

INTERGOVERNMENTAL AGREEMENT  
BETWEEN PLYMOUTH  
COUNTY AND  
THE TOWN OF XXX

THIS AGREEMENT, is made and entered into this                      day of April, 2019 by and between the County of Plymouth, hereinafter called the "County," and the Town of XXX, hereinafter called the "Town."

WHEREAS, Plymouth County received financial assistance in the form of a capital equipment grant from the Commonwealth, to create and develop a regional maintenance and improvement dredging program, including the purchase and acquisition of a dredge and associated capital equipment; and

WHEREAS, Plymouth 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 the General Laws of the Commonwealth; and

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 contract with the County for the dredging projects covered by this agreement to provide equipment necessary to perform the projects.

**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:

**PLYMOUTH COUNTY AGREES:**

1. To lease a John Deere 210G LC for the term of up to twenty-one days, which may be extended in writing, for the cost of \$1,400 per seven-day period, or any portion thereof, for dredging work to be performed in XXX. Transportation costs to the Town and back to Plymouth will be paid by the Town.
2. To provide a mechanical dredge to conduct maintenance dredging for the Town, according to and guided by the specifications, plans, drawings as provided.
3. 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.

4. 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.

**THE TOWN AGREES:**

1. To execute the Plymouth County Dredge Excavator Rental Agreement and to only allow properly licensed qualified operators to move and operate the dredge excavator.
2. To obtain all required federal, state, county and local permits and approvals to conduct the dredge project.
3. 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.
4. To conduct required inspections and testing consistent with federal, state and local permits and approvals.
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 PLYMOUTH COUNTY AND THE TOWN AGREE:**

That nothing herein shall be construed as obligating either Plymouth County or the Town 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.

### **ARTICLE III. PAYMENT TO COUNTY:**

The cost of the project shall be based on a rental of the dredge excavator as per the Plymouth County Dredge Excavator Rental Agreement for the period of use of the dredge excavator.

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. 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.

### **ARTICLE V. INSURANCE**

The Town shall maintain the following insurance coverages with limits set in the Rental Agreement 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, Plymouth County agrees to defend, indemnify, defend and hold harmless the Town from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of Plymouth 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 agrees to defend, indemnify, defend and hold harmless Plymouth County from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of the Town 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 April 2019.

#### **PLYMOUTH COUNTY:**

\_\_\_\_\_  
Daniel A. Pallotta, Chair, for the County of Plymouth Commissioners

\_\_\_\_\_  
Date

#### **TOWN OF XXX:**

\_\_\_\_\_

\_\_\_\_\_  
Date

**COUNTY OF PLYMOUTH  
44 OBERY STREET, PLYMOUTH MA 02360  
DREDGE EXCAVATOR RENTAL LEASE AGREEMENT**

LESSEE NAME	
STREET ADDRESS	
CITY	STATE ZIP CODE
TELEPHONE	
NAME OF CONTACT	TITLE
EQUIPMENT WILL BE USED AT	
RENTAL TERM BEGIN	PROJ END DATE
RENTAL COST \$1,400 per week (or part of) and transportation costs to and from the Plymouth area	
EQUIPMENT John Deere Excavator Dredge 210G LC, manufactured 2015 PIN 1FF210GXVFE523380	
HOUR READING OF DREDGE EXCAVATOR	
OUT          hours	RETURNED

Lessor hereby leases to Lessee the equipment identified above ("Equipment") for the term and with the rental payments set out above. Rental payments shall be made to Lessor at the address shown above. The Equipment will be transported to and from Lessor's place of business during the rental term at Lessee's expense. Lessee also agrees to pay any additional charges noted above upon or before receiving the Equipment from the Lessor.

Lessee agrees to pay additional rental prorated at the applicable daily, weekly or monthly rate for each hour the Equipment is used in excess of such time. The additional rent for excess hours of use will be paid at the time the Equipment is returned or, if the Equipment is leased for more than thirty days, on the first day of the month following such use. If an hour meter is furnished, (1) Lessee agrees to keep it connected to the Equipment and in good working condition at all times, and (2) it will be used as the conclusive measure of the number of hours of operation.

If Lessee fails to return the Equipment by the end of the rental term, Lessee will pay additional rental, prorated at one and one-half times the normal rental, for each day that the Equipment remains unreturned.

Lessee assumes all risks and liability for and agrees to hold Lessor and its assign harmless from all personal injuries and death, property damage, suits, claims (including third party claims), losses, expenses, costs, and attorney fees, arising from or in connection with the Lessee's use, possession, entrustment to others, or transportation of the Equipment. Lessee, at Lessee's own expense, will carry general liability insurance with limits of liability not less than \$1,000,000 per occurrence and \$1,000,000 aggregate, unless greater liability limits are specified below.

Lessee agrees to furnish a certificate of insurance to Lessor's satisfaction evidencing Lessee's compliance with the foregoing requirement and name the Lessor as an additional insured on the Lessee's general liability policy upon demand by Lessor.

Lessee shall indemnify Lessor against all loss or damage to the Equipment while it is out of Lessor's possession. The amount of any such loss or damage will be based on the value shown above. Damage to the Equipment, other than a total loss, will not abate or excuse the making of prescribed rental payments. Lessee agrees to use and care for the Equipment in a careful and prudent manner.

