



## Merrimac Select Board

### Select Board Meeting

02/12/24

**I. IN THE EVENT THAT THE BOARD CANNOT MEET IN PERSON, THEY WILL MEET REMOTELY, PURSUANT TO AN ACT EXTENDING CERTAIN COVID-19 MEASURES ADOPTED DURING THE STATE OF EMERGENCY INCLUDING AN EXTENSION, UNTIL MARCH 21, 2025, OF THE REMOTE MEETING PROVISIONS OF HIS MARCH 12, 2020, EXECUTIVE ORDER SUSPENDING CERTAIN PROVISIONS OF THE OPEN MEETING LAW. TO JOIN REMOTE MEETINGS:  
[HTTPS://MEET.GOOGLE.COM/PAW-BTHX-HPK](https://meet.google.com/paw-bthx-hpk)**

### **II. CALL TO ORDER**

PRESENT: Beaulieu, Manni, Gorzynski

ABSENT:

### **III. APPROVE AGENDA**

1. Motion to approve agenda

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

### **IV. MINUTES APPROVAL**

1. Merrimac Select Board - Select Board Meeting - Jan 29, 2024 9:00 AM

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>ACCEPTED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

2. Merrimac Select Board - Select Board Meeting - Jan 29, 2024 7:00 PM

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>ACCEPTED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

3. Merrimac Select Board - Executive Session - Feb 5, 2024 5:00 PM

The location of this meeting is wheelchair accessible and reasonable accommodations will be provided to persons with disabilities requiring assistance. If you need a reasonable accommodation, please contact the Town of Merrimac's ADA Coordinator, Robert Sinibaldi, at least two business days in advance of the meeting: [commissioner@townofmerrimac.com](mailto:commissioner@townofmerrimac.com) or 978-346-0525.

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>ACCEPTED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

**V. APPROVAL OF PAYROLL AND VENDOR WARRANT OF FEBRUARY 5, 2024**

1. Motion to approve

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

**VI. CORRESPONDENCE**

1. ZBA Special Permit
2. Merrimac Free Cash Certification
3. Finance Committee Appointment Lindy Davis
4. Commission on Disabilities 2023 4Th Qtr Report
5. DLS Alert\_ FY2025 Preliminary Cherry Sheet Estimates
6. Motion to file correspondence

No correspondence discussed.

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

**VII. OLD BUSINESS**

None

**VIII. NEW BUSINESS**

1. Olver Phased Contract- Wastewater Treatment Plant Upgrades

Sinibaldi confirms contractor is good with corrections. Going to be covered through retained earnings, SRF funding. Motion for the chair to sign. Motion made by Beaulieu seconded by Gorzynski. Motion passes Vote 3-0

|                |                 |
|----------------|-----------------|
| <b>RESULT:</b> | <b>APPROVED</b> |
|----------------|-----------------|

2. Performance Evaluation Bridget Batcheller

Brienne Walsh says Batcheller has been with the town for a year. Walsh recommends the 1% performance increase. Motion to approve the 1% for the performance evaluation

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

3. Water and Sewer Rate Increase - FY25

Sinibaldi says supplies, products pricing increase, contract increases; the rate change will take effect July 1st pending town meeting approval. Motion to approve the request for the 5% rate increase for FY25 for sewer and water

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|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

4. Susan Searle Volunteer Application

The board takes note of commentary on the volunteer application; Manni would like to reject the request. The board does not believe it is a good fit. Walsh has not received the request.

5. Merrimac Old Home Days Town Wide Yard Sale September 2024 Dates

Motion to approve the Old Home Days town wide yard sale dates as requested

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Chris Manni, Chairman       |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

6. Dog Barking Formal Complaint

Table to get more information from the police department and animal control officer.

|                |                            |                                |
|----------------|----------------------------|--------------------------------|
| <b>RESULT:</b> | <b>TABLED [UNANIMOUS]</b>  | <b>Next: 2/26/2024 7:00 PM</b> |
| <b>AYES:</b>   | Beaulieu, Manni, Gorzynski |                                |

7. Leo Reynolds Interim Highway Superintendent

Motion for the board to sign

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

8. IHCD Contract for ADA Website Review

Motion to approve

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Irina Gorzynski, Member     |
| <b>SECONDER:</b> | Ben Beaulieu, Selectman     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

9. Public Health Excellence Grant Inter Municipal Agreement

The select board invited Board of Health chair Chris Berube, she could not make it; this matter is not within the select board's purview to act upon.

|                |                            |                                |
|----------------|----------------------------|--------------------------------|
| <b>RESULT:</b> | <b>TABLED [UNANIMOUS]</b>  | <b>Next: 2/26/2024 7:00 PM</b> |
| <b>AYES:</b>   | Beaulieu, Manni, Gorzynski |                                |

10. Proposing Fees for Vital Record Corrections

Gwen Lay Sabbagh proposes the select board increase the fee for vital records corrections. It was brought to her attention by a funeral home. Most towns charge between \$25 and \$50. Manni says to stay consistent with other towns and because Sabbagh says it is labor intensive. Gorzynski agrees it's reasonable. Sabbagh also notes that the vital record fee has not gone up from 10.00. Motion to approve the request to increase fee for vital records corrections to \$25.00

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

11. Early Voting in Person for Local Election May 6, 2024

12. Local Election Vote by Mail

Gwen Lay Sabbagh recommends we hold both early voting and vote by mail. Motion to approve the local election vote by mail and early in person for the May 6th election

13. Election Warrant

7 copies. Motion for the board to sign the election warrant for the presidential primary on March 5th

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

14. FY24 Firefighter Equipment Grant Agreement

Motion to approve and chair to sign  
Using the grant for radios.

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

15. Merrimac FY24 Municipal ADA Improvement Grant Agreement and Contract

Motion for the chair to sign

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

16. SNAP Grant COA

New fiscal renewal for SNAP; Motion for the chair to sign

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

17. Education Update

Pentucket Regional School District meeting moved to Feb 27; vote will be in March. Manni will attend PRSD. He has not heard anything about Whittier's date. Manni will attend.

18. 8537 : Sewer Contract

Bob Sinibaldi has not seen the contract and wants to review it before vote. Forward to Sinibaldi

**IX. EXECUTIVE SESSION**

1. 2. To Conduct Strategy Sessions in Preparation for Negotiations with Non-Union Personnel or to Conduct Collective Bargaining Sessions or Contract Negotiations with Non-Union Personnel.

at 7:23pm

Roll call vote Manni yes; Beaulieu yes; Gorzynski yes; motion passes

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

**X. ADJOURN**

1. Motion to come out of executive session and adjourn at 8:00 pm

Roll call vote Manni yes; Beaulieu yes; Gorzynski yes; motion passes

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |



**Merrimac Select Board**  
**Select Board Meeting**  
**01/29/24**

**I. IN THE EVENT THAT THE BOARD CANNOT MEET IN PERSON, THEY WILL MEET REMOTELY, PURSUANT TO AN ACT EXTENDING CERTAIN COVID-19 MEASURES ADOPTED DURING THE STATE OF EMERGENCY INCLUDING AN EXTENSION, UNTIL MARCH 21, 2025, OF THE REMOTE MEETING PROVISIONS OF HIS MARCH 12, 2020, EXECUTIVE ORDER SUSPENDING CERTAIN PROVISIONS OF THE OPEN MEETING LAW. TO JOIN REMOTE MEETINGS:  
[HTTPS://MEET.GOOGLE.COM/PAW-BTHX-HPK](https://meet.google.com/paw-bthx-hpk)**

**II. CALL TO ORDER**

PRESENT: Beaulieu, Gorzynski, Sinibaldi

ABSENT: Manni

**III. EXECUTIVE SESSION**

1. Motion to go into executive session at 9:00 am.

Roll call vote Beaulieu yes; Gorzynski yes; motion passes

|                |                             |
|----------------|-----------------------------|
| <b>RESULT:</b> | <b>APPROVED [UNANIMOUS]</b> |
| <b>AYES:</b>   | Beaulieu, Gorzynski         |
| <b>ABSENT:</b> | Manni                       |

2. (M.G.L. C.30A, Sec. 21(A) -2 to Conduct Strategy Sessions in Preparation for Negotiations with Non-Union Personnel or to Conduct Collective Bargaining Sessions or Contract Negotiations with Non-Union Personnel.

|                |                             |
|----------------|-----------------------------|
| <b>RESULT:</b> | <b>APPROVED [UNANIMOUS]</b> |
| <b>AYES:</b>   | Beaulieu, Gorzynski         |
| <b>ABSENT:</b> | Manni                       |

**IV. ADJOURN**

1. Motion to come out of executive session and adjourn at 9:47 am

Roll call vote Beaulieu yes; Gorzynski yes motion passes

|                |                             |
|----------------|-----------------------------|
| <b>RESULT:</b> | <b>APPROVED [UNANIMOUS]</b> |
| <b>AYES:</b>   | Beaulieu, Gorzynski         |
| <b>ABSENT:</b> | Manni                       |

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**Merrimac Select Board****Select Board Meeting****01/29/24**

**I. IN THE EVENT THAT THE BOARD CANNOT MEET IN PERSON, THEY WILL MEET REMOTELY, PURSUANT TO AN ACT EXTENDING CERTAIN COVID-19 MEASURES ADOPTED DURING THE STATE OF EMERGENCY INCLUDING AN EXTENSION, UNTIL MARCH 21, 2025, OF THE REMOTE MEETING PROVISIONS OF HIS MARCH 12, 2020, EXECUTIVE ORDER SUSPENDING CERTAIN PROVISIONS OF THE OPEN MEETING LAW. TO JOIN REMOTE MEETINGS:  
[HTTPS://MEET.GOOGLE.COM/PAW-BTHX-HPK](https://meet.google.com/paw-bthx-hpk)**

**II. CALL TO ORDER**

PRESENT: Beaulieu, Manni, Gorzynski

ABSENT:

**III. APPROVE AGENDA**

1. Motion to approve agenda

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

**IV. MINUTES APPROVAL**

1. Merrimac Select Board - Select Board Meeting - Jan 16, 2024 7:00 PM

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>ACCEPTED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

**V. APPROVAL OF PAYROLL AND VENDOR WARRANT OF JANUARY 22, 2024**

1. Motion to approve

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

**VI. CORRESPONDENCE**

1. EXCESS AND DEFICIENCY - Pentucket
2. Easy CIP Demo Follow Up
3. Thank You to the Select Board - Sidewalks
4. Merrimac - Green Communities Competitive Grant

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01 29, 24

## 5. Motion to file correspondence

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

**VII. OLD BUSINESS**

None.

**VIII. AGENDA ITEMS**

## 1. Town Administrator's Report

Whittier building committee meeting tomorrow morning; McLeod recommends meeting with Whittier about sewer plant; met about capital planning software; McLeod met with CIP software and she feels it's what the board is looking for. \$2500.00 for a single admin user; \$3500.00 unlimited membership all dept heads can use it. She will talk to FinCom next week. Audit started today. Date to close town meeting warrant March 7th for spring town meeting;

An inter municipal agreement for the town to sign had been sent to the Board of Heath ; BOH and select board have to sign. Follow up with BOH chair Chris Berube. Invite the BOH to the next meeting.

FMLA changes to town policy recommended by legal. Motion to accept proposed changes to FMLA for the purpose of communicating to the union

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

## 2. Email from Mass Association of Health Boards

Addressed in #1.

## 3. Coastal Metals- Supplemental Sampling of Concrete Slabs

|                |                 |
|----------------|-----------------|
| <b>RESULT:</b> | <b>APPROVED</b> |
|----------------|-----------------|

## 4. Motion for the chair to sign

Additional testing covered under the grant.

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

## 5. Memo from Open Space Re McLaren Encroachment

They are looking for the board to send a letter on select board stationary. Gorzynski is for the letter; follow up with Lucy Abisilah as to what they're looking for how many abutters etc.; McLeod will look at their budget. Bob Sinibaldi feels open space should be doing their own enforcement

## 6. Vision Zero Initiative Meeting Invite

Gorzynski will let Jen Penney know if she can go

## 7. 2024 Boundary and Annexation Survey – CBAS - BAS ID\_ 32500940430

Minutes Acceptance: Minutes of Jan 29, 2024 7:00 PM (Minutes Approval)

Beaulieu says the document requests that you confirm boundary changes. Manni recommends they do the survey the same way we did last year. Look back at what we did last year.

8. Property Use Permit\_ALS Tri State Trek 062224

Motion to approve property use permit

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

9. Property Use Permit\_Merrimac Baseball

Excludes Old Home Days/town events ; conditions of field- it is town property. Sinibaldi says it needs extensive drainage work. They are going to try to connect 2 drains together this spring.

Motion to approve the permit

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Irina Gorzynski, Member     |
| <b>SECONDER:</b> | Ben Beaulieu, Selectman     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

10. Time Off Request-Larry Fisher

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

11. Time Off Request- Jen Penney

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

12. Request to Use ARPA Funds

2 lift stations they can no longer get parts for; qualifies for ARPA funds; remainder would be used for Bear Hill Road repairs; it will not affect Bear Hill paving; Motion to approve the request to use \$105,000 from the ARPA account for the lift stations

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

13. Merrimac 23EMPG Grant Contract - Chair Signed

Minutes Acceptance: Minutes of Jan 29, 2024 7:00 PM (Minutes Approval)

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** Ben Beaulieu, Selectman  
**SECONDER:** Irina Gorzynski, Member  
**AYES:** Beaulieu, Manni, Gorzynski

14. Green Community Competitive Grant Contract

Green community grant - have received just under \$500,000 in total grant money since its inception

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** Ben Beaulieu, Selectman  
**SECONDER:** Irina Gorzynski, Member  
**AYES:** Beaulieu, Manni, Gorzynski

15. Payment Request Form for Water Truck

Motion to approve

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** Ben Beaulieu, Selectman  
**SECONDER:** Irina Gorzynski, Member  
**AYES:** Beaulieu, Manni, Gorzynski

**IX. EXECUTIVE SESSION-(M.G.L. C.30A, SEC. 21(A))**

- A. 3. *To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.***

1. Motion to go into executive session at 7:28pm will come out only to adjourn

Roll call vote Manni-yes; Beaulieu-yes; Gorzynski-yes. Motion passes

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** Ben Beaulieu, Selectman  
**SECONDER:** Irina Gorzynski, Member  
**AYES:** Beaulieu, Manni, Gorzynski

- B. 2. *To conduct strategy sessions in preparation for negotiations with non-union personnel or to conduct collective bargaining sessions or contract negotiations with non-union personnel.***

**X. ADJOURN**

Motion come out executive session and adjourn at 8 pm

Roll Call Vote Manni-yes; Beaulieu-yes; Gorzynski-yes; Motion passes.

Minutes Acceptance: Minutes of Jan 29, 2024 7:00 PM (Minutes Approval)

**Merrimac Select Board****Executive Session****02/05/24****I. CALL TO ORDER**

PRESENT: Beaulieu, Manni, Gorzynski

ABSENT:

**II. APPROVE AGENDA**

1. Motion to approve

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

**III. EXECUTIVE SESSION-(M.G.L. C.30A, SEC. 21(A))**

1. 2. to Conduct Strategy Sessions in Preparation for Negotiations with Non-Union Personnel or to Conduct Collective Bargaining Sessions or Contract Negotiations with Non-Union Personnel.

Motion to go into executive session at 5:00 pm.

Roll call vote. Manni yes; Beaulieu yes; Gorzynski yes; motion passes

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

**IV. ADJOURN**

1. Motion to adjourn at 5:50 pm

|                  |                             |
|------------------|-----------------------------|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b> |
| <b>MOVER:</b>    | Ben Beaulieu, Selectman     |
| <b>SECONDER:</b> | Irina Gorzynski, Member     |
| <b>AYES:</b>     | Beaulieu, Manni, Gorzynski  |

Minutes Acceptance: Minutes of Feb 5, 2024 5:00 PM (Minutes Approval)

The location of this meeting is wheelchair accessible and reasonable accommodations will be provided to persons with disabilities requiring assistance. If you need a reasonable accommodation, please contact the Town of Merrimac's ADA Coordinator, Robert Sinibaldi, at least two business days in advance of the meeting: [commissioner@townofmerrimac.com](mailto:commissioner@townofmerrimac.com) or 978-346-0525.



## Merrimac Select Board

2 School Street

Merrimac, MA 01860

**SCHEDULED**

Meeting: 02/12/24 07:00 PM

Department: Merrimac Select Board

Category: Courtesy Copy

Prepared By: Jennifer Penney

Initiator: Jennifer Penney

Sponsors:

**CORRESPONDENCE (ID # 8525)**

DOC ID: 8525

## ZBA Special Permit



THIS APPLICATION FORM MUST  
BE FILED WITH THE  
TOWN CLERK  
IN THE TOWN OF  
MERRIMAC, MASSACHUSETTS

TOWN CLERK REC'D  
24 JUN 21 AM 9:47

6.1.a

For use by Town Clerk

# ZONING BOARD OF APPEALS

This Application has been authorized by the Merrimac Zoning Board of Appeals. It is for use in requesting a hearing before the Zoning Board of Appeals, consistent with Bylaw Article 25-Appeals. The requested hearing can be for a Variance, an Appeal of the Building Official's decision, a Special Permit in accordance with Section 6 of M.G.L. c.40A, or Comprehensive Permit M.G.L. c.40B.

## The undersigned hereby:

### APPLICATION FILING FEE

Select one  
applicable  
box

- ☐ Petition the Board to vary the terms of the Zoning Bylaw \$ 150.00
- ☒ Apply to the Board for a Special Permit \$150.00
- ☐ Appeal the Building Inspector's decision or failure to act \$ 150.00
- ☐ Petition the Board for a Finding of Fact \$ 150.00
- ☐ Submit application for M.G.L. ch. 40B project
- Check the box below which pertains to your organization and enter the number of proposed dwelling units to determine Application Filing Fee*
- ☐ Limited Dividend Organization @ \$60.00/unit x \_\_\_\_\_ units = \$ \_\_\_\_\_
- ☐ Non-Profit Organization @ \$40.00 per unit x \_\_\_\_\_ units = \$ \_\_\_\_\_

## Applicant Information:

( Please Print Clearly )

Name : Nancy Bixby Phone 978-821-3153

Address 29 Bear Hill Rd

City, State, ZIP Merrimac, MA 01860

Applicant's Interest in Property OWNER

I hereby declare under the pains and penalties of perjury, the statements and information on this application are true and accurate, to the best of my knowledge and belief.

Signature of Applicant Nancy Bixby Date 05/22/2023

## MERRIMAC ZONING BOARD OF APPEALS

**Property Information:**

( Please Print Clearly )

Street Address

29 BEAR HILL ROAD

NOTE: If undeveloped  
site, obtain address at  
Assessors OfficeProperty  
Dimensions

Lot Area:

145490.4

Sq.Ft.

Frontage:

310

Feet.

Assessors Map &  
Parcel Number

Map:

K

Parcel Number:

40

Zoning  
District☐ Village Center (VC)☐ Village Residential (VR)☐ Suburban - Residential (SR)☐ Lake Attitash (LA)☐ Highway Services (HS)☒ Agricultural - Residential (AR)☐ Rural Highway (RH)☐ Office-Light Industrial (OI)☐ Water Resource Protection District (WRPD)☐ Floodplain District (FP)☐ Rural Agricultural Preservation  
Overlay District (RA)

For lots divided by Zoning Boundry, see Bylaw Article 3.9. Select the applicable districts, above. Show Zoning Boundry line, dimensions and calculated areas of each subdistrict on the proposed site plans submitted with this Application.

Current Use



Residential



Commercial



Industrial



Undeveloped



Other:

Proposed Use



Residential



Commercial



Industrial



Mixed Use



Other:

Property Owner  
of Record

Name

NANCY BIXBY

Address

29 BEAR HILL ROAD

City, State, ZIP

MERRIMAC, MA 01860

Contact Info:

978-821-3153

**Authorizing Signature of Property Owner** (if different from Applicant):

As property owner, I have authorized the above-named Applicant to proceed with this application

Nancy Bixby

Date

5/22/2023

**Summary Narrative:**

Cite applicable section(s) of Merrimac Zoning Bylaw specific to this petition. Summarize information and reason facts to explain your argument or proposal. Attach additional sheets, if necessary.

Home owners are looking to build a one story 24'x24' attached in-law suite on to the existing house. The in-law suite will have a bedroom, bathroom, & a living room w/ a kitchenette. A new septic will be installed as the bedrooms are increasing 4 to 5. All utilities will connect to the existing house.

**General Filing Instructions:**

This Application has been authorized by the Merrimac Zoning Board of Appeals. It is for use in requesting a hearing before the Zoning Board of Appeals, consistent with Bylaw Article 25-Appeals. The requested hearing can be for a Variance, an Appeal of the Building Official's decision, or a Special Permit in accordance with Section 6 of M.G.L. c.40A.

In addition, the Zoning Board of Appeals has been empowered by Zoning Bylaw, Articles: 26.1, 26.3 and 26.4 as the Special Permit Granting Authority (SPGA) for certain other Special Permits. Consult Merrimac Zoning Bylaw to determine applicability. You may purchase a copy from the Merrimac Town Clerk's office.

When filing for a Comprehensive Permit pursuant to M.G.L. c.40B (see Bylaw Article 25.3), or for certain Special Permits, the Applicant shall be subject to Bylaw Article 19-Site Plan Review. Submittal plans shall include one or more scaled maps and/or drawings of the property, sealed by a Mass. Registered Professional appropriate to the work involved. Indicate existing structures and site conditions. Present the location and size of the proposed development, the total number of buildings and/or dwellings. Show frontage, site access, setback distances, area calculations, etc. Applicant should pay specific attention to Bylaw Articles 19 and 20, and include all documents and information required therein as part of the filing package.

To file, Applicant must submit eleven (11) copy-sets of plans, survey and all related materials as appropriate, along with eleven (11) copies of this completed Application, to the Merrimac Town Clerk. The required Application Filing Fee, as determined from page one, is payable to the Town of Merrimac at this time.

A public hearing shall be held within 65 days after the filing of this Application. Notice of such hearing shall be given by publication and posting and by first class mailings to parties of interest as defined in M.G.L. c.40A, Section 11.

Please note, "Notice of Hearing" advertisement costs are NOT included in the above listed Filing Fees. The Applicant shall be responsible for hearing-notice advertising charges, billed directly by the locally circulated newspaper used by the Zoning Board of Appeals. Also, at the time of filing, Applicant must purchase a Certified Abutters List from the Merrimac Assessors Office and without delay, deliver said list to the Administrative Assistant of the Zoning Board of Appeals.

The Administrative Assistant will then calculate and collect an \$8.00 postage and administrative fee for each address on the abutters list, and shall send notification of the hearing to each via Certified US Mail. All return receipts are due no later than the first posted hearing date.

**I have read the "GENERAL FILING INSTRUCTIONS" above and understand I shall be responsible for prompt payment of hearing notice advertising charges, billed directly by the locally circulated newspaper used by the Zoning Board of Appeals, and for obtaining an Abutters List and for mailing fees. Further, I hereby appoint the Administrative Assistant to the Zoning Board of Appeals as agent for the purposes of publishing all required hearing notices.**

Signature of Applicant

Date

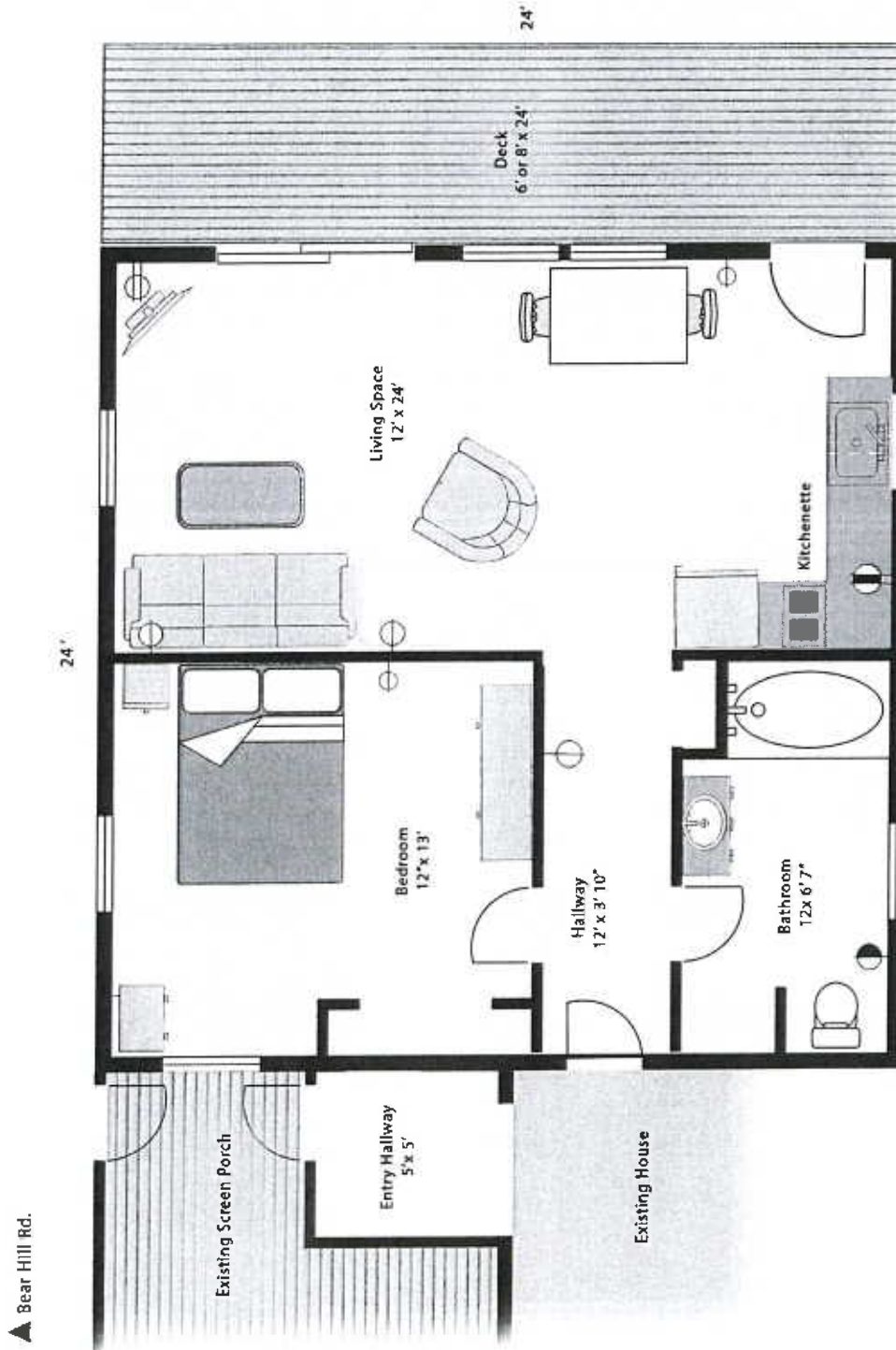
**NOTE: Applicant must file a copy of the ZBA's favorable decision with the Registry of Deeds. A copy of the filing receipt must be included with the Building Permit application.**

For Official Use



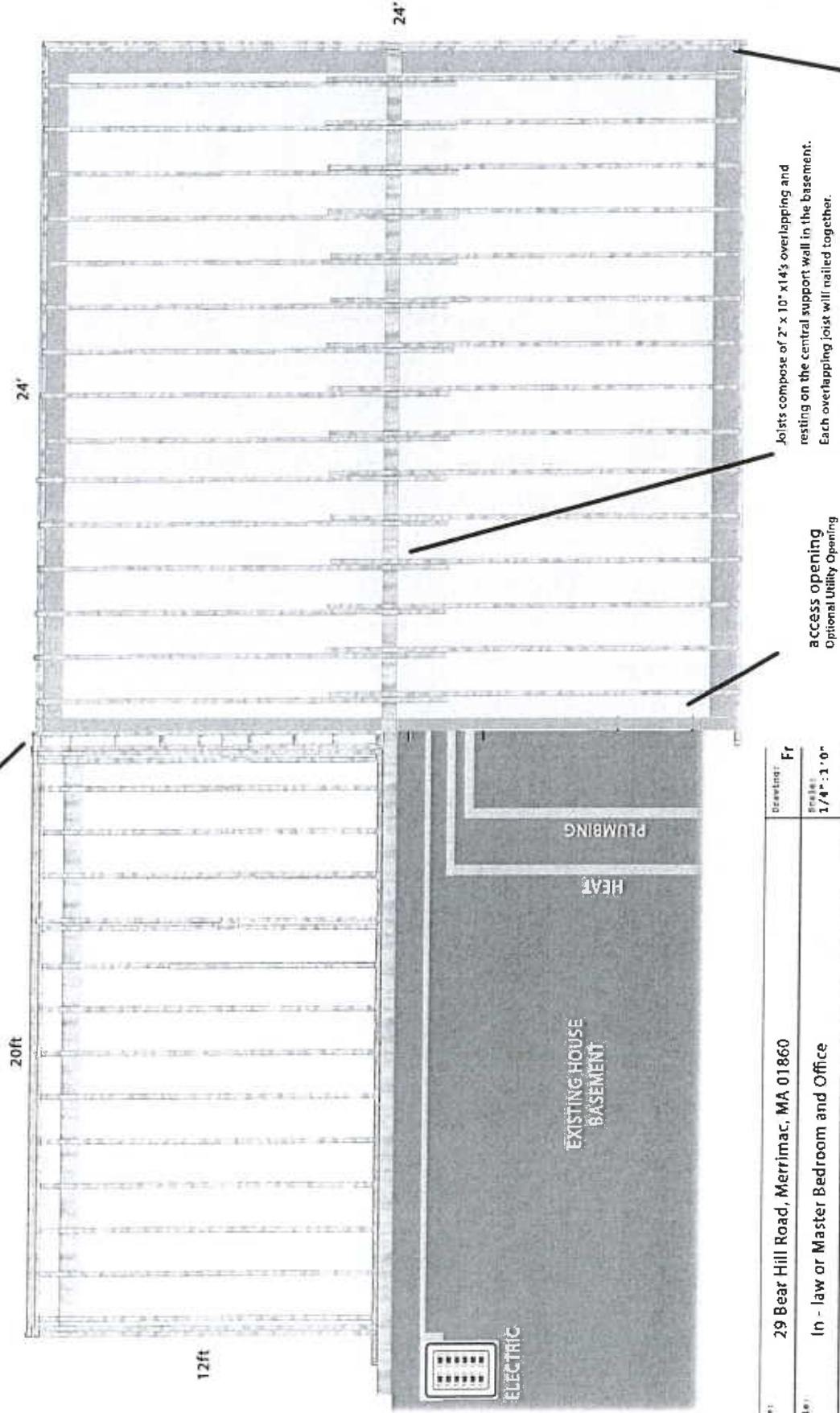
Not featured are railing balusters. They were negated to allow a better view of the structure.

|        |                                       |          |                  |        |          |          |  |
|--------|---------------------------------------|----------|------------------|--------|----------|----------|--|
| Sheet: | 29 Bear Hill Road, Merrimac, MA 01860 | Project: | Exterior Concept | Drawn: |          | Revised: |  |
| Notes: | In - law or Master Bedroom and Office | Scale:   | 1/4" = 1'-0"     | Date:  | May 2023 | Rev:     |  |

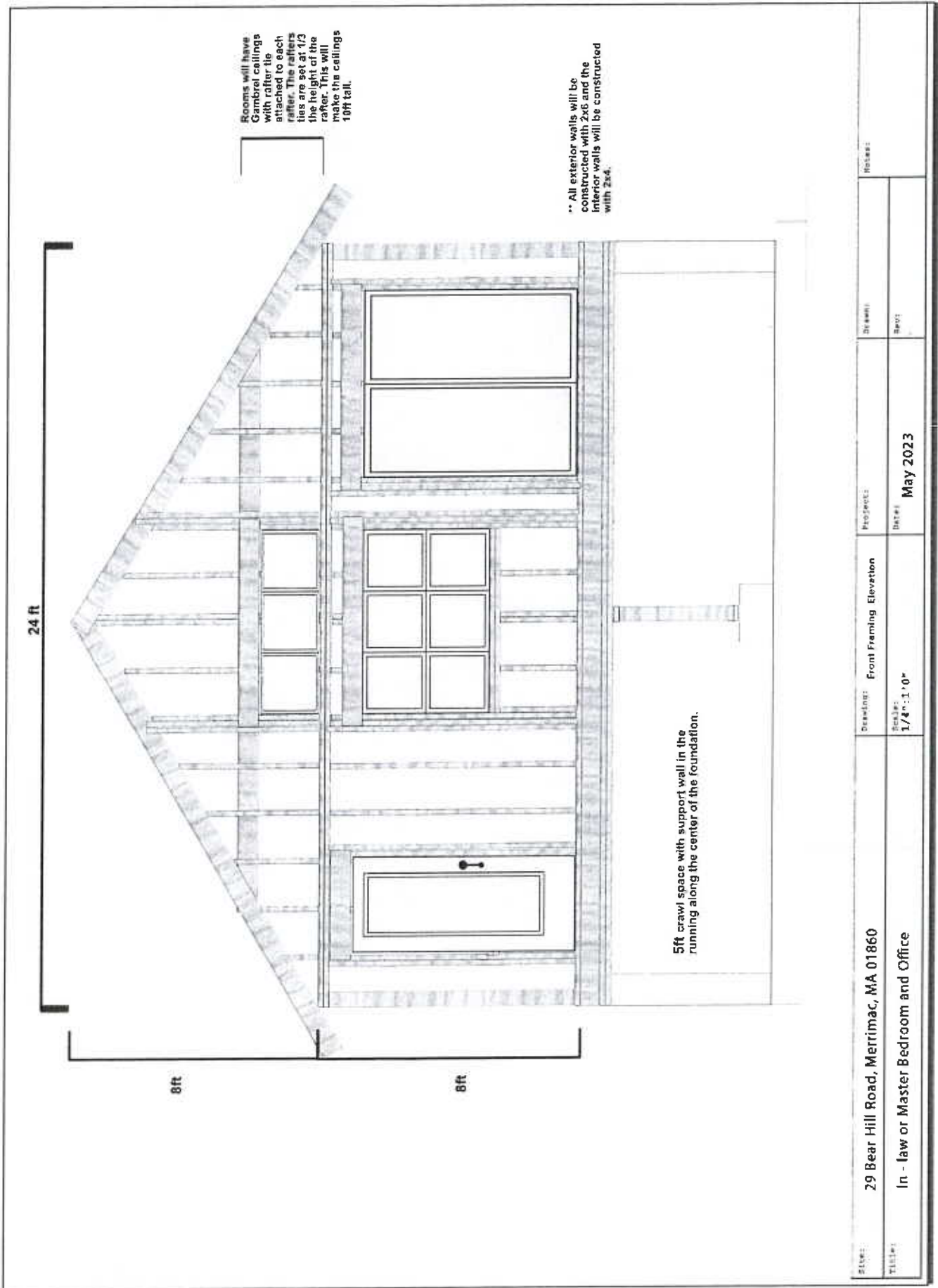


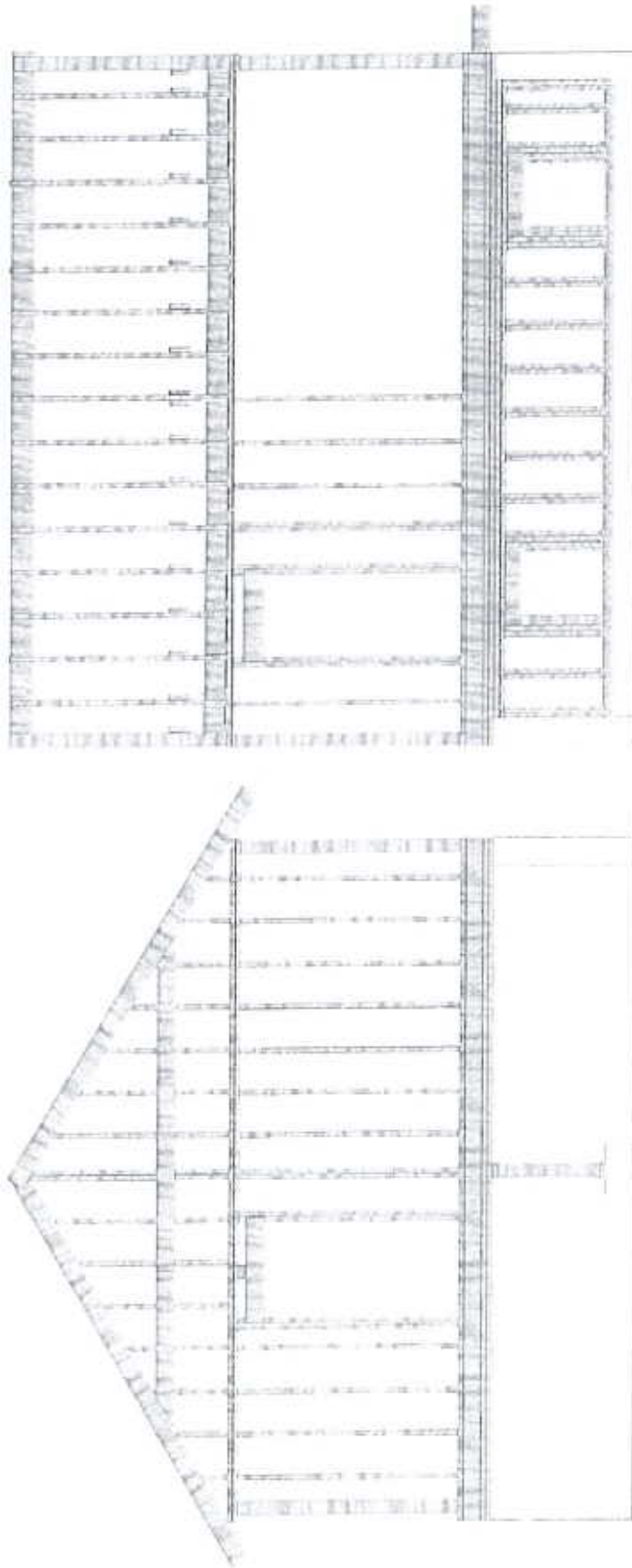
|        |                                       |           |              |          |          |        |  |        |  |
|--------|---------------------------------------|-----------|--------------|----------|----------|--------|--|--------|--|
| Site:  | 29 Bear Hill Road, Merrimac, MA 01860 | Drawings: | Floor Plan   | Project: |          | Drawn: |  | Notes: |  |
| Title: | In - law or Master Bedroom and Office | Scale:    | 1/4" = 1'-0" | Dates:   | May 2023 | Revs:  |  |        |  |

The Screen Porch is offset from the corner of the house by several inches. The distance between the edge of the porch and new construction will be made up by two 2"x8" ladders connecting the ledgers and the tying in the porch roof to the new wall. Non of these will be load bearing. The ladder that passes under the transfer hallway will be insulated and sealed.

