

**COOPERATIVE AGREEMENT
BETWEEN
TOWN OF EDGARTOWN
AND
TOWN OF TISBURY**

THIS AGREEMENT, made and entered into this 28th day of August, 2018, by and between the Town of Edgartown, hereinafter called the "Contractor", and the Town of Tisbury, hereinafter called the "Town".

WHEREAS, the expenditure of funds for dredging for maintenance or improvement of the waterways of the Commonwealth is authorized under Chapter 33 of the Acts of 1991 and Chapter 91 of the General Laws; and

WHEREAS, the Town wishes to have the Contractor undertake the dredging projects covered by this agreement during a mutually agreed upon time period between September 15th, 2018 and January 15th, 2019; or, if the Contractor requests and is granted a permit extension to dredge [x] additional days in January, [x] days (not necessarily consecutive days) shall be granted as an extension to the time period of this Agreement as stated above.

ARTICLE I. STATEMENT OF WORK

NOW THEREFORE, in consideration of the above premises and in the interest of the mutual advantage in attainment of common objectives, the parties hereto agree as follows:

TOWN OF EDGARTOWN AGREES:

1. To do and perform all dredge related work in accordance with the specifications, drawings and plans (Attachment 1) for the Tashmoo channel entrance and surrounding areas in the Town of Tisbury (the "Project") for a daily rate of \$7,500 for the dredging of up to 15,000 Cubic Yards of sand. The daily rate shall include time for routine maintenance of any and all equipment used for the work (Dredge, Loader, Skiffs). The daily rate is based on a work scope of removing up to 15,000 cubic yards of material from the Tashmoo entrance, and rough placement of said material on established beach nourishment locations. Any regulatory requirements for final grading of nourishment locations shall be the responsibility of the Town. Mobilization and demobilization costs are not included in the daily rate.
2. To observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the specifications, plans and drawings identified in Attachment 1 as applicable to dredging and rough placement of materials.
3. To provide a hydraulic dredge and all related equipment and operators to conduct maintenance dredging for the Town, according to and guided by the specifications, plans and drawings as provided.
4. To comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury, or loss, and on dredging or handling dredge materials.
5. To indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the Contractor but in no event above any amount in excess of what is permissible under by G. L. c. 258.

6. Immediately notify the Town and cease operations whenever the dredging operations exceed the specifications, drawings and plans, or whenever situations or conditions are encountered outside the scope of the specifications, drawings and plans.
7. Without prior approval of the Town, the dredge will operate between the hours of 4:00 A.M. and 6:00 P.M.

THE TOWN OF TISBURY AGREES:

1. To secure all required federal, state and local permits, permit modifications and other required approvals; notify all parties of the start of the Project; keep all necessary parties informed of information necessary for all parties to perform their duties hereunder; obtain and pay for all required surveys and studies; and mark the corners of the channel and the nourishment areas.
2. To furnish all specifications, drawings, and plans required to perform the dredge project at the time of execution of this Agreement. Said documents will be incorporated by reference as Attachment 1.
3. To conduct required inspections and testing consistent with federal, state and local permits and approvals.
4. To inspect the Contractor's on-site dredging work in a timely manner.
5. To obligate funds to conduct the dredging work specified in Attachment 1.
6. To indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the Town.

BOTH THE TOWN OF EDGARTOWN AND THE TOWN OF TISBURY AGREE:

That nothing herein shall be construed as obligating either the Town of Edgartown or the Town of Tisbury to expend funds or to be obligated to spend funds beyond the scope of this Agreement.

This AGREEMENT may only be modified in the form of amendments in writing by mutual agreement by both parties. Request for modification will be forwarded to one party by the other party by written notice.

ARTICLE II. TERM OF AGREEMENT

This AGREEMENT shall be effective when signed by all parties and shall remain in effect until April 15, 2019.

ARTICLE III. PAYMENT TO CONTRACTOR

SEE EXHIBIT A – DREDGE PRICING FOR TASHMOO (attached)

The Contractor will require an initial deposit payment of 15% (\$28,950.00) of the total not-to-exceed contract price (\$193,000.00) to be paid upon execution of this Agreement. Subsequent invoices will be submitted by the Contractor every seven (7) days once dredging has commenced. The deposit payment of \$28,950 will be considered a credit until the value of the dredging work performed surpasses the value of

the deposit payment. The Contractor will submit invoices with a negative value until the deposit threshold has been reached. At that time, the Contractor will begin submitting invoices for payment remittance and will continue to invoice every seven days until the work is complete.

