

## INTERMUNICIPAL AGREEMENT

Date: As of December 1, 2019

PARTIES:

This Agreement is made by and between the following parties:

**CAYUGA COUNTY**, with offices at 160 Genesee Street, Auburn, New York 13021 (the "Cayuga County"),

**MONROE COUNTY**, with offices at 39 West Main Street, Rochester, New York 14614 (the "Monroe County"),

**NIAGARA COUNTY**, with offices at Philo J. Brooks County Office Building  
2nd Floor, 59 Park Avenue, Lockport, New York 14094 (the "Niagara County"),

**ORLEANS COUNTY**, with offices at 14016 Route 31, Albion New York 14411 (the "Orleans County"),

And

**WAYNE COUNTY**, with offices at 26 Church Street, Lyons, New York 14489 ("Wayne County").

WITNESSETH:

WHEREAS, the parties entered into a Memorandum of Understanding last dated January 7, 2019 whereby the parties agreed to form a Regional Dredging Management Council to review, finalize and implement the Regional Dredging Management Plan; and

WHEREAS, each of the parties has granted approval of entering into this Intermunicipal Agreement to complete the tasks and assume the obligations set forth herein; and

NOW, THEREFORE, it is mutually agreed to by and between the parties hereto as follows:

### **Section 1. Definitions**

- "Corp"**- U.S. Army Corps of Engineers.
- "Council"**- Regional Dredging Management Council which consists of a member of each of the parties.
- "DEC"**- New York State Department of Conservation.
- "Designate"**- Each Counties alternative appointee to serve on the Council if the Member is unavailable.
- "Harbors"**- The harbors set forth on chart attached hereto as **Exhibit "A"**.
- "IMA"**- This Intermunicipal Agreement.
- "Initial**
- "Funding"**- Five Thousand and 00/100 Dollars payments made by each of the parties and deposited with the OLRC when the MOU was executed.
- "Member"**- Each County's appointee to serve on the Council.
- "MOU"**- Memorandum of Understanding, last dated January 7, 2019, between the parties and a copy of which is attached hereto as **Exhibit "B"**.
- "Municipal**
- Approvals"**- The approval granted by each of the parties and set forth on the chart attached hereto as **Exhibit "C"**.
- "OLRC"**- Orleans Land Restoration Corporation.
- "Permit"**- Permits issued by the DEC for dredging in the Harbors.
- "Plan"**- Regional Dredging Management Plan prepared by F-E-S Associates and dated December 2014.
- "Plan 2014"**- Regulation plan adopted and implemented by the International Joint Commission.
- "Program"**- Regional Dredging Management Program.

**“Wendel”-** Wendel WD Architecture, Engineering, Surveying & Landscape Architecture, P.C. with an address of 375 Essjay Road, Williamsville, New York 14221.

## **Section 2. Term**

The term of this Agreement shall commence on as of December 1, 2019 and terminate on November 30, 2014.

Upon written mutual consent and agreement the parties may be extend this agreement for two (2) further terms of five (5) years.

## **Section 3. Agreement Clauses**

The parties shall require the standard clauses attached **Exhibit “D”** shall be required to be part of each agreement entered into by the Council or its agent.

## **Section 4. Indemnification**

The parties shall defend, indemnify and save harmless each other, its officers, agents, and employees from and against all liability, damages, costs or expenses, causes of actions, suits, judgments, losses, and claims of every name not described, including attorneys' fees and disbursements, brought against the other which may arise, be sustained, or occasioned directly or indirectly by any person, firm or corporation arising out of or resulting from the performance of the services by, the provision of any products, arising from any act, omission or negligence of the other party, its agents or employees, or arising from any breach or default, all as provided under or as pursuant to this Agreement by the indemnifying party, its agents, contractors, or employees. Nothing herein is intended to relieve either party from its own negligence or misfeasance or to assume any such liability for the other party.

## **Section 5. Insurance**

The parties are self-insured and shall supply each other with proof of such self-insurance at the time of execution of this IMA.

## **Section 6. Notices**

Any notice, demand or request required or agreed to be given under this Agreement by either party shall be sufficiently given or served if in writing and signed by the party giving it and mailed by certified mail, return receipt requested, addressed to the party to be notified as follows:

### **To Cayuga County:**

County Administrator  
160 Genesee Street  
Auburn, New York 13021

With a copy to:

County Attorney  
160 Genesee Street  
6th Floor  
Auburn, New York 13021

### **To Monroe County:**

County Executive  
39 West Main Street  
Suite 100  
Rochester, New York 14614

With a copy to:

County Attorney  
Monroe County Department of Law  
39 West Main Street  
Suite 307  
Rochester, New York 14614

### **To Niagara County:**

County Manager  
Philo J. Brooks County Office Building  
2nd Floor  
59 Park Avenue,

Lockport, New York 14094

With a copy to:

County Attorney  
Niagara County Courthouse  
3rd Floor  
175 Hawley Street  
Lockport, New York 14094-2740

**To Orleans County:**

Chief Administrative Officer  
14016 Route 31, Suite 201  
Albion, NY 14411

With a copy to:

County Attorney  
517 Main Street  
Medina, New York 14103

**To Wayne County:**

County Administrator  
26 Church St.  
Lyons, New York 14489

With a copy to:

County Attorney  
Court House  
26 Church St.  
Lyons, New York 14489

or to such other address as the any of the parties may from time to time designate by giving notice thereof in writing. Service shall be complete upon such mailing except in case of a notice to change an address in which case service shall be complete when the notice is received by the addressee.

