

INTERGOVERNMENTAL AGREEMENT
BETWEEN
BARNSTABLE COUNTY
AND
TOWN OF MARSHFIELD

THIS AGREEMENT, made and entered into this _____ day of _____, 2015 by and between the County of Barnstable, organized pursuant to Special Acts of the General Court of the Commonwealth, hereinafter called the "County," and the Town of Marshfield, County of Plymouth, hereinafter called the "Town."

WHEREAS, Barnstable County received financial assistance in the form of a capital equipment grant from the Commonwealth, through DEM and Waterways to implement a regional maintenance and improvement dredging program, including the purchase and acquisition of a dredge and associated capital equipment; and

WHEREAS, Barnstable County is authorized to enter into agreements with other governmental units, within or without the County to perform any service, activity or undertaking which such governmental unit is authorized to perform for itself, Pursuant to Section 1-5 of its Home Rule Charter, subject to the authorization by the governing body of the county within which such governmental unit is located;

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

WHEREAS, the Town wishes to have the County undertake the dredging projects covered by this agreement.

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:

BARNSTABLE COUNTY AGREES:

1. To do and perform all dredge related work for South River Channel dredging in accordance with the specifications, drawings and plans (Attachment I) up to a maximum contract amount of \$284,527.50 based on removing approximately 10,150 cubic yards of material at \$22.81 per cubic yard and \$53,050.00 charge for mobilization/demobilization costs. Final and complete specifications, plans and drawings shall be provided to the County by the Town of Marshfield in a timely manner.

2. To observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the specifications, plans, and drawings identified in Attachment I as applicable to dredging and rough placement of materials.
3. To provide a hydraulic dredge and all related equipment to conduct maintenance dredging for the Town, according to and guided by the specifications, plans, drawings as provided.
4. To pump dredge materials and provide rough beach placement of said materials at a rate of \$22.81 per cubic yard for standard dredge material. This price includes before and after dredge surveys to be performed by the County.
5. 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 or on dredging or handling of dredge materials.
6. To the extent permitted by law, to indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the County and its employees with respect to the County's performance of its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this agreement.
7. To 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.
8. To operate the dredge will operate between the hours of 7:00 A.M. and 7:00 P.M.

THE TOWN OF MARSHFIELD AGREES:

1. To obtain all required federal, state, county and local permits and approvals to conduct the dredge project.
2. To furnish all specifications, drawings, and plans required to perform the dredge project at the execution of this document. Said documents will be incorporated by reference as Attachment I.
3. To conduct required inspections and testing consistent with federal, state and local permits and approvals.
4. To inspect the County's on-site dredging work in a timely manner.

5. To obligate funds to conduct the dredging work specified in Attachment I.
6. To indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the Town with respect to the Town's performance of its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this agreement.

BOTH BARNSTABLE COUNTY AND THE TOWN OF MARSHFIELD AGREE:

That nothing herein shall be construed as obligating either Barnstable County or the Town of Marshfield to expend funds or to be obligated to spend funds beyond the scope of this contract.

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 the dredging identified in Attachment I is completed to the mutual satisfaction of all parties.

ARTICLE III. PAYMENT TO COUNTY:

The cost of the project shall be based on a per cubic yard basis, and calculated on the total cubic yards of material moved, using standard engineering practices, except as specified in Article VIII, and the mobilization and demobilization costs. The cost per cubic yard is \$22.81 for standard dredge material. The Town shall be billed, and the County shall be paid for the following services:

60% Mobilization/ Demobilization costs for project;

50% movement/placement of dredge materials;

100% movement/placement of dredge materials;

40% Mobilization/Demobilization costs for the project.

The Town shall submit payment within 30 days of date of invoice to the County. Failure to pay said invoice 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. Said late fee will be assessed daily 0.033%. Failure to pay invoice within 90 days may result in legal action. The Town shall be responsible for all legal costs incurred by the County in collection of unpaid debts.

ARTICLE IV. WEATHER CONDITIONS

In the event of temporary suspension of work due to inclement weather conditions, the County shall cease work with no adverse consequences to the County. The decision to cease work shall be made by the County in consultation with the Town.

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 County. Costs for additional cubic yardage shall be determined utilizing the costs identified in Article III.

ARTICLE VI. COUNTY INSURANCE

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

1. Compensation insurance. The County shall maintain during the life of this Agreement Workmen'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

To the extent permitted by law, Barnstable County agrees to defend, indemnify, defend and hold harmless the Town of Marshfield from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of Barnstable County or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the County's liability under the Massachusetts Tort Claims Act or under other provisions of this Agreement.

To the extent permitted by law, the Town of Marshfield agrees to defend, indemnify, defend and hold harmless Barnstable County from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of the Town of Marshfield or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the

Town's liability under the Massachusetts Tort Claims Act or under other provisions of this Agreement.

ARTICLE VIII TERMINATION

Either party may terminate this Agreement by providing ten (10) days written notice to the other. The Town shall pay the County all costs incurred by the County 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 COUNTY execute this Agreement this _____ day of _____, 2015.

BARNSTABLE COUNTY
COMMISSIONERS:

TOWN OF MARSHFIELD:

Sheila R. Lyons, Chair

Rocco. J. Longo
Town Administrator

Date _____

Mary Pat Flynn

Leo G. Cakounes

Date