

14B

WEIGHTS AND MEASURES SERVICES INTERMUNICIPAL AGREEMENT  
BETWEEN  
TOWN OF BARNSTABLE  
AND  
TOWN OF BOURNE

PREAMBLE

This Agreement (hereinafter "Agreement"), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, executed in duplicate (each executed copy constituting an original) between the Town of Barnstable, a Massachusetts municipal corporation with its principal place 367 Main St. Hyannis, MA 02601, acting by and through its Town Manager (hereinafter "Barnstable") and Bourne, acting by and through its Town Administrator (hereinafter "Town") (both Barnstable and Bourne are together referred to herein as the "Members").

RECITALS

WHEREAS Barnstable has town staff employed as a sealer of weights and measures and deputy sealers of weights and measures working within its Licensing Division; and

WHEREAS Town has no town staff currently employed or contracted as sealer of weights and measures; and

WHEREAS Town desires to enter into an agreement with Barnstable for services performed by the sealer and deputy sealers of weights and measures; and

WHEREAS, M.G.L. c. 40, § 4A allows the Chief Executive Officers of cities towns and districts to enter into agreements with one or more other governmental entities to jointly perform activities or undertakings which any of the contracting governmental entities are authorized by law to perform; and

WHEREAS, said M.G.L. c., 40 § 4A sets forth the requirements for and parameters of such "intergovernmental agreements"; and

WHEREAS, the Members participating in this Agreement each have authorized participation in this Agreement: by the Town Manager for Barnstable a copy of which is attached hereto as Exhibit A and by the Town Administrator for Town a copy of which is attached hereto as Exhibit B;

NOW, THEREFORE, the Members, in consideration of the mutual benefits to be derived by the Members hereto, pursuant to the authority contained in M.G.L. c. 40, § 4A, do hereby mutually agree as follows.

ARTICLE I  
SCOPE OF SERVICES

Barnstable agrees to provide to "Town", Weights and Measures services of Barnstable employees who are certified sealers or deputy sealers of weights and measures pursuant to G. L. c. 98 §§ 34 and 35 under the following terms and conditions.

ARTICLE II  
RIGHTS AND OBLIGATIONS OF THE MEMBERS

1. The services to be provided under this Agreement shall be provided by the Town of Barnstable sealer of weights and measures and deputy sealers of weights and measures (collectively "Barnstable employees"), or by one or more such qualified successors as may be appointed by the Town Manager of Barnstable during the Term.

2. Barnstable agrees to provide the services subject to the availability of the Barnstable employees. Barnstable employees will schedule services directly with establishments in the Town.

3. The services to be provided under this Agreement shall include the following.

a. Notice

The Barnstable employees shall give notice to each establishment in "Town" known to use weighing, measuring or scanning devices that testing of these devices is required, and shall annually give public notice, by advertisement or by posting notices in one or more public places in their towns or districts, to all inhabitants, or persons having usual places of business therein, using weighing or measuring devices for the purpose of buying or selling goods, wares or merchandise, for public weighing or for hire or reward, to bring them in to be tested, adjusted and sealed or to request that such devices be tested, adjusted and sealed at their place of business.

b. Testing

The Barnstable employees shall apply and enforce the provisions of the laws pertaining to weights and measures including devices, testing and certifying all devices as required in a timely fashion. In addition, testing of automated checkout systems, conducting reweighing of commodities, item price, scanner waiver, unit price code inspections, and consumer complaints.

c. Collection of Fees

Town shall accept the fees and fines established by Barnstable to be charged to Town establishments for services. Barnstable employees shall charge and collect fines and fees for services and shall account for and pay same into the Barnstable Consumer

Protection revolving fund. All fees and fines so charged and collected shall belong entirely to Barnstable.

d. Reports

Barnstable shall maintain records and provide annual reports to Town as required by G.L. 98, § 34 and to the director as provided by § 37.

4. Barnstable shall provide the Barnstable employees with a vehicle and equipment for official use in performing the services, and shall bear the responsibility of registering, insuring, fueling and maintaining vehicles and equipment.

5. The Barnstable employees shall maintain regular office hours in Town of Barnstable and not in Town.

6. The Town shall pay to Barnstable the following sum for the weights and measures services of \$15,375.00, beginning July 1, 2020, with a 2.5% increase per fiscal year beginning in FY22 and billed each July 1<sup>st</sup>, for administrative expenses and cost to provide services including retirement and depreciation of equipment for replacement. The initial sum due shall be assessed and billed by Barnstable at the beginning of each FY and each payment is due and payable within fifteen (15) days after the commencement of such fiscal year.

7. Members agree to allow the Barnstable employees to enjoy such vacation, sick days, personal days and other leave as provided under applicable collective bargaining agreements and legislation. Neither party shall make any demand on the Barnstable employees or take any action with respect to the services that is in violation of rights under any collective bargaining agreement or applicable legislation.

8. In addition to statements provided pursuant to paragraph number 6 of this ARTICLE II, Barnstable shall prepare, at its cost, an annual report of costs and receipts incurred pursuant to the Agreement which shall be submitted to Town within thirty days of the end of the calendar year. All records supporting the billing shall be kept by Barnstable's Weights and Measures Division and made available for Town review upon request. If Town determines that an audit should be performed on the billing for these services Town shall bear the costs of such an audit and Barnstable shall provide all the records necessary to complete the audit.

ARTICLE III  
TERM / AMENDMENTS /  
INDEMNITY

1. The term of this Agreement shall commence upon final execution and be automatically renewed each year, and reviewed every three (3) years, unless sooner terminated as herein provided, not to exceed 25 years. The Members intend that the Members entering into this Agreement are the sole and exclusive beneficiaries of the Agreement. Either party may terminate this Agreement, at its sole discretion by providing 90 days' written notice to the other party in accordance with paragraph 5 of this Article III.

2. This Agreement shall not take effect until it has been executed by the Members, at which time, it shall become the binding and legally enforceable Agreement of each such member.

3. No officer, official, agent, or employee of any Member shall have the power to amend, modify or alter this Agreement or waive any of its provisions or to bind any of the other Members by making any promise or representation not contained herein except by an authorized written amendment requiring approval by the Town's authorized entity and the approval of the Town Manager of Barnstable. Said amendment shall be executed in the same manner as this Agreement is executed. No Member may rely on any conduct, statements, action, inaction or course of conduct of the employees, agents or officers of any other Members as having changed, modified or amended this Agreement. No Member shall be construed as waiving any provision of the Agreement unless the waiver is executed in writing as an amendment to this Agreement. No waiver by any Member of any default or breach shall constitute a waiver of any subsequent default or breach. Forbearance or indulgence in any form or manner by any Member shall not be construed as waiver of any term or condition hereto nor shall it limit the legal or equitable remedies available to the Member.

4. Notwithstanding the final sentence of G.L. c. 40, s. 4A, "Town" shall indemnify and hold harmless Barnstable and each and all of its officials, officers, employees, agents, servants and representatives (the Indemnitees) from and against any claim arising from or in connection with the performance by the Barnstable employees of duties in or for Town 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 or intentional misconduct by the Barnstable employees while in or performing services for "Town". 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) Town shall have the right to select counsel to defend against such claims, such counsel to be reasonably acceptable to Barnstable and its insurer, if any, and to approve or reject any settlement with respect to which indemnification is sought, (b) the Indemnitees shall cooperate with Town in all reasonable respects in connection with such defense, and (c) Town shall not be responsible to pay any judgment, award or settlement to the extent occasioned by the negligence or intentional misconduct of any of the Indemnitees other than the Barnstable employees.

5. This Agreement may be terminated by either party for any reason or no reason on ninety (90) days' written notice to the other. No such termination shall affect any obligation of indemnification that may have arisen hereunder prior to such termination or otherwise as provided by law.

6. No Member shall assign or transfer any of its rights or interests in or to this Agreement, or delegate any of its obligations hereunder, without the prior written consent of the other Members.

7. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, or if any such term is so held when applied to any particular circumstance, such invalidity, illegality or unenforceability shall not affect any other provision of

this Agreement, or affect the application of such provision to any other circumstances, and this Agreement shall be construed and enforced as if such invalid, illegal or unenforceable provision were not contained herein.

8. The obligations and conditions set forth in this Agreement may be waived only by a writing signed by the party waiving such obligation or condition. Forbearance or indulgence by a party shall not be construed as a waiver, nor limit the remedies that would otherwise be available to that party under this Agreement or applicable law. No waiver of any breach or default shall constitute or be deemed evidence of a waiver of any subsequent breach or default.

9. This Agreement shall be governed by and construed in accordance with the substantive law of the Commonwealth of Massachusetts, without regard to the conflicts of law provisions thereof.

10. Any notice permitted or required hereunder to be given or served on either party by the other shall be in writing signed in the name of or on behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual receipt of any hand delivery or three (3) business days after the date of any properly addressed notice sent by mail to the following.

11. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, superseding all prior agreements and understandings. There are no other agreements or understandings between the parties concerning the subject matter hereof. Each party acknowledges that it has not relied on any representations by the other party or by anyone acting or purporting to act for the other party or for whose actions the other party is responsible, other than the express, written representations set forth herein.

12. Each member shall notify the other Member in writing and keep the other Members informed of the changed names and titles of its official or officials responsible for the implementation of the terms of this Agreement.

13. In addition to the remedies, power and authority which each Member has at law or under its ordinances, by-laws, rules or regulations the following remedies shall be available to each Member:

- a. If any Member fails to fulfill any material obligation or condition of this Agreement (either a "Defaulting Member"), the other Member has the right to suspend this Agreement by giving sixty (60) days' notice (a "Default Notice"), in writing, of their intent to do so (the "Default Notice Period"). Upon receipt of such notice, the Defaulting Member shall have the right to prevent suspension by curing the default within thirty (30) days and diligently and continuously pursuing such cure to completion within any additional time which may be necessary to affect such cure. Suspension shall not release any Member from its obligation to pay all bills or sums due prior to suspension, in accordance with this Agreement.
- b. Each Member reserves the right, either in law or equity, by suit, and complaint in the nature of specific performance or other proceeding, to enforce or compel performance of this Agreement.

- c. The remedies set forth in this Agreement are separate and cumulative, and the election of one does not preclude use of another.

14. Each Member shall immediately, within not more than twenty four (24) hours, notify the other Member of any emergency or condition which may affect its participation in or the carrying out of its responsibilities under this Agreement.

15. Employees, servants or agents of either of the Members shall not be deemed to be agents, servants or employees of any other Member for any purpose including, but not limited to, either Workers' Compensation or unemployment insurance purposes. Specifically, the Barnstable employees shall not be deemed to be employees of "Town" for such purposes and any "Town" or other staff appointed by said "Town", whether as contemplated herein or otherwise, shall not be deemed to be employees of Barnstable.

This Intermunicipal Agreement shall be in effect until one of the parties dissolves this agreement with notice as provided above.

\_\_\_\_\_  
For the Town of Barnstable  
Town Manager

\_\_\_\_\_  
For the Town of Bourne  
Anthony Schiavi  
Town Administrator

\_\_\_\_\_  
Signed this day

\_\_\_\_\_  
Signed this day



Exhibit A



## Town of Barnstable

### Office of Town Clerk

367 Main Street, Hyannis MA 02601

Office: 508-862-4044

Fax: 508-790-6326

Ann M. Quirk, CMC/CMMC/MMC

Town Clerk

November 18, 2019

To Whom It May Concern:

Please be advised that the following is a true copy of an item duly passed by the Barnstable Town Council on November 7, 2019:

**2020-050 RESOLVE AUTHORIZING INTERMUNICIPAL AGREEMENTS BETWEEN BARNSTABLE, BOURNE, BREWSTER, CHATHAM, DENNIS, FALMOUTH, HARWICH, MASHPEE, ORLEANS, SANDWICH AND YARMOUTH FOR WEIGHTS AND MEASURES SERVICES INTRO: 11/07/19**

**RESOLVED:** That the Town Council authorizes the execution and delivery by the Town Manager of Intermunicipal Agreements for the provision of Weights and Measures services by the Town of Barnstable to the Towns of Bourne, Brewster, Chatham, Dennis, Falmouth, Harwich, Mashpee, Orleans, Sandwich and Yarmouth for a maximum term of twenty-five (25) years

**VOTE: PASSES UNANIMOUS**

Sincerely,

Ann M. Quirk, CMC/CMMC/MMC  
Town Clerk/Town of Barnstable



Exhibit B

## CERTIFICATE OF VOTE

At a meeting of the Board of Selectmen of the Town of Bourne, held on December 3, 2019, 7:00 p.m. at the Bourne Veterans' Memorial Community Center, a quorum being present and voting throughout, upon a motion duly made and seconded and unanimously voted 5-0-0

**VOTED:** To authorize the Town Administrator to enter into an Inter-Municipal Agreement with the Town of Barnstable to provide Weights and Measures services to the Town of Bourne.

### BOARD OF SELECTMEN

---

Judith MacLeod-Froman, Chairman

---

James L. Potter, Vice Chairman

---

George G. Slade, Jr., Clerk

---

Peter J. Meier

---

Jared P. MacDonald

**Dated: December 3, 2019**

**Part I** ADMINISTRATION OF THE GOVERNMENT

**Title VII** CITIES, TOWNS AND DISTRICTS

**Chapter 40** POWERS AND DUTIES OF CITIES AND TOWNS

**Section 4A** GOVERNMENTAL UNITS; JOINT OPERATION OF PUBLIC ACTIVITIES; TERMINATION OF AGREEMENT; "GOVERNMENTAL UNIT" DEFINED; FINANCIAL SAFEGUARDS

Section 4A. The chief executive officer of a city or town, or a board, committee or officer authorized by law to execute a contract in the name of a governmental unit may, on behalf of the unit, 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, if the agreement is authorized by the parties thereto, in a city by the city council with the approval of the mayor, in a town by the board of selectmen and in a district by the prudential committee; provided, however, that when the agreement involves the expenditure of funds for establishing supplementary education centers and innovative educational programs, the agreement and its termination shall be authorized by

the school committee. Any such agreement shall be for such maximum term, not exceeding twenty-five years, and shall establish such maximum financial liability of the parties, as may be specified in the authorizing votes of the parties thereto. A governmental unit, when duly authorized to do so in accordance with the provisions of law applicable to it, may raise money by any lawful means, including the incurring of debt for purposes for which it may legally incur debt, to meet its obligations under such agreement. Notwithstanding any provisions of law or charter to the contrary, no governmental unit shall be exempt from liability for its obligations under an agreement lawfully entered into in accordance with this section. For the purposes of this section, a "governmental unit" shall mean a city, town or a regional school district, a district as defined in section 1A, a regional planning commission, however constituted, a regional transit authority established under chapter 161B, a water and sewer commission established under chapter 40N or by special law, a county, or a state agency as defined in section 1 of chapter 6A.

All agreements put into effect under this section shall provide sufficient financial safeguards for all participants, including, but not limited to: accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received; the performance of regular audits of such records; and provisions for officers responsible for the agreement to give appropriate performance bonds. The agreement shall also require that periodic financial statements be issued to all participants.

Nothing in this section shall prohibit any agreement entered into between governmental units from containing procedures for withdrawal of a governmental unit from said agreement. A decision to enter into an intermunicipal agreement under this section, or to join a regional entity, shall be solely subject to the approval process of the towns' elected bodies.

All bills and payrolls submitted for work done under any such agreement shall be plainly marked to indicate that the work was done under authority thereof. Any reimbursement for or contribution toward the cost of such work shall be made at such intervals as the agreement provides. The amount of reimbursement received under any such agreement by any governmental unit shall be credited on its books to the account of estimated receipts, but any funds received under the provisions of section fifty-three A of chapter forty-four for contribution toward the cost of such work may be expended in accordance with the said provisions. The equipment and employees of a governmental unit while engaged in performing any such service, activity or undertaking under such an agreement shall be deemed to be engaged in the service and employment of such unit, notwithstanding such service, activity or undertaking is being performed in or for another governmental unit or units.

ACCEPTABLE ITEMS (prices may change)

- Bulky items: each household will get 4 bulky item stickers, good for 2020 only, that can be used for free disposal of the items below. Bulky item stickers must be presented or charges will apply. The charges are:
- Bulky item stickers must be presented or charges will apply. The charges are:
  - Appliances (including microwaves) - \$10
  - Flat screen monitors and TVs, computers (CPUs), Cathode Ray Tubes (TVs, monitors) - \$20
  - Mattresses, boxsprings, sofa beds - \$20
  - Fluorescent bulbs - One sticker per bundle of up to 8 - \$4 each bulb
  - Tires - up to 4 small tires per sticker allowed; Auto/motorcycle/vehicle/mower < 16" - \$10, vehicle/truck 16" - 20" - \$20, vehicle/truck > 20" - \$60
- Recyclables, scrap metal
- Yard waste, brush and stumps
- Residential garbage and rubbish
- Bulky items and furniture
- Construction & demolition debris/shingles
- Propane tanks (20 lbs. only)
- Batteries - Ni-Cad, auto/marine, lithium
- Mercury containing items- thermometers, thermostats, switches
- PCB ballasts
- Paint- March 28<sup>th</sup> through October 17<sup>th</sup>, 10 can limit/day
- Waste oil and antifreeze (5 gallon limit each), oil filters, **no gasoline**

SWAP SHOP

- Only leave items in good condition.
- No loitering over 20 minutes or harassing others.
- Items are to be left and taken free of charge. No financial transactions of any kind allowed.
- The Swap Shop is not for commercial users.

Do not leave at Swap Shop

- Items with sharp broken parts, water damage or mildew.
- Mattresses, boxsprings, futons, sleeper sofas, pillows.
- Fluorescent bulbs, child car seats
- Televisions, computer monitors
- Paint, hazardous products
- Rubbish
- Clothing (use textile containers)

PAY FOR AT SCALE (sticker holders only)

- Campers, boats and RVs.
- **Scale availability during residential recycling center hours; Mon. – Fri., 7:00 a.m. – 3:00 p.m. Saturdays 7:00 a.m. – noon. Closed Sundays. Subject to seasonal schedule.**

FOR SALE

- Compost bins - \$40

## Bourne Board of Selectmen Recycling Center Policy Calendar Year 2020



Approved by the Selectmen of Bourne:  
 Judith MacLeod-Froman, Chair  
 James L. Potter, Vice Chair  
 George G. Slade, Clerk  
 Peter J. Meier  
 Jared P. MacDonald

HOURS OF OPERATION

Labor Day to Memorial Day  
 Wed. – Mon., 7:00 a.m. to 3:00 p.m.  
 Closed Tuesdays & Holidays

Memorial Day to Labor Day  
 7 days a week, 7:00 a.m. to 3:00 p.m.  
 Closed Holidays  
 Exact dates to be posted later

IMPORTANT PHONE NUMBERS

ISWM Office 508-759-0600, ext. 4  
 Recycling Center 508-759-0643  
 Scale 508-759-0639  
 Town Hall 508-759-0600  
 Bourne Board of Health 508-759-0600, ext. 1341  
 DPW (curbside) 508-759-0600, ext. 3  
 Website [www.townofbourne.com](http://www.townofbourne.com)

### Recycling/Disposal Sticker

- 1<sup>st</sup> sticker **\$30**; 2<sup>nd</sup> sticker **\$15**
- Seniors (60), 1<sup>st</sup> **\$20**, 2<sup>nd</sup> **\$10**
- Replacement sticker **\$10**
- Limit of two (2) stickers per property owner/residential household.
- Credit/debit card or check only. **NO CASH.**

### GENERAL RULES

- **No Smoking.**
- **Abusive language toward employees will not be tolerated.**
- Stickers are Town property.
- Any violations of these rules may result in loss of sticker.
- **State waste disposal bans must be followed.** These items include: commercial organic material, recyclable paper, single resin narrow neck plastic containers, metal and glass containers, yard waste and leaves, lead acid batteries, whole tires, cathode ray tubes, white goods (appliances), metal, asphalt pavement, brick, concrete, wood (>5 cu. yd. loads).
- Fluorescent bulbs must be recycled.
- Stickers only issued to Bourne **residential** property owners and renters with proof of residence. Raw landowners, JBCC residents and MMA students do not qualify.

- Stickers **will not** be applied to Vehicles with:

- Dump bodies or dump trailers
- Trailers greater than 12 feet
- Beds longer than 8 feet
- Sidewalls higher than cab
- Bodies larger than a standard passenger Van
- Dealer plates or rental cars
- Business lettering (but sticker is kept at the guard shack for referral)

- Proof of residence or ownership required including:

- Current driver's license **and**
- Current vehicle registration
- One of the following shall be required:
  - Current property tax bill
  - Current lease
  - Current deed with stamps
  - Other current substantive documentation

- Department personnel will apply and remove all stickers on vehicles.
- Hazardous wastes/products and business wastes are prohibited.
- No high-pressure cylinders.
- The Town may track and question excessive numbers of loads or ask for proof of a building permit.
- Builders who build houses on speculation must bring that waste over the scale and pay.

- The acceptance of C&D and bulky items is dependent upon the Town's ability to replace full containers and may be suspended periodically.
- Trailers are not to be used for commercial "dump runs."
- Areas other than the residential recycling center and department offices are off limits.
- All scrap metal and other recyclables are the property of the Town. Picking is prohibited.
- Site is under video surveillance.
- The Town recognizes that special circumstances may arise. In these situations, a temporary sticker or other arrangements may be made. Sticker holders must be present with the load unless otherwise approved. Please call or visit the ISWM office in advance.
- Marijuana/cannabis residuals, including plants, must go in the trash not the composting area.

### Household Hazardous Waste (HHW)

Regional waste collection days are held each April - October, dates TBA. Look for a separate mailing, local ads or visit the ISWM website for more information and how to access collections all over the Cape.