



## Wellfleet Selectboard

### **Note: Start Time of 7pm**

The Wellfleet Selectboard will hold a public meeting on **Tuesday, May 16, 2023, at 7:00 p.m.** The Chapter 2 of the Acts of 2023, this meeting will be conducted in person and as a courtesy via remote means, per 940 MCR 29.10 and the Town's Remote Participation Policy. While an option for remote attendance and/or participation is provided as a courtesy to the public, the meeting/hearing may not be suspended or terminated if technological problems interrupt the virtual broadcast unless otherwise required by law.

### **Joining the Meeting:**

In-person at the Wellfleet ACC, 715 Old King's Highway, Wellfleet, MA, 02667

### **Join the meeting hosted in Zoom by using the following link:**

<https://us02web.zoom.us/j/85689604806?pwd=blplVFFBZzViQ0xNWkZKMm9iMVdrdz09>

By Phone: **phone +1 929 205 6099** and enter **Meeting ID: 856 8960 4806** | **Passcode: 611877**  
Landline callers can participate by dialing \*9 to raise their hand.

### **To Participate during public comment:**

- Zoom: Raise hand to be called on to speak.
- Phone: dial \*9 to raise your hand.

It is at the Chair's discretion to call on members of the public. All speakers must be recognized to speak. If attending a meeting in person, please find the closest available microphone and confine any personal conversations to the outside of the meeting room. Anyone may record the session but must notify the Chair and may not interfere with the meeting to record it.

Additionally, the meeting will be broadcast live, in real time, via live broadcast on Comcast cable (Wellfleet Government TV Channel 18), also available via livestream or Video on Demand (VOD) recordings at [wellfleet-ma.gov](http://wellfleet-ma.gov)

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### **I. *Announcements, Open Session and Public Comments***

**Note:** *Public comments are limited to no more than two minutes per speaker. The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments*

### **II. *Consent Agenda.***

- A. Appointment of Peter Simon as an alternate member to the Board of Water Commissioners.
- B. Appointment of Bradford Morse to the Shellfish Advisory Board
- C. Appointments of Annual and Reserve Police Officers ~ Chief Michael Hurley

### **III. *Police Officer Promotions***

- A. Promotion of Sergeant Michel Turner to Lieutenant ~ Chief Michael Hurley
- B. Promotion of Detective Nick Daley to Sergeant ~ Chief Michael Hurley
- C. Promotion of Officer Mark Braun to Sergeant ~ Chief Michael Hurley

- IV. ***Community Updates***
  - A. Presentation from the District Attorney to review new initiatives ~ District Attorney Galibois
- V. ***Friends of Herring River***
  - A. Approval of the draft technical assistance contract for the Friends of the Herring River
- VI. ***Public Hearings***
  - A. Amendment of fees and set guidelines for the use of Baker’s Field Pavilion for commercial and private events ~ Beach and Recreation Department
  - B. Petition for Underground Cable and Conduit Locations for work along Lawrence Road, Wellfleet ~ Eversource Energy ~ Marissa Jackson, Right of Way Agent.
- VII. ***Use of Town Property***
  - A. Richard Cohen ~ Indian Neck Beach, Thursday August 3, 2023, 4:30pm – 8:30pm for small adult Birthday party.
- VIII. ***Board/Committee Appointments and Updates***
  - A. Approval of draft NRAB letter to MA Division of Marine Fisheries regarding their support for a survey of the life and health of Wellfleet Harbor.
- IX. ***Business***
  - A. Town Meeting Update ~ Town Moderator ~ Dan Silverman
  - B. Jason Robicheau, The Grateful Mind ~ discussion on Community Host Agreement and the progress of his current licensing and final steps that need to be taken.
- X. ***Selectboard Reports***
- XI. ***Topics for Future Discussion***
- XII. ***Vacancy Reports***
- XIII. ***Minutes***
  - A. June 23, 2022
  - B. May 2, 2023
- XIV. ***Adjournment***



# SELECTBOARD

AGENDA ACTION REQUEST

Meeting Date: May 16, 2023

I

## ANNOUNCEMENTS, OPEN SESSION, AND PUBLIC COMMENTS

<b>REQUESTED BY:</b>	Wellfleet Selectboard
<b>DESIRED ACTION:</b>	Announcements to the board and public
<b>PROPOSED MOTION:</b>  <b>SUMMARY:</b>	<b><i>NOTE: Public comments are limited to no more than two minutes per speaker.</i></b> The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments.
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____



# SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023

II

## CONSENT AGENDA

<b>REQUESTED BY:</b>	<b>Various Parties</b>
<b>DESIRED ACTION:</b>	<b>To approve the following without objection</b>
<b>SUMMARY:</b>	<b>I move to approve the following items with no objection:</b> <ul style="list-style-type: none"><li>• <b>Appointment of Peter Simon as an alternate Member to the Board of Water Commissioners.</b></li><li>• <b>Appointment of Braford Morse to the Shellfish Advisory Board</b></li><li>• <b>Appointments of Annual &amp; Reserve Police Officers</b></li></ul>





**TOWN OF WELLFLEET  
APPLICATION FOR TOWN BOARDS & COMMITTEES MEMBERSHIP**

Wellfleet depends on its citizens to carry out many of our government's activities. Your community needs your help. *Please volunteer.*

FILL OUT THE FORM BELOW and mail it to:

Wellfleet Selectmen's Office, Town Hall, 300 Main Street, Wellfleet, MA 02667

Name Peter Simon Date 4-27-2023

Mailing Address PO Box 590

Wellfleet, MA 02667

Phone (Home) 401-871-9647 (cell) Same

E-mail PSimon846@gmail.com

Please describe briefly any work experience, including volunteer service, that you feel would be useful to the Town: 40 yrs as a public health official for

RI Dept. of Health, Founding Board Member  
National Center for Healthy Homes.

Please add any other information that you think may be useful, including education or other formal training, specialized courses, professional licenses or certifications, etc.:

MD + MPH - Boarded in Pediatrics & general  
preventive medicine

Committees/Boards of Interest: 1) Board of Water Commissioners

2) \_\_\_\_\_

3) \_\_\_\_\_



**TOWN OF WELFLEET  
APPLICATION FOR TOWN BOARDS & COMMITTEES MEMBERSHIP**

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FILL OUT THE FORM BELOW and mail it to:

Wellfleet Selectmen's Office, Town Hall, 300 Main Street, Wellfleet, MA 02667

Name Bradford Morse Date 5/11/23

Mailing Address Po. Box 1370 220 Paine Hollow Rd.  
Wellfleet, Ma. 02667

Phone (Home) 508-349-2408 (cell) 508-237-6913

E-mail bardman98@icloud.com

Please describe briefly any work experience, including volunteer service, that you feel would be useful to the Town: 45 years Commercial fisherman

Lifelong Wellfleet Resident  
Youth Coach, Umpire. Shellfish Grant  
Lease Since 2008

Please add any other information that you think may be useful, including education or other formal training, specialized courses, professional licenses or certifications, etc.:

Former Coast Guard licenced Merchant Mariner A.B.S.  
Former Fire Dept member Emergency  
Medical Technician E.M.T.

Committees/Boards of Interest: 1) Shellfish Advisory Board  
2) \_\_\_\_\_  
3) \_\_\_\_\_

Town of Wellfleet  
Police Department

May 16, 2023

To: Wellfleet Select Board  
From: Chief Michael P. Hurley

Subject: FULL TIME POLICE OFFICERS REAPPOINTMENT

Full time police officers require annual appointments for the first 5 years of their career, and thereafter they are tenured and require no further appointments.

I request the following individuals be reappointed as a Full Time Police Officer:

Appointment Period: July 1, 2023 through June 30, 2024

<u>Officer:</u>	<u>Initial Appointment</u>
Sarah Chase	2/14/2022
Christopher Greene	2/14/2022
Tyler Legare	01/30/2023
Jack Poska	05/13/2023
Jeremiah Valli	3/26/2018
Eric Daley	1/03/2022
Michael Allen	12/16/2019
Matthew McGue	2/17/2020

Respectfully submitted for your information and consideration.



Michael P. Hurley,  
Chief of Police

cc: Richard J. Waldo, Town Administrator  
Jennifer Congel, Town Clerk

Town of Wellfleet  
Police Department

May 16, 2023

To: Wellfleet Select Board  
From: Chief Michael P. Hurley

Subject: SPECIAL POLICE OFFICERS REAPPOINTMENT

I request the following individuals be reappointed as a Special Police Officer:

Appointment Period:            July 1, 2023 through June 30, 2024

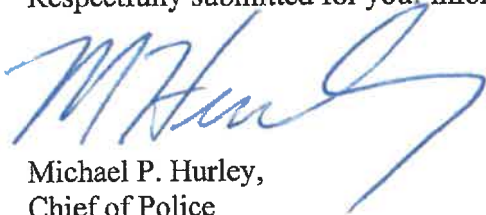
Marc Spigel

Ronald L. Fiset

Jacob Berrick

William Brazile

Respectfully submitted for your information and consideration.

A handwritten signature in blue ink, appearing to read "M Hurley", is written over the typed name and title of the sender.

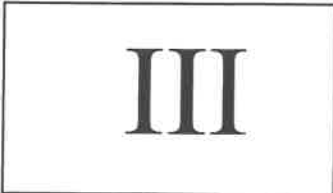
Michael P. Hurley,  
Chief of Police

cc: Richard J. Waldo, Town Administrator  
Jennifer Congel, Town Clerk



# SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023



## POLICE OFFICER PROMOTIONS

~ A ~

<b>REQUESTED BY:</b>	<b>Police Chief Michael Hurley</b>
<b>DESIRED ACTION:</b>	<b>To promote Michael Turner from Sergeant to Lieutenant</b>
<b>PROPOSED MOTION:</b>  <b>SUMMARY:</b>	<b>I move to approve the promotion of Michael Turner from Sergeant of the Wellfleet Police Department to Lieutenant. Congratulations and Thank you for your service to the town of Wellfleet.</b>
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____

Town of Wellfleet  
Police Department

May 16, 2023

To: Wellfleet Select Board  
From: Chief Michael P. Hurley

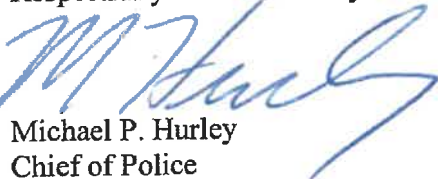
Subject: PROMOTION OF SERGEANT MICHAEL TURNER TO THE POSITION OF LIEUTENANT

I request Sergeant Michael Turner be promoted to the position of Lieutenant within the Wellfleet Police Department effective Monday June 12, 2023. Over the past few months, I have conducted a promotional process involving two Sergeants. The first phase was to request a letter of interest as to why the Sergeant feels he should be selected and promoted. Second, a panel comprised of the Deputy Chief, Assistant Town Administrator, Director of Public Works, and Human Resources conducted an in-person interview with both candidates. Finally, I conducted a one-on-one interview with a review of their personnel records along with their career accomplishments. After undertaking this process, I feel that Sergeant Michael Turner is the best candidate and would proudly serve the residents and visitors to the Town of Wellfleet and the Wellfleet Police Department (attached is his letter of interest).

Sergeant Turner's summary of information:

May 1998	Hired as a Summer Police Officer
November 1999	Hired as a full time Dispatcher
November 2000	Hired as full time Police Officer
April 2003	Trained as Department Firearms Instructor
September 2011	Promoted to Sergeant
November 2022	Completed the FBI Trilogy Leadership Program

Respectfully submitted for your information and consideration.



Michael P. Hurley  
Chief of Police

cc: Richard J. Waldo, Town Administrator  
Jennifer Congel, Assistant Town Clerk

# Michael P. Turner

Email:

Phone:

## SUMMARY

A 24-year veteran of the Wellfleet Police Department, serving 11 years as a Patrol Officer before being promoted to the rank of Sergeant in 2011. Aspiring to attain the rank of Lieutenant.

## HIGHLIGHTS

- Responsible for all aspects of Scheduling
- Lead Firearms Instructor
- Taser Instructor
- Fleet Maintenance Manager
- Fleet Procurement Manager (purchasing, outfitting and cruiser design)
- Served on numerous interview boards in the hiring of new police officers.
- Supervision of all aspects of patrol functions
- Department Critical Incident Stress Management Coordinator

## EXPERIENCE

*May 1998 - Present Wellfleet Police Department Wellfleet, Massachusetts*

- September 2011 - Promoted to the rank of Sergeant.
- November 2000 - Full-time Police Officer
- November 1999 - Full-time Dispatcher
- May 1998 - Special Police Officer

## LAW ENFORCEMENT TRAINING

- April 2001 - Massachusetts Criminal Justice Training Council / Plymouth Police Academy
- April 2003-Smith & Wesson Academy for Firearms Instructors
- June 2004 Emergency Management Institute, Community Emergency Response Team (CERT) Training, train the trainer.
- April 2011-Axon Taser Training
- November 2011 - MPI Institute / Leadership Communications for Police Supervisors
- October 2021-MPTC Critical Incident Stress Management
- November 2021-LSU Active Shooter Emergency Response
- November 2021-LSU Active Threat Integrated Response
- April 2022-FBI LEEDA Supervisor Leadership Institute
- May 2022-Intentional Leadership
- November 2022-FBI LEEDA Command Leadership Institute
- December 2022-FBI LEEDA Executive Leadership Institute

## EDUCATION

- Massasoit Community College and Western New England College
- Over 30 combined credits earned towards an associate degree in law enforcement.
- United States Marine Corps Basic Training  
Parris Island, North Carolina
- United States Marine Corps School of Infantry  
Camp Lejeune, North Carolina

To: Chief Michael Hurley

From: Sergeant Michael Turner

Subject: Police Lieutenant Vacancy

Date: March 27, 2023

I am writing to express my interest in the position of police Lieutenant. I began my employment with the Wellfleet Police Department in May of 1998 as a special police officer. I returned for the summer of 1999 as a special police officer and was then hired as a full-time dispatcher. I worked in that capacity until November of 2000, when I was hired as a full time Police Officer. During the past 24 years, I have taken on the responsibilities of the department firearms instructor, Taser instructor and fleet manager. In September of 2011 I was promoted to the rank of Sergeant. I have added scheduling coordinator, senior center liaison and critical incident stress management and peer support officer to my list of responsibilities. I have continued to strive for and accept more department responsibilities throughout my career. My many responsibilities have helped me develop meaningful relationships with the department members that will help me transition to a command leadership position. I believe these relationships will help me lead in a fair and proficient manner in the role of Lieutenant.

I have continuously pushed to improve department equipment including newer and updated vehicles and vehicle police equipment. I initiated an update to a black and white vehicle paint scheme and new graphics design to add a more professional appearance to the patrol vehicles. I initiated an update of our patrol rifles to replace our outdated shot guns. After extensive research including a study that was conducted by the FBI detailing the benefits of the 9mm weapons system, I initiated a change from our .40 caliber Glock duty weapons to our new 9 mm Glock handguns. During the design phase for the new police department facility, I pushed for a wellness area for the department to help improve the physical and mental wellness of our employees. I have assisted with interviewing applicants while participating in the hiring process for new police officers on numerous occasions. I created and implemented our current roll call form that is used to pass on pertinent information from each shift to the other department members.

The following is a list of training that I completed:

- April of 2003, I attended the Smith and Wesson Academy to be certified as a firearms instructor.
- June of 2004, I attended and completed train the trainer training from the Emergency Management Institute for Community Emergency Response Team (CERT).
- April of 2011, I attended the AXON Taser Training course for Taser Instructors.



- November of 2011, I attended the MPI Institute for Leadership Communications for Police Supervisors.
- October of 2021, I attended the MPTC Critical Incident Stress Management Course.
- November of 2021 attended the LSU Active Shooter Emergency Response Course.
- November of 2021 attended the LSU Active Threat Integrated Response Course.
- April of 2022, I attended the FBI LEEDA Supervisor Leadership Institute Course.
- May of 2022, I attended the Intentional Leadership Course taught by Dean Crisp.
- November of 2022, I completed the FBI LEEDA Command Leadership Institute Course.
- December of 2022, I completed the FBI LEEDA Executive Leadership Institute Course which completed my FBI LEEDA Trilogy.

Before my employment with the Wellfleet Police Department, I served in the United States Marine Corps. I served for a total of 8 years, 6 of which were as an active reservist and 2 were as an inactive reservist. I served as an infantryman with the First Battalion, Twenty fifth Marines. I served honorably and gained knowledge of being part of a team, leadership, courage, commitment, and discipline. My military experience gave me a foundation and a way to structure my life that has helped me in my policing career.

My leadership style is based on trust and mutual respect. I believe that collaboration and respect should be the core of any successful organization. It is important to create an environment where people feel comfortable expressing their opinions and ideas. I am also an advocate of giving people autonomy and giving them the opportunity to take ownership of their work.

At the same time, I believe that a good leader should be able to set clear expectations and hold people accountable. I strive to ensure that everyone has access to the resources they need to do their job and to provide clear directions on how to achieve their goals. I believe that leadership is not just about a title, but about having a sense of purpose. A good leader will inspire and motivate those around them and be an example for others to follow.

I truly care about the men and women of the Wellfleet Police Department, and I don't take lightly the responsibility to help them be prepared for any obstacle that may come their way. I believe that a good leader should be focused on helping others achieve their goals. They should be a good listener and provide guidance and support for their team and they should be approachable and open to feedback and suggestions. A good leader should also be able to take risks when necessary.

I believe I am well suited for a leadership role within the Wellfleet Police Department. I have excellent communication skills, and I understand the importance of setting a good example for the department.

I am also highly motivated, and I am committed to staying up to date with the latest developments in law enforcement. I understand the importance of developing and maintaining relationships within the community, and I am committed to upholding the highest standards of integrity and professional conduct.

I am extremely excited for the opportunity to work as the Lieutenant and would love the opportunity to help lead the Wellfleet Police Department into the future of modern policing. I am confident that I possess the leadership skills necessary to effectively manage a police team and foster an effective, positive working environment. I have a proven ability to assess situations quickly, develop and implement effective strategies, and work well with different types of people. I am highly organized, with excellent communication skills. I would like the opportunity to collaborate with the Deputy Chief, Chief and the other supervisors to come up with more programs to better reach out to the community.

As our department continues to grow, I see us meeting the challenges of today's world while maintaining and enhancing our professionalism through commitment to training and education. I see the department continue to work towards the goal of accreditation with increased accountability and supervision. I also see the department strive to become more professional and proactive through collaboration and teamwork. I am eager to bring my experience, enthusiasm, and skill to the position. I take great pride in my work, and I am confident that I have the skills and qualifications necessary to be a successful Police Lieutenant and make a positive impact on the department and the community.

I look forward to speaking with you soon regarding this position.

Respectfully Submitted,



Michael P Turner,

Sergeant



## SELECTBOARD

AGENDA ACTION REQUEST

Meeting Date: May 16, 2023

III

### POLICE OFFICER PROMOTIONS

~ B ~

<b>REQUESTED BY:</b>	<b>Police Chief Michael Hurley</b>
<b>DESIRED ACTION:</b>	<b>To approve the promotion of Nick Daley</b>
<b>PROPOSED MOTION:</b>	<b>I move to approve the promotion of Nick Daley from Wellfleet Police detective to Sergeant. Congratulations and thank you for your service to the Town of Wellfleet.</b>
<b>SUMMARY:</b>	
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____

Town of Wellfleet  
Police Department

May 16, 2023

To: Wellfleet Select Board  
From: Chief Michael P. Hurley

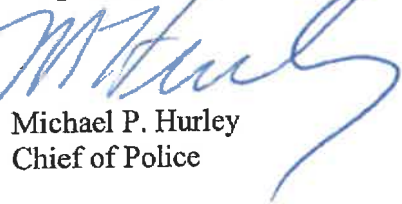
Subject: PROMOTION OF DETECTIVE NICK DALEY TO THE POSITION OF  
SERGEANT

I request Detective Nick Daley be promoted to the position of Sergeant within the Wellfleet Police Department effective Monday June 12, 2023. Over the past few months, I conducted a promotional process involving four of the department's Patrol Officers. The first phase was to request a letter of interest as to why the Patrol Officer feels he/she should be selected and promoted. The second phase was an interview panel with the Deputy Chief, Assistant Town Administrator and Public Works Director, and Human Resources. Finally, I conducted a one-on-one interview with each candidate and a review of their personnel records along with their career accomplishments. After undertaking this process, I feel that Detective Nick Daley is the best candidate to fill the first open Sergeant's position and would proudly serve the residents and visitors to the Town of Wellfleet and the Wellfleet Police Department (attached is his letter of interest).

Detective Daley summary of information:

May 2015	Hired Community Service Officer
May 2016	Hired as part-time Police Officer Wellfleet
October 2017	Hired as a full-time Police Officer
January 2020	Selected as a Department Field Training Officer
July 2021	Promoted Detective/Court Prosecutor

Respectfully submitted for your information and consideration.



Michael P. Hurley  
Chief of Police

cc: Richard J. Waldo, Town Administrator  
Jennifer Congel, Town Clerk

To: Chief Michael Hurley

From: Detective Nicholas Daley

Date: March 22, 2023

Subject: Sergeant Position Letter of Interest

Sir,

I am writing to express my interest in the police sergeant opening. I have been with the Wellfleet Police Department since 2015 and have been assigned as a full-time patrolman since October 2017. I have been assigned as the department's detective and court prosecutor since May 2020. Prior to joining the Wellfleet Police Department, I had experience with other police departments and law enforcement agencies on Cape Cod. I also have a bachelor's degree in criminal justice from Bridgewater State University. These experiences have allowed me to build relationships with other members of the criminal justice field which will benefit the Wellfleet Police Department.

As detective, I have taken on multiple high-profile cases which have involved working closely with other agencies. I have been involved in multiple investigations resulting in felony arrests. During investigations I have had to make important decisions and give assignments to others working with me. This makes me believe I will be able to do the same as a patrol sergeant.

As a court prosecutor, I am required to prepare cases for court. I am expected to review reports before they are given to the court and assign the correct charges. I am also expected to maintain the court schedule and advise the scheduling sergeant of overtime needs. As a court prosecutor I also conduct magistrate's hearings and have been called to testify before the grand jury. As a court prosecutor I am also the departments evidence control officer. This involves maintenance of the evidence room, transportation of evidence to the state crime lab, and maintaining chain of custody. There are thousands of dollars in cash, narcotics, and firearms in the evidence room which makes this an extremely important task. Many aspects of the court prosecutor job are comparable to the job a supervisor does. In my three years as court prosecutor, I have provided an excellent example of what a Wellfleet police court prosecutor should be.

I have been selected as a field training officer and have assisted in the training of multiple officers. Amongst the current slate of field training officers, I have been field training for the Wellfleet Police Department the longest. I have trained more than half of our current patrol force as well as other officers who have left for other agencies. I helped design the current field training manual. I helped create the schedule for the last group of trainees which is the most officers the Wellfleet Police Department has trained at the same time. I take my role as a field training officer very seriously as it is an important role to introduce new officers to the Wellfleet Police Department. I believe everyone I have trained would tell you I am ready to be a patrol supervisor.

I have also taken on several other assignments within this department. I have been involved in the hiring process for patrol as part of the interview panel. I have completed extensive background checks on all new hires. I helped run the Wellfleet Citizens Police Academy. I was elected as the Wellfleet Police Union President and have successfully negotiated two contracts with the town. I volunteer for every community event in effort to give back to the community I serve, because of this I am well known and respected by community members.

I have attended many advanced trainings and am always searching for more training opportunities. The areas I have received training in include background investigations, field training officer, community crisis intervention, detective clinic, search warrants, interview and interrogation, police prosecutor, drug investigations, street level narcotics investigator, stalking, trauma informed response, advanced domestic violence, and advanced roadside impaired driving enforcement. I am a certified sexual assault investigator and have prosecuted multiple cases. I try to keep an open mind and volunteer for any assignment that becomes available. Supervisors need to be proficient in many different areas and I have tried to learn as much as I can about different aspects of the department.

If a sergeant is out for the night, I have been called upon to act as an officer in charge many times. While acting as officer in charge I have responded to high priority calls including arrests, missing persons, domestic disturbances, mental health issues, suicide, and drug activity. I handle situations well while acting as an officer in charge and believe I would be able to do the same as a first line supervisor. I believe my training, experience, and education all make me a strong candidate for the sergeant opening.

I am committed to the Wellfleet Police Department, and I plan to be working here for my entire career. My long-term goal is to become Wellfleet chief of police. I am committed to the betterment of the department and wish to see improvements made. One area I think there can be improvement in is motivation. It is a supervisor's job to communicate expectations. I will work hard to prevent patrol from becoming static during the long haul of an offseason.

I believe supervisors need to be held to a higher standard both in the department and in the community. Accountability for your actions as a supervisor becomes even more important than as a patrolman. All eyes are on you and the patrol division needs to be able to respect your actions and your decisions. These are qualities I will strive to emulate if I am selected for the position.

Respectfully Submitted,



Detective Nicholas Daley



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023

III

### POLICE OFFICER PROMOTIONS

~ C ~

<b>REQUESTED BY:</b>	<b>Police Chief Michael Hurley</b>
<b>DESIRED ACTION:</b>	<b>To approve the promotion of Mark Braun from Police officer to Sergeant.</b>
<b>PROPOSED MOTION:</b>	<b>I move to approve the promotion of Police officer Mark Braun to Sergeant of the Wellfleet Police Department. Congratulations and thank you for your service to the Town of Wellfleet.</b>
<b>SUMMARY:</b>	
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition (s):
<b>VOTED:</b>	

Town of Wellfleet  
Police Department

May 16, 2023

To: Wellfleet Select Board  
From: Chief Michael P. Hurley

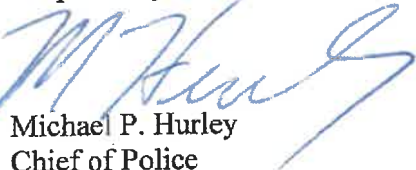
Subject: PROMOTION OF OFFICER MARK BRAUN TO THE POSITION OF  
SERGEANT

I request Officer Mark Braun be promoted to the position of Sergeant within the Wellfleet Police Department effective Monday June 12, 2023. Over the past few months, I conducted a promotional process involving four of the department's Patrol Officers. The first phase was to request a letter of interest as to why the Patrol Officer feels he/she should be selected and promoted. The second phase was an interview panel with the Deputy Chief, Assistant Town Administrator and Public Works Director, and Human Resources. Finally, I conducted a one-on-one interview with each candidate and a review of their personnel records along with their career accomplishments. After undertaking this process, I feel that Officer Mark Braun is the best candidate to fill the second Sergeant's position and would proudly serve the residents and visitors to the Town of Wellfleet and the Wellfleet Police Department (attached is his letter of interest).

Officer Mark Braun summary of information:

May 2015	Hired as part-time Police Officer
April 2016	Hired as a full-time Police Officer
May 2018	Selected as the Department's Accident Recon Officer
September 2020	Selected and trained as the Department MC Officer
January 2022	Selected as a Department Field Training Officer

Respectfully submitted for your information and consideration.



Michael P. Hurley  
Chief of Police

cc: Richard J. Waldo, Town Administrator  
Jennifer Congel, Town Clerk



Chief Michael Hurley  
Wellfleet Police Department  
36 Gross Hill Road  
Wellfleet, MA 02667

Officer Mark Braun

Date: April 6, 2023

Subject: Letter of Interest

Chief Hurley,

I would like to express my interest in being considered for the Police Sergeant position with the Wellfleet Police Department. I have been employed by the Wellfleet Police Department since 2015 and have worked in many different roles within the police department. Rising from the rank of seasonal police officer in 2015, to the position of full-time police officer in 2016. Assisting the police department in areas of patrol, dispatching, community relation events and fundraising events.

Over the course of my career in policing, I have attended numerous trainings that range from, general detective courses, developing informants, a three-tiered Accident Reconstruction course, motorcycle officer safety course, as well as being certified as a 911 telecommunicator.

Beyond assigned trainings that have been completed, I have written a proposal for the acquisition of a patrol motorcycle and have had the privilege of interacting with numerous companies on financial proposals and motorcycle graphics, to bring the program to fruition. The Wellfleet Police Departments Motorcycle Unit has allowed me to interact with police agency's such as, Orleans, Eastham and Provincetown. I have assisted in funeral processions, additional patrol coverage and community events. I have also assisted in the procurement of a backpack style medical bag that allows for ease of use on deployment in the field as well as less clutter within the police cruisers.

I have reformatted our police department's application intake and processing. Moving from printed out applications that were stored in binders to being fully digital and based within the shared drive of our computer system.

With the changing landscape in policing, I have been working towards creating a well thought out recruitment program. This program was developed with the continued upward momentum that our department has taken in recent years. From moving the department to a more digitalized route to reach more people to representing the department at multiple colleges. The procurement of employment brochures, statistical data and other materials to make the department excel and stand out amongst other agencies.

I am currently working with members of the Cape Cod Community College to provide first hand recruitment within the classroom. Demonstrating and assisting with questions and providing knowledge of the town of Wellfleet, but more importantly, the Wellfleet Police Department.

During my career and specifically field training, I strive to instill the value of community policing within our members of our police department and our new recruits. Bridging the gap between proactive policing and taking the time to step away from my cruiser and interact with the public. I have utilized getting coffee at local shops and walking the Main Street area as a means of interacting with members of our town. Stopping and taking the time to interact with younger kids and establish a good relationship. In doing this, I found the need for our department to give back to its community. With the approval of our department's members, I was able to acquire funds to purchase over a thousand community outreach items. These items are given out on a daily basis to children and young teens in an effort to bridge the gap of communication.

The future of the Wellfleet Police Department is ever changing. The need for proactiveness among first line supervisors to provide motivation, direction and communication for younger police officers is vital. With the current climate and need for better community relations, a proactive approach is needed inside and out of the police department. With the expanding financial budget and higher employment coverage, the needs of the Wellfleet Police Department will be met. But more importantly, the needs of the residents of the Town of Wellfleet will be met. With the enactment of POST, additional full-time officers will be needed to fill the void of losing reserve police officers. This proactive approach to adding additional personnel with the support of the town's residence, we will continue to be a growing leader in proactive policing for the town and community of Wellfleet.

I have had the privilege of supervising the day, evening and overnight shifts. This has allowed me to make patrol supervisor judgement calls, from shutting down Route 6 for an accident, to deciding on the process of arrest. During the summer months, I have managed up to four additional people on shift. I lead through explanation, direction and motivation. I explain what I am looking for, I give direction on how this can be completed and I motivate by example. I pride myself on this outlook and have utilized this method when field training new recruitments.

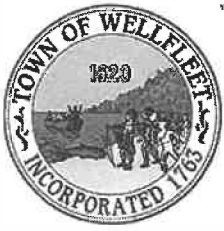
Over the course of my career as a police officer, I have remained disciplined, proactive and eager to better myself personally and through education. My years of experience have led me to have a straightforward calm approach and allow me to empathize with people's situations. I feel that these attributes are what a first line supervisor needs. With my training, experience, longevity and proactiveness within the Wellfleet Police Department, I have gained the knowledge, confidence and experiences that make me a leader.

Thank you for your consideration.

Sincerely,



Officer Mark Braun



# SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023

**IV**

## COMMUNITY UPDATES

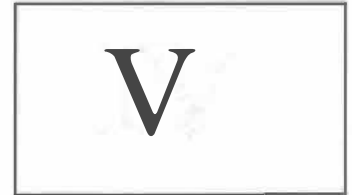
~ A ~

<b>REQUESTED BY:</b>	<b>District Attorney Robert J. Galibois</b>
<b>DESIRED ACTION:</b>	<b>To present the new initiatives of the district attorney.</b>
<b>PROPOSED MOTION:</b>	<b>There is no motion needed for this agenda item.</b>
<b>SUMMARY:</b>	
<b>Project</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____



# SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023



## FRIENDS OF THE HERRING RIVER

~ A ~

<b>REQUESTED BY:</b>	<b>Christa Drew, Executive Director, Friends of Herring River &amp; Carole Ridley, Project Coordinator</b>
<b>DESIRED ACTION:</b>	<b>To discuss and approve the draft technical assistance contract for Friends of the Herring River.</b>
<b>PROPOSED MOTION:</b>	<b>I move to approve the contract for technical assistance as written in draft form and presented tonight and to be signed by the Town Administrator.</b>
<b>SUMMARY:</b>	<b>Alternate motion: (I move to approve the contract for technical assistance as amended at tonight's meeting and to be signed by the Town Administrator.)</b>
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____

## **Memorandum**

**To:** Wellfleet Selectboard  
**From:** Christa Drew, Executive Director, Friends of Herring River  
Carole Ridley, Project Coordinator  
**Date:** May 8, 2023  
**Re:** Sub-award of NRCS Technical Assistance Funds

### **Context**

For more than a decade, non-profit Friends of Herring River (Friends) has administered grants from multiple state and federal agencies to fund engineering design and other technical studies needed for environmental permitting of Herring River Restoration Project, Phase 1.

