

**AGREEMENT FOR SHARING AN EXCAVATOR  
BETWEEN THE TOWNS OF  
WEST STOCKBRIDGE AND RICHMOND**

THIS AGREEMENT is made on this 2 day July of 2019 pursuant to M.G.L. Chapter 40, Section 4A. This Agreement is made for the mutual public interest of the participating municipalities. The participating municipalities are the Town of Richmond ("Richmond") and the Town of West Stockbridge ("West Stockbridge").

WHEREAS, the participating municipalities desire to provide for sharing of a rubber track excavator; and

WHEREAS, the Town of Richmond has agreed to add the excavator to the Town's insurance policy and to bill the Town of West Stockbridge for a proportionate share of this cost.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the participating municipalities agree as follows:

**SECTION 1. TERM**

This Agreement shall be in effect for the life of the rubber track excavator, unless terminated sooner as provided in Section 13.

**SECTION 2. EQUIPMENT**

The equipment covered by this Agreement is one Bobcat rubber track excavator (hereinafter "the excavator"). The specifications of the excavator to be purchased are attached to this Agreement (*see Attachment A*). The funds necessary to purchase the excavator will be provided in equal proportions by the participating municipalities.

**SECTION 3. LEAD TOWN**

The Town of Richmond is designated as the Lead Town in this Agreement.

**SECTION 4. MUNICIPAL REPRESENTATIVE**

Each participating municipality shall designate in writing an authorized representative to perform the duties of this Agreement on its behalf and to provide any necessary consent or vote required by this Agreement.

**SECTION 5. MAINTENANCE**

Maintenance of the excavator will be performed in accordance with the manufacturer's specifications. Only qualified personnel shall perform maintenance on the excavator. Each Town will be responsible for the excavators scheduled general maintenance on a rotational basis

**SECTION 6. REPAIRS**

When the excavator needs repairs, a participating municipality shall not perform any repairs or replacements in excess of \$500.00 without written authorization from the authorized representative of the other participating municipality. All repair costs shall be shared equally among the participating

municipalities unless such repairs are the result of negligence or intentional misconduct by one of the participating municipalities, its employees, or agents.

If the repairs to the excavator result from the negligence or intentional misconduct of a participating municipality, its employees, or agents, then that municipality shall be solely responsible for the cost of the repair or if the cost of the repair is covered, in whole or in part, by insurance then it shall be the sole responsibility of that municipality to pay the deductible and any other costs. The authorized representatives of the participating municipalities shall determine whether a municipality has engaged in negligence, based on the following definitions:

"Negligence," without qualification, is failure of a responsible person, by omission or action, to exercise degree of care, which, in discharge of duty, a person of ordinary caution should exercise.

Whichever town performs the repair shall submit the invoice for half the cost of the repair to the other shared town as soon as reasonably possible for payment, subject to the provisions noted above.

#### SECTION 7. SCHEDULE OF MAINTENANCE, SERVICE, AND REPAIRS

The costs of operating, maintaining, repairing and using the excavator covered by this Agreement shall be shared equally among the participating municipalities. Each participating municipality agrees to share equally any costs for maintenance, repair, insurance and other minor incidental costs as they occur.

#### SECTION 8. SCHEDULE OF USE

The authorized representative of each participating municipality shall agree to a written schedule or system for use of the excavator, including emergency use. During the first year of this Agreement, each participating municipality will use the excavator for a set period. In future years, the schedule will be set to accommodate, to the greatest extent possible, each participating municipalities' desired need for the use of the excavator. The schedule may be amended in writing from time to time by a majority vote of the authorized representatives from participating municipalities. During extended periods of nonuse, the excavator shall be garaged in the Town of Richmond.

#### SECTION 9. RECORDS

Any use of the excavator shall be recorded in a use log book that is kept inside the excavator. Each participating municipality shall keep records as to any repairs or maintenance done to the excavator and shall make those records available for inspection at the request of the other participating municipality. A copy of any records shall be submitted to the Town of Richmond on an annual basis.

#### SECTION 10. INSURANCE

The excavator shall be adequately insured against fire, theft, damage, or injuries to person or property and all other liability. The cost of this insurance shall be divided equally among the participating municipalities. The Town of Richmond shall be responsible for securing such insurance levels to include but not be limited to, automobile liability, physical damage and comprehensive and collision coverage.

#### SECTION 11. STATUS OF EMPLOYEES

The excavator and employees of a participating municipality shall be deemed to be in the service of that municipality when engaged in or performing any service under this Agreement. Each participating municipality represents that an employee assigned by it to operate the excavator is adequately trained to perform such operation and has all the current necessary permits and licenses to do so. All claims for workers compensation or similar benefits made by said employees shall be the sole responsibility of the participating municipality by which such employees are employed.

## SECTION 12. INDEMNIFICATION

Richmond shall indemnify and hold harmless West Stockbridge and each and all of its officials, officers, employees, agents, servants and representatives from and against any claim arising from or in connection with the performance by Richmond in or for Richmond including, without limitation, any claim of liability, loss, damages, costs and expenses for personal injury or damage to real or personal property by reason of any negligent act or omission caused by the excavator while in or performing services for Richmond. Similarly, West Stockbridge shall indemnify and hold harmless Richmond and each and all of its officials, officers, employees, agents, servants and representatives from and against any claim arising from or in connection with the performance by West Stockbridge in or for West Stockbridge including, without limitation, any claim of liability, loss, damages, costs and expenses for personal injury or damage to real or personal property by reason of any negligent act or omission caused by the excavator while in or performing services for West Stockbridge. Such indemnification shall include, without limitation, current payment of all costs of defense (including reasonable attorneys' fees, expert witness fees, court costs and related expenses) as and when such costs become due and the amounts of any judgments, awards and/or settlements, provided that (a) Richmond and West Stockbridge shall each have the right to select counsel to defend against such claims, such counsel to be reasonably acceptable to the other party and its insurer, if any, and to approve or reject any settlement with respect to which indemnification is sought; (b) each party shall cooperate with the other in all reasonable respects in connection with such defense; and (c) neither party shall be responsible to pay any judgment, award or settlement to the extent occasioned by the negligence or intentional misconduct of any employee, agent, official or representative of the other party. By entering into this Agreement, neither of the parties has waived any governmental immunity or limitation of damages which may be extended to them by operation of law.

## SECTION 13. TERMINATION & DEFAULT

Nothing in this Agreement shall prevent the participating municipalities from entering into an amendment to this Agreement to authorize termination of the agreement where one town buys out the other town's ownership of the Excavator, provided that each town shall approve such an amendment by vote at town meeting.

## SECTION 14. AMENDMENTS

This Agreement may be amended from time to time, but only by mutual written agreement of all the participating municipalities.

## SECTION 15. ENTIRE AGREEMENT

This Agreement represents the entire agreement between the participating municipalities relating to the sharing of the excavator.

SECTION 16. SEVERABILITY

If any of the provisions of this Agreement are found to be in violation of any law, rule or regulation, all other provisions of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the participating municipalities have caused this Agreement to be signed by their representatives, whose signatures are hereto affixed.

**Town of Richmond: Selectboard**

Date: 7/2/19

AW Mengolund N Res Alan B. Hansen

Authorized Representative: [Signature]

Title: Highway Superintendent

**Town of West Stockbridge: Selectboard**

Date: 7/10/19

Bruce Allen Joan Perry Eric Suncu

Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_