



**BOND ORDER
AUTHORIZING THE ISSUANCE OF SPECIAL OBLIGATION BONDS
TO PAY A PART OF THE COST OF A BEACH NOURISHMENT
PROJECT AND PROVIDING FOR CERTAIN RELATED MATTERS**

WHEREAS, the Board of Commissioners (the "Board") of Town of Nags Head, North Carolina (the "Town") has determined that it is necessary to nourish its beach by placing sand thereon from other sources (the "Project") and has found that the Project would benefit the Town;

WHEREAS, the Board has determined that it is necessary to issue special obligation bonds of the Town secured by certain revenues pledged for their payment pursuant to this bond order for the purpose of providing funds, with other available funds, for paying the cost of accomplishing the Project;

WHEREAS, the Board has determined that it may be necessary to provide additions or improvements to the Project (all of such additions or improvements being collectively called "Project Improvements") and that it is advisable to make provision for the issuance of additional special obligation bonds secured on a parity with the bonds initially to be issued under the provisions hereof for paying the cost of accomplishing Project Improvements and for refunding bonds issued under the provisions hereof (all of such bonds being collectively called the "Bonds");

WHEREAS, under the Constitution and laws of the State of North Carolina, including particularly the Local Government Special Obligation Bond Act, being Chapter 159I of the General Statutes of North Carolina, as amended, and The Municipal Service District Act of 1973, being Article 23 of Chapter 160A of the General Statutes of North Carolina, the Town is authorized and empowered:

(i) to borrow money for the purpose of financing or refinancing the cost of projects involving beach erosion control and flood and hurricane protection works and to issue special obligation bonds and notes for such purpose; and

(ii) to pledge for the payment of such special obligation bonds or notes any available source or sources of revenues of the Town specifically identified for such purpose and, to the extent that the generation of such revenues is within the power of the Town, to enter into covenants to take action in order to generate such revenues, as long as the pledge of such sources of revenues to make such payments or any such covenant to generate revenues does not constitute a pledge of the Town's taxing power;

NOW, THEREFORE, BE IT ORDERED by the Board, as follows:

ARTICLE I

GENERAL PROVISIONS AND DEFINITIONS

Section 1.01 Contract with Owners. In consideration of the purchase and acceptance of the Bonds by those who shall hold the same from time to time, the provisions of this Bond Order shall be deemed to be and shall constitute a contract between the Town and the Owners from time to time of the Bonds; and the covenants and agreements herein set forth to be performed by or on behalf of the Town shall be for the equal benefit, protection and security of the Owners of any and all of the Bonds so issued or to be issued, without preference, priority or distinction as to lien or otherwise, except as otherwise hereinafter provided, of any one Bond over any other Bond by reason of priority in the issue, sale or negotiation thereof, or otherwise.

Section 1.02 Definitions. In addition to the terms defined elsewhere in this Bond Order, the following words and terms as used in this Bond Order shall have the following meanings, unless some other meaning is manifestly intended:

“Act” means the Local Government Special Obligation Bond Act, being Chapter 159I of the General Statutes of North Carolina, as amended.

“Additional Bonds” means the Additional Bonds referred to in **Article III** hereof.

“Bank” means RBC Bank (USA), together with its successors and assigns, as a Depository with which the Project Fund is created.

“Board” means the Board of Commissioners for the Town or the board or body in which the general legislative powers of the Town shall hereafter be vested.

“Bond” or “Bonds” means any bond or bonds authorized by this Bond Order and includes the Initial Bonds and any Additional Bonds issued in accordance with this Bond Order.

“Bond Order” means this bond order, together with all orders amendatory hereof and all orders supplemental hereto as herein permitted.

“Bond Registrar” means the Finance Officer or any successor as appointed by the Board.

“Commission” means the Local Government Commission of North Carolina.

“Consulting Engineers” means a professional engineer or engineering firm at the time employed by the Town to perform the functions and duties imposed on the Consulting Engineers by this Bond Order.

“Counsel” means an attorney or firm of attorneys selected by the Town.

“Debt Service Account” means the account created and so designated by **Section 5.02** of this Bond Order.

