

**THE ENVIRONMENT AGENCY
AND
MERSEA HARBOUR PROTECTION TRUST
and
HARWICH HAVEN AUTHORITY**

**FUNDING AGREEMENT
IN RELATION TO
THE TRANSPORT AND DELIVERY OF DREDGED MATERIAL FOR USE IN A RECHARGE SCHEME IN
MERSEA HARBOUR**

1. DEFINITIONS AND INTERPRETATION	2
2. DELIVERY OF APPROPRIATE DREDGED MATERIAL.....	4
3. PAYMENT OF COSTS.....	5
4. ASSURANCES GIVEN BY HHA.....	5
5. TRANSPARENCY	5
6. DATA PROTECTION, PUBLIC PROCUREMENT AND STATE AID.....	6
7. ENVIRONMENTAL REQUIREMENTS	6
8. PUBLICITY	6
9. EVENTS OF DEFAULT AND TERMINATION.....	7
10. DISPUTE RESOLUTION	7
11. LIMITATION OF LIABILITY	8
12. NOTICES.....	8
13. GOVERNING LAW AND JURISDICTION	9
14. GENERAL.....	9
ANNEX 1 – CONTACT DETAILS	11

This Agreement is made on 21 July 2021

Between:

- (1) THE ENVIRONMENT AGENCY, whose principal address is at Horizon House, Deanery Road, Bristol BS1 5AH (the "**Environment Agency**")
- (2) MERSEA HARBOUR PROTECTION TRUST whose principal address is at Mersea Harbour Protection Trust, 10 Brickhouse Close, West Mersea, Essex CO5 8LA ("**MHPT**")
- (3) HARWICH HAVEN AUTHORITY whose principal address is at Harbour House, The Quay, Harwich, Essex CO12 3HH ("**HHA**").

(each a "**Party**" and together the "**Parties**")

BACKGROUND

- (A) HHA is in the process of procuring a contractor (the winning bidder being the "**Contractor**") to carry out capital dredging works to improve navigation through Harwich Haven (the "**Capital Dredging Project**"). Those works require a Marine Works Licence (the "**HHA Licence**") from the MMO.
- (B) As part of obtaining the HHA Licence, HHA was required to identify potential beneficial uses of dredged material arising from the Capital Dredging Project, and seek to co-operate with third parties to realise such beneficial uses. In consultation with the Environment Agency and MHPT, HHA has identified that some dredged material could beneficially be used to recharge natural wavebreaks in Mersea Harbour that have suffered centuries of erosion (the "**Mersea Harbour Recharge Scheme**").
- (C) The MMO has granted licence L/2018/00131/3 to MHPT (the "**MHPT Licence**") authorising the carrying out of those activities under the Mersea Harbour Recharge Scheme where a licence is required under Part 4 of the Marine and Coastal Access Act.
- (D) The Mersea Harbour Recharge Scheme aligns with the principles of Environment Agency-sponsored 'Natural Flood Management Projects' which are currently being piloted at various locations around the country. Given this alignment, the Environment Agency has agreed in principle to contribute to the additional costs that HHA will incur in paying for dredged material to be transported to, and distributed in, Mersea Harbour, as opposed to simply depositing the material out at sea, on the terms set out in this Agreement.

IT IS NOW AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement:

Annex means the annexes attached to this Agreement;

Appropriate Dredged Material means material matching the quantities, descriptions, and sources specified in the MHPT Licence. For information only, this has been described in the scope of HHA's proposed 'Channel Dredging Contract' for the Capital Dredging Works as a coarse sand / gravel mix with a D50 between 2mm and 5mm, and with a maximum of 10% silt or finer content.

Capital Dredging Project has the meaning given in Recital (A);

Contractor has the meaning given in Recital (A);

Data Protection Legislation means all applicable Law relating to the processing of Personal Data and privacy, including: the UK GDPR (as defined in section 3(10) (as supplemented by

section 205(4)) of the Data Protection Act 2018 (**DPA 2018**); the DPA 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, all as amended or updated from time to time, as well as any successor legislation to any of the above

Domestic Successor means, as the context requires, either:

- (a) a body that takes over the functions of the European Commission in the United Kingdom in respect of State Aid Law (or assumes equivalent functions) when the United Kingdom withdraws from the European Union; or
- (b) the relevant court in England which takes over the functions of the Court of Justice of the European Union in England in respect of State Aid Law (or assumes equivalent functions) when the United Kingdom withdraws from the European Union;