Failure on the part of the Town to pay invoices within 30 days will result in the assessment of a late fee in the amount of 1% per month (12% annually) on the unpaid balance remaining after the 30th day. Failure to pay invoice within 90 days may result in legal action. The Town shall be responsible for all legal costs incurred by the Contractor in collection of unpaid debts.

ARTICLE IV. WEATHER CONDITIONS

In the event of temporary suspension of work due to inclement weather conditions and/or mechanical breakdown of equipment, the Contractor shall cease work until conditions improve. During this time, the Contractor will be responsible for monitoring the equipment used for the Project. The Town will not be subject to the daily rate during suspended hours of operation; in the event that work is suspended for less than a day, the hours worked will be pro-rated to reflect a reduced daily rate for that day only. The decision to cease work shall be made by the Contractor in consultation with the Town. The Contractor will notify the Town in timely manner should work cease due to mechanical failure.

ARTICLE V. CHANGES IN WORK

No changes in the work covered by this Agreement shall be made without having prior written approval of both the Town and the Contractor. Costs for additional days shall be determined utilizing the costs identified in Article III.

ARTICLE VI. CONTRACTOR INSURANCE

The Contractor shall maintain the following insurance coverage while conducting the dredge project:

1. Worker's Compensation insurance. The Contractor shall maintain during the life of this Agreement Worker's Compensation Insurance as required by applicable state law.
2. Protection and Indemnity Insurance.
3. General liability and excess liability insurance.
4. Pollution Insurance.
5. Contingent watercraft liability insurance.

ARTICLE VII. INDEMNIFICATION

The Contractor agrees to hold the Town harmless for any and all damage done by the dredge or the crew on account of the operation of the dredge during the pendency of this Agreement but in no event above any amount in excess of what is permissible under by G. L. c. 258.

ARTICLE VIII. TERMINATION

Either party may terminate this Agreement by providing ten (10) days written notice to the other. If termination by the Town is not for breach or default by the Contractor, the Town shall pay the Contractor

all costs incurred by the Contractor to the date of termination, including staff time, review of documents and any other costs associated with the project up to said termination.

IN WITNESS WHEREOF, the TOWN and the CONTRACTOR execute this Agreement this 14th day of August, 2018.

TOWN OF TISBURY BOARD OF SELECTMEN:

Tristan R. Israel, Chairman

James J. Rogers

Melinda F. Loberg

TOWN OF EDGARTOWN BOARD OF SELECTMEN:

Michael J. Donaroma, Chairman

Margaret E. Serpa

Arthur Smadbeck

CERTIFICATION AS TO AVAILABILITY OF FUNDS REQUIRED BY M.G.L. c. 44.31C FOR
CITIES AND TOWNS: M.G.L. c. 44.31C Approved as to Funds Available

Suzanne E. Kennedy, Town Accountant

Date

EXHIBIT A



TOWN OF EDGARTOWN DREDGE DEPARTMENT

DREDGE PRICING FOR TASHMOO – FALL 2018

TOTAL NOT-TO-EXCEED COST: \$193,000.00

Cost Breakdown:

MOBILIZATION:

\$10,000 to Town of Edgartown:

- Mobilize skiffs
- Mobilize pipe (from Chappy)
- Mobilize anchors

\$4,000 for barge to tow to Tisbury

DREDGING:

\$7,500 per day* – Not to Exceed \$165,000.00

- For up to 15,000 CY (Estimate 700 CY/day)

DEMOBILIZATION:

\$10,000 to Town of Edgartown

\$4,000 for barge to tow back to Edgartown

TOTALS:

MOB: \$14,000

DREDGE: \$165,000.00 (Not to Exceed Amount)

DEMOB: \$14,000

DATES OF DREDGING: TBD

* Daily rate will be billed based for the actual number of days dredging occurs. Tisbury will not be responsible for payment on days where mechanical failures or weather prevent dredging.

**Edgartown Dredge Committee will invoice initial 15% deposit payment upon mobilization of dredge-related equipment to Tashmoo