

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

**Agreement By and Between
The City of Newburyport and the Town of West Newbury
Regarding Allocation of Costs for Evaluation, Design and Repair of
The Plummer Spring Road/Middle Street Bridge**

This Agreement is made as of this 17th day of September, 2020, by and between the City of Newburyport, a Massachusetts municipal corporation with its main office at City Hall, 60 Pleasant Street, Newburyport, MA 01950 (hereinafter referred to as “Newburyport”) and the Town of West Newbury, a Massachusetts municipal corporation with its main office at the 1910 Office Building, 381 Main Street, West Newbury, MA 01985 (hereinafter referred to as “West Newbury”).

RECITALS

Whereas, Newburyport and West Newbury in accordance with M.G.L. c. 40 §4A are authorized to enter into an agreement with another governmental unit to perform jointly or for that unit’s services, activities or undertakings which any of the contracting units is authorized by law to perform; and

Whereas, Newburyport and West Newbury desire to enter into an Agreement to share the costs to evaluate the condition of the Plummer Spring Road/Middle Street Bridge over the Artichoke Reservoir (the “Bridge”) situated on the border between Newburyport and West Newbury, and to share the costs of designing, bidding and making necessary repairs to the Bridge (the” Bridge Project”); and

Whereas, Newburyport and West Newbury both desire to work cooperatively in order to complete the repairs to the Bridge in the most expeditious fashion; and

Whereas, Newburyport has been authorized to enter into this agreement by vote of its City Council and approval of its Mayor; and

Whereas, West Newbury has been authorized to enter into this agreement by vote of its Board of Selectmen.

Now, therefore, in consideration of the mutual promises contained herein, Newburyport and West Newbury agree to the following terms, conditions and provisions.

1. **Effective Date and Term; Renewal:** This Agreement shall become effective when fully executed by Newburyport and West Newbury on the day first above written and shall continue, if renewed in accordance with the provisions hereinafter contained, until the completion of the Bridge Project.

The initial term of this Agreement shall be one year from the date first written above. The parties shall review the status of the Bridge Project on an annual basis and may renew this Agreement with such amendments as are mutually agreed upon; provided, however, that in no event shall the term of this Agreement, including any renewal thereof, exceed twenty-five (25) years. Any renewal shall be executed by the Mayor of Newburyport on behalf of the City of Newburyport and the Town Manager of the Town of West Newbury on behalf of the Town of West Newbury.

2. **Cost Sharing; Estimated Project Cost:** Newburyport and West Newbury mutually agree that they shall share equal responsibility for all aspects of the Bridge Project, including but not limited to, the costs of evaluation, project design, permitting, bidding, scheduling, oversight, construction, and contractor payment, to the extent that work is not undertaken by employees of Newburyport or West Newbury (all of whose costs and expenses shall be paid by their respective employer). To that end, Newburyport and West Newbury shall obtain the authorization of the other prior to incurring any such costs. Cost sharing shall pertain solely to work directly related to the Bridge Project, and shall be subject to appropriation.

The estimated Bridge project cost is contained in Appendix A attached to this Agreement. Funding, including any additional funding sources as described herein, shall be provided to address the costs as listed in Appendix A. Should additional funds for the Bridge Project in excess of this estimated cost be required, such additional costs shall be expressly subject to appropriation by both parties. Periodic financial statements shall be issued to both parties with respect to expenditures undertaken for the Bridge Project.

Notwithstanding anything set forth above, each party reserves the right to petition for an apportionment of the costs associated with the Bridge Project in accordance with the provisions of M.G.L. Ch. 84 §2.

3. **Cooperation:** Newburyport and West Newbury agree to work together to complete the Bridge Project design, bidding and repair as expeditiously as possible. Newburyport and West Newbury agree to use diligent efforts to obtain without undue delay, any required local, state or federal permit, clearances, approvals, and/or waivers for the Bridge Project. Newburyport and West Newbury acknowledge that each party has received grant funding for the completion of the Bridge Project, Newburyport having received a MassDOT grant and West Newbury having received a MassWorks grant, the terms and requirements of such grants being incorporated herein by reference. In the interest of complying with such grant requirements, the Bridge project must be completed by June 30, 2023.

