

# CAROLINA BEACH

Town Council Special Meeting

Thursday, November 07, 2024 – 8:00 AM

Council Chambers, 1121 N. Lake Park Boulevard, Carolina Beach, NC



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## AGENDA

### CALL TO ORDER

### ITEMS OF BUSINESS

1. Consider Approving the Carolina Beach Portion of the Coastal Storm Risk Management Project

### ADJOURNMENT



## AGENDA ITEM COVERSHEET

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**PREPARED BY:** Kim Ward, Town Clerk

**DEPARTMENT:** Clerk

**MEETING:** Town Council Special Meeting 11/7/2024

**SUBJECT:** Consider Approving the Carolina Beach Portion of the Coastal Storm Risk Management Project

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**BACKGROUND:**

Mr. Oakley will present Amendment No. 1 to the Project Partnership Agreement between the Department of the Army and the Town of Carolina Beach for periodic nourishment of the Carolina Beach portion of the Carolina Beach and Vicinity Coastal Storm Risk Management Project.

**ACTION:**

Council will consider approving the Project and signing the contract with the Department of the Army.

AMENDMENT NUMBER 1  
TO  
PROJECT PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
TOWN OF CAROLINA BEACH, NORTH CAROLINA  
FOR PERIODIC NOURISHMENT  
OF THE  
CAROLINA BEACH PORTION OF THE CAROLINA BEACH AND VICINITY  
COASTAL STORM RISK MANAGEMENT PROJECT

THIS AMENDMENT NUMBER 1 is entered into this \_\_\_ day of \_\_\_\_\_, 2024, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander for Wilmington District (hereinafter the “District Commander”) and the Town of Carolina Beach (hereinafter the “Non-Federal Sponsor”), represented by its Mayor.

WITNESSETH, THAT:

WHEREAS, the Carolina Beach portion of the Carolina Beach and Vicinity coastal storm risk management project (hereinafter the “Project”) was authorized by Section 203 of the Flood Control Act of 1962, as amended;

WHEREAS, Section 401(7) of the Water Resources Development Act of 2020, Public Law 116-260, extended periodic nourishment of the Project for a 15-year period;

WHEREAS, on November 24, 2021, the Government and the Non-Federal Sponsor entered into a Project Partnership Agreement (hereinafter the “Agreement”) to extend periodic nourishment of the Project for a 15-year period beginning on the date on which the Government initiates construction of the first cycle of such periodic nourishment;

WHEREAS, on February 10, 2022, the Government initiated construction of the first cycle of such periodic nourishment;

WHEREAS, Section 8308 of the Water Resources Development Act of 2022, Public Law 117-263 (hereinafter “Section 8308”), directs the Secretary of the Army, for specified projects that includes the Project, to fund, at Federal expense, any incremental increase in the cost of the Project that results from a legal requirement to use a borrow source determined by the Secretary to be other than the least-cost option; and

WHEREAS, the Government and the Non-Federal Sponsor desire to amend the Agreement to reflect that the Government, pursuant to Section 8308, shall fund, at full Federal expense, any incremental increase in the cost of periodic nourishment of the Project, incurred after the effective date of Amendment Number 1, that results from a legal requirement to use a borrow source that is not the least-cost option.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to amend the Agreement as follows:

1. Insert after the third WHEREAS clause the following:

“WHEREAS, Section 8308 of the Water Resources Development Act of 2022, Public Law 117-263 (hereinafter “Section 8308”), directs the Secretary of the Army, for specified projects including the Project, to fund, at full Federal expense, any incremental increase in the cost of the Project resulting from a legal requirement to use a borrow source determined by the Secretary to be other than the least-cost option;”

2. In Article I.B. insert the following after “June 16, 2020” and before “(hereinafter the “Decision Document”)”:

“, with modifications to the cost-sharing requirements of periodic nourishment of the Project pursuant to Section 8308, as described in the Letter Report, dated August 2024 and approved by the Division Commander for South Atlantic Division on September 5, 2024”.

3. In the last sentence of Article I.D., delete the second “or” and insert the following after “negotiating this Agreement”:

“; or any incremental increase in the cost of periodic nourishment of the Project pursuant to Section 8308 incurred after the effective date of Amendment Number 1.”

4. In Article I.J., insert as the last sentence the following:

“The Maximum Cost Limit also includes any incremental increase in the cost of periodic nourishment of the Project pursuant to Section 8308 incurred after the effective date of Amendment Number 1.”

5. In Article II.A., insert the following sentence after the first sentence:

“Pursuant to Section 8308, the Government shall fund, at full Federal expense, any incremental increase in the cost of periodic nourishment of the Project, incurred after the effective date of Amendment Number 1, that results from a legal requirement to use a borrow source determined by the Government to be other than the least-cost option.”

6. Replace Article IV.A. in its entirety with the following:

“A. As of the effective date of Amendment Number 1 to this Agreement, total construction costs are projected to be \$65,892,000, with the Government’s share of such costs projected to be \$32,946,000 and the Non-Federal Sponsor’s share of such costs projected to be \$32,946,000. Construction costs allocated to coastal storm risk management are projected to be \$65,892,000, with the Government’s share of such costs projected to be \$32,946,000, and the Non-Federal Sponsor’s share of such costs projected to be \$32,946,000, which includes

creditable in-kind contributions projected to be \$0, and the amount of funds required to meet its cost share projected to be \$32,946,000. Construction costs allocated to beach improvements with exclusively private benefits are projected to be \$0. Construction costs allocated to improvements or other work located within the Coastal Barrier Resources System that the Government has determined are ineligible for Federal financial participation are projected to be \$0. Construction costs allocated to the prevention of losses of undeveloped private lands are projected to be \$0. The total incremental increase in the cost of periodic nourishment of the Project pursuant to Section 8308 is projected to be \$11,501,000. Average annual costs for operation, maintenance, repair, replacement, and rehabilitation are projected to be \$136,000. Costs for betterments are projected to be \$0 and costs for additional work are projected to be \$0. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.”

7. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 1, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

TOWN OF CAROLINA BEACH, NORTH CAROLINA

BY: \_\_\_\_\_  
Brad A. Morgan, P.E.  
Colonel, U.S. Army  
District Commander

BY: \_\_\_\_\_  
Lynn Barbee  
Mayor

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Lynn Barbee  
Mayor  
Town of Carolina Beach, North Carolina

DATE: \_\_\_\_\_

CERTIFICATE OF AUTHORITY

I, Charlotte Noel Fox, do hereby certify that I am the principal legal officer for the Town of Carolina Beach, North Carolina, that the Town of Carolina Beach, North Carolina, is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment No. 1 to the Project Partnership Agreement between the Department of the Army and the Town of Carolina Beach, North Carolina in connection with the Carolina Beach Portion of the Carolina Beach and Vicinity Coastal Storm Risk Management Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Amendment on behalf of the Town of Carolina Beach, North Carolina, acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this \_\_\_\_\_ day of \_\_\_\_\_ 2024.

\_\_\_\_\_  
Charlotte Noel Fox  
Town Attorney