

6/15/2023

DRI 258-M2

Safe Harbor Marinas

Dear Rich,

Please find the following proposal for water sampling as outlined in condition #6 as defined:

"In order to better identify the sources of bacteria and other contaminants in the West Arm of the Lagoon, the Applicant shall provide water testing results to the MVC. Testing will be done at two sites at the marina and a comparison site to be determined. A scope of work for the testing, including the proposed protocols and testing agency or agencies, shall be submitted to the Land Use & Planning Committee (LUPC) for review and approval prior to receipt of a Certificate of Completion for the project. The testing shall include at minimum nutrient levels, petroleum products, copper, and zinc, as well as source-tracking for bacteria..... The LUPC shall review the testing results and determine if further mitigation is required for the project."

The sampling will be conducted as outlined in the condition and the attached proposal:

"The first round of testing results shall be provided prior to the start of operations for the project, the second round after six months of operations, and the third within two months after the first full year of operations, and the fourth with two months after the second full year of operations."

This plan was developed in conjunction with and reviewed by Sheri Caseau. Please provide this to the LUPC for review and approval.

Sincerely,

Christopher Scott Safe Harbor Vineyard Haven General Manager



May 22, 2023

Mr. Chris Scott, CMM General Manager Safe Harbor Vineyard Haven and Edgartown Martha's Vineyard, Massachusetts

Re: Proposal for Sediment and Surface Water Sampling
Safe Harbor Vineyard Haven
Tisbury, Massachusetts
CES Project No. 221.5.1

Dear Mr. Scott:

As requested Capitol Engineering Services Inc. (CES) is pleased to provide this proposal to Safe Harbor Marina for environmental professional services in connection with a sediment and surface water sampling at the property located at Safe Harbor Marina in Tisbury, Massachusetts (Subject Property) as indicated on Figure 1, Attachment A.

Background

As part of the permitting process associated proposed Marina renovations at the Subject Property the Martha's Vineyard Commission (MVC) has recommended the following scope of work relative to sediment and surface water sampling.

In order to better identify the sources of bacteria and other contaminants in the West Arm of the Lagoon, the Applicant shall provide water testing results to the MVC. Testing will be done at two sites at the marina and a comparison site to be determined. A scope of work for the testing, including the proposed protocols and testing agency or agencies, shall be submitted to the Land Use & Planning Committee (LUPC) for review and approval prior to receipt of a Certificate of Completion for the project. The testing shall include at minimum nutrient levels, petroleum products, copper, and zinc, as well as source-tracking for bacteria..... The LUPC shall review the testing results and determine if further mitigation is required for the project."



Sediment and Surface Water Sampling Proposal Safe Harbor Marina -Tisbury, Massachusetts May 22, 2023 Page 2 of 4

Scope of Work

CES proposed scope of work is set forth below

Task One <u>Sediment and Surface Water Sampling</u>

CES proposes to collect sediment and surface water samples at three locations:

- One -Upgradient (Muddy Creek);
- Two Cross Gradient (Lagoon Pond Interior); and
- One Downgradient (Lagoon Pond exterior).

The proposed sampling locations are indicated on Figure 2, Attachment A.

Surface water samples will be collected from the upper 24-inches of water using a disposable polyethylene bailer. Sediment samples will be collected using a "sludge judge" from the upper 6-inches of sediment. Samples will be transferred into laboratory provided bottles and placed on ice $(1-4C^{\circ})$.

Surface water samples will be submitted to a Commonwealth of Massachusetts certified laboratory for total petroleum hydrocarbons (TPH) EPA Method 1664, Total Nitrogen (Kjeldahl)EPA Method 351.3 and Total Coliform Bacteria EPA Method 1604. Due to the short holding time associated with bacteria sampling these samples will need to be immediately transported to the analytical laboratory.

Sediment samples will be submitted to a Commonwealth of Massachusetts certified analytical laboratory for total copper and zinc EPA Method 200.7.

Schedule

The first round of testing results shall be provided prior to the start of operations for the project, the second round after six months of operations, the third within two months after the first full year of operations, and the fourth with two months after the second full year of operations.