4. **Liability:** Each party hereto shall be liable and responsible for the negligent or intentional acts of its employees, agents and contractors with respect to the Bridge Project, and shall hold each other harmless from any claims arising therefrom, to the extent permitted by law.

5. **Additional Funding Sources:** Newburyport and West Newbury agree to use their best efforts to secure such grants, reimbursements or other sources of funding for the Bridge Project. All such additional funding sources for the Bridge Project, whether received prior to or after the date of this Agreement shall reduce each party's obligations for costs by one half of the amount secured. The parties agree to comply with all terms and conditions set forth in such grants, reimbursements or other sources of funding.

6. **Notice and Change of Circumstances:** Each party shall promptly notify the other of any legal impediment, change of circumstances, including but not limited to changes in funding availability, insurance requirements, city or town approvals, or any condition or event which may adversely affect each party's ability to carry out any of its obligation, under this Agreement. Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be made, given, furnished or filed with one party by another party shall be in writing and shall be delivered by hand or by certified mail, return receipt requested, or by overnight delivery service, in an envelope addressed to:

NEWBURYPORT:

Office of the Mayor
Newburyport City Hall
60 Pleasant Street
Newburyport, MA 01950

WEST NEWBURY:

Town Manager
1910 Office Building
381 Main Street
West Newbury, MA 01985

7. **Governing Law:** This Agreement is to be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

8. **Severability:** If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulations.

9. **Modification and Amendment:** This Agreement may be modified or amended only by written mutual agreement of the Parties.

10. **Designation of Project Coordinator:** Newburyport and West Newbury shall each designate an employee to act as the Project Coordinator who will be the point of contact for all aspects of the Bridge Project for that party. Each Project Coordinator shall be copied on all correspondence or other communication with any third party involved in the Bridge Project. In the event of the temporary absence or unavailability of a Project

Coordinator, the Parties may designate a temporary Project Coordinator for the duration of such absence or unavailability.

11. **Oversight:** Newburyport and West Newbury agree that their respective employees, agents and officials shall have access to the Bridge during the pendency of this Agreement. Newburyport and West Newbury agree to promptly notify the other in the event that such party considers any work connected with the Bridge Project to be not in compliance with this Agreement, the Bridge Project contract issued pursuant to the joint Invitation for Bids (“IFB”), or applicable federal, state or local laws and applicable regulations.

12. **Joint Invitation for Bids (“IFB”):** Newburyport and West Newbury shall prepare and advertise for a joint IFB for the construction of the Bridge Project and shall jointly open and evaluate bids and award a contract to the selected eligible and responsible bidder.

13. **Entire Agreement:** This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

City of Newburyport

Town of West Newbury

Donna D. Hurladay
Mayor
Duly authorized
By 11-0 vote of the
Newburyport City Council
AUGUST 31, 2020

Angus Jennings
Angus Jennings, Town Manager
Duly authorized
By unanimous 3-0 vote of the
West Newbury Board of Selectmen
June 8, 2020

July 6, 2020

Jon-Eric White, PE
City Engineer
Department of Public Services
16C Perry Way
Newburyport, MA 01950

RE: MOU - Preliminary Cost Estimate

Dear Jon-Eric

Below is the preliminary cost estimate based on the 30% design status of the Plummer Spring Road/Middle Street Bridge Replacement. The estimate is for the bridge type selected at the September 23rd, 2019 public hearing.

- 45'-0" span spread box beam
- 24'-0" roadway width with one 5'-6" sidewalk
- and S3-TL4 bridge rail
- Overall width 32'-6"
- Integral abutment on piles
- Preliminary Cost Estimate = \$2.6 M

The preliminary cost estimate does not include a contingency. For budgeting purposes, the two communities may find it prudent to include a contingency. At this preliminary design stage MassDOT usually includes a 20% contingency for bridge projects of similar magnitude.

Sincerely,

BSC Group, Inc.



Micah Morrison, PE, SE
Manager of Structural Engineering

cc: Peter Reed

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Engineers

Environmental
Scientists

Custom Software
Developers

Landscape
Architects

Planners

Surveyors