

CITY COUNCIL MEETING

AGENDA

June 12, 2023 7:00 pm

City Council Chambers, City Hall

60 Pleasant Street, Newburyport

Zoom details for City Council Meeting:

<https://us02web.zoom.us/j/81299990548>

Or One tap mobile:

US: +19292056099,81299990548#

Or Telephone US: +1 929 205 6099

Webinar ID: 812 9999 0548

1. MOMENT OF SILENCE

2. PLEDGE OF ALLEGIANCE

3. CALL TO ORDER

4. LATE FILE

- COMM00492_06_12_2023 Letter from Ashley Morton Comtois & Zach Comtois-Port Vida (PW&S)
- ORDR00470_06_12_2023 Market Landing Park Gap Funding for Construction (P&D/COTW)

5. PUBLIC COMMENT

6. MAYOR'S COMMENT

CONSENT AGENDA

NOTE: ALL ITEMS LISTED UNDER CONSENT AGENDA WILL BE ENACTED BY ONE MOTION. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS. IF DISCUSSION IS DESIRED, THAT ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND CONSIDERED SEPARATELY.

7. APPROVAL OF MINUTES

- May 22, 2023 (Approve)

8. COMMUNICATIONS

- APPL00142_06_12_2023 Port Vida Outdoor Dining Application (PW&S)
- APPL00143_06_12_2023 Block Party 10 Tyng St. June 16th 5:00pm (L&P)
- APPL00144_06_12_2023 Greek Church Food Festival July 28th-30th 11am-9pm (L&P)
- COMM00487_06_12_2023 Firefighters of Local 827 "Fill the Boot Drive" August 3, 4, & 5 10am-4pm (PW&S)
- COMM00488_06_12_2023 Memo Annual City Audit FY2022 Financial Statements (B&F)
- COMM00489_06_12_2023 Acting Head Librarian Jessica Atherton (CS)
- COMM00490_06_12_2023 Bike Feasibility: Locations, Estimate, March's Hill Bike Park Concept Plan, & Study (CS)
- COMM00491_06_12_2023 Letter from Owen Smith re: Tree Warden (PW&S)

9. TRANSFERS

- TRAN00159_06_12_2023 Harbormaster: Harbormaster Retained Earnings \$15K to HBR Assistant Harbormasters \$12,5000, HBR Cashman Park Attendants \$2K, & HBR PI Parking Lot Attendants \$500 (B&F)
- TRAN00160_06_12_2023 Police: POL Fuel/Oil Vehicle(s) \$2,500, POL Office Supplies \$2,500, & POL Ammunition/Weapons \$5,300 to POL Maint-Building \$10,300 (B&F)
- TRAN00161_06_12_2023 Mayor: ASR Appraisal System \$7K and HLH Sal Public Health Nurse \$10,758.24 Multiple (see attached) \$17,758.24 (B&F)

10. APPOINTMENTS

ALL ITEMS NOTED BELOW ARE REMOVED FROM THEIR RESPECTIVE COMMITTEES WITH THE MOTION TO APPROVE THE CONSENT AGENDA

BUDGET & FINANCE

- TRAN00154_05_22_2023 DPS: General Fund-Free Cash \$253,294.14 & Snow & Ice-Labor \$17,840.72 to Snow & Ice-Expenses \$271,134.86
- TRAN00155_05_22_2023 Health Insurance: General Fund-Free Cash \$61,195 to Health Insurance Premiums \$61,195
- TRAN00156_05_22_2023 Fire Dept: FIR Dues & Memberships \$1,291.54 to Emergency Mgmt. Coordinator \$922.58 & Emergency Mgmt. Deputy Coordinator \$368.96
- TRAN00157_05_22_2023 Police: POL Fuel/Oil Vehicle \$8K, POL Misc. Supplies \$2K, & POL MIS/Comm. \$2K to POL Maint-Equipment \$12K
- TRAN00158_05_22_2023 Library: LIB Salary Librarian \$7K & LIB Salaries Staff \$13K to LIB Purchase Books \$3K, LIB Heat/Electricity \$12K, & LIB Maint-Equipment \$5K
- ORDR00451_05_08_2023 PEG Center Gift Acceptance
- ORDR00457_05_22_2023 FY24 Revolving Funds Spending Limits

GENERAL GOVERNMENT

- APPT00390_04_24_2023 Caitlin Haire 43 Prospect St. Board of Registrars 5/1/2026
- APPT00406_05_22_2023 Murphy Hesse Toomey & Lehane LLP City Solicitor 7/1/2023-1/31/2024
50 Braintree Hill Office Park Suite 410 Braintree MA 02184

LICENSES & PERMITS

- APPL00140_05_22_2023 Block Party 51 Prospect St. August 3rd 6:30pm
- APPL00141_05_22_2023 Block Party 14 Dove St. August 5th 5:30pm-10pm

PUBLIC WORKS & SAFETY

- APPT00399_05_08_2023 Brett Carrier 231 Middle Rd. Byfield Asst Hrbrmstr/Shlfsh Cnstbl/SpPO 6/1/2026
- APPT00400_05_08_2023 Robert Dow 185 Storey Ave Harbor Comm. 6/1/2026
- APPT00404_05_08_2023 *Re-appointment* James Knapp 24 Cutting Dr. Harbor Comm. 6/1/2026
- APPT00405_05_22_2023 Ronald Thurlow 28 Hancock St. Harbor Comm. 6/1/2026
- COMM00456_12_12_2022 Letters re: Curb Cut 4 Wilkinson Dr. & 34 Hale St.
- ORDR00454_05_08_2023 Storey Avenue bicycle lane
- ORDR00458_05_22_2023 Hale Street Resolution
- COMM00483_05_08_2023 Residential HP App 12 Merrill St.

END OF CONSENT AGENDA

REGULAR AGENDA

9. MAYOR'S UPDATE

10. FIRST READING APPOINTMENTS

11. COMMUNICATIONS

12. TRANSFERS

13. SECOND READING APPOINTMENTS

14. ORDERS

- ORDR00459_06_12_2023 Opioid Stabilization Fund
- ORDR00460_06_12_2023 Water Sewer Rate
- ORDR00461_06_12_2023 Port Parks Alliance Gift Acceptance \$1,013.65
- ORDR00462_06_12_2023 Anna Jaques Newburyport Pride Gift Acceptance \$2,000
- ORDR00463_06_12_2023 Belleville Improvement Society Gift Acceptance \$4,700
- ORDR00464_06_12_2023 Friends of Newburyport Youth Services Gift Acceptance \$23,200
- ORDR00465_06_12_2023 Inclusive Playground Gift Acceptance \$8,867.86
- ORDR00466_06_12_2023 Children's Health Care Gift Acceptance \$12,500
- ORDR00467_06_12_2023 Parking Enforcement Officers Teamster's Union Local 170 Contract
- ORDR00468_06_12_2023 Wheelabrator North Andover Contract
- ORDR00469_06_12_2023 Handicapped Space - 12 Merrill Street

15. ORDINANCES

- ODNC00150_05_08_2023 2nd reading Amend Municipal Fees Street Permits and Employee Permits (COTW)
- ODNC00151_05_08_2023 2nd reading Amend Ch 13-180 Residential Permits (COTW)
- ODNC00153_05_08_2023 2nd reading Amend Ch 13-166 Anti-Shuffling (COTW)
- ODNC00156_06_12_2023 Amend Ch 13-168 Parking Restriction Fair St.
- ODNC00157_06_12_2023 Public Art Policy

16. COMMITTEE ITEMS

Budget & Finance

In Committee:

- TRAN00154 05 22 2023 **DPS: General Fund-Free Cash \$253,294.14 & Snow & Ice-Labor \$17,840.72 to Snow & Ice-Expenses \$271,134.86**
- TRAN00155 05 22 2023 **Health Insurance: General Fund-Free Cash \$61,195 to Health Insurance Premiums \$61,195**
- TRAN00156 05 22 2023 **Fire Dept: FIR Dues & Memberships \$1,291.54 to Emergency Mgmt. Coordinator \$922.58 & Emergency Mgmt. Deputy Coordinator \$368.96**
- TRAN00157 05 22 2023 **Police: POL Fuel/Oil Vehicle \$8K, POL Misc. Supplies \$2K, & POL MIS/Comm. \$2K to POL Maint-Equipment \$12K**
- TRAN00158 05 22 2023 **Library: LIB Salary Librarian \$7K & LIB Salaries Staff \$13K to LIB Purchase Books \$3K, LIB Heat/Electricity \$12K, & LIB Maint-Equipment \$5K**
- ORDR00451 05 08 2023 **PEG Center Gift Acceptance**
- ORDR00457 05 22 2023 **FY24 Revolving Funds Spending Limits**
- ODNC00129_11_01_2022 Defining Conflict Rule for Dept. Heads (COTW)
- ORDR00336_03_28_2022 ARPA Amesbury 250K (COTW)
- ORDR00452_05_08_2023 FY2024 Budget Order (COTW)
- ORDR00453_05_08_2023 FY2024-2028 Capital Improvement Program (COTW)
- TRAN00153_05_08_2023 Mayor: Multiple \$3,483,773 to Multiple \$3,483,773 (COTW)

Community Services

In Committee:

- COMM00474_04_10_2023 Newburyport Public Art Policy
- ORDR00455_05_08_2023 ACO Intermunicipal Agreement

General Government

In Committee:

- APPT00390 04 24 2023 **Caitlin Haire 43 Prospect St. Board of Registrars 5/1/2026**
- APPT00406 05 22 2023 **Murphy Hesse Toomey & Lehane LLP City Solicitor 7/1/2023-1/31/2024
50 Braintree Hill Office Park Suite 410 Braintree MA 02184**

- APPT00402_05_08_2023 Steven Wallace 20 Allen St Waterfront Trust 6/1/2026
- COMM00461_02_27_2023 Brown School Gymnasium Considerations (COTW)
- COMM00468_03_13_2023 Brown School Proposal (COTW)
- ODNC00146_03_13_2023 Amend Ch 2-34 Responsibilities of Committee on Community Services
- ORDR239_02_8_2021 Council Rule 7 and 10B

Licenses & Permits

In Committee:

- APPL00140 05 22 2023 Block Party 51 Prospect St. August 3rd 6:30pm
- APPL00141 05 22 2023 Block Party 14 Dove St. August 5th 5:30pm-10pm
- ODNC047_01_27_2020 General Ordinance - Short Term Rental Units Rules

Planning & Development

In Committee:

- APPT00404_05_22_2023 Edward Noymer 8 Lucey Dr. Historical Comm. 6/1/2026
- COMM00486_05_22_2023 Newburyport Comprehensive Economic Development Strategy
- ODNC00141_02_27_2023 Zoning Amendment STRU (COTW)

Public Works & Safety

In Committee:

- APPT00399 05 08 2023 Brett Carrier 231 Middle Rd. Byfield Asst Hbrmstr/ShlfshCnstbl/SpPO 6/1/2026
- APPT00400 05 08 2023 Robert Dow 185 Storey Ave Harbor Comm. 6/1/2026
- APPT00404 05 08 2023 Re-appointment James Knapp 24 Cutting Dr. Harbor Comm. 6/1/2026
- APPT00405 05 22 2023 Ronald Thurlow 28 Hancock St. Harbor Comm. 6/1/2026
- COMM00456 12 12 2022 Letters re: Curb Cut 4 Wilkinson Dr. & 34 Hale St.
- ORDR00454 05 08 2023 Storey Avenue bicycle lane
- ORDR00458 05 22 2023 Hale Street Resolution
- COMM00483 05 08 2023 Residential HP App 12 Merrill St.
- COMM00412_05_31_2022 Ltr Ann Jaroncyk re: Traffic Safety
- COMM00414_05_31_2022 Ltr. Emily Dunn re: Traffic on Merrimac Street
- COMM00459_01_30_2023 Ltr. Residents concerned with speeding on Arlington St.
- COMM00462_02_27_2023 Ltr. From Kathleen O'Connor Ives re: drinking water concerns
- COMM00479_04_24_2023 Ward 4 Street Sidewalk Traffic Safety Priorities
- COMM00480_04_24_2023 Merrimac St. Safety Items
- COMM00482_04_24_2023 Constructions projects at the Central Waterfront
- ODNC00103_01_10_2022 Streets, Sidewalks, and Other Public Places Alterations & Maintenance
- ODNC00152_05_08_2023 Amend Ch 13-181 Municipal Parking Facilities (COTW)
- ORDR00449_04_24_2023 Approving Shared Streets Grant, High Street Traffic Calming

17. GOOD OF THE ORDER

18. ADJOURNMENT

LATE FILE ITEMS

From: Ashley Morton <ashley.m.comtois@gmail.com>
Sent: Friday, June 9, 2023 4:27 PM
To: Richard Jones <RJones@CityofNewburyport.com>
Cc: Zach Comtois <zachcomtoismusic@gmail.com>
Subject: Letter Concerning Comm 142

Hi Richard,

We've composed a letter (below) in reference to Comm142 and would appreciate if you would forward this communication to the whole council ahead of Monday's meeting. Please let us know if you need sent in another format.

*Thanks so much!
Ashley & Zach*

To the City of Newburyport and the Public Works and Safety Committee,

We are writing as residents of 32 Water Street in objection to the outdoor dining request in Comm142.

While we love that summer has arrived and this means outdoor dining along State Street, etc. we are strongly opposed to Port Vida using their second parking lot for outdoor dining. We speak from experience, having lived here when the previous establishment (Brick and Ash) ran outdoor dining in the same location. Although we appreciate that the current restaurant has been more respectful as far as noise/interaction around our property than Brick and Ash, and would very much like to continue to have a pleasant relationship between our building and management, there are several factors that come with outside dining that simply cannot be managed or changed, even with the restaurant's best intentions.

Specifically:

- Noise/Privacy Concerns
- Trash/Concerns for vermin attraction directly next to our building with outdoor food
- Safety Concerns (the constant crossing of restaurant employees over our driveway)

The parking lot is directly next to a residential building as well as working offices -- not just shops. Ashley personally works from home every day -- the last time the parking lot was used for outdoor dining she was unable to keep the window open (particularly frustrating on a hot, summer day when the advantage to being in the area is the lovely breeze off the water!) because, between the everyday action of a large amount of people talking and eating, in addition to music, was incredibly disruptive, even with the window completely closed.

Besides being located outside of an office window, the parking lot is also outside of one of our bedroom windows -- we already deal with the late-night noise of people getting into/out of their cars and trash being taken out as we are attempting to sleep, but to have an entire restaurant set-up right outside feels like an even bigger lack of privacy and noise that is impossible to avoid. We feel it's fair to say that it is one thing to purchase property knowing a restaurant is behind your parking lot, we understood this when we moved in, but it is another to have a busy dining experience directly outdoors and underneath -- if not almost level with -- your window every day and night.

Our last experience with the outdoor dining also showed us the stress of having waitstaff constantly crossing over the driveway -- it led to several unsafe situations and what felt like a lack of concern and awareness for what is essentially being treated as an active crosswalk with people and vehicles coming and going throughout the day.

We have a small yard next to the parking lot, and we (as well as other owners in the building) had found ourselves picking up trash that wind had blown onto our property/into our yard most days, or having those eating at the restaurant using our yard for their pets to relieve themselves.

We will only add that we appreciate that a restaurant in the area may see it as a requirement to have an outdoor dining option in the summer to be competitive with other establishments, but want to note that Port Vida already *has* an outdoor dining option on their deck. They do not need to use the parking lot in order to offer this experience to their customers.

We hope this note is taken as it is meant, simply a strong request to not sign-off on the use of the parking lot for anything beyond what it was designed for: parking. We love living here, and the hustle and bustle of the downtown, but we do believe this extends beyond what one should expect from living in this location, and certainly affects the day-to-day quality of life for those living and working in the building.

Thank you so much for taking the time to read this through and consider this,
Ashley Morton Comtois & Zach Comtois

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

June 12, 2023

**AN ORDER TO ACCEPT STATE GRANTS, AND TO APPROVE OR REALLOCATE GAP FUNDING,
FOR CONSTRUCTION OF THE MARKET LANDING PARK EXPANSION PROJECT**

ORDERED:

THAT, The CITY COUNCIL of the City of Newburyport hereby approves the following related actions, for the purpose of timely advancing construction of the Market Landing Park Expansion Project:

1. Acceptance of State Grant Funding:

The Council accepts, and authorizes use of, the following state grants in accordance with M.G.L. Chapter 44, Section 53A:

- a. State Grant (*approved*): PARC Grant
 - i. State Agency: Executive Office of Energy and Environmental Affairs (EOEEA), Division of Conservation Services (DCS)
 - ii. Amount (*awarded*): \$400,000
 - iii. Purpose: Construction of Market Landing Park Expansion

- b. State Grant (*pending approval*): MassTrails Grant
 - i. State Agency: Executive Office of Energy and Environmental Affairs (EOEEA), Department of Conservation and Recreation (DCR)
 - ii. Amount (*requested*): \$399,936
 - iii. Purpose: Construction of Market Landing Park Expansion (*use of this grant limited to shared use path, shoulder plazas and related work only through this "corridor" of the larger project*)

2. Acceptance of Private/Non-Profit Grant:

The Council accepts, and authorizes use of, the following grant in accordance with M.G.L. Chapter 44, Section 53A:

- a. Grant/Donation (*approved*): Coastal Trails Coalition (CTC)
 - i. Amount (*awarded*): \$10,000
 - ii. Purpose: Construction of Market Landing Park Expansion (*shared use path*)

3. **Reallocation of Culvert Funding to both Culvert and Park Construction:**

The Council hereby approves and authorizes a *reallocation* of funding previously approved pursuant to TRAN00139_11_01_2022 (*i.e. a General Fund – Free Cash transfer to the Waterfront Culvert Replacement Project*) such that said funds may be used both for the installation of said culvert, or a portion thereof (*as described in the original transfer*), and for construction of improvements associated with the Market Landing Park Expansion Project.

4. **Appropriation of 5% Construction Contingency:**

The Council hereby appropriates \$294,614 from Waterfront Parking Revenues towards construction of the Market Landing Park Expansion Project (*representing a 5% construction contingency*), with any unused funds remaining at the completion of construction to be returned to said account for Waterfront Parking Revenues accordingly.

Councillor Heather L. Shand



CITY OF NEWBURYPORT
OFFICE OF PLANNING AND DEVELOPMENT
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4400

MEMORANDUM

TO: Honorable Members of the Newburyport City Council

FROM: Andrew R. Port, Director of Planning & Development

CC: Sean R. Reardon, Mayor
Heather L. Shand, City Council President/Chair, Ad Hoc Committee on Market Landing Park Expansion
Ethan Manning, Director of Finance
Andrew Levine, Chief of Staff

RE: Market Landing Park Expansion Project
Status Update & Request for Gap Funding to Advance Construction

DATE: June 10, 2023

As you know, this Department has been overseeing design, funding and other aspects of the long-awaited Market Landing Park Expansion project working with our design team at Sasaki. The purpose of this memorandum is to provide background, context and status updates regarding the Market Landing Park Expansion Project in relation to the associated gap funding Order this report accompanies. This Order, and the attached supplementary/supporting materials will be submitted as a "Late File" for the June 12, 2023 Council Meeting, for timely referral to Committee. Due to crucial timelines associated with the project I respectfully request that this Order be reviewed by the Committee/Council at your earliest convenience, at which time members of the design and project management team can answer related questions you may have.

Historical Background & Context

It should go without saying that completion of this project (*in particular the park expansion areas along the water's edge*) represents the culmination of decades of debate about the central waterfront, and important closure and resolution of those debates and uncertainties. Even after establishment of a central boardwalk, lawn and perpendicular walkways to the water's edge, and creation of the Newburyport Waterfront Trust (WFT) to protect these, a substantial investment of time, effort and public funds have been spent to dissolve the former Newburyport Redevelopment Authority (NRA), to transfer land and revenues to the City, to construct a new parking garage to allow for relocation of an expansive central waterfront parking "footprint," and to create a park expansion plan which has broad community consensus for this flagship community space. It is important to remember the longer historical context involved, and the time and resources so many have invested until now to reach a point where decades-old "temporary" gravel parking lots behind the boardwalk can become an expansive arc of waterside park space, with maritime views, for public enjoyment in perpetuity. As such there is an intangible cost to the community should this project be delayed or its outcome remain unclear for years to come.

Status Update – From Final Design Through Permitting & Two Rounds of Contractor Bidding

As you know, the Council approved a final design for the expansion of Market Landing Park on November 1, 2022. Reaching this point, and advancing bid plans for construction earlier this year, involved a lengthy review and approval process by the Council itself (*facilitated through the designated Ad Hoc Committee*) and multiple levels of local and state permitting by the Planning Board, Conservation Commission, Department of Environmental Protection (DEP), Massachusetts Environmental Policy Act (MEPA) and others. Multiple stakeholders and professionals have been engaged in this plan review process throughout, including but not limited to the Waterfront Trust, Harbormaster/Harbor Commission, Parking Clerk, Department of Public Services, Parks Department/Division, Licensed Site Professionals (LSPs), and our design team at Sasaki, which has helped to integrate so many points of input into the detailed plans for permit approvals and construction. Only after these approvals from multiple authorities with overlapping jurisdictions, could Sasaki provide a set of plans suitable for bidding and construction of the project.

Our first round of bidding earlier this year resulted in a higher than anticipated contractor pricing based on Sasaki's pre-bid design estimates. As you may recall, we decided to combine the Market Landing Park Expansion Project with the Market Square Drainage Culvert Replacement Project for the purposes of bidding and contractor mobilization, with the presumption that this would reduce our overall costs, and avoid the construction management problems typically associated with overlapping contractors and construction work areas. Through this first round of bidding, review of the low bid received, and even discussions with all other contractors who reviewed the bid package but did not submit a bid, it became apparent that the drainage culvert scope was driving most of the cost increases we were seeing, particularly the quantities for contaminated soil management involved with such a large pipe traversing through an AUL (Activities and Use Limitation) area, and the concerns and risks associated with installing such a large subsurface pipe tight between two historic buildings approaching Market Square. The attached sketch plan has been updated since you last saw it - with the Culvert funding transfer request last year – to include a few additional notations that are key to understanding our new approach to the integration of these two projects (*one as the primary park project, and the other as a distinct DPS infrastructure project that was recommended for install/burial prior to grade-level park and walkway improvements*).

It is possible that the culvert project itself will cost more than our municipal and consulting engineers originally estimated. Additionally, it is possible that the design approach here will be revised to align the "60%" segment (*see sketch plan*) easterly through the main driveway entrance to the NRA East Lot (*so as to avoid work of significant depth tight between historic building foundations*). As depicted and labeled on the sketch plan, a new drain manhole has been located, and slightly adjusted in its location during our second bid for the park project, so as to allow installation of the culvert segment beneath new park space now, while providing a convenient point of connection for the phased abandonment of an older undersized granite box culvert, with future extension of the new culvert (*abandoning the rest of the granite box culvert at such time*) to Market Square. In the attached sketch plan the old granite box culvert can be seen as a faint grey dashed line type to the left of the new culvert alignment. It is apparent that further adjustments in design and/or alignment for that section, and potentially additional funding, will be necessary to advance the remainder of the culvert installation. However, given that this infrastructure can be installed in two phases, it is not necessary to delay the long-awaited park project while these details of the DPS project are resolved. However, it would make sense to delay constructing the final brick work and surface improvements of Ferry Wharf Way approaching Market Square until the subsurface work in this area is complete. As noted in the sketch, the existing concrete walkway installed by DPS several years ago could remain in place until then.

In response to the high bid received during our first round of bidding, we revised our project plans to reduce the primary/mandatory culvert work, and break the Phase I area into smaller areas (*as "base bid" park expansion along the water's edge and "alternates" for the new perpendicular walkways*) to provide us with options should

contractor bids remain high. Our second round of bidding also resulted in a higher than anticipated contractor prices (*with our reference point being Sasaki's design estimates*). This remained the case for park work, despite our efforts to eliminate the more debatable scope and costs associated with culvert work through the AUL to Market Square. It should be noted here that three higher bids were also received, beyond that of the lowest bid. All four suggest consistency as to increased market prices for the associated construction work. As such, we have been reviewing our pre-bid estimates from Sasaki with the low bid, in order to determine what the primary cost drivers are, and the extent to which our plans could undergo any further "value engineering" to reduce costs. We are still engaged in discussions with the design team, and the low bidder, to flush out these details, but thus far it does not seem likely that any of these minor adjustments (*even in combination*) would result in a substantial reduction to the scope of work or contractor costs. As you know, we already broke the larger project into three phases (*i.e. park areas, parking lot upgrades, and visitor center/restrooms, respectively*), and during round two of bidding we isolated the two new perpendicular walkaways as secondary bid "alternates" that could be postponed should bid prices come in high again.

Budget Overview, Available Options, Related Considerations & Next Steps

Based on the above information, it is unlikely that we would see a substantial reduction in construction costs if the current bids were to be rejected in favor of further design changes and relatively minor "value engineering" adjustments prior to another bid round. And although there continues to be speculation as to whether, and when, changes in the economy may result in better prices, it is a risky proposition to anticipate that favorable trajectory for market prices, recognizing the typical pattern of inflation and cost increases over time. These inflationary costs are typically represented as an "escalation contingency" in design estimates during early design, in advance of bidding. It should be noted here that further design changes would require scope increases and contract extensions (*i.e. costs to the City*) associated with work by the design team beyond what has already been funded, and for which services have already been rendered. These cost drivers must be considered as part of the larger financial picture. The main point here being that unless substantial changes are involved, further value engineering to attempt another bid may not in fact produce better contractor bids in the end. Notwithstanding the foregoing, we have identified a few areas where smaller adjustments could be made via change orders at the outset of bid award and construction startup, to reduce our project costs as much as is reasonably feasible. This includes, but is not limited to, those listed here, which have thus far been identified by the design and project management team:

1. Minor adjustments to irrigation system – stubs/reductions at certain landscape planting beds
2. Minor adjustments to screening fences to be installed around raised electrical transformers
3. Potential National Grid assistance with pull boxes and concrete transformer pads
4. Reduction in initial planting sizes (e.g. 1 gal shrub vs. 2 gal. shrub)
5. Reduction in planting warranty periods (trees and/or shrubs, with ongoing watering/maintenance by the City/WFT immediately following construction)
6. Asphaltic Subbase in lieu of Concrete Base (beneath new brick walkways/plaza/shoulder pavers)
7. Direct drilling of new water line vs. trench/excavation work

Other potential changes (*cost reductions to be taken in total*) are still being considered. These could be achieved through one or more Change Orders with the contractor once a base contract is executed. The final cumulative number (*total cost reductions/savings*) would be confirmed at that time. As such, I would not recommend reducing the 5% construction contingency to be addressed through the associated Order at this time, but rather that any unused funds be returned to Waterfront Parking Revenues upon completion of the project as noted.

Pending Council approval of the associated Order, and thus our ability to proceed with a contract for the low bid, we intend to pursue the above, and any other similar adjustments for cost savings to the extent feasible, in coordination with the contractor. And while it may be possible to reduce the overall project cost by say \$100-200K

(maximum ballpark at this time), it is still important to have a reasonable (i.e. 5% minimum) construction contingency available at the time of contract execution, in order to avoid additional costs that would otherwise be created by the delays to our contractor associated with awaiting Council action later (i.e. committee referrals, etc.) during the middle of construction.

In light of this context regarding the potential for cost reductions by further “value engineering,” we must now consider whether impacts to the timeline of this project (necessary to delay or rebid the project, or to make substantial design changes) would adversely impact the project budget. This is where two state grants we have applied for come into key consideration, as combined they represent an order of magnitude notably higher than any cumulative “value engineering” design adjustments we believe would be feasible without jeopardizing the scope and quality of this project.

The below table provides a summary of the current construction phase costs, and funding that has been appropriated for the project. Also noted here are the specific actions requested of the Council now, as outlined in the accompanying omnibus Order, to address gap funding to advance construction at this time, and in light of the crucial timeline associated with access to and use of significant state funding.

Project Costs for Construction	
<i>(as outlined herein, not including design, permitting, bidding costs to date)</i>	
Base Bid (Onyx)	\$5,590,000
Construction Contingency (5%)	\$279,500
Construction Administration (Sasaki)	\$220,575
TOTAL	\$6,090,075

Funding Sources Available for Construction	
<i>(as outlined herein, with pending grant award and Council actions from the accompanying Order as noted)</i>	
CPA Bond	\$3,000,000
CPA FY22	\$250,000
Herman Roy Trust Fund	\$1,000,000
Grant - Coastal Trails Coalition (CTC) (awarded)*	\$10,000
Grant – MA EOEEA DCS PARC (awarded)*	\$400,000
Grant – MA EOEEA DCR MassTrails (pending)*	\$399,936
Council/WFT Appropriations - Temporary Power	\$80,000
Council Appropriation – Market Sq. Culvert**	\$655,525
Waterfront Parking Revenues***	\$294,614
TOTAL	\$6,090,075

Footnotes to Tables Above:

- * The associated Order includes acceptance of these three outside grants/donations. Both state grants must be used within FY’24. Technically a prior Council Order approved acceptance of the PARC grant, but it is included again here for consistency and comprehensiveness, particularly in the context of the current request for timely gap funding. While not yet officially announced, we anticipate state approval shortly for the MassTrails grant request.
- ** The associated Order would reallocate approximately 60% of the previously approved culvert funding/scope to the park project, as outlined here and in the attached sketch.
- *** The associated Order would allocate funding necessary to ensure a 5% construction contingency until the work is complete, with all remaining funds to be returned to said account. Pursuant to the Special Act for NRA dissolution, these parking revenues from the NRA East and West lots can only be used for construction and/or maintenance of the expanded park. The current account balance is approximately \$505,489, with approximately \$215,251 in revenues from the prior fiscal year. As such the appropriation for construction here is not likely to have any adverse impact on the remaining account balance or revenues required to maintain the expanded park after construction.

The accompanying Order will provide the gap funding necessary to complete construction of primary park space along the water’s edge, and the connecting shared use path “spine,” from our Phase I plan approved by the Council. And while I don’t think anyone would indicate pleasure with higher than anticipated contractor bids, this is not entirely unusual, both pre- and post-pandemic in particular (consider for instance supplemental funding

recently appropriated for the Cutter/West End Fire Station project). Incidentally, when discussing our grant, project status and timeline with the PARC grant Administrator this week, she indicated that this pattern of higher bids was being seen by other municipalities across the spectrum of projects they have provided FY'24 funding for. And while we might debate the ability and responsibility of Sasaki's cost estimators to anticipate substantial cost increases (whether pre- or post-pandemic) the market forces "are what they are," and I remain skeptical about relying on potential future bid rounds or mobilizations of a contractor, to provide an overall reduction in project costs to the City significant enough to justify walking away from \$800K in state funding available only for use within FY'24. I have asked whether any extension of the grant timelines would be possible, and for both PARC and MassTrails this is not an option. Additionally, I should note that cancelling our use of these state grants in FY'24 may have adverse implications for future grant applications associated with this, or similar, projects from Newburyport.

Recognizing the need for late summer/fall 2023 construction work to ensure that a spring (*i.e.* FY') 2024 completion remains feasible for the project, DCS expected contract execution by June 30, 2023, just a few weeks away. I have confirmed that we can delay execution of a construction contract for a few more weeks, but extending that timeframe further is problematic and may put our access to PARC grant funds for this project in jeopardy. Please note that in either event, both state grants applicable to this project must be used and reimbursed prior to June 30, 2024 (including a site visit to inspect the completed work and new public facilities created). Waiting to engage and mobilize a contractor makes that timeline progressively more difficult to achieve, even from a practical perspective.

Conclusion

The design and project management team will be available for Committee/Council review of this request, and any related questions you may have. It is my intention with this memorandum to provide you as comprehensive an update on status, project details and context necessary to make a timely decision in any event, and regardless of the outcome of such vote. As noted herein, overlapping consideration of multiple factors and variables, including but not limited to timely contractor bids and the constraints associated with state grants awarded specifically for this project to be constructed in FY'24, suggest that the attached Order (*and the path forward it represents*) should be presented to the Council forthwith, and that a decision on how to proceed should be made as soon as possible.

Thank you in advance for your consideration. As noted in my introductory comments above, while no one would express enthusiasm for higher than anticipated construction costs, I do believe (*in the context of, and with full consideration for, the various factors involved*) that approval of the attached Order and construction of primary park space in FY'24 would be the best course of action for the City at this time.

Existing Conditions



AREAS OF INTEGRATION

Waterfront Trust

Waterfront Trust

AREAS OF INTEGRATION

NRA Parcel - West

Waterfront Trust

AREAS OF INTEGRATION

NRA Parcel - East

Waterfront Trust

Proposed Plan



Somersby Sculpture Plaza

Drop Off Area

Seating Area

Embayment

West Embayment Plaza

Shared Use Path

Harbormaster Entry Drive

Harbormaster

Somersby Way

West Lot

Central Wharf Way

Stage
Newburyport Waterfront Trust Property
Existing to remain

Ferry Wharf Plaza

East Lot

Visitors Center + Restrooms

Upper Railroad Way

Lower Railroad Way

Ferry Wharf Way

Deliveries+ Dumpster Enclosure

Custom House Way

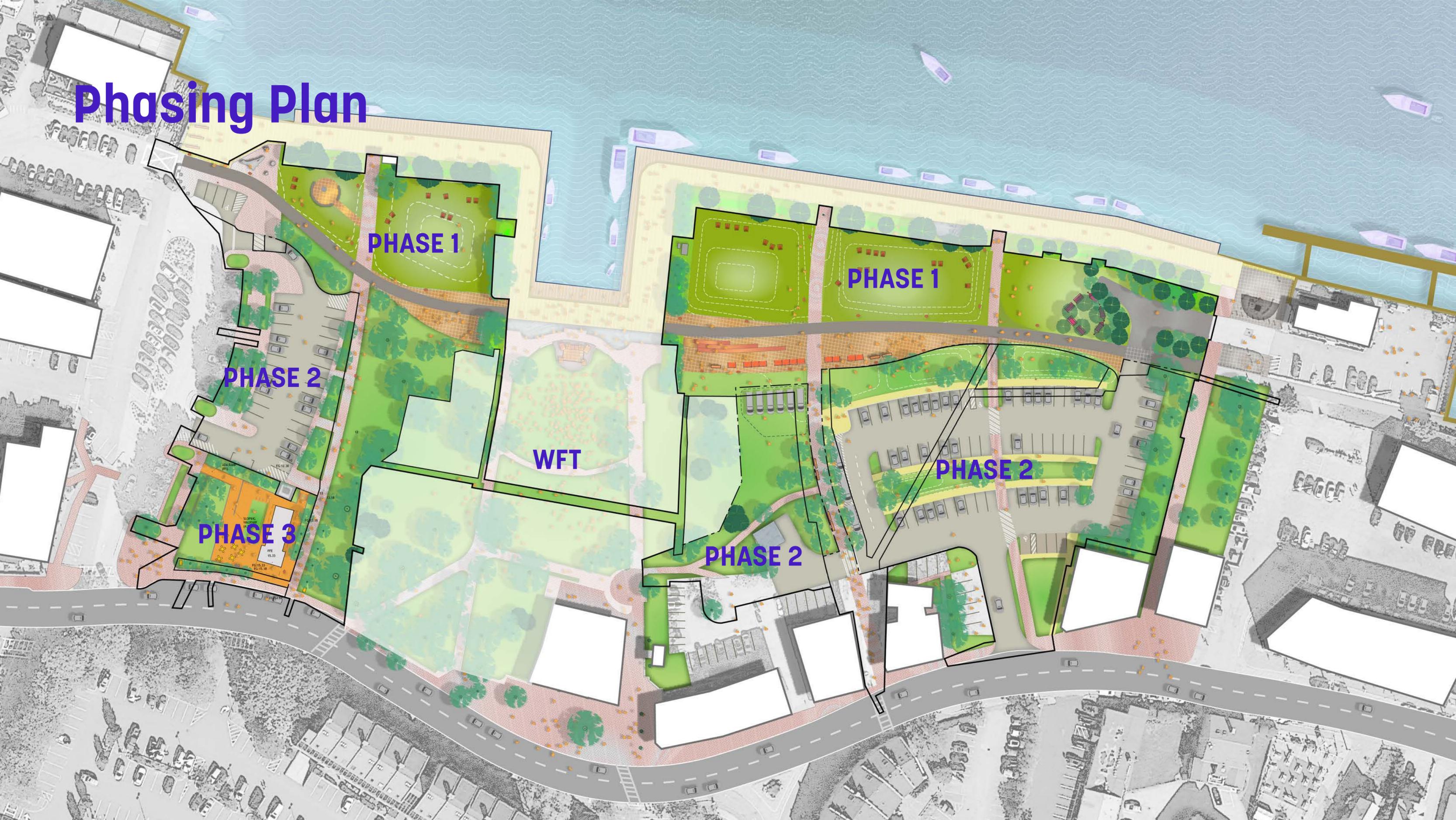
Custom House

Fire House

0 25 50 100 ft



Phasing Plan



Phase 1 with Interim Parking Layout

Interim conditions until Phase 2 parking areas are complete



	NRA East	NRA West	WFT	Total
2021 Parking Count (after 2019 interim lawn installation)	126 (4 HP Spaces)	65 (3 HP Spaces)	54 (3 HP Spaces)	245
Parking Count Phase 1 (after Market Landing Park Expansion Phase 1)	80 (1 HP Spaces)	33 (1 HP Spaces)	54 (3 HP Spaces)	167
Total Proposed Parking Count	75 (3 ADA)	35 (2 ADA, 2 EV)	54 (3 HP Spaces)	164

Revised Alternates

MERRIMACK RIVER

MERRIMACK RIVER

**BASE BID
WATERFRONT PARK EAST+CULVERT
CONNECTION TO EXISTING**

**BASE BID
WATERFRONT
PARK WEST**

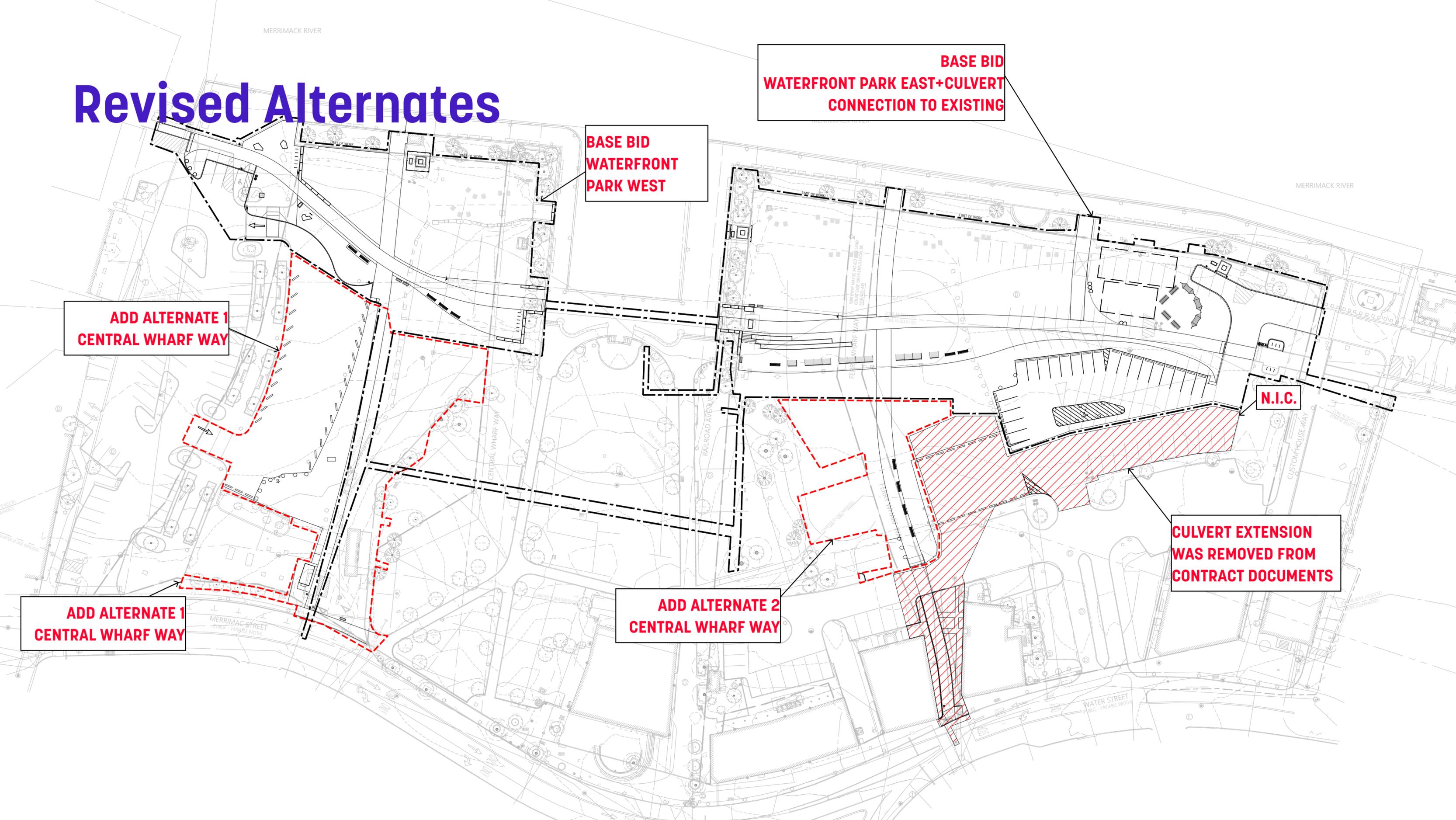
**ADD ALTERNATE 1
CENTRAL WHARF WAY**

N.I.C.

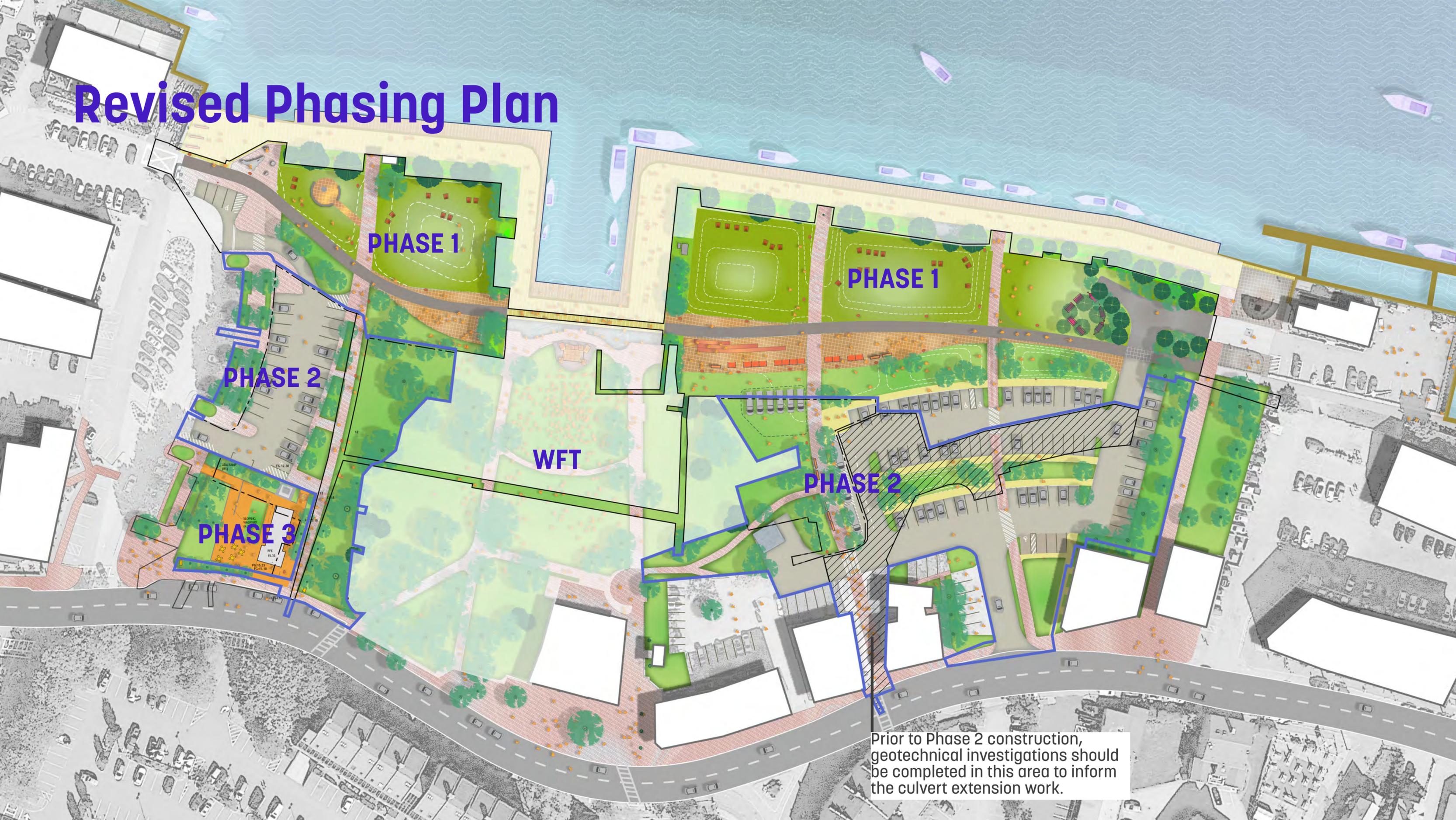
**CULVERT EXTENSION
WAS REMOVED FROM
CONTRACT DOCUMENTS**

**ADD ALTERNATE 1
CENTRAL WHARF WAY**

**ADD ALTERNATE 2
CENTRAL WHARF WAY**



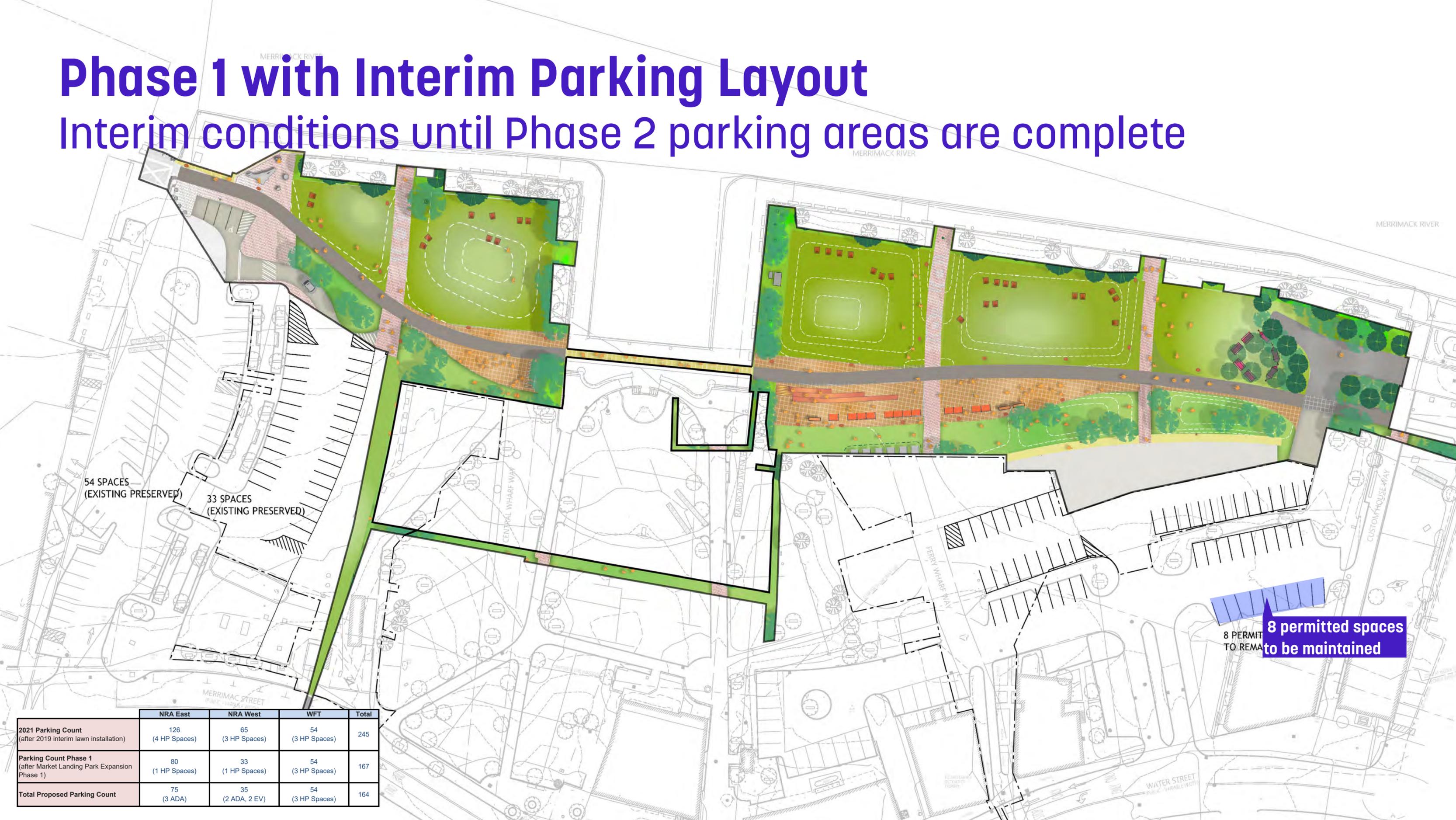
Revised Phasing Plan



Prior to Phase 2 construction, geotechnical investigations should be completed in this area to inform the culvert extension work.

Phase 1 with Interim Parking Layout

Interim conditions until Phase 2 parking areas are complete



54 SPACES
(EXISTING PRESERVED)

33 SPACES
(EXISTING PRESERVED)

8 PERMITTED TO REMAIN
8 permitted spaces to be maintained

	NRA East	NRA West	WFT	Total
2021 Parking Count (after 2019 interim lawn installation)	126 (4 HP Spaces)	65 (3 HP Spaces)	54 (3 HP Spaces)	245
Parking Count Phase 1 (after Market Landing Park Expansion Phase 1)	80 (1 HP Spaces)	33 (1 HP Spaces)	54 (3 HP Spaces)	167
Total Proposed Parking Count	75 (3 ADA)	35 (2 ADA, 2 EV)	54 (3 HP Spaces)	164

Market Landing Park
Expansion Project

&

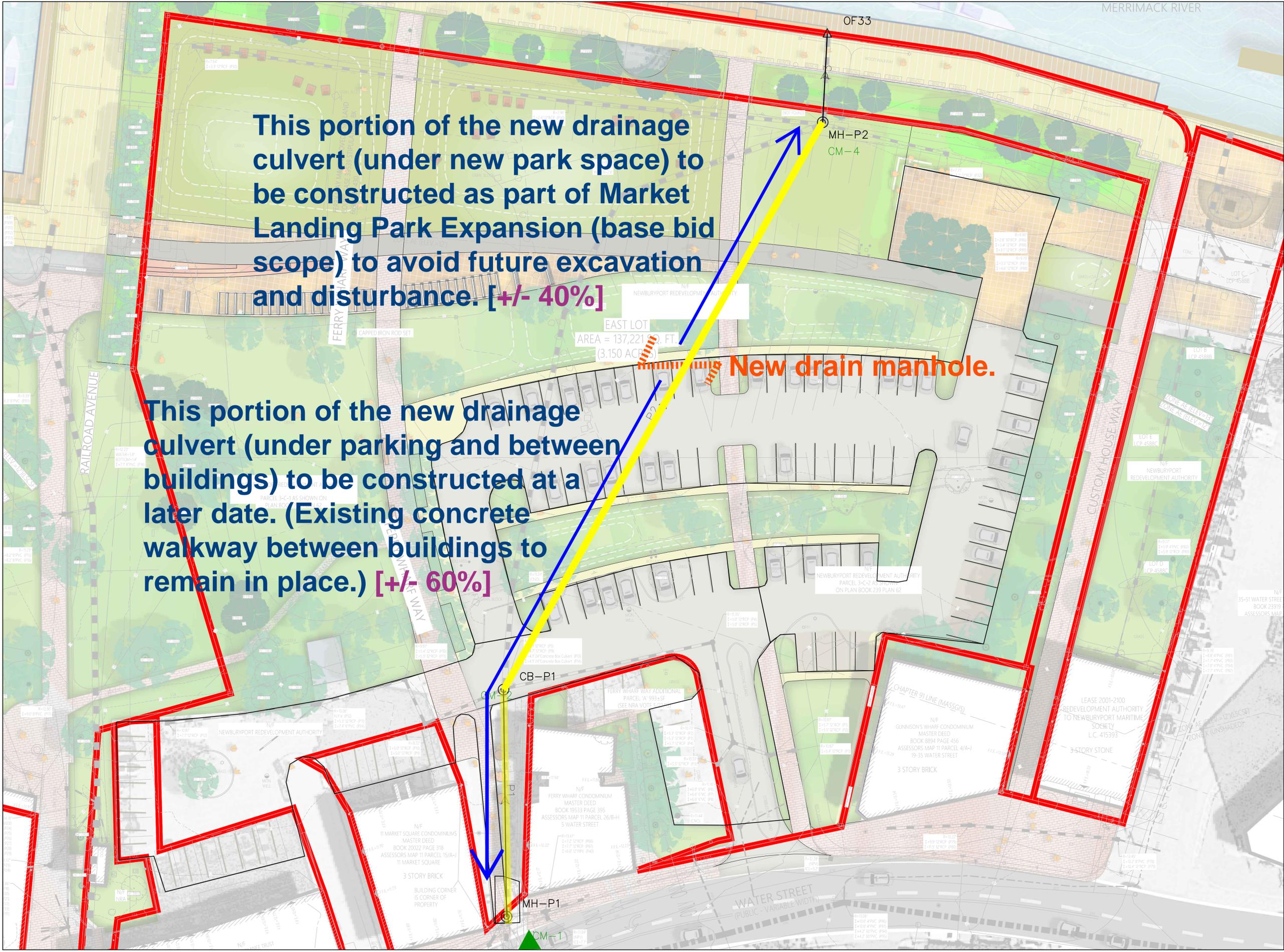
Market Square
Drainage Culvert
Replacement Project

Sketch to Accompany
Update to City Council,
Memorandum Date 6/10/2023

This portion of the new drainage culvert (under new park space) to be constructed as part of Market Landing Park Expansion (base bid scope) to avoid future excavation and disturbance. [+/- 40%]

This portion of the new drainage culvert (under parking and between buildings) to be constructed at a later date. (Existing concrete walkway between buildings to remain in place.) [+/- 60%]

New drain manhole.



Market Landing Park
Drainage Sketch
Sasaki
3/17/22
1" = 20'



CONSENT AGENDA

CITY COUNCIL MEETING

MINUTES

May 22, 2023 7:00 pm

City Council Chambers, City Hall

60 Pleasant Street, Newburyport

Zoom details for City Council Meeting:

<https://us02web.zoom.us/j/81299990548>

Or One tap mobile:

US: +19292056099,81299990548#

Or Telephone US: +1 929 205 6099

Webinar ID: 812 9999 0548

1. MOMENT OF SILENCE

2. PLEDGE OF ALLEGIANCE

CALL TO ORDER REMOTE 7:00 pm City Clerk Richard B. Jones called the role, the following City Councillors answered present: Vogel, Wallace, Wright, Zeid, Cameron, Donahue, Khan, Lane, McCauley, Preston, and Shand. 11 present (2 remote JD, BL).

3. LATE FILE

- ORDR00458_05_22_2023 Hale Street Resolution

Motion to waive the rules, accept the late file, and refer to Public Works & Safety by Councillor Zeid, seconded by Councillor Vogel. Roll call vote. 11 yes. Motion passes.

4. MAYOR'S COMMENT

5. PUBLIC COMMENT

Marianne Vesey	10 Kent St.
Mary Young	11 Jefferson Ct.
Stephanie Niketic	93 High St.
Marguerite Casey	487 Merrimac St.
Jason Lacroix	14 Hill St.
Victoria Carr	1 Hill St.
Rita Mihalek	53 Warren St.
Jean Costello	522 Merrimac St.
Madeline Nash	19 Arlington St.

Motion to move APPT00403_05_08_2023 to the beginning of the meeting by Councillor Wallace, seconded by Councillor McCauley. Roll call vote. 11 yes. Motion passes.

- APPT00403 05 08 2023 Stephen H. Bradbury III 24 Howard St. Fire Chief 6/1/2028

Motion to approve by Councillor Wallace, seconded by Councillor McCauley. Roll call vote. 11 yes. Motion passes.

CONSENT AGENDA

NOTE: ALL ITEMS LISTED UNDER CONSENT AGENDA WILL BE ENACTED BY ONE MOTION. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS. IF DISCUSSION IS DESIRED, THAT ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND CONSIDERED SEPARATELY.

6. APPROVAL OF MINUTES

- May 8, 2023

(Approve)

7. COMMUNICATIONS

- APPL00140_05_22_2023 Block Party 51 Prospect St. August 3rd 6:30pm (L&P)
- APPL00141_05_22_2023 Block Party 14 Dove St. August 5th 5:30pm-10pm (L&P)

- COMM00485_05_22_2023 Newburyport Maritime Days June 30th-July 10th Custom House Lawn (R&F)
- COMM00486_05_22_2023 Newburyport Comprehensive Economic Development Strategy

8. TRANSFERS

- TRAN00154_05_22_2023 DPS: General Fund-Free Cash \$253,294.14 & Snow & Ice-Labor \$17,840.72 to (B&F)
Snow & Ice-Expenses \$271,134.86
- TRAN00155_05_22_2023 Health Insurance: General Fund-Free Cash \$61,195 to (B&F)
Health Insurance Premiums \$61,195
- TRAN00156_05_22_2023 Fire Dept: FIR Dues & Memberships \$1,291.54 to (B&F)
Emergency Mgmt. Coordinator \$922.58 & Emergency Mgmt. Deputy Coordinator \$368.96
- TRAN00157_05_22_2023 Police: POL Fuel/Oil Vehicle \$8K, POL Misc. Supplies \$2K, & (B&F)
POL MIS/Comm. \$2K to POL Maint-Equipment \$12K
- TRAN00158_05_22_2023 Library: LIB Salary Librarian \$7K & LIB Salaries Staff \$13K (B&F)
to LIB Purchase Books \$3K, LIB Heat/Electricity \$12K, & LIB Maint-Equipment \$5K

9. APPOINTMENTS

- APPT00404_05_22_2023 Edward Noymer 8 Lucey Dr. Historical Comm. 6/1/2026 (P&D)
- APPT00405_05_22_2023 Ronald Thurlow 28 Hancock St. Harbor Comm. 6/1/2026 (PW&S)
- APPT00406_05_22_2023 Murphy Hesse Toomey & Lehane LLP City Solicitor 7/1/2023-1/31/2024 (GG/COTW)
50 Braintree Hill Office Park Suite 410 Braintree MA 02184

ALL ITEMS NOTED BELOW ARE REMOVED FROM THEIR RESPECTIVE COMMITTEES WITH THE MOTION TO APPROVE THE CONSENT AGENDA

GENERAL GOVERNMENT

- COMM00464_02_27_2023 Brown School RFI Councillor Zeid Redline (COTW) *amended*
- ORDR00428_02_27_2023 RFI Brown School Property (COTW) *amended*

LICENSES & PERMITS

- APPL00134_05_08_2023 9th Annual Harborside Half Marathon & 5K 11/12/2023 9am-1:30pm
- APPL00135_05_08_2023 Paws for a Cause 10/14/2023 10am-12pm
- APPL00136_05_08_2023 Yankee Homecoming July 29th-August 6th *amended*
- APPL00137_05_08_2023 Olive's Backyard Makers Market 7/22/2023 9am-2pm
- APPL00138_05_08_2023 Lions Bed Race August 3rd 5pm-8pm
- APPL00139_05_08_2023 Block Party 31 Howard St June 14th 12pm-9pm
- COMM00484_05_08_2023 Newburyport Pride Parade Information

PLANNING & DEVELOPMENT

- APPT00391_04_24_2023 Marc Cendron 91 High St. Historical Commission 5/1/2026
- APPT00394_04_24_2023 Madeline K. Nash 19 Arlington St. Affordable Housing Trust 5/1/2025
- APPT00396_04_24_2023 Jane Healey 38 Winter St. Community Preservation Comm. 5/1/2026
- ORDR00450_05_08_2023 NBHI Interpretive signs locations
- ORDR00456_05_08_2023 344 Merrimac St. Preservation Restriction

PUBLIC WORKS & SAFETY

- APPT00403_05_08_2023 Stephen H. Bradbury III 24 Howard St. Fire Chief 6/1/2028
- ODNC00150_05_08_2023 Amend Municipal Fees Street Permits and Employee Permits (COTW)
- ODNC00151_05_08_2023 Amend Ch 13-180 Residential Permits (COTW)
- ODNC00152_05_08_2023 Amend Ch 13-181 Municipal Parking Facilities (COTW)
- ODNC00153_05_08_2023 Amend Ch 13-166 Anti-Shuffling (COTW)

END OF CONSENT AGENDA

COMM00486_05_22_2023 is removed at request of Councillor Khan.
ODNC00152_05_08_2023 to remain in committee at request of Councillor Wallace
Motion to accept the Consent Agenda as amended by Councillor Zeid, seconded by Councillor McCauley . Roll call vote. 11 yes. Motion passes.

REGULAR AGENDA

9. MAYOR'S UPDATE

Motion to receive and file by Councillor Wright , seconded by Councillor Cameron. roll call 11

10. FIRST READING APPOINTMENTS

11. COMMUNICATIONS

• COMM00486_05_22_2023 Newburyport Comprehensive Economic Development Strategy
Motion to refer to Planning & Development by Councillor Khan, seconded by Councillor Vogel. Roll call vote. 10 yes, 1 no (SZ). Motion passes.

12. TRANSFERS

13. SECOND READING APPOINTMENTS

• APPT00398_05_08_2023 Ilene Harnch-Grady 10 Cushing Ave Council on Aging 6/1/2026
• APPT00401_05_08_2023 Annie Maurer 17 Otis Pl. Council on Aging 6/1/2026
Motion to collectively approve APPT00398 and APPT00401 by Councillor McCauley, seconded by Councillor Cameron. Roll call vote. 11 yes. Motion passes.

14. ORDERS

• ORDR00457_05_22_2023 FY24 Revolving Funds Spending Limits
Motion to refer to Budget & Finance by Councillor Zeid , seconded by Councillor Wright. Roll call vote. 11 yes. Motion passes.

15. ORDINANCES

• ODNC00135_01_30_2023 **2nd reading** Zoning Amendment ITIF Remove Residential Use *Amended*
Motion to approve on 2nd reading by Councillor Cameron, seconded by Councillor McCauley. Roll call vote. 11 yes. Motion passes.

16. COMMITTEE ITEMS

Budget & Finance

In Committee:

- ODNC00129_11_01_2022 Defining Conflict Rule for Dept. Heads (COTW)
- ORDR00336_03_28_2022 ARPA Amesbury 250K (COTW)
- TRAN00153_05_08_2023 Mayor: Multiple \$3,483,773 to Multiple \$3,483,773 (COTW)
- ORDR00451_05_08_2023 PEG Center Gift Acceptance
- ORDR00452_05_08_2023 FY2024 Budget Order (COTW)
- ORDR00453_05_08_2023 FY2024-2028 Capital Improvement Program (COTW)

Community Services

In Committee:

- COMM00474_04_10_2023 Newburyport Public Art Policy
- ORDR00455_05_08_2023 ACO Intermunicipal Agreement

General Government

In Committee:

- **COMM00464 02 27 2023** **Brown School RFI Councillor Zeid Redline (COTW) amended**

Motion to receive and file by Councillor Shand, seconded by Councillor Donahue. Roll call vote. 11 yes. Motion passes.

- **ORDR00428 02 27 2023** **RFI Brown School Property (COTW) amended**

Motion to approve by Councillor Vogel, seconded by Councillor Donahue.

Motion to amend to remove the gym from order by Councillor McCauley, seconded by Councillor Zeid. Roll call vote. 4 yes (CW, SZ, BL, JM), 7 no (BV, MW, EC, JD, AK, CP, HS). Amendment fails.

Motion to approve by Councillor Vogel, seconded by Councillor Donahue. Roll call vote. 7 yes (BV, MW, EC, JD, AK, CP, HS), 4 no (CW, SZ, BL, JM). Motion passes.

- **ORDR239_02_8_2021** **Council Rule 7 and 10B**
- **COMM00461_02_27_2023** **Brown School Gymnasium Considerations (COTW)**
- **COMM00468_03_13_2023** **Brown School Proposal (COTW)**
- **ODNC00146_03_13_2023** **Amend Ch 2-34 Responsibilities of Committee on Community Services**
- **APPT00390_04_24_2023** **Caitlin Haire 43 Prospect St. Board of Registrars 5/1/2026**
- **APPT00402_05_08_2023** **Steven Wallace 20 Allen St Waterfront Trust 6/1/2026**

Licenses & Permits

In Committee:

- **APPL00134 05 08 2023** **9th Annual Harborside Half Marathon & 5K 11/12/2023 9am-1:30pm**
- **APPL00135 05 08 2023** **Paws for a Cause 10/14/2023 10am-12pm**
- **APPL00136 05 08 2023** **Yankee Homecoming July 29th-August 6th amended**
- **APPL00137 05 08 2023** **Olive's Backyard Makers Market 7/22/2023 9am-2pm**
- **APPL00138 05 08 2023** **Lions Bed Race August 3rd 5pm-8pm**
- **APPL00139 05 08 2023** **Block Party 31 Howard St June 14th 12pm-9pm**

Motion to collectively approve APPL00134, APPL00135, APPL00136, APPL00137, APPL00138, and APPL00139 by Councillor Vogel, seconded by Councillor McCauley. Roll call vote. 11 yes. Motion passes.

- **COMM00484 05 08 2023** **Newburyport Pride Parade Information**

Motion to receive and file by Councillor Vogel, seconded by Councillor Khan. Roll call vote. 11 yes. Motion passes.

- **ODNC047_01_27_2020** **General Ordinance - Short Term Rental Units Rules**

Planning & Development

In Committee:

- **APPT00391 04 24 2023** **Marc Cendron 91 High St. Historical Commission 5/1/2026**

Motion to approve by Councillor Cameron, seconded by Councillor Preston. Roll call vote. 10 yes, 1 no (JM). Motion passes.

- **APPT00394 04 24 2023** **Madeline K. Nash 19 Arlington St. Affordable Housing Trust 5/1/2025**

Motion to approve by Councillor Cameron, seconded by Councillor Preston. Roll call vote. 11 yes. Motion passes.

- **APPT00396 04 24 2023** **Jane Healey 38 Winter St. Community Preservation Comm. 5/1/2026**

Motion to approve by Councillor Cameron, seconded by Councillor McCauley. Roll call vote. 11 yes. Motion passes.

- **ORDR00450 05 08 2023** **NBHI Interpretive signs locations**

Motion to approve by Councillor Cameron, seconded by Councillor Preston. Roll call vote. 11 yes. Motion passes.

- **ORDR00456 05 08 2023** **344 Merrimac St. Preservation Restriction**

Motion to approve by Councillor Cameron, seconded by Councillor Preston. Roll call vote. 9 yes, 1 no (SZ), 1 absent (JD). Motion passes.

- **ODNC00141_02_27_2023** **Zoning Amendment STRU (COTW)**

Public Works & Safety

In Committee:

- **APPT00403_05_08_2023** **Stephen H. Bradbury III 24 Howard St. Fire Chief 6/1/2028**

- **ODNC00150 05 08 2023** **Amend Municipal Fees Street Permits and Employee Permits (COTW)**
Motion to approve on 1st reading by Councillor Wallace, seconded by Councillor McCauley. Roll call vote. 10 yes, 1 no (SZ). Motion passes.
- **ODNC00151 05 08 2023** **Amend Ch 13-180 Residential Permits (COTW)**
Motion to approve on 1st reading by Councillor Wallace, seconded by Councillor McCauley. Roll call vote. 11 yes. Motion passes.
- **ODNC00152_05_08_2023** **Amend Ch 13-181 Municipal Parking Facilities (COTW)**
- **ODNC00153 05 08 2023** **Amend Ch 13-166 Anti-Shuffling (COTW)**
Motion to approve on 1st reading by Councillor Wallace, seconded by Councillor McCauley. Roll call vote. 7 yes, 4 no (BV, SZ, BL, CP). Motion passes.
 - COMM00412_05_31_2022 Ltr Ann Jaroncyk re: Traffic Safety
 - COMM00414_05_31_2022 Ltr. Emily Dunn re: Traffic on Merrimac Street
 - COMM00456_12_12_2022 Letters re: Curb Cut 4 Wilkinson Dr. & 34 Hale St.
 - ODNC00103_01_10_2022 Streets, Sidewalks, and Other Public Places Alterations & Maintenance
 - COMM00459_01_30_2023 Ltr. Residents concerned with speeding on Arlington St.
 - COMM00462_02_27_2023 Ltr. From Kathleen O'Connor Ives re: drinking water concerns
 - ORDR00449_04_24_2023 Approving Shared Streets Grant, High Street Traffic Calming
 - COMM00479_04_24_2023 Ward 4 Street Sidewalk Traffic Safety Priorities
 - COMM00480_04_24_2023 Merrimac St. Safety Items
 - COMM00482_04_24_2023 Constructions projects at the Central Waterfront
 - APPT00404_05_08_2023 *Re-appointment* James Knapp 24 Cutting Dr. Harbor Comm. 6/1/2026
 - COMM00483_05_08_2023 Residential HP App 12 Merrill St.
 - APPT00399_05_08_2023 Brett Carrier 231 Middle Rd. Byfield Asst Hrbmstr/Shlfsh Cnstbl/SpPO 6/1/2026
 - APPT00400_05_08_2023 Robert Dow 185 Storey Ave Harbor Comm. 6/1/2026
 - ORDR00454_05_08_2023 Storey Avenue bicycle lane

17. GOOD OF THE ORDER

18. ADJOURNMENT

Motion to adjourn at 8:49 pm by Councillor Zeid, seconded by Councillor Preston. Roll call vote. 11 yes. Motion passes.

COMMUNICATIONS



City of Newburyport

Application Form Restaurant License Occupy Outdoor City Property

****DO NOT USE THIS APPLICATION FORM FOR EVENTS****

Date Submitted: 05/24/23

Business Name: Red Ashes Inc DBA Port Ida Mexican Cantina

Business Contact: Paola Gonzalez | Elc T A + a

Business Address: 10 Center St

Phone: 978 242 6200

Email: Damianvargassue@gmail.com

Property Owner: New England Development

Outdoor Tables

Quantity: 12 (16)

Dimensions: 31" x 52"

Material: Brushed Aluminium Frame

Synthetic top

Outdoor Chairs

Quantity: 60

Dimensions: 30" w x 16" d x 36" h

Material: Brushed Aluminium Frame

Synthetic top

Proposed Days/Hours of Operation: Monday - Sunday 11:00am to 9:00pm

Check all that apply:

- Applicant requests approval for food consumption.
- Applicant requests approval for alcohol consumption.
- Applicant requests approval for occupancy of public parking space(s).

Applications shall be delivered to the Office of the City Clerk by hand, mail, or email:

- 1) Office of the City Clerk
Newburyport City Hall
60 Pleasant Street
Newburyport, MA 01950
(978) 465-4407 ext. 1205
rjones@cityofnewburyport.com
- 2) The deadline for applications is the close of business 7:00 pm Thursday, March 10th.

Processing:

- 1) Application fee \$100.00
Occupancy fee \$5/sq. ft. pending in City Council.
- 2) Applications will be reviewed by the City Council and forwarded to the Licensing Board. For applications to occupy a city park or playground, the City Council shall not consider or act upon such application until the earlier of (i) having received a recommendation by the Parks Commission regarding such application, or (ii) 30 days from the City Clerk's receipt of such complete application.
- 3) The **Licensing Board will then conduct a public hearing** on each application and determine whether to approve, approve conditionally, or deny it. The Licensing Board may not approve an application without a favorable recommendation by the City Council.
- 4) The City has no obligation whatsoever to approve any individual application, each of which shall be processed, reviewed, and a determination thereon made by the relevant City officers, boards, and commissions in their reasonable discretion.
- 5) Any condition of approval and submitted plan shall be in force for the entire duration of any validly issued license.
- 6) Any license issued may be revoked at any time by super-majority vote of the City Council, after a public hearing, for any reason, or no reason.

RELEASE AND INDEMNITY AGREEMENT TO ENCUMBER A PUBLIC WAY

I, the undersigned Applicant or Duly Authorized Agent, hereby agree to RELEASE, DISCHARGE, and HOLD HARMLESS, the City of Newburyport, a municipal corporation of the Commonwealth of Massachusetts, and its officers, employees, agents, and servants from all actions, causes of action, claims, demands, damages, costs, loss of services, expenses and compensation associated with the undersigned's use of the public way or other city property as described herein.



Signature of Business Owner

05/24/23

DATE

NEWBURYPORT DEVELOPMENT

A NEW ENGLAND DEVELOPMENT *Company*

City of Newburyport
60 Pleasant Street
Newburyport, Ma 01950

To Whom it May Concern:

Red Ashes Inc, operates Port Vida, a Mexican Cantina at our property located at 10 Center Street, Newburyport. Red Ashes Inc. has our permission to expand outdoor seating to our adjacent property located at 2-8 Center Street. The Lease agreement dated September 26th, 2022 by and between 2-18 Center Street Nominee Trust and Red Ashes Inc. is in place today and continues until the lease expiration date of February 28, 2033. 2-18 Center Street Nominee Trust is wholly owned by New England Development.

Sincerely,



Chris Skiba, General Manager
New England Development

City of Newburyport

Outdoor Tables & Chairs

- 1) A minimum of five-feet of pedestrian clearance must be maintained for public pedestrian access. Tables, chairs, and/or all enclosure materials used to create a demarcated area for serving alcohol may not impede this required pedestrian clearance.
- 2) Tables, chairs, and/or enclosure materials to create a demarcated area for serving alcohol must maintain a minimum of 5-feet of pedestrian clearance from streetlights, signs, trees, benches, garbage barrels, or other sidewalk obstacles.
- 3) Tables, chairs, and/or personal property used to demarcate an area cannot interfere with curb ramps, driveways, fire escapes and/or doorways.
- 4) All tables and chairs that are chained, roped, or otherwise tethered together after business hours must be untethered during business hours.
- 5) Placement of tables and chairs on city property must conform in all respects to all applicable federal, state, and local laws and regulations, including, without limitation workplace safety rules and other public health regulations. Please contact the Newburyport Health Department for workplace safety rules specific to your business sector.
- 6) Like any license, permission to place tables and chairs outdoors on city property is revocable at the discretion of the City of Newburyport.
- 7) Initial licenses, unless revoked, shall remain effective until on or about October 31st and commencing on or about May 1st.

N.B. ODNCO98_10_12_2021 is pending in City Council and may amend requirements to this license.

Attach the following materials:

- 1) Evidence of liability insurance with minimum coverage in the amount of one million dollars (\$1,000,000) per occurrence, naming the City of Newburyport as co-insured, and in force for the entire approved period of occupancy.
- 2) A clear and legible 8½-inch x 11-inch diagram of the proposed area of occupancy, detailing which shall be in addition to any other requirements of law, regulation or ordinance, including state alcohol law. **Such diagram shall demonstrate compliance with MAAB CMR 521 and all other Americans with Disabilities Act (“ADA”) requirements:**
 - a) Perimeter of proposed areas of occupancy, with relevant linear dimensions;
 - b) If such area includes portions of a public street traveled by vehicles, then the public, vehicular path of travel, no less than eleven (11) feet in width, or wider as may be required by the City Engineer;
 - c) All relevant obstacles such as streetlights, signs, trees, etc.; and
 - d) All tables, chairs, seats, total seating count and total occupancy; and
 - e) The area of occupancy must be enclosed by a fence, rope or other means to control access and demarcate the area proposed for the service of food and alcohol; and
 - f) Public, pedestrian path of travel no less than five feet in width.
- 3) Written authorization signed by the Applicant’s landlord acknowledging and agreeing to the use of the adjacent portion of any public way.



REDASHE-01

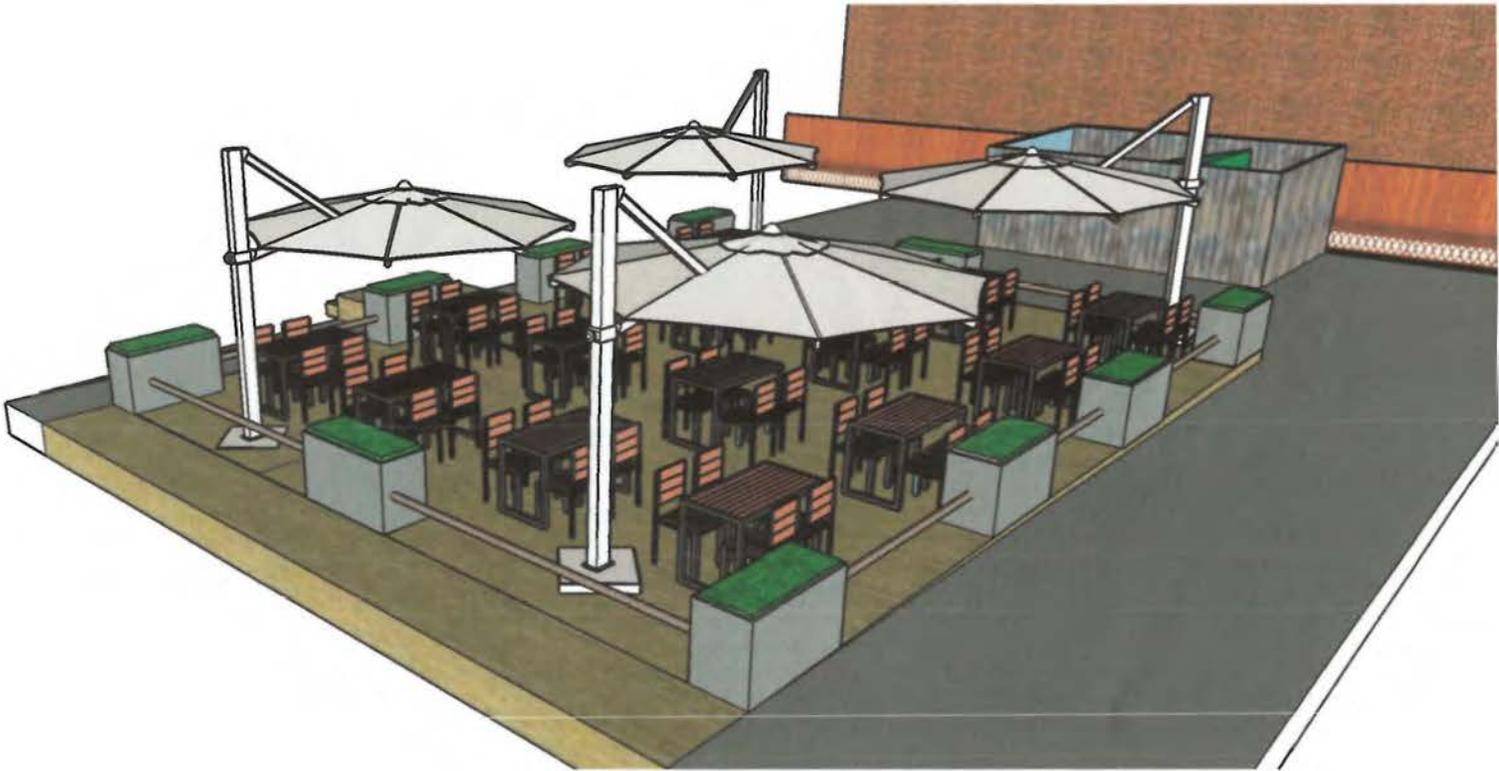
CTAYLOR

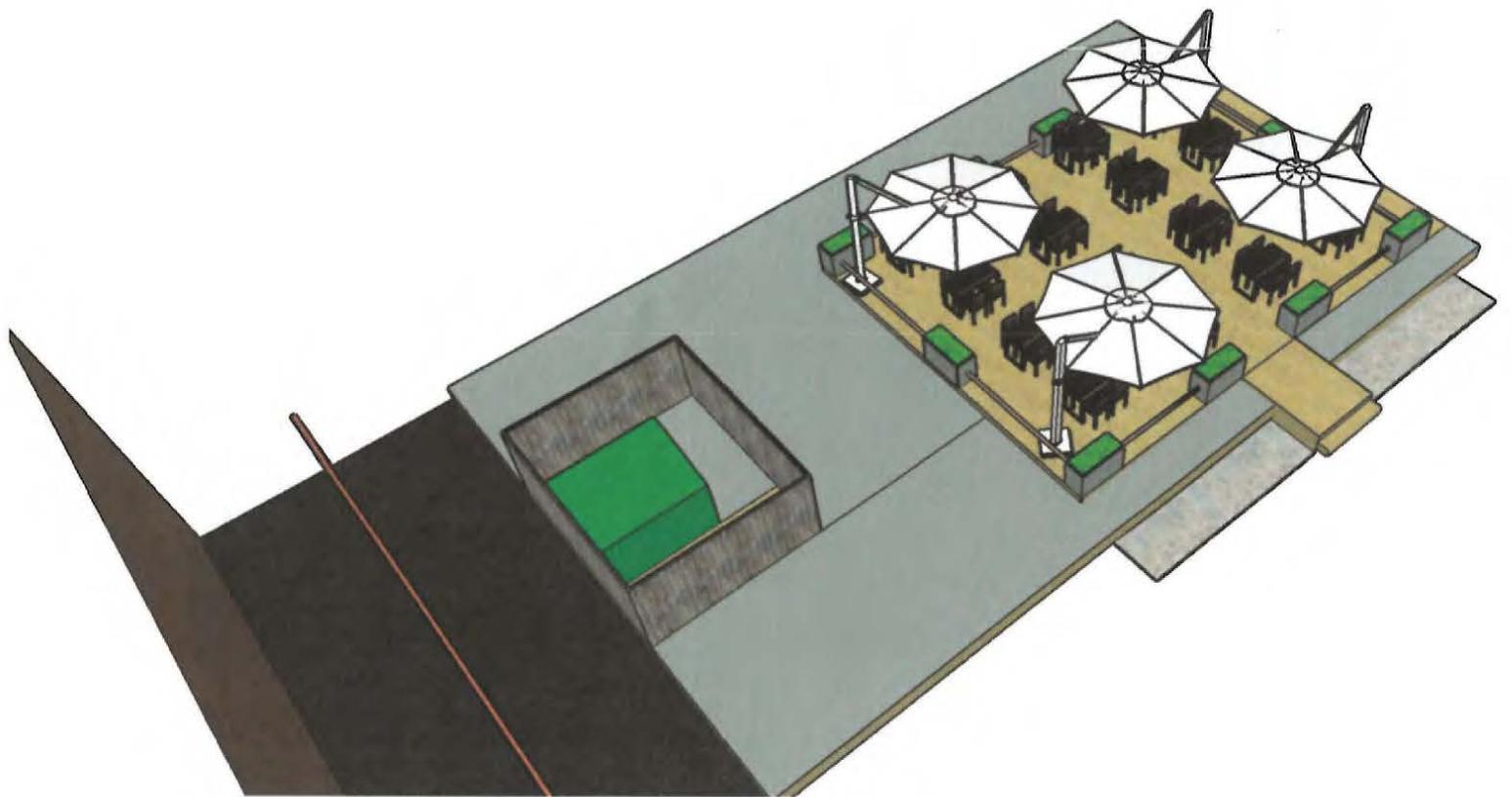
CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/25/2023

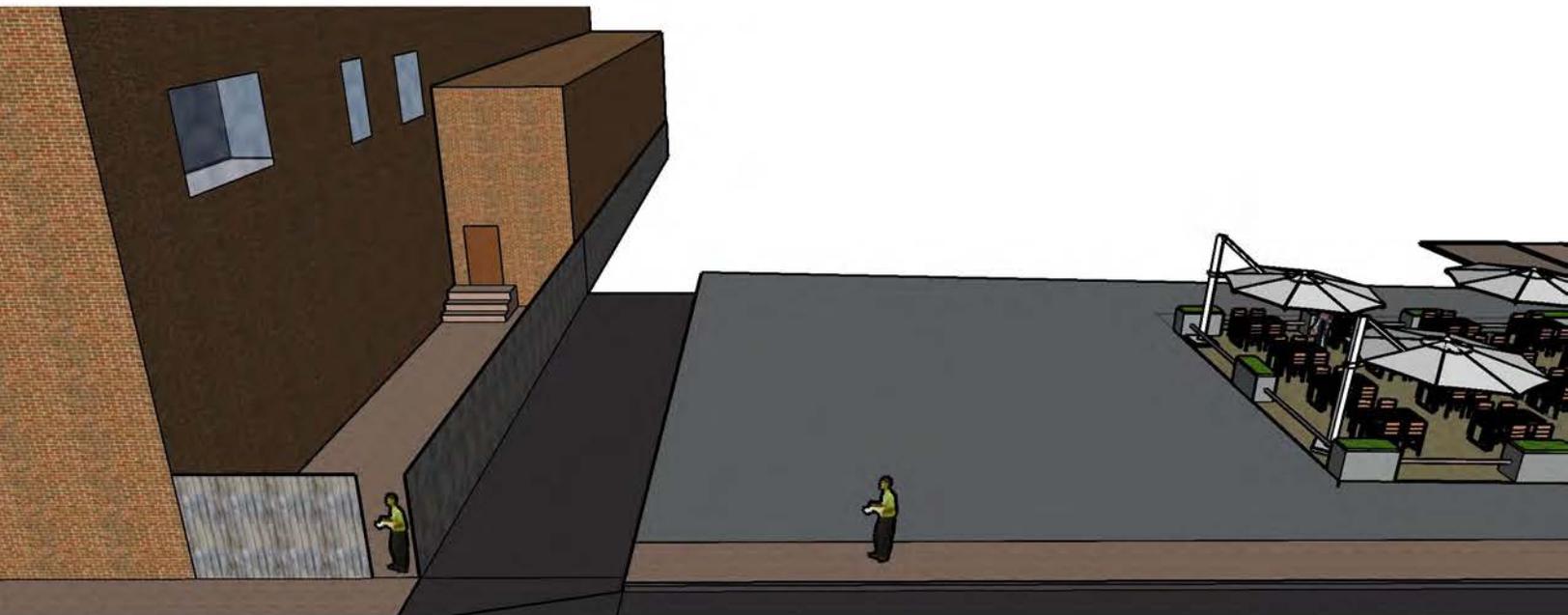
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED











Project:
 Port Vida 722549485 - G&A
 Outdoor Furniture

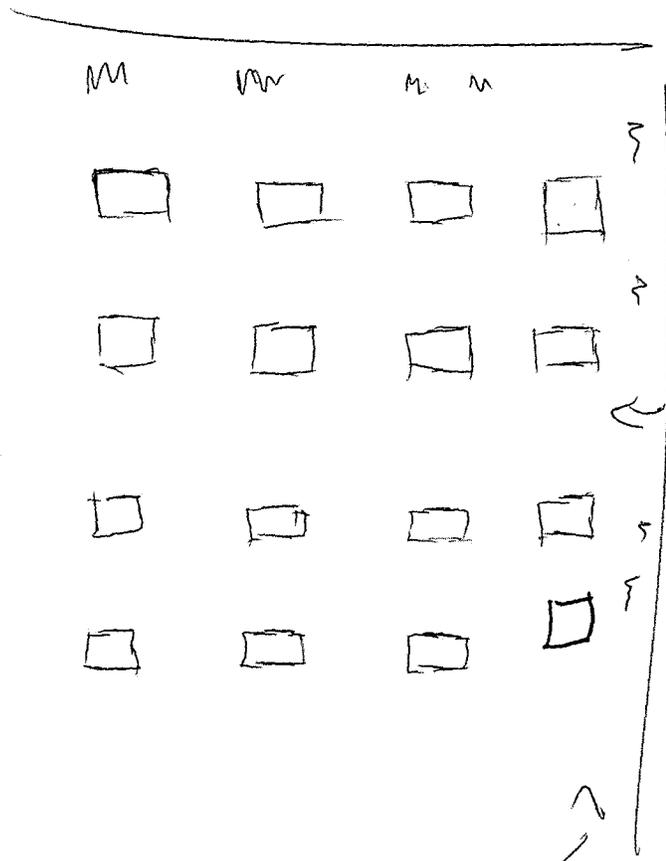
From:
 Gordon Food Service

Job Reference Number: 12640

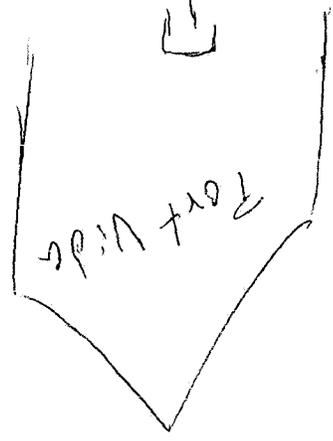
Item	Qty	Description	Sell	Sell Total
<u>1</u>	36 ea	CHAIR G & A Commercial Seating Model No. 8216 Sol Side Chair, indoor/outdoor use, stacking, synthetic teak ladder back & seat, fully welded, aluminum frame, nylon floor glides 	\$153.61	\$5,529.96
	36 ea	Note: Pricing is valid for 2 weeks from date of quote		
	36 ea	1 year warranty free from defects in material and workmanship, contact factory for details		
	36 ea	Black powder coated frame finish/brushed brown synthetic teak		
			ITEM TOTAL:	\$5,529.96
<u>2</u>	3 ea	TABLE, OUTDOOR G & A Commercial Seating Model No. STC3131 Table, square, 31" x 31", dining height, indoor/outdoor use, synthetic teak slatted top, fully welded, brushed aluminum frame, nylon floor glides 3 ea Note: Pricing is valid for 2 weeks from date of quote 3 ea 1 year warranty free from defects in material and workmanship, contact factory for details 3 ea Black frame/Brushed brown synthetic teak 3 ea Black frame/Brushed brown synthetic teak 3 ea Umbrella hole	\$393.45	\$1,180.35
			ITEM TOTAL:	\$1,243.74
<u>3</u>	5 ea	TABLE, OUTDOOR G & A Commercial Seating Model No. STC3152 Table, rectangular, 31" x 52", dining height, indoor/outdoor use, synthetic teak slatted top, fully welded, brushed aluminum frame, nylon floor glides 	\$564.77	\$2,823.85
	5 ea	Note: Pricing is valid for 2 weeks from date of quote		
	5 ea	1 year warranty free from defects in material and workmanship,		

Item	Qty	Description	Sell	Sell Total
		contact factory for details		
	5 ea	Frame finish/Synthetic teak to be specified		
	5 ea	Black frame/Brushed brown synthetic teak		
	5 ea	Umbrella hole	\$21.13	\$105.65
			ITEM TOTAL:	\$2,929.50
			Total	\$9,703.20

Water St



Center St



Rec'd
6/21/23
DPS



RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

2023 JUN -2 A 11:22

CITY OF NEWBURYPORT
60 PLEASANT STREET
NEWBURYPORT, MA 01950

BLOCK PARTY APPLICATION

Please fill out the application below and obtain the approving signatures for the street closure. Mail or drop off the completed signed application at: City Clerk's Office, City Hall, 60 Pleasant Street, Newburyport, MA 01950 **at least eight (8) business days prior** to a City Council meeting. The requested Block Party needs approval by the City Council. For any questions, please contact The City Clerk's Office at (978) 465-4407.

DATE OF REQUEST: _____

CONTACT INFORMATION

FIRST AND LAST NAMES: LORI McIntosh

MAILING ADDRESS: 10 Tyng St. NBPT

PHONE NUMBER: (414) 303-2341

E-MAIL ADDRESS: lorimcintosh2010@hotmail.com

BLOCK PARTY INFORMATION

BLOCK PARTY DATE: June 16th

DESIRED STREET CLOSING LOCATION: Tyng + ~~Monroe~~ / Tyng + Monroe
Please indicate cross streets when requesting the closing of street sections

STREET TO BE BARRICADED: Lower Tyng

DESIRED STREET CLOSING TIME: 5:00 pm
Block Parties should run no later than 10:00 p.m.

REGULATIONS

By signing, I agree that I am a legal adult 18 years of age or older and understand this permit does not release me of any liability for damages that may result from the conducting of this Block Party. Further, I agree to comply with all requirements listed below:

I understand that applications for block party permits may take up to four (4) weeks to process.

Block parties will be conducted only on low-volume residential streets, dead-end streets, or cul-de-sacs. No thoroughfares or collector streets may be used.

It is hereby agreed that, by signing and presenting this application, signer(s) represents to the City of Newburyport that the following statements are true and correct, and agrees to and will abide by the following:

1. All residents living on the street or block for which the party is planned request the block party, or have been contacted and do not object to the Block Party.
2. To be responsible for placement, maintenance and removal of barricades.
3. A block party permit does not allow the sale of alcohol or the consumption of alcohol on public property (in city streets, sidewalks, parks, etc.) alcohol is allowed only on private property. All state and city alcohol laws still apply during Block Parties.
4. Amplified music shall be permitted with permission of the City Council.
5. To leave **AT LEAST A TWELVE (12) FOOT AISLE** in the street to permit passage of emergency vehicles or vehicles of residents. Failure to maintain a ten (10) foot aisle during the entire period of the party will necessitate denial of requests for subsequent block parties. **Public safety personnel will monitor the party for strict adherence to this rule.**
6. To maintain adult supervision at all times during the party.
7. Applicant(s) shall be responsible for the pick-up of trash and garbage within two (2) hours of the end of the party.
8. Streets may not be barricaded later than 10:00 P.M.
9. No residents of the area designated shall be prohibited from attending the party.
10. No such activity may be conducted within five hundred (500) feet of any school, church, hospital, nursing home or similar operation unless endorsed by the management of such institution.
11. Only approved readily removable Barricades will be permitted such as orange cones and sawhorses with a sign. No vehicles will be permitted to be used as a Barricade.
12. Block parties are permitted 10 A.M. – 10 P.M.

Applicant signature: _____

Date: _____

June 2, 2023

APPROVAL SIGNATURES REQUIRED FOR STREET CLOSURE

CITY MARSHALL

4 Green Street

FIRE CHIEF

0 Greenleaf Street

DEPUTY DIRECTOR

16A Perry Way

ADD 6/2/23

CITY CLERK

60 Pleasant Street

City use only: _____

Approved _____

Denied _____

Date _____

NEWBURYPORT SPECIAL EVENT APPLICATION

Tel.

CITY CLERK'S OFFICE
NEWBURYPORT, MA Fax.

(For Street Closure or Any Use of a Public Way - Please complete page 3 of this application)

NAME OF EVENT: ANNUNCIATION CHURCH GREEK FOOD FESTIVALDate: JULY 28-30, 2023 Time: from 11:00 AM to 9:00 PMRain Date: NOT APPLIC. Time: from _____ to _____2. Location*: 7 HARRIS ST.

*Please Note: If the location is a public park or the rail trail, please also contact the Parks Department

3. Description of Property: CHURCH + ADJACENT HALL Public _____ Private X4. Name of Organizer: ANNUNCIATION GREEK CHURCH City Sponsored Event: Yes _____ No XContact Person JAMES SPERELAKISAddress: 7 HARRIS ST, NBPT, MA 01950 Telephone: 978-479-6372E-Mail: JAMES.SPERELAKIS@COVESTRO.COM Cell Phone: SAME AS ABOVEDay of Event Contact & Phone: SAME AS ABOVE, PLEASE5. Number of Attendees Expected: SEVERAL HUNDRED TO A THOUSAND, OVER 3 DAYS6. MA Tax Number: 110502697. Is the Event Being Advertised? YES Where? DAILY NEWS, SOCIAL MEDIA, LOCAL RADIO8. What Age Group is the Event Targeted to? ALL AGE GROUPS, PRIMARILY ADULTS, FAMILY FRIENDLY9. Have You Notified Neighborhood Groups or Abutters? Yes X No _____, Who? ALL ABUTTERS, PARK & HARRIS STS
ABUTTERS HAVE BEEN, OR WILL BE, NOTIFIED. GOOD RELATIONS WITH NEIGHBORS

ACTIVITIES: (Please check where applicable.) Subject to Licenses & Permits from Relevant City Departments

A. Vending*: Food X Beverages X Alcohol X Goods X Total # of Vendors 1 (INDOOR)

*If checked, signature from Health Director required (Page 3)

B. Entertainment: (Subject to City's Noise Ordinance.) Live Music X* DJ _____ Radio/CD _____Performers X* Dancing _____ Amplified Sound X* Stage _____
* LIVE GREEK BAND (2 PERSON) FRI + SAT FROM 5-9 PM

C. Games /Rides: Adult Rides _____ Kiddie Rides _____ Games _____ Raffle _____

Other _____ Total # _____

Name of Carnival Operator: NOT APPLICABLE

Address: _____

Telephone: _____

D. Organizer is responsible for clean-up during and after event. All trash must be collected and removed from event location immediately at the end of the event unless prior written agreement had been made with the Department of Public Services (DPS).

Will you be conducting the clean-up for this event? Yes X No _____

If yes:

- a) How many trash receptacles will you be providing? 15+
- b) How many recycling receptacles will you be providing? 10+
- c) Will you be contracting for disposal of : **Trash** Yes No **Recycling** Yes No
- i. If yes, size of dumpster(s): **Trash** 20' x 30' **Recycling** SIMILAR
- ii. Name of disposal company: **Trash** MELLO **Recycling** MELLO
- iii. If no, will you remove trash & recycling with organizers' cars or trucks? Yes No
- iv. If no, where will the trash & recycling be disposed ? _____

If no:

- a) # of trash container(s) to be provided by DPS _____
- b) # of recycling container(s) to be provided by Recycling Office _____
- c) \$45.00/hr/DPS employee charge must be paid by the organizer to DPS in advance of the event (Fee for Special Events). The hours required for the event will be determined by DPS.

All fees must be paid prior to the event. Check or money order is payable to the City

of Newburyport. E. Portable Toilets: (Each cluster of portable toilets must include at least one ADA accessible toilet)

_____ Standard # _____ ADA accessible

Name of company providing the portable toilets: _____

FOR STREET CLOSURE OR ANY USE OF A PUBLIC WAY

PARADE _____

ROAD RACE _____

WALKATHON _____

1. Name of the Group or Person Sponsoring the Road Race, Parade, Walkathon: GREEK FOOD FESTIVAL

2. Name, Address & Daytime Phone Number of Organizer: JAMES SPERELAKIS c/o
ANNUNCIATION GREEK ORTHODOX CHURCH, 7 HARRIS ST.
NEWBURYPORT, MA 01950
CELL: 978-479-6372

3. Name, Address & 24/7 Telephone Number of Person Responsible for Clean Up SAME AS #2 ABOVE
WE RESPECTFULLY REQUEST STREET CLOSURE (SEE #6 BELOW)

4. Date of Event: JULY 28-30, 2023 Expected Number of Participants: SEVERAL HUNDRED

5. Start Time: 11:00 AM Expected End Time: 9:00 PM

6. Road Race, Parade or Walkathon Route: (List street names & **attach map of route**): NOT APPLIC.

WE KINDLY REQUEST TWO ITEMS:

- 1.) NO PARKING ZONE ON SOUTH (CHURCH FACING) SIDE OF HARRIS ST., DIRECTLY IN FRONT OF CHURCH FROM FRI. 7/28 9 AM TO SUN. 7/30 4 PM.
- 2.) CLOSURE OF HARRIS ST (FROM GREEN TO PARK) ON FRI. 7/28, 5-9 PM + SAT. 7/29, 5-9 PM.

7. Locations of Water Stops (if any): NOT APPLICABLE

8. Will Detours for Motor Vehicles Be Required? NO If so, where? THANK YOU

9. Formation Location & Time for Participants: NOT APPLICABLE

10. Dismissal Location & Time for Participants: NOT APPLICABLE

11. Additional Parade Information:

- Number of Floats: NOT APPLICABLE
- Locations of Viewing Stations: _____
- Are Weapons Being Carried: Yes _____ No X
- Are Marshalls Being Assigned to Keep Parade Moving: Yes _____ No NOT APPLIC.

APPROVAL SIGNATURES REQUIRED FOR STREET CLOSURE OR ANY USE OF A PUBLIC WAY

CITY MARSHAL [Signature] 4 Green St. FIRE CHIEF [Signature] 5/22/23 0 Greenleaf St.
 DEPUTY DIRECTOR [Signature] 16A Perry Way CITY CLERK [Signature] 60 Pleasant St.
 HEALTH DIRECTOR [Signature] 60 Pleasant St. (only needed when Food & Beverage Vendors are included in the event)

DEPARTMENT APPROVAL (for Committee Member use only):

It will be necessary for you to obtain permits or certificates from the following Departments: Please note that costs for some City support services during an event are an estimate only. Some Departments may forward an invoice for services rendered at the completion of the event, and others may require advance payment.

Approval
Required

Date: _____ Signature: _____

- ____ 1. Special Events: _____
- ____ 2. Police: _____
Is Police Detail Required: _____ # of Details Assigned: _____
- ____ 3. Traffic, Parking & Transportation: _____
- ____ 4. ISD/Health: _____
- ____ 5. Recycling: _____
- ____ 6. ISD/Building: _____
- ____ 7. Electrical: _____
- ____ 8. Fire: _____
Is Fire Detail Required: _____ # of Details Assigned: _____
- ____ 9. Public Works: *Fee for Special Events: \$45/hr/DPS employee for trash handling/staging etc. may apply*
Yes: \$ _____ due on _____ No Fee for Special Events applies
Other requirements/instructions per DPS _____
- ____ 10. Parks Department: _____
- ____ 11. License Commission _____

The departments listed above have their own application process.
Applicants are responsible for applying for and obtaining all required
permits & certificates from the various individual departments

a list of all streets notified shall be provided to the city clerk to be date stamped and appended to the application record. Press releases and other media type notifications are encouraged.

(6) *Insurance.* All events shall have an insurance policy or rider in effect for the event naming the "City of Newburyport" as an additional insured. The policy shall be no less than two million dollars (\$2,000,000.00).

(7) *Event termination.* If in the judgment of the city marshal, fire chief or department of public services (DPS) director or designees thereof determine that an event is unsafe due to existing conditions, that event may be stopped, terminated or suspended. In the case of a multidiscipline event such as a triathlon, the harbormaster or his/her designee may likewise stop, terminate or suspend the swimming portion for cause.

(8) *Event and traffic security.* The city marshal, fire chief, DPS director or in the case of a triathlon, the harbormaster can require special duty personnel to assist in the organizing and coordinating the safety and security of the event. All special duty assignments will be paid by the event organizers.

(9) *Clean-up.* The event organizers shall be responsible for post event trash collection, removal of signage, directional arrows, advertisements or other promotional material associated with the event.

10) *Parking.* The event organizers shall be responsible for including parking instructions in materials disseminated to event participants. If the event is happening within one-half mile of municipal parking, then participants shall be asked to park at such parking facilities.

(11) *Notification of previous event organizers.* To the extent reasonably possible, the city clerk shall notify all event organizers from events held from 2014—2016, inclusive, by a one-time phone, email, or letter of the new application timeline and other requirements.

(12) *Simplification.* Departments are encouraged to unify their respective applications into a singular application, managed and distributed by the city clerk's office.

(13) *Americans with Disabilities Act.* Event organizers are reminded of the importance of and expectation of adherence to the Americans with Disabilities Act of 1990 (42 U.S.C § 12101) and subsequent applicable amendments.

(e) *Enforcement.*

(1) *Regulations.* Consistent with this section, the city shall promulgate regulations to enforce and otherwise implement the provisions of this section upon passage by the city council. Any event previously approved by city council shall be deemed permitted.

(2) *Warning.* In the circumstance that this section is violated, the enforcement may consist of a warning. Any warnings issued for violation(s) will be reported to the city clerk and city council and may be used as a factor in future application approvals and denials.

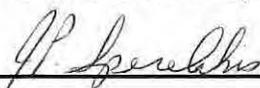
(3) *Noncriminal disposition.* If the city determines that a violation has occurred in which a noncriminal violation is issued, the named event organizer shall be penalized by a non-criminal disposition as provided in Massachusetts General Law as adopted by the City of Newburyport as a general ordinance in section 1-17 of chapter 1 of the Code or Ordinances of the City of Newburyport in the amounts set herein in subsection (e)(4) below.

(4) *Violation.* The non-criminal violation shall be one hundred dollars (\$100.00) for the first offense and two hundred fifty dollars (\$250.00) for second and subsequent offenses. Any non-criminal citations issued for violation(s) will be reported to the city clerk and city council and shall be used as a factor in future application approvals and denials.

(5) *Failure to notify.* If the event fails to notify residents and provide documentation to the city clerk, pursuant to subsection (d)(5) above, shall render that organization ineligible to receive an event permit for a period of twelve (12) months unless special leave is granted by two-thirds super-vote of the city council.

I fully understand and agree to all the terms set forth in this application. The information that I have provided is truthful and accurate. I accept all responsibility related to this event.

Signed: _____



Date: _____

6/5/2023

Sec. 13-97. - Road races, walkathons, bicycle and other multidisciplined events.

(a) *Short title.* This section may be cited as the "road races, walkathons and bicycle events."

(b) *Purpose and intent.* The use of city streets and sidewalks for the purpose of road races, walkathons or bicycle tours are positive events that promote exercise, general good health and Newburyport as a destination. These events do from time to time create hardships, impacting neighborhoods and traffic. To create a balance between conflicting interests, by safeguarding participants, residents, visitors and the City of Newburyport, this section will define and codify the procedure for the benefit of all.

(c) *Definitions.*

(1) *Road race.* A competitive or non-competitive running event that utilizes the streets, sidewalks and/or crosses over streets or sidewalks within city limits and in which an entry fee is required or charitable donation is solicited or suggested.

(2) *Walkathon.* A competitive or non-competitive walk event that utilizes the streets, sidewalks and/or crosses over streets or sidewalks within city limits and in which an entry fee is required or charitable donation is solicited or suggested.

(3) *Bicycle race.* A competitive or non-competitive bicycling event that utilizes the streets, sidewalks and/or crosses over streets or sidewalks within city limits and in which an entry fee is required or charitable donation is solicited or suggested.

(4) *Multidisciplined event.* A competitive or non-competitive event requiring or offering running, walking, biking, swimming or any combination thereof in which an entry fee is required or a charitable donation is solicited or suggested.

(5) *Event.* Any road race, walkathon, bicycle race, multi-disciplined event as defined above.

(d) *Limitations.*

(1) *Procedure.* All events shall, through that event's organizer, board of directors, charity foundation or designee ("organizer") apply for city council authorization to hold the event through the office of the city clerk no later than sixty (60) days before the event's proposed date. There shall be a grace period through December 31, 2017, during which applications will be accepted beyond the prescribed due date. Prior to application with the city council, the event shall file and receive approval from all applicable city departments, boards, and commissions. Copies of such approved applications, including along with documentation of any fees, donations, in-kind donations paid as part of said application(s), shall be included as part of the city council application.

The date of application is the date a completed application is submitted to the city clerk's office and stamped by the same. The city clerk, upon review of the completed form, will place the application on the next regular city council agenda, even if such submission is a late file. Upon following the procedures of the council, as deemed appropriated in the sole judgment of the council, the application will be considered approved if the council votes favorably by majority. The application shall name one (1) person responsible on the application and shall provide contact information to include name, address, email address, and telephone number.

(2) *Exemptions.* Each event organizer or organization shall comply with this ordinance and no exemptions will be permitted.

(3) *Course map.* All applications shall be accompanied by a legible, precise course map showing the event route, water stops, refreshment stops, and so-called "port-a-potties". The course map shall also include any road closures, detours and parking areas. The course map shall be approved by police, fire, department of public services, parks commission and harbor masters departments prior to submission to the city clerk.

(4) *Electronic amplifier.* Electronic amplifiers, loudspeakers and bullhorn use shall be requested at time of application. Under no circumstances will they be used for public address announcements or music before 8:00 a.m., except for Sundays when electronic amplifiers, loud speakers or bullhorns will not be used for public address announcements or music before 9:00 a.m.

(5) *Road closure.* No ways, public or private, boat ramps or parking lots controlled or patrolled by the city shall be closed without authorization. Authorization shall be considered granted only if said closure(s) are contained in the approved permit. It is the sole responsibility of the race organizers to notify residents fourteen (14) days in advance that neighborhood roads will be closed if no alternate route is available to those residents. Notification shall be made by race organizers by informational packet drop-off at all residences that may be impacted, including, but not limited to, road closures, restricted driveway access, parking restrictions, or noise. In the case of multi-family residences with so-called security doors, notification will be sufficient at said security door. A copy of the notification shall be provided to the city clerk and, when possible, posted on the city website and distributed via email. Further,

Google Maps 4 Park St #6





CITY OF NEWBURYPORT

FIRE DEPARTMENT

0 Greenleaf Street, Newburyport, MA 01950
(978) 465-4427 FAX (978) 463-9177

Stephen H. Bradbury
Fire Chief

Barry Salt
Acting Deputy Chief

June 5, 2023

Mr. Richard Jones, City Clerk
City of Newburyport

Barry Salt, Acting Deputy Fire Chief
Newburyport Fire Department

Muscular Dystrophy Support Letter

Mr. Jones,

This letter is to acknowledge that the Newburyport Fire Department Supports the Firefighters of Local 827 Annual "Fill the Boot drive" in Market Square during Thursday, Friday and Saturday of Yankee homecoming and therefore request permission from the City Council.

This is a long-standing tradition of fund raising for such a worthy cause. We look to continue this tradition on August 3, 4 and 5 from 10 am-4 pm.

As always, we thank you for your support of this continued event.

Barry Salt

A handwritten signature in black ink, appearing to read "Barry Salt", written over a faint, larger version of the same signature.

Acting Deputy Chief



CITY OF NEWBURYPORT
FINANCE DEPARTMENT

60 PLEASANT STREET
NEWBURYPORT, MA 01950
PHONE: 978-465-4404

WWW.CITYOFNEWBURYPORT.COM/FINANCE

SEAN R. REARDON
MAYOR

ETHAN R. MANNING
FINANCE DIRECTOR/CITY AUDITOR

To: President and Members of the Newburyport City Council

From: Ethan R. Manning, Finance Director/City Auditor

Date: June 5, 2023

Subject: Annual Audit of the City's FY2022 Financial Statements

The certified public accounting firm, Melanson, has completed the annual audit of the City's FY2022 financial statements. This audit must be performed by an independent CPA firm and is required by bond rating agencies, financial institutions, local charter and various state and federal agencies. The City's financial statements, as well as the Popular Annual Financial Report (PAFR) can be located electronically in the "Financial Reports Center" section of the Finance Department website at: <https://www.cityofnewburyport.com/financials>.

The FY2022 audit was conducted in accordance with auditing standards generally accepted in the United States and standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. These standards require that the audit is planned and performed to obtain reasonable assurance that the City's financial statements are free of material misstatements. In addition, the audit assesses the accounting principles used and significant estimates made by City management.

The scope of the audit is discussed in the independent auditor's report, which prefaces the financial statements. With respect to the FY2022 financial statements, it is the opinion of the independent auditor that they "present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Newburyport, Massachusetts, as of June 30, 2022."

The audit also includes a management report that contains recommendations for strengthening internal controls and operating efficiency. Significant progress has been made by the City in implementing the recommendations of the independent auditors. For FY2022, one prior-year recommendation was resolved, with two items remaining.

Below is a summary of the recommendations that appear in the FY2022 management letter:

1) Improve Compensated Absences Accounting (Prior Year) - Ongoing

The auditors recommend that the City centralize and automate the accounting for employee compensated absences (i.e., vacation, sick time), which will increase the accuracy, efficiency, and controls over the payment of compensated absences.

During FY2023, the Human Resources Department has worked to further roll out a web-based time and attendance platform to all City departments that did not have an electronic platform already in place. As of June 30, 2023, we believe that automated reports will be able to be generated for approximately 95% of all employees rather than relying on the old Excel-generated tool that was previously utilized by many departments and is being phased out.

2) Improve Bank Account Reconciliations (Prior Year) - Ongoing

The auditors recommend that the City continue to address some lingering prior-year reconciling items despite the overall number of items and the time outstanding decreasing over the past several years.

The City has worked to resolve a number of the older reconciling items during fiscal year 2023. The reconciliation process has been improved by promoting greater use of the electronic cash management system (Zobrio) by departments, replacing the manual "9-10 form." Having departments enter receipts directly into the system is a more streamlined process that results in more descriptive entries and much easier research when needed.

3) Reconcile and Maintain Investment Accounts at Fair Value (Prior Year) - Resolved

In the prior year, the auditors recommended that the City establish and implement formal reconciliation procedures between the general ledger and Treasury records while maintaining applicable investments at fair value, in accordance with Governmental Accounting Standards Board Statement No. 72, Fair Value Measurement and Application.

The auditors consider this matter to be sufficiently resolved.

As always, please do not hesitate to contact me with any questions.



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
SEAN R. REARDON, MAYOR

60 PLEASANT STREET - P.O. BOX 550
NEWBURYPORT, MA 01950
978-465-4413 PHONE
MAYOR@CITYOFNEWBURYPORT.COM

June 7, 2023

Dear Clerk Jones,

Pursuant to Section 3-5 of the City Charter, I am designating Jessica Atherton to perform the duties of the office of Head Librarian on a temporary basis beginning June 8th until the office can be filled by the selection of the Library Board of Directors. I certify that Ms. Atherton is qualified to perform the duties which will be required and that I make this designation solely in the interests of the City of Newburyport.

The Library Board of Directors is assembling a search committee and plans to post this position in the coming weeks. The search committee will interview candidates and recommend finalists for the full board. The Board will then select a Head Librarian to fill the position.

This Acting Head Librarian Appointment is valid for 90 days and may be given two 30-day extensions, according to our Charter. I will be in communication should an extension be necessary.

Respectfully,

A handwritten signature in black ink, appearing to read 'Sean R. Reardon'.

Sean R. Reardon
Mayor



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*Estimate**

Multi-site Feasibility Study for New Mountain Bike Recreation Area Construction

Prepared for: **Town of Newburyport, MA**

Scope

- Work in conjunction with the town of Newburyport administration to determine suitable sites for consideration
- Assess 3-5 sites for suitability of a Bike Park installation including, but not limited to, a pump track, skills practice facilities, and freeride zone.
- Conduct Soil analysis, environmental overview, and determine possible limiting factors of each site
- Compare and contrast sites to develop order of preference

Cost Estimate

\$1150 per site 3 – 5 sites

$\$1150 \times 3 \text{ sites} = \3450

$\$1150 \times 4 \text{ sites} = \4600

$\$1150 \times 5 \text{ sites} = \5750

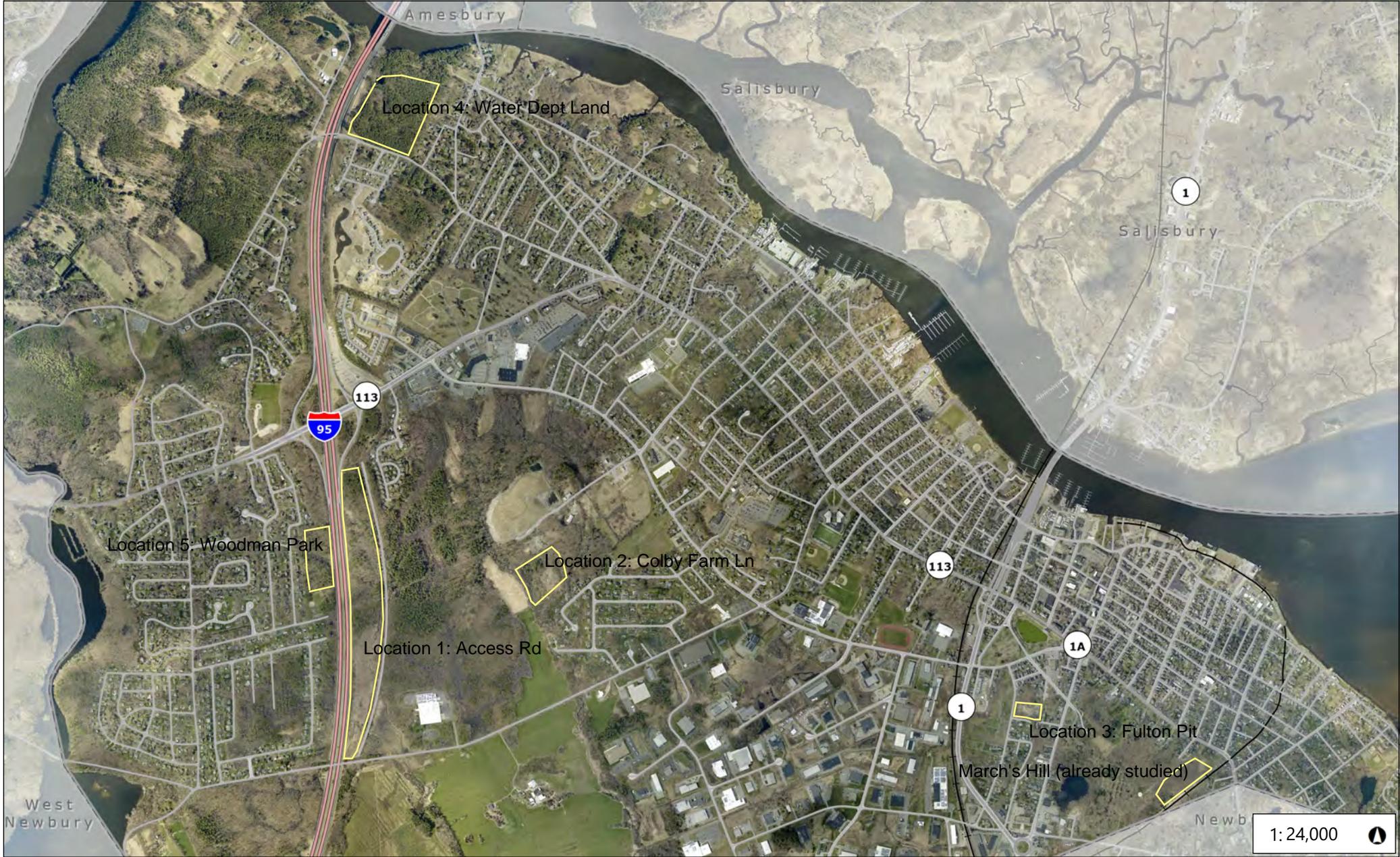
Timeline

3 – 4 weeks (*from date of contract signing*)

**estimate subject to change at any time prior to completion of binding agreement*

City of Newburyport

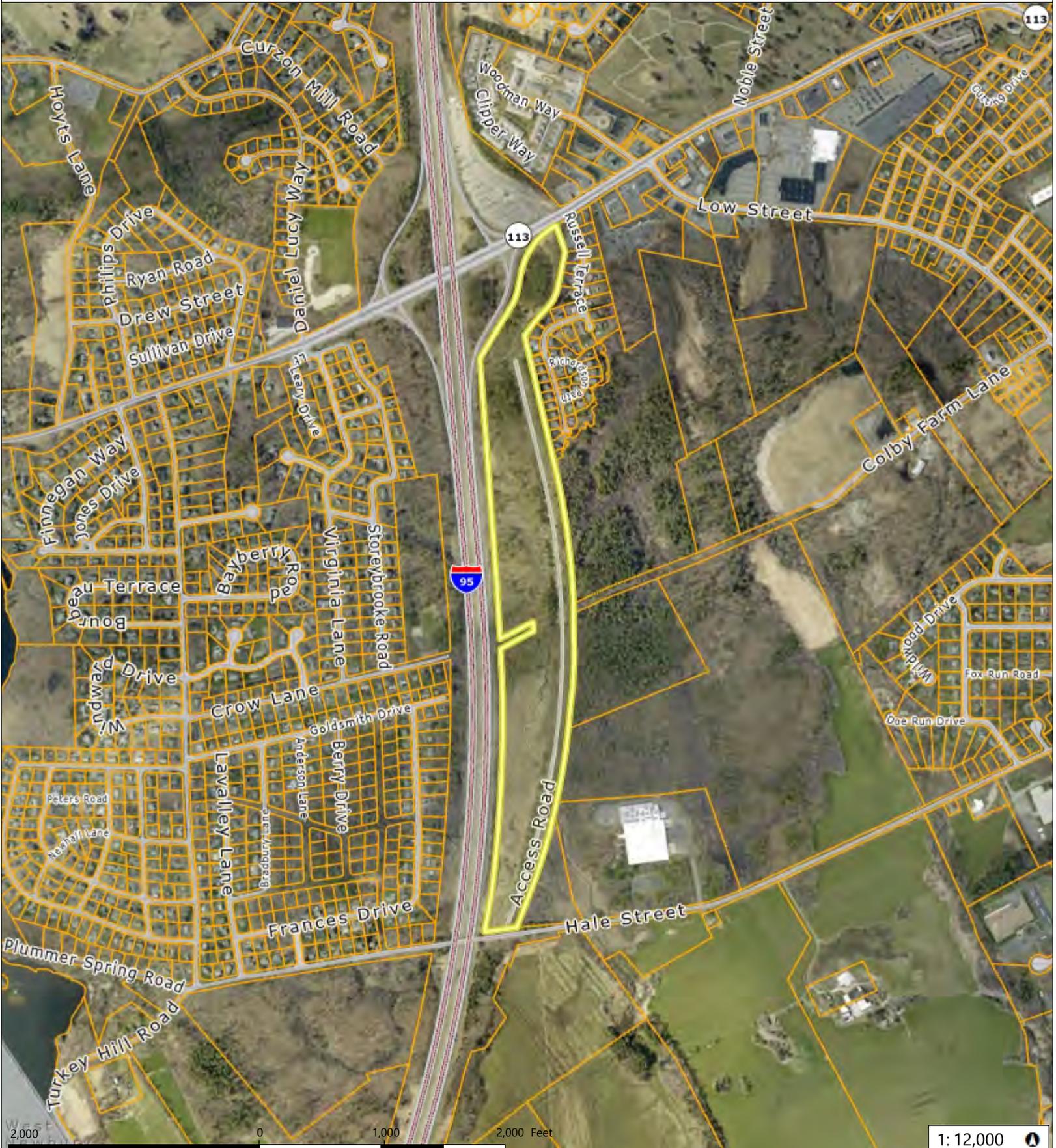
6/6/2023



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Municipal Boundary		Roads		Interstate		Legend		Local Road		Railroad		Road Right of Way			
	Municipal Boundary		Paved		Unpaved		Interstate		Major Road		Local Road		Railroad		Road Right of Way





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Legend					
Municipal Boundary	Roads	Interstate	Major Road	Local Road	Railroad
Parcels	Road Right of Way	Paved	Unpaved		

Location 1: 95 Access Rd

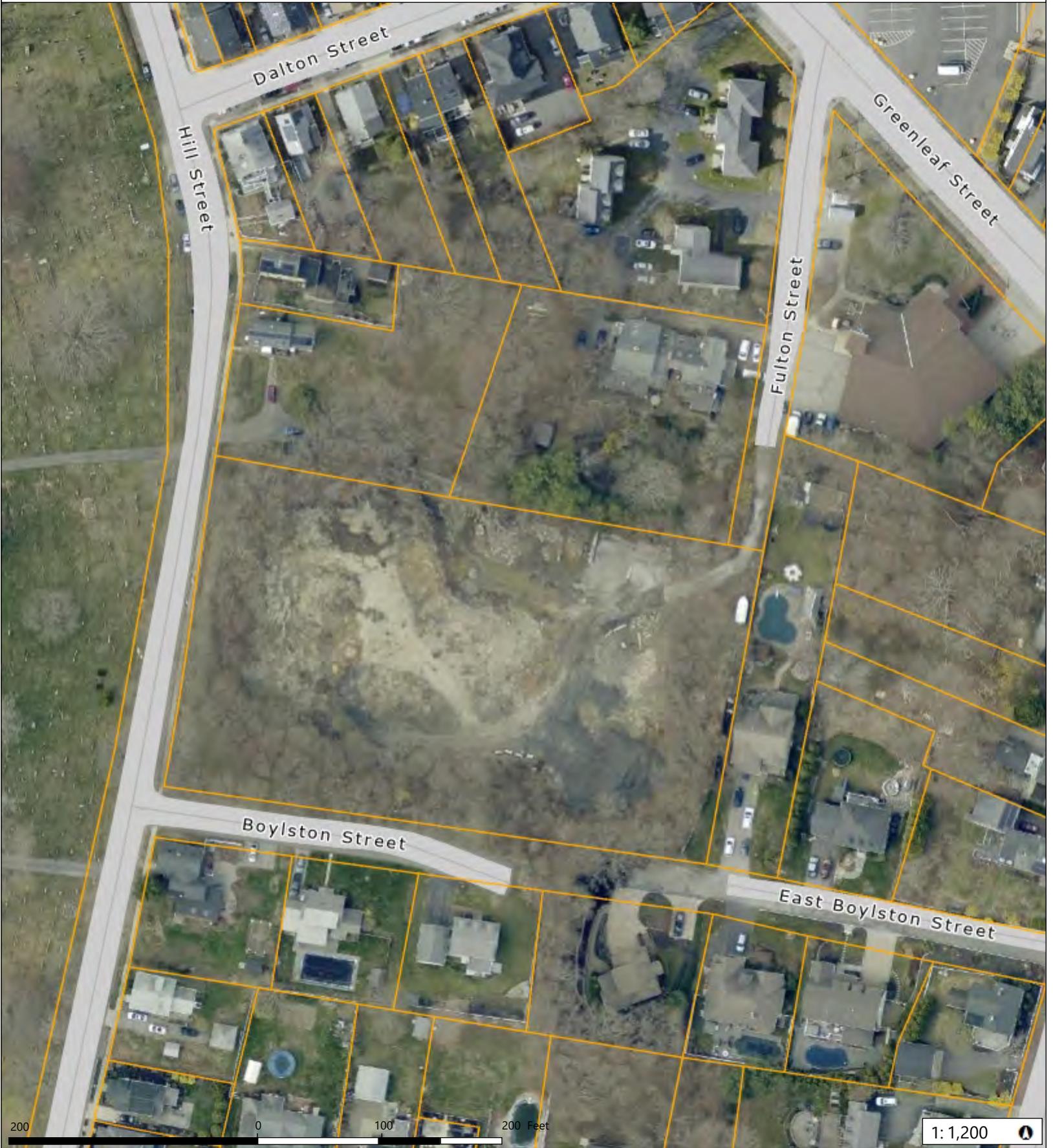


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Legend					
Municipal Boundary	Roads	Interstate	Major Road	Local Road	Railroad
Parcels	Road Right of Way	Paved	Unpaved		

Location 2: Colby Farm Ln



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<p>Legend</p> <ul style="list-style-type: none"> Municipal Boundary Parcels Roads Road Right of Way Interstate Paved Major Road Unpaved Local Road Railroad 	
<h2>Location 3: Fulton Pit</h2>	

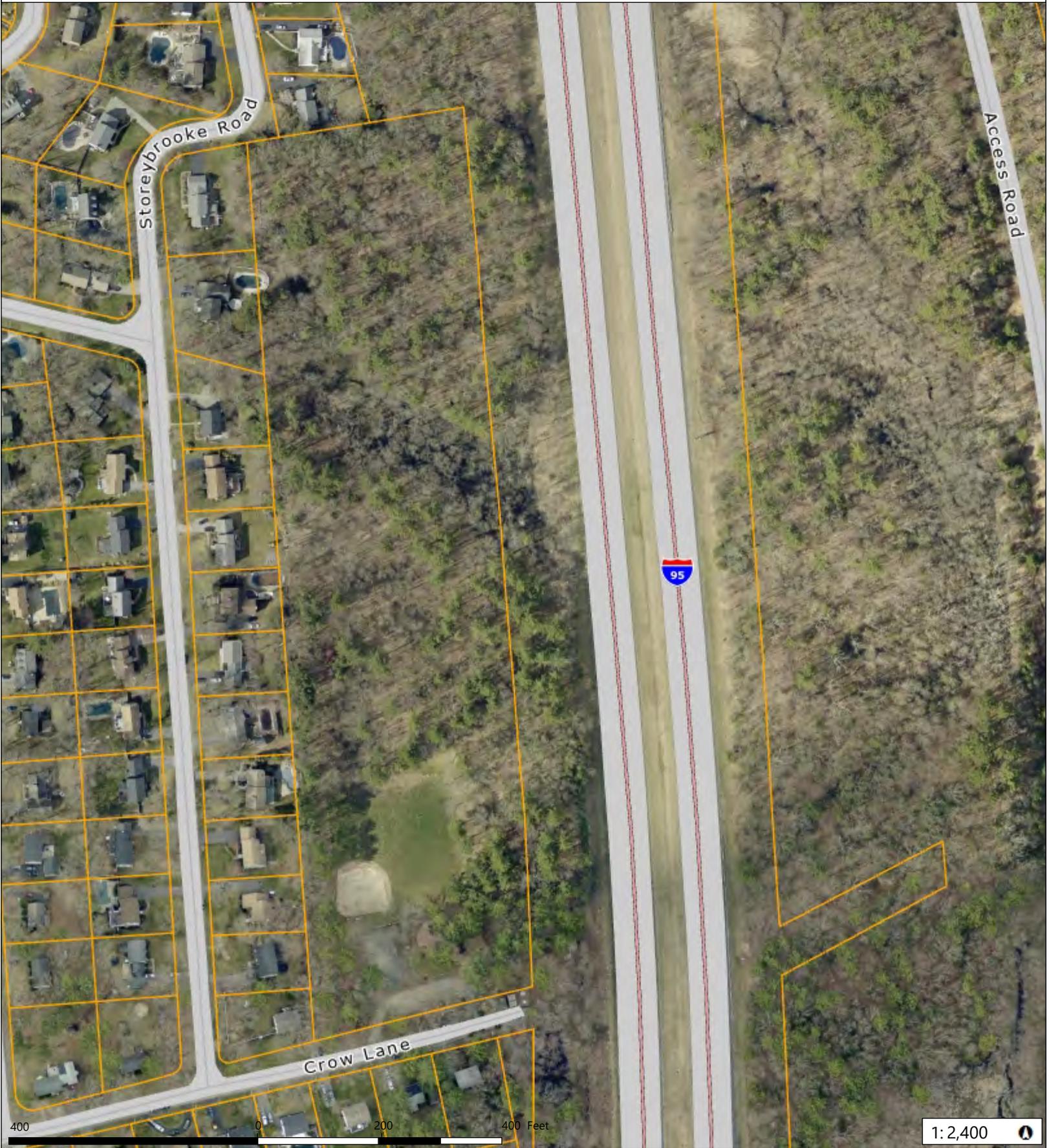


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<ul style="list-style-type: none"> Municipal Boundary Parcels 		<ul style="list-style-type: none"> Roads Road Right of Way 		<ul style="list-style-type: none"> Interstate Paved 	<ul style="list-style-type: none"> Major Road Unpaved 	<ul style="list-style-type: none"> Local Road Railroad
--	--	--	--	---	--	---

Location 4: Water Dept Land



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Municipal Boundary		Roads		Legend	
	Parcels		Interstate		Major Road
	Municipal Boundary		Paved		Unpaved
			Road Right of Way		Local Road
			Railroad		

Location 5: Woodman Park



MARCH'S HILL BIKE PARK CONCEPT PLAN

Revised 10/19/2022

Prepared By:

Powder Horn LLC // PO Box #951 Belmont, NH 03220

Will@powderhorn.bike

Table of Contents

Introduction.....3
Site Analysis..... 3
Environmental..... 5
Geographic Analysis..... 6
Design Concepts..... 8
Design Recommendations.....13
Signage..... 13
Cost Projection..... 13
Sample ‘Roll-In’ Styles.....14
Exhibit A: Construction Plan & Surface Types..... 15
Exhibit B: Asphalt Construction 17

Introduction

- 1.1. Powder Horn LLC was contacted by interested parties in the town of Newburyport, MA to conduct an analysis of existing facilities and determine suitability of a single site for the installation of a public bike park.
- 1.2. Powder Horn LLC conducted an initial assessment of the site within the scope of its business, recreational facilities, to make recommendations and estimate the cost and resources of such an installation.

Site Analysis: General Information

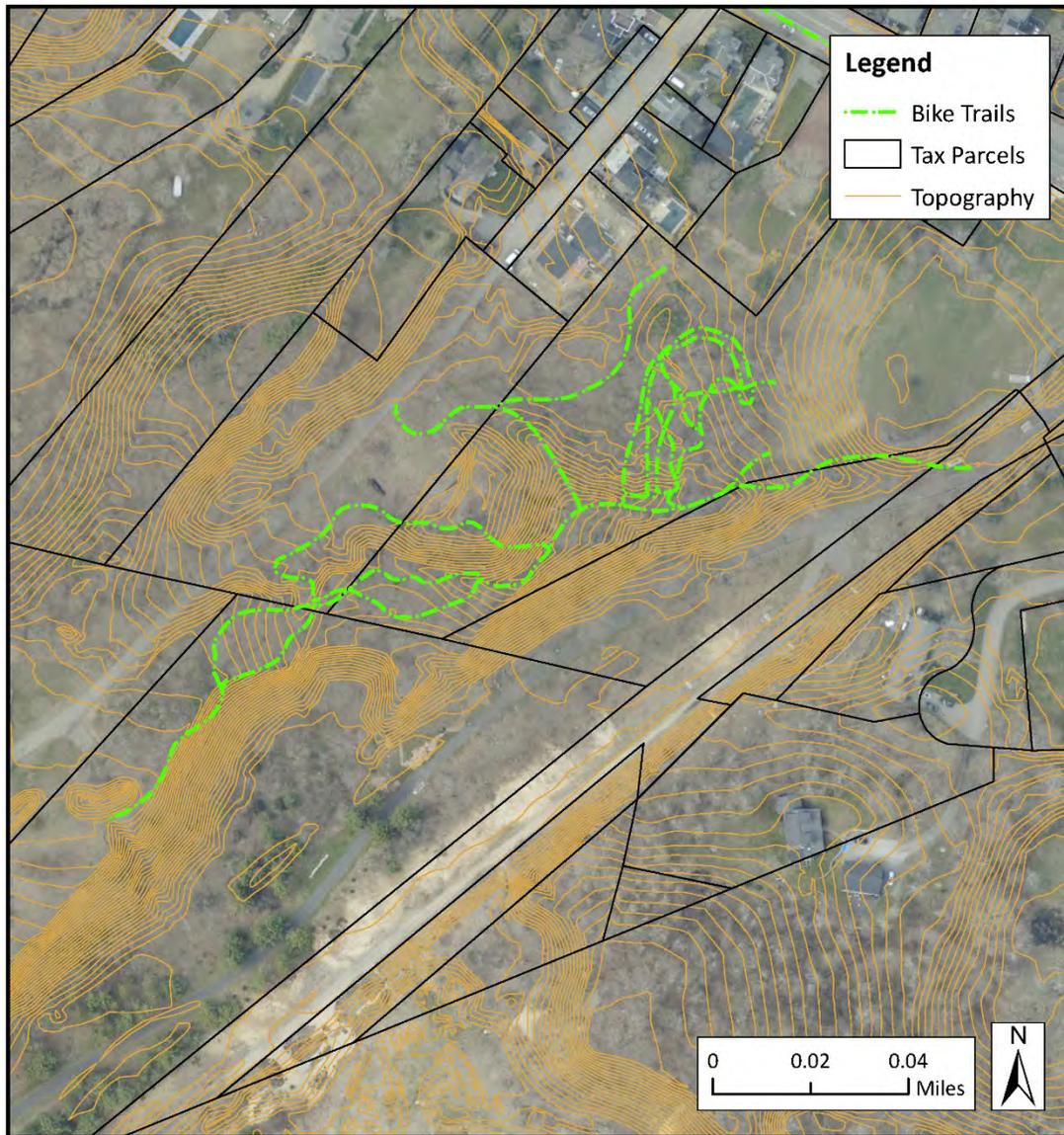
Description

The Area of Scope (AOS) is referred to as March's Hill Park in the town of Newburyport, MA. The property is located at High St. at Bromfield ST., parallel to the Rail Trail running NE-SW.

Usable Area:	Roughly 2 Acres
Total Elevation Change:	+/- ~25'
Wetlands present:	No
Zoning Class:	A/C, DCOD (need clarification)

Site Analysis: Current State & Activities

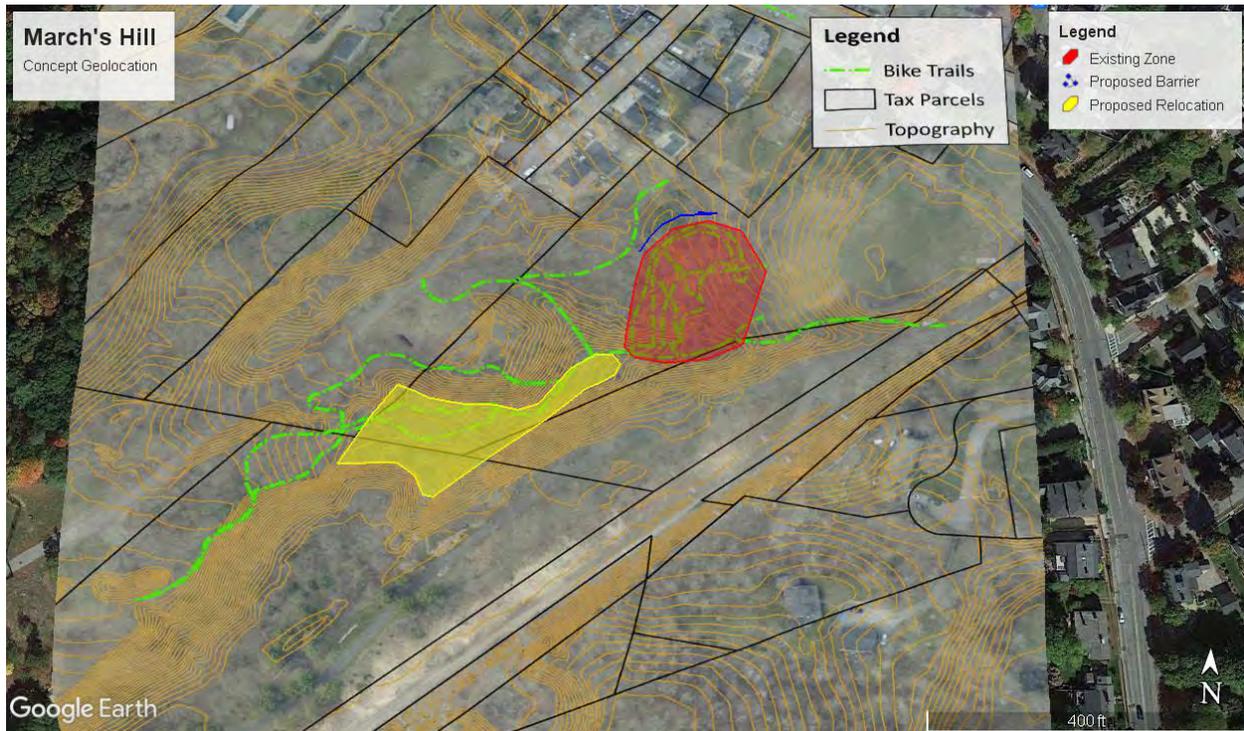
In its current state, the Area of Scope has seen increased mountain bike usage and trail building activities in the last several years. Community members who expressed interest in creating a mountain bike jump zone approached the Town Administration and were granted verbal permission to construct trails & features. Conflict has arisen over the scope, location, and size of features that have been installed. Remedial attention is recommended to balance the needs of abutters, users, and Town Administration.



Possible Solutions (order does not reflect recommendations):

1. Installation of barrier on existing facility to block noise and views from abutting property
 - a. Tall fence
 - b. Organic barrier (tall shrubs, trees, or vegetative buffer)
2. Re-location of Mountain Bike Facility to another section of the property

3. Removal of existing facility & revegetation of area.



It is recommended that combination of these items be utilized to create a location that is **Safe, Fun, and Sustainable**.

- **Safe:** The facility needs to adhere to industry standards & best practices to protect users from unnecessary harm. While threat of injury or death is an inherent risk of participating in the sport of mountain biking, minimizing risk, and resulting liability should be a priority for stakeholders.
 - **Safer Design:** Currently there are several features in the park that have mandatory gaps and airs – this is only acceptable in certain situations on advanced sections of the facility. Most features installed should be ‘table-top’ style, meaning that the middle of the jump is filled in to minimize risk of injury to riders.
 - **Maintenance:** Increased oversight of the facility will be needed to ensure cleanliness, notify users of features that are closed for service or rebuilding, and prevent unauthorized changes. Organizing volunteer days to keep the community involved is a great way to strengthen bonds between users and stakeholders. Storage facilities for tools and materials are also recommended to ensure site cleanliness.
- **Fun:** The park should include features of progressive difficulty levels to ensure enjoyment by participants of all ages and ability levels. Size & cost limitations may place boundaries on the amount of features installed, however consideration should be taken in the design phase to maximize the range of offerings.
- **Sustainable:** A broad term that applies to multiple facets of the project.

- **Environmental Sustainability:** Care must be taken during the design and planning phases to ensure that the desired result is achieved without unnecessary harm to the surrounding ecosystem. At a minimum Stormwater control, vegetation removal, and revegetation plans should be in place prior to construction. Local and state regulations may apply based on area classification and presence of sensitive areas.
- **Functional Sustainability:** The facility must be designed with proper grade angles, drainage, and surface quality. Neglect of installation guidelines will result in rapid surface degradation and the inability to use the facility without an overburden of maintenance. Improper drainage can lead to pooling, erosion, and loss of grade angles. In addition, it is recommended that a maintenance plan be in place prior to installation.
- **Communal Sustainability:** The most successful mountain bike parks & facilities have a large volunteer corp. and the guidance of one or more experienced builders. The symbiotic relationship between the stakeholders and users is most often successfully achieved by partnering with a local bike club, bike shop, or mountain-bike specific non-profit to organize volunteer days, maintenance schedules, and communicate the needs of users to stakeholders.

Soil Analysis



	to 25 percent slopes		
600	Pits, gravel	12.4	72.7%
Totals for Area of Interest		17.1	100.0%

Conclusions from Soil Survey:

- The area of concern related to the scope of this project is entirely contained within the classification of “Gravel Pits”, indicating that the area is previously disturbed by industrial use.
- No sensitive areas, wetlands, or highly unfavorable classifications of soil appear to exist within the scope of the areas in question, based on publicly available mapping resources.
- Low to average annual rainfall and a moderately weak frost season mean decreased maintenance, less erosion, and increased tread stability.

Environmental

Categories of consideration:

- **Wetland conservation**
 - There are no delineated wetland boundaries within or proximal to the project scope. Any seasonal/temporary pools or streams will be observed and, if necessary, avoided until drained or bridged and realigned.
- **Stormwater runoff and erosion control**
 - Area of Scope boundaries exceed the baseline riparian buffer (50 ft) size surrounding any permanent or semi-permanent stream, brook, or waterway.
 - Urban landscaping and development exists between the park and any permanent or semi-permanent stream or brook, further reducing the risk of a detrimental stormwater discharge to any waters of the city.
 - Standard erosion control measures should be taken in order to minimize general soil loss and movement.
- **Wildlife impact and habitation**
 - Typical wildlife considerations would include locating and preserving den sites (Fox, Bear, Coyote, etc.), presence of endangered species, predator sighting, or aviary habitat (elevated hawk & owl nests)
 - There are no official records or common sightings of endangered species, seasonal breeding grounds, or pristine environments within the scope of the project.
 - Wildlife habitation is fluid, and it is recommended to the contractor to be aware of how to spot dens, nests, or endangered species in order to prevent any future debilitation.
- **Observation of endangered or invasive species of Plantae**
 - There are no publicly recorded endangered species of plant life within the project boundary.

Design Concepts



Screenshot from Powder Horn LLC's design of the Keene Bike Park in Keene, NH

Municipal Bike parks typically contain the following Zones:

Pump Track (All Skill Levels)

Skills Training Zone (Beginner/Intermediate)

Freeride Zone (Intermediate/Expert)

These zones together meet the interests of large portions of modern riders, on many different types of bicycles. It is critical to offer zones for riders of ALL skill levels, from Beginner through Expert. While the focus of this park is to offer riders a fun place to practice their skills, there is an ever-growing number of expert riders in New England and around the globe that are interested in advanced-level riding.

Pump Track

A pump track is a closed loop circuit installed on a level surface, containing features such as rollers, banked corners, table-tops, and start/rest areas. This type of zone is designed for short-travel bikes such as BMX, hardtail MTB, and slopestyle bikes. The intention is for the rider to 'pump' the rollers and corners to gain speed and carry momentum without pedaling. This creates an exhilarating, yet non-intimidating experience that delivers an incredible cardio workout, advances motor skills and reaction time in all ages, and



develops fundamentals essential skills for all styles of riding.

Toddler/Beginner Pump Track Characteristics:

- 12-18” Rollers
- 30-degree continuous banked corners
- Simplified oval design with minimal variation
- Separated from larger pump track to ensure comfortable environment for young children and first-time riders

Intermediate/Expert Pump Track Characteristics:

- 16-24” Rollers
- 45 Degree and steeper banked corners containing rollers
- Variations, doubles, tabletops, and wall rides
- Designed to allow intermediate riders to challenge their skills and improve cornering, jumping, and pumping skills

Pump Tracks can be constructed with several different material types. The (3) main surface types are:

- Natural earthen surface (dirt, clay, earthen mix)
 - Prefabricated (concrete or composite surface)
 - Asphalt
- See ‘Surface Types’ on page 18 for details*



Earthen Pump Track

Skills Training Zone

Skills Training zones are designed for beginners who look to learn the fundamentals of riding varied terrain features. The features in this zone are designed to imitate those that the rider will find on the trail, in the pump track, or at other bike parks; the intent is to familiarize beginner riders with all different surface types and shapes. Rollers, rock gardens, wooden bridges, drops, table-tops, and banked corners are all included in this type of zone.

Nessy

Item	Height	Length	Width 18"	Width 24"	Width 30"	Width 36"
Nessy 2 Bumps (2'P, 1'V)	2'	31.7'	\$3,393.47	\$3,817.66	*\$4,241.84	\$4,666.02
Nessy 3 Bumps (2'P, 1'V)	2'	44.7'	\$4,963.10	\$5,583.49	\$6,203.88	\$6,824.27
Nessy 4 Bumps (2'P, 1'V)	2'	57.7'	\$6,532.74	\$7,349.33	\$8,165.92	\$8,982.51



Split Decision

Item	Height	Length	Width 18"	Width 24"	Width 30"	Width 36"
Split Decision	2'	48.8'	\$5,885.63	\$6,621.34	*\$7,357.04	\$8,092.74

(Left layout shown. Orders need to specify left or right layout.)



Straight Ladder

Item	Height	Length	Width 8"	Width 12"
Straight Ladder (3.5 Deg)	1'	27.7'	\$1,892.38	\$2,102.64
Straight Ladder (15 Deg)	1'	15.4'	\$1,315.01	\$1,461.12
Straight Ladder (11 Deg)	2'	27.7'	\$1,918.58	\$2,131.76
Straight Ladder (15 Deg)	2'	22.9'	\$1,747.87	*\$1,942.08



Features sourced from Progressive Bike Ramps© LLC

Freeride Zone



Freeride, Flow, or Jump Zones are often the main attraction of a bike park, where many intermediate and advanced riders will seek to hone their skills on advanced features such as jumps, table-tops, gaps, drops, hips, wall-rides, and bridges. In most cases these types of zones are what generate popular content and draw riders from far away. Well-built flow zones are often recognized world-wide, and there are examples of these that have garnered extraordinary exposure through the social media & YouTube channels of professional and well-known riders. While there is increased amplitude in advanced riding features, the associated skill level of the participating riders means no real increase in risk.

Design Recommendations

Based on the site survey & analysis, the following concepts are recommended

1. Access Routes
 - Current hiking trails exist to provide access for users on foot as well as mountain bike riders. It is recommended that the access trail be expanded to better accommodate all users, or a separate MTB-only access trail be installed.
2. Beginner Skills Zone
 - Proximity to parking areas means ease of access for families and young children who need supervision
3. Freeride Zone
 - Large open areas allow for creative freedom and maximizing use of space
4. Hub Areas
 - Bike Park & Trail Hub
 - Rules & Etiquette sign located here, along with maps and directional signage to inform & guide users to each zone
 - Serves as the main access point to reduce cross-traffic and unwanted merges
 - Parking/ Access Hubs
 - Existing parking areas will likely be sufficient to handle the volume of park users, with the highest strain on parking coming during special events or in conjunction with events happening nearby.

Signage

1. Access Points:
 - Rules & Etiquette
 - Informational maps & directional signs
 - MTB only vs. Multi-use vs. Hike only explanation
2. On- Trail:
 - Trail/zone difficulty level

- Intended user (MTB vs. Hike-only)
- Caution & Warning (merge, exit, etc.)

Cost & Timeline Projection*

Design (MTB infrastructure only)

\$6-8,000

1-2 months

Construction

Skills Zone & Jump Lines

\$60-100,000+ 4-6 Weeks

Removal & revegetation of existing facilities (if required)

\$15,000-\$18,000 1-2 weeks

*Cost Projection is designed to give rough numbers for reference, not an official estimate.



Sample Designs
Powder Horn LLC ©



Exhibit A: Sample Construction Plan & Surface Types

A. Site Clearing & Preparation

First, the area is outlined and enclosed per OSHA regulations with signage, fencing (if necessary) and gates to ensure a safe and secure job site.

Vegetation and surface organics are removed from the work area. Timber is either staged to mill or chipped and stacked for later use. Turf, surface organics, and loam are staged to be used in the landscaping process or exported for disposal.

B. Design Layout

Once the work area is prepared and compacted to the foundation level, the track dimensions and utility/drainage additions are located and marked. Any necessary erosion control measures are installed (silt fence, matting, hay booms, etc.).

C. Drainage, Utilities, & Sub-base

Material Staging & Sorting Imported aggregate is staged and moved as close as possible to the work area. If possible, any imported material is unloaded directly into the work area to minimize shuttling time. Aggregate generated on-site is processed as needed and staged as close as possible to final location.

D.

With the area surveyed and marked, excavation begins on the drainage system. Silt collection areas and pipes are installed with the necessary material, and all systems are measured to ensure proper slope and outflow distribution of storm water. Conduit, foundations, and bases of permanent structures are also excavated and installed (i.e. concrete bases for lights, footings for support structure, etc.). All riding areas are checked to ensure ground material stability, and if necessary are modified to meet structural requirements.

E. Base Shaping

First layer of track material is moved into position, compacted, and shaped in preparation for the surface material. Different types of riding surface will require different types of base material (see Asphalt Construction)

F. Surface Application

The high-quality surface material is deposited onto the pre shaped base. This material will be the final layer and the surface that is ridden on. This material can be either screened dirt, or asphalt depending on the design choice. This material is precision-shaped by a combination of machines and hand laborers, then compacted to a smooth and consistent finish.

G. Landscaping & Finishing

All non-riding areas are backfilled to specification in the design. Grade on the non-riding surface is brought up to match the grade of the riding surface to eliminate any sudden drops or inconsistencies that may cause difficulties if a rider mistakenly goes off-track. These non-riding areas are revegetated with grass or turf to eliminate erosion and create a sharp, detailed look

Surface Types

Dirt / Aggregate

As implied, this method uses the native or imported material that has been screened clean of stone and other unwanted particles to create a homogeneous mix. Typically, mineral soil or a high clay content is desired to help sustain the final shape of the track. While easy to change and repair, dirt surfaces have the highest levels of required maintenance and typically need an annual overhaul. Untreated dirt is also the option with the lowest cost.

Treated Earth

This method uses the same material as option #1, but is treated with an organic, non-toxic solution to harden and increase the durability of the surface material. There are several different brands of solution that are made specifically for this purpose; “DirtGlue” brand solution was used in our construction of the Keene pump track with positive results.

Asphalt

Asphalt surfaces are the costliest, yet most sustainable option. Asphalt requires little to no maintenance for years after the original construction if applied properly. This surface type has been popularized in recent years by several global construction companies (i.e. Velosolutions). Using asphalt is highly recommended for its low maintenance levels, traction while riding, and clean finished look.

Prefabricated

Prefabricated pump tracks can be made of precast concrete, or timber-framed with a hard composite molded surface. These options, while somewhat restrictive in design flexibility, provide a fantastic balance between maintenance / lifespan and cost. While less expensive than an asphalt hard surface track that allows full design customization with a hard surface, prefabricated pump tracks are leaps and bounds more durable than earthen surfaces and require very little maintenance. Ease of installation is also a plus.

POWDER HORN
TRAIL COMPANY

Bike Feasibility Study



Bike Feasibility Study: brief history

- Fall, 2020: in reaction to the COVID-19 pandemic, a group of resident children asked the Parks Commission to use existing trails at March's Hill for biking.
- May, 2021: access granted, uptick in biking at March's Hill, Woodman Park and Atkinson Common.
- Summer, 2021-Summer 2022: Youth looking for challenging dirt trails to balance, jump and create with dirt and natural materials. Parents and others encouraged their ingenuity but abutters concerned about expansion of activity, safety, noise and environmental impact.
- Summer, 2022: Parks Commission hired consultant to assess the trails at March's Hill and explore options for developing and potentially relocating some trails in a low-impact manner, abutters asked Commission to look at other locations.
- December, 2022: Parks Commission submitted CPC request to hire consultant to review alternative locations.

Bike Feasibility Study: scope

- Assess 3-5 locations for suitability for a biking facility: pump track, skills practice and/or free riding.
- Assess soils, environment, accessibility and safety.
- Identify and rank where activity is best suited, how to better manage it, and how to proceed.
- Cost: \$5,750



Bike Feasibility Study: public benefit

- Provide youth with opportunities for biking recreation that offers multiple levels of challenge, ability to socialize in the outdoors, and become stewards of/connect with the environment.
- OSRP Goal 2: “To maintain and improve high quality parks and recreational areas which are safe, attractive and **provide a range of active and passive recreational opportunities** for all residents.”
- Help the Commission and the community reach consensus on this issue.



Owen Smith
175 Storey Avenue
Newburyport, MA 01950
osmith87@gmail.com

June 6, 2023

Heather Shand, *City Council President*
City of Newburyport
PO Box 550
Newburyport, MA 01950

Dear President Shand:

In early March 2023, the *de facto* Tree Warden and appointed Interim DPS Director of the City of Newburyport resigned to obtain employment in another municipality. After vacating this position, no temporary appointment or full appointment has been made to fill the position.

Recognizing that this vital position has not been filled in a timely manner, I conducted a search to determine the date of appointment of the previous Tree Warden and could find no record indicating that this position was appointed by the (previous) Mayor and confirmed by the City Council. A review of Tree Commission Minutes showed that there was a change in the position of Tree Warden between November 2018 and December 2018. The November minutes stated that the Tree Warden was leaving City employment and the December minutes identified a different person as the Interim Tree Warden.

This is concerning for the following reasons:

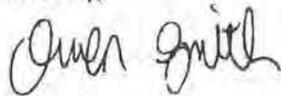
- 1) This is an enforcement position that is vested certain powers granted by the Commonwealth. Not having a person properly appointed exposes the City to liability. If a qualified person is not appointed, is the City legally exercising its authority? The Code of City Ordinances gives a lot of discretion to the Tree Warden to enforce local ordinances and pass on judicially the disposition of hazard trees on private property. The authority granted in Section 12-191 in the Code of Ordinances allows the Tree Warden to remove trees on private property. This authority alone shows the importance of ensuring this person is properly appointed. It is unacceptable to have people delegated to exercise authority of the Commonwealth without the proper appointment or training. This hinders the credibility of the City and is contrary to the rule of law.
- 2) Ch. 41 M.G.L. Section 1 requires that the Tree Warden be elected at every town meeting, or appointed if the city or town has a bylaw stating such. From November 2018 to date, I can find no record of appointment in a City Council Packet or City Council Meeting Minutes indicating that this position has been appointed and confirmed.
- 3) Ch. 41 M.G.L. Section 106 states that the term shall be for three years. This means that the City failed to have this position properly filled for at least two (2) terms. This establishes repeated non-compliance with state law. This section also states that "Such tree warden shall be qualified by training and experience in the field of arboriculture and licensed with the department of food and agriculture..." Industry standard qualifications would include ISA Certified Arborist, Massachusetts Certified Arborist, a degree in Arboriculture, or Urban Forestry.

- 4) Does the City have an internal control process to identify positions that require a Mayoral appointment? Is there an inventory of these positions to determine that they are filled with qualified people?

It is my hope that the City Council appoint a special commission to review the actions of this administration and the previous administration to identify other instances of non-compliance with the City Charter, City Ordinances, City Policies, and State Law.

Learning from previous mistakes will improve the delivery of public services. The City Council's demonstration of good governance will lead to public confidence and protect the City from liability.

Sincerely,



Owen Smith

Attachments:

- 1) Ch. 42 M.G.L. Section 1
- 2) Ch. 42 M.G.L. Section 106
- 3) November 2018 Tree Commission Meeting Minutes
- 4) December 2018 Tree Commission Meeting Minutes

Cc:

Richard Jones, City Clerk (for inclusion in the City Council packet)

Part I	ADMINISTRATION OF THE GOVERNMENT
Title VII	CITIES, TOWNS AND DISTRICTS
Chapter 41	OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND DISTRICTS
Section 1	TOWN OFFICERS TO BE ELECTED; TENURE

Section 1. Every town at its annual meeting shall in every year when the term of office of any incumbent expires, and except when other provision is made by law or by charter, choose by ballot from its registered voters the following town officers for the following terms of office:

A town clerk for the term of one or more years.

A town treasurer for the term of one or more years.

One or more collectors of taxes for the term of one or more years, unless the town votes otherwise or votes to authorize its treasurer to act as collector.

Three or more selectmen for the term of not more than three years, subject to the provisions of section twenty-one.

One or more assessors for the term of not more than three years.

One or more auditors for the term of one or more years, except where such office is abolished as provided in section fifty-five.

One or more highway surveyors for the term of one or more years; or one or more road commissioners for the term of one or more years.

One or more sewer commissioners for the term of one or more years if the town has provided for such officers, unless the town by vote authorizes its road commissioners to act as sewer commissioners.

A tree warden for the term of one or more years, unless the town by vote or by-law provides that he shall be appointed.

One or more constables for a term of one or more years, unless the town by vote provides that they shall be appointed.

Three or more members of the school committee for terms of not more than three years.

Three or more assistant assessors, if the town so votes, for the term of not more than three years.

Three or more members of the board of health for the term of one or more years if the town provides for such board, otherwise the selectmen shall act as a board of health.

All other town officers shall be appointed by the selectmen unless other provision is made by law or by vote of the town.

In any town or district in which the election date of the officers, authorized under this section, is changed, the officers currently serving shall continue to hold their offices until the appointment or election and qualification of their successors.

In any case where three or more members of a board are to be elected for terms of more than one year, as nearly one-third as may be shall be elected annually.

The provisions of this section or any of the following sections of this chapter which authorize or require the fixing of the terms of office of members of any board, commission or body in such a manner that all such terms would not expire at the same time shall not apply with respect to such board, commission or body after the town has voted under section two of chapter fifty-four A to elect the members thereof by the proportional representational method of election. In no case shall the term of any officer exceed five years.

Part I	ADMINISTRATION OF THE GOVERNMENT
Title VII	CITIES, TOWNS AND DISTRICTS
Chapter 41	OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND DISTRICTS
Section 106	TREE WARDEN; APPOINTMENT; TERM

Section 106. If the town provides by vote or by-law that the tree warden shall be appointed, such appointment shall be made by the board of selectmen. The term of such appointment shall be for three years.

In any city or in a town which exceeds ten thousand inhabitants and which provides by vote, by-law or by ordinance that the tree warden shall be appointed, such appointment shall be made by the mayor, with the approval of the city council or by the board of selectmen. In such city or town, the tree warden shall exercise the duties of tree warden and of insect pest control. Such tree warden shall be qualified by training and experience in the field of arboriculture and licensed with the department of food and agriculture in accordance with the provisions of section ten of chapter one hundred and thirty-two B. The term of such appointment shall be for three years.



City of Newburyport Tree Commission

Meeting Minutes

8 November, 2018

Children's Activity Room
Newburyport Public Library

Meeting convened at 7:04 pm.

Tree Commission members (TC) present: Crispin Miller (Chair) (**CM**), Constance Preston (Treasurer) (**CP**), Sheila Taintor (Secretary) (**ST**), Paul Bevilacqua (**PB**), David Dylewski (**DD**), Jane Niebling (**JN**), Scott Hanley (**SH**), Katie Haried (**KH**), Wayne Amaral, Tree Warden and Deputy Director/Director of Operations, Department of Public Services, ex-officio (**WA**)

No public in attendance

This was a special Tree Commission meeting marking both an ending and a beginning. We said farewell to Wayne Amaral, our cherished Tree Warden, and welcomed a new Commissioner, Scott Hanley.

Reports

Secretary

The Commission approved the Minutes of the September 2018 Meeting unanimously. (The **TC** did not meet in October.)

Treasurer

The October 2018 Treasurer's Report was unanimously accepted.

CP explained that scheduled watering was cancelled 4 times over the summer/fall season due to rain or projected rain. Each cancellation saved the **TC** \$1,968 (246 trees @ \$8), which was applied to extend the waterings in the fall.

Tree Warden

Total Street Trees Removed in 2018 is 84

Most recent tree removals are:

- Beacon Avenue #18
- Charles Street #40
- Coffin Street #2
- Guild Street #5 (2 trees)
- Prospect Street #119-121 (2 trees)
- Woodland Street at Carleton Street

WA said they are on track to remove a total of about 100 trees this year.

WA reminded the **TC** that ash trees need 2 injections in successive years to be protected from the Emerald Ash Borer (**EAB**). Last spring, 48 trees (~1/3 of Newburyport's ash trees) were injected, and they will need their second injection early this spring. In addition it would be

optimal to do the 1st round of injections on the next 50 trees. The following spring, the second 50 trees should get their 2nd injections and the remaining third should get their first injection. There is no money set aside for this in the budget, so the **TC** should plan to make a request from free cash.

Planting and Pruning

CP shared the report she had prepared for the October meeting which was cancelled.

Spring 2018 Planting:

- Lady Tracey Anne finalized the watering of 246 trees for 2018 growing season
- All new trees have been mulched

Fall 2018 Planting:

- 33 trees (all requests from residents) were planted in September by Plants & Pleasantrees
- The order was split between Northeast Nursery (17 trees) and Bigelow Nurseries (16 trees)
- These trees were mulched (11/7) and inventoried.

Spring 2019 Planting:

- There are currently 54 trees on the list of requests from residents
- Potential projects (Tyng St, Pheasant Run, Griffin House, Daniel St, High St and Federal St) are not included

CP explained that **SH** has agreed to take on the responsibility of supervising future spring and fall plantings. He will work closely with **CP** next spring as he learns the ropes and assume total responsibility for the fall planting. The **TC** expressed their appreciation to both: **CP** for her incredible effort this past spring and fall, and **SH** for stepping up to take over.

Inventory

KH is submitting a request for reimbursement to the **MA DCR** for about \$10,000 of our \$13,000 grant.

The **TC** expressed their gratitude to **KH** for her colossal effort of tracking all the details for the inventory.

The activity described in the chart on the next page is a result of the yearlong **MA DCR** matching grant to take the inventory of Newburyport's public trees. Two interns were hired for a 3-month period. Volunteers from the Tree Commission, the Friends of Newburyport Trees (FoNT) and several interested citizens were recruited. The volunteer hours and other operating expenses are eligible to match the reimbursable cost of the interns.

DCR Inventory Challenge Grant Tracking
June 2018 - October 2018, & YTD

Volunteer/ Intern	Task	# Trees ID'd	Hours	Miles
Volunteers				
June	Inventory / Administration	580	97.50	151.4
July	Inventory / Administration	918	111.25	291.1
August	Inventory / Administration	1,061	90.75	168.3
September	Inventory / Administration	0	23.50	13.3
October	Inventory / Administration	0	53.75	11.0
2018 YTD Volunteer Totals		2,559	376.75	635.1
Interns				
June	Inventory	623	67.00	102.0
July	Inventory	2,855	225.00	267.6
August	Inventory	2,722	260.50	235.5
September	Tree Book / Administration	0	55.80	
2018 YTD Intern Totals		6,200	608.30	605.1
2018 YTD INVENTORY TOTALS		8,759	985.05	1,240.2

Grants/Donations

JN reported that she will be submitting the application for the annual *Tree City USA* designation. She will need to include our volunteer hours for this calendar year and asked the commissioners to send their hours (exclusive of inventorying) to her in early December, adding in estimated hours for December.

She will prepare a report of all grants with details and deadlines to be distributed at the TC December meeting.

Education

No update.

Community Outreach

The TC expressed their appreciation to JN for her interesting and informative article *It takes all kinds of trees* which appeared in the 10/31 Daily News.

Old Business

Callery Pear

The TC currently has 2 lists of trees posted on our website: *Recommended Trees* and *Invasive Trees in Massachusetts*. It was decided that we would rename the *Invasive Trees* document *Undesirable Trees* and add trees such as the Callery Pear to it. In addition to the Callery Pear, there are several trees considered invasive in neighboring states, but have not yet been so designated in Mass. KH will work on the list of trees to be added and send them to ST for the retitled document.

Maintenance of Tree Pits

This summer's weather was optimal for crab grass which led to very unsightly tree pits. The TC agreed that since the DPS does not have the manpower we should take on the task for maintaining the condition of the tree pits and discussed how we might do it. Asking residents to be responsible for "their" city tree pits has not been successful, but we should consider adding this request to the information handed out to residents on planting day, and perhaps emphasize it more on the tree bag tags. We should also seek volunteers to help with this task. Reaching out to the H.S. for students in need of volunteer hours, contacting scout troops to see if a scout might take this on as an Eagle Scout project were mentioned. CM shared that having residents of the Link House help is not feasible for us, since their rate is \$20/hour.

New Business

2019 Free Cash request and FY 2020 budget

The TC approved a motion to submit the **FY 19 Free Cash** request to the Director of the **DPS** and the Mayor at the appropriate time by the Chair. If needed the Chair is authorized to make any reasonable adjustments in the proposal which he deems appropriate prior to submission.

The TC approved a motion to submit the **FY 20 Budget** proposal to the Director of the **DPS** and the Mayor at the appropriate time by the Chair. If needed the Chair is authorized to make any reasonable adjustments in the proposal which he deems appropriate prior to submission.

The meeting adjourned at 8:43 PM Children's Activity Room time.

Respectfully Submitted,
Sheila Taintor, Secretary

Next meeting: Thursday, December 13, 2018 at 7 PM

Location: Children's Activity Room, Newburyport Public Library



City of Newburyport Tree Commission

Meeting Minutes

13 December, 2018

Children's Activity Room
Newburyport Public Library

Meeting convened at 7:03 PM.

Tree Commission (TC) members present: Crispin Miller (**CM**), Chair; Sheila Taintor (**ST**), Secretary; Paul Bevilacqua (**PB**); Scott Hanley (**SH**)

Tree Commission members absent: Constance Preston (**CP**) Treasurer); David Dylewski (**DD**); Jane Niebling (**JN**); Jamie Tuccolo (**JT**), interim Tree Warden, ex-officio

No Public in attendance.

Shady News Talk #5

7:05-7:35 Speaker: Neil Doran, National Grid Merrimack Valley Forestry Supervisor
Topic: The Power of the Trees

Reports

Secretary

The Commission approved the Minutes of the 8 November, 2018 Meeting.

Treasurer

There was no Treasurer's Report this month. There will be a year-end report at the January meeting.

Tree Warden

Total Street Trees removed in 2018 is 89.

Most recent tree removals are:

- ◇ Market Street #10 ◇ Ferry Road #22 & #26 (2 trees removed - were on Moulton St.)
- ◇ Beacon Ave. #20 ◇ Perkins Playground on Beacon Ave

Both Tony Furnari and Jamie Tuccolo (Tree Warden) will attend the January meeting to discuss changes in DPS that they know will make things work well.

Planting and Pruning

Spring 2019 Planting:

- Spring 2019 planting list has been finalized at 62 trees. All are requests from residents.
- Species determinations have been finalized for all 62 trees.

- City Council approved our free cash proposal on 12/10/18, giving us funds to cover 58 trees.
- It is highly likely that there will be some changes to the planting list. Inevitably some trees will fall off the list. If no trees fall off the list, the last 4 trees added will be moved to the Fall 2019 Planting. Residents are aware of this.
- Free cash proposal also includes \$10K to cover the cost of inoculation of Phase I Ash trees. CP will work with DPS to get that done.
- Potential projects (Tyng St, Pheasant Run, Griffin House, Daniel St and Federal St) are not included in Spring 2019 list.

Inventory

CM and Kate Dardinski (KD), FoNT board member, have been working with the database of inventoried trees and have discovered some software anomalies. They are pointing them out to the software engineer at MVPC who is fixing them one-by-one.

Grants/Donations

Prior to this meeting and in anticipation of her absence, JN submitted a document listing grant activity and history along with deadlines.

Education

ST reported that plans for the 2019 poster contest are underway.

Community Outreach

JN's most recent Tree Talk column, *Getting Ready for Spring*, appeared in the 12/13 DN.

Old Business

“Undesirable Tree” document for website

There was discussion around the “*Undesirable Tree*” document on the website. It was decided that it will be called “*Not Recommended Trees*” and will include both “invasive” and “undesirable” trees. CM wishes to get feedback on our tree list from Neil Doran, our *Shady News* presenter tonight.

Maintenance of Tree Pits

SH has taken on the task of finding volunteers who can assume responsibility for maintaining our tree pits weed- and trash-free.

New Business

PB raised a concern about where trees are going to be planted around the new garage. He felt that the tree pits he had seen did not conform to the City of Newburyport Tree Regulations as posted on the DPS website. He wasn't able to locate the specific regulation he had in mind during the meeting. He promised to find it and share it later. **CM** shared his concern that the trees are being planted "this fall", since planting them now seems risky.

We will hold the *Annual Tree Commission Calendar* discussion for the January meeting.

The meeting adjourned at 8:50 PM.

Respectfully submitted,
Sheila Taintor, Secretary

Next meeting: Thursday, 10 January, 2018 at 7 PM

Location: Children's Activity Room, Newburyport Public Library

TRANSFERS



CITY OF NEWBURYPORT FY 2023

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

TRANSFER/APPROPRIATION REQUEST

JUN -6 P 3:20

Department: Harbormaster

Submitted by: Paul Hogg, Harbormaster

Date Submitted: 6/12/2023

Transfer From:

Account Name:	Harbormaster Retained Earnings	Balance:	\$ 753,356.00
Account Number:	6520-35920	Category:	n/a
Amount:	\$15,000.00	Trans I/O:	\$ (20,000.00)

Why Funds Are Available:

The Massachusetts Department of Revenue certified Retained Earnings for the Harbormaster Enterprise Fund for FY2023 at \$773,356.00. These funds are available for any legal expenditure with the approval of the Mayor and a majority vote of the City Council.

Transfer To:

Account Name:	HBR Assistant Harbormasters	Balance:	\$ 1,421.50
Account Number:	652001-51102	Category:	\$ 39,435.77
Amount:	\$12,500.00	Trans I/O:	\$ -

Why Funds Are Needed:

Additional funds are needed to cover the remaining pay periods through June 30, 2023. The anticipated budgetary shortfall is driven by an increase in hours and wages.

Transfer To:

Account Name:	HBR Cashman Park Attendants	Balance:	\$ 2,733.36
Account Number:	652001-51185	Category:	\$ 39,435.77
Amount:	\$2,000.00	Trans I/O:	\$ -

Why Funds Are Needed:

Additional funds are needed to cover the remaining pay periods through June 30, 2023. The anticipated budgetary shortfall is driven by an increase in hours and wages.

Transfer To:

Account Name:	HBR PI Parking Lot Attendants	Balance:	\$ 5,893.95
Account Number:	652001-51187	Category:	\$ 39,435.77
Amount:	\$500.00	Trans I/O:	\$ -

Why Funds Are Needed:

Additional funds are needed to cover the remaining pay periods through June 30, 2023. The anticipated budgetary shortfall is driven by an increase in hours and wages.

Sean R. Reardon, Mayor:

Date: 6/6/2023

Ethan R. Manning, Auditor:

Date: 6/16/2023

City Council Action:



CITY OF NEWBURYPORT FY 2023

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

TRANSFER/APPROPRIATION REQUEST

2023 JUN -6 P 3: 20

Department: Police

Submitted by: Mark Murray, Marshal

Date Submitted: 6/12/2023

Transfer From:

Account Name:	POL Fuel/Oil Vehicle(s)	Balance:	\$ 15,326.75
Account Number:	01210004-54801	Category:	\$ 45,520.31
Amount:	\$2,500.00	Trans I/O:	\$ -

Why Funds Are Available:

A surplus is anticipated at year-end.

Transfer From:

Account Name:	POL Office Supplies	Balance:	\$ 4,389.50
Account Number:	01210004-54200	Category:	\$ 45,520.31
Amount:	\$2,500.00	Trans I/O:	\$ -

Why Funds Are Available:

A surplus is anticipated at year-end.

Transfer From:

Account Name:	POL Ammunition/Weapons	Balance:	\$ 10,537.48
Account Number:	01210004-55801	Category:	\$ 45,520.31
Amount:	\$5,300.00	Trans I/O:	\$ -

Why Funds Are Available:

A surplus is anticipated at year-end.

Transfer To:

Account Name:	POL Maint-Building	Balance:	\$ (15,932.35)
Account Number:	01210002-52401	Category:	\$ 102.67
Amount:	\$10,300.00	Trans I/O:	\$ -

Why Funds Are Needed:

This account is in a deficit and there is only \$103 left in the overall purchase of services category. We recently transferred \$12,000 to the Maint-Equipment line item to help cover the unforeseen expense of repairing the building's generator and replacing the oil tank. However, after reconciling all remaining activity, it appears an additional \$10,300 will be needed to pay all expenses and utilities through June 30th.

Sean R. Reardon, Mayor:

Date: 6/6/2023

Ethan R. Manning, Auditor:

Date: 6/6/2023

City Council Action:



CITY OF NEWBURYPORT

FY 2023

TRANSFER/APPROPRIATION REQUEST

Department: Mayor

Submitted by: Mayor Sean R. Reardon

Date Submitted: 6/12/2023

Transfer From:

Account Name:	ASR Appraisal System	Balance:	\$ 7,000.00
Account Number:	01141002-53001	Category:	\$ 10,415.00
Amount:	\$7,000.00	Trans I/O:	\$ -

Why Funds Are Available:

A contingency was budgeted for moving the appraisal system to the cloud. Funds are no longer needed for FY2023.

Transfer From:

Account Name:	HLH Sal Public Health Nurse	Balance:	\$ 45,414.06
Account Number:	01510001-51711	Category:	\$ 76,164.66
Amount:	\$10,758.24	Trans I/O:	\$ -

Why Funds Are Available:

A surplus is anticipated at year-end due to staffing changes and a reduction in hours for this position.

Transfer To:

Account Name:	Multiple (see attached)	Balance:	\$ -
Account Number:	Multiple (see attached)	Category:	\$ -
Amount:	\$17,758.24	Trans I/O:	\$ -

Why Funds Are Needed:

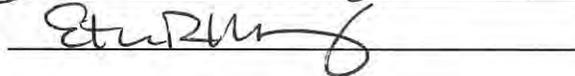
A deficit is anticipated at year-end due to staffing changes and additional coverage needed in the City Clerk's Office throughout FY2023. See attached detail.

Sean R. Reardon, Mayor:



Date: 6/2/2023

Ethan R. Manning, Auditor:



Date: 6/8/2023

City Council Action:

Transfer Detail - City Clerk Personnel June 12, 2023

ORG	OBJ	ACCOUNT DESCRIPTION	REVISED BUDGET	EXPENDED THROUGH 6/30/23	TRANSFER NEED
01111001	51162	CCN SAL CLK COMMITTEE	\$679.25	\$742.84	\$63.59
01161001	51102	CLK SAL ASST CITY CLERK	\$84,226.63	\$96,690.03	\$12,463.40
01161001	51103	CLK SAL OFFICE MGR	\$63,209.42	\$63,663.48	\$454.06
01161001	51166	CLK SAL PT ADMIN ASST	\$40,384.85	\$43,590.94	\$3,206.09
01161001	51167	CLK SAL ADMIN ASST/PASSPORT	\$46,239.39	\$47,810.49	\$1,571.10
				TOTAL	\$17,758.24

END OF CONSENT AGENDA

BEGINNING OF REGULAR AGENDA

ORDERS



IN CITY COUNCIL

ORDERED:

June 12, 2023

THAT the City Council of the City of Newburyport hereby establishes, by a two-thirds vote, an Opioid Stabilization Fund in accordance with Massachusetts General Laws Chapter 40, Section 5B. Said fund shall be utilized for implementing abatement programs and strategies related to areas such as prevention, harm reduction, community, treatment and recovery in accordance with the terms of the statewide settlement agreements with opioid industry participants.

FURTHER THAT the City Council of the City of Newburyport hereby dedicates 100% of the Opioid Settlement Abatement funds to the Opioid Stabilization Fund effective for the fiscal year 2024 beginning on July 1, 2023.

Councillor Sharif I. Zeid



CITY OF NEWBURYPORT
FINANCE DEPARTMENT

60 PLEASANT STREET
NEWBURYPORT, MA 01950
PHONE: 978-465-4404

WWW.CITYOFNEWBURYPORT.COM/FINANCE

SEAN R. REARDON
MAYOR

ETHAN R. MANNING
FINANCE DIRECTOR/CITY AUDITOR

To: President and Members of the Newburyport City Council

From: Ethan R. Manning, Finance Director/City Auditor

Date: May 24, 2023

Subject: Opioid Stabilization Fund

During FY2023, the first round of payments was made to municipalities in relation to the statewide settlements with opioid industry participants, including manufacturers, distributors, and pharmacies. Attached are Newburyport's estimated allocations resulting from the settlement agreements. The City has received \$128,485 to date and is expected to receive approximately \$1.1 million in total over the 17-year payment period.

As part of the settlement agreements, municipalities are required to expend the opioid funds on abatement and remediation efforts based on guidance from the Attorney General's Office and the Executive Office of Health and Human Services (EOHHS). To ensure that funds are expended for allowable purposes, the Division of Local Services advises cities and towns to establish special purpose stabilization funds with dedicated revenue from the opioid settlement payments in accordance with [MGL Chapter 40, Section 5B](#). This is the same process that was used to earmark parklet-use fees, as well as a portion of revenue collected from the parking lots on Plum Island.

As outlined in [IGR 17-20](#), the vote to establish the fund and dedicate the respective revenue stream must take place before July 1 of the fiscal year in which the fund and dedication is to begin. Therefore, only payments received on or after July 1, 2023 would go directly into this fund, whereas funds received during FY2023 will, by default, close to the general fund and will need to be appropriated back to this stabilization fund from free cash once certified in the fall.

Here are some links to additional information:

[MA Statewide Subdivision Agreement 3/7/2022](#)
[Ask DLS: Treatment of Opioid Settlement Payments 7/7/2022](#)
[Presentation Slides from Statewide Virtual Forum 3/7/2023](#)

Thank you for your consideration.

Newburyport Opioid Settlement Allocations

Estimated as of 5/24/2023

Payment Year	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Total
Company / Year Ending	6/30/23	6/30/24	6/30/25	6/30/26	6/30/27	6/30/28	6/30/29	6/30/30	6/30/31	6/30/32	6/30/33	6/30/34	6/30/35	6/30/36	6/30/37	6/30/38	6/30/39	
Walmart	11,968	11,968	11,968	11,968	11,968	11,968												71,808
Teva	7,374	7,374	7,374	7,374	7,374	7,374	7,374	7,374	7,374	7,374	7,374	7,374	7,374	7,374				95,864
Allergan	8,159	8,159	8,159	8,159	8,159	8,159	8,159											57,111
CVS	9,068	7,230	14,448	14,448	14,448	14,448	13,726	12,993	12,993	12,993								126,795
Walgreens	10,639	7,023	7,023	7,023	7,023	7,023	7,023	10,639	10,639	10,639	10,639	10,639	10,639	10,639	10,639			137,888
Johnson & Johnson	84,960					4,285	4,285	4,285	5,456	5,456	5,456							114,183
Distributors	43,525	22,303	27,915	27,915	27,915	27,915	32,832	32,832	32,832	27,599	27,599	27,599	27,599	27,599	27,599	27,599	27,599	496,773
Total	175,693	64,056	76,887	76,887	81,172	81,172	73,399	69,294	69,294	64,061	45,612	45,612	45,612	38,238	38,238	27,599	27,599	1,100,424

Average Annual Payment 64,731

Already Paid to City: 128,485

Newburyport Opioid Settlement Allocation Payments by Year





IN CITY COUNCIL

ORDERED:

June 12, 2023

THAT, the City of Newburyport establishes the following water and sewer rates effective July 1, 2023:

	<u>FY2023 Approved</u>	<u>FY2024 Proposed</u>
<u>Water Rate</u>		
<u>Consumption</u>		
First 3,000 cubic feet:	\$6.61 per 100 cu. ft.	\$6.88 per 100 cu. ft.
3,001 cubic feet and over:	\$7.37 per 100 cu. ft.	\$7.92 per 100 cu. ft.
<u>Service Charge (Residential)</u>		
Customers with meters 1 inch or smaller:	\$25.00 per quarter	\$25.00 per quarter
Customers with meters larger than 1 inch:	\$125.00 per quarter	\$125.00 per quarter
<u>Service Charge (Non-Residential)</u>		
Customers with meters 1 inch or smaller:	\$30.00 per quarter	\$30.00 per quarter
Customers with meters larger than 1 inch:	\$125.00 per quarter	\$125.00 per quarter
<u>Sewer Rate</u>		
<u>Consumption</u>		
First 3,000 cubic feet:	\$9.84 per 100 cu. ft.	\$10.18 per 100 cu. ft.
3,001 cubic feet and over:	\$10.60 per 100 cu. ft.	\$11.21 per 100 cu. ft.
<u>Service Charge</u>		
Newburyport/Plum Island customers:	\$25.00 per quarter	\$25.00 per quarter
Newbury (Old Town) customers:	\$30.00 per quarter	\$30.00 per quarter

Councillor Sharif I. Zeid

FY2024 Water & Sewer Rate Recommendation – June 2023

Rate Setting Goals

- 1) Plan for necessary upgrades to the city's infrastructure
- 2) Begin to implement recommendations of Water/Sewer Rate Study that was conducted by Environmental Partners
- 3) End continuous use of retained earnings for annual rate setting
- 4) Mitigate impact on ratepayers to avoid any large one year fluctuations in water/sewer rates

Environmental Partners Study

Scope/Process

- Conducted alternatives analysis
 - Looked at five rate adjustment scenarios ranging from minimum rate increase to funding all capital, while building an additional \$500K per year in retained earnings
- Reviewed historical consumption trends
- Reviewed spending and revenue trends
- Reviewed needs identified in capital improvement program

Main Takeaways/Recommendations

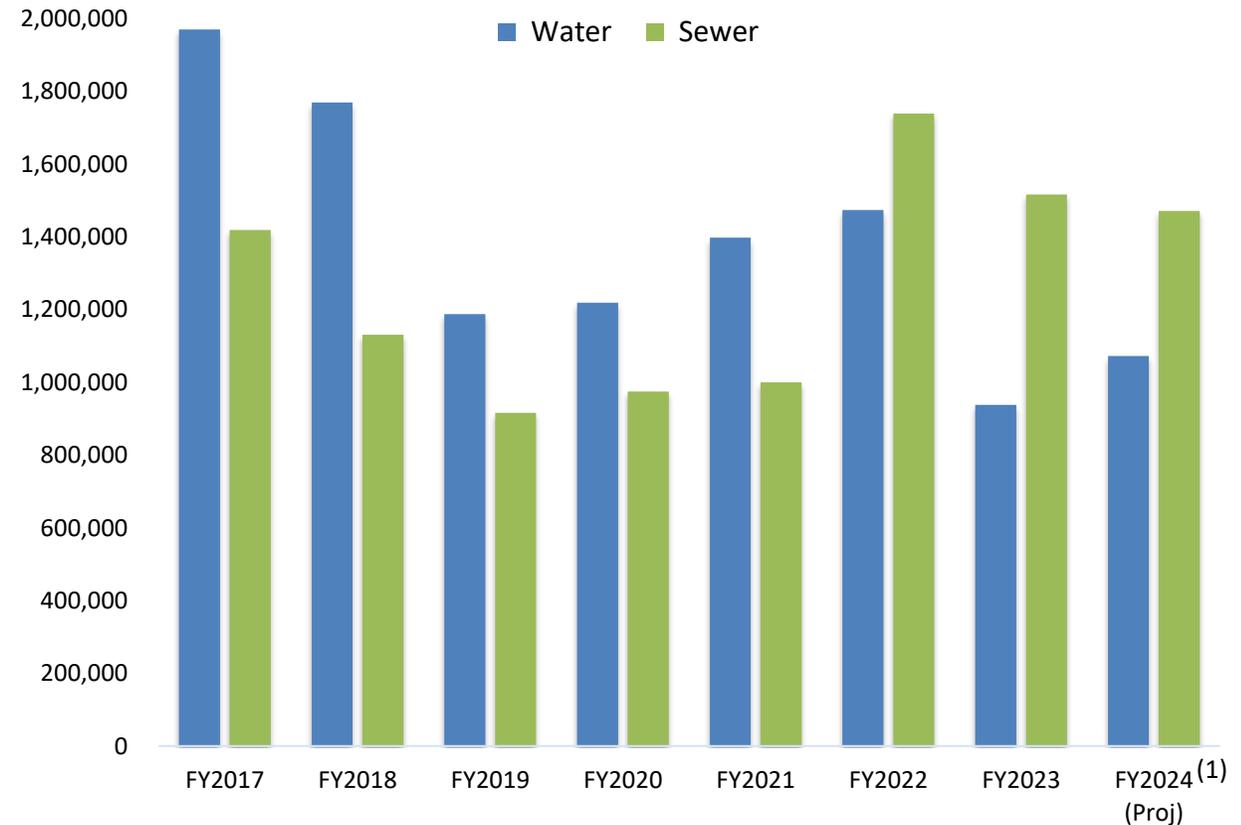
- Increase the difference between the two block rates (tiers); Newburyport's upper block is ~110% of the lower block rate, whereas similar utilities are ~150% of the lower block rate
- End continuous use of retained earnings to offset necessary rate adjustments
- Increase the amount of the fixed customer service charge
- Implement consistent rate increases based on anticipated capital needs

FY2023 Year-End & Retained Earnings Balances

	Water	Sewer
7/1/2022 Balance	937,918	1,516,385
Approved Transfers	(86,000)	(120,000)
Current Balance	851,918	1,396,385
Pending Transfers	(255,998)	(595,616)
Net Remaining	<u>595,920</u>	<u>800,769</u>
FY2023 Year-End Projected		
Revenue	6,451,290	8,410,572
Expenses	5,974,682	7,740,369
Turnback	<u>476,608</u>	<u>670,203</u>
FY2024 Projected⁽¹⁾	<u>1,072,528</u>	<u>1,470,972</u>

	Water	Sewer
FY2017	1,970,192	1,419,115
FY2018	1,769,560	1,131,128
FY2019	1,188,081	916,043
FY2020	1,219,425	974,540
FY2021	1,398,128	999,799
FY2022	1,474,050	1,738,991
FY2023	937,918	1,516,385
FY2024 (Proj) ⁽¹⁾	1,072,528	1,470,972

Retained Earnings



Use of Retained Earnings to Offset Rate Increases:

Water	0	0	100,000	100,000	171,322	100,000	100,000	0
Sewer	0	675,000	375,000	300,334	321,784	100,000	300,000	0

⁽¹⁾ Note: FY2024 projected balance is an estimate and is shown for illustrative purposes only.

Water Revenue/Expense Projection

	Growth Factor	Actual FY2019	Actual FY2020	Actual FY2021	Actual FY2022	Revised FY2023	Budget FY2024	Projected FY2025	Projected FY2026	Projected FY2027	Projected FY2028
Revenue											
Meter/CSC Revenue (Line 1)		4,829,654	4,809,726	5,265,975	5,039,260	5,534,526	6,020,029	6,651,816	7,079,564	7,511,714	7,948,398
Misc Fees		232,450	185,540	233,387	273,568	295,071	250,000	250,000	250,000	250,000	250,000
Special Assessments		195,486	156,846	215,957	149,124	150,000	150,000	150,000	150,000	150,000	150,000
Liens		84,213	68,371	89,708	61,711	90,000	70,000	70,000	70,000	70,000	70,000
Interest/Penalties		44,835	29,350	29,254	26,002	27,017	30,000	30,000	30,000	30,000	30,000
Non-Recurring Revenue		19,203	38	5,537	1,383	0	0	0	0	0	0
Total		5,405,840	5,249,871	5,839,817	5,551,049	6,096,614	6,520,029	7,151,816	7,579,564	8,011,714	8,448,398
FY24 Mayor's Budget Proposal											
Expenses											
Personnel Services	3.0%	2,030,480	1,990,268	2,165,568	2,208,432	2,456,395	2,572,883	2,650,069	2,729,572	2,811,459	2,895,802
Purchase of Services	3.0%	866,157	831,236	872,581	1,154,077	1,257,279	1,249,723	1,287,214	1,325,831	1,365,606	1,406,574
Supplies	3.0%	183,508	159,560	180,943	175,245	297,214	307,214	316,430	325,923	335,700	345,772
Other Charges & Expense	3.0%	92,857	96,280	94,653	101,161	109,044	111,655	115,005	118,455	122,008	125,669
Capital Outlay	3.0%	166,375	14,494	105,197	280,187	382,000	440,000	453,200	466,796	480,800	495,224
Debt Service		1,854,139	1,818,110	1,807,253	1,657,598	1,780,682	1,770,592	2,259,896	2,540,886	2,821,876	3,102,865
Existing		1,854,139	1,818,110	1,807,253	1,657,598	1,780,682	1,770,592	1,743,399	1,743,400	1,743,400	1,743,400
New		0	0	0	0	0	0	516,497	797,486	1,078,476	1,359,465
Transfers Out	3.0%	0	0	0	15,604	0	67,963	70,002	72,102	74,265	76,493
Total		5,193,516	4,909,947	5,226,195	5,592,305	6,282,614	6,520,029	7,151,816	7,579,564	8,011,714	8,448,398
(From Line 1) Amount to Raise Through Rates and Fixed Charge:							<u>6,020,029</u>	<u>6,651,816</u>	<u>7,079,564</u>	<u>7,511,714</u>	<u>7,948,398</u>

FY24-28 CIP
(Increased in
Equal
Increments)

Water Rate Projection

Growth Factor	Actual FY2019	Actual FY2020	Actual FY2021	Actual FY2022	Revised FY2023	Budget FY2024	Projected FY2025	Projected FY2026	Projected FY2027	Projected FY2028						
Amount to Raise Through Rates and Fixed Charge:						<u>6,020,029</u>	<u>6,651,816</u>	<u>7,079,564</u>	<u>7,511,714</u>	<u>7,948,398</u>						
Build/(Use of) Retained Earnings:						0	(217,705)	(193,148)	(145,510)	(91,166)						
Fixed Charge:						\$ 100.00	\$ 100.00	\$ 120.00	\$ 120.00	\$ 140.00						
Customers:						8,450	8,450	8,450	8,450	8,450						
Fixed Charge Revenue:						845,000	845,000	1,014,000	1,014,000	1,183,000						
Amount to Raise Through Rates:						5,175,029	5,589,111	5,872,416	6,352,203	6,674,233						
% by Tier																
68%																
32%																
Total Consumption (cf):						71,722,454	71,722,454	71,722,454	71,722,454	71,722,454						
Block 1 Consumption (cf):						48,771,269	48,771,269	48,771,269	48,771,269	48,771,269						
Block 2 Consumption (cf):						22,951,185	22,951,185	22,951,185	22,951,185	22,951,185						
Block 2 % of Block 1:						115.1%	117.5%	125.0%	127.5%	132.5%						
Fixed Charge:						\$ 100.00	\$ 100.00	\$ 120.00	\$ 120.00	\$ 140.00						
Block 1 Rate (per 100 cf):						\$ 5.54	\$ 5.63	\$ 5.63	\$ 5.94	\$ 6.61						
Block 2 Rate (per 100 cf):						\$ 6.29	\$ 6.38	\$ 6.38	\$ 6.70	\$ 7.37						
Average Customer ⁽¹⁾ :						137 gal/day	\$472	\$478	\$478	\$498	\$543	\$562	\$595	\$628	\$666	\$705
Change to Average Customer (\$):						\$18	\$6	\$0	\$21	\$45	\$18	\$34	\$33	\$38	\$39	
Change to Average Customer (%):						4.0%	1.3%	0.0%	4.4%	9.0%	3.3%	6.0%	5.6%	6.0%	5.9%	
Average Comm/Ind ⁽¹⁾ :						625	\$1,927	\$1,955	\$1,955	\$2,050	\$2,255	\$2,389	\$2,588	\$2,782	\$3,015	\$3,216
Change to Average Comm/Ind (\$):						\$13	\$27	\$0	\$96	\$205	\$134	\$199	\$194	\$234	\$201	
Change to Average Comm/Ind (%):						0.7%	1.4%	0.0%	4.9%	10.0%	5.9%	8.3%	7.5%	8.4%	6.7%	

⁽¹⁾ Source: Environmental Partners Newburyport Water & Sewer Rate Studies March 17, 2022.

Sewer Revenue/Expense Projection

	Growth Factor	Actual FY2019	Actual FY2020	Actual FY2021	Actual FY2022	Revised FY2023	Budget FY2024	Projected FY2025	Projected FY2026	Projected FY2027	Projected FY2028
Revenue											
Meter/CSC Revenue (Line 1)		6,380,565	6,655,115	7,280,386	7,032,983	6,741,981	7,571,921	8,149,022	8,399,660	8,713,668	8,925,233
Misc Fees		136,005	125,255	142,818	155,810	215,000	250,000	250,000	250,000	250,000	250,000
Special Assessments		415,938	258,299	341,829	231,229	360,000	150,000	150,000	150,000	150,000	150,000
Liens		114,795	99,721	132,590	89,372	149,685	70,000	70,000	70,000	70,000	70,000
Interest/Penalties		53,724	41,913	47,981	46,789	60,674	30,000	30,000	30,000	30,000	30,000
Non-Recurring Revenue		9,656	35,127	29,087	287,191	0	0	0	0	0	0
Total		7,110,682	7,215,429	7,974,691	7,843,373	7,527,340	8,071,921	8,649,022	8,899,660	9,213,668	9,425,233
FY24 Mayor's Budget Proposal											
Expenses											
Personnel Services	3.0%	2,224,681	2,237,471	2,267,734	2,421,595	2,597,010	2,628,937	2,707,805	2,789,039	2,872,710	2,958,892
Purchase of Services	3.0%	1,235,914	1,049,824	1,137,684	1,350,711	1,412,070	1,422,770	1,465,453	1,509,416	1,554,699	1,601,340
Supplies	3.0%	442,428	471,980	441,611	485,657	609,500	621,975	640,634	659,853	679,649	700,038
Other Charges & Expense	3.0%	94,703	80,315	84,517	91,480	105,684	108,280	111,528	114,874	118,320	121,870
Capital Outlay	3.0%	151,859	111,767	183,913	158,091	287,000	308,500	317,755	327,288	337,106	347,219
Debt Service		3,002,881	3,030,638	3,018,533	2,932,120	2,927,576	2,895,705	3,317,519	3,408,212	3,557,476	3,599,356
Existing		3,002,881	3,030,638	3,018,533	2,932,120	2,907,576	2,890,705	2,876,971	2,684,168	2,684,168	2,684,168
New		0	0	0	0	20,000	5,000	440,548	724,043	873,308	915,188
Transfers Out	3.0%	0	0	0	18,202	0	85,755	88,328	90,977	93,707	96,518
Total		7,152,465	6,981,995	7,133,990	7,457,856	7,938,840	8,071,921	8,649,022	8,899,660	9,213,668	9,425,233
(From Line 1) Amount to Raise Through Rates and Fixed Charge:							<u>7,571,921</u>	<u>8,149,022</u>	<u>8,399,660</u>	<u>8,713,668</u>	<u>8,925,233</u>

FY24-28 CIP
(Increased in
Equal
Increments)

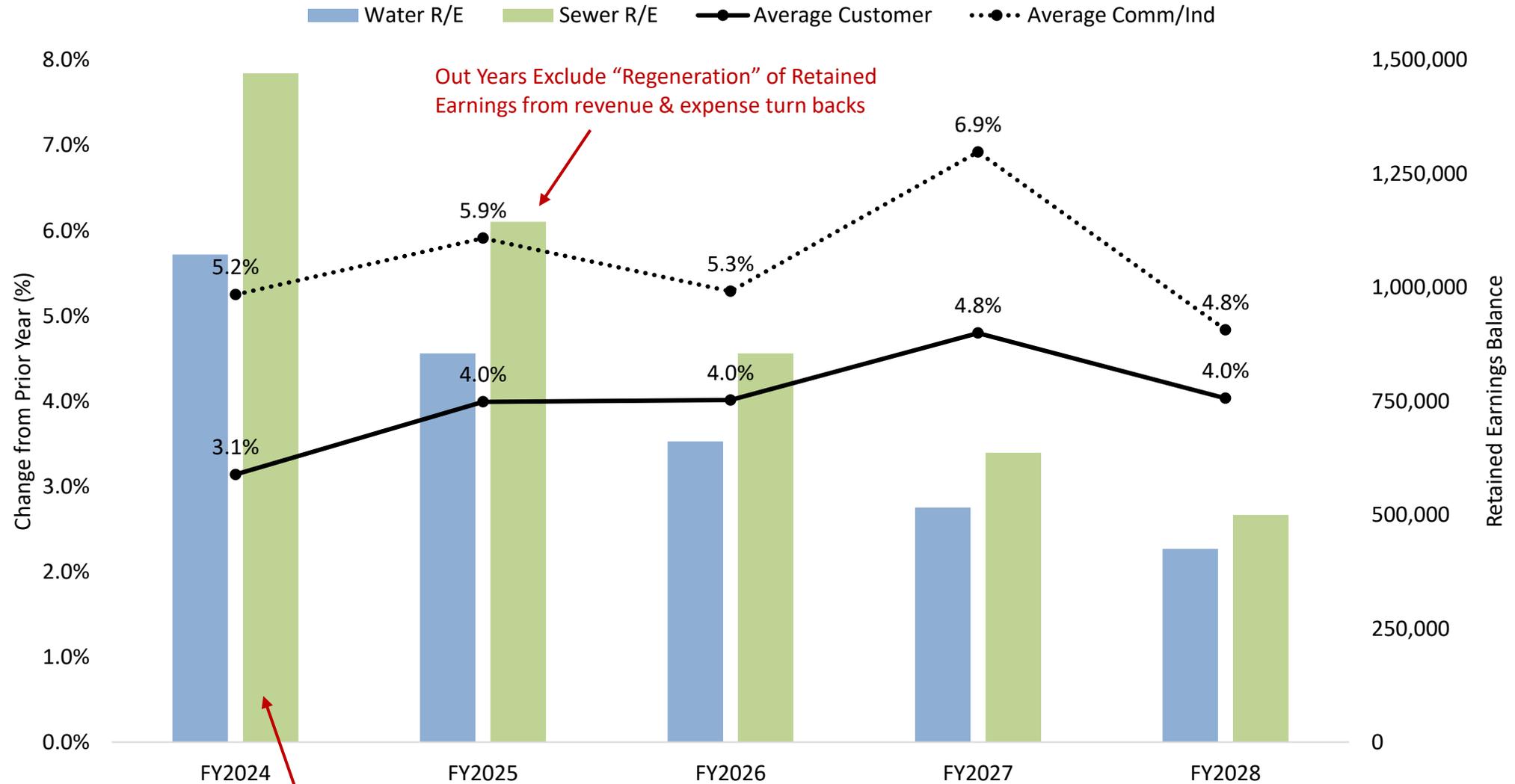
Sewer Rate Projection

Growth Factor	Actual FY2019	Actual FY2020	Actual FY2021	Actual FY2022	Revised FY2023	Budget FY2024	Projected FY2025	Projected FY2026	Projected FY2027	Projected FY2028						
Amount to Raise Through Rates and Fixed Charge:						<u>7,571,921</u>	<u>8,149,022</u>	<u>8,399,660</u>	<u>8,713,668</u>	<u>8,925,233</u>						
Build/(Use of) Retained Earnings:						0	(326,557)	(289,722)	(218,266)	(136,749)						
Fixed Charge:						\$ 100.00	\$ 100.00	\$ 120.00	\$ 120.00	\$ 140.00						
Customers:						7,800	7,800	7,800	7,800	7,800						
Fixed Charge Revenue:						780,000	780,000	936,000	936,000	1,092,000						
Amount to Raise Through Rates:						6,791,921	7,042,465	7,173,937	7,559,402	7,696,485						
% by Tier																
68%						Total Consumption (cf):	64,598,625	64,598,625	64,598,625	64,598,625	64,598,625					
32%						Block 1 Consumption (cf):	43,927,065	43,927,065	43,927,065	43,927,065	43,927,065					
						Block 2 Consumption (cf):	20,671,560	20,671,560	20,671,560	20,671,560						
						Block 2 % of Block 1:	110.2%	112.5%	117.5%	120.0%	125.0%					
Fixed Charge:						\$ 100.00	\$ 100.00	\$ 120.00	\$ 120.00	\$ 140.00						
Block 1 Rate (per 100 cf):						\$ 9.01	\$ 9.55	\$ 9.55	\$ 9.84	\$ 9.84						
Block 2 Rate (per 100 cf):						\$ 9.76	\$ 10.31	\$ 10.31	\$ 10.59	\$ 10.60						
gal/day																
Average Customer ⁽¹⁾ :						137	\$704	\$741	\$741	\$760	\$760	\$783	\$803	\$826	\$858	\$880
Change to Average Customer (\$):							\$65	\$36	\$0	\$19	\$0	\$23	\$20	\$23	\$32	\$22
Change to Average Customer (%):							10.2%	5.1%	0.0%	2.6%	0.0%	3.0%	2.6%	2.8%	3.9%	2.6%
Average Comm/Ind ⁽¹⁾ :						625	\$2,985	\$3,151	\$3,151	\$3,238	\$3,239	\$3,393	\$3,536	\$3,667	\$3,879	\$4,012
Change to Average Comm/Ind (\$):							\$223	\$166	\$0	\$87	\$1	\$154	\$143	\$130	\$213	\$133
Change to Average Comm/Ind (%):							8.1%	5.6%	0.0%	2.7%	0.0%	4.8%	4.2%	3.7%	5.8%	3.4%

⁽¹⁾ Source: Environmental Partners Newburyport Water & Sewer Rate Studies March 17, 2022.

Combined Water/Sewer Rate Projection

Use of Retained Earnings to Stabilize Rates



FY2024 Water & Sewer Rate Recommendation

Water & Sewer Rates		FY2022 Approved	FY2023 Approved	FY2024 Recommended	FY2024 Alternative A	FY2024 Alternative B	FY2024 Alternative C	FY2024 Alternative D	Change
		Use of R/E to Offset Increase: Water \$100K & Sewer \$100K	Use of R/E to Offset Increase: Water \$100K & Sewer \$300K	No Change in Service Charge, No Use of R/E to Offset Increase	No Change in Service Charge, Build \$100K in R/E for Water Only	Increase Service Charge, No Use of R/E to Offset Increase	Increase Service Charge, Build \$250K in R/E for Water & Sewer	EP Study: Baseline (Scenario 3)	FY'24 Rec. / FY'23 Approved
Water Rate									
<u>Consumption per 100 cf</u>	First 3,000 cf	\$5.94	\$6.61	\$6.88	\$7.02	\$6.66	\$6.99	\$7.18	\$0.27
	3,001 cf and over	\$6.70	\$7.37	\$7.92	\$8.08	\$7.67	\$8.05	\$8.62	\$0.55
<u>Service Charge (per quarter)</u>									
Residential	Meters 1" or smaller	\$25	\$25	\$25	\$25	\$30	\$30	\$30	\$0
	Meters over 1"	\$125	\$125	\$125	\$125	\$125	\$125	\$125	\$0
Non-Residential	Meters 1" or smaller	\$30	\$30	\$30	\$30	\$30	\$30	\$35	\$0
	Meters over 1"	\$125	\$125	\$125	\$125	\$125	\$125	\$125	\$0
Sewer Rate									
<u>Consumption per 100 cf</u>	First 3,000 cf	\$9.84	\$9.84	\$10.18	\$10.18	\$9.95	\$10.32	\$11.16	\$0.34
	3,001 cf and over	\$10.59	\$10.60	\$11.21	\$11.21	\$10.96	\$11.37	\$12.58	\$0.61
<u>Service Charge (per quarter)</u>	Newburyport/Plum Island	\$25	\$25	\$25	\$25	\$30	\$30	\$30	\$0
	Newbury (Old Town)	\$30	\$30	\$30	\$30	\$30	\$30	\$30	\$0
Water/Sewer Combined									
<u>Average Customer</u> 137 gallons/day	Annual Charge	\$1,259	\$1,303	\$1,344	\$1,354	\$1,354	\$1,401	\$1,470	\$41
	Quarterly Charge	\$315	\$326	\$336	\$338	\$339	\$350	\$368	\$10
	Change from Prior Year	3.3%	3.6%	3.1%	3.9%	3.9%	7.5%	12.8%	3.1%
<u>Average Commercial/ Industrial</u> 625 gallons/day	Annual Charge	\$5,288	\$5,494	\$5,782	\$5,829	\$5,676	\$5,906	\$6,379	\$288
	Quarterly Charge	\$1,322	\$1,374	\$1,446	\$1,457	\$1,419	\$1,477	\$1,595	\$72
	Change from Prior Year	3.6%	3.9%	5.2%	6.1%	3.3%	7.5%	16.1%	5.2%

Recommended Rates Approved by Water & Sewer Commission (6-0) June 5, 2023

FY2024 Rate Recommendation

- ✓ No use of retained earnings to fund rate
 - Preserves retained earnings to stabilize rate increases once the debt service kicks in for planned water/sewer capital projects
- ✓ Increases the difference between the two consumption block rates
 - Provides moderate increase for average customer with higher increase for larger users
 - Incremental change (upper block as % of lower block)
 - Water: 111% → 115%, Sewer: 108% → 110%
 - Can work to get closer to 150% EP benchmark over time
- ✓ Keeps the service charge level, which benefits users with lowest usage (e.g. small households, seniors)



IN CITY COUNCIL

ORDERED:

June 12, 2023

THAT, The CITY COUNCIL of the City of Newburyport accepts the following gifts and donations in accordance with M.G.L. Chapter 44, Section 53A:

Donor:	Port Parks Alliance
Amount:	\$1,013.65
Purpose:	Unrestricted donation in support of Newburyport Parks

Councillor Sharif I. Zeid

Newburyport City Council
60 Pleasant Street Newburyport, MA 01950

Subject: **Unrestricted** Donor Gifts from the Port Parks Alliance

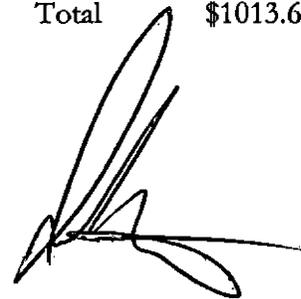
24 May 2023

Dear Councilors,

On behalf of the donors listed below please accept our check (#103) in the amount of \$1013.65 in support of Newburyport Parks. Please deposit in City account #29929201-48300.

Date of Donation	Donor Name/Method	Total Amount Given	Fees and PPA Op Expenses	Net Amount sent to City Council
5 May 23	McCarthy Check #7296	\$1000.00	\$30.00	\$970.00
23 Apr 23	Naylor Check #219	\$45.00	\$1.35	\$43.65

Total \$1013.65



Jim McCarthy
Treasurer
Port Parks Alliance
(978) 417-9373



IN CITY COUNCIL

ORDERED:

June 12, 2023

THAT, The CITY COUNCIL of the City of Newburyport accepts the following gifts and donations in accordance with M.G.L. Chapter 44, Section 53A:

Donor: Anna Jaques Hospital

Amount: \$2,000.00

Purpose: Reimbursement for Newburyport Pride events and programming

Councillor Sharif I. Zeid



IN CITY COUNCIL

ORDERED:

June 12, 2023

THAT, The CITY COUNCIL of the City of Newburyport accepts the following gifts and donations in accordance with M.G.L. Chapter 44, Section 53A:

Donor: Belleville Improvement Society

Amount: \$4,700.00

Purpose: Funding source for (Upper) Atkinson Common Tennis Court Resurfacing Project

Councillor Sharif I. Zeid



IN CITY COUNCIL

ORDERED:

June 12, 2023

THAT, The CITY COUNCIL of the City of Newburyport accepts the following gifts and donations in accordance with M.G.L. Chapter 44, Section 53A:

Donor: Friends of Newburyport Youth Services

Amount: \$23,200.00

Purpose: Funds raised for Senior Celebration 2023

Councillor Sharif I. Zeid



IN CITY COUNCIL

ORDERED:

June 12, 2023

THAT, The CITY COUNCIL of the City of Newburyport accepts the following gifts and donations in accordance with M.G.L. Chapter 44, Section 53A:

Donor: Inclusive Playground Support Fund
(Organizers: Jason LeBlanc, Chris & Kasey Edwards, Kristen Farrell)

Amount: \$8,867.86

Purpose: Funding support to Parks Commission for the Bartlet Mall inclusive playground

Councillor Sharif I. Zeid



IN CITY COUNCIL

ORDERED:

June 12, 2023

THAT, The CITY COUNCIL of the City of Newburyport accepts the following gifts and donations in accordance with M.G.L. Chapter 44, Section 53A:

Donor: Children's Health Care

Amount: \$12,500.00

Purpose: Unrestricted donation to Newburyport Youth Services for programming and services

Councillor Sharif I. Zeid



IN CITY COUNCIL

ORDERED:

June 12, 2023

THAT funding for cost items contained in the collective bargaining agreement between the City of Newburyport and the Parking Enforcement Officers, Teamster’s Union Local 170, is hereby approved in accordance with Massachusetts General Laws Chapter 150E, Section 7. This agreement takes effect on July 1, 2023 and expires on June 30, 2026. Said bargaining agreement entitled “Parking Enforcement Officers Tentative Agreement, 6-6-2023” is attached hereto and incorporated herewith.

Councillor Sharif I. Zeid



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
SEAN R. REARDON, MAYOR

To: President and Members of the Newburyport City Council

From: Mayor Sean R. Reardon

Date: June 6, 2023

Subject: FY24-26 Parking Enforcement Officers, Teamsters Local 170

Consistent with the requirements of MGL Chapter 150E, Section 7, I hereby submit the recently negotiated Tentative Agreement between the City of Newburyport and the Parking Enforcement Officers, affiliated with the Teamster's Union Local 170.

Enclosed herewith, you will find the Tentative Agreement that outlines all of the changes that were mutually bargained between the parties. The budget proposal for FY2024, presently under review, has duly accounted for all cost items pertaining to the first year. Therefore, no additional appropriation is being requested at this time.

Thank you for your consideration.

City of Newburyport
and
Teamsters Local 170/Newburyport Parking Control
Tentative Agreement
April 13, 2023

Article VIII - Hours of Work:

Section 1. All Holidays worked shall be paid at time and one half (1 ½) for all hours worked.

These Holidays are New Years Day, MLK Day, Presidents Day, Patriots Day, Memorial Day, July 4th, Labor Day, Indigenous Peoples Day, Veterans Day, Thanksgiving Day, and Christmas Day.

Working hours are 8am-8pm Monday to Sunday.

Article XI - Leaves:

B, Personal Leave - Change from six (6) hours each year to twelve (12) hours each year.

Article XII - Wages:

Year	Starting Rate	1 Year Service
FY 2024	\$20.00	\$21.75
FY 2025	\$20.50	\$22.29
FY 2026	\$21.01	\$22.85

Employees shall receive premium pay for working extended seasonal hours between 5-8pm of an additional \$3.00 an hour.

Article XIV - Miscellaneous

Section 1. Clothing Allowance

Clothing allowance will consist of the rates in the below chart.

Year	Starting Rate
FY 2024	\$400
FY 2025	\$425
FY 2026	\$450

Section 4 - Call-in Pay

In the case that the parking enforcement officer is called in for unscheduled maintenance of a parking kiosk, such union member will be paid a 2-hour minimum of pay at time and one half (1 ½) for getting called in.

Any hours worked after the first two hours shall be paid at the employee's regular rate.

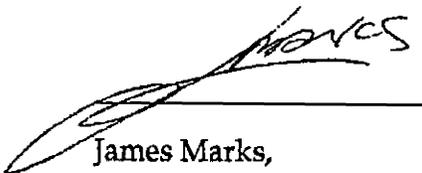
New Section - Body Cameras

The parties agree to the Implementation of Body Camera tracking system for the purpose of efficient management of its vehicles and personnel. The Body Camera Tracking system will not be used for disciplinary purposes. The gathering of Body Camera information may only be utilized for corroborating purposes when dealing with the safety of the city employees and the public. Officers, when possible are expected to turn on cameras at the beginning of any interactions with members of the public that are or may be about to become contentious. All videos will be saved for 30 days in ease of complaint. Enforcement officers, when possible are expected to take all efforts to video interactions that may lead to a complaint.

Article XXII Duration:

This Agreement shall become effective on July 1, 2023 and expires on June 30, 2026.

Signatures:


James Marks,
Teamsters Local 170


Sean R. Reardon, Mayor



IN CITY COUNCIL

ORDERED:

June 12, 2023

THAT, The CITY COUNCIL of the City of Newburyport hereby approves Amendment #2 to the contract entitled "Amendment #2 to the City of Newburyport Contract for Municipal Solid Waste Disposal" originally dated July 22, 2013 by and between the City of Newburyport and Wheelabrator North Andover, Inc.

Said contract is attached hereto and incorporated herewith and marked 'Contract: Municipal Solid Waste Disposal City of Newburyport and Wheelabrator North Andover, Inc.' and dated July 22, 2013.

Councillor James J. McCauley

AMENDMENT #2 TO THE CITY OF NEWBURYPORT ¹
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

This Amendment #2 to the City of Newburyport Contract for Municipal Solid Waste Disposal (this “Amendment #2”) is dated as of July 1, 2023 (the “Effective Date”), by and between the City of Newburyport, Massachusetts, a municipal corporation organized and existing under the laws of The Commonwealth of Massachusetts (the “Municipality”), and Wheelabrator North Andover Inc., a Delaware corporation (the “Contractor”). Municipality and Contractor are sometimes referred to herein individually as a “party” and collectively as the “parties.”

WHEREAS, the Municipality and the Contractor are parties to that certain Contract for Municipal Solid Waste Disposal dated as of July 18, 2013, as amended by that certain Amendment #1 to City of Newburyport Contract for Municipal Solid Waste Disposal dated as of June 29, 2018 (collectively, the “Contract”); and

WHEREAS, the parties now wish to amend the Contract on the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual promises set forth herein and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Contract. The Recitals above are incorporated into this Amendment #2.

2. Amendments.

a. The Cover Page and Preamble of the Contract shall be amended by replacing the words “July 1, 2013 through June 30, 2023” and replaced with “July 1, 2013 through June 30, 2028”; and further, the Preamble of the Contract is amended by replacing the words “June 30, 2023” appearing the last sentence thereof with the words “June 30, 2028.”

b.

Section 2 of the Contract is hereby deleted in its entirety and replaced with the following:

“The Contract shall commence work on July 1, 2013 and the Work shall continue through June 30, 2028.

The Municipality and the Contractor may by mutual consent renew the Contract for two (2) additional one (1) year terms. The renewal option shall be exercised by mutual written consent, in subject to applicable law, within ninety (90) days of the expiration date of this Contract. All terms and conditions contained in this Contract, including those set forth on Appendix A, shall continue in full force and effect during any renewal period.”

c. The second paragraph of Section 15.A. of the Contract is hereby deleted in its entirety and replaced with the following:

“The tipping fee shall be paid within thirty (30) days of the Municipality’s receipt of a proper monthly invoice and accompanying materials, as described below that includes the total tons

¹ 6/6/2023

of material delivered for the monthly period, fee per ton, and total monthly fee (tons X fee = total fee). The invoice shall also include the daily tonnage report of Acceptable Solid Waste delivered and accepted by the Contractor for the monthly period invoiced.”

d. Appendix A to the Contract is hereby deleted in its entirety and replaced by Appendix A attached hereto.

3. Limited Effect. This Amendment #2 is limited in effect and, except as specifically set forth above, shall apply only as expressly set forth in this Amendment #2 and shall not constitute a consent, waiver, modification, approval or amendment of any other provision of the Contract. Except as modified and amended by this Amendment #2, the terms and conditions of the Contract remain in full force and effect and are hereby ratified and affirmed.
4. Severability. In case any one or more of the provisions contained in this Amendment #2 should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired hereby. The parties shall enter into good faith negotiation to replace the invalid, illegal or unenforceable provision with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.
5. Headings. The headings used herein have been inserted in this Amendment #2 as a matter of convenience for reference only and are not a part of this Amendment #2 and shall not be used in the interpretation of any provision of this Amendment #2.
6. Governing Law. This Amendment #2 and the rights and duties of the parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of The Commonwealth of Massachusetts, and the parties hereby agree that any unresolved dispute arising under this Amendment #2 shall be only submitted in a court of competent jurisdiction located in The Commonwealth of Massachusetts.
6. Binding Effect; Counterparts. This Amendment #2 may be executed in one or more duplicate counterparts and by facsimile or other electronic transmission, each of which shall constitute an original but all of which shall become effective as provided above. Delivery of any executed signature page to this Amendment #2 by email transmission shall be as effective as delivery of a manually signed counterpart of this Amendment #2.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Amendment #2 to be executed by their duly authorized officers as of the Effective Date.

WHEELABRATOR NORTH ANDOVER INC.

By: _____
Name:
Title:

CITY OF NEWBURYPORT

By: _____
Name:
Title:

Appendix A

Contract Fees

The Municipality agrees to pay the Contractor \$90.00 per ton (“short ton” of 2000 pounds) of Acceptable Solid Waste delivered to the Facility during the period beginning on July 1, 2023 and ending on June 30, 2024 (the “Tip Fee”) Once per year, beginning on the first anniversary of the Effective Date, the Tip Fee, not including the per-ton environmental fee of \$1.25 per ton, shall be increased by 5% (five percent). In addition, thereto, customer shall also pay a per-ton environmental fee of \$1.25 per ton, which shall escalate by \$0.50 per ton on each anniversary of the Effective Date but which is not added to the tip fee increase per year. See chart below for clarification. In addition, thereto, customer shall also pay a per ton fuel fee based on the U.S. Energy Information Administration’s (EIA) Weekly Retail Diesel Prices Index, which you can view at www.eia.gov/petroleum/gasdiesel. This rate will be adjusted monthly using the index as posted on the third Tuesday of each month.

	FY23	FY24	Increase	FY25	Increase	FY26	Increase	FY27	Increase	FY28	Increase
Per ton fee	\$75.75	\$90.00		\$90.00		\$94.50		\$99.23		\$104.19	
5% CPI yrly				\$4.50		\$4.73		\$4.96		\$5.21	
Tip fee		\$90.00		\$94.50		\$99.23		\$104.19		\$109.40	
Environ fee: \$1.25 of tip + \$0.50 per year escalation		\$1.25		\$1.75		\$2.25		\$2.75		\$3.25	
Fuel fee per ton based on EIA adjusted monthly		\$2.42 as of June 2023									
Total Tip fee w/out Fuel fee	75.75	\$91.25	20%	\$96.25	5.48%	\$101.48	5.43%	\$106.94	5.38%	\$112.65	5.34%

MEMORANDUM

To: City Council President Heather Shand and Members
From: Mayor Sean Reardon
Energy and Sustainability Manager Molly Ettenborough
Date: June 6, 2023
Re: Solid Waste Disposal Contract July 2023

Below please find background information for the requested approval of a five (5) year contract for The City of Newburyport and Wheelabrator North Andover, the city's current solid waste disposal site.

Waste Disposal Background

In our region, there are two waste combustors that accept municipal solid waste, Covanta Haverhill and Wheelabrator North Andover. Newburyport has been bringing its solid waste to the Wheelabrator North Andover combustion facility since 2013. We originally signed a five-year contract which was then extended for five years. We are requesting a second amendment to our contract, which would extend the contract another five years.

Since last year, we have been working with the Massachusetts Department of Environmental Protection (DEP) and a solid waste contracting group consisting of two DEP regional groups: Northeast District 1 and 2 (cumulative total of 75 cities and towns). All members of this group have reported on the same trends, which are price increases and a reduction in capacity and increases in wait times at both facilities.

Across the board we are seeing all new disposal pricing coming in well over \$90/ton and in some cases over \$100/ton. One company has been quoting solid waste disposal trucking/rail out of the region at prices well over \$120/ton. Capacity in the region is strained and we are fortunate to have had a long-term relationship with Wheelabrator to continue as our disposal site. Please also note that solid waste disposal, collection and transport are exempt from 30B procurement laws.

Selection

Wheelabrator North Andover manages 1500 tons per day on site and landfills the residual ash locally. As reviewed with the Newburyport City Council several years ago, solid waste disposal capacity in Massachusetts and throughout the Northeast is and has continued to shrink as more landfills close. We believe continuing with Wheelabrator is the best choice at this time, as their rates are competitive compared with the other options in our region and their price escalation is consistent with the market.

Long-Term waste reduction

This tightening of disposal capacity has weakened the resiliency of Massachusetts waste disposal infrastructure and facility outages that were routine in the past are causing frequent operational problems. In response, MassDEP recently issued its final **2030 Solid Waste Master Plan**, which established goals for reducing disposal statewide by 30 percent (from 5.7 million tons in 2018 to 4 million tons in 2030) over the next decade. It set a long-term goal of achieving a 90 percent reduction in disposal to 570,000 tons by 2050.

This contract is our first step towards securing solid waste disposal. We are also working on trash collection, recycling processing and collection and hauling RFPs with a start date of July 1, 2024.

Contract:
Municipal Solid Waste Disposal
City of Newburyport
and
Wheelabrator North Andover, Inc.
July 1, 2013 through June 30, 2018

7/18/2013
City of Newburyport
Health Department

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

**July 2013 through June 30, 2018
Contract for Municipal Solid Waste Disposal
City of Newburyport and Wheelabrator North Andover, Inc.**

This Contract for Disposal of Municipal Solid Waste hereinafter referred to as "THE CONTRACT" is made and entered into as of the first day of July 2013 by and between the City of Newburyport, Massachusetts, a political subdivision of the Commonwealth of Massachusetts hereinafter referred to as "THE MUNICIPALITY" with address as follows: City of Newburyport, 60 Pleasant Street, Newburyport, Massachusetts 01950 acting through its Mayor, as applicable, and its contractor, Wheelabrator North Andover, Inc., hereinafter referred to as "THE CONTRACTOR" with a waste-to-energy facility located at 285 Holt Road, North Andover, Massachusetts 01845 (the "Facility") agree to the terms of this contract with an expiration date of June 30, 2018 and the costs of the contract in accordance with Appendix A attached.

1. Definitions

Whenever the following terms, or pronouns in place of them, are used in this Contract, the intent and meaning shall be interpreted as follows:

ACCEPTABLE SOLID WASTE or ACCEPTABLE WASTE: means all household garbage, trash, rubbish, refuse, normally or which may be hereinafter collected and disposed of by or on behalf of Municipality, but excluding, without limitation (i) Hazardous Waste (as defined below), explosives and ordnance materials, pathological wastes, radioactive materials, lead acid batteries, sludges, highly inflammable substances, cesspool or other human wastes, human and animal remains, motor vehicles, farm or other large machinery, nonburnable construction materials and demolition debris and hazardous refuse of any type or kind including those addressed by regulations adopted by the United States Environmental Protection Agency ("EPA") pursuant to the Resource Conservation and Recovery Act of 1976, as amended, or other federal or state statutes, such as, but not limited to, cleaning fluids, hazardous paints, acids, caustics, poisons, radioactive materials, fine powdery earth used to filter cleaning fluid, and refuse of similar nature; (ii) any item of waste exceeding six feet in any one of its dimensions or being in whole or in part a solid mass, the solid mass portion of which has dimensions such that a sphere with a diameter of eight inches could be contained within such solid mass portion; (iii) all large household appliances, commonly referred to as "white goods" including, without limitation, refrigerators, stoves, washing machines, drying machines, water heaters, and the like; (iv) any controlled substances regulated under the Controlled Substances Act, 21 USC 801 et seq., or any equivalent state law; (v) small appliances containing chlorofluorocarbons (CFCs) including, without limitation, air conditioners, water coolers, and dehumidifiers; and (vi) all other items of waste which Contractor reasonably believes would be likely to pose a threat to health or safety or the acceptance and disposal of which may cause damage to the Facility or be in violation of any judicial decision, order, action, permit, authorization, license, approval or registration of any federal, state or local government or any agency thereof, or any other regulatory authority or applicable law or regulations. In addition, the parties recognize that some substances which are not, as of the date of this Agreement, considered harmful or of a toxic nature or dangerous, may be determined by the EPA or any other federal, state, or local agency subsequent to the date hereof to be hazardous, toxic, dangerous, or harmful, and at the time of such determination, such substances shall cease to be Acceptable Waste.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

- ALTERATION:** Change in the form or character of any work performed or to be performed or any change in the terms of the contract.
- CONTRACT:** The written agreement executed between the Municipality and the Contractor setting forth the obligations of the parties hereunder, including, but not limited to, the performance of the work, the furnishing of all labor, vehicles, equipment and materials, and the basis of payment.
- The Contract includes this signed contract, Wage Rates, Performance Bonds, General and Detailed plans, any Extra Work orders and agreements, the Invitation for Information and Contractor's response thereto, the pertinent Municipal Policies that are required to complete the work in an acceptable manner, if any, including authorized extensions thereof, all of which constitute one instrument. All of the documents listed above shall be incorporated herein by reference and made a part hereof. In the event that the Invitation for Information or the Contractor's response to the Invitation for Information conflicts with the language, terms and conditions of this signed contract, then the terms of this signed contract shall control and supersede all other documents.
- CONTRACTOR:** The company designated under this agreement to perform the work in accordance herewith, referred to herein as "Contractor," "he," "him," or "it."
- DEPARTMENT:** The Newburyport Health Department- Sustainability Office.
- DIRECTOR:** The Recycling and Energy Coordinator and/or Health Agent, acting directly or through an authorized representative, provided such representative is acting within the scope of his or her delegated authority
- HAZARDOUS WASTE OR HAZARDOUS MATERIAL:** (i) any waste identified as a hazardous waste in 40 CFR Part 261 or in any applicable state or local hazardous waste regulatory program; (ii) any waste that is mixed with a listed Hazardous Waste as regulated in 40 CFR Part 261.3(a)(2)(iv) or any applicable state or local hazardous waste regulatory program; (iii) any waste containing polychlorinated biphenyls in concentrations that are subject to regulation under the federal Toxic Substances Control Act; (iv) any waste containing radioactivity at levels that are subject to regulation under federal, state, or local law; or (v) any other waste that is regulated as a hazardous waste by any applicable federal, state, or local statutory or common laws, regulations, rules, or ordinances.
- MAYORS OFFICE:** The Office of the Mayor for City of Newburyport.
- MUNICIPALITY:** The City of Newburyport, Massachusetts, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts.
- OWNER:** The City of Newburyport, Massachusetts as applicable.
- RECYCLABLE MATERIALS:** Municipal recycling material as may be defined by the Massachusetts Department of Environmental Protection, and shall mean newspaper, mixed paper, junk mail, cardboard, green, brown, and clear glass containers; bottles and jars, number one through seven (#1-7) plastic containers, aluminum and steel cans, and metal food containers.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

SURETY:

The Company issuing the bonds required of the Contractor under the terms of this Contract.

TON:

A short ton of two thousand (2,000) pounds.

UNACCEPTABLE SOLID WASTE or UNACCEPTABLE WASTE: Waste banned by Massachusetts Department of Environmental Protection. Any waste other than Acceptable Waste.

UNCONTROLLABLE CIRCUMSTANCES: Any act or event, other than an increase in the cost of Contractor's performance of its obligations under this Contract or a change in Contractor's financial condition, that has or will have a material adverse effect on the Contractor's rights or obligations under this Agreement, but only to the extent such act or event is (1) beyond the reasonable control of Contractor; and (2) not the result of any fault, negligence or misconduct of the Contractor. Such acts or events may include, but shall not be limited to, the following:

- (i) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood, or civil disturbance, strike, lockout, work slowdown, or similar industrial or labor action or any other similar occurrence;
- (ii) the order and/or judgment of any federal, state, local or foreign court, administrative agency or governmental officer or body after the date hereof;
- (iii) suspension, termination, interruption or failure of renewal, through no fault of Contractor, of any permits, license, consent, authorization or approval essential to the operation, ownership and possession of the Facility;
- (iv) adoption, promulgation, modification of or change in interpretation after the date hereof of any federal, state, local or foreign rule or law, regulation or ordinance, by the relevant federal, state, local or foreign authority, to the extent that the effect of such change cannot be reasonably accommodated and such change results in a material adverse effect on the rights or obligations of the Contractor;
- (v) the failure, through no fault of Contractor, of the community in which the Facility is situated or the appropriate federal or state agencies or public or private utilities having operational jurisdiction over the Facility to provide reasonably adequate utilities, sewerage and water lines to the Facility required for the operation of the Facility, provided they are essential to the operation of the Facility. Contractor represents that it has taken reasonable steps to inform itself regarding the existing utilities, sewerage and water lines serving or that will serve the Facility and that, as of the date of this Contract, to the knowledge of Contractor, the existing utilities, sewerage and water lines are adequate for the performance of the work under this Contract.

WORK:

The Work shall mean the services to be performed by the Contractor under the Contract, including, but not limited to, the furnishing of all materials, labor, tools, vehicles, equipment and incidentals, and everything else required of the Contractor under, and reasonably inferable from, the terms of this Contract, provided that the words "as permitted," "as required," "as approved" or words of like effect shall mean that the direction, permission, approval or requirement of the Director is intended, unless otherwise provided herein. The words "necessary," "suitable," "equal" or like words shall mean necessary, suitable or equal in the reasonable opinion of the Municipality.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

2. Term of Contract

The Contract shall commence work on July 1, 2013 and the Work shall continue through June 30, 2018.

The Municipality and the Contractor may by mutual consent, renew the Contract for two (2) additional one (1) year terms. The renewal option shall be exercised by mutual consent, in writing within ninety (90) days of the expiration date of this Contract.

3. Services to be provided

A. Solid Waste Disposal

This contract and the pricing hereunder, are not based upon and do not require an annual guaranteed tonnage from the Municipality. Wheelabrator North Andover, Inc. and its parent company Waste Management Company shall not impose a charge, fee, or penalty upon the Municipality due to any reduction of solid waste tonnage received from the Municipality for the life of this contract.

To the extent that a beneficial reuse of specific waste stream items is or becomes available, the Municipality may divert such items for such beneficial reuse, including collection thereof by an alternate contractor, notwithstanding any provision of this Contract to the contrary.

The Contractor shall provide to the Municipality all labor, services, equipment, vehicles and material required for five-days-per-week (Monday through Friday) receipt of Acceptable Solid Waste, as defined herein, and generated within the Municipality. In the event there is a weekday holiday, the drop-off schedule will be advanced one day (e.g. Monday pick-up will be on Tuesday, Friday pickup will be on Saturday). No drop-offs will be made on the following legal holidays:

New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. The Municipality reserves the right to add holidays at its discretion. In this case holiday schedule pickup will be implemented.

The Contractor understands and agrees that the Accepted Solid Waste received pursuant to this Contract shall be disposed of in compliance with all applicable laws, rules, regulations and permit requirements.

B. Transportation/Drop Off

All Acceptable Solid Waste collected for the Municipality, the disposal of which is controlled by the Municipality, shall be transported to the Contractor, at the Facility, by a vendor chosen by and contracted with the Municipality (hereinafter referred to as the "Collection and Transportation Vendor" or "Vendor"). Deliveries shall be made between the hours of 7:00AM and 5:00PM Monday through Friday, and in the event of a weekday holiday, 6:00AM to 5:00PM on Saturday.

The Municipality, through its agreement with its Collection and Transportation Vendor, shall require that such vendor deliver Acceptable Waste in a clean, orderly and safe manner, including, without limitation, in a manner such that the Acceptable Waste will not be spilled (other than on the tipping floor) or blown on the site of the Facility. If, through no fault of Contractor, Acceptable Waste is so spilled or blown because the Collection and Transportation Vendor failed to take reasonable steps to prevent such spillage and blowing, the Municipality shall, upon written request of Contractor together with evidence of negligence of the Collection and Transportation Vendor, direct its Collection and Transportation Vendor to collect and remove such spilled or blown Acceptable Waste, and if the Vendor fails to do so, the Municipality shall direct the Collection and Transportation Vendor to reimburse Contractor for reasonable and necessary costs of such clean-up incurred

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

and paid by Contractor. The vehicles shall have the capability of dumping directly into a waste pit, and bear the name and contact information of the Vendor and other markings so deemed appropriate by the Municipality.

Contractor shall have the right upon reasonable advance written notice to the Municipality to designate certain highway routes within the vicinity of the Facility to be used by the Municipality to deliver Acceptable Waste to the Facility if and to the extent such designation is required of Contractor by the City of Andover, the location of the Facility. The Municipality shall use only those designated routes to the Facility.

Contractor shall have the right without any liability to the Municipality to refuse, provided such refusal is reasonable, deliveries of:

- (i) Unacceptable Solid Waste;
- (ii) any waste delivered by or on behalf of the Municipality not at least substantially in conformity with the terms of this Agreement; or
- (iii) any other Acceptable Waste which Contractor is unable to accept as the result of an Uncontrollable Circumstance.

Upon written request from Contractor, the Municipality shall remove, at its sole cost, any Unacceptable Solid Waste delivered by Municipality to the Facility and, if Municipality fails to do so within a reasonable period of time, the Municipality shall, upon additional written notice from Contractor, reimburse Contractor for the reasonable and necessary costs incurred and paid by Contractor in removing and disposing (and, if necessary, storing) of such Unacceptable Solid Waste. The Municipality shall not be obligated to pay a Tipping Fee for the Unacceptable Solid Waste.

The Contractor shall receive and accept title to all solid waste and recyclable material upon its acceptance at the Facility.

C. Proper Equipment

All equipment used to deliver Acceptable Waste to the Facility shall be maintained in efficient and safe and good condition.

If equipment does not contain proper safety devices and/or is being operated in an unsafe manner, the Contractor shall immediately notify the Collection and Transportation Vendor **and** the Municipality. The Municipality shall direct the Vendor to correct the unsafe condition, including the removal and replacement of any unsafe equipment or operators, and to replace any unsafe equipment or operator with equipment or an operator capable of performing the scope safely and properly to the reasonable satisfaction of the Contractor and the Municipality.

D. Weather Conditions

Contractor represents that it is familiar with all weather conditions prevailing in this area and will provide proper equipment and sufficient labor to perform Work under the Contract.

E. Licenses and Permits

The Contractor shall obtain and assume all cost for all Local, State and/or Federal licenses and permits that are or may become necessary for receipt and disposal of Acceptable Solid Waste at the Facility as required under this Contract.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

The Contractor and Municipality shall, and the Municipality shall request its Collection and Transportation Vendor to comply with all federal, state and local laws, regulations, rules, ordinances applicable to it in the performance of its obligations under this Agreement.

The Municipality has, and will renew or maintain in full force and effect, all permits, licenses or permissions or registrations with, or the consent of, governmental authorities necessary in the performance of its obligations under this Agreement, except if and where Contractor is, by this Agreement, required to obtain, renew and/or maintain any such permits, licenses, permissions or registrations.

F. Compliance with Regulations

At all times the Facility shall be operated in compliance with all applicable Federal and State and local laws, rules and regulations, and codes. The Contractor is responsible for compliance with any and all regulations regarding the proper disposal of Acceptable Waste at the Facility.

The delivery of Acceptable Waste to the Facility by or on behalf of the Municipality shall be conducted in compliance with all applicable Federal and State and local laws, rules and regulations, and regulations.

G. Mercury Program

The Municipality shall participate in the Contractor's Mercury Removal Program, as described in Appendix B, at no additional cost to the Municipality. The cost of the Contract is inclusive of this program and the Municipality shall have the option each year to participate in any or all of the activities described in the Mercury Removal Program.

4. Municipality's Contracts With Other Firms

Contractor understands and acknowledges that Municipality is, or will be, under contract with other firms regarding the collection and disposal of solid waste. Contractor agrees that it shall take all reasonable steps to cooperate, and harmonize its work, with such other firms for the safe and efficient collection, transportation and disposal of Municipality's waste. Contractor understands and acknowledges that its failure to comply with the provisions of this Section 3 and the other terms of this Contract may result in claims for damages being asserted by such other firms against Municipality. Contractor agrees to indemnify Municipality for any and all such claims, including any attorneys' fees incurred by Municipality in connection therewith, arising out of Contractor's failure to comply with this Section 3 and the other terms of this Contract.

5. Contractor's General Obligations

A. Performance of Work

The Contractor shall perform all Work and furnish all labor, materials, vehicles, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this Contract. Said work shall be performed within the time herein specified, in accordance with the provisions of this Contract and specifications and in accordance with the directions of the Municipality as given from time to time during the progress of the Work.

B. Personnel and Performance

The Contractor shall furnish personnel for all services rendered under this Contract, including supervisory, clerical, and working personnel. Contractor shall furnish such number of qualified personnel as may at any

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

time be necessary to accomplish the Work in accordance with the terms of this Contract. All such personnel must be qualified to perform and capable of performing their assigned work. The Contractor shall provide the Municipality with the name and direct contact information, including email address and direct company phone number, of a designated Supervisor. In the event of a change, the Contractor shall notify the Municipality immediately in writing.

All employees (excluding administrative staff) must be OSHA certified.

C. Performance of Contractor

The Contractor shall give personal attention constantly to the faithful prosecution of the Work, shall keep the same under direct control, and shall neither legally nor equitably assign any of its rights or obligations under this Contract, including, but not limited to, its right or claims to any monies payable under this Contract, without the advance written consent of the Municipality, which shall not be unreasonably withheld.

The Contractor shall be responsible for the acts and omissions of subcontractors, and of any and all persons directly or indirectly employed by Contractor in connection with the Work.

The Contractor shall not assign by power of attorney or otherwise, or subcontract out the Work encompassed by this Contract.

D. Equal Opportunity Employment Requirements

The Contractor shall not discriminate against any of its employee or an applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, age, or national origin.

The Contractor shall take steps to ensure that its employees are treated fairly during employment without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to the following activities: *EMPLOYMENT, PROMOTING, DEMOTING, or TRANSFERAL, RECRUITMENT or RECRUITMENT ADVERTISING, LAYOFF or TERMINATION, RATES of PAY or OTHER FORMS of COMPENSATION, SELECTION for TRAINING, INCLUDING APPRENTICESHIP.*

The Contractor shall be prepared to sign an Affirmative Action Affidavit at the time of contract execution. The Contractor will comply with all requirements under applicable laws with respect to Minority/Women Business Enterprise programs.

The Contractor shall at all times observe and comply with all Federal, State and Local laws, by-laws, ordinances, and regulations in any matter which affects the conduct of the work or applies to its employees under contract. Similarly, the Contractor shall comply with all orders or decrees which have been promulgated or enacted by any other legal body or tribunal having the authority or jurisdiction over the work, materials, its employees, or the contract.

6. Compliance with Terms of the Contract

The Contractor shall observe, comply with, and be subject to all terms, conditions; requirements and limitations of the Contract and specifications set forth therein, and shall do, carry on, and complete the entire Work to the reasonable satisfaction of the Municipality.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

7. Acknowledgement of Acts for Agents, Employees and Subcontractors

The Contractor acknowledges and agrees that he is an Independent Contractor, and that he is and shall be responsible for all his acts and omissions and all the acts and omissions of his agents, employees and subcontractors hereunder.

8. Knowledge of Laws/Notice of Inconsistencies to the Municipality

The Contractor shall keep himself fully informed of all Federal, State, and Local laws, ordinances, regulations and policies affecting in any manner those engaged or employed in the Work, or the materials used in the Work, or in any way affecting the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and conform to and abide by the same. If any discrepancy or inconsistency is discovered by the Contractor between the Contract for this Work and any such law, ordinance, regulation, policy, order or decree, he shall forthwith report the same to the Municipality in writing. The Contractor shall at all times observe and comply with, and shall cause all his agents and employees to observe and comply with, all such existing and future laws, ordinances, regulations, policies, orders and decrees, and Contractor assumes the risk for changes in laws, regulations and policies that affect the Work or costs of fulfilling this contract. The Contractor shall defend and indemnify the Municipality and their officers, agents and employees for, from and against any damages, expenses, including attorneys' fees, claim or liability arising from or based on the violation of any such law, ordinance, regulation, policy, order or decree, whether by himself or his agents, employees or subcontractors.

9. Proper Licenses and Permits

The Contractor shall secure, at its own expense, all necessary permits and licenses and comply with all local, State, and Federal codes and regulations necessary for the receipt and disposal of Acceptable Waste at the Facility. The Contractor must provide and pay for all vehicles, materials, equipment, labor, tools, temporary construction of every nature, changes, levies, fees, or other expenses incurred and all other services and facilities of every nature whatsoever for his performance of the Contract within the specified time, and required for the receipt and disposal of Acceptable Waste at the Facility.

10. Work to be Prosecuted

The Contractor agrees that it shall prosecute the Work regularly, diligently, and without interruption.

11. Reports, Records and Data

A. Solid Waste Reporting

The Contractor shall utilize and maintain motor truck scales to weigh all vehicles delivering Acceptable Solid Waste to the Facility in accordance with applicable laws. Each vehicle delivering Acceptable Solid Waste shall be weighed at the Contractor's facility, and the gross weight, tare weight, date and time of delivery and truck identification shall be indicated on a weight record. The Contractor shall provide the Municipality with a monthly written report of the daily tonnage delivered and disposed under this Contract.

The Contractor shall keep detailed daily records of solid waste accepted, and the Municipality shall have the right to inspect the same at all reasonable times. The records shall show the type (regular solid waste, bulky items, yard waste, etc.) and weight of materials accepted under this Contract, and all other information customarily recorded for work of the kind required by this Contract.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

Notwithstanding anything to the contrary in this Contract, if and to the extent the Contractor is eligible, by the terms of this Contract, for reimbursement or payment from the Municipality of any costs, expenses or fees, the Contractor shall first substantiate, to the City's reasonable satisfaction, and through original invoices and other data, any and all such costs, expenses and fees as a condition precedent to reimbursement or payment.

12. Protection of Health and Safety

Contractor shall comply with all Federal, State and Local laws and regulations, including without limitation the United States Department of Labor Occupational Safety and Health Act and all amendments thereto, applicable to the operation of the Facility and the Work, and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from Work, arising out of and in the course of employment on the Work under this Contract. The Contractor alone shall be responsible for any damages, losses and expenses that may result from its failure to properly construct, maintain and/or operate the Facility.

13. Insurance

A. Contractor Insurance Requirements:

During the term of this Agreement, Contractor shall keep in force the following minimum insurance coverages on an occurrence basis with insurance companies rated "A-" or better by A.M. Best rating service:

<u>Coverages</u>	<u>Limits of Liability</u>		
Workers' Compensation Insurance	Statutory		
Employers' Liability Insurance	Per Occurrence	\$1,000,000	
Commercial General Liability Insurance, including contractual and products/completed operations	Per Occurrence	\$1,000,000	
	General Aggregate	\$2,000,000	
Comprehensive Automobile Liability Insurance, including non-owned and hired vehicle coverage			For bodily injury and property damage
	Per Occurrence	\$1,000,000	
Excess Umbrella	Per Occurrence	\$4,000,000	
Pollution Liability Aggregate	Per Occurrence	\$1,000,000	General
		\$2,000,000	

The commercial general liability and excess umbrella insurance policies maintained by the Contractor shall be specifically endorsed to provide coverage for any contractual liability accepted by the Contractor in this Agreement. In addition, the commercial general liability and excess umbrella policies shall be endorsed with, and the certificates of insurance required hereunder shall contain, language clearly identifying the Municipality as a certificate holder under, **and as an additional insured, on those policies.**

Upon execution of this Agreement and prior to commencement of the services contemplated herein, the Contractor shall furnish the Municipality with certificates of insurance indicating that the insurance required by this Agreement has been procured. The certificates of insurance provided by the Contractor and Municipality shall also contain the following express obligation:

**CITY OF NEWBURYPORT
 CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

“In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days’ prior written notice will be given the certificate holder.”

B. Municipality’s Collection and Transportation Vendor Insurance Requirements

Municipality agrees that it shall require its Collection and Transportation Vendor to maintain the following minimum insurance with insurance companies rated “B+” or better by A.M. Best rating service:

<u>Coverages</u>	<u>Limits of Liability</u>	
Workers' Compensation Insurance	Statutory	
Employers' Liability Insurance	Per Occurrence	\$1,000,000
Commercial General Liability Insurance, including contractual and products/completed operations	Per Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
Comprehensive Automobile Liability Insurance, including non-owned and hired vehicle coverage	For bodily injury and property damage Per Occurrence	\$1,000,000
Excess Umbrella	Per Occurrence	\$2,000,000

Municipality shall also require that its Collection and Transportation Vendor’s commercial general liability and excess umbrella policies be endorsed with, and the certificates of insurance required hereunder contain, language identifying Wheelabrator North Andover, Inc., as a certificate holder under, and as an additional insured on, those policies. Municipality shall deliver to Contractor, or require that its Collection and Transportation Vendor deliver to Contractor, copies of such endorsement to Contractor prior to the delivery of Acceptable Solid Waste to the Facility by such Collection and Transportation Vendor.

Municipality shall also require that its Collection and Transportation Vendor furnish certificates of insurance indicating that the insurance required by this paragraph 7B has been procured by the Vendor, and that the certificates of insurance contain the following express obligation:

“In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days’ prior written notice will be given the certificate holder.”

14. Uncontrollable Circumstances

Contractor is excused for failure or delay in performance of any Work required herein if such failure or delay is the direct result of an Uncontrollable Circumstance. This provision shall not, however, relieve Contractor from using all reasonable efforts to overcome or remove such Uncontrollable Circumstance. Contractor shall give prompt written notice of such failure or delay to the Municipality. Contractor shall attempt to remedy with all reasonable dispatch the cause or causes constituting the Uncontrollable Circumstance; however, the settlement of strikes, lockouts and other industrial disturbances or of any legal actions or administrative proceedings shall be entirely in the reasonable discretion of Contractor, and it shall not be required to make settlement of strikes, lockouts, and other industrial disturbances or legal actions or administrative proceedings when such settlement is unfavorable, in the reasonable judgment of Contractor.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

**15. Payment; Acceptance of Final Payment Constitutes Release of Municipality;
Subject to Appropriation**

A. Payment

The Municipality agrees to pay and the Contractor agrees to accept a tipping fee, set and adjusted annually as indicated in Appendix A, for each Ton of Acceptable Solid Waste delivered to and accepted by the Contractor, as full compensation for performing and completing the Work contemplated by this Contract.

The tipping fee shall be paid within 30 (thirty) days of the Municipality's receipt of a proper monthly invoice and accompanying materials, as described below, that includes the total tons of material delivered for the month, fee per ton, and total monthly fee (tons X fee = total fee). The invoice shall also include the daily tonnage report of Acceptable Solid Waste delivered and accepted by the Contractor for the month invoiced.

The tipping fee includes any and all Federal Social Security and Manufacture, Excise, State Unemployment, Sales, Use and Income Taxes imposed in connection with all of the labor performed and services, materials and equipment furnished under this Contract.

In the event that funds are not appropriated or otherwise made available by the Municipality to support the continued performance of this Contract after the first year of this agreement, the Municipality shall terminate this Contract without further liability to Contractor for future payments hereunder. Contractor shall be entitled to payment for services rendered hereunder prior to the end of the agreement year for which funds were appropriated and available.

The Municipality shall make payments to the Contractor only.

B. Withholding Payment

The Municipality may keep any monies which would otherwise be payable at any time hereunder and apply the same, or as much as may be deemed by the Municipality as reasonably necessary, to pay any costs, expenses, including attorneys' fees, losses or damages incurred and sustained by the Municipality, its officers, agents, employees or servants, and resulting from Contractor's acts and omissions or willful misconduct, or any material breach of this Contract. Any monies kept hereunder shall be deemed not due and payable to the Contractor until final disposition of any such costs, expenses, losses or damages, and not then if such disposition consumes all such monies, or if there exists any other lawful reason for continued withholding of any such monies.

C. Faithful Payment

So long as the Contractor shall faithfully do everything required of him by this Contract, the Municipality shall pay the Contractor each month, the tipping fee due for each ton of material delivered to and accepted by the Contractor as stated herein, after deducting from the total amount thereof the amount of any claims, expenses, or losses that the Municipality may deem proper to retain as provided aforesaid.

D. Final Payment

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Municipality of all claims and all liability to the Contractor for all things done or furnished in connection with the work and for every act and neglect of the Municipality and others relating to or arising out of this Work.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

E. Final Estimate

A Final Estimate shall be provided by the Contractor to the Municipality. Such Final Estimate shall be certified by the Contractor to the effect that all just and lawful bills against the Contractor for labor, materials, and expendable equipment covered by the estimate have been paid in full, and that the amount stated as due the Contractor for payment is full compensation for all work done under the terms of the Contract, including orders for Extra Work, and all damages, losses and expenses incurred by the Contractor in doing the Work, and that the Contractor waives all rights to claim or receive any further compensation in addition to that provided in the Final Estimate.

16. Additional Equipment

If the Contractor fails to supply sufficient equipment and manpower to dispose solid waste each day, then Contractor is required to provide additional equipment to perform the required Work at its own expense.

17. Failure to Perform Work

If, other than as a result of Uncontrollable Circumstances, the Contractor fails or refuses to accept delivery of Acceptable Solid Waste, per the terms of this Contract, the Municipality may, without prior notice to Contractor, invoke any remedy available to it under this Contract and at law to address that failure, including, but not limited to, engaging another contractor to perform the obligations of the Contractor, or disposing of materials by any means, and all reasonable costs and expenses incurred thereby will be deducted from amounts payable to the Contractor:

If the Contractor refuses to accept any Acceptable Solid Waste in violation of the terms and conditions of this Contract, then the Municipality may elect to engage another contractor to perform the required work. Costs incurred by Municipality in engaging another contractor shall be deducted from the monthly amount of monies due the Contractor.

18. Default.

In the event that, other than if the result of an Uncontrollable Circumstance, the Contractor does not perform the Work and maintain all operations in accordance with all applicable laws and regulations; and such failure continues for twenty-four hours or more, the Municipality may, after notice to Contractor, engage another contractor, or elect to conduct disposal of waste by any means, and the cost of such contractor or disposal will be deducted from amounts otherwise payable to Contractor, in addition to any other right or remedy available to the Municipality under this Contract and at law.

A. Default; Municipality's Right to Terminate; Damages

- 1) The following shall constitute events of default by the Municipality:
 - a. the failure of the Municipality, after receipt of written notice from Contractor that payment has not been made, to make any payment required to be made to Contractor under this

Agreement within thirty (30) days after receipt of written notice from Contractor that such amount is due;

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

- b. the failure of the Municipality, after receipt of written notice of default from Contractor, to perform any of its other obligations under this Agreement, and which failure is not cured within sixty (60) days, or, if a cure is not reasonably possible within such 60-day period, the failure of the Municipality, after receipt of such written notice, to commence and diligently pursue a cure to completion; or
 - c. in the event the Municipality shall make an assignment for the benefit of creditors, file a voluntary petition in bankruptcy, be adjudicated a bankrupt or insolvent, file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, file any answer admitting or not contesting the material allegations of a petition filed against it in any such proceeding or seek or consent to or acquiesce in the appointment of any trustee, liquidator or receiver of it or of all or any substantial part of the properties of it.
- 2) The following shall constitute events of default by Contractor:
- a. the failure of Contractor, after receipt of written notice of default from Municipality, to perform any of its material obligations under this Agreement, and which failure is not cured within sixty (60) days, or, if a cure is not reasonably possible within such 60-day period, the failure of Contractor, after receipt of such written notice, to commence and diligently pursue a cure to completion or
 - b. in the event Contractor shall make an assignment for the benefit of creditors, file a voluntary petition in bankruptcy, be adjudicated a bankrupt or insolvent, file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, file any answer admitting or not contesting the material allegations of a petition filed against it in any such proceeding or seek or consent to or acquiesce in the appointment of any trustee, liquidator or receiver of it or of all or any substantial part of the properties of it.
- 3) Upon the occurrence of an event of default, the party not in default may terminate this Agreement by written notice to the defaulting party.
- 4) Any obligation to pay any fixed sum of money that may have accrued and be due and payable hereunder, and the obligations of the Municipality contained in Section 8 hereof, and any indemnification obligations of the Contractor contained in this Contract, shall survive the termination or expiration of this Agreement.

Notwithstanding anything to the contrary herein, in the event this Contract is terminated by the Municipality, the Municipality may, in addition to any other rights and remedies available to it under this Contract and at law, perform and complete the Work by any means necessary, and charge all costs and expenses of doing so to the Contractor, including, but not limited to, costs for labor and equipment, and reasonable attorneys' fees.

19. Retainage for Claims

The Municipality may, after the final completion of the Work, retain out of the moneys due to the Contractor under this Contract such sum of money as may, in the reasonable judgment of the Municipality, be required to cover the payment of claims arising from, and payable by the Contractor under, the provisions of the Contract

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

but remaining unsatisfied. Contractor shall be entitled to a reasonably detailed statement of any retainage by the Municipality thirty (30) days of requesting same.

20. Suspension of Work; Abandonment of Work

Should the Work be prevented or enjoined from proceeding either before or after the start of performance of this Contract by reason of any litigation or other reason beyond the control of the Municipality, the Contractor shall not be entitled to make or assert any claims for damage by reason thereof.

Notwithstanding anything to the contrary in this Contract, the Municipality may notify the Contractor by written order to discontinue all Work, or any part thereof, and may terminate this Contract if:

- (a) The Contractor abandons the Work, or any part thereof;
- (b) The Contractor sublets the Contract or any part thereof without the advance written consent of the Owner;
- (c) The Contractor assigns its rights or obligations, or any claim it may have, under the Contract to any person without the advance written consent of the Municipality; or
- (d) The Contractor, in the reasonable opinion of the Municipality, has failed to perform the Work at the rate of progress specified in the Contract, or the Work or part thereof is unnecessarily or unreasonably delayed, or the Contractor has materially violated any of the provisions of this Contract, or

Thereupon, the Contractor shall discontinue such Work or such part thereof as the Municipality may designate, and the Municipality may, by Contract or otherwise, as it may determine, complete the Work, or such part thereof, and charge the entire expense of so completing the Work or part thereof, including any attorneys' fees, to the Contractor.

Notwithstanding anything to the contrary herein, the Municipality reserves the right to, at all times and for any reason, call upon Contractor's Surety to perform and complete the Work.

All expenses charged under this provision shall be deducted and paid by the Municipality out of any moneys then due or to become due to the Contractor under this Contract, or any part thereof. Notwithstanding anything to the contrary in this Contract, in performing the Work or other services under this provision or any other provision in this Contract, the Municipality shall not be held to obtain the lowest cost for the performance of such Work and services. In case the expenses so charged to the Contractor do not exceed amounts otherwise payable to Contractor, the Contractor shall be entitled to receive the difference, provided there exists no other lawful reason for continued withholding of such amounts, and in the case such expenses shall exceed the amount so charged, the Contractor shall promptly pay the amount of the excess to the Municipality.

21. Claims for Extra Work

No claim for Extra Work or cost shall be allowed unless the same was done pursuant to a written order of the Municipality issued before such work has begun, and a written claim for such work-and presented with the first

estimate after the Extra Work is done. The Contractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and, when requested by the Municipality, shall provide the Municipality access to all other information reasonably relating thereto, including, but not limited to, Contractor's financial and accounting data pertaining to the claim.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

22. Subcontracting or Assignment of Contract

The Contractor shall give his direct attention constantly to the faithful prosecution of the Work, shall keep the same under his direct control. Other than in connection with a sale of all or substantially all of Contractor's assets, the Contractor shall not assign or subcontract the Work, or any part thereof, without the prior written consent of the Municipality (not to be unreasonably withheld). The Contractor shall not either legally assign any of the monies payable under this Contract, or any claim thereon, without the previous written consent of the Municipality. The Contractor shall be responsible for the acts and omissions of his subcontractors, if any and of all persons directly or indirectly employed by him or them in connection with the Work.

This Agreement may not be assigned by the Municipality without the prior written consent of Contractor, which shall not be unreasonably withheld

23. Performance Bond and Guarantee

The Contractor shall furnish a Performance Bond in the penal sum of the greater of 100 percent of the annual Contract sum or Fifty Thousand Dollars (\$50,000). The bond shall be from a bonding company licensed by the Massachusetts Division of Insurance and reasonably satisfactory to the Municipality.

The Contractor must submit to the Municipality an original of the Performance Bond and valid power of attorney indicating the signatory for the surety is authorized to sign the bond. Any renewal bond shall be delivered to the Municipality at least thirty (30) days prior to expiration of the existing bond. Failure to deliver the renewal bond shall be cause for the Municipality to either cancel the Contract or withhold payments to be made hereunder.

24. Damages, Suits and Claims; Indemnification

No officer, official, agent or employee of the Municipality shall be held personally responsible for any liability arising under the Contract. The Contractor shall indemnify, defend and hold harmless the Municipality, its Mayor and Municipal Councilors, its Department of Public Works, and all of its and their officers, agents and employees, for, from and against all suits, damages, costs, losses, expenses, including attorneys' fees, claims and liability of every name and nature arising out of or in consequence of (i) the negligence or intentional misconduct of the Contractor, its agents, employees, and (ii) any breach of this Agreement by Contractor, its agents and employees; and the Contractor shall and does hereby assume and agrees to pay for the defense of all such claims demands, suits and proceedings brought against the Municipality by a third party. Notwithstanding anything to the contrary in this provision or this Contract, this indemnification obligation of the Contractor is in addition to any other right or remedy available to the Municipality under this Contract and at law.

The Contractor agrees to indemnify and hold the Municipality harmless from all and claims, liens, demands or bills for labor and/or materials furnished or delivered in the performance of this Contract, and agrees also to indemnify the Municipality against all loss, damage or cost, legal or otherwise, ensuing from the same, including attorneys' fees.

The Contractor also shall be responsible for paying any fines assessed to the Municipality for the Contractor's failure (other than as a result of Uncontrollable Circumstances) to provide required services under this Contract.

Municipality shall require that its Collection and Transportation Vendor agree, in its contract with Municipality, to indemnify, defend and hold harmless the Contractor, its officers, agents and employees against all suits,

CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

claims or liability from and on account of any injuries to persons or damage to property or nuisances or trespasses, and specifically including death or injuries, arising out of the negligence or intentional misconduct of the collection and transportation Vendor, its agents, employees and subcontractors, in connection with the delivery of Acceptable Solid Waste to the Facility by the Collection and Transportation Vendor .

In the event that the Municipality is sued or becomes subject to administrative action because the Contractor has failed to properly process or dispose of the Municipality's solid waste or recyclable material, full restitution will be made to the Town for all expenses, fees, fines or other costs or charges incurred.

25. Representations

A. Representations of the Municipality

The Municipality makes the following representation as the basis for the undertakings on the part of the Contractor under this Contract:

- 1) The Municipality is a municipal corporation and political subdivision of the Commonwealth.
- 2) The Municipality has power and legal authority to enter into this Contract, to carry out the transactions contemplated by this Contract, and to perform its obligations in accordance with terms of this Contract.
- 3) The Municipality makes no representation or guarantee as to the quality of Solid Waste or other materials that may be delivered and/or accepted by Contractor pursuant to this Contract.

B. Representations of the Contractor

The Contractor makes the following representation as the basis for the undertaking on the part of the Municipality under this Contract:

- 1) The Contractor is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts, and is in the business of providing Solid Waste Services.
- 2) The Contractor has the authority and legal capacity to enter into this Contract and perform its obligation hereunder in accordance with the terms of this Contract.

Each party may change the address to which notices shall be sent by filing written notice thereof with the other party.

26. Applicable Law

This Contract shall be construed in accordance with the laws of the Commonwealth of Massachusetts. Each of the parties, to the extent that it may lawfully do so, hereby consents to the jurisdiction of the courts of the Commonwealth and the United States District Court for the District of Massachusetts, as well as to the jurisdiction of all courts from which an appeal may be taken from such courts, for the purpose of any suit, action or other proceeding arising out of any of its obligations arising hereunder or with respect to the transactions contemplated hereby and the adjudication of any disputes arising hereunder, and expressly waives any and all objections which it may have as to the venue in any such courts.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

27. Discrepancies, Errors and Omissions

The provisions of this Contract are intended to be explanatory of the Work to be done and of each other, but should any discrepancies or errors appear or any omissions be made, they shall be called to the attention of the Municipality and shall be subject to his correction and interpretation, thereby defining and fulfilling the intent of this Contract.

28. Provisions Required By Law Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and through mistakes or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall be forthwith physically amended to make such insertion or correction.

29. Severability

If any provision of this Contract is held invalid or unenforceable, such provisions shall be modified consistent with the original intent of the parties so as to be enforceable and the remainder of the Contract shall remain in full forces and effect.

If any section, paragraph, clause or provision of this Contract shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Contract shall be unaffected by such adjudication and all of the remaining provisions of this Contract shall remain in full force and effect as though such section, paragraph, clause or provision, or any part thereof adjudicated to be invalid had not been included herein, unless such remaining provisions, standing alone, are incomplete and incapable of being executed in accordance with intent of the parties to this Contract.

Any provision of this Contract which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, but shall remain effective in any other jurisdiction where such provision is not prohibited, unenforceable or unauthorized.

30. Amendment of Contract

This Contract may not be amended except in writing executed in the same manner as the Contract itself and delivered by the parties hereto. It is contemplated by both parties that amendment of this Contract may be necessary during the term of this Contract.

31. Beneficiaries

The parties intend that there shall not be any third party beneficiaries to this Contract.

32. Interpretation and Rules of Construction

References herein to articles and paragraph numbers shall refer to articles and paragraphs in this Contract unless reference to another document is clearly stated and shall be solely for the convenience of reference and shall not affect the meaning or the construction, interpretation or effect of this Contract. The words "here", "hereby", and "hereof" and such general terms of reference as may be utilized in this Contract shall refer and pertain to this Contract as a whole, including any exhibits, attachments, schedules or annexed material forming part of this

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

Contract and referenced in it. All exhibits attached hereto are incorporated herein by reference but to the extent of a conflict between an exhibit and the Contract, the terms of this Contract shall govern. The singular of any term defined in this Contract shall encompass the plural, and the singular, unless the context clearly indicates otherwise.

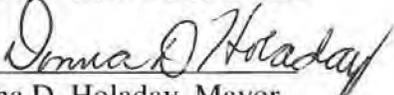
33. Entire Agreement

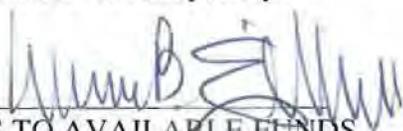
This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

The parties hereto indicate their approval of this Contract by their authorization signatures below.

Executed as a Seal Instrument this 22nd Day of July, 2013

CITY OF NEWBURYPORT

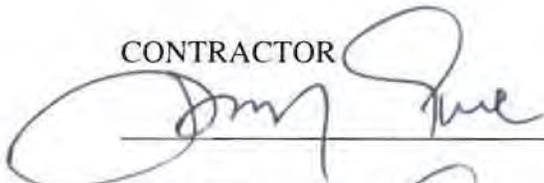
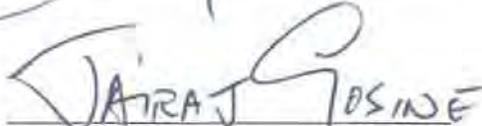

Donna D. Holaday, Mayor


AS TO AVAILABLE FUNDS
Chief Financial Officer

60 Pleasant Street
Newburyport, MA 01913


AS TO FORM
Kopelman & Paige, P.C.
101 Arch Street
12th Floor
Boston, MA 02110

CONTRACTOR



Print Name

Wheelabrator North Andover, Inc.
Regional Vice President
285 Holt Road
North Andover, MA 01845

**APPENDIX A
CONTRACT COST**

	Description							Option to Renew	Option to Renew
Escalator effective start date:			July 1, 2013	July 1, 2014	July 1, 2015	July 1, 2016	July 1, 2017	July 1, 2018	July 1, 2019
* Incentive	\$21,041.24								
Service			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Municipal Solid Waste Disposal Fee	Per ton ¹		\$61.00	\$62.22	\$63.46	\$64.73	\$66.03	\$67.35	\$68.70

- * Cash Incentive is the equivalent of offering the new contract rate starting 1/1/13. The amount is equal to the current rate of \$69.40/ton minus the new rate of \$61/ton for the 5 year, multiplied by 6 months deliveries, or 5,000 tons.
- * Cash Incentive payable to City–Within **30 days of receipt of the signed amendment, WNA will pay the City of Newburyport a cash incentive of \$21,041.24. If at any time and for any reason the agreement is terminated prior to June 30, 2018, the City of Newburyport shall repay WNA within 30 days a pro-rata portion of the incentive based on the unfulfilled commitment, calculated as follows:

$$\frac{((60 \text{ Months} - \text{Actual Months Contract was Fulfilled}) / 60 \text{ Months}) \times \$4,000}{}$$

** At the discretion of the City of Newburyport, the incentive payment can be made in installments agreed upon by WNA and the City of Newburyport.

Notes:

1. A ton shall be defined as a “short ton” meaning 2,000 pounds.
2. Tonnage fee will be increased by the actual escalator table above.
3. The escalators shall take effect July 1 of each fiscal year contract.

**CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

CITY OF NEWBURYPORT

CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

APPENDIX B MERCURY RECOVERY PROGRAM

1. Community based collection program/thermometer exchange

Each community has at least one and often two collection locations in the community. These locations are normally located at the Health Department and/or the Recycling Center on Crow Lane. A five-gallon plastic pail is at each location. Resident are encourage to bring items such as mercury thermometers, thermostats, switches, sphygmomanometers (blood pressure units) and other devices that contain mercury (Universal Waste) to these locations for safe disposal.

Each location is supplied with digital thermometers. When a resident brings in a mercury thermometer, they are given a new digital thermometer in exchange.

When the pail is full, the 800 number on the pail is called and the service provider, Enviro Safe, will come and pick up the pail and leave an empty.

2. School Clean Sweeps

Each school system is offered the Clean Sweeps Program in an effort to remove mercury and items containing mercury from the schools. Mercury items will be removed free of charge. Certain devices, such as lab thermometers, sphygmomanometers and barometers, will be replaced on a one to one basis.

3. Fluorescent Lamp Reimbursement Program

The fluorescent lamp reimbursement program is offered to each community. The program coordinator will assist the community in establishing a collection program for fluorescent lamps in the municipal buildings and schools. Some communities offer the program to small businesses and residents as well. All the bulbs are collected and shipped to a processor. The community is reimbursed 100% of the invoiced amount for the recycling of the fluorescent lamps.

Each community is offered an 8 foot by 10 foot storage shed for the storage of fluorescent lamps and other Universal Wastes. These sheds are valued at approximately \$2,300 each.

4. Button-Cell Battery Fund Raising Opportunity

Each community is offered a program for the collection of button-cell batteries. A local organization is identified. That group would place small collection boxes at appropriate locations in the community for the collection of button-cell batteries. Button-cell batteries are the small batteries commonly found in watches, hearing aides, cameras, etc. The local group will periodically collect the batteries from the collection sites and place them in the pail at the Health Department office. These batteries will be weighed when the pail is picked up and the group will received \$100 per pound, up to a maximum of \$500 in any calendar year.

CITY OF NEWBURYPORT

CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

APPENDIX B

Continued

5. Thermostat Program

Each community is offered a program to notify contractors concerning the need to safely dispose of thermostats. This program is operated in conjunction with the Health and the Building Department. All costs of printing and mailing are covered by the program.

6. Bulk Collection

If a large quantity of elemental mercury is found in the City, the Mercury Recovery Program will remove the mercury free of charge.

7. Advertising

The Mercury Recovery Program conducts regional advertising on area radio stations such as WBZ and WEEI. Advertisements are also placed in the local newspapers promoting each community's specific program. Ads are also available in support of local Household Hazardous Waste Programs.

8. Additional Shed

Wheelabrator will supply an additional shed for each city for the use in collection and storage of mercury containing items or to be used during the Hazardous Waste Collection process. These sheds are supplied by Wheelabrator, used by the municipalities and replaced as needed by Wheelabrator.

CITY OF NEWBURYPORT

CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

APPENDIX C INCENTIVE

This Contract includes an incentive, a value added item to be provided to the Cities by Wheelabrator when awarded the contract.

One item listed is an incentive, with an explanation that the payment is based upon the prior year usage and will result in a reduction in the Cities' costs for that prior year, dating back to January 1, 2013, from the rate charged under the prior contract to the lower rate proposed in the proposal. Thus, a maximum payment of \$42,000 based on a five year contract is being offered, with the rebate to be paid as a lump sum upon contract execution.

Jan. 1, 2013 per ton rate = \$69.40
New Five yr. per ton rate = \$61.00

Difference = \$8.40 per ton

Newburyport:

Tons delivered from January 1, 2013 to June 30, 2013 = 2504.91 tons

Newburyport Total: \$21,041.24

CITY OF NEWBURYPORT

CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

APPENDIX D

Hazardous Waste Clean Up Day

Wheelabrator will support one Hazardous Waste Clean Up Day in Newburyport each year for the duration of the contract. (Up to \$5000 per year). Advertising for this event will be included as part of the advertising for the Mercury Source Separation Program (see below).

From:

APPENDIX B

MERCURY RECOVERY PROGRAM

7. Advertising

The Mercury Recovery Program conducts regional advertising on area radio stations such as WBZ and WEEL. Advertisements are also placed in the local newspapers promoting each community's specific program. Ads are also available in support of local Household Hazardous Waste Programs.

CITY OF NEWBURYPORT

CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

APPENDIX E

Sharps Collection Program

Wheelabrator will sponsor a sharps collection program in Newburyport. Wheelabrator will provide one kiosk per city and collect the sharps on an as needed basis. The cost of the Contract is inclusive of this program and the Municipality shall have the option each year to participate in this Program. Typically the kiosk will be located in a secure location at a local pharmacy, the fire station, the police station or the City's Health Department where it can be monitored. Location is to be determined and agreed upon by the Health Department and the Public Health Nurse.

CITY OF NEWBURYPORT

**CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL
APPENDIX F**

Educational Programs, Tours and Community Outreach

Educational Programs

Wheelabrator is the proud sponsor of the "Science Screen Report" video series. This video series is provided to schools in our contract communities. The Science Screen Report series is a resource for the schools to use to assist in the classroom. Each year a new set of DVD's is made and distributed to the schools. This year's series includes units on chemistry, electronics, radio astronomy, aeronautics, physics and energy. The DVD library continues to grow and the schools keep the DVD's and build their own library of resources. This program has received numerous awards and we get great feedback from schools that we serve.

This program will continue for age appropriate schools in Newburyport.

Tours

Wheelabrator provides facility tours to help educate our customers, schools and various groups on solid waste disposal issues. Tours are followed by a sometimes lively question and answer period where many solid waste concerns are discussed. Typically when people see our operation they are very impressed by the highly technical nature of the whole process. We can schedule tours to suit the needs of the cities, but typically they are held Tuesday through Thursday between 10 a.m. and 3 p.m.

Community Outreach

Wheelabrator also does community Outreach in each of our contract communities that include sponsoring local charitable organizations and earth day activities among others. In Amesbury, we have been active with the Chamber of Commerce and Youth Sports. In Newburyport we have been active with the Jeanne Geiger Crisis Center and Yankee Homecoming.

CITY OF NEWBURYPORT

CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL

APPENDIX G

Approximate Value Added for items listed above (Appendix A-F)

		1 X Cost	Annual	5 Year
1	Mercury Source Separation Program – Appendix B		\$5K	\$25K
2	Science Screen Report Videos (for Schools) – Appendix F		\$2K	\$10K
3	Hazardous Waste Cleanup Day – Appendix D		\$10K	\$50K
4	Facility Tours for Groups - at no cost – Appendix F			
5	Sharps Program – Appendix E	\$4K	\$2K	\$14K
6	Additional Shed for each City – Appendix B	\$5K		\$5K
7	Earth Day Cleanup Sponsors – Appendix F		\$2K	\$10K
8	Incentive - Appendix A & C	\$21,041.24		\$42K
9	Community Outreach Programs** - Appendix F		Varies	
	Totals	\$30,041	\$21K	*\$156K

*Corrected total from Wheelabrator Proposal

**Community Outreach Programs: See Appendix F

**AMENDMENT #1 TO CITY OF NEWBURYPORT
CONTRACT FOR MUNICIPAL SOLID WASTE DISPOSAL**

This Amendment #1 to the City of Newburyport Contract for Municipal Solid Waste Disposal is entered into as of June ~~21~~²⁹, 2018, by and between the City of Newburyport, Massachusetts, a political subdivision of the Commonwealth of Massachusetts (the "Municipality") and Wheelabrator North Andover, Inc., a Delaware corporation ("Wheelabrator").

WHEREAS, the Municipality and Wheelabrator are parties to that Contract for Municipal Solid Waste Disposal dated July 18, 2013 (the "Contract"); and

WHEREAS, the parties now wish to amend the Contract on the terms and conditions contained herein;

NOW THEREFORE, in consideration of the mutual promises set forth herein and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Capitalized Terms. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Contract.
2. Cover Page and Heading. The "July 1, 2013 through June 30, 2018" dates set forth on the cover page of the Contract and the subtitle on the page 1 of the Contract shall be amended and replaced with "July 1, 2013 through June 30, 2023."
3. Preamble. The June 30, 2018 expiration date in the preamble of the Contract shall be amended and replaced with June 30, 2023.
4. Section 2. Term of Contract. Section 2 of the Contract is hereby deleted in its entirety and replaced with the following:

The Contract shall commence work on July 1, 2013 and the Work shall continue through June 30, 2023.

The Municipality and the Contractor may by mutual consent renew the Contract for two (2) additional one (1) year terms. The renewal option shall be exercised by mutual consent, in writing within ninety (90) days of the expiration date of this Contract. The rate for each additional year will be subject to a 3.5% increase over the prior years' rate.

5. Section 15. A. Payment. The second paragraph of Section 15.A. of the Contract is hereby deleted in its entirety and replaced with the following:

The tipping fee shall be paid within thirty (30) days of the Municipality's receipt of a proper monthly invoice and accompanying materials, as described below that includes the total tons of material delivered for the monthly period, fee per ton, and total monthly fee (tons X fee= total fee). The invoice shall also include the daily tonnage report of Acceptable Solid Waste delivered and accepted by the Contractor for the monthly period invoiced.

6. Appendix A Contract Cost. Appendix A to the Contract is hereby deleted in its entirety and replaced by Appendix A attached hereto.

7. Appendix B Mercury is part of this contract attached hereto.
8. Appendix C Incentive. Appendix C to the Contract is hereby deleted in its entirety.
9. Appendix D HHW Clean-up Day is part of this contract attached hereto.
10. Appendix E Sharps is part of this contract attached hereto.
11. Appendix F Educational Programs, Tours and Community Outreach. Appendix F to the Contract is hereby deleted in its entirety.
12. No Other Changes. Except as specifically amended herein, the terms and conditions of the Agreement shall remain in full force and effect.

[Signature Page Follows]

WITNESS the execution hereof as of the date first above written.

~~WHEELABRATOR NORTH ANDOVER, INC.~~

By: _____

Name: Bill Stagar

Title: Corp VP Fuel Sen

CITY OF NEWBURYPORT

By: _____

Name: Donna D Holaday

Title: mayor

Appendix A

Contract Cost

Year	Estimated Annual Tons	Tip Fee per Ton
7/1/2018-6/30/2019	5,000	\$67.35

Year	Estimated Annual Tons	Tip Fee per Ton
7/1/2019-6/30/2020	5,000	\$68.70

Year	Estimated Annual Tons	Tip Fee per Ton
7/1/2020-6/30/2021	5,000	\$71.25

Year	Estimated Annual Tons	Tip Fee per Ton
7/1/2021-6/30/2022	5,000	\$73.50

Year	Estimated Annual Tons	Tip Fee per Ton
7/1/2022-6/30/2023	5,000	\$75.75



IN CITY COUNCIL

ORDERED:

June 12, 2022

AN ORDER TO ADD A NEW HANDICAPPED PARKING SPACE BY AMENDING CHAPTER 13 (TRAFFIC AND MOTOR VEHICLES) OF THE MUNICIPAL CODE

Be it ordained by the City Council of the City of Newburyport as follows:

Chapter 13	Traffic and Motor Vehicles
Article 4	Specific Street Schedules
Division 6	Stopping, Standing and Parking
Section 13-179	Handicapped Zones

Amend Section 13-179 by inserting a new line, as follows, with deletions ~~double-stricken through~~, and additions double-underlined:

<p><u>Merrill Street</u></p> <p><u>One (1) space at 12 Merrill Street through June 30, 2025</u></p>

Councillor Jennie L. Donahue

ORDINANCES

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

May 8, 2023

Appendix B Municipal Fee Schedule

Section 2 Municipal Fees by Category

Section – 2-I - Parking fees (permits, rates).

The City Council of the City of Newburyport hereby amends Appendix B Municipal Fee Schedule Ordinance Section 2-J Parks and Recreation fees with deletions ~~double-stricken and italicized~~ and additions double-underlined and italicized:

2-I - Parking fees (permits, rates).

Parking Permits	Fee
Resident Annual Permit—Paid Parking Facilities	\$15.00 \$5.00, Senior Rate
Employee Quarterly Permit, All Day Parking Facilities <u>and Titcomb Street Garage</u>	\$50.00 <u>\$60.00</u>
Resident Monthly Pass for Titcomb Street Garage	\$60.00
Non-Resident Monthly Pass for Titcomb Street Garage	\$80.00
Employee Pass for Titcomb Street Garage	\$50.00
<u>Residential Annual Street Permit (sec 13-180)</u>	<u>\$10.00</u>
<u>Residential Daily Street Permit Visitor Pass (sec 13-180)</u>	<u>\$5.00</u>

Parking, Hourly Fees in Lots	Fee
Hourly Fee—Waterfront Trust Lot, State Street Lot, Titcomb Street Garage, NRA West and East Lot	\$1.00/hour
Hourly Fee—Green Street Lot, Prince Place Lot and Hales Court Lot	\$1.50/hour
Plum Island Parking Lot	Fee
Resident	\$10.00, Weekday \$12.00, Weekend
Non-Resident	\$15.00, Weekday \$20.00, Weekend

Councillor James J. McCauley

In City Council May 8, 2023:

Motion to refer to Public Works & Safety and COTW by Councillor Zeid, seconded by Councillor Preston. Roll call vote. 11 yes. Motion passes.

In City Council May 22, 2023:

Motion to approve on 1st reading by Councillor Wallace, seconded by Councillor McCauley. Roll call vote. 10 yes, 1 no (SZ). Motion passes.

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

May 8 , 2023

AN ORDINANCE TO AMEND CH. 13 SEC. 180 WITH RESPECT TO RESIDENTIAL PARKING ZONES

Be it ordained by the City Council of the City of Newburyport as follows:

THAT Chapter 13 Section 13-180 of the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended to include the following parking restrictions with deletions ~~double-stricken and italicized~~ and additions double-underlined and italicized:

CHAPTER 13. – TRAFFIC AND MOTOR VEHICLES

Sec. 13-180. – Residential Parking Zones

(a) *Definitions.* As used in this section:

(3) Inn Street/State Street Mixed-Use Area shall mean the contiguous area generally bounded by Market Square to the northeast, State Street to the southeast, Pleasant Street to the southwest, and the Inn Street Mall to the northwest, and including all parcels within Assessor's Block 4, with the exception of Assessor's Parcels 4-1, 4-1-A, 4-2 (Inn Street Playground), and 4-30 (Inn Street Mall itself) and all properties on the east side of State Street from the southerly side of Liberty Street to northerly side Charter Street.

(g) Designation of two-hour residential parking permit zones.

- (1) Zone 1: Includes the following streets between State Street, Water Street, Federal Street, And High Street:
Center Street, on the easterly side from Liberty Street to Middle Street.
Charter Street, on the southwesterly side for its entirety.
Essex Street, on both sides for its entirety.
Fair Street, on the southeasterly side from Water Street to Prospect Street, and on the northwesterly side the southwesterly edge of the driveway at 2 Fair Street (Map 008, Lot 028) to Prospect Street.

Fruit Street, on both sides for its entirety.
Garden Street, on both sides for its entirety.
Independent Street, on the northwesterly side from Water Street to Liberty Street.
Liberty Street, on both sides from Center Street to State Street.
Liberty Street, on both sides from Fair Street to Independent Street, and on the southwesterly side only from Independent Street to Federal Street.
Middle Street, on the southwesterly side from State Street to Federal Street.
Orange Street, on both sides for its entirety.
Otis Place, on both sides for its entirety.
Pike Street, on the westerly side from Liberty Street to the southwesterly lot line of 10 Pike Street (Map 008, Lot 013).
Prospect Street, on the southerly side from State Street to Federal Street.
Spring Street, on both sides for its entirety.
Temple Street on the southwesterly side from State Street to Federal Street.

(j) ~~Inn Street/State Street Mixed-Use Area~~. A bona fide hardship exists for residents of the Inn Street/State Street Mixed-Use Area caused by unique or special conditions there that preclude designation of a residential parking permit zone incorporating any of the adjacent streets, which are commercial in nature. Notwithstanding anything in this [section 13-180](#) to the contrary, the parking clerk or their designee shall issue residential street parking permits for use ~~within the Green Street Parking Lot (Assessor's Parcel [3-28](#)) to no more than four (4) households that reside within the Inn Street Mixed-Use Area~~ within Zone 1 described above.

~~(1) Applicants under this subsection (j) may apply, and renew or transfer such permits pursuant to subsections (c) and (d), respectively, but shall remain ineligible always for visitor parking permits pursuant to subsection (f).~~

~~(2) A parking permit under this subsection (j) shall not guarantee or reserve a parking space within the Green Street Parking Lot, nor shall it excuse the permit holder from observance of any traffic or parking regulation other than the time limit on parking, or from having to move all vehicles from the Green Street Parking Lot as ordered by the city during a declared snow emergency.~~

~~(3) It shall be a violation of this section to use a parking permit issued under this subsection in any residential parking permit zone.~~

~~(4) The parking clerk or their [designee] shall issue parking permits under this subsection on a first come, first served basis, or by lottery if more than four (4) complete applications are filed on the same day.~~

Councillor James J. McCauley

In City Council May 8, 2023:

Motion to refer to Public Works & Safety and COTW by Councillor Zeid, seconded by Councillor Preston. Roll call vote. 11 yes. Motion passes.

In City Council May 22, 2023:

Motion to approve on 1st reading by Councillor Wallace, seconded by Councillor McCauley. Roll call vote. 11 yes. Motion passes.



IN CITY COUNCIL

ORDERED:

May 8, 2023

AN ORDINANCE TO AMEND CH. 13 SEC. 166 WITH RESPECT TO ANTI-SHUFFLING

Be it ordained by the City Council of the City of Newburyport as follows:

CHAPTER 13. – TRAFFIC AND MOTOR VEHICLES
ARTICLE IV. SPECIFIC STREET SCHEDULES
DIVISION 6 STOPPING, STANDING AND PARKING

THAT Chapter 13 Section 13-166 of the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended to include the following parking restrictions with deletions ~~double-stricken and italicized~~ and additions double-underlined and italicized:

~~**Sec. 13-166. – Amendment, addition and deletion by order.**~~

~~In order to efficiently and expeditiously address parking issues within the City of Newburyport, any and all amendments, additions and deletions to these sections contained in division 6 may be by order of the council and, furthermore, the clerk's office shall maintain a list of said amendments, additions and deletions and post the same on the appropriate page of the City of Newburyport website.~~

Sec. 13-166 – Anti-Shuffling

The changing of the parked position of a vehicle from one parking space to another within a municipal parking lot or the same block on either side of the street or roadway shall be deemed one continuous time period as designated by related signs.

Councillor James J. McCauley

In City Council May 8, 2023:

Motion to refer to Public Works & Safety and COTW by Councillor Zeid, seconded by Councillor Preston. Roll call vote. 11 yes. Motion passes.

In City Council May 22, 2023:

Motion to approve on 1st reading by Councillor Wallace, seconded by Councillor McCauley. Roll call vote. 7 yes, 4 no (BV, SZ, BL, CP). Motion passes.

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

June 12, 2023

AN ORDINANCE TO LIMIT ON-STREET PARKING ON FAIR STREET

Be it ordained by the City Council of the City of Newburyport as follows:

THAT Chapter 13 Article IV of the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended to read as follows, with ~~deletions double-stricken and in-italicized~~, and additions double-underlined and italicized:

Sec. 13-168. - Parking limited—Generally.

No person shall park any vehicle on the following streets or portions of streets as indicated below:

Street	Zones
Fair Street	On the westerly side at the intersection of Essex St for a distance of twenty <u>(20) fifty-six (56)</u> feet running in a northerly direction.

Councillor Jennie L. Donahue



IN CITY COUNCIL

ORDERED:

June 12, 2023

AN ORDINANCE TO AMEND CH. 2 SEC. 125g ET AL WITH RESPECT TO A PUBLIC ART COMMITTEE

Be it ordained by the City Council of the City of Newburyport as follows:

CHAPTER 2. ADMINISTRATION
ARTICLE III. BOARDS AND COMMISSIONS
DIVISION 8. PUBLIC ART COMMITTEE

THAT Chapter 2 Section 125g et al of the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended to include the following with deletions ~~double-stricken and italicized~~ and additions double-underlined and italicized:

Sec. 2-125g. Establishment of public art committee, membership and terms

There is hereby established a public art committee, in accordance with the public art policy adopted by the Newburyport city council and shall consist of seven (7) members with a composition and term as follows:

- (1) 2 members of the Newburyport Cultural Council for a term of three (3) years.
- (2) 1 member of the Newburyport Art Association for a term of three (3) years.
- (3) 1 local artist for a term of three (3) years.
- (4) 1 member of the Parks Commission for a term of three (3) years.
- (5) 1 City Staff
- (6) 1 representative from the Mayor's office for a term of three (3) years.

The appointments to the public art committee shall be made in accordance with the provisions of the city charter.

(Ord. of xx date)

Sec. 125h. Powers and duties.

A. The public art committee shall study the needs, possibilities and resources of the city regarding public art. The committee shall consult with existing municipal boards, including the city council, the planning board and the parks commission, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one (1) or more public informational hearings on the needs, possibilities and resources of the city regarding public art possibilities and resources, notice of which shall be posted publicly and published for each of two (2) weeks preceding a hearing in a newspaper of general circulation in the town.

B. The public art committee shall make recommendations to the city council for the acquisition, creation and placement of public art.

(Ord. of xx date)

Sec. 125i. Rules and regulations.

A. By majority vote of the members of the committee, the committee may adopt and promulgate rules and regulations for the conduct of its business on any matter within the committee's jurisdiction under the Massachusetts Constitution, Massachusetts General or Special Laws, the Code of Massachusetts Regulations (CMR), ordinance, or other legal right or authority granted to or conferred upon the commission.

The proposed rule or regulation shall be submitted to all committee members at least forty-eight (48) hours prior to any vote to adopt the same; provided, however, the committee may make such amendments to the proposed rules or regulations as it deems appropriate at the said meeting.

Upon approval of any rule or regulation by the committee, a copy of the same shall be filed with the City Clerk and become effective as of the date of filing thereof unless the specific vote of the committee establishes a later effective date.

To enhance communication, minutes of each meeting shall be sent to the City Clerk for distribution to the City Council.

Councillor Constance Preston

City of Newburyport

Public Art Policies & Processes

Prepared by the Public Art Policy Advisory
Group of the Mayor's Office

Submitted to the City Council on _____

I. TABLE OF CONTENTS

I.	Introduction.....	2
	A. Curatorial Vision	2
	B. Public Art in Newburyport	2
	C. The Public Art Team	2
	D. Powers and Duties.....	3
	E. Scope	3
	F. Limitations	3
	G. Applicability.....	3
	H. Definitions.....	3
	I. Administration.....	4
	J. Funding for Acquisitions	4
	K. About this Document	5
II.	Procedures for the Acquisition of Public Artwork.....	5
	A. Acquisition Priorities	5
	B. Approval and Development Process for Public Art Commissions.....	6
	C. Approval Process for Donations	9
	D. Plaques for Public Artworks	10
	E. Mural Commissions	10
	F. Memorial Commissions	11
III.	Procedures for the Deaccessioning of Public Artwork.....	12
	A. Removal from the Collection: Deaccessioning	12
IV.	Procedures for the Care of Public Artwork.....	13
	A. Collection Care	13
	Glossary of Terms	15
	Appendix A: FAQ for Artists	18
	Appendix B: Application	23
	Appendix C: Sample Call to Artists	25
	Appendix D: Sample Commissioning Agreement.....	29
	Appendix E: Sample Donation Agreement.....	49

I. Introduction

A. Curatorial Vision

The Curatorial Vision for the City of Newburyport is to foster the creation and collection of artworks that reflect the people, ideas, histories, and futures of Newburyport. We aim to commission and approve artworks that engage communities and directly respond to, enrich, and enliven the environment. We seek public art that is driven by an artistically strong vision, enhances the diversity and equity of the existing collection, and possesses durability appropriate to the lifespan of the work.

B. Public Art in Newburyport

Public art is any artwork installed in a publicly accessible space where it can be experienced by everyone for free. It takes a wide range of forms, including murals, sculptures, memorials, architectural or landscape elements, and multi-media installations. The City of Newburyport recognizes the value of public art to its citizens and visitors. It is an important component of our civic and cultural fabric and an essential building block for engaging spaces that enliven the public realm, foster shared community interactions, celebrate our unique stories and collective history, and help create a unique identity for Newburyport. The City has always, and intends to continue to integrate a wide range of artworks reflecting diverse artistic disciplines and points of view into public locations throughout the community. In support of this goal, this document outlines the policies and processes that will facilitate the development of public art throughout the City. It provides a guide for City Departments, Boards and Commissions considering the placement of public art. To successfully implement this policy, City Department Heads should ensure that employees, as well as the Boards and Commissions they staff, are familiar with the procedures herein for proper compliance and execution. An FAQ for Artists (see Appendix A) is a condensed version of this document that is intended to help artists, cultural organizers and other public art proponents who are interested in proposing public art works.

C. The Public Art Team

The Public Art Team (PAT) is an advisory committee to the Mayor that supports the commissioning, review, selection, acceptance, and care of art in public places. They aim to raise public awareness of the impact of public art and its cultural and economic contributions while establishing a diverse collection of public art that engages the community and encourages dialogue around public art. They also aim to identify and promote funding mechanisms to support public art, including grants, donations and specially designated funds. The end result of their efforts will provide a legacy of art and culture for future generations.

The Public Art Team (PAT) holds public meetings as needed to review, discuss, and vote to make recommendations to the City Council on matters concerning the City's public art collection. Meeting agendas are posted by the City Clerk's office at least 48 hours before the meeting. Constituents and stakeholders are encouraged to attend the PAT's public meetings and make comments on agenda items. Official votes will be conducted during the PAT's public meetings and the results will be recorded by the PAT in the meeting minutes. For a vote to take place, a quorum must be present. For a motion to pass, it must receive a majority of the votes of the Members present.

The PAT has exclusive authority to recommend approval and commissioning of artworks intended to be added to the City's collection or be placed on City property to the Mayor and City Council. By centralizing the responsibility of the City's artwork to the PAT, the PAT acts as a transparent, independent entity that

holds public meetings to vote on matters concerning the City's art collection. Members are nominated by their representative groups and appointed in accordance with provisions of the City Charter, and may serve for up to 3 years. The PAT is comprised of 7 members, including 2 members of the Newburyport Cultural Council, 1 member of the Newburyport Art Association, 1 local artist, 1 member of the Parks Commission, 1 City Staff and 1 representative from the Mayor's office.

D. Powers and Duties:

The Public Art Team shall study the needs, possibilities and resources of the city regarding public art. The committee shall consult with existing municipal boards, including the City Council, the Planning Board and the Parks Commission, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one (1) or more public informational hearings on the needs, possibilities and resources of the town regarding public art possibilities and resources, notice of which shall be posted publicly and published for each of two (2) weeks preceding a hearing in a newspaper of general circulation in the town.

The Public Art Team shall make recommendations to the City Council for the acquisition, creation and placement of public art.

E. Scope

This policy applies to all works of art that are commissioned, hosted, or displayed, including both temporary and permanent works, and meet all of the following criteria:

- A. Funded in whole or in part through City funds or maintained by the City;
- B. Sited on City property, building, or right-of-way;
- C. Consistently accessible to the public.

F. Limitations

The policy does not extend to:

- A. Artworks on display within City offices or City buildings that have restricted public access or regulated access. This includes artworks acquired for the sole purpose of office adornment and not for overall public experience.
- B. Temporary exhibitions of artworks (such as gallery displays, booth displays at art festivals, individual artworks, or museum exhibits) displayed on City-owned or -managed property where the owner of such artwork has or intends to: retain ownership of the work or sell it; assume all responsibility associated with that display; remove it after an agreed upon duration has concluded.
- C. Public art on private property.

G. Applicability

The placement of public art on public property is a form of government speech and as such, is not subject to scrutiny under the Free Speech Clause. Therefore, the City has broad discretion to make decisions related to public art on public property. The City shall honor other local, state and federal laws that may apply. The City shall exercise final approval authority over all decisions regarding public art on City property.

H. Definitions (see also Glossary of Terms)

For the purposes of this policy, public art is defined as, but need not be limited to, unique, one-of-a-kind artwork conceived with its site in mind and of the following:

- A. Sculpture in the round, bas relief, mobiles, fountains, kinetic and electronic work in any approved

material or combination of materials

- B. Paintings in all media, including oils and acrylics, that are portable or permanently affixed, such as murals
- C. Graphic arts, such as printmaking, drawing and banners
- D. Mosaics, including works executed in tile, glass, stone or other materials
- E. Crafts using clay, fiber and textiles, wood, metal, plastics, stained glass and other materials, both functional and ornamental
- F. Photography, including digital and traditional photographic print media
- G. Mixed media, which may include any combination of two- and three-dimensional forms of media, including collage
- H. Earth works, environmental installations and environmental art
- I. Ornamental or functional decorative elements designed by practicing artists or other persons submitting as artists, including design professionals who are not members of the City design team for the project
- J. Light-based or luminal art that is experiential, site-specific or installation-based work that explores optical phenomena or work composed of transmitted light, artificial or natural light sources, projections or sculpture that incorporates light sources as a major compositional and expressive element
- K. Sound art or media with primarily aural-based expressive elements, including electronic, audio media, found or experimental sound sources
- L. Video and animation, projected or displayed on a video monitor
- M. Portable art that may be displayed at locations other than a substantially permanent location or adjacent to the project site

For the purposes of this policy, the following are not considered public art:

- A. Directional elements, wayfinding, signage, color-coding (except where these elements are an integral part of the artwork.)
- B. Donor bricks and plaques
- C. Decorations
- D. Non-original works of art of all media, including reproductions
- E. Mass-produced standardized art objects such as playground equipment
- F. Public improvements for safety such as area or path lighting, protective railings, etc. (except where these elements are an integral part of the artwork)
- G. Landscape design or gardens (when used for decoration unless designed by an artist and are an integral part of the artwork)

I. Administration

The Public Art Team (PAT) will serve as an advisory group in support of the execution of this policy. Oversight and coordination of all works of public art acquired by the City of Newburyport, including their budgets and execution of contracts, are the sole responsibility of the Mayor. Staff member(s) designated by the Mayor will manage all operations and duties related to public art projects sited on or proposed for City of Newburyport property, including the maintenance of the public art collection.

J. Funding for Acquisitions

- A. Sources of funding:
 1. Special designated funds: From time to time, special funds may be established for the express

purposes of commissioning works of art in accordance with the terms of this policy. For example, a special increment tax may be established by voters for capital projects with a portion assigned to public art.

2. Voluntary allocations: Departments may deposit additional funds into existing public art accounts or create new public art accounts at the department's discretion. These funds will be spent in accordance with this policy.
3. Donated artwork or funds: Funds or works of art may be donated to the City in accordance with Section II.C. of this policy.
4. Public art maintenance funding: The funding to maintain and conserve acquired works of art, though not governed by this policy, is a critical component of the public art program. It is recommended that City staff carefully consider and implement the necessary funding to properly care for the collection under the terms found in Section IV of this policy.

K. About this Document

Our commissioning and review processes are iterative and will continue to evolve over time. We expect these policies and guidelines to change and welcome feedback on ways we can improve them. Changes to portions of this document that describe PAT reviews and approvals may be updated by the Public Art Team for clarity and responsiveness to community needs.

II. Procedures for the acquisition of public artwork

A. Acquisition Priorities

The following priorities shall be used when considering acquisition of artwork by purchase, commission or donation. Additional priorities may be established at the discretion of the Public Art Team (PAT) to meet the needs of individual projects.

1. Artistic aims, objectives and goals
 - What has the artist accomplished with the work and does it align with the proposed project goals?
 - Is the work relevant to the City, its values, culture and people and does it contribute to the fabric of the City? Is the work an integral component of the overall project?
 - Is the work of art appropriate for the community it serves?
2. Diversity and accessibility
 - Does the artwork reflect or advance the City's curatorial vision and policy of inclusivity?
 - Does the artwork advance lesser-told or lesser-known stories, non-traditional imagery, diverse perspectives, and/or minority voices?
3. Placement/siting
 - What is the relationship of the work to the site? Is it appropriately scaled?
 - Will the work help to anchor and activate the site and enhance the surrounding area?
 - Will there be convenient public access to the site?
 - What are the utility requirements of the artwork?
4. Fabrication, handling and installation
 - Are the projected costs accurate and realistic?
 - Have written estimates been obtained from qualified technical support and fabrication contractors?

- Does a certain site present any special obstacles to installation?
 - Can the work easily be removed if necessary?
5. Maintenance requirements
- Is the work suitable for outdoor display or special indoor environments?
 - Are the materials durable and will they last? Does the work have a limited lifespan due to built-in obsolescence or any inherent weakness?
 - What are the existing or projected maintenance requirements of the work? Are they excessive or cost prohibitive? Are any unusual or ongoing costs likely?
 - What are the artist's suggestions for protection of the work from vandalism?
6. Liability and safety
- Is any aspect of the work a potential safety hazard?
 - Will fencing or other types of security measures be required?
7. Affordability
- Is the artwork priced appropriately for the City?
 - How will the artwork impact the capacity for future acquisitions?

B. Approval and Development Process for Public Art Commissions

Public art projects that are recommended by a proponent (i.e. the City of Newburyport, Community members such as non-profits, neighborhood groups, Friends of, etc., or individual Artists or Artist groups) for long-term or short-term installations shall be approved through the process outlined below. The proponent should review the City's existing collection of public art, the history of the proposed site, the current uses of the site, the community or communities who are regularly engaged with the site, and consider accessibility, future maintenance, and project longevity. Proponents should reach out to the PAT for guidance and information in the early stages of their design process.

Public art projects should be integrated into the selected site, with a preference for areas that are highly visible or highly impactful because of their cultural importance and their access to the public. Important considerations include how the artwork is physically integrated within the site and surrounding environment, how it responds to the public use of the space in which it resides, and how it compliments other public art projects in the immediate area. All artworks should be connected to their context, showing awareness of local cultures, histories, and the ways in which the community interacts with the project site.

Below is the recommended process for Public Art Commissions:

1. **Initial communication:** The proponent must first initiate communication with the City by submitting a signed letter of intent describing the project and its location. In order to install an artwork on City property, the property-owning department (such as Parks or DPS, etc.) must first give permission for the location of the artwork. Once approval is given by the property-owning department, a formal application may be submitted.
2. **Project initiation & site selection:** The proponent shall submit a formal application (see Appendix B) to the PAT to approve the artwork design, at least one month in advance of necessary approvals, with the following information:
 - contact information
 - a project description, including materials and dimensions
 - proposed project site
 - the property-owning department of the proposed project site
 - photos or drawings of the proposed artwork

- details of the installation and/or deinstallation including any equipment required, as well as lighting and sound plans (if pertinent)
- estimated cost and proposed funding source
- call to Artists in the form of an RFP or RFQ, if required (see #2 below)
- Artist resume and selected work samples
- a maintenance plan, depending on the length and needs of the project
- a project schedule including installation, programming and events if applicable, and deinstallation
- insurance value and information
- letters of support from community members or organizers, if available

The applicant shall review the application and scope of the project with the PAT, who will consult with appropriate City staff and the Mayor in order to provide guidance about approvals and permissions from other Boards, Offices, and Commissions that may be required. Approvals must be provided by the jurisdictional Board or Commission during this phase of the project. If the proponent is not self-funding the project, the PAT can assist in helping to identify funding sources for installation, understanding there is no current City fund specifically for public art projects. The Artist shall not begin fabrication until they have secured funding sufficient to cover 100% of all costs associated with the fabrication and installation of the artwork.

3. **Calls to Artists, Artist selection and Contracting:** Calls to Artists are required for Public Art projects with budgets over \$50,000 that are not initiated by an applicant that is currently working with an Artist or Artist group. Calls to Artists are the documents that describe the scope of the project and should provide Artists with everything they need to know to determine if they want to apply for a commission, including budget and schedule. Calls should be publicly accessible and shared with a wide variety of artists. The PAT shall advise the applicant in writing a Call to Artists. There is a sample Call to Artists in Appendix C of this document. For City-initiated public art projects, Calls to Artists are written by the PAT and must be advertised on the City website, Mayor's and NCC's social media accounts, and other public art platforms and listservs, and may be advertised in other places depending on the source of funding. A non-City entity proposing public art on City land, regardless of budget, shall consult with the City prior to sending out an RFP.

The primary metrics for Artist selection are the priorities outlined in the Call to Artists and the PAT Acquisition Priorities (Section II.A.). For City-Initiated public art projects, the PAT members review and rate each proposal independently, then meet publicly to review a select number of proposals that fit the priorities. At that meeting, they may select up to three finalists for interviews by the Public Art Team. During a public meeting, the PAT may deliberate, before voting, on which Artist or team to recommend to the Mayor for execution of a contract. Once awarded a contract, the Artist or Artists will move forward to create their design proposal. If the PAT does not approve any of the Artists who answer the call, the Call to Artists may be re-issued and a new selection process begun. The City of Newburyport, as in all contracts, RFPs, RFQs, and other Calls, retains the ability to not select any applicant for a Call to Artists or to reissue the Call to Artists for that project.

It is the sole authority of the Mayor to provide final approval of the PAT's selection of an artist, and direct staff to proceed with a contract. All contracts for the execution of artworks commissioned by the City of Newburyport shall be made by the Mayor. Commissioning Agreements and other contract appendices are written, reviewed, and negotiated by the City Solicitor, at the request of the Mayor. Depending on the funding mechanism, contracts and Artist Review processes may be subject to state (M.G.L. Chapter 30B, Section 2) and local procurement law in addition to the requirements of this policy. A sample commissioning agreement is included in Appendix D. Project deliverables and payment schedules, agreed upon by the PAT, the Artist or Artist Team, the Mayor

and City Solicitor, will be included in the contract documents.

For non-City-initiated public art projects, the City may contract with the applicant, similar to City-initiated projects. If the applicant is already working with a funder and has a contract for the artwork, the City may instead request an MOU with the applicant, the funder, or both. Each project is unique and the legal agreements will be specific to that project, but the agreements should align with the requirements outlined in this document, clearly define each party's roles and responsibilities, and follow best practices for public art commissioning. Project deliverables and payment schedules, agreed upon by the PAT, the proponent, the Mayor and City Solicitor, will be included in the contract documents.

4. **Design and Development for Short-term Public Art:** Short-term artworks are intended to be installed for five years or less. Artists should fully design and plan their project before submitting it for review by the PAT. The PAT can guide the proponent in completing their information so their project can be reviewed and voted on at a public meeting. The PAT will provide guidance about approvals and permissions from other Boards, Offices, and Commissions that may apply to public art projects. During a public meeting, the PAT may allow public comment or ask the PAT for additional information. This public review ensures transparency in the review process.

The following is the list of information requested for review. Most short-term public art projects won't require everything described, and the PAT will help the proponent determine what they should include in their Final Design.

- *Fabrication:* The proponent and Artist should provide details of all materials and methods used in the creation, installation, and de-installation of the artwork, understanding that any significant changes may require amended approvals from the PAT to be voted on at a public meeting.
 - *Community Engagement:* The applicant should provide evidence of work done to get community feedback and response, such as images from community meetings, flyers and social media postings, and letters of support from the community.
 - *Installation:* The proponent and Artist will coordinate the installation of the artwork with the site owner and update the Public Art Team. The applicant is responsible for securing any permits or approvals that are required by other City agencies. This may include approval from the Parks Commission or DPS, depending on the project site, how the project affects access to the public right of way, or if the installation of the project requires temporary street closures.
 - *Maintenance:* Depending on the length and needs of the project the proponent and Artist should submit a narrative describing how they will maintain or repair the artwork if it is damaged.
 - *Deinstallation:* Short-term projects have a specific, predetermined lifespan. The proponent and Artist should include details of the deinstallation of the artwork with their proposal, including any equipment and/or permitting required. The proponent and Artist are responsible for returning the project site to its original condition after deinstallation.
5. **Design and Development for Long-term Public Art:** Long-term artworks are intended to be installed for five years or more. We encourage applicants considering long-term commissions to think about how the artwork will be experienced in the present moment, as well as the future.

The applicant will work with the PAT to develop a schedule that reflects any capital construction schedule associated with the project, Artist's contract milestones, other Board or Commission approvals, PAT reviews, a working budget, and Artist deliverables for each project phase. The PAT reviews and votes on the applicant's design at a public meeting and may allow public comment or ask for additional information. This public review ensures transparency in the commissioning process. During the presentation of the design at a public meeting, the PAT needs to understand the following:

- *Visualizations:* Drawings, maquettes, renderings, or other plans and renditions of the artwork as it will appear when installed, appropriately scaled and accurately depicting materials, colors, lighting effects, interpretive text, plaque, and/or signage text.

- *Public Engagement:* The applicant should describe or summarize their community engagement, showing effort to connect with and involve Newburyport's residents, and should keep in mind accessibility.
 - *Fabrication Plans:* The Fabrication Plan must detail all materials and methods used in the creation of the artwork. The applicant will work with the PAT and City partner agencies to determine design deliverables requirements. Fabrication must substantially conform to the Fabrication Plan, and any significant changes may require amended approvals from the PAT to be voted on at a public meeting.
 - *Maintenance Recommendations:* The applicant must provide a written document of the Artist's maintenance recommendations for all proposed materials, and an estimated schedule for routine maintenance and preservation of the artwork.
 - *Installation Plans:* When the artwork is associated with a capital project, installation should be incorporated into the capital construction timeline to avoid additional costs and disruptions to the finished site. Detailed installation plans may include but are not limited to site preparation, equipment requirements, and site restoration, when applicable. The applicant must coordinate the installation of the artwork with the site owner, and update the PAT and any pertinent City partner agencies and their contractors. The applicant is responsible for securing any permits or approvals that are required by other City agencies. This may include approval from the Parks Commission or DPS, depending on the project site, how the project affects access to the public right of way, or if the installation of the project requires any temporary street closures. If the artwork installation diverges significantly from the Installation Plan, the PAT may require amended approvals to be voted on at a public meeting.
 - *Plaques and Signage:* The proponent and Artist should include images showing how they will include or otherwise display their name, the title of the artwork, the year it was installed, and the medium.
 - *Description of Artwork:* The applicant must provide a narrative description of the Artwork for the City to use as a source for descriptions of the project on the City's website, public-facing arts database, and other approved uses, including a final summary of the artwork materials, dimensions, and any collaborations or subcontractors who worked on the project.
6. **Final Acceptance:** The applicant shall submit the following within 30 calendar days of completing the installation:
- Documentation that the artwork was installed in conformance with the Installation Plan.
 - A minimum of five (5) high resolution digital files in JPG format of the installed, finished artwork.
7. **Review and Vote:** At the next public meeting after installation, the PAT will review and vote to accept the artwork into the collection via accessioning.

C. Approval Process for Donations

All proposals to donate works of art to the City must be submitted to the Public Art Team for review.

1. **The donation request shall contain the following:**
 - Provenance: includes artwork information, conservation history, and donation agreement (see Appendix E).
 - Maintenance recommendations: outlines how the artwork is to be maintained, and what materials and maintenance procedures are needed to conduct routine maintenance of the artwork (cleaning schedules and minor repairs).
 - Proposed site, if any.
2. **The PAT will review the proposed donation based on the following:**
 - Compliance with this policy.

- Acquisition priorities listed in section II.A.
 - If a site is proposed, the residents adjacent to the site or other stakeholders of the site will be notified and public feedback will be heard.
 - Depending upon the nature of the project, further public engagement and approvals by jurisdictional Boards or Commissions may be required according to the specific requirements for permit application or development review. These approvals must be obtained prior to final approval of the Mayor.
3. **All other processes and procedures**, including final approval and contract execution shall follow the guidelines outlined in this policy.
 4. **Limitations:** Approved proposals for donation must complete the full process, including installation of the artwork, by no more than one year after approval. The Donor may request an extension to the deadline of no more than one additional year. The extension request must be submitted to the PAT for review and approval by the Mayor.

The City is under no obligation to consider for acquisition unauthorized and abandoned art. Instead, the Mayor may choose, at his or her full discretion, to remove and/or dispose of it or consider the work for acquisition consistent with the donation process outlined above.

D. Plaques for Public Artworks

Knowing who created an artwork and when can help provide the context needed to experience an artwork fully. Plaques help the public identify artworks and artists, and enable further explorations of artwork in our collection.

Although there are stand-alone commemorative plaques, tablets, and historic markers in the public art collection, the plaques addressed in this section are used to identify artworks and may provide additional interpretive and educational information.

The PAT will work with Artists and proponents to plan for the inclusion of plaques and other educational and interpretive materials as part of the design proposal.

1. **Standard Information for Plaques for Public Artwork:** Plaques for any artwork should be incidental to the artwork and not a competing focus for the viewer. It shall include the following:
 - Artist name
 - Artwork title and year
 - Brief interpretive text (optional)

**Plaques for public artworks may not include logos (e.g. symbols or trademarks designed for definite recognition in order to avoid the use of public art for advertising or endorsement purposes) or any other kind of advertising or sponsorship information.*

2. **Interpretation and Education:** In addition to artwork plaques, additional educational and interpretive information may be shared on the City of Newburyport's website. Such information may include biographical information about the Artist(s) and/or community proponent(s), descriptions and/or histories of the artwork, materials, scheduled repairs or conservation, and images of the design, fabrication, and/or installation process.

E. Mural Commissions

Murals are public art works that are directly painted on walls or other existing surfaces and can be short-term or long-term commissions. They should follow the guidelines below:

1. **Reviews for murals on City-owned sites:** The PAT will help the Artist determine which City department owns the site and obtain their permission to use it. All mural proposals will follow a modified review process at the discretion of the PAT. Mural reviews should generally follow the

guidelines listed under section II.B.4, with the exception of processes that are not pertinent to mural commissions. The PAT will assist the applicant in discerning which areas of this document are pertinent.

2. **Street Murals:** Street murals are murals painted directly on a roadway. Because the wear and tear on these artworks is intense, they are usually not considered long-term projects, and should follow the process for short-term commissions described in Section II.B.3. Because they are painted on streets, the applicant and PAT shall work closely with DPS to review these projects.
3. **Murals Proposed for Private Sites:** Mural projects on private property require Artists to obtain approval from the landowner. The PAT should be notified about the project and may offer support. The PAT may be able to assist or offer guidance on approvals from other City departments, like reviews by the Historic Commission for projects in historic districts, or street occupancy permits for the installation from DPS. Murals proposed for privately owned surfaces usually don't require City review, unless they fall within special overlay districts as identified in the City's Zoning ordinance. The PAT won't review or vote on these artworks.

F. Memorial Commissions

A memorial is a public expression designed to shape and honor a shared memory of a particular person, group, or event, and may be long- or short-term. The City of Newburyport has an expansive collection of public art memorials and is unable to accept most new long-term memorial design proposals. We are most interested in those that strongly align with the Curatorial Vision, in particular those that add to the diversity of the City's public art collection.

Memorial Commissions must also meet these additional design criteria:

- **Historical Significance to Newburyport:** The memorial subject must have a direct connection to the City of Newburyport.
- **Public Interest:** Proposals should be considerate of the broader community's interests and needs, particularly the community at the proposed project site.
- **Timing and Timelessness:** Proposed long-term memorials should retain significance and relevance in the future and be meaningful to future generations. The PAT requires a minimum of five years and recommends a minimum of ten years between an event or the passing of an individual and their commemoration to allow for sufficient historical perspective.
- **Subjects Not Previously Memorialized:** The memorial should not honor living individuals or duplicate any existing memorials. We inventory all public memorials and strongly recommend applicants review our Public Art Collections database prior to submitting a memorial proposal. We give preference to proposals that memorialize subjects not currently represented or subjects that are under-represented in the City's collection.
- **Appropriate Location:** The memorial should have a historical or thematic relationship with its proposed location. We prefer proposals for locations where memorials or other artworks do not already exist.
- **Longevity:** Applicants should consider the long-term impact of the memorial and its ability to withstand conditions such as weather or vandalism, as well as changing times and attitudes about its importance, impact on the community, and relevance to the Curatorial Vision.

Artists or community proponents can submit their memorial proposals to the PAT at least one month in advance of necessary approvals. The Artist or proponent shall present their memorial proposal for the PAT to review based on the criteria above, as well as the priorities listed in Section II.A. The PAT may invite representatives from other relevant City departments, boards or commissions relevant to the proposed memorial. Memorial proposals must also include:

- Identification of the person, group, or event to be memorialized;
- A brief narrative explaining the importance of the person, group, or event and its direct, proven relationship to the City;
- A brief explanation of the visitor experience of the proposed memorial; and
- A rationale for the proposed memorial location.

If approved, the memorial project will then follow a regular commissioning outlined in Section II.B above.

III. Procedures for the deaccessioning of public artwork

A. Removal from the Collection: Deaccessioning

Deaccessioning is the formal removal of an artwork from the City's collection. Under deaccessioning, artworks are not only removed from public view but also permanently removed from the City's collection.

The decision to deaccession is only made after careful deliberation and depends in part on the artwork's accessioning. Deaccessioning requires documentation (e.g., signed Deed of Gift, bill of sale, minutes of the PAT meetings, artist's contract, etc.) proving that the PAT has the right to transfer ownership of the artwork in question. Any deaccession process should be carried out with the utmost caution, especially with regard to the determination of ownership of the artwork.

The PAT must approve the deaccessioning of an artwork by a majority vote at a public meeting. Artworks are permanently removed from the collection by sale, donation, disposal, or destruction. Additionally, the deaccessioning of all City-owned artwork may be subject to State and City procurement statutes.

The PAT will make all reasonable efforts to notify any living Artist, or the estate of any deceased Artist, whose work is being considered for deaccessioning. Any correspondence about the deaccessioning will be included in the collection file.

1. **Criteria for Deaccessioning:** Criteria for determining whether an object should be deaccessioned include, but are not limited to the following:
 - The use of the site has changed, the artwork is no longer appropriate, and the artwork cannot be reasonably protected or maintained.
 - The artwork has been damaged beyond reasonable repair and/or requires extensive conservation or restoration that is cost-prohibitive.
 - The artwork is beyond the capability of the City of Newburyport to properly display, maintain, and/or store.
 - The artwork endangers public safety in its current condition.
 - The artwork was stolen from its location and cannot be retrieved.
 - The artwork was commissioned or accepted with the provision or understanding that it was to have a limited lifecycle or installation period.
2. **Requirements for Deaccessioning:** If the PAT recommends considering an artwork for deaccessioning, the Public Art Team will draft a report including information about:
 - The Artist (if living, or their estate),
 - Provenance,
 - Current condition of the artwork and the site,
 - Project stakeholders when it was commissioned, and during its' lifespan,
 - Evidence of current public opinion and recent community engagements about the artwork,
 - Recommendations from the Public Art Team.

The PAT keeps a permanent record of the conditions and circumstances under which artworks are deaccessioned from City property. Artworks which no longer fit the Curatorial Vision, are severely deteriorated, or otherwise pose a threat to public safety will be relocated or discarded following any relevant City of Newburyport legal processes. The City of Newburyport does not sanction the sale or gift of deaccessioned artworks to its employees, officers, trustees, or to their immediate families or representatives.

3. **Process for Deaccessioning:** If the PAT recommends an artwork for deaccessioning, the following steps shall be followed:
 - Notice to the Artist: Artists whose works are being considered for deaccession will be notified by all diligent means, including a legally-verifiable means of communication,
 - Review by the PAT: the PAT will provide recommendations in the form of a report including the grounds for deaccessioning, written evaluation, photo documentation of the condition of the artwork, damage and/or theft report, and proposed removal and/or demolition work plan,
 - Public Engagement: the PAT will facilitate the opportunity for the public to provide feedback on the decision with the purpose of informing the decision of the PAT,
 - Final decision: the final decision to deaccession a public art piece shall be made by the Mayor. The Mayor may decide to a) accept the recommendation, b) reject the recommendation, or c) delay the decision and request more information,

IV. Procedures for the care of public artwork

A. Collection Care

1. **Use and Activities:** The City of Newburyport shall carry out the reasonable responsibilities required to provide necessary care for all collections acquired.
2. **Maintenance Plan for New Acquisitions:** All public art commissions shall be required to include maintenance recommendations that outline how the artwork is to be maintained, and what materials and maintenance procedures are needed to conduct routine maintenance of the artwork. A maintenance plan shall include the following elements:
 - Materials, and sources of the materials, used in the artwork,
 - Methods of fabrication and the name of any individual other than the Artist who was involved in the construction or creation of the artwork,
 - Installation specifications,
 - Method and frequency of required maintenance, including planning for protections against the effects of tactile/public interaction and/or environmental conditions, and;
 - Additional contacts for maintenance issues, if warranted.
3. **General Maintenance:** Maintenance of the artwork, as distinguished from technical maintenance, restoration or repair, shall be the responsibility of the host department. This may include cleaning schedules and protective measures against normal wear, weather, and vandalism.
4. **Technical Maintenance:** The City will, by its own qualified member on the PAT and/or a City staff member, be responsible for the following:
 - Maintaining a comprehensive Collection Database of all existing artwork in the City's public art collection. This inventory will include but not be limited to:
 - a. An accession number unique to the specific artwork;
 - b. Artwork information – title, year of commission, location of artwork;
 - c. Artist information – artist name, contact information, artist copyright;

- d. Gift acknowledgement, bill of sale, Artist contract, or written justification for acquisition;
 - e. Photographs;
 - f. Significant correspondence relating to the artistic intent of the artwork, provenance of the artwork, and any associated press;
 - g. Maintenance and conservation information – materials, fabrication methods, installation specifics, ongoing photographic documentation, additional parties contact information, material-specific warranties;
 - h. Commissioning information – commission amount, contract reference number, contract amendments, final contract amount, funding source, additional departments or organizations involved, warranties and insurance.
- The PAT will conduct biennial condition reports and periodic physical assessment of its public art collection.
 - The PAT will annually identify restoration and repair needs for the public art collection that surpass general maintenance. This reporting will be used in creating annual work plans and appropriating funding.
5. **Funding for Public Art Maintenance:** The host department is responsible for the care and custody of art owned by the City of Newburyport and as such will make all reasonable efforts to maintain public artworks as determined by maintenance recommendations written by the Artist or proponent. Because there is no City funding mechanism geared toward public art maintenance, the PAT shall carefully consider the maintenance implications of a public art piece during deliberations on its approval.
 6. **Insurance:** The City maintains an umbrella fine arts insurance policy, procured by the City's Finance Director. This policy is reviewed and updated annually by the PAT, the host department and the Finance Director. The policy covers objects owned by the city, subject to certain limitations. Objects are covered at the Artist's stated value. In the case of damage or loss to the collections the PAT may decide to file an insurance claim. The PAT shall request through the Finance Director to file a claim and keep all appropriate documentation in the object record.

GLOSSARY OF TERMS

These are working definitions provided by the Public Art Policy Advisory Group of the Mayor's Office for use with the PAT and NCC and are subject to change.

Accession is the act of formal documentation and legal acceptance of an approved acquisition or loan to the City's collection of artwork.

Acquisition is the formal process used to accept additions to the City's art collection. It includes the initial proposal/donation, evaluation, negotiation, PAT approval, and final accessioning of works of art.

Approval is the action of officially agreeing or accepting a proposal or artwork put before the PAT.

Artist(s) refers to individuals or teams who self-define as Artists for the purpose of creating artworks for the City.

Artistic concept is an early narrative of what the artwork might be and does not include any visual design.

Artwork, alternatively **Work of Art**, refers to all paintings, mural decorations, statues, bas-reliefs, sculptures, monuments, fountains, arches, ornamental gateways, and other structures of a permanent character intended for ornament or commemoration.

Call to Artists is a public solicitation for submissions from Artists and Artist teams for a specific project or opportunity. Calls to Artists include, but are not limited to, Requests for Proposals (RFP) and Requests for Qualifications (RFQ).

Collection refers to artworks that have been commissioned, donated, purchased, or otherwise acquired by the City of Newburyport via majority vote of the PAT this includes artworks colloquially referred to as Public Art. The public art team documents artworks included within this definition as well as short-term artworks and artworks on private property such as murals and artworks that have been deaccessioned.

Collection record is a digital and adjoining hard-file that retains all physical and intellectual information regarding an individual or grouping of artwork(s).

Commission is the act of requesting and authorizing the production of a work of art.

Commissioning Agreement is a supplemental document to the City's standard contract form that outlines the project schedule, reviews, and votes by the PAT, Intellectual Property rights, and other legal rights.

Community is a group of people with a common interest, whether defined by geography, identity, experience, or activity.

Conservation is the treatment and/or stabilization of a collection object by qualified conservators, identified by the PAT.

Culture is the customs, arts, social institutions, and achievements of a particular nation, people, or other social group.

Curator is a person who researches and interprets a collection of artworks and/or objects.

Deaccessioning is the formal process used to permanently remove an object from the collection.

Diversity, in relation to artworks, means including or involving a wide range of distinct forms, peoples, and/or perspectives. In relation to people, diversity means having a high number of races, cultures, ethnicities and other demographic groups represented within a group, organization, or institution.

Donations are an existing artwork offered as a gift to the City for placement under the City's jurisdiction; alternatively, a monetary gift for the purposes of acquiring a work of art for the City.

Equity is the respectful treatment and fair involvement of all people in a society. It is the state in which everyone has the opportunity to reach their full potential.

Historic refers subjectively to a thing or an event of importance when studied as part of the past.

Historical figure is a person who lived in the past and may be perceived as having had a significant impact on people's lives and society through their deeds and accomplishments.

Inclusion means involving people of all backgrounds, abilities, perspectives, and beliefs within a group, institution, or decision. This is more than achieving diversity; it is ensuring all individuals have a true sense of belonging.

Informational plaque is signage that provides context or additional interpretive and educational information for public artworks.

Long-term refers to the projected lifespan of artworks. Long-term artworks employ durable materials and archival fabrication methods and are intended to be fixed to one site for an enduring lifespan. Long-term artworks require care and maintenance as capital assets. Long-term artworks contribute to the lasting legacy of the City's collection for a minimum of five years.

Memorial is a public expression designed to shape and honor a shared memory of a particular person, group, or event. In public art, memorials may be long or short-term.

Mural is a large painting traditionally applied to a wall or ceiling, especially in a public space. Our definition of mural extends to artworks painted or applied on the ground or other surface.

Project theme is a general idea that conceptualizes the subject matter to be expressed through a public artwork.

Proponent is an individual, group, organization, or business that proposes a work of art for placement or installation on a city-owned site, and/or, when applicable, the Artist(s) who created the proposed gift.

Provenance is the documentation of an object's origins and history of ownership.

Public Art is a colloquial term for Artworks that are intentionally experienced from, or sited upon, publicly accessible locations. These Artworks on City of Newburyport property are part of the City's formal Collection of Artworks or have been approved for temporary placement on City of Newburyport property by the PAT.

Public Art is a dynamic cultural activity from conception and design, to fabrication and installation, to formal accession or temporary approval at a PAT public meeting. Public Art may affirm or challenge existing community aesthetics and values and may critique, augment, or invite exploration of established narratives and the physical landscape.

Public Art Team (PAT) refers to the advisory committee to the NCC that supports the commissioning, review, selection, acceptance, and care of art in public places. They have exclusive authority to recommend approval and commissioning of artworks intended to be added to the City's collection or be placed on City property to the Mayor, and act as a transparent, independent entity that holds public meetings to vote on matters concerning the City's art collection. All of its members are residents of the City. Members are appointed by their representative groups, and may serve for up to 3 years. The PAT is comprised of 7 members, including 2 members of the Newburyport Cultural Council, 2 members of the Newburyport Arts Collective, 1 member of the Parks Commission, 1 City Staff and 1 representative from the Mayor's office.

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.

Request for Proposals (RFP) is a call to Artists to submit a specific project proposal. The RFP outlines all the details of the project, including community values, vision, and site use.

Request for Qualifications (RFQ) is a call to Artists to submit their qualifications. The RFQ outlines all the details of the project and any qualifications needed.

Stakeholder typically refers to community groups, businesses, organizations, or individuals with explicit or implicit interest in a public art project.

Short-term refers to the projected lifespan of artworks. Works of art intended as short-term have an intended lifespan of anything from less than one day up to five years. Short-term works may be at one or more sites, and the artwork may be dynamic in nature.

APPENDIX A: FAQ FOR ARTISTS

City of Newburyport Public Art Policy

FAQs for Artists

Thank you for your interest in advancing Public Art in the City of Newburyport. The City recognizes the value of public art to its citizens and visitors. We are committed to fostering a collection of artworks and public art projects that reflect our people, ideas, histories, and futures, engage our communities and directly respond to, enrich, and enliven our environment. We seek public art that is driven by an artistically strong vision, enhances the diversity and equity of the existing collection, and possesses durability appropriate to the lifespan of the work.

In order to help streamline the process for Artists and other proponents of public art, we have created this document to answer frequently asked questions and outline the steps by which public art is approved. Newburyport's Public Art Team (PAT) is a transparent, independent entity who has the exclusive authority to recommend approval and commissioning of public artwork. The PAT also acts as a resource for artists and proponents as they navigate this process, and we encourage you to reach out to them for assistance.

F. What does the Public Art Policy apply to?

- D. This policy applies to all works of art (both temporary and permanent) that are commissioned, hosted, or displayed on public property and are 1. funded in whole or in part through City funds or maintained by the City; 2. sited on City property, building or right-of-way, or 3. consistently accessible to the public.
- E. This policy does not apply to 1. artwork that is on display within City offices/ buildings that have restricted or regulated access, or 2. temporary exhibitions such as gallery displays, booth displays at art festivals, and museum exhibits displayed on City-owned or -managed property.

B. What are the PAT's priorities for approving public art?

- 8. Artistic aims, objectives and goals
 - What has the artist accomplished with the work and does it align with the proposed project goals?
 - Is the work relevant to the City, its values, culture and people and does it contribute to the fabric of the City? Is the work an integral component of the overall project?
 - Is the artwork appropriate for the community it serves?
- 9. Diversity and accessibility
 - Does the artwork reflect or advance the City's curatorial vision and policy of inclusivity?
 - Does the artwork advance lesser-told or lesser-known stories, non-traditional imagery, diverse perspectives, and/or minority voices?
- 10. Placement/siting
 - What is the relationship of the work to the site? Is it appropriately scaled?
 - Will the work help to anchor and activate the site and enhance the surrounding area?
 - Will there be convenient public access to the site?
 - What are the utility requirements of the artwork?
- 11. Fabrication, handling and installation
 - Are the projected costs accurate and realistic?
 - Have written estimates been obtained from qualified contractors?

- Does a certain site present any special obstacles to installation?
 - Can the work easily be removed if necessary?
12. Maintenance requirements
- Is the work suitable for outdoor display or special indoor environments?
 - Are the materials durable? Does the work have a limited lifespan due to any inherent weakness?
 - What are the existing or projected maintenance requirements of the work? Are they excessive or cost prohibitive? Are any unusual or ongoing costs likely?
 - What are the artist's suggestions for protection of the work from vandalism?
13. Liability and safety
- Is any aspect of the work a potential safety hazard?
 - Will fencing or other types of security measures be required?
14. Liability and safety
- Is the artwork priced appropriately for the City?
 - How will the artwork impact the capacity for future acquisitions?

C. How do I get my public art project approved and installed?

8. **Initial communication:** The proponent must first initiate communication with the City by submitting a signed letter of intent describing the project and its location. In order to install an artwork on City property, the property-owning department (such as Parks or DPS, etc.) must first give permission for the location of the artwork. Once approval is given by the property-owning department, a formal application may be submitted.
9. **Project initiation & site selection:** The proponent shall submit a formal application (see attached) to the PAT to approve the artwork design, at least one month in advance of necessary approvals.

The applicant should review the application and scope of the project with the PAT, who will consult with appropriate City staff and the Mayor in order to provide guidance about approvals and permissions that may be required from other Boards, Offices, and Commissions. If the applicant is not self-funding the project, the PAT can assist in helping to identify funding sources for installation, understanding there is no current City fund specifically for public art projects.

10. **Process for Short-term Public Art:** Short-term artworks are intended to be installed for five years or less. Artists should fully design and plan their project before submitting it for review by the PAT at a public meeting. During the public meeting, the PAT may allow public comment or ask for additional information. This public review ensures transparency in the review process.

The following is the list of information requested for review. Most short-term public art projects won't require everything described, and the PAT will help the applicant determine what they should include.

- *Fabrication:* The applicant should provide details of all materials and methods used in the creation, installation, and de-installation of the artwork, understanding that any significant changes may require amended approvals from the PAT to be voted on at a public meeting.
- *Community Engagement:* The applicant should provide evidence of effort to get community feedback (i.e. images from community meetings, social media postings, or letters of support)
- *Installation:* The applicant is required to coordinate the installation of the artwork with the site owner and update the Public Art Team. The applicant is responsible for securing any permits or approvals that are required by other City agencies. This may include approval from the Parks

Commission or DPS, depending on the project site, how the project affects access to the public right of way, or if the installation of the project requires temporary street closures.

- *Maintenance*: Depending on the length and needs of the project, the applicant should submit a narrative describing how they will maintain or repair the artwork if it is damaged.
- *Deinstallation*: The applicant should include details of the deinstallation of the artwork, including any equipment and/or permitting required. The applicant is responsible for returning the project site to its original condition after deinstallation.

11. **Process for Long-term Public Art**: Long-term artworks are intended to be installed for five years or more. We encourage applicants considering long-term commissions to think about how the artwork will be experienced in the present moment, as well as the future.

The applicant will work with the PAT to develop a schedule that reflects any capital construction timelines associated with the project, contract milestones, other Board or Commission approvals, PAT reviews, a working budget, and Artist deliverables for each project phase. The PAT reviews and votes on the applicant's design at a public meeting and may allow public comment or ask for additional information, ensuring transparency in the commissioning process. During the presentation of the design at a public meeting, the applicant should provide the following:

- *Visualizations*: Drawings, maquettes, renderings, or other plans and renditions of the artwork as it will appear when installed, appropriately scaled and accurately depicting materials, colors, lighting effects, interpretive text, plaque, and/or signage text.
- *Public Engagement*: Describe or summarize community engagement, showing effort to connect with and involve Newburyport's residents, and being sensitive to accessibility.
- *Fabrication Plans*: Detail all materials and methods used in the creation of the artwork. The applicant will work with the PAT and City partner agencies to determine design deliverables requirements. Fabrication must substantially conform to the Fabrication Plan, and any significant changes may require amended approvals from the PAT.
- *Schedule*: Present a schedule detailing the artwork process, proposed installation date and budget.
- *Maintenance Recommendations*: Provide a written document of the Artist's maintenance recommendations for all proposed materials, and an estimated schedule for routine maintenance and preservation of the artwork.
- *Installation Plans*: When the artwork is associated with a capital project, installation should be incorporated into the capital construction timeline to avoid additional costs and disruptions to the finished site. Detailed installation plans may include site preparation, equipment requirements, site restoration, etc. The applicant must coordinate the installation of the artwork with the site owner, and update the PAT and any pertinent City agencies and their contractors. The applicant is responsible for securing any permits or approvals that are required by other City agencies. This may include approval from the Parks Commission or DPS, depending on the project site, how the project affects access to the public right of way, or if the installation of the project requires temporary street closures. If the artwork installation diverges significantly from the Installation Plan, the PAT may require amended approvals.
- *Plaques and Signage*: Include images showing how the Artist's name, title of the artwork, year it was installed, and medium used will be included or displayed.
- *Description of Artwork*: Provide a narrative description of the Artwork for the City to use as a source for descriptions of the project on the City's website, public-facing arts database, and other approved uses, including a final summary of the artwork materials, dimensions, and any collaborations or subcontractors who worked on the project.

12. **Final Acceptance**: The applicant will submit the following within 30 calendar days of installation:

- Documentation that the artwork was installed in conformance with the Installation Plan.
- A minimum of five (5) high resolution digital files in JPG format of the installed, finished

artwork.

13. **Review and Vote:** The PAT will review and vote to accept the artwork into the collection.

D. When do I need an RFP?

Calls to Artists are required for Public Art projects with budgets over \$50,000 that are not initiated by an applicant who is currently working with an Artist. If a Call to Artists is required, the PAT will assist the applicant in developing and executing one. Applicants should not initiate RFP's for projects on City property without prior discussions with the City.

E. What kind of legal contract do I need?

Legal agreements for public artworks may be executed in several ways. The City may contract with the Artist or applicant directly. If the applicant is already working with a funder and has a contract for the artwork, the City may request an MOU with the applicant, the funder, or both. Each project is unique and the legal agreements will be specific to that project.

F. Can I make a donation of public art?

All proposals to donate works of art to the City must be submitted to the Public Art Team for review. Donation requests to the PAT should contain the following:

- Provenance: includes artwork information, conservation history, and transfer of ownership.
- Maintenance recommendations: outlines how the artwork is to be maintained, and what materials and maintenance procedures are needed to conduct routine maintenance of the artwork (cleaning schedules and minor repairs).
- Proposed site, if any.
- Feedback from abutters to the proposed site or stakeholders of the site, or effort shown to connect with and involve neighbors and stakeholders, including feedback and approvals from jurisdictional Boards or Commissions.
- How the art complies with the criteria listed in section B.

G. Will a plaque be allowed or required for public artworks?

Knowing who created an artwork and when can help provide the context needed to experience an artwork fully. Plaques help the public identify artworks and artists, and enable further explorations of artwork in our collection.

The PAT will work with Artists and proponents to plan for the inclusion of plaques and other educational and interpretive materials as part of the design proposal. Plaques should be incidental to the artwork and not a competing focus for the viewer. Logos, trademarks and symbols designed for recognition and advertising or endorsement are not allowed. Plaque information should include the following:

- Artist name
- Artwork title and year
- Brief interpretive text (optional)

H. Can I paint a mural?

Murals are public art works that are directly painted on walls or other existing surfaces and can be short-term or long-term commissions. For City-owned properties, the PAT will help the Artist determine which City department owns the site and obtain their permission to use it. All mural proposals will follow a modified review process, at the discretion of the PAT, to meet the guidelines of the City's Public Art Policy. The PAT will assist the applicant in the process.

Mural projects on private property require Artists to obtain approval from the landowner. The PAT should be notified about the project and may offer support. The PAT may be able to assist or offer guidance on

approvals from other City departments, like reviews by the Historic Commission for projects in historic districts, or street occupancy permits from DPS. Murals proposed for privately owned surfaces usually don't require City review, unless they fall within special overlay districts as identified in the City's Zoning ordinance. The PAT won't review or vote on these artworks.

Street murals are painted directly on a roadway. Because the wear and tear on these artworks is intense, they are usually not considered long-term projects, and should follow the procedures for short-term public art approvals. The applicant should work closely with DPS to review these projects.

I. Can I propose a memorial?

A memorial is a public expression designed to shape and honor a shared memory of a particular person, group, or event, and may be long- or short-term. The City of Newburyport has an expansive collection of public art memorials and is unable to accept most new long-term memorial design proposals unless they strongly align with the City's curatorial vision, in particular those that add to the diversity of the City's public art collection. Memorials must also meet these additional criteria:

- **Historical Significance to Newburyport:** The memorial subject must have a direct connection to the City of Newburyport.
- **Public Interest:** Proposals should be considerate of the broader community's interests and needs, particularly the community at the proposed project site.
- **Timing and Timelessness:** Proposed long-term memorials should retain significance and relevance in the future and be meaningful to future generations. The PAT requires a minimum of five years and recommends a minimum of ten years between an event or the passing of an individual and their commemoration to allow for sufficient historical perspective.
- **Subjects Not Previously Memorialized:** The memorial should not honor living individuals or duplicate any existing memorials. We inventory all public memorials and strongly recommend applicants review our Public Art Collections database prior to submitting a memorial proposal. We give preference to proposals that memorialize subjects not currently represented or subjects that are under-represented in the City's collection.
- **Appropriate Location:** The memorial should have a historical or thematic relationship with its proposed location. We prefer proposals for locations where memorials or other artworks do not already exist.
- **Longevity:** Applicants should consider the long-term impact of the memorial and its ability to withstand conditions such as weather or vandalism, as well as changing times and attitudes about its importance, impact on the community, and relevance to the Curatorial Vision.

Applicants can submit their memorial proposals to the PAT at least 3 months in advance of the requested installation date and follow the process for approval listed in C above. Memorial proposals must also include:

- Identification of the person, group, or event to be memorialized;
- A brief narrative explaining the importance of the person, group, or event and its direct, proven relationship to the City;
- A brief explanation of the visitor experience of the proposed memorial; and
- A rationale for the proposed memorial location.

APPENDIX B: APPLICATION APPLICATION FOR PUBLIC ART

Name: _____

Address: _____

Phone: _____

Email: _____

Project Description, including title of artwork, materials and dimensions:

*please attach photos or drawings of the proposed artwork

Proposed project site:

Property-owning department:

Installation and/or deinstallation details, including equipment required, lighting and sound plans (if pertinent):

Estimated cost and funding source:

Artist name:

*please attach resume and selected work samples

Maintenance plan:

Project schedule including installation date, programming and events if applicable, and deinstallation date:

Insurance value:

*Please attach letters of support from community members or organizers, if available

Questions? Contact _____, at email _____@_____.com

Submit your application to:
City of Newburyport, Public Art Team
c/o _____
60 Pleasant St.
Newburyport, MA 01950

APPENDIX C: SAMPLE CALL TO ARTISTS

**THE CITY OF NEWBURYPORT ANNOUNCES
THE CLIPPER CITY RAIL TRAIL PHASE II
MURAL PROJECT**

in collaboration with the Newburyport Art Association

CALL FOR ARTIST PROPOSALS



Clipper City Rail Trail: Phase II



Introduction

The City of Newburyport's Clipper City Rail Trail Phase II project offers an exciting opportunity for artists to contribute to the beautification of the trail corridor along a portion of the long fenced section between Harrison and Water Streets. The City of Newburyport, in collaboration with the Newburyport Art Association, invites artists and design professionals to submit proposals for this public art mural project. The murals will be permanently installed on the solid board fencing along this corridor. (Please see photographs of the site below.) The goals of the project include:

- Celebrating, improving, and enhancing the Trail corridor
- Bringing public art to people's everyday lives
- Contributing to the distinct identity of the area
- Responding to the physical, social, and historical characteristics of Newburyport
- Enlivening and activating the public space
- Celebrating the rich connection between the arts and the environment

Vision

The City of Newburyport envisions a number of distinct murals celebrating the distinct setting and City history. A range of themes and subject matter will be considered, including Newburyport's culture, maritime history, landscape and nature, although overtly political, sexual, and/or religious themes will not be appropriate for this setting. Works must be appropriate for general public viewing. The final number of murals installed will depend upon the submissions. The artists selected will work with the review committee to determine the best way to curate the submissions when installed together. An artist may be selected to create more than one panel if he or she can show that he or she can meet the stated time frame.

Site

The 500' section of the Clipper City Rail Trail Phase II corridor between Harrison and Water Streets is lined with 6' solid board white cedar fencing, some of which is raised even higher due to the mounded soil along the sides of the trail. The fence panels measure 6'x8' and have steel fence posts embedded in concrete footings. The mural panels will measure 4' x 6' and fit on the chosen fence panels between the posts.



Mural Panels

After selection of the artwork, high resolution digital files of the artwork will be digitally printed on 4'x6' low-profile ¼" Aluminum Composite Panels, laminated to protect them from ultraviolet radiation, framed with 1.5" metal trim molding, and mounted on the wood fence panels by the City of Newburyport. The City will also install plaques with the artist's name and mural title.

Anticipated Timeline (may vary)

March 23, 2017	Request for Proposals announced
Monday, May 1, 2017	Proposals due
Monday, May 22, 2017	Finalists notified
May 30-June 2, 2017	Selection Committee interviews Finalists
Week of June 19, 2017	Parks Commission public meeting & review
June 2017	Final selections (winners notified along with all finalists)
Friday, August 4, 2017	Digital files due for printing on panels
August 2017	Fabrication of mural panels
September 2017	City Hall exhibition of winning submissions
Week of October 2, 2017	Installation of murals
October 2017	Mural celebration ceremony

Eligibility

Artists and design professionals from the Greater Newburyport area are eligible to submit mural proposals. Newburyport Art Association members and non-members welcome to submit proposals. Must be 18 years or older. Artist teams are also eligible to apply. Please note that if an applicant does not have the capacity to provide a high resolution digital image with good lighting of his or her artwork, then the original art can be brought to the sign company and they can photograph it to provide the image.

Prize

In addition to publicity, the Prize for each winning mural panel is \$500 payable on delivery of a completed digital file (for reproduction on the ACM panel) satisfactory to the Committee by the delivery deadline set by the Committee.

Submission requirements

Digital proposal submissions must be received by the City's Planning Department no later than **4:00 p.m. Monday, May 1, 2017** by email at gvining@cityofnewburyport.com or submission of a labelled thumb drive to Geordie Vining at the Planning Office.

Digital proposal must include:

- an artist statement/letter of interest;

- up to 5 images of a mural design proposal (need not be final work, but a representation of the artist's vision);
- resume or curriculum vitae.

If artist is selected as a finalist, he or she will be required to have an interview with the selection committee. The selection committee, in consultation with the Mayor and the Parks Commission, will be comprised of: Geordie Vining, Senior Project Manager, Newburyport Planning Office; Lise Reid, Newburyport Parks Director; and Elena Bachrach, Executive Director, Newburyport Art Association.

Finalists are anticipated to be notified around Monday May 22, 2017, interviewed during the week after Memorial Day May 30th - June 2nd, and final selections made in June 2017.

Selection Criteria

The selection of artwork for the Clipper City Rail Trail Phase II mural project will be based on the following criteria:

Quality: Concept should draw from the vision of the City's mural project, tapping historical and cultural themes, with possible subcategories of maritime, cultural landscapes, bridges and railroads, and landscape and nature, etc.

Elements of Design: The Artist Selection Committee will review the conceptual proposals and determine those that are the most appropriate for the project.

Cooperation: The artist should have a demonstrated ability to work closely and cooperatively with the committee, volunteers, other artists, and the community.

Communication: The artist must have the ability to clearly communicate concepts visually and through clearly written materials as well as orally during the interview process.

Technical Feasibility: The artist must be able to demonstrate his or her technical ability to complete the mural project proposed.

APPENDIX D: SAMPLE COMMISSIONING AGREEMENT

THIS AGREEMENT, is entered into this _____ day of _____, 20____, by and between [name of city] (hereinafter the “City”), acting by and through the [appropriate department or council] with offices at _____, and [artist’s name or artist’s name d.b.a. business name] (hereinafter the “Artist”) with offices at _____.

WHEREAS, the City has implemented [name of art program] pursuant to [applicable local, state or federal laws, ordinances and/or regulations, and/or funding source] by allocating [amount or type of funding] for the establishment and display of artwork in public places; and

WHEREAS, authority lies with the City to make payments for the [acquisition, design execution, fabrication, transportation, and/or installation] of artworks, including payments for the support of an artist [selection process, design, execution and/or placement of Art]; and

WHEREAS, the Artist is a recognized artist whose work and reputation make the Artist uniquely qualified to create the Artwork; and

WHEREAS, the Artist was selected by the City through [commissioning method or selection procedure] adopted by the City to [design, execute, fabricate and/or install] the Artwork, as described in Exhibit 1 in a public space located at _____ (hereinafter the “Site”); and

WHEREAS, the Artist and City wish to undertake the obligations expressed herein;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

Article 1 Scope of Services

1.1 Artist’s Obligations

- a. The Artist shall perform all services and furnish [all supplies, material and/or equipment (specify if not all)] as necessary for the design and fabrication of the Artwork at the Site in accordance with the specified schedule. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- b. The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the City as set forth in this Agreement. To ensure that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, and safety devices and procedures at the Site, the Artist’s proposal shall be reviewed and approved by the City or Commission, other applicable city departments such as the Department of Public Services and, where appropriate, the project architect to ensure compliance with these objectives.
- c. The Artist shall prepare the design concept and the corresponding budget described in Section 1.3 of this Agreement. The design concept shall include a description of all materials and products utilized in the Artwork and the required routine care and upkeep involved.
- d. Artist shall attend public information meetings with the general public, attend design and construction coordination meetings with City, general contractor, architect and other parties, as

appropriate, to communicate about the Artwork and to ensure appropriate integration and/or installation of the Artwork.

- e. The Artist shall complete the fabrication of the Artwork by the scheduled installation date as provided in Section 1.4(b)(i) of this Agreement.
- f. The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation and maintenance of the Artwork at the Site.
- g. The Artist shall arrange the transportation and installation of the Artwork in consultation with the City. If the Artist does not install the Artwork himself or herself, Artist shall supervise and approve the installation.
- h. Artist shall provide required insurance in amounts and limits specified in Article 6 and Exhibit 4.
- i. Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor.
- j. Artist shall provide a maintenance manual with a description of all materials and products utilized in the Artwork and the required care and upkeep involved.
- k. Artist shall provide photographic documentation of the Artwork.
- l. Artist shall be available with reasonable advance notice for meetings, ceremonies and the like, as necessary.

1.2 City's Obligations

- a. The City shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- b. The City shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by Artist in order to perform.
- c. The City shall be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations, and shall explain any limitations imposed by such laws and/or regulations to the Artist.
- d. The City shall prepare the Site in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement. The City shall be responsible for [all expenses, labor and equipment (specify if not all)] to prepare the Site for the timely transportation and installation of the Artwork. The City shall complete the Site preparations by the scheduled installation date as provided in Section 1.4(b)(i) of this Agreement or shall contact the Artist in writing informing him or her of any delays.
- e. The City shall provide and install a plaque on or near the Artwork containing a credit to the Artist substantially in the following form: [Artist's name, date of publication].
- f. The City shall be responsible for leading the Artist through the required review process. The City shall be responsible for organizing and scheduling meetings with review entities, [listed here, for example, Public Art Team, boards, commissions, etc.] and for providing the Artist written instructions for the materials required at such meetings.

1.3 Design

- a. Concept/Schematic
 - i. The Artist submitted a design concept/schematic (the "Design") with an accompanying budget, pursuant to the City's Public Art Policy, which was (selected/approved) by the Public Art Team. The Design and Budget shall be attached to this Agreement as Exhibit 1 and Exhibit 2, respectively.
- b. Approval & Development Process

- i. The Artist followed the Approval and Development Process outlined in the City’s Public Art Policy, obtaining required approvals in order to comply with any applicable laws, ordinances and/or regulations or for other reasons including, but not limited to, obtaining public input at public meetings and the ensuring the physical integrity of the Artwork or its installation at the Site.
- c. Design/Construction Documents
 - i. The Design will include: a description of the method by which the Artwork is to be fabricated and installed; a description of any operational, maintenance and conservation requirements for the Artwork; a description of the placement of the Artwork at the Site and any site preparations that may be required by the City including, but not limited to, any changes or modifications to any utility system or structure of the Site as necessary.
 - ii. If applicable, the Artist shall prepare structural drawings detailing every physical feature of the construction of the Artwork and its integration with the Site. These drawings shall indicate any risks involved in the construction, integration and maintenance of the Artwork, as well as any third-party subcontractors needed to work on the project.
 - iii. Where appropriate, the Artist shall present such drawings to a qualified engineer, licensed by the state and paid by the Artist, for certification that the Artwork will be of adequate structural integrity and the Artist shall provide the City with such a certification.
 - iv. Where appropriate, the Artist shall present the Design to a qualified conservator, who will make recommendations on the maintenance of the Artwork, and the Artist shall provide a written copy of the conservator’s recommendations to the City.

1.4 Budget, Payment Schedule, Construction Schedule and Progress Reports

- a. Budget
 - i. The Artist shall prepare a budget, which shall include all goods, services and materials, with such costs itemized. The Budget shall be attached to this Agreement as Exhibit 2.
 - ii. Calculation of the budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date.
 - iii. The Artist shall keep a log of the Artist’s project hours and shall retain all original receipts pertaining directly to the project.
 - iv. If the Artist incurs costs in excess of the amount listed in the budget, the Artist shall pay such excess from the Artist’s own funds unless the Artist previously obtained approval for such costs from the City.
- b. Schedule
 - i. The Artist shall notify the City of the tentative schedule for the fabrication and installation of the Artwork, including a schedule for the submission of progress reports and inspections, if any. The Schedule may be amended by written agreement.
 - ii. A schedule for the payment of budget installments is attached to this Agreement as Exhibit 3.

1.5 Fabrication Stage

- a. The Artist shall fabricate [and install] the Artwork in substantial conformity with the Design. The Artist may not deviate from the approved design without written approval of the Public Art Team.
- b. The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork such as the application of protective or anti-graffiti coatings, if applicable, unless the City disapproves. If the

Artwork is being constructed on site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations. Prior to requesting authorization to transport and install the Artwork, the Artist shall be required to provide the City with a list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on site. All additional workers or subcontractors must provide proof of insurance prior to entering the site.

- c. The City shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice.
- d. If the City, upon review of the Artwork, determines that the Artwork does not conform to the Design or Revised Design, the City reserves the right to notify the Artist in writing of the deficiencies and that the City intends to withhold the next budget installment.
- e. The Artist will promptly cure the City's objections and will notify the City in writing of completion of the cure. The City shall promptly review the Artwork, and upon approval shall release the next budget installment. If the Artist disputes the City's determination that the Artwork does not conform, the Artist shall promptly submit reasons in writing to the City within [_____] days of the City's prior notification to the contrary. The City shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the terms of this Agreement shall remain with the City.
- f. The Artist shall notify the City in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for delivery and installation at the Site if the Artwork was fabricated off-site.
- g. The City shall inspect the Artwork within [_____] days after receiving notification pursuant to paragraph (f), prior to installation, to determine that the Artwork conforms with the Design and to give final approval of the Artwork. The City shall not unreasonably withhold final approval of the fabricated Artwork. In the event that the City does withhold final approval, the City shall submit the reasons for such disapproval in writing within [_____] days of examining the fabricated Artwork. The Artist shall then have [_____] days from the date of the City's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the Site unless the Artist has willfully and substantially deviated from the Design without the prior approval of the City. The Artist shall then be held responsible for any expenses incurred in correcting such deviation.
- h. The City shall promptly notify the Artist of any delays impacting installation of the Artwork. Any additional storage fees incurred as a result of such delays are the responsibility of the City. The Artist shall be required to inspect the Site prior to the transportation and installation of the Artwork and shall notify the City of any adverse Site conditions that will impact the installation of the Artwork which are in need of correction.

1.6 Changes to Design

- a. Prior to the execution of any change in the approved design, Artist shall present proposed changes in writing to the Public Art Team for further review and approval. The Artist must provide a detailed description of any significant changes in the artistic expression, design, dimensions and materials of the Artwork that is not permitted by nor in substantial conformity with the already approved design. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the Artwork or the concept of the Artwork as represented in the Design.
- b. If the Public Art Team approves the changes, the City shall promptly notify the Artist in writing. The Artist will also make the required presentations to the approval bodies [List here].
- c. If the Public Art Team disapproves of the changes, the City shall promptly notify the Artist in writing and the Artist shall continue to fabricate the Artwork in substantial conformity with the Design.
- d. The Artist's fee shall be equitably adjusted for any increase or decrease in the Artist's cost of, or

time required for, performance of any services under this Agreement as a result of revisions made to the Design under Section 1.6(a). Any claim of the Artist for adjustment under this paragraph must be asserted in writing within _____ days after the date of the revision by the Artist.

1.7 Installation

- a. Upon the City's final approval of the fabricated Artwork, as being in conformity with the Design, the Artist shall deliver [and install] the completed Artwork to the Site in accordance with the schedule provided for in Section 1.4(b). Transportation fees shall be paid by the [___ indicate City or Artist].
- b. The Artist will coordinate closely with the City to ascertain that the Site is prepared to receive the Artwork. Artist must notify City of any adverse conditions at the Site that would effect or impede the installation of the Artwork. The Artist is responsible for timely installation of the Artwork. The Artist will confer and coordinate with the City to ensure timely coordination with the City's construction team. Artist may not install the Artwork until authorized to do so by the City.
- c. The Artist shall be present to supervise the installation of the Artwork.
- d. Upon written acceptance of the installation, the Artwork shall be deemed to be in the custody of the City for purposes of Article 4 and Article 6 of this Agreement.
- e. Within 30 days after installation of the Artwork, the Artist shall furnish the City with five (5) high-resolution digital files in JPG format the of the Artwork as installed. The photographs must be labeled with the name of the Artwork and the date upon which the photograph was taken. The Artist shall also furnish the City with a full written narrative description of the Artwork.
- f. Prior to the installation of the Artwork, the Artist shall provide the City with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense. The City is responsible for the proper care and maintenance of the Artwork.

1.8 Approval and Acceptance

- a. The Artist shall notify the City in writing when all services as required of both Parties by this Agreement prior to this paragraph have been completed in substantial conformity with the Design.
- b. The City shall promptly notify the Artist of its final acceptance of the Artwork within ____ days after the Artist submitted written notice pursuant to paragraph (a) above. The effective date of final acceptance shall be the date the City submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the City acknowledges completion of the Artwork in substantial conformity with the Design, and that the City confirms that all services as required of both Parties by this Agreement prior to paragraph (c) of this section have been completed. Title to the Artwork passes upon final acceptance and final payment.
- c. If the City disputes that all the services have been performed, the City shall notify the Artist in writing of those services the Artist has failed to perform within _____ days after the Artist submitted written notice pursuant to paragraph (a) above. The Artist shall promptly perform those services indicated by the City.
- d. If the Artist disputes the City's determination that not all services have been performed, the Artist shall submit reasons in writing to the City within _____ days of the City's prior notification to the contrary. The City shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain

with the City.

- e. Upon the resolution of any disputes that arise under paragraphs (c) and (d) of this section, the City shall notify the Artist of its final acceptance of the Artwork pursuant to paragraph (b).
- f. After final acceptance of the Artwork, the Artist shall be available at such time(s) as may be mutually agreed upon by the City and the Artist to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Artwork.
- i. During such public presentations by the Artist, the Artist shall acknowledge the City's role in funding the Artwork.
- ii. The City shall be solely responsible for coordinating public information materials and activities related to public presentations.

Article 2 Taxes

Any state or federal sales, use or excise taxes, or similar charges relating to the services and materials under this Agreement shall be paid by the Artist in a timely fashion. The City shall report payments made to the Artist annually to the Internal Revenue Department in a 1099 statement.

Article 3 Term of Agreement

a. Duration

This Agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to such provisions in the Agreement, shall extend until final acceptance by the City under Section 1.8(b), or submission of final payment to the Artist by the City under Exhibit 3, whichever is later. Extension of time of performance hereunder may be granted upon the request of one Party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both parties, and attached to the schedule under section 1.4(b)(i) (which is attached as Exhibit ____).

b. Force Majeure

The City shall grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

Article 4 Risk of Loss

The Artist shall bear the risk of loss or damage to the Artwork until the City's final acceptance of the Artwork under Section 1.8(b). The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The City shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork is in the custody, control or supervision of the City or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

Article 5 Artist's Representations and Warranties

5.1 Warranties of Title

The Artist represents and warrants that:

- a) the Artwork is solely the result of the artistic effort of the Artist;
- b) except as otherwise disclosed in writing to the City, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- c) the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- d) the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- e) the Artwork is free and clear of any liens from any source whatsoever;
- f) all Artwork created or performed by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party;
- g) the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;
- h) all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence;
- i) these representations and warranties shall survive the termination or other extinction of this Agreement.

5.2 Warranties of Quality and Condition

- a. The Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for [one] year after the date of final acceptance by the City under Section 1.8(b).
- b. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
- c. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.7(f).
- d. If within [one] year the City observes any breach of warranty described in this Section 5.2 that is curable by the Artist, the Artist shall, at the request of the City, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the City. The City shall give notice to the Artist of such breach with reasonable promptness.
- e. If after [one] year the City observes any breach of warranty described in this Section 5.2 that is curable by the Artist, the City shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, the City may seek the services of a qualified restorative conservator and maintenance expert.
- f. If within [one] year the City observes a breach of warranty described in this Section 5.2 that is not curable by the Artist, the Artist is responsible for reimbursing the City for damages, expenses and loss incurred by the City as a result of the breach. However, if the Artist disclosed the risk of this breach in the Proposal and the City accepted that it may occur, it shall not be deemed a breach for purposes of this Section 5.2 of this Agreement.

- g. Acceptable Standard of Display. Artist represents and warrants that:
- i. General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display.
 - ii. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display.
 - iii. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
 - iv. Manufacturer's Warranties. To the extent the Artwork incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to the City.
- The foregoing warranties are conditional, and shall be voided by the failure of the City to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards. If the City fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

Article 6 Insurance

6.1 General

- a. The Artist acknowledges that until final acceptance of the Artwork by the City under Section 1.8(b), any injury to property or persons caused by the Artist's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artist's Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork, regardless of where such loss occurs.
- b. Terms for the procurement and duration of insurance are provided in Exhibit 4.
- c. Required insurance policies are described in Exhibit 4.

6.2 Indemnity

Artist shall indemnify, protect, defend and hold harmless the City and its subdivisions, officials, employees and agents (each a "Covered Person") from and against all liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) ("collectively "Losses") arising from, in connection with or caused by: (a) any personal injury or property damage caused, directly or indirectly, by any act or omission of Artist; or (b) any infringement of patent, copyright, trademark, trade secret or other proprietary right caused by Artist. Notwithstanding the foregoing, Artist shall have no obligation under this Section with respect to any Loss that is caused solely by the active negligence or willful misconduct of the Covered Party and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Artist. Artist acknowledges and agrees that its obligation to defend in this Section: (i) is an immediate obligation, independent of its other obligations hereunder; (ii) applies to any Loss which actually or potentially falls within the scope of this Section, regardless of whether the applicable allegations are or may be groundless, false or fraudulent; and (iii) arises at and continues after the time the Loss is tendered to Artist.

Article 7 Ownership and Intellectual Property Rights

7.1 Title

Title to the Artwork shall pass to the City upon the City's written final acceptance and payment for the Artwork pursuant to Section 1 and Exhibit 5. Artist shall provide the City with a Transfer of Title in substantially the form attached hereto as Exhibit 5.

7.2 Ownership of Documents

One set of presentation materials prepared and submitted under this Agreement shall be retained by the City for possible exhibition and to hold for permanent safekeeping.

7.3 Copyright Ownership

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Artwork for the duration of the copyright.

7.4 Reproduction Rights

- a. In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate [three]-dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the City. However, nothing shall prevent the Artist from creating future Artworks in the Artist's manner and style of artistic expression.
- b. The Artist grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publications provided that these rights are exercised in a tasteful and professional manner.
- c. All reproductions by the City shall contain a credit to the Artist in substantially the following form: [Artist's name, date of publication].
- d. The Artist shall use the Artist's best efforts in any public showing or resume use of reproductions to give acknowledgment to the City in substantially the following form: "an original Artwork commissioned by and in the public art collection of the City."
- e. The Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Artist's name.
- f. If the City wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to, tee shirts, post cards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.
- g. Third Party Infringement. The City is not responsible for any third-party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.

Article 8 Artist's Rights

8.1 General

- a. The Artist retains all rights under state and federal laws including §106A of the Copyright Act of 1976.
- b. The City agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from the Artist.
- c. If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artist may have in law or equity under this contract. Upon written request, the City shall remove the identification plaque and all attributive references to the Artist at its own expense within [_____] days of receipt of the notice. No provision of this Agreement shall obligate the City to alter or remove any such attributive reference printed or published prior to the City's receipt of such notice. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.

8.2 Alterations of Site or Removal of Artwork

- a. The City shall notify the Artist of any proposed significant alteration of the Site that would affect the intended character and appearance of the Artwork. The City shall make a good faith effort to consult with the Artist in the planning and execution of any such alteration. The City shall make a reasonable effort to maintain the integrity of the Artwork.
- b. The City agrees not to arbitrarily remove or relocate the Artwork without first making a good faith effort to contact the Artist. The Artist shall not unreasonably withhold approval of removal or relocation of the Artwork. Should the Artist agree to such removal or relocation, the Artist shall provide the City with written handling instructions. In the event that the Artist is deceased or unable to otherwise give the Artist's consent, the current owner of the copyright of the Artwork shall not unreasonably withhold permission, keeping in mind the intentions of the Artist at the time of commission and fabrication.

Article 9 Permanent Record

The City shall maintain on permanent file a record of this agreement and of the location and disposition of the Artwork.

Article 10 Artist as an Independent Contractor

The Artist agrees to perform all Artwork under this Agreement as an independent contractor and not as an agent or employee of the City. The Artist acknowledges and agrees that the Artist shall not hold himself or herself out as an authorized agent of the City with the power to bind in any manner. The Artist shall provide the City with the Artist's Tax Identification Number and any proof of such number as requested by the City.

Article 11 Nondiscrimination

The Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

Article 12 Assignment of Artwork

The Artwork and services required of the Artist are personal and shall not be assigned, sublet or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the City. The City shall have the right to assign or transfer any and all of the City's rights and obligations under this Agreement, subject to the Artist's consent, if ownership of the Site is transferred; if the Artist refuses to give consent, this Agreement shall terminate.

Article 13 Termination

- a. Either Party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operations; superior governmental regulation or control, public emergency or strike or other labor disturbance. Notice of termination of this Agreement shall be given to the non-terminating Party in writing not less than [_____] days prior to the effective date of termination.
- b. The City may terminate this Agreement without cause upon [_____] days written notice to the Artist. The City shall pay the Artist for services performed and commitments made prior to the date of termination, consistent with the schedule of payments set forth in Exhibit 3 of this Agreement.
- c. If either Party to this agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the other Party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting Party of its intent to terminate specifying the grounds for termination. The defaulting Party shall have [_____] days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate.
- d. If the Artist defaults [for cause other than death or incapacitation], the Artist shall return to the City all funds provided by the City in excess of expenses already incurred. The Artist shall provide an accounting. All finished and unfinished drawings, sketches, photographs and other Artwork products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist. The City shall retain the right to have the Artwork completed, fabricated, executed, delivered and installed. However, the Artist shall retain the copyright in the Artwork and all rights under Article 7 and Article 8.
- e. If the City defaults, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. The City shall pay the Artist for services performed and commitments made prior to the date of termination, consistent with the schedule of payments set forth in Exhibit 3. The Artist shall retain possession and title to the [studies, drawings, designs, maquettes and models] already prepared and submitted or prepared for submission to the City by the Artist under this Agreement prior to the date of termination.
- f. Upon notice of termination, the Artist and his subcontractors shall cease all services affected.

Article 14 Death or Incapacity

If the Artist becomes unable to complete this Agreement due to death or incapacitation, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist for the purpose of Article 13. However, nothing in this Article shall obligate the City to accept the Artwork.

- a. In the event of incapacity, the Artist shall assign the Artist's obligations and services under this contract to another artist provided that the City, in the City's sole discretion, approves of the new artist.

Article 19 Arbitration

If, during the creation of the Artwork, its installation and subsequent existence, either Party breaches this Agreement, each Party agrees to submit to arbitration upon the request of the other provided that the breach is not cured within a reasonable time under paragraph (c) of Article 13.

If an ambiguity arises regarding this Agreement upon which the parties cannot agree or a dispute arises as to the completion of a provision, the Parties shall submit to [arbitration] [mediation].

Each Party agrees to be responsible for its own attorney’s fees except as otherwise provided by statute.

Article 20 Amendments

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.

Article 21 Conflicts of Law

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction or arbitration panel or mediation procedure to be in conflict with the laws, rules, and/or regulations of the United States or the State of Massachusetts, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

Article 22 Choice of Law

This contract shall be governed by the laws of the State of Massachusetts both as to interpretation and performance.

Article 23 Entire Agreement

This Agreement, including the exhibits, comprises all of the covenants, promises, agreements, and conditions between the parties. No verbal agreements or conversations between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligations.

For City:

For Artist:

Name

Name

Title

Title

Date

Date

Exhibit 1 Description of the Artwork

[This exhibit should provide a detailed narrative describing the proposed artwork with explicit detail regarding the overall form or design, scale, dimensions, color, and surface treatment of the Artwork.]

Exhibit 2 Artwork Budget

[The estimated budget for the proposed artwork should be inserted here. The following sample budget worksheet is a guide to some of the costs the budget might include.]

SAMPLE BUDGET WORKSHEET

The following sample budget worksheet is intended to assist artists in planning and developing an estimated budget for public art projects. The following worksheet is intended as a guide only and is not necessarily inclusive of all costs which may be incurred when undertaking a public art project. Not all costs listed will pertain to every project. A contingency of ten percent (10%) of the project total is highly encouraged to cover unexpected costs. The artist's fee is generally 15%–20% of the total project budget for design and fabrication projects. This fee may vary based on the actual work undertaken by the artist and according to the experience and reputation of the artist.

The fee is generally intended to cover the creative work of the artist in developing the project concept. The fee is separate from and does not cover the artist's labor if the artist is responsible for fabrication of the project. Eligible project costs may vary from program to program.

ARTIST FEE (suggested 15%–20% of total project budget)

FINAL DESIGN DEVELOPMENT

Includes final proposal, engineering and/or architectural documents, budget and schedule. Hourly fee for design
Engineering

TRAVEL

Airfare, Car Rental, Per Diem

INSURANCE

(not all insurance is required for each project)

Artwork, Inland Marine, General Liability

Workers' Compensation

Automobile/Hired Vehicle

PROFESSIONAL CONSULTANT FEES

Architect, Structural Engineer, Electrical Engineer, Conservator, Other

(Consultants must be licensed in the State of Massachusetts)

ADMINISTRATIVE EXPENSES

Shop Drawings and Contract Documents, Studio Costs

Supplies, Project Documentation

MATERIALS AND SUPPLIES

(itemize all anticipated aspects and components with per unit and total cost estimates)

FABRICATION COSTS

(include and itemize all portions of subcontracted work and work to be completed by artist)

SITE PREPARATION

(do not include costs covered by the City or others)

TRANSPORTATION

Materials and finished work to the site Storage

Other

INSTALLATION COSTS

Labor

Equipment (crane, scaffolding, or other) Base or Mounting Devices and Components Traffic Barricades/Control

Off-duty police

Landscaping, Site Restoration

Electrical modifications

ADDITIONAL LIGHTING

Design Fixtures Bulbs

Site Preparation, Installation

PERMITS AND TAXES

Sales Tax, Use Tax

Permits

OTHER COSTS CONTINGENCY

(suggested 10% of project total)

TOTAL

Exhibit 3 Payment Schedule

Payment Schedule

The City shall pay the Artist a fixed fee of \$_____, which shall constitute full and complete compensation for all the services performed and materials furnished by the Artist under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and materials provided prior to payment thereof:

- a. _____ upon the execution of this Agreement, recognizing that the Artist will invest time and expense in preparing the Design as set forth under Section 1.3;
- [b. _____ upon submission of the Design as set forth under Section 1.3;]
- [c. _____ upon the City's notification to the Artist of its approval of the Design as set forth under Section 1.3;]
- d. _____ within _____ days after the Artist notifies the City that the Artwork is fabricated and ready for delivery and installation at the Site as set forth under Section 1.5(f);
- [e. _____ within _____ days after the Artist provides the City with photographic documentation and written instructions for the maintenance and preservation of the Artwork as set forth under Section 1.7(e) and (f).]
- f. _____ upon [or within _____ days after] final acceptance of the Artwork by the City as set forth under Section 1.8(e).

Exhibit 4 Insurance

Insurance – General

- a. The Artist shall procure and maintain for the duration of this Agreement, at the Artist's expense, insurance in the kinds and amounts as provided in this Exhibit 4 with insurance companies authorized to do business in Massachusetts. The required insurance shall cover the Artist's employees, agents, contractors or subcontractors. The City, its officials, employees, agents and contractors shall be named as additional insureds. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors.
- b. The duration of the general liability insurance described in Exhibit 4 shall extend for ____ years after the termination of this Agreement.
- c. The Artist and the Artist's subcontractors' insurance coverage shall be the primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents and contractors shall be in excess of the Artist's or the Artist's subcontractors' insurance and shall not contribute with the Artist's or the Artist's subcontractors' insurance. The coverage shall state that the Artist's or the Artist's subcontractors insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. Prior to undertaking any Artwork under this Agreement, the Artist, at no expense to the City, shall furnish to the City a certificate of insurance with original endorsements affecting coverage for each of the insurance policies provided in Exhibit 4. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates must be current and the Artist must submit replacement or renewal certificates of insurance for all the policies expiring during the term of this Agreement. Each certificate shall clearly indicate that the Artist has obtained insurance in the type, amount, and classification as specified in Exhibit 4 and that no material changes, cancellation, suspension or reduction in limits of insurance shall be effective except after [30] days prior written notice to the City. Each certificate shall indicate that the subcontractors are additional insureds or the Artist shall furnish separate certificates for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including, but not limited to, naming the parties as additional insureds.
- e. Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Artist shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of \$[_____].
- f. Despite any changes to or cancellation of insurance, the Artist remains responsible for maintaining the required insurance coverage for the duration of the Agreement.
- g. Failure of the Artist to comply with any of the terms of this Article 6 shall be considered a material breach of this Agreement and cause for its immediate termination.

Insurance Policies

a. Commercial General Liability insurance policy, written on an occurrence form, including all the usual coverages known as:

- i) premises / operations liability
- ii) products / completed operations
- iii) personal / advertising injury
- iv) contractual liability
- [v) broad-form property damage]
- [vi) independent contractor's liability]

Said policy must provide the following minimum coverage:

- i) \$[1,000,000] combined single limit per occurrence for bodily injury, personal injury and property damage.
- ii) \$[1,000,000] annual aggregate

b. Automobile liability insurance policy, including coverage for owned, non-owned, leased or hired vehicles, providing the following minimum coverage:

- i) bodily injury liability of \$[50,000] for each person,
- ii) \$[300,000] per occurrence,
- iii) property damage liability of \$[25,000] for each occurrence.

The Artist agrees to keep in good standing a valid driver's license at all times, where appropriate, during the term of this Agreement.

[c. Transportation/Cartage insurance all-risk. Coverage must include loading, transportation and unloading of the Artwork. If the Artwork is to be loaded, transported or unloaded by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to Artist through the date of loading under Exhibit 3.]

[d. All Risk Installation insurance which covers physical damage to or destruction of the Artwork. If the Artwork is to be installed by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to Artist through the date of the beginning of installation of the Artwork under Exhibit 3.]

[e. Worker's Compensation and Employers' Liability insurance in accordance with the statutory requirements of the State of _____ providing coverage for any and all employees of Artist. The Artist shall require all subcontractors to carry this coverage also. The minimum coverage for the Worker's Compensation and Employers' Liability insurance shall be \$[100,000]. If, however, the Artist does not have any employees as defined by state statutes and regulations and does not wish to cover himself or herself for Worker's Compensation, the Artist shall sign the following statement:

["I, do not have, nor intend to have for the full term of this Agreement, any employees. Furthermore, I do not wish to obtain or be covered under any Worker's Compensation insurance coverage and, therefore, am signing this statement in lieu of providing the above require Worker's Compensation coverage."]

(Artist's signature)

(Print Artist's name)

Exhibit 5

Transfer of Title

STATE OF Massachusetts

COUNTY OF Essex

TRANSFER OF TITLE

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the undersigned Artist located at the address noted below does hereby sell, transfer and convey to the City of Newburyport, its assigns and successors, all right, title and interest in the ownership of the Artwork commissioned by Agreement of _____ and as described therein.

Title: _____.

Location: _____.

IN WITNESS WHEREOF, Artist has executed this written transfer of title on this the ____ day of ____, 20__.

WITNESS

ARTIST

ADDRESS

Sworn to and subscribed
before me this ____ day
of _____, 20__.

SOC. SEC. NO. _____

NOTARY PUBLIC
My Commission Expires: _____
(NOTARY SEAL)

APPENDIX E: SAMPLE DONATION AGREEMENT

City of Newburyport [Sculpture] Donation Agreement

Agreement made this _____ day of _____, 20__ by and among the City of Newburyport and _____ (the "Donor") whose address is _____.

Whereas the Donor intends to donate a [sculpture] by the Artist _____ entitled "_____" (hereinafter the "Artwork", a photograph of which is attached hereto as Exhibit A) as part of the permanent collection of public art to be owned by the City of Newburyport and displayed in [City Park] or at another location in accordance with the provisions of this Agreement as specified below in "Display of Artwork," and the City of Newburyport has agreed to accept this gift;

Now therefore, in consideration of the foregoing and the mutual promises and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Care and Maintenance of the Artwork:** The City of Newburyport shall provide for the care and maintenance of the Artwork as necessary.
2. **Insurance:** The City of Newburyport agrees to insure the Artwork with an insurance value of \$_____ based on documentation provided by the Donor.
3. **Display of Artwork:** The City of Newburyport agrees to display the sculpture in a public location at _____. In the future, if in the sole judgement of the City, the Artwork requires relocation, the City shall notify the Donor of its intention to move the Artwork. The Artwork may not be sold.
4. **Plaque/Sign:** The City shall arrange for a permanent plaque regarding the Artwork to be displayed with the Artwork wherever the Artwork may be located.
5. **Indemnification:** The City of Newburyport shall indemnify and hold harmless the Donor and the Artist from and against any loss, cost, damage, expense and/or claim for personal injury or other injury arising from exhibition of the Artwork in the City of Newburyport, including, without limitation, costs of defense and reasonable attorneys' fees. The parties hereto acknowledge that G.L. c.21, Section 17C protects a property owner, manager, or agent from liability for negligence where the public is permitted to use the land for recreational or educational purposes without paying a fee.

6. **Theft, Damage or Destruction of the Artwork:** In the event the Artwork is stolen, lost, vandalized, damaged or destroyed, the City shall attempt to use available insurance payments to repair or replace the Artwork with a work of art of comparable stature and value.
7. **Publicity and Public Information:** Any online or promotional material about the Artwork should include a reference to the Donor as follows: “ _____’s [sculpture] _____ was permanently gifted to the City of Newburyport in _____ by the generous donation of _____.”
8. **Photographs and other Media or Reproductions.** The City may use photographs, video or film and written information of and about the Artwork. The Artwork cannot be sold in any digital, printed or online form without written permission from and compensation to the Artist.
9. **Claims, Disputes and Controversies:** The headings contained in this Agreement are for reference only and shall not affect the meaning or interpretation of this Agreement. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts. The parties submit to the jurisdiction of the courts of the Commonwealth of Massachusetts, specifically the Superior Court of Essex County, Massachusetts for all matters arising under this Agreement, and by their signatures, the parties agree to specifically exclude all other jurisdictions and venues as a choice of forum for all disputes connected to or arising from this Agreement and relationship. All claims, disputes and controversies arising out of or in relation to the performance, interpretation, application or enforcement of this Agreement, including but not limited to breach thereof, shall be referred to mediation before, and as a condition precedent to the initiation of any adjudicative action or proceeding, including arbitration. All mediation shall be held in Essex County, Massachusetts and the parties agree to specifically exclude all other jurisdictions and venues as a choice of forum for all disputes connected to or arising from this Agreement and relationship. Each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but, if any such provision is held to be prohibited or invalid, such provision will be ineffective only to the extent of such prohibition invalidity, without invalidating the remainder of the Agreement. This agreement contains the entire understanding of the parties with respect to its subject matter. There are no restrictions, promises or warranties other than as set forth herein. All additional promises or warranties must be agreed to by the parties and attached in writing to this Agreement.

Donor(s)

Signature(s) _____

Name(s) (type or print) _____

Date _____

Address _____

Telephone _____

Email _____

Artist

Signature _____

Name (print or type) _____

Date _____

Public Art Team

Chair signature _____

Name (print or type) _____

Date _____

City of Newburyport

Mayor's signature _____

Name (print or type) _____

Date _____



Newburyport Public Art Policy

Presentation to City Council

June 12, 2023

Photo Credit: Bob Watts



Presentation Overview



WHY IS THIS
IMPORTANT?



HOW WILL IT WORK?



QUESTIONS?

Why is this important?

- Currently no clear path toward reviewing and approving public art
- Many requests go to the Parks Commission, who does not have the skill set to review works of art, expressed discomfort in doing so
- Newburyport recognizes the value of public art to its residents and visitors, its an important part of our civic and cultural fabric and an essential building block in enlivening our public spaces
- Opportunity to clearly define our process and encourage public art

How will it work?

The Public Art Team

- Advisory committee that supports commissioning, review, selection, acceptance and care of art in public spaces, raises awareness
- Publicly held meetings and votes, transparency
- 7 members: 2 Cultural Council, 1 Newburyport Art, 1 local artist, 1 Parks Commissioner, 1 City staff, 1 representative from Mayor's office



How will it work?

Acquisition Priorities

- Artistic aims, objectives & goals
- Diversity and accessibility
- Placement/siting
- Fabrication, handling & installation
- Maintenance requirements
- Liability & safety
- Affordability



Photo Credit: Bob Watts

What does it cover?

- All works of art that are commissioned, hosted, or displayed, including both temporary and permanent works, and meet all the following criteria:
 - Funded in whole or in part through City funds or maintained by the City;
 - Sited on City property, building, or right-of-way
 - Consistently accessible to the public.



What doesn't it cover?

- Artwork on display within City offices or City buildings that have restricted public access or regulated access
- Temporary exhibitions of art (gallery displays, booths at art festivals, etc.) displayed on City-owned or -managed property where the owner has or intends to retain ownership or sell it; assume all responsibility associated with the display; remove it after an agreed upon time.
- Public art on private property

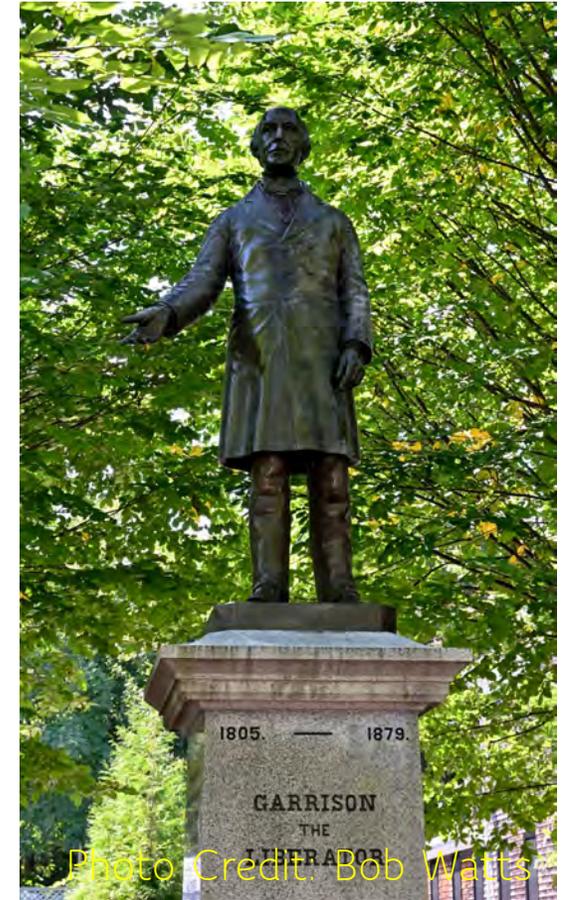


Photo Credit: Bob Watts



Questions?

COMMITTEE ITEMS

Committee Items – June 12, 2023

Budget & Finance

In Committee:

- TRAN00154_05_22_2023 DPS: General Fund-Free Cash \$253,294.14 & Snow & Ice-Labor \$17,840.72 to Snow & Ice-Expenses \$271,134.86
- TRAN00155_05_22_2023 Health Insurance: General Fund-Free Cash \$61,195 to Health Insurance Premiums \$61,195
- TRAN00156_05_22_2023 Fire Dept: FIR Dues & Memberships \$1,291.54 to Emergency Mgmt. Coordinator \$922.58 & Emergency Mgmt. Deputy Coordinator \$368.96
- TRAN00157_05_22_2023 Police: POL Fuel/Oil Vehicle \$8K, POL Misc. Supplies \$2K, & POL MIS/Comm. \$2K to POL Maint-Equipment \$12K
- TRAN00158_05_22_2023 Library: LIB Salary Librarian \$7K & LIB Salaries Staff \$13K to LIB Purchase Books \$3K, LIB Heat/Electricity \$12K, & LIB Maint-Equipment \$5K
- ORDR00457_05_22_2023 FY24 Revolving Funds Spending Limits
- ORDR00451_05_08_2023 PEG Center Gift Acceptance



CITY OF NEWBURYPORT

FY 2023

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

TRANSFER/APPROPRIATION REQUEST

2023 MAY 16 10 25 36

Department: Department of Public Services

Submitted by: Sean R. Reardon, Mayor

Date Submitted: 5/22/2023

Transfer From:

Account Name:	General Fund - Free Cash	Balance:	\$ 1,244,843.00
Account Number:	01-35910	Category:	n/a
Amount:	\$253,294.14	Trans I/O:	\$ 2,718,333.00

Why Funds Are Available:

The Massachusetts Department of Revenue certified Free Cash for FY2023 at \$3,963,176. These funds are available for any legal expenditure with the approval of the Mayor and a vote of the City Council. Includes pending transfer(s) in committee.

Transfer From:

Account Name:	Snow & Ice - Labor	Balance:	\$ 17,840.72
Account Number:	01423001-51301	Category:	\$ 17,840.72
Amount:	\$17,840.72	Trans I/O:	\$ -

Why Funds Are Available:

A surplus is anticipated at year-end.

Transfer To:

Account Name:	Snow & Ice - Expenses	Balance:	\$ (271,134.86)
Account Number:	01423002-52901	Category:	\$ (271,134.86)
Amount:	\$271,134.86	Trans I/O:	\$ -

Why Funds Are Needed:

Snow and ice expenses are variable depending on winter weather conditions. This account is used to pay the cost of contractors hired to clear snow, equipment maintenance, as well as, materials such as salt and sand. State law allows communities to deficit spend in this category, however the deficit must be removed by fiscal year-end.

Sean R. Reardon, Mayor:



Date: 5/16/2023

Ethan R. Manning, Auditor:



Date: 5/16/2023

City Council Action:

City of Newburyport
Snow & Ice Expenditures Past 10 Years
 As of 5/16/2023

Fiscal Year	Snow & Ice Labor			Snow & Ice Expense ⁽¹⁾			Total		
	Budget	Actual	Surplus/ (Deficit)	Budget	Actual	Surplus/ (Deficit)	Budget	Actual	Surplus/ (Deficit)
FY2014	\$90,000	\$119,133	(\$29,133)	\$90,000	\$299,109	(\$209,109)	\$180,000	\$418,241	(\$238,241)
FY2015	\$90,000	\$173,007	(\$83,007)	\$90,000	\$712,489	(\$622,489)	\$180,000	\$885,496	(\$705,496)
FY2016	\$95,000	\$38,277	\$56,723	\$95,000	\$179,791	(\$84,791)	\$190,000	\$218,068	(\$28,068)
FY2017	\$100,000	\$141,202	(\$41,202)	\$100,000	\$292,402	(\$192,402)	\$200,000	\$433,604	(\$233,604)
FY2018	\$100,000	\$107,921	(\$7,921)	\$100,000	\$283,897	(\$183,897)	\$200,000	\$391,819	(\$191,819)
FY2019	\$105,000	\$93,518	\$11,482	\$105,000	\$259,412	(\$154,412)	\$210,000	\$352,930	(\$142,930)
FY2020	\$105,000	\$105,331	(\$331)	\$120,000	\$201,465	(\$81,465)	\$225,000	\$306,796	(\$81,796)
FY2021	\$110,000	\$109,762	\$238	\$150,000	\$265,499	(\$115,499)	\$260,000	\$375,261	(\$115,261)
FY2022	\$115,000	\$144,560	(\$29,560)	\$175,000	\$367,607	(\$192,607)	\$290,000	\$512,167	(\$222,167)
FY2023	\$120,000	\$102,159	\$17,841	\$193,000	\$464,135	(\$271,135)	\$313,000	\$566,294	(\$253,294)

⁽¹⁾ Cost of contractors, chemicals and other non-labor costs related to snow and ice removal.

Newburyport Snow & Ice Expenditures Past 10 Years





CITY OF NEWBURYPORT FY 2023

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

TRANSFER/APPROPRIATION REQUEST

Department: Health Insurance

Submitted by: Sean R. Reardon, Mayor

Date Submitted: 5/22/2023

Transfer From:

Account Name:	<u>General Fund - Free Cash</u>	Balance:	<u>\$ 1,244,843.00</u>
Account Number:	<u>01-35910</u>	Category:	<u>n/a</u>
Amount:	<u>\$61,195.00</u>	Trans I/O:	<u>\$ 2,718,333.00</u>

Why Funds Are Available:

The Massachusetts Department of Revenue certified Free Cash for FY2023 at \$3,963,176. These funds are available for any legal expenditure with the approval of the Mayor and a vote of the City Council. Includes pending transfer(s) in committee.

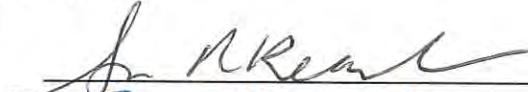
Transfer To:

Account Name:	<u>Health Insurance Premiums</u>	Balance:	<u>\$ 768,806.19</u>
Account Number:	<u>01914001-51700</u>	Category:	<u>\$ 828,052.54</u>
Amount:	<u>\$61,195.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Needed:

This account was underbudgeted for FY'23. Additional funds are needed to pay June 2023 health insurance premiums for city and school employees.

Sean R. Reardon, Mayor:



Date: 5/16/2023

Ethan R. Manning, Auditor:



Date: 5/16/2023

City Council Action:



CITY OF NEWBURYPORT FY 2023 TRANSFER/APPROPRIATION REQUEST

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA
2023 MAY 16 P 12:45

Department: Fire Department
Submitted by: Stephen Bradbury, Jr., Acting Chief **Date Submitted:** 5/22/2023

Transfer From:

Account Name:	<u>FIR Dues & Memberships</u>	Balance:	<u>\$ 1,920.00</u>
Account Number:	<u>01220007-57300</u>	Category:	<u>\$ 1,920.00</u>
Amount:	<u>\$1,291.54</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Available:
 A surplus is anticipated at year-end.

Transfer To:

Account Name:	<u>Emergency Mgmt. Coordinator</u>	Balance:	<u>\$ 1,846.60</u>
Account Number:	<u>01291001-51101</u>	Category:	<u>\$ 2,169.92</u>
Amount:	<u>\$922.58</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Needed:
 A deficit is anticipated in this account due to additional staffing that was needed during FY'23 to cover for the former chief's medical leave.

Transfer To:

Account Name:	<u>Emergency Mgmt. Deputy Coordinator</u>	Balance:	<u>\$ 323.32</u>
Account Number:	<u>01291001-51102</u>	Category:	<u>\$ 2,169.92</u>
Amount:	<u>\$368.96</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Needed:
 A deficit is anticipated in this account due to additional staffing that was needed during FY'23 to cover for the former chief's medical leave.

Sean R. Reardon, Mayor:  Date: 5/16/2023
 Ethan R. Manning, Auditor:  Date: 5/16/2023
 City Council Action:



CITY OF NEWBURYPORT FY 2023

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

TRANSFER/APPROPRIATION REQUEST

2023 MAY 17 P 3:52

Department: Police
Submitted by: Mark Murray, Marshal **Date Submitted:** 5/22/2023

Transfer From:

Account Name:	<u>POL Fuel/Oil Vehicle(s)</u>	Balance:	<u>\$ 23,326.75</u>
Account Number:	<u>01210004-54801</u>	Category:	<u>\$ 45,633.77</u>
Amount:	<u>\$8,000.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Available:

A surplus is anticipated at year-end.

Transfer From:

Account Name:	<u>POL Misc. Supplies</u>	Balance:	<u>\$ 4,463.41</u>
Account Number:	<u>01210004-55800</u>	Category:	<u>\$ 45,633.77</u>
Amount:	<u>\$2,000.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Available:

A surplus is anticipated at year-end.

Transfer From:

Account Name:	<u>POL MIS/Communications</u>	Balance:	<u>\$ 8,553.77</u>
Account Number:	<u>01210008-58501</u>	Category:	<u>\$ 40,265.74</u>
Amount:	<u>\$2,000.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Available:

A surplus is anticipated at year-end.

Transfer To:

Account Name:	<u>POL Maint-Equipment</u>	Balance:	<u>\$ (5,898.61)</u>
Account Number:	<u>01210002-52402</u>	Category:	<u>\$ 915.21</u>
Amount:	<u>\$12,000.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Needed:

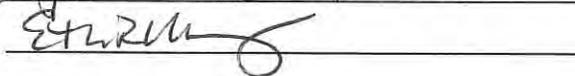
This account is in a deficit and there is only \$915 left in the overall purchase of services category. This is primarily due to the unforeseen expense of repairing the building's generator and replacing the oil tank. Funds are needed to pay bills through year-end, including utilities and vehicle maintenance.

Sean R. Reardon, Mayor:



Date: 5/17/2023

Ethan R. Manning, Auditor:



Date: 5/17/2023

City Council Action:



CITY OF NEWBURYPORT FY 2023

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA
2023 MAY 22

TRANSFER/APPROPRIATION REQUEST

Department: Library

Submitted by: Sara Kelso, Head Librarian

Date Submitted: 5/22/2023

Transfer From:

Account Name:	<u>LIB Salary Librarian</u>	Balance:	<u>\$ 23,326.75</u>
Account Number:	<u>01610001-51101</u>	Category:	<u>\$ 241,338.46</u>
Amount:	<u>\$7,000.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Available:

A surplus is anticipated at year-end due to the hiring of a new Head Librarian at a lower rate.

Transfer From:

Account Name:	<u>LIB Salaries Staff</u>	Balance:	<u>\$ 4,463.41</u>
Account Number:	<u>01610001-51156</u>	Category:	<u>\$ 241,338.46</u>
Amount:	<u>\$13,000.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Available:

A surplus is anticipated at year-end due to multiple position vacancies.

Transfer To:

Account Name:	<u>LIB Purchase Books</u>	Balance:	<u>\$ (6,286.60)</u>
Account Number:	<u>01610002-55102</u>	Category:	<u>\$ 29,101.15</u>
Amount:	<u>\$3,000.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Needed:

This account is in a deficit, even with nearly \$7,000 in books already billed to the Friends – Special Gifts to offset. A minor deficit in the purchase of services category is expected for expenses at the end of May and early June for outstanding billed items not covered by other budget line item balances (such as Audio/Visual, which has ~39% remaining balance of ~\$9,000).

Transfer To:

Account Name:	<u>LIB Heat/Electricity</u>	Balance:	<u>\$ 4,005.66</u>
Account Number:	<u>01610002-52101</u>	Category:	<u>\$ 29,101.15</u>
Amount:	<u>\$12,000.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Needed:

\$82,000 has been budgeted for Heat & Electricity for FY23. \$77,994.34 of this amount has been spent. Heat and Electricity bills for May and June 2023 have not yet arrived. Heat and electricity expenses have averaged \$7,800/month in FY23 thus far. Account balance as of 5/17/23 is \$4,005.66. An additional \$11,600 is anticipated in cost to cover remaining billed balances for the year. The anticipated increase in cost for Heat & Electricity has been factored into the proposed FY24 budget.

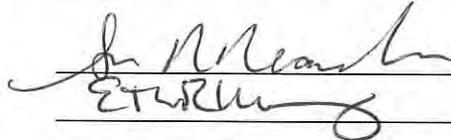
Transfer To:

Account Name:	<u>LIB Maint-Equipment</u>	Balance:	<u>\$ 15,281.89</u>
Account Number:	<u>01610002-52402</u>	Category:	<u>\$ 29,101.15</u>
Amount:	<u>\$5,000.00</u>	Trans I/O:	<u>\$ -</u>

Why Funds Are Needed:

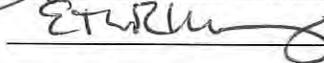
\$31,185.42 has been billed to HVAC costs thus far for Maintenance Equipment in FY23. Current account balance as of 5/17/23 is \$15,281. An outstanding bill of \$10,213 will be paid with May 23, 2023 bills, leaving balance at ~\$5,000. An additional \$10,000 may be needed for repairs and ongoing maintenance in May and June. The anticipated increase in cost for HVAC maintenance and repair has been factored into the proposed FY24 budget.

Sean R. Reardon, Mayor:



Date: 5/17/2023

Ethan R. Manning, Auditor:



Date: 5/17/2023

City Council Action:

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

THAT, The CITY COUNCIL of the City of Newburyport accepts the following gifts and donations in accordance with M.G.L. Chapter 44, Section 53A:

Donor:	The PEG Center for Art & Activism
Amount:	\$2,000.00
Purpose:	Purchase and planting of five (5) river birch trees along the Clipper City Rail Trail (near the locomotive structure).

Councillor Sharif I. Zeid

In city council May 8, 2023:

Motion to refer to Budget & Finance by Councillor Zeid, seconded by Councillor Preston. Roll call vote. 11 yes. Motion passes.



IN CITY COUNCIL

ORDERED:

May 22, 2023

THAT, the City of Newburyport fix the maximum amount that may be spent during fiscal year 2024 beginning on July 1, 2023 for the revolving funds established in city ordinances for certain departments, boards, committees, agencies or officers in accordance with Massachusetts General Laws Chapter 44, Section 53E½, as follows:

Revolving Fund	Department, Board, Committee, Agency or Officer Authorized to Spend from Fund	FY2023 Spending Limit	FY2024 Spending Limit	Change
Council on Aging	Director of Council on Aging	\$40,000	\$40,000	\$0
Recreational Services	Director of Youth Services	\$550,000	\$600,000	\$50,000
Historical Commission	Director of Planning & Development	\$2,500	\$2,500	\$0
Electrical Inspector	Building Commissioner	\$110,000	\$110,000	\$0
Plumbing Inspector	Building Commissioner	\$70,000	\$70,000	\$0
Gas Inspector	Building Commissioner	\$60,000	\$60,000	\$0
Disabilities Commission	ADA Coordinator	\$7,500	\$7,500	\$0
Emma Andrews Library	Director of Public Services	\$30,000	\$30,000	\$0
Transient Vendors	Director of Public Health	\$20,000	\$20,000	\$0
Planning & Zoning	Director of Planning & Development	\$70,000	\$70,000	\$0
Animal Control	Director of Public Health	\$6,000	\$6,000	\$0
Tree Commission	Newburyport Tree Warden	\$10,000	\$10,000	\$0
Health Programs	Director of Public Health	\$35,000	\$35,000	\$0
Veterans Services	Director of Veteran's Services	\$2,000	\$2,000	\$0
City Hall Maintenance	Director of Public Services	\$5,000	\$5,000	\$0
Senior/Community Center Maintenance	Director of Public Services	\$40,000	\$40,000	\$0
Parks Maintenance	Director of Public Services	\$15,000	\$15,000	\$0
Solid Waste	Recycling/Energy Manager	\$100,000	\$100,000	\$0
Assessor's Office	Assessor	\$2,000	\$2,000	\$0

Councillor Sharif I. Zeid

In City Council May 22, 2023:

Motion to refer to Budget & Finance by Councillor Zeid , seconded by Councillor Wright. Roll call vote. 11 yes. Motion passes.

Committee Items – June 12, 2023

General Government

In Committee:

- APPT00390_04_24_2023
- APPT00406_05_22_2023

Caitlin Haire 43 Prospect St. Board of Registrars 5/1/2026

Murphy Hesse Toomey & Lehane LLP City Solicitor 7/1/2023-1/31/2024
50 Braintree Hill Office Park Suite 410 Braintree MA 02184



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
SEAN R. REARDON, MAYOR

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA
2023 APR 20 A 10:53

60 PLEASANT STREET - P.O. BOX 550
NEWBURYPORT, MA 01950
978-465-4413 PHONE
MAYOR@CITYOFNEWBURYPORT.COM

To: President and Members of the
City Council

From: Sean R. Reardon, Mayor

Date: April 24, 2023

Subject: Appointment

I hereby appoint, subject to your approval, the following named individual as a full-time Registrar for the Newburyport Board of Registrars. This term will expire on May 1, 2026.

Caitlin Haire
43 Prospect Street
Newburyport, MA 01950

A proven team player with the ability to adapt quickly, think critically, and develop/maintain strong interpersonal relationships. Strong communication, organizational and problem-solving skills. Ability to connect the dots across business units to increase output across the board.

EXPERIENCE

Cannella Media DTC 2011 – Present

VICE PRESIDENT, MARKETING & COMMUNICATION: 2021 – present

In addition to VP Strategic Revenue responsibilities and key achievements, create organizational structure and direction to marketing and communication efforts. Centered on prospecting, retargeting, and retention of potential and existing clients:

- Build and execute annual marketing plan.
- Lead offline and online marketing initiatives.
- Identify targeted exposure opportunities and PR efforts.
- Champion and manage implementation of inbound marketing, sales and CRM software for 360-degree visibility into pipeline performance along with KPI monitoring and analysis; ongoing management.
- Mentoring of junior marketing team member for increased performance and productivity.
- Continue to execute on Vice President, Strategic Revenue responsibilities.

Key Achievements:

- Launched marketing & communication department off success in Vice President, Strategic Revenue role.
- Managed social media content calendar, encompassing more than 250 posts during first year of ongoing efforts.
- Supervised increase in Instagram followers by 800% and engagement by 300% during first year of sustained efforts.
- Supervised increase in LinkedIn followers by 15%, reactions by 2,750%, & comments by 1,410% during first year of sustained efforts.
- Built operational process surrounding five key marketing pillars.
- Managed team of three freelancers: designer, website developer, and writer.
- Updated and improved onboarding process with the addition of two new business units.

VICE PRESIDENT, STRATEGIC REVENUE: 2019 – 2021

Responsible for a range of disciplines that organizationally touch on all aspects of the sales cycle and client retention, with an added focus on new business operations:

- Shepherd all new clients from close of sales cycle through operations and analytics onboarding to account management transition.
 - Implemented next generation of client onboarding to account for evolving client and campaign sophistication with an emphasis on standardizing and streamlining process.
- Orchestrate account management processes review, recommendations, implementation, and execution.
 - Implement company-wide initiatives with goal of client retention.
- Own content development process, including original content for publication.
- Implement standardized style guide and brand guidelines across all internal and external outputs.
- Built centralized repository of past, current, and prospective accounts for efficiency and visibility.
- Execute internal and external event planning.
- Mentoring of junior sales executives.

Key Achievements:

- Onboarded approximately 70 campaigns and 25 new clients.
- Negotiated approximately 30 agreements for three business units.
- Managed coordination of six departments for seamless client experience.
- Increased efficiency and accuracy of onboarding through stronger communication and collaboration across three business units.
- Managed creation, approval and dissemination of a variety of prospect and client facing communication promoting Cannella offerings and solutions.

VICE PRESIDENT, BUSINESS DEVELOPMENT: 2011 - 2019

Created and built client relationships with focused interaction to obtain new billings:

- Identified target clients and strategic alliances; managed day-to-day operations of new business process; and provided organizational and analytical expertise to the business development process.
- Managed campaign teams by serving as liaison between clients, vendors, and media buyers; analyzed campaign performance and proactively made recommendations to ensure campaign success and maximum profitability.
- Spearheaded company's events, marketing, and PR efforts for targeted industry exposure.

Key Achievements:

- Responsible for 17% of company billings during first three years; average 5% year-over-year increase in billing performance.
- Established business development department as an integral part of business operations.
- Expanded base of strategic allies to discover potential prospects and referral opportunities.
- Maximized existing clients' campaign performance by identifying missed opportunities between business units — broadcast, cable, and performance-based media — leading to increased billings and client satisfaction.
- Restructured new client on-boarding and setup process, resulting in quicker speed to market with a goal of maximizing client's revenue opportunities.

Williams Worldwide Television 2008 – 2011

MARKETING MANAGER

- Procured top direct response products for international markets.
- Planned, implemented, and oversaw international product distribution for 10-20 products annually.
- Provided single point for client contact on creative, sales, and logistics issues.

Key Achievements:

- Expanded supplier base to include top U.S. companies to procure top products for sale in international markets, helping to increase annual total product sales by approximately 20%.
- Successfully negotiated improved payment terms from an average of 50% deposit to 20% deposit; lowered product costs by approximately 10%; shortened lead times from an average of 6 weeks to 4 weeks; and reduced minimum order quantities to accommodate small test orders.
- Organized three departments – sales, media, and logistics – to ensure campaign elements were working in unison for optimum product performance and profit.
- Ensured maximized product sales through the generation and analysis of campaign status reports.
- Increased company opportunities by identifying industry trends and consumer needs through research of both international and domestic markets and products.

EDUCATION

Boston University

College of Arts and Science

Bachelor of Arts, English – Cum Laude

Minor in Journalism



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
SEAN R. REARDON, MAYOR

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

2023 MAY 16 P 1:16

60 PLEASANT STREET - P.O. Box 550
NEWBURYPORT, MA 01950
978-465-4413 PHONE
MAYOR@CITYOFNEWBURYPORT.COM

To: President and Members of the City Council
From: Sean Reardon, Mayor
Date: May 22, 2023
Subject: Appointment

I hereby appoint, subject to your approval, the following named firm to serve in the office of City Solicitor. This term will expire January 31, 2024.

Murphy Hesse Toomey & Lehane LLP
50 Braintree Hill Office Park
Suite 410
Braintree, MA 02184

MEMORANDUM

TO: President Shand and Members of the City Council

FROM: Mayor Sean Reardon

RE: City Solicitor Appointment

DATE: May 16, 2023

I am pleased to appoint law firm Murphy, Hesse, Toomey and Lehane (MHTL), LLP as City Solicitor for the City of Newburyport. MHTL serves as legal counsel to more than 150 Massachusetts entities and is engaged in virtually every aspect of municipal law, including, but not limited to, litigation and administrative law, land use, zoning, public governance, procurement and contracts, labor and employment, finance and tax recovery matters, civil rights, elections, licensing, and document drafting and negotiation.

Attorney Karis L. North is the proposed lead municipal legal counsel, and Attorney Sarah C. Spatafore is the proposed lead labor and employment legal counsel. They will be backed up by other experienced attorneys from their Municipal Law Group and Labor and Employment Group. This proposed combination of attorneys routinely work with each other and other members of the Firm to provide seamless representation to the cities, towns and districts the Firm represents as Town Counsel.

Karis L. North has been practicing municipal and public sector law since 2006, and has over twenty years of experience counseling and resolving complex disputes for public clients. She is currently Town Counsel for the Town of Natick, Special Counsel to the Towns of Cohasset and Burlington, and provides legal services to other cities and towns in Massachusetts. Ms. North is also an experienced litigator on behalf of municipalities and municipal agencies, private parties, and non-profit organizations.

Her practice is focused on counseling and advocacy on behalf of municipal governments and agencies. She provides representation and advice in the areas of municipal governance, public records and open meeting law, regulatory and environmental counseling and enforcement, real estate transfers and transactions, affordable housing, land use and planning, conflicts of interest, and town meetings. Ms. North also represents municipalities in collective bargaining, arbitrations and other labor proceedings, as well as in wage and hour litigation and in employment litigation.

Ms. North has a B.S. from Cornell University and received her J.D. *cum laude* from Vermont Law School, where she was the Managing Editor of the *Vermont Law Review*. She is admitted to practice in state and federal courts in Massachusetts. Ms. North is a Director of the Massachusetts Municipal Lawyer's Association and a member of the Vermont Law School Board of Trustees, where she chairs the Governance Committee.

Attorney Sarah C. Spatafore is a partner with the firm. She practices primarily in the labor and employment area, representing both public and private clients. Ms. Spatafore also handles education issues. Ms. Spatafore has represented clients before a number of courts and administrative tribunals at both the state and federal level. Ms. Spatafore regularly advises clients on a variety of issues related to labor and employment, represents clients on issues related to collective bargaining, grievances, and arbitrations, and has conducted numerous workplace investigations both for existing clients and also as an outside investigator.

Ms. Spatafore graduated from Bates College. She received her Juris Doctor, with Honors, from Boston College Law School. In law school, Ms. Spatafore interned at the Massachusetts Superior Court.

My office selected MHTL after interviewing three firms and requesting proposals for services from all of them. MHTL offers competitive rates that are very similar to those we currently receive from our City Solicitor. They have a large enough firm that we believe they will be able to meet all our needs for services, while also being able to devote the resources necessary to understand the unique needs of our City. They have a firm understanding of Mayor/Council relations and have worked with Charters that are very similar to those of the City of Newburyport. They also have significant experience in the labor, land use, and municipal operations issues that we have required the most legal assistance from over the last few years.

We are very appreciative of our current City Solicitor, KP Law, for all their assistance over the last 12 plus years, and we look forward to working with them on their remaining cases with us. KP Law has indicated that they will work with us to close out any issues in which they are still engaged, and will assist with the transition to our new City Solicitor. We may retain KP Law as Special Counsel on any issues for which we still need their assistance.

May 8, 2023

VIA EMAIL & FIRST CLASS MAIL

Mayor Sean Reardon
Newburyport City Hall
60 Pleasant Street
Newburyport, MA 01950

***Re: Murphy, Hesse, Toomey & Lehane, LLP
City Solicitor Legal Services Proposal***

Dear Mayor Reardon:

I am writing in response to our meeting of April 26, 2023, to express our Firm's strong interest in providing City Solicitor legal services to the City of Newburyport ("Newburyport"). Our Firm serves as legal counsel to more than 150 Massachusetts entities. We are engaged in virtually every aspect of municipal law, including, but not limited to, litigation and administrative law, land use, zoning, conservation, environmental, real estate, public governance, procurement and contracts, labor and employment, collective bargaining, discrimination, harassment, discipline, eminent domain, finance and tax recovery matters, civil rights, elections, licensing, and document drafting and negotiation. Our broad and unique blend of legal experience, understanding of federal, state and municipal government, and appreciation of local issues, needs, and customs make Murphy, Hesse, Toomey & Lehane, LLP the ideal choice to serve as City Solicitor for the City of Newburyport.

Attorney Karis L. North is the proposed lead municipal legal counsel, and Attorney Sarah C. Spatafore is the proposed lead labor and employment legal counsel. They will be backed up by other experienced attorneys from our Municipal Law Group and our Labor and Employment Group. This proposed combination of attorneys routinely work with each other and other members of the Firm to provide seamless representation to the cities, towns and districts the Firm represents as Town Counsel. A hallmark of our Firm's practice is accessibility. Through a combination of in person, telephone and electronic communication, we will be fully accessible to the City of Newburyport fully capable of providing an immediate response to any legal issue that may arise. Please see the attached for Biographies of our proposed Team and other Firm attorneys that may be assigned to the City of Newburyport, as well as the Firm's price proposal.

We would be extremely honored to serve as City Solicitor to Newburyport and are committed to providing outstanding service and ensuring that the City's legal needs are fully satisfied.

Mayor Sean Reardon
City of Newburyport
May 8, 2023
Page 2

Thank you for considering Murphy, Hesse, Toomey & Lehane, LLP. We look forward to hearing from you in the near future. In the meantime, please contact us if we can be of service or provide any additional information to you.

Sincerely,



Karis L. North



Sarah C. Spatafore

Enclosures

ATTORNEY BIOGRAPHIES

Municipal Counsel

Karis L. North - Karis L. North has been practicing municipal law for over fifteen years and has more than twenty-five years of experience counseling and resolving complex regulatory and land use matters for her clients. She is currently lead counsel for the Towns of Natick and Mendon, and special counsel to the Towns of Cohasset and Dartmouth. She also counsels the Towns of Milton, Norwood, Mendon, and Dracut. Her expertise includes all of the areas necessary to advise a municipal corporation, including municipal governance, land use, procurement, employment, town meetings, public records, open meeting law, and legislation. She also practices municipal labor law, negotiating successor contracts and side agreements, advising on civil service matters, grievances and discipline, and labor arbitrations.

Ms. North is also an experienced litigator on behalf of municipalities and municipal agencies, private parties, and non-profit organizations. She has experience in bench and jury trials in state and federal courts, arbitrations, and administrative litigation. Her goal in any matter is to find the right solution for her clients. She engages in creative problem solving to resolve conflicts and has achieved favorable outcomes for her clients in many settings that take into account the client's needs as well as the facts and the law underlying each matter.

Ms. North is a graduate of Cornell University and a *cum laude* graduate Vermont Law School, where she was the Managing Editor of *The Vermont Law Review*. She is a regular speaker providing training and expertise to the Massachusetts Municipal Lawyer's Association (MMLA), MCLE, the Massachusetts Municipal Association (MMA) and to various law and graduate school classes. Ms. North is presently Vice President of the Massachusetts Municipal Lawyers Association, and served two terms as a member of the Vermont Law School Board of Trustees. She is also active in her community where she served as Chair of the Plymouth County Commission on the Status of Women and was an elected Town of Hull Library Trustee, including six years as Chair. Ms. North is admitted to practice in state and federal courts in Massachusetts and in the state of Maryland.

Sarah Spatafore – Ms. Spatafore is a Partner at the firm. She practices primarily in the labor and employment area, representing both public and private clients. Ms. Spatafore also handles education issues. Ms. Spatafore has represented clients before a number of courts and administrative tribunals at both the state and federal level. She regularly conducts seminars and training programs on unlawful harassment, preventing discrimination, and a variety of other labor and employment issues. Ms. Spatafore has completed all the Massachusetts Commission Against Discrimination-certified "Train-the-Trainer" courses.

Ms. Spatafore graduated from Bates College in 2007. Prior to attending law school, Ms. Spatafore spent a year working on a presidential campaign and then served as a presidential appointee at the National Aeronautics and Space Administration in Washington, D.C. She received her Juris Doctor, with Honors, from Boston College Law School in 2012. In law school, Ms. Spatafore interned at the Massachusetts Superior Court. As a law student, Ms. Spatafore

was a member of the Jessup International Moot Court team. The team won the Northeast Super Regional Competition and, in the Jessup Cup International Rounds, Ms. Spatafore individually placed 3rd among several hundred oralists. She was a co-recipient of the third year best oralist award at Boston College Law School. Prior to matriculating with the firm, Ms. Spatafore worked for a presidential campaign as a law clerk and was sent to a targeted swing state to serve as the Election Day Operations Director for the general election.

Peter L. Mello - Mr. Mello focuses his practice in municipal law and general civil litigation, including in the areas of construction, land use and zoning, wetlands and school law, among others. He practices routinely before state and federal courts and state agencies in Massachusetts and has written and presented extensively on wetlands, construction and labor issues for organizations such as REBA, the Massachusetts School Building Authority, the Massachusetts Municipal Lawyers Association and the Massachusetts Bar Association. Mr. Mello is currently the City Solicitor for the City of Attleboro.

Mr. Mello earned his B.A. in Politics, with a Certificate in Legal Studies from Brandeis University and is a graduate of Boston University School of Law. While at Boston University School of Law, Mr. Mello served as a staff editor of the American Journal of Law and Medicine.

Mr. Mello is a recent past President of the Massachusetts Municipal Lawyers Association.

He is admitted to practice in the Commonwealth of Massachusetts, the United States District Court for the District of Massachusetts and the United States Court of Appeals for the First Circuit.

Mr. Mello was recognized as a Rising Star by New England Super Lawyers magazine in 2012, 2013 and 2014.

Joseph W. Proctor – Mr. Proctor practices in the areas of municipal law, labor and employment law, and general civil litigation. In his municipal practice, Mr. Proctor has represented municipalities in litigation matters including defending against claims of adverse possession. Additionally, he has researched and provided guidance on municipal conflicts of interest, public records laws, eminent domain procedure, environmental issues, cannabis industry laws and regulations, personnel issues, and more. In his labor and employment practice, Mr. Proctor has participated in collective bargaining negotiations, grievance responses, and arbitrations. Further, he has advised public and private clients on a wide array of issues such as wage and hour laws, discipline and discharge, and compliance with state and federal rules and regulations.

Mr. Proctor graduated *summa cum laude* from the University of Massachusetts Amherst in 2017 with a Bachelor of Arts in History. He graduated *cum laude* from Boston University School of Law in 2021. During law school, Mr. Proctor served on the executive board of the BUSL Real Estate Association and was a member of the Public Interest Law Journal. He completed internships with the Plymouth Superior Court and the Office of the Attorney General. Mr. Proctor is a member of the Massachusetts Municipal Lawyers Association.

David A. DeLuca - Formerly an Assistant District Attorney with the Suffolk County District Attorney's Office, Mr. DeLuca handles a full spectrum of tort, contract, land use and workers' compensation litigation matters. Attorney DeLuca is lead counsel to the Towns of Danvers, Holbrook, Norwood and Dracut. He is experienced in all phases of state and federal trial and appellate court advocacy, having handled administrative law judge, bench and jury trials including personal injury, product liability, domestic litigation, zoning and tax disputes, insurance litigation, workers' compensation claims and civil rights violations. Mr. DeLuca advises building inspectors and planning directors on zoning, tax enforcement and tax title recovery matters. He represents municipal clients regarding zoning matters at town meeting and before trial and appellate courts. Mr. DeLuca also handles all phases of workers' compensation litigation for self-insured municipal clients and is a frequent participant in continuing legal education seminars on workers' compensation and related municipal/labor matters.

Mr. DeLuca is a member of the Massachusetts, Norfolk County and Quincy Bar Associations, the Massachusetts Municipal Lawyers Association, a member for the Massachusetts Bar Association Joint Bar Committee on Judicial Appointments, and former Chairman of a regional Hearing Committee for the Board of Bar Overseers. Mr. DeLuca is also a former instructor with the Northeastern University College of Criminal Justice. Mr. DeLuca is a graduate of Boston College and Suffolk University Law School.

Michael J. Maccaro - Mr. Maccaro is a Partner at the firm and represents employers in both the public and private sector, acting labor counsel for private entities and as both labor counsel and general counsel to governmental bodies, including numerous school districts. Mr. Maccaro's labor law practice includes representing employers in representation proceedings and campaigns, contract negotiation, collective bargaining matters, grievance administration and arbitration, and in proceedings before the Massachusetts Department of Labor Relations and the National Labor Relations Board. His employment law practice includes defending employers in a wide range of workplace claims, including claims of employment discrimination, retaliation, and wrongful discharge before the Massachusetts Commission Against Discrimination, and other enforcement agencies. Mr. Maccaro has successfully represented clients before the Division of Unemployment Assistance, the Civil Service Commission, the Massachusetts Superior Court, and the Massachusetts Appeals Court.

Prior to joining MHTL, Mr. Maccaro served as an Associate General Counsel for a large labor union, where he litigated over one hundred arbitration cases. Following law school, Mr. Maccaro served as a Law Clerk to the Justices of the Superior Court. Mr. Maccaro has served as an Adjunct Professor at Massachusetts School of Law where he taught legal writing. Mr. Maccaro regularly speaks to employers on matters such as collective bargaining obligations, employment practices, and drafting of workplace policies. Mr. Maccaro currently serves on the Executive Board of the Labor Employment Relations Association. Mr. Maccaro is a member of the bar of Massachusetts and is admitted before the federal District Court in Massachusetts. Mr. Maccaro graduated from Bates College with a Bachelor of Science degree in Biological Chemistry. He received his law degree from Northeastern University.

Kier Wachterhauser - Mr. Wachterhauser is a Partner at MHTL. Mr. Wachterhauser represents private and public sector clients in all areas of labor and employment law and maintains a litigation practice. Mr. Wachterhauser regularly counsels clients on employment matters, including wage and hour, leave entitlements, and discrimination and harassment matters, as well as the drafting of employment policies and contracts, and represents clients in employment-related litigation before state and federal courts and administrative bodies, such as the Massachusetts Commission Against Discrimination and the Equal Employment Opportunity Commission. Mr. Wachterhauser also maintains an extensive labor practice, representing public and private clients in the representation issues, the collective bargaining process, arbitration hearings, and proceedings in front of administrative agencies such as the National Labor Relations Board, the Civil Service Commission, and the Department of Labor Relations. Mr. Wachterhauser's clients include health care agencies, financial institutions, food service entities, local housing authorities and other State and local governmental entities.

Mr. Wachterhauser is a regular speaker at industry and trade groups, chambers of commerce, and other organizations on a wide range of labor and employment topics. Mr. Wachterhauser also conducts workplace training for organizations of all sizes. He received his Juris Doctor from Boston University School of Law, where he served as the Editor-in-Chief of the *Boston University Law Review*. In law school, Mr. Wachterhauser was awarded the Faculty Award for Academic Accomplishment. Prior to attending law school, Mr. Wachterhauser spent several years working in the consulting field, providing guidance to administrators of hospitals and universities on a variety of business-related matters. Mr. Wachterhauser received a Masters of Arts degree from Northwestern University and graduated from Swarthmore College with honors.

Kevin S. Freytag - Kevin S. Freytag is a member of the Firm's Municipal and Litigation practices. Mr. Freytag serves as lead counsel in MHTL's representation of the Town of Milton and the Town of Scituate. He represents individuals, businesses and municipalities in a wide range of disputes in the areas of construction, labor and employment, land use and real-estate tax. He has appeared in courts throughout the Commonwealth and successfully tried cases to verdict before judges and juries. He has also effectively represented clients at the Appellate Tax Board as well as the Massachusetts Appeals Court.

Mr. Freytag received his Juris Doctor from Suffolk University Law School. He was a member of the Trial Team and earned the honor of 2006 New England National Trial Competition Regional Champion. Mr. Freytag received a Bachelor of Arts degree from Stonehill College. Before entering private practice, he spent five (5) years working at the Norfolk County District Attorney's Office where he prosecuted countless cases in District and Superior Court. Mr. Freytag is admitted to practice in all state courts in the Commonwealth of Massachusetts and the United States District Court for the District of Massachusetts.

Madison Harris-Parks - Ms. Harris-Parks practices in the areas of municipal and labor and employment law, as well as general civil litigation. She has aided in the representation of municipalities in both proactive litigation, such as zoning enforcements, and in defense of municipalities against claims of arbitrary, tortious, and unconstitutional actions. She has

additionally conducted research in the areas of land use, conflict of interest law, procedural requirements for passing zoning and general bylaws, and employee discipline matters.

Ms. Harris-Parks graduated from the University of Florida with Bachelor of Arts degrees in English and Sociology, and graduated *cum laude* from Boston University School of Law in May 2021. During law school, Ms. Harris-Parks gained valuable litigation experience while interning with the Solicitor's Office of the U.S. Department of Labor, the Trial Division of the Massachusetts Attorney General's Office, and the Housing Division of Harvard's Legal Services Center. She also served as a Managing Editor of BU Law's Public Interest Law Journal, a Fellow for BU Law's first-year writing program, and a research assistant. Prior to joining MHTL, Ms. Harris-Parks clerked at the Massachusetts Appeals Court.

Brett R. Cavanaugh – Mr. Cavanaugh focuses his practice in municipal law, education and special education, and labor and employment. He has done research related to public housing, the First Amendment, wetlands violations, PFAS chemicals in drinking water, for cause termination, betterments, and license to carry laws. Additionally, he has experience responding to Open Meeting Law complaints. In his labor and employment practice, Mr. Cavanaugh represents both public and private employers. He has participated in collective bargaining matters and grievance administration for municipalities, including drafting last chance agreements and participating in termination hearings.

Mr. Cavanaugh graduated *cum laude* from Boston College Law School in May 2022 and joined MHTL in the fall of 2022. He is admitted to practice in the Commonwealth of Massachusetts. Prior to law school, Mr. Cavanaugh received both his Bachelor of Arts and his Master of Education from the University of Notre Dame. He worked in education for six years, including four years as a middle school math and social studies teacher. During law school, Mr. Cavanaugh was a legal intern with the United States District Court for the Eastern District of Michigan and worked as a summer law clerk at a labor and employment firm in Boston. He also provided legal and business training to aspiring entrepreneurs through a clinic serving formerly incarcerated individuals. In addition, he interned with the Boston College Athletic Department where he

assisted with compliance matters, and he gained in-house counsel experience at Spartan Race in Boston. Moreover, he served as the president of the St. Thomas More Society and provided legal services at a detention center in Texas.

CITY OF NEWBURYPORT

FEE PROPOSAL

Murphy, Hesse, Toomey & Lehane, LLP (“MHTL”) proposes the following rates for City Solicitor legal services for the City of Newburyport (“City”): for general municipal services we propose \$230.00 per hour blended rate for partners and associates; for litigation and labor services we propose \$250.00 per hour blended rate for partners and associates; and we propose \$115.00 per hour for paralegal and law clerk services. There is no charge for clerical staff. Please note, hourly fees may increase after the first year of the agreement, by mutual agreement of the parties.

Disbursements, including filing fees, stenographer’s fees, expert witness fees, overnight delivery fees, and computerized research fees are billed at their actual cost. Mileage, if any, is charged at the Federal Travel reimbursement rate, which is currently 58 cents/mile. All other office-related costs (e.g., clerical expense, postage, facsimile expenses, equipment supplies, etc.) are considered overhead and are not billed to the client.

MHTL strongly adheres to a cost-conscious, but effective representation of its municipal clients. Accordingly, we propose the follow approach to our representation:

- **Quarterly Budget Review:** Upon request, we will meet quarterly to review all pending legal matters and fees incurred. This will allow the City to make informed decisions about the amounts and purpose of legal fee expenditures.
- **Conscientious Time Keeping:** We consider it part of our professional responsibility to be meticulous about fair time keeping for our bills. We do not place undue pressure on our associates to meet unrealistic billing quotas. Each monthly billing statement to a client is detailed and any questions or discrepancies are promptly addressed.
- **In-Person Visits with Clients:** Although it may seem counter-intuitive, we have found that taking the time to meet face to face with department heads or municipal boards to discuss ongoing legal issues, or to provide briefings on litigation or collective bargaining matters promotes economy and efficiency in the course of our legal representation. Through discussions with the clients we can fully understand their priorities, explain various options and the potential consequences of those options.
- **Specialized Expertise:** We possess a broad range of specialized knowledge and experience which allows our municipal clients to avoid the added expense of special counsel for complex matters. Additionally, we are thoroughly familiar with the unique legal issues that municipalities regularly encounter. Thus, questions about municipal finance, collective bargaining, ethics, open meetings, public records, procurement, public construction and other recurring municipal issues can be addressed promptly and economically without the expense of extensive legal research.

- **Local Knowledge Contributes to Efficiency and Economy:** While the resources of our entire firm are available to address almost any legal issue, we do not expose our clients to a revolving door of numerous attorneys unfamiliar with the City. One senior level attorney will be assigned to the City who will be familiar with all pending legal matters and supervise the work of all other MHTL attorneys working on City matters. The senior level attorney would strive to learn the characteristics of the City and develop comfortable working relationships with public officials. This approach promotes effective communication and consistency while minimizing the expense of bringing additional lawyers up to speed on any particular legal matter.
- **Revenue Enhancements:** We are available to assist in the review of all municipal license and permit fees, fees for service requests, Payments in Lieu of Tax Agreements, and other collection items. We will assist in the vigorous enforcement of statutory liens, and third party recovery of funds owed from injury loss or damage to the City. Municipal government depends on the full realization of all sources of revenue, and the effective and efficient enforcement of all obligations.
- **Gatekeeper Forms:** Upon request, we will develop a form to be used by City employees seeking City Solicitor services. The form would require an employee to investigate other resources, including state agencies, to resolve a legal issue and then obtain written permission to contact counsel.

Committee Items – June 12, 2023

Licenses & Permits

In Committee:

- APPL00140_05_22_2023 Block Party 51 Prospect St. August 3rd 6:30pm
- APPL00141_05_22_2023 Block Party 14 Dove St. August 5th 5:30pm-10pm



RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

2023 MAY -9 A 10:40

CITY OF NEWBURYPORT
60 PLEASANT STREET
NEWBURYPORT, MA 01950

BLOCK PARTY APPLICATION

Please fill out the application below and obtain the approving signatures for the street closure. Mail or drop off the completed signed application at: City Clerk's Office, City Hall, 60 Pleasant Street, Newburyport, MA 01950 **at least eight (8) business days prior** to a City Council meeting. The requested Block Party needs approval by the City Council. For any questions, please contact The City Clerk's Office at (978) 465-4407.

DATE OF REQUEST:	<u>May 4, 2023</u>
CONTACT INFORMATION	
FIRST AND LAST NAMES:	<u>Gilee Woodworth</u>
MAILING ADDRESS:	<u>51 Prospect Street</u>
PHONE NUMBER:	<u>978 462-2010</u>
E-MAIL ADDRESS:	<u>pcbahati@yahoo.com</u>
BLOCK PARTY INFORMATION	
BLOCK PARTY DATE:	<u>August 3, 2023 (Yankee Homecoming)</u>
DESIRED STREET CLOSING LOCATION:	<u>Federal + Temple Street</u>
Please indicate cross streets when requesting the closing of street sections <u>one way</u>	
STREET TO BE BARRICADED:	<u>Temple St - between Federal + Fair St</u>
DESIRED STREET CLOSING TIME:	<u>about 6:30 - as soon as bedrace ends</u>
Block Parties should run no later than 10:00 p.m.	

our 6th year
Gathering @ 52 Temple St - owners
Susen Crawford and Marie Roy
we have cones and sign

REGULATIONS

By signing, I agree that I am a legal adult 18 years of age or older and understand this permit does not release me of any liability for damages that may result from the conducting of this Block Party. Further, I agree to comply with all requirements listed below:

I understand that applications for block party permits may take up to four (4) weeks to process.

Block parties will be conducted only on low-volume residential streets, dead-end streets, or cul-de-sacs. No thoroughfares or collector streets may be used.

It is hereby agreed that, by signing and presenting this application, signer(s) represents to the City of Newburyport that the following statements are true and correct, and agrees to and will abide by the following:

1. All residents living on the street or block for which the party is planned request the block party, or have been contacted and do not object to the Block Party.
2. To be responsible for placement, maintenance and removal of barricades.
3. A block party permit does not allow the sale of alcohol or the consumption of alcohol on public property (in city streets, sidewalks, parks, etc.) alcohol is allowed only on private property. All state and city alcohol laws still apply during Block Parties.
4. Amplified music shall be permitted with permission of the City Council.
5. To leave **AT LEAST A TWELVE (12) FOOT AISLE** in the street to permit passage of emergency vehicles or vehicles of residents. Failure to maintain a ten (10) foot aisle during the entire period of the party will necessitate denial of requests for subsequent block parties. **Public safety personnel will monitor the party for strict adherence to this rule.**
6. To maintain adult supervision at all times during the party.
7. Applicant(s) shall be responsible for the pick-up of trash and garbage within two (2) hours of the end of the party.
8. Streets may not be barricaded later than 10:00 P.M.
9. No residents of the area designated shall be prohibited from attending the party.
10. No such activity may be conducted within five hundred (500) feet of any school, church, hospital, nursing home or similar operation unless endorsed by the management of such institution.
11. Only approved readily removable Barricades will be permitted such as orange cones and sawhorses with a sign. No vehicles will be permitted to be used as a Barricade.
12. Block parties are permitted 10 A.M. – 10 P.M.

Applicant signature: *Lele Woodworth* Date: *5/4/2023*

APPROVAL SIGNATURES REQUIRED FOR STREET CLOSURE

CITY MARSHALL *[Signature]*
4 Green Street

FIRE CHIEF *[Signature]*
0 Greenleaf Street

DEPUTY DIRECTOR *[Signature]*
16A Perry Way

CITY CLERK *[Signature]*
60 Pleasant Street

City use only: _____

Approved _____ Denied _____ Date _____

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

2023 MAY 12 A 10:51

CITY OF NEWBURYPORT
60 PLEASANT STREET
NEWBURYPORT, MA 01950**BLOCK PARTY APPLICATION**

Please fill out the application below and obtain the approving signatures for the street closure. Mail or drop off the completed signed application at: City Clerk's Office, City Hall, 60 Pleasant Street, Newburyport, MA 01950 **at least eight (8) business days prior** to a City Council meeting. The requested Block Party needs approval by the City Council. For any questions, please contact The City Clerk's Office at (978) 465-4407.

DATE OF REQUEST: _____

5/3/23

CONTACT INFORMATION

FIRST AND LAST NAMES: _____

Milissa Duncan

MAILING ADDRESS: _____

14 Dove St

PHONE NUMBER: _____

978-764-1019

E-MAIL ADDRESS: _____

milissaduncan@hotmail.com

BLOCK PARTY INFORMATION

BLOCK PARTY DATE: _____

Sat. Aug 5th

DESIRED STREET CLOSING LOCATION: _____

Dove St. between Monroe & Merrimack

Please indicate cross streets when requesting the closing of street sections

STREET TO BE BARRICADED: _____

Dove St.

DESIRED STREET CLOSING TIME: _____

5:30 - 10pm

Block Parties should run no later than 10:00 p.m.

REGULATIONS

By signing, I agree that I am a legal adult 18 years of age or older and understand this permit does not release me of any liability for damages that may result from the conducting of this Block Party. Further, I agree to comply with all requirements listed below:

I understand that applications for block party permits may take up to four (4) weeks to process.

Block parties will be conducted only on low-volume residential streets, dead-end streets, or cul-de-sacs. No thoroughfares or collector streets may be used.

It is hereby agreed that, by signing and presenting this application, signer(s) represents to the City of Newburyport that the following statements are true and correct, and agrees to and will abide by the following:

1. All residents living on the street or block for which the party is planned request the block party, or have been contacted and do not object to the Block Party.
2. To be responsible for placement, maintenance and removal of barricades.
3. A block party permit does not allow the sale of alcohol or the consumption of alcohol on public property (in city streets, sidewalks, parks, etc.) alcohol is allowed only on private property. All state and city alcohol laws still apply during Block Parties.
- * 4. Amplified music shall be permitted with permission of the City Council.
5. **To leave AT LEAST A TWELVE (12) FOOT AISLE** in the street to permit passage of emergency vehicles or vehicles of residents. Failure to maintain a ten (10) foot aisle during the entire period of the party will necessitate denial of requests for subsequent block parties. **Public safety personnel will monitor the party for strict adherence to this rule.**
6. To maintain adult supervision at all times during the party.
7. Applicant(s) shall be responsible for the pick-up of trash and garbage within two (2) hours of the end of the party.
8. Streets may not be barricaded later than 10:00 P.M.
9. No residents of the area designated shall be prohibited from attending the party.
10. No such activity may be conducted within five hundred (500) feet of any school, church, hospital, nursing home or similar operation unless endorsed by the management of such institution.
11. Only approved readily removable Barricades will be permitted such as orange cones and sawhorses with a sign. No vehicles will be permitted to be used as a Barricade.
12. Block parties are permitted 10 A.M. – 10 P.M.

Applicant signature: Melissa Duncan Date: 5/3/23

APPROVAL SIGNATURES REQUIRED FOR STREET CLOSURE

CITY MARSHALL
4 Green Street

FIRE CHIEF
0 Greenleaf Street

DEPUTY DIRECTOR
16A Perry Way

CITY CLERK
60 Pleasant Street

[Signature]
[Signature] ADC
[Signature] ADD 5/11/23
[Signature]

City use only:

Approved _____ Denied _____ Date _____

Committee Items – June 12, 2023

Public Works & Safety

In Committee:

- APPT00399_05_08_2023 Brett Carrier 231 Middle Rd. Byfield Asst Hrbmstr/Shlfsh Cnstbl/SpPO 6/1/2026
- APPT00400_05_08_2023 Robert Dow 185 Storey Ave Harbor Comm. 6/1/2026
- APPT00404_05_08_2023 *Re-appointment* James Knapp 24 Cutting Dr. Harbor Comm. 6/1/2026
- APPT00405_05_22_2023 Ronald Thurlow 28 Hancock St. Harbor Comm. 6/1/2026
- COMM00456_12_12_2022 Letters re: Curb Cut 4 Wilkinson Dr. & 34 Hale St.
- ORDR00454_05_08_2023 Storey Avenue bicycle lane
- ORDR00458_05_22_2023 Hale Street Resolution
- COMM00483_05_08_2023 Residential HP App 12 Merrill St.



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
SEAN R. REARDON, MAYOR

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

2023 MAY -1 P 12: 37

60 PLEASANT STREET - P.O. BOX 550
NEWBURYPORT, MA 01950
978-465-4413 PHONE
MAYOR@CITYOFNEWBURYPORT.COM

To: President and Members of the
City Council

From: Sean R. Reardon, Mayor

Date: May 8, 2023

Subject: Appointment

I hereby appoint, subject to your approval, the following named individual as Assistant Harbormaster/Shellfish Constable and Special Police Officer for the purposes of local, State and Federal laws and regulations with respect to waterways, marine activities and boating. This term will expire on June 1, 2026.

Brett Carrier
231 Middle Road
Byfield, MA 01922

BRETT CARRIER

United States Coast Guard

(978) 501-6486 | brett.m.carrier@uscg.mil | 231 Middle Road, Byfield, MA 01922

As an avid jet skier and law enforcement officer with the U.S. Coast Guard in Newburyport, I have come to know the river and community very well, and am confident I would be a great addition to the Newburyport Harbormaster Department.

Experience

Petty Officer

UNITED STATES COAST GUARD, Newburyport, MA

November 2019 - Present

- Certified U.S. Coast Guard Law Enforcement Boarding Officer.
- Attended Federal Law enforcement Training Center in Charleston, SC.
- Specializes in maritime and environmental law enforcement.
- Conducted roughly 100 vessel boardings in the 2022 boating season.
- Holds current federal security clearance.
- Currently completing Emergency Medical Technician course with expected completion in January 2023.
- Liaises with and participates in inter-agency law enforcement activities and training events to improve working relationships and effectiveness.
- Association of State Boating Law Enforcement Administrators (NASBLA) boating under the influence certified officer.
- Certified communications watch-stander receiving distress and non-emergency requests for assistance and dispatching appropriate resources.
- Certified search and rescue response boat crew member and trainee Motor Lifeboat coxswain.
- Valid certifications in first aid, national incident management systems, and CPR.

Intern

FELLOWSHIP HOUSE MINISTRIES, Groton, CT

May 2015 - August 2015

- Worked closely with the case coordinator processing inmates in and out of the facility and assisted inmates with job procurement.
- Conducted rounds of the facilities and worked with recently released inmates with basic life skills to assist in the re-adjustment to society.

Intern

SUFFOLK COUNTY SHERIFF'S DEPARTMENT, Boston, MA

April 2013 - August 2013

- Worked closely with the Department's civil process section assisting in the processing and filing of court documents, and accompanied deputies to court appearances and on ride-alongs.

Ice Hockey Official
USA HOCKEY - NATIONAL COLLEGIATE ATHLETIC ASSOCIATION - NATIONAL FEDERATION OF HIGH SCHOOL SPORTS, New England Region
September 2007 - Present

- Active member of the ice hockey community at all levels ranging from young children, to high school and college athletics.
- Assisted in the set-up of an officiating mentorship program within the Valley Youth Hockey League to assist young/new officials and am a current member of the mentorship staff.

Education

Bachelor of Arts in Criminal Justice
Mitchell College, New London, CT
September 2013 - May 2016

Mount Wachusett Community College, Fitchburg, MA
May 2012 - May 2013

High school Diploma
The Bromfield School, Harvard, MA
September 2008 - May 2012

Applicable Competencies

- In-depth knowledge of boating safety laws
- Communications watch stander
- Search and rescue response
- Strong local area knowledge of Merrimack River and surrounding waterways
- River hazards and high-violation areas
- De-escalation techniques

Community Involvement

Boating Safety Guest Speaker
U.S. Coast Guard Auxiliary, Newburyport, MA
July 2021 - Present

- Assists U.S. Coast Guard Auxiliary instructors in teaching boating safety practices to the general public and provides a unique perspective to classes as a Coast Guard boarding officer.
- Informs general public on rules and regulations, registration requirements, dangers of boating under the Influence, and enforcement consequences for failure to comply.

Volunteer On-Ice Official
Special Olympics / Regional Paralympic Games
January 2010 - Present

- Officiates ice and floor hockey tournaments and worked to ensure all participants had a memorable experience.



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
SEAN R. REARDON, MAYOR

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

2023 MAY -1 P 12:37

60 PLEASANT STREET - P.O. BOX 550
NEWBURYPORT, MA 01950
978-465-4413 PHONE
MAYOR@CITYOFNEWBURYPORT.COM

To: President and Members of the City Council
From: Sean R. Reardon, Mayor
Date: May 8, 2023
Subject: Re-Appointment

I hereby re-appoint, subject to your approval, the following named individual as a member of the Harbor Commission. This term will expire on June 1, 2026.

Robert Dow
185 Storey Avenue
Newburyport, MA 01950

Robert Dow

185 Story Ave
Newburyport, MA 01950
(978) 463-4982
bdowmack@comcast.net

April 28, 2023

Dear Mayor Reardon;

Growing up in Newburyport, I have been boating on the Merrimack River all my life. In fact my great grandfather, Osmond Cummings, was in the United States Life Saving Service (USLSS)/USCG for over forty years serving at lighthouses and surf stations such as Nash Island, ME, The Isle of Shoals (Appledore Island), Provincetown, MA, Salisbury Beach Station, Plum Island, Rye Beach and the Custom House in Boston.

I have always enjoyed being involved in our community, coaching youth hockey for ten years as both an assistant and head coach, receiving an award from The Massachusetts Neighborhood Crime Watch Commission, but probably the most rewarding was being recruited by the Mayor's office and appointed by the City Council in 1992 to The Newburyport Harbor Commission.

I take pride in working closely with the Harbor Commission and other city officials to help carry out the duties of the Harbor Commission and Harbormasters Department. I am also proud of my attendance record and the many accomplishments we as a commission have achieved over the years. It was in the early 1990's when visiting Scituate by boat and seeing the Harbormaster/Transient boater's facility I realized the need for something in Newburyport.

I have always enjoyed the quality of the individuals that have served on the Harbor Commission and have had the privilege to serve on different sub-committees that have specifically been involved in projects such as:

- Patrol boat replacement
- Engine replacement from (2) stroke to (4) stroke for increased fuel efficiency, lower emissions, and lower noise levels
- Replacement of central waterfront docks
- Upgrades at Cashman park
- Upgraded central waterfront 30-amp service to 50-amp
- Design and bid new docks and aluminum strong arms for Harbormaster and commercial fishing boats.
- Harbormaster selection committee
- Help with "Coast Guard City" application
- Harbormaster and transient boater's facility committee
- Water sheet reviews
- Short term and long-term planning

Education:

Merrimack College, North Andover, MA 01845
December 1984, Bachelor of Science in Business Administration
Major-Marketing

Northern Essex Community College, Haverhill, MA 01830
December 1982, Associate in Science in Business Administration
Major-Business Administration

Employment:

October 1986-Present

Mack Trucks Inc, McDevitt Trucks Inc, Ballard Mack Sales and Service.
Oversee a specific (AOR) and customer base. Working as a Mack Sales Representative for almost 34 years, starting at factory-owned Mack Trucks Inc. on North Beacon St. in Allston, MA which was sold to McDevitt Mack and then acquired by Ballard Mack. I have enjoyed a successful career specifying Mack's in vocational, highway, municipal and commercial applications.

October 1985-October 1986

Seaboard Products Co.-Anheuser-Busch Distributor

Sales Representative responsible for a specific territory (AOR).

May 1981-September 1985

Commonwealth of Massachusetts -Department of Environmental Management.

Lifeguard, Assistant Head Lifeguard- Salisbury Beach

Responsible for the general safety of the public and beach police work.

Presented a well-respected public image, supervise specific areas of the beach as well as subordinate lifeguards.



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
SEAN R. REARDON, MAYOR

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CITY CLERK'S OFFICE
NEWBURYPORT, MA

2023 MAY -5 A 10:03

60 PLEASANT STREET - P.O. Box 550
NEWBURYPORT, MA 01950
978-465-4413 PHONE
MAYOR@CITYOFNEWBURYPORT.COM

To: President and Members of the City Council
From: Sean R. Reardon, Mayor
Date: May 8, 2023
Subject: Re-Appointment

I hereby re-appoint, subject to your approval, the following named individual as a member of the Harbor Commission. This term will expire on June 1, 2026.

James Knapp
24 Cutting Drive
Newburyport, MA 01950

JAMES KNAPP

24 Cutting Drive, Newburyport, MA 01950 | 978-500-6611 | james.knapp13@gmail.com

SUMMARY

- Over 20 years of experience in international trade and domestic transportation.
- Roles in customer service, management and pricing for air and ocean cargo
- Keen eye for attention to detail, building strong internal and external relationships, business process management

CERTIFICATES & COMPUTER SKILLS

Certificates

- IATA / FIATA – May 2009

Software

- Microsoft Office, Lotus Notes, Adobe

EXPERIENCE

BOC International

- July 2015 - Present
- Customer Relationship Manager, *BOC international Inc.*
- Oversees customer implementation and development.
 - Manages customer business reviews and pricing.

Expeditors International or Washington

- September 2014 – July 2015
- Import Transportation Customer Service Lead, *Expeditors International of WA*
- Ensures that the customer service team is working closely with our external and internal customers to ensure that all of their needs are being exceeded.

- Works closely with warehouse personnel to make arrangements for the receipt of ocean and air inbound cargo on a daily basis.
- Responsible for the air import pricing and route development for New England.

- March 2014 – September 2014
- Inbound & Outbound Transcon Lead, *Expeditors International of WA*
- Oversaw several projects that included bringing in time definite shipments of construction material and finished goods for new store launches.
 - Cross trained in both inbound and outbound operations to provide support to both teams and train additional personnel as well.

April 2010 – March 2014 Air Import Manager, *Expeditors International of WA*

- Responsible for the growth of the Air Import market for New England while managing the operational procedures for our team of 4.
- Worked closely with airline partners to put consol programs into place and worked closely with their local terminal operations to ensure that freight was turned around timely.
- Traveled to Hong Kong and Shanghai to form stronger operational relationships with our offices in these region and to develop pricing strategies to increase our revenue potential.

April 2006 – April 2010 Import Transportation Supervisor, *Expeditors International of WA*

- Worked with an experienced team to put processes in place to become a more efficient and productive department.
- Oversaw the daily operations for the ocean and air import transportation teams that consisted of 8 members.
- Managed the account receivables and payables on a weekly basis and reported back to the Finance Manager on the progress of collections.
- Performed audits on our service providers to ensure that they met Expeditors standards for insurance and compliance

Feb 2005 – April 2006 Management Trainee Program , *Expeditors International of WA*

- Chosen from an extensive field of candidates to learned all aspects or international freight forwarding, customs compliance, distribution services, and domestic transportation.
- Became Dangerous Goods Certified in Ocean, Air and Domestic transportation
- Relocated to Washington DC to support a growth potential for an account and trained additional personnel in the process.

Jan 2004 – Feb 2005 Air Export Night Operations , *Expeditors International of WA*

- Worked within a team setting to process house air waybills for customers all over New England to ensure that these shipments moved on a nightly line haul truck to New York for consolidation

City of Newburyport

Feb 2008 – Present Harbor Commissioner, *City of Newburyport MA*

- Focused on supporting the Harbor Master to operate within his budget and ensure that the city's best interests are being taken into consideration.
- Worked to have the City of Newburyport be named the 13th "Coast Guard City" as designated by the United States Coast Guard and Congress.
- Developed plans for a new Harbor Master and transient boaters facility.

EDUCATION

June 2004 International Maritime Business, *Massachusetts Maritime Academy*



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
SEAN R. REARDON, MAYOR

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CITY CLERK'S OFFICE
NEWBURYPORT, MA

2023 MAY 16 P 1:16

60 PLEASANT STREET - P.O. BOX 550
NEWBURYPORT, MA 01950
978-465-4413 PHONE
MAYOR@CITYOFNEWBURYPORT.COM

To: President and Members of the City Council
From: Sean R. Reardon, Mayor
Date: May 22, 2023
Subject: Re-Appointment

I hereby re-appoint, subject to your approval, the following named individual as a member of the Harbor Commission. This term will expire on June 1, 2026.

Ronald Thurlow
28 Hancock Street
Newburyport, MA 01950

A handwritten signature in cursive script that reads "Sean R. Reardon".

Ronald Thurlow
28 Hancock Street
Newburyport, MA 01950

I have played an active role as a commissioner and below are some examples of this support:

- I lead the effort including the developing, and writing the package for the City's most recent Coast Guard City re-certification. This was a complex 45-page document that I researched, wrote the narrative, and coordinated and tracked obtaining the numerous political endorsements. I then tracked monthly with the Coast Guard Headquarters the review and ultimate approval by the Coast Guard City Approval Board.
- I developed an "Urgent-Emergent" relief process that allows a means and provides a funding source for Coast Guard personnel assigned to Station Merrimack during times of unexpected needs.
- The Commission recognized the high number of Kayak near misses and rescues in the Waterfront and other areas. As an experienced and trained Kayak Guide, I developed a comprehensive Kayak Safety class specific for Newburyport. I have conducted this course several times the last 3 years, through the Newburyport Continuing Education program. The class materials development, delivering the class and follow up support to students has all been a significant amount of time I have volunteered to provide to the City. I also designed Kayaking Safety signage for critical high-risk areas in the river. These efforts have had a positive impact on Kayak safety in Newburyport.
- I also supported the regional dredge efforts including several meetings and assessment input.
- I was the Harbor Commission member assigned to the Ordinance Review Team for the City.

These are a few examples of support I have provided to the Commission. Below are a few items I would like to support going forward:

- Relocation of the Federal Channel at the mouth of the river which will improve safety and save on dredging costs.
- Continuing to champion our Coast Guard City duties for both the local Coasties support and to ensure we are successful at the next recertification cycle.
- Creation of formal mooring and dock gear standards for the City.
- Create a City Spring waterfront fair to support:
 - Waterway Safety
 - Waterway Protection
 - Waterway Enjoyment

Except for my years as an Air Force Captain, I am a lifelong resident of Newburyport and have been on the waterways my whole life. I bring initiative, strong harbor knowledge, sometimes differing challenge, bias for action and value listening to all perspectives in supporting the goals of the Harbor Commission and City.

Jennifer Sullivan

From: Margaret Melville <maggie.melville@gmail.com>
Sent: Monday, November 14, 2022 9:23 AM
To: DPS
Subject: Curb cut 34 hale st objection

Hi Jennifer,

I am a resident of 4 Wilkinson Dr and am writing to object to a curbcut at the lot on 34 Hale St. My property abuts 34 Hale St and I see the dangers at the corner of 34 Hale St and Wilkinson drive. Putting a curbcut on Wilkinsom Drive will make it very dangerous to turn right onto Wilkinson Drive off of Hale st. The driveway will be blind to cars turning right onto Wilkinson Drive. It will only benefit the lot of 34 Hale st, but at the detriment of the residents of Wilkinson drive.

Thank you,

Margaret Melville Alcantara
Resident of 4 Wilkinson Drive
617-549-0994

Jennifer Sullivan

From: Ron Dienstmann <ronalddien@yahoo.com>
Sent: Monday, November 14, 2022 12:35 PM
To: DPS
Cc: Dawngolf
Subject: No Curb Cut on Wilkinson Drive

Hello Mrs. Sullivan,

I'm writing to absolutely object to the proposed curb cut by my house on 36 Hale Street.

The upcoming work at 34 Hale Street calls for such a cut on Wilkinson Drive, which is not its actual address.

Furthermore, it would entail trucks backing up, in and out of said construction, resulting in a unbelievable increase in danger for cars and people coming out of the cul-de-sac.

Not to mention the razing of another lot of beautiful trees in Newburyport. Another sad instance of misguided idea of "progress" promoted by our "leaders." As if more, means better.

It's time to reconsider this unabashed building boom in a city that prides itself for its beauty. The City Hall should be a vehicle of maintenance of this beauty, not destruction. The town managers should not have a free pass on razing nature and replacing with concrete.

I trust that nothing will go forward without further discussions with all involved.

Best

Ron Dienstmann.

"Cromwell Danny Lyra" new book by Ron Dienstmann. Check out on Amazon.com

https://www.amazon.com/Cromwell-Danny-Lyra-Ron-Dienstmann/dp/B0B4GS13ML/ref=tmm_pap_swatch_0?_encoding=UTF8&qid=1656686476&sr=8-2

Jennifer Sullivan

From: Michael Maloof <michael.Maloof@virtex.us>
Sent: Monday, November 14, 2022 12:03 PM
To: DPS
Subject: Objection - Curb Cut Wilkinson Drive

Hi Jennifer,

My name is Michael Maloof a 30 year Wilkinson Drive Newburyport resident.

I strongly object to curb cutting Wilkinson Drive. I respectfully request that the integrity of our cul-de-sac, which we pridefully maintain should not be altered for a potential building of a home who's property address is 36 Hale Street.

Michael Maloof
3 Wilkinson Drive
Newburyport, MA

978.764.8288

Disclaimer:

This electronic transmission is strictly confidential to VIRTEX and intended solely for the addressee. The information contained herein may be confidential and protected under NDA and other applicable laws. If you are not the intended recipient of this electronic message, the retention, dissemination, distribution or copying of this email message is strictly prohibited. If you receive this email message in error, please delete it and notify us immediately by contacting the sender via the email or phone number provided. This message or any documents attached may be subject to federal ITAR export control laws.

VIRTEX

Jennifer Sullivan

From: dawngolf@aol.com
Sent: Monday, November 14, 2022 11:49 AM
To: DPS
Subject: 34 Hale St curb cut objection

Good Morning Jennifer:

My name is Dawn Brandmark and I live at 36 Hale Street in Newburyport, MA.
I strongly OBJECT to the curb cut requested by 34 Hale Street in Newburyport, MA.

Thank you,
Dawn Brandmark

CITY OF NEWBURYPORT

IN CITY COUNCIL

ORDERED:

May 8, 2023

AN ORDER APPROVING A BIKE LANE AND TRAFFIC CALMING ON STOREY AVENUE

WHEREAS, the City of Newburyport (“City”) has an interest in reducing vehicle speeds and improving access for cyclists; and

WHEREAS, the Massachusetts Department of Transportation is willing to complete a bicycle lane at the intersection of Storey Ave and High Street; and

NOW, THEREFORE, the City Council hereby approves the layout plan below for the installation of a bicycle lane on the City’s right-of-way, attached hereto and incorporated herewith and marked ‘Exhibit A’

Councillor James J. McCauley

In City council May 8, 2023:

Motion to refer to Public Works & Safety by Councillor Zeid, seconded by Councillor Cameron. Roll call vote. 11 yes. Motion passes.

EXHIBIT A



MEMORANDUM

To: President and Members of Newburyport City Council

From: Mayor Sean R. Reardon

CC: Wayne Amaral, Director of Public Services
Geordie Vining, Senior Project Manager

Re: Storey Ave Bike Lane

Date: May 8, 2023

This cover memo serves to introduce a bike lane that has been requested by Newburyport residents and that the Massachusetts Department of Transportation (MassDOT) is willing to construct should the City sign off on this work. MassDOT informed the City on April 18th that they received a request from a group of Newburyport residents for traffic calming and incorporation of a bike lane for a small portion of Storey Avenue, just west of Ferry Road in Newburyport.

According to MassDOT, a bike lane in the eastbound direction would offer connectivity to the existing facility on High Street. To offer such a connection, however, would require MassDOT to modify pavement markings in municipal layout. Exhibit A above shows proposed and existing bike lanes, with the magenta line representing the connection needed in municipal layout. The scope of work would be limited to marking a bike lane along the southern curb line of the intersection as shown, and possibly some minor pavement marking eradication where conflicts exist.

There is still more planning taking place on the Three Roads and potential long-term configurations. The proposed work above will help with the current situation, and MassDOT is willing to perform this work with Council approval.



IN CITY COUNCIL

ORDERED:

May 22, 2023

Resolution

Whereas: Hale Street, despite being built originally as a rural road, has evolved to be a major link for residents in Wards 3, 5 and 6 and a busy thoroughway for trucking into Newburyport Business Park, and

Whereas: currently 5000 residents are blocked from safe pedestrian and/or bicycle access to schools, links to rail trail or downtown, and

Whereas: the City has previously commissioned a survey of the Right of Way and has the results therefrom, and

Whereas: the City has solicited and received bids from 3rd party vendors To continue to explore options and next-step tasks needed for a share-use pathway along Hale Street, and

Whereas: pursuant to Section 2.5 of the City Charter, all powers of the city shall be vested in the city council which shall provide for their exercise and for the performance of all duties and obligations imposed upon the city by law.

Now Therefore, the City Council hereby requests that the Administration allocate up to One Hundred and Thirty Thousand (\$130,000) Dollars to fund the next phase of design including the identification of longer term funding sources for the completion of a safe pedestrian pathway along Hale Street.

Councillor James J. McCauley

In City Council May 22, 2023:

Motion to waive the rules, accept the late file, and refer to Public Works & Safety by Councillor Zeid, seconded by Councillor Vogel . Roll call vote. 11 yes. Motion passes.



CITY CLERK'S OFFICE
60 Pleasant St.
Newburyport, MA 01950
978-465-4407
978-462-7936
clerk@cityofnewburyport.com

RESIDENTIAL HANDICAPPED PARKING APPLICATION

Applicant's Name: CARLOS PEREIRA GAST

Applicant's Street Address: 12 MERRICK ST
Newburyport, MA 01950

Phone Number: _____ Cell Phone: 978 270 4687

Email: CLIPPERCITYK9@GMAIL.COM

Vehicle Registration Number: 38744

Disabled Parking Placard Number: PL 5900382

You must provide a written statement from the owner of your home that you have either no off-street parking where you live, or why the available off-street parking is inadequate or unavailable. (Both are subject to verification.)

Off street parking is too far from the door.

(Use the back if you need more space.)

I have read the City of Newburyport's policy for establishing handicapped parking spaces on public streets in residential areas, and I understand the conditions required for this handicapped parking space. I also understand that if I fail to meet the eligibility requirements, I will have the opportunity to appeal for a waiver.

I certify that the information provided is correct. I also give permission for the Newburyport City Clerk to obtain all information necessary to verify my need for this parking space.

[Signature]
Signature

May 1 2023
Date



CITY CLERK'S OFFICE
 60 Pleasant St.
 Newburyport, MA 01950
 978-465-4407
 978-462-7936
 clerk@cityofnewburyport.com

RESIDENTIAL HANDICAP PARKING APPLICATION

Applicant's Name: CARLOS FREYDERGAST

Applicant's Street Address: 12 MERRILL ST
Newburyport, MA 01950

TO BE COMPLETED BY ATTENDING PHYSICIAN or OTHER HEALTHCARE PROFESSIONAL

To Physician: Approval for a Residential Handicapped Parking Space is based in part on information provided by you. If this applicant (your patient) has a "hidden" disability (i.e.: one that is not visibly obvious), it will be incumbent on you to specify the extent to which the disability limits the person's mobility in order for our Review Committee to make a fair evaluation of this application. Residential Handicapped Parking Spaces are available only to those with substantial functional limitations that affect mobility for more than **six months**.

Please answer the following:

Does the applicant have mobility impairment? No Yes

Note which, if any, of the following impairments is attributable to the applicant and explain:

- Loss of use of one or more limbs FEET
- Vision impairment _____
- Knee, ankle, hip dysfunction _____
- Respiratory, heart or circulatory disorder _____

Are mobility aids prescribed? No Yes; please specify:

- cane crutches walker wheelchair

Ambulatory range of the applicant: Without rest distance in feet 20
 With intermittent rest distance in feet 40+

Describe any other functional limitations that make having a Residential Handicap Parking Space desirable:

Physician's name (please print): Jon Mallett, DO

Phone: 877-379-5522

Medical specialty: Family Medicine Registration # 76720

Address: 414 Liverhill St. Rowley MA 01969

I hereby certify that the above information is correct.

Physician's signature: [Signature] Date 4/27/25

PLEASE MAIL TO: City of Newburyport, City Clerk's Office
 60 Pleasant St., Newburyport, MA 01950
 ATTN: Richard Jones