



# Marcol Dredging & Commercial Marine Co.

2015 Cosgrove Ave. North Charleston, SC 29405 office (843) 747-2177 fax (843) 744-1616

August 27, 2020

Mr. Tim Wise  
Molasses Creek Dredging Association, LLC  
144 Wando Reach Court  
Mt. Pleasant, SC 29464

Re: Molasses Creek Dredging Services

Dear Mr. Wise,

Com-Mar Ltd., dba Marcol Dredging and Commercial Marine Company (Marcol), has evaluated the existing conditions at Molasses Creek and is pleased to offer the following proposal to perform the necessary maintenance dredging for the Molasses Creek Dredging Association, LLC (MCDA).

Mobilization / De-Mobilization	\$271,700/2 = \$135,850 *
Maintenance Dredging	22,000 yd = \$307,120
Total Estimated Fees	\$442,970

\* Mobilization/Demobilization fees will be divided equally between the MCDA and the Hobcaw Yacht Club.

Thank you for the opportunity to provide a quote for this work. We hope that we may be favored with your most valued business. Please contact me at your convenience with any questions that you may have.

Best regards,

William H. Jordan Jr.  
Sales Manager (Primary Contact)  
Marcol Dredging and Commercial Marine Co.  
2015 Cosgrove Ave., N Charleston, SC 29405  
(843) 607-1209  
billy@marcoldredging.com

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## **Molasses Creek Dredging Services Agreement**

This Agreement (hereinafter "Agreement") is made effective as of \_\_\_\_\_ by and between Com-Mar Ltd. of 2015 Cosgrove Ave., North Charleston, SC 29405 (dba Marcol Dredging & Commercial Marine Company, hereinafter called "Marcol" or "Contractor") and Molasses Creek Dredging Association, LLC (hereinafter called "MCDA" or "Owner").

### **Recitals**

**Whereas**, MCDA requires dredging at its premises, or in areas in navigable waters adjacent to its premises;

**Whereas**, Marcol has the equipment and ability to perform dredging work consistent with the MCDA needs;

**Whereas**, MCDA has entered into agreement with the South Carolina State Ports Authority (hereinafter called "SCSPA") to allow for the use of the West Cell of the Daniel Island Upland Confined Disposal Facility (hereinafter called "Disposal Area") for disposal of dredge material from its premises;

**Whereas**, MCDA has acquired authorization from the Charleston District, Corps of Engineers (COE) and the Office of Ocean and Coastal Resource Management (OCRM) to dredge specific sections of Molasses Creek and a small area in the Wando River. On May 18, 2019, the Office of Ocean and Coastal Resource Management issued an "Critical Area Permit & Water Quality Certification" for the referenced dredging activity;

**Where in** consideration of the mutual covenants herein, and other goods and valuable consideration, the receipt of which is hereby acknowledged, MCDA and Marcol agree as follows:

#### **Effective**

This Agreement shall be effective when executed by MCDA and Marcol.

### **Project Description**

Marcol will mobilize a 10-inch swinging ladder dredge, HDPE pipeline and support equipment to the project site. Marcol will lay submerged and surface pipeline across the Wando River from the project site to the "Disposal Area." Marcol will dredge approximately 22,000 cubic yards of sediments from the site noted above. Marcol will commence dredging on a 7-day a week schedule, with the option to dredge 24-hours a day until project completion.

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### **Assumptions**

This proposal is for **maintenance material only** and does not cover the removal of rock or dredging of virgin material. Marcol is expected to dredge those materials able to be removed with Marcol's 10" swinging ladder dredge. A hydrographic survey will be performed, at the Owners expense, before and after dredging to determine dredge material pay volume. This proposal does not include dredging at the private residential dock located in the Wando River. A price for this dredging will be provided upon request.

### **Permitting**

MCDCA represents and warrants that it has the authority to authorize Marcol to perform dredging services at the Project Site. MCDCA represents that it has all required permits or licenses for dredging at the Project Site from all governmental authorities, including without limitation, applicable municipal, state, and federal governments and agencies that have jurisdiction over the Project Site. MCDCA represents that the Project Site described in this Agreement is identical to the dredging work authorized by such permits or licenses.

Marcol represents and warrants that it has the appropriate licensing to perform the work required to complete the dredging at the Project Site in Charleston County, South Carolina. Marcol will also obtain any additional licensing from the Town of Mt. Pleasant, SC prior to initiating the dredging operations.