“Debt Service Requirements” means, with respect to Bonds in any Fiscal Year, the sum of (a) the amount required to pay the interest on the Bonds then Outstanding which is payable in such Fiscal Year and (b) the amount required to pay the principal of the Bonds then Outstanding which is payable in such Fiscal Year, the computation of such amounts to be based on the assumption that (a) the Bonds at the time Outstanding will be retired according to their stated maturities, principal installments or mandatory redemption requirements and (b) if the Bonds bears interest at a variable rate, the applicable rate is the average interest rate thereon for the twelve (12) months next preceding the month of the calculation of such average or, if such Bonds shall have had a variable rate for less than a twelve (12) month period, then the average interest rate thereon for such lesser period and, in respect of any proposed Bonds, the applicable rate is one hundred ten percent (110%) of the initial rate, such rate being established by a letter of a banking or investment banking or financial advisory or other institution knowledgeable in financial matters relating to municipally-owned utilities systems to the effect that the initial rate was established on a par offering basis.

“Debt Service Reserve Fund” means the fund created and so designated by **Section 5.02** of this Bond Order.

“Debt Service Reserve Fund Requirement” means, as of any particular date of calculation and with respect to any series of Bonds, such amount, if any, as shall be provided in the Series Resolution relating to such series of Bonds.

“Depository” means one or more banks, savings and loan associations or trust companies in the State or, with the written permission of the Secretary of the Commission, a national bank located in another state duly authorized under the laws of the United States of America or the State of North Carolina to engage in the banking business or to accept deposits within said State and designated by the Board as a depository of moneys under the provisions of this Bond Order.

“Finance Officer” means the Finance Officer of the Town or the officer succeeding to his principal functions and duties.

“Fiscal Year” means the period of twelve (12) months commencing on July 1 of any year and ending on June 30 of the following year.

“Fund Balance” means the amount of cash and unrestricted investments held for the credit of the Beach Nourishment Fund as of the date of the calculation of such amount.

“General Account” means the account so designated by **Section 5.01** of this Bond Order.

“Government Obligations” means direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America in either certificated or book-entry form.

“Initial Bonds” means the Bonds authorized under **Section 2.01** of this Bond Order.

“Interlocal Agreement” means the Interlocal Funding Agreement dated February 21, 2011 between the Town and Dare County, North Carolina.

“Mayor” means the Mayor of the Town or the officer succeeding to or exercising his principal functions and duties.

“Outstanding,” when used with reference to Bonds, means, as of a particular date, all Bonds theretofore authenticated and delivered under this Bond Order, except:

(1) Bonds theretofore cancelled by the Bond Registrar or delivered to the Bond Registrar for cancellation;

(2) Bonds for whose payment or redemption moneys or Government Obligations, or both, in the necessary amount have theretofore been deposited with an escrow agent in trust for the Owners of such Bonds (whether upon or prior to maturity or redemption of such Bonds), the principal of and the interest on such Government Obligations, if any, when due, providing sufficient moneys to pay, with any such other moneys so deposited with such escrow agent, the principal and redemption premium of and the interest on such Bonds being paid or redeemed;

(3) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Bond Order; and

(4) Bonds constituting tender indebtedness deemed to have been purchased in accordance with the provisions of the applicable Series Resolution in lieu of which other Bonds have been authenticated and delivered under such Series Resolution;

provided, however, that in determining whether the Owners of the requisite principal amount of Outstanding Bonds have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Bonds owned by the Town or any other obligor upon the Bonds shall be disregarded and deemed not to be Outstanding, except that the term “obligor upon the Bonds” shall not include any credit provider unless otherwise provided in a Series Resolution and except that, in determining whether any escrow agent, any trustee, any Depository or the Bond Registrar shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which any escrow agent, any trustee, any Depository or the Bond Registrar, as the case may be, knows to be so owned shall be so disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purpose of determining whether the Owners of the requisite principal amount of Outstanding Bonds have given any request, demand, authorization, direction, notice, consent or waiver hereunder if the pledgee establishes to the satisfaction of any escrow agent, any trustee, any Depository or the Bond Registrar the pledgee’s right so to act with respect to such Bonds and that the pledgee is not the Town or any other obligor upon the Bonds except a credit provider.