Sediment and Surface Water Sampling Proposal Safe Harbor Marina -Tisbury, Massachusetts May 22, 2023 Page 4 of 4

CES appreciates the opportunity to provide this proposal, if you have any questions, please call me at (617) 291-8915. To authorize the scope of work set forth above, please execute the Agreement for Professional Services included as Attachment B.

Very truly yours,

Capitol Engineering Services, Inc.

Joseph B. O'Brien, P.E.

President



ATTACHMENT A

FIGURES





SOURCE:

MassMapper 2021 Aerial Image

PREPARED FOR:

Safe Harbor Marina Vineyard Haven Tisbury, Massachusetts

LOCUS MAP

Safe Harbor Marina Tisbury, Massachusetts

DATE: May 2023





SOURCE:

MassMapper 2021 Aerial Image

PREPARED FOR:

Safe Harbor Marina Vineyard Haven Tisbury, Massachusetts

PROPOSED SEDIMENT & SURFACE WATER SAMPLING LOCATIONS

Safe Harbor Marina Tisbury, Massachusetts 2

DATE: May 2023



ATTACHMENT B

AGREEMENT FOR ENVIRONMENTAL PROFESSIONAL SERVICES

ENVIRONMENTAL PROFESSIONAL SERVICE AGREEMENT

Capitol Engineering Services, Inc. (CES) and Safe Harbor (the Client) enter into this contract and agree to the following terms and conditions.

1. Compass of Work.

- a. CES, as a representative of the Client, shall perform only that scope of work (the "Work") described in the attached letter from CES to **Mr.** Chris Scott dated **May 22, 2023** (the Proposal) attached as Exhibit A. The Work set forth in the Proposal represents a minimum for environmental professional and remediation services for the site referred to in the Proposal (the Subject Property). A copy of the Proposal is attached hereto and incorporated herein as Exhibit A.
- b. Based upon the results of field work or as a result of review or audit of the Work by governmental agencies, additional services outside the proposal, may be recommended by CES to the Client (Additional Work). Such Additional Work shall be addressed under separate scopes of work and by written amendment of this agreement. Client also agrees to pay for any reasonable additional fees, expenses and charges incurred by CES for services or for modifications or additions required to comply with laws or regulations which become effective after the execution of the Proposal.
- c. Client acknowledges that environmental, geologic, and geotechnical conditions at the Site are subject to change over time as a result of natural and man-made processes, and the Client agrees that the Work proposed by CES is subject to modification due to variations in Site conditions from those encountered at the times when and locations where assessment data were obtained.
- d. Unless expressly set forth in the Proposal, the Work to be performed by CES shall not include any analysis or determination by CES as to whether any activities or facilities of the Client are in compliance with federal, state, or local laws, statutes, ordinances, regulations, or policies.
- e. In performing the Work, CES may review and interpret information obtained from third parties, including but limited to government authorities, registries of deeds, testing laboratories and other entities, but Client acknowledges that CES is not required to conduct an independent evaluation of the accuracy or completeness of such information. Additionally the Client shall provide or obtain the necessary authorization to allow CES, its agents, subcontractors and representatives to have access to the Site, buildings thereon, and other areas at reasonable times as necessary throughout performance of the Work.
- f. Unless expressly set forth in the Proposal, the Work to be performed by CES does not include any analysis, testing or evaluation with respect to the presence of asbestos, polychlorinated biphenyls, radon gas, lead paint, or any airborne pollutants.
- g. CES does not, by its entry into this agreement with Client or its performance of the Work, assume any responsibility or liability with respect to any aspect or condition of the Site, now existing or hereafter arising or discovered, nor shall any liability or responsibility be implied or inferred by reason of CES's performance of the Work. CES will take reasonable precautions to minimize alteration of the Site, but Client agrees and acknowledges that unavoidable alterations may result from performance of the Work.
 - h. If the Proposal specifically so states, CES will provide the Client with a written report in

connection with the Work performed (Report). The Report and other instruments of service are prepared for and made available for the sole use of the Client, and the contents thereof may not be used or relied upon by any other person without the express written consent and authorization of CES. Client agrees to indemnify, hold harmless, and defend CES and its environmental professionals for claims, losses, or damages of any person arising from such unauthorized use or reliance.

