



**MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
SPECIAL MEETING
THURSDAY, JANUARY 23, 2025; 10:00 A.M.**

The Nags Head Board of Commissioners met in the Board Room located at 5401 S Croatan Highway, Nags Head, North Carolina on Thursday, January 23, 2025 at 10:00 a.m. for a Special Meeting. [The January 22, 2025 Board of Commissioners Recessed Session was cancelled due to a snow storm event.]

Board members Present: Mayor Ben Cahoon; Comr. Bob Sanders; and Comr. Megan Lambert

Board members Absent: Mayor Pro Tem Michael Siers; (One Vacancy)

Others present: Town Manager Andy Garman; Amy Miller; David Ryan; Nancy Carawan; Brittany Phillips; Roberta Thuman; Jim Morris; David Thompson; Carol Mercer; and Town Clerk Carolyn F. Morris

CALL TO ORDER

Mayor Cahoon called the Special Meeting to order at 9 a.m.

ADOPTION OF AGENDA

MOTION: Comr. Sanders made a motion to approve the January 23rd Special Meeting agenda as presented. The motion was seconded by Comr. Lambert which passed 3 – 0 (Mayor Pro Tem Siers was excused.).

PUBLIC COMMENT

No one present wished to speak during Public Comment.

CONSENT AGENDA

The Consent Agenda consisted of the following items:

- Beach Nourishment Maintenance Capital Project Ordinance Amendment #14 - Beach Nourishment Restoration 2026/2027 project
- Consideration of Conflict of Interest Policy

MOTION: Comr. Sanders made a motion to approve the Consent Agenda as presented. The motion was seconded by Comr. Lambert which passed 3 – 0 (Mayor Pro Tem Siers was excused.).

The Beach Nourishment Maintenance Capital Project Ordinance Amendment #14 – Beach Nourishment Restoration – 2026/2027 Project, as approved, is attached to and made a part of these minutes as shown in Addendum “A”.

The resolution detailing the Conflict of Interest Policy applicable to contracts supported by federal financial assistance, as adopted, read in part as follows:

“I. Scope of Policy

a. **Purpose of Policy.** This Conflict of Interest Policy (“*Policy*”) establishes conflict of interest standards that (1) apply when the Town of Nags Head enters into a Contract (as defined in Section II hereof) (2) meet or exceed the requirements of North Carolina law and 2 C.F.R. § 200.318(c).

b. **Application of Policy.** This Policy shall apply when the Town (1) enters into a Contract to be funded, in part or in whole, by Federal Financial Assistance to which 2 C.F.R. § 200.318(c) applies, or (2) makes any Subaward to be funded by Federal Financial Assistance to which 2 C.F.R. § 200.318(c) applies. If a federal statute, regulation, or the terms of a financial assistance agreement applicable to a particular form of Federal Financial Assistance conflicts with any provision of this Policy, such federal statute, regulation, or terms of the financial assistance agreement shall govern.

‘II. Definitions

Capitalized terms used in this Policy shall have the meanings ascribed thereto in this Section II: Any capitalized term used in this Policy but not defined in this Section II shall have the meaning set forth in 2 C.F.R. § 200.1.

a. “*COI Point of Contact*” means the individual identified in Section III(a) of this Policy.

b. “*Contract*” means, for the purpose of Federal Financial Assistance, a legal instrument by which the Town purchases property or services needed to carry out a program or project under a Federal award.

c. “*Contractor*” means an entity or individual that receives a Contract.

d. “*Covered Individual*” means a Public Officer, employee, or agent of the Town.¹

e. “*Direct Benefit*” means, with respect to a Public Officer or employee of the Town, or the spouse of any such Public Officer or employee, (i) having a ten percent (10%) ownership interest or other interest in a Contract or Subaward; (ii) deriving any income or commission directly from a Contract or Subaward; or (iii) acquiring property under a Contract or Subaward.

f. “*Federal Financial Assistance*” means Federal financial assistance that the Town receives or administers in the form of grants, cooperative agreements, non-cash contributions or donations of property (including donated surplus property), direct appropriations, food commodities, and other Federal financial assistance (except that the term does not include loans, loan guarantees, interest subsidies, or insurance).

g. “*Governing Board*” means the Board of Commissioners of the Town of Nags Head.

h. “*Immediate Family Member*” means, with respect to any Covered Individual, (i) a spouse, and parents thereof, (ii) a child, and parent thereof, (iii) a parent, and spouse thereof, (iv) a sibling, and spouse thereof, (v) a grandparent and grandchild, and spouses thereof, (vi) domestic partners and parents thereof, including domestic partners of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with the Covered Individual is the equivalent of a family relationship.²