## Section 7. Members

### A. **Appointed**

The Council shall comprise five members. One member shall be from each of the Counties. At the commencement of this IMA, each County shall provide the Council with the name of the member. If the County chooses to replace its member with another person, the County shall notify the Council, in writing of the change as soon as such change is made.

### B. **Designates**

At the commencement of this IMA, each County may appoint up to two (2) designates who are permitted to assume the duties of the member if the member is unable to attend a meeting. If the County chooses to replace one or both of its delegates with another person, the County shall notify the Council, in writing of the change as soon as such change is made.

## Section 8. Structure

- A. **Chairperson-** the Members shall choose one Member to serve as the Council Chairperson. The Chairperson shall preside at all meetings of the Council; approve the notices of the meetings; shall assign staff to keep minutes at each meeting and circulate such meeting minutes to each Member within ten (10) days of any meeting.
- B. **Vice Chairperson-** shall perform all the duties of the Chairman in case of the absence or disability of the Chairman.
- C. **Staff-** Each County shall supply adequate staff to support its member. In addition, Orleans County shall supply its County Attorney and Monroe County shall supply its Senior Deputy County Attorney to support the Council. This does not preclude the other Counties from assigning their County Attorney or Deputy County Attorney to attend any meeting.

## **Section 9. Meetings**

### **A. Schedule**

The Council shall establish a meeting schedule at the meeting when these By-laws are approved. In addition, the Council may choose to hold meetings not on its Schedule. If there is no business ready to be discussed at a scheduled meeting, the Council shall cancel the scheduled meeting by an e-mail sent by the Chairman to each of the other Members.

### **B. Location**

Council meetings shall be held at the office of the Chief Administrative Officer of Orleans County, or at any other location unanimously agreed to by the Members.

### **C. Notice**

The schedule of meetings set forth above shall be supplemented by an e-mail reminder from the Chairman to each of the other Members five (5) business days ahead of each scheduled meeting.

Members shall be notified of any meetings not on the schedule by an e-mail from the Chairman to each of the other Members five (5) business days ahead of each such meeting. Members may choose to waive this five (5) day notice requirement by e-mail before any such meeting.

### **D. Quorum**

Since no County shall be bound by a decision of the Council unless the County's Member has voted in favor of the decision, there is no need for quorum. The Council is not an entity under New York State Law, any Member may participate in any Council meeting by telephone conference or by any video conferencing system.

### **E. Voting**

No County shall be bound by a decision of the Council unless the County's Member has voted in favor of the decision. The record of all votes taken at a meeting shall be included in the meeting minutes. Such meeting minutes shall contain a breakdown of how each Member voted.

## **Section 9. Fees**

### **A. Administrative and Other Soft Costs**

Within thirty (30) days from the execution of this IMA, the Council shall obtain an estimate from Wendel on the soft costs associated with the Project. Once reviewed and agreed to by the Members, each Member shall arrange for the deposit of its County's share of the soft costs with the Escrow Agent within sixty (60) days from the consensus of the Members.

By January 31<sup>st</sup> of each year of the Term, Wendel shall be tasked with updating the estimate of soft costs for presentation to the Council prior to March 31<sup>st</sup>. Once the new estimate is reviewed and agreed to by the Members, each Member shall arrange for the deposit of its County's share of the new amount of soft costs with the Escrow Agent within sixty (60) days from the consensus of the Members.

### **B. Dredging Costs**

Within ninety (90) days from the execution of this IMA, the Council shall obtain an estimate from Wendel on the dredging costs associated with the Project. Once reviewed and agreed to by the Members, each Member shall arrange for the deposit of its County's share of the soft costs with the Escrow Agent within sixty (60) days from the consensus of the Members.

By January 31<sup>st</sup> of each year of the Term, Wendel shall be tasked with updating the estimate of soft costs for presentation to the Council prior to March 31<sup>st</sup>. Once the new estimate is reviewed and agreed to by the Members, each Member shall arrange for the deposit of its County's share of the new amount of soft costs with the Escrow Agent within sixty (60) days from the consensus of the Members.



## **Section 10. Books, Records, and Accounts**

Council agrees to maintain and retain all pertinent books and records related to this Agreement for a period of five (5) years after completion of the Project. The Council may retain all pertinent books and records in electronic format. Retention of electronic records shall also be for a period of five (5) years after completion of the Project. The books and records shall be retained by retained by Orleans County.

