

APPENDIX C  
THIRD PARTY CONTRACT

**PROCESSING AGREEMENT BETWEEN**  
**THE UNITED STATES ARMY CORPS OF ENGINEERS**  
**AND**  
**Carteret County, N.C.**

**I. INTRODUCTION AND PURPOSE**

**A.** This Processing Agreement (“Agreement”) provides a framework in which the United States Army Corps of Engineers (“USACE”) will prepare a Programmatic Environmental Impact Statement (“PEIS”) for the development of the Bogue Banks Master Beach Nourishment Plan (Master Plan) located in Carteret County, N.C. [Action # 2009-0293]. Carteret County has chosen to develop a PEIS for evaluating federal permit applications under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. This Agreement describes the relationship of the above named parties in preparing the PEIS. Subject to completion of the PEIS, the USACE will determine whether to authorize the proposed project. This determination will be set forth in a Record of Decision.

**B.** The USACE will approve the selection of an independent contractor (“Contractor”) to prepare the PEIS. Carteret County the (“Applicant”) shall be the party responsible for engaging, retaining, and remitting payment to a Contractor.

**C.** The EIS and any related documents shall comply with the provisions of the National Environmental Policy Act of 1969 (“NEPA”) and appropriate Council on Environmental Quality (“CEQ”) and USACE environmental regulations and guidance, as well as all applicable local, state and Federal laws, as appropriate.

**D.** It is the purpose of this Agreement to establish an understanding between the Applicant and the USACE regarding the responsibilities of the parties and the conditions and procedures to be followed in the development and preparation of the EIS.

**E.** The parties hereto intend that development and preparation of the EIS as provided in this Agreement will satisfy the pertinent environmental requirements of the USACE.

**II. GENERAL PROVISIONS**

**A.** The USACE will be responsible for assuring compliance with all the requirements of NEPA (42 U.S.C. §4321 et seq.), CEQ Regulations (40 C.F.R. §§ 1500- 1508), and appropriate USACE environmental orders. The USACE shall assure that all pertinent

environmental issues and impacts, and reasonable alternatives and their impacts are treated in the EIS, and shall be responsible for the scope and content of the EIS.

**B.** The Applicant will engage and retain a Contractor, approved by the USACE, for the preparation of the EIS. The Contractor, with the approval of the USACE and Applicant, may employ such other contractors and experts (collectively referred to as "Subcontractors"), as are required for the adequate development and preparation of the EIS.

**C.** The Contractor will provide, through its staff or by Subcontractor, the expertise, staffing, and technical capabilities required for the preparation of the EIS. The USACE will determine the scope of the EIS and will independently evaluate all information, environmental data and analyses submitted by the Contractor, or others, and revise or cause additional study and analyses to be performed as necessary.

**D.** The Contracts between the Applicant and Contractor and between the Contractor and Subcontractors (collectively the "Contract") shall be consistent with the provisions of this Agreement and shall specifically incorporate those provisions herein which address the conduct of the Contractor. The Contract shall provide, and the Applicant hereby represents, consistent with 40 C.F.R. § 1506.5(c), that the Contractor and any Subcontractors have not entered into and, during the lifetime of the EIS preparation, will not enter into any agreement affording the Contractor and any Subcontractors with any direct or indirect financial interest in the planning, design, construction or operation of the Project except with regard to the preparation of the EIS. Further, the Applicant shall ensure that the Contract shall specifically limit any remedies available to the Contractor and any Subcontractors, so as to affirmatively relieve the United States of America, the USACE, and any officer, agent or employee of same, from any liability arising out of the performance or termination of the contract for preparation of the EIS, or out of this Agreement.

(1) Prior to beginning work on the EIS, the Contractor and any Subcontractors shall sign a "Disclosure Statement" provided by the USACE per the requirements of 40 C.F.R. § 1506.5(c), specifying they have no financial or other interest in the outcome of the project.

(2) The USACE shall evaluate the Disclosure Statement prior to its approval.

**E.** The Applicant shall facilitate the coordination of effort and the exchange of information related to the planning, design, and construction of the Project, as these activities relate to the preparation of the EIS among and between the Contractor and its Subcontractors and the USACE. The Applicant shall make all reasonable efforts to assure the satisfactory and timely performance of the duties of the Contractor as specified in this Agreement.