- i. *"Involved in Making or Administering"* means (i) with respect to a Public Official or employee, (a) overseeing the performance of a Contract or Subaward or having authority to make decisions regarding a Contract or Subaward or to interpret a Contract or Subaward, or (b) participating in the development of specifications or terms or in the preparation or award of a Contract or Subaward, (ii) only with respect to a Public Official, being a member of a board, commission, or other body of which the Public Official is a member, taking action on the Contract or Subaward, whether or not the Public Official actually participates in that action.
- j. *"Pass-Through Entity"* means a non-Federal entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- k. *"Public Officer"* means an individual who is elected or appointed to serve or represent the Town (including, without limitation, any member of the Governing Board), other than an employee or independent contractor of the Town.
- l. *"Recipient"* means an entity, usually but not limited to a non-Federal entity, that receives a Federal award directly from a Federal awarding agency. The term does not include Subrecipients or individuals that are beneficiaries of the award.
- m. *"Related Party"* means (i) an Immediate Family Member of a Covered Individual, (ii) a partner of a Covered Individual, or (iii) a current or potential employer (other than the Town of Nags Head) of a Covered Individual, of a partner of a Covered Individual, or of an Immediate Family Member of a Covered Individual.
- n. *"Subaward"* means an award provided by a Pass-Through Entity to carry out part of a Federal award received by the Pass-Through Entity. It does not include payments to a contractor or payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- o. *"Subcontract"* means mean any agreement entered into by a Subcontractor to furnish supplies or services for the performance of a Contract or a Subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.
- p. *"Subcontractor"* means an entity that receives a Subcontract.
- q. *"Subrecipient"* means an entity, usually but not limited to a non-Federal entity, that receives a subaward from a Pass-Through Entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.
- r. *"Town"* has the meaning specified in Section I hereof.

III. COI Point of Contact

a. Appointment of COI Point of Contact. The Deputy Town Manager, an employee of the Town of Nags Head, shall have primary responsibility for managing the disclosure and resolution of potential or actual conflicts of interest arising under this Policy. In the event that the Deputy Town Manager is unable to serve in such capacity, the Town Manager shall assume responsibility for managing the disclosure and resolution of conflicts of interest arising under this Policy. The individual with responsibility for managing the disclosure and resolution of potential or actual conflicts of interest under this Section III(a) shall be known as the *"COI Point of Contact."*

IV. Conflict of Interest Standards in Contracts and Subawards

a. Town of Nags Head Supplemental Procurement Policies for Federal Projects or Federal Financial Assistance. The Town of Nags Head maintains written standards of conduct covering conflicts of interest. In addition to the prohibition against self-benefiting from a public contract under G.S. 14-234, no officer, employee, or agent of

the Town of Nags Head may participate directly or indirectly in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties, has a financial or other interest in or a tangible personal benefit from a firm considered for award. 2 C.F.R. § 200.318(c)(1).

'b. North Carolina Law. North Carolina law restricts the behavior of Public Officials and employees of the Town involved in contracting on behalf of the Town. The Town shall conduct the selection, award, and administration of Contracts and Subawards in accordance with the prohibitions imposed by the North Carolina General Statutes G.S. § 14-234.

'c. Federal Standards.

i. Prohibited Conflicts of Interest in Contracting. Without limiting any specific prohibition set forth in Sections IV(a-b), a Covered Individual may not participate in the selection, award, or administration of a Contract or Subaward if such Covered Individual has a real or apparent conflict of interest.

1. Real Conflict of Interest. A real conflict of interest shall exist when the Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Contract or Subaward.
2. Apparent Conflict of Interest. An apparent conflict of interest shall exist where a real conflict of interest may not exist under Section IV(c)(i)(1), but where a reasonable person with knowledge of the relevant facts would find that an existing situation or relationship creates the appearance that a Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Contract or Subaward.

ii. Identification and Management of Conflicts of Interest

1. Duty to Disclose and Disclosure Forms.

Any officer, employee, or agent with an actual, apparent, or potential conflict of interest as defined in this policy shall report the conflict to his or her immediate supervisor. Any such conflict shall be disclosed in writing to the federal award agency or pass-through entity in accordance with applicable Federal awarding agency policy. 2 C.F.R. § 200.112.