EA Contribution means a sum of £3.00 for each m³ of Appropriate Dredged Material delivered to the Mersea Harbour Recharge Scheme in accordance with this agreement, calculated in accordance with clause 2.5 and subject always to the proviso that if the actual quantity delivered exceeds 98,000m³, the EA Contribution shall be capped as if only 98,000m³ had been distributed;

Event of Default means an event or circumstance set out in paragraph 10.1;

General Data Protection Regulation and **GDPR** means, as applicable: (i) the UK's General Data Protection Regulation (as amended and incorporated into UK law under the UK European Union (Withdrawal) Act 2018); (ii) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, as amended; and (iii) any other applicable data protection laws modelled on the GDPR;

HHA Licence has the meaning given in Recital (A);

Information Acts means the Data Protection Legislation, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, as amended from time to time;

Law means any applicable law, statute, byelaw, regulation, order, regulatory policy, guidance or industry code, judgment of a relevant court of law, rule or principle of the common law or equity, or directives or requirements of any regulatory body, delegated or subordinate legislation;

Losses means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and **Loss** shall be interpreted accordingly;

Mersea Harbour Recharge Scheme has the meaning given in Recital (B);

MHPT Licence has the meaning given in Recital (C);

MMO means the Marine Management Organisation established by the Marine and Coastal Access Act 2009;

Personal Data has the meaning given to it in the Data Protection Legislation;

Representatives means any of the Parties' duly authorised directors, employees, officers, agents, professional advisors, consultants and sub-contractors;

VAT means value added tax chargeable in the UK;

Working Day means any day from Monday to Friday (inclusive) other than Christmas Day or Good Friday which is not specified or proclaimed as a bank holiday in England and Wales pursuant to section 1 of the Banking and Financial Dealings Act 1971.

- 1.2. In this Agreement, unless the context otherwise requires:
 - 1.2.1. the singular includes the plural and vice versa;
 - 1.2.2. reference to a gender includes other genders;
 - 1.2.3. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.2.4. the words "including", "other", "in particular", "for example" and similar words do not limit the generality of the preceding words;
 - 1.2.5. the words "writing" and "written" include email;
 - 1.2.6. the word "person" has the meaning given by the Interpretation Act 1978;
 - 1.2.7. references to "paragraphs" and "Annexes" are, unless otherwise provided, references to the paragraphs of and annexes to this Agreement and references in any Annex to parts, paragraphs and tables are, unless otherwise provided, references to the parts, paragraphs and tables of the Annex in which such references appear; and
 - 1.2.8. the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

2. DELIVERY OF APPROPRIATE DREDGED MATERIAL

- 2.1. HHA shall, subject to the proviso at paragraph 2.1.1 procure that 98,000m³ of Appropriate Dredged Material is transported to, and distributed at, such sites within Mersea Harbour and in such quantities as specified in the MHPT Licence and, to the extent not provided for in the MHPT Licence, in accordance with any reasonable directions by of MHPT:
 - 2.1.1 provided that at least that volume of appropriate material can be identified and dredged, and if not the volume in clause 2.1 shall be capped at the volume of Appropriate Dredged Material that can be identified and dredged; and
 - 2.1.2 using a shallow draft rainbow discharge dredger.
- 2.2. HHA shall, and shall procure that the Contractor shall, use all reasonable skill, care, and diligence in transporting and delivering the Appropriate Dredged Material.
- 2.3. HHA shall, and shall procure that the Contractor shall, collaborate with MHPT to agree:
 - 2.3.1. appropriate dates for delivery of the Appropriate Dredging Material to Mersea Harbour within the timeframes specified in the MHPT Licence; and
 - 2.3.2. time windows for delivery on such dates, as may be appropriate depending on tidal conditions and other parameters reasonably determined by MHPT.
- 2.4. Where this Agreement requires HHA to procure that the Contractor shall do or not do any action, HHA shall ensure that all such obligations are captured accurately within the terms of HHA's contract with the Contractor in respect of the Capital Dredging Project.
- 2.5. Volumes of Appropriate Dredged Material shall be calculated using assessments of volumes from each hopper load in the vessel used to deliver the Appropriate Dredged Material to the sites, by a method of average soundings in the hopper and the use of the vessel's official hopper measurement (ullage) tables. Hopper measurements will be taken once any free water has

drained from the load and will be recorded in the dredger's daily log and provided on a weekly basis to the Environment Agency.

3. PAYMENT OF THE EA CONTRIBUTION

3.1. The Environment Agency will pay the EA Contribution as follows:

- 3.1.1. The first payment following distribution of 50% of the Appropriate Dredged Material pursuant to clause 2.1 at such sites within Mersea Harbour, in accordance with clause 2.1; and
- 3.1.2. The second payment following distribution of the remainder of Appropriate Dredged Material in accordance with clause 2.1, as assessed by reference to the actual quantity of Appropriate Dredged Material so distributed, save if the actual quantity distributed exceeds 98,000m³, the EA Contribution shall be capped as if only 98,000m³ had been distributed.

subject always to the volumes of Appropriate Dredged Material having first been evidenced to the Environment Agency pursuant to clause 2.5, such that no payment of the EA Contribution shall be due without such evidence.

- 3.2. The Environment Agency shall not be liable for any interim or part payment of EA Contribution, whether in advance or arrears, save to the extent set out in clause 3.1.
- 3.3. Where the EA Contribution become payable under this Agreement, HHA shall submit to the Environment Agency an invoice for payment of such EA Contribution which shall be paid by the Environment Agency 20 Working Days after receipt of such invoice on the Environment Agency's electronic invoicing and payments system Bravo.
- 3.4. If VAT is or becomes chargeable in respect of payments under this Agreement, all payments shall be deemed to be inclusive of all VAT and the Environment Agency shall not be obliged to pay any additional amount on account of VAT.

4. ASSURANCES GIVEN BY HHA

- 4.1. HHA shall ensure at all times that its procurement to identify the Contractor for the Capital Dredging Project (including the negotiation, execution, and terms of the contract between HHA and the Contractor) is on terms which do not preclude HHA complying with any of the terms in this Agreement.
- 4.2. HHA shall at all times comply with the HHA Licence.
- 4.3. HHA shall, and shall procure that the Contractor shall, not act in a way that causes a breach of the MHPT Licence.

5. ASSURANCES GIVEN BY MHPT

- 5.1 MHPT has, or will at the appropriate time in accordance with the MHPT Licence have obtained all the relevant consents and land-owners' permissions to comply with its obligations under the MHPT Licence and will comply with all the requirements of those consents and with the terms of the MHPT Licence.
- 5.2 MHPT will, once Harwich Haven Authority and/or the Contractor has completed delivery and placement of the Appropriate Dredged Material pursuant to this Agreement, assume all responsibility for

5.2.1 any further operations required by the MHPT Licence, and any other site management and public safety matters; and

5.2.2 any claims and losses which may arise in relation to the Mersea Harbour Recharge Scheme, to the extent that Harwich Haven Authority and the Contractor have complied with the terms of this Agreement and the MHPT Licence.

6. TRANSPARENCY

- 6.1. The Environment Agency and HHA acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Information Acts, the content of the Agreement is not confidential.

7. DATA PROTECTION, PUBLIC PROCUREMENT AND STATE AID

Data Protection

- 7.1. HHA and the Environment Agency shall comply at all times with their respective obligations under Data Protection Legislation.

Public procurement

- 7.2. HHA shall ensure that any procurement carried out in respect of the Capital Dredging Project will at all times comply with all public procurement Law applicable to the Capital Dredging Project.
- 7.3. HHA warrants that it has complied with all public procurement Law applicable to the Capital Dredging Project as at the date of this Agreement.

State aid

- 7.4. HHA shall ensure that the Capital Dredging Project and any related procurement or competitions are carried out in a way compatible with State Aid Law.
- 7.5. HHA shall maintain appropriate records of compliance with the State Aid Law and shall take all reasonable steps to assist the Environment Agency to comply with State Aid Law requirements and respond to any investigation(s) instigated by the European Commission (or its Domestic Successor) in relation to the Costs.

8. ENVIRONMENTAL REQUIREMENTS

- 8.1. HHA shall, and shall procure that the Contractor shall:

- 8.1.1. perform the obligations in clause 2 in such a way as so far as reasonably practicable to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
- 8.1.2. pay due regard to the use of recycled products, so long as they are not detrimental to the carrying out of the obligations in clause 2 or the environment, to include the use of all packaging, which should be capable of recovery for re-use or recycling;
- 8.1.3. take all possible precautions to ensure that any equipment and materials used in the carrying out of the obligations in clause 2 do not contain chlorofluorocarbons, halons or any other damaging substances, unless unavoidable, in which case the Environment Agency shall be notified in advance of their use; and
- 8.1.4. endeavour to reduce fuel emissions wherever possible.