Marcol will coordinate and facilitate pre-construction meetings and inspections, as necessary, with OCRM or ACOE Field Representatives prior to initiating the dredging operations, if necessary.

### **Equipment**

Marcol will furnish all equipment, accessories, and personnel to perform the removal of sediments at the Project Site described in this Agreement. The removal of sediments will be performed with a 10" swinging ladder hydraulic suction dredge provided by Marcol.

### **Disposal Area Owner Provided Equipment**

SCSPA shall provide a functioning and serviceable spillway (also known as spillbox or weir structure), including appropriately sized and useable stoplogs (also known as weir boards), and appropriately functioning and serviceable piping to extend effluent discharge beyond wetland areas.

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### Commencement of Services

Marcol will complete dredging services during the 2020-2021 dredging season (Nov.1, 2020 – March 31, 2021)

### Project Schedule

Marcol plans to operate 1 or 2 dredge crews, operating on 12 or 24-hour shifts seven days a week until project completion.

### Hydrographic Surveys

MCDA will assist in coordinating and scheduling survey work consisting of a “BD” before dredging survey and a “AD” after dredging survey in order to calculate the volume of material removed. MCDA will assume the cost of all survey work.

### Fees for Services Rendered

MCDA shall pay Marcol the following charges in exchange for the services described herein:

Mobilization / De-Mobilization	\$271,700/2 = \$135,850 *
Maintenance Dredging	22,000 yd = \$307,120
Total Estimated Fees	\$442,970

\* Mobilization/Demobilization fees will be divided equally between the MCDA and the Hobcaw Yacht Club.

Dredging Fees are based on calculated difference between a pre-dredge survey a post-dredge survey. Any additional dredging requested by the Owner during the project will be performed at an hourly rate which will be negotiated and agreed to prior to said dredging.

The cost to remove any foreign objects greater than four inches in diameter and/or other material unable to be dredged with Marcol’s 10” swinging ladder dredge encountered during the maintenance dredging will be the responsibility of MCDA. The Contractor will provide MCDA with a cost estimate for approval prior to any additional removal activities.

### Payment Terms

Mobilization Fees (60% of Mobilization/Demobilization fees) will be submitted as a lump-sum fee and shall be due and payable within fifteen (15) days of the invoice date. Dredging fees will be submitted as a per cubic yard fee based on estimated materials removed and shall be due and payable within fifteen (15) days of invoice. Final dredging fees and de-mobilization fees

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(40% of Mobilization/Demobilization fees) will be submitted upon satisfactory completion and close-out of the project and shall be due and payable within thirty (15) days of invoice.

MCDA shall notify Marcol in writing (including email) of any disputed amounts within five (5) calendar days after receipt of invoice (or such time as is reasonable to validate the completion of services covered by the invoice); otherwise all invoice charges will be considered acceptable and correct. In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion shall be due and payable as provided herein.

### **Insurance**

Marcol maintains Workers' Compensation coverage for all applicable statutory limits and maintains General Liability Insurance with a limit of liability in the amount of \$1,000,000. Marcol will also maintain all applicable statutory limits for Jones Act. Marcol will list MCDA as additionally insured and shall provide a waiver of subrogation with respect to Worker's Compensation. A Certificate of Insurance will be provided prior to the start of work.

### **Indemnity**

To the fullest extent permitted by law, MCDA shall indemnify and defend, and hold harmless Marcol, Marcol's officers, employees and agents, from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of attorneys and court costs) caused in whole or in part by the negligent acts or omissions of MCDA, or MDA's officers, directors, partners, employees, agents, or consultants; provided, however, that this duty to indemnify shall not extend to those damages resulting from the acts or omissions of Marcol that are not otherwise excluded by this agreement, including, but not limited to, bulkhead and dock damage that may result from dredging, not negligence.

To the fullest extent permitted by law, Marcol shall indemnify and defend, and hold harmless MCDA, MCDA's officers, employees and agents, from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of attorneys and court costs) caused in whole or in part by the negligent acts or omissions of Marcol, or Marcol's officers, directors, partners, employees, agents, or consultants; provided, however, that this duty to indemnify shall not extend to those damages resulting from the acts or omissions of MCDA that are not otherwise excluded by this agreement.

is not responsible

To the fullest extent permitted by law, MCDA hereby releases, acquits and discharges Marcol and it's officers, owners, employees and agents of and from any and all claims, costs, losses and damages (including but not limited to all fees and charges of attorneys and court costs) caused by, arising out of, or relating to the presence, discharge, release or escape of any harardous waste, PCB's, petroleum, or other pollutant at, on under, or from the Project site; provided, however, that this release, acquittal and discharge shall not apply to any such harardous waste,

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PCB's, petroleum, or other pollutant which originates from Marcol's equipment or is otherwise brought to the Project site by Marcol.