2. Client's Responsibilities .

- a. If this agreement and the Proposal have been received by Client, then the Client's verbal authorization to proceed with the Work constitutes the Client's acceptance of the terms and conditions set forth in this Agreement pending execution in writing.
- b. The Client agrees to provide all information in its possession, custody, or control that relates to the Site, its present and prior uses, and activities at the Site which may bear upon the matters addressed by the Proposal or disclose the location of any information as it related to the site, including, but not limited to, the following:
 - i. a legal description of the Site, including boundary lines;
 - ii. available plans of the Site;
 - iii. historical information regarding prior owners of the Site;
- iv. identification of the location of utilities, underground tanks, and other structures at the Site;
- v. a description of activities which were conducted at the Site at any time by the Client or by any person or entity which would relate to the Work;
- vi. copies of all site assessment and investigation reports including logs, records and data; and
- vii. identification, by name, quantity, location, and date, of any handling or release of oil, waste, hazardous materials, and hazardous substances.
- c. Information and data about the Site are to be furnished at the Client's expense and CES may rely upon all data furnished by the Client and the accuracy and completeness thereof. Client shall be responsible for any damage arising from CES's interference with subterranean structures, including, but not limited to, pipes, tanks and utility lines, that are not correctly indicated on documents provided by the Client.
- d. Drawings, diagrams, plans, specifications, calculations, reports, processes, computer processes and software, operational and design data, and all other documents and information produced by CES as instruments of service, regardless of form, shall be confidential and the proprietary information of CES, and shall remain sole and exclusive property of CES.
- e. The Client shall not have or acquire any title to or ownership rights in any of the documents or information prepared by CES. The Client shall be permitted to retain printed copies of such documents or information for information and reference only in connection with the Client's use.

The documents and/or information shall not be used or reused by the Client or by other persons except with the express written consent of CES and with appropriate compensation to CES. Submission or distribution to meet official regulatory requirements or for purposes in connection with the Client's activities are not to be construed as publication in derogation of CES's rights under this section.

f. The Client acknowledges that applicable law and regulations impose requirements for notification of information about the Site to regulatory agencies, and Client agrees to release, indemnify, defend and hold harmless CES and its environmental professionals from and against any claims, losses, expenses, fines, penalties, and other liabilities, including attorney's fees and costs, arising directly or indirectly in connection with the Client's failure to report or disclose such conditions in a timely and accurate manner.

3. Professional Judgment.

- a. CES will perform services under this agreement in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants performing such services within the same limits set forth in the Proposal or otherwise prescribed by the Client, within the same time period, and under the same or similar circumstances and conditions (the Required Standard of Care). The Client agrees that CES's services are being provided without any other warranty, either express or implied.
- b. Client acknowledges that federal, state or local agencies may audit the work performed by CES and/or the Report and that Additional Work may be required as a result of such audits, notwithstanding the performance of the Work by CES in accordance with the Required Standard of Care.
- c. In completing the Work, CES may utilize the services of Licensed Site Professionals or other licensed or certified professionals in order to provide specific opinions as required by law or regulation (Opinions). CES's environmental professionals shall exercise independent professional judgment in rendering Opinions and in providing requests for Additional Work necessary to permit the environmental professional to render such Opinions.
- d. Any Opinions rendered pursuant to this Agreement are for the sole and exclusive use of Client and are not intended for use or reliance by any other person without the prior written approval of CES. Client agrees to indemnify, hold harmless, and defend CES and its environmental professionals for any claims, losses, or damages arising from unauthorized use or reliance by third parties on any such Opinion.
- e. CES agrees to notify Client as soon as practical upon discovery of conditions at the Site that require CES to take immediate measures to protect health and safety. Client authorizes CES to undertake all measures that in CES's judgment are necessary to preserve and protect the health and safety of CES's personnel and the public, and Client agrees to compensate CES for Additional Work undertaken in such cases to protect health and safety.
- f. The Client acknowledges that legal authority may impose a duty upon CES or its environmental professionals to disclose information about hazardous conditions at the Site to regulatory agencies or other persons in the event of an emergency or if Client has failed to fulfill its obligation to do so. Client agrees to release, indemnify, defend and hold harmless CES and its environmental professionals from and against any claims, losses, expenses, fines, penalties, and other liabilities, including attorney's fees and costs, arising directly or indirectly in connection with the reporting or disclosure of such conditions in good faith by CES or its environmental professionals.