9. PUBLICITY

- 9.1. Each party shall consult the other party, and take account of their representations (if any), before issuing any press or media release or other statement, or publishing any document, relating to the distribution of Appropriate Dredged Material.

10. EVENTS OF DEFAULT AND TERMINATION

Events of Default

- 10.1. The Environment Agency may exercise its rights set out in paragraph 10.2 if any of the following events occur:
- 10.1.1. The Capital Dredging Project is at any time abandoned, cancelled, or otherwise ended;
- 10.1.2. In the reasonable opinion of the Environment Agency:
- (i) HHA materially fails to comply with its obligations under this Agreement or the HHA Licence;
 - (ii) HHA's action or inaction causes a breach of the MHPT Licence;
- 10.1.3. the whole or any part of HHA's obligations under this Agreement is carried out without any environmental permit, licence, consent, permission or approval required by law or otherwise in an unlawful manner;
- 10.1.4. the Environment Agency determines (acting reasonably) that HHA or any of its Representatives has:
- (i) acted dishonestly or negligently at any time during the term of the Agreement and to the detriment of the Environment Agency;
 - (ii) taken any actions or made any omissions which unfairly bring or are likely to unfairly bring the Environment Agency's into disrepute;
 - (iii) transferred, assigned or novated this Agreement or any rights under this Agreement to any third party without the Environment Agency's consent; or
 - (iv) otherwise failed to act in accordance with the Law, howsoever arising, including incurring expenditure on unlawful activities;
- 10.1.5. The Contractor ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation).

Termination

- 10.2. Where the Environment Agency determines that an Event of Default has or may have occurred, the Environment Agency may by written notice to HHA terminate this Agreement with effect from such date as the Environment Agency may determine
- 10.3. If the Environment Agency exercises its right to terminate this Agreement under clause 10.2:
- 10.3.1. its only liability for the EA Contribution shall be as set out in clause 3.1.
- 10.3.2. HHA shall have no obligation to distribute further material pursuant to paragraph 2.1
- 10.3.3. in respect of any loss suffered by MHPT arising from the intended volume of 98,000 cubic metres of Appropriate Dredged Material not having been distributed as a result of the application of clause 10.3.2 above:
- 10.3.3.1. HHA shall have no liability to the Environment Agency; and
 - 10.3.3.2. neither HHA nor the Environment Agency shall have any liability to MHPT.

11. DISPUTE RESOLUTION

- 11.1. All disputes and complaints arising out of this Agreement (except for those which relate to the Environment Agency's right to withhold or reclaim funds or terminate this Agreement) shall be referred in the first instance to Representatives nominated by the Parties.
- 11.2. If the dispute is not resolved between the Parties' Representatives within one month, then the matter shall be escalated to a formal meeting between the Environment Agency's relevant Area Director (or such other person as the Environment Agency may nominate) and HHA's chief executive (or equivalent).

12. LIMITATION OF LIABILITY

- 12.1. The Environment Agency accepts no liability for any consequences, whether direct or indirect, that may come about from HHA or the Contractor carrying out any obligations under or activities contemplated by this Agreement.
- 12.2. HHA shall be liable to the Environment Agency in respect of any Losses suffered by the Environment Agency arising from:
 - 12.2.1. an Event of Default, subject always to clause 10.3 above;
 - 12.2.2. a breach of the obligations of HHA under this Agreement or the HHA Licence or its obligations to third parties; or
 - 12.2.3. any act or omission by the Contractor in relation to the matters contemplated by this Agreement, but only to the extent that such act or omission amounts to a breach of the obligations of HHA under this Agreement or the HHA Licence or its obligations to third parties.
- 12.3. Other than accepting responsibility as set out in Clause 12.2 above and save in respect of liabilities for fraud or for death or injury occasioned by negligence or any other matter for which the law does not permit liability to be limited, HHA shall have no liability (whether in contract, tort (including negligence) or otherwise) to the Environment Agency or MHPT for any actions claims charges demands Losses or any other matter under or in connection with this Agreement.
- 12.4. It is acknowledged by all Parties that the requirements of the MHPT Licence and the specification of the Appropriate Dredged Material have not been prepared or contributed to by HHA and that HHA shall have no liability for, nor is providing any guarantee of the suitability, appropriateness or effectiveness of such requirements and specification in meeting the requirements of MHPT.
- 12.5. Save in respect of liabilities for fraud or for death or injury occasioned by negligence or any other matter for which the law does not permit liability to be limited:
 - 12.5.1. the Environment Agency's liability to HHA (whether in contract or tort (including negligence) or otherwise) under or in connection with this Agreement is limited to any outstanding balance of EA's maximum liability for the EA Contribution pursuant to clause 3.1; and
 - 12.5.2. the Environment Agency shall have no liability to MHPT (whether in contract or tort (including negligence) or otherwise).
- 12.6. The Environment Agency shall bear no liability for any action or inaction by MHPT, including in relation to MHPT's compliance with the terms of the MHPT Licence.

13. NOTICES

- 13.1. All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or sent by first class post to the address of the relevant party, as referred to in Annex 1 or otherwise notified in writing. All notices and other communications shall be marked for the attention of the contact specified in Annex 1 (Contact Details). If personally delivered or e-mailed all such communications shall

be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any Working Day they shall be deemed received on the next Working Day) and if posted all such communications shall be deemed to have been given and received on the second Working Day following posting.

14. GOVERNING LAW AND JURISDICTION

- 14.1. This Agreement shall be governed by and construed in accordance with the law of England and the Parties irrevocably submit to the exclusive jurisdiction of the English courts in respect of any dispute or difference arising out of or in connection with this Agreement, its subject matter or formation.

15. GENERAL

- 15.1. This Agreement contains the whole agreement between the Parties and supersedes all previous communications, representations and arrangements, written or oral. It is accepted that this Agreement has not been entered into on the basis of any representations that are not expressly contained in this Agreement.
- 15.2. If any part of this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid or legally unenforceable, that part will be severed from the remainder of this Agreement which will continue to be valid and enforceable to the fullest extent permitted by law.
- 15.3. The Parties agree that the terms of this Agreement are not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.
- 15.4. The Parties shall at all times comply with all applicable Laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010.
- 15.5. HHA shall not transfer, assign, novate or otherwise dispose of the whole or any part of this Agreement or any rights under it without the Environment Agency's prior written approval.
- 15.6. Except where expressly provided otherwise in this Agreement, no part of this Agreement may be varied except by the express written agreement of the Parties.

SIGNED by:

Signature

Print Name

.....
for and on behalf of the
Environment Agency

Title

COASTAL ENGINEER

Date

21 July 2021

SIGNED by:



Print Name



for and on behalf of the
Mersea Harbour Protection
Trust

TRUSTEE

Title

21 July 2021

Date

SIGNED by

Signature

Print name.....

for and on behalf of Harwich
Haven Authority

Title

Date

SIGNED by:

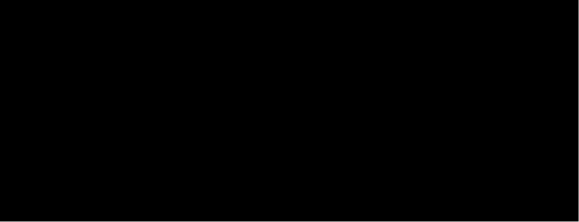
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Signature

Print Name

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Title

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for and on behalf of the
Mersea Harbour Protection
Trust

.....
Date



SIGNED by

Print name



CEO

.....

for and on behalf of Harwich
Haven Authority

Title

.....
Date

21 July 2021

ANNEX 1 – CONTACT DETAILS

The main Environment Agency contact in connection with this Agreement is:

Name of contact	[REDACTED]
Position in organisation	Coastal Engineer (Essex), Coastal Partnership and Strategic Overview Team
Email address	[REDACTED]
Postal address	[REDACTED]

The main Mersea Harbour Protection Trust contact in connection with this Agreement is:

Name of contact	[REDACTED]
Position in organisation	Chairman
Email address	[REDACTED]
Postal address	[REDACTED]

HHA's main contact in connection with this Agreement is:

Reference	
Name of contact	[REDACTED]
Position in organisation	Channel Dredge Project Manager
Email address	[REDACTED]
Postal address	[REDACTED]