To the fullest extent permitted by law, Marcol shall indemnify, hold harmless and defend MCDA, MCDA's officers, employees and agents, from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of attorneys and court costs) caused by, arising from, or relating to the presence, discharge, release or escape of any hazardous waste, PCB's, petroleum, or other pollutant, at, on, under or from the Project site; provided, however, that the duty to indemnify shall not extend to the negligence of MCDA.

To the fullest extent permitted by law, MCDA shall indemnify, hold harmless and defend Marcol, Marcol's officers, employees and agents, from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of attorneys and court costs) caused by, arising out of, or relating to failure of the SCSPA Disposal Area.

#### **Default by MCDA**

If MCDA fails to make payment due Marcol for uncontested services and expenses within the payment terms set forth herein, Marcol may suspend services under this Agreement and demobilize its equipment without waiving any claim or right against MCDA until Marcol has been paid in full all amounts due for services, expenses, and charges. In the event of demobilization for nonpayment, MCDA shall be liable for additional mobilization costs prior to recommencing work. In the event Marcol retains the services of an attorney to collect sums validated and due under this Agreement, MCDA shall be responsible for all attorneys' fees and costs associated with the collection of all amounts due; provided however, that MCDA will not be responsible for all such costs and fees if the sums are determined to not be due and owing to Marcol.

#### **Default by Marcol**

If any part of Marcol's work is found to be defective for reasons solely attributable to Marcol, MCDA's exclusive remedy against Marcol for such defective work shall be to require Marcol to re-perform, at Marcol's own expense, those aspects of the work found by MCDA to be defective, provided MCDA notifies Marcol in writing within ten (10) days of the discovery of the defect, and MCDA has completed a hydrographic survey within five (5) days of notification of completion of the Project.

#### **MCDA's Duty to Survey**

MCDA acknowledges that solids in inlets, creeks, waterways and other navigable waters are accumulated, transported, and move within very short periods of time. As a result, Marcol shall have no duty to re-perform any part of the work unless a hydrographic survey of the entire Project site is completed within five (5) days of notification of completion of the Project by Marcol and indicating defective work. In any event, Marcol shall have no duty to re-perform

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work if a material intervening force majeure occurs including, without limitation, abnormal floods, storms, hurricanes, or other acts of force majeure.

### **General Provisions**

Severability - If any provision of this Agreement, or any application thereof, should be construed or held to be void, invalid, or unenforceable, by order, decree, or judgment of a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby, but shall remain in full force and effect.

No Waiver - Marcol's failure to require strict compliance with any provision of this Agreement shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision of this Agreement.

Binding Effect - The provisions of this Agreement shall be binding upon the heirs, successors, and assigns of each party, and shall contain the sole and entire agreement between the parties hereto. This Agreement cannot be modified except by writing and/or change order signed by both Marcol and MCDA.

### **Force Majeure**

Marcol shall not be liable for failure to perform or for delay in performance due to circumstances beyond its control, including without limitation, war, danger of war, natural disasters, unrest, strikes, lockouts, fire, epidemics, government measures, embargoes, blockades, congestion, or blocked waterways. In the event of the foregoing, Marcol shall be entitled to suspend or cancel the Agreement without any further obligation on its part.

### **Forum Selection**

MCDA agrees that the place of jurisdiction and venue for any dispute arising under this Agreement shall be the General Court of Justice of Charleston County, South Carolina. This Agreement is governed by and shall be subject to the laws of the State of South Carolina.

### **Expiration of Agreement**

This Agreement shall be null and void if Owner does not execute the Agreement by August 30, 2020.

### **Signatures**

In Witness Whereof, we have set our hands and seals on the date above-mentioned.

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144 Wando Reach Court  
Mt. Pleasant, SC 29464

Marcol Dredging & Commercial Marine  
Company  
2015 Cosgrove Ave.  
N Charleston, SC 29405

\_\_\_\_\_  
*By (Signature)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*By (Signature)*

Craig J. Lavelle  
\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Date)*