2. Identification After Award of Contract or Subaward.

If the COI Point of Contact discovers that a real or apparent conflict of interest has arisen after the Town has entered into a Contract or Subaward, the COI Point of Contact shall, as soon as possible, disclose such finding to the Town Manager and to each member of the Governing Board. Upon discovery of such a real or apparent conflict of interest, the Town shall cease all payments under the relevant Contract or Subaward until the conflict of interest has been resolved.

'V. Gift Standards

- a. Federal Standard. Subject to the exceptions set forth in Section V(b), a Covered Individual may not solicit or accept gratuities, favors, or anything of monetary value from a Contractor or a Subcontractor.
- b. Exception. Notwithstanding Section V(a), a Covered Individual may accept an unsolicited gift from a Contractor or Subcontractor in which the financial interest is de minimus, not substantial, or the gift is an unsolicited item of nominal value. 2 C.F.R. § 200.318(c)(1).

VI. Violations of Policy

- a. Disciplinary Actions for Covered Individuals. Violations of the Town's written standards of conduct by officers, employees, or agents of the Town may result in dismissal for the Town employee or termination of a contract for a professional service provider and/or contractor 2 C.F.R. §200.318(c)(1).
- b. Protections for Whistleblowers. In accordance with 41 U.S.C. § 4712, the Town shall not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant: (i) a member of Congress or a representative of a committee of Congress; (ii) an Inspector General; (iii) the Government Accountability Office; (iv) a Treasury or other federal agency employee responsible for grant oversight or management; (v) an authorized official of the Department of Justice or other law enforcement agency; (vi) a court or grand jury; or (vii) a management official or other employee of the Town, a Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct."

NEW BUSINESS

Consideration of S Old Oregon Inlet Road Drainage Infrastructure Improvements (Project Area #13) Construction Bids

Town Engineer David Ryan summarized his report which read in part as follows:

"The Town of Nags Head recently solicited formal bids for the South Old Oregon Inlet Rd Drainage Infrastructure Improvement project, for the construction of a discrete infiltration pipe collection system along the east side of S. Old Oregon Inlet Rd. spanning from Hargrove St to Tides Dr. with pump station, force main and infiltration basin immediately north of Fire Station 21, (Project Area 13). Funding for the project is provided through a grant award in the amount of \$2,957,961 received through the American Rescue Plan Act, NCDEQ Division of Water Infrastructure, Local Assistance for Stormwater Infrastructure Investments Program. The funding amount includes Project Area #13 in conjunction with Project Area #12, a separate drainage improvement project located to the south. The project was initially advertised in October with only two bids submitted at the November 21, 2024 bid opening. In accordance with NC General Statute 143.132, for construction contracts within the formal bid range, a minimum of three bids shall be received to be considered for award. If three bids are not received, the local government must re-advertise. If three bids are still not received, the local government may award to the lowest responsive, responsible bidder, even if only one bid is received. The project was re-advertised on November 21, 2024, with a re-bid due date of December 3, 2024. Two bids were received at the December re-bid, one by Hatchell Concrete Inc. in the amount of \$1,712,810 and one by Fred Smith Company in the amount of \$1,814,148.10, (bid tabulation is attached).

"The lowest responsive, responsible bid amount received was determined to be well in excess of the funds available for the project. If all bids for a construction project exceed the funds available to for the project, the unit of government may negotiate with the lowest responsive, responsible bidder to make reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available. A negotiation was conducted with Hatchell Concrete Inc., through a value engineering process. This process focused on reasonable changes to materials, methods and bid item quantities without altering the overall project length. The impact of these modifications resulted is a bid reduction of \$412,395 for an adjusted amount of

\$1,300,415.00. Further modifications or reductions could potentially impact system performance or result in changes extending beyond what could be considered reasonable. Staff will present the bid tabulation results and bid award recommendation at the January 23, 2025 meeting.”

Mayor Cahoon confirmed with Engineer Ryan that the value engineering changes, which resulted in a bid reduction of \$412,395, did not impact system performance or overall project length.

MOTION: Comr. Sanders made a motion to award the S Old Oregon Inlet Road Project Area #13 bid to Hatchell Concrete as the lowest responsible, responsive bidder, and to authorize the Town Manager to execute the contract in the amount of \$1,300,415 contingent upon Town Attorney review. The motion was seconded by Comr. Lambert which passed 3 – 0 (Mayor Pro Tem Siers was excused.).