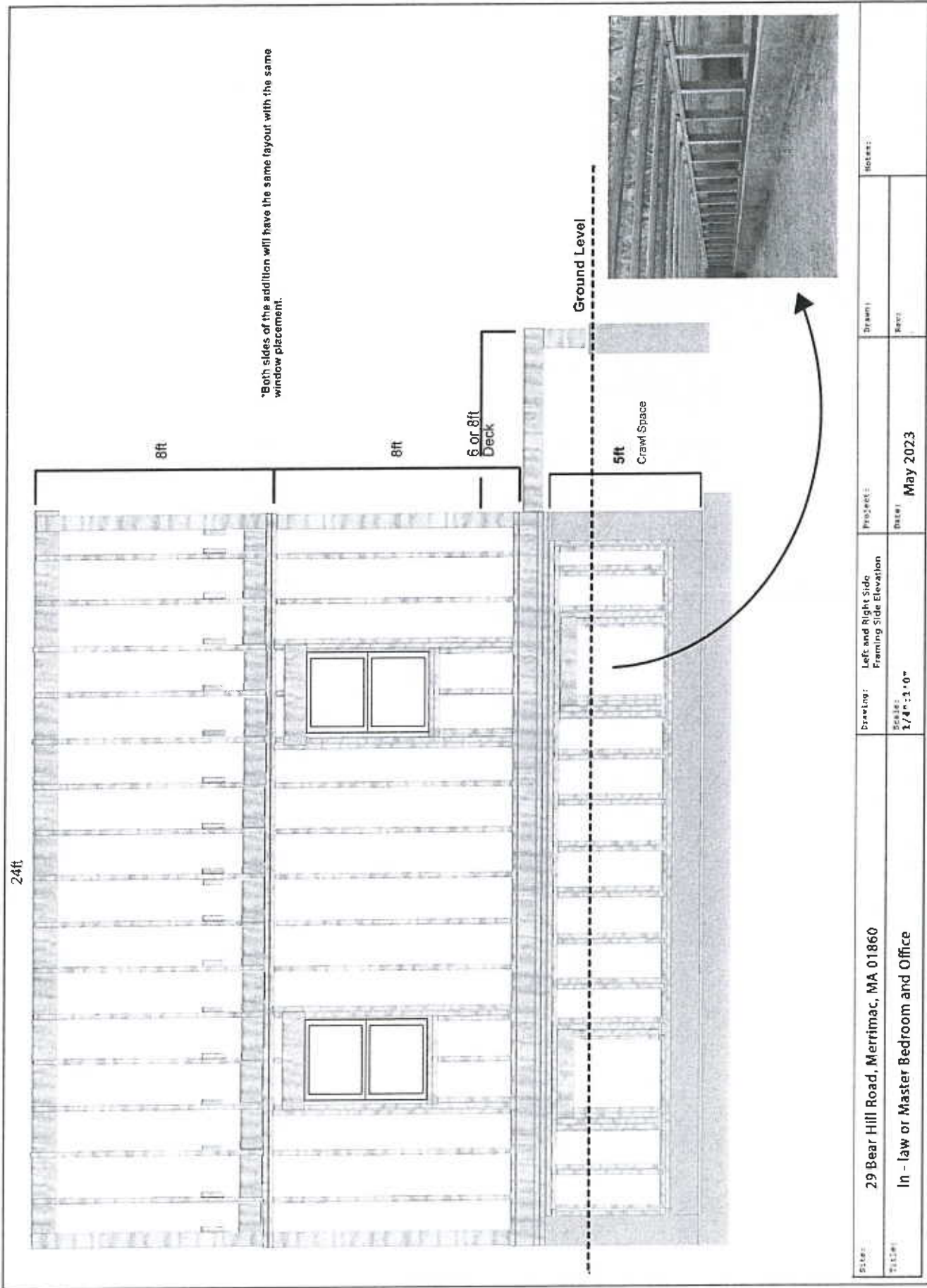


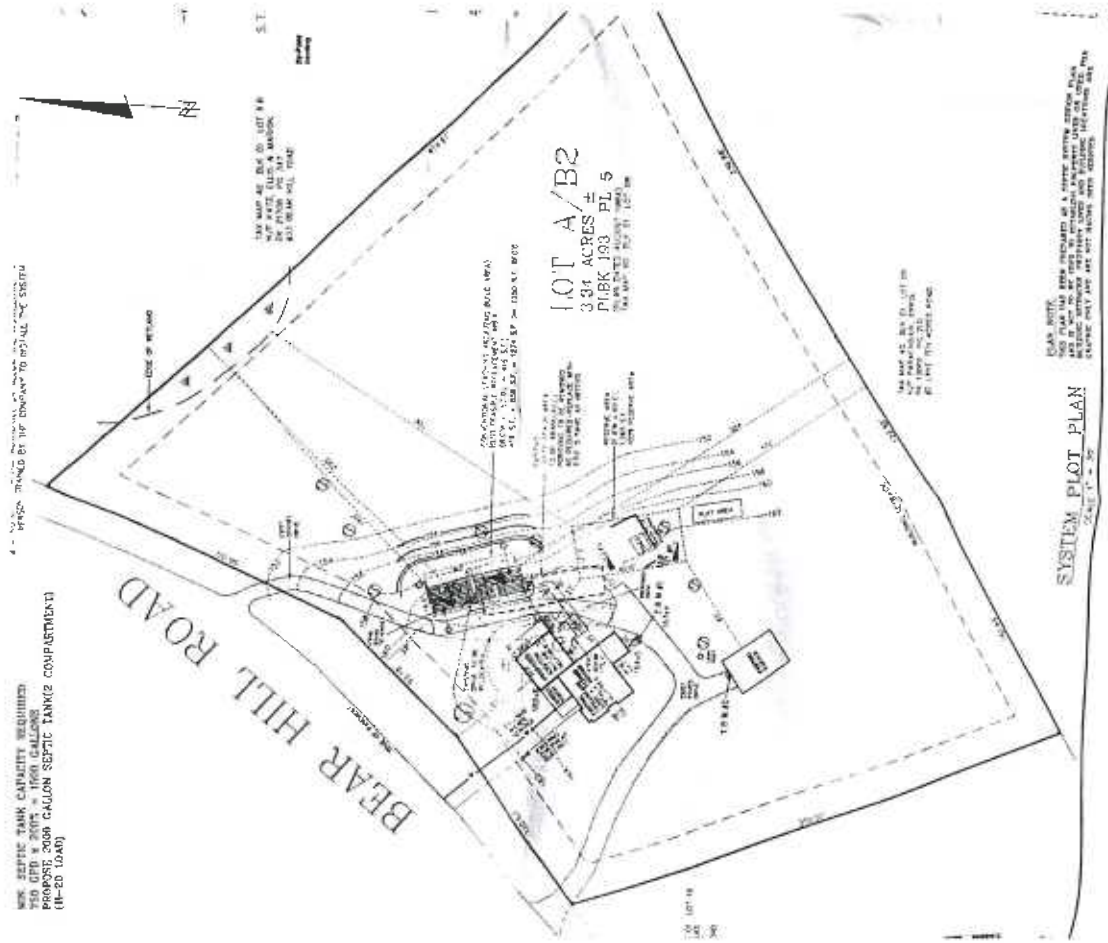
|        |                                       |          |              |
|--------|---------------------------------------|----------|--------------|
| Sheet: | 29 Bear Hill Road, Merrimac, MA 01860 | Drawing: | Fr           |
| Title: | In - law or Master Bedroom and Office | Scale:   | 1/4" = 1'-0" |





|        |                                       |                |  |          |          |        |
|--------|---------------------------------------|----------------|--|----------|----------|--------|
| Site:  | 29 Bear Hill Road, Merrimac, MA 01860 |                |  | Project: | Drawn:   | Notes: |
| Title: | In-law or Master Bedroom and Office   |                |  | Date:    | May 2023 |        |
|        | Drawing:                              | Interior walls |  |          |          |        |
|        | Scale:                                | 1/4" = 1'-0"   |  |          |          |        |





29 Bear Hill Road, Merrimac, MA 01860

## Proposed Septic Plan

29 Bear Hill Road, Merrimac, MA 01860

### Proposed Septic Plan

**Packet Pg. 24**





## Merrimac Select Board

2 School Street  
Merrimac, MA 01860

**SCHEDULED**

Meeting: 02/12/24 07:00 PM

Department: Merrimac Select Board

Category: Information

Prepared By: Jennifer Penney

Initiator: Jennifer Penney

Sponsors:

~~CORRESPONDENCE (ID # 8522)~~

~~DOC ID: 8522~~

## Merrimac Free Cash Certification

Free Cash Certification  
Free Cash Calculation - Fiscal Year 2024

|                                                      |               |
|------------------------------------------------------|---------------|
| Begin:                                               |               |
| Unreserved Undesignated Fund Balance                 | 794,698.00    |
| Subtract:                                            |               |
| Personal Property Tax Receivable                     | 1,089.00      |
| Real Estate Tax Receivable                           | 258,357.00    |
| Other Receivables in Deferred Revenue                |               |
| Supplemental RE                                      | 7,346.00      |
| Total                                                | 7,346.00      |
| OtherOther Receivables, Overdrawn Accounts, Deficits |               |
| AF: Police details                                   | 6,876.00      |
| SR: Emergency shelter generator                      | 8,300.00      |
| SR: Police ALERRT grant                              | 4,291.00      |
| SR: Police bullet proof vests                        | 12,929.00     |
| Total                                                | 32,396.00     |
| Free Cash Voted from Town Meeting Not Recorded       | 0.00          |
| Add:                                                 |               |
| Circuit Breaker, Other Closed Accounts, Adjustments: |               |
|                                                      | 0.00          |
| Total                                                | 0.00          |
| Deferred Revenue (Credit Balance+, Debit Balance-)   | 134,932.00    |
| Free Cash Calculation for 2023                       | 630,442.00    |
|                                                      |               |
|                                                      |               |
| Reviewed By:                                         | Bobbi Colburn |
| Certified On:                                        | 2/5/2024      |

Attachment: Merrimac Free Cash Certification (Merrimac Free Cash Certification)

Free Cash Certification

Retained Earnings Calculation - Water Enterprise - Fiscal Year 2024

|                                             |                  |
|---------------------------------------------|------------------|
| Enterprise Fund Number                      | A-2(1ST)         |
| Type of Enterprise Fund                     | Water            |
| Name of Enterprise Fund/Statutory Reference | Water Enterprise |

|                                                         |            |            |
|---------------------------------------------------------|------------|------------|
| Part I Cash                                             |            | 352,451.00 |
| Current Liabilities, Designations of Fund Balance:      |            |            |
| Accounts Payable                                        | 0.00       |            |
| Payroll Payable                                         | 0.00       |            |
| Warrants Payable                                        | 0.00       |            |
| Encumbrances                                            | 171.00     |            |
| Expenditures                                            | 0.00       |            |
| Continuing Appropriations                               | 256,713.00 |            |
| Other Liabilities                                       |            |            |
| FB Rsv for Petty Cash                                   | 50.00      |            |
| Total                                                   | 256,934.00 |            |
| Cash less Current Liabilities                           |            | 95,517.00  |
| Part II Retained Earnings, Undesignated                 |            | 95,517.00  |
| Accounts Receivable (net):                              |            |            |
| User Fees                                               | 0.00       |            |
| Other Accounts Receivable                               |            |            |
|                                                         | 0.00       |            |
| Total                                                   | 0.00       |            |
| Undesignated Retained Earnings Less Accounts Receivable |            | 95,517.00  |
| Fixed Assets                                            |            |            |
| Debits:                                                 |            |            |
|                                                         | 0.00       |            |
| Total                                                   | 0.00       |            |
| Credits:                                                |            |            |
|                                                         | 0.00       |            |
| Total                                                   | 0.00       |            |

Attachment: Merrimac Free Cash Certification (Merrimac Free Cash Certification)

Free Cash Certification

Retained Earnings Calculation - Water Enterprise - Fiscal Year 2024

|                                          |      |
|------------------------------------------|------|
| Fixed Assets Variance (Debits - Credits) | 0.00 |
|------------------------------------------|------|

Attachment: Merrimac Free Cash Certification (Merrimac Free Cash Certification)

Free Cash Certification

Retained Earnings Calculation - Wastewater Enterprise - Fiscal Year 2024

|                                             |                       |
|---------------------------------------------|-----------------------|
| Enterprise Fund Number                      | A-2(2ND)              |
| Type of Enterprise Fund                     | Sewer                 |
| Name of Enterprise Fund/Statutory Reference | Wastewater Enterprise |

|                                                         |              |
|---------------------------------------------------------|--------------|
| Part I Cash                                             | 1,624,603.00 |
| Current Liabilities, Designations of Fund Balance:      |              |
| Accounts Payable                                        | 0.00         |
| Payroll Payable                                         | 0.00         |
| Warrants Payable                                        | 0.00         |
| Encumbrances                                            | 2,872.00     |
| Expenditures                                            | 20,000.00    |
| Continuing Appropriations                               | 1,191,915.00 |
| Other Liabilities                                       |              |
| FB Rsv for Petty Cash                                   | 50.00        |
| FB Rsv for Debt Svc - Betterments                       | 91,764.00    |
| Total                                                   | 1,306,601.00 |
| Cash less Current Liabilities                           | 318,002.00   |
| Part II Retained Earnings, Undesignated                 | 318,003.00   |
| Accounts Receivable (net):                              |              |
| User Fees                                               | 0.00         |
| Other Accounts Receivable                               |              |
| Rounding                                                | 1.00         |
| Total                                                   | 1.00         |
| Undesignated Retained Earnings Less Accounts Receivable | 318,002.00   |
| Fixed Assets                                            |              |
| Debits:                                                 |              |
|                                                         | 0.00         |
| Total                                                   | 0.00         |
| Credits:                                                |              |
|                                                         | 0.00         |

Attachment: Merrimac Free Cash Certification (Merrimac Free Cash Certification)

Free Cash Certification

Retained Earnings Calculation - Wastewater Enterprise - Fiscal Year 2024

|                                          |      |      |
|------------------------------------------|------|------|
| Total                                    | 0.00 |      |
| Fixed Assets Variance (Debits - Credits) |      | 0.00 |

Attachment: Merrimac Free Cash Certification (Merrimac Free Cash Certification)



## Merrimac Select Board

2 School Street  
Merrimac, MA 01860

**SCHEDULED**

Meeting: 02/12/24 07:00 PM

Department: Merrimac Select Board

Category: Information

Prepared By: Jennifer Penney

Initiator: Jennifer Penney

Sponsors:

~~CORRESPONDENCE (ID # 8519)~~

~~DOC ID: 8519~~

## Finance Committee Appointment Lindy Davis

**From:** [Earl Baumgardner - Moderator](#)  
**To:** [Gwen Lay Sabbagh - Clerk \(X3030\)](#)  
**Cc:** [Carol McLeod - Finance \(X3040\)](#); [Jennifer Penney - SELECT BOARD \(X3080\)](#); [mldsz@comcast.net](mailto:mldsz@comcast.net)  
**Subject:** Finance Committee Appointment  
**Date:** Sunday, February 4, 2024 5:58:22 PM  
**Attachments:** [FinCom Appt - Lindy Davis.pdf](#)

---

Hi Gwen,

Please see the attached appointment of Lindy Davis to the Finance Committee. Lindy will replace James Archibald. Please let me know if there are any questions. Thanks.

Earl

Attachment: Finance Committee Appointment Davis (Finance Committee Appointment Lindy Davis)

**Merrimac Select Board**

2 School Street

Merrimac, MA 01860

Meeting: 02/12/24 07:00 PM

Department: Merrimac Select Board

Category: Information

Prepared By: Jennifer Penney

Initiator: Jennifer Penney

Sponsors:

**SCHEDULED**~~CORRESPONDENCE (ID # 8518)~~~~DOC ID: 8518~~**Commission on Disabilities 2023 4Th Qtr Report**

**TOWN OF MERRIMAC**  
**Commission on Disabilities**  
4 School Street, Merrimac, MA 01860  
**E-MAIL [COD@townofmerrimac.com](mailto:COD@townofmerrimac.com)**

To: The Honorable Select Board;

Listed below are the projects the Merrimac Commission on Disabilities worked on during the last three months as of December 2023. Please remember the Commission on Disabilities doesn't have a budget and relies on grant funds and donations to pay for these projects.

- Follow up with building inspector regarding non-compliant new ramp located at 5 East Main Street.
- Apply for grant to review ADA compliance on town websites
- Receive \$1,000.00 Donation from Bankprov
- Reached out to the post office regarding Push Button Power Door Openers
- Purchase (2) wheelchair accessible round café tables for Sweetsir and Donaghue School
- Request \$45k earmark from Senator Finegold for curb cuts located along Locust Street and Union Street
- Reach out to 12 School Street business regarding newly painted parking spaces with non-ADA compliant parking space

Sincerely,

Chris Gaudet  
Chairman, Merrimac Commission on Disabilities





## Merrimac Select Board

2 School Street  
Merrimac, MA 01860

**SCHEDULED**

Meeting: 02/12/24 07:00 PM

Department: Merrimac Select Board

Category: Information

Prepared By: Jennifer Penney

Initiator: Jennifer Penney

Sponsors:

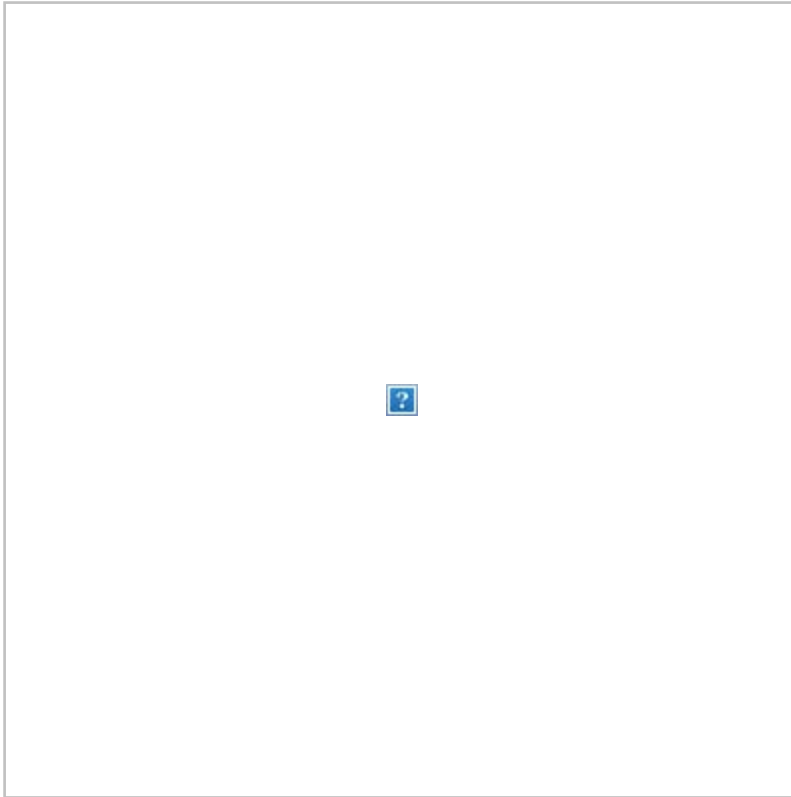
~~CORRESPONDENCE (ID # 8516)~~

~~DOC ID: 8516~~

## DLS Alert\_ FY2025 Preliminary Cherry Sheet Estimates

**From:** [DLS Alerts](#)  
**To:** [Jennifer Penney - SELECT BOARD \(X3080\)](#)  
**Subject:** DLS Alert: FY2025 Preliminary Cherry Sheet Estimates  
**Date:** Thursday, January 25, 2024 11:31:28 AM

---



## FY2025 Preliminary Cherry Sheet Estimates

The Division of Local Services (DLS) has posted on its website preliminary cherry sheet estimates based on Governor Healey's FY2025 budget recommendation (House 2).

[Municipal estimates receipts and charges](#)  
[Regional school estimated receipts and charges](#)

House 2 recommends funding Chapter 70 at \$6.856 billion, or \$263 million (4%) higher than the FY2024 GAA, and increases Unrestricted General Government Aid (UGGA) by \$38.1 million (3%) to \$1.309 billion. More detailed information regarding Chapter 70 and other school finance related initiatives contained in H.2 can be found on the Department of Elementary and Secondary Education (DESE) website at <http://www.doe.mass.edu/finance/chapter70>. Information includes the Chapter 70 aid calculations, minimum contributions and net school spending requirements.

Cherry sheet estimates for charter school tuition and reimbursements are based on estimated tuition rates and projected enrollments under charters previously issued by the Board of Elementary and Secondary Education. Please be advised that charter school assessments and reimbursements will change as updated tuition rates and enrollments become available. Estimates for the school choice assessments may also change significantly when updated to reflect final tuition rates and enrollments.

Attachment: DLS Alert\_ FY2025 Preliminary Cherry Sheet Estimates (DLS Alert\_ FY2025 Preliminary Cherry Sheet Estimates)

It is important for local officials to remember that these estimates are preliminary and are subject to change as the legislative process unfolds.

Please contact the DLS Data Analytics and Resources Bureau at [databank@dor.state.ma.us](mailto:databank@dor.state.ma.us) or (617) 626-2384 with any questions.

*You are receiving this message through the [Massachusetts Department of Revenue's Division of Local Services](#) DLS Alerts system. These periodic notices include our City & Town e-newsletter, IGRs, Bulletins, Cherry Sheets and other municipal finance-related information. To unsubscribe to DLS Alerts and the City & Town e-newsletter, please email [dls\\_alerts@dor.state.ma.us](mailto:dls_alerts@dor.state.ma.us).*

---

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## Merrimac Select Board

2 School Street  
Merrimac, MA 01860

8.1

Meeting: 02/12/24 07:00 PM

Department: Public Works

Category: Contract

Prepared By: Alyssa Sexton

Initiator: Alyssa Sexton

Sponsors:

**ADOPTED**

**CORRESPONDENCE (ID # 8510)**

**DOC ID: 8510**

## Olver Phased Contract- Wastewater Treatment Plant Upgrades

### COMMENTS - Current Meeting:

Sinibaldi confirms contractor is good with corrections. Going to be covered through retained earnings, SRF funding. Motion for the chair to sign. Motion made by Beaulieu seconded by Gorzynski. Motion passes Vote 3-0

**RESULT:      APPROVED**

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

EJCDC® E-500, Agreement between Owner and Engineer for Professional Services, is published in two parts: (1) this part, the E-500 Agreement form, and (2) the Exhibits to Agreement between Engineer and Subconsultant for Professional Services. This first part contains a Guidelines for Use section that pertains to both the Agreement form and the Exhibits.

## AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by



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National Society of Professional Engineers  
1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
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# **AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES**

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## AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

This is an Agreement between **Town of Merrimac, MA** (Owner) and **Olver Associates Inc.** (Engineer). Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as **Wastewater Treatment Facility Upgrade** (Project). Other terms used in this Agreement are defined in Article 7. Engineer's services under this Agreement are generally identified as **Engineering design and contract administration services for the upgrade of the Town of Merrimac's wastewater treatment facility**.

Owner and Engineer further agree as follows:

### ARTICLE 1—SERVICES OF ENGINEER

#### 1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.
- B. All phases of service will include Management of Engineering Services as shown in Exhibit A.

### ARTICLE 2—OWNER'S RESPONSIBILITIES

#### 2.01 Project Information

- A. To the extent Owner has not already provided the following, or has new, additional, or revised information from that previously provided, Owner shall provide Engineer with information and data needed by Engineer in the performance of Basic and Additional Services, including Owner's:
  - 1. design objectives and constraints;
  - 2. space, capacity, and performance requirements;
  - 3. flexibility and expandability needs;
  - 4. design and construction standards;
  - 5. budgetary limitations; and
  - 6. any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- B. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, Owner shall obtain, furnish, or otherwise make available (if necessary through retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services; or, with consent of Engineer, Owner may authorize the Engineer to obtain or provide all or part of such additional information as Additional Services. Such additional information or data may include the following:
  - 1. Property descriptions.
  - 2. Zoning, deed, and other land use restrictions.
  - 3. Surveys, topographic mapping, and utility documentation.

4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
  6. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- C. Owner shall examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
  - D. Owner shall furnish to Engineer data as to Owner's anticipated costs for services to be provided to Owner by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) so that Engineer may assist Owner in collating the various cost categories that comprise Total Project Costs.
  - E. Owner shall inform Engineer as to whether Engineer's assistance is requested with respect to Owner's evaluation of the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
  - F. Owner shall inform Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- 2.02 Owner's Instructions Regarding Bidding/Proposal and Front-End Construction Contract Documents
- A. Owner shall give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable) and Owner's construction contract practices and requirements, and furnish to Engineer (or give specific directions requesting Engineer to use copies already in Engineer's possession) the following:
    1. Owner's standard contract forms, general conditions (if other than the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract), supplementary conditions, text, and related documents and content for Engineer to include in the draft Bidding/Proposal Documents, and in draft Front-End Construction Contract Documents;
    2. insurance and bonding requirements;
    3. protocols for electronic transmittals during bidding and construction;
    4. Owner's safety and security programs applicable to Contractor and other Constructors;
    5. diversity and other social responsibility requirements;
    6. bidding and contract requirements of funding, financing, or regulatory entities;
    7. other specific conditions applicable to the procurement of construction or contract documents;

8. any other information necessary for Engineer to assist Owner in preparing its Bidding/Proposal Documents and Front-End Construction Contract Documents.
  - B. Owner shall have responsibility for the final content of (1) such Bidding/Proposal Documents, and (2) such Front-End Construction Contract Documents, other than content furnished by Engineer concerning the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters.
    1. Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
  - C. If there will be an advertisement soliciting bids for construction, Owner shall place and pay for such advertisement.
- 2.03 Owner-Furnished Services
- A. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, Owner shall obtain, as required for the Project:
    1. Accounting, bond and financial advisory services (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
    2. Legal services, including attorney review of proposed Construction Contract Documents, legal services required by Owner, legal services needed as a result of issues raised by Contractor, and Project-related legal services reasonably requested by Engineer.
    3. Auditing services, including those needed by Owner to ascertain how or for what purpose Contractor has used money paid to it.
  - B. Owner shall provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Owner shall provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
  - C. Owner shall acquire or arrange for acquisition of the Site(s) and any temporary or permanent rights of access, easements, or property rights needed for the Project.
  - D. With respect to the portions or phases of the Project designed or specified by Engineer, Owner shall provide, obtain, or arrange for:
    1. all required reviews, approvals, consents, and permits from governmental authorities having jurisdiction, and
    2. such reviews, approvals, and consents from others as may be necessary for completion of each portion or phase of the Project.
  - E. Owner may delegate to Contractor or others the responsibilities set forth in Paragraphs 2.03.C and D.

## 2.04 Owner's General Responsibilities

- A. Owner shall inform Engineer of the policies, procedures, and requirements of Owner that are applicable to Engineer's performance of services under this Agreement.
- B. Owner shall provide Engineer with Owner's budget for the Project, including type and source of funding to be used, and will promptly inform Engineer if the budget or funding sources change.
- C. Owner shall inform Engineer in writing of any safety or security programs that are applicable to the personnel of Engineer, its Subconsultants, and Engineer's Subcontractors, as they visit the Site or otherwise perform services under this Agreement.
- D. Owner shall arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under this Agreement.
- E. Owner shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance of its services.
- F. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- G. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
  1. any development that affects the scope or time of performance of Engineer's services;
  2. the presence at the Site of any Constituent of Concern; or
  3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.
- H. Owner shall advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- I. If Owner designates a construction manager, site representative, or any individual or entity other than, or in addition to, Engineer to represent Owner at the Site, Owner shall define and set forth as an exhibit to this Agreement the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- J. Owner shall:
  1. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to

determine Substantial Completion and readiness of the completed Work for final payment.

2. Primarily communicate with Engineer's Subcontractors and Subconsultants through the Engineer.
  - a. Promptly inform Engineer of the substance of any communications between Owner and Engineer's Subcontractors or Subconsultants.
  - b. Refrain from directing the services of Engineer's Subcontractors or Subconsultants.
3. Authorize Engineer to provide Additional Services as set forth in Article 2 of Exhibit A of the Agreement, as required.

#### 2.05 Payment

- A. Owner shall pay Engineer as set forth in Article 4 and Exhibit J.

### ARTICLE 3—SCHEDULE FOR RENDERING SERVICES

#### 3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

#### 3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Estimated completion time is 18 months after effective date.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.

### ARTICLE 4—INVOICES AND PAYMENTS

#### 4.01 Invoices

- A. Preparation and Submittal of Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices, the progress reporting and special invoicing requirements (if any) in Exhibit A Paragraph 1.01.A, and the terms of Exhibit J. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

#### 4.02 Payments

- A. Application to Interest and Principal: Payment will be credited first to any interest owed to Engineer and then to principal.
- B. Disputed Invoices: If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so; may withhold only that portion so disputed; and must pay the undisputed portion, subject to the

terms of Paragraph 4.01. After a disputed item has been resolved, Engineer shall include the agreed-upon amount on a new invoice.

- C. Failure to Pay: If Owner fails to make any undisputed payment due Engineer within 30 days after receipt of Engineer's invoice, then:
  - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and
  - 2. Engineer may, after giving 7 days' written notice to Owner, suspend services under this Agreement until Owner has paid in full amounts due. Owner waives any and all claims against Engineer for any such suspension.
- D. Sales or Use Taxes: If after the Effective Date any governmental entity takes an action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement will be in addition to the compensation to which Engineer is entitled under the terms of Exhibit J.