Lessee agrees to pay all operating and maintenance expenses while the Equipment is out of the Lessor's possession, and to make or secure any needed repairs. All repairs shall be at Lessee's expense, except to the extent that Lessor performs repairs and obtains compensation for doing so from the manufacturer. To the extent permitted by law, neither Lessor, its assigns, the wholesale distributor or manufacturer makes any representation or promise as to the quality, performance or freedom from defect of the Equipment, and NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS IS MADE. Neither Lessor, its assigns, the wholesale distributor or manufacturer will be liable for any incidental or consequential damages which may result from the use, performance or failure of the Equipment. Lessee acknowledges that the Equipment is of a size, design and capacity selected by Lessee and that Lessee is satisfied that the Equipment is suitable for Lessee's purposes.

Lessee will return the Equipment to Lessor in as good condition as received, reasonable wear and tear excepted, by the end of the rental term. If the Equipment is not in such good condition upon its return to Lessor and Lessor elects to repair it, Lessee will pay for such repairs at Lessor's regular shop rates.

**THIS RENTAL AGREEMENT IS SUBJECT TO ALL OF THE TERMS AND CONDITIONS SET OUT BELOW.**

<b>LESSEE</b>   <div style="border-top: 1px solid black; margin-top: 20px; display: flex; justify-content: space-between;"> <span>SIGNATURE</span> <span>DATE</span> </div>	<b>LESSOR</b> The equipment rented hereunder was set up, inspected and adjusted according to factory recommendations before delivery. Operation and servicing is detailed in the manual given to the Lessee.  <div style="border-top: 1px solid black; margin-top: 20px; display: flex; justify-content: space-between;"> <span>SIGNATURE</span> <span>DATE</span> </div>
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## **RENTAL AGREEMENT**

### **1. Addition of Accessories**

Lessee will not, without Lessor's written consent, install any accessories or devices on the Equipment if such installation will impair the originally intended function or use of the Equipment. All accessories or devices affixed to the Equipment will become the property of Lessor unless such accessory or device can be removed without in any way affecting the originally intended function or use of the Equipment. Any damage to the Equipment caused by the removal of such accessories or devices will be repaired at Lessee's expense.

### **2. Compliance with Regulations**

Lessee will comply with all laws and regulations relating to ownership, possession, use or maintenance of the Equipment.

### **3. Inspection**

Lessee will, whenever requested, advise Lessor of the exact location of the Equipment. Lessor and its representatives may, for the purpose of inspection, enter upon any job, building or place where the Equipment is located at any reasonable time. Lessor may remove the Equipment without notice to Lessee if, in the opinion of the Lessor, it is being used beyond its capacity or in any other manner improperly cared for or abused.

### **4. Default**

If Lessee fails to make any rental payment when due, attempts to sell or encumber the Equipment, ceases operating, institutes or has instituted against it proceedings under any bankruptcy or insolvency law, makes an assignment for the benefit of creditors or fails to comply with any other provision of this Rental Agreement, or if any attachment, execution, writ or process is levied against the Equipment or any of Lessee's property, or if for any reason Lessor deems itself insecure or the Equipment unsafe, Lessor may terminate the rental term hereunder by giving Lessee written notice thereof, in which event Lessee will deliver the Equipment to Lessor on demand, and Lessor may enter upon any job, building or place where the Equipment is located and take possession of it without notice to Lessee. In the event of such termination, Lessee agrees to pay all guaranteed rentals and all other rentals due, damages for any injury to the Equipment, legal expenses, costs of removal of the Equipment from the possession of Lessee, and all freight, storage, transportation and other charges incurred in such removal and return to Lessor at its place of business.

### **5. Construction**

This is an agreement for rental only. Nothing herein will be construed as conveying to Lessee any right, title or interest in or to the Equipment, except as a lessee.

### **6. Guaranteed Rental - Return of Equipment**

Provided the guaranteed rental set forth on the reverse side is or has been paid, Lessee may return the Equipment and terminate the rental term hereunder on three days notice to Lessor.

### **7. General**

Time is of the essence of this Rental agreement. Lessor's failure at any time to require strict performance by Lessee of any provision of this Rental Agreement will not waive or diminish Lessor's right thereafter to demand strict compliance with that or any other provision. Waiver by Lessor of any default will not waive any other default. This Rental Agreement may not be modified except by a written revision signed by the parties hereto. Lessee acknowledges receipt of a signed copy of this Agreement.

### **8. Insurance**

Every customer renting equipment must provide General Liability Insurance. General Liability coverage must be provided protecting both Plymouth County and the Town in the event that persons or property are injured or damaged as a result of an accident.

#### **General Liability Insurance Requirements**

##### **Minimum Requirements:**

- \$1,000,000 each occurrence General Liability including Contractual Liability.
- Plymouth County named as additional insured on General Liability Policy.

The General Liability Insurance requirements do not cover the equipment and is separate and exclusive from machine coverage.

##### **Physical Damage Coverage Requirements:**

- In order to avoid fire, theft, and vandalism charge on rental equipment we must have an insurance policy on file that meets our standard General Liability requirements above and All Risk Physical Damage Coverage must be provided which will pay for loss of damage to the rented/leased dredge excavator.
- County of Plymouth named as a Loss Payee as respects to the rented/leased dredge excavator.
- Blanket Policies must have coverage greater than the total value of the dredge excavator.
- If machine specific, the certificate must reference the model, serial number and the full replacement value of the dredge excavator.
- The Certificate must name the actual insurance company providing the coverage.