Consideration of S Old Oregon Inlet Rd Drainage Infrastructure Improvements (Project Area #12)
Construction Bids - Consideration of Budget Amendment 9.1

Town Engineer David Ryan summarized his report which read in part as follows:

“The Town of Nags Head recently solicited formal bids for the South Old Oregon Inlet Rd Drainage Infrastructure Improvement project, for the construction of a discrete infiltration pipe collection system along the east side of S. Old Oregon Inlet Rd. spanning from James St to approximately Juncos St. Dr. with pump station, force main and infiltration gallery located within the dune complex at the Juncos St Beach Access, (Project Area 12). Funding for the project is provided through a grant award in the amount of \$2,957,961 received through the American Rescue Plan Act, NCDEQ Division of Water Infrastructure, Local Assistance for Stormwater Infrastructure Investments Program. The funding amount includes Project Area #12 in conjunction with Project Area #13, a separate drainage improvement project located to the north.

‘The project was initially advertised in October with only two bids submitted at the November 21, 2024 bid opening. In accordance with NC General Statute 143.132, for construction contracts within the formal bid range, a minimum of three bids shall be received to award a bid. If three bids are not received, the local government must readvertise. If three bids are still not received, the local government may award to the lowest responsive, responsible bidder, even if only one bid is received. The project was re-advertised on November 21, 2024, with a re-bid due date of December 3, 2024.

‘Two bids were received at the December re-bid, one by Hatchell Concrete Inc. in the amount of \$2,513,291 including Add alternate #2, and one by Fred Smith Company in the amount of \$2,091,500, including Add Alternate #2 (bid tabulation is attached). The lowest responsive, responsible bid amount received was determined to be well in excess of the funds available for the project. If all bids for a construction project exceed funds available for the project, the unit of government may negotiate with the lowest responsive, responsible bidder to make reasonable changes in the plans and specifications as necessary to bring the contract price within the funds available. A follow-up negotiation was conducted with Fred Smith Company, through a value engineering process. This process focused on reasonable changes to materials, methods and bid item quantities without altering the overall project length. The impact of these modifications resulted in a bid reduction of \$283,442 for an adjusted amount of \$1,808,058.00.

‘Further modifications or reductions could potentially impact system performance or result in changes extending beyond what could be considered reasonable.

‘Staff will present the bid tabulation results and bid award recommendation at the January 23, 2025 meeting.”

Engineer Ryan explained that the Budget Amendment is to cover the shortfall to carry the project to the end of this fiscal year with the balance requested in next year's budget. Project timelines for both Project Areas #12 and #13 are extended to May 2026 for substantial completion date.

Mayor Cahoon questioned why the projects weren't bid together. Engineer Ryan said that the projects were bid separately due to size, scale, the capacity of local contractors, as well as the time period which is that the projects must be completed by the end of 2026 to cover the grant funding. Town Manager Garman also pointed out that the permit requirements were different for each project.

MOTION: Comr. Lambert made a motion to award the S Old Oregon Inlet Road Project #12 bid to Fred Smith Company as the lowest responsible, responsive bidder and to authorize the Town Manager to execute the contract in the amount of \$1,808,058 contingent upon Town Attorney review. The motion was seconded by Comr. Sanders which passed 3 – 0 (Mayor Pro Tem Siers was excused.).

MOTION: Comr. Sanders made a motion to approve the Budget Amendment associated with Project #12 in the amount of \$96,559 as presented. The motion was seconded by Comr. Lambert which passed 3 – 0 (Mayor Pro Tem Siers was excused.).

ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Town Manager Garman – Thank you to Town Clerk

Town Manager Garman noted that today is Town Clerk Carolyn F Morris' 30 year anniversary with the Town and he thanked her for her years of service, congratulated her on her upcoming retirement and noted that a more formal thank you will take place at the February 5th Board of Commissioners meeting.

BOARD OF COMMISSIONERS AGENDA

Comr. Lambert – Thank you to Town Clerk

Comr. Lambert thanked Town Clerk Morris for her 30 years of service.

MAYOR'S AGENDA

Mayor Cahoon – Thank you to staff during snowstorm

Mayor Cahoon gave a special thank you to staff to include Public Works, Police, and Fire Departments for their work during and after the recent substantial snowstorm felt by this area.

ADJOURNMENT

MOTION: Comr. Sanders made a motion to adjourn. The motion was seconded by Comr. Lambert which passed 3 – 0 (Mayor Pro Tem Siers was excused.). The time was 10:25 a.m.

Date Approved: February 5, 2025

Carolyn F. Morris, Town Clerk

Mayor: _____
Benjamin Cahoon