## ARTICLE 5—OPINIONS OF COST

### 5.01 Opinions of Probable Construction Cost

- A. Engineer's opinions of probable Construction Cost (if any) are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

### 5.02 Opinions of Total Project Costs

- A. The services, if any, of Engineer with respect to Total Project Costs will be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## ARTICLE 6—GENERAL CONSIDERATIONS

### 6.01 Standards of Performance

- A. Standard of Care: The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. Technical Accuracy: Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical

accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

- C. **Engineer's Subcontractors and Subconsultants:** Engineer may retain such Engineer's Subcontractors and Subconsultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. **Reliance on Others:** Subject to the standard of care set forth in Paragraph 6.01.A, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. **Compliance with Laws and Regulations, and Policies and Procedures**
  - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
  - 2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
    - a. changes after the Effective Date to Laws and Regulations,
    - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures, and
    - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. **General Conditions of Construction Contract:** The general conditions for any Construction Contract Documents prepared hereunder are to be the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract, prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise.
- G. **Copies of Drawings and Specifications:** If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one complete electronic copy of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations, and one complete printed copy, duly signed and sealed.
- H. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant conditions whose existence Engineer cannot ascertain within the authorized scope of Engineer's services. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to Engineer in any way contingent upon Engineer signing any such document.
- I. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety

at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

- J. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- K. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer.
- L. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- M. Engineer's services do not include providing legal advice or representation.
- N. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- O. While at the Site, Engineer, its Subconsultants, and Engineer's Subcontractors, and their employees and representatives will comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 Ownership and Use of Documents

- A. All Documents are instruments of service, and Engineer owns the Documents, including all associated copyrights and the right of reuse at the discretion of the Engineer, subject to the following provisions:
  - 1. Upon receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents and subject to the express exclusions that follow, Engineer and any Subconsultants will grant to Owner the ownership of the Documents, including all associated copyrights and the right of reuse.
  - 2. Engineer shall have and retain the ownership, title, and property rights, including copyright, patent, intellectual property, and common law rights, in any design elements (including but not limited to standard details, drawings, plans, specifications, methodologies, and engineering computations) used in the Documents, but developed by Engineer or its Subconsultants previous to or independent of this Agreement.
  - 3. Owner acknowledges that the Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer.
  - 4. Any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific

purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants.

5. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer.
6. Nothing herein limits the Engineer's right of use or reuse of Engineer's work product.
- B. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.
- C. Engineer will obtain Owner's consent, which will not be unreasonably withheld, prior to releasing any publicity, including news and press releases, promotional publications, award and prize competition submittals, and other advertising regarding the subject matter of this Agreement. Nothing herein will limit the Engineer's right to include information in statements of qualifications and proposals to others accurately describing its participation and participation of employees in the Project.

#### 6.03 Electronic Transmittals

- A. To the fullest extent practical, Owner and Engineer agree to transmit, and accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with Exhibit F, Electronic Documents Protocol (EDP).
  1. Compliance with the EDP by Engineer shall be considered a Basic Service and no direct or separate compensation will be paid to Engineer for such compliance, unless provisions for separate compensation are expressly set forth in the EDP.
  2. Engineer's costs directly attributable to changes in Engineer's Electronic Documents obligations, after the effective date of this Agreement, necessitated by revisions to Exhibit F, delayed adoption of Exhibit F, or implementation of other Electronic Documents protocols, will be compensated as Additional Services.
- B. If this Agreement does not include Exhibit F or otherwise does not establish or include protocols for transmittal of Electronic Documents by Electronic Means, then Owner and Engineer may operate without specific protocols or may jointly develop such protocols at a later date.
- C. Except as stated otherwise in Exhibit F (if included in this Agreement), when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents, or from those established in applicable protocols.
- D. This Agreement (including the EDP) is not intended to create obligations for Owner or Engineer with respect to transmittals to or from third parties, except as expressly stated in the EDP.

## 6.04 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G.
- B. Additional Insureds: The Engineer's commercial general liability, automobile liability, and umbrella or excess liability policies, must:
  - 1. include and list as additional insureds Owner, and any individuals or entities identified as additional insureds in Exhibit G;
- C. Owner shall procure and maintain insurance as set forth in Exhibit G.
- D. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer, its Subconsultants, and Engineer's Subcontractors to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project. Owner shall give Engineer access to any certificates of insurance and copies of endorsements and policies obtained by Owner from Contractor.
- E. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates must be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
  - 1. Upon request by Owner or any other insured, Engineer shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subconsultants and Engineer's Subcontractors. In any documentation furnished under this provision, Engineer may redact (a) any confidential premium or pricing information and (b) any wording specific to projects or jurisdictions other than those applicable to this Agreement.
- F. All construction contracts entered into by Owner with respect to the Project must require builder's risk or similar property insurance.
- G. All policies of property insurance relating to the Project, including but not limited to any builder's risk or similar policy, must allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer, its Subconsultants, or Engineer's Subcontractors. Owner and Engineer waive all rights against each other, Contractor, Engineer's Subcontractors and Subconsultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any such builder's risk or similar policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- H. All policies of insurance must contain a provision or endorsement that the coverage afforded will not be canceled, and that renewal will not be refused, until at least 10 days' prior written notice has been given to the primary insured. Upon receipt of such notice, the primary insured must promptly forward a copy of the notice to the other party to this Agreement and

replace the coverage being cancelled or reduced to conform to the requirements of this Agreement.

- I. At any time, Owner may request that Engineer, or Engineer's Subcontractors or Subconsultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require Engineer's Subcontractors or Subconsultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.05 Suspension and Termination

##### A. Suspension

1. By Owner: Owner may suspend Engineer's services for up to 90 days upon 7 days' written notice to Engineer.
2. By Engineer: Engineer may, after giving 7 days' written notice to Owner, suspend services under this Agreement:
  - a. if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraphs 4.02.B and 4.02.C;
  - b. in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.09.D; or
  - c. if persistent circumstances beyond the control of Engineer have prevented it from performing its obligations under this Agreement.

##### B. Termination for Cause

1. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.
  - a. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1 if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. In addition to its termination rights in Paragraph 6.05.B.1, Engineer may terminate this Agreement for cause upon 7 days' written notice:
  - a. if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional;
  - b. if Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control; or

- c. as the result of the presence at or adjacent to the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.09.E.
  - 3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.
  - C. Termination for Convenience: Owner may terminate this Agreement for convenience, effective upon Engineer's receipt of notice from Owner.
  - D. Extension of Effective Date of Termination: If Owner terminates the Agreement for cause or convenience, Owner may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Engineer shall be entitled to compensation for such tasks.
  - E. Payments Upon Termination: In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination. Upon making such payment, Owner will have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.02.A.
    - 1. If Owner has terminated the Agreement for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the Documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.
    - 2. If Owner has terminated the Agreement for convenience, or if Engineer has terminated the Agreement for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Subcontractors or Subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit J.
- 6.06 Successors, Assigns, and Beneficiaries
- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.06.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
  - B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
2. Nothing in this Agreement will be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
3. Owner agrees that the substance of the provisions of this Paragraph 6.06.C will appear in the Construction Contract Documents.

6.07 Dispute Resolution

A. Unless otherwise required by Exhibit H, Owner and Engineer shall resolve all disputes in the following manner:

1. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice, prior to invoking mediation.
2. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process will be conducted on a confidential basis, and must be completed within 120 days.
3. If the parties fail to resolve a Dispute through negotiations under Paragraph 6.07.A.1 or mediation under Paragraph 6.07.A.2, then:
  - a. either or both may invoke the applicable dispute resolution procedures of Exhibit H for final resolution of Disputes.
  - b. If Exhibit H is not included, or if no final dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.08 Controlling Law; Venue

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.
- B. Venue for any exercise of rights at law will be the state court having jurisdiction at the location of the Project; or at the choice of either party, and if federal jurisdictional requirements can be met, in federal court in the district in which the Project is located.

6.09 Environmental Condition of Site

- A. Owner represents to Engineer that, as of the Effective Date, to the best of Owner's knowledge, no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. Undisclosed Constituents of Concern: For purposes of this Paragraph 6.09, the presence at or adjacent to the Site of Constituents of Concern that were not disclosed to Engineer pursuant to Paragraph 6.09.A, in such quantities or circumstances that such Constituents of Concern may present a danger to persons or property exposed to them, will be referred to as "undisclosed" Constituents of Concern.

1. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of this Agreement or the Construction Contract, are not undisclosed Constituents of Concern.
  2. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under this Agreement are not undisclosed Constituents of Concern.
  3. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under another professional services contract for Owner, or as part of the work under a construction or remediation contract, are not undisclosed Constituents of Concern if Engineer has been informed of the general scope of such contract.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate authorities having jurisdiction if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, or if encountered, uncovered, or revealed Constituents of Concern are present in substantially greater quantities or substantially different locations than disclosed or anticipated, or if investigative or remedial action, or other professional services, are necessary or required by applicable Laws and Regulations with respect to such Constituents of Concern, then Engineer may, at its option and without liability for direct, consequential, or any other damages, suspend performance of services on the portion of the Project adversely affected thereby until such portion of the Project is no longer so affected; and Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- E. If the presence at the Site of undisclosed Constituents of Concern, or of Constituents of Concern in substantially greater quantities or in substantially different locations than disclosed or anticipated, adversely affects the performance of Engineer's services under this Agreement, then:
1. if the adverse effects do not preclude Engineer from completing its Project services in general accordance with this Agreement on unaffected or marginally affected portions of the Project, Engineer may accept an equitable adjustment in its compensation or in the time of completion, or both; and the Agreement will be amended to reflect changes necessitated by the presence of such Constituents of Concern; or
  2. if the adverse effects are of such materiality to the overall performance of Engineer that it cannot complete its services without significant changes to the scope of services, time of completion, and compensation, then Engineer may terminate this Agreement for cause on 7 days' written notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and will not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are

or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.10 Indemnification and Mutual Waiver

- A. **Indemnification by Engineer:** To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, Subconsultants, or Engineer's Subcontractors. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."
- B. **Environmental Indemnification:** To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer, its Subconsultants, Engineer's Subcontractors, and their officers, directors, members, partners, agents, employees, and subconsultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that:
  1. any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and
  2. nothing in this paragraph obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- C. **No Defense Obligation:** The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- D. **Percentage Share of Negligence:** To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, will not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. **Mutual Waiver:** To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's officers, directors, members, partners, agents, employees, subconsultants, and insurers, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes. Such excluded damages include but are not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and cost of capital.

## 6.11 Records Retention

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, or such other period as required by Laws and Regulations, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

## 6.12 Miscellaneous Provisions

- A. Notices: Any notice required under this Agreement will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line. All such notices are effective upon the date of receipt.
- B. Survival: Subject to applicable Laws and Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Engineer.
- D. No Waiver: A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.
- E. Accrual of Claims: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer's services do not include Construction Phase services, or the Project is not completed, then no later than the date of Owner's last payment to Engineer.

## ARTICLE 7—DEFINITIONS

### 7.01 Defined Terms

- A. Wherever used in this Agreement (including the exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
  1. Addenda—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
  2. Additional Services—The services to be performed for or furnished to Owner by Engineer in accordance with Article 2 of Exhibit A of this Agreement.
  3. Agreement—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  4. Application for Payment—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and

which is to be accompanied by such supporting documentation as is required by the Construction Contract.

5. **Basic Services**—The services to be performed for or furnished to Owner by Engineer in accordance with Article 1 of Exhibit A of this Agreement.
6. **Bidding/Proposal Documents**—Documents related to the selection of the Contractor, including advertisements or invitations to bid; requests for proposals; instructions to bidders or proposers, including any attachments such as lists of available Site-related documents; bid forms; bids; proposal forms; proposals; bidding requirements; and qualifications documents.
7. **Change Order**—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
8. **Change Proposal**—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
9. **Constituents of Concern**—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
10. **Construction Contract**—The entire and integrated written contract between Owner and Contractor concerning the Work.
11. **Construction Contract Documents**—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract. See also definition of “Front-End Construction Contract Documents” below.
12. **Construction Contract Price**—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
13. **Construction Contract Times**—The number of days or the dates by which Contractor must: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.

14. **Construction Cost**—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
15. **Constructor**—Any person or entity (not including the Engineer, its employees, agents, representatives, or Subconsultants, or Engineer's Subcontractors), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, design-builders, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
16. **Contractor**—The entity or individual with which Owner enters into a Construction Contract.
17. **Documents**—All documents expressly identified as deliverables in this Agreement, whether in printed or Electronic Document form, required by this Agreement to be provided or furnished by Engineer to Owner. Such specifically required deliverables may include, by way of example, Drawings, Specifications, data, reports, building information models, and civil integrated management models.
18. **Drawings**—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. **Effective Date**—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. **Electronic Document**—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. **Electronic Means**—Electronic mail (e-mail), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Agreement. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
22. **Engineer**—The individual or entity named as such in this Agreement.

23. **Engineer's Subcontractor**—An individual, firm, vendor, or other entity having a contract with Engineer to furnish general services, equipment, or materials with respect to the Project as an independent contractor.
24. **Field Order**—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
25. **Front-End Construction Contract Documents**—Those Construction Contract Documents whose primary purpose is to establish legal and contractual terms and conditions, typically including the Owner-Contractor agreement, bonds, general conditions, and supplementary conditions. The term excludes the Drawings and Specifications, and any Construction Contract Documents delivered or issued after the effective date of the Construction Contract.
26. **Laws and Regulations; Laws or Regulations**—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
27. **Owner**—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
28. **Project**—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
29. **Record Drawings**—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
30. **Resident Project Representative**—The authorized representative assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of the RPR.
31. **Samples**—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
32. **Shop Drawings**—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
33. **Site**—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

34. **Specifications**—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
35. **Subconsultant**—An individual, design firm, consultant, or other entity having a contract with Engineer to furnish professional services with respect to the Project as an independent contractor.
36. **Subcontractor**—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
37. **Submittal**—A written or graphic document, prepared by or for Contractor, which the Construction Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Construction Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Construction Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
38. **Substantial Completion**—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
39. **Supplier**—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
40. **Total Project Costs**—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties and private utilities (including relocation if not part of Construction Cost), Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
41. **Underground Facilities**—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other

such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

42. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
43. Work Change Directive—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. Terminology

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

## ARTICLE 8—EXHIBITS AND SPECIAL PROVISIONS

### 8.01 Exhibits to Agreement

The following exhibits are incorporated by reference and included as part of this Agreement:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Not used.
- C. Exhibit C, Amendment to Owner-Engineer Agreement (form).
- D. Exhibit D, Not used.
- E. Exhibit E, EJCDC® C-626, Notice of Acceptability of Work (form).
- F. Exhibit F, Electronic Documents Protocol (EDP).
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Payments to Engineer for Services and Reimbursable Expenses.

### 8.02 Total Agreement

- A. This Agreement (which includes the exhibits listed above) constitutes the entire contractual agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit C to this Agreement.

### 8.03 Designated Representatives

- A. With the execution of this Agreement, Engineer and Owner shall each designate a specific individual to act as representative under this Agreement. Such an individual must have authority to transmit instructions, receive information, and render decisions with respect to this Agreement on behalf of the party that the individual represents.

### 8.04 Engineer's Certifications

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

### 8.05 Conflict of Interest

- A. Nothing in this Agreement will be construed to create or impose any duty on the part of Engineer that would be in conflict with Engineer's paramount obligations to the public health, safety, and welfare under the professional practice requirements governing Engineer, its Subconsultants, and all licensed professionals employed by Engineer or its Subconsultants.
- B. If during the term of this Agreement a potential or actual conflict of interest arises or is identified:
  1. Engineer and Owner together will make reasonable, good faith efforts to avoid or eliminate the conflict of interest; to mitigate any adverse consequences of the conflict of interest; and, if necessary and feasible, to modify this Agreement to address the conflict of interest and its consequences, such that progress under the Agreement may continue.
  2. Such efforts will be governed by applicable Laws and Regulations and by any pertinent Owner's policies, procedures, and requirements (including any conflict of interest resolution methodologies) provided to Engineer under Paragraph 2.04.A of this Agreement.

This Agreement's Effective Date is **[insert date]**.

Owner:

Town of Merrimac, MA

(name of organization)

By: \_\_\_\_\_

(individual's signature)

Date: \_\_\_\_\_

(date signed)

Name: Chris Manni

(typed or printed)

Title: Selectboard Chairman

(typed or printed)

Attach evidence of authority to sign.

Attest: \_\_\_\_\_

(individual's signature)

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

(typed or printed)

Address for giving notices:

Merrimac Public Works Department

2-8 School Street

Merrimac, MA 01860

Designated Representative:

Name: Robert Sinibaldi

(typed or printed)

Title: Director Public Works

(typed or printed)

Address:

Merrimac Public Works Department

2-8 School Street

Merrimac, MA 01860

Phone: (978) 346-0612

Email: dpwdir@townofmerrimac.com

Engineer:

Olver Associates Inc.

(name of organization)

By: \_\_\_\_\_

(individual's signature)

Date: \_\_\_\_\_

(date signed)

Name: Mandy J. Holway P.E.

(typed or printed)

Title: Vice-President

(typed or printed)

Attach evidence of authority to sign.

Attest: \_\_\_\_\_

(individual's signature)

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

(typed or printed)

Address for giving notices:

Olver Associates Inc.

P. O. Box 679

Winterport, Maine 04496

Designated Representative:

Name: Mandy J. Holway P.E.

(typed or printed)

Title: Vice-President

(typed or printed)

Address:

Olver Associates Inc.

P. O. Box 679

Winterport, Maine 04496

Phone: (207) 223-2232

Email: mandy@olverassociatesinc.com

## EXHIBITS TO AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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Article 1 of the Agreement, Services of Engineer, is supplemented to include the following provisions:

Baseline Information: Owner has furnished the following Project information to Engineer as of the Effective Date. Engineer's scope of services has been developed based on this information. As the Project moves forward, some of the information may change or be refined, and additional information will become known, resulting in the possible need to change, refine, or supplement the scope of services.

- a. Plant upgrade scope and needs as defined in report entitled "Treatment Process Evaluation of Merrimac Wastewater Treatment Facility" dated September, 2022 as commissioned and approved by Town of Merrimac, MA and prepared by Olver Associates Inc.

Engineer shall provide Basic and Additional Services as set forth below.

**ARTICLE 1—BASIC SERVICES****1.01 Management of Engineering Services**

- A. All phases of Engineer's services will include management of Engineer's Project-specific responsibilities, including but not limited to the following management tasks, whether separately tracked and itemized or included as being incidental to other phase and scope task items.
  1. Develop and submit an Engineering Services Schedule. The Engineering Services Schedule will:
    - a. be consistent with and serve as a supplement to the Schedule of Deliverables set forth in Exhibit B.
    - b. be updated on a regular basis, and as required to reflect any programmatic decisions by Owner.

Exhibit A—Engineer's Services.

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2. Coordinate services within Engineer's internal team, and with Subconsultants and Engineer's Subcontractors.
3. Prepare for and participate in meetings with consultants and contractors working on other parts of the Project that may affect, or be affected by, Engineer's services or resulting construction.
4. Prepare and submit monthly engineering services progress reports to the Owner. Include summary of services performed in period, expected progress in next period, and a description of major issues or concerns.
5. Conduct ongoing management tasks, including:
  - a. Maintaining communications records and files pertaining to or arising from Engineer's services;
  - b. With respect to Engineer's services and other directly relevant parts of the Project, prepare for and participate in periodic progress meetings with Owner to discuss progress, schedule, budget, issues, potential problems and their resolution; and
  - c. Preparing agendas prior to and minutes following all Engineer-led meetings.

#### 1.02 Study and Report Phase

- A. Study and report phase was previously completed prior to this Agreement under separate contract and resulted in "Treatment Process Evaluation of Merrimac Wastewater Treatment Facility" report dated September, 2022 as prepared by Olver Associates Inc.

#### 1.03 Preliminary Design Phase

- A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables selection by Owner of a recommended solution; issuance by Owner of any instructions for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design, or enhanced resiliency of the design; indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner; and any necessary changes, refinements, and supplementation of the Baseline Information set forth at the beginning of this Exhibit A, Engineer and Owner shall discuss, resolve, and document in writing any necessary revisions to Engineer's scope of services, compensation (through application of the provisions regarding Additional Services, or otherwise), and the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design and resiliency instructions, specific modifications to the Project, or changes, refinements, or supplementation of the Baseline Information.
- B. Upon written authorization from Owner, Engineer shall:
  1. Review and assess all available Project information and data, including any pertinent reports or studies (whether prepared by Engineer or others) and any related instructions from Owner.
  2. Based on the threshold review and assessment of available information and data, advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer any additional information and data, for Engineer's use in the preparation of a Preliminary Design Phase Report.

#### Exhibit A—Engineer's Services.

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3. Prepare a Preliminary Design Phase Report in format required by any funding agency of Project.
4. The Preliminary Design Phase Report will consist of final design criteria, preliminary drawings, a preliminary list of expected specifications, and written descriptions of the Project. The Preliminary Design Phase Report will consider the following matters to the extent applicable to the Project and as necessary to establish the basis of design for proceeding to final design and construction:
  - a. The Project concept, intent, performance criteria, desired outcomes, Owner's standards and Owner directed improvements and facility elements as established in the Study and Report Phase and as expressly set forth in the Baseline Information section of this Exhibit A (collectively the "Project Goals").
  - b. Recommended appropriate design criteria for each primary portion and significant discipline of the design necessary to address the Project Goals.
  - c. Site conditions and characterization as known at the time of, or to be determined during, the Preliminary Design Phase, including topography; subsurface information; Constituents of Concern; cultural, historical, and archaeological resources at the Site; wetlands information; and evaluations of flora and fauna that may be affected by the Project.
  - d. The time schedule for completion of the Project in accordance with Project Goals, including any recommended changes to the time required to complete the Final Design Phase (as set forth in Exhibit B, Deliverables Schedule) and estimated schedule(s) for construction.
  - e. Identification of major items of materials and equipment, rationale for selection with consideration of quality, suitability, pricing, sourcing, regulatory, and bidding issues affecting recommended selection.
  - f. Revised opinions of probable Construction Cost.
  - g. The impact of Project Strategies, Technologies, and Techniques, sustainable features, and enhanced resiliency selected by Owner for inclusion in the Project on the Project Goals, schedule and probable Construction Cost, including impact of multiple prime construction contracts, separate procurement of materials or equipment, and other alternate project delivery methods when the Project Goals necessitate and Owner authorizes;
  - h. Construction Phase quality assurance and quality control needs affecting development of Drawings and Specifications and other Final Design and Bidding Phase documents.
  - i. The effect of permits and authorizations by other entities and utility coordination needs on the Project.
  - j. Other matters and information pertinent to addressing the Project Goals.
5. In preparing the Preliminary Design Phase Report, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the

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Study and Report Phase, and include sustainable features and enhanced resiliency, as appropriate, pursuant to Owner's instructions.

6. Visit the Site as needed to prepare the Preliminary Design Phase Report.
7. If at any point in the Preliminary Design Phase it becomes apparent to Engineer that additional reports, data, information, or services of the types described in Article 2 are necessary, then so advise Owner, and assist Owner in obtaining such reports, data, information, or services.
8. Above-Ground Utilities
  - a. Review above-ground utilities information obtained from Owner and from observations at the Site.
  - b. Make recommendations regarding any further identification, investigation, and mapping of above-ground utilities at or adjacent to the Site, for Engineer's design purposes or otherwise.
  - c. Account for above-ground utilities, based on available information, when advancing design during the Preliminary Design Phase.
9. Underground Facilities
  - a. Review Underground Facilities data furnished by Owner. Assist Owner in reducing and managing risks associated with Underground Facilities by working together with Owner to jointly establish a procedure ("Underground Facilities Procedure") for the further identification, investigation, and mapping of Underground Facilities at or adjacent to the Site, using ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as a basis for establishing such Underground Facilities Procedure.
  - b. Such Underground Facilities Procedure must take into account the Site and the nature of the Project.
  - c. Use the Underground Facilities Procedure to aid in the performance of design services:
    - 1) Account for Underground Facilities, based on available information, when advancing the design during the Preliminary Design Phase.
    - 2) The Underground Facilities Procedure will include a plan to keep Underground Facilities information current as Engineer proceeds with the provision of design services, and to add new or relocated Underground Facilities information to the base utility or Site drawings.
    - 3) To manage the potential impact of design changes on Underground Facilities, Engineer shall work together with Owner to modify or reapply the Underground Facilities Procedure as the design progresses and changes.
    - 4) Conduct subsurface explorations and soils borings.
10. Mitigation of Utilities Conflicts
  - a. Identify potential conflicts between the Project (including existing and new facilities and structures) and above-ground utilities and Underground Facilities as

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reviewed in Exhibit A Paragraphs 1.03.B.8 and 9 above, and advise Owner regarding the need for resolution of such conflicts with utility and Underground Facilities owners and permit agencies. Identify the potential need for the relocation of existing above-ground utilities and Underground Facilities.

- b. Update the Underground Facilities Procedure as necessary for any Underground Utilities conflicts and relocations.
  - c. Working together with Owner, jointly identify which specific parties or other entities will be responsible for implementation of the various specific parts of the Underground Facilities Procedure (including those parts that address resolution of Underground Facilities conflicts), and for resolution of above-ground utilities conflicts. Such identification will take into account Owner's authority and standing, as owner of the Site, with respect to Underground Facilities and above-ground utilities.
    - 1) To the extent that Owner and Engineer agree that in addition to performing the design-related obligations set forth in Exhibit A Paragraphs 1.03.B.8 and 9, Engineer will also implement any non-design part of the Underground Facilities Procedure (including resolution of Underground Facilities conflicts), or undertake resolution of above-ground utilities conflicts, such additional duties will be Additional Services under Article 2 of this Exhibit A.
11. Surveys, Topographic Mapping, and Utility Documentation
- a. Coordinate with Owner's utility engineer, utility consultant, or land surveyor for the necessary field surveys, topographic mapping, and utility documentation required for Engineer's design purposes, or by the Underground Facilities Procedure.
  - b. If no scope of work and procedure for utility documentation has been established, selected, or authorized, then at a minimum Engineer will contact utility owners and obtain available information. Except as otherwise provided in this Agreement, Owner acknowledges that the information gathered from utility owners may be incorrect, incomplete, outdated, or otherwise flawed, and as to Engineer, bidders, and Contractor, the Owner accepts all associated risks. Owner reserves all associated rights as to recourse against the sources of such flawed information and against third parties.
  - c. Conduct field survey of existing site.
  - d. Prepare preliminary base sheets from survey.
12. Prepare initial draft of a comprehensive permit document that identifies Owner's permit duties, Engineer's permit duties, and Contractor's permit duties, and the schedule for permitting activities.
13. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement in Exhibit A Paragraph 1.03.A.
14. Obtain Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and

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requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's Bidding/Proposal Documents and Front-End Construction Contract Documents.

- a. Also obtain copies of Owner's standard Bidding/Proposal Documents and Front-End Construction Contract Documents (if other than the EJCDC 2018 Construction Series documents), and any other related documents or content for Engineer to include in drafts of the Project-specific Bidding/Proposal Documents and Front-End Construction Contract Documents, when applicable.
  - b. Review Owner's instructions regarding procurement, bidding and contracting of construction services with respect to effects on the Project design, schedule and construction and address as needed in the Preliminary Design Phase deliverables.
15. Prepare the Preliminary Design Phase Report. This Report will consist of, as appropriate, separate or combined submittals in whole or summary, the Preliminary Design Phase documents listed in Exhibit A Paragraph 1.03.B.4, and Engineer's findings and recommendations for advancing the Project to the Final Design Phase (including Engineer's findings and recommendations, if any, regarding permitting, utilities, and Underground Facilities). The submittal will be in the format of a report, or otherwise organized and assembled for ease and practicality of use.
- a. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and on the basis of information furnished by Owner, assist Owner in tabulating the various cost categories which comprise Total Project Costs.
  - b. Engineer will meet with Owner to discuss the draft Preliminary Design Phase submittal and receive Owner's comments.
16. Furnish the Preliminary Design Phase Report, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner pursuant to the requirements of the Deliverables Schedule in Exhibit B, and review the deliverables with Owner.
17. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and submit revised deliverables pursuant to the Deliverables Schedule.
- C. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Preliminary Design Phase Report (as revised) and associated documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

#### 1.04 Final Design Phase

- A. After acceptance by Owner of the Preliminary Design Phase Report and any other Preliminary Design Phase deliverables; issuance by Owner of any instructions for specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner; and any necessary changes, refinements, and supplementation of the Baseline Information set forth at the beginning of this Exhibit A, Engineer and Owner shall discuss, resolve, and document any necessary revisions to Engineer's scope of services, compensation (through application of the provisions regarding Additional Services, or

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otherwise), and the time for completion of Engineer's services, resulting from specific modifications to the Project, or changes, refinements, or supplementation of the Baseline Information.

1. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is three. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.
  2. If more than one prime construction contract is to be awarded for the Work designed or specified by Engineer, then Owner shall define and set forth (in an exhibit to this Agreement, or in a subsequent document) the duties, responsibilities, and limitations of authority of a person or entity that will have authority and responsibility for coordinating the activities among the various prime Contractors, and any resulting changes in the duties, responsibilities, and authority of Engineer.
  3. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime construction contract, or if Engineer's services are to be separately sequenced with the work of one or more separate design professional consultants or prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding/Proposal, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable under such separate prime construction contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such construction contracts is to proceed concurrently.
- B. Upon written authorization from Owner, Engineer shall prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor, in accordance with the Preliminary Design Phase Report (as revised) and other Preliminary Design Phase deliverables. As part of the preparation of the Drawings and Specifications, Engineer shall prepare interim drafts and final Drawings and Specifications as follows, pursuant to the Deliverables Schedule in Exhibit B:
1. First Final Design Phase draft of all Drawings and Specifications.
  2. Second Final Design Phase draft of all Drawings and Specifications, addressing Owner comments and including appropriate design advancement.
  3. Final Drawings and Specifications that address Owner comments; complete the design; are suitable for estimating and pricing by prospective Contractors; and are complete and ready for construction.
- C. In preparing the Specifications (and any bidding, contract, or other documents that are part of Engineer's scope of services), Engineer shall obtain from Owner or Owner's legal counsel any relevant constraints such as requirements for use of domestic steel and iron, other domestic purchasing requirements, statutory restrictions on utilizing proprietary specifying methods, and the like, and comply with or account for such constraints in drafting Specifications, Bidding/Proposal Documents, and other Project documents.

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- D. Engineer shall prepare or assemble draft Bidding/Proposal Documents and Front-End Construction Contract Documents as follows:
1. Such documents will be based on the 2018 EJCDC Construction Documents, and on the specific bidding or Contractor selection-related instructions and forms, contract forms, text, or other content received from Owner.
  2. When Engineer is required to use other than the 2018 EJCDC Construction Documents, then as required in the Preliminary Design Phase Owner will furnish to Engineer a copy of the required documents to be used for the Project's Bidding/Proposal Documents and Front-End Construction Contract Documents. Prior to the first Final Design Phase submittal, Engineer will review the bidding and contracting documents furnished by Owner and provide comments to Owner. Engineer will meet with Owner to discuss Engineer's comments. Owner will consider Engineer's recommendations to revise Owner's documents for the Project.
  3. Engineer will furnish to Owner, for review by Owner's legal counsel, the draft Bidding/Proposal Documents and Front-End Construction Contract Documents. Owner and Owner's legal counsel must transmit to Engineer, in a timely manner, one coordinated set of comments and revisions to the draft documents.
- E. During the Final Design Phase the Engineer shall continue to account for above-ground utilities and Underground Facilities as the design advances and is finalized. This may include:
1. performing the services assigned to Engineer under the Underground Facilities Procedure described in Exhibit A Paragraph 1.03 above, including but not limited to the design-related tasks in Exhibit A Paragraph 1.03.B.9.
  2. addressing required and proposed activities or mitigations identified in the analysis of utilities and by the Underground Facilities Procedure as having an impact on the final design, and considering such in preparing the Drawings and Specifications.
- F. Engineer shall perform or furnish the following other Final Design Phase services:
1. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
  2. Assist with or prepare applications for permits and approvals, as follows:
    - a. Update comprehensive permit document created in Preliminary Design Phase for Final Design detail.
    - b. Prepare the following applications for Owner's submittal to authorities having jurisdiction over the construction or operation of the Project:
      - 1) Town of Merrimac, MA Planning Board.
      - 2) Massachusetts Department of Environmental Protection.
      - 3) Applicable Funding Agencies for project.
    - c. Confer with Owner regarding revisions, if any, to the application(s), and make appropriate revisions to the application(s) for Owner's resubmittal to the authority having jurisdiction.
    - d. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of the authorities having

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jurisdiction listed above, including applications for review or approval of the final design.

- e. Identify and indicate in the Construction Contract Documents the permits and approvals for which Contractor will be responsible, including work permits, building permits, and other permits and approvals that will be Contractor's responsibility; and, in addition, indicate those permits initially obtained by Owner for which Contractor will be a co-permittee, together with associated requirements.
  - f. Unless expressly indicated otherwise, Engineer's scope and budget includes attending one meeting or conference call with each permit and approval-issuing agency to discuss the Project and receive the agency's comments on the application.
  - g. Engineer does not guarantee issuance of any required permit or approval.
  - h. Fees charged by authorities having jurisdiction for such permits or approvals are the responsibility of Owner.
3. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost. Furnish to Owner an updated opinion of probable Construction Cost with the interim and final deliverables of the Drawings and Specifications.
  4. After consultation with Owner, include in the Front-End Construction Contract Documents any Electronic Document Protocol addressing specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website.
  5. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
  6. Review the preliminary schedule for the Construction Phase and advise Owner when initial understanding of the Construction Contract Times must or should be revised, and furnish Owner with recommendations on revisions to the proposed Construction Contract Times.
  7. Engineer's project manager and other appropriate staff will participate in the following meetings and conference calls:
    - a. First draft design review meeting at Owner's office.
    - b. Second draft design review meeting at Owner's office.
    - c. Engineer will prepare and distribute minutes of each such meeting and conference call, indicating attendees, topics discussed, decisions made, and action items for follow-up.
  8. Perform or provide the following other Final Design Phase activities or deliverables:
    - a) Conduct additional topographic survey of the site and field verify the building configurations.