4. Health and Safety.

- a. CES and its employees and contractors shall follow health and safety precautions which meet federal, state and local statutes and regulations. If asked to conduct any activities that do not conform to said statutes or regulations, or that CES determines in its sole discretion to be unsafe or a danger to health, then CES shall stop work immediately, inform Client of unacceptable conditions, and Client shall work in good faith to remedy the unacceptable conditions. If no remedy can be achieved, CES may terminate this Agreement in accordance with the terms stated herein, and Client shall pay CES for all outstanding costs and termination costs according to the terms stated herein.
- b. Unless specifically set forth in the Proposal, and notwithstanding observation or testing by CES of work performed by other parties at the Site, CES is not required to specify, manage or supervise construction or construction procedures, or to plan or implement health or safety procedures for persons other than its employees and contractors. CES is not responsible in any way for the acts or omissions of other parties at the Site, or for the means, methods, techniques, sequences, or procedures used for construction and related safety precautions and programs.
- c. For the purposes of this Agreement, the term "Hazardous Substance" shall include Oil and/or Hazardous Materials as defined pursuant to M.G.L. Chapter 21E, and any constituent of Oil or Hazardous Materials, or any other substance that is or becomes defined as "hazardous waste," "hazardous substance," "pollutant" or "contaminant" under common law or any federal, state or local statute, regulation, rule or ordinance, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, and/or the Resource Conservation and Recovery Act (Environmental Law), including without limitation material that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and material that is or becomes regulated by Environmental Law, and whose presence in air, groundwater, surface water, sediment or soil requires notification, investigation or remediation under any Environmental Law.
- d. If Hazardous Substances or conditions are discovered by CES that were not identified or disclosed prior to preparation of the Work, then, upon notification, Client and CES shall seek an equitable adjustment to this Agreement. If the parties are unable to agree, the Agreement may be terminated in accordance with termination provisions set forth herein.
- e. In the event that Hazardous Substances at the Site are discovered to be "nonconforming," the Work will be modified in a manner to be agreed upon by CES and the Client, or, if modification acceptable to CES is not executed by Client, CES shall not be obligated to perform the Work with respect to such nonconforming materials. Hazardous Substances shall be considered nonconforming for the purposes of this Agreement if one or a combination of the following situations occur:
- i. if the Hazardous Substances contain constituents that were not anticipated to exist at the Site;
- ii. if the Hazardous Substances are present in quantities not disclosed in available information or reasonably anticipated by CES;
- iii. if the Hazardous Substances have characteristics or properties not disclosed in, or anticipated by CES from, available information;
- iv. if such undisclosed or unanticipated constituents, quantities, characteristics or properties increase the risk of hazard to human health or the environment involved in the performance of

the work under this Agreement.

The Client agrees to notify CES immediately if it becomes aware of any Hazardous Substances at the Project Site which are nonconforming.

5. Samples and Site Investigation.

- a. In performing the Work, CES shall not be required directly or indirectly to store, arrange for, or actually transport, dispose, treat or monitor hazardous materials, hazardous wastes or oil.
- b. No sample will be kept by CES longer than thirty (30) days after submission of the final Report, unless agreed otherwise. Client agrees that CES is acting only as a bailee and that all samples and materials remain the property of the Client. In the event that samples or materials contain or are suspected to contain substances or constituents hazardous or detrimental to health, safety, or the environment, CES will, after completion of testing, have such samples and materials properly disposed of at Client's sole expense in accordance with applicable requirements.
- c. All field equipment contaminated in performing the Work will be cleaned at Client's expense. Contaminated consumables will be disposed of and replaced at Client's expense. Equipment (including tools) which reasonably cannot be decontaminated shall be disposed of by CES at Client's expense in a manner similar to that indicated for hazardous material.