All money collected by the Council from the Counties shall be retained in an escrow account with Orleans County Treasurer (the "Escrow Agent"). The Escrow Agent will only disburse Council funds upon written notice from the Council which has been signed by all five Members.

## **Section 11. Agents**

The Council shall rely on the following agents to complete the work under this IMA:

- A. Agent for engineering purposes: Wendell
- B. Agent for handling of Council funds: OLRC
  - 1.) It is anticipated Orleans County may take over the handling of Council funds. If such transfer is completed, it shall be done by Council resolution and no amendment of this IMA shall be needed.

The Council may designate, by resolution, other agents as needed during the Term.

## **Section 12. No Assignment**

No party shall not, in whole or in part, assign, transfer, convey, sublet, mortgage, pledge, hypothecate, grant any security interest in, or otherwise dispose of this IMA or any of its right, title or interest herein or its power to execute the IMA, or any part thereof to any person or entity.

### **Section 13: Right to Inspect**

Designated representatives of any County shall have the right to monitor the provision of services under this Agreement which includes having access at reasonable times and places to the Council's reports, books, records, audits and any other material relating to the delivery of such services. Each party agrees to maintain and retain all pertinent records related to this Agreement for a period of five (5) years after completion of the Project. Either party may retain all pertinent records in electronic format. Retention of electronic records shall be for a period of five (5) years after completion of the Project.

### **Section 14. Additional Parties**

The Council anticipated membership from all the counties along the south shore of Lake Ontario with harbors in their jurisdictions. If any such county desire to become members of the Council, it may do so by executing an amendment to this IMA, submitting its contact information, and paying its funding contribution in an amount determined by the Council at that time.

### **Section 15. Miscellaneous**

- A. The captions of this IMA are for convenience of reference only and in no way define, limit or describe the scope or intent of this IMA or in any way affect this IMA.
- B. This IMA contains the entire agreement between the parties in regards to the issues set forth herein and it may not be changed orally or by any agreement between the parties unless in writing, signed and acknowledged by the parties or their successors.
- C. This IMA shall be governed by and construed in accordance with the laws of the State of New York. The venue for any action or proceeding regarding this Agreement shall be the County of Monroe, New York; however, an action brought against a particular County, must be brought in the County being sued.

D. The agreements, terms, covenants and conditions herein shall bind and inure to the benefit of the parties and their respective heirs, personal representatives, successors and (except as otherwise provided herein) assigns.

E. This IMA may be executed in several counterparts, each of which shall be deemed an original.

F. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party under the provisions of this IMA shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

G. If any provision of this IMA is held invalid by a court of law, the remainder of this IMA shall not be affected thereby, if such remainder would then continue to conform to the laws of the State of New York.

H. The parties acknowledge this IMA is subject to the Freedom of Information Law.

J. Any party may make this IMA available to the public and searchable on-line in a digital format.

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

**County of Cayuga, New York**

By: \_\_\_\_\_ or By: \_\_\_\_\_  
Name: ----- (Vacant) Name: David Gould  
Title: County Administrator Title: Chairman

STATE OF NEW YORK)  
COUNTY OF CAYUGA) SS:

On the \_\_\_\_ day of \_\_\_\_\_, 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

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

**County of Monroe, New York**

By: \_\_\_\_\_  
Name: Adam J. Bello  
Title: Monroe County Executive

STATE OF NEW YORK)  
COUNTY OF MONROE) SS:

On the \_\_\_\_ day of \_\_\_\_\_, 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

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

**County of Niagara, New York**

By: \_\_\_\_\_ or By: \_\_\_\_\_  
Name: Richard E. Updegrove Name: Rebecca J. Wydysch  
Title: County Manager Title: Chairman

STATE OF NEW YORK)  
COUNTY OF NIAGARA) SS:

On the \_\_\_\_ day of \_\_\_\_\_, 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

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

**County of Orleans, New York**

By: \_\_\_\_\_ or By: \_\_\_\_\_  
Name: John C. Welch, Jr. Name: Lynne M. Johnson  
Title: Chief Administrative Officer Title: Chairman

STATE OF NEW YORK)  
COUNTY OF ORLEANS) SS:

On the \_\_\_\_ day of \_\_\_\_\_, 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in his/her capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

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

**County of Wayne, New York**

By: \_\_\_\_\_ or By: \_\_\_\_\_  
Name: Rick House Name: Philip W. Eygnor  
Title: County Administrator Title: Chairman

STATE OF NEW YORK)  
COUNTY OF WAYNE) SS:

On the \_\_\_\_ day of \_\_\_\_\_, 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared **Rick House** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public





**Exhibit "B"**  
**Memorandum of Understanding**

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**Exhibit "C"**  
**Municipal Approvals**

<b>County</b>	<b>Identification of Approval</b>	<b>Date of Approval</b>	<b>Comments</b>
<b>Cayuga</b>			
<b>Monroe</b>	<b>Resolution __ or 2019</b>		
<b>Niagara</b>			
<b>Orleans</b>			
<b>Wayne</b>			

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Exhibit "D"

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