**F.** The Applicant and USACE shall:

(1) Appoint such representatives as necessary to accomplish the coordination necessary for the satisfactory preparation of the EIS. Notice to any such representative shall constitute notice to that party. Failure of a party to respond to such notice shall not be construed to represent approval of a proposal or action.

(2) Review substantive phases of preparation of the EIS as the USACE deems necessary.

(3) Have their respective representatives attend meetings with other Federal, State, regional, and local agencies for the purpose of increasing communications and receiving comments, as the same may be necessary, desirable, or required by law in preparation of the EIS.

**G.** All costs incurred in connection with the employment of the Contractor and any and all Subcontractors, or other persons retained or employed by the Applicant, shall be the sole responsibility of the Applicant and the Applicant agrees to hold harmless and indemnify the USACE, its officers, agents, and employees, with respect to any and all judgments or settlements arising from claims, demands, causes of action, and the like, in connection with the Applicant's employment of the Contractor and any and all Subcontractors which may arise from the termination or performance of the Contract or any other services, or purchase of materials utilized for the development and preparation of the EIS, or from termination of this Agreement. This indemnification by the Applicant does not extend to administrative or legal costs of the USACE, including suits by third parties (other than the Contractor or its Subcontractors) against the USACE, involving the legality or adequacy of the USACE's compliance with NEPA and other laws and regulations, to the extent of the USACE's liabilities on those issues. The Applicant shall cooperate and shall ensure that the Contractor cooperates in defense of any such suit.

### **III. PROCEDURES**

**A.** Under the direction of the USACE, the Contractor shall develop and submit a Plan of Study to the USACE for approval. The Plan of Study shall include detailed descriptions of all work to be performed, the methodologies proposed to perform the work, the name and qualifications of the person performing each aspect of the work, estimated man-hours required for completion of each aspect, the schedule for performing each aspect and a description of the internal and external review procedures to assure quality control. Also, the Plan of Study shall include a provision for a thorough literature search and bibliography of references and methodologies to be used in the acquisition of the environmental data and analyses and the development and preparation of the EIS.

**B.** The USACE will forward the Plan of Study to the Applicant for review and comment. After receiving comments from the Applicant, and after the scoping process conducted pursuant to 40 C.F.R. §1501.7, the USACE will finalize and approve the Plan of Study. The Plan of Study and this Agreement shall establish the scope of work required of the Contractor in the development and preparation of the EIS.

**C.** The Plan of Study may be amended by the USACE from time to time as the work of the Contractor or its Subcontractors proceeds, but any amendments or changes which require the expenditure of additional funds by the Applicant must be agreed to by the Applicant. The Applicant will be notified and consulted prior to any significant amendments or modifications to the Plan of Study.

**D.** Unless otherwise directed by the USACE, any and all work performed by the Contractor and its Subcontractors in preparation of the EIS shall be submitted directly to the USACE and to the Applicant. The Applicant may communicate with the Contractor and its Subcontractors during the development of the EIS, but no prior review or discussion of data or analyses developed by the Contractor or Subcontractor as related to the EIS shall be afforded the Applicant. In no case will the Applicant discuss, review, modify, or edit the Contractor's work or the work of its Subcontractors prior to submission to the USACE, or be provided the opportunity to do so. All suggestions for modifications or changes to such sections recommended by the Applicant shall only be made to the USACE.

**E.** The USACE reserves the right to review periodically and modify the work of the Contractor to ensure that requirements under NEPA and other applicable laws and regulations are satisfied. The Contractor shall submit monthly written reports on the progress of its work to the USACE, with a concurrent copy to the Applicant. This report shall describe the present status of each aspect of the work, any problems encountered, and recommendations for modifications to the Plan of Study and any changes in personnel, methodology or schedules for completion.

**F.** As each portion of any draft or final document is completed, the USACE shall review each portion and those tasks completed thereunder and, after consultation with the Applicant, shall approve, modify, comment thereon and/or direct further work with regard to such portion or tasks as necessary. Said directions and/or comments shall be made by the USACE in a timely manner, and the Contractor shall ensure incorporation of such comments into any editorial changes to the satisfaction of the USACE. Final drafts of any documents will require USACE approval. Prior to approval, the USACE will forward final drafts to the Applicant for review and comment. Comments from the Applicant shall be sent to the USACE. The Contractor will only make modifications as the USACE directs regarding these comments.