- b) Design foundation requirements from soils borings of the site.
- c) Finalize design concepts with the Owner.
- d) Develop final CAD base sheets from the field survey.
- e) Develop a P&ID Process Flow Diagram for the project.
- f) Develop a Hydraulic Profile for the project and set reactor grades and elevations.
- g) Conduct process sizing calculations for all reactors and equipment needed for the project.
- h) Prepare site plans showing the existing site, the proposed site, the required grading and roadway plans, and yard piping plans and profiles.
- i) Develop demolition plans for all existing structures and processes.
- j) Develop structural plans for all buildings and reactors.
- k) Prepare mechanical and process sheets for all equipment and unit processes.
- l) Prepare contract documents consisting of plans and specifications for all of the above items.
- m) Work with Sevee & Mahar, the Town's contracted Engineer, throughout the project to have close communication such that this can retain the lead client contact role.
- n) Attend design meetings with Sevee & Mahar and the Town to maintain good communication and concurrence on all critical design decisions.
- o) Prepare bidding packages for subconsultants to do plumbing, electrical and HVAC work on the project.
- p) We would work with the Town to approve subsequent contracts and budget phases for each subconsultant.
- q) Take lead role in securing funding for the project including filling out applications, meeting with funding agencies, preparing bidding documents, etc., including developing a Preliminary Engineering Report and Environmental Review report for the funding agencies.
- r) Prepare a detailed opinion of probable cost estimate based upon the final project plans and apply for construction funds based upon that estimate.
- s) Once contract documents are approved, work with DEP and all funding agencies to put the various packages out to bid.

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- t) Attend a Prebid Conference and answer questions during bidding, issue Addenda as needed, and hold a Bid Opening.
- u) Check contractor references and make a recommendation for the award of each contract.
- v) Provide contract administration during construction including a Preconstruction Conference, monthly pay meetings, submittal reviews, constant contact with Sevee & Mahar and the resident engineer to ensure the project is being built as planned, and preparation of ongoing documents for requisitions, change orders, closeout, etc.
- w) Participate in equipment startups, etc., O& M training, O& M Manual, etc.
- x) Sevee & Mahar will provide the Resident Engineer and our firm will coordinate.

G. Engineer shall complete the Final Design Phase as follows:

1. Pursuant to the requirements of the Deliverables Schedule in Exhibit B, furnish for review by Owner, its legal counsel, and other advisors, the final Drawings and Specifications (as set forth in Exhibit A Paragraph 1.04.B.3 above); assembled drafts of other Construction Contract Documents including the draft Front-End Construction Contract Documents; the draft Bidding/Proposal Documents; the most recent opinion of probable Construction Cost; and any other Final Design Phase deliverables, and review the deliverables with Owner.
2. Revise the final Design Phase deliverables in response to Owner's comments, as appropriate, and submit revised deliverables pursuant to the Deliverables Schedule.
3. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications; assembled drafts of the Front-End Construction Contract Documents; the draft Bidding/Proposal Documents; and any other Final Design Phase deliverables, as revised.

1.05 Bidding/Proposal Phase

- A. After acceptance by Owner of the final Drawings and Specifications; assembled drafts of other Construction Contract Documents, including the draft Front-End Construction Contract Documents; the draft Bidding/Proposal Documents; the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and any other Final Design Phase deliverables, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work; assist Owner in issuing assembled Bidding/Proposal Documents and proposed Construction Contract Documents to prospective contractors; if applicable, maintain a record of prospective contractors to which documents have been issued; attend pre-bid conferences, if any; and receive and process contractor deposits or charges, if any, for the issued documents.

2. Prepare and issue addenda as appropriate to clarify, correct, or change the issued documents.
3. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Exhibit A Paragraph 2.01.A.2.
4. Attend the bid opening; prepare bid tabulation sheets; and assist Owner in evaluating bids or proposals, assembling final Construction Contracts for the Work for execution by Owner and Contractor, and in preparing notices of award to be issued by Owner for such contracts.
5. Provide information or assistance needed by Owner in the course of any review of bids, proposals, or negotiations with prospective contractors.
6. Consult with Owner as to the qualifications of prospective contractors.
7. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
9. The Bidding/Proposal Phase will be considered complete upon award of Construction Contracts for the Work and commencement of the Construction Phase, or upon cessation of negotiations with prospective contractors.

#### 1.06 Construction Phase

- A. After completion of the Final Design Phase and concurrent with the Bidding/Proposal Phase, and after issuance by Owner of any instructions for specific modifications or changes in the scope, extent, character, design, schedule, number of prime construction contracts, and other construction requirements of the Project during the Construction Phase desired by Owner, the Engineer and Owner shall discuss, resolve, and document any necessary revisions to Engineer's scope of services or compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from specific modifications to the Project.
  1. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A Paragraph 1.06, as duly modified. With the exception of such expressly required services, Engineer shall have no design, Submittal (including Shop Drawing) review, or other obligations during construction, and Owner assumes all responsibility for providing or arranging for all other necessary Construction Phase administrative, engineering, and professional services.
  2. Owner waives all claims against Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants, and Engineer's Subcontractors, that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer

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in Exhibit A. Notwithstanding the foregoing waiver, Engineer shall be responsible for any professional opinions and interpretations provided by Engineer to Owner during the Construction Phase or Post-Construction Phase, including interpretations or clarifications of the Construction Contract Documents.

- B. Upon successful completion of the Bidding/Proposal Phase, and upon written authorization from Owner, Engineer shall provide the following services:
1. General Administration of Construction Contract: Consult with Owner and act as Owner's representative as provided in this Agreement and the Construction Contract. Unless otherwise set forth in the scope of Basic Services (as duly modified), the extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2018) or other construction general conditions specified in this Agreement. Except as otherwise provided in the Construction Contract, Owner's communications to Contractor will be issued through Engineer.
    - a. If the responsibilities of Engineer as set forth in the Construction Contract are greater than those Construction Phase services expressly required of Engineer in Exhibit A Paragraph 1.06, as duly modified, then Owner shall either (1) expand the scope of the Construction Phase services to match those of the Construction Contract, and compensate Engineer for any related increases in the cost to provide Construction Phase services, pursuant to the provisions for compensating Additional Services, or (2) identify a qualified individual or entity (other than Engineer) responsible for the additional responsibilities in the Construction Contract.
    - b. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, or if Owner requires Engineer's services for construction that extends longer than the anticipated Construction Contract Times, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services, pursuant to the provisions for compensating Additional Services.
    - c. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional.
  2. Field Office: Engineer and Resident Project Representative will be based in a field office at the Site. The field office will be furnished and maintained at Contractor's expense, and will include reasonable furnishings, all required temporary utilities (including internet service) and facilities, and be secured for Engineer's (and RPR's) exclusive use.
  3. Selection of Independent Testing Laboratory: Assist Owner in the selection of an independent testing laboratory to perform required testing services.
  4. Pre-Construction Conference: Participate in a pre-construction conference prior to commencement of Work at the Site; prepare and distribute agenda for the conference and prepare and distribute minutes of such conference.

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5. Electronic Transmittal Protocols: If the Construction Contract does not establish protocols for transmittal of Electronic Documents by Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
6. Original Documents: If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. Schedules: Receive, review, and, and, subject to the criteria of the Construction Contract, determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the progress schedule, schedule of submittals, and schedule of values. Advise Contractor in writing of Engineer's comments or acceptance of schedules.
  - a. Schedules will be acceptable to Engineer as to form and substance:
    - 1) Progress Schedule: if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
    - 2) Contractor's Schedule of Submittals: if it provides a workable arrangement for reviewing and processing the required Submittals.
    - 3) Contractor's Schedule of Values: if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
8. Baselines and Benchmarks: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. Permits: Provide Owner with copies of technical information and supporting data previously obtained or developed by Engineer for Owner's use, or for Owner to provide to Contractor, in obtaining required permits and licenses delegated to Contractor by Owner.
10. Visits to Site and Observation of Construction: In connection with observations of Contractor's Work while it is in progress:
  - a. Make visits to the Site at intervals appropriate to the various stages of the Work, as Engineer deems necessary, to observe as an experienced and qualified design professional, the progress of Contractor's executed Work. Such visits and observations by Engineer, including Sevee & Mahar's RPR, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of

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general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the RPR, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work. Engineer will make a report of Engineer's visit, summarizing Engineer's general observations and any significant findings.

- b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to by this Agreement and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer will not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor will Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
11. Defective Work: If, on the basis of Engineer's observations or as indicated in documentation available to Engineer, Engineer believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, Engineer will promptly issue written notice to Contractor (with copy to Owner) of such defective Work. Such notice will communicate the scope, extent (to Engineer's understanding) of defect, and associated provisions of the Construction Contract Documents.
- a. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting the defective Work in accordance with the provisions of the Construction Contract Documents. Engineer shall give notice to Contractor regarding whether the defective Work should be repaired, replaced, or will be accepted by Owner.
  - b. However, Engineer's authority to provide this information to Owner or Engineer's decision to exercise or not exercise such authority will not give rise to a duty or responsibility of the Engineer to Contractors, Subcontractors, material and equipment suppliers, their agents or employees, or any other person(s) or entities performing any of the Work, including but not limited to any duty or responsibility

for Contractors' or Subcontractors' safety precautions and programs incident to the Work.

12. **Compatibility with Design Concept:** If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
13. **Clarifications and Interpretations:** Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
14. **Non-reviewable Matters:** If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (a) the performance or acceptability of the Work under the Construction Contract Documents, (b) the design (as set forth in the Drawings, Specifications, or otherwise), or (c) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
15. **Field Orders:** Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
16. **Change Orders and Work Change Directives:** Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
17. **Change Proposals and Claims**
  - a. **Review and respond to Change Proposals.** Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal.
  - b. **Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.**
18. **Differing Site Conditions:** Respond to any notice from Contractor of differing site conditions, including conditions relating to Underground Facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use subject to limitations of Engineer's obligations under this Agreement.

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19. **Contractor's Submittals:** Review and approve or take other appropriate action with respect to required Contractor Submittals, but only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Construction Contract Documents, and for compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's Submittal schedule that Engineer has accepted.
20. **Substitutes and "Or-equals":** Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Exhibit A Paragraph 2.01.A.2.
21. **Inspections and Tests**
  - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining whether the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
  - b. Reply to Contractor requests for written concurrence that specific portions of the Work that are to be inspected, tested, or approved may be covered.
  - c. Issue written requests to Contractor that specific portions of the Work remain uncovered.
  - d. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
  - e. Pursuant to the terms of the Construction Contract, require additional inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
22. **Contractor's Applications for Payment:** Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
  - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set offs) based on the provisions for set offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, within the limits of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the

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recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
23. Contractor's Completion Documents: Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Exhibit A Paragraph 1.06.B.20. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents will be to check that Contractor has submitted a complete set of those documents that Contractor is required to submit.
  24. Substantial Completion: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, visit the Site in company with Owner and Contractor to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
  25. Completion and Acceptability of the Work: After notice from Contractor that the Work is complete:

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- a. visit the Site with Owner and Contractor to determine if the Work is in fact complete and acceptable;
  - b. notify Contractor of any part of the Work that is found during the visit to be incomplete or defective, and subsequently confirm that Contractor has corrected any such deficiencies;
  - c. follow the procedures in the Construction Contract regarding review and response to Contractor's application for final payment and accompanying documentation; and
  - d. if Engineer is satisfied that the Work is complete and acceptable, provide a notice to Owner and Contractor using EJCDC® C-626, Notice of Acceptability of Work (attached as Exhibit E), stating that the Work is acceptable (subject to the provisions of the Notice and this Exhibit A) within the limits of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
26. Standards for Certain Construction-Phase Decisions: Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- C. Duration of Construction Phase: The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractor. If the Project involves more than one prime contract as indicated in Exhibit A Paragraph 1.04.A.1, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.
- 1.07 Post-Construction Phase
- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
- 1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
  - 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.

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- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate 12 months after the commencement of the Construction Contract's correction period.

## ARTICLE 2—ADDITIONAL SERVICES

### 2.01 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit J.
1. Substantive design and other technical services in connection with Work Change Directives, Change Proposals, and Change Orders to reflect changes requested by Owner.
  2. Services essential to the orderly progress of the Bidding/Proposal and Construction Phases and not wholly quantifiable prior to those Phases or otherwise dependent on the actions of prospective individual bidders or contractors and including:
    - a. making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items;
    - b. services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project;
    - c. evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract; and
    - d. providing to the Contractor or Owner additional or new information not previously prepared or developed by the Engineer for their use in applying for or obtaining required permits and licenses, in responding to agency comments on such applications, or in the administration of any such permits or licenses.
  3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
  4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
  5. Implement coordination of Engineer's services with other parts of the Project that are not planned or designed by Engineer or its Subconsultants, unless Owner furnished to Engineer substantive information about such other parts of the Project prior to the

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parties' entry into this Agreement, in the Baseline Information section of this Exhibit A, or otherwise in Exhibit A; if such substantive information has been so provided, coordination of Engineer's services will be part of Basic Services.

6. Implement the specific parts of an Underground Facilities Procedure that are assigned to Engineer, or above-ground utilities tasks that are assigned to Engineer as the Project progresses (but not including the design-related services already assigned to Engineer as a Basic Service).
7. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
8. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
9. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
10. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.
11. To the extent the Project is subject to Laws and Regulations governing public or government records disclosure or non-disclosure, Engineer will comply with provisions applicable to Engineer, and Owner will compensate Engineer as Additional Services for Engineer's costs to comply with any disclosure or non-disclosure obligations beyond those identified in the Basic Services.
12. Services directly attributable to changes in Engineer's Electronic Documents obligations after the effective date of the Agreement.

## 2.02 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit J.
  1. Obtain or provide specified additional Project-related information and data to enable Engineer to complete its Basic and Additional Services.
  2. Preparation of special and customized reporting, invoicing, and related support documentation in addition to that identified to be provided under Basic Services.
  3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.

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4. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
5. Undertaking investigations and studies including, but not limited to:
  - a. All-hazards risk assessments and other studies to evaluate the feasibility of enhancing the resiliency of the design;
  - b. detailed consideration of operations, maintenance, and overhead expenses;
  - c. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
  - d. preparation of appraisals;
  - e. with respect to proprietary systems or processes requiring licensing, providing services necessary to assist Owner in obtaining such licensing.
  - f. detailed quantity surveys of materials, equipment, and labor; and
  - g. audits or inventories required in connection with construction performed or furnished by Owner.
6. Furnishing services of Subconsultants or Engineer's Subcontractors for other than Basic Services.
7. Providing data or services of the types described in Article 2, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
8. Providing the following services:
  - a. Services attributable to more prime construction contracts than specified in Exhibit A Paragraph 1.04.A.1.
  - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
9. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Article 1 of Exhibit A).
10. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
11. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents); preparing pre-qualification procedures and documents, and participating in pre-qualifying prospective Bidders; and preparing Construction Contract Documents for alternate bids.

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12. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
13. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all addenda and any amendments negotiated by Owner and Contractor.
14. Services to assist Owner in developing or modifying protocols for transmittal of Electronic Documents by Electronic Means after the effective date of this Agreement, either by revising or adapting Exhibit F to the Project or implementing other Electronic Documents protocols among Project participants.
15. Any services by Engineer in connection with Owner or Engineer providing a Document to a Requesting Party under Exhibit F Paragraph 1.01.D (see Exhibit F, Electronic Documents Protocol), or any other distribution of a Document to a third party. Such services may include but are not limited to preparing the data contained in the requested Document in a manner deemed appropriate by Engineer; creating or otherwise preparing and distributing the Document in a format necessary to respond to Owner's direction or decision to provide the Document to a requesting party, including Contractor, in a format other than that required for deliverables from Engineer to Owner; and services in connection with obtaining required releases from the third parties to which the Documents will be distributed. Compensation for these Additional Services is not contingent upon Owner's reimbursement from the requesting party.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
18. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
19. Preparing to serve or serving as a consultant or witness for, or producing documents for or on behalf of, Owner in any litigation, arbitration, mediation, lien or bond claim, or other legal or administrative proceeding involving the Project (but not including disputes between Owner and Engineer).
20. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Exhibit A Paragraph 1.06.B.9; any type of property surveys or related engineering services needed for the transfer of interests in real property; providing construction and property surveys to replace reference points or property monuments lost or destroyed during construction; and providing other special field surveys.
21. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.

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22. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).

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**EXHIBIT C—AMENDMENT TO OWNER-ENGINEER AGREEMENT****AMENDMENT TO OWNER-ENGINEER AGREEMENT**

Amendment No. [Enter Amendment Number]

Owner: **Town of Merrimac, MA**Engineer: **Olver Associates Inc.**Project: **Wastewater Treatment Facility Upgrade**Effective Date of Owner-Engineer Agreement: **[Effective Date of Agreement]**

Nature of Amendment: (Check those that apply)

- ☐ Additional Services to be performed by Engineer
- ☐ Modifications to services of Engineer
- ☐ Modifications to responsibilities of Owner
- ☐ Modifications of payment to Engineer
- ☐ Modifications to time(s) for rendering services
- ☐ Modifications to other terms and conditions of the Agreement

Description of Modifications:

**[Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary. Include cost breakdown and documentation, if applicable.]**

Agreement Summary:

Original agreement amount: \$

Net change for prior amendments: \$

This amendment amount: \$

Adjusted Agreement amount: \$

Change in time for services (days or date, as applicable):

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. The Effective Date of the Amendment is **[Enter Effective Date of Amendment]**.

Owner

Engineer

(typed or printed name of organization)

(typed or printed name of organization)

By:

By:

(individual's signature)

(individual's signature)

(Attach evidence of authority to sign.)

(Attach evidence of authority to sign.)

Date:

Date:

(date signed)

(date signed)

Name:

Name:

(typed or printed)

(typed or printed)

Title:

Title:

(typed or printed)

(typed or printed)

Exhibit C—Amendment to Owner-Engineer Agreement.

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**EXHIBIT E—EJCDC® C-626, NOTICE OF ACCEPTABILITY OF WORK****NOTICE OF ACCEPTABILITY OF WORK (EJCDC® C-626 2018)**

|                |                                              |                           |
|----------------|----------------------------------------------|---------------------------|
| Owner:         | Town of Merrimac, MA                         | Owner's Project No.:      |
| Engineer:      | Olver Associates Inc.                        | Engineer's Project No.:   |
| Contractor:    |                                              | Contractor's Project No.: |
| Project:       | Wastewater Treatment Facility Upgrade        |                           |
| Contract Name: |                                              |                           |
| Notice Date:   | Effective Date of the Construction Contract: |                           |

The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract is acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents ("Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated [date of professional services agreement] ("Owner Engineer Agreement"). This Notice of Acceptability of Work (Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree:

1. This Notice has been prepared with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice has been prepared to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's Work) under the Owner Engineer Agreement, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Owner Engineer Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to otherwise comply with the Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

Engineer

By (signature): \_\_\_\_\_  
 Name (printed): \_\_\_\_\_  
 Title: \_\_\_\_\_

Exhibit E—Notice of Acceptability of Work.

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## EXHIBIT F—ELECTRONIC DOCUMENTS PROTOCOL (EDP)

### ARTICLE 1—ELECTRONIC DOCUMENTS PROTOCOL (EDP)

Paragraph 6.03 of the Agreement is supplemented by the following Exhibit F Paragraph 1.01 and Exhibit F—Attachment 1: Software Requirements for Electronic Document Exchange:

#### 1.01 Electronic Documents Protocol

- A. Electronic Transmittals: The parties shall conform to the following provisions together referred to as the Electronic Documents Protocol ("EDP" or "Protocol") for exchange of electronic transmittals.

##### 1. Basic Requirements

- a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents by Electronic Means using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Agreement.
- b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.
- c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Agreement.
- d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between the Owner and Engineer and any third party for any portion of the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with Owner, Engineer, or any Contractor or other entity directly contracted with the Owner to furnish Program-related services. Nothing herein will modify the requirements of the Agreement and applicable Construction Contract Documents regarding communications between and among the individual third parties and their respective subcontractors and consultants, except to the extent that any respective subcontractor or consultant exchanges Electronic Documents with the Owner or Engineer.
- e. When transmitting Electronic Documents, the transmitting Party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving Party's use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.
- f. Nothing herein negates any obligation (1) in the Agreement to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; (2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or

Exhibit F—Electronic Documents Protocol (EDP).

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(3) to comply with any notice requirements limiting or otherwise modifying the acceptance of Electronic Documents for such notice.

2. System Infrastructure for Electronic Document Exchange

- a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions ("System Infrastructure") at its own cost and sufficient for complying with the EDP requirements. With the exception of minimum standards set forth in this EDP and any explicit system requirements specified by attachment to this EDP, it will be the obligation of each party to determine, for itself, its own System Infrastructure.
  - 1) The maximum size of an e-mail attachment for exchange of Electronic Documents under this EDP is 100 MB. Attachments larger than that may be exchanged using large file transfer functions or physical media.
  - 2) Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.
- b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology ("IT") for maintaining operations of its System Infrastructure during the Project, including coordination with the party's individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.
- c. Each party will operate and maintain industry-standard, industry-accepted, ISO-standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as CD/DVD/flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it will not be liable to the other party for any breach of system security.
- d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties will cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Engineer, not reasonably anticipated under the original EDP, Engineer shall be entitled to compensation as Additional Services for its costs associated with the revisions to the EDP, delayed adoption of Exhibit L or implementation of other Electronic Documents protocols.
- e. Each party is responsible for its own back-up and archive of documents sent and received during the term of any Project contract/agreement under this EDP, unless this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the Parties may

Exhibit F—Electronic Documents Protocol (EDP).

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rely for document archiving during the specified term of operation of such project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of project documents, as each party deems necessary for its own purposes, after the term of contract, or termination of the project document archive, if one is established.

- f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.
- g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.

**B. Software Requirements for Electronic Document Exchange; Limitations**

- 1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.
  - a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.
- 2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.

**EXHIBIT G—INSURANCE****ARTICLE 1—INSURANCE**

Paragraph 6.04 of the Agreement, Insurance, is supplemented to include the following Exhibit G Paragraphs 1.01 and 1.02:

1.01 Insurance Policies and Limits

- A. In accordance with Paragraph 6.04.A of the Agreement, the insurance that Engineer must procure and maintain, and the policy limits of such insurance, are as follows:

| Coverage                                                  | Policy limits of not less than: |
|-----------------------------------------------------------|---------------------------------|
| <b>Workers' Compensation</b>                              |                                 |
| State                                                     | Statutory                       |
| <b>Employer's Liability</b>                               |                                 |
| Each accident                                             | \$1,000,000                     |
| Each employee                                             | \$1,000,000                     |
| Policy limit                                              | \$2,000,000                     |
| <b>Commercial General Liability</b>                       |                                 |
| General Aggregate                                         | \$2,000,000                     |
| Personal and Advertising Injury                           | \$1,000,000                     |
| Bodily Injury and Property Damage—Each Occurrence         | \$1,000,000                     |
| <b>Automobile Liability</b>                               |                                 |
| Combined Single Limit                                     |                                 |
| Combined Single Limit (Bodily Injury and Property Damage) | \$1,000,000                     |
| <b>Excess or Umbrella Liability</b>                       |                                 |
| Each Occurrence                                           | \$2,000,000                     |
| General Aggregate                                         | \$2,000,000                     |
| <b>Professional Liability</b>                             |                                 |
| Each Claim                                                | \$3,000,000                     |
| Annual Aggregate                                          | \$4,000,000                     |

Exhibit G—Insurance.

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- B. In accordance with Paragraph 6.04.C of the Agreement, the insurance that Owner must procure and maintain, and the policy limits of such insurance, are as follows:

| Coverage                                                  | Policy limits of not less than: |
|-----------------------------------------------------------|---------------------------------|
| <b>Workers' Compensation</b>                              |                                 |
| State                                                     | Statutory                       |
| <b>Employer's Liability</b>                               |                                 |
| Each accident                                             | \$1,000,000                     |
| Each employee                                             | \$1,000,000                     |
| Policy limit                                              | \$2,000,000                     |
| <b>Commercial General Liability</b>                       |                                 |
| General Aggregate                                         | \$2,000,000                     |
| Personal and Advertising Injury                           | \$1,000,000                     |
| Bodily Injury and Property Damage—Each Occurrence         | \$1,000,000                     |
| <b>Automobile Liability</b>                               |                                 |
| Combined Single Limit                                     |                                 |
| Combined Single Limit (Bodily Injury and Property Damage) | \$1,000,000                     |
| <b>Excess or Umbrella Liability</b>                       |                                 |
| Each Occurrence                                           | \$2,000,000                     |
| General Aggregate                                         | \$2,000,000                     |

#### 1.02 Additional Insureds

- A. Owner shall cause Engineer, its Subconsultants, and its Engineer's Subcontractors to be listed as additional insureds on any of Owner's general liability policies that are applicable to the Project. The following individuals or entities are to be listed on Owner's general liability policies of insurance (and on Contractor's policies required under Paragraph 6.04.D of the Agreement) as additional insureds:

| Name of Additional Insured | Address                                |
|----------------------------|----------------------------------------|
| Olver Associates Inc.      | P. O. Box 679, Winterport, Maine 04496 |
| [Engineer's Subconsultant] | To be determined                       |
| [Engineer's Subconsultant] | To be determined                       |
| [Other Additional Insured] | To be determined                       |

- B. During the term of this Agreement the Engineer shall notify Owner of any other Subconsultant or Engineer's Subcontractor to be listed as an additional insured on Owner's and applicable Contractor's general liability policies of insurance.
- C. The Owner must be listed on Engineer's general liability policy as provided in Paragraph 6.04.B.
- D. For applicable Contractor's general liability policies of insurance, the additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
- E. For applicable Contractor's general liability policies of insurance, Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors

#### Exhibit G—Insurance.

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Not Engaged by the Named Insured" or its equivalent for Engineer, Subconsultants, and other design professional additional insureds.

---

Exhibit G—Insurance.

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## EXHIBIT H—DISPUTE RESOLUTION

### ARTICLE 1—DISPUTE RESOLUTION METHOD

Paragraph 6.07 of the Agreement, Dispute Resolution, is supplemented to include the following Exhibit H Paragraph 1.01:

#### 1.01 Arbitration

- A. Method for Resolution of Disputes: All Disputes between Owner and Engineer that have not been resolved by negotiations or mediation will be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (subject to the conditions and limitations of this Exhibit H Paragraph 1.01). This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. Arbitration Provisions
  1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the selected arbitration administrator. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.
  2. The arbitrator(s) must be licensed engineers, architects, contractors, attorneys, or construction managers. Hearings will take place pursuant to the standard procedures of the Construction Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute or the Agreement. Any award in an arbitration initiated under this clause will be limited to monetary damages and include no injunction or direction to any party other than the direction to pay a monetary amount.
  3. If the applicable arbitration rules require a preliminary mediation, but the parties have already participated in mediation with respect to the Dispute, then the second mediation is not required.
  4. The rules of any arbitration must be supplemented to include the following: The award rendered by the arbitrators must be in writing, and include (a) a precise breakdown of the award, and (b) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.
  5. The award rendered by the arbitrators will be consistent with this Agreement and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.
  6. The arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a specific Law or Regulation or this Agreement expressly permits them to do so.
  7. The parties agree that failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative charges will constitute a waiver

Exhibit H—Dispute Resolution.

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Page 1 of 2

by that party of the right to present evidence or cross-examine witness. In such event, the other party will be required to present evidence and legal argument as the arbitrator(s) may require for the making of an award. Such waiver will not allow for a default judgment against the non-paying party in the absence of evidence presented as provided for above.

8. Except as may be required by Laws or Regulations, neither party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, with the exception of any disclosure required by Laws and Regulations or the Agreement. To the extent any disclosure is allowed pursuant to the exception, the disclosure must be strictly and narrowly limited to maintain confidentiality to the extent possible.
9. If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner, Subconsultants to the Engineer, or Engineer's Subcontractors (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Exhibit H Paragraph 1.01 nor in the provision of such contract consenting to joinder will create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.

---

Exhibit H—Dispute Resolution.

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## EXHIBIT I—LIMITATIONS OF LIABILITY

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### ARTICLE 1—LIMITATIONS OF LIABILITY

Paragraph 6.10 of the Agreement is supplemented to include Exhibit I Paragraph(s) 1.01:

#### 1.01 Limitation of Engineer's Liability

- A. **Engineer's Liability Limited to Amount of Insurance Proceeds:** Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by Laws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, Subconsultants, and Engineer's Subcontractors to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever (including but not limited to direct, indirect, special, incidental, punitive, exemplary, or consequential damages) arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, Subconsultants, or Engineer's Subcontractors (hereafter "Owner's Claims"), will be limited to (1) responsibility for payment of all or the applicable portion of any deductibles, either directly to the Engineer's insurers or in settlement or satisfaction, in whole or in part, of Owner's Claims, and (2) total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's applicable insurance policies up to the amount of insurance required under this Agreement.

---

Exhibit I—Limitation of Liability.

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Page 1 of 1

**EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES****COMPENSATION PACKET BC-1: BASIC SERVICES—LUMP SUM**

---

**ARTICLE 1—COMPENSATION PACKET BC-1: BASIC SERVICES—LUMP SUM**

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraph 1.01:

**1.01 Compensation for Basic Services (other than Resident Project Representative)—Lump Sum Method of Payment**

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A (except for Resident Project Representative services, if any) as follows:

1. A Lump Sum amount of \$1,440,000 based on the following estimated distribution of compensation and as phased as noted in Part C below:

|                                  |           |
|----------------------------------|-----------|
| a. Preliminary Design Phase      | \$300,000 |
| b. Final Design Phase            | \$890,000 |
| c. Bidding and Negotiating Phase | \$10,000  |
| d. Construction Administration   | \$200,000 |
| e. Post-Construction Phase       | \$40,000  |

Fees based on budget allowances presented in September 2022 report entitled "Treatment Process Evaluation of Merrimac Wastewater Treatment Facility" by Olver Associates Inc.

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but compensation will not exceed the total Lump Sum amount unless approved in writing by the Owner.
3. The Lump Sum includes compensation for Engineer's services but excludes services of Engineer's Subcontractors and Subconsultants, which will be billed as expense under Item 4. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, and expenses (other than any expressly allowed Reimbursable Expenses).
4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges):

|                                                   |           |
|---------------------------------------------------|-----------|
| Geotechnical Soils boring subconsultant allowance | \$ 35,000 |
| Electrical subconsultant allowance                | \$150,000 |
| HVAC/Plumbing subconsultant allowance             | \$140,000 |
| Miscellaneous expenses (copies/plans/etc)         | \$ 10,000 |

Expenses for subconsultants will be billed at cost without markup.

5. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period. Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

---

Exhibit J—Payments to Engineer for Services and Reimbursable Expenses.

Compensation Packet BC-1: Basic Services—Lump Sum.

Exhibits to EJCDC® E-500, Agreement between Owner and Engineer for Professional Services.

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Page 1 of 2

Attachment: Full Contract Merrimac 1-26-24 (Olver Phased Contract- Wastewater Treatment Plant Upgrades)

- B. Period of Service: The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 24 months. If such period of service is extended, the compensation amount for Engineer's services will be appropriately adjusted.
- C. Owner may phase the project to match available funding sources. Each phase and the amount of funding allocated to that phase will be authorized by Owner through the issuance of a written Notice to Proceed to Engineer. Said notice shall include budget limitations for that phase. Engineer will not invoice for any fees beyond the amount that Owner has authorized in writing for that Phase. As additional funding becomes available, Owner may authorize Engineer to proceed with additional phases by issuance of additional Notices to Proceed.
- D. Any and all payments which the Owner is required to make under this Agreement shall be subject to appropriation or other availability of funds as certified by the Town Accountant of the Owner. Engineer shall proceed only with work for which Owner has appropriated funds for phased scope as defined in writing. In the absence of appropriation or availability as certified herein, the Engineer shall not proceed beyond budget and scope which had already been approved. Engineer shall pause work until Owner authorizes additional phases in writing. Said pause shall be without liability for damages, penalties or other charges to the Owner. In the event this is a multi-year contract, this Agreement shall be subject to annual appropriation for additional phases and in the event funds are not so appropriated, the Engineer shall not proceed to additional phases of work. Said pause shall be without liability for damages, penalties or charges to the Owner. Engineer will proceed with work on additional project phases only after additional funds are appropriated. Massachusetts General Law Chapter 41, Section 56, shall apply to the aforementioned certifications by the Town Accountant which requires that its approval shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged by the Engineer were ordered and that such goods and materials were delivered and that the services were actually rendered to or for the Owner as the case may be.
- E. Phase One of project will be for Preliminary Design Phase and geotechnical services with budgets defined under 1.01(A)(1)(a) and 1.01 (A)(4)(line one) of this Exhibit. No further work will proceed without Owner's written authorization for future phases and only if and after additional funds are appropriated.

---

Exhibit J—Payments to Engineer for Services and Reimbursable Expenses.

Compensation Packet BC-1: Basic Services—Lump Sum.

Exhibits to EJCDC\* E-500, Agreement between Owner and Engineer for Professional Services.

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**EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES**  
**COMPENSATION PACKET AS-1: ADDITIONAL SERVICES—STANDARD HOURLY RATES**

---

**ARTICLE 2—COMPENSATION PACKET AS-1: ADDITIONAL SERVICES—STANDARD HOURLY RATES**

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraph 3.01:

**2.01 Compensation for Additional Services—Standard Hourly Rates Method of Payment**

**A. Owner shall pay Engineer for Additional Services, if any, as follows:**

1. For services of Engineer's personnel engaged directly on the Project pursuant to Exhibit A Paragraph 2.01 or 2.02, except for services as a consultant or witness under Exhibit A Paragraph 2.02.A.28 (which if needed will be separately negotiated based on the nature of the required consultation or testimony), an amount equal to the cumulative hours charged by each class of Engineer's personnel providing such Additional Services times Standard Hourly Rates for each applicable billing class, plus Additional Services-related Reimbursable Expenses and Additional Services-related Engineer's Subcontractors' and Subconsultants' charges, if any.

**B. Compensation for Reimbursable Expenses**

1. For those Reimbursable Expenses that are directly related to the provision of Additional Services, and are not already accounted for in the compensation for Basic Services or RPR-related services, Owner shall reimburse Engineer, using the rates set forth in Appendix 1 to this Exhibit J when applicable.
2. Such Reimbursable Expenses include, to the extent Additional Services-related, the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.0.

**C. Other Provisions Concerning Payment for Additional Services**

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Subcontractors and Subconsultants, such compensation will be the amounts billed by Engineer's Subcontractors and Subconsultants to Engineer times a factor of 1.0.
2. Factors: The external Reimbursable Expenses and Engineer's Subcontractors' and Subconsultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

---

Exhibit J—Payments to Engineer for Services and Reimbursable Expenses.