At the direction of the Herring River Restoration Project Technical Team, Friends entered into contracts with Fuss & O'Neill, Inc. for design of the Chequessett Neck Bridge and Water Access Facility, and with WSP USA for the design of elevated low roads/culverts, and for work to protect structures on three private properties. The firms prepared plans for environmental permitting. Contracts with each firm contemplate completion of construction level design plans and bid documents following permitting. These documents will be beneficial for the Town of Wellfleet as the Herring River Restoration Project continues through construction (Phase 1) and the design modifications within will reduce costs in this Phase.

### **Sub-award of NRCS Technical Assistance Funds**

The US Department of Agriculture Natural Resource Conservation Service (USDA NRCS), has been requested to allow use of a portion of the \$3,200,000 in Technical Assistance funds granted to the Town to finalize construction plans and bid documents. Up to \$375,000 in Technical Assistance funds is needed, and will offset a number of tasks that would otherwise be encompassed in design services contracts between the Town and engineers.

### **Sub-award Rationale**

Four unexpected events resulted in a need for Friends to extend the contract terms and budgets with Fuss & O'Neill and WSP, respectively, in order to avoid costly delays:

1. MassDOT determined that Fuss & O'Neill should design the temporary bridge substructure previously thought to be the contractor's responsibility.
2. The transition to a construction services contract between Fuss & O'Neill and the Town has taken longer than anticipated.
3. The timeline for WSP's final design work was extended by the need for updated scour analysis on three culverts that resulted in minor design modifications.
4. Meanwhile, scopes and budgets of other engineering design contractors exceeded budgeted amounts, leaving no margin to manage extension of Fuss & O'Neill's or WSP's respective contracts.

### **Suggested Motion**

Pending NRCS approval, authorize the Town Administrator or Selectboard Chair to negotiate and execute an agreement with Friends of Herring River to allow use of up to \$375,000 in Technical Assistance funds granted to the Town by US Department of Agriculture Natural Resource Conservation Service (NRCS) for the purpose of completing construction plans and bid documents for the Chequessett Neck Bridge, low-lying road elevation and culvert replacements, and work to protect structures on three private properties. Grant funds would be provided on a reimbursement basis and in compliance with the terms and conditions of the grant agreement between the Town of Wellfleet and USDA NRCS dated August 17, 2022.

**GRANT AGREEMENT  
BETWEEN TOWN OF WELLFLEET AND FRIENDS OF HERRING RIVER**

THIS GRANT AGREEMENT (this “Agreement”) is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the **Town of Wellfleet** (the “Town”), a municipal corporation duly organized under the laws of The Commonwealth of Massachusetts, and acting by and through its Selectboard, having a usual place of business at 300 Main Street, Wellfleet, MA 02667 and **Friends of Herring River, Wellfleet/Truro, Inc.** (the “Grantee” or “FHR”), a Massachusetts nonprofit organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, having a usual place of business at 1580 Route 6, South Wellfleet, MA 02663, collectively the “Parties.”

WHEREAS, the Town, in collaboration with the Cape Cod National Seashore, is undertaking restoration of approximately 890 acres of salt marsh in the Herring River Watershed which shall include removal of multiple tidal restrictions and replacement with water control structures, including construction of a bridge with sluice gates, elevation of low-lying road segments and replacement of associated culverts, various mitigation measures on low-lying private properties to prevent flood impacts to structures, and vegetation and marsh management on the floodplain (the “Project”), and FHR has worked to facilitate the Town and the Cape Cod National Seashore’s work on the Project;

WHEREAS, a financial and technical assistance grant of up to \$27,200,000 from the Natural Resources Conservation Service, United States Department of Agriculture (No. NRCS-ADS-093) have been awarded to the Town as recipient agency to pay eligible Project costs, and a copy of such grant is attached hereto as Exhibit A and incorporated herein (the “NRCS Grant”);

WHEREAS, the NRCS Grant includes technical assistance funding in the amount of \$3,200,000 for non-construction eligible Project costs, which assistance includes \$2,600,000 for the Chequessett Neck Bridge and \$200,000 for low-lying road elevation, culvert replacements and one water control structure (the “Eligible Project Elements”), and the NRCS Grant may be used for final design and engineering services for the Eligible Project Elements;

WHEREAS, in order to assist the Town and to help advance the Project, FHR has entered into contracts with consultants Fuss & O’Neill, Inc. to develop design plans for the Chequessett Neck Bridge and with WSP USA Solutions, Inc. (formerly Louis Berger U.S., Inc.) (together, Fuss & O’Neill and WSP USA Solutions are referred to as “the Consultants”) to develop design plans for low-lying road elevation, culvert replacements and one water control structure;

WHEREAS, in the past, engineering design services under contracts between FHR and the Consultants (the “Prior Contracts”) have been funded by grants from Massachusetts Division of Ecological Restoration (MA DER) and US Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), which funding has supported development of plans needed to secure permits and funding for the Herring River Restoration Project, Phase 1;

WHEREAS, additional funding is needed to complete final design plans and bid documents for construction of the Eligible Project Elements; and

WHEREAS, the Town desires to sub-grant to Grantee a portion of the available technical assistance funds from the NRCS Grant to fund the Consultants' completion of final design plans and bid documents for the Eligible Project Elements in accordance with terms of this Agreement (as described herein and in Section 3(a) and Exhibits B and C below, the "Work"), and Grantee desires to facilitate the Project and receive the Grant Amount (defined below) to fund the Consultants' completion of the Work in accordance with the terms of this Agreement.

NOW THEREFORE, the Town and Grantee wish to set forth in this Grant Agreement the terms and conditions of the Grant, and hereby agree as follows:

### Agreement

1. Recitals. The recitals above are true and accurate and are incorporated herein by reference.
2. Funding. The Town shall sub-grant a portion of the NRCS Grant to Grantee in an amount not to exceed **XXXXXXXXXXXXXXXXXX** Dollars (the "Funds" or the "Grant Amount") on the condition that Grantee shall use the Funds only for eligible expenses associated with the purposes of undertaking the work in accordance with the terms of this Agreement. **[Note: Precise amount of funding to be discussed among parties.]**
3. Conditions. The award and release of the Grant Funds to Grantee is conditioned upon the following:
  - a) The Work shall be comprised of, and completed by the Consultants in accordance with, the detailed scopes of work incorporated in this agreement as Exhibit B (for Fuss & O'Neill, Inc.) and Exhibit C (for WSP USA). **[Note: parties to discuss inclusion of these agreements as exhibits.]**
  - b) Any remaining Funds shall be returned to the Town if the Work has not been completed as provided for in Section 3(a). The Town may grant extensions of the completion deadline for good cause in writing. **[Note to Town: Completion deadline to be discussed between the parties.]**
  - c) Grantee agrees that, prior to the receipt of any Funds, Grantee shall provide the Town an opportunity to review and approve the plans, products and construction documents produced under the Prior Contracts.
  - d) Town Contact. Grantee shall seek the approval of, and work closely with, the Town Administrator or their designee, in the implementation of the Work. **[Note to Town: Town contact to be added.]**
  - e) Grantee Contact. Grantee's authorized representative is Christa Drew, Executive Director, who can be reached at 508-214-0656 and christa@herringriver.org.

4. Budget/Other Sources of Funding. Prior to the commencement of any Work, Grantee must submit the scopes of work and budgets for the Work. If the Town determines that funds have been spent in a manner inconsistent with the budgets and scopes of work, reimbursement may not be authorized or, if the Grant Amount has already been granted, Grantee shall repay such Grant Amount to the Town. The Parties acknowledge that if sources of funding other than the Grant Amount have contributed to payment for the Work, this Agreement shall not apply to those other sources of funding. [Note: Parties to discuss logistics of reimbursement in further detail.]

5. The Work. The Consultants shall perform the Work shall be performed in a good and workmanlike manner, by contractors who are licensed in their respective disciplines and shall conform to all applicable laws, bylaws, rules and regulations. The Consultants shall be responsible for obtaining from federal, state and local agencies all relevant permits, licenses, and approvals prior to commencing the Work. No local permit or license or fee is waived by the award of the Funds. The Town shall have the right to review plans and specifications showing the Work to be done for compliance with the Exhibit B and Exhibit C.

6. Payment. The Town shall reimburse Grantee an amount not to exceed 100% of the Grant Amount (or XXXXXXXXXXXX) for the cost of performing the Work, which disbursements shall be apportioned based on the Work done and made no more than once a month and paid only upon the presentment of invoices from Grantee listing in detail the Work performed and the cost thereof. The Town shall have the right to ask for supplementary information. Prior to any payment, the Town shall have the right to inspect the Work and/or ensure that Grantee is in compliance with this Agreement. No payment shall be made until the Town reasonably determines that the Work has been done in a good and workmanlike manner and substantially in compliance with legal and regulatory requirements applicable to the Work. Grantee shall use all such sums only for the purpose of performing the Work, as described herein. The entire cost of performing the Work in excess of the Grant Amount shall be paid by Grantee. Notwithstanding anything herein to the contrary, if the actual total cost of performing the Work is less than the Grant Amount (the difference between the two amounts referred to hereinafter as the "Excess"), the Town shall have no obligation to pay the Excess.

7. Progress Reports. Grantee shall provide the Town with progress reports (in a form to be agreed upon by the Parties) at three (3)-month intervals beginning sixty (60) days from the date of the signing of this Agreement for as long as the Funds remain unexpended, and with final notification within thirty (30) days after the work has been completed. The Town reserves the right to require supplementary information from Grantee. Grantee shall submit a final report to the Town, including digital photographs and other documents, if applicable, within thirty (30) days from the work completion date.

8. Record-Keeping. Grantee agrees to keep, for a period of six (6) years after the Work is completed, such records with respect to the utilization of the Funds as are kept in the normal course of business and such additional records as may be required by the Town. The Town shall have full and free access to such records and may examine and copy such records during normal business hours, with at least two days' notice to FHR.



9. Termination. In the event Grantee fails to fulfill any of its obligations under this Agreement, as reasonably determined by the Town, and such failure is attributable to the Grantee and not the Consultants, and such failure is not cured within thirty (30) days after the Town has given written notice to Grantee specifying such failure, the Town shall have the right, in its sole discretion, to terminate this Agreement upon written notice to Grantee. Upon receipt of said termination notice, Grantee shall cease to incur additional expenses in connection with this Agreement. Upon termination, the Town shall be free to pursue any rights or remedies provided within this Agreement, including without limitation, recapture of Funds as set forth in Section 10 below. Upon the expiration or earlier termination of this Agreement, all rights and obligations of the parties hereunder shall expire and be of no further force and effect, except that the provisions of Sections 8, 9, 10, 11, 12 and 18 shall survive said expiration or earlier termination.
10. Return of Funds. In the event Grantee fails to fulfill any of its obligations under this Agreement and the Agreement is terminated pursuant to Section 9, any funds paid to Grantee under this Agreement and not yet expended shall be returned forthwith to the Town without further expenditure thereof. If Grantee fails to fulfill its obligations under the terms of this Agreement as a result of negligent or intentional acts or omissions of Grantee, Grantee shall be liable to repay to the Town the amount of the Grant Amount provided under this Agreement related to such negligent or intentional acts, and the Town may take such steps as are necessary, including legal action, to recover such funds.
11. Liability of the Town. The Town's sole obligation hereunder shall be to make the payment specified in Section 6 of this Agreement, provided that Grantee complies with the terms hereof, including the conditions set forth in Section 3, and the Town shall be under no further obligation or liability. Nothing in this Agreement shall be construed to render the Town liable for any other obligation under this Agreement or to render any elected or appointed official or employee of the Town, or their successors in office, personally liable for any obligation under this Agreement.
12. Indemnification. Grantee's indemnification of the Town related to the Work shall be limited to the scope of liability and indemnification provided by the Consultants to FHR as set forth in Exhibit B and Exhibit C. The provisions of this paragraph shall survive the expiration or termination of this Agreement.
13. Independent Status. Grantee acknowledges and agrees that it is acting in a capacity independent of the Town, and shall not be considered an instrumentality, employee, or agent of the Town for any purpose.
14. Successors and Assigns. This Agreement is binding upon the parties hereto and their successors and permitted assigns. Grantee shall not assign, subcontract or otherwise transfer this Agreement or its rights hereunder, in whole or in part, without the prior written consent of the Town, which may be withheld in its sole and absolute discretion.
15. Compliance with Laws. Grantee shall comply with all federal, state and local laws, rules, regulations and orders applicable to the Work performed pursuant to this Agreement.

16. Notice. Any and all notices, or other communications required or permitted under this Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the addresses set forth on Page 1 or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.

17. Severability. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

18. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of The Commonwealth of Massachusetts and Grantee submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

Exhibits:

Exhibit A: NRCS Grant

Exhibit B: Fuss & O'Neill scope and budget

Exhibit C: WSP scope and budget

IN WITNESS THEREOF, the Parties hereto have executed this Grant Agreement effective on the day written above:

GRANTEE:

FRIENDS OF HERRING RIVER, WELLFLEET/TRURO, INC.  
By its Duly Authorized Representative

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

TOWN:

TOWN OF WELLFLEET,  
By its Selectboard

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

847715/WELL/0185

**Exhibit A**

**NRCS Grant**

DRAFT



U.S. Department of Agriculture  
Natural Resources Conservation Service

NRCS-ADS-093

**NOTICE OF GRANT AND AGREEMENT AWARD**

1. Award Identifying Number NR221320XXXXC004	2. Amendment Number	3. Award /Project Period 0From Date of Final Signature - 12/31/2024	4. Type of award instrument: Cooperative Agreement
5. Agency (Name and Address)  Natural Resources Conservation Service 451 West Street Amhers, MA 01002-2953		6. Recipient Organization (Name and Address)  WELLFLEET, TOWN OF 300 MAIN ST WELLFLEET MA 02667  UEI Number / DUNS Number: LN46CBCFEJY7 / 076598101 EIN:	
7. NRCS Program Contact  Name: Deron Davis Phone: (413) 253-4352 Email: deron.davis@ma.usda.gov	8. NRCS Administrative Contact  Name: Dorothea Martinez Phone: (803) 253-3899 Email: dorothea.martinez@wdc.usda.gov	9. Recipient Program Contact  Name: Jay Norton Phone: (508) 349-0315 Email: jay.norton@wellfleet-ma.gov	10. Recipient Administrative Contact  Name: Richard Waldo Phone: (508) 349-0300 Email: richard.waldo@wellfleet-ma.gov
11. CFDA 10.904	12. Authority 16 U.S.C. 1001-1009	13. Type of Action New Agreement	14. Program Director  Name: Richard Waldo Phone: (508) 349-0300 Email: richard.waldo@wellfleet-ma.gov
15. Project Title/ Description: For the Design and Installation of measures to provide assistance to the Town of Wellfleet to restore tidal hydrology, habitat for aquatic organisms, and salt marsh vegetation for			
16. Entity Type: C = City or township Government			
17. Select Funding Type			
Select funding type:	<input checked="" type="checkbox"/> Federal	<input checked="" type="checkbox"/> Non-Federal	
Original funds total	27,200,000.000	\$8,000,000.00	
Additional funds total	\$0.00	\$0.00	
Grand total	27,200,000.000	\$8,000,000.00	
18. Approved Budget			

Personnel	\$0.00	Fringe Benefits	\$0.00
Travel	\$0.00	Equipment	\$0.00
Supplies	\$0.00	Contractual	\$0.00
Construction	24,000,000.000	Other	\$3,200,000.00
Total Direct Cost	27,200,000.000	Total Indirect Cost	\$0.00
		Total Non-Federal Funds	\$8,000,000.00
		Total Federal Funds Awarded	27,200,000.000
		Total Approved Budget	35,200,000.000

This agreement is subject to applicable USDA NRCS statutory provisions and Financial Assistance Regulations. In accepting this award or amendment and any payments made pursuant thereto, the undersigned represents that he or she is duly authorized to act on behalf of the awardee organization, agrees that the award is subject to the applicable provisions of this agreement (and all attachments), and agrees that acceptance of any payments constitutes an agreement by the payee that the amounts, if any, found by NRCS to have been overpaid, will be refunded or credited in full to NRCS.

Name and Title of Authorized Government Representative <b>DANIEL WRIGHT</b> State Conservationist	Signature	Date
Name and Title of Authorized Recipient Representative <b>RICHARD WALDO</b> Town Administrator	Signature 	Date 8/17/22

#### NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

#### PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. Section 522a).

## Statement of Work

### Purpose

The purpose of this agreement is for the United States Department of Agriculture, Natural Resources Conservation Service, hereinafter referred to as the "NRCS", to provide assistance to Town of Wellfleet hereinafter referred to as the "Sponsor", to restore approximately 890 acres of salt marsh in the Herring River watershed under the Watershed Flood Prevention Operations (WFPO) Program's Cape Cod Water Resources Restoration Project. The Herring River Salt Marsh restoration project will include construction of a 165' bridge, installation of culverts and water control structures, various mitigation measures on low properties and roads, and vegetation and marsh management on the floodplain.

### Objectives

The objective is to restore tidal hydrology, habitat for aquatic organisms, and salt marsh vegetation to approximately 890 acres of salt marsh in the Herring River watershed by installing a properly sized bridge and water control structures. Associated objectives of the project are treating stormwater on adjacent roads to improve water quality and flood mitigation of adjacent low-lying properties and roads.

### Budget Narrative

The official budget described in this Budget Narrative will be considered the total budget as last approved by the NRCS for this award.

Amounts included in this budget narrative are estimates. Reimbursement will be based on actual expenditures, not to exceed the amount obligated.

Total Estimated Project Budget for this agreement: \$35,200,000 broken out as follows

Technical Assistance (TA) Funds provided by NRCS:

\$3,200,000 in Project Administration, Project Management, and Construction Oversight Costs

Financial Assistance (FA) Funds (75% NRCS-\$24,000,000, 25% Town-\$8,000,000):

\$32,000,000 in Construction Costs

Individual project element estimates:

a. Chequessett Neck Road Bridge:

Estimated NRCS construction costs (FA): \$19,500,000

Estimated NRCS technical assistance costs (TA): \$2,600,000

b. Funding for elevating low-lying roads, six culvert replacements and one Water Control Structure/culvert.

Estimated NRCS construction costs (FA): \$1,500,000

Estimated NRCS technical assistance costs (TA): \$200,000

c. Funding for Low Property Mitigation on 5 residential properties

Estimated NRCS construction cost (FA) \$150,000

Work includes three new wells, one new residential parking lot, a tidal barrier, and utility relocation

Estimated NRCS technical assistance costs (TA): \$20,000

d. Funding for Fill Acquisition to elevate low lying areas within the watershed including a low-lying commercial property within the Mill Creek Subbasin and all roads with an elevation below the new design high water elevation

Estimated NRCS cost to purchase fill material (FA) \$2,200,000

Estimated NRCS technical assistance costs (TA) \$293,333

e. Funding for marsh restoration and vegetation management

Estimated NRCS construction cost (FA) = 650,000

Estimated NRCS technical assistance costs (TA) = \$86,667

1. NRCS pays up to 75 percent of eligible construction/material costs, not to exceed \$24,000,000 and up to \$3,200,000

for eligible technical assistance costs. Sponsor pays at least 25 percent of construction costs (estimated to be \$8,000,000) and all other project costs.

2. NRCS funding for this project is provided to the Sponsor in two separate NRCS funding accounts, one for financial assistance (FA) and one for technical assistance (TA). FA costs are associated with construction activities; TA costs are associated with services. These expenditures shall be accounted for separately in order for expenses to be eligible for reimbursement.

3. NRCS will provide FA up to the amount of \$24,000,000, not exceeding actual eligible costs, as reimbursement to the Sponsor for approved on-the-ground construction and material costs. The Sponsor is responsible for the balance of funds to complete the construction project. The Sponsor is responsible for ensuring that at least 25% of the total actual construction costs are from non-federal sources.

4. NRCS will provide TA up to the amount of \$3,200,000, not exceeding actual costs, as reimbursement to the Sponsor for eligible administrative, project management, and construction oversight costs directly charged to the project. These project administrative costs include but are not limited to soliciting, evaluating, awarding, and administering contracts for construction. Project Management and Construction Oversight includes construction inspection, verification of invoices and installed quantities, recordkeeping, termination, and closeout documentation.

5. The above costs for each project element are estimates and may change based on actual implementation costs. This agreement allows for the reapportionment of funds between the project elements. This reapportionment shall be initiated by the Sponsor with prior approval from the NRCS representative, provided the costs are within the budget estimates listed above. This will be documented through an exchange of correspondence rather than a formal amendment to the agreement.

6. Construction Costs are expenses incurred for labor, materials, equipment, and services associated with installing a new bridge and other water control structures, installation of stormwater treatment measures, mitigation of neighboring properties, and associated incidental and vegetative work to restore salt marsh. The NRCS portion of the costs can be utilized towards the following activities for the project: demolition and removal of the existing bridges and culverts, earthwork removal to enlarge the bridge and culvert openings, construction of bridge abutments and deck, installation of water control structures, placement of fill and structures for mitigation, construction of stormwater treatment measures, restoration of disturbed areas, and other incidental items necessary to complete the work and stabilize the site.

7. NRCS funding for the fill acquisition for flood mitigation of the commercial property in the Mill Creek Subbasin is contingent on the Town obtaining funding from another federal agency and the MA DER to fully fund the mitigation work of this property prior to starting this mitigation work. If the Town is not able to obtain this additional funding, NRCS will remove the funding of the fill acquisition for the flood mitigation of the commercial property in the Mill Creek Subbasin from this agreement.

8. NRCS will only provide funding to purchase fill (material) to raise the elevation of the commercial property within the Mill Creek Subbasin to mitigate flooding. The Town will be responsible for completing the work to have the property elevated to meet the design requirements.

### **Responsibilities of the Parties:**

If inconsistencies arise between the language in this Statement of Work (SOW) and the General Terms and Conditions attached to the agreement, the language in this SOW takes precedence.

#### **SPONSOR RESPONSIBILITIES**

1. Perform the work and produce the deliverables as outlined in this Statement of Work.
2. Comply with the applicable version of the General Terms and Conditions.
3. Secure all necessary land rights and permits for completion of each phase of the work prior to commencing construction. All costs associated with obtaining land rights and permits are the responsibility of the Sponsor. Form NRCS-ADS-78 must be completed and signed by the SLO and must be provided and must be supported by an attorney's opinion. Real property rights work maps will be provided by NRCS to the Sponsor.
4. The contracts for services and construction described in this Agreement shall not be awarded to the Sponsor or to any firm in which any Sponsor's official or any member of such official's immediate family has direct or indirect interest in the pecuniary profits or contracts of such firms. Reference 2 CFR § 200.318 regarding standards of conduct covering



conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts.

5. Notify NRCS of environmental clearance, modification of construction plans, and any unresolved concerns and issues prior to award of any contracts for installation of the work for the project specified in this agreement. Modifications to the final approved design drawings or construction specifications must have NRCS concurrence.

6. Accept all financial and other responsibility for any excess costs resulting from its failure to obtain, or delay in obtaining adequate land and water rights; natural resource rights; or Federal, State, and local permits and licenses needed for the work described in this agreement for the Project.

7. Take reasonable and necessary action of all contractual and administrative issues arising out of contracts awarded under this agreement.

8. Upon determination of technical acceptability of the completed work, the Sponsor must assume responsibility for the revised operation and maintenance (O&M) plan as provided by NRCS upon acceptance of designs and in accordance with Title 180, Part 500 of the NRCS Operation and Maintenance Manual and Title 390, Part 505, Subpart B, Section 505.11, of the NRCS National Watershed Program Manual.

9. Ensure that requirements for compliance with environmental and cultural resource laws are incorporated into the construction contract for the works of improvement.

10. Ensure that all contractors on NRCS assisted projects are performing their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 USC 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). The Sponsor is responsible for periodically checking the contractor's compliance with safety requirements.

11. Ensure the design follows the policy set forth in the NRCS National Engineering Manual Part 511.

12. Obtain NRCS acceptance of the final design package for each funded project phase prepared by a Massachusetts licensed professional engineer prior to soliciting contractors to install the project. The design package for each funded project phase will include drawings, specifications, a quality assurance plan, an operation and maintenance plan, a bid schedule and an engineer's cost estimate at a minimum. The review of the submittals (drawings, specifications, etc.) by NRCS will be general only, and nothing contained in the NRCS acceptance shall relieve, diminish, or alter in any respect the responsibilities of the Sponsor or approving Licensed Professional Engineer in achieving the results and performance specified in this Agreement. The Sponsor and the Licensed Professional Engineer are responsible for the soundness and adequacy of the designs, drawings, specifications, and other services performed under this Agreement. Modifications to the final approved design drawings or construction specifications must have NRCS concurrence.

a. The design shall include an assessment of sea level rise to ensure the restored salt marsh will function as intended and meet the design objectives for a 50-year design life.

b. The operation and maintenance plan shall identify any individual components that may require replacement during the 50-year design life. Estimated replacement costs shall be included in the estimated annual operation and maintenance costs.

13. Ensure the design and construction of the project shall meet and conform to all applicable NRCS Conservation Practice Standards(CPS), including CPS MA 657, Wetland Restoration, CPS MA 659, Wetland Enhancement, CPS MA 396, Aquatic Organism Passage, and CPS MA 570, Stormwater Runoff Control, which requires a minimum two-foot separation between the bottom of the treatment measure and the high groundwater elevation, in addition to all applicable local and state requirements.

14. Be responsible for all ineligible project costs. Ineligible costs are costs not referenced in this agreement. The Sponsor is also responsible for all costs in excess of the federal cost-share in this agreement.

15. Provide all construction inspection and quality assurance services for the project while allowing NRCS to perform periodic progress checks.

16. Ensure that a written release from the contractor of all claims against the Sponsor arising by virtue of the contract, other than claims in stated amounts as may be specifically excepted by the contractor, be incorporated into the terms of the construction contract and said release is a condition for final payment to the contractor.

17. Coordinate with the owners of the commercial property within the Mill Creek Subbasin to utilize the fill material funded by NRCS and undertake the construction work required to raise the agreed to low lying areas on the property to the design elevations. Provide as-built documentation to NRCS that the low-lying areas have been mitigated against flooding to meet the project requirements.

18. Ensure the information in the System for Award Management (SAM) is current and accurate until the final financial report (SF 425) under this award or final payment is received, whichever is later.

19. Dispose of all claims resulting from the contract; secure prior written concurrence of the State Conservationist if NRCS funds are involved.

20. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract awarded under this agreement. This includes, but is not limited to disputes, claims, protests of award, source evaluation, and litigation that may result from the project. Such actions will be at the expense of the Sponsor, including any legal expenses. The Sponsor will advise, consult with, and obtain prior written concurrence of NRCS on any litigation matters in which NRCS could have a financial interest.

21. Sponsor must indemnify and hold NRCS harmless to the extent permitted by State law for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the Sponsor in connection with its acquisition and management of the Watershed Flood Prevention Operations Program pursuant to this project agreement. Further, the Sponsor agrees that NRCS will have no responsibility for acts and omissions of the Sponsor, its agents, successors, assigns, employees, contractors, or lessees in connection with the acquisition and management of the Watershed Flood Prevention Operations Program pursuant to this project agreement that result in violation of any laws and regulations that are now or that may in the future become applicable.

22. Be liable to the NRCS for damages sustained by the NRCS as a result of the contractor failing to complete the work within the specified time. The damages will be based upon the additional costs incurred by the NRCS resulting from the contractor not completing the work within the allowable performance period. These costs include but are not limited to personnel costs, travel, etc. The NRCS will have the right to withhold such amount out of any monies that may be then due or that may become due and payable to the Sponsor. This liability is not applicable to the extent that the contract performance time is extended by court judgment unless such judgment results from actions of the Sponsor not concurred in by NRCS.

23. The Sponsor must secure at its own expense all Federal, State, and local permits and licenses necessary for completion of the work described in budget narrative as well as any necessary natural resource rights and provide copies of all permits and licenses obtained to NRCS.

24. Submit reports and payment requests to the ezFedGrants system or the Farm Production and Conservation (FPAC) Grants and Agreements Division via email to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov) as outlined in the applicable version of the General Terms and Conditions. Reporting frequency is as follows:

Performance reports: semi-annual

SF425 Financial Reports: semi-annual

#### NRCS RESPONSIBILITIES

1. Review and concur with the design, construction plans and specifications, Quality Assurance Plan (QAP) and O&M plan, and all other contract documents developed for or by the Sponsor.
2. Periodically perform progress checks during construction and participate in the final construction inspection.
3. Provide authorized assistance such as, but not limited to, estimates of contract costs, length of contract period, results of tests and studies as available, site investigations, design and layout, and drawings and specifications, and quality assurance, as requested by the Sponsor and as its resources permit.
4. Provide the services of Government Representative for final inspection.
5. Provide a template for the sign to be installed at the project site.
6. Make payment to the Sponsor covering the NRCS's share of the cost upon receipt and approval of SF-270, withholding the amount of damages sustained by NRCS as provided for in this agreement.

#### SPECIAL PROVISIONS

1. The furnishing of financial, administrative, and/or technical assistance above the original funding amount by NRCS is contingent on there being sufficient unobligated and uncommitted funding in the Watershed Flood Prevention Operations Program that is available for obligation in the year in which the assistance will be provided. NRCS may not make commitments in excess of funds authorized by law or made administratively available. Congress may impose

obligational limits on program funding that constrains NRCS's ability to provide such assistance.

2. In the event of default of a construction contract awarded pursuant to this agreement, any additional funds properly allocable as construction costs required to ensure completion of the job are to be provided in the same ratio as construction funds are contributed by the parties under the terms of this agreement. Any excess costs including interest resulting from a judgment collected from the defaulting contractor, or his or her surety, will be prorated between the Sponsor and NRCS in the same ratio as construction funds are contributed under the terms of the agreement.
3. Additional funds, including interest properly allocable as construction costs as determined by NRCS, required as a result of decision of the sponsor contracting officer or a court judgment in favor of a claimant will be provided in the same ratio as construction funds are contributed under the terms of this agreement. NRCS will not be obligated to contribute funds under any agreement or commitment made by the Sponsor without prior concurrence of NRCS.
4. The State Conservationist may make adjustments in the estimated cost to NRCS for constructing the works of improvement. Such adjustments may increase or decrease the amount of estimated funds that are related to differences between such estimated cost and the amount of the awarded contract or to changes, differing site conditions, quantity variations, or other actions taken under the provisions of the contract.
5. NRCS, at its sole discretion, may refuse to cost share should the Sponsor, in administering the contract, elect to proceed without obtaining concurrences described in this agreement.

### **Expected Accomplishments and Deliverables**

1. Secure funding from another federal agency and the MA DER to fully fund the flood mitigation of the low-lying areas of the commercial property within the Mill Creek Subbasin prior to work starting.
2. Schedule and facilitate a pre-design meeting with the Massachusetts professional registered project engineer and representatives of the Sponsor and NRCS for each phase of work.
3. Prepare a design, construction specifications, and drawings for each phase of work in accordance with relevant engineering principles that comply with NRCS programmatic requirements; and/or install the designed construction. The Sponsor must ensure each description of the work described in this agreement is reviewed, concurred, and approved by NRCS. Sponsor must not move to the next project work described in this agreement until the prior work is concurred and approved by NRCS.
4. Develop a quality assurance plans (QAP) for each project phase and submit it for NRCS review and concurrence.
5. The sponsor must provide NRCS with documentation of the actual cost incurred for the services acquired.
6. The Sponsor must provide NRCS with a signed Operation and Maintenance Agreement and the O&M plan that it is based on prior to soliciting contractors to install the project. By signing the agreement, the Sponsor agrees to maintain the project as outlined in the Operation and Maintenance Plan for the 50-year lifespan of the project.
7. Contract for services and construction, award and administer any contracts for the installation of the work for the project specified in this agreement in accordance with the Code of Federal Regulations (CFR), 2 CFR § 200.317 through 200.326, applicable state requirements, and the Sponsors' procurement regulations, as appropriate. See general terms and conditions attached to this agreement for a link to the CFR. In accordance with 2 CFR § 200.326 contracts must contain the applicable provisions described in Appendix II to Part 200. Davis-Bacon Act would not apply under this Federal program legislation.
8. Provide all construction inspection and quality assurance for the project but must allow NRCS to perform periodic progress checks.
9. Provide to NRCS, as a minimum, the following data to support the Sponsor's request for reimbursement for installing the project:
  - a. Copies of Design Report including data collected for design (surveys, geotechnical investigations, etc.), design computations, design assumptions, final AutoCAD drawing files, specifications, bid package, final payment documentation, construction inspection documents including pictures and videos and as-built plans and record drawings.
  - b. Certification from a Professional Engineer registered in the State of Massachusetts that all works meets construction standards and specifications. Sponsors will prepare as-built drawings, stamped by a MA licensed Professional Engineer

(PE) certifying that the "To the best of my professional knowledge, judgment and belief, this practice is installed in accordance with the plans and specifications and meets NRCS standards."

10. Arrange for and conduct final inspection of completed work with NRCS and provide a certification statement to NRCS that the project was completed in accordance with contractual requirements and the terms of this agreement.

11. Provide copies of site maps to appropriate Federal and State agencies for environmental review. Notify NRCS of environmental clearance, modification of construction plans, or any unresolved concerns prior to award of the contracts for construction of the works of improvement.

12. Procure and install a Project Sign. Details for the sign will be provided by NRCS and it will be installed at a location on the project site agreed upon by NRCS and the Sponsor. Costs associated with procurement and installation of the project sign are eligible for reimbursement from NRCS.

13. Upon acceptance of the completed works by the NRCS, assume responsibility for operation and maintenance of the completed works in accordance with the Operation and Maintenance Agreement for 50 years.

### **Resources Required**

See the Responsibilities of the Parties section for required resources, if applicable.

### **Milestones**

Sponsor and NRCS acceptance of final CNR Bridge Designs	August 2022
Announcement and solicitation of construction contracts for bridge	September 2022
Sponsor and NRCS acceptance of low roads, culverts and WCS	October 2022
Secure funding for low property mitigation	October 2022
Award construction contract for bridge	November 2022
Begin mitigation of low-lying properties	September 2023
Announcement and solicitation of construction contracts for roads	October 2023
Award construction contract for low roads and WCS	November 2023
Complete mitigation of low-lying properties	April 2024
Date of estimated completion of bridge construction	September 2024
Date of estimated completion of low roads and WCS	September 2024
Submission of As-built Documentation for low roads and WCS	November 2024
Submission of As-built Documentation for Bridge to NRCS	December 2024

## **GENERAL TERMS AND CONDITIONS**

Please reference the below link(s) for the General Terms and Conditions pertaining to this award:  
<https://www.fpacbc.usda.gov/about/grants-and-agreements/award-terms-and-conditions/index.html>

**U.S. DEPARTMENT OF AGRICULTURE  
FARM PRODUCTION AND  
CONSERVATION**

**GENERAL TERMS AND CONDITIONS FOR  
GRANTS AND COOPERATIVE AGREEMENTS**

The Farm Production and Conservation (FPAC) mission area encompasses the following USDA agencies: Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), Risk Management Agency (RMA), the Commodity Credit Corporation (CCC), and the FPAC Business Center.

**I. APPLICABLE REGULATIONS**

- a. As a condition of this award, the recipient assures and certifies that it has and/or will comply and require subrecipients to comply with the requirements contained in the following statutes and regulations, as applicable. The full text of Code of Federal Regulations references may be found at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov/>.
1. 2 CFR Part 25, "Universal Identifier and System of Award Management"
  2. 2 CFR Part 170, "Reporting Subaward and Executive Compensation Information"
  3. 2 CFR Part 175, "Award Term for Trafficking in Persons"
  4. 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)"
  5. 2 CFR Part 182, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)"
  6. 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
  7. 2 CFR Part 400, "Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards"
  8. 2 CFR Part 417, "Nonprocurement Debarment and Suspension"
  9. 2 CFR Part 418, "New Restrictions on Lobbying"
  10. 2 CFR Part 421, "Requirements for Drug-Free Workplace (Financial Assistance)"
  11. 2 CFR Part 422, "Research Institutions Conducting USDA-Funded Extramural Research; Research Misconduct"
- b. Allowable project costs will be determined in accordance with the authorizing statute, the purpose of the award, and, to the extent applicable, to the type of organizations receiving the award, regardless of tier. The following portions of the Code of Federal Regulations are hereby incorporated by reference. The full text of Code of Federal Regulations references may be found at

<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>  
and <http://www.ecfr.gov/>.

2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards"

- c. For corporate recipients, by accepting this award the recipient acknowledges: (1) that it does not have a Federal tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) that it has not been convicted of a felony criminal violation under any Federal law within 24 months preceding the award, unless a suspending and debarring official of the USDA has considered suspension or debarment of the recipient corporation based on these convictions and/or tax delinquencies and determined that suspension or debarment is not necessary to protect the interests of the Government. If the recipient fails to comply with these provisions, the agency will annul this agreement and may recover any funds the recipient has expended in violation of the above cited statutory provisions.

## II. UNALLOWABLE COSTS

The following costs are not allowed:

- a. Profit and management fees. Recipients may not earn and keep income resulting from an award
- b. Costs above the amount authorized for the project.
- c. Costs incurred after the award period of performance end date.
- d. Costs not identified in the approved budget or approved budget revisions.
- e. Costs of promotional items and memorabilia, including models, gifts, and souvenirs.
- f. Compensation for injuries to persons or damage to property arising from project activities.
- g. Meals: Meals may be charged to an award only if they are necessary for the performance of the project. For instance, meals (normally only lunch) that are a necessary part of the costs of meetings and conferences (i.e., required attendance and continuity of a meeting), the primary purpose of which is the dissemination of information, are allowable, as are costs of transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. Note: Meals consumed while in official travel status do not fall in this category. They are considered to be per diem expenses and should be reimbursed in accordance with the organization's established travel policies subject to statutory limitations or in accordance with Federal travel policies.
- h. Costs normally charged as indirect costs may not be charged as direct costs without proper justification and agency approval. Proper justification includes documentation that the costs meet the criteria for allowability (see 2 CFR 200.403). Examples of such costs include rent, utilities, depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.
- i. Salaries that are not commensurate with level of work: All costs must be reasonable

to be allowable (2 CFR 200.403), and 2 CFR 200.404 defines a reasonable cost as one if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. Salaries determined not to be reasonable compared to the level of work will be unallowable.

- j. Honoraria. Speaker fees are allowable.
- k. Costs which lie outside the scope of the approved project and amendments thereto.
- l. Entertainment costs, regardless of their apparent relationship to project objectives.
- m. Consulting services performed by a Federal employee during official duty hours when such consulting services result in the payment of additional compensation to the employee; and
- n. Renovation or refurbishment of facilities, the purchase or installation of fixed equipment in facilities, and the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

This list is not exhaustive. For general information about the allowability of particular items of costs, please see 2 CFR Part 200, "Subpart E - Cost Principles", or direct specific inquiries to the administrative contact identified in the award. The allowability of some items of costs may be difficult to determine. To avoid disallowance or dispute of such costs, the recipient may seek prior approval before incurring them. See 2 CFR 200.407.

### **III. PRIOR APPROVAL REQUIREMENTS**

Certain items of cost and award revisions require the prior written approval of the awarding agency. The following are the most common situations requiring prior approval. However, this list is not exhaustive, and the recipient is also bound by any other prior approval requirements identified in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Submit all requests for the approvals described below via e-mail to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov). In any instance where a request for approval modifies the award budget, the recipient must submit a revised SF 424A and budget narrative. All requests for prior approval must reference the applicable agreement number.

- a. Pre-award costs.—To receive reimbursement for costs incurred prior to the award date, recipients must request written approval. This restriction also applies to costs intended to meet cost-share requirements. Even with approval, recipients incur pre-award costs at their own risk. The Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover the costs.
- b. Revisions to scope, objective, or deliverables.—When it is necessary to modify the scope, objective, or deliverables of an award, the recipient must submit a written request and justification for the change along with the revised scope, objective, or deliverables of the award.
- c. Additions or changes to subawards and contracts.—The subawarding, transferring, or contracting out of any work (i.e., services) under a Federal award not identified in the original award budget or any changes to subaward or contracts requires prior written approval. The recipient must submit a justification for the proposed



subaward/contract, a statement of work to be performed, and a detailed budget for the subaward/contract. This provision does not apply to the acquisition of supplies, material, equipment, or general support services.

- d. Change in a key person specified in the application or award.—When there is a change in key personnel, the recipient must request prior written approval for the substitution or change. The request must identify the replacement personnel and provide his or her qualifications.
- e. Absence or change in project leadership.—If the approved project director or principal investigator disengages from the project for more than three months or reduces time devoted to the project by 25 percent or more, the recipient must request prior approval in writing, identifying who will be in charge during the project director's absence. The notification must include the qualifications of the replacement.
- f. Budget revisions.—Recipients must request prior written approval for deviations from the approved budget in the instances described below. For all budget revisions, the recipient must submit a new SF 424A or 424C and budget narrative, even those that do not require prior approval.
  1. The inclusion of costs that require prior approval in accordance with Subpart E—Cost Principles of this part or 45 CFR part 75 Appendix IX, "Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.
  2. Where the cumulative amount of transfers of funds among direct cost categories or programs, functions, and activities exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency, and where the Federal share of the project exceeds the simplified acquisition threshold. Recipients must notify the Government of budget changes that do not meet the threshold described above and provide a revised SF 424A and budget narrative.
  3. The transfer of funds budgeted for participant support costs to other categories of expense requires prior written approval. Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences or training projects.
  4. Changes in the approved cost-sharing or matching provided by the recipient, including to amount, source, or type.
  5. Additional Federal funds needed to complete the project. This change also requires a formal agreement amendment.
  6. Changes to negotiated indirect cost rates during the award period of performance. If the change is due to receipt of a new negotiated indirect costs rate agreement (NICRA) must include a copy of the new agreement.
- g. No-Cost Extensions of Time.—When a no-cost extension of time is necessary, the recipient authorized signatory must submit a written request via e-mail to FPAC.BC.GAD@usda.gov. Except in limited circumstances, a no-cost extension of time cannot exceed 12 months. FPAC cannot approve requests for no-cost

extensions received after the expiration of the award. In addition, time may not allow extension requests submitted less than 30 calendar days before the period of performance end date to be processed, so recipients are encouraged to submit requests as soon as possible. FPAC agencies cannot approve no-cost extensions requested merely to expend remaining funds. The request must contain the following:

1. Amount of additional time requested
2. Explanation for the need for the extension
3. A summary of progress to date and revised milestones

#### **IV. PAYMENTS**

- a. Recipients must request reimbursement or advances using a properly completed and executed SF-270, submitted with a Budget Expense Table or Deliverable Expense Table (or similar summary document), as applicable to either the ezFedGrants system or to FPAC.BC.GAD@usda.gov. Templates for Budget Expense Tables and Deliverable Expense Tables are available at this link: <https://www.fpacbc.usda.gov/about/doing-business/index.html>. FPAC agencies will make payment to the recipient on a reimbursable or advance basis in accordance with the frequency specified in the statement of work.
- b. Recipients requesting advances should request payments in amounts necessary to meet their current needs pursuant to procedures contained in the Federal administrative provisions and 31 CFR Part 205. Requests must be submitted no less than 15 days prior to the start of the requested advance period. The recipient must provide a justification showing the amount of advanced funds spent using the Budget Expense Table within 30 days of the end of the advance period. If applicable, the recipient must also submit the cost-share Budget Expense Table.
- c. The method of payment between the recipient and its contractors will be in accordance with the policies and procedures established by the recipient except that the contractors may not use the USDA Office of Financial Management/National Finance Center method to request payments. If the recipient makes advance payments to contractors, the recipient must ensure that the timing of such payments is designed to minimize elapsed time between the advance payment and the disbursement of funds. Recipients must not submit requests from their contractors for review or approval.
- d. The recipient must maintain records of supporting documentation all costs incurred under this award. Such documentation includes, but is not limited to, canceled checks, paid bills, payroll records, and subaward documents. Labor cost charges to this award must be based upon salaries actually earned and the time actually worked on this award. All project costs must be incurred within the period of performance of this award, including any approved no-cost extension of time. The Government may disallow costs that cannot be supported by supporting documentation or that are incurred outside of the agreement period of performance and budget and may require the return of any funds paid out for those costs. The level of detail and documentation required to be provided to support any individual payment request is at the discretion of the Government. Do not provide supporting

documentation unless it is specifically requested.

- e. Recipients must pay all costs incurred (i.e., liquidate obligations) under the award and request all final requests for payment not later than 120 calendar days after the period of performance end date. The Government must timely close-out expired agreements, which includes de-obligation of unspent funds. Therefore, funds may not be available for payment requests received more than 120 days after the period of performance end date, and the Government is not obligated to make such payments.
- f. Payments under fixed-amount awards are made based on deliverables completed, milestones achieved, or as a single payment upon award completion rather than costs incurred. The Government and recipient must utilize 2 CFR 200, Subpart E, Cost principles to support unit prices included in fixed amount awards prior to agreement execution.

## **V. FINANCIAL REPORTING**

- a. Recipients must submit a Federal Financial Report (FFR), SF 425 in accordance with the schedule included in the award statement of work. Recipients must submit reports to either the ezFedGrants system or via e-mail to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov). Failure to submit reports as required may result in suspension or termination of award.
  - b. The recipient must submit a final financial report no later than 120 days after the period of performance end date. Failure to do so may result in a negative report to the Federal Awardee Performance and Integrity Information System (FAPIIS).
  - c. The FPAC awarding agency will withhold payments under this award if the recipient is delinquent in submitting required reports.

## **VI. PERFORMANCE MONITORING AND REPORTING**

- a. The recipient is responsible for monitoring day-to-day performance and for reporting to the FPAC awarding agency. If the project involves subaward/contractual arrangements, the recipient is also responsible for monitoring the performance of project activities under those arrangements to ensure that approved goals and schedules are met.
- b. The recipient must submit a written progress report at the frequency specified in the statement of work to either the ezFedGrants system or via e-mail to [FPAC.BC.GAD.usda.gov](mailto:FPAC.BC.GAD.usda.gov). Each report must cover—
  1. A comparison of actual accomplishments with the milestones and deliverables established for the reporting period and, where project output can be quantified, a computation of the costs per unit of output.
  2. The reasons why milestones and deliverables targets were not met, if appropriate.
  3. Additional pertinent information including, where appropriate, analysis

and explanation of cost overruns or high unit costs.

- c. The recipient must submit a final performance report within 120 calendar days of the period of performance end date. Failure to do so may result in a negative report to the Federal Awardee Performance and Integrity Information System (FAPIIS).
- d. The FPAC awarding agency will withhold payments under this award if the recipient is delinquent in submitting required reports.

## **VII. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION**

- a. Reporting of first-tier subawards.
  - 1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$30,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
  - 2. Where and when to report.
    - i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
    - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
  - 1. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov>.
- b. Reporting Total Compensation of Recipient Executives.
  - 1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
    - i. the total Federal funding authorized to date under this award is \$30,000 or more;
    - ii. in the preceding fiscal year, you received—
      - A. 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
      - B. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15

U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

- i. As part of your registration profile at <https://www.sam.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

- A. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
- B. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

1. Subawards, and

2. The total compensation of the five most highly compensated executives of any subrecipient.
- e. Definitions. For purposes of this award term:
1. Entity means all of the following, as defined in 2 CFR part 25:
    - i. A Governmental organization, which is a State, local government, or Indian tribe;
    - ii. A foreign public entity;
    - iii. A domestic or foreign nonprofit organization;
    - iv. A domestic or foreign for-profit organization;
    - v. A Federal agency, but only as a subrecipient under an award or subaward to a non- Federal entity.
  2. Executive means officers, managing partners, or any other employees in management positions.
  3. Subaward:
    - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
    - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
    - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
  4. Subrecipient means an entity that:
    - i. Receives a subaward from you (the recipient) under this award; and
    - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
  5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
    - i. Salary and bonus.
    - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
    - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical

reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

## **VIII. AUDIT REQUIREMENTS**

The recipient is responsible for complying with audit requirements in accordance with 2 CFR 200, Subpart F. A recipient entity that expends \$750,000 or more during the recipient's fiscal year in Federal awards must have a single or program-specific audit conducted for that year.

## **IX. SPECIAL PROVISIONS**

- a. The recipient assures and certifies that it will comply with the minimum-wage and maximum-hour provisions of the Federal Fair Labor Standards Act.
- b. Employees of FPAC agencies will participate in efforts under this agreement solely as representatives of the United States. They may not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of the recipient. They also may not assist the recipient with efforts to lobby Congress or to raise money through fundraising efforts. Further, FPAC employees must report to their immediate supervisor any negotiations with the recipient concerning future employment and must refrain from participation in projects or agreements with such recipients.
- c. Except for agreements entered under the Agriculture Conservation Experienced Services (ACES) program authorized by the Food, Conservation, and Energy Act of 2008, employees of the recipient will not be considered Federal employees or agents of the United States for any purposes under this agreement. An individual providing services under the ACES program is deemed to be an employee of the United States Government solely for purposes of chapter 171 of title 28, United States Code, provided the individual is acting within the scope of the agreement.
- d. Except in very limited circumstances (e.g., construction agreements), no agreement period of performance can exceed a total of five years, including extensions.
- e. Recipients who engage or assist in scientific related activities on behalf of USDA must uphold the principles of scientific integrity established by Departmental Regulations 1074-001, Scientific Integrity. Covered activities

include engaging in, supervising, managing, and reporting scientific work; analyzing and publicly communicating information resulting from scientific work; and utilizing information derived from scientific work in policy and decision making.

- f. Recipients of awards under covered programs (as defined in Executive Order 13858, January 31, 2019) are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or subaward that is chargeable under the award. "Covered program" means a program that provides financial assistance for the alteration, construction, conversion, demolition, extension, improvement, maintenance, construction, rehabilitation, or repair of an infrastructure project in the United States. However, it does not include programs for which a domestic preference is inconsistent with law or programs providing financial assistance that are subject to comparable domestic preferences.
- g. The recipient and its employees are prohibited from promoting, recommending, or discussing the availability of specific commercial products or services with FPAC agency clients in the course of carrying out activities under this agreement, including any products or services offered by the recipient, except as may be specifically allowed in the agreement.

#### **X. PATENTS, INVENTIONS, COPYRIGHTS, AND ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER**

- a. The following acknowledgment of USDA support must appear in the publication of any material, whether copyrighted or not, and any products in electronic formats (web sites, computer programs, etc.) that is substantially based upon or developed under this award:

"This material is based upon work supported by the U.S. Department of Agriculture, under agreement number [recipient should enter the applicable award number here]."

In addition, all publications and other materials, except scientific articles or papers published in scientific journals, must include the following statement:

"Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Agriculture. In addition, any reference to specific brands or types of products or services does not constitute or imply an endorsement by the U.S. Department of Agriculture for those products or services."

- b. All publications printed with Federal Government funds will include the most current USDA nondiscrimination statement, available from the Public Affairs Division, Civil Rights Division, or on the USDA home page. If the material is too small to include the full nondiscrimination statement, the material must, at a



minimum, include the following statement:

“USDA is an equal opportunity provider, employer, and lender.”

The recipient is responsible for ensuring that an acknowledgment of USDA is made during news media interviews, including popular media such as radio, television, and news magazines, that discuss work funded by this award in a substantial way.

- c. Allocation of rights of patents, inventions, and copyrights must be in accordance with 2 CFR Part 200.315. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support.
- d. In accordance with 37 CFR Section 401.14, each subject invention must be disclosed to the Federal agency within 2 months after the inventor discloses it in writing to recipient personnel responsible for patent matters. Invention disclosure statements pursuant to 37 CFR Section 401.14(c) must be made in writing to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov).
- e. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must manufacture it domestically.

#### **XI. COST SHARING REQUIREMENTS**

- a. If the award has specific cost-sharing requirements, cost-sharing participation in other projects must not be counted toward meeting the specific cost-share requirement of this award. Cost sharing must come from non-Federal sources unless otherwise stated in the applicable program authorizing statute.
- b. Cost sharing must be documented on each SF 425 and payment requests as it is provided by the recipient or third party. The required cost-share or matching ratio must be met by the end of the agreement period of performance; however, it does not have to be maintained for every payment request.
- c. Should the recipient become aware that it may be unable to provide the cost-sharing amount identified in this award, it must—
  - 1. Immediately notify the FPAC Business Center Grants and Agreements Division via e-mail to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov), and
  - 2. Either specify the steps it plans to take to secure replacement cost sharing or specify the plans to phase out the project in the absence of cost sharing.

Failure by the recipient to notify FPAC in accordance with this section or failure to submit an acceptable remediation plan may result in the disallowance of some or all the costs charged to the award, the subsequent recovery by FPAC of some of the FPAC funds provided under the award, and/or termination of the award. It may constitute a violation of the terms and conditions of the award so serious as to

provide grounds for subsequent suspension or debarment. FPAC reviews and approves or disapproves cost-sharing remediation plans on a case-by-case basis.

- d. The recipient must maintain records of all project costs that are claimed as cost sharing as well as records of costs to be paid by FPAC. If the recipient's cost sharing includes in-kind contributions, the basis for determining the valuation for volunteer services and donated property must be documented.
- e. Recipients must also request prior approval before changing the source or type of cost sharing. See Section III(e)(4).

## **XII. PROGRAM INCOME**

- a. Program income does not include Federal funds received under an award. Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in §200.307(f). Examples include fees charged for conferences or workshops, fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them.
- b. FPAC recommends treating program income with the additive method, however recipients may request to use the deductive method.
- c. If program income is earned and not already identified and addressed in the award, the recipient must provide notification to the FPAC BC GAD via e-mail to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov) and indicate the preferred treatment method (additive or deductive).
- d. Program income may be used to meet recipient cost-sharing requirements with the approval of the Government.
- e. Recipients must report all program income on the applicable SF 270 and SF 425 as it is earned.

## **XIII. NONEXPENDABLE EQUIPMENT**

- a. Recipients purchasing equipment or products with funds provided under this award are encouraged to purchase only American-made equipment and products. A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. All other recipients must follow these procedures.
- b. Title to equipment acquired under a Federal award will vest conditionally in the

recipient upon acquisition. The recipient must not encumber the property without approval of the Government.

- c. The recipient must use the equipment for the authorized purposes of the project for as long as needed whether or not the project or program continues to be supported by the Federal award. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:
  1. Activities under a Federal award from the Federal awarding agency which funded the original program or project, then
  2. Activities under Federal awards from other Federal awarding agencies.
- d. The recipient must maintain property records that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
- e. The recipient must take a physical inventory of the property and reconcile the results with the property records at least once every two years until final disposition.
- f. When equipment is no longer needed for any of the purposes set out in this provision and the per-unit fair market value is less than \$5,000, the recipient may retain, sell, or dispose of the equipment with no further obligation to FPAC. However, if the per-unit fair market value is \$5,000 or more, the recipient must submit a written request for disposition instructions to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov).

#### **XIV. LIMIT OF FEDERAL LIABILITY**

- a. The maximum financial obligation of FPAC to the recipient is the amount of funds indicated in the award as obligated by FPAC. However, if an erroneous amount is stated on the approved budget, or any supporting document relating to the award, FPAC will have the unilateral right to make the correction and to make an appropriate adjustment in the FPAC share of the award to align with the Federal amount authorized.
- b. For awards where it is anticipated that the period of performance will include multiple budget periods, all subsequent budget periods are subject to the availability of funds, program authority, satisfactory performance, and compliance with the terms and conditions of the Federal award.

#### **XV. AMENDMENTS**

The parties may modify this agreement via formal amendment executed by the authorized signatories of each. The FPAC Business Center's Grants and Agreements Division has developed streamlined procedures for certain agreement changes, including no-cost extensions and some changes to agency and recipients contacts that do not require formal amendments. Contact the administrative contact for this award for instructions.

**XVI. PRIVACY ACT AND PROHIBITION AGAINST CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS**

- a. Activities performed under this award may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term "confidential information" means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of FPAC.
- b. The recipient's personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. The recipient's personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171).
- c. The recipient agrees to comply with the "Prohibition Against Certain Internal Confidentiality Agreements:"
  1. You may not require your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
  2. You must notify your employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (1) of this award provision are no longer in effect.
  3. The prohibition in paragraph (1) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.
  4. If FPAC determines that you are not in compliance with this award provision, FPAC:
    - i. Will prohibit your use of funds under this award, in accordance with sections 743 and 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law;
    - ii. May pursue other remedies available for your material failure to comply with award terms and conditions.

**XVII. ACKNOWLEDGMENT OF SECTION 1619 COMPLIANCE**

The recipient agrees to comply with FPAC guidelines and requirements regarding the disclosure of information protected under Section 1619 of the Food, Conservation, and

Energy Act of 2008 (PL 110- 246), 7 U.S.C. 8791 as described below. Responsibilities.

- a. Acceptance of this award indicates acknowledgment and understanding that the recipient is legally bound by Federal statute to comply with the provisions of Section 1619 and that the recipient will not subsequently disclose information protected by section 1619 to any individual or organization that is not directly covered by this award. Any such subsequent disclosure of the protected information (except as permitted under Section 1619) will be considered a violation of Section 1619. The recipient will be held responsible should disclosure of the protected information occur.
- b. Acceptance of this award legally binds every owner, manager, supervisor, employee, contractor, agent, and representative of the recipient to comply with the provisions in Section 1619. The recipient must consult with FPAC prior to providing protected information to an entity or individual outside of the recipient and as necessary to implement the program to ensure that such release is permissible.
- c. The recipient will use the protected information only to perform work that is directly connected to this award. Use of the protected information to perform work that is not directly connected to this award is expressly prohibited.
- d. The recipient must internally restrict access to the protected information to only those individuals who have a demonstrated need to know the protected information to perform work under this award.
- e. The provisions in Section 1619 are continuing obligations. Even when the recipient is no longer a recipient, or when individuals currently affiliated with the recipient become no longer so affiliated, every person having been provided access to the protected information will continue to be legally bound to comply with these provisions.
- f. The recipient must notify all managers, supervisors, employees, contractors, agents, and representatives about this provision and the requirements of Section 1619. Notifications about the existence of this provision must be made to those individuals who are new to the organization and periodic notifications must be sent throughout the organization (as well as to all contractors and agents) to remind all about the ongoing and continuing requirements.
- g. When the recipient is unsure whether particular information is covered or protected by Section 1619, the recipient must consult with FPAC to determine whether the information must be withheld.
- h. Use of the protected information for any purpose is expressly prohibited after the period of performance end date of this award. Upon the award end date, any protected information provided under this award must be immediately destroyed or returned to FPAC. The recipient must provide to FPAC written certification that the protected information (paper copy, electronic copy, or both) has been properly destroyed, removed from any electronic storage media, or both.
- i. Any State's "sunshine law," "open records act" or other version of the Freedom of Information Act is superseded by section 1619 under the

Supremacy Clause of the U.S. Constitution. Accordingly, information protected from disclosure by section 1619 must not be released under such State laws.

j. Protected Information.

Examples of the types of information prohibited by disclosure under Section 1619 include, but are **not limited to**, the following:

- i. State identification and county number (where reported and where located).
  - ii. Producer or landowner name, business full address, phone number, Social Security Number, and similar personal identifying information.
  - iii. Farm, tract, field, and contract numbers.
  - iv. Production shares and share of acres for each Farm Serial Number (FSN) field.
  - v. Acreage information, including crop codes.
  - vi. All attributes for Common Land Units (CLUs) in USDA's Geospatial Information System
  - vii. Any photographic, map, or geospatial data that, when combined with other maps, can be used to identify a landowner.
  - viii. Location of conservation practices.
- k. Section 1619 allows disclosure of "payment information (including payment information and the names and addresses of recipients of payments) under any Department program *that is otherwise authorized by law*" (emphasis added). The names and payment information of producers generally may be provided to the public; however, the recipient shall consult with FPAC if there is any uncertainty as to the provision of such information.
- l. Section 1619 also allows disclosure of otherwise protected information if "the information has been transformed into a statistical or aggregate form without naming any—(i) individual owner, operator, or producer; or (ii) specific data gathering cite." The recipient must consult with FPAC as to whether specific information falls within this exception prior to relying on this exception.
- m. Violations. The recipient will be held responsible for violations of this provision and Section 1619. A violation of this provision by the recipient may result in action by FPAC, including termination of the underlying Federal award.
- n. Effective Period. The requirements of this provision is effective on the date of the final signature and will continue until FPAC notifies the recipient that it is no longer required based on changes in applicable Federal law.

#### **XVIII. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

The recipient (including subrecipients) is responsible for compliance with the prohibition on certain telecommunications and video surveillance services or equipment identified in 2 CFR 200.216. See Public Law 115-232, Section 889 for additional information. In accordance with 2 CFR 200.216, the recipient (including subrecipients) is prohibited from obligating or expending loan or grant funds for covered telecommunications equipment or services to:

- o. procure or obtain, extend or renew a contract to procure or obtain;
- p. enter into a contract (or extend or renew a contract) to procure; or
- q. obtain the equipment, services or systems.

## **XIX. NATIONAL POLICY REQUIREMENTS**

The recipient must comply with all relevant public policy requirements, including those in general appropriations provisions, which can be accessed at this link:  
[https://www.ocfo.usda.gov/docs/Regulatory\\_Statutory\\_and\\_National\\_Policy\\_Requirements\\_v2\\_2018\\_04\\_17.pdf](https://www.ocfo.usda.gov/docs/Regulatory_Statutory_and_National_Policy_Requirements_v2_2018_04_17.pdf)

## **XX. TERMINATION**

In accordance with 2 CFR 200.340, the recipient understands this agreement may be terminated in whole or in part as follows:

- a. By the Federal awarding agency or pass-through entity, if a recipient fails to comply with the terms and conditions of a Federal award;
- b. By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
- c. By the Federal awarding agency or pass-through entity with the consent of the recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
- d. By the recipient upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety.
- e. If the Federal award is terminated for the recipient's material failure to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award, the termination decision will be reported to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS) in accordance with 2 CFR200.341.

## **XXI. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE**

If the total value of the recipient's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any

period of time during the period of performance of this Federal award, then the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

**a. Proceedings About Which You Must Report**

Submit the information required about each proceeding that:

1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
2. Reached its final disposition during the most recent five-year period; and
3. Is one of the following:
  - i. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
  - ii. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - iii. An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
  - iv. Any other criminal, civil, or administrative proceeding if:
    - A. It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
    - B. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
    - C. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

**b. Reporting Procedures**

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

**c. Reporting Frequency**

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report.



Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

**d. Definitions**

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
2. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
3. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  - i. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  - ii. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

**XXII. AWARD CLOSEOUT**

- a. Award closeout is the process by which FPAC determines that all required project activities have been performed satisfactorily and all necessary administrative actions have been completed.
- b. The recipient must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the agreement, including documentation showing that match or cost-share requirements have been met. The awarding agency may approve extensions when requested by the recipient.
- c. Unless the awarding agency authorizes an extension, the recipient must liquidate all obligations incurred under the agreement not later than 120 calendar days after the end date of the period of performance.
- d. Recipients must submit all requests for reimbursements no later than 120 calendar days after the end date of the period of performance.
- e. The recipient must promptly refund any balances of unobligated cash that the awarding agency paid in advance or paid and that are not authorized to be retained by the recipient for use in other projects. See OMB Circular A-129 and see §200.345 Collection of amounts due, for requirements regarding unreturned amounts that become delinquent debts.

- f. Recipients must retain all records pertaining to the agreement in accordance with 2 CFR 200.333-337 and any additional requirements included in the agreement statement of work.
- g. Recipients must follow disposition requirements for property acquired with award funds in accordance with 2 CFR 200.310-316 and the terms of this agreement.
- h. If the recipient does not submit all reports in accordance with this section and the terms and conditions of the Federal award within one year of the period of performance end date, the Federal awarding agency must proceed to close out with the information available, including de-obligation of remaining funds. In addition, in accordance with 2 CFR 200.344, the Federal awarding agency must report the non-Federal entity's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPIIS).

### **XXIII. NON-DISCRIMINATION IN USDA PROGRAMS**

The recipient agrees that, in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.



FUSS & O'NEILL

November 16, 2021

Ms. Martha Craig  
Friends of Herring River  
P.O. Box 565  
South Wellfleet, MA 02663

VIA EMAIL: [mcraig@HerringRiver.org](mailto:mcraig@HerringRiver.org)

RE: Proposal for Professional Engineering Services  
Final Design and Permitting Support  
Chequessett Neck Road Bridge and Water Access Improvements

Dear Ms. Craig:

This proposal is being provided to continue assisting Friends of Herring River (FHR) and the Herring River Technical Team (HRTT) on behalf of project proponents in developing final design and contract documents for the Chequessett Neck Road (CNR) bridge and access improvements and addressing comments to secure permit authorizations for work at CNR and the Mill Creek (MC) water control structure and tidal channel drainage improvement project elements. We understand the project will be advertised for public bidding by the Town with the subsequent construction conducted by the selected contractor under a contract to the Town.

## Scope of Services

### Task 1 – Final CNR Design and Bid/Contract Documents

Complete final design of civil and electrical project elements, including final drawings and technical specifications for these elements depicted on the June 2021 CNR Bridge and Water Access Facility Improvements permitting drawing set.

- Prepare technical specifications in accordance with the Construction Specification Institute (CSI).
- Coordinate respective design elements with potential product suppliers, including for gate structures, gate structure power and control systems, the temporary bridge system, and elevated pedestrian access structure.

317 Iron Horse Way  
Suite 204  
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California  
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Vermont

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Contract

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Ms. Martha Craig  
November 16, 2021  
Page 2

### Sub-Task 1.1 – Final Civil and Electrical Drawings and Specifications

- Complete final design analyses for civil and electrical project elements. Prepare final plans, details and notes associated with respective project elements depicted on the CNR Bridge and Water Access Facility Improvements permitting drawing set.
- Prepare Division 1 specifications to address project requirements including general project coordination, administrative management, environmental protection, temporary traffic control and quality assurance/quality control including field- and laboratory testing of respective materials delivered to the project site.

Temporary traffic control specification will indicate performance requirements for delegated design of the temporary bridge and roadway approaches, including geotechnical and structural design of the temporary foundations and bridge system satisfying stated dead-and live-loadings and allowing temporary placement of respective overhead utilities for the duration of the project.

- Prepare Division 2 technical specifications addressing requirements governing construction of civil elements, including control of water, earthwork, shoring of excavations, dredging, pile foundation and sheeting cutoff systems, the elevated pedestrian access structure, drainage structures, stone scour protections, paving, signage and guardrails, and site restoration (seeding and plantings).

Performance requirements will be indicated for temporary surface water bypass, groundwater dewatering and treatment, excavation shoring and protection, dredging methodology(ies) and the pedestrian access structure such that the bidders/contractor will be responsible to determine through delegated design activities what equipment, materials and methods are proposed to meet respective performance requirements including permit conditions.

- Prepare Division 4 and higher specifications addressing fabricated steel structures including railings gate structures, electrical power and control systems, and the trailer-mounted generator. Specifications for gate structures/operators and the trailer-mounted generator will state performance/operation and layout requirements for respective systems, and reference or-equal manufacturers for consideration by the bidders/contractor.

### Sub-Task 1.1 Deliverables

- Draft and final drawings and technical specifications in PDF format.
- AutoCAD files associated with the civil and electrical drawings included in the final drawing set.





Ms. Martha Craig  
November 16, 2021  
Page 3

### **Sub-Task 1.2 – Final Structural Drawings and Specifications**

- Prepare final plans, details and notes associated with respective project elements depicted on the June 2021 CNR Bridge and Water Access Facility Improvements permitting drawing set.
- Prepare Division 3 specifications addressing cast-in-place and precast concrete structures including steel reinforcing, concrete admixtures and execution requirements for forming and placement of concrete delivered to the project site.

Performance requirements will be indicated for pre-cast concrete structures such that the bidders/contractor will be responsible to determine through delegated design the required materials and configurations of respective structures needed to meet respective performance requirements.

#### **Sub-Task 1.2 Deliverables**

- Documentation of structural analyses will be incorporated into MassDOT submittals provided as deliverables under Sub-Task 1.5.
- Draft and final drawings and technical specifications in PDF format.
- AutoCAD files associated with structural drawings included in the final drawing set.

### **Sub-Task 1.3 – Final Geotechnical Specification and Drawing Documentation**

- Review relevant draft and final Division 2 technical specifications, plans, details and notes for consistency with identified subsurface conditions and material and execution requirements determined by geotechnical design analyses for respective civil and structural project elements.

#### **Sub-Task 1.3 Deliverables**

- Review and edits to draft and final technical specifications in PDF format will be provided with Division 1 and 2 technical specifications provided as deliverables under Sub-Task 1.1.

### **Sub-Task 1.4 – Bid/Contract Documents and Updated Opinion of Cost**

- Develop front-end bid and contract documents to be incorporated into the Project Manual with technical specifications and drawings being developed under Sub-Tasks 1.1, 1.2 and 1.3. Bid documents to include an invitation to bid, instructions to bidders, bid form with lump-sum and unit bid price items (and/or add/deduct bid price items) for project elements that have the potential for changed quantities of materials, or potential unknown conditions that may be encountered, to secure competitive pricing in the bid environment.

Ms. Martha Craig  
November 16, 2021  
Page 4

- Incorporate standard bid bond, performance bond, payment bond, non-collusion, tax compliance and qualifications of bidder documents. File a request with the Massachusetts Department of Labor to obtain prevailing wage determination documentation within no more than 90 days of bids being available for review by prospective bidders. Coordinate with the Town to incorporate Town-specific bid forms/language and supplemental conditions contract documents.
- Incorporate Engineers Joint Contract Documents Committee (EJCDC) standard general terms and conditions into the project manual with project-specific supplemental conditions and special conditions (if any) conveying Town-specific project requirements. Develop and incorporate respective exhibits conveying data on project site and subsurface conditions, project permit conditions and other data affecting the bidders'/contractor's project material and execution requirements and corresponding schedule/costs.
- Update the previous opinion of construction cost based on updated product types/dimensions, estimated material quantities and available recent construction project bid prices, published regional MassDOT weighted-average unit prices (supplemented by RIDOT and ConnDOT weighted-average unit bid prices where appropriate) and other published sources (e.g., RSMeans Construction Cost Data).

#### **Sub-Task 1.4 Deliverables**

- Draft and final bid/contract documents in PDF format.
- Massachusetts Department of Labor prevailing wage determination.
- Draft and final updated opinion of construction cost.

#### **Sub-Task 1.5 – MassDOT Final Design Submittal**

- Complete final geotechnical design analyses for relevant project elements requiring assessments of subsurface conditions and related recommendations for design of foundations for respective project elements depicted on the June 2021 CNR Bridge and Water Access Facility Improvements permitting drawing set in accordance with the respective geotechnical design analyses.

These analyses will include final assessments for bridge abutment and pier pile foundations, including dead and live- vertical loads, dynamic lateral loads associated with tidal hydrostatic and wave force loadings on the gate/panel structures, seepage analyses for respective tidal and flood conditions imposed on gate/panel structures and underlying sheeting cutoff walls, shallow foundations for concrete portage access structures, and shallow foundations for other structures to be constructed on the embankment causeway.

- Complete final design analyses for structural project elements, including dead- and live-vertical and dynamic lateral forces imposed on gate/panel structures, bridge deck and beam elements, guardrail structures, concrete abutments and piers, and pile foundations.





Ms. Martha Craig  
November 16, 2021  
Page 5

Complete design analyses in accordance with MassDOT's Load and Resistance Factor Design (LRFD) Bridge Manual. Prepare documentation of final design analyses in format(s) suitable for inclusion in MassDOT's final design submittal.

#### **Sub-Task 1.5 Deliverables**

- Documentation of respective civil, hydraulic, geotechnical and structural analyses will be incorporated into the MassDOT submittal provided in PDF format.

#### **Sub-Task 1.6 – MassDOT and Utility Owner Coordination Assistance**

- Coordinate with MassDOT through its review of final design submittal documentation. Conduct web conferences with District 5 and Boston review staff for respective design divisions.
- Provide up to 30 hours of on-call assistance to FHR/HRTT and/or the Town through coordination with respective owners of utilities on Chequessett Neck Road in support of the CNR bridge and associated improvements to be constructed.
  - Prior coordination with Eversource and other owners of overhead utilities at Chequessett Neck Road (including Verizon and Comcast) resulted in the development of a diagram developed by Eversource in consultation with Verizon and Comcast, depicting temporary relocation of utilities onto the temporary bridge and causeway structure, and subsequent relocation of utilities to their permanent future locations within underground conduits/handholes depicted on project construction drawings. Following development of this diagram, Eversource transmitted cost to complete work associated with its utilities, as depicted on the plan; corresponding costs from other utility owners (Verizon and Comcast) were not received by the Town.

Subsequent coordination with respective utility owners will include reviewing and confirming, or revising as appropriate, arrangements between respective utility owners as depicted on the diagram. Once finalized, respective scopes of work and coordination arrangements between utility owners and the site contractor (as depicted on final drawings, notes and specifications developed under Task 1, will be formalized through cost-share contract agreements between respective utility owners and the Town for utility owners to complete temporary and permanent modifications at the project site as depicted on the diagram and construction drawings developed under Task 1.

Upon establishing updated costs from respective utility owners, it is understood that the contract agreements will entail establishment of force accounts between the Town and each utility owner to fund respective field operations. Construction specifications developed under Task 1 will articulate coordination requirements of the contractor to schedule utility work by and between each utility owner, in sequence with its own site



Ms. Martha Craig  
November 16, 2021  
Page 6

activities to assure safe and adequate access for respective utility crews. Utility interruptions for property owners affected by temporary and permanent utility relocations will be coordinated between the site contractor, utility owners and the Town, through coordination and scheduling activities between these parties.

- Prepare summaries of discussions, comments and action items for web conferences. Prepare and transmit supplemental responses to comments and other requested documentation of final design analyses for respective reviews and approvals by technical staff in MassDOT's District 5 (bridge, traffic, environmental) and Boston offices (hydraulic, geotechnical) and additional technical review by MassDOT's consultant.

#### **Sub-Task 1.6 Deliverables**

- Summaries of web conferences in PDF format.
- Responses to MassDOT comments and documentation of supplemental technical analyses in PDF format.
- Descriptions of utility owner coordination discussions via email or memorandum in PDF format.

#### **Task 2 – Bidding Assistance**

- Provide assistance to the Town in soliciting bids for construction of proposed CNR improvements. Prepare and agenda and attend an on-site pre-bid meeting to describe the project, review site conditions, outline contract and Town coordination requirements, and address bidder questions.
- Prepare a draft addendum documenting responses provided at the pre-bid meeting and subsequently received by email. This draft addendum will be provided for Town/FHR/HRTT review, revised to address received comments, and distributed to bidders via email or F&O's file transfer portal.
- Attend the bid opening, review received bids (copies to be provided by the Town), tabulate bid results and prepare a draft bid award recommendation letter for Town review. Provide a final letter addressing Town review questions and comments.
- The budget for this task's scope of services includes 45 hours of assistance.

#### **Task 2 Deliverables:**

- Draft and final bid addendum in PDF format.
- Draft and final bid award recommendation letter and bid tabulation in PDF format.





### **Task 3 – On-Call Permitting Assistance**

- Provide ongoing assistance to FHR/HRTT through drawing revisions, impact calculations and/or narrative descriptions/revisions for respective permitting submittals in support of the CNR bridge and associated improvements, MC water control structure and MC drainage improvements.
- We have budgeted 88 hours for this support; additional assistance, if requested, will be provided on a time and materials basis upon authorization by FHR. Remote attendance at permitting agency meetings or hearings, if required, will be provided under Task 5 below.

#### **Task 3 Deliverables**

- Draft and final documents/drawings will be provided as imaged Adobe PDF files.
- Narrative documents will be provided as electronic MS Word files.
- Paper copies of drawings and other documents, if requested, will be provided on a time and materials basis in accordance with our rate table in effect at the time of services.
- Electronic AutoCAD files corresponding to final drawing sets will be transmitted via F&O's file transfer portal.

### **Task 4 – Rendering Revisions**

- Revise three (3) renderings previously prepared for the FHR (facing south, north and upstream) to include additional and/or revised project elements incorporated onto the project drawings since the renderings were last revised. Proposed revisions to renderings will be annotated on existing graphics to confirm the number and type of revisions with FHR prior to development of draft updated graphics.
- We have budgeted 30 hours for this support; additional assistance, if requested, will be provided on a time and materials basis upon authorization by FHR.

#### **Task 4 Deliverables**

- Annotated edits, and draft and final renderings will be provided as electronic files in image (e.g., TIF) and PDF formats.

### **Task 5 – Remote Conferences and In-Person Meetings**

Web conferences and meetings will be conducted with FHR/HRTT and/or the Town of Wellfleet (Town) to review and discuss draft deliverables. The list of conferences and meetings to be conducted includes:



Ms. Martha Craig  
November 16, 2021  
Page 8

- Web conferences in support of work under Tasks 1-4. We have budgeted for six (6) remote conferences and two (2) in-person meetings, as generally listed below.
  - Web conferences to discuss project coordination and/or questions/comments from FHR/HRTT/Town review of draft deliverables. This may include conferences with the FHR and its consultants to review draft up-front bid/contract documents provided as a template for use by the respective consultants in developing project manuals for other Herring River restoration elements to be issued for bidding and constructed.
  - Web conferences with MassDOT staff to coordinate review of final design documents.
  - Web conferences and/or site visits with CNR utility owners to coordinate utility relocations associated with planned construction of temporary/permanent project elements.
- Additional conferences requested by FHR will be invoiced on a per-conference basis.
- Additional in-person meetings requested by FHR will be invoiced on a per-meeting basis.

### Schedule

We are prepared to initiate the scope of services upon receiving a written authorization to proceed. Estimated schedules indicated below to complete tasks are measured from the date on which we mutually agree to initiate services, unless otherwise noted. Schedules for Task 1 assume no extensive delays from MassDOT's review of respective submittals.

Task	Estimated Schedule
1. Final CNR Design and Bid/Contract Documents	<ul style="list-style-type: none"> <li>• Sub-Task 1.4: Draft Bid/Contract Documents within 8 weeks authorization; final bid/contract documents within 3 weeks of receipt of comments</li> <li>• Other Sub Task draft deliverables within 18 weeks of authorization (staged delivery for each sub task); final deliverables within 6 weeks of receipt of comments.</li> </ul>
2. Bidding Assistance	Draft recommendation letter within 2 weeks of bid opening
3. On Call Permitting Assistance	As mutually coordinated and agreed by F&O/FHR
4. Rendering Revisions	Drafts 4 weeks of FHR approval of annotated revisions
5. Remote Conferences and In-Person Meetings	As mutually coordinated and agreed by F&O/FHR



Ms. Martha Craig  
 November 16, 2021  
 Page 9

## Fees

The following table outlines the estimated budget for the services described above, which will be provided on a time and materials basis. We will submit invoices monthly with payment due within 60 days from the invoice date. If fees for these services are anticipated to exceed the budget amount, we will negotiate a supplemental agreement with FHR prior to proceeding with the work.

Task	Estimated Budget
1. Final CNR Design and Bid/Contract Documents	
1.1 Final Civil and Electrical Drawings and Specifications	\$55,700
1.2 Final Structural Drawings and Specifications	\$184,250
1.3 Final Geotechnical Specification and Drawing Documentation	\$12,000
1.4 Bid/Contract Documents and Updated Opinion of Cost	\$22,900
1.5 MassDOT Final Design Submittal	\$79,700
1.6 MassDOT and Utility Owner Coordination Assistance	\$34,300
<b>SUBTOTAL TASK 1</b>	<b>\$388,850</b>
2. Bidding Assistance	\$13,200
3. On-Call Permitting Assistance	\$10,000
4. Rendering Revisions	\$6,000
5. Remote Conferences and In-Person Meetings	\$18,800
<b>TOTAL</b>	<b>\$436,850</b>
5A. Additional Remote Conference (per each)	\$1,250
5B. Additional In-Person Meeting (per each)	\$2,500

## General Terms and Conditions

These services will be provided in accordance with the general terms and conditions and supplemental conditions of our agreement dated October 14, 2020, and rate schedule in effect at the time services are provided (current rates are attached). Work requested outside the scope of work defined above will not be completed without prior written approval from FHR, including definition of the scope, schedule, and budget for additional tasks as/if required.

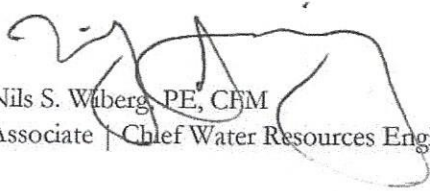


FUSS & O'NEILL

Ms. Martha Craig  
November 16, 2021  
Page 10

Thank you for this opportunity to continue providing assisting with this project. If you have any questions or would like to discuss anything further, please contact me at (800) 286-2469 ext. 4559 or [nwiberg@fando.com](mailto:nwiberg@fando.com).

Sincerely,



Nils S. Wiberg, PE, CFM  
Associate | Chief Water Resources Engineer



Shawn M. Martin, PE  
Vice President | Office Manager

Attachment: Authorization to Proceed  
Budget Spreadsheet  
2021 Rate Sheet

## Authorization to Proceed

Mr. Nils Wiberg  
Associate | Chief Water Resources Engineer  
Fuss & O'Neill, Inc.  
317 Iron Horse Way, Suite 204,  
Providence, RI 02908

RE: Authorization to Proceed - Final Design and Permitting Support  
Chequessett Neck Road Bridge, Mill Creek Water Control Structure and Mill Creek  
Drainage Improvements

Dear Mr. Wiberg:

I hereby authorize Fuss & O'Neill to proceed with the following tasks of the above-referenced project in accordance with our proposal dated November 16, 2021. I understand that billing will be monthly, payable within sixty (60) days after approval from HRTT with interest accruing at the rate of 1.5% per month thereafter. I further understand that FHR will be responsible for the reasonable cost of collection.

Martha Craig  
Printed Name

12/7/21  
Date

Martha Craig  
Signature

Executive Director, FHR  
Title

Task	Estimated Budget	Authorized (Initial and Date)
1. Final CNR Design and Bid/Contract Documents	\$388,850	<i>mc</i>
2. Bidding Assistance	\$13,200	
3. On-Call Permitting Assistance	\$10,000	<i>mc</i>
4. Rendering Revisions	\$6,000	
5. Remote Conferences and In-Person Meetings	\$18,800	<i>mc</i>
<b>TOTAL ESTIMATED BUDGET</b>	<b>\$436,850</b>	







2021 BILLING RATE SCHEDULE

<u>LABOR CATEGORY</u>	<u>HOURLY RATE</u>
Researcher, Clerical	\$ 82
Project Accountant	\$ 93
CAD, Survey, Technician I	\$ 98
CAD, Survey, Technician II	\$ 103
CAD, Survey, Technician III	\$ 108
Engineer, Scientist, Analyst I	\$ 129
Engineer, Scientist, Analyst II	\$ 129
Engineer, Scientist, Analyst III	\$ 144
Senior Engineer, Scientist, Analyst I	\$ 160
Senior Engineer, Scientist, Analyst II	\$ 175
Senior Engineer, Scientist, Analyst III	\$ 175
Associate	\$ 200
Officer	\$ 200
Senior Officer	\$ 205

DIRECT CHARGE SCHEDULE

Subcontractors/Subconsultants	Cost plus 15%
F&O Staff Mileage	At Prevailing IRS Rate
F&O Field Vehicles	\$100/day plus \$0.35/mile
F&O Hybrid Vehicles	At Prevailing IRS Rate
Printing/Reprographics	
Black & White Copy/Print	\$0.065/page
Color Copy/Print	\$0.40/page
Electrostatic Copy/Print	\$0.25/Sq.Ft.
Inkjet Plotter Monochrome	\$0.25/Sq.Ft.
Color Plotting	\$1.00/Sq.Ft.
Inkjet Mylar	\$2.50/Sq.Ft.
Binding Materials	At Cost
Payment Processing (e.g. debit or credit card)	3% fee



**2021 FIELD EQUIPMENT RATE SCHEDULE**

<b>FIELD EQUIPMENT</b>	<b>DAILY RATE</b> (unless otherwise noted)
Air Sampling Pumps	\$ 15
All Terrain Vehicle	\$ 100
Bladder Pumps	\$ 25
Boat	\$ 50
Combustible Gas Indicator (CGI)	\$ 110
Concrete Coring Machine	\$ 250
Cone Penetrometer	\$ 25
Dissolved Oxygen/Temp/pH Meter (YSI-30)	\$ 15
Generators	\$ 50
Hammer Drill	\$ 50
Hand Auger	\$ 25
Hydrogen Sulfide Sensor & Data Logger	\$ 206 per week
IAQ Meter	\$ 80
Interface Probe	\$ 25
Infiltrometer	\$ 25
Low Flow Controller	\$ 50
Metal Detector	\$ 25
Moisture Meter	\$ 80
Mold Air Pump	\$ 15
Multimeters (YSI-600)	\$ 85
Confined Space Meter (Multi-Gas Meter)	\$ 50
Particulate Monitor	\$ 155
Peristaltic Pumps	\$ 20
Petro Flag Sample	\$ 25
Photoionization Detector (OVM/PID)	\$ 75
Soil Gas Sampling Equipment	\$ 100
Soil/Sediment VOC Supplies (Terra Core)	\$ 2 per sample
Soil/Sediment SPLP/TCLP Supplies (Encore)	\$ 10 per sample
Soil Vapor Extraction (SVE) Pilot Test Equipment	\$ 260
Survey Levels	\$ 30
Survey GPS Submeter Receiver	\$ 50
Survey GPS VRS Subcentimeter	\$ 100
Survey Robotic Total Station	\$ 100
Total Organic Vapor Analyzer	\$ 65
Tracer Dye Flow Dilution Equipment	\$ 1,600
Transit Time Flowmeter	\$ 130 per day
	\$ 520 per week
	\$ 1,706 per month
Turbidity Meters	\$ 15
Water Level Indicator	\$ 15
XRF	\$ 250





FUSS & O'NEILL

May 2, 2023

Ms. Christa Drew  
Friends of Herring River  
P.O. Box 565  
South Wellfleet, MA 02663

VIA EMAIL: [christa@herringriver.org](mailto:christa@herringriver.org)

RE: Contract Amendment for Professional Engineering Services  
Final Design, Permitting and Bidding Support  
Chequessett Neck Road Bridge and Water Access Improvements  
Fuss & O'Neill Reference No. 20120636.A22

Dear Ms. Drew:

This contract amendment is being provided to continue assisting Friends of Herring River (FHR), the Herring River Technical Team (HRTT), and the Town of Wellfleet (the Town) in providing continuing permitting/compliance assistance and continuing bridge design and MassDOT/utility owner coordination assistance for the Chequessett Neck Road (CNR) bridge and water access facility improvements. Web conferences and meetings will continue to be conducted with FHR/HRTT and/or the Town to review and discuss ongoing coordination and deliverables under Task 5 – Remote Conferences and In-Person Meetings.

## Scope of Services

### Task 1 – Final CNR Design and Bid Documents

**Subtask 1.6.1 – Continued MassDOT Coordination:** Continue coordination with MassDOT to address/resolve MassDOT review comments on the 100% permanent bridge submittal, the temporary bridge substructure submittal and the Contractor's temporary bridge superstructure submittal. Coordinate/Address review comments by NRCS's review of the temporary bridge substructure drawings and calculations submittal to MassDOT. Upon resolution of comments, final documents will be prepared for distribution to MassDOT, NRCS, the Town/Contractor and FHR/HRTT.

**Subtask 1.6.2 – Continued Utility Owner Coordination:** Continue coordination with utility owners (Eversource, Verizon) to confirm/document utility pole layouts per Verizon's transmitted schematic and determine/coordinate activities for Wellfleet Select Board rights hearing for resetting of utility poles and utilities within the Chequessett Neck Road right-of-way.

**Subtask 1.7 – Temporary Bridge Substructure Design:** Continue design analyses and coordination with MIG to prepare drawings, specifications and calculations for construction of the proposed temporary bypass bridge's substructure components. Prepare a brief narrative

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Ms. Christa Drew  
May 2, 2023  
Page 2

documenting design analyses with formatted calculations as attachments as a supplemental submittal to the Massachusetts Department of Transportation (MassDOT).

#### **Task 1 Deliverables**

- Documents/drawings developed through coordination with MassDOT and utility owners will be provided as Adobe PDF files

#### **Task 2.2 – On-Call Permitting Assistance**

Provide ongoing assistance through document/drawing revisions, and/or narrative descriptions/revisions for respective permitting submittals in support of the CNR bridge and associated improvements.

#### **Task 2.2 Deliverables**

- Documents/drawings will be provided as Adobe PDF files

#### **Task 2.3 – Remote Conferences and In-Person Meetings**

Provide ongoing assistance through attendance at conferences and in-person meetings as requested by the FHR. Site review meetings will be conducted to observe conditions at the site with the Town's agent. Documents relevant to ongoing construction will be developed and distributed to the Town/Contractor and FHR/HRTT.

#### **Task 2.3 Deliverables**

- Documents/drawings will be provided as Adobe PDF files

### **Schedule**

We are prepared to initiate the scope of services upon receiving a written authorization to proceed. It is estimated that work under this amendment will be completed in June 2023, assuming no extensive delays from MassDOT's or utility owners' reviews of respective submittals and that Fuss & O'Neill's contract with the Town is executed in June.

Ms. Christa Drew  
 May 2, 2023  
 Page 3

## Fees

The following table outlines current and revised contract budgets for the tasks described above, which will be provided on a time and materials basis. Other task budgets under our current contract remain unchanged. We will submit invoices monthly with payment due within 90 days from the invoice date. If fees for these services are anticipated to exceed the budget amount, we will negotiate a supplemental agreement with FHR prior to proceeding with the work.

Task	Current Contract Budget	Amendment Budget	Proposed Contract Budget
1.6.1 Continued MassDOT Coordination	\$71,961.33	\$94,000.00	\$165,961.33
1.6.2 Continued Utility Owner Coordination	\$18,825.00	\$2,500.00	\$21,325.00
1.7 Temporary Bridge Substructure Design	\$57,800.00	\$34,638.37	\$92,438.37
2.2 On-Call Permitting Assistance	\$27,666.19	\$5,400.00	\$33,066.19
2.3 Remote Conferences and In-Person Meetings	\$38,825.00	\$52,500.00	\$91,325.00
<b>TOTAL BUDGET</b>	<b>\$215,077.52</b>	<b>\$189,038.37</b>	<b>\$404,115.89</b>

## General Terms and Conditions

This amendment will serve as the sole active contract remaining open between Fuss & O'Neill and FHR for the work described herein. These services will be provided in accordance with the general terms and conditions and supplemental conditions of our agreement dated October 14, 2020 and the rate schedule in effect at the time services are provided (rates for services in 2023 are attached).

Thank you for this opportunity to continue providing assistance with this project. If you have any questions or would like to discuss anything further, please contact me at (401) 533-5979 or [nwiberg@fando.com](mailto:nwiberg@fando.com).

Sincerely,

Nils S. Wiberg, PE, CFM  
 Associate | Chief Water Resources Engineer

Brian E. Kortz, CPG, LSP, CNU-A  
 Vice President | Office Manager

Attachment: Authorization to Proceed  
 2023 Rate Schedule

## Authorization to Proceed

Mr. Nils Wiberg  
Associate | Chief Water Resources Engineer  
Fuss & O'Neill, Inc.  
317 Iron Horse Way, Suite 204  
Providence, RI 02908

RE: Authorization to Proceed  
Contract Amendment for Professional Engineering Services  
Final Design, Permitting and Bidding Support  
Chequessett Neck Road Bridge and Water Access Improvements  
Fuss & O'Neill Reference No. 20120636.A22

Budget: \$189,038.37

Dear Mr. Wiberg:

On behalf of the Friends of Herring River, I hereby authorize Fuss & O'Neill, Inc. to proceed with the above-referenced project in accordance with the General Terms and Conditions of our October 14, 2020 contract, and with the F&O contract and proposal dated May 2, 2023. I understand that billing will be monthly, payable within ninety (90) days after approval from HRTT with interest accruing at the rate of 1.5% per month thereafter. I further understand that FHR will be responsible for the reasonable cost of collection.

The parties agree that the provisions contained in Article 6.17 in the Amendment to the Agreement between FHR and Fuss & O'Neill dated June 12, 2013, shall remain in full force and effect.

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Printed Name

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Date

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Signature

---

Title

**Herring River Restoration Project: ~~Permitting Support~~**  
**FINAL DESIGN PLANS AND BID SPECIFICATIONS PACKAGE**  
**CONTRACT Between Friends of Herring River and WSP USA**

**PREAMBLE**

This Contract (the "Agreement") is made this 9th day of March 2022 between Friends of Herring River, Wellfleet/Truro, Inc., PO Box 565, South Wellfleet, Massachusetts 02663 (the "CONTRACTOR"), and WSP USA, having offices at 166 Valley Street, Building 5, Providence RI, 02909 (the "SUBCONTRACTOR"). CONTRACTOR named herein is Friends of Herring River ("FHR"). FHR, however, participates in the Herring River Restoration Project (the "Project") under the technical guidance of the Herring River Technical Team ("HRTT") and the Project involves a partnership of two (2) entities, the Town of Wellfleet and the Cape Cod National Seashore. These two (2) partnership entities act through a series of Memoranda of Understanding (MOU I-IV) and a created entity, the Herring River Executive Council (the "HREC"). FHR acts in furtherance of this contract at the behest of the Town of Wellfleet.

**AGREEMENT**

CONTRACTOR and SUBCONTRACTOR (the "Parties"), in consideration of the Terms and Conditions set forth in the Agreement, hereby agree as follows:

1. **SCOPE and SCHEDULE.** SUBCONTRACTOR agrees to perform the Scope of Work (SOW) specified in Appendix I attached to this Agreement and made a part of it.
  
2. **PAYMENT.** CONTRACTOR, as a recipient of grants from NOAA, MA DER, National Fish and Wildlife Federation and under contract with the Town of Wellfleet to administer the MA Municipal Vulnerability Preparedness Program grant for low road and property final plan and bid specification with the Herring River Restoration Project, will pay SUBCONTRACTOR for services provided under the SOW at the rates outlined in the Budget set out in Appendix I. These hourly rates shall include time and expenses and total costs for the tasks, and shall not exceed \$358,912. Invoicing will be monthly. Payment will be made within sixty (60) days after SUBCONTRACTOR submits its invoice for the Work and the invoice has been approved by both the HRTT and the Town of Wellfleet.
  
3. **TERMS.** SUBCONTRACTOR is an independent contractor and shall procure and maintain workers compensation and employer's liability insurance, comprehensive general liability insurance, automobile liability insurance and professional liability insurance. SUBCONTRACTOR agrees to defend and hold CONTRACTOR harmless for

SUBCONTRACTOR's negligent acts or omissions, gross negligence or willful misconduct. Neither party shall be liable for any special, indirect, incidental or consequential damages. SUBCONTRACTOR shall perform the Work in accordance with generally accepted professional practices. Neither party shall be responsible for delays beyond its reasonable control nor shall the schedule, if any, be adjusted to compensate for delays.

4. **DISPUTES.** The terms of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts. First attempt to resolve disputes will be informally. Second attempt to resolve will be through mediation, and third attempt shall be settled by arbitration in Needham, Massachusetts in accordance with the rules of the American Arbitration Association. The results shall be final and binding, and judgment thereon may be entered in any court of competent jurisdiction in Norfolk County, Massachusetts by either party.

5. **NOTICES.** Any required notices shall be in writing and delivered by hand, sent certified mail, return receipt requested, or sent via facsimile to the addresses specified in the preamble.

6. **DISCLOSURE.** SUBCONTRACTOR is required to disclose any outside activities or interests, including ownership or participation in the development of prior inventions, that conflict or may conflict with the best interests of CONTRACTOR or all other entities listed above in association with the Herring River Restoration Project. Prompt disclosure is required under this paragraph if the outside activity or interest is related, directly or indirectly, to any activity that SUBCONTRACTOR may be involved with or on behalf of CONTRACTOR.

7. **INTELLECTUAL PROPERTY.** SUBCONTRACTOR represents and warrants that it has the rights to use and reproduce any materials it uses or furnishes to CONTRACTOR or all other entities listed above in association with the Project in connection with SUBCONTRACTOR's services, and will indemnify and hold CONTRACTOR or all other entities harmless from all claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against CONTRACTOR or all other entities listed above in association with the Project which are based upon any allegation of violation of any patent, trademark, and/or copyright interests of any party.

8. **INSURANCE.** Before commencing any work and throughout the term of this Agreement, SUBCONTRACTOR must have and maintain the following insurance policies: (a) workers' compensation insurance, as and to the extent required by applicable law; (b) commercial general liability insurance written on an occurrence basis with a liability limit of at least \$1,000,000 per incident ~~and~~ and in the aggregate covering the activities that are the subject of

accident

and in the aggregate

this Contract, including any related Claims; (c) automobile liability insurance covering all owned and non-owned vehicles used in performing the SOW, with a liability limit of at least \$1,000,000 per ~~occurrence~~; and (d) if SUBCONTRACTOR is providing professional services (such as consulting, engineering, design, appraisal, or surveying services), professional liability insurance with a liability limit of at least \$1,000,000 per claim. SUBCONTRACTOR's policies must be primary insurance to any other valid and collectible insurance available to CONTRACTOR with respect to any claim arising out of SUBCONTRACTOR's performance of the SOW. SUBCONTRACTOR must have FHR ~~named~~ as an additional insured on SUBCONTRACTOR's commercial liability insurance policy on a primary, non-contributory basis and, if requested, provide CONTRACTOR with evidence that the required coverage is in effect before any work commences or payments are made under this Agreement.

included

9. **LIABILITY.** SUBCONTRACTOR's total liability to CONTRACTOR for any and all injuries, claims, losses, expenses, damages, or claim expenses arising out of this Agreement from any cause or causes shall be \$100,000 or the total amount of SUBCONTRACTOR's fee for its services, whichever is greater. Such causes include but are not limited to SUBCONTRACTOR's negligent acts, errors or omissions, strict liability, breach of contract or breach of warranty (expressed or implied). Neither CONTRACTOR nor SUBCONTRACTOR shall be liable to the other party for any special, indirect or consequential damages, whether caused or alleged to be caused by their negligence, strict liability, breach of contract or warranty under this Agreement.

10. **INDEMNIFICATION.** SUBCONTRACTOR agrees to indemnify, defend, and hold harmless CONTRACTOR or all other entities listed above in association with the Project, from and against any and all liabilities, demands, damages, claims, losses, costs, or expenses, including reasonable attorneys' fees and costs (collectively, "Claims"), caused by the negligent acts or omissions or willful misconduct of SUBCONTRACTOR or any of its employees (including any permitted subcontractors) in performing the SOW.

to the extent

11. **RETURN OF RECORDS.** Upon termination of this Agreement, SUBCONTRACTOR shall deliver all records, notes, data, memoranda, models and equipment of any nature that are in SUBCONTRACTOR's possession or under its control and that are the CONTRACTOR's business.

12. **MODIFICATION OF THE AGREEMENT.** The Parties may mutually agree in writing to a modification of the contract at any time during the duration of this Agreement.

13. **INTERPRETATION AND SEVERABILITY.** If any provision of this Agreement is declared or found to be illegal, unenforceable or void, all Parties shall be relieved of all



obligations under that provision. The remainder of the Agreement shall remain in effect and shall be enforced to the fullest extent permitted by law.

14. This Contract consists of and incorporates the **Agreement** set forth above and the **SOW** attached hereto (**Appendix I**). In the event of any conflict between the Terms and Conditions set forth in the Agreement and any terms set forth in the SOW, the terms of the Agreement will control, unless the SOW expressly states that the conflicting provision in the SOW is to control.

**IN WITNESS WHEREOF**, SUBCONTRACTOR and CONTRACTOR have executed the Agreement by the signatures of their duly authorized representatives as of the date set forth above in the Preamble.

**SUBCONTRACTOR**

**WSP USA**

  
\_\_\_\_\_  
Signature

THOMAS W. PAYNE, P.E.  
\_\_\_\_\_  
Printed Name


ASSOCIATE VICE PRESIDENT  
\_\_\_\_\_  
Title

15 MARCH 2022  
\_\_\_\_\_  
Date

Clayton Carlisle  
\_\_\_\_\_  
Attest

**CONTRACTOR**


**Friends of Herring River,  
Wellfleet/Truro, Inc.**

  
\_\_\_\_\_  
Signature

Martha Craig  
\_\_\_\_\_  
Printed Name

Executive Director, FHR  
\_\_\_\_\_  
Title

18 March 2022  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Attest

**APPENDIX I: SCOPE OF WORK**  
**HERRING RIVER RESTORATION PROJECT**  
**FINAL DESIGN PLANS AND BID SPECIFICATIONS PACKAGE**

Friends of Herring River (FHR) seeks professional assistance from WSP to prepare for Herring River Restoration Project (Project) bid and construction. FHR participates in the Project under the technical guidance of the Herring River Technical Team (“HRTT”). The Project involves a partnership of two (2) entities, the Town of Wellfleet and the Cape Cod National Seashore; these partnership entities act through a series of Memoranda of Understanding (MOU I - IV) and a created entity, the Herring River Executive Council (the “HREC”). FHR acts in furtherance of the Project at the behest of HRTT and the Town of Wellfleet in this Agreement.

WSP will prepare construction-level design plans and a construction bid specifications package for four (4) Project elements:

- Elevation of Low-Lying Roads and Replacement of Associated Culverts (including Pole Dike Creek Water Control Structure) (collectively, LLR)
- High Toss Road (causeway removal and travelway elevation) (collectively, HT)
- Way #672 (elevation of roadway and private property impact prevention)
- Low-Lying Property Impact Prevention, Miller-Frederiksen Property (M-F LLP)

To ensure consistency, including use of common terminology, FHR will provide up-front bid/contract documents comprising a Project Manual template in support of bidding and construction of proposed Project elements. WSP will be given the opportunity to review and comment on the draft template. The FHR/HRTT/Town-approved template will be provided to WSP prior to the start of work under this contract.

Provided below is detail of the tasks and sub-tasks required to complete this SOW. Materials to elevate roadways (as well as other construction materials as needed) will be stored at the Town Sand Pit located at 145 Pole Dike Road or/and the Town of Wellfleet Transfer Station located at 370 Coles Neck Rd (both in Wellfleet); cost estimates, traffic management plans and other deliverables must take into account the hauling of fill and other materials from the Pit or Transfer Station to the work zones. Access agreements and environmental permits will be provided, as described under Assumptions.

Development of final plans and other deliverables such as technical specifications and updated opinions of construction costs for each of the four (4) Project elements that are the subject of this contract will proceed separately under Tasks 2-5; and final deliverables for construction-level design plans will be kept separate. However, technical specifications and other draft deliverables for the subject Project elements will be consolidated under Task 7 to facilitate preparation

of a single invitation to bid for all four (4) of the Project elements designed by WSP. Final deliverables must be consistent with the Project Manual template.

This contract is funded through a grant award with a specified performance period and other requirements. Project plan sets and other documents generated under this contract must acknowledge the source of grant funding; FHR will provide the appropriate text and graphics at the Kick-Off meeting for this contract. This SOW must be completed by June 30, 2022.

### **TASK 1 – KICK-OFF MEETING**

Prior to starting the design work, WSP will hold a virtual kickoff meeting with the Project Team to discuss the approach to the project and the schedule for completion of Tasks 2 – 7, including turnaround times for comments and revised deliverables to ensure completion of this SOW by June 30, 2022. The Project Manual template, which will be provided in advance, will be reviewed and the list of documents that should be consolidated under Task 7 will be confirmed.

This task covers one virtual meeting, not to exceed two hours, including preparation, participation by up to three (3) WSP employees and follow-up. Additional meetings, if needed, will be covered by Task 8.

#### **Task 1 Deliverables**

- Kick-off meeting agenda and materials
- Draft and final meeting notes
- Updated schedule of draft and final deliverables

### **TASK 2 – LOW-LYING ROADS AND ASSOCIATED CULVERT REPLACEMENTS, INCLUDING POLE DIKE CREEK WATER CONTROL STRUCTURE**

### **TASK 3 – HIGH TOSS ROAD (CAUSEWAY REMOVAL AND TRAVELWAY ELEVATION)**

### **TASK 4 - WAY 672 (ELEVATION OF ROADWAY AND PRIVATE PROPERTY IMPACT PREVENTION)**

### **TASK 5 - LOW- LYING PROPERTY IMPACT PREVENTION, MILLER-FREDERIKSEN PROPERTY**

### **Tasks 2-5, Sub-Task A – Prepare Draft Final Construction-Level (95%) Design Plans for Review**

WSP will prepare draft final construction-level (95%) Design Plan documents, including construction-level Project plans, specifications, and other bid documents consistent with the Project Manual template. The plans, prepared on 22-inch by

34-inch sheets, shall include the following items:

- **Title Sheet**
- **General Notes and Legend**
- **Summary of Quantities**
- **Existing Conditions Plan**
- **Excavation and Grading Plan**
- **Soil Erosion and Sediment Control Plan**
- **Proposed Conditions Plan**
- **Typical Details, Site Profile and Cross-Sections**
- **Structural Design Plans for Project Components**
- **Planting and Seeding Plans and Details**
- **Water Control, Temporary Diversion, and Dewatering Details**

The plans will clearly depict the location of areas of proposed excavation, fill placement, water control and soil handling activities, culverts, existing and relocated utilities, and suitable locations for construction staging areas. This task also includes updates as needed to the O&M manual and/or SW Management Report, if advancing design from permit- to construction-level necessitates changes. Engineering and design as shown on the draft final Design Plans delivered under this sub-task will be completed such that, following incorporation of Project Team comments, the resulting revision will be final construction-level design. WSP will revise the draft final deliverables based on one collective set of Project Team comments compiled and forwarded by FHR.

#### Tasks 2-5, Sub-Task A Deliverables

WSP will provide the Project Team with draft final (95%) Design Plans and specifications for review. WSP will revise the plans in Tasks 2-5, Sub-Task B, based on one collective set of Project Team comments compiled and forwarded by FHR.

- Draft final (95%) Design plans, sections, details, notes and specifications for review, compiled as an image and provided in PDF format.

#### **Tasks 2-5, Sub-Task B Provide Final (100%) Design Plans**

WSP will finalize (100%) design plans for the Herring River restoration components that will be sufficient for bid and construction of this restoration project. This sub-task includes updates as needed to the associated O&M Manual and/or Stormwater Management Reports to reflect changes stemming from advancement from permit-level to construction-ready design.

The final (100%) design plan set will include the following:

- **Summary of Quantities**
- **General Notes and Legend**

- **Plan Views and Typical Sections**
- **Excavation and Grading Plans**
- **Structural Design**
- **Soil Erosion and Sediment Control Plan and Details**
- **Planting Plans**
- **Construction Details**
- **Construction Specifications**
- **Sequence of Construction coordinated with the TMP**

#### Sub-Task B Deliverables

WSP will provide the Project Team with final (100%) Design Plans. WSP will provide the revised plans, based on one collective set of Project Team comments from Sub-Task A, compiled and forwarded by FHR.

- Final (100%) Design Plans, including sections, details, notes and specifications for final review, compiled as an image and provided in PDF format.
- Final stamped design plan set will be provided under requirements of Task 7 below.

### **TASK 6 - DEVELOP CONSOLIDATED TRAFFIC MANAGEMENT PLAN**

WSP will expand upon existing LLR detour plans and traffic management information to prepare a single consolidated Traffic Management Plan (TMP) that includes all necessary information for construction under a single contract of all four subject Project elements in accordance with MassDOT regulations and local requirements for traffic management. The TMP as well as associated technical specifications and cost estimate will address hauling fill and other construction materials from the Town Sand Pit and/or Transfer Station to temporary staging areas and work zones, including the unpaved portion of Bound Brook Island Road (west) and the Miller-Frederiksen property. This task includes identifying locations that are not shown on permit plans, if any, where temporary utility relocations are needed and/or additional property impacts beyond the ROW are likely to occur along haul routes.

LLR permit-level design plans show three phases of work on the main alignment (Pole Dike, Bound Brook Island and Old County Roads) with three corresponding detour routes; these phases start at the southern end of the main LLR alignment on Pole Dike Road with subsequent phases moving north into Truro. However, since fill material for the subject Project elements will be stored at and hauled from the Town Sand Pit and/or Transfer Station, the Project Team recommends that roadway elevation operations start on Old County Road and move south to Pole Dike Road. This is especially important if paving operations are done in phases as well, to avoid truck traffic being routed on newly paved roads.

The TMP will be prepared consistent with the Project Manual template and will incorporate Town input on matters including but not limited to coordination with other projects and activities, seasonal variations and public safety. Coordination to integrate traffic management for the subject Project elements into a larger

traffic management plan for the Project as a whole is anticipated. Traffic Management Plans will be reviewed with the public at one or more public meetings. WSP participation as needed in meetings related to this task will be covered on a time-and-materials basis under Task 8 Meetings and Project Communications. Work under this task will be scheduled to accommodate timely development of other deliverables according to contract schedule.

Deliverables:

- Location-specific information about additional temporary utility relocations and/or additional property impacts beyond the ROW, if any, needed along the haul route that aren't shown on permit-level design plans
- Draft and Final TMP narrative and graphics consistent with the Project Manual template

## **TASK 7 – CONSOLIDATE DETAILS, SPECIFICATIONS, BID DOCUMENTS AND COST ESTIMATE**

The Town of Wellfleet intends to issue a single invitation to bid on construction of the four (4) Project elements designed by WSP as a single contract. WSP will consolidate technical specifications and other bid documents developed under Tasks 2-5 into a single Technical Specification and Bid Document package consistent with the Project Manual template that references four individual construction-level design plan sets. WSP will finalize the 95% design project construction specifications as part of the bid document package, consistent with the Project Manual template. The final technical specifications shall provide the construction details for all four subject Project elements, include details on the scope of work, identification of materials and equipment, structure details, construction phasing, updated fill calculations as applicable, measurement and payment and any other technical specifications. WSP will provide the Project Team with digital draft final Project construction specifications, an itemized bid sheet, and the engineer's estimate of probable costs. Following review and comment on these documents by the Project Team, WSP will finalize the bid contract set and provide five (5) hard copies signed and stamped by the PE and one thumb drive with an electronic copy.

Task 7 Deliverables

- Draft deliverables: digital draft final Project Manual consistent with the template.
- Final deliverables:
  - five (5) hard copies of the Project Manual, signed and stamped by the PE
  - one (1) thumb drive with electronic copies of the final design plans in PDF and CADD formats, and all other documents in PDF and MS Office-compatible files (i.e., Word, Excel).

## **TASK 8 – MEETINGS AND PROJECT COMMUNICATIONS**



This task will cover meetings and project communications that are necessary throughout the final design. As much as possible, WSP will communicate with the FHR Project Team via conference call meetings. The design meetings will likely include meeting with project partners, Town officials, and impacted adjacent property owners. WSP will prepare materials for the meetings in the form of agendas, presentations, reports and meeting minutes. WSP will also participate in phone check-ins with the Project Team to provide updates on project progress and any issues that may have arisen.

#### Task 8 Deliverables

WSP will prepare agendas, presentations and reports as needed for meetings including conference calls, as well as draft meeting notes.

### **TASK 9 - ADDITIONAL SURVEY (OPTIONAL)**

If WSP determines that additional topographic survey is necessary, WSP will prepare a written description or/and graphic depiction of additional survey needs including proposed locations and suggested timing. FHR may choose to contract a licensed Massachusetts surveyor to collect additional survey information of the Project sites, or WSP may be asked to contract a licensed Massachusetts surveyor to collect additional survey information of the project sites. This work will only be conducted as needed and will require FHR approval prior to sub-contract award. WSP will hold a virtual meeting or conference call with the Project Team to discuss the need for additional or updated survey. The meeting would be covered by Task #, below, and is not included in the proposed budget for this task.

### **TASK 10 – BIDDING AND CONTRACT AWARD SERVICES**

Approximately one week after putting the Herring River restoration project components designed by WSP out to bid, the Project Team will sponsor a pre-bid conference for interested bidders to learn more about the project components and ask questions. WSP will attend this pre-bid conference and present the project, plans and the construction sequence of the work. WSP will be prepared to answer the attendees' questions about the project and shall make note of all questions raised and answers provided during the conference.

Following the conference, WSP will prepare a memorandum to the Project Team that lists all questions asked by the conference attendees and the detailed answers to such questions. This memorandum shall also provide answers to any questions, supplied by the Project Team to WSP, that the Project Team received from parties that did not attend the pre-bid conference.

During the bidding phase of this project, WSP will continue to support the Project Team by facilitating the pre-bid meeting, responding to questions during the bidding process related to the design, providing interpretation of the Contract Documents, and issuing any necessary addenda required.



Following the opening of the bids, the Project Team shall transmit to WSP copies of all the bids with a request for a review and analysis of the submitted bids. WSP will assist in the review of bids for sufficiency and balance and assist in the making of a recommendation to the Project Team regarding project award. Within five days after receipt of the bids, WSP will submit to the Project Team an analysis of the bids received and provide written recommendations regarding the responsiveness of the bids. Any concerns with pricing will be summarized in the evaluation letter to the Project Team.

## **ASSUMPTIONS**

This agreement is predicated on the following assumptions:

- “Project Team” as used in this agreement refers in general to FHR, HRTT and Town of Wellfleet but may at times include others as determined to be necessary (e.g., other partner agency staff, consultants).
- In support of consistency in bid and construction of the subject Project elements, FHR will provide a Project Manual template of front-end documents, developed specifically for the Project by a construction planning consultant working with the Engineers Joint Contract Documents Committee (EJCDC), including but not limited to:
  - Revised Invitation to Bid (simple)
  - Instructions to Bidders (simple)
  - Revised Qualifications (project specific, simple)
  - Revised Supplemental Conditions (project specific)
  - standard forms for the template, including some EJCDC
- Some procurement-related requirements (e.g., Buy American Steel, DBE/WBE reporting, etc. required by NOAA, DER or NRCS) will be provided as template Project Manual exhibits. Under separate cover, sample Division 1 specifications will be provided to promote consistency on generic construction procedures (submittal, field order, change order forms, payment procedures) and quality controls,
- The Project Team will (a) obtain a Special Use Permit from U. S. National Park Service for work within Cape Cod National Seashore boundary and (b) secure all necessary access rights agreements with owners of property that will have construction-related impacts from work shown on the Project final design plans.
- The Project team will obtain, and record as needed, all federal, state, and local environmental regulation permits and public waterways licenses necessary to do the work shown on the subject plan sets. Copies of applicable permits will be provided as Project Manual exhibits. Actionable conditions and requirements will be compiled into a spreadsheet with agency, responsible entity, due date and notes in columns to be distributed to all parties for consistency and coordination.

- The Project Team will obtain fill material suitable for roadway elevation as shown on the subject design plans. Fill and other materials needed for construction will be stored at the Town Sand Pit and/or Transfer Station. The contractor is responsible for all aspects of hauling materials from the Pit and/or Transfer Station to the work sites.
- The Project Team will provide information in a timely manner about Town and MassDOT projects that are scheduled or may occur during construction, and other input in support of sequencing, traffic management and other construction coordination, planning and logistics.
- Temporary utility relocations necessary for construction of Project elements as shown on the subject plans are the responsibility of the contractor; these must be incorporated into final design plans and factored into other deliverables including cost estimates and TMP. Permanent utility installation to serve Way #672 and permanent utility elevation/relocation at 695 Bound Brook Island Road are not part of this contract; these may be referenced but should not be included or factored into any deliverables.
- “Suitable” potential construction staging areas are specific locations approved by Town public safety officials. If usage of any given area shown on drawings or referenced in documents is subject to restrictions (e.g., to accommodate seasonal traffic or prohibit specific activities), said restrictions will be noted and accommodated on sequencing and traffic management plans.

## **SCHEDULE**

The proposed project schedule is included as an attachment, including turnaround times for comments, that ensures completion of final deliverables for Tasks 1-7 by June 30, 2022.

## **BUDGET**

A budget for Tasks 1-7 was prepared based on the assumptions for time and material not to exceed contract basis, as summarized below. See Appendix II for details. The proposed budget is attached.

## **INVOICING**

Invoices will be submitted on a monthly basis via e-mail to Karen Dansk. Payment will be made within sixty (60) days after the invoice has been approved by the HRTT. For Task not specified in Appendix II, the following hourly rates would apply for potential staff involved in this particular scope of work:

WSP will provide a table of proposed staff and associated hourly rates with the executed contract.

**Herring River Restoration Project**  
**Final Design Plans and Bid Specifications Package**


Proposal by WSP Feb 2022

2022

			February				March				April				May				June				July				August				
Task #	Task	Duration (weeks)	Week 1	Week 2	Week 3	Week 4	Week 1	Week 2	Week 3	Week 4	Week 1	Week 2	Week 3	Week 4	Week 1	Week 2	Week 3	Week 4	Week 1	Week 2	Week 3	Week 4	Week 1	Week 2	Week 3	Week 4	Week 1	Week 2	Week 3	Week 4	Week 5
1	Kickoff Meeting	1																													
LOW-LYING ROADS AND ASSOC. CULVERT REPLACEMENTS, INCLUDING POLE DIKE CREEK WATER CONTROL STRUCTURE																															
2A	Prepare Draft Final (95%) Design Plans	9																													
	FHR Review and Comment	2																													
2B	Finalize (100%) Design Plans	4																													
HIGH TOSS ROAD (CAUSEWAY REMOVAL AND TRAVELWAY ELEVATION)																															
3A	Prepare Draft Final (95%) Design Plans	6																													
	FHR Review and Comment	2																													
3B	Finalize (100%) Design Plans	3																													
WAY 672 (ELEVATION OF ROADWAY AND PRIVATE PROPERTY IMPACT PREVENTION)																															
4A	Prepare Draft Final (95%) Design Plans	5																													
	FHR Review and Comment	2																													
4B	Finalize (100%) Design Plans	3																													
LOW-LYING PROPERTY IMPACT PREVENTION, MILLER-FREDERIKSEN PROPERTY																															
5A	Prepare Draft Final (95%) Design Plans	4																													
	FHR Review and Comment	2																													
5B	Finalize (100%) Design Plans	2																													
6																															
	Develop Consolidated Traffic Management Plan	3																													
	FHR Review and Comment	2																													
	Finalize Traffic Management Plan	2																													
7																															
	Consolidate Details, Specifications, Bid Documents and Cost Estimate	4																													
	FHR Review and Comment	2																													
	Finalize Bid Package	2																													
8																															
	Meetings and Project Communications																														
9																															
	Additional Survey (Optional)	TBD																													
10																															
	Building and Contract Award Services	TBD																													

 = Milestone

**HERRING RIVER RESTORATION - LOW LYING ROADS  
FINAL PLANS AND SPECS AND OPTIONAL SURVEY  
2/10/2022**

KEY STAFF PERSONNEL		Program Manager	QA/QC	Project Manager	Principal Civil Engineer	Senior Civil Engineer	Project Engineer	Principal Scientist	Senior Scientist	Senior Structural Engineer	CADD Technician							
		\$243.50	\$202.00	\$202.00	\$182.00	\$155.50	\$125.00	\$207.00	\$165.00	\$202.00	\$145.00						Total Hours	Total Labor
<b>Task #</b>																		
1	KICK-OFF MEETING	4	0	8	8	2	2	0	2	2	0	28	\$ 5,341.00	\$ -	\$ -	\$ -	\$ 5,341.00	
2	LOW-LYING ROADS AND ASSOC. CULVERT REPLACEMENTS, INCLUDING POLE DIKE CREEK WATER CONTROL STRUCTURE																	
2A	PREPARE DRAFT FINAL (95%) DESIGN PLANS	4	6	40	60	88	90	12	44	132	84	560	\$ 94,708.00	\$ -	\$ -	\$ -	\$ 94,708.00	
2B	FINALIZE (100%) DESIGN PLANS	2	8	20	32	40	48	4	16	56	40	266	\$ 44,767.00	\$ -	\$ -	\$ -	\$ 44,767.00	
3	HIGH TOSS ROAD (CAUSEWAY REMOVAL AND TRAVELWAY ELEVATION)																	
3A	PREPARE DRAFT FINAL (95%) DESIGN PLANS	3	10	20	28	32	40	12	18	8	32	203	\$ 33,572.50	\$ -	\$ -	\$ -	\$ 33,572.50	
3B	FINALIZE (100%) DESIGN PLANS	2	6	16	12	16	16	4	8	8	16	104	\$ 17,687.00	\$ -	\$ -	\$ -	\$ 17,687.00	
4	WAY 672 (ELEVATION OF ROADWAY AND PRIVATE PROPERTY IMPACT PREVENTION)																	
4A	PREPARE DRAFT FINAL (95%) DESIGN PLANS	3	12	20	20	24	60	12	16	0	64	231	\$ 36,470.50	\$ -	\$ -	\$ -	\$ 36,470.50	
4B	FINALIZE (100%) DESIGN PLANS	3	10	20	20	28	28	6	3	0	12	130	\$ 21,761.50	\$ -	\$ -	\$ -	\$ 21,761.50	
5	LOW-LYING PROPERTY IMPACT PREVENTION, MILLER-FREDERIKSEN PROPERTY																	
5A	PREPARE DRAFT FINAL (95%) DESIGN PLANS	1	2	4	4	4	12	2	2	0	16	47	\$ 7,369.50	\$ -	\$ -	\$ -	\$ 7,369.50	
5B	FINALIZE (100%) DESIGN PLANS	1	2	4	4	4	4	2	1	0	4	26	\$ 4,464.50	\$ -	\$ -	\$ -	\$ 4,464.50	
6	DEVELOP CONSOLIDATED TRAFFIC MANAGEMENT PLAN	4	6	12	12	40	60	0	0	0	56	190	\$ 28,634.00	\$ -	\$ -	\$ -	\$ 28,634.00	
7	CONSOLIDATE DETAILS, SPECIFICATIONS, BID DOCUMENTS AND COST ESTIMATE	4	8	20	16	32	40	4	8	8	8	148	\$ 24,442.00	\$ -	\$ 1,500.00	\$ -	\$ 25,942.00	
8	MEETINGS AND PROJECT COMMUNICATIONS	16	2	24	16	16	0	0	4	16	0	94	\$ 18,440.00	\$ -	\$ 500.00	\$ -	\$ 18,940.00	
9	ADDITIONAL SURVEY (OPTIONAL)	0	0	0	0	0	0	0	0	0	0	0	\$ -	\$ -	\$ -	\$ -	\$ -	
10	BIDDING AND CONTRACT AWARD SERVICES	2	16	12	16	16	24	4	4	12	0	106	\$ 18,455.00	\$ -	\$ 800.00	\$ -	\$ 19,255.00	
<b>TOTALS FOR ALL TASKS</b>		<b>49</b>	<b>88</b>	<b>220</b>	<b>248</b>	<b>342</b>	<b>424</b>	<b>62</b>	<b>126</b>	<b>242</b>	<b>332</b>	<b>2,133</b>	<b>\$ 356,112.50</b>	<b>\$ -</b>	<b>\$ 2,800.00</b>	<b>\$ -</b>	<b>\$ 358,912.00</b>	
<b>NOTES</b>		1: None.																

## CONTRACT

### **PREAMBLE**

This fourth (4th) Permitting Support Contract Amendment (the "Agreement") is made this 9<sup>th</sup> day of August 2021 between Friends of Herring River, Wellfleet/Truro, Inc., PO Box 565, South Wellfleet, MA 02663 ("FHR"), and WSP USA, Inc., having offices at 166 Valley Street, Building 5, Providence RI, 02909 ("WSP"). FHR participates in the Herring River Restoration Project ("Project") under the technical guidance of the Herring River Technical Team ("HRTT") and the Project involves a partnership of two (2) entities, the Town of Wellfleet and the Cape Cod National Seashore. These two (2) partnership entities act through a series of Memoranda of Understanding (MOU I - IV) and a created entity, the Herring River Executive Council (the "HREC"). FHR acts in furtherance of the Project at the behest of HRTT and the members of HREC in the Agreement.

### **AGREEMENT**

FHR and WSP (the "Parties"), in consideration of the Terms and Conditions set forth in the Agreement, hereby agree as follows:

1. **SCOPE and SCHEDULE.** WSP agrees to perform the Scope of Work (SOW) specified in Appendix I attached to this Agreement and made a part of it.
2. **PAYMENT.** FHR, as a recipient of grants from NOAA and MA DER for low road and property work associated with the Herring River Restoration Project, will pay WSP for services provided under the SOW according to the budget set out in Appendix II or, if not specified in Appendix II, at the hourly rates (which shall include time and expenses and total costs for the tasks) outlined under Invoicing in Appendix I. The total budget shall not exceed \$ 96,919. Invoicing will be monthly. Payment must be made within sixty (60) days after WSP submits its invoice for the Work and the invoice has been approved by the HRTT.
3. **TERMS.** WSP is an independent contractor and shall procure and maintain workers compensation and employer's liability insurance, comprehensive general liability insurance, automobile liability insurance and professional liability insurance. WSP shall perform the Work in accordance with generally accepted professional practices. Neither party shall be responsible for delays beyond its reasonable control nor shall the schedule, if any, be adjusted to compensate for delays.
4. **DISPUTES.** The terms of this Agreement shall be governed by the laws of the



Commonwealth of Massachusetts. First attempt to resolve disputes will be informally. Second attempt to resolve will be through mediation, and third attempt shall be settled by arbitration in Needham, Massachusetts in accordance with the rules of the American Arbitration Association. The results shall be final and binding, and judgment thereon may be entered in any court of competent jurisdiction in Norfolk County, Massachusetts by either party.

5. **NOTICES.** Any required notices shall be in writing and delivered by hand, sent certified mail, return receipt requested, or sent via facsimile to the addresses specified in the preamble.

6. **DISCLOSURE.** WSP is required to disclose any outside activities or interests, including ownership or participation in the development of prior inventions, that conflict or may conflict with the best interests of FHR or all other entities listed above in association with the Herring River Restoration Project. Prompt disclosure is required under this paragraph if the outside activity or interest is related, directly or indirectly, to any activity that WSP may be involved with or on behalf of FHR.

7. **INTELLECTUAL PROPERTY.** WSP represents and warrants that it has the rights to use and reproduce any materials it uses or furnishes to FHR or all other entities listed above in association with the Project in connection with WSP's services, and will indemnify and hold FHR or all other entities harmless from all claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against FHR or all other entities listed above in association with the Project which are based upon any allegation of violation of any patent, trademark, and/or copyright interests of any party.

8. **INSURANCE.** Before commencing any work and throughout the term of this Agreement, WSP must have and maintain the following insurance policies: (a) workers' compensation insurance, as and to the extent required by applicable law; (b) commercial general liability insurance written on an occurrence basis with a liability limit of at least \$1,000,000 per incident and in the aggregate, covering the activities that are the subject of this Contract, including any related Claims; (c) automobile liability insurance covering all owned and non-owned vehicles used in performing the SOW, with a liability limit of at least \$1,000,000 per assident; and (d) if WSP is providing professional services (such as consulting, engineering, design, appraisal, or surveying services), professional liability insurance with a liability limit of at least \$1,000,000 per claim and in the aggregate. WSP's policies must be primary insurance to any other valid and collectible insurance available to FHR with respect to any claim arising out of WSP's performance of the SOW.



WSP must have FHR included as an additional insured on WSP's commercial liability insurance policy on a primary, non-contributory basis and, if requested, provide FHR with evidence that the required coverage is in effect before any work commences or payments are made under this Agreement.

9. **LIABILITY.** WSP's total liability to FHR for any and all injuries, claims, losses, expenses, damages, or claim expenses arising out of this Agreement from any cause or causes shall be \$100,000 or the total amount of WSP 's fee for its services, whichever is greater. Such causes include but are not limited to WSP's negligent acts, errors or omissions, strict liability, breach of contract or breach of warranty (expressed or implied). Neither FHR nor WSP shall be liable to the other party for any special, indirect or consequential damages, whether caused or alleged to be caused by their negligence, strict liability, breach of contract or warranty under this Agreement.

10. **INDEMNIFICATION.** WSP agrees to indemnify, and hold harmless FHR or all other entities listed above in association with the Project, from and against any and all liabilities, demands, damages, claims, losses, costs, or expenses, including reasonable attorneys' fees and costs (collectively, "Claims"), to the extent caused by the negligent acts or omissions or willful misconduct of WSP or any of its employees (including any permitted subcontractors) in performing the SOW.

11. **RETURN OF RECORDS.** Upon termination of this Agreement, WSP shall deliver all records, notes, data, memoranda, models and equipment of any nature that are in WSP's possession or under its control and that are the FHR's business.

12. **MODIFICATION OF THE AGREEMENT.** The Parties may mutually agree in writing to a modification of the contract at any time during the duration of this Agreement.

13. **INTERPRETATION AND SEVERABILITY.** If any provision of this Agreement is declared or found to be illegal, unenforceable or void, all Parties shall be relieved of all obligations under that provision. The remainder of the Agreement shall remain in effect and shall be enforced to the fullest extent permitted by law.

14. **COMPLIANCE WITH APPLICABLE FEDERAL, STATE, AND LOCAL LAWS.** WSP agrees to conduct all activities in compliance with all applicable Federal, State, and local laws, regulations, and ordinances and to secure all appropriate necessary public or



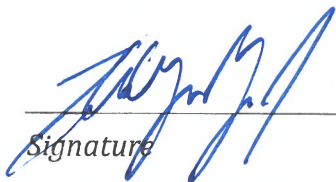
private permits and consents. WSP will ensure that no payments have been or will be made or received in connection with this Agreement in violation of the U.S. Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. §dd-1 *et seq.*), the UK Bribery Act 2010, or any other applicable anticorruption laws or regulations. WSP shall not provide material support or resources directly or indirectly to any entity it knows, or has reason to know, commits, attempts to commit, advocates, facilitates, or participates in any terrorist activity, or has committed, attempted to commit, advocated, facilitated or participated in any terrorist activity, including, but not limited to, the individuals and entities (1) on the master list of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury's Office of Foreign Assets Control (<https://www.treasury.gov/ofac/downloads/sdnlist.pdf>); (2) on the consolidated list of individuals and entities maintained by the "1267 Committee" of the United Nations Security Council (<https://www.un.org/securitycouncil/content/un-sc-consolidated-list#composition%20list>); (3) on the consolidated list maintained by the U.S. Department of Commerce ([http://export.gov/ecr/eg\\_main\\_023148.asp](http://export.gov/ecr/eg_main_023148.asp)); or (4) on such other list as NFWF may identify from time to time. WSP shall ensure that its activities under this Agreement comply with all applicable U.S. laws, regulations and executive orders regarding money laundering, terrorist financing, U.S. sanctions laws, U.S. export controls, restrictive trade practices, boycotts, and all other economic sanctions or trade restrictions promulgated from time to time by means of statute, executive order, regulation or as administered by the U.S. Department of State, the Office of Foreign Assets Control, U.S. Department of the Treasury, or the Bureau of Industry and Security, U.S. Department of Commerce.

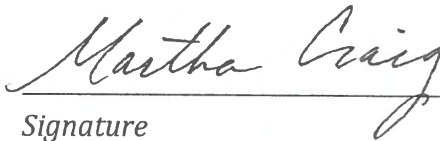
This Contract consists of and incorporates the **Agreement** set forth above and the **SOW** and **Budget** attached hereto (**Appendix I and II**). In the event of any conflict between the Terms and Conditions set forth in the Agreement and any terms set forth in the SOW, the terms of the Agreement will control, unless the SOW expressly states that the conflicting provision in the SOW is to control.

**IN WITNESS WHEREOF**, WSP and FHR have executed the Agreement by the signatures of their duly authorized representatives as of the date set forth above in the Preamble.

**WSP USA, Inc.**

**Friends of Herring River,  
Wellfleet/Truro, Inc.**

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Signature

THOMAS W. PAYNE, P.E.  
\_\_\_\_\_  
Printed Name

Martha Craig  
\_\_\_\_\_  
Printed Name

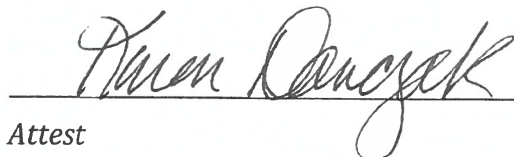
ASSOCIATE VICE PRESIDENT  
\_\_\_\_\_  
Title

Executive Director, FHR  
\_\_\_\_\_  
Title

11 August 2021  
\_\_\_\_\_  
Date

8/9/21  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Attest

  
\_\_\_\_\_  
Attest

## APPENDIX I - SCOPE OF WORK

### Herring River Restoration Project: Preparation of NOI Plans and Documents

Friends of Herring River (FHR), in partnership with the Herring River Technical Team (HRTT), has requested that WSP USA (WSP) submit a contract modification proposal to prepare NOI Plans, update buffer zone/ resource area impact information and related documents for future NOI submission.

#### **Task 11A: Prepare NOI Plans and Provide Buffer Zone / Resource Impacts**

WSP will prepare NOI Plans for Low Lying Roads, High Toss Road, Way 672 and Miller Frederiksen plan sets, showing the following minimum information, as applicable:

- Show all applicable WPA resource areas and 100' BZ on plans and legends – see attached
- Show 50-ft filter strip on plans and legends
- For clarity, show only outermost BZ and FS that exist on any given plan view
- Show Limit of Disturbance (LOD) (okay to combine with perimeter control line)
- Show map/parcel number for all parcels in and abutting the LOD (if owner names are also shown, use N/F)
- Show Mean Annual High Water (aka Ordinary High Water) or delineation of stream bank (put note in legend that this is equal to MAHW) if applicable – see attached
- Boundaries: ACEC, Town lines, Cape Cod National Seashore (where ACEC is coincident with CCNS boundary, there should be a note to that effect if a single line is used)
- FEMA zone (include flood zone category and elevation)
- Table of total temporary and total permanent impacts by each resource area type (any WPA resources deleted for 401/404 need to be added back and 401/404 tables should be removed)
- Estimated Habitat should be shown with a line or, if entire site is within, indicated in a note
- Other information as necessary and appropriate to depict Project element work and resource impacts (e.g., erosion and sediment control, dewatering, temporary bypass, etc.)

WSP will also compile buffer zone and resource area impacts for Low Lying Roads, High Toss Road, Way 672 and Miller Frederiksen plan sets, as applicable:

- Provide information as needed to fill out Form 3 Section B. Buffer Zone and Resource Area Impacts. List temporary and permanent resource area impacts separately as follows: temporary: ##### (lf, sf, cy)/permanent: xxxx (lf, sf, cy), as referenced in markup documents supplied by FHR.
- Include riverfront impacts associated with work broken out in 0-100 and 100-200 ft, as well as total.
- Verify/update table of temporary and permanent resource area impacts

provided in RCR or on plan sets, or create a new table. Must include all applicable resource areas as referenced in markup corrections documents supplied by FHR.

### **Task 11A Deliverables**

WSP will prepare Draft and Final NOI Plans; draft and final inputs to the Form 3 Section B Buffer Zone and Resource Area Impacts, along with verification or updated tables of temporary and permanent resource area impacts, as applicable. Draft plans will be provided when all design work has been completed and all associated information is included, and the only pending changes would be in response to consolidated comments provided by FHR.

The completed Draft plans, Form 3 and updated information will be delivered in PDF format to FHR. FHR will provide consolidated comments to WSP. It is anticipated that FHR review comments will be provided within one week of receipt of Draft plans. Final copies of the plan PDFs will be provided to FHR for written approval prior to being stamped by a Massachusetts-registered Professional Engineer and provided as fully formatted PDFs and as original CAD files, either by email or FTP, and on CD/DVD. One (1) full-size copy of the stamped final plan sets will also be provided. Final full-size paper plans will be sent to FHR c/o Christine Odiaga at 14 Rainbow Way, Harwich MA 02645.

### **Task 11B: Written Descriptions of Resource Impacts and Fish Passage**

WSP will provide concise written descriptions of temporary and permanent impacts for each resource type for each major project element (Low roads/culverts, Pole Dike WCS, High Toss causeway removal, High Toss road elevation, Way 672 work, and Miller-Frederiksen). WSP will also provide concise written descriptions of how the fish passage will be maintained on Herring River at High Toss Road causeway and during replacement of LLR culverts.

### **Task 11B Deliverables**

WSP will prepare Draft and Final written descriptions as described above, in electronic format as PDF.

### **Task 11C: Prepare Resource Area Impact Graphics for each project**

WSP will prepare a graphic figure showing all permanent resource area impacts shaded (resource area types do not need to be distinguished) and all temporary resource area impacts shaded (resource area types do not need to be distinguished) and a line showing outermost extent of jurisdiction (LSCSF or 100 ft buffer zone, whichever is more extensive). It is anticipated that one graphic figure will be prepared for each project, specifically Low Lying Roads, High Toss Road, Way 672 and Miller Frederiksen.

### **Task 11C Deliverables**

WSP will prepare Draft and Final Resource Area Impact Graphics as described above, in electronic format as PDF.

### **Task 11D: Meetings and Communication**

A kick-off meeting will be held via conference call. To reduce the cost of this task, WSP will rely primarily on phone calls, e-mails and/or virtual meetings to communicate with FHR and Project partners going forward. If necessary, additional in-person meetings in Wellfleet will be coordinated with other tasks (under this or other contracts) to reduce overall costs. WSP shall provide an agenda and associated graphics and documentation, including sketches for potential design options, as needed for effective communications.

### **Task 11D Deliverables**

WSP will take and maintain notes and records of meetings and distribute concise, draft meeting notes to FHR within three business days of the meeting for review by the Project team. Following the incorporation of comments, final notes will be provided to FHR within three business days of receiving compiled comments.

### **Schedule**

The schedule for final deliverables under Tasks 11A – 11D is as follows, contingent upon timely review and comment by the Project team.

<b>Preparation of NOI Plans and Documents SCHEDULE of DELIVERABLES</b>	<b>Delivery Date from Receipt of NTP</b>
TASK 11A – Prepare NOI Plans and provide Buffer Zone / Resource Impacts	<b>3 weeks</b>
TASK 11B – Written Description of Resource Impacts and Fish Passage	<b>2 weeks</b>
TASK 11C – Prepare Resource Area Impact Graphics for each project	<b>3 weeks</b>
TASK 11D - Meetings and Communication	<b>N/A</b>

### **Budget**

A detailed budget estimate for Tasks 11A – 11D, provided in Appendix II and summarized below, was prepared based on the assumptions for time and material not to exceed contract basis. Based on the scope of work identified above, the budget for this Agreement is estimated at \$18,980. WSP will not exceed the \$18,980 budget without prior notice and approval.

<b>Preparation of NOI Plans and Documents BUDGET SUMMARY</b>	<b>Total Labor</b>	<b>Total Expenses</b>	<b>TOTAL COST</b>
TASK 11A – Prepare NOI Plans and provide Buffer Zone / Resource Impacts	\$7,488		\$7,488
TASK 11B – Written Description of Resource Impacts and Fish Passage	\$2,430		\$2,430
TASK 11C – Prepare Resource Area Impact Graphics for each project	\$4,866		\$4,866
TASK 11D - Meetings and Communication	\$3,696	\$500	\$4,196
<b>PROJECT TOTALS:</b>	<b>\$18,480</b>	<b>\$500</b>	<b>\$18,980</b>

### **Invoicing**

Invoicing will be monthly. Invoices should be sent via email to FHR Office Manager, Karen Danczak at klarocque@herringriver.org. Payment will be made within sixty (60) days.



**APPENDIX II - BUDGET ESTIMATE**  
**Herring River Restoration Project: Preparation of NOI Plans and Documents**

WSP USA Herring River Restoration Project Planning and Design TASK 11: Preparation of NOI Plans and Documents	QA/QC Officer	Project Manager	Senior Engineer	Senior Scientist	Civil Engineer - Mid	Civil Engineer - Jr.	Sr. CAD Designer	Sr. Surveyor	Jr. Surveyor	Sub-Task Total Hours	Total Labor	Reproduction	Mailings	Travel Expenses & Mileage	TOTAL EXPENSES	TOTAL COST
	LOADED HOURLY RATES	\$240.00	\$190.00	\$140.00	\$105.00	\$112.00	\$105.00	\$140.00	\$140.00	\$105.00						
<b>TASK 11A - Prepare NOI Plans and provide buffer zone / resource impacts</b>																<b>\$7,488</b>
TOTAL HOURS	4	4		8	24		16			56						
TOTAL LABOR	\$960	\$760		\$840	\$2,688		\$2,240				\$7,488					\$7,488
<b>TASK 11B - Written Descriptions of Resource Impacts and Fish Passage</b>																<b>\$2,430</b>
TOTAL HOURS	1	6		10						17						
TOTAL LABOR	\$240	\$1,140		\$1,050							\$2,430					\$2,430
<b>TASK 11C - Prepare Resource Area Impacts graphic for each project</b>																<b>\$4,866</b>
TOTAL HOURS	2	4		10	8		12			36						
TOTAL LABOR	\$480	\$760		\$1,050	\$896		\$1,680				\$4,866					\$4,866
<b>TASK 11D - Meetings and Communication / Project Coordination</b>																
TOTAL HOURS	2	10		4	8					24				\$500	\$500	\$4,196
TOTAL LABOR	\$480	\$1,900		\$420	\$896						\$3,696					\$3,696
<b>PROJECT TOTALS:</b>										<b>133</b>	<b>\$18,480</b>				<b>\$500</b>	<b>\$18,980</b>

**ASSUMPTIONS:**

1. Task 11A NOI Plans and buffer zone/ resource area impacts info updates for LLR, High Toss Road, Way 672, and Miller-Frederiksen.
2. Task 11B Resource area impacts description / info updates for LLR, Pole Dike Road WCS, High Toss Road causeway removal, High Toss Road, Way 672, and Miller-Frederiksen.
3. Task 11B Fish passage description for construction on Herring River related to LLR culverts and High Toss Road causeway.
4. Task 11C Graphics to be prepared to show Resource Area impacts and jurisdiction limit for LLR, High Toss Road, Way 672, and Miller-Frederiksen.

TOWN OF WELLFLEET  
PUBLIC HEARING

In accordance with M.G.L. Chapter 138, notice is hereby given that a public hearing will be held on Tuesday, May 16, 2023, at 7:00 p.m. both virtually and at the Wellfleet Community Center (715 Old King's Highway) to consider the following:

- To amend the fees and set guidelines for the use of Bakers Field Pavilion for Commercial/private events. (*Documents of the changes can be found in the administration office at town hall*)

Join Zoom Meeting

<https://us02web.zoom.us/j/85689604806?pwd=blplVFFBZzViQ0xNWkZKMm9iMVdrdz09>

Meeting ID: 856 8960 4806

Passcode: 611877

Dial by your location

+1 929 205 6099 US (New York)

WELLFLEET SELECTBOARD



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023

VI

### PUBLIC HEARINGS

~ A ~

<b>REQUESTED BY:</b>	<b>Suzanne Grout-Thomas ~ Beach Director</b> <b>Becky Rosenberg ~ Recreation Director</b>
<b>DESIRED ACTION:</b>	<b>To approve the amended fees and guidelines for the use of Baker's Field Pavilion for commercial and private events.</b>
<b>PROPOSED MOTION:</b>	<b>I move to approve the amendment of fees and guidelines for the use of Baker's Field Pavilion for commercial and private events as presented at tonight's meeting to go into effect immediately.</b>
<b>Summary:</b>	
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____

## Use of Bakers Field Pavilion for Commercial/private events

Because of the increased popularity of the permanent pavilion at Bakers Field for private events that do not include the general public, the following process will apply:

1. The attached application must be submitted to the Recreation Director ninety days prior to the proposed event. There is a \$50 non-refundable application fee that must be included with the application for it to be considered.
2. Once the Recreation Director has approved the event, it will be transmitted to the Chief of Police, the Fire Chief, the DPW Director and the Director of Community Services for approval.
3. At that point, the application will be heard by the Selectboard and final approval will be granted by the Selectboard who will also assign the fee for this event based on the Use of Town Property Fee Schedule (9/28/2021).
4. Once permission is used, the Recreation Director and staff will be the contact points for the organizers of any event.

### Wellfleet Recreation Department Special Event Conditions

- ~~Applicant will be notified by the Recreation Department as to the status of the application no later than ten business days after the application date.~~
- ~~The pavilion is available to municipal groups and Recreation Department sponsored events for no fee. (this whole section is covered in other locations in this document)~~
- ~~The Bakers Field Recreation park cannot be shut down for the duration of the event; use of the playground, tennis/pickleball courts and skateboard park is not included in the Use of Town Property for the pavilion. However, people attending the event are welcome to use the facilities along with the general public.~~
- ~~The Recreation Department has limited equipment available for loan. If chairs, tables, and lights that are used for Rec programs are requested, it is with the understanding that they are not in pristine condition. The event sponsors/organizers are responsible for setting up and breaking down all borrowed equipment on the day of the event.~~
- ~~If the event organizers plan to use a tent, the permit to use the tent must be obtained from the Wellfleet Building Inspector in a timely manner prior to~~

the erection of the tent. James Badera, 508-349-0308, james.badera@wellfleet-ma.gov)

- If the event organizers plan to serve food and or engage a food truck, any permits must be obtained from the Wellfleet Health and Conservation Agent in a timely fashion. Hillary Greenberg Lemos, 508-349-0309, Hillary.lemos@wellfleet-ma.gov.
- If the event organizers plan to use a tent, the permit to do so must be obtained in advance from the Wellfleet Building Inspector's office.
- If the event organizers plan to serve alcohol, they must
  - a. Obtain a one day liquor license from the Selectboard
  - b. Obtain liability insurance for the day of the event from their insurance carrier naming the Town of Wellfleet as also insured for \$1,000,000
- If the Wellfleet Police Department requires a detail officer(s) arrangements for a detail officer can be made by contacting Lt. Kevin LaRocco at the Wellfleet Police Department at 508-349-3702, kevin.larocco@wellfleet-ma.gov

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#### Fee Schedule for Bakers Field Pavilion

- |  |              |
|--|--------------|
| • <u>Use of the Pavilion per diem</u>                  | <u>\$300</u> |
| • <u>Use of sound equipment per diem</u>               | <u>\$200</u> |
| • <u>Use of Town equipment(chairs, tables, lights)</u> | <u>\$200</u> |
| • <u>Food Truck per diem</u>                           | <u>\$150</u> |
| • <u>Liquor service</u>                                | <u>\$150</u> |

#### Contact Information

<u>Administration Office</u>	<u>508-349-0300</u>
<u>Health and Conservation Office</u>	<u>508-349-0308</u>
<u>Building Inspector</u>	<u>508-349-0309</u>
<u>Recreation Office</u>	<u>508-349-0314</u>
<u>Wellfleet Police</u>	<u>508-349-3702</u>

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TOWN OF WELLFLEET  
PUBLIC HEARING

In accordance with M.G.L. Chapter 138, notice is hereby given that a public hearing will be held on Tuesday, May 16, 2023, at 7:00 p.m. both virtually and at the Wellfleet Community Center (715 Old King's Highway) to consider the following:

- Eversource to Install 40' of 2-4" pipes in concrete under Lawrence Road from pole 4/19 to 2ft within the private property line as shown and 10' of 2-4" pipes in concrete under Long Pond Road from pole 5/13 to 2ft within private property line as shown on sketch. Sketches will be available in the Selectboard packet for the May 16<sup>th</sup> meeting.

**Join Zoom Meeting**

<https://us02web.zoom.us/j/85689604806?pwd=blplVFFBZzViQ0xNWkZKMm9iMVdrdz09>

**Meeting ID:** 856 8960 4806

**Passcode:** 611877

**Dial by your location**

+1 929 205 6099 US (New York)

WELLFLEET SELECTBOARD





## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023

VI

### PUBLIC HEARINGS

~ B ~

<b>REQUESTED BY:</b>	<b>Marissa Jackson ~ Eversource Right of Way Agent</b>
<b>DESIRED ACTION:</b>	<b>To approve the petition for underground cable and conduit locations regarding the Lawrence Road project</b>
<b>PROPOSED MOTION:</b>	<b>I move to approve the petition from Eversource for the underground cable and conduit locations along Lawrence Road</b>
<b>SUMMARY:</b>	
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____



484 Willow Street, West Yarmouth, Massachusetts 02673

April 12, 2023

Chairman  
Select Board  
Town of Wellfleet  
300 Main Street  
Wellfleet, MA 02667

Dear Sir,

Enclosed you will find one (1) Petition covering the installation of 160' +/- 2-4" conduit along Lawrence Road and 85' +/- 2-4" conduit along Long Pond Road.

The purpose of this construction is to accommodate a new community development.

The notice to abutters and hearing will be required.

Favorable action on the part of the Select Board will be greatly appreciated.

Very truly yours,

Marissa Jackson  
Right of Way Agent  
[Marissa.Jackson@Eversource.com](mailto:Marissa.Jackson@Eversource.com)  
508-790-9001

enc.

**PETITION FOR  
UNDERGROUND CABLE AND CONDUIT LOCATIONS**

Wellfleet, Massachusetts, **April 1, 2023**

TO THE SELECT BOARD FOR THE TOWN OF WELLFLEET, MASSACHUSETTS

NSTAR ELECTRIC COMPANY (d/b/a Eversource Energy)

**W/O# 11857470**

requests permission to locate underground cables, conduits, manholes, including the necessary sustaining and protecting fixtures, in, under, along and across the following public way or ways:

**Lawrence Road**

**To install 120' +/- of 2-4" of conduit  
from pole 4/18**

**Lawrence Road**

**To install 40' +/- of 2-4" conduit from  
pole 4/19**

**Long Pond Road**

**To install 85' +/- of 2-4" of conduit  
from 5/13**

Wherefore it prays that after due notice and hearing as provided by law, it be granted a location for and permission to install and maintain underground cables, conduits, and manholes, together with such sustaining and protecting fixtures as it may find necessary, said underground cables, conduits, and manholes to be installed substantially in accordance with the plan filed herewith marked **Plan No. 11857470 dated April 11, 2023.**

NSTAR ELECTRIC COMPANY (d/b/a Eversource Energy)

By                     *Marissa Jackson*                      
Marissa Jackson, Right of Way Agent

# FORM OF ORDER FOR UNDERGROUND CABLE AND CONDUIT LOCATIONS

IN SELECT BOARD FOR THE TOWN OF WELLFLEET, MASSACHUSETTS

Notice having been given and a public hearing held, as provided by law,  
IT IS HEREBY ORDERED THAT THE:

NSTAR ELECTRIC COMPANY (d/b/a Eversource Energy)

**W/O# 11857470**

be and they are hereby granted a location for and permission to install and maintain underground cables, Conduits and manholes, together with such sustaining or protecting fixtures as said company may deem necessary, in, under, along and across the public way or ways hereinafter referred to, as requested in petition of said company.

All construction under this order shall be in accordance with the following conditions:  
Cables, conduits, and manholes shall be installed substantially at the point indicated upon the plan marked -- **Plan No. 11857470 dated April 11, 2023**. The following are the public ways or parts of ways under, along and across which the cables above referred to may be installed under this order.

<b>Lawrence Road</b>	<b>To install 120' +/- of 2-4" of conduit from pole 4/18</b>
<b>Lawrence Road</b>	<b>To install 40' +/- of 2-4" conduit from pole 4/19</b>
<b>Long Pond Road</b>	<b>To install 85' +/- of 2-4" of conduit from 5/13</b>

I hereby certify that the foregoing order was adopted at a meeting of the Select Board of the Town of Wellfleet, Massachusetts held on the \_\_\_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
Select Board Clerk

\_\_\_\_\_  
Massachusetts

\_\_\_\_\_  
2023.

Received and entered in the records of location orders of the Town of \_\_\_\_\_  
Book \_\_\_\_\_ Page \_\_\_\_\_.

Attest:

\_\_\_\_\_  
Town Clerk

We hereby certify that on \_\_\_\_\_ 2023, at \_\_\_\_\_ o'clock, \_\_\_\_\_ M ,

at \_\_\_\_\_ a public hearing was held on the petition of the  
NSTAR ELECTRIC COMPANY (d/b/a Eversource Energy)

for permission to install and maintain the underground cables, conduits, manholes and fixtures described in the order herewith recorded, and that we mailed at least seven days before said hearing a written notice of the time and place of said hearing to each of the owners of real estate (as determined by the last preceding assessment for taxation) along the ways or parts of ways upon which the Company is permitted to install underground cables, conduits, manholes and fixtures under said order. And that thereupon said order was duly adopted.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Select Board of the Town of Wellfleet,  
Massachusetts

CERTIFICATE

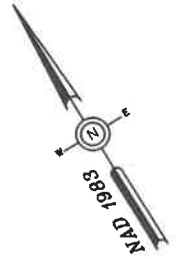
I hereby certify that the foregoing is a true copy of a location order and certificate of hearing with notice adopted by the Select Board of the Town of Wellfleet, Massachusetts, on the \_\_\_\_\_ day of \_\_\_\_\_ 2023, and recorded with the records of location orders of said Town, Book \_\_\_\_\_, Page \_\_\_\_\_.

This certified copy is made under the provisions of Chapter 166 of General Laws and any additions thereto or amendments thereof.

Attest:

\_\_\_\_\_  
Town Clerk

Plan to accompany petition of EVERSOURCE ENERGY to install 2-4" pipes in concrete from P4/19 to 2ft within pp line DL = 40'±.



13-2-1  
95 LAWRENCE RD  
N/F  
TOWN OF WELFLEET  
WATER TOWER & OLD COA

APPROX. PT.  
OF PICKUP

GRASS

2-4" PVC ENCASE IN CONCRETE  
L=40'±

APPROX. 400±  
FEET TO LONG  
POND ROAD

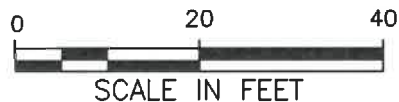
LAWRENCE ROAD

EDGE OF PAVEMENT

13-2-0  
100 LAWRENCE RD  
N/F  
TOWN OF WELFLEET  
ELEMENTARY SCHOOL

### LEGEND

- ⊕ Proposed Hand Hole
- ⊕ Existing Hand Hole
- Proposed Conduit
- Existing Pole
- PROPOSED Pole



BY YOUR USE OF THE INFORMATION CONTAINED IN THIS MAP, YOU AGREE THAT NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, IS GIVEN WITH RESPECT TO THE INFORMATION. NEITHER NSTAR ELECTRIC COMPANY, NSTAR GAS COMPANY NOR ITS PARENTS, AFFILIATES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR AGENTS (COLLECTIVELY THE "NSTAR ENTITIES") SHALL BE LIABLE FOR ANY LOSS OR INJURY CAUSED IN WHOLE OR IN PART BY USE OF THIS INFORMATION OR IN RELIANCE UPON IT, TO THE MAXIMUM EXTENT ALLOWED BY LAW, YOU AGREE BY YOUR ACCEPTANCE OF THE INFORMATION TO RELEASE, INDEMNIFY AND HOLD THE NSTAR ENTITIES HARMLESS FROM ANY SUCH LOSS OR INJURY.

THE INFORMATION MAY NOT REPRESENT A SURVEY, MAY NOT BE THE MOST COMPLETE AND IS SUBJECT TO CHANGE WITHOUT NOTICE. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE INFORMATION, EITHER EXPRESSED OR IMPLIED. UNAUTHORIZED ATTEMPTS TO MODIFY THE INFORMATION OR USE THE INFORMATION FOR OTHER THAN ITS INTENDED PURPOSES ARE PROHIBITED.

#### MASS. LAW

REQUIRES 72 HOURS ADVANCE NOTICE TO UTILITY COMPANIES BEFORE DIGGING BY ANYONE. CALL DIG-SAFE 1-888-344-7233

Plan # 12718646

Ward # -

Work Order # 12718646

Surveyed by: N/A

Research by: JC

Plotted by: VT

Proposed Structures: JC/TL

Approved: T THIBAUT

P#

**NSTAR EVERSOURCE**  
ELECTRIC  
dlb/a

1185 MASSACHUSETTS AVE. DORCHESTER, MASS. 02125

Plan of LAWRENCE RD

WELFLEET, MA

Showing PROPOSED CONDUIT

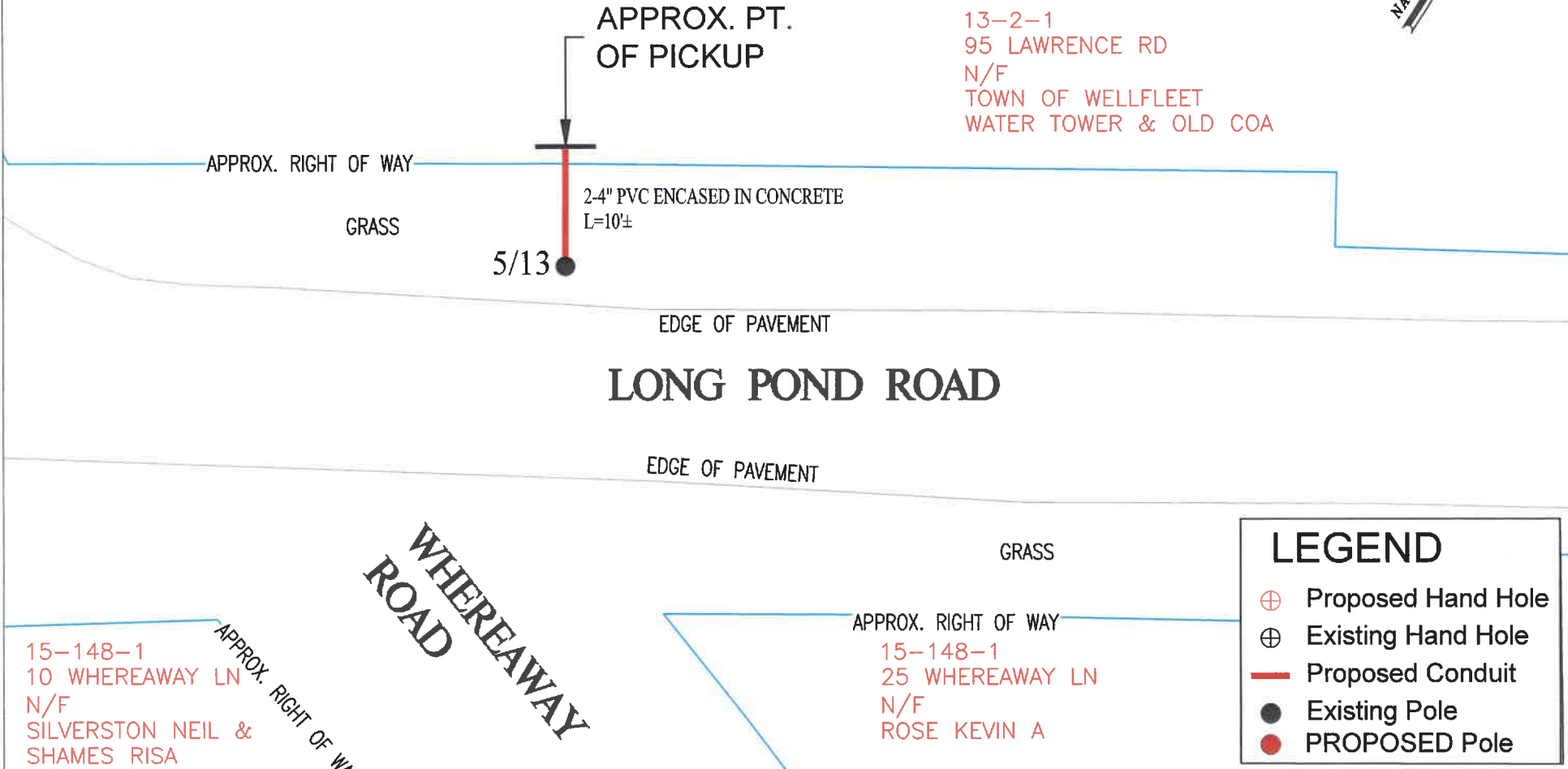
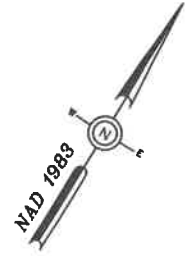
Scale 1"=20'

Date APRIL, 26 2023

SHEET 1 of 2

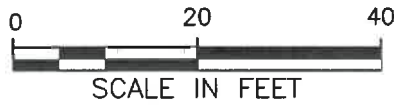


Plan to accompany petition of EVERSOURCE ENERGY  
to install 2-4" Pipes Encased in Concrete from P5/13 to 2ft  
within pp line DL = 10'±.



**LEGEND**

- ⊕ Proposed Hand Hole
- ⊕ Existing Hand Hole
- Proposed Conduit
- Existing Pole
- PROPOSED Pole



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**MASS. LAW**

REQUIRES 72 HOURS ADVANCE NOTICE TO UTILITY COMPANIES BEFORE DIGGING BY ANYONE. CALL DIG-SAFE 1-888-344-7233

Plan #	12718646	<b>NSTAR EVERSOURCE</b> <small>ELECTRIC d/b/a</small> 1185 MASSACHUSETTS AVE. DORCHESTER, MASS. 02125
Ward #	-	
Work Order #	12718646	
Surveyed by:	N/A	Plan of LONG POND RD
Research by:	JC	WELFLEET, MA
Plotted by:	VT	Showing PROPOSED CONDUIT
Proposed Structures:	JC/TL	
Approved:	T THIBAUT	Scale 1"=20' Date APRIL, 26 2023
P#		SHEET 2 of 2

WO #12718646  
LAWRENCE & LONG POND ROAD  
WELLFLEET, MA 02667

15-148-1  
10 WHEREAWAY LN  
N/F  
SILVERSTON NEIL &  
SHAMES RISA  
57 RIDGE AVE  
NEWTON, MA 02459

15-148-1  
25 WHEREAWAY LN  
N/F  
ROSE KEVIN A  
BOX 1443  
WELLFLEET, MA 02667

13-2-1  
95 LAWRENCE RD  
N/F  
TOWN OF WELLFLEET  
WATER TOWER & OLD COA  
300 MAIN ST  
WELLFLEET, MA 02667

13-2-0  
100 LAWRENCE RD  
N/F  
TOWN OF WELLFLEET  
ELEMENTARY SCHOOL  
300 MAIN STREET  
WELLFLEET, MA 02667



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023

# VII

### USE OF TOWN PROPERTY

~ A ~

<b>REQUESTED BY:</b>	Richard Cohen
<b>DESIRED ACTION:</b>	To approve the use of Indian Neck Beach for small birthday party.
<b>PROPOSED MOTION:</b>  <b>SUMMARY:</b>	I move to approve Richard Cohen the use of Indian Neck Beach on Thursday August 3, 2023, from 4:30pm to 8:30pm for a small 60 <sup>th</sup> birthday party, for a fee of \$110, the applicant be responsible for all trash clean-up and the beach to be left in the condition it was found; to the satisfaction of the DPW and Beach Directors.
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____  Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____



Police Department: ok - per

Comments/Conditions: daRocco

\_\_\_\_\_  
\_\_\_\_\_

Building Department: ok - Victor

Comments/Conditions: Stacey

\_\_\_\_\_  
\_\_\_\_\_

Fire Department: ok - Chief

Comments/Conditions: Paulsey

\_\_\_\_\_  
\_\_\_\_\_

Health Department: need a

Comments/Conditions: catering

license  
per Hillary

\_\_\_\_\_  
\_\_\_\_\_

DPW Department: ok - Jay

Comments/Conditions: Norton

\_\_\_\_\_  
\_\_\_\_\_

Town Administrator: \_\_\_\_\_

Comments/Conditions: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Other: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Other: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date Received

\_\_\_\_\_  
Fee

\_\_\_\_\_  
Date Issued



# SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023

VIII

## BOARD/COMMITTEE APPOINTMENTS AND UPDATES

~ A ~

<b>REQUESTED BY:</b>	Natural Resources Advisory Board
<b>DESIRED ACTION:</b>	To approve the draft letter written to the MA Division of Marine Fisheries regarding their support for a survey of the life and health of Wellfleet Harbor.
<b>PROPOSED MOTION:</b>	I move to approve the letter written on behalf of the Natural Resource Advisory Board and the Wellfleet Selectboard to the Massachusetts Division of Marine Fisheries asking their support for a survey of the life and health of the Wellfleet Harbor.
<b>SUMMARY:</b>	
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____





# TOWN OF WELLFLEET

300 MAIN STREET WELLFLEET MASSACHUSETTS 02667  
Tel (508) 349-0300 Fax (508) 349-0305  
[www.wellfleet-ma.gov](http://www.wellfleet-ma.gov)

To: Dan McKiernan – Director  
Cc: Brad Chase - Diadromous Fisheries Project Leader  
Massachusetts Division of Marine Fisheries  
51 Causeway Street, Suite 400  
Boston, MA 02114

May 5, 2023

From: The Wellfleet Selectboard  
300 Main Street  
Wellfleet, MA 02667

Dear Director McKiernan -

The Wellfleet Selectboard and Wellfleet Natural Resources Advisory Board (NRAB) support the undertaking of a long overdue survey of the life and health of Wellfleet Harbor. The last comprehensive harbor study was performed over 50 years ago by the Massachusetts Division of Marine Fisheries (MA DMF) [A Study of the Marine Resources of Wellfleet Harbor](#)

The Selectboard supports this project, and requests that MA DMF, having the technical expertise and qualifications to fund, design and perform such a survey, consider allocating in your budget funding for a new Wellfleet Harbor survey to begin as early as summer 2023.

Our Natural Resources Advisory Board (NRAB) has prepared three harbor management plans in [1995](#), [2006](#), and [2021](#). These have been useful informational documents but don't quantify how our harbor is doing today compared to 50 years ago. With dredging and the Herring River work beginning, this is an opportune time to develop a comprehensive baseline for both the life in the harbor and chemistry of the harbor itself.

There are numerous studies and reports regarding our harbor that have been prepared over the years, all of which are useful for the town. However, what has been missing is a report that compiles and compares all the available data, analyzes what's been done, and details how those actions have affected the harbor and the fauna occupying the harbor.

As a healthy marine ecosystem begins from the bottom up, special emphasis should be placed on identifying the smallest phytoplankton by species, all the way up to the striped bass and bluefish at the top of the food chain. NRAB has prepared a detailed description of many technical details they believe are important and for your consideration in designing and finalizing a new survey. Additionally, Wellfleet is rich with citizen scientists with on-the-water expertise who would be available to assist MA DMF with designing a new survey, and could provide valuable assistance to help with performing the survey itself.

As work has already begun on restoring tidal flow to the Herring River, and dredging has been underway, time is of the essence to perform a new harbor survey. We would greatly appreciate your assistance in funding and documenting the current state of our harbor to properly gauge the consequences of those major initiatives now underway and set a detailed baseline for evaluating changes in the future.

Sincerely,

The Wellfleet Selectboard  
300 Main Street  
Wellfleet, MA 02667

## **Why the MA Division of Marine Fisheries should prioritize Wellfleet Harbor**



**The health of Wellfleet Harbor is critical to the life and economy of Wellfleet, for both recreational use and for commercial fishing & shellfishing. While we have invested time and money to improve the quality of water and life in Wellfleet Harbor, we have failed to do one crucial step. We have not studied the actual health of the harbor - its water quality, finfish and shellfish populations, and plant life in over 50 years.**

**When the last such survey was published in 1972, based on 1969 data, the total value of the annual commercial oyster harvest was \$18,000, and the influx of summer visitors was a fraction of the current size. In 2019, the value of harvested shellfish from Aquaculture and the wild fishery alone was \$7.7m, with Wellfleet ranking #1 statewide for blood clams, #1 for oysters, and #2 for quahogs. 300 Wellfleet residents, or roughly 10% of the town's population earned their living in the industry. There is a total of 250 moorings, 200 slips, and a busy daily launch ramp. With 93 aquaculture farms and highly productive wild fishery, everything possible should be done to properly account for and manage the resource. We must take stock of the changes that have occurred in the past 50 years. Some questions that need answering are:**

- **How successful have our management actions been?**
- **What trends over the past 50 years should we logically expect to continue?**
- **What are the current populations of finfish and shellfish ... and their prey?**
- **What flora are growing in the Harbor?**
- **What is the chemistry and temperature of the water?**

**In short, what is the base reality of Wellfleet Harbor today and what do the changes in the past 50 years tell us about the future?**

**With climate change and global warming a scientific certainty, we need to become proactive to protect the health of the Harbor. We also should take into account the benefits from the Herring River restoration and the Town's waste-water project. Fact-based decisions will provide one chance to do this; our future depends on us getting it right. The time has come to have a comprehensive survey of harbor life, and to set a benchmark for future work.**

**Project work could begin in summer 2023, with a final report due by January 1, 2025. The work will identify those resources critical to harbor health including:**

- **A survey of finfish and shellfish populations in the harbor using seining, dragging and camera technologies. The basic plan follows the protocols of the MA Division of Marine Fisheries.**
- **Understanding the harbor food chain is important: big fish eat small fish, shellfish eat phytoplankton.**
- **A report will be prepared, with references to other on-going studies summarizing work done with proposals for either future surveys, or actions needed to ensure long term harbor health.**
- **The report will be presented to the Selectboard, other appropriate Town Committees and the general public.**

**We believe that this survey is critical to account for and protect our biggest asset. We must know what we have now and begin adapting to upcoming changes that will affect all aspects of life in Wellfleet, including the continued sustainability of those industries we all depend on.**



SELECTBOARD  
AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023

IX

**BUSINESS**  
~ A ~

<b>REQUESTED BY:</b>	<b>Town Moderator ~ Daniel Silverman</b>
<b>DESIRED ACTION:</b>	<b>To update the board and public on the Annual Town meeting held April 29, 2023.</b>
<b>PROPOSED MOTION:</b>	<b>There is no motion needed for this agenda item.</b>
<b>SUMMARY:</b>	
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023

IX

### BUSINESS

~ B ~

<b>REQUESTED BY:</b>	<b>Jason Robicheau ~ The Grateful Mind</b>
<b>DESIRED ACTION:</b>	<b>To discuss his current licensing and the progress to date.</b>
<b>PROPOSED MOTION:</b>	<b>If a motion is needed for this agenda item one will be made at the time of the meeting.</b>
<b>SUMMARY:</b>	
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____



# Board of Selectmen

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## Request for Placement on Agenda

Name: Jason Robicheau

Address: 1069 Browns Neck Rd

Company or Organization Representing: The Grateful Mind (15 Bank Street)

Phone Number: (508)579-4461

Email Address: jasonrobicheau@netscape.net

Specific Request: I would like to speak with the Selectboard regarding my current licensing progress and the final steps required.

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To be Filled out by Dept.

Applicant Notified: \_\_\_\_\_ Date of Hearing: \_\_\_\_\_

Date Request Completed: \_\_\_\_\_

**TOWN OF WELLFLEET AND  
THE GRATEFUL MIND, LLC  
HOST COMMUNITY AGREEMENT**

This Host Community Agreement (“AGREEMENT”) is entered into this \_\_\_ day of \_\_\_\_\_, 2023 (the “EFFECTIVE DATE”) by and between The Grateful Mind, LLC., a Massachusetts limited liability corporation with a principal office address of 15 Bank Street, Wellfleet, Massachusetts (the “COMPANY”), and the TOWN of Wellfleet, a Massachusetts municipal corporation with a principal address of 286 Main Street, Wellfleet, Massachusetts (the “TOWN”), acting by and through its Select Board (the “BOARD”) in reliance upon all of the representations made herein (collectively, the TOWN and the COMPANY, the “PARTIES” and each a “PARTY”).

**RECITALS**

WHEREAS, the COMPANY has been awarded a provisional license for a marijuana retail establishment license from the Cannabis Control Commission (the “CCC”) and seeks to locate and operate an approximately 676 square foot adult use retail marijuana establishment on an approximately 17,614 square foot parcel of land at the property located at 15 Bank Street, Wellfleet, Barnstable County, Massachusetts, more accurately described by the deed recorded with the Barnstable County Registry of Deeds Book 18192, Page 233 (the “PROPERTY”), solely for the retail sales of adult use marijuana and marijuana products, with approximately 140 square feet of administrative space, 400 square feet of retail space, 140 square feet of storage/warehouse space, and 3,200 square feet of parking (the “ESTABLISHMENT”), in accordance with and pursuant to applicable local, state laws and regulations including, but not limited to G.L. c.94G and 935 CMR 500.000, et seq., and such approvals as may be required by the TOWN in accordance with its bylaws, rules, regulations, and policies;

WHEREAS, the COMPANY anticipates that the TOWN will incur additional expenses and impacts on the TOWN’s road and other infrastructure systems, law enforcement, fire protection services, inspectional services, permitting and consulting services and public health, as well as unforeseen impacts, both quantifiable and unquantifiable on the TOWN;

WHEREAS, the PARTIES agree and acknowledge that the TOWN has identified certain concerns with respect to the impact of the construction of the ESTABLISHMENT on the PROPERTY, as well as its subsequent operation;

WHEREAS, the COMPANY intends to provide certain benefits to the TOWN as a good corporate citizen in the event that it receives the requisite license from the CCC or such other state licensing or monitoring authority, as the case may be, to operate the ESTABLISHMENT; and

WHEREAS, the PARTIES intend by this AGREEMENT to satisfy the provisions of G.L. c.94G, §3(d), applicable to the operation of the ESTABLISHMENT, such activities to be only done in accordance with the applicable state and local laws and regulations in the TOWN.



NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the COMPANY and the TOWN agree as follows:

**1. Recitals**

The PARTIES agree that the above Recitals are true and accurate and that they are incorporated herein and made a part hereof.

**2. Representation of Authority and Warranties**

The COMPANY represents and warrants that it is duly organized and existing and in good standing, has the full power, authority, and legal right to enter into and perform this AGREEMENT, and the execution, delivery and performance hereof and thereof (i) will not violate any judgment, order, state law, bylaw, or regulation, and (ii) does not conflict with, or constitute a default under, any agreement or instrument to which the COMPANY is a PARTY or by which the COMPANY may be bound or affected.

Each person signing this AGREEMENT hereby represents and warrants that he or she has the full authority and is duly authorized and empowered to execute this AGREEMENT on behalf of the PARTY for which he or she signs.

Each person signing this AGREEMENT further represents and warrants that this AGREEMENT has been duly authorized, executed and delivered. This AGREEMENT constitutes legal, valid and binding obligations of each PARTY, enforceable in accordance with its terms, and there is no action, suit, or proceeding pending, or, to the knowledge of either PARTY, threatened whereby an unfavorable decision, ruling or finding would materially adversely affect the performance of any obligations hereunder, except as otherwise specifically noted in this AGREEMENT.

**3. Community Impact Fees**

The COMPANY acknowledges that, as a result of the COMPANY’s operation of the ESTABLISHMENT at the PROPERTY, the TOWN may incur both direct and indirect expenses and impacts including, but not limited to, consulting services, administrative services and public health education and substance abuse counseling services, and any necessary and related legal and enforcement costs, as well as unforeseen impacts on the TOWN. Accordingly, in order to mitigate any direct and indirect financial impacts on the TOWN and use of TOWN resources, both quantifiable and unquantifiable, the COMPANY agrees to pay community impact fees to the TOWN under the terms provided herein (the “COMMUNITY IMPACT FEES”). The COMMUNITY IMPACT FEES shall be in addition to and separate from any local sales tax required to be paid to the TOWN pursuant to G.L. c. 64N, §3.

- i. The COMPANY shall annually provide written notice to the TOWN within forty-eight (48) hours of each renewal of its license from the CCC operate the ESTABLISHMENT (the “ANNUAL LICENSE RENEWAL”).

- ii. Not later than one (1) month after the date of each ANNUAL LICENSE RENEWAL, the TOWN shall transmit to the COMPANY its documentation of costs reasonably related to actual costs, imposed and/or anticipated, upon the TOWN in the preceding year by the operation of the ESTABLISHMENT (“TOWN COSTS”), if any (the “TRANSMITTAL”); provided, however, that upon prior written notice to the COMPANY, the TOWN may request an extension of time for the TRANSMITTAL, which request shall not be unreasonably denied by the COMPAN.
- iii. The COMPANY agrees that TOWN COSTS sought as COMMUNITY IMPACT FEES may include anticipated costs rather than solely already-incurred costs. The COMPANY acknowledges that the TOWN may use the monies received from it as COMMUNITY IMPACT FEES in its sole discretion. The TOWN shall make a good faith effort to allocate such expenditures to off-set actual and anticipated costs arising from the impacts of the operation of marijuana establishments within its borders, including but not limited to COMPANY’s operations.
- iv. Each annual TRANSMITTAL setting forth the TOWN COSTS shall be due as COMMUNITY IMPACT FEES and paid by the COMPANY to the TOWN within two (2) months of the issuance of the TRANSMITTAL; provided, however, that if the COMPANY believes that the COMMUNITY IMPACT FEES are not reasonably related to actual costs imposed upon TOWN in the preceding year by the operation of the ESTABLISHMENT, the COMPANY shall submit a written request (the “REQUEST”) to the TOWN within one (1) month of the issuance of the respective TRANSMITTAL and shall engage in good faith negotiations with the TOWN to review the COMMUNITY IMPACT FEES.
- v. In the event that the PARTIES cannot resolve a dispute by informal negotiations under the preceding paragraph of this Section, the COMPANY agrees to submit the dispute to mediation prior to challenging the COMMUNITY IMPACT FEES in a court of competent jurisdiction. Within fourteen (14) days following the expiration of the time period for informal negotiations, the PARTIES shall propose and agree upon a neutral and otherwise qualified mediator, unless a longer time period is agreed to by the PARTIES. In the event that the PARTIES fail to agree upon a mediator, the PARTIES shall request the American Arbitration Association to appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed ninety (90) days, unless such time period is modified by written agreement of the PARTIES. The decision to continue mediation shall be in the sole discretion of each PARTY. The PARTIES shall each bear their own costs of the mediation. In the event that the PARTIES cannot resolve a dispute by informal negotiations or mediation, either PARTY shall be entitled to seek judicial review of the COMMUNITY IMPACT FEES.

- vi. The COMPANY acknowledges that the impacts of its operations at the ESTABLISHMENT may be impracticable to ascertain and assess as impacts may result in budgetary increases though not separately identified, and consequently, unless the COMPANY timely submits the REQUEST to the TOWN and engages in negotiations and mediation as set forth in the preceding paragraphs of this Section, the COMMUNITY IMPACT FEES shall be deemed reasonably related to the TOWN COSTS and due and payable, and the COMPANY hereby expressly waives any claims to the contrary. Further, in exchange for and in reliance on such representation, among others, the TOWN has entered into this AGREEMENT. Therefore, the PARTIES agree that in the event that the COMPANY challenges the COMMUNITY IMPACT FEES, it shall, notwithstanding the result of such challenge, waive any claim or request for the TOWN to pay the COMPANY's attorneys' fees and costs. The COMPANY agrees that the foregoing provision is not intended to prohibit it from exercising any right to judicial relief nor as a penalty for any such exercise, but as an allocation of a specified risk to the COMPANY.
- vii. The COMPANY and the TOWN agree that they shall comply with rules, and/or regulations promulgated by the CCC as of November 2023 applicable to marijuana establishment operators and municipalities regarding permissible impact costs.
- viii. The ANNUAL COMMUNITY IMPACT FEES shall continue for a period of eight (8) years from the date the COMPANY is first granted a license to operate the ESTABLISHMENT from the CCC.
- ix. The COMMUNITY IMPACT FEES payments shall be sent to the TOWN of Wellfleet, Attn: TOWN Administrator, 300 Main St, Wellfleet, MA 02667.
- x. ANNUAL COMMUNITY IMPACT FEES are expressly included as "other municipal charges" pursuant to M.G.L. c. 40, § 57. A TOWN licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of the COMPANY or agent thereof if the COMPANY's name appears on a list furnished to the licensing authority from the TOWN Collector of individuals delinquent on their taxes and/or water bills.
- xi. The COMPANY acknowledges that time is of the essence with respect to performance of its obligations hereunder and that late payments shall be subject to interest at the rates prescribed by G.L. c. 59, §57.

#### **4. Annual Reporting**

The COMPANY shall submit annual written reports to the TOWN at least thirty (30) days prior to the anniversary of the issuance of its final license to operate from the CCC each year with a certification of (1) its compliance with all requirements of this AGREEMENT; and (2) copies of all reports which are required to be submitted to the Commonwealth, regarding the COMPANY's

operations at the ESTABLISHMENT. During the term of this AGREEMENT the COMPANY shall, upon request of the TOWN, appear before a meeting of the BOARD to review compliance with the terms of this AGREEMENT.

The COMPANY shall maintain its books, financial records, and other compilations of data pertaining to all requirements of this AGREEMENT in accordance with standard accounting practices and any applicable regulations or guidelines of the CCC and the Department of Revenue (the "DOR"). The COMPANY shall retain such records for a period of at least seven (7) years. Upon request by the TOWN, the COMPANY shall provide the TOWN and its agents with the same access to its records as it is required by the CCC and DOR for purposes of obtaining and maintaining a license for the ESTABLISHMENT. In addition to the above referenced reports, the COMPANY shall also provide to the TOWN such other information as may reasonably be requested by the BOARD (to be treated as confidential, to the extent allowed by law).

During the term of this AGREEMENT and for three (3) years following the termination of this AGREEMENT the COMPANY shall, upon request of the TOWN, have its records examined, copied and audited by an independent financial auditor of the TOWN's choosing, the expense of which shall be borne by the TOWN and reimbursed by the COMPANY as an ANNUAL COMMUNITY IMPACT FEE pursuant to procedure set forth in Section 3 above. The independent financial auditor shall review the COMPANY's records for purposes of determining compliance with the terms of this AGREEMENT. Such examination shall be made not less than thirty (30) days following written notice from the TOWN and shall occur only during normal business hours and at such place where said books, financial records and accounts are maintained. The independent financial audit shall include those parts of the COMPANY's books and financial records that relate to all other information required to ascertain compliance with the terms of this AGREEMENT. The independent audit of such records shall be conducted in such a manner as not to interfere with the COMPANY's normal business activities.

## **5. No Off-Set Payments**

In the event that the TOWN receives additional payments from the COMPANY, or from the DOR or any other source, the funds for which have been collected by assessment against the COMPANY, including, but not limited to taxes, imposed by an act of the legislature of the Commonwealth of Massachusetts, or a mandate from the TOWN for said payments, the amounts due from the COMPANY to the TOWN under the terms of this AGREEMENT shall not be reduced by the amount of such other payments.

## **6. Local Taxes**

### **A. Retail Sales Excise Tax**

The PARTIES acknowledge that the TOWN has imposed a local sales tax upon the sale or transfer of marijuana or marijuana products by marijuana retailers operating within the TOWN, pursuant to the provisions of G.L. c. 64N. Accordingly, the COMPANY, as required by applicable law, shall remit to DOR the excise tax rate determined by the Commonwealth of Massachusetts for the

sale of adult-use marijuana and adult-use marijuana-infused products, currently at three (3) percent of gross annual sales. Pursuant to G.L. c. 64N, §3, the excise taxes received by the DOR “shall at least quarterly be distributed, credited and paid [to the TOWN] by the state treasurer.” Nothing herein shall limit the ability of the TOWN to adjust the local sales tax in the future, should the law be amended to allow for an increase in such allowable sales tax.

### **B. Local Taxes**

At all times during the Term of this AGREEMENT, property, both real and personal, owned or operated by the COMPANY shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by the COMPANY, and the COMPANY shall not object or otherwise challenge the taxability of such property and shall not seek a non-profit or agricultural exemption or reduction with respect to such taxes.

Notwithstanding the foregoing, (i) if real or personal property owned, leased or operated by the COMPANY is determined to be non-taxable or partially non-taxable, or (ii) if the value of such property is abated with the effect of reducing or eliminating the tax which would otherwise be paid if assessed at fair cash value as defined in G.L. c. 59, §38, or (iii) if the COMPANY is determined to be entitled or subject to exemption with the effect of reducing or eliminating the tax which would otherwise be due if not so exempted, then the COMPANY shall pay to the TOWN an amount which when added to the taxes, if any, paid on such property, shall be equal to the taxes which would have been payable on such property at fair cash value and at the otherwise applicable tax rate, if there had been no abatement or exemption; this payment shall be in addition to the payments made by the COMPANY under this AGREEMENT.

### **C. Vehicle Excise Tax**

The COMPANY shall: (1) keep any and all vehicles used in connection with transportation of marijuana and other products from the ESTABLISHMENT in TOWN, (2) register all vehicles in the TOWN and (3) pay motor vehicle excise taxes on such vehicles to the TOWN.

## **7. Local Permitting and Costs**

The COMPANY shall apply for, and must receive, all necessary permits and approvals pursuant to the TOWN’s Bylaws and Regulations. In accordance with the procedures set forth in G.L. c.44, §53G, any TOWN board or official from whom the COMPANY requires a permit or approval may require the COMPANY to fund the reasonable costs of such board’s or official’s employment of outside consultants, including without limitation, engineers, architects, scientists and attorneys.

The COMPANY hereby acknowledges and accepts, and waives all rights to challenge, contest or appeal the TOWN’s building permit fee and other permit application fees, sewer and water connection fees, and all other local charges and fees generally applicable and of the same rates and fees chargeable to other comparable commercial developments in the TOWN.

The COMPANY shall reimburse the TOWN for any and all reasonable consulting costs and fees related to any land use applications concerning the ESTABLISHMENT, negotiation of this and any other related agreements, and any review concerning the ESTABLISHMENT, including, but limited to, planning, engineering, legal and/or environmental professional consultants and any related reasonable disbursements in relation to the ESTABLISHMENT.

The COMPANY shall reimburse the TOWN for its legal fees and costs associated with the ESTABLISHMENT including, but not limited to, the cost to negotiate this AGREEMENT, within thirty (30) days of the TOWN's request for the same.

The COMPANY shall reimburse the TOWN for the actual costs incurred by the TOWN in connection with holding public meetings and forums substantially devoted to discussing the ESTABLISHMENT and/or reviewing the ESTABLISHMENT and for any and all reasonable consulting costs and fees related to the monitoring and enforcement of the terms of this AGREEMENT, including, but not limited to independent financial auditors and legal fees.

#### **8. Community Impact Hearing Concerns and Complaints**

The COMPANY shall employ its best efforts to work collaboratively and cooperatively with its neighboring businesses and residents to establish written policies and procedures to address mitigation of any concerns or issues that may arise as a result of its operation of the ESTABLISHMENT including, but not limited to, any and all reasonable concerns or issues raised at the COMPANY's required Community Outreach Meeting relative to the operation of the ESTABLISHMENT.

In addition, at the request of the BOARD, the COMPANY shall hold community forums for discussion with neighboring residences and businesses owners in order to address community feedback and neighborhood concerns with respect to the operation of the ESTABLISHMENT; the COMPANY shall establish or update its written policies and procedures to address concerns raised. Said written policies and procedures, as may be amended from time to time, shall be approved by the BOARD prior to the commencement of any sales at the ESTABLISHMENT (the "COMMENCEMENT OF OPERATIONS") and reviewed annually by the BOARD as part of the COMPANY's annual report to ensure compliance with the policies and procedures and to address any further impacts requiring mitigation. The policies and procedures addressing community impact mitigation adopted by the COMPANY and presented to the BOARD shall be incorporated herein by reference and made a part of this AGREEMENT, the same as if each were fully set forth herein.

The COMPANY further agrees and acknowledges that in the event the TOWN receives complaints with respect to the failure to mitigate conditions at the operation of the ESTABLISHMENT, the COMPANY shall meet with the BOARD and shall take additional mitigation measures, at the COMPANY's sole expense, to address the specific nature of the complaints to the satisfaction of the BOARD.

## 9. Community Support

### A. Local Vendors and Employment.

To the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, the COMPANY shall use its best efforts in a legal and non-discriminatory manner to give priority to local businesses, suppliers, contractors, builders and vendors in the provision of goods and services called for in the construction, maintenance and continued operation of the ESTABLISHMENT when such contractors and suppliers are properly qualified and price competitive. The COMPANY also shall use its best efforts to hire TOWN residents and make reasonable efforts to utilize women-owned, minority-owned, and veteran-owned vendors within the TOWN. The COMPANY shall report annually to the BOARD on the number of Wellfleet residents employed at the ESTABLISHMENT.

Best efforts shall include, at a minimum, actively soliciting bids from TOWN vendors through local advertisements and direct contact, advertising any job expansion or hiring of new permanent full time employees first to TOWN residents before advertising through all typical regional employment advertising outlets, as well as hosting annual employee training programs for career advancement, cannabis career advancement, management training, business financing, entrepreneurship and/or diversity training.

The COMPANY's annual report to the BOARD shall include information concerning the number of Wellfleet residents employed at the ESTABLISHMENT and a description of the measures taken to fulfill this workforce hiring commitment. The COMPANY shall furnish the TOWN with such further information and documentation as the TOWN may reasonably request to support and document compliance with this AGREEMENT.

### B. Approval of Manager.

The COMPANY shall provide to the TOWN, for review by the TOWN Administrator, the name and relevant information, including but not limited to the information set forth in 935 CMR 500.030, or such other state regulations, as the case may be, of the person(s) proposed to act as on-site manager(s) of the ESTABLISHMENT. The TOWN Administrator may consult with the Police Chief, and if the person proposed to act as on-site manager is of unsuitable character, the TOWN may, in its discretion, require the COMPANY to appear before the BOARD to discuss the selection of the on-site manager. In no event shall any on-site manager approved by the CCC be prohibited from acting as on-site manager during the pendency of any TOWN review. This approval process shall also apply to any change of on-site manager.

### C. Educational Programs.

The COMPANY shall use best efforts to provide staff to sponsor and/or participate in ten (10) hours annually of local educational programs on public health and drug abuse



prevention, and to work cooperatively with TOWN public safety departments. The COMPANY's annual report to the BOARD shall include information concerning the number of educational programs provided.

## **12. Security**

To the extent requested by the TOWN's Police Department, and subject to the security and architectural review requirements of the CCC, or such other state licensing or monitoring authority, the COMPANY shall work with the TOWN's Police Department in determining the placement of exterior security cameras and in reviewing and approving all security plans prior to implementation and the COMMENCEMENT OF OPERATIONS. The COMPANY shall maintain security at the ESTABLISHMENT and Property in accordance with said approved security plan. In addition, the COMPANY shall at all times comply with all state and local laws and regulations, as well as any special permit or other permit/approval regarding security of the Property.

The COMPANY shall cooperate with the TOWN's Police Department, if requested, including but not limited to periodic meetings to review operational concerns, security, delivery schedule and procedures, cooperation in investigations, and communications with the Police Department of any incidents and suspicious activities at or in the immediate vicinity of the ESTABLISHMENT and Property and with regard to any anti-diversion procedures to ensure that marijuana and marijuana products are not being transferred to the illegal market or to minors.

To the extent requested by the TOWN's Police Department, the COMPANY shall work with the Police Department to implement a comprehensive diversion prevention plan to prevent diversion, such plan to be in place prior to the COMMENCEMENT OF OPERATIONS at the ESTABLISHMENT. Such plan shall include, but is not limited to, (i) training the COMPANY employees to be aware of, observe, and report any unusual behavior in authorized visitors or other COMPANY employees that may indicate the potential for diversion; and (ii) utilizing appropriate tracking software to closely track all inventory at the ESTABLISHMENT.

The COMPANY shall promptly report the discovery of the following to TOWN Police within twenty-four (24) hours of the COMPANY becoming aware of such event: diversion of marijuana; unusual discrepancies identified during inventory; theft; loss and any criminal action; unusual discrepancy in weight or inventory during transportation; any vehicle accidents, diversions, losses, or other reportable incidents that occur during transport; any suspicious act involving the storage, cultivation, sale, distribution, transportation or delivery of marijuana by any person; unauthorized destruction of marijuana; any loss or unauthorized alteration of records related to marijuana, registered qualifying patients, personal caregivers, or dispensary agents; an alarm activation or other event that requires response by public safety personnel; failure of any security alarm system due to a loss of electrical power or mechanical malfunction that is expected to last longer than eight (8) hours; and any other breach of security.

### **13. Annual Inspections**

The COMPANY shall submit to annual inspections by the Police, Fire and Building Departments to ensure compliance with the terms of this AGREEMENT and other local approvals. This provision shall not preclude the TOWN or any of its departments from conducting inspections at other times during the year to address enforcement matters.

### **14. Improvements to the Property**

The COMPANY shall make capital improvements to the Property such that the Property will match the look and feel of the TOWN and the surrounding parcels, and be of construction standards at least at the quality of other nearby businesses. The COMPANY shall comply with all laws, rules, regulations and orders applicable to the ESTABLISHMENT, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of such work. The COMPANY agrees that the ESTABLISHMENT shall be adequately screened from the public way and nearby properties to the satisfaction of the BOARD.

### **15. Limitation on Use**

Even if authorized under CCC regulations, the COMPANY shall not permit on-site social consumption at the ESTABLISHMENT absent prior written approval from the BOARD.

### **16. Hours of Operation**

In no event shall the ESTABLISHMENT be open for business, nor shall any delivery, transportation or distribution of marijuana occur at the ESTABLISHMENT outside the hours of 9 A.M. through 8 P.M. Monday through Sunday, unless further restricted by the TOWN's special permit granting authority.

### **17. Emergency Contacts**

The COMPANY shall disclose to the TOWN the names and contact information for individuals that will be the emergency contacts for the ESTABLISHMENT prior to the COMMENCEMENT OF OPERATIONS. The COMPANY shall immediately, within twenty-four hours (24) provide the TOWN with updated information if the names and contact information for the emergency contacts change at any time.

To the extent requested by the TOWN's Fire Department, the COMPANY shall work with TOWN's Fire Department in reviewing and approving all emergency procedures, including disaster plans with procedures to be followed in case of fire or other emergencies, prior to implementation and COMMENCEMENT OF OPERATIONS.

## **18. Traffic Mitigation**

The COMPANY agrees to cooperate with TOWN officials on traffic management, including, but not limited to the Police Department, to ensure that sufficient traffic control measures are in place to mitigate traffic impacts. The COMPANY shall pay for all customary traffic control measures required by the TOWN and shall also, at its own expense, employ a police detail, if deemed necessary by the TOWN, to manage traffic at the PROPERTY.

In the event that there is traffic queuing at the ESTABLISHMENT that cannot be accommodated through existing parking and police detail, the COMPANY shall provide off-site parking and shuttle service to the ESTABLISHMENT to alleviate traffic issues. The COMPANY further agrees to maintain sufficient spaces on the PROPERTY for customer parking. The COMPANY shall also make arrangements for employee parking off street and off-site, and shall provide the TOWN with documentation regarding its employee parking plan.

## **19. Additional Obligations**

- A. Good Neighbor Policy: The COMPANY has committed to a Good Neighbor Policy regarding the TOWN. As an expression of this Policy, LICENSEE shall seek reasonable ways to contribute to the growth, development, and long-term success of the TOWN.
- B. Lighting: The COMPANY shall use lighting practices at the PROPERTY and the ESTABLISHMENT to reduce light pollution, that minimize the impact on maintaining a 'dark sky', by using best practices for outdoor lighting such as shielding lights and directing them down, selecting lamps with warmer colors, use less light and only where needed, and shielding any indoor lighting after sunset and before sunrise.
- C. Waste and Wastewater Controls: The COMPANY shall ensure that all recyclables and waste, including organic waste composed of or containing finished marijuana and marijuana products, shall be stored, secured, and managed in accordance with applicable state and local statutes, ordinances, and regulations. Liquid waste containing marijuana or by-products of marijuana processing shall be disposed of in compliance with all applicable state and federal requirements, including but not limited to, for discharge of pollutants into surface water or groundwater (Massachusetts Clean Waters Act, M.G.L. c. 21 §§ 26-53; 314 CMR 3.00: Surface Water Discharge Permit Program; 314 CMR 5.00: Groundwater Discharge Program; 314 CMR 12.00: Operation Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers; the Federal Clean Water Act, 33 U.S.C. 1251 et seq., the National Pollutant Discharge Elimination System Permit Regulations at 40 CFR Part 122, 314 CMR 7.00: Sewer System Extension and Connection Permit Program), or stored pending disposal in an industrial wastewater holding tank in accordance with 314 CMR 18.00: Industrial Wastewater Holding Tanks and Containers.

The COMPANY shall ensure that no fewer than two (2) agents witness and document how the marijuana waste is disposed or otherwise handled (recycled, composted, etc.) in

accordance with 935 CMR 501.000. When marijuana products or waste is disposed or handled, the COMPANY will create and maintain a written or electronic record of the date, the type and quantity disposed or handled, the manner of disposal or other handling, the location of disposal or other handling, and the names of the two COMPANY agents present during the disposal or other handling, with their signatures. The COMPANY shall keep these records for at least three (3) years.

- D. Odor Control Technology: The COMPANY shall ensure that odor from the ESTABLISHMENT is not released so as to constitute a nuisance, in the opinion of the BOARD, to surrounding properties. The COMPANY shall develop an odor mitigation plan and submit the plan to the TOWN for approval. At a minimum, the COMPANY shall contain all cannabis related odors onsite through use of odor control technologies, including but not limited to appropriate ventilation and air handling equipment and odor resistant packaging. In addition, the COMPANY shall employ odor control technology to remove odors and harmful volatile organic compounds from the ESTABLISHMENT. The COMPANY shall also ensure proper maintenance of all odor mitigation equipment to ensure maximum efficiency.

In the event the TOWN receives complaints with respect to odor impacts in relation to the operation of the ESTABLISHMENT, the COMPANY shall meet with the BOARD. If requested by the BOARD, the COMPANY shall take additional mitigation measures at the COMPANY's sole expense, including, but not limited to, having its odor prevention mechanism and technologies reviewed and assessed by Independent Engineer, to address the nature of the complaints to the satisfaction of the BOARD. The COMPANY agrees and acknowledges that if odor mitigation is not addressed to the satisfaction of the BOARD, the COMPANY shall immediately, within thirty (30) days of notice, cease all operations at the ESTABLISHMENT upon the request of BOARD.

Nothing set forth herein, shall limit the authority or jurisdiction of the Building Inspector, Board of Health, or any other local enforcement official from enforcing applicable state laws and regulations, the TOWN's local bylaws and regulations, with respect to odor violations.

## **20. Municipal Support**

The TOWN agrees to submit to the CCC, or such other state licensing, registering or monitoring authority, as the case may be, the required certification(s) of compliance with applicable local bylaws relating to the COMPANY's application for a license to operate the ESTABLISHMENT where such compliance has been properly met, but makes no representation or promise that it will act on any other license or permit request, including, but not limited to any zoning application submitted for the ESTABLISHMENT, in any particular way other than by the TOWN's normal and regular course of conduct and in accordance with its rules and regulations and any statutory guidelines governing them.

## **21. Retained Authority of the Municipality**

This AGREEMENT does not affect, limit, or control the authority of the TOWN boards, commissions, and departments to carry out their respective powers and duties to decide upon and to issue, or deny, applicable permits and other approvals under the statutes and regulations of the Commonwealth, the General and Zoning Bylaws of the TOWN, or applicable regulations of those boards, commissions, and departments or to enforce said statutes, bylaws, and regulations. The TOWN, by entering into this AGREEMENT, is not thereby required or obligated to issue such permits and approvals as may be necessary for the ESTABLISHMENT to operate in the TOWN, or to refrain from enforcement action against the COMPANY and/or the ESTABLISHMENT for violation of the terms of said permits and approvals or said statutes, bylaws, and regulations.

## **22. Re-Opener/Review**

The COMPANY, or any person or entity having direct or indirect control in the COMPANY, shall be required to provide to the BOARD notice and a copy of any other host community agreement entered into for any marijuana establishment in which the COMPANY, or any person or entity having direct or indirect control in the COMPANY, has any interest and which is licensed by the CCC as the same type of establishment as the entity governed by this agreement.

In the event the COMPANY or any controlling person enters into a Host Community AGREEMENT for a retail marijuana establishment, either individually or as co-located uses, with another municipality that contains terms that are superior to what the COMPANY agrees to provide the TOWN pursuant to this AGREEMENT, then the parties shall reopen this AGREEMENT and negotiate an amendment resulting in benefits to the TOWN equivalent or superior to those provided to the other municipality.

## **23. Term and Termination**

This AGREEMENT shall take effect on the EFFECTIVE DATE first set forth above and shall continue in effect for eight (8) years from the date that the COMPANY receives its final license from the CCC to operate the ESTABLISHMENT in Wellfleet.

In the event the COMPANY has not secured a final license from the CCC and all necessary local permits from the TOWN and commenced operations at the ESTABLISHMENT within two (2) years from the date this AGREEMENT takes effect, this AGREEMENT shall expire at the option of the BOARD, and the COMPANY shall be required to negotiate a new Host Community AGREEMENT in order to operate the ESTABLISHMENT within the TOWN. The BOARD, in its discretion, may agree to an extension of the two (2) year expiration, for good cause, which shall include the time required to pursue or await the determination of an appeal of any permits required for the operation of the ESTABLISHMENT, the special permit or other legal proceeding.

The TOWN may terminate this AGREEMENT for cause by providing written notice to the COMPANY in the event that: (i) COMPANY with willful or gross negligence violates any laws of the TOWN or the Commonwealth with respect to the operation of the ESTABLISHMENT, and

such violation remains uncured for thirty (30) days following the TOWN's issuance to COMPANY of written notice of such violation; (ii) COMPANY fails to make payments to the TOWN as required under this AGREEMENT, and such failure remains uncured for thirty (30) days following the TOWN's issuance to COMPANY of written notice of such violation; (iii) there is any other material breach of the AGREEMENT by the COMPANY, which material breach remains uncured for thirty (30) days following the TOWN's issuance to COMPANY of written notice of such violation; or (iv) the COMPANY's license is revoked by the CCC.

In the event of termination of this AGREEMENT, as set forth herein, the COMPANY shall immediately cease all operations at the ESTABLISHMENT.

#### **24. Nullity**

This AGREEMENT shall be null and void in the event that the COMPANY does not locate the ESTABLISHMENT in TOWN; provided however, that COMPANY shall reimburse the TOWN for its legal fees and costs associated with the negotiation of this AGREEMENT within thirty (30) day of the TOWN's request for same. Further, in the case of the cessation of operations or relocation of the ESTABLISHMENT out of TOWN, the payments due to the TOWN under Paragraph 3 of this AGREEMENT shall be paid by the COMPANY within thirty (30) days of the TOWN's request for the same and, in no event shall the TOWN be responsible for the return of any funds provided to it by the COMPANY.

#### **25. Assignment/ Successors and Change in Corporate Structure and/or Control**

This AGREEMENT is binding upon the PARTIES hereto, their successors, assigns, and legal representatives. The COMPANY shall not assign, sublet or otherwise transfer the ESTABLISHMENT or delegate its rights or obligations under this AGREEMENT, in whole or in part, without the prior written consent of the TOWN, and shall not assign or obligate any of the monies payable under this AGREEMENT, except by and with the prior written consent of the TOWN.

Events deemed an assignment include, without limitation: (i) COMPANY's final and adjudicated bankruptcy whether voluntary or involuntary; (ii) the COMPANY's takeover or merger by or with any other entity; (iii) the COMPANY's outright sale of assets and equity, majority stock sale to another organization or entity for which the COMPANY does not maintain a controlling equity interest; (iv) or any other change in majority ownership or status of the COMPANY; (v) any assignment for the benefit of creditors; and/or (vi) any other assignment not approved in advance in writing by the TOWN.

#### **26. Notices**

Any and all notices, consents, demands, requests, approvals or other communications required or permitted under this AGREEMENT, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery

service, and will be effective upon receipt for hand or said delivery and three days after mailing, to the other PARTY at the following addresses:

To TOWN: TOWN Administrator  
TOWN of Wellfleet  
300 Main Street  
Wellfleet, MA 02667

Copy to:

Wellfleet TOWN Counsel  
KP Law, PC  
101 Arch Street  
12<sup>th</sup> Floor  
Boston, MA 02110

To COMPANY: Jason Robicheau,  
Managing Member  
15 Bank Street  
Wellfleet, MA 02667

**27. Severability**

If any term of condition of this AGREEMENT or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this AGREEMENT shall not be deemed affected thereby unless the TOWN would be substantially or materially prejudiced. For the purposes hereof, substantial or material prejudice shall include, without limitation, reduction or termination of the payments required hereunder.

Further, the COMPANY hereby represents that at the time of execution of this AGREEMENT, based upon the COMPANY's diligent inquiry, it determined to its satisfaction that the provisions of this AGREEMENT are valid, binding and enforceable. In exchange for and in reliance on such representation, among others, the TOWN has entered into this AGREEMENT.

**28. Governing Law**

This AGREEMENT shall be governed and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, and the COMPANY submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this AGREEMENT.

**29. Entire Agreement**

This AGREEMENT, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the PARTIES with respect to the matters described. This



AGREEMENT supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the PARTIES hereto.

### **30. Indemnification**

Excluding any claims caused by the gross negligence or willful misconduct of the TOWN, the COMPANY shall indemnify, defend, and hold the TOWN harmless from and against any and all claims, demands, liabilities, actions, causes of actions, defenses, subpoenas, proceedings and/or costs and expenses, including attorney's fees (collectively, the "CLAIMS"), brought against the TOWN, its agents, departments, officials, employees, insurers, successors or assign, by any third PARTY arising from or relating to this AGREEMENT and/or ESTABLISHMENT as long as such agents, officials and employees were acting in their official capacity on behalf of the TOWN. Such indemnification shall include, but shall not be limited to, all reasonable fees and reasonable costs of attorneys and consultants of the TOWN's choosing incurred in defending such claims, actions, proceedings or demands. The COMPANY agrees that any and all costs and fees incurred by the TOWN in defending itself with respect to any such CLAIMS shall reimbursed by the COMPANY and may be included by the TOWN as TOWN COSTS as described in this AGREEMENT.

### **31. Amendments/Waiver**

The failure of any PARTY to strictly enforce the provisions hereof shall not be construed as a waiver of any obligation hereunder. This AGREEMENT can be modified only in a written instrument signed by the BOARD and LICENSEE, prior to the effective date of the amendment. This AGREEMENT shall be binding upon the PARTIES and their successors and assigns.

### **32. Headings**

The article, section, and/or paragraph headings in this AGREEMENT are for convenience of reference only, and shall in no way affect, modify, define or be used in interpreting the text of this AGREEMENT.

### **33. Counterparts**

This AGREEMENT may be signed in any number of counterparts all of which taken together, each of which is an original, and all of which shall constitute one and the same instrument, and any PARTY hereto may execute this AGREEMENT by signing one or more counterparts.

### **34. Signatures**

Facsimile and electronic signatures affixed to this AGREEMENT shall have the same weight and authority as an original signature.

**35. No Joint Venture**

The PARTIES hereto agree that nothing contained in this AGREEMENT or any other documents executed in connection herewith is intended or shall be construed to establish the TOWN and COMPANY, or the TOWN and any other successor, affiliate or corporate entity as joint ventures or partners.

**36. Third PARTIES**

Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third PARTY against either TOWN or the COMPANY.

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

TOWN OF WELLFLEET

THE GRATEFUL MIND, LLC:

By:

By:

\_\_\_\_\_  
Ryan Curley  
Chair of the Select Board  
On behalf of the  
TOWN of Wellfleet

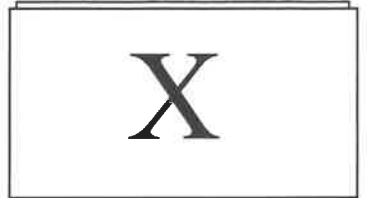
\_\_\_\_\_  
Jason Robicheau  
Managing Member

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# SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023



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## SELECTBOARD REPORTS:

Reported by:	Topic:



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023

XI

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### TOPICS FOR FUTURE DISCUSSION

- **The Selectboard will discuss a list of current items that are outstanding**



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023

XII

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## VACANCY REPORTS

**\*\*\*Please see the packet for full report\*\*\***

Date: May 16, 2023  
To: Board of Selectmen  
From: Rebekah Eldridge  
Re: Vacancies on Town Boards

**Bike and Walkways Committee (5 members)** ~ This group no longer meets ~  
Vacant Positions Appointing Authority Length of Term  
2 Positions Selectboard 1 year (complete term)  
Requesting Appointment: No applications on file

**Board of Assessors (3 members, 1 alternate)**  
Vacant Positions 0 Appointing Authority Length of Term  
1 Alt Position Selectboard 3 years  
Requesting Appointment: No applications on file

**Board of Health (5 members, 2 alternates)**  
Vacant Positions 0 Appointing Authority Length of Term  
0 Alt Positions Selectboard 3 years  
Requesting Appointment: No applications on file

**Board of Water Commissioners (5 Members, 2 Alternates)**  
Vacant Positions 0 Appointing Authority Length of Term  
2 Alt Positions Selectboard 3 years  
Requesting Appointment: **ONE** application on file

**Cable, Internet, and Cellular Service Advisory Committee (7 Members)**  
Vacant Positions Appointing Authority Length of Term  
0 Voting Positions Selectboard 1 year

**Commission on Disabilities (up to 5 Members)**  
Vacant Positions 1 Appointing Authority Length of Ter  
Selectboard 3 years  
Requesting Appointment: No applications on file

**Conservation Commission (7 Members + 2 alternates)**  
Vacant Positions 0 Appointing Authority Length of Term  
Selectboard  
2 Alt Positions 3 years  
Requesting Appointment: No applications on file

**Council on Aging (11 Members)**  
Vacant Positions Appointing Authority Length of Term  
2 Voting Positions Selectboard 3 years  
Requesting Appointment: No application on file

**Cultural Council (no more than 15 Members)**  
Vacant Positions Appointing Authority Length of Term  
3 voting Positions Selectboard 3 years  
Requesting Appointment: no applications on file

**Dredging Task Force (5 Members)**

<b>Vacant Positions</b>	Appointing Authority	Length of Term
<b>3 Voting Positions</b>	Selectboard	3 years

Requesting Appointment: No applications on file

**Energy and Climate Action Committee**

<b>Vacant Position</b>	Appointing Authority	Length of Term
<b>2 Voting Positions</b>	Selectboard	
<b>2 Alternate Positions</b>		

**Finance Committee (9 members, 2 alternate)**

<b>1 Vacant Positions</b>	Appointing Authority	Length of Term
<b>1 Alternate Position</b>	Town Moderator	3 years

Requesting Appointment: **one** application on file ~ Timothy Sayer

**Historical Commission (7 members)**

<b>Vacant Positions</b>	Appointing Authority	Length of Term
<b>0 Vacancies</b>	Selectboard	3 years

Requesting Appointment: **no** application on file

**Local Housing Partnership (at least 10 members)**

<b>Vacant Positions</b>	Appointing Authority	Length of Term
<b>0 Vacancy</b>	Selectboard	1 year

Requesting Appointment: No application on file

**Marina Advisory Committee (7 Members, 2 Alternates)**

<b>1 Vacant Positions</b>	Appointing Authority	Length of Term
<b>0 Alternate Position</b>	Selectboard	2 years

Requesting Appointment: No applications on file

**Natural Resources Advisory Committee (7 Members)**

<b>Vacant Positions</b>	Appointing Authority	Length of Term
<b>3 Voting Positions</b>	Selectboard	3 years

Requesting Appointment: No application on file

**Open Space Committee (7 Members)**

<b>Vacant Positions</b>	Appointing Authority	Length of Term
<b>0 Positions</b>	Selectboard	1 year

Requesting Appointment: No application on file

**Planning Board (7 members + 2 alternates)**

<b>Vacant Positions</b>	Appointing Authority	Length of Term
<b>1 voting position</b>	Selectboard	5 years
<b>2 Alternate Position</b>		

Requesting Appointment: No applications on file

**Recreation Committee (7 Members)**

<b>Vacant Positions</b>	Appointing Authority	Length of Term
<b>2 Positions</b>	Selectboard	3 years

Requesting Appointment: No applications on file

**Recycling Committee (7 Members + 2 Alternates)**

<b>1 Voting Positions</b>	Appointing Authority	Length of Term
<b>1 Alternate Positions</b>	Selectboard	3 years

Requesting Appointment: No application on file



**Rights of Public Access (5 Members)**

<b>Vacant Positions</b>	Appointing Authority	Length of Term
<b>4 Positions</b>	Selectboard	1-2 years
Requesting Appointment: No application on file		

**Shellfish Advisory Board (7 members + 2 Alternates)**

<b>1 Vacant Positions</b>	Appointing Authority	Length of Term
<b>1 Alternate Position</b>	Selectboard	3 years
Requesting Appointment: No application on file		

**Zoning Board of Appeals (5 Members, 4 Alternates)**

<b>Vacant Positions</b>	Appointing Authority	Length of Term
<b>1 Position</b>	Selectboard	3 years
Requesting Appointment: No applications on file		



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023

XIII

### MINUTES

<b>REQUESTED BY:</b>	<b>Executive Assistant</b>
<b>DESIRED ACTION:</b>	<b>Approval of the Meeting Minutes of June 23, 2022 &amp; May 2, 2023</b>
<b>PROPOSED MOTION:</b>	<b>I move to approve the minutes of June 23, 2022 and May 2, 2023, as printed in draft.</b>
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____

**Wellfleet Selectboard**  
**Joint Meeting with Board of Health & Clean Water Advisory Committee**  
**Thursday June 23, 2022; 7:00pm**  
**Meeting Minutes**

**Members Present:**

**Selectboard:** Ryan Curley, Chair; Michael DeVasto, Vice Chair; Barbara Carboni, Kathleen Bacon, John Wolf

**Board of Health:** Ken Granlund, Chair; Janet Drohan, Nick Picariello, Debera Freeman (zoom)

**Clean Water Advisory Committee:** Curt Felix, Chair

**Others Present:** Rich Waldo, Town Administrator, Rebekah Eldridge, Executive Assistant; Hillary Lemos, Health/Conservation Agent; Scott Horsley, Consultant; Tim Sayer, resident.

Chair Curley Called the meeting to order at 7:02pm

**I. *Announcements, Open Session, Public Comments***

**NOTE:** Public comments must be brief. The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments. There were no public comments or announcements.

**II. *Joint meeting with Board of Health, Clean Water Advisory Committee, & Selectboard***

- ***DEP MassDEP's Regulatory Strategy for Cape Cod Estuaries Impaired by Nitrogen***

The team from the DEP presented to the boards a slide show showing how the town could obtain a water shed permit, they discussed funding and the ability to accomplish it.

They finished the slide show, and the board had some questions for the DEP representatives. They discussed funding and loan options.

Chair Curley had some comments on the proposed regulations. He questioned the ability of the board of health and if they would be able to regulate the number of systems. He feels that the timeline of five years is too aggressive for the town stating that he feels the DEP is setting the town of Wellfleet up for failure. He continued stating his concerns with the plan for Wellfleet. The board discussed the water shed permit at great length, discussing issues, concerns, and possibilities for the town.

- ***Presentation of Targeted Wastewater Plan***

Horsley presented to the board the watershed plan. He began the power point presentation. He discussed with the group IA enhanced septic systems.

- ***Sewer Sheds GHD***

The next power point presentation was the sewer shed slide. He explained how the sewer portion would work for Wellfleet. He discussed the transfer station and the opportunity for treatment at the transfer station. He spoke

about the traditional compliance approach. How the watersheds play into this plan. There were questions regarding this presentation. A long discussion took place about the water sheds, sewerage, and septic systems. Bacon spoke to the DEP representatives about septic and the 95 Lawrence Road project stating that Wellfleet would benefit hugely with a wastewater system. Civetta had questions regarding the shellfish department and how the shellfish propagation plays a role in this. Felix spoke to this watershed plan stating that we need to begin the process to move forward to move towards clean water. He gave kudos to the town for passing many wastewater articles at town meetings. He asked the Selectboard to pass this plan onto the DEP so the town can begin the work towards a watershed permit. DEP stated they are committed to work with the town and walk through the plan with the town. She spoke to funding plans and options. She stated she feels the town is ready to submit the permit to the DEP and begin.

- ***Next Steps***

Chair Curley spoke to the group about the next steps. He stated the Cape Cod Commission needs to review this plan regarding the 208 plan. Chair Curley stated he has spoken with the Cape Cod Commission, and they have asked for a public forum. Lemos stated that the commission is on the meeting and willing to speak to the board regarding this submission. Chair Curley spoke to having an IMA with the surrounding towns.

**Chair Curley Moved; Board Member Wolf Seconded; and it was voted to the request the town administrator begin negotiations with the surrounding towns (Eastham and Truro) for an IMA for the Wellfleet Harbor Watershed.**

**Roll Call Vote: 4-0-1 (Carboni abstained)**

**Chair Curley Moved; Board Member Wolf seconded; and it was voted to ask the Cape Cod Commission to engage with the town of Wellfleet to**

**Roll Call Vote: 5-0**

**Chair Curley Moved; Board Member Wolf Seconded; and it was voted to submit the draft targeted watershed plan as presented to the Department of Environmental protection and the Cape Cod Commission on behalf of the town of Wellfleet**

**Roll Call Vote: 5-0**

- ***DEP proposed changes to SRF Priority Ranking System***

- ***Board of Health Draft Regulations***

Chair Curley asked the board members and Lemos if they would be okay not discussing the regulations at this meeting as it was getting late into the meeting. The board members agreed that this could wait but needed to be addressed soon.

***DRAFT*** **\*\* a full recording of this meeting can be found on the town's website \*\***

***III. Adjourn***

**Board Member Bacon moved; Chair Curley Seconded; and it was voted to adjourn**

**Roll Call Vote: 5-0**

**Meeting adjourned 10:05pm**

***\*\*\* Public Documents \*\*\****

***Power point presentation from Department of Environmental Protection***

***Board of Health Draft Regulations***

***Clean Water Advisory Committee power point presentation***

**Wellfleet Selectboard**  
**Tuesday May 2, 2023; 7pm**  
**Hybrid Meeting: Zoom/715 Old King's Highway**  
**Meeting Minutes**

**Members Present:** Ryan Curley, Chair; Michael DeVasto, Vice Chair; Kathleen Bacon, Barbara Carboni, John Wolf

**Others Present:** Richard Waldo, Town Administrator; Rebekah Eldridge, Executive Assistant; Michael Hurley, Police Chief; Nancy Civetta, Shellfish Constable; Chris Allgeier, Barbara Leddy, Curt Felix, Denny O'Connell, Wellfleet Conservation Trust; Melissa Low, Mass Audubon; Alyssa Richard, GEI, Engineering; Dan Robbins, GEI, Engineering; Diane Brunt, resident; Charles Cole, resident; Michael Parlante, resident; Tim Sayer, resident; Jude Ahern, resident; Damian Parkington, resident; Barry MacLauchlan, Manager Chequessett Yacht & Country Club; Paul Stepanick, manager Cuddy Kitchen

Chair Curley Called the Meeting to order at 7:02pm

**I. *Announcements, Open Session and Public Comments***

**Note:** *Public comments are limited to no more than two minutes per speaker. The Board will not deliberate or vote on any matter raised solely during Announcements & Public Comments.*

Chief Hurley spoke to the public stating that Matthew McGue was going to discuss the scavenger hunt with neighboring town to foster relationships with the local police departments. He spoke to the touch a truck event that will be happening at the Wellfleet Drive Inn Sunday May 7, 2023, beginning at 10am. He stated this event would benefit the Make a Wish foundation.

**II. *Consent Agenda***

**A.** Ocean Sanctuaries Act Prohibition of Pilgrim Wastewater Discharge into Cape Cod Bay

**B.** Appointment of Robin Robinson as a liaison to the Barnstable Human Rights Commission for a term of three years to end June 30, 2026.

**C.** Appointment of Kathleen Hickey to the Wellfleet Board of Trustees for the remainder of the two-year term, due to the resignation of Dian Reynolds ~ Robin Robinson, Chair of the Wellfleet Library Board of Trustees, appointment to end June 30, 2025.

**D.** Appointment of Lara Henry as a member to the Wellfleet Local Housing Partnership for a term of one-year.

**Chair Curley Moved; Board Member DeVasto Seconded; and it was voted to adopt the consent agenda as printed.**

**Roll Call Vote: 5-0**

**III. *Community Updates***

**A.** Presentation on the District Attorneys new initiatives ~ District Attorney Galibois  
**This was postponed to May 16, 2023.**

**IV. Public Hearings**

- A. Application received April 4, 2023, from Jonathan Kells Phillips & Katie Savoy One-day Special Event Liquor License on June 24, 2023, at the Baker's Field Pavilion for a rehearsal dinner.

**Chair Curley Moved; Board Member DeVasto Seconded; and it was voted to approve the one-day special event liquor license to Jonathan Kells Phillips and Katie Savoy for their June 24, 2023, rehearsal dinner event at Baker's Field Pavilion, for a fee of \$150.00 and to obtain a catering license from the board of health.**

**Roll Call Vote: 4-0-1 (Bacon abstained)**

- B. Application received April 12, 2023, Chequessett Yacht & Country Club, Transfer of Alcohol License, to Cuddy Kitchen located at 680 Chequessett Neck Road, Wellfleet MA

The board discussed this license transfer and had some questions on the way the application was filled out. Eldridge explained to the board that she would finalize with the state how the application should be filled out.

**Chair Curley Moved; Board member DeVasto Seconded, and it was voted to amend the application of the transfer of license on page one under business entity from Chequessett Yacht & Country Club to Cuddy Kitchen dba as Cuddy Kitchen and the manager on record to be Paul Stepanick, with the correct license Number.**

**Roll Call Vote: 5-0**

**Chair Curley Moved; Board Member DeVasto Seconded, and it was voted to approve the transfer of all alcohol seasonal liquor license from the Chequessett Yacht & Country Club to the Cuddy Kitchen, manager Paul Stepanick, located 680 Chequessett Neck Road Wellfleet.**

**Roll Call Vote: 5-0**

**Chair Curley Closed the Hearing.**

- C. Dredging Task Force members will provide information and answer questions about the town's proposed mitigation plan required by the Army Corps of Engineers to secure the permit to dredge the harbor mooring field, thus allowing dredging of the first half of the mooring field to begin.

**Board Member DeVasto Recused himself from this agenda item.**

Allgeier spoke to the board about the dredging mitigation of the harbor. He gave some information on the discussions he was having with the army corps of engineers. The board asked him about some of the changes that have occurred since their last discussion. Allgeier shared the screen and discussed the dredging areas and the areas that were allowed for shellfishing and showed maps as to where the dredging would take place. Some board members had questions regarding the dredging. The board discussed the grants that have been received by the town from the state. Chair Curley spoke to the mitigation plan, reading some issues he had and questions to go with them. It was questioned if there was a monitoring plan. The discussion continued for a great length of time, discussing



Chapter 90 funds and the monitoring of this project. Robins answered questions from Chair Curley. Carboni questioned the standard conditions, Allgeier explained them and how they would meet them. The board continued to discuss the mitigation plan and changes needing to be made to it. Wolf explained a concern he has heard from people is the timeline and needing to see things in writing rather than hearing “maybe this, and maybe that”. There was a discussion on biodiversity. It was questioned when this area would be open for harvest. Felix explained that it would have to be opened after 3 years and the goal would be for the amount of shellfish be increased. Chair Curley questioned the constable about how this would be managed. Civetta explained that she wouldn't be able to answer until she was able to see how it looked. Chair Curley opened the discussion to the public. He asked the public to be civil and respectful. There were members of the public that came to the microphone to discuss the dredging and their concerns with the project. Parlante brought to the board that the town should check with the property owners to make sure it was allowable for the dredging to happen. Low asked for a map for the Audubon so they would understand where the culch would be placed. Ahern stated the draft was not well put together. She stated that the town should wait and take their time. She had questions for Allgeier and Felix and they answered. Brunt spoke to the board asking for the money that was allotted to do the dredging, both Waldo and Allgeier spoke to the money that was available for dredging. The discussion on this item lasted a while with lots of questions being answered and concerns being addressed. Chair Curley shared his screen discussing maps with the board and public. Allgeier asked for confirmation from the board that they could continue to work with the Army Corps of Engineers.

**Chair Curley Moved; Board Member Wolf Seconded; the Selectboard has made the following finding: that whereas the dredging of the mooring basin will benefit both wild shellfish and farmed aquaculture beds whereas dredging of the mooring basin will benefit commercial and recreational fishers and boaters; and the culching monitoring and propagation will increase the commercial productivity of the unproductive area, therefore the Selectboard is supportive of the proposed mitigation strategy**

**Chair Curley Closed the public hearing. Hearing closed at 10:04pm**

V. ***Reorganization of the Selectboard***

A. The board will vote to reorganize positions.

Chair Curley spoke to the annual reorganization of the board. DeVasto joined the table again.

Chair Curley stated that per the charter all the boards in the town need to reorganize on a yearly basis. HE stated that the selectboard reorganizes after the annual town meeting. Chair Curley stated that he was willing to serve as chair for one more year to see through some of his projects.

**Board Member DeVasto Nominated Barbara Carboni to be Chair of the Selectboard.**

**Roll Call Vote: 2-3 (motion failed)**

Carboni stated she was throwing her hat into the ring because she believed that leadership should be rotated, stating she has a lot of experience. Chair Curley stated he wanted to continue as chair.

Bacon spoke to Carboni about being chair and stated she doesn't believe Carboni has been on the board long enough to be chair yet but stated she would like to see her as vice chair. She continued saying that she has never been chair after being on the board for over seven years.

The board discussed this. DeVasto stated rotation is a healthy process.

**Board Member Wolf Nominated Ryan Curley to be board chair, Board Member Bacon Seconded; and it was voted to approve Ryan Curley as the Chair of the Selectboard.**

**Roll Call Vote: 5-0**

**Chair Curley Moved; Board Member DeVasto Seconded; and it was voted to appoint Barbara Carboni as the vice chair of the selectboard.**

**Roll Call Vote: 5-0**

**Chair Curley Moved; Board Member Bacon Seconded; and it was voted to appoint John Wolf as the Clerk of the Selectboard.**

**Roll Call Vote: 5-0**

**VI. *Use of Town Property ~ Chair Curley Moved, Board Member Carboni Seconded; and it was voted to move the use of town property out of order.***

***Roll Call Vote: 5-0***

**A. Richard Cohen ~ Indian Neck Beach, Thursday August 3, 2023, 4:30pm – 8:30pm for small adult Birthday party. Richard was not on the meeting, NO ACTION WAS TAKEN – this was moved to the May 16, 2023, meeting.**

**B. Newcomb Hollow Beach Parking Lot ~ Barbara Leddy, pre wedding welcome party. ~ Thursday July 13, 2023, 6:30pm-10:30pm. Leddy came to the table and explained her event.**

**Chair Curley Moved; Board Member Bacon Seconded, and it was voted to approve the use of town property for a portion of Newcomb Hollow Beach Parking Lot, Thursday July 13, 2023, from 6:30pm to 10:30pm for a pre-wedding welcome event; for a fee of \$110, the parking lot to be cleaned and left in its original form, to the satisfaction of the DPW and Beach Director and to obtain a catering license from the Wellfleet Health Department.**

**Roll Call Vote: 5-0**

**C. Newcomb Hollow Beach Parking Lot ~ Food Truck for private party; Thursday July 13, 2023, 6:30pm – 10:30pm ~ Joey's Joint & Food Truck This use of town property goes with the previous application.**

**Chair Curley Moved; Board Member DeVasto Seconded; and it was voted to approve Joey's Joint & Food Truck to serve food previously paid for on Thursday July 13, 2023, from 6:30pm to 10:30pm for a pre-wedding welcome event. The Vendor is responsible for all trash removal that is created through this event and to obtain a catering license from the health agent.**

**Roll Call Vote: 5-0**

**VII. *Business***

**A. Town Meeting Follow up, special town meeting discussion.**

Chair Curley spoke to town meeting and the town election, discussing the items that passed and the items that didn't talking about educating the residents on the items needed. The board discussed the success of the town meeting. The board discussed the disappointment of the housing coordinator position. The items on the ballot didn't reflect what free cash certified, which wasn't clear at the election. Sayer asked what was discussed at the meeting before the town meeting. The board explained that it was discussed to indefinitely postpone the scholarship and to work with the board to further discuss funding. Sayer questioned the feasibility study of the community center. Waldo gave him an update. Chair Curley explained the legality of the meeting posting that Sayer brought up on Tuesday April 25, 2023. Sayer stated he felt it wasn't legal. Waldo stated that the moderator would like to report to the board on the 16<sup>th</sup> of May.

**VIII. *Selectboard Reports***

**IX. *Topics for Future Discussion***

**X. *Vacancy Reports***

**XI. *Minutes***

**A. April 18, 2023**

**Board Member Moved; Board Member Seconded; and it was voted to approve the meeting minutes of April 18, 2023, as printed in draft.**

**Roll Call Vote: 5-0**

**XII. *Adjournment***

**Chair Curley Moved; Board Member Carboni Seconded; and it was voted to adjourn the meeting.**

**Roll Call Vote: 5-0**

**Meeting adjourned: 10:45pm**

***PUBLIC DOCUMENTS:***

*Letter for Ocean Sanctuaries Act*

*Application and Resume from Robin Robinson to be a liaison to the Barnstable Human Rights Commission*

*Application from Kathleen Hickey to be appointed on the Wellfleet Library Board of Trustees*

*Application from Lara Henry to be appointed as a member of the Wellfleet Local Housing Partnership*

*Application from Jonathan Kells Phillips and Katie Savoy for a one-day liquor license for a special event.*

*Application for a transfer of Seasonal Liquor license from the Chequesset Yacht & Country Club*

*Dredging Task Force packet to present the dredging mitigation plan to the board and public.*

*Use of town property application for Indian Neck Beach from Richard Cohen for a birthday party.*

*Use of town property for Newcomb Hollow Beach for a pre-wedding event Barbara Leddy*

*Use of town property for Newcomb Hollow Beach for a food truck to serve at the pre-wedding event.*

*Meeting Minutes of April 18, 2023.*



## SELECTBOARD

AGENDA ACTION REQUEST  
Meeting Date: May 16, 2023

XIV

### ADJOURNMENT

<b>REQUESTED BY:</b>	<b>Selectboard Chair Ryan Curley</b>
<b>DESIRED ACTION:</b>	<b>To Adjourn</b>
<b>PROPOSED MOTION:</b>	<b>I move to Adjourn the Meeting</b>
<b>ACTION TAKEN:</b>	Moved By: _____ Seconded By: _____ Condition(s):
<b>VOTED:</b>	Yea _____ Nay _____ Abstain _____