**G.** If requested, the Contractor will provide the USACE access to, copies of, and review of all procedures and underlying data used by the Contractor in developing submitted sections of the EIS, including, but not limited to, field reports, Subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be contained in a draft or final EIS. The Applicant will also have access to such procedures and underlying data. Such access by the USACE and Applicant shall be governed by paragraph III.T hereunder.

**H.** To facilitate the development and preparation of the EIS, joint meetings among the USACE, Applicant, and Contractor may be held. However, the USACE reserves the right

to work directly with the Contractor for purposes of assuring objectivity in preparing reports and/or for assuring expeditious communications. The Contractor will notify the USACE and Applicant of any substantive meetings that are scheduled and of their purpose and will provide an opportunity for the parties to attend if desired. No meeting will be held between the Contractor and Applicant without prior notification to and approval of the USACE. A summary of all matters relating to EIS discussions in any meetings or communications between the Contractor and a party hereto will be included in each formal monthly report submitted by the Contractor to the USACE and Applicant. The USACE reserves the right to consult directly with other Federal, State, and local officials and agencies during the preparation of the EIS to assure compliance with NEPA and other applicable laws and regulations.

**I.** The Applicant shall assure the full cooperation of the Contractor and its Subcontractors with respect to participating in any public workshops, hearings, or meetings as required by the USACE to foster public familiarity and participation with respect to the assessment of impacts related to the Project.

**J.** The Contractor shall be responsible for the costs associated with the printing, publication, and mailing of the draft and final copies of the EIS, as well as any preliminary drafts or reports required by USACE. The Contractor shall be responsible for the costs associated with the compilation of any and all mailing lists necessary for the distribution of preliminary, draft, and final copies of the EIS. The Contractor shall be responsible for all costs associated with the publication of notices announcing public workshops, meetings, hearings, and the like. The Contractor shall also be responsible for costs of stenographic and clerical services, preparation of graphics and visual aids associated with any public workshops, meetings, and hearings.

**K.** At such time as the USACE, after consultation with the Applicant, has approved the Draft EIS developed and prepared by the Contractor and its Subcontractors, the Contractor shall print the contracted quantity of Draft EIS and submit same to the USACE. The USACE shall submit an appropriate number of copies of the Draft EIS to the Applicant. The USACE shall proceed expeditiously to comply with the provisions of NEPA.

**L.** In all instances involving questions as to the content or relevance of the environmental data and analyses, and evaluations and wording prepared by the Contractor, the USACE, with appropriate advice and consultation where deemed necessary by the USACE, will make the final determination on the inclusion, deletion or modification of the same in the Draft or Final EIS. Except where otherwise prohibited by NEPA regulation governing the preparation of an EIS, the Applicant or the Contractor may supplement by addendum any material excluded or modified by direction of the USACE in the text of any given report.

**M.** Upon determination by the USACE that a public hearing is required, the Contractor shall organize the public hearing in accordance with 33 C.F.R. §327, and provide a facility, necessary equipment, and a court reporter therefor. The presiding officer shall be the Wilmington District Engineer or his designee.

**N.** The USACE will receive all comments during the Draft EIS review and comment period. This period (at least 45 days) will be initiated when the Environmental Protection Agency ("EPA") publishes the "Draft EIS Notice of Availability" in the Federal Register.

**O.** At the close of the Draft EIS review and comment period, the USACE shall identify the issues and comments submitted which will require response in the Final EIS. The USACE will direct those comments to the Contractor for preparation of proposed responses, and shall furnish the Applicant with copies of all comments received. The Contractor will furnish proposed responses to the USACE and Applicant for review. The USACE shall modify the proposed responses as it deems necessary. The Contractor and Applicant shall have the right to include, by way of addendum or comment, such responses as either one deems necessary in the Final EIS.

**P.** After receipt of comments and preparation of responses, the USACE, after appropriate advice and consultation, may direct the Contractor to make changes to the text of the Draft EIS as necessary.

**Q.** At such time as the USACE has approved the Final EIS, the Contractor shall print the contracted quantity of Final EIS. The USACE shall submit an appropriate number of copies of the Final EIS to the Applicant. The USACE shall proceed expeditiously to comply with the provisions of NEPA.

**R.** The USACE will receive all comments on the Final EIS during the mandatory "hold period". This period (at least 30 days) will be initiated when the EPA publishes the "Final EIS Notice of Availability" in the Federal Register.

**S.** The USACE, with assistance from the Contractor as needed by the USACE, will prepare and issue the USACE Record of Decision.

**T.** The USACE will maintain the confidentiality of, and will not release or allow access to, any information, documents or materials which in its opinion are validly designated as confidential by the Applicant or Contractor and which contain trade secrets, proprietary data, or commercial or financial information. Information developed under this Agreement is disclosable to the public to the extent required by law. In any instance where the USACE proposes to release to the public or allow access to any information, documents or materials which the Applicant or Contractor has designated as confidential, it shall notify the Applicant or Contractor of its intention to do so and provide the Applicant or Contractor the opportunity to appeal the decision in accordance with applicable regulations on such release or access prior to any such release or access.

#### **IV. CESSATION AND TERMINATION**

**A.** Any of the parties to this Agreement may withdraw from the terms of this Agreement for good cause upon 30 days written notice to the other party. During this period, the parties will actively attempt to resolve any disagreement.

**B.** In the event of a termination of this Agreement, and if the USACE determines, in its sole discretion, that preparation of an EIS by the USACE is still required by law or desired by the USACE, it is agreed as follows:

(1) The USACE shall have access to all documentation, reports, analyses and data by the Contractor and Subcontractors with confidentiality governed by paragraph III.T.


(2) The USACE shall complete the EIS. The Applicant shall no longer be responsible for the payment of costs associated with preparation of the EIS under the terminated Agreement, apart from costs already incurred under the Applicant's contract with the Contractor.

(3) Liability for termination shall be in accordance with paragraph II.G. hereof.

**V. NO RIGHTS FOR NON-PARTIES** No rights or privileges are created or intended to be created by this Agreement in anyone not a signatory of this Agreement.

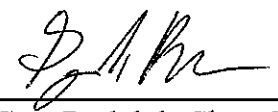
**VI. MODIFICATION** This Agreement represents the entire agreement and may be modified by the parties hereto only by written agreement by all the parties.

**UNITED STATES ARMY CORPS OF ENGINEERS**

  
\_\_\_\_\_  
for Jefferson M. Ryscavage  
Colonel, U.S. Army  
District Engineer

7 June 10  
Date

**CARTERET COUNTY, NORTH CAROLINA**

  
\_\_\_\_\_  
Greg Rudolph, Shore Protection Manager

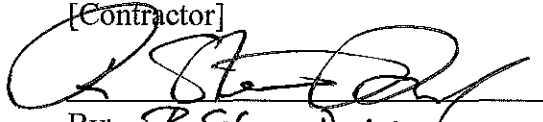
6/17/10  
Date



DISCLOSURE STATEMENT  
40 CFR § 1506.5(c)

We, Dial Cordy and Associates Incorporated, do hereby certify that we have not entered into and, during the lifetime of the Programmatic EIS preparation, will not enter into any agreement affording us or any Subcontractors that we may hire with any direct or indirect financial interest in the planning, design, construction or operation of the Bogue Banks Master Beach Nourishment Plan Project, Action ID. 2009-00293, located on the island of Bogue Banks, from Emerald Isle to Atlantic Beach, in Carteret County, North Carolina, except with regard to the preparation of the Programmatic EIS. In making this certification, we acknowledge that we have read, considered, and are in compliance with the provisions of 40 CFR § 1506.5(c), and the Council on Environmental Quality (CEQ) Forty Questions, Questions 16 & 17 (copies attached). We further certify that we will, in the Draft Programmatic EIS, make a full disclosure of the scope and extent of the firm's prior involvement in the Bogue Banks Master Beach Nourishment Plan project.

[Contractor]



By: R Steve Dial

Title: PRESIDENT, DIAL CORDY & ASSOC.

Date: 7-8-10

JDC