6. Billing, Payment and Termination.

- a. The Client shall pay CES in accordance with the rates and charges set forth in the Proposal. CES will submit an invoice to the Client at least monthly for the Work incurred during the previous period. Payment will be due upon receipt of CES's invoice. CES's obligation to continue with the Work is contingent upon a determination by CES, at CES's sole discretion, of the ability of the Client to pay CES's invoices.
- b. Amounts due to CES and unpaid under the terms of this Agreement shall bear interest from thirty (30) days after the date payment is due at the rate of one and one half percent (1.5%) per month (18 percent per annum), or the maximum rate allowed by law at the principal place of business of CES, whichever is less. In the event that CES is compelled to take action to collect overdue payments, the Client will reimburse CES for all cost and expenses of collection, including without limitation, all court costs and reasonable attorneys' fees.
- c. If Client fails to make payment when due, CES may, upon written notice, suspend performance of the Work under this Agreement. Suspension of the Work may include, but is not limited to, withholding delivery of work product, draft or final Reports, and Opinions of CES or any of its employees, subcontractors and subconsultants. In the event of a suspension of the Work, CES shall incur no liability to Client or other person because of such suspension, including any form of direct, indirect or consequential damages, fines or penalties. Client agrees that if Work is suspended and a representative of CES is the Licensed Site Professional of record, or its equivalent, then CES may file a withdrawal as Licensed Site Professional of Record with the appropriate regulatory authority without the prior approval of the Client.
- d. If Client objects to all or part of any invoice, Client shall so notify CES in writing within two (2) weeks of the date the Client receives the invoice, and shall pay that portion of the invoice not in dispute within thirty (30) days of the date the Client receives the invoice. The parties shall make efforts to

settle promptly the disputed portion of the invoice, and the additional charges described in the preceding paragraph shall not apply to the portion of any invoice timely disputed and under review. To the extent the objection is resolved in favor of the Client, such charges shall not be due, but if the objection is resolved in favor of CES, such additional charges shall be due on the unpaid amount accruing from the date of original invoice until the date such amount is paid in full.

- e. To the extent the Work includes equipment, title to such equipment shall remain CES's until all of Client's obligations under this Agreement have been fulfilled, including payment, at which time title shall vest in the Client. The equipment shall not become part of the real estate by being attached in any manner to the premises, but shall remain personal property, and Client shall not, without CES's written consent, remove same from the premises and shall not mortgage, assign, encumber or dispose of the same, nor permit or suffer any lien or attachment to be asserted against the same, until Client's obligations hereunder shall be fully performed. Any loss or damage to the equipment after delivery shall not release Client from its obligations hereunder.
- f. If the Client defaults on payments when due or commits a breach of this Agreement, or if a bankruptcy petition is filed by or against the Client, or if the Client makes an assignment for the benefit of creditors or an application for receivership of Client's property is made, then CES shall have the right to enter the premises where equipment is located and remove the same or any part thereof without legal process, in addition to any remedies CES may otherwise have under the law.
- g. This Agreement may be terminated by either party upon seven (7) days written notice. If this Agreement is terminated, Client shall remain obligated to pay CES for all labor performed and reimbursable charges incurred prior to the effective termination date, including any additional labor costs and charges incurred in demobilizing from the Site.
- h. In the event of termination, CES shall incur no liability to Client or other persons because of such termination, including any form of direct, indirect or consequential damages, fines or penalties. If the Work is terminated and a representative of CES is the Licensed Site Professional of record, or its equivalent, it is hereby agreed that CES may file a withdrawal as Licensed Site Professional of record with the appropriate regulatory authority without prior approval of the Client.

7. Limitations on Liability and Claims.

- a. To the fullest extent permitted by law, the total liability, in the aggregate, of CES and of CES's members, officers, directors, employees, agents, and independent professional associates, and any of them, to Client and any one claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages arising out of or in any way related to the Work or this Agreement, shall not exceed the total compensation received by CES under this Agreement, or the total amount of \$50,000, whichever is greater.
- b. Client agrees to defend, indemnify, and hold harmless CES and each of CES's members, officers, directors, employees, agents, independent professional associates, and subcontractors from and against any and all claims, suits, fines, penalties losses, and defense costs, attorneys' fees, damages, and other liabilities arising out of or in any way related to this Agreement or performance of Work by CES, including without limitation: (a) any release of oil, waste, or hazardous materials at the Site; (b) bodily injury and/or property damage to third parties; and (c) fines, penalties or assessments of federal, state, or local government; except to the extent that such injury, damage or loss is caused by negligence or willful misconduct of CES.