Compensation Packet AS-1: Additional Services—Standard Hourly Rates.

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3. The Standard Hourly Rates and the Reimbursable Expenses Schedule will be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer for Additional Services-related services and expenses.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

**EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES****APPENDIX 1: REIMBURSABLE EXPENSES SCHEDULE**

Reimbursable Expenses are subject to review and adjustment per Exhibit J. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

|                             |                              |
|-----------------------------|------------------------------|
| 8"x11" Copies/Impressions   | \$ 0.10/page                 |
| Copies of Drawings          | \$ 1.00/sq. ft.              |
| Mileage (auto)              | \$ 0.625/mile                |
| Laboratory Testing          | at cost                      |
| Meals and Lodging           | at cost                      |
| Geotechnical Subconsultant  | at cost (\$35,000 estimate)  |
| Electrical Subconsultant    | at cost (\$150,000 estimate) |
| HVAC/Plumbing Subconsultant | at cost (\$140,000 estimate) |

Exhibit J—Payments to Engineer for Services and Reimbursable Expenses.

Appendix 1: Reimbursable Expenses Schedule.

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Page 1 of 1

**EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES****APPENDIX 2: STANDARD HOURLY RATES SCHEDULE**

---

**A. Standard Hourly Rates**

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit J and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Exhibit J.

**B. Schedule: Hourly rates for services performed on or after the date of the Agreement are:**

|                        |             |
|------------------------|-------------|
| Principal Engineer     | \$ 190/hour |
| Project Engineer       | \$ 105/hour |
| Senior CAD Designer    | \$ 122/hour |
| Engineering Technician | \$ 92/hour  |
| Administrative         | \$ 60/hour  |

This Agreement's Effective Date is **[insert date]**.

Owner:

Town of Merrimac, MA

(name of organization)

By:

(individual's signature)

Date:

(date signed)

Name: Chris Manni

(typed or printed)

Title: Selectboard Chairman

(typed or printed)

Attach evidence of authority to sign.

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Merrimac Public Works Department

2-8 School Street

Merrimac, MA 01860

Designated Representative:

Name: Robert Sinibaldi

(typed or printed)

Title: Director Public Works

(typed or printed)

Address:

Merrimac Public Works Department

2-8 School Street

Merrimac, MA 01860

Phone: (978) 346-0612

Email: dpwdir@townofmerrimac.com

Engineer:

Olver Associates Inc.

(name of organization)

By:

(individual's signature)

Date:

(date signed)

Name: Mandy J. Holway P.E.

(typed or printed)

Title: Vice-President

(typed or printed)

Attach evidence of authority to sign.

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Olver Associates Inc.

P. O. Box 679

Winterport, Maine 04496

Designated Representative:

Name: Mandy J. Holway P.E.

(typed or printed)

Title: Vice-President

(typed or printed)

Address:

Olver Associates Inc.

P. O. Box 679

Winterport, Maine 04496

Phone: (207) 223-2232

Email: mandy@olverassociatesinc.com

**EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES**  
**COMPENSATION PACKET BC-1: BASIC SERVICES—LUMP SUM**

**ARTICLE 1—COMPENSATION PACKET BC-1: BASIC SERVICES—LUMP SUM**

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraph 1.01:

**1.01 Compensation for Basic Services (other than Resident Project Representative)—Lump Sum Method of Payment**

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A (except for Resident Project Representative services, if any) as follows:

1. A Lump Sum amount of \$1,440,000 based on the following estimated distribution of compensation and as phased as noted in Part C below:

|                                  |           |
|----------------------------------|-----------|
| a. Preliminary Design Phase      | \$300,000 |
| b. Final Design Phase            | \$890,000 |
| c. Bidding and Negotiating Phase | \$10,000  |
| d. Construction Administration   | \$200,000 |
| e. Post-Construction Phase       | \$40,000  |

Fees based on budget allowances presented in September 2022 report entitled "Treatment Process Evaluation of Merrimac Wastewater Treatment Facility" by Olver Associates Inc.

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but compensation will not exceed the total Lump Sum amount unless approved in writing by the Owner.
3. The Lump Sum includes compensation for Engineer's services but excludes services of Engineer's Subcontractors and Subconsultants, which will be billed as expense under Item 4. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, and expenses (other than any expressly allowed Reimbursable Expenses).
4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges):

|                                                   |           |
|---------------------------------------------------|-----------|
| Geotechnical Soils boring subconsultant allowance | \$ 35,000 |
| Electrical subconsultant allowance                | \$150,000 |
| HVAC/Plumbing subconsultant allowance             | \$140,000 |
| Miscellaneous expenses (copies/plans/etc)         | \$ 10,000 |

Expenses for subconsultants will be billed at cost without markup.

5. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period. Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

Exhibit J—Payments to Engineer for Services and Reimbursable Expenses.  
 Compensation Packet BC-1: Basic Services—Lump Sum.

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- B. Period of Service: The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 24 months. If such period of service is extended, the compensation amount for Engineer's services will be appropriately adjusted.
- C. Owner may phase the project to match available funding sources. Each phase and the amount of funding allocated to that phase will be authorized by Owner through the issuance of a written Notice to Proceed to Engineer. Said notice shall include budget limitations for that phase. Engineer will not invoice for any fees beyond the amount that Owner has authorized in writing for that Phase. As additional funding becomes available, Owner may authorize Engineer to proceed with additional phases by issuance of additional Notices to Proceed.
- D. Any and all payments which the Owner is required to make under this Agreement shall be subject to appropriation or other availability of funds as certified by the Town Accountant of the Owner. Engineer shall proceed only with work for which Owner has appropriated funds for phased scope as defined in writing. In the absence of appropriation or availability as certified herein, the Engineer shall not proceed beyond budget and scope which had already been approved. Engineer shall pause work until Owner authorizes additional phases in writing. Said pause shall be without liability for damages, penalties or other charges to the Owner. In the event this is a multi-year contract, this Agreement shall be subject to annual appropriation for additional phases and in the event funds are not so appropriated, the Engineer shall not proceed to additional phases of work. Said pause shall be without liability for damages, penalties or charges to the Owner. Engineer will proceed with work on additional project phases only after additional funds are appropriated. Massachusetts General Law Chapter 41, Section 56, shall apply to the aforementioned certifications by the Town Accountant which requires that its approval shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged by the Engineer were ordered and that such goods and materials were delivered and that the services were actually rendered to or for the Owner as the case may be.
- E. Phase One of project will be for Preliminary Design Phase and geotechnical services with budgets defined under 1.01(A)(1)(a) and 1.01 (A)(4)(line one) of this Exhibit. No further work will proceed without Owner's written authorization for future phases and only if and after additional funds are appropriated.

Exhibit J—Payments to Engineer for Services and Reimbursable Expenses.

Compensation Packet BC-1: Basic Services—Lump Sum.

Exhibits to EJCDC® E-500, Agreement between Owner and Engineer for Professional Services.

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**Agenda Item**  
**Council on Aging**  
**02/12/24**

**Performance Evaluation Bridget Batcheller**

Subject:

Please see the enclosed completed Performance Evaluation for Bridget Batcheller; Recommendation is for a 1% Positive Performance Increase. Seeking Select Board's Approval. Thank you.



**Agenda Item**  
**Public Works**  
**02/12/24**

**Water and Sewer Rate Increase - FY25**

Subject:

Attachments:

WATER RATE INCREASE - FY25

SEWER RATE INCREASE-FY25

City/Town/District Name: Town of Merrimac

| Water User Charges |              |              |              |           |          |               |                    |                      |                       |
|--------------------|--------------|--------------|--------------|-----------|----------|---------------|--------------------|----------------------|-----------------------|
|                    | FY23<br>Rate | FY24<br>Rate | FY25<br>Rate | \$ Change | % Change | FY23<br>Usage | Estimated<br>Usage | Estimated<br>Revenue | Estimated<br>Increase |
| Tier 1             | \$0.960      | \$1.080      | \$1.134      | \$0.05    | 5.00%    | 109,452,149   | 109,452,149        | \$1,241,187          | \$59,104              |
| Tier 2             |              |              |              |           |          |               |                    |                      |                       |
| Tier 3             |              |              |              |           |          |               |                    |                      |                       |
| Tier 4             |              |              |              |           |          |               |                    |                      |                       |
| Tier 5             |              |              |              |           |          |               |                    | \$0                  |                       |
| Irrigation         |              |              |              |           |          |               |                    | \$0                  |                       |
| Elderly            |              |              |              |           |          |               |                    | \$0                  |                       |
|                    |              |              |              |           |          |               |                    | \$1,241,187          | \$59,104              |

user charges

\*\* Total Estimated revenue must be equal to or greater than line 1.a, column (b) on the form A-2

Updated 01/23/24

City/Town/District Name: Town of Merrimac

| Sewer User Charges |              |              |              |           |          |               |                    |                      |                       |
|--------------------|--------------|--------------|--------------|-----------|----------|---------------|--------------------|----------------------|-----------------------|
|                    | FY23<br>Rate | FY24<br>Rate | FY25<br>Rate | \$ Change | % Change | FY22<br>Usage | Estimated<br>Usage | Estimated<br>Revenue | ESTIMATED<br>INCREASE |
| Tier 1             | \$1.595      | \$1.785      | \$1.874      | \$0.09    | 5.00%    | 87,902,260    | 87,902,260         | \$1,647,288          | \$78,233              |
| Tier 2             | \$76.16      | \$85.30      | \$89.57      | \$4.26    | 5.00%    | 6             | 6                  | \$537                | \$25.56               |
| Tier 3             | \$168.00     | \$188.00     | \$198.00     | \$10.00   | 5.00%    | 69            | 69                 | \$13,662             | \$690.00              |
| Tier 4             | \$6,500.00   | \$6,500.00   |              | \$0.00    | 0.00%    | 1             | 1                  | \$6,500              | \$0.00                |
| Tier 5             |              |              |              |           |          |               |                    | \$0                  |                       |
| Irrigation         |              |              |              |           |          |               |                    | \$0                  |                       |
| Elderly            |              |              |              |           |          |               |                    | \$0                  |                       |
| 12%                |              |              |              |           |          |               |                    | \$1,667,988          | \$78,949              |

user charges

# of accounts - flat rate

# of accounts - flat rate

only 1 account

\*\* Total Estimated revenue must be equal to or greater than line 1.a, column (b) on the form A-2

Updated 1/23/2024



**Agenda Item**  
**Merrimac Select Board**  
**02/12/24**

**Susan Searle Volunteer Application**

Subject:



**Agenda Item**  
**Merrimac Select Board**  
**02/12/24**

**Merrimac Old Home Days Town Wide Yard Sale September 2024 Dates**

Subject:

Attachments:

Merrimac Old Home Days Town Wide Yard Sale September 2024 dates

**From:** [Yvonne Bednarz](#)  
**To:** [Jennifer Penney - SELECT BOARD \(X3080\)](#)  
**Cc:** [Ben Beaulieu](#)  
**Subject:** MOHD Town Wide Yard Sale 2024 dates  
**Date:** Monday, January 29, 2024 9:27:36 AM

---

Jennifer, The Merrimac Old Home Days is requesting that September 21 and 22, 2024 be approved by the Merrimac Board of Selectmen for the Town Wide Yard Sale dates.

The rain dates will be September 28 and 29, 2024.

Please let me know if I need to be in attendance at the meeting this agenda item is assigned to.

Thank you  
Yvonne Bednarz, MOHD TWYS Chairperson



**Agenda Item**  
**Merrimac Select Board**  
**02/12/24**

**Dog Barking Formal Complaint**

**Subject:**

This matter has been forwarded to the Police Dept. and the animal control officer as a first step.

**Attachments:**

MA Complaint of Vicious or Barking Dogs S. 157 C. 140 General Laws\_Redacted

# Commonwealth of Massachusetts

## Complaint of Vicious or Barking Dogs

Section 157, Chapter 140, General Laws

TO SELECTMEN  
CHIEF OF POLICE  
COUNTY COMMISSIONERS

City or Town of Merrimac, MA Date 30 January 2024. I hereby make complaint hereon, that a dog or dogs owned or harbored by [REDACTED]

Name Address  
residing in my vicinity on or near [REDACTED]  
is a nuisance by reason of:— Street or Locality

1. Vicious disposition.

State facts here

2. Excessive barking.

State facts here The owner of [REDACTED] has an adult Golden Retriever that is let out in the middle of the night (Ranging from 11 PM-2AM). The Merrimac PD were called on Monday, 29 Jan at 1 AM to address this issue. I understand dogs bark and during the day its unpleasant but expected, however, in the middle of the night is a disturbance to the peace and distrupts the sleep of my neighborhood and family.

3. Other disturbance.

State facts here

4. Source of annoyance to a sick person residing in the vicinity.

State facts here

This complaint is made under the penalties of perjury.

Complainant's signature and address

//SIGNED// [REDACTED]

\$ [REDACTED]

Attachment: MA Complaint of Vicious or Barking Dogs S. 157 C. 140 General Laws\_Redacted (Dog Barking Formal Complaint)

## Investigation of Vicious or Barking Dogs

Section 157, Chapter 140, General Laws

City or Town of \_\_\_\_\_ Date \_\_\_\_\_

Upon complaint of \_\_\_\_\_  
made under the penalties of perjury and filed on \_\_\_\_\_ it is hereby ordered  
that \_\_\_\_\_ shall investigate forthwith such  
complaint including an examination of facts and conditions as exist in connection with the case and  
hereon make a report of your findings to me — us.

Signed, Selectmen: Chief of Police: County Commissioners.

Report on above investigation.

Investigator \_\_\_\_\_

Address \_\_\_\_\_

Report filed \_\_\_\_\_ 19\_\_\_\_  
(date)



**Agenda Item**  
**Merrimac Select Board**  
**02/12/24**

**Leo Reynolds Interim Highway Superintendent**

Subject:



**Agenda Item**  
**Merrimac Select Board**  
**02/12/24**

**IHCD Contract for ADA Website Review**

Subject:

Attachments:

IHCD cid8885B0F4-A367-461A-892F-5EC63D30A66D



## Town of Merrimac

### Web Site Review Proposed Budget - February 7, 2024

| Tasks                                                                                       | COST            |
|---------------------------------------------------------------------------------------------|-----------------|
| Internal Review Round 1                                                                     | \$1,710         |
| Report of Findings on Round 1 - Detailed Report (Individual Reports for Each of 5 Websites) | \$5,400         |
| Internal Review Round 2                                                                     | \$1,710         |
| User/Expert Review                                                                          | \$720           |
| Updated Detailed Reports with User/Expert Review                                            | \$1,220         |
| Consultation During Remediation                                                             | \$840           |
| Post-Remediation Final Review with Final Report                                             | \$840           |
| <b>TOTAL</b>                                                                                | <b>\$12,440</b> |

Websites to be reviewed: Town of Merrimac; Police Department; Fire Department  
Light Department; Library; The Senior Center

**Acceptance:** If this scope and budget is acceptable, please sign and return a digital copy to Gabriela Sims at [gsims@ihcdesign.org](mailto:gsims@ihcdesign.org).

#### Accepted by Town of Merrimac:

By: \_\_\_\_\_

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

Date: \_\_\_\_\_



**Agenda Item**  
**Merrimac Select Board**  
**02/12/24**

**Public Health Excellence Grant Inter Municipal Agreement**

Subject:

Attachments:

Email on IMA 11 15 2023 (002)

Email on Inter Municipal Agreement 11 15 2023

IMA Greater Amesbury PHE Group Rowley Edits 11.1.23 (002)

IMA Greater Amesbury PHE Group Rowley Edits 11.1.23

Select Board Request to Meet with BOH

Questions re proposed Regional IMA re Public Health

**Debbie Eagan**

**From:** Rowley Board of Health  
**Sent:** Tuesday, January 30, 2024 3:17 PM  
**To:** Debbie Eagan  
**Subject:** FW: PHE grant IMA for your review  
**Attachments:** IMA Greater Amesbury PHE Group 11.1.23.docx

**From:** Rowley Board of Health  
**Sent:** Wednesday, November 15, 2023 2:34 PM  
**To:** 'Ann Marie Casey' <Caseya@amesburyma.gov>  
**Cc:** 'Michael Hugo' <hugo@mahb.org>; Rowley Board of Health <health@townofrowley.org>  
**Subject:** RE: PHE grant IMA for your review

Hi Ann Marie,  
 Our Town Counsel reviewed the revised Intermunicipal Agreement (attached) with just 3 minor edits that appear in section 5 and 12.  
 Please let me know if you need any additional information.  
 Thank you,  
 Frank

Frank Marchegiani, R.S. | Health Director | Rowley Board of Health | 39 Central Street | P.O. Box 783 | Rowley, MA 01969 | (978) 948-2231 | Fax: (978) 948-7196 | [health@townofrowley.org](mailto:health@townofrowley.org) || Save paper – slim your signature

**From:** Ann Marie Casey [<mailto:Caseya@amesburyma.gov>]  
**Sent:** Monday, November 6, 2023 3:05 PM  
**To:** Vinny Tirone <[tironev@amesburyma.gov](mailto:tironev@amesburyma.gov)>; Deb Ketchen <[ketchend@amesburyma.gov](mailto:ketchend@amesburyma.gov)>; [anntmckay@hotmail.com](mailto:anntmckay@hotmail.com); [wholt@georgetownma.gov](mailto:wholt@georgetownma.gov); [Healthagent@grovelandma.com](mailto:Healthagent@grovelandma.com); [healthagent@townofmerrimac.com](mailto:healthagent@townofmerrimac.com); [cberube@townofmerrimac.com](mailto:cberube@townofmerrimac.com); [health.director@townofnewbury.org](mailto:health.director@townofnewbury.org); [lvlasuk@cityofnewburyport.com](mailto:lvlasuk@cityofnewburyport.com); Rowley Board of Health <[health@townofrowley.org](mailto:health@townofrowley.org)>; [psevigny@wnewbury.org](mailto:psevigny@wnewbury.org); [radecie@verizon.net](mailto:radecie@verizon.net)  
**Cc:** Michael Hugo <[hugo@mahb.org](mailto:hugo@mahb.org)>; Cheryl Sbarra <[sbarra@mahb.org](mailto:sbarra@mahb.org)>; [rich@muccilegal.com](mailto:rich@muccilegal.com)  
**Subject:** PHE grant IMA for your review

Hello Greater Amesbury PHE partners,

Per our meeting last week, please see the attached revised Intermunicipal Agreement for you to present to your respective Boards of Health and City Council/Select Boards.

Thank you to Attorney Rich Mucci for providing this.

Once I receive the Capacity Assessment Report, I will touch base again to set a follow up meeting.

Best,

Ann Marie

**ANN MARIE CASEY**  
Office of the Mayor, Chief of Staff

T (978) 388-8121  
M (781) 650-0791

City Hall | 62 Friend Street | Amesbury, MA 01913  
[www.amesburyma.gov](http://www.amesburyma.gov)



**From:** Rich Mucci <[rich@muccilegal.com](mailto:rich@muccilegal.com)>  
**Sent:** Wednesday, November 1, 2023 8:25 AM  
**To:** Ann Marie Casey <[caseya@amesburyma.gov](mailto:caseya@amesburyma.gov)>  
**Cc:** Michael Hugo <[hugo@mahb.org](mailto:hugo@mahb.org)>; Cheryl Sbarra <[Sbarra@mahb.org](mailto:Sbarra@mahb.org)>  
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Rich Mucci

Richard Mucci  
Law Offices of Richard Mucci  
63 Shore Road, Suite 23  
Winchester, MA 01890  
Phone: 781-729-3999  
Fax: 781-729-6999  
Email: [Rich@muccilegal.com](mailto:Rich@muccilegal.com)

Visit the Law Offices of Richard Mucci website at: [www.muccilegal.com](http://www.muccilegal.com)

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**Cc:** Michael Hugo <[hugo@mahb.org](mailto:hugo@mahb.org)>; Cheryl Sbarra <[sbarra@mahb.org](mailto:sbarra@mahb.org)>; [rich@muccilegal.com](mailto:rich@muccilegal.com)  
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**Greater Amesbury Public Health Excellence Group**  
**Inter-Municipal Agreement (IMA)**  
**for the Public Health Excellence for Shared Services Grant**

This Intermunicipal Agreement (hereinafter “Agreement”), is entered into by and between cities and/or towns of Amesbury, Georgetown, Groveland, Merrimac, Newbury, Newburyport, Rowley, and West Newbury, hereinafter referred to collectively as the “Municipalities,” and individually as a “Municipality,” and Amesbury, in its capacity as Host Agent of the Greater Amesbury Public Health Excellence Group, (hereinafter referred to as “Greater Amesbury PHE Group”) this \_\_\_\_ day \_\_\_\_ 2023, as follows:

**WHEREAS**, the City of Amesbury was awarded a Public Health Excellence for Shared Services grant by the Commonwealth of Massachusetts (the “Grant Program”) to create a cross-jurisdictional public health services sharing program consistent with the recommendations of the Special Commission on Local and Regional Public Health’s (SCLRPH) June 2019 Report; and

**WHEREAS**, the purpose of the Grant Program is to implement the recommendations made in the SCLRPH’s June 2019 Report by increasing local public health capacity through cross-jurisdictional shared services programs and agreements; and

**WHEREAS**, each of the Municipalities offers public health services and resources, and desires to increase its capacity to provide said services and resources and improve regional public health and meet performance standards set by the Commonwealth by entering this Agreement; and

**WHEREAS**, the City of Amesbury, entering into an agreement with the Commonwealth of Massachusetts governing its participation in the Grant Program, is willing and able to manage the administrative obligations of the Grant Program through its Director of Inspectional Services, who shall hereinafter be referred to as the “Program Manager”, and

**WHEREAS** each Municipality has authority to enter into this Agreement pursuant to M.G.L. c. 40, §4A;

**NOW THEREFORE**, the municipalities, in mutual consideration of the covenants contained herein, intending to be legally bound thereby, agree under seal as follows:

1. The Public Health Services Collaborative. There is hereby established a collaborative of the Municipalities to be known as the (“Greater Amesbury PHE Group”), which shall hereinafter be referred to as the “Collaborative.” The Collaborative, acting by and through an Advisory board (“Advisory Board”) as established in Section 5 of this Agreement, and Shared Services Manager, supervised by the Program Manager will coordinate, manage, and direct the activities of the parties with respect to the subject matter of the Grant Program, this Agreement, and the agreement between the (City of Amesbury), and the Commonwealth of Massachusetts, attached hereto as Exhibit A, the terms of which are expressly incorporated herein and shall bind all parties hereto, and any other programs and services related thereto. The purpose of the

Collaborative is to design and implement a program by which the public health staff and resources of the Municipalities are consolidated and shared such that cross-jurisdictional services, investigations, enforcement and data reporting may be carried out and the public health and safety of the Municipalities may be better protected (the “Shared Services Program”).

2. Term. The term of this Agreement shall commence on the date set forth above and shall expire when the funds for the Grant Program are no longer available, or when terminated in accordance with this Agreement, but in no event shall the Term of this Agreement exceed twenty-five (25) years unless permitted by statute. Nothing herein shall be interpreted to prevent the Municipalities from extending the term of this Agreement beyond the exhaustion of the Grant Funds with the written consent of all parties hereto.
3. Lead Municipality. During the term of this Agreement, the (City of Amesbury), acting as the “Lead Municipality,” shall oversee the Grant Program and the shared services program provided for herein (the “Shared Services Program”).

As the Lead Municipality, the (City of Amesbury) shall act for the Collaborative with respect to all grant applications to be submitted and gifts and grants received collectively by the Municipalities. The (City of Amesbury) shall act as the Municipalities’ purchasing agent pursuant to G.L. c. 7, §22B, for all contracts duly authorized by the Advisory Board, established pursuant to Section 5 of this Agreement, to be entered into collectively by the Municipalities. Final approval of any such contract is subject to approval of the Advisory Board and appropriation by each Municipality, to the extent required.

4. Shared Services Coordinator. The (City of Amesbury), as Lead Municipality, shall hire and employ a Shared Services Coordinator who may or may not be the (City of Amesbury)’s Director of Public Health, and, through the Shared Services Coordinator and its Health Department, shall perform all necessary fiscal and administrative functions necessary to provide the services contemplated under this Agreement, and shall be the holder of all grant funds related to the Grant Program, and may retain up to 15% of the funds received through the Grant Program for wages and resources related to the performance of such duties, in accordance with the Grant Program Scope of Services, attached hereto as Exhibit B and incorporated herein. The Shared Services Coordinator shall report to the Advisory Board and shall keep records of all funding and expenditures for review by the Board and provide periodic financial status updates. For the purposes of employment status and health, retirement and other benefits, and immunities and indemnification as provided by law, the Shared Services Coordinator and any participating Collaborative staff working on behalf of the Collaborative, or the Advisory Board shall be considered employees of (City of Amesbury) and shall be accorded all benefits enjoyed by other (City of Amesbury) employees within the same classification as they are or shall be established.

## 5. Advisory Board

There shall be a-an Advisory Board which shall be convened not less than quarterly by the Advisory Board Chair/Co-Chairs.

- a. Composition: one member and one alternate, both appointed by the Board of Health from each municipality. One representative from each municipality shall be a full voting member whose term shall be as determined by each municipality's local Board of Health. The voting member shall be a Board of Health member or designee of that municipality's Board of Health. Each participating municipality shall also have a second representative who shall be an associate member and who may vote only when the full member is not in attendance. Each municipality shall maintain its individual local Board of Health, which shall retain its own legal authority and autonomy as provided by law. The Shared Services Coordinator will be a non-voting member of the Advisory Board; however, in the event of a tie would be permitted to cast a deciding vote.
- b. Voting: Each participating municipality shall be entitled to one vote on the Advisory Board. Every voting member shall have an equal voice in determining shared priorities, and services to be provided.
- c. Quorum: A majority of the voting members of the Advisory Board shall constitute a quorum for the purposes of transacting business. The Advisory Board may act by a simple majority of members present and voting unless otherwise provided herein.
- d. Roles and Responsibilities of the Advisory Board:
  - 1) Meet on a regular basis and at least quarterly.
  - 2) Develop annual and long-term goals for the Collaborative.
  - 3) Advise on Collaborative staff priorities.
  - 4) Collaborate in developing a sustainability plan for (Greater Amesbury PHE Group).
  - 5) Adopt any Collaborative-wide policies and recommended regulations.
  - 6) Review and provide recommendations on operating budgets.
  - 7) Assure compliance with all mandatory reporting requirements as proscribed by the Department of Public Health ("DPH") and Office of Local and Regional Health ("OLRH").
  - 8) Assure attendance at monthly or other grant holder meetings convened by DPH and OLRH.
  - 9) Review financial status and financial statements provided by the Shared Services Coordinator.
  - 10) Review and provide recommendations on reports from staff.
  - 11) Hire, evaluate and terminate staff.
- e. Meetings. The Advisory Board shall meet no less than quarterly and may schedule additional meetings, as necessary. All meetings shall be conducted in compliance with the Massachusetts Open Meeting Law M.G.L. c. 30A, §§ 18-25 as may be amended from time to time if required.

6. Shared Services Program Participation. Each Municipality as part of this Agreement shall participate in the Shared Services Program as follows:
- a. Each Municipality will consent to the Collaborative's duly-authorized agents and representatives exercising the powers provided for herein and by the Advisory Board within the boundaries of said Municipality and will direct its agents and employees to work in good faith with the Collaborative's health agents, nurses, and any other employees the Collaborative may employ from time to time.
  - b. Each Municipality will be a member of the Advisory Board as established pursuant to this Agreement, and appoint and maintain two Advisory Board representatives at all times.
  - c. Each Municipality will use best efforts to ensure that a representative of the Municipality will attend all Advisory Board meetings (either in-person or via remote access) throughout the life of this Agreement.
  - d. Each Municipality will use best efforts to ensure that a representative of the Municipality will attend all training sessions which are offered in conjunction with the Grant Program geared towards stakeholders under the Program, as required by the DPH or its representative.
  - e. Each Municipality will assist in collecting the necessary data as agreed to by the Committee and pursuant to the data reporting policy established pursuant to Section 5 of this Agreement to help meet the goals of the Shared Services Program and the Grant Program. The data collection provided for herein will include, but not be limited to, reporting to the Advisory Board, through the Shared Services Coordinator, public health outcomes and services related to the Shared Services Program and the Collaborative's agents and nurses.
  - f. Each Municipality will request from the appropriate legislative body appropriation for any services, costs and expenses associated with the Collaborative and not covered by the Grant Program. Notwithstanding this provision or any other terms of this Agreement, no party shall be obligated to incur any financial cost above the amount made available herein through grants and gifts or other sources, unless the financial obligation is supported by an appropriation made in accordance with law.
  - g. Each Municipality will help promote and market the Shared Services Program and its services within their community.
7. Payment and Funding. Pursuant to G.L. c. 40, §4A, any funds received by the Shared Services Program, Advisory Board, or the (City of Amesbury) pursuant to this Agreement, shall be deposited with the treasurer of the (City of Amesbury) and held as a separate grant account and may be expended, with the approval of the Advisory Board, under the provisions of G.L. c. 34, §23 and G.L. c. 44, §53A, for contribution

toward the cost of the Shared Services Program and in compliance with established grant guidelines from grantors only.

The Advisory Board may authorize a disbursement of funds for any shared contractor, salary, or wages consistent with the terms of this Agreement, and/or for any program, service or benefit that is consistent with the terms of this Agreement.

Except for the 15% of Grant Program funding for administrative costs that the (City of Amesbury) may retain pursuant to Section 4 of this Agreement, a Municipality may draw on grant funds individually, with prior approval by the Advisory Board, and provided such funds are available, by submitting invoices to the Shared Services Coordinator for reimbursement from the funds, for expenditure consistent with the purposes of the Shared Services Program and applicable grant funding guidelines.

The (City of Amesbury), as the holder of Grant Program funds, will pay the invoice within 30 days, subject to the availability of funds; provided, however, that the (City of Amesbury) shall not be obligated to supply any funding or incur any cost in excess of the amounts made available to the Advisory Board and the Shared Services Program through the Grant Program and/or any other and gifts, grants, or other sources appropriated for the purposes of this Agreement. Individual municipal costs incurred outside the scope of this Agreement and specific to the needs of that Municipality will be borne solely by that Municipality. Any funds contributed by the Grant Program shall only be used for shared public health services consistent with the purposes of this Agreement.

Annually, the Advisory Board will develop and approve a public health services budget for contractual shared services. Initially, these services are funded by a 3-year Public Health Excellence Grant from the Department of Public Health administered by the (City of Amesbury). It is the intention of the (City of Amesbury) to seek additional grant funds to sustain these services but if that is unsuccessful, participating Municipalities will revisit this Agreement and determine whether they will allocate municipal funds to continue participation. The Shared Services Coordinator will provide each Municipality with sufficient notice to allow that Municipality's funding authority to authorize any such expenditure. Until grant funds are expended, there will be no cost to participating municipalities. Execution of this Agreement does not obligate any other participating Municipality to fund the Grant Program and a mutually acceptable written contract amendment would be required to do so.

Pursuant to G.L. c. 40, §4A, any party may, but shall not be required to, raise money by any lawful means to further the purposes of the Shared Services Program and any such funds shall be held by the (City of Amesbury) and expended pursuant to the terms of this Agreement.

8. Other Municipal Services. The Municipalities of the Collaborative may request the Advisory Board to add or remove associated services to be delivered as part of the

Shared Services Program, and such shall take effect only after this Agreement is so amended in writing and approved by each Municipality. The Municipalities are not limited exclusively to the Grant Program and are not required to use all services of the Grant Program. Municipalities may apply for other grants outside the Collaborative.

The Collaborative through a vote of the Advisory Board may apply for other grants, opportunities, funds, and awards for shared services on behalf of the Municipalities. The Advisory Board must approve any and all grants or grant applications submitted as a Collaborative. The Advisory Board may appoint other Municipalities to act as host agencies for these other grant opportunities and the Municipalities agree that this Agreement shall be amended to account for any associated grant terms and conditions.

9. Employees. Employees and personnel of each Municipality providing services pursuant to this Agreement shall be deemed employees of their respective Municipalities, and not shared services employees or employees of any other Municipality. An employee who performs services, pursuant to this Agreement on behalf of another member Municipality, shall be deemed to be acting within the scope of his current Municipal job duties at all times and remain an employee of the employee's Municipality for insurance coverage purposes. Said Municipal employee shall retain all accrued benefits and shall be subject to standard hiring and personnel practices of such municipality.
10. Indemnification & Insurance. To the extent permitted by law, each Municipality shall defend, indemnify, and hold the other Municipalities harmless from and against any and all claims, demands, liabilities, actions, causes of action, costs and expenses, including attorney's fees, arising out of the indemnifying Municipality's acts or omissions, breach of this Agreement, or the negligence or misconduct of the indemnifying Municipality or its agents or employees. In entering into this Agreement, no Municipality waives any governmental immunity or statutory limitation of damages. Should the Collaborative or a Municipality incur any liabilities on behalf of the Grant Program such as unemployment insurance or other unforeseen expenses, each of the member municipalities will proportionally share in the liability for such expenses.

The (City of Amesbury) and the Municipality shall obtain and keep in full force and effect public liability insurance in the amount of One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage arising out of any one occurrence, protecting the other party against all claims for bodily injury, Three Million Dollars (\$3,000,000) aggregate, death, or property damage arising directly or indirectly out of the Indemnification Provisions of this Agreement.

11. Entrance. Any municipality may petition the Collaborative to join this Agreement to the extent permitted by the grants. In order to approve the addition of a new entity to the Agreement for the Grant Program requires the approval of the Massachusetts Department of Public Health and no less than a two-thirds vote of the Advisory Board.
  
