

SELECTMEN'S MEETING AGENDA*

Donn B. Griffin Room, Town Hall

732 Main Street, Harwich, MA

Executive Session 6:00 P.M.

Regular Meeting 6:30 P.M.

Monday, June 28, 2021

**As required by Open Meeting Law, you are hereby informed that the Town will be video and audio taping as well as live broadcasting this public meeting. In addition, anyone in the audience who plans to video or audio tape this meeting must notify the Chairman prior to the start of the meeting.*

I. CALL TO ORDER

II. EXECUTIVE SESSION

- A. Executive session under G.L. c.30A, §21(a) (3) to discuss strategy with respect to litigation regarding Watkins, et al. v. Town of Harwich, et al., Probate and Family Court Case No. BA 18E0025QC72, votes may be taken
- B. Pursuant to MGL,c.30A section 21 (a) paragraph 3 to discuss with respect to collective bargaining for all town unions if an open session would have a detrimental effect on the town's bargaining position and the chair so declares

III. PLEDGE OF ALLEGIANCE

IV. PUBLIC COMMENTS/ANNOUNCEMENTS

V. CONSENT AGENDA

- A. Discussion and possible vote to approve a gift of a Loops Equine Rescue System to the Harwich Police Department
- B. Discussion and possible vote to accept a donation in the amount of \$25,000 from the Monomoy Regional School District to support the Harwich Elementary School playground design
- C. Discussion and possible vote to approve the action recommended by Cape Light Compact relative to publicly owned outdoor street lighting and operation maintenance agreement from Siemens Mobility, Inc. to Yunex LLC
- D. Discussion and possible vote to approve the Committee Appointments recommended by the Interview Committee:
 1. Carol Fuller – Golf Committee – Full Position – Term expires 6.30.2024
 2. Bradford Chase – Conservation Commission – Full Position – Term expires 6.30.2024
 3. Jacqueline Leach – Cultural Council – Full Position – Term expires 6.30.2024
 4. Nina Schuessler – Cultural Council – Full Position – Term expires 6.30.2023
 5. Roger Peterson – Waterways Committee – Full Position – Term expires 6.30.2023
 6. James Atkinson – Real Estate, Open Spaces Committee – Full Position – Term expires 6.30.2024
 7. James Atkinson – Conservation Commission – Full Position – Term expires 6.24.2024

VI. NEW BUSINESS

- A. Discussion – Ad Hoc Noise Committee's Noise Report, Noise By-law, any and all items relating to noise in the Town of Harwich
- B. Discussion and possible vote on a proposed penalty structure for violations of Chapter 189 – Noise as outlined within the Town Code as well as noise from licensed establishments
- C. Town Administrator to present his Finding of the Facts from the Show Cause Hearing that was held on June 22, 2021 for Wychmere Harbor Beach and Tennis Club located at 23 Snow Inn Road
- D. Discussion on use and current policies of the town shooting range located on Depot Road, South Harwich
- E. Discussion and possible vote to approve a new 2021 Weekday and Sunday Entertainment license – Lucky Labrador Inc. DBA Perks – 545 Route 28 – Weekday 12:00 P.M. – 12:00 A.M. inside and Sunday 1:00 P.M. to 12:00 A.M. inside. Recorded or live music with amplification. *Pending Fire Department Approval*
- F. Discussion and possible vote to approve a One Day Entertainment License for Reciprocity – 4 Cross Street – July 24, 2021 4:30 P.M. to 7:00 P.M. Live music outside
- G. Discussion and possible vote to approve a One Day Entertainment License for Harwich Inn and Tavern – 77 Route 28 – July 10, 2021 12:00 P.M. to 4:00 P.M. Live and/or recorded music with amplification outside
- H. Discussion and possible vote to approve a new 2021 Common Victuallers license – CDUT Corp. DBA Upper Crust Pizza – 1421 Orleans Road
- I. Discussion and possible vote to approve the proposal from the Cape Light Compact Joint Powers Agreement letter dated June 17, 2021

VII. OLD BUSINESS

- A. Discussion and debrief of the June 22, 2021 Planning Board discussion on the Halls Path Approval Not Required (ANR) application
- B. Town Administrator's debrief of the June 18, 2021, Dennis Harwich Yarmouth Clean Waters Community Partnership Working group meeting
- C. Discussion and possible vote on the Saquatucket Harbor Snack Shack license agreement

VIII. **CONTRACTS**

- A. Discussion and possible vote to authorize the Chair to sign a grant from Executive Office of Housing and Economic Development for dredging - \$36,000

IX. **TOWN ADMINISTRATOR'S REPORT**

X. **SELECTMEN'S REPORT**

XI. **ADJOURNMENT**

**Per the Attorney General's Office: The Board of Selectmen may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting following "New Business." If you are deaf or hard of hearing or a person with a disability who requires an accommodation contact the Selectmen's Office at 508-430-7513.*

Authorized Posting Officer:

Ellen Powell, Executive Assistant

Posted by: _____

Town Clerk

Date: _____

June 24, 2021

CONSENT AGENDA



HARWICHPolice

DEPARTMENT

183 Sisson Road, Harwich, MA 02645

Tel 508-430-7541 Fax 508-432-2530



DAVID J. GUILLEMETTE
Chief of Police

KEVIN M. CONSIDINE
Deputy Chief

Memorandum

TO: Board of Selectmen

Joseph Powers
Town Administrator

FROM: David J. Guillemette
Chief of Police

A handwritten signature in blue ink, appearing to be "DJG", is written over the name "David J. Guillemette" in the "FROM:" field.

DATE: June 17, 2021

SUBJECT: Gift of a Loops Equine Rescue System

Please see attached gift acceptance letter and description of the Loops Equine Rescue System being generously gifted to Animal Control from Michael and Jennifer Lewis of Westgate Farms in Harwich.

Loops Equine Rescue System Gift Acceptance

Background:

On Saturday, May 29, 2021 the fire department got a call for assistance with a horse that “went down”. ACO Harrington was also contacted by dispatch, she was off duty and out of town. When a horse goes down due to their size it is nearly impossible to get them back up safely without some type of assistance, while keeping the animal and the humans safe. That day many folks who are in the horse world showed up to assist the family and FD with getting the older horse named “Maybe” back up on his feet. ACO Harrington spent time on the phone with the owners and FD in attempt to guide them through what they could do to try and help get the horse up. This horse was down for 8 hours which can be life threatening to an animal of this size.

After this event Michael and Jennifer Lewis of Westgate Farms in Harwich reached out to ACO Harrington with a very generous donation of a Loops Equine Rescue System. This system is utilized to assist the humans in safely lifting the horse. The approximate value of this gift is \$500.00 (five hundred dollars), there is a photo attached.

Grantor(s): Michael & Jennifer Lewis – Westgate Farms Harwich

Gift Value: Approximately \$500.00

Grantor and Grantee stipulate this gift is to be used to assist the Harwich Police and Animal Control assist in safely raising a horse off the ground if these services are needed.

Grantor has no knowledge of damage or defect to lift as described.

Accepted by the Town of Harwich Board of Selectmen,

DATE: _____

Loops Equine Rescue System



Monomoy Regional School District



Dr. Scott Carpenter
Superintendent

Marc Smith
Director of Curriculum

Melissa Maguire
Director of Student Services

Michael MacMillan
Business Manager

Donald C. Mercure
Treasurer

June 17, 2021

Town of Harwich
732 Main Street,
Harwich, MA 02645

To Whom It May Concern,

Please find enclosed a check for \$25,000. This is a donation from the Monomoy Regional School District.

These funds were raised through community donations for the purposes of building a new playground at Harwich Elementary School. This donation should be used for payment of the services received from DeVellis Zrein under the attached contract. This includes the three invoices received so far, also attached.

We are very grateful to the Harwich community for the contribution they have made to the construction to this playground and to the work of the staff of the Town of Harwich in implementing this project.

Yours Sincerely,

[Date]

Yunex LLC
Attn: Anchal Bansal
9225 Bee Cave Road
Building B, Suite 201
Austin, TX 78733, USA

RE: **Consent Letter/Transfer of Outdoor Area Lighting and Operation Maintenance Agreement from Siemens Mobility, Inc. to Yunex LLC**

Dear Ms. Bansal,

The Town of [insert] ("Town") is in receipt of a letter from Siemens Mobility, Inc. ("Siemens Mobility" or "Assignor") dated May 26, 2021 regarding transfer of its Outdoor Area Lighting and Operation Maintenance Agreement dated as of [insert] (the "Agreement") with Siemens Mobility to Yunex LLC ("Assignee"). The letter is appended to this Consent Letter and is referred to herein as the "Notice Letter."

Subject to the limitations and conditions set forth in the following paragraph, the Town consents to the assignment of the Agreement from Assignor to Assignee. The Town's consent is limited by and subject to:

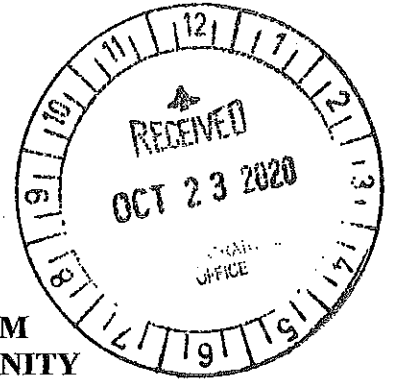
- (i) The Assignee's agreement (as evidenced by its signature below) to assume and agree to be bound by and to perform and comply with, for the benefit of the Town, each and every obligation of the Assignor under the Agreement as evidenced by its signature below;
- ~~(ii)~~ Assignor's agreement (as evidenced by its signature below) that in the event of any default of Assignee under the Agreement, the Town may proceed directly against Assignee or the Assignor until the effective date of the assignment;
- ~~(iii)~~ Assignee undertakes to perform the obligations of Assignor contained in the Agreement and agrees to be bound by the terms of the Contract in every way as if Assignee had at all times been a party to the Agreement instead of Assignor;
- ~~(ii)~~ The Town releases and discharges Assignor from all claims, obligations, liabilities, demands and duties whatsoever in respect of the Agreement and accepts the liability of Assignee under the Agreement instead of liability of Assignor as if Assignee had at all times been a party to the Agreement instead of Assignor;
- ~~(iii)~~(iv) Assignor's and Assignee's acknowledgments that except as explicitly set forth herein, nothing contained herein shall be deemed or construed to modify, waive, impair or affect any of the covenants, agreements, terms, provisions or conditions contained in the Agreement;
- ~~(iv)~~(v) The Town's consent shall not be effective and the assignment shall not be valid or binding on the Town unless and until a fully executed original counterpart of this Consent Letter is delivered to the Town; and
- ~~(v)~~(vi) The effectiveness this Consent Letter is subject to and conditioned upon delivery to the Town of confirmation that Assignee has obtained all permits and licenses necessary to perform the services under the Agreement.

The Town also acknowledges the payment instructions and information regarding tax exemption certificates set forth in the Notice Letter.

[add signature blocks for three parties.]

Recommendations from Board of Selectmen Interview Committee – Wednesday, June 9, 2021

<u>Applicant:</u>	<u>Vacancy</u>	<u>Term/Recommendation</u>
Carol Fuller	Golf Committee	Full Position Term expires 6/30/2024
Bradford Chase	Conservation Commission	Full Position Term expires 6/30/2024
Jacqueline Leach	Cultural Council	Full Position Term expires 6/30/2024
Nina Schuessler	Cultural Council	Full Position Term expires 6/30/2023
Roger Peterson	Waterways Committee	Full Position Term expires 6/30/2023
James Atkinson	Real Estate, Open Spaces Committee	Full Position Term expires 6/30/2024
James Atkinson	Conservation Commission	Full Position Term expires 6/30/2024



**CITIZEN'S COMMITTEE VACANCY FORM
VOLUNTEER NOW -- SERVE YOUR COMMUNITY**

Town government needs citizens who are willing to give time in the service of their community. This form was adopted by the Selectmen as a means of compiling names of interested citizens to serve, on a voluntary basis, on Boards and Committees and Commissions

Vacancy Forms are updated to include categories consistent with the changing needs of the Town. Indicate your order of preference and return this form to:

**CITIZEN'S COMMITTEE VACANCY FORM
BOARD OF SELECTMEN
732 Main Street, Harwich, MA 02645**

Name Carol P. Fuller Street/P.O. Box _____ Town Harwich Zip 02645
Occupation RETIRED INSURANCE EXECUTIVE Email _____ Telephone _____
(LIST IN ORDER OF PREFERENCE)

PLANNING AND PRESERVATION

- Agricultural Commission
- *Board of Appeals
- Brooks Academy Museum Commission
- Building Code Board of Appeals
- By-law/Charter Review Committee
- Community Preservation Committee
- *Conservation Commission
- Cultural Council
- Historical/Historic District Commission
- *Planning Board
- Real Estate, Open Space Committee
- Town Forest Committee
- Traffic Safety Committee
- Trail Committee
- Harwich Energy Committee
- OTHER _____

OTHER

- *Board of Assessors
- *Board of Health
- Capital Outlay Committee
- Cemetery Commission
- Community Center Facilities Committee
- Constable
- Council on Aging
- Disability Rights Committee
- Finance Committee
- Harwich Housing Committee
- Herring Supervisor (Voluntary)
- Saquatucket Development Committee
- Shellfish Constable (Voluntary)
- Treasure Chest Committee
- Wastewater Support Committee
- Youth Services Committee
- Voter Information Committee

RECREATION

- Bikeways Committee
- Golf Committee
- Recreation & Youth Commission
- Waterways Committee

* Please include a resume with form

Required resume items for Carol Fuller

Educational Background:

- Newington High School, Newington Ct.
- University of North Carolina and Southern Connecticut State University with BS Degree and additional Masters credits
- Courses and exams leading to Insurance Brokers License and Real Estate Brokers License with advanced professional designations
- University of Connecticut courses and exams leading to Master Gardener designation
- Courses and exams leading to insurance underwriter designation

Relevant skills:

- In my role as Vice President of National Accounts at Cigna Healthcare I had senior financial, service delivery and growth responsibilities for some of its largest customers. They included companies such as Delta Airlines, Sprint, Northwest Airlines, Citibank, and Chase. In my role, I interacted with the most senior decision makers of those companies as well as employees and union representatives. Strategic planning, execution of plans, front line problem solving and interaction with all levels of internal and external customers were necessary for success.
- I personally underwrote multimillion-dollar accounts and assumed complete responsibility for profit and growth.
- I owned and managed two of my own businesses.
- I managed the largest real estate office of Merrill Lynch in Connecticut
- I served on the ethics tribunal of the Greater Hartford Board of Realtors
- I am a member of Cranberry Valley Golf Course, Cranberry Women's Golf Association and the Cape Cod Women's Golf League and Sarasota National Women's Golf league.

Reasons for interest in committee:

I was introduced to the game of golf during sophomore year in college, but really embraced the game when I joined Hopmeadow Country Club in Simsbury, Ct. I was a member there for 30 years. I also played at our wonderful town course called Simsbury Farms. For several months each summer, I played at Miacomet Golf (a public course) on Nantucket. A combination of travel and job provided an opportunity to experience golf on some of the most beautiful courses nationally. All this to say the broad variety of golf experiences is helpful in forming recommendations.

Cranberry Valley Golf Course is one of the jewels of Harwich. Its benefits are far reaching to the town, its residents, restaurants, shops, inns and motels.

I am extremely interested in helping preserve the excellent reputation Cranberry Valley has among its paying members and paying guests, At the same time I am aware of the highly competitive arena for golf membership and revenue among all of the Cape towns. It is imperative that Cranberry retain its current level of business, stay competitive with other communities and find opportunities for

growth. I am hopeful you find my background, experiences and desire to give back to the community sound reasons to consider me as a committee member.



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**CITIZEN'S COMMITTEE VACANCY FORM
BOARD OF SELECTMEN**

732 Main Street, Harwich, MA 02645

Name Jacqueline Ledch Street/P.O. Box _____ Town Harwich Zip 02645
Occupation part time librarian, Brooks Free Library Email _____ Telephone _____

(LIST IN ORDER OF PREFERENCE)

PLANNING AND PRESERVATION

- Agricultural Commission
- Architectural Advisory Committee
- *Board of Appeals
- Brooks Academy Museum Commission
- Building Code Board of Appeals
- By-law/Charter Review Committee
- Community Preservation Committee
- *Conservation Commission
- Cultural Council
- Historical/Historic District Commission
- *Planning Board
- Real Estate, Open Space Committee
- Town Forest Committee
- Traffic Safety Committee
- Trail Committee
- Utility & Energy Conservation Commission
- OTHER _____

OTHER

- *Board of Assessors
- *Board of Health
- Capital Outlay Committee
- Cemetery Commission
- Community Center Facilities Committee
- Constable
- Council on Aging
- Disability Rights Committee
- Finance Committee
- Harwich Housing Committee
- Herring Supervisor (Voluntary)
- Saquatucket Development Committee
- Shellfish Constable (Voluntary)
- Treasure Chest Volunteers
- Wastewater Implementation Committee
- Youth Services Committee
- Voter Information Committee

RECREATION

- Bikeways Committee
- Golf Committee
- Recreation & Youth Commission
- Waterways Committee

* Please include a resume with form

EDUCATIONAL BACKGROUND:

- Bridgewater State University, Bridgewater, MA
- Advanced Degree, School Social Work, June 1998
 - Masters in Education in Counseling, May 1983
- University of Massachusetts, Amherst, MA
- B.A. in Education, May 1972

* I was awarded the Massachusetts "Unsung Heroines Award" for Harnick in 2006. This award was given by the Committee on the Status of Women for "the time, talent, and enthusiasm" to enrich the lives of others in my community, at the state capital.

RELEVANT SKILLS:

During my career in public schools, as a teacher, counselor, and school social worker, I promoted diversity, culture, and scholarship with an array of students and teachers.

My current job at Brooks Free Library allows me the added opportunity to work with all age groups of the Harnick population.

My strongest skills are that I love working with people and I feel I'm an excellent communicator.

I organized and facilitated "Career Days" at HHS, exposing students to all aspects of local professionals and

REASONS FOR INTEREST IN COMMITTEE/COMMISSION/BOARD: Their careers.

I have lived and worked in Harnick for over forty years, and have supported the town through many volunteer projects. These include the Harnick Children's Fund, aiding children & families in Harnick during the holidays, and the Harnick Garden Club, beautifying the Brooks Academy gardens.

Becoming part of the Cultural Council gives me other opportunities to promote art, humanities and science projects in the town.



**CITIZEN'S COMMITTEE VACANCY FORM
VOLUNTEER NOW -- SERVE YOUR COMMUNITY**

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Vacancy Forms are updated to include categories consistent with the changing needs of the Town. Indicate your order of preference and return this form to:

**CITIZEN'S COMMITTEE VACANCY FORM
BOARD OF SELECTMEN
732 Main Street, Harwich, MA 02645**

Name Nina K. Schvessler Street/P.O. Box _____ Town E. Harwich Zip 02645
Occupation Producing Artistic Director Email _____ Telephone _____

(LIST IN ORDER OF PREFERENCE)

PLANNING AND PRESERVATION

- Agricultural Commission
- *Board of Appeals
- Brooks Academy Museum Commission
- Building Code Board of Appeals
- By-law/Charter Review Committee
- Community Preservation Committee
- *Conservation Commission
- Cultural Council
- Historical/Historic District Commission
- *Planning Board
- Real Estate, Open Space Committee
- Town Forest Committee
- Traffic Safety Committee
- Trail Committee
- Harwich Energy Committee
- OTHER _____

OTHER

- *Board of Assessors
- *Board of Health
- Capital Outlay Committee
- Cemetery Commission
- Community Center Facilities Committee
- Constable
- Council on Aging
- Disability Rights Committee
- Finance Committee
- Harwich Housing Committee
- Herring Supervisor (Voluntary)
- Saquatucket Development Committee
- Shellfish Constable (Voluntary)
- Treasure Chest Committee
- Wastewater Support Committee
- Youth Services Committee
- Voter Information Committee

RECREATION

- Bikeways Committee
- Golf Committee
- Recreation & Youth Commission
- Waterways Committee

* Please include a resume with form

EDUCATIONAL BACKGROUND:

Bachelor of Arts W.S.U.
Master level courses in Theatre, Arts Management,
and public health policy

RELEVANT SKILLS:

Producing Artistic Director 24 years
Cape Cod Theatre Company / Harwich Junior Theatre, Inc.
Grant Writer, Teacher, Actor
Fundraiser
Editor of Plays and Musicals
Scenic Designer
Lighting Designer
Sound Editor
Director of Plays and Musicals
w/ many Professional Actors + Amateur Actors

REASONS FOR INTEREST IN COMMITTEE/COMMISSION/BOARD:

I am very interested in the
cultural landscape of Cape Cod
and wish to support the diverse
community of artists and presenters.



**CITIZENS ACTIVITY VACANCY FORM
ACT NOW -- SERVE YOUR COMMUNITY**

Town government needs citizens who are willing to give time in the service of their community. The Citizens Activity Record program was adopted by the Selectmen as a means of compiling names of interested citizens to serve, on a voluntary basis, on Boards and Committees.

Activity records are being updated to include categories consistent with the changing needs of the Town. Indicate your order of preference and return this form to:

**CITIZENS ACTIVITY VACANCY FORM
BOARD OF SELECTMEN
732 Main Street, Harwich, MA 02645**

Name: Roger Peterson Street/P.O. Box: _____
Town/Zip: Harwich 02645 Telephone: _____
Email: _____ Occupation: parts manager

(LIST IN ORDER OF PREFERENCE)

PLANNING AND PRESERVATION

- Agricultural Commission
- *Board of Appeals
- Brooks Academy Museum Commission
- Building Code Board of Appeals
- By-law/Charter Review Committee
- Community Preservation Committee
- *Conservation Commission
- Cultural Council Committee
- Forest Committee
- Harwich Energy Committee
- Historic District and Historical Commission
- *Planning Board
- Real Estate and Open Space Committee
- Traffic Safety Committee
- Trail Committee
- OTHER _____

RECREATION

- Bikeways Committee
- Golf Committee
- Recreation & Youth Commission
- Waterways Committee

OTHER

- Affordable Housing Trust
- *Board of Assessors
- *Board of Health
- Capital Outlay Committee
- Cemetery Commission
- Community Center Facilities Committee
- Constable
- Council on Aging
- Finance Committee
- Harwich Accessibility Rights Committee
- Harwich Center Initiative Committee
- Harwich Housing Committee
- Harwich Port Parking Committee
- Herring Supervisor (Voluntary)
- Noise Containment Committee (Ad Hoc)
- Shellfish Constable (Voluntary)
- Treasure Chest Committee
- Voter Information Committee
- Wastewater Support Committee - Inactive
- Youth Services Committee
- Voter Information Committee

* Please include a resume with form

EDUCATIONAL BACKGROUND:

2 years at California Maritime Academy
Continuing education classes in Marina
Management at Mass. Maritime
Annual training in Stormwater Pollution
Prevention

Training at Yamaha Outboard Factory school
Annual training in Regulatory & Government

RELEVANT SKILLS: relations for the Marine Trades

Massachusetts Class A/B operator of underground
Storage tanks

Parts Manager at Allen Harbor Marine

Life long boater with experience in both
power and sail boats

REASONS FOR INTEREST IN COMMITTEE/COMMISSION/BOARD:

I want to be involved in my
community. I believe my knowledge
and experience best matches the
Waterways Committee.



**CITIZEN'S COMMITTEE VACANCY FORM
VOLUNTEER NOW -- SERVE YOUR COMMUNITY**

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Vacancy Forms are updated to include categories consistent with the changing needs of the Town. Indicate your order of preference and return this form to:

**CITIZEN'S COMMITTEE VACANCY FORM
BOARD OF SELECTMEN
732 Main Street, Harwich, MA 02645**

Name James P. Atkinson Street/P.O. Box _____ Town South Harwich Zip 02661

Occupation Retired Email _____ Telephone _____

(LIST IN ORDER OF PREFERENCE)

PLANNING AND PRESERVATION

- Agricultural Commission
- *Board of Appeals
- Brooks Academy Museum Commission
- Building Code Board of Appeals
- By-law/Charter Review Committee
- Community Preservation Committee
- *Conservation Commission
- Cultural Council
- Historical/Historic District Commission
- *Planning Board
- Real Estate, Open Space Committee
- Town Forest Committee
- Traffic Safety Committee
- Trail Committee
- Harwich Energy Committee
- OTHER _____

OTHER

- *Board of Assessors
- *Board of Health
- Capital Outlay Committee
- Cemetery Commission
- Community Center Facilities Committee
- Constable
- Council on Aging
- Disability Rights Committee
- Finance Committee
- Harwich Housing Committee
- Herring Supervisor (Voluntary)
- Saquatucket Development Committee
- Shellfish Constable (Voluntary)
- Treasure Chest Committee
- Wastewater Support Committee
- Youth Services Committee
- Voter Information Committee

RECREATION

- Bikeways Committee
- Golf Committee
- Recreation & Youth Commission
- Waterways Committee

*** Please include a resume with form**

EDUCATIONAL BACKGROUND:

SEE ATTACHED RESUME

RELEVANT SKILLS:

SEE ATTACHED RESUME

REASONS FOR INTEREST IN COMMITTEE/COMMISSION/BOARD:

To use my education, experience and skills
for the benefit of the Town of Harwich.