- c. Prior to the initiation of any legal proceedings, the parties agree to submit to mediation, using a mediator agreed to by CES and the Client, all claims, disputes, or controversies arising out of, or in relation to, the interpretation, application, or enforcement of this Agreement.
- d. All legal actions by the Client against CES for breach of this Agreement or for the failure to perform in accordance with the Required Standard of Care, however denominated, shall be barred on after two (2) years from the completion or termination of Work.
- e. In consideration of the substantial risks to the Consultant in rendering its services in connection with the Project due to the presence or suspected presence of hazardous materials at or near the jobsite, the Client agrees to make no claim and hereby waives, to the fullest extent permitted by law, any claim or cause or causes of action of any kind, including but not limited to negligence, breach of contract or warranty, either express or implied, strict liability or any other causes, against the Consultant, its officers, directors, partners, employees or subconsultants (collectively, Consultant), which may arise out of or may in any way be connected to the presence of such hazardous materials. The Client acknowledges that the Consultant is not and shall not be required to be in any way an "arranger," "generator," "operator" or "transporter" of hazardous materials present at or near the Project site, as these terms are defined in applicable federal or state statutes.
- f. In consideration of the substantial risks to the Consultant in rendering professional services in connection with this Project, the Client agrees to make no claim and hereby waives, to the fullest extent permitted by law, any claim or cause of action of any nature against the Consultant, his or her officers, directors, employees, agents or sub-consultants, which may arise out of or in connection with this Project or the performance by any of the parties above named of the services under this Agreement.
- g. In consideration of the substantial risks to the Consultant in rendering its services in connection with the Project due to the presence or suspected presence of hazardous materials at or near the jobsite, the Client agrees to make no claim and hereby waives, to the fullest extent permitted by law, any claim or cause or causes of action of any kind, including but not limited to negligence, breach of contract or warranty, either express or implied, strict liability or any other causes, against the Consultant, its officers, directors, partners, employees or subconsultants (collectively, Consultant), which may arise out of or may in any way be connected to the presence of such hazardous materials. The Client acknowledges that the Consultant is not and shall not be required to be in any way an "arranger," "generator," "operator" or "transporter" of hazardous materials present at or near the Project site, as these terms are defined in applicable federal or state statutes.

8. Additional Provisions.

- a. Neither the Client nor CES shall assign any interest in or rights under this Agreement without the written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. This paragraph shall not prevent CES from employing independent consultants, associates and subcontractors to assist in the performance of the Work.
- b. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the Client and CES.
- c. CES and Client will use reasonable care to comply with applicable laws in effect at the time the work is performed hereunder and that apply, to the best of their knowledge, information, and belief, to their respective obligations under this Agreement.

- d. Any provisions of this Agreement held in violation of any law or ordinance shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties. CES and Client shall in good faith attempt to replace any invalid or unenforceable provisions of this Agreement with provisions that are valid and enforceable and that come as close as possible to expressing the intention of the original provisions.
- e. This Agreement represents the entire and integrated Agreement between Client and CES regarding the Work and supersedes all prior negotiations, representations or agreements about the Work, either written or oral, and may be amended only by written instrument signed by both Client and CES.
- f. The terms and provisions of this agreement shall not be construed to alter, waive or affect any lien or stop notice rights which CES may have for the performance of Work.
- g. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.
- h. Paragraph or section headings in this Agreement are included for convenience only and shall not constitute a part of the Agreement for any purpose.
- i. A waiver of or failure to strictly enforce any right under this Agreement shall not constitute a waiver of that, or any subsequent, breach or omission, and any waiver or consent shall be effective only on the specific occasion given unless otherwise agreed to in writing by the parties.

SIGNED THIS	DAY OF MAY 2023	
Print Name		
 Title		