12. Withdrawal. Any Municipality other than the Lead Municipality, by votes of its respective authorizing bodies, may withdraw from this Agreement with the provision of at least three (3) months prior written notice to the Lead Municipalityies. Withdrawal requires the vote of both the Select Board and the Board of Health. Upon such withdrawal, the Shared Services Coordinator shall prepare full statements of outstanding unpaid financial obligations under this Agreement and present the same to the terminating Municipality for payment within thirty (30) days thereafter. To the extent permitted by the Grant Program and its agreement with the Commonwealth of Massachusetts pursuant thereto, the Lead Municipality, by a vote of its Select Board and Board of Health, may withdraw from this Agreement upon the provision of at least three (3) months prior written notice to the participating Municipalities and the Advisory Board, and a new Lead Municipality shall thereafter be designated by the Advisory Board, by a vote of the representatives of the remaining parties. Prior to the effective date of its withdrawal, the Lead Municipality shall transfer all funds held pursuant to this Agreement to the new Lead Municipality as designated by the Advisory Board any pay any outstanding unpaid financial obligations under this Agreement within thirty (30) days thereafter. Any Municipality may withdraw at the end of any fiscal year in which the Municipality's legislative body has not appropriated funds sufficient to support that Municipality's continued participation in the subsequent fiscal year if such funds are required. In such an event, the Municipality shall give as much notice to the other Municipalities to this Agreement as the circumstances allow. The Advisory Board, by vote of the remaining members, has the authority to reallocate grant resources or other outside funding that would have been allocated to the withdrawing Municipality. Any data collected from the terminating Municipality through a Shared Services Program project, service, or program will remain with the Advisory Board for analysis by the Shared Services Coordinator and the Advisory Board.
  
13. Termination. This Agreement may be terminated by a vote of a majority of the Municipalities' representatives of the Advisory Board, at a meeting of the Advisory Board called for that purpose; provided that the representative's vote has been authorized by the Municipality's Chief Executive Officer. Any termination vote shall not be effective until the passage of at least sixty (60) days and until the Municipalities have agreed to an equitable allocation of all remaining costs, expenses and assets.

14. Conflict Resolution. The Advisory Board may hold additional meetings to discuss and resolve any conflicts that may arise including, but not limited to, disagreements regarding the needs of each Municipality, administration of the shared services programs, the terms of this Agreement, data reporting and any other matters the parties deem necessary.
15. Financial Safeguards. The Lead Municipality shall maintain separate, accurate, and comprehensive records of all services performed for each of the Municipalities, and all contributions received from the Municipalities.
16. Assignment. None of the Municipalities 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 all of the other Municipalities.
17. Amendment. This Agreement may be amended only in writing pursuant to an affirmative vote of all Municipalities' (Chief Executive Officer/Appointing Authority).
18. Severability. 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 the remaining provisions hereof shall not be affected and shall remain in full force and effect.
19. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Massachusetts.
20. Headings. The paragraph headings herein are for convenience only, are no part of this Agreement, and shall not affect the interpretation of this Agreement.
21. Non-Discrimination. Neither the Lead Municipality nor the Municipalities shall discriminate against any person because of race, color, religious creed, national origin, gender, ancestry, sexual orientation, age, handicap, gender identity, genetic information, military service, or any other protected class under the law with respect to admission to, access to, or operation of its programs, services, or activities.
22. Notices. Any notice permitted or required hereunder to be given or served on any Municipality shall be in writing signed in the name of or on behalf of the Municipality 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 as set forth below:

City of Amesbury:  
Mayor Kassandra Gove

[govek@amesburyma.gov](mailto:govek@amesburyma.gov)

978-388-8121

Amesbury City Hall

62 Friend St.

Amesbury, MA 01913

Town of Georgetown:

(contact name)

(email)

(phone)

(address)

Town of Groveland:

(contact name)

(email)

(phone)

(address)

Town of Merrimac:

(contact name)

(email)

(phone)

(address)

Town of Newbury:

(contact name)

(email)

(phone)

(address)

City of Newburyport:

(contact name)

(email)

(phone)

(address)

Town of Rowley:

(contact name)

(email)

(phone)

(address)

Town of West Newbury:

(contact name)

(email)

(phone)

(address)

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

WITNESS OUR HANDS AND SEALS as of the first date written above.

\_\_\_\_\_  
Mayor, City of Amesbury

\_\_\_\_\_  
Date

\_\_\_\_\_  
Board of Health, City of Amesbury

\_\_\_\_\_  
Date

\_\_\_\_\_  
Select Board, Town of Georgetown

\_\_\_\_\_  
Date

\_\_\_\_\_  
Board of Health, Town of Georgetown

\_\_\_\_\_  
Date

\_\_\_\_\_  
Select Board, Town of Groveland

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Date

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Select Board, Town of Merrimac

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Date

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Board of Health, Town of Merrimac

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Date

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Select Board, Town of Newbury

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Date

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Board of Health, Town of Newbury

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Date

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Mayor, City of Newburyport

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Date

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Board of Health, City of Newburyport

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Date

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Select Board, Town of Rowley

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Date

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Board of Health, Town of Rowley

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Date

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Select Board, Town of West Newbury

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Date

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Board of Health, Town of West Newbury

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Date

**EXHIBIT A**

Grant agreement between the Greater Amesbury Public Health Excellence Group and the Commonwealth of Massachusetts – to be attached

**EXHIBIT B**

The scope of services the Greater Amesbury Public Health Excellence Group shall provide the following services in coordination with member municipalities:

TO BE FILLED IN

**Greater Amesbury Public Health Excellence Group**  
**Inter-Municipal Agreement (IMA)**  
**for the Public Health Excellence for Shared Services Grant**

This Intermunicipal Agreement (hereinafter “Agreement”), is entered into by and between cities and/or towns of Amesbury, Georgetown, Groveland, Merrimac, Newbury, Newburyport, Rowley, and West Newbury, hereinafter referred to collectively as the “Municipalities,” and individually as a “Municipality,” and Amesbury, in its capacity as Host Agent of the Greater Amesbury Public Health Excellence Group, (hereinafter referred to as “Greater Amesbury PHE Group”) this \_\_\_\_ day \_\_\_\_ 2023, as follows:

**WHEREAS**, the City of Amesbury was awarded a Public Health Excellence for Shared Services grant by the Commonwealth of Massachusetts (the “Grant Program”) to create a cross-jurisdictional public health services sharing program consistent with the recommendations of the Special Commission on Local and Regional Public Health’s (SCLRPH) June 2019 Report; and

**WHEREAS**, the purpose of the Grant Program is to implement the recommendations made in the SCLRPH’s June 2019 Report by increasing local public health capacity through cross-jurisdictional shared services programs and agreements; and

**WHEREAS**, each of the Municipalities offers public health services and resources, and desires to increase its capacity to provide said services and resources and improve regional public health and meet performance standards set by the Commonwealth by entering this Agreement; and

**WHEREAS**, the City of Amesbury, entering into an agreement with the Commonwealth of Massachusetts governing its participation in the Grant Program, is willing and able to manage the administrative obligations of the Grant Program through its Director of Inspectional Services, who shall hereinafter be referred to as the “Program Manager”, and

**WHEREAS** each Municipality has authority to enter into this Agreement pursuant to M.G.L. c. 40, §4A;

**NOW THEREFORE**, the municipalities, in mutual consideration of the covenants contained herein, intending to be legally bound thereby, agree under seal as follows:

1. The Public Health Services Collaborative. There is hereby established a collaborative of the Municipalities to be known as the (“Greater Amesbury PHE Group”), which shall hereinafter be referred to as the “Collaborative.” The Collaborative, acting by and through an Advisory board (“Advisory Board”) as established in Section 5 of this Agreement, and Shared Services Manager, supervised by the Program Manager will coordinate, manage, and direct the activities of the parties with respect to the subject matter of the Grant Program, this Agreement, and the agreement between the (City of Amesbury), and the Commonwealth of Massachusetts, attached hereto as Exhibit A, the terms of which are expressly incorporated herein and shall bind all parties hereto, and any other programs and services related thereto. The purpose of the

Collaborative is to design and implement a program by which the public health staff and resources of the Municipalities are consolidated and shared such that cross-jurisdictional services, investigations, enforcement and data reporting may be carried out and the public health and safety of the Municipalities may be better protected (the “Shared Services Program”).

2. Term. The term of this Agreement shall commence on the date set forth above and shall expire when the funds for the Grant Program are no longer available, or when terminated in accordance with this Agreement, but in no event shall the Term of this Agreement exceed twenty-five (25) years unless permitted by statute. Nothing herein shall be interpreted to prevent the Municipalities from extending the term of this Agreement beyond the exhaustion of the Grant Funds with the written consent of all parties hereto.
3. Lead Municipality. During the term of this Agreement, the (City of Amesbury), acting as the “Lead Municipality,” shall oversee the Grant Program and the shared services program provided for herein (the “Shared Services Program”).

As the Lead Municipality, the (City of Amesbury) shall act for the Collaborative with respect to all grant applications to be submitted and gifts and grants received collectively by the Municipalities. The (City of Amesbury) shall act as the Municipalities’ purchasing agent pursuant to G.L. c. 7, §22B, for all contracts duly authorized by the Advisory Board, established pursuant to Section 5 of this Agreement, to be entered into collectively by the Municipalities. Final approval of any such contract is subject to approval of the Advisory Board and appropriation by each Municipality, to the extent required.

4. Shared Services Coordinator. The (City of Amesbury), as Lead Municipality, shall hire and employ a Shared Services Coordinator who may or may not be the (City of Amesbury)’s Director of Public Health, and, through the Shared Services Coordinator and its Health Department, shall perform all necessary fiscal and administrative functions necessary to provide the services contemplated under this Agreement, and shall be the holder of all grant funds related to the Grant Program, and may retain up to 15% of the funds received through the Grant Program for wages and resources related to the performance of such duties, in accordance with the Grant Program Scope of Services, attached hereto as Exhibit B and incorporated herein. The Shared Services Coordinator shall report to the Advisory Board and shall keep records of all funding and expenditures for review by the Board and provide periodic financial status updates. For the purposes of employment status and health, retirement and other benefits, and immunities and indemnification as provided by law, the Shared Services Coordinator and any participating Collaborative staff working on behalf of the Collaborative, or the Advisory Board shall be considered employees of (City of Amesbury) and shall be accorded all benefits enjoyed by other (City of Amesbury) employees within the same classification as they are or shall be established.

## 5. Advisory Board

There shall be ~~a~~an Advisory Board which shall be convened not less than quarterly by the Advisory Board Chair/Co-Chairs.

- a. Composition: one member and one alternate, both appointed by the Board of Health from each municipality. One representative from each municipality shall be a full voting member whose term shall be as determined by each municipality's local Board of Health. The voting member shall be a Board of Health member or designee of that municipality's Board of Health. Each participating municipality shall also have a second representative who shall be an associate member and who may vote only when the full member is not in attendance. Each municipality shall maintain its individual local Board of Health, which shall retain its own legal authority and autonomy as provided by law. The Shared Services Coordinator will be a non-voting member of the Advisory Board; however, in the event of a tie would be permitted to cast a deciding vote.
- b. Voting: Each participating municipality shall be entitled to one vote on the Advisory Board. Every voting member shall have an equal voice in determining shared priorities, and services to be provided.
- c. Quorum: A majority of the voting members of the Advisory Board shall constitute a quorum for the purposes of transacting business. The Advisory Board may act by a simple majority of members present and voting unless otherwise provided herein.
- d. Roles and Responsibilities of the Advisory Board:
  - 1) Meet on a regular basis and at least quarterly.
  - 2) Develop annual and long-term goals for the Collaborative.
  - 3) Advise on Collaborative staff priorities.
  - 4) Collaborate in developing a sustainability plan for (Greater Amesbury PHE Group).
  - 5) Adopt any Collaborative-wide policies and recommended regulations.
  - 6) Review and provide recommendations on operating budgets.
  - 7) Assure compliance with all mandatory reporting requirements as proscribed by the Department of Public Health ("DPH") and Office of Local and Regional Health ("OLRH").
  - 8) Assure attendance at monthly or other grant holder meetings convened by DPH and OLRH.
  - 9) Review financial status and financial statements provided by the Shared Services Coordinator.
  - 10) Review and provide recommendations on reports from staff.
  - 11) Hire, evaluate and terminate staff.
- e. Meetings. The Advisory Board shall meet no less than quarterly and may schedule additional meetings, as necessary. All meetings shall be conducted in compliance with the Massachusetts Open Meeting Law M.G.L. c. 30A, §§ 18-25 as may be amended from time to time if required.

6. Shared Services Program Participation. Each Municipality as part of this Agreement shall participate in the Shared Services Program as follows:
- a. Each Municipality will consent to the Collaborative's duly-authorized agents and representatives exercising the powers provided for herein and by the Advisory Board within the boundaries of said Municipality and will direct its agents and employees to work in good faith with the Collaborative's health agents, nurses, and any other employees the Collaborative may employ from time to time.
  - b. Each Municipality will be a member of the Advisory Board as established pursuant to this Agreement, and appoint and maintain two Advisory Board representatives at all times.
  - c. Each Municipality will use best efforts to ensure that a representative of the Municipality will attend all Advisory Board meetings (either in-person or via remote access) throughout the life of this Agreement.
  - d. Each Municipality will use best efforts to ensure that a representative of the Municipality will attend all training sessions which are offered in conjunction with the Grant Program geared towards stakeholders under the Program, as required by the DPH or its representative.
  - e. Each Municipality will assist in collecting the necessary data as agreed to by the Committee and pursuant to the data reporting policy established pursuant to Section 5 of this Agreement to help meet the goals of the Shared Services Program and the Grant Program. The data collection provided for herein will include, but not be limited to, reporting to the Advisory Board, through the Shared Services Coordinator, public health outcomes and services related to the Shared Services Program and the Collaborative's agents and nurses.
  - f. Each Municipality will request from the appropriate legislative body appropriation for any services, costs and expenses associated with the Collaborative and not covered by the Grant Program. Notwithstanding this provision or any other terms of this Agreement, no party shall be obligated to incur any financial cost above the amount made available herein through grants and gifts or other sources, unless the financial obligation is supported by an appropriation made in accordance with law.
  - g. Each Municipality will help promote and market the Shared Services Program and its services within their community.
7. Payment and Funding. Pursuant to G.L. c. 40, §4A, any funds received by the Shared Services Program, Advisory Board, or the (City of Amesbury) pursuant to this Agreement, shall be deposited with the treasurer of the (City of Amesbury) and held as a separate grant account and may be expended, with the approval of the Advisory Board, under the provisions of G.L. c. 34, §23 and G.L. c. 44, §53A, for contribution

toward the cost of the Shared Services Program and in compliance with established grant guidelines from grantors only.

The Advisory Board may authorize a disbursement of funds for any shared contractor, salary, or wages consistent with the terms of this Agreement, and/or for any program, service or benefit that is consistent with the terms of this Agreement.

Except for the 15% of Grant Program funding for administrative costs that the (City of Amesbury) may retain pursuant to Section 4 of this Agreement, a Municipality may draw on grant funds individually, with prior approval by the Advisory Board, and provided such funds are available, by submitting invoices to the Shared Services Coordinator for reimbursement from the funds, for expenditure consistent with the purposes of the Shared Services Program and applicable grant funding guidelines.

The (City of Amesbury), as the holder of Grant Program funds, will pay the invoice within 30 days, subject to the availability of funds; provided, however, that the (City of Amesbury) shall not be obligated to supply any funding or incur any cost in excess of the amounts made available to the Advisory Board and the Shared Services Program through the Grant Program and/or any other and gifts, grants, or other sources appropriated for the purposes of this Agreement. Individual municipal costs incurred outside the scope of this Agreement and specific to the needs of that Municipality will be borne solely by that Municipality. Any funds contributed by the Grant Program shall only be used for shared public health services consistent with the purposes of this Agreement.

Annually, the Advisory Board will develop and approve a public health services budget for contractual shared services. Initially, these services are funded by a 3-year Public Health Excellence Grant from the Department of Public Health administered by the (City of Amesbury). It is the intention of the (City of Amesbury) to seek additional grant funds to sustain these services but if that is unsuccessful, participating Municipalities will revisit this Agreement and determine whether they will allocate municipal funds to continue participation. The Shared Services Coordinator will provide each Municipality with sufficient notice to allow that Municipality's funding authority to authorize any such expenditure. Until grant funds are expended, there will be no cost to participating municipalities. Execution of this Agreement does not obligate any other participating Municipality to fund the Grant Program and a mutually acceptable written contract amendment would be required to do so.

Pursuant to G.L. c. 40, §4A, any party may, but shall not be required to, raise money by any lawful means to further the purposes of the Shared Services Program and any such funds shall be held by the (City of Amesbury) and expended pursuant to the terms of this Agreement.

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Shared Services Program, and such shall take effect only after this Agreement is so amended in writing and approved by each Municipality. The Municipalities are not limited exclusively to the Grant Program and are not required to use all services of the Grant Program. Municipalities may apply for other grants outside the Collaborative.

The Collaborative through a vote of the Advisory Board may apply for other grants, opportunities, funds, and awards for shared services on behalf of the Municipalities. The Advisory Board must approve any and all grants or grant applications submitted as a Collaborative. The Advisory Board may appoint other Municipalities to act as host agencies for these other grant opportunities and the Municipalities agree that this Agreement shall be amended to account for any associated grant terms and conditions.

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City of Amesbury:  
Mayor Cassandra Gove

[govek@amesburyma.gov](mailto:govek@amesburyma.gov)

978-388-8121

Amesbury City Hall

62 Friend St.

Amesbury, MA 01913

Town of Georgetown:

(contact name)

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City of Newburyport:

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Town of Rowley:

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Town of West Newbury:

(contact name)

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(address)

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WITNESS OUR HANDS AND SEALS as of the first date written above.

\_\_\_\_\_  
Mayor, City of Amesbury

\_\_\_\_\_  
Date

\_\_\_\_\_  
Board of Health, City of Amesbury

\_\_\_\_\_  
Date

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Select Board, Town of Georgetown

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Date

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Board of Health, Town of Georgetown

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Select Board, Town of Groveland

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Board of Health, Town of Merrimac

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Select Board, Town of Newbury

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Date

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Board of Health, Town of Newbury

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Date

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Mayor, City of Newburyport

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Date

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Board of Health, City of Newburyport

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Date

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Select Board, Town of Rowley

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Date

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Board of Health, Town of Rowley

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Date

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Select Board, Town of West Newbury

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Date

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Board of Health, Town of West Newbury

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Date

**EXHIBIT A**

Grant agreement between the Greater Amesbury Public Health Excellence Group and the  
Commonwealth of Massachusetts – to be attached

## EXHIBIT B

The scope of services the Greater Amesbury Public Health Excellence Group shall provide the following services in coordination with member municipalities:

TO BE FILLED IN

**From:** [Chris Berube - BOH Chair](#)  
**To:** [Jennifer Penney - SELECT BOARD \(X3080\)](#)  
**Cc:** [Julie Gilchrist - BOH \(X3050\)](#)  
**Subject:** Re: Select Board Request to Meet  
**Date:** Wednesday, January 31, 2024 3:33:18 PM

---

Hi Jen

The Grant is still looking to get off the ground so I really do not have anything new to report. Once the group hires the Coordinator, I will have more detailed information about what activities / services will be offered with the Grant funds.

The BOS is always welcome to our meetings

The next BOH meeting will be at the Merrimac Police Station Conference Room 2/28 at 630

Thank you  
 Chris

---

**From:** Jennifer Penney - SELECT BOARD (X3080) <selectmen@townofmerrimac.com>  
**Sent:** Tuesday, January 30, 2024 10:42 AM  
**To:** Chris Berube - BOH Chair <cberube@townofmerrimac.com>  
**Cc:** Julie Gilchrist - BOH (X3050) <boh@townofmerrimac.com>  
**Subject:** Select Board Request to Meet

Chris,

The select board would like to meet with the Board of Health at their next meeting to discuss the proposed Regional IMA for the Public Health Excellence for Shared Services Grant. Please let me know if you are available to meet on 2/12/24 at 7PM. Thank you.

*Jennifer Penney*

Executive Assistant, Notary Public  
 Office of the Select Board  
 Town of Merrimac  
 4 School St.  
 Merrimac, MA 01860  
 P: 978-346-8862  
 Hours: Monday 8-7; Tue.-Thur. 8-4

<https://townofmerrimac.com/select-board/>

Notice:

This email is subject to [MGL: Chpt.66, Sec.10 Public Records Law.](#)

Attachment: Select Board Request to Meet with BOH (Public Health Excellence Grant Inter Municipal Agreement)



**From:** [Carol McLeod - Finance \(X3040\)](#)  
**To:** [Jennifer Penney - SELECT BOARD \(X3080\)](#)  
**Subject:** FW: Questions re proposed Regional IMA re Public Health  
**Date:** Wednesday, January 31, 2024 3:46:13 PM  
**Attachments:** [Email on IMA 11 15 2023.pdf](#)  
[IMA Greater Amesbury PHE Group Rowley Edits 11.1.23.docx](#)

---

Please see communication from Rowley with their legal review edits.

This original document has still not been provided to the Town from the Board of health so we can do our review.

Thank you,

Carol A. McLeod, CMMT  
 Finance Director, Treasurer, Town Administrator  
 Town of Merrimac  
 4 School St.  
 Merrimac, MA 01860  
 (978) 346-0524

Office Hours:

Monday 8 AM – 7 PM  
 Tuesday – Thursday 8 AM – 4 PM

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**From:** Debbie Eagan <debbie@townofrowley.org>  
**Sent:** Tuesday, January 30, 2024 4:13 PM  
**To:** Angus Jennings <townmanager@wnewbury.org>; Rebecca Oldham <ROldham@grovelandma.com>; Carol McLeod - Finance (X3040) <cmcleod@townofmerrimac.com>; Orlando Pacheco <OPacheco@georgetownma.gov>; Tracy Blais <administrator@townofnewbury.org>  
**Cc:** Executive Assistant <exec.assistant@wnewbury.org>  
**Subject:** RE: Questions re proposed Regional IMA re Public Health

Hi Angus:  
 Please see attached. Please let me know if you have any questions.

Sincerely,  
 Debbie

---

**From:** Angus Jennings [<mailto:townmanager@wnewbury.org>]  
**Sent:** Tuesday, January 30, 2024 4:01 PM  
**To:** Debbie Eagan <[debbie@townofrowley.org](mailto:debbie@townofrowley.org)>; Rebecca Oldham <[ROldham@grovelandma.com](mailto:ROldham@grovelandma.com)>; Carol McLeod - Finance (X3040) <[cmcleod@townofmerrimac.com](mailto:cmcleod@townofmerrimac.com)>; Orlando Pacheco <[OPacheco@georgetownma.gov](mailto:OPacheco@georgetownma.gov)>; Tracy Blais <[administrator@townofnewbury.org](mailto:administrator@townofnewbury.org)>

Attachment: Questions re proposed Regional IMA re Public Health (Public Health Excellence Grant Inter Municipal Agreement)

**Cc:** Executive Assistant <[exec.assistant@wnewbury.org](mailto:exec.assistant@wnewbury.org)>

**Subject:** RE: Questions re proposed Regional IMA re Public Health

Debbie, thanks for this. Would you be able to share Town Counsel's comments on the draft IMA? Trying to minimize duplication of effort (and manage legal costs), and will be happy to share what we learn as we dig into this further. Thanks!

Angus Jennings, Town Manager  
Town of West Newbury  
Town Office Building  
381 Main Street  
West Newbury, MA 01985  
(978) 363-1100 x111  
[townmanager@wnewbury.org](mailto:townmanager@wnewbury.org)

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**From:** Debbie Eagan <[debbie@townofrowley.org](mailto:debbie@townofrowley.org)>

**Sent:** Tuesday, January 30, 2024 3:21 PM

**To:** Angus Jennings <[townmanager@wnewbury.org](mailto:townmanager@wnewbury.org)>; Rebecca Oldham <[ROldham@grovelandma.com](mailto:ROldham@grovelandma.com)>; Carol McLeod - Finance (X3040) <[cmcleod@townofmerrimac.com](mailto:cmcleod@townofmerrimac.com)>; Orlando Pacheco <[OPacheco@georgetownma.gov](mailto:OPacheco@georgetownma.gov)>; Tracy Blais <[administrator@townofnewbury.org](mailto:administrator@townofnewbury.org)>

**Cc:** Executive Assistant <[exec.assistant@wnewbury.org](mailto:exec.assistant@wnewbury.org)>

**Subject:** RE: Questions re proposed Regional IMA re Public Health

Hi All:

My Board of Selectmen approved a Board of Health Shared Services Statement of Commitment in June of 2023. Please see attached. According to my Health Director Frank Marchegiani, our Town Counsel reviewed a draft intermunicipal agreement in mid-November 2023 and had a few edits that were then forwarded to Amesbury on November 15, 2023. Amesbury is the lead community on this initiative. At this point, my Health Director is not sure where the IMA review stands. Please let me know if you have any questions.

Sincerely,  
Debbie

Deborah M. Eagan  
Town Administrator  
Town of Rowley  
PO Box 275  
Rowley, MA 01969  
(t) 978-948-2705  
(f) 978-948-8202  
[debbie@townofrowley.org](mailto:debbie@townofrowley.org)  
[www.townofrowley.net](http://www.townofrowley.net)

Attachment: Questions re proposed Regional IMA re Public Health (Public Health Excellence Grant Inter Municipal Agreement)

**From:** Town Manager [<mailto:townmanager@wnewbury.org>]

**Sent:** Thursday, January 25, 2024 11:19 AM

**To:** Rebecca Oldham <[ROldham@grovelandma.com](mailto:ROldham@grovelandma.com)>; Carol McLeod - Finance (X3040) <[cmcleod@townofmerrimac.com](mailto:cmcleod@townofmerrimac.com)>; Orlando Pacheco <[OPacheco@georgetownma.gov](mailto:OPacheco@georgetownma.gov)>; Tracy Blais <[administrator@townofnewbury.org](mailto:administrator@townofnewbury.org)>; Debbie Eagan <[debbie@townofrowley.org](mailto:debbie@townofrowley.org)>

**Cc:** Executive Assistant <[exec.assistant@wnewbury.org](mailto:exec.assistant@wnewbury.org)>

**Subject:** Questions re proposed Regional IMA re Public Health

Hi,

Our Select Board has been asked to sign the attached IMA. I haven't referred it for Town Counsel review, but in my own review have a number of questions. I'm wondering whether/how your Boards have addressed this: have they taken it up, signed it? Is review ongoing/pending?

Note: I have only included the named towns' Town Administrators, not the Mayors, because of the differences in dynamics/form of govt between Select Boards and Mayors/Councils.

Would like to share info on this so we can jointly benefit from a collective understanding of the pros/cons(?) of this proposal. Happy to host a zoom if others would be interested.

Thanks,  
Angus

Angus Jennings, Town Manager  
Town of West Newbury  
Town Office Building  
381 Main Street  
West Newbury, MA 01985  
(978) 363-1100 x111  
[townmanager@wnewbury.org](mailto:townmanager@wnewbury.org)



**Agenda Item**  
**Town Clerk**  
**02/12/24**

**Proposing Fees for Vital Record Corrections**

Subject:

At this time Merrimac does not charge a fee for Vital Records Corrections. I am proposing the Town of Merrimac charge \$25.00 per correction as do the surrounding towns.



**Agenda Item**  
**Town Clerk**  
**02/12/24**

**Early Voting in Person for Local Election May 6, 2024**

Subject:

Local Election May 6, 2024, proposing Early Voting In Person at Town Hall April 29 thru Friday 10am-3pm.



**Agenda Item**  
**Town Clerk**  
**02/12/24**

**Local Election Vote by Mail**

Subject:

Local Election Vote By Mail - proposing to have vote by mail for the Local Election 5/6/2024



**Agenda Item**  
**Town Clerk**  
**02/12/24**

**Election Warrant**

Subject:

Election Warrant for Presidential Primary 3/5/2024



**Agenda Item**  
**Merrimac Select Board**  
**02/12/24**

**FY24 Firefighter Equipment Grant Agreement**

Subject:

Attachments:

Contractor Authorized Signatory Listing Form

DFS Award Letters\_Merged\_Part166

Fwd\_ FY24 Firefighter Safety Equipment Grant Contract Documents

FY2024 Merged Contracts\_Part166

FY24 Firefighter Safety Equipment Grant - Report Template

Governor's Award Letters\_Merged\_Part166

Grant Agreement SOW and Budget\_Merged\_Part166



Commonwealth of Massachusetts  
CONTRACTOR AUTHORIZED SIGNATORY LISTING

This form is jointly issued and published by the Office of the Comptroller (CTR) and the Operational Services Division (OSD) as the default form for all Commonwealth Departments when another form is not prescribed by regulation or policy.

Signature for Corporation (C or S), Partnership, Trust/Estate, Limited Liability Company  
(must match Form W-9 tax classification)

|                       |                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------|
| Contractor Legal Name | Contractor Vendor/Customer Code<br>(if available, not the Taxpayer Identification Number or Social Security Number) |
|-----------------------|---------------------------------------------------------------------------------------------------------------------|

**INSTRUCTIONS:** Any Contractor (other than a sole-proprietor or an individual contractor) must provide a listing of individuals who are authorized as legal representatives of the Contractor who can sign contracts and other legally binding documents related to the contract on the Contractor’s behalf. In addition to this listing, any state department may require additional proof of authority to sign contracts on behalf of the Contractor, or proof of authenticity of signature (a notarized signature that the Department can use to verify that the signature and date that appear on the Contract or other legal document was actually made by the Contractor’s authorized signatory, and not by a representative, designee or other individual.)

For privacy purposes **DO NOT ATTACH** any documentation containing personal information, such as bank account numbers, social security numbers, driver’s licenses, home addresses, social security cards or any other personally identifiable information that you do not want released as part of a public record. The Commonwealth reserves the right to publish the names and titles of authorized signatories of contractors.

There are three types of electronic signatures that will be accepted on this form: **1) Traditional “wet signature” (ink on paper); 2) Electronic signature that is either: a. hand drawn using a mouse or finger if working from a touch screen device; or b. An upload picture of the signatory’s hand drawn signature; 3) Electronic signature affixed using a digital tool such as Adobe Sign or DocuSign.** Typed text of a name not generated by a digital tool, computer generated cursive, or an electronic symbol are not acceptable forms of electronic signature.

| Authorized Signatory Name | Signature (Signature as it will appear on contract or other documents) | Title | Phone Number | Email Address |
|---------------------------|------------------------------------------------------------------------|-------|--------------|---------------|
|                           |                                                                        |       |              |               |
|                           |                                                                        |       |              |               |
|                           |                                                                        |       |              |               |
|                           |                                                                        |       |              |               |

**Acceptance of any payment under a Contract or Grant shall operate as a waiver of any defense by the Contractor challenging the existence of a valid Contract due to an alleged lack of actual authority to execute the document by the signatory.**

I certify that I am a responsible authorized officer of the Contractor and as an authorized officer of the Contractor I certify that the names of the individuals identified on this listing are current as of the date of execution and that these individuals are authorized to sign contracts and other legally binding documents related to contracts with the Commonwealth of Massachusetts on behalf of the Contractor. I understand and agree that the Contractor has a duty to ensure that this listing is immediately updated and communicated to any state department with which the Contractor does business whenever the authorized signatories above retire, are otherwise terminated from the Contractor’s employ, have their responsibilities changed resulting in their no longer being authorized to sign contracts with the Commonwealth or whenever new signatories are designated.

**Please note you cannot self-certify your own signature as a single signer listed above.**

|            |               |
|------------|---------------|
| Signature  | Date          |
| Print Name | Phone Number  |
| Title      | Email Address |

A copy of this listing must be attached to the “record copy” of a contract filed with the department.

Attachment: Contractor Authorized Signatory Listing Form (FY24 Firefighter Equipment Grant Agreement)



MAURA T. HEALEY  
GOVERNOR

KIMBERLEY DRISCOLL  
LIEUTENANT GOVERNOR

TERRENCE M. REIDY  
SECRETARY

*The Commonwealth of Massachusetts*  
*Executive Office of Public Safety and Security*  
*Department of Fire Services*

*P.O. Box 1025 ~ State Road*

*Stow, Massachusetts 01775*

*Telephone (978) 567~3100*

*[www.mass.gov/dfs](http://www.mass.gov/dfs)*



JON M. DAVINE  
STATE FIRE MARSHAL

February 6, 2024

Chief Larry Fisher  
Town of Merrimac  
4 School Street  
Merrimac, MA 01860

Dear Chief Fisher,

I am pleased to provide you with a Commonwealth of Massachusetts Standard Contract Form, Grant Agreement Scope of Work and Budget, and Contractor Authorized Signatory Listing Form for your FY24 Firefighter Safety Equipment Grant award. Please print and mail copies of these documents with original signatures to Tim Moore at the Department of Fire Services (DFS) address above. The Standard Contract Form Instructions and Commonwealth Terms and Conditions, which are incorporated by reference into this contract, may be found at [www.macomptroller.org/forms](http://www.macomptroller.org/forms). As a reminder, equipment orders may not be placed until this contract has been fully executed by DFS and your department. DFS will provide you with a copy of the fully executed contract and provide specific direction to proceed when your contract has been executed.

The funds for this program will be disbursed on a reimbursement basis in accordance with the terms of the grant Notice of Funding Opportunity. Once you have received your equipment and paid the vendor(s), reimbursement requests may be submitted to DFS by submitting the following documents to [OPS.DFS-TM-Grants@mass.gov](mailto:OPS.DFS-TM-Grants@mass.gov):

- Completed Final Report Template.
- Copy of invoice(s) with detailed description of all eligible costs.
- Proof of payment to the vendor(s) (cancelled check copy or other official financial system record).

If you have any questions during the grant performance period, please contact Tim Moore at 978-567-3721 or [OPS.DFS-TM-Grants@mass.gov](mailto:OPS.DFS-TM-Grants@mass.gov).

This program is an excellent opportunity to improve the health and safety of firefighters across the Commonwealth, and I am grateful that we are able to provide this vital equipment to your department this year.