“Owner” or any similar term, when used with reference to any Outstanding Bond or Bonds means any person who shall be the registered owner of such Bond or Bonds.

"Pledged Revenues" means (a) the occupancy tax payable to the Town by Dare County pursuant to Chapter 449 of the 1985 Session Laws, as amended by Chapters 177 and 906 of the 1991 Session Laws, Part VII of S.L. 2001-439 and Section 7 of S.L. 2010-78, (b) amounts payable to the Town pursuant to Section 1.b. of the Interlocal Agreement, and (c) to the extent authorized by law, any other revenues of the Town specifically designated as being Pledged Revenues within the meaning of this Bond Order by an order or resolution of the Board adopted or passed after the issuance of the Initial Bonds and otherwise satisfying the requirements of the Act and any other applicable law.

"Project" means Project as defined in the preamble of this Bond Order.

"Project Fund" means the fund created and so designated by **Section 4.01** of this Bond Order.

"Qualified Investments" means any deposits or investments that the Town is permitted to make under Section 159-30 of the General Statutes of North Carolina, as amended, or any successor provision.

"Secretary" means the Secretary of the Commission or his designated assistant.

"Series Resolution" means the resolution of the Board providing for the issuance of any series of Bonds and fixing the details thereof.

"State Treasurer" means the Treasurer of the State of North Carolina or his designated assistant.

"Town" means the Town of Nags Head, North Carolina.

"Town Clerk" means the Town Clerk or the officer succeeding to or exercising his principal functions and duties.

"Town Representative" means the Town Manager of the Town or the Finance Officer and such other person or persons as are designated to act on behalf of the Town by resolution of the Board.

"Project Improvements" means any additions or improvements to the Project.

"Town" means the Town of Nags Head, North Carolina.

"Town Representative" means the Town Manager of the Town or the Finance Officer and such other person or persons as are designated to act on behalf of the Town by resolution of the Board.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words "Owner" and "person" shall include corporations and associations, including public bodies, as well as natural persons.

ARTICLE II

AUTHORIZATION OF PROJECT AND INITIAL BONDS; TERMS, EXECUTION, AUTHENTICATION, DELIVERY AND REGISTRATION OF BONDS

Section 2.01 Authorization of Project and Initial Bonds. The Board hereby confirms that it is in the best interest of the Town to proceed with the Project. The Town shall issue, in accordance with and pursuant to the Act and this Bond Order, its special obligation bonds (herein referred to also as the "Initial Bonds") in an aggregate principal amount not exceeding \$18,000,000 for the purpose of providing funds, with other available funds, to pay the cost of the Project. The cost of the Project may include interest on such special obligation bonds and expenses of issuing such special obligation bonds as provided in the Series Resolution for such special obligation bonds.

Neither the Town nor the Bond Registrar shall be required to make any such registration of transfer of Bonds during the fifteen (15) days immediately preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, immediately preceding the date of mailing of notice of such redemption, or after such Bond or any portion thereof has been selected for redemption.

Section 2.07 Ownership of Bonds. As to any Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and the interest on any such Bond shall be made only to the Owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond including the interest thereon to the extent of the sum or sums so paid.

Section 2.08 Mutilated, Destroyed, Stolen or Lost Bonds. In case any Outstanding Bond shall become mutilated or be destroyed, stolen or lost, the Town may prepare and cause to be executed, authenticated and delivered a new Bond of like tenor, number and amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond and upon surrender of such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, upon the Owner furnishing to the satisfaction of the Bond Registrar, the Commission and the Town evidence that such Bond has been destroyed, stolen or lost, proof of the ownership thereof, a surety bond or other indemnification instrument in twice the face amount of the Bond or in such other amount required by applicable law, payment of the cost of preparing and issuing such new Bond, including the reasonable expenses and charges of the Town and the Bond Registrar in connection therewith, and evidence of compliance with such other reasonable regulations as the Bond Registrar and Board may prescribe. All Bonds surrendered hereunder shall be surrendered to the Bond Registrar and shall be cancelled. All Bonds issued in accordance with this Section shall be signed by the Mayor, Mayor Pro Tem or the Town Manager and the Town Clerk or any deputy or assistant Town Clerk who are in office at the time and shall contain a recital to the effect that they are issued in exchange for or in place of certain Bonds and are to be deemed a part of the same series as such Bonds.

Section 2.09 Delivery of Initial Bonds. The Initial Bonds shall be executed substantially in the manner hereinabove set forth and shall be deposited with the Bond Registrar for authentication, but prior to or simultaneously with the authentication by the Bond Registrar and delivery of the Initial Bonds by the State Treasurer there shall be filed with the Bond Registrar the following:

- (a) copies, certified by the Town Clerk to be true and correct copies, of this Bond Order and the Series Resolution prescribing the details of the Initial Bonds, including form, maturities and redemption provisions;
- (b) a certificate of the Commission approving the issuance and providing for the sale of the Initial Bonds;
- (c) an opinion of Counsel to the effect that the issuance of the Initial Bonds has been duly authorized; and
- (d) an opinion of bond counsel to the Town to the effect that the Initial Bonds are valid and binding special obligations of the Town except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights and by equitable principles, whether considered at law or in equity.

No Bond shall be valid or obligatory for any purpose unless authenticated by the Bond Registrar.

When the documents mentioned above in this Section shall have been filed with the Bond Registrar and when the Initial Bonds shall have been executed and authenticated as required by this Bond Order, the State Treasurer shall deliver or cause to be delivered the Initial Bonds to or upon the order of the purchasers thereof, but only upon payment to the State Treasurer or as otherwise directed by the State Treasurer of the purchase price of the Initial Bonds. The Bond Registrar shall be entitled to rely upon such documents with respect to the matters contained therein.

Section 2.10 Approval of Issuance and Sale of Initial Bonds. None of the Initial Bonds shall be issued unless they are approved and sold by the Commission and until the Secretary shall have endorsed thereon a certificate evidencing approval in accordance with the provisions of the Act.

ARTICLE III

ADDITIONAL BONDS

Section 3.01 Refunding of Outstanding Bonds. The Town may, to the extent permitted by the Act and the provisions of this Section, issue, from time to time, its special obligation bonds (herein referred to as "Additional Bonds") which shall be secured by and payable from the Pledged Revenues as provided in this Bond Order for the purpose of providing funds, with any other available funds, for refunding all or any portion of the Initial Bonds or any Additional Bonds and paying expenses of issuing such Additional Bonds, all as provided in the Series Resolution for any series of such Additional Bonds. Except as to any difference in the maturities thereof, the rate or rates of interest, the provisions for redemption or any funding of the Debt Service Reserve Fund that may be provided for the security thereof, such Additional Bonds shall be on a parity with and shall be entitled to the same benefit and security of this Bond Order as all other Bonds. The Bond Registrar shall not authenticate and deliver any Additional Bonds for this purpose unless theretofore or simultaneously therewith there shall have been filed with the Bond Registrar the following:

(a) a copy, certified by the Town Clerk to be a true and correct copy, of the Series Resolution authorizing the issuance of such Additional Bonds and prescribing the details thereof;

(b) a certificate of the Commission approving the issuance and providing for the sale of such Additional Bonds;

(c) a copy, certified by the Town Clerk to be a true and correct copy, of the resolution (which may be incorporated in the Series Resolution) of the Board approving the sale of such Additional Bonds by the Commission and directing the authentication and delivery thereof to or upon the order of the purchasers therein named upon payment of the purchase price therein set forth;

(d) an opinion of Counsel to the effect that the issuance of such Additional Bonds has been duly authorized and that all conditions precedent to the delivery of such Additional Bonds have been fulfilled;

(e) an opinion of bond counsel to the Town to the effect that such Additional Bonds are valid and binding special obligations of the Town except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights and by equitable principles, whether considered at law or in equity;

(f) a certificate, signed by the Town Representative stating that all payments required by **Section 5.04** of this Bond Order prior to the beginning of the month during which such Additional Bonds are to be issued have been made;

(g) (i) a certificate, signed by the Town Representative, to the effect that the amount of the Debt Service Requirements for each Fiscal Year thereafter on account of the Bonds to be Outstanding after the issuance of such Additional Bonds shall be less than the amount of the Debt Service Requirements for such Fiscal Year on account of the Bonds Outstanding immediately prior to the issuance of such Additional Bonds or (ii) such certificates, statements or other items as may be required to show compliance with the provisions of **Section 3.02** hereof as if such Additional Bonds were not being issued under this Section but were being issued under **Section 3.02** hereof for paying the cost of Project Improvements; and

(h) such documents as shall be required by the Bond Registrar to evidence that provision has been satisfactorily made for the redemption of the Bonds to be refunded.

When the documents mentioned above in this Section shall have been filed with the Bond Registrar and when such Additional Bonds shall have been executed and authenticated as required by this Bond Order, the State Treasurer shall deliver or cause to be delivered such

Additional Bonds to or upon the order of the purchasers thereof, but only upon payment to the State Treasurer or as otherwise directed by the State Treasurer of the purchase price of such Additional Bonds.

Section 3.02 Financing of Project Improvements. The Town may, to the extent permitted by the Act and the provisions of this Section, issue, from time to time, its special obligation bonds (herein also referred to as "Additional Bonds"), which shall be secured by and payable from the Pledged Revenues as provided in this Bond Order for the purpose of providing funds, with any other available funds, for paying the cost of Project Improvements, including interest on such Additional Bonds and expenses of issuing such Additional Bonds, all as provided in the Series Resolution for any series of such Additional Bonds. Except as to any difference in the maturities thereof, the rate or rates of interest, the provisions for redemption or any funding of the Debt Service Reserve Fund that may be provided for the security thereof, such Additional Bonds shall be on a parity with and shall be entitled to the same benefit and security of this Bond Order as all other Bonds. The Bond Registrar shall not authenticate and deliver any Additional Bonds for this purpose unless theretofore or simultaneously therewith there shall have been filed with the Bond Registrar the following:

(a) a copy, certified by the Town Clerk to be a true and correct copy, of the Series Resolution authorizing the issuance of such Additional Bonds and prescribing the details thereof;

(b) a certificate of the Commission approving the issuance and providing for the sale of such Additional Bonds;

(c) a copy, certified by the Town Clerk to be a true and correct copy, of the resolution (which may be incorporated in the Series Resolution) of the Board approving the sale of such Additional Bonds by the Commission and directing the authentication and delivery thereof to or upon the order of the purchasers therein named upon payment of the purchase price therein set forth;

(d) an opinion of Counsel to the effect that the issuance of such Additional Bonds has been duly authorized and that all conditions precedent to the delivery of such Additional Bonds have been fulfilled;

(e) an opinion of bond counsel to the Town to the effect that such Additional Bonds are valid and binding special obligations of the Town except as may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights and by equitable principles, whether considered at law or in equity;

(f) a certificate, signed by the Town Representative stating that all payments required by **Section 5.04** of this Bond Order prior to the beginning of the month during which such Additional Bonds are to be issued have been made; and

(g) a certificate, signed by the Town Representative, to the effect that (i) the Pledged Revenues for the complete Fiscal Year next preceding the issuance of the proposed Additional Bonds plus fifty percent (50%) of the Fund Balance as of June 30 or December 31 next preceding the issuance of the proposed Additional Bonds, whichever is more recent, were equal to at least one hundred twenty percent (120%) of the maximum Debt Service Requirements of all Outstanding Bonds and the proposed Additional Bonds to be issued for the current or any succeeding Fiscal Year and (ii) the Pledged Revenues for the complete Fiscal Year next preceding the issuance of the proposed Additional Bonds were equal to at least one hundred percent (100%) of the maximum Debt Service Requirements of all Outstanding Bonds and the proposed Additional Bonds to be issued for the current or any succeeding Fiscal Year.

When the documents mentioned above in this Section shall have been filed with the Bond Registrar and when such Additional Bonds shall have been executed and authenticated as required by this Bond Order, the State Treasurer shall deliver or cause to be delivered such Additional Bonds to or upon the order of the purchasers thereof, but only upon payment to the State Treasurer or as otherwise directed by the State Treasurer of the purchase price of such Additional Bonds.