JAMES P. ATKINSON

Admitted to Massachusetts Bar and U.S. District Court - Massachusetts

EDUCATION:

New England School of Law - Boston, Massachusetts
Juris Doctor - 1980

University of Rhode Island - Kingston, Rhode Island
Master of Community Planning - 1974

Worcester Polytechnic Institute - Worcester, Massachusetts
B. S. Civil Engineering - 1969

PROFESSIONAL EXPERIENCE:

Massachusetts Water Resources Authority – Boston, Massachusetts

Senior Staff Counsel – Real Estate – 2008 to 2012

Sole in-house real estate counsel resolving legal issues related to the acquisition, disposition and management of real property owned by, or under the care and control of, the Massachusetts Water Resources Authority. Major tasks include:

- o Review of the acquisition process for Watershed Protection land,
- o Interpretation and negotiation of lease documents,
- o Acquisition of interests in real property,
- o Approval of permits granted for use of real property, and
- o Participated in implementation of new regulations.

Massachusetts Bay Transportation Authority - Boston, Massachusetts

Deputy Director/Legal Counsel - Design and Construction - 1997 to 2008

Staff Attorney - Transit Realty Associates, LLC. - 1996 to 1997

Project Manager - Real Estate Development - 1995 to 1996

Held various positions dealing with the acquisition, disposition and development of the Massachusetts Bay Transportation Authority's real estate portfolio and the legal issues arising out of the construction of new facilities. Major activities include managing an eight (8) person staff responsible for all real estate acquisitions; overseeing the legal work of the privatized real estate disposition and leasing function, managing real estate development projects and serving as Legal Counsel to the Design and Construction Department. Major tasks included:

- o Acquisition of property for expansion projects,
- o Development of standardized leases, licenses and documents,
- o Sale of surplus property,
- o Negotiation of settlement in breach of Master Leases,
- o Negotiation of settlement in Land Damage actions,
- o Participation in the development of a regional transportation center,
- o Participation in the development of construction contracts, and
- o Negotiation of Mitigation Agreements and Memorandum of Understanding.

Worcester Redevelopment Authority - Worcester, Massachusetts

Legal Counsel - 1994

Responsible for undertaking, or supervising, all legal work of municipal redevelopment authority including involvement in the implementation of redevelopment projects valued at over \$500,000,000. Major tasks included:

- o Negotiation of development agreement for downtown project, and
- o Negotiation of railroad relocation agreement.

Lane, Greene & Murtha - Worcester, Massachusetts

Attorney - 1992 to 1993

Handled matters in the areas of Real Estate, Environmental and Land Use Law.

Massachusetts Port Authority - Boston, Massachusetts

Legal Counsel - 1983 to 1992

Drafted and negotiated leases, contracts and development agreements; analyzed pending Federal and State legislation; represented Authority as an unsecured creditor in Bankruptcy actions and acted as legal advisor to Environmental Compliance Unit. Major tasks included:

- o Drafting and negotiation of leases and management agreements for state office building,
- o Advised on the Environmental remediation of Logan Airport,
- o Drafting and negotiation of land transfer mechanism for Third Harbor Central Artery Project, and
- o Supervised appraisal of Airport and Seaport property.

Commonwealth of Massachusetts - Boston, Massachusetts

Executive Office of Transportation and Construction

Special Assistant to the Secretary - 1983

Developed plan and program for use of highway funds and advised incoming staff on transit issues.

New Jersey Department of Transportation - Trenton, New Jersey

Office of Policy Analysis

Assistant Director for Legislation - 1981

Drafted and monitored Federal and state legislation.

Massachusetts Bay Transportation Authority - Boston, Massachusetts

Construction Directorate - 1979 to 1981

Assisted in the management of construction projects; conducted review of construction contracts and drafted Federal grant applications.

Consultant - 1978 and 1981

Prepared impact analysis regarding funding eligibility for reorganized state human services office; assisted in developing regulations governing transit accessibility for the elderly and handicapped and researched feasibility of coordinating transportation components of social service programs.

Metropolitan Area Planning Council - Boston, Massachusetts

Principal Transportation Planner - 1973 to 1977

Assured compliance with Federal regulations; managed agency contracts and participated in interagency planning projects.

NEW BUSINESS

Chapter 189. Noise

[HISTORY: Adopted by the Special Town Meeting of the Town of Harwich 5-5-2009 by Art. 1; amended in its entirety 5-3-2011 STM by Art. 20. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Peace and good order — See Ch. 214.

§ 189-1. Definitions; regulations; exemptions; special permits; violations and penalties.

[Amended 5-7-2012 ATM by Art. 23]

A. Definitions. As used by this bylaw, the following terms shall have the meanings indicated:

PLAINLY AUDIBLE

Any sound from a source regulated by this bylaw that can be detected above routine or normal ambient background noise by unaided human hearing.

SOUND AMPLIFICATION SYSTEM

Any fixed or portable system to operate or amplify sound, including, but not limited to, phonograph, radio, television, stereo, record player, tape player, cassette player, compact disk player, digital music player, "boom box," or loud speaker.

- B. It shall be unlawful for any person or persons to cause or allow any noise which emanates from any building, boat, structure, vehicle, premises, or any sound amplification system, which is plainly audible at a distance of 150 feet from any such building, boat, structure, vehicle, premises or sound amplification system. The fact that the noise is plainly audible at a distance of 150 feet from the building, structure, vehicle, boat, premises or sound amplification system in which or from which it originates shall constitute prima facie evidence of a violation of this section. Each such act, which constitutes a violation of this section, which either continues or is reported more than 30 minutes after the issuance of a warning or citation to cease said activities, shall be considered a separate offense and shall be prosecuted as a separate offense in accordance with § 189-1E.
- C. Sounding horns excessively. It shall be unlawful to sound or use automobile, truck or other motor vehicle horns or similar signaling devices upon the public streets, alleys, parking lots, or thoroughfares of the Town in excess of those signals necessary for the preservation of safety and is a violation of this bylaw at anytime.
- D. For the purposes of this bylaw, noises which disturb the reasonable quiet, comfort, repose, or health of others shall include loading or unloading activities, use of power tools and equipment, use of lawn or landscaping equipment, loud outcries, and other loud or boisterous noises which are not specifically exempted by § 189-1F and which are plainly audible at a distance of 150 feet from their source between 10:00 p.m. and 7:00 a.m., except as otherwise indicated as outlined in § 189-1B.
- E. Procedure upon violation. It shall be the duty of any police officer of this town to order any person or persons so acting as to violate the provisions of this bylaw to cease any prohibited activities which are specified in this bylaw, and if the person or persons so ordered does not forthwith obey,

G. Application for special permit.

- (1) Application for a permit for relief from the noise level designated in this chapter on the basis of undue hardship may be made to the Board of Selectmen.
- (2) Any permit granted by the Selectmen shall set forth all conditions pertaining to the specified noise and a reasonable time limit for its abatement.
- (3) The holders of licenses to provide alcoholic beverages and/or entertainment shall comply with any noise allowances and/or restrictions imposed upon such licenses, and in the case of a conflict between individual license allowances or restrictions and this bylaw, the terms of the license shall apply, and a violation of any such allowances or restrictions shall also constitute a violation of this bylaw.

H. Severability clause. If any part of this bylaw is deemed to be contrary to state or federal law by the Attorney General, that part can be severed without affecting any other part of this bylaw.

Harwich Ad Hoc Noise Containment Committee
Liaison Report
November 12, 2020

1. The Harwich Ad Hoc Noise Containment Committee conferred with residents and businesses to determine issues and develop an Issues List. The chief items on the list follow:

- Lowering the volume;
- Self-regulation by businesses;
- How to minimize residents' involvement in enforcement;
- "Plainly Audible" definition;
- How to improve communication between residents and businesses;
- How to get faster turn-around for violations;
- After hours noise by patrons.

2. The Noise Committee voted on the definition of "Plainly Audible." The vote was 5 in favor of not changing the current language in the Liquor Regulations and 2 votes in favor of using the Noise Bylaw's definition, as originally passed at the 2016 Public Hearing, but inadvertently omitted from the Liquor Regulations.

Also stipulated in the vote was that quicker and stricter sanctions be used, as well as a directive from the Chief of Police to his officers not to use the lyrics test for determining Plainly Audible.

It is worth noting that: (a) Chief Guillemette felt that using the bylaw's definition would increase the number of violations; and (b) 52 residents were surveyed and voted unanimously to use still more specific language. **DISCLAIMER:** The Committee was in no way involved with this survey nor the collection of information and was made aware of the survey after it was conducted.

The definition of "Plainly Audible" has been somewhat contentious for us. The majority are in favor of using the existing language, leaving the term undefined, as we feel most establishments have or will be making substantial changes to reduce volume. The current pandemic cancelled out last season which made musical volume levels impossible to ascertain. If it turns out that volume levels are not sufficiently reduced, then the "Noise Bylaw" definition of "Plainly Audible" can be decided and voted on.

3. The Noise Committee voted to ban sing-alongs, cow bells, horns, karaoke, music generated from cell phones, and other noise enhancers. The vote was unanimous at 5.

4. The Noise Committee is, I believe, in unanimous agreement that a "fast track" process be used whereby a violator could opt to pay a fine or move forward to the hearing process. We also discussed a quicker hearing process, stronger sanctions for violators, and began developing a penalty schedule.

5. The Noise Committee feels it is important for establishments to have a phone number/text as well as a name through which a resident can report alleged excessive noise. This person(s) must have the authority to address the complaint before law enforcement gets involved.

6. The Committee briefly looked into decibel meters for enforcement, but it was felt the learning curve was too steep for now, but that it might be worthwhile looking into it in the future.

7. The Committee separately discussed the use of decibel monitors for self-regulation by businesses. I believe the majority are in favor of this, although we have not thoroughly discussed it. This was originally a proposal by Chief Guillemette prior to the Committee being formed.

8. The Committee also received input from Chief Guillemette on a number of other topics: (a) he agreed that the introductory pre-season ABCC meeting be made mandatory for pouring establishments; (b) he said that the lyrics test would be eliminated for determination of Plainly Audible; and (c) that he would try, but couldn't promise to increase proactive policing in the last hour of performances.

The Committee wishes to thank both Chief Guillemette and Deputy Chief Considine for their generous help and participation throughout.

9. The Noise Committee very briefly discussed the use of a paid security detail (at the expense of the establishment) to deal with crowd noise at establishments that are open later. Again this was a very brief suggestion at our last meeting, but I feel worth looking into.

11. The Noise Committee also had a proposal for individualized license conditions on its last agenda, but didn't have time to address it.

We believe the Noise Committee still has a good deal of work ahead and look forward to continuing in the upcoming weeks/months.

Respectfully Submitted,
Angela McNamara
Chairperson
Harwich Noise Containment Committee

SENIE & ASSOCIATES, P.C.
A T T O R N E Y S A T L A W

15 Cape Lane
Brewster, MA 02631

Phone (774) 323-3027
Fax (774) 323-3008
Cell (508) 330-6640
csenie@senie-law.com
WWW.SENIE-LAW.COM

April 23, 2021

Mr. Larry Ballantine, Chairman
Harwich Board of Selectmen
Harwich Town Hall
732 Main Street
Harwich Center, MA 02645
lballantine@townofharwich.us

Re: Noise Complaints Related to Restaurants and Bars – Analysis of the Town of Harwich Regulations

Dear Chairman Ballantine and Selectmen McManus, MacAskill and Howell,

I represent the individual residents of Harwich indicated below my signature. I have been asked to review the Harwich regulations relative to noise from restaurants and bars and provide this memorandum. I am aware that the Board is currently considering this matter, and my clients wish to have the information contained in this letter included in your review. I would welcome the chance to appear before your Board to discuss my analysis and suggestions.

Memorandum

The Town of Harwich (“Town”) has a Noise Ordinance (Chapter 189 – Noise), adopted in 2009 and amended in 2011 and 2012 (“Ordinance”). It applies to all types of noise disturbance, which includes noise generated at restaurants and bars. The Ordinance employs a standard of “plainly audible”, which is defined as follows: “Any sound from a source regulated by this bylaw that can be detected above routine or normal ambient background noise by unaided human hearing.”

The primary constraint contained in the Ordinance reads as follows: “It shall be unlawful for any person or persons to cause or allow any noise which emanates from any building, boat, structure, vehicle, premises, or any sound amplification system which is plainly audible at a distance of 150 feet from any such building, boat, structure, vehicle, premises or sound amplification system.”

Thus, if a restaurant or bar generates noise of any kind that is plainly audible 150 feet or further from the noise source, it is a violation of the Ordinance, whether that noise is caused by outdoor

Memorandum on Noise Complaints from Restaurants and Bars

Page 2

dining, patron activities while at the premises, arrivals and departures from the property or entertainment (live or recorded).

In Section D, the Ordinance identifies its purpose in terms of what is prohibited: “noises which disturb the reasonable quiet, comfort, repose, or health of others”. It then specifically mentions “loud outcries and other loud or boisterous noises”. These are the kinds of noises that can be generated at restaurants and bars if not managed carefully, especially those with outdoor seating.

Section F. of the Ordinance lists a number of exemptions: 1. Law enforcement vehicles and devices; 2. Fire apparatus, ambulance, rescue, or emergency response; 3. Emergency vehicles with communication devices; 4. Highway maintenance, water department, public utility vehicles and communication devices; 5. Announcing systems at sanctioned sporting or other public events; 6. Safety signal noises; 7. Authorized emergency vehicles responding to an emergency; 8. Activities of temporary duration permitted by law or by license or permit from the Town; 9. Parades, music festivals, public gatherings permitted by the Board of Selectmen (“BOS”); 10. Bells, chimes or carillons for religious purposes; 11. Snow removal operations; 12. Noises for which the BOS has granted a special permit; 13. Agricultural activities.

The activities of restaurants and bars which receive liquor and/or entertainment licenses can be said to fit into exemption #12 related to special permits granted by the BOS. This is known by consulting the next section, “G Application for Special Permits”.

Section G has three subsections, the third of which specifically addresses liquor and entertainment licenses:

“The holders of licenses to provide alcoholic beverages and/or entertainment shall comply with any noise allowances and/or restrictions imposed upon such licenses, and in the case of a conflict between individual license allowances or restrictions and this bylaw, the terms of the license shall apply, and a violation of any such allowances or restrictions shall also constitute a violation of this bylaw.”

Section G (3) allows the terms of the issued alcoholic or entertainment license to control. However, the issuance of such licenses is controlled by a different regulation; the Harwich Board of Selectmen Liquor License Regulations (“Regulation”), adopted in 2011 and amended in 2017. This regulation includes its own noise standard particular to license holders:

Under the heading “1.10 Environs of Licensed Premises”, the following appears in subparagraph d.:

“When any noise, disturbance, misconduct, disorder, act or activity occurs in the licensed premises, or in the area in front of or adjacent to the licensed premises, or in any parking lot provided by the licensee for the use of its patrons, which in the judgment of the Authority (BOS) adversely affects the protection, health, welfare, safety, or repose of the residents of the area in which the licensed premises are located, or results in the licensed premises becoming the focal point for police attention, the licensee shall be held in

violation of the license and subject to proceedings for suspension, revocation or modification of the license.”¹

Several things are clear from this liquor/entertainment-specific noise regulation:

1. The restrictions are not limited to entertainment noise, such as that coming from a live band or recorded music; they apply to noise from patrons, parking lots and other activities at the facility.
2. This regulation includes a standard, not the plainly audible standard contained in the Ordinance, but a different one: noise from restaurants and bars should not adversely affect “health, welfare, safety, or repose of the residents of the area”. Repose in this case means the ability of residents to get rest in their homes.

The protections of the two different Harwich regulations are quite similar: The Ordinance: “reasonable quiet, comfort, repose, or health of others”; The Regulation: “protection, health, welfare, safety, or repose of the residents of the area”.

In issuing annual liquor licenses (under M.G.L. c. 138 Section 12) and annual entertainment licenses (under M.G.L. c. 183A), the BOS must support and further the Town’s Ordinance and Regulation. The way in which the BOS has historically done so is to include on the face of each license the “plainly audible at 150 feet” standard contained in the Ordinance.

It may be that the BOS has historically chosen to add to each license the Ordinance standard (150 feet) because it prescribes a measurable distance. This provides a mechanism for enforcement which is easily interpreted and applied. It helps achieve the goal; the use of the licenses ought to be done in a way that fits within the surrounding community, in accord with these Town-adopted standards.

The application of the Ordinance, the Regulation and the issued annual licenses is such that well-managed restaurants and bars can undertake their business activity robustly, and the adjacent neighborhoods can enjoy the protections intended by the adoption of both the Ordinance and the Regulation.

Recently there have been significant noise complaints in Harwich Port, which is a densely populated village center, with vibrant businesses located very close to residential neighborhoods. The key to the successful reconciliation of these very different land uses in such close proximity is prudent and responsible management by the business owners. This means, for example, that rock and roll bands should not play outdoors on a patio, patrons should not be allowed to become boisterous at a patio bar with yelling and singing, and patrons arriving at or leaving the property should not be allowed to create disruption.

¹ The language of 1.10 is common in such municipal regulations (see Barnstable Licensing Rules and Regulations, Section 501-11 f.; the language is nearly identical).

Memorandum on Noise Complaints from Restaurants and Bars

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The 150-foot plainly audible standard of the Ordinance, a by-law adopted at Town Meeting and approved by the Attorney General of the Commonwealth, is a workable standard, and is commonly used by other communities on the Cape. In fact, all towns which share a border with Harwich use the plainly audible at 150 feet standard to establish a noise violation (Town of Dennis Anti-noise By-law – Section A; Brewster Code Chapter 125-1; Orleans Code Chapter 120-B; Chatham Code Chapter 208-18).

When there is a noise complaint, a violation should be issued if noise from a restaurant or bar is plainly audible 150 feet or more away from the premises. This will lead to operational adjustments by managers and owners in terms of the equipment used, musicians hired, times of performances, volume levels of amplification and recorded music, and very importantly, patron control at the restaurant and in the use of driveways, parking lots and the areas around the facility.

Police Chief Guillemette confirmed this in a letter to the department dated June 19, 2020, “If noise from entertainment is plainly audible beyond 150 feet **at any time** it should result in an alleged violation”. (Emphasis added)

There is no conflict between the Ordinance, the Regulation and the licenses historically issued. They all say the same thing; these establishments should not unreasonably disturb the peace and quiet of residential neighborhoods. The Ordinance and issued licenses, like the regulations of all neighboring Towns, incorporate the 150 foot plainly audible standard as the tool to be used to ensure that the balance essential to the coexistence of diverse land uses in close proximity is maintained.

The Covid 19 virus led to the encouragement of outdoor dining, as a matter of increasing the safety of employees, patrons, and the full community. However, as businesses are encouraged and supported, they must observe the limits on how far they can transmit their noise into otherwise quiet neighborhoods occupied by residents entitled to the “reasonable quiet, comfort, repose, and health” articulated in both the Ordinance and the Regulation”. This requires consistent enforcement of the standards the community has adopted.

I ask that this perspective be included in the conversation the Board, as the Town’s Selectmen and its licensing authority, is having with all stakeholders.



Christopher Senie
Counsel to:

Memorandum on Noise Complaints from Restaurants and Bars

Page 5

Joe Ganley
42 Sea Street
Harwich Port, MA 02646

Bob Cohn
29 Pleasant Street
Harwich Port, MA 02646

Bob Nickerson
37 Bay View Road
Harwich Port, MA 02646

cc: 'Michael D. MacAskill' <mmacaskill@townofharwich.us>; 'Don Howell'
<dhowell@townofharwich.us>; 'Ed McManus' <emcmanus@townofharwich.us>; 'Joe Powers'
<jpowers@town.harwich.ma.us>; Chief David J. Guillemette <dguillemette@harwichpolice.com>;
Gregg Corbo Town Counsel gcorbo@k-plaw.com

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Town Administrator*
Meggan M. Eldredge, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA



MEMO

TO: Board of Selectmen

FROM: Joseph F. Powers, Town Administrator

CC: Meggan M. Eldredge, Assistant Town Administrator

RE: Proposed penalty structure for violations of Chapter 189 - Noise as outlined within the Town Code as well as noise from licensed establishments

DATE: June 28, 2021

This memorandum is submitted as part of the Board's discussion on noise generally in the town and specifically to noise emanating from establishments licensed under MGL, c.138 (alcohol), and/or MGL, c. 140 (entertainment) and non-licensed properties, meaning private property.

Noise from establishments operating under MGL, c.138 separate from entertainment

The town's *Liquor License Regulations* ("the regulations"), adopted on June 13, 2011 and most recently amended on January 9, 2017, contain several references to noise relative to establishments ("licensees"). These references include noise irrespective of whether the establishment also has an entertainment license.

These references are (with emphasis added by me):

- **Section One, Subsection 1.04 Admission to the Premises:** Paragraph i (2) dictates that "Persons who are permitted to wait in line outside the premises shall be supervised by an employee of the licensed premises. Such employee shall stand outside with the line during all times when the line exceeds ten (10) persons and shall announce no further admissions to the premises if persons in line are being loud or disorderly or if the line is blocking the sidewalk or is of a size that could reasonably be expected to cause noise or other problems for residents of the area or for passersby. To the extent that lines in front of a licensed premises become the subject of public complaints the licensee shall have been deemed to be inviting a public nuisance and shall be subject to disciplinary proceedings for same. It is recommended that licensees in residential areas discourage lines of more than ten persons."
- **Section One, Subsection 1.10 Environs of Licensed Premises:** Paragraph d states, "When any noise, disturbance, misconduct, disorder, act or activity occurs in the

licensed premises, or in the area in front of or adjacent to the licensed premises, or in any parking lot provided by the licensee for the use of its patrons, which in the judgment of the Authority adversely affects the protection, health, welfare, safety or repose of the residents of the area in which the licensed premises are located, or results in the licensed premises becoming the focal point for police attention, the licensee shall be held in violation of the license and subject to proceedings for suspension, revocation or modification of the license.”

Proposed Disciplinary Guidelines for noise separate from entertainment

The specific references outlined above indicate that noise under these paragraphs would constitute violations of the establishment’s liquor license. As such, I recommend that the Board rely upon and emphasize the existing *Disciplinary Guidelines* outlined under **Subsection 1.17** of the Liquor License Regulations.

Specifically, paragraph a states, in whole, the following guidelines:

“Licensees in violation of the applicable laws of the Commonwealth, regulations of the Alcoholic Beverage Control Commission and/or these regulations may be subject to the following range of discipline:

1. First offense: warning to seven day suspension.
2. Second offense: warning to thirty day suspension.
3. Third offense: warning to revocation.”

I would also add that the Board, as Local Licensing Authority (LLA), should consider future revisions to the disciplinary guidelines to expand Item 3 to refer to “third and subsequent offenses” for additional offenses.

Noise from establishments operating under MGL, c.138 resulting from entertainment

The regulations specifically address noise as a result of entertainment at liquor licensed establishments.

Section One, Subsection 1.09 Entertainment at Licensed Premises is entirely focused on entertainment occurring at licensed establishments that also enjoy the benefits of entertainment as permitted under MGL, c. 140, 183A.

Furthermore, “noise” as a result of entertainment is expressly addressed within Subsection 1.09 under paragraph e, which states, in whole, the following:

“Inside Entertainment - No entertainment at the licensed premises may be conducted in a manner such that the ***noise*** from the entertainment is creating a nuisance and can be heard outside the boundaries of the premises.

Outside Entertainment – ***Noise*** from entertainment must be at reasonable sound levels which are not plainly audible at a distance of 150 feet from boundary line or source of sound amplification system whichever is further.”

The reference to inside entertainment indicates a “nuisance” and the regulations clearly indicate that “nuisances” are subject to disciplinary proceedings.

The reference to outside entertainment comports directly with the Town's bylaw regulating noise, specifically Chapter 189, Section 1, and Paragraph B. That reference indicates that noise as defined under outside entertainment within the regulations exceeding 150 feet is "unlawful".

"Unlawful" is reasonably understood to be synonymous with "illegality". Further, **Section One, Subsection 1.16 Paragraph a Violations; Hearing Procedure** clearly states,

"Upon written notice from the Chief of Police or other source that an illegality has allegedly occurred at a licensed establishment or other matters that the Chief of Police deems should be brought to the attention of the Licensing Authority, the Authority will consider in open session whether or not a public hearing should be held."

As such, outside entertainment plainly audible from a distance of 150 feet should be handled with all other alleged violations of the regulations and adhere to the same disciplinary guidelines as outlined above.

Noise from non-licensed properties (including private property)

The Board should rely upon **Chapter 189: Noise** within the town's General Bylaws, for the regulation of noise emanating from non-licensed properties. The General Bylaws in combination with the Home Rule Charter and Zoning Bylaws, constitutes the **Code of the Town of Harwich**.

Chapter 189 outlines the definitions, regulations, exemptions, special permits, violations and penalties related to "noise". For the purposes of the bylaw, "noise" is "sound" that is perceived to be "plainly audible". The sole definition contained within the Chapter is that of "plainly audible". Given that the Board will be hearing from and discussing the findings of the Ad Hoc Noise Containment Committee, I will yield on this topic specifically and rely upon that discussion.

Established Disciplinary Guidelines for noise from non-licensed properties

Given that this memorandum discusses penalties related to violations associated with noise, I note that **Chapter 189, Section 1, Paragraph E** clearly outlines the "procedure upon violation" and delineates a disciplinary guideline (to use language consistent with the liquor regulations) under Items 1 – 4. I have included the entire bylaw with this memorandum and direct you to that specific section.

The penalties outlined therein are consistent with the non-criminal disposition statute found in MGL, c. 40, Section 21D.

I look forward to your discussion on noise generally and any specific discussion of this memorandum.

Thank you for your consideration of this material.

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Town Administrator*

732 MAIN STREET, HARWICH, MA



MEMO

TO: Board of Selectmen

FROM: Joseph F. Powers, *JP* Town Administrator

CC: David J. Guillemette, Chief – Police
Jeffrey Blake, Esq. – KP Law

RE: Recommended action following disciplinary hearing held on June 23, 2021 re:
Wychmere Harbor Functions LP d/b/a Wychmere Harbor Beach and Tennis
Club, Entertainment License Violation

DATE: June 28, 2021

The following is my report on a disciplinary hearing held on June 22, 2021 for an alleged violation of the entertainment license for Wychmere Harbor Beach and Tennis Club, 23 Snow Inn Road, Harwich Port, MA.

Violation alleged:

Specifically, the alleged violation was: one (1) violation of 204 CMR 2.05(2), permitting a disorder, disturbance or illegality to take place on the licensed premises.

Hearing summary:

The manager of record, Christopher Clifton Kolwicz and the General Manager, Michael Sharlet were present and represented by Attorney Andrew Singer.

Attorney Singer made a brief statement on behalf of the establishment wherein he stated that the licensee:

- Admitted to the facts outlined in Police Chief David Guillemette's memo to the Board dated May 25, 2021; and
- Apologized on behalf of the licensee for the transgression.

Legal Standard:

I applied the following legal standard, as suggested by Town Counsel, in making my recommendation:

- 204 CMR 2.05(2), prohibits license holders from permitting any disorder, disturbance or illegality to take place on the licensed premises.

Statement of findings:

Whereas representatives from the licensee did not dispute the facts presented in the Chief's memo, and admitted that they were, in fact, in violation as outlined above, I find that one (1) violation of the laws of the Commonwealth has been established.

Recommended disciplinary action:

There is no record of any prior violations or alleged violations to have occurred at this establishment. As such, this finding constitutes their first offense. Given that and coupled with the licensee's full cooperation and full responsibility for the matter, I recommend that the Town impose a disciplinary action of **a warning** as outlined under 1.17 Disciplinary Guidelines within the Town of Harwich Liquor Licensing Regulations.



HARWICHPolice
DEPARTMENT
183 Sisson Road, Harwich, MA 02645
Tel 508-430-7541 Fax 508-432-2530



DAVID J. GUILLEMETTE
Chief of Police

KEVIN M. CONSIDINE
Deputy Chief

Harwich Police Range Orientation, Rules, & Regulations

The Range is open on the following days and times:

Saturday: 11:00 AM to 1:00 PM* and 1:00 PM to 4:00 PM

Sunday: 12:00 PM to 2:00 PM* and 2:00 PM to 4:00 PM

*MUST HAVE KEY RETURNED to HPD Dispatch NO LATER THAN 1:00 PM FOR THE NEXT PERSON.

- Range key and flag to be signed out from the HPD Communication Center and returned at end of session.
- Trap and Skeet shooting **PROHIBITED**.
- Never fire into the air.
- All firing is to be fired into the approved backstop.
- No shooting of objects such as glass bottles, cans, etc.
- Only paper targets are to be used.
- Pick up your spent shell casings.
- Do not leave targets at the range. Take targets to and from range.

Remember:

- Treat every firearm as if it were loaded.
- Keep the muzzle pointed in a safe direction at all times.
- Keep your finger off the trigger until you are ready to fire.
- Be aware of your target area and what is beyond.

The key and flag may be picked up **NO EARLIER than 15 minutes** prior to the scheduled time.

Users **may sign up for two slots only** during the month.

If the key and flag **has not been** picked up **within 20 minutes** of the scheduled time, then the key and flag may be given to another user.

Any violation will result in the termination of range privileges

Harwich Resident Name: _____

Address: _____

Phone: _____

Signature: _____ Date: _____

Harwich Police Officer: _____



OFFICE OF THE SELECTMEN
732 MAIN STREET
HARWICH, MA 02645
508-430-7513

APPLICATION FOR ENTERTAINMENT LICENSE

Weekday Entertainment (\$75) _____ 1 day (\$25) _____
 Batters Box (\$50) _____
 Go Carts (\$50) _____
 Miniature Golf (\$50) _____
 Trampolines (\$25) _____
 Theater (\$150 per cinema) _____
 Automatic Amusement:
 Juke Box (\$100 each) _____
 Video Games (\$100 each) _____

New application
Renewal _____
Annual _____
Seasonal _____
Opening Date _____

Other _____

Business Name PERKS Phone _____

Business Address 545 ROUTE 28 HARWICH PORT, MA 02646

Mailing Address _____

Owners Name & Address TAYLOR POWELL

Email Address perkscOFFEEandcafe@gmail.com

Managers Name & Address TAYLOR POWELL

TIMES AND DAYS OF WEEK FOR ENTERTAINMENT (Please note this application does not cover Sundays. You can obtain a Sunday license application at the Selectmen's Office):

12 PM - 12 AM (application for INDOOR ONLY)
IN ADDITION to our outdoor music permit

ENTERTAINMENT TYPE: (Check all appropriate boxes)

Concert Dance Exhibition Cabaret Public Show Other
 Dancing by Patrons
 Dancing by Entertainers or Performers
 Recorded or Live Music
 Use of Amplification System
 Theatrical Exhibit, Play or Moving Picture Show
 A Floor Show of Any Description
 A Light Show of Any Description
 Any Other Dynamic Audio or Visual Show, Whether Live or Recorded

At any time during this concert, dance exhibition, cabaret or public show, will any person(s) be permitted to appear on the premises in any manner or attire as to expose to the public view any portion of the body as described in Mass. General Laws Chapter 140, Section 183A, Para. 3.

____ Yes No

If Yes, answer questions 1 through 4 below. Attach a separate sheet and/or exhibits if necessary:

1. Describe in complete detail the extent of exposure during the performance and the nature of the entertainment: _____

2. Furnish additional information concerning the condition of the premises and how they are suitable for the proposed entertainment: _____

3. Fully describe the actions you will take to prevent any adverse effects on public safety, health, or order: _____

4. Identify whether and how you will regulate access by minors to the premises: _____

Days/Hours of Business Operation _____

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

Jaylon Panel - OWNER
Signature of applicant & title Federal I.D. # _____

Signature of individual or corporate name Federal I.D. # _____

Signature of Manager Federal I.D. # _____

Signature of Partner Federal I.D. # _____

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

[Signature]
Building Commissioner

[Signature]
Board of Health

Fire Department

K.M.C.
Police Department

comments: * pending 2021 food service permit renewal
OK - (CC) 6/14/2021

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
 732 MAIN STREET
 HARWICH, MA 02645
 508-430-7513

APPLICATION FOR SUNDAY ENTERTAINMENT LICENSE

- | | |
|--|---|
| <input checked="" type="checkbox"/> Music 1PM or After (Municipal Fee \$85/State \$50) | New application <input checked="" type="checkbox"/> |
| <input type="checkbox"/> Music prior to 1PM (Municipal Fee \$175/State \$100) | Renewal <input type="checkbox"/> |
| <input type="checkbox"/> Go Carts (\$50) | Annual <input type="checkbox"/> |
| <input type="checkbox"/> Miniature Golf (\$50) | Seasonal <input type="checkbox"/> |
| <input type="checkbox"/> Trampolines (\$25) | Opening Date <input type="checkbox"/> |
| <input type="checkbox"/> Theater (\$150 per cinema) | |
| <input type="checkbox"/> Automatic Amusement (\$100) | |
| <input type="checkbox"/> Juke Box (\$100 each) | |
| <input type="checkbox"/> Video Games (\$100 each) | Other <input type="checkbox"/> |

Business Name PERKS Phone
 Business Address 545 ROUTE 28 HARWICH PORT, MA 02646
 Mailing Address
 Owners Name & Address TAYLOR POWELL I
 Email Address perks coffee and cafe @ gmail.com
 Managers Name & Address TAYLOR POWELL I

TIMES OF ENTERTAINMENT (Please specify where music will be located on your property and what type of entertainment such as live, DJ, recorded)
1 PM - 12 AM (this application is for indoor only in addition to our outdoor music permit)

ENTERTAINMENT TYPE: (Check all appropriate boxes)

- Concert Dance Exhibition Cabaret Public Show Other
- Dancing by Patrons
- Dancing by Entertainers or Performers
- Recorded or Live Music
- Use of Amplification System
- Theatrical Exhibit, Play or Moving Picture Show
- A Floor Show of Any Description
- A Light Show of Any Description
- Any Other Dynamic Audio or Visual Show, Whether Live or Recorded

At any time during this concert, dance exhibition, cabaret or public show, will any person(s) be permitted to appear on the premises in any manner or attire as to expose to the public view any portion of the body as described in Mass. General Laws Chapter 140, Section 183A, Para. 3.

___ Yes No

If Yes, answer questions 1 through 4 below. Attach a separate sheet and/or exhibits if necessary:

- Describe in complete detail the extent of exposure during the performance and the nature of the entertainment: _____
- Furnish additional information concerning the condition of the premises and how they are suitable for the proposed entertainment: _____
- Fully describe the actions you will take to prevent any adverse effects on public safety, health, or order: _____
- Identify whether and how you will regulate access by minors to the premises: _____

Days/Hours of Business Operation _____

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

Angela Parell OWNER _____ Federal I.D. # _____
 Signature of applicant & title

 Signature of individual or corporate name Federal I.D. # _____

 Signature of Manager Federal I.D. # _____

 Signature of Partner Federal I.D. # _____

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

[Signature] _____ Kathleen O'Neill* _____
 Building Commissioner Board of Health Fire Department

K.M.C. _____
 Police Department

comments: *Pending 2021 food service permit renewal OK - (KO) 6/14/2021

Required signatures to be obtained by the applicant prior to submission of new applications.

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Town Administrator*
Meggan Eldredge, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645



MEMO

TO: Board of Selectmen

FROM: Danielle Delaney, Executive Assistant - Licensing

CC: Joseph F. Powers, Town Administrator
Meggan M. Eldredge, Assistant Town Administrator

RE: One Day Entertainment License - Reciprocity

DATE: June 28, 2021

Per an email from the requesting party, the One Day License application is for live entertainment to be held on July 24, 2021 from 4:30 p.m. to 7:00 p.m. outside on private property. There will be no alcohol served at this event.

Close

Print Preview



APPLICATION FOR ENTERTAINMENT

OFFICE OF THE SELECTMEN
732 MAIN STREET
HARWICH, MA 02645
508-430-7513

- Weekday Entertainment (\$75) 1 day
- Batters Box (\$50)
- Go Carts (\$50)
- Miniature Golf (\$50)
- Trampolines (\$25)
- Theater (\$150 per cinema)
- Automatic Amusement:
- Juke Box (\$100 each)
- Video Games (\$100 each)

Annual _____
Seasonal _____
Opening Date _____

Other ONE DAY - July 21 2021

Business Name Reciprocity Phone _____

Business Address 4 Cross Street

Mailing Address Harwich Port MA

Owners Name & Address Rebecca & Madeline

Email Address rca59@aol.com

Managers Name & Address _____

TIMES AND DAYS OF WEEK FOR ENTERTAINMENT (Please note this application does not cover Sundays. You can obtain a Sunday license application at the Selectmen's Office):

ENTERTAINMENT TYPE: (Check all appropriate boxes)

- Concert Dance Exhibition Cabaret Public Show Other
- Dancing by Patrons
- Dancing by Entertainers or Performers
- Recorded or Live Music
- Use of Amplification System
- Theatrical Exhibit, Play or Moving Picture Show
- A Floor Show of Any Description
- A Light Show of Any Description
- Any Other Dynamic Audio or Visual Show, Whether Live or Recorded

At any time during this concert, dance exhibition, cabaret or public show, will any person(s) be permitted to appear on the premises in any manner or attire as to expose to the public view any portion of the body as described in Mass. General Laws Chapter 140, Section 183A, Para. 3.

____ Yes _____ No

Close

Print Preview

If Yes, answer questions 1 through 4 below. Attach a separate sheet and/or exhibits if necessary:

- 1. Describe in complete detail the extent of exposure during the performance and the nature of the entertainment: 2.5 hours soul music - Family music
- 2. Furnish additional information concerning the condition of the premises and how they are suitable for the proposed entertainment: _____
- 3. Fully describe the actions you will take to prevent any adverse effects on public safety, health, or order: _____
- 4. Identify whether and how you will regulate access by minors to the premises: NO

Days/Hours of Business Operation _____

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

[Signature] _____
 Signature of applicant & title Federal I.D. #

 Signature of individual or corporate name Federal I.D. #

 Signature of Manager Federal I.D. #

 Signature of Partner Federal I.D. #

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

[Signature] _____
 Building Commissioner

[Signature] _____
 Board of Health

[Signature] _____
 Fire Department

[Signature] _____
 Police Department

comments:

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
732 MAIN STREET
HARWICH, MA 02645
508-430-7513

APPLICATION FOR ENTERTAINMENT LICENSE

Weekday Entertainment (\$75) 1 day (\$25) New application
 Batters Box (\$50) Renewal
 Go Carts (\$50) Annual
 Miniature Golf (\$50) Seasonal
 Trampolines (\$25) Opening Date
 Theater (\$150 per cinema)
Automatic Amusement:
 Juke Box (\$100 each)
 Video Games (\$100 each) Other

Business Name Harwich Inn + Tavern Phone 6
Business Address 77 Route 28 W Harwich, ma
Mailing Address Same
Owners Name & Address James Tsoukalas
Email Address JpTsoukalas@verizon.net
Managers Name & Address James Tsoukalas Same

TIMES AND DAYS OF WEEK FOR ENTERTAINMENT (Please note this application does not cover Sundays. You can obtain a Sunday license application at the Selectmen's Office):

ENTERTAINMENT TYPE: (Check all appropriate boxes)

Concert Dance Exhibition Cabaret Public Show Other
 Dancing by Patrons
 Dancing by Entertainers or Performers
 Recorded or Live Music
 Use of Amplification System
 Theatrical Exhibit, Play or Moving Picture Show
 A Floor Show of Any Description
 A Light Show of Any Description
 Any Other Dynamic Audio or Visual Show, Whether Live or Recorded

At any time during this concert, dance exhibition, cabaret or public show, will any person(s) be permitted to appear on the premises in any manner or attire as to expose to the public view any portion of the body as described in Mass. General Laws Chapter 140, Section 183A, Para. 3.

___ Yes ✓ No

If Yes, answer questions 1 through 4 below. Attach a separate sheet and/or exhibits if necessary:

1. Describe in complete detail the extent of exposure during the performance and the nature of the entertainment: _____
2. Furnish additional information concerning the condition of the premises and how they are suitable for the proposed entertainment: _____
3. Fully describe the actions you will take to prevent any adverse effects on public safety, health, or order: _____
4. Identify whether and how you will regulate access by minors to the premises: _____

Days/Hours of Business Operation July 10 2021 12pm-4pm

Pursuant to MGL, Chapter 62C, Section 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all State tax returns, and have paid all State taxes under the law.

[Signature] owner

Signature of applicant & title

Federal I.D. #

[Signature]

Signature of individual or corporate name

Federal I.D. #

[Signature]

Signature of Manager

Federal I.D. #

[Signature]

Signature of Partner

Federal I.D. #

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes & regulations, including zoning ordinances, health regulations & building & fire codes.

[Signature]
Building Commissioner

[Signature] Matthew O'Neil
Board of Health

[Signature]
Fire Department

[Signature]
Police Department

comments:

Required signatures to be obtained by the applicant prior to submission of new applications.



OFFICE OF THE SELECTMEN
 732 MAIN STREET
 HARWICH, MA 02645
 508-430-7513

APPLICATION FOR COMMON VICTUALLERS LICENSE

Fee: \$50 New application Annual # of seats 21
 Renewal Seasonal Opening date 7/1/21 (Estimate)

In accordance with the provisions of the Statutes relating thereto, application for a Common Victuallers license is hereby made by:

Business Name CDUT Corp Phone ()
 Doing Business As (d/b/a) Upper Crust Pizza
 Business Address 1421 Orleans-Harwich Rd, Harwich MA 02645
 Mailing Address _____
 Email Address Ueni.slavatomiva@gmail.com
 Name of Owner _____

(If corporation or partnership, list name, title and address of officers)
Ueni Slava Tomova - President, Secretary, Director
Christian Diaz - Vice President, Treasurer, Director
* [Signature] - president
 Signature of applicant & title Federal I.D. #

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required under law.

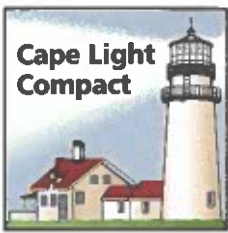
CDUT Corp By [Signature]
 Signature of individual or corporate name Corporate officer (if applicable)

REGULATORY COMPLIANCE FORM

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes and regulations, including zoning ordinances, health regulations and building and fire codes.

[Signature] [Signature] [Signature]
 Building Commissioner Board of Health Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.



Cape Light Compact JPE
261 Whites Path, Unit 4, South Yarmouth, MA 02664
Energy Efficiency 1.800.797.6699 | Power Supply 1.800.381.9192
Fax: 774.330.3018 | capelightcompact.org

June 17, 2021

BY: Federal Express and Electronic Mail

Board of Selectmen
Town of Harwich
732 Main Street
Harwich, MA 02645

Re: Cape Light Compact JPE

Dear Selectmen:

The purpose of this letter is to inform the Town that the Governing Board of the Cape Light Compact JPE (the "Compact") intends to vote on certain proposed amendments to Compact's First Amended and Restated Joint Powers Agreement dated as of December 13, 2017 (the "JPA"). The vote to adopt the proposed amendments will take place at the July 21, 2021 Governing Board meeting, or at a later date if the Governing Board decides that a later date is more desirable or appropriate.

While the power to amend the JPA generally lies with the Governing Board, the Members are required to be given advance notice under Article XV of the JPA which provides for at least thirty (30) days advance written notice prior to taking a Governing Board vote to adopt such amendment(s).

The Governing Board is proposing to amend Article V(D), Manner of Acting and Quorum of the JPA. The specific text of the proposed amendments is set forth below. The proposed amendments are a response to the June 15, 2021 expiration of Governor Baker's pandemic Executive Order Suspending Certain Provisions of the Open Meeting Law (the "Order"). As you know, the Order expressly permitted members of a public body to participate in a meeting remotely. While the Order was in effect, all members of the Compact's Governing Board have been able to participate in meetings remotely and the Compact has been able to consistently achieve a quorum with nearly 80% of member towns participating remotely on average. Prior to issuance of the Order, obtaining a physical quorum was challenging, as the Compact has a large board consisting of one board member representing each of its twenty-one towns, and one representing Dukes County. The distance required to travel in order to attend board meetings in person is significant, especially for the seven Martha's Vineyard representatives who, even in good weather, need to devote an entire day to attend a two and a half hour meeting because of the required car and ferry travel. Winter storms often make in-person attendance impossible.

Working Together Toward A Smarter Energy Future

Aquinnah | Barnstable | Bourne | Brewster | Chatham | Chilmark | Dennis | Dukes County | Eastham | Edgartown | Falmouth
Harwich | Mashpee | Oak Bluffs | Orleans | Provincetown | Sandwich | Tisbury | Truro | Wellfleet | West Tisbury | Yarmouth

During the months prior to the end of the emergency Order, the Board discussed options to continue its very successful remote participation practice. Recognizing that effectuating changes to the Open Meeting Law was out of its immediate control, the Board looked at its governing document, the JPA, for possible options to continue to allow Board members to participate remotely. Compact legal counsel, BCK Law, presented the Board with the option of changing the current quorum requirements of the Governing Board, Article V(D) of the JPA (see attached June 4, 2021 memorandum from legal counsel). Counsel proposed that a simple majority of the Executive Committee must be physically present to attain a quorum to satisfy the OML requirements. However, in order for a meeting of the Governing Board to convene and take action, additional Governing Board members equal to or greater than a simple majority of the Municipal Members of the Governing Board must be physically present or participating remotely. As set forth in the memorandum, Compact counsel is of the opinion that amending the JPA as set forth below will actually have the effect of increasing Governing Board member participation and thus eliminate (or at least significantly reduce) the need for the Executive Committee to meet in place of the full board, and thus, the amendments, when implemented, should expand Municipal Members' rights as their appointed Directors on the Governing Board should be able to participate in and vote virtually at all Governing Board meetings. Yesterday, the Governor signed legislation which extends the ability of members of public bodies to continue to participate remotely in public meetings through April 1, 2022. However, the Governing Board still intends to take a vote on the proposed amendments at its July board meeting.

The specific language of the proposed amendments to Article V(D) are as follows (**red text** is proposed new language, ~~strikeout text~~ is for suggested deletions, **blue text** has been moved):

A simple majority of the members of the Executive Committee (including the Chair or, in the Chair's absence, the person authorized to chair the meeting) must be physically present to attain a quorum. In order for a meeting of the Governing Board to convene and take action, additional members of the Governing Board equal to or greater than a majority of the Municipal Members of the Governing Board must be physically present or participating remotely (the "Additional Participating Governing Board Members"). By way of example, if the Governing Board has a total of twenty-one Municipal Members, and five members of the Executive Committee (including the Chair or, in the Chair's absence, the person authorized to chair the meeting) are physically present, an additional six Governing Board members must participate in person or remotely in order for a meeting to convene. If there are not enough Additional Participating Governing Board Members to attain a majority of the Governing Board, the provisions of Article V(C) (Executive Committee) shall apply to convening and taking action at a meeting to the meeting.

The Governing Board shall act by vote of a majority of the Directors of the Municipal Members present and voting at the time of the vote. Directors may participate in meetings remotely in accordance with applicable laws regarding remote participation, including the regulations of the Office of the Attorney General governing remote participation, 940 C.M.R. 29.10. [moved up and edited slightly] Unless altered by the Governing Board in accordance with this Agreement, each Municipal Member shall be entitled to select one (1) Director whose vote shall be

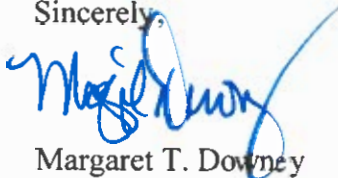
~~equal in weight to the Director of any other Municipal Member, except as expressly set forth in the succeeding paragraphs. Directors may participate in meetings remotely in accordance with the regulations of the Office of the Attorney General governing remote participation, 940 C.M.R. 29.10. [moved up] In accordance with 940 C.M.R. 29.10 and the Open Meeting Law, G.L. c. 30A, §§18-25, a simple majority of the Directors of the Municipal Members must be physically present to attain a quorum.~~ County Representatives shall not count towards a quorum as they have limited participation rights. Directors abstaining from voting shall be counted for meeting quorum purposes, but their votes shall not count with respect to the matters they abstain from voting on. By way of example, if ten (10) Directors from the Municipal Members are present and four (4) abstain from voting, and the remaining Directors split their votes four (4) in favor, two (2) against, the motion would pass.

While a quorum is present *plus the Additional Participating Governing Board Members*, unless another provision is made by law, this Agreement or by the Cape Light Compact JPE's own rules, all business shall be determined by a majority vote of the Directors of the Municipal Members then present and voting. *Directors participating remotely are to be considered present and may vote.* Notwithstanding the foregoing, any vote involving a matter concerning issues which would or could bear in a direct and material fashion on the financial interests of the Municipal Members shall be taken by a weighted vote in which the vote of each Director shall be weighted in the same proportion as the population of the Municipal Member such Director represents bears to the whole population of the Municipal Members of the Cape Light Compact JPE, such population as determined, in the case of Barnstable County, by the most recent federal census, or decennial census, and, in the case of Dukes County, by the most recent data available from the Martha's Vineyard Commission. In case of a dispute as to whether a vote shall be taken on a weighted basis as set forth in this paragraph or on a one (1) town, one (1) vote basis as set forth in the preceding paragraph of this subsection, the determination shall be made by weighted vote as set forth herein. Exhibit B sets forth the population for each Municipal Member, and provides an example of a vote taken in accordance with weighted voting procedures.

Members having any comments on the proposed amendments are being asked to provide them to their Director in advance of the July meeting. Compact counsel is also available to answer questions from your town counsel.

Please let me know if you have any questions.

Sincerely,



Margaret T. Downey
Cape Light Compact JPE Administrator

Enclosure

Cc: Valerie Bell, CLCJPE Director, via email



ATTORNEYS AT LAW

The firm has attorneys admitted to practice in Massachusetts, Idaho, Vermont, District of Columbia and New Hampshire (Inactive)

TELEPHONE: 617.244.9500
FACSIMILE: 802.419.8283
E-MAIL: bckboston@bck.com
WEBSITE: www.bck.com

MEMORANDUM

TO: Cape Light Compact JPE Governing Board and Administrator
FROM: BCK Law, P.C./EMO
DATE: June 4, 2021
RE: Quorum Issues/Amending the JPA

I. BACKGROUND

The purpose of this memorandum is to provide the Governing Board of the Cape Light Compact JPE (the "Compact") with background information regarding the quorum requirements under the Open Meeting Law ("OML") and the Compact's First Amended and Restated Joint Powers Agreement dated December 13, 2017 (the "JPA"), and make recommendations regarding amending the JPA quorum provisions.

II. DISCUSSION

A. Applicable OML Provisions and New OML Bills

Under the OML, a quorum is defined as "a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision." G.L. c. 30A, § 18. The remote participation regulations promulgated under the OML separately require a quorum be physically present. 940 CMR 29.10(4)(b) provides as follows: "[a] quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be *physically present* at the meeting location, as required by M.G.L. c. 30A, § 20(d)." (emphasis added.)

On March 12, 2020, in response to the pandemic, Governor Baker issued an Executive Order Suspending Certain Provisions of the Open Meeting Law (the "Order"). Among other things, the Order expressly permits all members of a public body to participate in a meeting remotely, and it suspended the Open Meeting Law's requirement that a quorum of the body as well as the body's chair be physically present at the meeting. The Governor is ending the pandemic emergency orders on June 15, 2021, though there are efforts to extend the OML Order

through September 1, 2021. New bills have also been introduced to permanently permit remote participation for all members of public bodies under the OML (H.B. 3213 and S.B. 2104), and hearings on these bills were held on June 1, 2021.

B. JPA Provisions Regarding Quorum

As noted above, under the OML, a quorum is defined as “a simple majority of the members of the public body, *unless otherwise provided in a general or special law, executive order or other authorizing provision.*” G.L. c. 30A, Section 18 (emphasis added). On the mass.gov website, there is a page for FAQs about the OML and it states “[t]he Open Meeting Law does not define what constitutes an ‘authorizing provision,’ but where a general or special law sets a body’s or type of body’s number of members or quorum requirement, no other provision can set a different number or requirement.” See <https://www.mass.gov/service-details/frequently-asked-questions-about-the-open-meeting-law-public-bodies-quorum-and>). In BCK’s view, the “authorizing provision” could be the Joint Powers Statute, or the JPA, or both. In 2017, the OAG agreed that the JPA could establish OML quorum requirements in communications with BCK.

In order for the Compact to address the difficulty in obtaining a physical quorum, it will need to lower the quorum to a number which is less than a majority of the Governing Board members. The current quorum requirement is as follows:

Art. V(D) Manner of Acting and Quorum.

The Governing Board shall act by vote of a majority of the Directors of the Municipal Members present and voting at the time of the vote. (emphasis added).
Unless altered by the Governing Board in accordance with this Agreement, each Municipal Member shall be entitled to select one (1) Director whose vote shall be equal in weight to the Director of any other Municipal Member, except as expressly set forth in the succeeding paragraphs. Directors may participate in meetings remotely in accordance with the regulations of the Office of the Attorney General governing remote participation, 940 C.M.R. 29.10. In accordance with 940 C.M.R. 29.10 and the Open Meeting Law, G.L. c. 30A, §§18-25, a simple majority of the Directors of the Municipal Members must be physically present to attain a quorum. (emphasis added). County Representatives shall not count towards a quorum as they have limited participation rights. Directors abstaining from voting shall be counted for meeting quorum purposes, but their votes shall not count with respect to the matters they abstain from voting on. By way of example, if ten (10) Directors from the Municipal Members are present and four (4) abstain from voting, and the remaining Directors split their votes four (4) in favor, two (2) against, the motion would pass.

While a quorum is present, unless another provision is made by law, this Agreement or by the Cape Light Compact JPE’s own rules, all business shall be determined by a majority vote of the Directors of the Municipal Members then present and voting. Notwithstanding the foregoing, any vote involving a matter concerning issues which would or could bear in a direct and material fashion on the financial interests of the Municipal Members shall be taken by a weighted vote in which the vote of each

Director shall be weighted in the same proportion as the population of the Municipal Member such Director represents bears to the whole population of the Municipal Members of the Cape Light Compact JPE, such population as determined, in the case of Barnstable County, by the most recent federal census, or decennial census, and, in the case of Dukes County, by the most recent data available from the Martha's Vineyard Commission. In case of a dispute as to whether a vote shall be taken on a weighted basis as set forth in this paragraph or on a one (1) town, one (1) vote basis as set forth in the preceding paragraph of this subsection, the determination shall be made by weighted vote as set forth herein. Exhibit B sets forth the population for each Municipal Member, and provides an example of a vote taken in accordance with weighted voting procedures.

C. Role of Executive Committee

The Executive Committee has acted in lieu of the full Governing Board many times when the Governing Board failed to meet quorum requirements. This happened twice in 2019 (April and June meetings).

Art. V(C) Executive Committee.

*At such time as there are more than five (5) Municipal Members, there shall be an Executive Committee composed of no less than five (5) Directors elected by the Governing Board from among the Directors appointed by the Municipal Members. The Executive Committee shall be selected by majority vote of all of the Directors of the Municipal Members. **In addition to the delegation of powers set forth in Article V(A) (Powers of Governing Board), the powers of the Governing Board shall be delegated to the Executive Committee in the following circumstances: (i) when a quorum of the full Governing Board is not present for a regularly scheduled meeting; and (ii) exigent circumstances require Governing Board action, and there is insufficient time to convene a regular meeting of the Governing Board.** (emphasis added.)*

The Executive Committee shall conduct its business so far as possible in the same manner as is provided by this Agreement by the Governing Board. A majority of the Executive Committee shall constitute a quorum. The Executive Committee shall keep records of its meetings in form and substance as may be directed by the Governing Board and in accordance with the Open Meeting Law, G.L. c. 30A, §§18-25, and other applicable law.

Any Director who is not a member of the Executive Committee may attend and participate in Executive Committee meetings, but may not vote. Attendance may be in-person or by telephone.

From time to time upon request and at each meeting of the Governing Board, the Executive Committee shall make a full report of its actions and activities since the last meeting of the Governing Board.

If two (2) members of the Executive Committee object to the affirmative action taken by the Executive Committee, they may appeal such decision within forty-eight (48) hours of such action or vote by requesting a special meeting of the Governing Board in accordance with Article VI(C) (Special Meetings) which must occur as soon as possible

but no later fourteen (14) days after the Executive Committee action if the original Executive Committee action was necessitated by exigent circumstances. At such special meeting, the Governing Board may overturn the action or vote of the Executive Committee by a two-thirds vote of the Directors. A vote by the Executive Committee to take no action cannot be appealed.

D. Proposed Amendments to JPA

BCK proposes to amend the quorum provisions in the JPA to address the difficulties that the Compact has had in achieving a quorum of the full Governing Board. BCK recommends that a simple majority of the members of the Executive Committee (including the Chair or, in the Chair's absence, the person authorized to chair the meeting) must be physically present to attain a quorum to satisfy OML requirements. However, in order for a meeting of the Governing Board to convene and take any action, additional Governing Board members equal to or greater than a simple majority of the Municipal Members of the Governing Board must be physically present or participating remotely.

The specific language of the proposed amendments to Art. V(D) Manner of Acting and Quorum are as follows (**red text** is proposed new language, ~~strikeout text~~ is for suggested deletions, **blue text** has been moved):

A simple majority of the members of the Executive Committee (including the Chair or, in the Chair's absence, the person authorized to chair the meeting) must be physically present to attain a quorum. In order for a meeting of the Governing Board to convene and take action, additional members of the Governing Board equal to or greater than a majority of the Municipal Members of the Governing Board must be physically present or participating remotely (the "Additional Participating Governing Board Members"). By way of example, if the Governing Board has a total of twenty-one Municipal Members, and five members of the Executive Committee (including the Chair or, in the Chair's absence, the person authorized to chair the meeting) are physically present, an additional six Governing Board members must participate in person or remotely in order for a meeting to convene. If there are not enough Additional Participating Governing Board Members to attain a majority of the Governing Board, the provisions of Article V(C) (Executive Committee) shall apply to convening and taking action at a meeting to the meeting.

The Governing Board shall act by vote of a majority of the Directors of the Municipal Members present and voting at the time of the vote. Directors may participate in meetings remotely in accordance with applicable laws regarding remote participation, including the regulations of the Office of the Attorney General governing remote participation, 940 C.M.R. 29.10. [moved up and edited slightly] Unless altered by the Governing Board in accordance with this Agreement, each Municipal Member shall be entitled to select one (1) Director whose vote shall be equal in weight to the Director of any other Municipal Member, except as expressly set forth in the succeeding paragraphs. ~~Directors may participate in meetings remotely in accordance with the regulations of the Office of the Attorney General governing remote participation, 940 C.M.R. 29.10. [moved up]~~ In accordance with 940 C.M.R. 29.10 and the Open Meeting

~~Law, G.L. c. 30A, §§18-25, a simple majority of the Directors of the Municipal Members must be physically present to attain a quorum.~~ County Representatives shall not count towards a quorum as they have limited participation rights. Directors abstaining from voting shall be counted for meeting quorum purposes, but their votes shall not count with respect to the matters they abstain from voting on. By way of example, if ten (10) Directors from the Municipal Members are present and four (4) abstain from voting, and the remaining Directors split their votes four (4) in favor, two (2) against, the motion would pass.

While a quorum is present *plus the Additional Participating Governing Board Members*, unless another provision is made by law, this Agreement or by the Cape Light Compact JPE's own rules, all business shall be determined by a majority vote of the Directors of the Municipal Members then present and voting. *Directors participating remotely are to be considered present and may vote.* Notwithstanding the foregoing, any vote involving a matter concerning issues which would or could bear in a direct and material fashion on the financial interests of the Municipal Members shall be taken by a weighted vote in which the vote of each Director shall be weighted in the same proportion as the population of the Municipal Member such Director represents bears to the whole population of the Municipal Members of the Cape Light Compact JPE, such population as determined, in the case of Barnstable County, by the most recent federal census, or decennial census, and, in the case of Dukes County, by the most recent data available from the Martha's Vineyard Commission. In case of a dispute as to whether a vote shall be taken on a weighted basis as set forth in this paragraph or on a one (1) town, one (1) vote basis as set forth in the preceding paragraph of this subsection, the determination shall be made by weighted vote as set forth herein. Exhibit B sets forth the population for each Municipal Member, and provides an example of a vote taken in accordance with weighted voting procedures.

BCK believes that amending the JPA as set forth above will actually have the effect of increasing Governing Board member participation and thus eliminate (or at least significantly reduce) the need for the Executive Committee to meet in lieu of the full board. **Thus, the amendments when implemented should expand Municipal Members' rights as their appointed Directors on the Governing Board should be able to participate in and vote virtually at all Governing Board meetings.** Given current participation rates in the pandemic, Governing Board attendance should significantly improve from historic pre-pandemic rates if the proposed amendments are implemented. Of the 12 meetings held from April of 2020 through April of 2021, 9 meetings had 15 or more Governing Board members in. This is especially true for the Directors representing the towns on Martha's Vineyard. Should this trend continue, it may no longer be necessary to notice every meeting as both an Executive Committee and Governing Board meeting.

E. Power to Amend Quorum Provisions in JPA

In 2017, Jonathan Sclarsic, Esq. at the OAG told BCK that while there is no case law on point, the OAG takes the view that a board cannot set its own quorum requirements for public policy reasons. Therefore, if the Compact were to adopt his view, new quorum requirements would need to be approved by the JPE's Municipal Members. This opinion is not legally binding on the Compact, and Jonathan Sclarsic is no longer with the OAG. There are multiple

OML determinations that state the following standard for reviewing complaints: “[t]he Division of Open Government is charged specifically with reviewing complaints to determine compliance with the Open Meeting Law, G.L. c. 30A, §§ 18-25. The Division does not review for compliance with a public body’s own policies and procedures.” OML 2021–20; 2019-85 (“Our Division only has jurisdiction to evaluate Open Meeting Law violations and therefore we decline to review any allegations relating to Board regulations or municipal ordinance.”; 2013-162; OML determination dated 9/4/12 (Cambridge Historical Commission). In BCK’s opinion, because the proposed amendments will actually expand Municipal Members’ rights under the JPA, and the JPA only provides for Member approval of JPA amendments dealing with eligibility for membership/addition of Members (see Article XV of the JPA), liability of members and termination of the Compact, approval of the Municipal Members is not legally required.

III. RECOMMENDATIONS/NEXT STEPS

If the Governing Board wants to consider amending the JPA, we recommend lowering the threshold of the Governing Board quorum to a quorum of the Executive Committee (including the Chair). While this is a small number and thus could appear to be a drastic change, in reality the current practice is that when the Compact is unable to obtain a physical quorum of the full Governing Board, the meeting then becomes a meeting of Executive Committee. We are recommending adding a requirement that additional members be present (remotely or in person) to attain a majority of the full board before the Governing Board can convene and take action. In practice, this should mean that it is far less likely that the Executive Committee would need to be used in lieu of the full board and thus have the effect of increasing Municipal Members’ voting rights.

The Governing Board will need to decide if it wants to (i) follow the OAG’s guidance on requiring the Municipal Members to approve the amendments, or (ii) take the position the OAG has no authority over JPE governance and move forward with the Governing Board amending the JPA without seeking Municipal Member approval. If Municipal Member approval is sought, we recommend drafting a short memorandum explaining the necessity of the amendments, reaching out to KP Law, and offering to have a Zoom call with other Municipal Members’ town counsel to answer any questions regarding the proposed amendments. If the Governing Board decides to proceed with the board taking up the amendments, amending the JPA can be accomplished in a matter of a few months (30 days’ advance notice to members is required under Article XV of the JPA.)

OLD BUSINESS

MEETING MINUTES

DHY Clean Waters Community Partnership

Dennis, Harwich, and Yarmouth

Date: 06/18/2021

Time: 9:00 AM

Location: Conference (Teams) Call

Participants:

Tom Andrade, Diane Chamberlain, Liz Sullivan, Paul McCormick, John Terrio (Town of Dennis)

Dan Pelletier, Joe Powers (Town of Harwich)

Jeff Colby, Mark Forest, Curt Sears, Peter Smith, Bob Whritenour (Town of Yarmouth)

Joe Manning, Peter McDowell, Clara Mclardy

Kara Johnston, David Young (CDM Smith)

Meeting Summary:

1. Curt Sears made motion to approve minutes of 03-19-21. Mark Forest seconded. Unanimous
2. Discussion by Mark Forest of Letters from Yarmouth BOS to Town of Harwich and Dennis. He reviewed the letter sent to each town on May 27, 2021 and reiterated Yarmouth will be bringing a wastewater article to this falls town meeting.
3. Town Updates and Status:
 - a. Dennis
 - i. Spring 2021 Town Meeting had three wastewater articles
 1. \$300,000 transfer to Wastewater Stabilization Fund – approved (fund now has over \$2 Million)
 2. \$100,000 capital for planning - approved
 3. \$660,000 Phase 1 Survey and Preliminary Design – Did not pass. Fell short by 5 votes of required 2/3rds vote.
 - ii. Dennis previously set up its wastewater cost recovery mechanisms
 - iii. Swan Pond Peer Review is nearing completion

- iv. Dennis is intending to hold wastewater public outreach meetings with focus of completing CWMP and it will be a focus at upcoming Select Board meetings.
- v. Dennis previously approved DHY Agreement
- vi. WIC has conducted two recent meetings
- vii. Route 28 Dennis MassDOT Project is at 25% design

b. Harwich

- i. Selectman Steven Ford passed away on April 9, 2021
- ii. New Selectman Mary Anderson replaced Ed McManus who ran for Sewer Commission but was not elected.
- iii. Griffin Ryder departed Harwich and is new Brewster DPW Director
- iv. Special Town Election for BOS Vacancy on 9/21
- v. BOS reorganized. Michael MacAskill is new Chair.
- vi. Harwich will not be proceeding in DHY as current organizational structure has been contemplated. Mike MacAskill has authorized Joe Powers to discuss potential future options with Liz Sullivan and Bob Whritenour.

c. Yarmouth

- i. Residents wanted to have DHY on 2021 Spring Town Meeting. Next Town Meeting at end of October 2021.
- ii. Water Infrastructure Investment Fund is now implemented as it passed at the spring ballot.
- iii. Yarmouth has approved CWMP and is ready to move forward
- iv. Spring Town Meeting article was successful for funding to support water main design for first phase of wastewater collection system
- v. Four Corners (Route 28/Main Street Intersection) and Route 28 (Parkers River Bridge to Barnstable) – working with MassDOT to coordinate on sewer design for these areas (design underway and to be completed in 2022)
- vi. Cape Cod Commission shared that Cape Cod Water Protection Trust has brought in \$21 Million and awarded over \$71 Million to date.
- vii. Barnstable has reached out to begin high level talks about an IMA for the Lewis Bay Watershed permit.

4. Community Options moving Forward
 - a. Discussion of Dennis-Yarmouth partnership moving forward
 - i. Needs to be discussed on BOS level in each community.
 - ii. Yarmouth feels a sense of urgency to move forward with wastewater. Recommended that the scenario of Dennis conveying wastewater flow to a Yarmouth WWTP be evaluated.
 - iii. "Mid-Cape" Clean Waters Community Partnership should be considered instead of DY.
5. Fall 2021 Town Meeting Status
 - a. Dennis Fall Town Meeting to be scheduled; typically in October or November.
6. Future Meeting Schedule
 - a. Nothing scheduled and will depend on direction provided by Dennis and Yarmouth over next couple of weeks.
7. Other
 - a. Comment by Clara Mclardy regarding public outreach. Suggestion to be open and clear regarding intentions.
 - b. Question by Peter Smith – Is there potential for Harwich to join back into DHY with a new BOS? No future action anticipated, but Joe Powers will stay in touch with Liz and Bob to keep them updated on Harwich progress.
 - c. Curt: Need to provide environmental information as part of public outreach as well.

Adjourn: 10:00 am

Action Items:

Assigned To	Action Item
CDM Smith	Post approved minutes to DHY website
CDM Smith	Send draft minutes to DHY subgroup

CONTRACTS

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



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

CONTRACTOR LEGAL NAME: Town of Harwich (and d/b/a):		COMMONWEALTH DEPARTMENT NAME: Executive Office of Housing and Econ. Dev. MMARS Department Code: EED	
Legal Address: (W-9, W-4): 732 Main Street, Harwich, MA 02645		Business Mailing Address: 1 Ashburton Place, Rm. 2101, Boston, MA 02108	
Contract Manager: John Rendon	Phone: 774 212-6193	Billing Address (if different):	
E-Mail: jrendon@town.harwich.ma.us	Fax:	Contract Manager: Nicholas Bulens	Phone: 617-788-3620
Contractor Vendor Code: VC6000191822		E-Mail: nicholas.bulens@mass.gov	Fax: 617-788-3605
Vendor Code Address ID (e.g. "AD001"): AD_0001. (Note: The Address ID must be set up for EFT payments.)		MMARS Doc ID(s): 21DredgeHarwichAllen	
		RFR/Procurement or Other ID Number: Dredging2021	
<input checked="" type="checkbox"/> NEW CONTRACT		<input type="checkbox"/> CONTRACT AMENDMENT	
PROCUREMENT OR EXCEPTION TYPE: (Check one option only) <input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget) <input checked="" type="checkbox"/> Department Procurement (includes all Grants - 815 CMR 2.00) (Solicitation Notice or RFR, and Response or other procurement supporting documentation) <input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget) <input type="checkbox"/> Contract Employee (Attach Employment Status Form, scope, budget) <input type="checkbox"/> Other Procurement Exception (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)		Enter Current Contract End Date <i>Prior</i> to Amendment: _____, 20____. Enter Amendment Amount: \$ _____. (or "no change") AMENDMENT TYPE: (Check one option only. Attach details of amendment changes.) <input type="checkbox"/> Amendment to Date, Scope or Budget (Attach updated scope and budget) <input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> Contract Employee (Attach any updates to scope or budget) <input type="checkbox"/> Other Procurement Exception (Attach authorizing language/justification and updated scope and budget)	
The Standard Contract Form Instructions and Contractor Certifications and the following Commonwealth Terms and Conditions document are incorporated by reference into this Contract and are legally binding: (Check ONE option): <input checked="" type="checkbox"/> Commonwealth Terms and Conditions <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services <input type="checkbox"/> Commonwealth IT Terms and Conditions			
COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00 . <input type="checkbox"/> Rate Contract. (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input checked="" type="checkbox"/> Maximum Obligation Contract. Enter total maximum obligation for total duration of this contract (or <i>new</i> total if Contract is being amended). \$36,000.			
PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days ___% PPD; Payment issued within 15 days ___% PPD; Payment issued within 20 days ___% PPD; Payment issued within 30 days ___% PPD. If PPD percentages are left blank, identify reason: <input checked="" type="checkbox"/> agree to standard 45 day cycle <input type="checkbox"/> statutory/legal or Ready Payments (M.G.L. c. 29, § 23A); <input type="checkbox"/> only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)			
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) Grant funding through the Massachusetts Dredging Program (pursuant to Plan Item D017 in the Mass. Capital Investment Plan) to support a public dredging project, in accordance with the scope and additional terms and conditions described in Attachment A, and as described in the attached RFR response.			
ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: <input checked="" type="checkbox"/> 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date. <input type="checkbox"/> 2. may be incurred as of _____, 20____, a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date. <input type="checkbox"/> 3. were incurred as of _____, 20____, a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.			
CONTRACT END DATE: Contract performance shall terminate as of June 30, 2022 , with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the " Effective Date " of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07 , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.			
AUTHORIZING SIGNATURE FOR THE CONTRACTOR:		AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:	
X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature)		X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature)	
Print Name: <u>Joseph Powers</u> Print Title: <u>Town Administrator</u>		Print Name: <u>Mike Kennealy or Designee</u> Print Title: <u>Secretary of Housing and Economic Development</u>	



STANDARD CONTRACT FORM INSTRUCTIONS

CONTRACTOR CERTIFICATIONS

COMMONWEALTH TERMS AND CONDITIONS

INSTRUCTIONS

The following Instructions, Contractor Certifications and the applicable Commonwealth Terms and Conditions are incorporated by reference into an executed Standard Contract Form. Instructions are provided to assist with completion of the Standard Contract Form. Additional terms are incorporated by reference. Links to legal citations are to unofficial versions and Departments and Contractors should consult with their legal counsel to ensure compliance with all legal requirements. Please note that not all applicable laws have been cited.

Contractor Legal Name (and D/B/A): Enter the **Full Legal Name** of the Contractor's business as it appears on the Contractor's W-9 or W-4 Form (Contract Employees only) and the applicable Commonwealth Terms and Conditions. If Contractor also has a "doing business as" (d/b/a) name, BOTH the legal name and the "d/b/a" name must appear in this section.

Contractor Legal Address: Enter the Legal Address of the Contractor as it appears on the Contractor's W-9 or W-4 Form (Contract Employees only) which must match the legal address on the 1099I table in MMARS (or the Legal Address in HR/CMS for a Contract Employee).

Contractor Contract Manager: Enter the authorized Contract Manager who will be responsible for managing the Contract. The Contract Manager should be an Authorized Signatory or, at a minimum, a person designated by the Contractor to represent the Contractor, receive legal notices and negotiate ongoing Contract issues. The Contract Manager is considered "Key Personnel" and may not be changed without the prior written approval of the Department. If the Contract is posted on COMMBUYS, the name of the Contract Manager must be included in the Contract on COMMBUYS.

Contractor E-Mail Address/Phone/Fax: Enter the electronic mail (e-mail) address, phone and fax number of the Contractor Contract Manager. This information must be kept current by the Contractor to ensure that the Department can contact the Contractor and provide any required legal notices. Notice received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or e-mail address will meet any written legal notice requirements.

Contractor Vendor Code: The Department must enter the MMARS Vendor Code assigned by the Commonwealth. If a Vendor Code has not yet been assigned, leave this space blank and the Department will complete this section when a Vendor Code has been assigned. The Department is responsible under the Vendor File and W-9s Policy for verifying with authorized signatories of the Contractor, as part of contract execution, that the legal name, address and Federal Tax Identification Number (TIN) in the Contract documents match the state accounting system.

Vendor Code Address ID: (e.g., "AD001") The Department must enter the MMARS Vendor Code Address ID identifying the payment remittance address for Contract payments, which MUST be set up for EFT payments PRIOR to the first payment under the Contract in accordance with the Bill Paying and Vendor File and W-9 policies.

Commonwealth Department Name: Enter the full Department name with the authority to obligate funds encumbered for the Contract.

Commonwealth MMARS Alpha Department Code: Enter the three (3) letter MMARS Code assigned to this Commonwealth Department in the state accounting system.

Department Business Mailing Address: Enter the address where all formal correspondence to the Department must be sent. Unless otherwise specified in the Contract, legal notice sent or received by the Department's Contract Manager

(with confirmation of actual receipt) through the listed address, fax number(s) or e-mail address for the Contract Manager will meet any requirements for legal notice.

Department Billing Address: Enter the Billing Address or e-mail address if invoices must be sent to a different location. Billing, confirmation of delivery or performance issues should be resolved through the listed Contract Managers.

Department Contract Manager: Identify the authorized Contract Manager who will be responsible for managing the Contract, who should be an authorized signatory or an employee designated by the Department to represent the Department to receive legal notices and negotiate ongoing Contract issues.

Department E-Mail Address/Phone/Fax: Enter the e-mail address, phone and fax number of the Department Contract Manager. Unless otherwise specified in the Contract, legal notice sent or received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or e-mail address will meet any requirements for written notice under the Contract.

MMARS Document ID(s): Enter the MMARS 20-character encumbrance transaction number associated with this Contract, which must remain the same for the life of the Contract. If multiple numbers exist for this Contract, identify all Document IDs.

RFR/Procurement or Other ID Number or Name: Enter the Request for Response (RFR) or other Procurement Reference number, Contract ID Number or other reference or tracking number for this Contract or Amendment which will be entered into the Board Award Field in the MMARS encumbrance transaction for this Contract.

NEW CONTRACTS (Left Side of Form):

Complete this section ONLY if this Contract is brand new. (Complete the CONTRACT AMENDMENT section for any material changes to an existing or an expired Contract, and for exercising options to renew or annual contracts under a multi-year procurement or grant program.)

Procurement or Exception Type: Check the appropriate type of procurement or exception for this Contract. Only one option can be selected. See the Office of the Comptroller Guidance for Vendors Policies (State Finance Law and General Requirements, Acquisition Policy and Fixed Assets) and the Operational Services Division Conducting Best Value Procurements Handbook for details.

Statewide Contract (OSD or an OSD-designated Department): Check this option for a Statewide Contract under OSD, or by an OSD-designated Department.

Collective Purchase approved by OSD: Check this option for Contracts approved by OSD for collective purchases through federal, state, or local government or other entities.

Department Procurement: Check this option for a Department contract procurement including state grants and federal sub-grants under [815 CMR 2.00](#) and State Grants and Federal Subgrants Policy, Departmental Master Agreements (MA). If this is a multi-Department user Contract, state that multi-Department use is allowable in the section labeled "Brief Description."

Emergency Contract: Check this option when the Department has determined that an unforeseen crisis or incident has arisen which requires or mandates immediate purchases to avoid substantial harm to the functioning of government, the provision of necessary or mandated services, or where the health, welfare or safety of clients or other persons or serious damage to property is threatened.

Contract Employee: Check this option when the Department requires the performance of an Individual Contractor, and when the planned Contract performance with an Individual has been classified using the Employment Status



STANDARD CONTRACT FORM INSTRUCTIONS

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Form (prior to the Contractor's selection) as work of a Contract Employee and not that of an Independent Contractor.

Other Procurement Exception: Check this option when another procurement exception exists, such as legislation with specific language naming the Contractor as a recipient of a grant or contract, an existing legal obligation, a prohibition or other circumstance that exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative “earmarks” exempt the Contract solely from procurement requirements; all other Contract and state finance laws and policies apply. Supporting documentation must be attached to explain and justify the exemption.

CONTRACT AMENDMENT (Right Side of Form)

Complete this section for any Contract being renewed, amended, or to continue a lapsed Contract. All Contracts with available options to renew must be amended referencing the original procurement and Contract Document IDs, since all continuing contracts must be maintained in the same Contract file (even if the underlying appropriation changes each fiscal year). See “Amendments, Suspensions, and Termination Policy.”

Enter Current Contract End Date: Enter the termination date of the Current Contract being amended, even if this date has already passed. (Note: Current Start Date is not requested since this date does not change and is already recorded in MMARS.)

Enter Amendment Amount: Enter the amount of the Amendment increase or decrease to a Maximum Obligation Contract. Enter “no change” for Rate Contracts or if there is no change.

Amendment Type: Identify the type of Amendment being made. Documentation supporting the updates to performance and budget must be attached.

Amendment to Date, Scope or Budget: Check this option when renewing a Contract or executing an Amendment (“material change” in Contract terms) even if the Contract has lapsed. The parties may negotiate a change in any element of Contract performance or cost identified in the RFR or the Contractor’s response which results in lower costs, or a more cost-effective or better value performance than was presented in the original selected response, provided the negotiation results in a better value within the scope of the RFR than what was proposed by the Contractor in the original selected response. Any “material change” in the Contract terms must be memorialized in a formal Amendment even if a corresponding MMARS transaction is not needed to support the change. Additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor’s Response only if made using the process outlined in [801 CMR 21.07](#), incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

Interim Contracts: Check this option for an Interim Contract to prevent a lapse of Contract performance whenever an existing Contract is being re-procured but the new procurement has not been completed, to bridge the gap during implementation between an expiring and a new procurement, or to contract with an interim Contractor when a current Contractor is unable to complete full performance under a Contract.

Contract Employee: Check this option when the Department requires a renewal or other amendment to the performance of a Contract Employee.

Other Procurement Exception: Check this option when another procurement exception exists, such as legislation with specific language naming the Contractor as a recipient of a grant or contract; an existing legal obligation; a prohibition or other circumstance that exempts or prohibits a Contract from being

competitively procured, or identify any other procurement exception not already listed. Legislative “earmarks” exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Attach Supporting documentation to explain and justify the exemption and whether Contractor selection has been publicly posted.

COMMONWEALTH TERMS AND CONDITIONS

Identify which version of the Commonwealth Terms and Conditions is incorporated by reference into this Contract: the Commonwealth Terms and Conditions (TC), the Commonwealth IT Terms and Conditions (TC-IT), or the Commonwealth Terms and Conditions for Human and Social Services (TC-HHS). The Comptroller Expenditure Classification Handbook identifies the applicable Commonwealth Terms and Conditions based upon the object code for the contract.

COMPENSATION

Identify if the Contract is a **Rate Contract** (with no stated Maximum Obligation) or a **Maximum Obligation Contract** (with a stated Maximum Obligation) and identify the Maximum Obligation. If the Contract is being amended, enter the new Maximum Obligation based upon the increase or decreasing Amendment. The Total Maximum Obligation must reflect the total funding for the dates of service under the contract, including the Amendment amount if the Contract is being amended. The Maximum Obligation must match the MMARS encumbrance. Funding and allotments must be verified as available and encumbered prior to incurring obligations. If a Contract includes both a Maximum Obligation component and Rate Contract component, check off both. Specific Maximum Obligation amounts or amended amounts and Attachments must clearly outline the Contract breakdown to match the encumbrance.

PROMPT PAY DISCOUNTS

Payments are processed within a 45 day payment cycle through EFT, in accordance with the Commonwealth Bill Paying Policy for investment and cash flow purposes. Departments may NOT negotiate accelerated payments and Payees are NOT entitled to accelerated payments UNLESS a prompt payment discount (PPD) is provided to support the Commonwealth’s loss of investment earnings for this earlier payment, or unless a payment is legally mandated to be made in less than 45 days (e.g., construction contracts, Ready Payments under [M.G.L. c. 29, § 23A](#)). See Prompt Pay Discounts Policy. PPD are identified as a percentage discount which will be automatically deducted when an accelerated payment is made. Reduced contracts rates may not be negotiated to replace a PPD. If PPD fields are left blank, please identify that the Contractor agrees to the standard 45 day cycle, a statutory/legal exemption such as Ready Payments ([M.G.L. c. 29, § 23A](#)), or only an initial accelerated payment for reimbursements or startup costs for a grant, with subsequent payments scheduled to support standard EFT 45 day payment cycle. Financial hardship is not a sufficient justification to accelerate cash flow for *all* payments under a Contract. Initial grant or contract payments may be accelerated for the *first* invoice or initial grant installment, but subsequent periodic installments or invoice payments should be scheduled to support the Payee cash flow needs and the standard 45 day EFT payment cycle, in accordance with the Bill Paying Policy. Any accelerated payment that does not provide for a PPD must have a legal justification in the Contract file for audit purposes explaining why accelerated payments were allowable without a PPD.



STANDARD CONTRACT FORM INSTRUCTIONS CONTRACTOR CERTIFICATIONS COMMONWEALTH TERMS AND CONDITIONS

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE

Enter a brief description of the Contract performance, project name or other identifying information for the Contract to specifically identify the Contract performance, match the Contract with attachments, determine the appropriate expenditure code (as listed in the [Expenditure Classification Handbook](#)) or to identify or clarify important information related to the Contract such as the Fiscal Year(s) of performance (ex. "FY2021" or "FY2021-23"). Identify settlements or other exceptions and attach more detailed justification and supporting documents. Enter "Multi-Department Use" if other Departments can access the procurement. For Amendments, identify the purpose and what items are being amended. Merely stating "see attached" or referencing attachments without a narrative description of performance is insufficient.

ANTICIPATED START DATE

The Department and Contractor must certify when obligations under this Contract/Amendment may be incurred. Option 1 is the default option when performance may begin as of the Effective Date (latest signature date and any required approvals). If the parties want a new Contract or renewal to begin as of the upcoming fiscal year then list the fiscal year(s) (ex. "FY2021" or "FY2021-23") in the Brief Description section. Performance starts and encumbrances reflect the default Effective Date (if no FY is listed) or the later FY start date (if a FY is listed). Use Option 2 only when the Contract will be signed well in advance of the start date and identify a specific future start date. Do not use Option 2 for a fiscal year start unless it is certain that the Contract will be signed prior to the fiscal year. Option 3 is used in lieu of the Settlement and Release Form when the Contract/Amendment is signed late, and obligations are incurred by the Contractor prior to the Effective Date, which the Department has either requested, accepted, or deemed legally eligible for reimbursement, and the Contract includes supporting documents justifying the performance or proof of eligibility and approximate costs. Any obligations incurred outside the scope of the Effective Date under any Option listed, even if the incorrect Option is selected, shall be automatically deemed a settlement included under the terms of the Contract and upon payment to the Contractor will release the Commonwealth from further obligations for the identified performance. All settlement payments require justification and must be under the same encumbrance and object codes as the Contract payments. Performance dates are subject to [M.G.L. c. 4, § 9](#).

CONTRACT END DATE

The Department must enter the date that Contract performance will terminate. **If the Contract is being amended and the Contract End Date is not changing, this date must be entered again here.** A Contract must be signed for at least the initial duration but not longer than the period of procurement listed in the RFR, or other solicitation document (if applicable). No new performance is allowable beyond the end date without an amendment, but the Department may allow a Contractor to complete minimal close out performance obligations if substantial performance has been made prior to the termination date of the Contract and prior to the end of the fiscal year in which payments are appropriated, provided that close out performance is subject to appropriation and funding limits under state finance law, and CTR may adjust encumbrances and payments in the state accounting system to enable final close out payments. Performance dates are subject to [M.G.L. c. 4, § 9](#).

CONTRACTOR AUTHORIZED SIGNATORIES FOR EXECUTION

See Comptroller policies entitled "Department Head Signature Authorization" and "Contractor Authorized Signatory Listing" for guidance.

Authorizing Signature for Contractor/Date: The Authorized Contractor Signatory must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "Anticipated Contract Start Date." Acceptance of payment by the Contractor shall waive any right of the Contractor to claim the Contract/Amendment is not valid and the Contractor may not void the Contract. **Rubber stamps are not acceptable.** Proof of Contractor signature authorization on a **Contractor Authorized Signatory Listing** may be required by the Department if not already on file. **See the Commonwealth's policy on electronic or digital signatures.**

Contractor Name/Title: The Contractor Authorized Signatory's name and title must appear legibly as it appears on the **Contractor Authorized Signatory Listing.**

Authorizing Signature For Commonwealth/Date: The Authorized Department Signatory must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "Anticipated Start Date." **Rubber stamps are not acceptable.** The Authorized Signatory must be an employee within the Department legally responsible for the Contract. See Department Head Signature Authorization. The Department must have the legislative funding appropriated for all the costs of this Contract or funding allocated under an approved Interdepartmental Service Agreement (ISA). A Department may not contract for performance to be delivered to or by another state department without specific legislative authorization (unless this Contract is a Statewide Contract). For Contracts requiring Secretariat signoff, evidence of Secretariat signoff must be included in the Contract file.

Department Name/Title: Legibly enter Authorized Signatory's name and title.

CONTRACTOR CERTIFICATIONS AND LEGAL REFERENCES

Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified, subject to any required approvals. The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein.

Commonwealth and Contractor Ownership Rights. The Contractor certifies and agrees that the Commonwealth is entitled to ownership and possession of all "deliverables" purchased or developed with Contract funds. A Department may not relinquish Commonwealth rights to deliverables nor may Contractors sell products developed with Commonwealth resources without just compensation. The Contract should detail all Commonwealth deliverables and ownership rights and any Contractor proprietary rights.

Qualifications. The Contractor certifies that it is qualified and shall at all times remain qualified to perform this Contract, and that performance shall be timely and meet or exceed industry standards for the performance required, which includes obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability, and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

Laws and Regulations Prohibiting Discrimination and Human Trafficking. Contractors acknowledge and certify as a condition of this Contract that they are responsible for complying fully with all state and federal laws prohibiting



STANDARD CONTRACT FORM INSTRUCTIONS CONTRACTOR CERTIFICATIONS COMMONWEALTH TERMS AND CONDITIONS

discrimination, human trafficking, and forced labor, including but not limited to M.G.L. c. 265 §§ 49-57.

Business Ethics and Fraud, Waste and Abuse Prevention. The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

Collusion. The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud, or unfair trade practices with any other person, and that any actions to avoid or frustrate fair and open competition are prohibited by law and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

Public Records and Access. The Contractor shall provide full access to records related to performance and compliance to the Department and officials listed under [Executive Order 195](#) and [M.G.L. c. 11, §12](#) for six (6) years beginning on the first day after the final payment under this Contract or such longer period as necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor can not claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under [950 CMR 32.00](#).

Debarment. The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation including [Executive Order 147](#); [M.G.L. c. 29, § 29F](#); [M.G.L. c. 30, § 39R](#); [M.G.L. c. 149 §§ 27C, 44C and 148B](#); and [M.G.L. c. 152, § 25C](#).

Applicable Laws. The Contractor shall comply with all applicable state laws and regulations including, but not limited to, the Massachusetts General Laws; the Official Code of Massachusetts Regulations; Code of Massachusetts Regulations (unofficial); [801 CMR 21.00](#) (Procurement of Commodity and Service Procurements, Including Human and Social Services); [815 CMR 2.00](#) (Grants and Subsidies); [808 CMR 1.00](#) (Compliance, Reporting and Auditing for Human And Social Services); AICPA Standards; confidentiality of Department records under [M.G.L. c. 66A](#); and the [Massachusetts Constitution Article XVIII](#), if applicable.

Invoices. The Contractor must submit invoices in accordance with the terms of the Contract and the Commonwealth Bill Paying Policy. Contractors must be able to reconcile and properly attribute concurrent payments from multiple Departments. Final invoices in any fiscal year must be submitted no later than August 15 for performance made and received (goods delivered, services completed) prior to June 30, in order to make payment for that performance prior to the close of the fiscal year to prevent reversion of appropriated funds. Failure to submit timely invoices by August 15 or other date listed in the Contract shall authorize the Department to issue an estimated payment based upon the Department's determination of performance delivered and accepted. The Contractor's acceptance of an estimated payment releases the Commonwealth from further claims for these invoices. **If budgetary funds revert due to the Contractor's failure to submit timely final invoices, or for disputing an estimated payment, the Department may deduct a penalty of up to 10% from any final payment in the next fiscal year for failure to submit timely invoices.**

Payments Subject To Appropriation. Pursuant to [M.G.L. c. 29 §§ 26, 27 and 29](#), Departments are required to expend funds only for the purposes set forth by the Legislature and within the funding limits established through appropriation, allotment and subsidiary, including mandated allotment reductions triggered by [M.G.L. c. 29, § 9C](#). A Department cannot authorize or accept performance in excess of an existing appropriation and allotment, or sufficient non-appropriated available funds. Any oral or written representations, commitments, or assurances made by the Department or any other Commonwealth representative are not binding. The Commonwealth has no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by a Contractor outside the scope of a Contract. Contractors should verify funding prior to beginning performance.

Intercept. Contractors may be registered as Customers in the Vendor file if the Contractor owes a Commonwealth debt. Unresolved and undisputed debts, and overpayments of Contract payments that are not reimbursed timely shall be subject to intercept pursuant to [M.G.L. c. 7A, § 3](#) and [815 CMR 9.00](#). Contract overpayments will be subject to immediate intercept or payment offset. The Contractor may not penalize any state Department or assess late fees, cancel a Contract or other services if amounts are intercepted or offset due to recoupment of an overpayment, outstanding taxes, child support, other overdue debts or Contract overpayments.

Tax Law Compliance. The Contractor certifies under the pains and penalties of perjury: (1) tax compliance with federal tax laws; (2) tax compliance with state tax laws including, but not limited to, [M.G.L. c. 62C, § 49A](#), reporting of employees and contractors, withholding and remitting of tax withholdings and child support; and (3) Contractor is in good standing with respect to all state taxes and returns due, reporting of employees and contractors under [M.G.L. c. 62E](#), withholding and remitting child support including [M.G.L. c. 119A, § 12](#), TIR 05-11, New Independent Contractor Provisions and applicable TIRs.

Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts. The Contractor certifies it has not been in bankruptcy or receivership within the last three calendar years which would negatively impact Contractor's ability to fulfill the terms of this Contract or Amendment. Contractor certifies that it will immediately notify the Department, in writing, of any filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is **any risk** to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Commonwealth reserves the right to request additional information regarding the financial viability of the Contractor and its ability to perform. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

Federal Anti-Lobbying and Other Federal Requirements. If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including 31 USC § 1352; other federal requirements; Federal Executive Order 11246; Air Pollution Act; Federal Water Pollution Control Act and Federal Employment Laws.

Protection of Commonwealth Data, Personal Data and Information. The Contractor certifies that all steps will be taken to ensure the security and



STANDARD CONTRACT FORM INSTRUCTIONS CONTRACTOR CERTIFICATIONS COMMONWEALTH TERMS AND CONDITIONS

confidentiality of all Commonwealth data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under [M.G.L. c. 93H](#) and [c. 66A](#) and other applicable state and federal privacy requirements. The Contractor shall comply with [M.G.L. c. 93I](#) for the proper disposal of all paper and electronic media, backups or systems containing personal data and information. The Contractor shall also ensure that any personal data or information transmitted electronically or through a portable device is properly encrypted using (at a minimum) the Commonwealth's "Cryptographic Management Standard" set forth in the Enterprise Information Security Policies and Standards published by the Executive Office for Technology, Services and Security (EOTSS), or a comparable Standard prescribed by the Department. Contractors with access to credit card or banking information of Commonwealth customers certify that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards, and shall provide confirmation of compliance during the Contract. The Contractor shall immediately notify the Department in the event of any security breach, including the unauthorized access, disbursement, use or disposal of personal data or information and, in the event of a security breach, the Contractor shall cooperate fully with the Commonwealth and provide access to any information necessary for the Commonwealth to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including, but not limited to, damages under [M.G.L. c. 214, § 3B](#).

For all Contracts involving the Contractor's access to personal information, as defined in [M.G.L. c. 93H](#), and personal data, as defined in [M.G.L. c. 66A](#), or access to Department systems containing such information or data, Contractor certifies under the pains and penalties of perjury that the Contractor: (1) has read [M.G.L. c. 93H](#) and [c. 66A](#) and agrees to protect any and all personal information and personal data; and (2) has reviewed all of the Enterprise Information Security Policies and Standards published by the Executive Office for Technology, Services and Security (EOTSS), or stricter standards prescribed by the Department. Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all Departments, including all offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with any pertinent security guidelines, standards, and policies; (2) comply with the Enterprise Information Security Policies and Standards published by the Executive Office for Technology, Services and Security (EOTSS), or a comparable set of policies and standards ("Information Security Policy") as prescribed by the Department; (3) communicate and enforce such security guidelines, standards, policies and the applicable Information Security Policy among all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which the Contractor is given access by the contracting Department from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information or personal data (collectively referred to as the "unauthorized use"): (a) immediately notify the contracting Department if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the contracting Department to determine the scope of the unauthorized use; and (c)

provide full cooperation and access to information necessary for the contracting Department and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth may exercise any and all contractual rights and remedies, including, without limitation, indemnification, withholding of payments, Contract suspension, or termination, pursuant to the [Commonwealth's Terms and Conditions](#), the Commonwealth IT Terms and Conditions, or the Commonwealth Terms and Conditions for Human and Social Services. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including, and without limitation, those imposed pursuant to [M.G.L. c. 93H](#) and under [M.G.L. c. 214, § 3B](#) for violations under [M.G.L. c. 66A](#).

Corporate and Business Filings and Reports. The Contractor certifies compliance with all certification, filing, reporting and service of process requirements of the Secretary of the Commonwealth, the Office of the Attorney General or other Departments related to its conduct of business in the Commonwealth, and with relevant requirements of its incorporating state (or foreign entity).

Employer Requirements. Contractors that are employers certify compliance with applicable state and federal employment laws and regulations, including but not limited to prevailing wage laws at M.G.L. c. 149, §§ 26-27D (public construction work); M.G.L. c. 149, § 27F (use of trucks, vehicles and other equipment to perform public works functions); [M.G.L. c. 149, § 27G](#) (moving office furniture and fixtures); [M.G.L. c. 149, § 27H](#) (cleaning state office buildings or buildings leased by the state); [M.G.L. c. 6C, § 44](#) (MassDOT relocation of utilities or utility facility); [M.G.L. c. 7, § 22](#) (contracts for meat products and clothing and apparel); [M.G.L. c. 71, § 7A](#) (transportation of students to public schools); Chapter 195 of the Acts of 2014 (MA Convention Center Authority security guard services); minimum wage and overtime law and regulations ([M.G.L. c. 151](#) and 454 CMR 27.00); child labor laws (M.G.L. c. 149, §§ 56-105); all payment of wages, payroll and timekeeping records, earned sick time, meal breaks, domestic violence leave, temporary worker rights, domestic worker rights and anti-retaliation laws at M.G.L. c. 149 (Labor and Industries); [M.G.L. c. 151A](#) (unemployment insurance and contributions); [M.G.L. c. 152](#) (workers compensation and insurance); [M.G.L. c. 150A](#) (Labor Relations); [M.G.L. c. 153](#) (liability for injuries); 29 U.S.C. c. 8 (Federal Fair Labor Standards); 29 U.S.C. c. 28 (Federal Family and Medical Leave Act); M.G.L. c. 6, § 171A (applicant criminal record information); M.G.L. c. 149, § 105A (MA Equal Pay Act); and M.G.L. c. 175M (Paid Family Medical Leave Act).

Federal And State Laws And Regulations Prohibiting Discrimination. Contractors certify compliance with applicable state and federal anti-discrimination laws, including but not limited to the Federal Equal Employment (EEO) Laws; the Americans with Disabilities Act; 42 U.S.C. § 12101, et seq., the Rehabilitation Act, 29 U.S.C. § 794; 29 U.S.C. § 701; 29 U.S.C. § 623; 42 U.S.C. c. 45; (Federal Fair Housing Act); [M.G. L. c. 151B](#) (Unlawful Discrimination); [M.G.L. c. 151E](#) (Business Discrimination); the Public Accommodations Law [M.G.L. c. 272, § 92A](#); [M.G.L. c. 272, §§ 98](#) and [98A](#), [Massachusetts Constitution Article CXIV](#) and [M.G.L. c. 93, § 103](#); 47 USC § 255 (Telecommunication Act); [M.G.L. c. 149, § 105D](#), [M.G.L. c. 151C](#), M.G.L. c. 272, §§ 92A, [98](#) and [98A](#), and [M.G.L. c. 111, § 199A](#), and Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and resources.



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Small Business Purchasing Program (SBPP). A Contractor may be eligible to participate in the SBPP, created pursuant to [Executive Order 523](#), if qualified through the SBPP COMMBUYS subscription process at: www.commbuys.com and with acceptance of the terms of the SBPP participation agreement.

Limitation of Liability. Contracts may not use the following limitation of liability language unless approved by legal staff at the Office of the Comptroller (CTR) or Operational Services Division (OSD), and it may not be used if a Department is utilizing the Commonwealth IT Terms and Conditions. The term “other damages” in Section 11 of the Commonwealth Terms and Conditions, “Indemnification,” shall include, but shall not be limited to, the reasonable costs the Commonwealth incurs to repair, return, replace or seek cover (purchase comparable substitute commodities and services) under a Contract. “Other damages” shall not include damages to the Commonwealth as a result of third party claims, provided, that this in no way limits the Commonwealth’s right of recovery for personal injury or property damages or patent and copyright infringement under Section 11 or the Commonwealth’s ability to join the contractor as a third party defendant. Further, the term “other damages” shall not include, and in no event shall the contractor be liable for, damages for the Commonwealth’s use of contractor provided products or services, loss of Commonwealth records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth. In no event shall “other damages” exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. Section 11 sets forth the Contractor’s entire liability under a Contract. Nothing in this section shall limit the Commonwealth’s ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference Section 11 of the Commonwealth Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement. The terms in this Clarification may not be modified.

Northern Ireland Certification. Pursuant to [M.G.L. c. 7, § 22C](#), for state agencies, state authorities, the state House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland or if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief, and certifies that it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

Pandemic, Disaster or Emergency Performance. In the event of a serious emergency, pandemic or disaster outside the control of the Department, the Department may negotiate emergency performance from the Contractor to address the immediate needs of the Commonwealth even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

Attorneys. Attorneys or firms providing legal services or representing Commonwealth Departments may be subject to [M.G.L. c. 30, § 65](#), and if providing litigation services must be approved by the Office of the Attorney General to appear on behalf of a Department, and shall have a continuing obligation to notify the Commonwealth of any conflicts of interest arising under

the Contract.

Subcontractor Performance. The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the Department will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors.

EXECUTIVE ORDERS

For covered Executive Departments, the Contractor certifies compliance with applicable Massachusetts Executive Orders including, but not limited to, the specific orders listed below. A breach during the period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts. For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, they shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker.

Executive Order 130. Anti-Boycott. The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See IRC § 999(b)(3)-(4), and IRS Audit Guidelines Boycotts) or engages in conduct declared to be unlawful by [M.G.L. c. 151E, § 2](#). If there is a breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the Commonwealth may rescind this Contract. As used herein, an affiliated company shall be a business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

Executive Order 346. Hiring of State Employees By State Contractors. Contractor certifies compliance with both the conflict of interest law, including [M.G.L. c. 268A, § 5\(f\)](#) and this Order, which includes limitations regarding the hiring of state employees by private companies contracting with the Commonwealth. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor’s company, of a state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

Executive Order 444. Disclosure of Family Relationships With Other State Employees. Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family as well as persons related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.



STANDARD CONTRACT FORM INSTRUCTIONS CONTRACTOR CERTIFICATIONS COMMONWEALTH TERMS AND CONDITIONS

Executive Orders 523, 526 and 565, Executive Order 523 (Establishing the Massachusetts Small Business Purchasing Program). [Executive Order 526](#) (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes Executive Order 478). [Executive Order 565](#) (Reaffirming and Expanding the Massachusetts Supplier Diversity Program). All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices. The Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices. The Contractor also commits to purchase supplies and services from certified minority, women, veteran, service-disabled veteran, LGBT or disability-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons; and Contractor commits to comply with any Applicable Department contractual requirements pertaining to the employment of persons with disabilities pursuant to [M.G.L. c. 7 § 61\(s\)](#). These provisions shall be enforced through the contracting Department, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.



COMMONWEALTH TERMS AND CONDITIONS

This Commonwealth Terms and Conditions form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth of Massachusetts ("State") Departments and Contractors. ***Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.*** Upon execution of the Standard Contract Form these Commonwealth Terms and Conditions will be incorporated by reference. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.

1. Contract Effective Start Date. Notwithstanding verbal or other representations by the parties, the effective start date of performance under a Contract shall be the later of the date the Contract was executed by an authorized signatory of the Contractor, the date the Contract was executed by an authorized signatory of the Department, the date specified in the Contract, or the date of any approvals required by law or regulation.

2. Payments And Compensation. The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to [M.G.L. c. 29, § 26](#), or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to [M.G.L. c. 7A, § 3](#) and [815 CMR 9.00](#). Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a Contract.

3. Contractor Payment Mechanism. All Contractors will be paid using the Comptroller's payment system unless a different payment mechanism is required. The Contractor shall timely submit invoices and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and [815 CMR 4.00](#), provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System shall be used only for Individual Contractors who have been determined to be Contract Employees as a result of the Department's completion of an Internal Revenue Service SS-8 form in accordance with the Omnibus Budget Reconciliation Act (OBRA) 1990, and shall automatically process all state and federal mandated payroll, tax and retirement deductions.

4. Contract Termination Or Suspension. A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen

public emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

5. Written Notice. Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

6. Confidentiality. The Contractor shall comply with [M.G.L. c. 66A](#) if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to, the Department's public records, documents, files, software, equipment or systems.

7. Record-keeping And Retention, Inspection Of Records. The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of six (6) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under [Executive Order 195](#), during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

8. Assignment. The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with [M.G.L. c. 106, § 9-318](#). The Contractor must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.

9. Subcontracting By Contractor. Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

10. Affirmative Action, Non-Discrimination In Hiring And Employment. The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability,



COMMONWEALTH TERMS AND CONDITIONS

handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

11. Indemnification. Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, including the Department, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State may sustain which arise out of or in connection with the Contractor's performance of a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law.

12. Waivers. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

13. Risk Of Loss. The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, Department personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract, until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Department.

14. Forum, Choice of Law And Mediation. Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a state or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The Department, with the approval of the Attorney General's Office, and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

15. Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration. Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law; provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 1 of these Commonwealth Terms and Conditions and filed with the original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and OSD, which incorporates by reference these Commonwealth Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

IN WITNESS WHEREOF, the Contractor certifies under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by their authorized signatory signing the Standard Contract Form.

**COMMONWEALTH OF MASSACHUSETTS
CONTRACTOR AUTHORIZED SIGNATORY LISTING**

Issued May 2004



CONTRACTOR LEGAL NAME :
CONTRACTOR VENDOR/CUSTOMER CODE:

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

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

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

AUTHORIZED SIGNATORY NAME	TITLE

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

_____ Signature

Date:

Title: Telephone:

Fax: Email:

[Listing can not be accepted without all of this information completed.]

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

**COMMONWEALTH OF MASSACHUSETTS
CONTRACTOR AUTHORIZED SIGNATORY LISTING**

Issued May 2004



CONTRACTOR LEGAL NAME :
CONTRACTOR VENDOR/CUSTOMER CODE:

PROOF OF AUTHENTICATION OF SIGNATURE

**This page is optional and is available for a department to authenticate contract signatures.
It is recommended that Departments obtain authentication of signature for the signatory
who submits the Contractor Authorized Listing.**

This Section MUST be completed by the Contractor Authorized Signatory in presence of notary.

Signatory's full legal name (print or type):

Title:

X _____

Signature as it will appear on contract or other document (**Complete only in presence of notary**):

AUTHENTICATED BY NOTARY OR CORPORATE CLERK (PICK ONLY ONE) AS FOLLOWS:

I, _____ (NOTARY) as a notary public certify that I witnessed
the signature of the aforementioned signatory above and I verified the individual's identity on this date:

_____, 20 ____.

My commission expires on:

AFFIX NOTARY SEAL

I, _____ (CORPORATE CLERK) certify that I witnessed the
signature of the aforementioned signatory above, that I verified the individual's identity and confirm the individual's
authority as an authorized signatory for the Contractor on this date:

_____, 20 ____.

AFFIX CORPORATE SEAL

EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT
Massachusetts Dredging Program

ATTACHMENT A
Additional Terms and Conditions

ARTICLE I – Grant Agreement

A Grant Agreement (Agreement) is made by and between the Commonwealth of Massachusetts, acting through the Executive Office of Housing and Economic Development (EOHED), and the **Town of Harwich** (Public Entity), jointly referred to as “The Parties”, based on the application submitted by Public Entity (incorporated herein as Attachment B). The following documents, collectively, are referred to as the “Contract”:

1. Commonwealth of Mass. – Standard Contract Form
2. Commonwealth of Mass. – Contractor Authorized Signatory Forms
3. Attachment A, Additional Terms and Conditions (*this document*)
4. Attachment B, RFR Response / Grant Application and Site Plan

The purpose of the Contract is to identify the roles, responsibilities, and obligations of each party as they relate to the implementation of a Massachusetts Dredging Project (Project), based on an application submitted on: **March 15, 2021**. The entire Contract package sets forth the parties’ mutual intentions and understandings. All Parties agree to devote the necessary resources and to work in good faith to achieve the objectives contemplated herein.

ARTICLE II – Definitions (*The following terms shall have the respective meanings ascribed to them.*)

“**Contract**” shall mean the documents described in Article I in their entirety, as they may be amended, supplemented, or restated from time to time.

“**Contract Manager**” shall mean the staff member assigned to manage/oversee the Contract.

“**Director**” shall mean the Assistant Secretary or designee that manages/supervises the Massachusetts Dredging Program.

“**Grant Application**” shall mean the application submitted in response to the RFR by the Public Entity to the Massachusetts Dredging Program, including a Site Plan, and appended as Attachment B to the Contract.

“**Grant Funds**” shall mean funds disbursed by EOHED to the Public Entity pursuant to the Contract.

“**Massachusetts Dredging Program**” shall mean the grant program authorized by Section 2A of Chapter 228 of the Acts of 2018, and further described in the Massachusetts Dredging Program Request for Proposals (RFR), promulgated by the Secretary.

“**Monetary Penalties**” shall mean the full recoupment by EOHED of funds paid to Public Entity under the Contract and recovery of all Commonwealth administrative costs and legal fees related to the Contract, including enforcement thereof.

“**Project**” shall have the meaning set forth by all of the components outlined in Article III.

“**Project Site**”, also referred to herein as the “**Site**”, shall mean the land, tidelands, submerged lands, appurtenant easements, and other areas, if any, identified in Section III.A hereof, described in the Grant Application, and shown on the Site Plan.

“**Scheduled Drawdown Dates**” shall mean the quarterly milestone dates identified in Article III, Section E by which EOHEd expects to disburse Grant Funds to reimburse the Public Entity for Project costs previously incurred.

“**Secretary**” shall mean the Massachusetts Secretariat of Housing and Economic Development.

“**Maximum Obligation**” shall mean the maximum amount of Grant Funds that the Public Entity is allowed to request/receive for performance under this contract.

ARTICLE III – Project Scope and Budget

Project Name: **Allen Harbor Dredging Project III**

Maximum Obligation of this Contract: **\$36,000**

A. Description of the Project Site

Dredging sites will include the following areas in Allen Harbor in Harwich, Massachusetts:

- Allen Harbor entrance channel.

Dredged material disposal sites will include permitted areas of coastal beach located at Earle Road Beach, Grey Neck Road Beach, and/or Wah Wah Taysee Road Beach.

The Project Site is illustrated in Attachment B.

B. Project Description

The Public Entity will dredge +/- 8,000 cubic yards of sand from the Allen Harbor entrance channel. Dredging sites will be dredged to an authorized depth of -6.00 feet mean low water (MLW) with an allowable overdredge depth of -7.0 feet MLW.

Material will be hydraulically dredged using a cutterhead suction dredge or other conventional dredging equipment as determined by the Public Entity, consistent with permit requirements.

Dredged material will be pumped through pipelines, or transported by other conventional means as determined by the Public Entity, for placement at Earle Road Beach, Grey Neck Road Beach, and/or Wah Wah Taysee Road Beach.

The Project is further described and illustrated in Attachment B.

C. Project/Construction Timeline

MILESTONE	MONTH-YEAR
Start Dredging	May-2021
Dredging 100% Complete	Jun-2021
Post-Dredge Survey Complete	Jun-2021

D. Project Budget

SPENDING CATEGORY	GRANT FUNDS
Bidding/Contracting	\$0.00
Mobilization/Demobilization	\$0.00
Dredging and Material Disposal	\$36,000.00
Docks/Moorings Relocation	\$0.00
Construction Administration	\$0.00
GRAND TOTAL	\$36,000.00

E. Funds Drawdown Schedule

Period (QE = "Quarter Ending")	Amount
QE 9/30/21	\$0.00
QE 12/31/21	\$0.00
QE 3/31/22	\$0.00
QE 6/30/22	\$36,000.00
FY22 Total	\$36,000.00
Grand Total	\$36,000.00
Retainage (5%)	\$1,800.00

ARTICLE IV – Grant Administration

A. Project Management.

The Director shall oversee the Massachusetts Dredging Program on behalf of the Secretary.

B. Use and Disbursement of Grant Funds.

EOHED shall disburse Grant Funds to the Public Entity solely to reimburse the Public Entity for reasonable expenses incurred in connection with the design or construction of the Project, in an aggregate amount not to exceed the Maximum Obligation. EOHED shall use best efforts to disburse Grant Funds within forty-five (45) days after receipt of a reimbursement request and invoices therefor

from the Public Entity. All disbursements of Grant Funds shall be subject to the following terms and conditions:

1. Invoices for actual expenses shall be submitted for reimbursement on a monthly basis as costs are incurred, and by the 15th of the month following the period of performance. Reimbursement shall be only for work completed and/or items purchased, as approved by this Contract. The Contract Manager may disallow ineligible expenses and/or otherwise withhold approval of invoice reimbursement request due to insufficient and/or incorrect information. . The Contract Manager will promptly notify the Public Entity of any disapproved invoice and provide adequate time for correction. With prior authorization from the Director, the Public Entity may deviate from or suspend the Reimbursement Schedule.
2. To maintain the integrity of the Massachusetts Dredging Program’s capital budget, Grant Funds scheduled to be spent within a particular fiscal year (ending on June 30) must be posted in the state’s accounting system, and disbursed no later than August 31 each year. In no event will EOHEd be able to provide reimbursement for any expenses in the fiscal year, after this date. In order to allow enough time for processing and for meeting the deadline, all final reimbursement requests for the fiscal year must be submitted to the Contract Manager, as soon after the close of the fiscal year as possible, but not later than July 31. Requests that are submitted after this date will require a detailed justification for the delay and be subject to additional review and approval by the Director. EOHEd reserves the right to reject late invoices. It is the responsibility of the Public Entity to meet deadlines and ensure that all applicable requests are submitted in the corresponding fiscal year. EOHEd will not accept or be obliged to consider requests seeking reimbursement for expenses from any previously closed fiscal year.
3. EOHEd will set aside 5% of the total grant award as retainage until the Project (or the portion of the Project completed with Grant Funds) is demonstrated to be complete, and by submitting a completed project closeout form pursuant to Article V, Section D. The 5% will be deducted from the final invoice and will be paid promptly upon demonstration that the Project has been completed.

C. General Conditions of Funding

1. Verification of Representations. Funding is contingent upon satisfactory verification of all Project information and representations contained in the Grant Application. Determinations of such verification shall be made in the Secretary’s sole discretion. The Public Entity is responsible for providing to the Secretary such information and documentation that the Secretary deems necessary for such determination.
2. No Obligation to Increase Budget. EOHEd has no obligation to increase or reprogram the Grant Funds for any reason, including, but not limited to, a change in the Project’s budget. It is the sole responsibility of the Public Entity to cover any and all cost overruns and secure any and all additional funding necessary for the Project.
3. No Arbitrage. For funds that are received on a cost reimbursement basis, for which the Public Entity invoices for the costs of performance when rendered, and for lump sum amounts, the funds received by the Public Entity must be held in a segregated non-interest bearing account and shall be expended by the Public Entity within 60 days to avoid arbitrage.
4. Drawdown Deadlines. The Project expenses shall be incurred, and reimbursements shall be requested, on a timeframe that permits Grant Funds to be disbursed in accordance with the

Scheduled Drawdown Dates set forth in Article III. **Failure by the Public Entity to request reimbursement for the full amount of an expected Scheduled Drawdown Date that corresponds with the end of a fiscal year (June 30) may be deemed a material breach of this Agreement authorizing EOHEd to exercise rights and remedies set forth in Article VI, including without limitation the revocation of the Grant.**

5. Additional Investment. If additional funds are required to complete the Project, including, but not limited to, private investment, the Public Entity shall use diligent efforts to obtain the funds necessary to complete the Project as set forth in Article III. The Public Entity is responsible for requiring the Project to be designed to budget and ensuring the Project can be completed as necessary to achieve the economic development goals outlined in the Contract.
6. Remaining Balance. In no event shall EOHEd be obligated to disburse Grant Funds in excess of the actual cost of constructing the Public Improvements. Excess Grant Funds remaining in the budget upon completion of the Project, if any, may not be claimed by the Public Entity.
7. Other Conditions. N/A.

ARTICLE V – Obligations of the Public Entity

A. Obligations of the Public Entity

This Agreement shall in no way relieve the Public Entity from the full force and application of any laws, rules, regulations and orders or requirements. In addition to any other requirements of the Contract, the Public Entity, by accepting any or all of such Grant Funds, shall:

1. Timely commence the Project, and diligently pursue the Project to completion, in accordance with the construction schedule set out in Article III.C.
2. Ensure compliance, including but not limited to the RFR and any and all applicable local, state and federal rules, regulations and laws.
3. Submit regular and complete requests for reimbursement, on a form provided by EOHEd that includes supporting invoices and documentation, pursuant to Article IV.B.
4. Submit timely and complete quarterly reports, on a form provided by EOHEd that includes updates and/or changes to the Project.
5. Submit timely and complete reimbursement requests, with appropriate supporting documentation, in accordance with all Scheduled Drawdown Dates.
6. Cooperate fully and promptly with any other request for information that the Secretary or the Director may make.
7. Ensure that all representations made in the Contract by the Public Entity remain true and correct.
8. Ensure that construction begins on this Project in accordance with Article III.

B. Compliance with Laws Regarding Contractors and Procurement

Without limiting the generality of Section V.A.1 above, the Public Entity shall comply, and ensure that its contractors comply, with the legal requirements set forth below.

1. The Public Entity shall comply with its procurement process and with Section 39M of Chapter 30 and Chapters 30B, 149 and 7 of the Massachusetts General Laws, to the extent applicable.
2. The Public Entity shall use diligent efforts to ensure that any contractors it employs or are employed on its behalf do not unlawfully misclassify workers as self-employed or as independent contractors, and will certify compliance with applicable state and federal employment laws and regulations, including but not limited to minimum wages, unemployment insurance, workers' compensation, child labor, and the Massachusetts Health Care Reform Law, Chapter 58 of the Acts of 2006, as amended.
3. The Public Entity shall use diligent efforts to ensure that within the past five years, no officers, directors, employees, agents, or subcontractors of which the contractor has knowledge, been the subject of (a) an indictment, judgment, conviction, or grant of immunity, including pending actions, for any business- related conduct constituting a crime under state or federal law; or (b) a government suspension or debarment, rejection of any bid or disapproval of any proposed contract subcontract, including pending actions, for lack of responsibility, denial or revocation of prequalification or a voluntary exclusion agreement; or any governmental determination of a violation of any public works law or regulation, or labor law or regulation or any OSHA violation deemed "serious or willful."
4. In accordance with Executive Order 481 and under the pains and penalties of perjury, the Public Entity shall ensure that its Contractors do not knowingly allow the use of undocumented workers in connection with the performance of the contract; that pursuant to federal requirements, the Contractor shall verify the immigration status of all workers assigned to the contract without engaging in unlawful discrimination; and that it shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker(s).

The Public Entity understands and agrees that breach of any of these terms by its contractors during the contract period may be regarded as a material breach, subjecting the Public Entity to sanctions, including but not limited to Monetary Penalties, withholding of payments, contract suspension and termination of the Contract.

C. Signage

If signage is to be erected at or near the Project Site identifying the Project, such signage shall include acknowledgement of grant support from the Commonwealth of Massachusetts and/or the Massachusetts Dredging Program. The Public Entity may contact the Contract Manager for message suggestions, to review draft signage, and/or to request digital copies of the Commonwealth Seal and/or Massachusetts Dredging Program logo.

D. Project Closeout

Upon completion of the Project, the Public Entity shall submit its final request for reimbursement along with a completed closeout form, as provided by EOHED, and a post-dredging survey of the work completed with the Grant Funds. Further, the closeout form shall certify that the scope of work outlined in this contract has been successfully completed and confirm that the Public Entity does not have any other expenses that it expects to be reimbursed from this grant. .

ARTICLE VI – Breach, Mitigation, and Remedies

A. Penalties for Breach of Contract

The Public Entity understands and agrees that in the event of a breach of any material term of the Contract during the contract period, the Secretary may, in his/her sole discretion:

1. Suspend, withhold or rescind the payment of Grant Funds;
2. Impose and collect Monetary Penalties;
3. Suspend, condition or terminate the Contract; and/or
4. Declare the Public Entity ineligible for participation in future programs administered by EOHED.

The Secretary's rights and remedies set forth herein are not exclusive and do not preclude other remedies available to the Secretary at law or in equity. Any failure of EOHED to enforce at any time any provision of the Contract shall in no way be construed to be a waiver of such provision or of any other provision hereof.

B. Failure to Timely Commence or Complete the Project

It shall be a material breach of this Agreement if the Public Entity does not commence construction of the Project by the commencement date set forth in the construction schedule set forth in Article III.C, or if the Public Entity does not diligently pursue the Project to completion in accordance with said construction schedule. If the Secretary determines, in his/her sole discretion, that there is a material failure by the Public Entity to commence or complete the Project in accordance with the terms of the Contract, the Secretary may suspend the Grant (including any payments pending) by sending written notice sent to the Public Entity. The Public Entity shall have an opportunity to cure and to provide clear and convincing evidence that the Project is in compliance with the terms of the Contract within 60 days of the date of the receipt of said notice. Failure to do so will terminate the Contract effective immediately.

C. Post-Completion Maintenance and Operation; No Transfer

Upon completion of the Project, the Public Entity shall maintain and operate the Project infrastructure, and for a period of thirty (30) years following the date of this Grant Agreement, the Public Entity shall not sell, convey, lease or otherwise transfer the ownership or control of the Project infrastructure except with the prior written approval of EOHED, which approval EOHED may grant, condition or deny in its sole discretion. The Secretary, in his/her sole discretion, may recoup previously paid Grant Funds to the Public Entity if the Public Entity sells or otherwise conveys ownership of the Project or any portion thereof in violation of this section VI.C. This section VI.C shall survive the expiration or earlier termination of this Grant Agreement.

D. Completion of the Project After Termination

In the event of any termination of the Contract by the Secretary pursuant to this Article VI, the Public Entity shall submit to EOHED any and all materials that Public Entity owns related to the Project, including but not limited to, documents, financial pro-formas and analysis, studies, drawings, plans, specifications and intellectual property associated with this project in any way. EOHED shall have access to such material consistent with the provisions of Paragraph 7 of the Commonwealth Terms and Conditions. The Public Entity shall further consult with the Director with respect to the means and

strategy for pursuing reasonable and timely completion of the Project in accordance with the purpose and scope as defined in the Contract and the Massachusetts Dredging Program.

ARTICLE VII – Notice

Pursuant to Paragraph 5 of the Commonwealth Terms and Conditions, unless otherwise explicitly set forth in the Contract, all notices or other communications required or permitted to be given hereunder shall be in writing and delivered in person or when delivered by any other appropriate method evidencing actual receipt, addressed as follows (or to such other address and to such other person's attention as any party may from time to time specify by like notice to the other):

To EOHED: **Massachusetts Dredging Program**
Executive Office of Housing and Economic Development
One Ashburton Place, Suite 2101
Boston, MA 02108
Fax: (617) 788-3605

To Public Entity: **Town of Harwich**
Attn: John Rendon
732 Main Street
Harwich, MA 02645

ARTICLE VIII – Miscellaneous

A. Authority

Each party executing the Contract, in whole and in part, represents that such party has the full authority and legal power to do so and that such person, by signing and delivering the Contract, has created a legal, valid and binding and enforceable contract.

B. Amendment, Modification and Waiver

Any request to waive, modify, or discharge any terms of the Contract must be submitted in writing to the Director in the form provided by EOHED. Any amendment to the Contract shall be in writing, signed by all parties. Any oral waiver, change or discharge of any term or provision of the Authority shall be without authority and of no force or effect, whether or not notice has been given or received.

C. Other

1. **Severability**. Should a court of competent jurisdiction hold any of the provisions the Contract as unenforceable, any such decision shall not affect or impair any of the remaining provisions of those of the Contract.
2. **Word Meanings**. Words such as "herein," "hereinafter," "hereof," and "hereunder" refer to the Contract as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The singular shall include the plural, and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires.
3. **Applicable Law**. The Contract shall be construed and enforced in accordance with the laws of the

Commonwealth of Massachusetts, including the Section 63 of Chapter 23A of the General Laws, and the courts of such Commonwealth shall be the sole forum with respect to any legal process arising hereunder.

4. Counterparts. The Contract may be executed in several counterparts, and, as so executed, shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties have not signed the same counterpart.
5. Entire Agreement. The Contract embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

#

Massachusetts Dredging Program

ATTACHMENT B

RFR Response / Grant Application / Site Plan(s)

25 pages including current page.

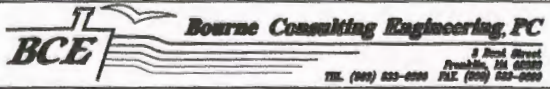
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HTL	+4.62	MLW	0.0
MHW	+3.72		

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PURPOSE: DREDGE	APPLICATION BY: TOWN OF HARWICH

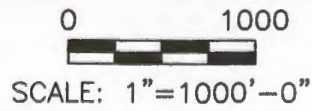
IN: NANTUCKET SOUND
AT: HARWICH
COUNTY: BARNSTABLE STATE: MA
SHEET 1 OF 6
DATE: 04/01/15



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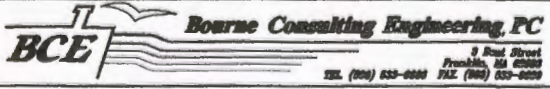
ALLEN HARBOR
 MAINTENANCE DREDGE AREA 304,861
 VOLUME: 20,000± CU.YDS.



100 YR FLOOD	+11.4	NAVD88	+2.3
HTL	+4.62	MLW	+0.0
MHW	+3.72		

**TITLE: PROPOSED DREDGING AND NOURISHMENT
 ALLEN HARBOR**

**IN: NANTUCKET SOUND
 AT: HARWICH
 COUNTY: BARNSTABLE STATE: MA**



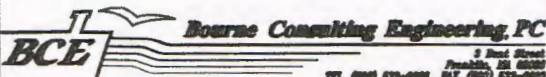
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 DREDGE**

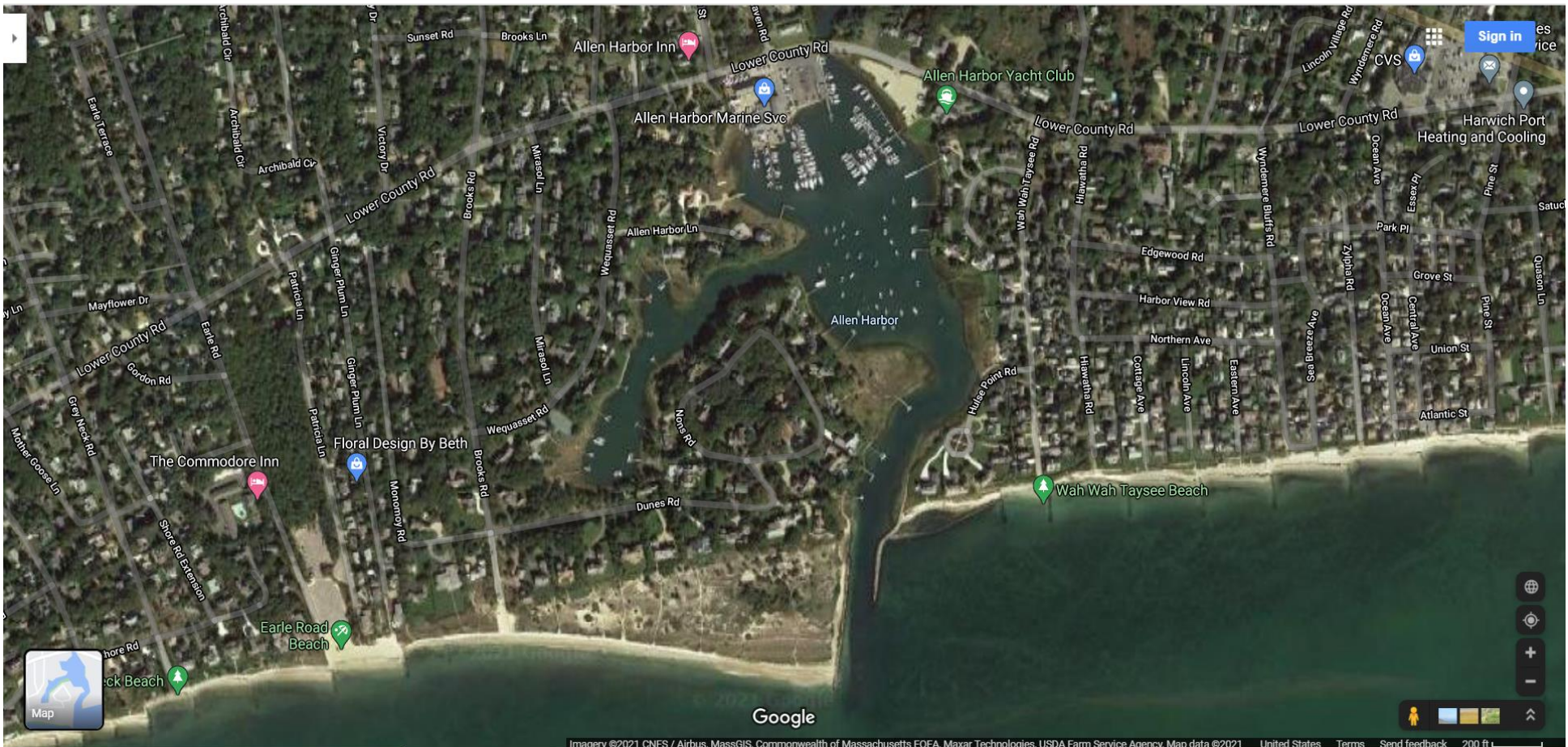
**APPLICATION BY:
 TOWN OF HARWICH**

**SHEET 4 OF 6
 DATE: 04/01/15**

File: X:\35041-35048 Harwich dredge\REGULATORY\ACOE\harwich_dredge_PLAN.dwg

BEACH COORDINATES									CHANNEL COORDINATES	
NORTH	EAST	BEACH LETTER	TYPE	L(FT)	HT (FT)	AVE W (FT.)	AREA (SQ. FT)	VOL. CU. YDS.	NORTHING	EASTING
2702510.99	1033955.73	A	PRIVATE	480	3	40	19200	2133	HERRING RIVER	
2702344.08	1034427.46	A							2701662.24	1034542.87
2703077.14	1034627.18	B	PRIVATE	2280	3	50	114000	12667	2702609.83	1034520.50
2704012.80	1036725.49	B							2703242.02	134605.58
2704012.80	1036725.49	B	PUBLIC	450	3	40	18000	2000	2703495.91	1034621.66
2704092.97	1037175.99	C							2703497.06	1034578.92
2704092.97	1037175.99	C	PRIVATE	920	3	40	36800	4089	2703293.27	1034569.39
2704306.02	1038062.02	C							2701944.64	1034388.47
2704306.02	1038062.02	C	PUBLIC	60	3	40	2400	267	2701810.77	1034479.06
2704314.06	1038120.61	D							2701662.24	1034542.87
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2704526.91	1038920.38	D							2702582.00	1043021.00
2704526.91	1038920.38	D	PUBLIC	60	3	45	2700	300	2702649.00	1043101.00
2704543.89	1038982.30	E							2704646.00	1041727.00
2704543.89	1038982.30	E	PRIVATE	630	3	40	25200	2800	2705023.00	1041662.00
2704703.21	1039589.87	E							2705466.64	1041704.69
2704703.21	1039589.87	E	PUBLIC	230	3	40	9200	1022	2705480.46	1041655.80
2704801.02	1039806.62	F							2704673.00	1041585.00
2704801.02	1039806.62	F	PRIVATE	1700	3	80	136000	15111	2702592.00	1043021.00
2704805.51	1041551.31	F							WYCHMERE HARBOR	
2705328.01	1041775.54	G	PRIVATE	570	3	50	28500	3167	2704781.5	1049390.49
2705431.25	1042272.33	G							2704785.57	1049119.41
2705431.25	1042272.33	G	PRIVATE	1750	3	50	87500	9722	2704678.74	1048562.74
2705690.34	1044010.51	H							2705008.66	1048367.24
2705690.34	1044010.51	H	PRIVATE	4130	3	50	206500	22944	2705769.88	1048210.18
2705139.01	1048110.59	I							2706214.37	1048041.23
2705877.28	1048110.59	J	PRIVATE	790	3	40	31600	3511	2706232.14	1048087.96
2706120.32	1049087.68	J							2705787.64	1048256.92
2706094.09	1049332.17	K	PRIVATE	2020	3	40	80800	8978	2705500.8	1048600.26
2706252.04	1051320.14	K							2704943.73	1048808.38
2706252.04	1051320.14	K	PRIVATE	1040	3	45	46800	5200	2704930.29	1049363.56
2706466.10	1052322.60	L							2704781.5	1049390.49
2706252.04	1052322.60	L	PRIVATE	680	3	45	30600	3400	SAQUATUCKET HARBOR	
2706466.10	1052986.59	M							2702989.72	1049714.82
2706466.10	1052986.59	M	PRIVATE	270	3	40	10800	1200	2706182.8	1049136.84
2706707.08	1053215.71	M							2706627.47	1049320.26
2706707.08	1053215.71	M	PUBLIC	2620	3	50	131000	14556	2706590.69	1049386.22
2707328.25	1055754.89	END							2706174.53	1049214.56
		TOTAL		21510			1054950	117217	2703015.78	1049786.31
									2702969.72	1049714.82

PURPOSE: DREDGE		TITLE: PROPOSED DREDGING AND NOURISHMENT		APPLICATION BY: TOWN OF HARWICH	
100 YR FLOOD	+11.4			IN: NANTUCKET SOUND	
HTL	+4.62			AT: HARWICH	
MHW	+3.72			COUNTY: BARNSTABLE STATE: MA	
NAVD88	+2.3			SHEET 2 OF 6 DATE: 04/02/15	
MLW	0.0				





COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT

Massachusetts Dredging Program
2021 GRANT APPLICATION

SECTION I. PROJECT SUMMARY

1.1 Applicant Municipality (Public Entity): Town of Harwich

1.2 Applicant CEO Name and Title: Joseph Powers, Town Administrator

1.3 Legal Address: 732 Main Street

1.4 City: Harwich 1.5 State: MA 1.6 Zip Code: 02645

1.7 Application Point of Contact (POC) Name and Title: John Rendon, Harbormaster

1.8 POC Email: jrendon@town.harwich.ma.us

1.9 POC Phone: 774 212-6193

1.10 Project Name: Allen Harbor Channel

1.11 Total Project Cost: \$72,000*

***Please Note:** Amount must match Table 4.1 in Section IV.

1.12 Grant Amount Requested: \$36,000*

***Please Note:** Amount must match Table 4.1 in Section IV.

1.13 Is this a joint application between two or more municipalities?

Yes No

1.14 If yes, please list the additional municipalities participating in this application. In addition, please attach a statement of collaboration from each additional municipality.

Click here to enter text.

1.15 Please choose the category that best matches the project's *principal goal*: (**Check one.**)

- Commercial Fishing/Boating
- Recreational Boating
- Public Safety
- Coastal Resiliency

1.16 Please indicate what other program goals, if any, are supported by the project: (**Check all that apply.**)

- Commercial Fishing/Boating
- Recreational Boating
- Public Safety
- Coastal Resiliency

1.17 Please provide a brief description of the project (**150 words or less**).

Annual dredging of Allen Harbor channel is required to maintain its permitted depth of 6 feet at Mean Low Water (MLW). Partly due to a compromised west jetty, severe shoaling occurs throughout the winter making the channel nearly impassable for the hundreds of boats that operate from public slips and moorings, private slips and from the public boat ramp. Dredging is required to ensure safe navigation.

SECTION II. HARBOR INFORMATION

2.1 Harbor Name – Please provide the name of the harbor associated with the project:

Allen Harbor

2.2 Does the project support a [Designated Port Area \(DPA\)](#)?

Yes No

2.3 If yes, please provide the name of the DPA:

Click here to enter text.

2.4 Please provide current counts for the following facilities, infrastructure, and associated jobs in the harbor. **Information should be specific to the harbor named above.** Applicants are expected to be as accurate as possible.

Type of Facility/Infrastructure	No. Publicly Owned	No. Privately Owned	Total <i>Public + Private</i>	No. of Jobs
State/Municipal Boat Ramp	1	N/A	N/A	N/A
State/Municipal Pier or Wharf	1	N/A	N/A	N/A
Moorings (All)	66			N/A
Commercial-Use Moorings only				N/A
Transient/Visitor-Use Moorings only				N/A
Slips (All)	13	115	128	N/A
Commercial-Use Slips only	5		5	N/A
Transient/Visitor-Use Slips only				N/A
Marinas		1	1	18
Boatyards				
Haul and Launch Businesses		6	6	30
Yacht Clubs		1	1	8
Other: Type here.				
Other: Type here.				
Other: Type here.				

2.5 Please indicate which, if any, of the following land uses are present along the harbor's waterfront.

Waterfront Destinations and Land Uses	
Public beach	<input type="checkbox"/>
Public park/trail	<input type="checkbox"/>
Maritime center/museum or similar	<input type="checkbox"/>
Downtown center	<input type="checkbox"/>
Retail/Restaurants	<input type="checkbox"/>
Mixed-use zoning	<input checked="" type="checkbox"/>
Commercial zoning by-right	<input type="checkbox"/>

2.6 Is a public access point to the harbor located within two (2) miles of an Environmental Justice population and/or similar vulnerable populations, such as a CDBG low- and moderate-income census tract? *Please Note: In this context, a public access point is defined as the entrance to a public beach, public boat ramp, public marina, and/or similar harbor-based facility available to the public, whether free of charge, pay for use, or by a permit/sticker available to the public for purchase.* To locate Environmental Justice populations in your community, please see the Commonwealth's [Environmental Justice Viewer](#).

Yes No

2.7 If yes, please complete 2.7(a) and 2.7(b) below.

2.7(a) Please provide the best available street address(es) for the public access point(s). Any address should be searchable using the Commonwealth's [Environmental Justice Viewer](#).

343 Lower County Road, Harwich Port, MA 02646

2.7(b) Please identify the type and name of the public access point(s) and describe the vulnerable population(s) and what benefits the harbor provides for these residents?

Allen Harbor public boat ramp, a state public access facility available to vulnerable population based upon Income that is located approximately .5 miles from facility.

SECTION III. PROJECT DESCRIPTION

3.1 Please provide the following details for the project: (Type "N/A" if not applicable.)

Dredging Method (Hydraulic, Mechanical, or Combination)	Hydraulic
Anticipated Dredge Volume (+/-cubic yards)	8000
Anticipated Dredge Footprint (+/-square feet)	304,860
Anticipated Beach Nourishment Footprint (+/-square feet)	6500
Authorized Depth (specify MLW or MLLW)	6'
Dredge Depth to be Achieved by Project (specify MLW or MLLW)	MLW
Over Dredge Depth (specify MLW or MLLW)	1'

3.2 Has the Public Entity received a dredging grant from the Commonwealth in the last five (5) fiscal years, including the current fiscal year?

Yes No

3.3 Project Site – Please briefly describe the area(s) to be dredged and the disposal/nourishment area(s) to be used.

Approximately 8000 cubic yards of material will be dredged from Allen Harbor inner and outer channel to the permitted depth on 6' MLW. Material has been tested and is permitted to be used for beach nourishment. The public beaches of Grey Neck, Earle Rd and Wah Wah Taysee will be nourished.

3.4 ATTACHMENT (REQUIRED) Please attach a site plan of the Project Site. This attachment is *required* for all applicants. At minimum, this site plan should consist of a satellite image/[Nautical Chart](#) with the Project Site clearly identified.

3.5 Has the Project Site been dredged in the last five (5) years, including the current fiscal year?

Yes No

3.6 Please describe when the Project Site was last dredged and how the work was financed. This question is *required* for all applicants, regardless of when the Project Site was last dredged.

Allen Harbor channel was last dredged in June 2020. Project was financed by 50% of cost from department operating budget and 50% from state dredge grant.

3.7 Please indicate the allowable dredging/construction period for the project.

The requested dredge period is between May 1– June 15, however, dredging could commence prior to May 1 as there is no winter flounder TOY restriction for Allen Harbor.

3.8 Is this project part of a larger, comprehensive dredging project that the Public Entity is currently phasing for reasons of budget and/or size?

Yes No

3.9 If yes, please summarize the phasing and describe the importance of completing this phase in the upcoming dredging/construction season.

Click here to enter text.

3.10 Will dredging occur entirely within public tidelands?

Yes No

3.11 If no, please describe the ownership situation (lease, license, etc.) and how the Public Entity will obtain ownership to complete the project in the upcoming dredging/construction season?

Click here to enter text.

3.12 Project Scope and Need – Please describe the scope of work to be completed and the need for the project. Please include in this description the extent to which shoaling has reduced the available depth (MLW/MLLW) in the Project Site.

Maintenance dredging of shoaled areas within the 304,861 square foot area in the inner and outer channel of Allen Harbor is required every year. There is a large shoal that forms every winter that is exposed at mid to low tide and extends halfway across the navigable channel which poses a significant navigational hazard. In addition there are shoaled areas in the outer channel that reduces the channel depth to 2 -3 feet at mean low. The Town's general dredge permit (NAE-2008-00014) allows the channel to be dredged to minus 6 feet MLW with 1 foot over dredge. All dredge material (sand) within the channel has been tested and determined to be suitable for beach nourishment. The town has 13 boat slips and 66 moorings within the harbor. Also located within the harbor is a private marina/boatyard (Allen Harbor Marine) that has 45 boat slips and Allen Harbor Yacht Club (private) that has 70 boat slips. Boats up to 50 feet in length operate from the harbor; maintaining the channel at its permitted depth is critical to safe navigation. Also within Allen Harbor, a MA State Public Access facility, there is a public landing, float and boat ramp. Keeping the channel open is important for not only the recreational boating community, but it is critical to the economic livelihood of the commercial fishing and charter fishing businesses.

3.13 In the table below, please indicate which permits are required for the project, whether these permits have been secured, and if not secured, when the Public Entity expects to secure them.

	Required Permit	Secured?	Filing Date Month & Year MM/YYYY <i>Use Actual or Anticipated.</i>	Issue Date Month & Year MM/YYYY <i>Use Actual or Anticipated.</i>
<input checked="" type="checkbox"/>	U.S. Army Corp of Engineers (USACE) Section 10 / 404	<input checked="" type="checkbox"/>		
<input type="checkbox"/>	DEP Chapter 91 Waterways	<input type="checkbox"/>		
<input type="checkbox"/>	DEP 401 Water Quality Certification	<input type="checkbox"/>		
<input checked="" type="checkbox"/>	Combined DEP Chapter 91 Waterways and 401 Water Quality Certification	<input checked="" type="checkbox"/>		
<input checked="" type="checkbox"/>	Local Order of Conditions	<input checked="" type="checkbox"/>	3 year extension submitted Mar 2021; expect approval Apr 2021	Current, extended due to COVID emergency declaration

<input checked="" type="checkbox"/>	MEPA – Secretary’s Certificate	<input checked="" type="checkbox"/>		
<input checked="" type="checkbox"/>	CZM Federal Consistency Review	<input checked="" type="checkbox"/>		
<input type="checkbox"/>	DEP Superseding Order of Conditions	<input type="checkbox"/>		
<input type="checkbox"/>	DEP Water Management Act	<input type="checkbox"/>		
<input checked="" type="checkbox"/>	Board of Underwater Archaeological Resources Review	<input checked="" type="checkbox"/>		Included as part of USACE permit
<input type="checkbox"/>	Other: <u>Type here.</u>	<input type="checkbox"/>		
<input type="checkbox"/>	Other: <u>Type here.</u>	<input type="checkbox"/>		
<input type="checkbox"/>	Other: <u>Type here.</u>	<input type="checkbox"/>		

3.14 ATTACHMENT: (REQUIRED) Please attach all issued permits from the table above. Please include all plans and/or drawings associated with these permits.

3.15 Please provide an anticipated project schedule/timeline.

Milestone	Start Date	End Date
Design/Engineering/Permitting*	N/A	
Bidding/Contracting	N/A (County)	
Start Dredging	Late May 2021	N/A
100% Completion	N/A	Early June 2021
Post-Dredge Survey	N/A	June 2021

***Please Note:** It is expected that all design, engineering, and/or permitting associated with a project will be completed by July 1st.

SECTION IV. BUDGET AND FUNDING SOURCES

4.1 Please provide a breakdown of the project cost. *Please note the following:*

- The “Total Match” must be at least 50% of the “Total Project Cost.”
- All match funds must originate from non-state sources.
- Match funds **may not** include pre-construction expenses and/or in-kind contributions.
- Match funds **may not** include spending on past and/or future phases of a larger, comprehensive dredging project. Only costs associated with the bidding and/or construction of this project’s scope of work may be included.
- The “Total Project Cost” and “Total Grant Amount Requested” must match 1.11 and 1.12 in Section I.
- If successful, the Public Entity will be required to provide proof that all match funds have been secured.

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
Spending Category	Grant Request	Match Funds	Cost = Column A + Column B	Source of Match Funds <i>Specify Municipal, Federal, and/or Private.</i>	Match Secured Month & Year MM/YYYY <i>Use Actual or Anticipated.</i>
Bidding/Contracting	N/A				
Mobilization/ Demobilization	N/A				
Dredging and Material Disposal	\$36,000	\$36,000	\$72,000	Department Operating Budget	Jul 2020
Docks/Moorings Relocation	N/A				
Construction Admin.	N/A				
Other: <u>Type here.</u>					
Other: <u>Type here.</u>					
Other: <u>Type here.</u>					
Other: <u>Type here.</u>					
Other: <u>Type here.</u>					
TOTALS				N/A	N/A
	Total Grant Amount Requested	Total Match <i>At least 50% of Total Project Cost</i>	Total Project Cost		

4.2 Are *all* match funds currently secured?

- Yes No

4.3 Briefly describe the source(s) of the Public Entity’s non-state match. **Please indicate who appropriated, awarded, and/or donated these funds and when. If the match is not yet secured, please describe the anticipated source(s) of the funds and the anticipated timeframe for securing them.**

Matching funds are approved and will be available as part of the Harbormaster Department annual operating budget commencing July 2020 (FY21) or July 2021 (FY22).

4.4 **If applicable**, please describe any pre-construction expenses incurred by the Public Entity in **the last three fiscal years**, including the current fiscal year? **Please specify the start and end dates of these expenses and the total amount paid in municipal funds.** *Please Note: In this context, pre-construction expenses are costs associated with a project's study, design, permitting, and/or real property transactions.*

N/A

SECTION V. SUPPORTING THE BLUE ECONOMY

COMMERCIAL FISHING/BOATING

5.1 Does the harbor support commercial fishing? (Do *not* include aquaculture/shellfishing in this question.)

Yes No

5.2 If yes, please describe the harbor’s commercial fishing operations. If available, please provide landing information (species, pounds, value, etc.).

There are 6 commercial fishing boats that operate from the town pier at Allen Harbor. The boats land Lobster (approx. 20K pds), Conch (approx. 40K pds), Sea Bass, Striped Bass, and Tuna; amount of sea bass, striped bass and tuna unknown. In addition there are numerous boats who trailer in at the public access ramp who fish commercially for striped bass and tuna. Very active commercial fishing operation out of Allen Harbor.

5.3 Does the harbor support aquaculture?

Yes No

5.4 If yes, please describe the harbor’s aquaculture/shellfishing operations. If available, please provide acreage and landing information (species, pieces, value, etc.).

The town has a shellfish laboratory that produces plantable shellfish seed (quahogs, oysters) each fall in Harwich waterways, including Allen Harbor. Both recreational and commercial shellfish permits are available.

5.5 Does the harbor support commercial boating (charter boats, cruise boats, tug boats, shipping vessels, etc.)?

Yes No

5.6 If yes, please describe the harbor’s existing commercial boating activities.

There is one permitted charter boat that operates from a town slip in Allen Harbor, and trailered boats with a town permit can run charters. In addition, there are other boats who do not require a town permit who charter from private slips at Allen Harbor Marine. Majority of charter boats fish for striped bass.

5.7 Please provide current vessel counts and job estimates for the following types of commercial vessels operating in the harbor. **Information should be specific to the project harbor only.** Applicants are expected to be as accurate as possible.

Type of Commercial Vessel	No. Operating in Harbor	No. of Jobs
Commercial Fishing Boats (<i>excluding</i> charter/head boats)	6	12
For-Hire Fishing Boats (charter boats, head boats, etc.)	1	2
Tour Boats (harbor cruises, whale watches, etc.)		

Tug Boats		
Ferries		
Other: <u>Type here.</u>		
Other: <u>Type here.</u>		
Other: <u>Type here.</u>		

5.8 Will the project improve conditions and/or enhance opportunities for commercial fishing/boating?

Yes No

5.9 If yes, please explain. Applicants should consider the barriers currently facing commercial fishing/boating in the harbor and how these barriers will be mitigated or removed as a result of the project.

Without dredging Allen Harbor entrance channel the entire harbor would be choked off by the building shoal area and it would prevent both recreational and commercial boaters from transiting the harbor; this would have a detrimental impact on the livelihood of both the commercial and charter captains and crews.

RECREATIONAL BOATING

5.10 Does the project support access to a *state* boat ramp?

Yes No

5.11 Does the project support access to a *municipal* boat ramp?

Yes No

5.12 If “yes” was answered for either question above, please describe the number of public parking spaces available at the ramp(s). **In addition, please specify what number of these spaces currently accommodate boat trailer parking.** *Please Note: In this context, public parking is defined as parking for the general public, whether free of charge, pay for use, or by a permit/sticker available to the general public for purchase. Do **NOT** count parking spaces reserved for or accessible only to residents.*

Allen Harbor is a public access facility that has a public boat ramp and courtesy dock. There are 12 boat trailer parking spaces and 29 vehicle parking spaces that are open to the public. The town charges a \$10 daily ramp fee for boats launching at the ramp, or boat owners can purchase a seasonal ramp permit for \$100. There is no charge for vehicle parking.

5.13 Will the project support an increase in the number of moorings and/or slips in the harbor?

Yes No

5.14 If yes, please describe how many moorings and/or slips are anticipated to be added and where. In addition, please indicate whether these new moorings and/or slips will be publicly or privately owned.

Click here to enter text.

5.15 Will the project support an increase in the number of *transient/visitor* moorings or slips in the harbor?

Yes No

5.16 If yes, please describe how many of these moorings and/or slips are anticipated to be added and where. In addition, please indicate whether these new moorings and/or slips will be publicly or privately owned.

Click here to enter text.

5.17 Will the project support a recreational or downtown waterbody? *Please Note: In this context, recreational may include public spaces (beaches, parks, trails, etc.) and/or recreational boating facilities (boat ramps, marinas, mooring fields, etc.).*

Yes No

5.18 If yes, please explain. Please include a summary of any existing public spaces, recreational boating facilities (including marinas and mooring fields), and/or downtown businesses associated with the harbor (shops, restaurants, inns, etc.).

As a coastal tourist community, our harbors, waterways, and beaches are the life line of this town, and annual dredge operations are critical to the maintenance and care of each of them. As stated above, hundreds of boats (recreational and commercial) operate from Allen Harbor throughout the boating season

from our town pier and town moorings, state public access boat ramp, and private yacht club and private marina. Maintaining the channel at its permitted depth is critical to safe navigation, and critical to the economic livelihood of the commercial fishing and charter fishing businesses. In addition, beach nourishment that results from the dredge operations is important to maintaining our public beaches.

PUBLIC SAFETY

5.19 Has shoaling resulted in one or more boating incidents in the harbor?

- Yes No

5.20 If yes, please explain the nature of these incidents. **Please include the total number and the time period over which these incidents occurred.** Additionally, please explain how the project will prevent such incidents from occurring in the future.

In the past we have had boats that have grounded in the channel, but we have been fairly successful at dredging the channel every spring (early June), prior to the start of the boating season. However, without question, if the channel was not dredged there would be constant groundings and a very unsafe situation. Again, the channel would be essentially choked off by the shoaled area if dredging is not completed annually.

5.21 If incidents have *not* occurred *but are likely to occur* given existing conditions, please use this space to explain the existing risks and how these risks will be addressed by the project. **Skip this question if 5.20 is answered above.**

Click here to enter text.

5.22 Will the project increase public safety responsiveness in the harbor?

- Yes No

5.23 If yes, please explain. If available, please include examples of how shoaling in the harbor has prevented public safety officers from responding to boating incidents and/or other harbor-related incidents in a timely and effective manner.

Allen Harbor is one of the three primary harbors in the Town of Harwich. As stated we have hundreds of boats operating from the harbor, and with that comes the need to respond to maritime assistance cases. Every year the Harbormaster Department responds to vessel assist cases for a variety of reasons, disabled boat, person in the water, grounded boats, medical incidents, etc. As such, we must maintain safe and navigable channels for all of our harbors.

5.24 Please provide current vessel counts for the following types of public safety vessels that commonly operate in the harbor. **Information should be specific to the project harbor only.** Applicants are expected to be as accurate as possible.

Type of Public Safety Vessel	No. Operating in Harbor
Harbormaster Boats	3
Fire Boats	
Police Boats (if different from harbormaster boats)	
MA Environmental Police Boats	
U.S. Coast Guard Boats	2

Other: <u>Type here.</u>	
Other: <u>Type here.</u>	
Other: <u>Type here.</u>	

COASTAL RESILIENCE

5.25 Does the project include beach nourishment?

- Yes No

5.26 If yes, please describe the benefits that this nourishment will provide.

All of the dredge material will be used for beach nourishment on several of our town public beaches.

5.27 Will the project enhance or protect wetland resources in the harbor?

- Yes No

5.28 If yes, please explain.

Click here to enter text.

5.29 If applicable, please explain how the project will improve water quality and what benefits these improvements will have for the community's coastal resources.

Click here to enter text.

5.30 Is the harbor included on the Massachusetts Department of Environmental Protection's [303\(d\) list of impaired water bodies](#)?

- Yes No

5.31 Has the Public Entity received MVP Community designation through the Commonwealth's [Municipal Vulnerability Preparedness \(MVP\) Program](#)?

- Yes No

5.32 If yes, will this project advance a goal or objective identified in the Public Entity's MVP Plan?

- Yes No

5.33 If yes, please explain.

Coastal Infrastructure to include, in part, beaches, harbors and maritime infrastructure are listed as specific concerns and vulnerabilities in the towns MVP. Dredging certainly advances the goal of maintaining our public beaches with sand nourishment, and keeping our harbors and supporting infrastructure accessible through properly dredged channels.

SECTION VI. PREPARING FOR SUCCESS

6.1 Does the Public Entity have a comprehensive permit for dredging and dredged material disposal? *Please Note: In this context, a comprehensive permit is a single federal and/or state permit that covers all areas under municipal control to be dredged and associated dredged material disposal sites across a community's harbors.*

Yes No

6.2 If yes, when does the permit expire?

April 2023 (see attached NAE-2008-0014 Re-verification letter). In addition, the town has applied for a 10 year comprehensive dredge permit which is currently awaiting Army Corps approval; application date Apr 2018.

6.3 Does the Public Entity have any local or state-approved plan that identifies dredging as a goal or objective? Examples may include a coastal resources management plan, a waterfront revitalization plan, a dredging maintenance plan, or a [Municipal Harbor Plan \(HMP\) or DPA Master Plan](#).

Yes No

6.4 If yes, please provide both the plan name and a URL link to access the document.

The town has a locally approved Harbor Management Plan that states the purpose of the regulations is to promote public safety, define proper area usages and encourage mariner awareness of local Waterway By-laws and Harwich Harbor rules and regulations. A clear goal of the harbor management plan is to ensure our town harbors and waterways are managed in a safe manner, and ensuring our harbor channels are dredged to permitted depths is a critical achievement in navigational safety.
https://www.harwich-ma.gov/sites/g/files/vyhlf3236/f/uploads/harbor_mgmt_plan_january_14_2021.pdf

6.5 Will the project directly support an increase in either harbor-dependent jobs or commercial vessels operating in the harbor?

Yes No

6.6 ATTACHMENT (IF APPLICABLE): If yes, please attach supporting letters of commitment from the relevant private parties. Please use the table below to summarize the number of jobs and/or vessels to be added based on these letters.

Number of jobs to be created:	
Number of commercial vessels to be added:	

6.7 Will the project support "piggyback dredging" or subsequent dredging projects undertaken by private parties for commercial and/or recreational purposes?

Yes No

6.8 ATTACHMENT (IF APPLICABLE): If yes, please attach supporting letters of commitment from the relevant private parties.

6.9 Does the Public Entity have a municipal waterways fund that supports dredging activities?

Yes No

6.10 If yes, please explain all sources of revenue for this fund (launch fees, mooring fees, boat excise tax revenue, annual appropriations, etc.).

Mooring fees, one-half of boat excise tax revenue, and waterway user fees.

6.11 Please provide information regarding any additional municipal funds dedicated to harbor or waterway activities. Examples may include a harbor fund or enterprise fund. Type "N/A" if not applicable.

N/A

6.12 Please provide totals from the previous two fiscal years (July 1 to June 30) related to the following types/sources of revenue. **Totals should reflect revenue from all harbors and waterways within the municipality.**

Type/Source of Revenue	FY19	FY20
Moorings	\$98,037	\$95,266
Slips	\$741,854	\$739,888
Launches (ramps)	\$32,140	\$33,147
Boat Excise Tax	\$26,828	\$26,882
Waterways User Fee	\$97,318	\$82,350
Other: <u>Type here.</u>		
Other: <u>Type here.</u>		
Other: <u>Type here.</u>		

6.13 Please provide the Public Entity’s current schedule of fees related to harbor and waterway activities. Applicants can either type the fee schedule below, provide a URL link to the fee schedule, or type “See attached” and submit the fee schedule as an attachment to this application.

See Attached.

6.14 Has the Public Entity increased any of its harbor/waterways fees in the last five fiscal years, including the current fiscal year?

- Yes No N/A

6.15 If yes, please briefly describe the increase(s).

Majority of town Harbor/Waterways fees were increased by 10% in 2018

6.16 Please describe how the Public Entity, if awarded funding, will plan for future maintenance dredging. **As part of your answer, please specify the life expectancy of the proposed project (i.e., when the Project Site will next require dredging).**

In part due to a compromised jetty, the town plans for the annual need to dredge Allen Harbor channel. Grant support would greatly benefit the town's ongoing effort to keep the channel open and safe. The town has embark on an engineering study and eventual design to make repairs to the jetty in the hope that the frequency of required dredging would be reduced. As stated, dredge funds are included in the annual Harbormaster Department operating budget.

SECTION VII. CERTIFICATION OF AUTHORIZATION

7.1 Preparer Name and Title – Please provide the name and title of the person preparing and submitting this application:

John C. Rendon, Harbormaster

7.2 Does the Public Entity require a vote of an executive body to authorize the submission of this application?

Yes No

7.3 ATTACHMENT (IF APPLICABLE): If yes, please attach a certified copy of this vote.

7.4 If no, is the Preparer authorized to submit this application on behalf of the Public Entity, either by virtue of an executive position (CEO, CFO, etc.) or as a designee of an executive officer?

Yes No

7.5 Certification:

By dating and submitting this application, the Preparer (see 7.1 above) certifies that he/she is duly authorized to submit this application on behalf of the Public Entity. He/she further acknowledges that the information provided herein will be relied upon by the Commonwealth to decide whether to award a capital grant and that the Commonwealth reserves the rights to take action against the Public Entity or any other beneficiary of such a grant if any of the information provided is inaccurate, misleading, or false.

The Preparer hereby certifies under the pains and penalties of perjury that the answers submitted in this application, and any attachments submitted in support thereof, are true, accurate, and complete.

Date of Submission: March 15, 2021

[No Signature Required]

TOWN
ADMINISTRATOR'S
REPORT

Massachusetts Agreement
Injured-on-Duty Claims Services
For Consulting and Claims Administration Clients
(VFIS High-Deductible & Self-Insured Clients)

With respect to injuries subject to Massachusetts General Law Chapter 41, Sections 100 and 111F, this Injured on Duty Services Agreement (the "Agreement") is entered between [Town of Harwich , MA] (the "Municipality") and Gowrie Claim Services, a unit Gowrie Barden and Brett, Inc .and a division of Risk Strategies Corporation, (the "Contractor"). The agreement shall be effective as of the stated term and shall remain in force and effect until terminated in accordance with the terms hereof.

1. General Services of Contractor

- 1.1 Contractor agrees to perform claim administrative services on behalf of Municipality for its employees injured on duty as provided for in the above referenced statute, in accordance with applicable laws and regulations and accepted claim practices, and with all due care and skill reasonably expected of an experienced claim administrator. During the term of this agreement, these services shall include the following:
- a. review and assess each claim reported to the Contractor for eligibility for compensation under the statute; and
 - b. establish and maintain appropriately documented claim files for all claims; and
 - c. track treatment progress of claimants and coordinate with providers to stay abreast of treatment plans; and
 - d. provide the Municipality with regular updates regarding claimants' status, treatment plan, and return-to-work expectations; and
 - e. engage in regular communication with providers to encourage appropriate proactive treatment, and claimant adherence to treatment plans; and
 - f. ensure medical bills are processed, and, when appropriate, that checks or vouchers are issued in a timely manner and in keeping with payment schedules established by the Massachusetts Rate Setting Commission; and
 - g. request reimbursement from insurers or other responsible parties when applicable; and
 - h. advise the Municipality immediately of any lawsuit against them of which the Contractor becomes aware relating to the business that is the subject of this Agreement, and provide all appropriate claim information to designated counsel.

2. Records

- 2.1 The Contractor shall maintain records containing all information required under all applicable laws and regulations for the periods required by such laws.
- 2.2 The Contractor shall keep books of account and other financial information relating to the services provided under this Agreement, and this financial information shall be kept separate from all other books of account and financial information relating to any other business of the Contractor.
- 2.3 The Contractor shall establish and maintain systems and procedures to monitor and record claim payments, settlements, recoveries, and any moneys and assets held by or under the control of the Contractor in connection with the services provided hereunder.
- 2.4 The Contractor shall maintain a disaster recovery plan for records maintained on behalf of Municipality which shall include all necessary steps relating to the storage and protection of the records.
- 2.5 The Contractor shall establish controls to assure the data and records it maintains on behalf of Municipality and claimants are secure and compliant with legal and Written Information Security Protocol (WISP) standards.

3. Loss Payment Administration (when applicable)

- 3.1 Municipality's Loss Funds will be maintained in trust in a non-interest bearing account by the Contractor for the sole purpose of settling claims and related loss expenses on behalf of the Municipality and shall not be commingled with funds belonging to other parties including the Contractor.
- 3.2 All Loss Fund account payments shall require dual signatures.
- 3.3 The Municipality shall replenish the Loss Funds as appropriate. It is understood and agreed that Contractor will have no obligation to pay claims or loss expenses except from the Loss Funds.
- 3.4 Upon termination of the Agreement, the Contractor shall provide a full accounting of the Loss Funds and shall return the balance of all Loss Funds within thirty (30) days as instructed by the Municipality.

4. Indemnification and Insurance

- 4.1 The parties agree to defend, indemnify and hold harmless each other, their respective employees, officers, directors and agents from and against any and all claims, causes of action, proceedings, penalties, fines, losses, damages, costs, expenses and liabilities including, without limitation, settlement costs and reasonable attorney fees, court costs and other expenses incurred in investigating, prosecuting or defending any claim or action, or any threatened claim or action, which is based upon or arises out of any adverse acts or omissions made in conjunction with this Agreement.

4.2 The Contractor will maintain appropriate Errors and Omissions Liability insurance with a limit of not less than \$2,000,000 per claim and \$2,000,000 aggregate throughout the term of this Agreement.

5. Term

5.1 This agreement will become effective on [July 1, 2021], and expire on [June 30, 2022].

6. Termination

6.1 This Agreement may be terminated by either party upon thirty (30) days prior written notice.

7. Acknowledgements

7.1 The parties acknowledge that the municipality retains authority under MGL c. 41 §§ 100 and 111F and other statutes, collective bargaining agreements, etc.

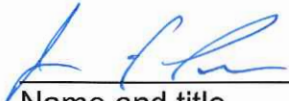
7.2 The parties acknowledge that the municipality is the Responsible Reporting Entity for Centers for Medicare & Medicaid Services reporting.


8. General Provisions

8.1 No modification or amendment of this Agreement shall be effective unless made in writing and executed by all parties.

9. Fees

9.1 Municipality will pay the Contractor a flat fee of \$6,600 for the services enumerated in this Agreement.

By and for Municipality:  Town Administrator 6/21/2021
Name and title Date

By and for Contractor:  Director 6/16/21
Name and title Date

Amendments:

AGREEMENT FOR TOWN OF HARWICH

The following provisions shall constitute an Agreement between the Town of Harwich, acting by and through its Board of Selectmen, hereinafter referred to as "Town," and Seaside Arborists, with an address of 656 County Road, Pocasset, MA 02559, hereinafter referred to as "Contractor", effective as of the 21st day of June, 2021. In consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF WORK:

The Contractor shall perform all work and furnish all services necessary to provide the Town with Tree Removal & Tree Trimming Services, including the scope of services set forth in Attachment A.

ARTICLE 2: TIME OF PERFORMANCE:

The Contractor shall complete all work and services required hereunder commencing upon execution of the contract through June 30, 2022.

ARTICLE 3: COMPENSATION:

The Town shall pay the Contractor for the performance of the work outlined in Article 1 above the contract sum of \$1,700.00 per day, for a maximum of 16 days, for a not to exceed limit of \$27,200. The Contractor shall submit monthly invoices to the Town for services rendered, which will be due 30 days following receipt by the Town.

ARTICLE 4: CONTRACT DOCUMENTS:

The following documents form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties.

3. All attachments to the Agreement.

In the event of conflicting provisions, those provisions most favorable to the Town shall govern.

ARTICLE 5: CONTRACT TERMINATION:

The Town may suspend or terminate this Agreement by providing the Contractor with ten (10) days written notice for the reasons outlined as follows:

1. Failure of the Contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement.
2. Violation of any of the provisions of this Agreement by the Contractor.
3. A determination by the Town that the Contractor has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.

Either party may terminate this Agreement at any time for convenience by providing the other party written notice specifying therein the termination date which shall be no sooner than thirty (30) days from the issuance of said notice. Upon receipt of a notice of termination from the Town, the Contractor shall cease to incur additional expenses in connection with the Agreement. Upon such termination, the Contractor shall be entitled to compensation for all satisfactory work completed prior to the termination date as determined by the Town. Such payment shall not exceed the fair value of the services provided hereunder.

ARTICLE 6: INDEMNIFICATION:

The Contractor shall defend, indemnify and hold harmless the Town and its officers, agents, and all employees from and against claims arising directly or indirectly from the contract. Contractor shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and income tax laws. Further, the Contractor

shall defend, indemnify and hold harmless the Town with respect to any damages, expenses, or claims arising from or in connection with any of the work performed or to be performed under this Agreement. This shall not be construed as a limitation of the Contractor's liability under the Agreement or as otherwise provided by law.

ARTICLE 7: AVAILABILITY OF FUNDS:

The compensation provided by this Agreement is subject to the availability and appropriation of funds.

ARTICLE 8: APPLICABLE LAW:

The Contractor agrees to comply with all applicable local, state and federal laws, regulations and orders relating to the completion of this Agreement. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

ARTICLE 9: ASSIGNMENT:

The Contractor shall not make any assignment of this Agreement without the prior written approval of the Town.

ARTICLE 10: AMENDMENTS:

All amendments or any changes to the provisions specified in this Contract can only occur when mutually agreed upon by the Town and Contractor. Further, such amendments or changes shall be in writing and signed by officials with authority to bind the Town. No amendment or change to the contract provisions shall be made until after the written execution of the amendment or change to the Contract by both parties.

ARTICLE 11: INDEPENDENT CONTRACTOR:

The Contractor acknowledges and agrees that it is acting as an independent contractor for all work and services rendered pursuant to this Agreement and shall not be considered an employee or agent of the Town for any purpose.

ARTICLE 12: INSURANCE:

The Contractor shall be responsible to the Town or any third party for any property damage or bodily injury caused by it, any of its subcontractors, employees or agents in the performance of, or as a result of, the work under this Agreement. The Contractor and any subcontractors used hereby certify that they are insured for workers' compensation, property damage, personal and product liability. The Contractor and any subcontractor it uses shall purchase, furnish copies of, and maintain in full force and effect insurance policies in the amounts here indicated.

- 1) General Liability of at least \$1,000,000 Occurrence/\$3,000,000 General Aggregate. The Municipality should be named as an "Additional Insured". Products and Completed Operations should be maintained for up to 3 years after the completion of the project.
- 2) Automobile Liability (applicable for any contractor who has an automobile operating exposure) of at least \$1,000,000 Bodily Injury and Property Damage per accident. The Municipality should be named as an "Additional Insured".
- 3) Workers' Compensation Insurance as required by law. Include Employers Liability Part B with a limit of \$1,000,000
- 4) Property Coverage for materials and services being transported by the contractor, as the Town's Property Contract provides coverage for personal property within 1000 feet of the premises.
- 5) Umbrella Liability of at least \$2,000,000/ occurrence, \$2,000,000/aggregate. The Municipality should be named as an "Additional Insured".

Prior to commencement of any work under this Agreement, the Contractor shall provide the Town with Certificates of Insurance which include the Town as an additional named insured and which include a thirty day notice of cancellation to the Town.

ARTICLE 13: SEVERABILITY:

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the 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.

ARTICLE 14: 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.

ARTICLE 15: COUNTERPARTS:

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be a counterpart original.

CERTIFICATION AS TO PAYMENT OF STATE TAXES

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, Stephen Buckhoff, authorized signatory for the Contractor do hereby certify under the pains and penalties of perjury that said Contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

26-3012505
Social Security Number or
Federal Identification Number

Stephen Buckhoff
Signature of Individual or
Corporate Name

By:
Corporate Officer
(if applicable)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CONTRACTOR
By

TOWN OF HARWICH
by its Board of Selectmen Over \$50,000

Seaside Arborists

Stephen Buckhoff - owner
Printed Name and Title

Approved as to Availability of Funds:

DocuSigned by:
Carol Coppola (\$27,200.00)
48C32039D33D434
Finance Director Contract Sum
014212/527000 and 16111002/538000

by its Town Administrator Up to \$50,000

DocuSigned by:
Joseph F. Powers
0623C0C5798611E
Town Administrator

Attachment A

Town of Harwich Tree Removal and Tree Trimming Scope of Services

The Town of Harwich DPW in conjunction with the Town of Harwich Cemetery Department is soliciting quotes from qualified vendors for tree removal and tree trimming services in accordance with the provisions of Massachusetts General Laws Chapter 30B. The DPW does perform some tree removal and trimming, but requires the services of a certified arborist to safely remove dead, damaged or dying trees that may be in or close to overhead utility wires or grave sites.

Scope of Work

The DPW will provide a list of tree locations where trees need to be removed or trimmed. In some cases trees will need to be removed in segments to protect wires or grave sites. Absent an emergency condition, the DPW develops this list until there is one to two full days of tree work before requesting service. The tree work will occur throughout the year.

All work will be performed in compliance with ANSI Z-133.1-2006 and ANSI 300 standard, and any published amendments or updates thereto. The prospective vendor must also be familiar with and certified to work around utility wires.

The contractor will be responsible to restore the work area back to pre-work conditions removing all branches, logs and woodchip debris generated from the area. However, there are times when the contractor will be directed to leave large logs on the side of the road that will be picked up later by the Town staff. This is done in order to maximize bucket truck usage while working for the DPW. When working for the Town, you will be able to dump woodchips and logs at the Town's Disposal Area without charge.

The Town of Harwich will arrange and pay for police details when required. The contractor must provide 2 hour minimum notice to the DPW, via telephone, if they need to cancel any scheduled work. If proper notice is not provided, the contractor shall be responsible for cost of the canceled detail.

The prospective vendor's tree removal and/or tree trimming price quote shall be for a daily rate of 8 hours that will start and end at the DPW at 273 Queen Anne Road in Harwich. The Town estimates a total of 13 days of tree removal and/or tree trimming work over the course of the year. The contract award shall be for one year of tree removal and/or tree trimming work. The contractor's price will include all equipment and personnel (minimum of 2) to perform the requested work including a bucket truck (working height of 70'), chipper, chainsaws, fuel, personal protective safety equipment and any other ancillary equipment needed.