Sincerely,

Jon M. Davine  
State Fire Marshal

*Administrative Services • Division of Fire Safety*  
*Hazardous Materials Response • Massachusetts Firefighting Academy*

Attachment: DFS Award Letters\_Merged\_Part166 (FY24 Firefighter Equipment Grant Agreement)

**From:** [Chris Manni - Chairman](#)  
**To:** [Jennifer Penney - SELECT BOARD \(X3080\)](#)  
**Subject:** Fwd: FY24 Firefighter Safety Equipment Grant Contract Documents  
**Date:** Wednesday, February 7, 2024 11:22:46 AM  
**Attachments:** [Governor's Award Letters\\_Merged\\_Part166.pdf](#)  
[DFS Award Letters\\_Merged\\_Part166.pdf](#)  
[Grant Agreement SOW and Budget\\_Merged\\_Part166.pdf](#)  
[FY2024\\_Merged\\_Contracts\\_Part166.pdf](#)  
[Contractor Authorized Signatory Listing Form.pdf](#)  
[FY24 Firefighter Safety Equipment Grant - Report Template.xlsx](#)

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Sent from my iPad

Begin forwarded message:

**From:** Larry Fisher <lfisher@merrimacfire.org>  
**Date:** February 7, 2024 at 11:22:07 AM EST  
**To:** Chris Manni - Chairman <selectman2@townofmerrimac.com>  
**Cc:** Kiersten Cray <kcray@merrimacfire.org>  
**Subject:** FW: FY24 Firefighter Safety Equipment Grant Contract Documents

Please review the attached documents

Larry S. Fisher  
*Fire Chief/ EMD*

Merrimac Fire Department  
 16 East Main Street  
 Merrimac, MA 01860  
 978-346-8211

Please be aware the Massachusetts Secretary of State has determined that most emails to and from the Town of Merrimac are public records, therefore cannot be kept confidential.  
[MGL: Chpt.66, Sec.10 Public Records Law.](#)

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**From:** Moore, Timothy (DFS) <Timothy.Moore@mass.gov>  
**Sent:** Tuesday, February 6, 2024 3:49 PM  
**To:** Larry Fisher <lfisher@merrimacfire.org>  
**Subject:** FY24 Firefighter Safety Equipment Grant Contract Documents

Good Afternoon:

Attached you will find the following documents related to your FY24 Firefighter Safety Equipment Grant award:

1. Award letter from Governor Healey and Lt. Governor Driscoll
2. Contract letter with instructions from Fire Marshal Davine
3. Standard Contract Form
4. Grant Agreement Scope of Work and Budget
5. Contractor Authorized Signatory Listing Form
6. Final Report Template

Please print, sign, and mail the signed original **Standard Contract Form**, **Grant Agreement Scope of Work and Budget**, and **Contractor Authorized Signatory Listing Form** to DFS at the address below as soon as possible:

Attn: Tim Moore  
 Department of Fire Services  
 PO Box 1025  
 Stow, MA 01775

Please feel free to reach out with questions at any time. Thanks.

<!--[if !vml]-->

Attachment: Fwd\_ FY24 Firefighter Safety Equipment Grant Contract Documents (FY24 Firefighter Equipment Grant Agreement)

<!--[endif]-->**Tim Moore**  
Fire Standard Compliant Cigarette Program Coordinator  
Department of Fire Services  
P.O. Box 1025 | Stow, MA 01775  
Desk: 978-567-3721  
[Timothy.Moore@mass.gov](mailto:Timothy.Moore@mass.gov) | [www.mass.gov/dfs](http://www.mass.gov/dfs)

## COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM

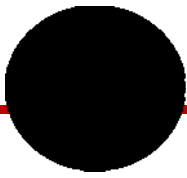


8.14.d

This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract forms or invoice terms) to the terms in this published form or to the [Standard Contract Form Instructions and Contractor Certifications](#), the [Commonwealth Terms and Conditions for Human and Social Services](#) or the [Commonwealth IT Terms and Conditions](#) which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: <https://www.mass.gov/lists/osd-forms>. Forms are also posted at OSD Forms: <https://www.mass.gov/lists/osd-forms>.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| CONTRACTOR LEGAL NAME: Town of Merrimac<br>(and d/b/a):                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                     | COMMONWEALTH DEPARTMENT NAME: Department of Fire Services<br>MMARS Department Code: DFS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                     |
| Legal Address: (W-9, W-4): 4 School St, Merrimac, MA, 01860                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                     | Business Mailing Address: P.O. Box 1025, Stow MA 01775                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                     |
| Contract Manager: Chief Larry S. Fisher                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Phone: 978-815-7432 | Billing Address (if different):                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |
| E-Mail: lfisher@merrimacfire.org                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Fax: 978-346-9227   | Contract Manager: David Clemons                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Phone: 978-567-3179 |
| Contractor Vendor Code: VC6000191880                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     | E-Mail: David.Clemons@mass.gov                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Fax: 978-567-3121   |
| Vendor Code Address ID (AD001)<br>(Note: The Address ID must be set up for EFT payments.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                     | MMARS Doc ID(s): CT-DFS-1000-2024FFEGRANT00000000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                     |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                     | RFR/Procurement or Other ID Number: BD-94942                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                     |
| <input checked="" type="checkbox"/> <b>NEW CONTRACT</b><br><b>PROCUREMENT OR EXCEPTION TYPE: (Check one option only)</b><br><input type="checkbox"/> <b>Statewide Contract</b> (OSD or an OSD-designated Department)<br><input type="checkbox"/> <b>Collective Purchase</b> (Attach OSD approval, scope, budget)<br><input checked="" type="checkbox"/> <b>Department Procurement</b> (includes all Grants - <a href="#">815 CMR 2.00</a> ) (Solicitation Notice or RFR, and Response or other procurement supporting documentation)<br><input type="checkbox"/> <b>Emergency Contract</b> (Attach justification for emergency, scope, budget)<br><input type="checkbox"/> <b>Contract Employee</b> (Attach Employment Status Form, scope, budget)<br><input type="checkbox"/> <b>Other Procurement Exception</b> (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                     | <input type="checkbox"/> <b>CONTRACT AMENDMENT</b><br>Enter Current Contract End Date <u>Prior</u> to Amendment: _____, 20____.<br>Enter Amendment Amount: \$ _____ (or "no change")<br><b>AMENDMENT TYPE: (Check one option only. Attach details of amendment changes.)</b><br><input type="checkbox"/> <b>Amendment to Date, Scope or Budget</b> (Attach updated scope and budget)<br><input type="checkbox"/> <b>Interim Contract</b> (Attach justification for Interim Contract and updated scope/budget)<br><input type="checkbox"/> <b>Contract Employee</b> (Attach any updates to scope or budget)<br><input type="checkbox"/> <b>Other Procurement Exception</b> (Attach authorizing language/justification and updated scope and budget) |                     |
| The Standard Contract Form Instructions, Contractor Certifications and the following Commonwealth Terms and Conditions document is incorporated by reference into this Contract and are legally binding: (Check ONE option): <input checked="" type="checkbox"/> Commonwealth Terms and Conditions <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |
| <b>COMPENSATION:</b> (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under <a href="#">815 CMR 9.00</a> .<br><input type="checkbox"/> <b>Rate Contract.</b> (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)<br><input checked="" type="checkbox"/> <b>Maximum Obligation Contract.</b> Enter total maximum obligation for total duration of this contract (or <b>new</b> total if Contract is being amended) <b>\$15,500.00</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |
| <b>PROMPT PAYMENT DISCOUNTS (PPD):</b> Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting <b>accelerated</b> payments must identify a PPD as follows: Payment issued within 10 days <input type="checkbox"/> % PPD; Payment issued within 15 days <input type="checkbox"/> % PPD; Payment issued within 20 days <input type="checkbox"/> % PPD; Payment issued within 30 days <input type="checkbox"/> % PPD. If PPD percentages are left blank, identify reason: <input checked="" type="checkbox"/> agree to standard 45 day cycle <input type="checkbox"/> statutory/legal or Ready Payments ( <a href="#">M.G.L. c. 29, § 23A</a> ); <input type="checkbox"/> only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |
| <b>BRIEF DESCRIPTION OF CONTRACT PERFORMANCE OR REASON FOR AMENDMENT:</b> (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) FY24 Firefighter Safety Equipment Grant Program. This contract is for funds awarded under the Department of Fire Services' FY24 Firefighter Equipment Grant, in accordance with the FY24 Grant Application, and attached Grant Agreement Scope of Work and Budget. Funds for this program will be disbursed on a reimbursement basis only.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |
| <b>ANTICIPATED START DATE:</b> (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:<br><input checked="" type="checkbox"/> 1. may be incurred as of the Effective Date (latest signature date below) and <b>no</b> obligations have been incurred <b>prior</b> to the Effective Date.<br><input type="checkbox"/> 2. may be incurred as of _____, 20____, a date <b>LATER</b> than the Effective Date below and <b>no</b> obligations have been incurred <b>prior</b> to the Effective Date.<br><input type="checkbox"/> 3. were incurred as of _____, 20____, a date <b>PRIOR</b> to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |
| <b>CONTRACT END DATE:</b> Contract performance shall terminate as of <b>June 30, 2024</b> , with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |
| <b>CERTIFICATIONS:</b> Notwithstanding verbal or other representations by the parties, the " <b>Effective Date</b> " of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in <a href="#">801 CMR 21.07</a> , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract. |                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |
| <b>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</b><br><br>X: _____ Date: _____<br>(Signature and Date Must Be Captured At Time of Signature)<br><br>Print Name: _____<br>Print Title: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                     | <b>AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:</b><br><br>X: _____ Date: _____<br>(Signature and Date Must Be Captured At Time of Signature)<br><br>Print Name: <b>Jon M. Davine</b><br>Print Title: <b>State Fire Marshal</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                     |

Attachment: FY2024 Merged Contracts\_Part166 (FY24 Firefighter Equipment Grant Agreement)



Programmatic Summary

Recipient Name: \_\_\_\_\_

Chief of Department: \_\_\_\_\_

Award Amount: \_\_\_\_\_

E mail: \_\_\_\_\_

Street Address: \_\_\_\_\_

Grant Manager: \_\_\_\_\_

Municipality: \_\_\_\_\_

Grant Manager Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E mail: \_\_\_\_\_

Please describe the equipment purchased using these funds, how it is being used/ deployed, and the associated benefit to the recipient:

Please cite any specific success stories that occurred as a result of these funds:

Please describe any measures being implemented to support the long-term sustainability of the investments made with this funding:

Attachment: FY24 Firefighter Safety Equipment Grant - Report Template (FY24 Firefighter Equipment Grant Agreement)



OFFICE OF THE GOVERNOR  
**COMMONWEALTH OF MASSACHUSETTS**  
 STATE HOUSE BOSTON, MA 02133  
 (617) 725-4000

**MAURA T. HEALEY**  
 GOVERNOR

**KIMBERLEY DRISCOLL**  
 LIEUTENANT GOVERNOR

February 6, 2024

Chief Larry Fisher  
 Town of Merrimac  
 4 School Street  
 Merrimac, MA 01860

Dear Chief Fisher,

Congratulations! I am pleased to inform you that the Executive Office of Public Safety and Security and the Department of Fire Services (DFS) has awarded the Town of Merrimac Fire Department \$15,500.00 in State Fiscal Year 2024 funding for the Firefighter Safety Equipment Grant Program.

With each new challenge, the fire service in Massachusetts demonstrates its ability to adapt, overcome, and continue providing the excellent level of services that the citizens of the Commonwealth have come to expect. Please know how thankful I am for this, and how grateful I am to be able to provide your department with this important equipment.

The contract, terms and conditions, and other award documents for this program will be provided to you by DFS. Please contact Tim Moore at DFS with any questions about this award at 978-567-3721 or [Timothy.Moore@mass.gov](mailto:Timothy.Moore@mass.gov).

Sincerely,

GOVERNOR MAURA T. HEALEY

LT. GOVERNOR KIMBERLEY DRISCOLL

## Department of Fire Services and the Town of Merrimac FY24 Firefighter Equipment Grant Agreement Scope of Work and Budget

**Authorization:** This grant is awarded by the Executive Office of Public Safety through the Department of Fire Services' FY24 Firefighter Safety Equipment Grant program for the purchase of firefighter safety equipment in accordance with the Acts of 2020 chapter 151 2D, the Department of Fire Services Earmark and Grants policy and procedures, and CMR 815, 2.00 State Grant Regulations.

**Grant Project Description:** Purchase of firefighter safety equipment as listed in the budget section of this Scope of Work.

**Grant Manager:** The MA Department of Fire Services and the grantee will each assign a grant manager with respect to this Scope of Work. It is anticipated that the grant manager will not change during the period the Scope of Work is in force. In the event that a change is necessary, the party requesting the change will provide prompt written notice to the other. In the event a change occurs because of a non-emergency, two-week written notice is required. For a change resulting from an emergency, prompt notice is required.

The MA Department of Fire Services grant manager will work closely with the grantee to ensure successful completion of the grant, will consult with the grantee to develop the Scope of Work, will coordinate input as needed, and will review and approve deliverables, progress reports and authorize acceptance and compensation of deliverables.

The grantee's grant manager will serve as the interface between the MA Department of Fire Services and all grantee personnel participating in this program, will maintain the Scope of Work and Budget in consultation with the MA Department of Fire Services grant manager, will facilitate regular communication with the MA Department of Fire Services grant manager including status reports/updates and review of performance against the Scope of Work, and will work closely with the MA Department of Fire Services to ensure successful completion of the grant.

The grantee's grant manager is Chief Larry Fisher who can be reached at: 4 School Street Merrimac, MA 01860, tel 978-346-8211, email: [lfisher@merrimacfire.org](mailto:lfisher@merrimacfire.org). The MA Department of Fire Services grant manager is David Clemons, Director of Operations, 1 State Road, Stow, MA 01775, tel 978-567-3179, email: [David.Clemons@mass.gov](mailto:David.Clemons@mass.gov).

**Budget:** The funds may not be used to serve as a match for a federal grant. The funds may not be used for construction and all applicable local and state procurement requirements must be adhered to in the use of the grant funds. The grant funds must be used to purchase the following approved firefighter safety equipment.

**Grant Award:**

| Department         | Description of allowable Equipment |
|--------------------|------------------------------------|
| Town of Merrimac   | Individual/Portable Radios         |
| <b>Total Award</b> | \$15,500.00                        |

**Reimbursement Request Process:** The MA Department of Fire Services agrees to disburse funds on a cost reimbursement basis. All costs requested for reimbursement must be listed on the DFS Grant/Earmark reimbursement form. Appropriate supporting documentation for all non-salary costs must also be attached, including:

1. copy of invoice
2. proof of payment – cancelled check or similar other proof of payment documentation such as a copy of the City/Town warrant or invoice that is marked paid and signed as paid by the City/Town fiscal officer.

**Period of Performance:** Approved expenditures may not be made until a contract has been executed between DFS and the grant recipient. Expenses incurred prior to execution of a contract **will not** be eligible for reimbursement through this program.

Grant recipients must take delivery of equipment no later than June 30, 2024. Equipment delivered to the recipient after that date **will not** be eligible for reimbursement through this program unless approval for an extension has been already been granted in writing by the DFS grant manager.

Reimbursement requests must be submitted no later than July 26, 2024. DFS will only reimburse for costs incurred through the grant performance period, June 30, 2024.

**Grant Extensions:** Grant recipients may request a single performance period extension if extenuating circumstances beyond the control of the recipient (backordered equipment, supply chain disruptions, vendor errors, etc.) will prevent equipment from being delivered on or before June 30, 2024. Extensions for these purposes must be submitted to DFS by email no later than June 1, 2024. Approval of extension requests is at the sole discretion of DFS.

**Grant Monitoring:** The Department of Fire Services may conduct grant monitoring through either a desk-based review or on-site monitoring visits, or both, in order to obtain additional information or verify information related to grant spending, grant-funded activity, or grant award outcomes. Advance notice will be given prior to a site visit. Findings of non-compliance with

any portion of the terms of the FY24 Firefighter Safety Equipment Application, the executed Standard Contract Form, and the DFS Grant Agreement Scope of Work and Budget may result in a demand for funds to be returned to DFS.

**Changes in Scope of Work or Budget:** The grant project description and budget are fixed and any change would be a “material” change in the contract. “Material” changes to the project description (adding, deleting or altering items) or budget lines (deletions, additions or changes to items) will require both parties to execute a *Standard Contract Amendment Form*. Contract amendments may not be done retroactively and must be done prior to the grant end date.

**Records Management:** The grantee shall maintain records in accordance with 815 CMR 2.08. This regulation includes but is not limited to “... maintain records, books, files and other data as specified in a contract and in such detail as shall properly substantiate claims for payment under a contract, for a minimum retention period of seven years beginning on the first day after the final payment under a contract, or such longer period as is necessary for the resolution, of any litigation, claim, negotiation, audit or other inquiry involving a contract...”

Approved by:

\_\_\_\_\_  
Town of Merrimac

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

Approved by:

\_\_\_\_\_  
Department of Fire Services

\_\_\_\_\_  
David Clemons, Director of Operations  
Print Name and Title

\_\_\_\_\_  
Date



**Agenda Item**  
**Merrimac Select Board**  
**02/12/24**

**Merrimac FY24 Municipal ADA Improvement Grant Agreement and Contract**

Subject:

Board vote

Attachments:

merrimac fy24 municipal ada improvement grant agreement and contract - signed (Temp) (Converted)

## **GRANT AGREEMENT**

This Grant Agreement ["Agreement"] is made by and between the Commonwealth of Massachusetts, acting by and through the Executive Director of the Massachusetts Office on Disability (MOD) on behalf of the Secretary of the Executive Office for Administration and Finance (EOAF), and the Town of Merrimac ["Grantee"] acting through Chris Manni.

### **PRELIMINARY STATEMENT**

The Grantee desires to obtain funding from EOAF in the amount specified in paragraph 1.1, as authorized under the Commonwealth of Massachusetts Five-Year Capital Investment Plan – FY2023–FY2027 and Chapter 140 of the Acts of 2022, Section 2, Item 1100-2515 for a Municipal ADA Improvement Grant to fund capital improvements or planning [the "Project"] as described herein.

EOAF agrees to make the funds ["EOAF Grant"] available to the Grantee for the Project, subject to the terms and conditions set forth in this Agreement and in compliance with all applicable state laws and regulations governing the disbursement and expenditure of state funds.

The Grantee shall exercise complete management and oversight responsibility of the Project and agrees that the Commonwealth's provision of state funding under this Agreement shall not in any way be construed as the Commonwealth assuming responsibility or liability for the completed Project.

### **SECTION 1. PROJECT SCOPE**

**1.1** The scope of the Project to be funded under the EOAF Grant will include:

The Grantee will hire a consultant with EOAF Grant funds to complete an ADA Self-Evaluation and Transition Plan. The Project scope includes an ADA Self-Evaluation and Transition Plan encompassing all of Grantee's facilities, activities, programs and services. The maximum EOAF Grant amount authorized is \$12440. Disbursement of funds to Grantee is contingent upon MOD's receipt of detailed, itemized invoices showing incurred expenses between the date of contract execution and June 30, 2024, as described in Section 2.

### **SECTION 2. DISBURSEMENT OF EOAF GRANT**

**2.1** Disbursement of the EOAF Grant under this Agreement shall be made pursuant to the FY2019-FY2023 Capital Investment Plan; the information provided in the grant application; and any other information EOAF or MOD may require.

The grant award will be disbursed upon the Commonwealth's receipt of Grantee's request for reimbursement, including itemized invoices showing expenses incurred by Grantee, as set forth in paragraphs 2.2 through 2.6. Grantees should submit all invoices with the request for reimbursement at the end of the grant and should not send them individually throughout the grant cycle.

**2.2** It is understood and agreed that the grant provided under this Agreement shall be used solely to pay for expenses associated with the Project. Expenses relating to project administration and management shall be assumed by the Grantee, including without limitation: **(i)** salaries and wages of Grantee staff; **(ii)** legal fees; **(iii)** travel, meal and entertainment expenses; **(iv)** overhead and supplies; **(v)** project costs

incurred prior to the execution and subsequent to termination of this Agreement; and **(vi)** costs of any other service or activity not related to the Project.

**2.3** The Grantee shall keep detailed records of all activities associated with the Project, including without limitation all disbursements made pursuant to this Agreement. EOAF shall have the right to examine all records kept by the Grantee related to the Project.

**2.4** The Grantee shall be responsible for any cost overruns that occur during implementation of the Project.

**2.5** All approved expenses must be incurred by June 30, 2024. Grantee will forfeit reimbursement for any remaining award unused by June 30, 2024. The Executive Office for Administration and Finance shall give due consideration to any extenuating circumstances presented in writing by the applicant and may waive this restriction at its discretion.

**2.6** Upon completion of the Project, and no later than July 9, 2024, Grantee shall submit a request for reimbursement that includes a cover letter stating the total amount of reimbursement sought by Grantee; and itemized invoices of all reimbursable costs incurred for the Project. The itemized invoices shall not include costs excluded from reimbursement in paragraph 2.2. The Commonwealth may reject any requests for reimbursement received after July 9, 2024.

### **SECTION 3. REPORTING**

**3.1** Once the Project is completed, the Grantee shall furnish to MOD, in addition to a report certifying project completion, the following documentation: **(i)** copies of all permits and approvals issued in connection with the Project, unless this information was previously supplied; **(ii)** any outstanding vendors' invoices, certified payment vouchers, cancelled checks or other documentation verifying actual expenditures in connection with the Project; **(iii)** documentation evidencing commitment of funds to the Project from sources other than EOAF, including documentation associated with the issuance of bonds or notes to finance the cost of the Project; **(iv)** a certificate of occupancy of the Project or portions of the Project as applicable by law; and **(v)** a statement from the Grantee certifying to the best of their knowledge that the Project was undertaken in conformance with all applicable laws, rules and regulations.

### **SECTION 4. COMPLIANCE WITH ALL APPLICABLE LAWS/REGULATIONS**

**4.1** The Grantee and its consultants and contractors shall comply with any and all federal, state and local laws, rules and regulations, orders or requirements that apply to the Project, including but not limited to: **(i)** Executive Order 592 relating to nondiscrimination, diversity, equal opportunity and affirmative action in hiring and employment practices; **(ii)** the State Prevailing Wage Law (M.G.L. Ch.149, Sections 26 to 27H); **(iii)** Title VI of the Civil Rights Acts of 1964, as amended; **(iv)** Environmental Impact Requirements (M.G.L. Ch.30, Sections 61 to 62I); **(v)** Historic Preservation Requirements (M.G.L. Ch.9, Sections 26 to 28) and applicable regulations; **(vi)** Title II of the Americans with Disabilities Act (42 USC 12132) and applicable regulations and guidance, including the 2010 ADA Design Standards; **(vii)** Architectural Access Board Requirements (M.G.L. Ch.22, Section 13A) and applicable regulations; and **(viii)** legal requirements relating to municipal or state-assisted construction and design projects, including those under M.G.L. c. 30B, c. 7C, c. 7, and c. 149, as applicable. Specifically, the Grantee agrees that any

work completed under the project will conform with either 521 CMR or the 2010 ADA Design Standards, whichever is more stringent.

**4.2** This Agreement shall in no way relieve the Grantee from the full force and application of any laws, rules, regulations and orders or requirements.

## **SECTION 5. INTEREST OF MEMBERS OR EMPLOYEES OF THE GRANTEE**

**5.1** No officer, servant, agent, or employee of the Grantee has participated or will participate in any decision relating to the development and implementation of the Project that affects directly or indirectly their personal interest or the interest of any corporation, partnership or proprietorship with which they are directly or indirectly affiliated. Furthermore, no officer, servant, agent or employee of the Grantee shall have any interest directly or indirectly in any contract in connection with the Project or shall in any way violate M.G.L. Chapter 268A.

## **SECTION 6. AMENDMENTS**

**6.1** No amendment to this Agreement or any significant modification of the scope of the Project funded under this Agreement shall be made by the Grantee without the prior written approval of EOAF.

## **SECTION 7. SEVERABILITY OF PROVISIONS**

**7.1** If any provision of this Agreement is held invalid by any court of competent jurisdiction, the remaining provisions shall not be affected thereby, and all other parts of the Agreement shall remain in full force and effect.

For the Municipality:

  
Chris Manni (Feb 5, 2024 18:03 EST)  
(Signature)

Chris Manni

(Name and Title)

Feb 5, 2024

(Date)

Select Board Chair

For the Commonwealth:

  
Julia O'Leary (Feb 7, 2024 09:02 EST)  
(Signature)

Julia O'Leary, General Counsel

(Name and Title)

Feb 7, 2024

(Date)



# COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM

This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract forms or invoice terms) to the terms in this published form or to the [Standard Contract Form Instructions and Contractor Certifications](#), the [Commonwealth Terms and Conditions for Human and Social Services](#) or the [Commonwealth IT Terms and Conditions](#) which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: <https://www.macomptroller.org/forms>. Forms are also posted at OSD Forms: <https://www.mass.gov/lists/osd-forms>.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| <b>CONTRACTOR LEGAL NAME:</b><br>(and d/b/a): Town of Merrimac                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                             | <b>COMMONWEALTH DEPARTMENT NAME:</b> Massachusetts Office on Disability<br><b>MMARS Department Code:</b> OHA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                            |
| <b>Legal Address: (W-9, W-4):</b> 4 SCHOOL STREET, Merrimac, MA, 01860                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                             | <b>Business Mailing Address:</b> 1 ASHBURTON PLACE, ROOM 1305, BOSTON, MA, 02108                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                            |
| <b>Contract Manager:</b> CHRISTOPHER GAUDET                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>Phone:</b> (978)914-3545 | <b>Billing Address (if different):</b> SAME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                            |
| <b>E-Mail:</b> selectmen@townofmerrimac.com                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>Fax:</b>                 | <b>Contract Manager:</b> Michael Dumont                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Phone:</b> 617-727-7440 |
| <b>Contractor Vendor Code:</b> VC6000191879                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                             | <b>E-Mail:</b> MICHAEL.DUMONT@MASS.GOV                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>Fax:</b> 617-727-0965   |
| <b>Vendor Code Address ID (e.g. "AD001"):</b> AD001<br>(Note: The Address ID must be set up for EFT payments.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                             | <b>MMARS Doc ID(s):</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                             | <b>RFR/Procurement or Other ID Number:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                            |
| <b><u>X</u> NEW CONTRACT</b><br><b>PROCUREMENT OR EXCEPTION TYPE: (Check one option only)</b><br><input type="checkbox"/> <b>Statewide Contract</b> (OSD or an OSD-designated Department)<br><input type="checkbox"/> <b>Collective Purchase</b> (Attach OSD approval, scope, budget)<br><input checked="" type="checkbox"/> <b>Department Procurement</b> (includes all Grants - <a href="#">815 CMR 2.00</a> ) (Solicitation Notice or RFR, and Response or other procurement supporting documentation)<br><input type="checkbox"/> <b>Emergency Contract</b> (Attach justification for emergency, scope, budget)<br><input type="checkbox"/> <b>Contract Employee</b> (Attach Employment Status Form, scope, budget)<br><input type="checkbox"/> <b>Other Procurement Exception</b> (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                             | <b>CONTRACT AMENDMENT</b><br>Enter <b>Current Contract End Date</b> <u>Prior</u> to Amendment: _____, 20____.<br>Enter <b>Amendment Amount:</b> \$ _____, (or "no change")<br><b>AMENDMENT TYPE: (Check one option only. Attach details of amendment changes.)</b><br><input type="checkbox"/> <b>Amendment to Date, Scope or Budget</b> (Attach updated scope and budget)<br><input type="checkbox"/> <b>Interim Contract</b> (Attach justification for Interim Contract and updated scope/budget)<br><input type="checkbox"/> <b>Contract Employee</b> (Attach any updates to scope or budget)<br><input type="checkbox"/> <b>Other Procurement Exception</b> (Attach authorizing language/justification and updated scope and budget) |                            |
| <b>The Standard Contract Form Instructions and Contractor Certifications and the following Commonwealth Terms and Conditions document are incorporated by reference into this Contract and are legally binding:</b> (Check ONE option): <u>X</u> <a href="#">Commonwealth Terms and Conditions</a> <u>  </u> <a href="#">Commonwealth Terms and Conditions For Human and Social Services</a> <u>  </u> <a href="#">Commonwealth IT Terms and Conditions</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                            |
| <b>COMPENSATION:</b> (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under <a href="#">815 CMR 9.00</a> .<br><input type="checkbox"/> <b>Rate Contract.</b> (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)<br><input checked="" type="checkbox"/> <b>Maximum Obligation Contract.</b> Enter total maximum obligation for total duration of this contract (or <b>new</b> total if Contract is being amended). \$ <u>12440</u> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                            |
| <b>PROMPT PAYMENT DISCOUNTS (PPD):</b> Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting <b>accelerated</b> payments must identify a PPD as follows: Payment issued within 10 days <u>  </u> % PPD; Payment issued within 15 days <u>  </u> % PPD; Payment issued within 20 days <u>  </u> % PPD; Payment issued within 30 days <u>  </u> % PPD. If PPD percentages are left blank, identify reason: <u>  </u> agree to standard 45 day cycle <u>  </u> statutory/legal or Ready Payments ( <a href="#">M.G.L. c. 29, § 23A</a> ); <u>  </u> only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                            |
| <b>BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT:</b> Municipal ADA Improvement Grant Program, FY24: Develop a Self Evaluation and Transition Plan                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                            |
| <b>ANTICIPATED START DATE:</b> (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:<br><input checked="" type="checkbox"/> 1. may be incurred as of the Effective Date (latest signature date below) and <b>no</b> obligations have been incurred <b>prior</b> to the Effective Date.<br><input type="checkbox"/> 2. may be incurred as of _____, 20____, a date <b>LATER</b> than the Effective Date below and <b>no</b> obligations have been incurred <b>prior</b> to the Effective Date.<br><input type="checkbox"/> 3. were incurred as of _____, 20____, a date <b>PRIOR</b> to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                            |
| <b>CONTRACT END DATE:</b> Contract performance shall terminate as of <u>June 30, 2024</u> , with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                            |
| <b>CERTIFICATIONS:</b> Notwithstanding verbal or other representations by the parties, the " <b>Effective Date</b> " of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in <a href="#">801 CMR 21.07</a> , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract. |                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                            |
| <b>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</b><br><br>Date: Feb 5, 2024<br>(Signature and Date Must Be Captured At Time of Signature)<br>Print Name: <u>Chris Manni</u><br>Print Title: <u>Select Board Chair</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                             | <b>AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:</b><br><br>Date: Feb 7, 2024<br>(Signature and Date Must Be Captured At Time of Signature)<br>Print Name: <u>Julia O'Leary</u><br>Print Title: <u>General Counsel</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                            |

# Merrimac FY24 Municipal ADA Improvement Grant Agreement and Contract

Final Audit Report

2024-02-07

|                 |                                              |
|-----------------|----------------------------------------------|
| Created:        | 2024-01-12                                   |
| By:             | Michael Dumont (michael.dumont@mass.gov)     |
| Status:         | Signed                                       |
| Transaction ID: | CBJCHBCAABAAzqbS1TDSwuqKc3b7Tj-U-3Qw2-yA1-aN |

## "Merrimac FY24 Municipal ADA Improvement Grant Agreement and Contract" History

-  Document created by Michael Dumont (michael.dumont@mass.gov)  
2024-01-12 - 8:54:20 PM GMT
-  Document emailed to selectmen@townofmerrimac.com for signature  
2024-02-01 - 9:12:59 PM GMT
-  Email viewed by selectmen@townofmerrimac.com  
2024-02-05 - 2:03:24 PM GMT
-  Document signing delegated to selectman2@townofmerrimac.com by selectmen@townofmerrimac.com  
2024-02-05 - 2:05:21 PM GMT
-  Document emailed to selectman2@townofmerrimac.com for signature  
2024-02-05 - 2:05:21 PM GMT
-  Email viewed by selectman2@townofmerrimac.com  
2024-02-05 - 11:02:02 PM GMT
-  Signer selectman2@townofmerrimac.com entered name at signing as Chris Manni  
2024-02-05 - 11:03:12 PM GMT
-  Document e-signed by Chris Manni (selectman2@townofmerrimac.com)  
Signature Date: 2024-02-05 - 11:03:15 PM GMT - Time Source: server
-  Document emailed to Julia OLeary (Julia.E.OLeary@mass.gov) for signature  
2024-02-05 - 11:03:16 PM GMT
-  Email viewed by Julia OLeary (Julia.E.OLeary@mass.gov)  
2024-02-07 - 2:01:58 PM GMT



Document e-signed by Julia OLeary (Julia.E.OLeary@mass.gov)

Signature Date: 2024-02-07 - 2:02:07 PM GMT - Time Source: server



Agreement completed.

2024-02-07 - 2:02:07 PM GMT



Adobe Acrobat Sign



**Agenda Item**  
**Merrimac Select Board**  
**02/12/24**

**SNAP Grant COA**

Subject:

Board vote

Attachments:

Merrimac, Town of - SNAP Outreach 10.1.23-9.30.28 final REVISED VERSION 2



**UMass Chan**  
MEDICAL SCHOOL

**AGREEMENT BY AND BETWEEN**

Town of Merrimac

dba Merrimac Council on Aging

**AND**

**THE UNIVERSITY OF MASSACHUSETTS BY AND THROUGH ITS  
UNIVERSITY OF MASSACHUSETTS CHAN MEDICAL SCHOOL**

This Agreement is entered into this 1st day of October, 2023, by and between

Town of Merrimac

dba Merrimac Council on Aging

located at

4 School Street, Merrimac, MA 01860

(Entity) and the University of Massachusetts by and through its University of Massachusetts Chan Medical School by and through its ForHealth Consulting at UMass Chan, Health Care Finance Solutions located at 333 South Street, Shrewsbury, MA 01545 (UMass Chan).

**WHEREAS**, the federal government reimburses the Commonwealth of Massachusetts for a certain percentage of expenditures made in accordance with the Commonwealth's federally approved Supplemental Nutrition Assistance Program Outreach Plan (SNAP Outreach Plan);

**WHEREAS**, the Department of Transitional Assistance (DTA) administers the SNAP Outreach Plan for the Commonwealth;

**WHEREAS**, DTA has engaged UMass Chan to handle the administrative aspects of disbursing these funds to the Entities and monitoring the delivery of allowable SNAP Outreach services;

**WHEREAS**, under the agreement between UMass Chan and DTA, UMass Chan must, among other things, assist the Entity in identifying outreach services and claiming outreach

Attachment: Merrimac, Town of - SNAP Outreach 10.1.23-9.30.28 final REVISED VERSION 2 (SNAP Grant COA)

funds that are eligible for federal reimbursement under the SNAP Outreach Plan and UMass Chan must enter into agreements with Entities governing the disbursement of funds as well as delivering and monitoring of outreach services;

**WHEREAS**, under the agreement between DTA and UMass Chan, UMass Chan is authorized to retain, as compensation for its services, five percent (5%) of the federal funds transferred to UMass Chan for disbursement to the Entity;

**WHEREAS**, each Entity who has incurred costs and submitted a claim for reimbursement is entitled to receive fifty percent (50%) of approved expenditures less the 5% UMass Chan administrative fee; and

**NOW THEREFORE**, the Entity and UMass Chan hereby enter into this Agreement as follows:

**Purpose of Agreement:** The purpose of this Agreement is to set forth the terms and conditions under which the Entity must complete SNAP enrollment and outreach activities and under which UMass Chan must monitor such services and disburse funds to the Entity for eligible outreach services.

A. Entity Responsibilities

**Project Requirements**

1. The Entity shall coordinate with UMass Chan to develop the annual budget based on eligible funding sources for all allowable outreach services, by the due date advised each year to be included in the State's SNAP Outreach Plan. Barring unforeseen circumstances, budgets must be submitted through DTA's *Partner Activity Tracking Hub (PATH) system*. The annual Entity budget is subject to United States Department of Agriculture's (USDA) Food & Nutrition Service (FNS) review and approval.
2. The Entity will receive from UMass Chan a *Statement of SNAP Outreach Reimbursement Project Standards* within 30 days following notification to UMass Chan of USDA/FNS approval of the SNAP Outreach Plan. The Entity must provide to UMass Chan written acknowledgment of its approved Annual Entity Client Engagement Number, Quality Application Approval Rate, Quality Application Approval Rate Rules, and Entity Budget within 7 days of receipt.

3. The Entity shall work with UMass Chan to maintain a working knowledge of outreach services that are eligible for federal reimbursement under the SNAP Outreach Plan. See [SNAP Outreach resource materials](#).
4. The Entity shall provide SNAP outreach activities in accordance with the federally approved SNAP Outreach Plan, provided however, the Entity will not be reimbursed for SNAP application and outreach activities prior to the effective date of the Agreement.
5. Program deliverables and due dates:
  - a) Initial budgets are due on or before April 1<sup>st</sup> for the upcoming federal fiscal year. Budgets not received by the due date will not be included in the state plan authorizing services starting on October 1st.
  - b) Budgets for new Entities starting after October 1<sup>st</sup>, will be accepted at any time, but may require state plan amendment and will require approval before services can begin.
  - c) Each year and if the rate changes, the Entity must provide UMass Chan with a federally approved indirect cost rate letter, if applying an indirect cost rate of more than 10%.
  - d) The Entity must sign and submit to UMass Chan a W-9/Vendor Identification Form annually.
  - e) Claims are due on or before the 10th day after the quarter ends (or prior business day if the 10<sup>th</sup> is a non-working day).
    - i. Q1 due date – January 1<sup>st</sup> to January 10<sup>th</sup>
    - ii. Q2 due date – April 1<sup>st</sup> to April 10<sup>th</sup>
    - iii. Q3 due date – July 1<sup>st</sup> to July 10<sup>th</sup>
    - iv. Q4 due date – October 1<sup>st</sup> to October 10<sup>th</sup>
  - f) Claims submitted after the due date may be processed as retroactive (retro) claims, resulting in delayed payments. Retro claims are due as follows:
    - i. Retro Q1– by March 10<sup>th</sup>
    - ii. Retro Q1 and/or Q2 – by June 10<sup>th</sup>
    - iii. Retro Q1, Q2 and/or Q3 – by September 10<sup>th</sup>
    - iv. End of Year Claim (not typical) – by November 1<sup>st</sup>
 Retro claims will not be accepted after November 1st.
6. Ongoing Performance deliverables:
  - a) The Entity must secure permission to exchange information with DTA by way of a signed Permission to Share Information (PSI) form for each client and keep records on file as per Section A.22-27, below. The Entity must make these documents available to DTA/UMass Chan if requested during a PSI audit review (to occur at least annually), or at any other time. Failure to provide requested documentation may result in corrective action, revocation of access, and/or termination of this Agreement.
  - b) The Entity will use DTA Connect to inform DTA that the PSI form has been

signed and to submit SNAP applications, recertifications, interim reports, case assistance (maintenance) to DTA on behalf of clients served. Barring unforeseen circumstances, all outreach activities must be completed on DTA Connect.

- c) The Entity must work to meet the Client Engagement Number (applications, recertifications, interim reports and case assistance) as provided by the Entity in the budget for the respective federal fiscal year.
- d) The Entity must maintain an approval rating of 50% or more as established in the *Statement of SNAP Outreach Reimbursement Project Standards*. The approval rating is based on the number of applications, recertifications and/or interim reports entered through DTA Connect and approved for SNAP benefits.
- e) Entities with approval ratings below the standard may be subject to performance improvement strategies, such as training, and technical assistance to help the Entity meet the required rating.

7. Nondiscrimination:

- a) The Entity must operate in compliance with all nondiscrimination laws, regulations, instructions, policies, and guidelines. In addition, the Entity must compile data, maintain records, and submit reports as required to permit effective enforcement of nondiscrimination laws, regulations, policies, instructions, and guidelines.
- b) The Entity must comply with state and federal law and ensure that individuals served under this contract are not discriminated against based on race, color, national origin, age, sex, religious creed, disability, and political beliefs.
- c) While all program staff are encouraged to attend the Civil Rights Training, at a minimum, the Entity's Program Director or designee(s) must attend the mandatory training offered by DTA/UMass Chan annually and, in turn, train each staff working on the project.
- d) The Entity must display the most current version of the 'And Justice for All' Poster in a prominent location(s).
- e) The Entity must comply with USDA non-discrimination statement requirements (<https://www.fns.usda.gov/fns-instruction-113-1>).

8. The Entity will ensure that all staff involved with the SNAP Outreach program participate in UMass Chan/DTA sponsored mandatory\* and/or optional training as appropriate to their role and responsibilities. Examples of training:

- a) Onboarding trainings, if applicable;
- b) DTA's PATH and DTA Connect systems;
- c) SNAP Outreach budget process;
- d) SNAP Outreach claims and reimbursement process;
- e) Annual Civil Rights Training; and
- f) Permission to Share Information (PSI) training.

\*Entity will be informed of mandatory training and due dates as applicable.

9. UMass Chan will support the Entity with contracts, budget, claims, and PATH System and DTA will support the Entity with SNAP Outreach SNAP 101, DTA Connect access and training. The Entity will request technical assistance and/or training as needed.

### **System Access Requirements**

10. The Entity's authorized signatory must complete and sign the *DTA Connect/Partner Activity Tracking Hub (PATH) Service Agreement* and *DTA Connect/Partner Activity Tracking Hub (PATH) Security Administrator Designation Form*. If there is a change in the authorized signatory or security administrator, these forms must be updated within 5 business days of the change.
11. The Security Administrator(s) (SA) must ensure that information provided to DTA for all Entity user(s) accessing DTA system(s) is current and accurate. The SA must notify DTA if a user's access must be terminated or updated within 5 business days of the change. The Entity will be subject to user access audits. **Unauthorized access or failure to inform could result in revocation of user or Entity's system access or termination of this Agreement for cause.**
12. UMass Chan will provide the Entity with login credentials for the UMass Chan Secure File Transfer System (SFTS). Information containing Personal Information (PI), as defined in Section N, or other sensitive information must be exchanged with UMass Chan/DTA via SFTS or secure email.

### **Claiming Requirements**

13. As per section 5.e). within 10 days of each quarter end, the Entity will submit a quarterly claim (invoice) documenting the reimbursement eligible expenditures that were incurred during the claim period. Barring extenuating circumstances that warrant another method of submission, all claims must be submitted through the PATH system. The Entity must include documentation of staff time spent on SNAP outreach activities in accordance with USDA requirements and guidance provided by UMass Chan to the Entity.
14. The Entity will check the application listing in the PATH system for accuracy of all applications, recertifications, and interim reports. If applications, recertifications and /or interim reports were completed outside of DTA Connect, the Entity will enter this information into the PATH system under *List client* and validate the entry. If unable to enter information into the PATH system due to extenuating circumstances, the Entity will provide UMass Chan, as part of the invoice, a separate list by calendar month of SNAP applications, recertifications, and interim reports submitted in the preceding quarter. This list must include:

- a. Description of the specific SNAP Outreach activity (applications, recertifications, and interim reports);
  - b. Date of the allowable SNAP Outreach activity;
  - c. Name of the applicant or recipient who received an allowable SNAP Outreach activity; and
  - d. The Social Security Number (SSN) or Assessed Persons ID (APID), *if no SSN is available*, for the applicant or recipient of SNAP Outreach activity.
15. The Entity shall include in the invoice only those expenses for services that meet the requirements for reimbursement. Reimbursement eligible expenses include:
- a. Allowable expenditures for eligible outreach services in accordance with the approved SNAP Outreach Plan and guidance.
  - b. Claimed expenditures that relate to application and outreach activities and the time spent on SNAP outreach activities in accordance with USDA requirements and guidance for the applicable quarter.
  - c. Funding used for outreach services from allowable sources and which are not being used to provide a match for other federal funding by the Entity or the original funding source.
  - d. Expenses supported by accurate and detailed records that verify the delivery and costs of outreach services. Examples of detailed records may include but are not limited to cost calculations, itemized receipts, invoices, purchase orders, time sheets and/or payroll records, payment summary, and expense or disbursement ledger with all allowable (invoiced) expenses.
16. The Entity shall exclude from the invoice all expenses for services that are not eligible for reimbursement, such as:
- a. Services that are reimbursed by, or eligible to be reimbursed by, other federal funds/programs/grants;
  - b. Services that are provided for the Entity to qualify for *matching* funds for federal funds/programs/grants;
  - c. Services that are provided pursuant to funds donated from an individual or other Entity, if the results of such donation have a direct benefit to said individual or Entity; and
  - d. The value of services rendered by volunteers and the value of goods contributed by third parties.
17. The Entity shall submit to UMass Chan with each invoice, as entered on the PATH system, a completed *Certification of SNAP Outreach Project Expenditures* and *SNAP Quarterly Outreach Invoice Cover Letter*, signed by an authorized signatory of the Entity, in accordance with guidance provided by UMass Chan.

18. The Entity shall provide clarification and/or supporting documentation as requested by UMass Chan during the claims review process for any rejected invoice. If unable to resolve claims discrepancies within the claims review period, claims will be processed retroactively with the next quarter.
19. As per section 5.f). the Entity may submit a retro claim(s) documenting reimbursement eligible expenditures that were incurred during the allowable claim period(s). Retro claims must meet requirements in sections A.13-17 and require a *Retro Certification of SNAP Outreach Project Expenditures* and *Retro SNAP Quarterly Outreach Invoice Cover Letter* and may require additional supporting documentation or clarification as part of the review. Barring extenuating circumstances that warrant another method of submission, retro claims must be submitted through the PATH system.
20. The Entity shall communicate regularly with the UMass Chan Contract Officer identified in Section H., *Agreement Management and Supervision*, of this Agreement on the progress of the invoice relative to activities performed under the terms of this Agreement.
21. The Entity shall ensure that reimbursed funds received under this Agreement are used to supplement the capacity of or enhance the SNAP Outreach program or add additional services and not to supplant existing services.

#### **Record Retention and Monitoring for access by UMass, State or FNS**

22. The Entity shall maintain auditable records and accounts of the reimbursement eligible SNAP Outreach services detailed in the SNAP Outreach claim that substantiate the delivery of services and expenditures. Examples of detailed records may include but are not limited to:
  - a) Itemized receipts, invoices, and purchase orders
  - b) Time sheets and/or payroll records
  - c) A payment summary, expense/ disbursement ledger with all allowable (invoiced) costs clearly identified under appropriate headings.
23. The Entity shall keep records in a cost-effective and easily retrievable format and in a storage area that meets recognized industry standards for physical and environmental security.
24. The Entity must make records available to UMass Chan/DTA upon request. Records may be requested and reviewed at any time for monitoring audit purposes.
25. The Entity shall maintain all such records for a period of seven years or longer, as specified in this section. The seven-year period must begin on the first day that the Entity signs the contract and requests payment for services;

26. If any litigation, claim, negotiation, audit, or other action involving the records is commenced prior to the expiration of the applicable retention period, the Entity shall retain all records until completion of the action and resolution of all issues resulting from the action, or until the end of the applicable retention period, whichever is later.
27. The Entity shall cooperate with UMass Chan and DTA monitoring activities, such as site visits (virtual or in-person) and an annual review related to the SNAP Outreach Reimbursement Project. In addition, the Entity shall allow auditors from UMass Chan, DTA, the federal government, and/or other appropriate oversight agencies access to all records pertaining to revenue and expenditures specific to projects outlined in this Agreement. Such access may include, but is not limited to, on-site visit or virtual/annual review, request to upload documentation via SFTS and reproduction of records at reasonable expense.
28. The Entity shall submit to UMass Chan each year a copy of the Entity's annual audit report.
29. In accordance with [2 CFR §200 et seq, Subpart F](#), a non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.
30. The Entity must comply with all security and confidentiality requests as deemed necessary by DTA or UMass Chan to ensure compliance with program requirements and as noted in Section K. of this Agreement, *Data Management*. **Any failure to comply with such request could result in termination of this Agreement for cause.**
31. If the Entity needs to enter into an 'inactive' status due to a lack of funding, staffing issues, or other reason, the Entity must inform UMass Chan and DTA. Inactive status means that an Entity has a current signed entity agreement with UMass Chan but is not participating in the SNAP Outreach project for a temporary time frame, or until the contract is terminated and/or expires (see section I).

#### B. Conflict of Interest

1. The Entity must not allow any employee, vendor, or subcontractor to participate in any decision related to this Agreement or to services provided under this Agreement that affects or may affect his/her personal financial interest or that of any family member or business partner.
2. The Entity must not employ or compensate any employee of the Commonwealth during the term of this Agreement unless such arrangement or

decision is permitted under the provisions of M.G.L. c. 268A.

3. The Entity must not employ any former Commonwealth employees during the term of this Agreement except as allowed by M.G.L. c. 268A.

C. Reporting Requirements

The Entity agrees to prepare any additional reports requested by UMass Chan/DTA that are reasonably necessary to acquire or facilitate for the acquisition of federal reimbursement.

D. Confidentiality

1. The Entity acknowledges that in the performance of this Agreement it may acquire or have access to “personal data” and become a “holder” of such personal data as defined in the Fair Information Practices Act, M.G.L. c. 66A, or other information deemed confidential by the Commonwealth.
2. The Entity must comply with all applicable federal and state laws, rules, and regulations relating to the privacy and security of personal information and/or confidential information, including 7 CFR 272.1(c), M.G.L. c. 66A and M.G.L. c. 93H.

E. UMass Chan Responsibilities

UMass Chan will:

1. Coordinate with the Entity to identify allowable outreach activities and funding sources and to develop a budget by the due date to be included in the State’s SNAP Outreach Plan.
2. Within 30 days of notification of USDA/FNS approval of the SNAP Outreach Plan, UMass Chan will provide the Entity with a *Statement of SNAP Outreach Reimbursement Project Standards*.
3. Assist the Entity in developing a working knowledge of SNAP Outreach requirements and services that are eligible for reimbursement.
4. In coordination with DTA, provide the Entity with training and technical assistance related to:
  - a) Onboarding trainings, if applicable;
  - b) DTA’s PATH and DTA Connect systems;
  - c) SNAP Outreach budget process;
  - d) SNAP Outreach claims and reimbursement process;

- e) Annual Civil Rights Training;
  - f) PSI training; and
  - g) Other necessary training(s).
5. Provide the Entity with login credentials for the UMass Chan Secure File Transfer System (SFTS) and provide training and technical assistance.
  6. Review each invoice to ensure that:
    - a) expenditures were allowed and incurred in the claim quarter;
    - b) reimbursement eligible funding sources were used;
    - c) cover letter and certification of expenditures were submitted; and
    - d) supporting documents were provided (as applicable).
  7. Work with the Entity to address any problems or errors identified during the claims review process and to examine and review policies to avoid problems with future invoices. If unable to resolve claims discrepancies within the claims review period, UMass Chan will process the claim retroactively with the next quarter.
  8. Provide the Entity with a total of the costs that are not submitted to the federal government for reimbursement, with a written explanation for the non-inclusion.
  9. Work with DTA to ensure that the Entity's request for reimbursement is included in the claim that the State submits to the federal government for SNAP Outreach reimbursement.
  10. Monitor the Entity Application Approval Rate. Notify DTA and the Entity if the Quality Application Approval Rate falls below the standard.
  11. Conduct an annual program and fiscal review (virtual or in-person) to ensure compliance with SNAP Outreach services and contract requirement.
  12. For monitoring purposes, and in coordination by DTA, conduct random document reviews of the Entity to ensure accuracy of claims and maintenance of appropriate records.
  13. In coordination with DTA, implement performance-improvement strategies, such as, but not limited to, trainings and technical assistance, corrective action with the goal improvement, if warranted, a probationary period to implement changes discussed with the Entity, and contract termination, if warranted.
  14. Provide the Entity with reminders of due dates, deliverables, and track compliance and mandatory training attendance.
  15. In coordination with DTA, UMass Chan will work with the Entity that needs to

enter into an 'inactive' status or terminated status due to a lack of funding, staff transitions and/or other factors. UMass Chan will complete the following process:

- a) UMass Chan and DTA will schedule a phone conversation and/or meeting to determine why the organization wants to become inactive/terminate the contract.
- b) UMass Chan will secure written acknowledgement of inactive/termination plan from the Entity.
- c) UMass Chan and DTA will use the following checklist to track steps for inactive/terminated Entity:
  - i. UMass Chan will remove the Entity from all active partner distribution and tracking lists and marketing materials;
  - ii. UMass Chan will encourage the Entity to submit a claim by the end of the current quarter (if applicable).
  - iii. DTA will suspend DTA Connect and PATH system privileges within 30 days of the report of inactive or terminated status;
  - iv. DTA will inform the appropriate Community Liaison the Entity is no longer active; and
  - v. UMass Chan and DTA will deactivate the Entity in UMass Chan/DTA systems.
- d) UMass Chan and DTA will inform the Entity of the process for resuming SNAP Outreach service or new contract requirements, when applicable.

#### F. Payment Procedure

1. UMass Chan will distribute to the Entity an amount equal to 95% of the federal funds that have been received by the Commonwealth that are attributable to the services provided by the Entity and listed on the Entity's quarterly SNAP outreach claim (invoice) and will retain 5% of such funds as compensation for its services. UMass Chan will work with DTA, EOHHS, and USDA to make payments within 90 days after the quarter claims are processed.
2. If any expenditures listed on the Entity's quarterly outreach invoice are not reimbursed by the federal government, UMass Chan will notify the Entity of the non-reimbursed amount and, to the extent known by UMass Chan, the reason for the non-reimbursement.
3. All payments and reimbursements are subject to availability of federal funds.

#### G. Disallowance Procedure

1. In the event that a review by DTA, UMass Chan, the federal government, or any other oversight agency determines that the Entity did not provide services in accordance with the terms specified in this Agreement, applicable state and/or federal laws, and/or if for any other reason the federal government takes steps to recover funds that it believes it paid in error (disallowance), the Entity agrees to return the disallowed funds to UMass Chan within 60 days after notification by UMass Chan, or to make other repayment provisions satisfactory to UMass Chan and agreed to by UMass Chan in writing.
2. The Entity agrees to return the disallowed funds to UMass Chan as described in Section G.1 above, even if the disallowance occurs after the termination of this Agreement.
3. The Entity authorizes UMass Chan to reduce or withhold future payments to the Entity if necessary to recover disallowed funds.

#### H. Agreement Management and Supervision

1. UMass Chan designates Jayna Mistry as its Contract Officer to be responsible for managing and administering this Agreement.
2. The Entity designates Brienne Walsh as its Contract Officer to be responsible for all Agreement management and supervision.
3. Each party must notify the other within 10 business days after any change to its Contract Officer.

#### I. Termination

1. This Agreement must be in effect from the date it is executed until September 30, 2028, unless this Agreement is amended or terminated earlier in accordance with the provisions of this Section I.
2. Either party may terminate this Agreement without cause by giving written notice to the other party's Contract Officer at least 30 calendar days prior to the effective date of termination.
3. In the event of an elimination or reduction in the Entity's funding, the Entity may terminate this Agreement by providing written notice of termination to the UMass Chan Contract Officer at least 14 calendar days prior to the effective date of termination, unless funding circumstances necessitate a shorter notice period.
4. Either party may terminate this Agreement for cause by giving written notice to the other party's Contract Officer at least three calendar days prior to the

effective date of termination if the other party fails to fulfill its responsibilities under this Agreement. Such written notice must state the circumstances of the other party's failure. Such written notice may, but is not required to, provide the other party with an opportunity to cure the breach.

J. Diversity, Equity and Inclusion Commitment

UMASS Chan and DTA are committed to increasing opportunities and creating a culture that values and embraces contributions from all people with different backgrounds, experiences, and perspectives. This agreement between UMASS Chan and the Entity is an agreed upon commitment that will provide opportunities and services in alignment with the state's efforts towards diversity, equity, and inclusion (DEI) for all. Accordingly, as part of this continuous effort and program improvement towards DEI alignment, SNAP Outreach partners must demonstrate a commitment to such efforts in the services they provide.

K. Data Management

1. Definitions

- a. **"Breach"**: must mean the acquisition, access, use, or disclosure of Personal Information in a manner not permitted under this Agreement, M.G.L. c. 93H, or other applicable state or federal privacy and security laws.
- b. **"Custodian"**: must mean the individual designated by the Entity to oversee the Entity's compliance with this section of the Agreement, *Data Management*. The Entity designates Brienne Walsh as custodian of the Personal Information and must notify UMass Chan within two business days if the custodianship is transferred to another person.
- c. **"Data Management Agreement" ("DMA")**: must mean Section K, the data management section of the Agreement.
- d. **"Discovers"**: must mean the first day on which a use or disclosure of Personal Information not permitted under this Agreement, a Breach, or a Security Incident is known to the Entity (including any person, other than the individual committing the Breach, who is an employee, officer, or other agent of the Entity), or should reasonably have been known to the Entity, to have occurred.
- e. **"Personal Information" or "PI"**: must mean:
  - "personal information" as defined in M.G.L. c. 93H or other applicable states' security breach notification laws;
  - "personal data" as defined in M.G.L. c. 66A;

- “information” obtained from a SNAP applicant or recipient household as used in 7 CFR 272.1(c);
- Third party data and any other individually identifiable information that is treated as confidential under the law;

and must refer to any information in any medium (whether oral, written, or electronic) that the Entity creates, receives, maintains, uses, discloses, transmits or is otherwise permitted access to in the performance of its services pursuant to this Agreement.

- f. **“Security Incident”**: must mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

## 2. Obligations and Activities of Entity

- a) The Entity acknowledges and agrees that it is functioning as UMass Chan's subcontractor pursuant to this Agreement by performing services UMass Chan is obligated to perform.
- b) The Entity agrees not to access, create, receive, maintain, use, disclose, or transmit Personal Information other than for the purposes specified in this Agreement, as permitted or required by this DMA, or applicable state and federal laws. The Entity further agrees that it must make all reasonable effort to use or disclose, request, maintain, or access no more than the minimum amount of Personal Information permitted under this Agreement and DMA than is necessary to perform the services under this Agreement.
- c) The Entity agrees to comply with all applicable state and federal laws and regulations relating to the confidentiality, privacy, and security of Personal Information, as well as any applicable state policies, standards, or rules governing the Entity’s use, disclosure, and maintenance of any PI under this Agreement. This includes, but is not limited to, 7 CFR 272.1(c), M.G.L. c. 66A and c. 93H; 201 CMR 17; and the Massachusetts Executive Office of Technology Services and Security (EOTSS) Enterprise Information Security Policies and Standards or applicable successor policies and requirements;.
- d) The Entity further agrees that it must comply with all other privacy and security obligations applicable to any PI under this Agreement based on UMass Chan or DTA having entered into an agreement with a third party (including, but not limited to, the Social Security Administration or the Massachusetts Department of Revenue) to obtain or access the data. Such agreements may include a written compliance acknowledgment or confidentiality agreement. The Entity must comply with other privacy

and security obligations required by the third party for access to data from the third party or to any system or database containing any such data or through which such data could be accessed.

- e) The Entity agrees to implement a comprehensive information security program at least as stringent as 201 Code of Massachusetts Regulations 17.00, as amended, including but not limited to:
  - (1) Designating one or more employees to maintain the comprehensive information security program.
  - (2) Identifying and assessing reasonably foreseeable internal and external risks to the security, confidentiality, and/or integrity of any electronic, paper, or other records containing Personal Information, and evaluating and improving, where necessary, the effectiveness of the Entity's current safeguards for limiting such risks, including but not limited to:
    - ongoing training for individuals authorized to access the Personal Information, including but not limited to employees (including temporary and contract employees) (collectively "employees"), officers, independent contractors, and agents (employees, officers, independent contractors, and agents must collectively be referred to in this DMA as "individuals with access");
    - compliance with policies and procedures by individuals with access; and
    - means for detecting and preventing security systems failures.
  - (3) Developing and implementing security policies applicable to individuals with access, including but not limited to the storage, access, and transportation of records containing Personal Information outside of business premises owned or controlled by the Entity, including remote access to Personal Information.
  - (4) Imposing disciplinary measures, including but not limited to termination of access to Personal Information, for violations of the Entity's comprehensive information security program rules by individuals with access.
  - (5) Preventing terminated employees or other individuals with access from accessing records containing Personal Information.
  - (6) Taking reasonable steps to select and retain subcontractors capable of maintaining appropriate security measures to protect Personal Information consistent with this DMA and ensuring that each agent

or subcontractor that the Entity engages to create, receive, maintain, use, disclose, or transmit Personal Information under the subcontract agrees in writing to the same restrictions and conditions that apply to the Entity throughout this DMA.

- (7) Implementing reasonable restrictions upon physical access to records containing Personal Information, and storage of such records and data in locked facilities, storage areas, or containers.
  - (8) Regular monitoring of the Entity's comprehensive information security program to ensure it is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of Personal Information; and upgrading physical, administrative, and technical safeguards as necessary to limit risks.
  - (9) Reviewing the scope of the Entity's security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing Personal Information.
  - (10) Documenting responsive actions taken in connection with any incident involving a Breach or Security Incident, and mandatory post-incident review of events and actions taken, if any, to make changes in business practices relating to protection of Personal Information.
- f. The Entity agrees to implement reasonable administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Personal Information that it creates, receives, maintains, uses, discloses, transmits, or otherwise has access to on behalf of UMass Chan or DTA. Such safeguards must include at a minimum the following:
- (1) Secure user authentication protocols.
  - (2) Secure access control measures restricting access to records and files with Personal Information to those who need such information to perform job duties, and then only to the minimum necessary to perform such duties, as well as the assignment of unique identifications and passwords that are designed to maintain the integrity of the security of the access controls.
  - (3) Encryption of all data-in-motion and data-at-rest meeting standards set forth in <http://csrc.nist.gov/publications/nistpubs/800-111/SP800-111.pdf> (NIST Special Publication 800-111 entitled "Guide to Encryption Technologies for End-User Devices"), as that document may be amended or updated from time to time.

- (4) No storage of Personal Information on portable media or devices that maybe transported off the Entity's premises except when copying data onto storage media for secure transport to UMass Chan, DTA, or the Entity's backup facility, and then only in encrypted format as described in Section f(3) immediately above.
  - (5) Continuous monitoring of the Entity's systems for unauthorized use of or access to Personal Information.
  - (6) Continuous updating of firewall protection and operating system security patches designed to maintain the integrity of the Personal Information.
  - (7) Updated versions of system security agent software, which must include malware protection and updated patches and virus definitions, or a version of such software that can still be supported with updated patches and virus definitions and is set to receive the most current security updates on a regular basis.
  - (8) Education and training of individuals with access on the proper use of the information security system and the importance of Personal Information security.
  - (9) No remote access to the Personal Information, unless pursuant to Entity's comprehensive written information security plan for such access.
  - (10) If UMass Chan gives the Entity access to any UMass Chan, DTA, or other data owner's database, system, or information technology resource, the Entity must comply with all UMass Chan, DTA, or other data owner's policies, processes, and mechanisms established for access. The Entity must maintain and make available at the request of UMass Chan a current list of individuals with access to such database(s) and changes thereto, including but not limited to changes requiring a termination or modification of any password, user ID, or other access mechanisms.
  - (11) No hosting or maintaining any Personal Information outside the United States.
- g. The Entity agrees to furnish UMass Chan upon request a description of the steps it has taken to protect the security of the Personal Information and must allow authorized representatives of UMass Chan access to the premises where Personal Information is stored or accessed, for purposes

of inspecting privacy and security arrangements.

- h. The Entity agrees to document disclosures of Personal Information, as required to provide an accounting of disclosures of Personal Information, only as prescribed by applicable state or federal requirements.
- i. The Entity agrees to verbally report to UMass Chan's Privacy Officer by telephone (508-856-TEAM) and in writing by email ([PrivacyAndCompliance@umassmed.edu](mailto:PrivacyAndCompliance@umassmed.edu)), within three business days of when the Entity Discovers any Breach, nonpermitted use or disclosure of Personal Information, or Security Incident.

Notice must include:

(i) the date(s) of occurrence of the Breach, nonpermitted use or disclosure, or Security Incident; (ii) nature of such incident(s); (iii) date of Discovery of such incident(s); (iv) nature and extent of Personal Information involved; (v) nature of unauthorized persons who received Personal Information; (vi) the number of individuals involved; (vii) the harmful effects of the incident known to the Entity and steps the Entity has taken or plans to take to mitigate risk of harm from such incident(s); and (viii) any other information necessary to complete a risk assessment. When, despite all reasonable efforts by the Entity to timely obtain the information required for such notice, circumstances beyond the control of the Entity necessitate additional time, the Entity must provide the above information to UMass Chan as soon as possible and without unreasonable delay, but in no event later than 30 calendar days from the date on which it Discovers the Breach, nonpermitted use or disclosure, or Security Incident; provided that the Entity must provide verbal notice of the Breach, nonpermitted use or disclosure, or Security Incident, and all information then available within three business days of Discovery of the incident and the additional information as soon thereafter as it is available.

- (1) The Entity agrees to retrieve, to the extent possible, any Personal Information used or disclosed in the nonpermitted manner; mitigate, to the extent possible, the risk to the Personal Information resulting from the nonpermitted use or disclosure; and take any further action required by any applicable state or federal law concerning the privacy and security of the Personal Information.
- (2) The Entity agrees to cooperate and provide access to information necessary for UMass Chan and the Entity to determine the scope of the unauthorized use, disclosure, or Security Incident and to fulfill any mitigation or notification obligation. If the data owner, DTA, or UMass Chan determines that the Entity's breach triggers

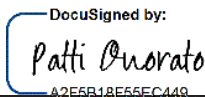
individual notification, the Entity agrees to assist UMass Chan. The Entity further agrees to comply with its obligations under M.G.L. c. 93H and other state and federal security breach statutes, as applicable, but in no case must the Entity provide notice directly to individuals, any applicable government agency, or any media outlets.

- (3) The Entity agrees to reimburse UMass Chan for reasonable costs incurred associated with notification and mitigation, to the extent that such costs are due to the Entity's: (a) failure to meet its responsibilities under, or in violation of, any provision of this DMA or this Agreement; (b) violation of law; (c) negligence; and (d) any activity or omission of its employees, agents, other individuals with access, or subcontractors resulting in or contributing to an incident triggering such notice or mitigation.
- j. The Entity agrees to ensure that each agent or subcontractor that it may engage on its behalf that will have access to Personal Information received from, created or received by the Entity pursuant to this Agreement, agrees in writing to the same restrictions and conditions that apply through this DMA to the Entity. The Entity is solely responsible for its agents' and subcontractors' compliance with this and all other provisions in this DMA and must not be relieved of any obligation because the PI was in the possession of its agents or subcontractors.
- k. The Entity agrees to report to UMass Chan's Privacy Officer, by telephone and in writing by email, as described in Section i above, within two business days of receipt, any instance where an individual or an individual's legal representative makes a request of either the Entity or a subcontractor or agent of the Entity:
  - (a) for a copy of the Personal Information pertaining to that individual;
  - (b) that the Personal Information be disclosed to a third party; (c) that the Personal Information be amended; or (d) for a list of disclosures made by the Entity of the Personal Information pertaining to that individual. The Entity must respond as directed by UMass Chan.
- l. The Entity agrees to report to the UMass Chan Privacy Officer, by telephone and in writing by email, as described in Section i above, any instance in which the Personal Information is subpoenaed or becomes the subject of a court or administrative order or other legal process, whether or not the Personal Information is in the Entity's physical custody. In no event must the Entity's reporting obligations under this paragraph be delayed beyond two business days preceding the return date in the subpoena or legal process, or two business days from obtaining such request for data, whichever is shorter. The Entity must not respond

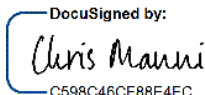
to such legal process unless so authorized by UMass Chan and in accordance with applicable state or federal law requirements.

- m. The Entity acknowledges that it has no ownership rights in the Personal Information or in any data derived or extracted from the Personal Information.
- n. Upon termination or expiration of this Agreement or as otherwise applicable, the Entity must properly dispose of all Personal Information as follows, or as otherwise instructed in writing by UMass Chan:
  - (1) Paper documents containing Personal Information must be either redacted, burned, pulverized, or shredded so that personal data cannot practicably be read or reconstructed;
  - (2) Electronic media and other non-paper media containing Personal Information must be destroyed or erased so that Personal Information cannot practicably be read or reconstructed meeting standards set forth in [http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88\\_with\\_errata.pdf](http://csrc.nist.gov/publications/nistpubs/800-88/NISTSP800-88_with_errata.pdf) (NIST Special Publication 800-88 entitled "Guidelines for Media Sanitization"), as that document may be amended or updated from time to time; and
  - (3) The Entity must attest in writing to UMass Chan within 30 days of the termination or expiration of this Agreement that all the Personal Information was returned or destroyed in compliance with the above- listed requirements, including a description of the steps taken.

**UMass Chan:**

**SIGNATURE:**   
**PRINT NAME:** Patti Onorato  
**PRINT TITLE:** Deputy Executive Vice Chancellor for Operations

**ENTITY:**

**SIGNATURE:**   
**PRINT NAME:** Chris Manni  
**PRINT TITLE:** Chair of Select Board



**Agenda Item**  
**Merrimac Select Board**  
**02/12/24**

**Education Update**

Subject:



**Agenda Item**  
**Merrimac Select Board**  
**02/12/24**

**Sewer Contract Signing**

Subject:

Board to vote new contract



**Agenda Item**  
**Merrimac Select Board**  
**02/12/24**

- 2. To Conduct Strategy Sessions in Preparation for Negotiations with Non-Union Personnel or to Conduct Collective Bargaining Sessions or Contract Negotiations with Non-Union Personnel.**

Subject: