



CITY OF HAVERHILL CITY COUNCIL AGENDA

Tuesday, June 4, 2019 at 7:00 PM

Theodore A. Pelosi, Jr. Council Chambers, 4 Summer St, Room 202

1. OPENING PRAYER
2. PLEDGE OF ALLEGIANCE
3. APPROVAL OF MINUTES OF PRIOR MEETING
4. ASSIGNMENT OF THE MINUTES REVIEW FOR THE NEXT MEETING
5. COMMUNICATIONS FROM THE MAYOR:
 - 5.1. Communication from Mayor Fiorentini requesting to address the City Council regarding the proposed FY 2020 Haverhill Budget
6. COMMUNICATIONS AND REPORTS FROM CITY OFFICERS AND EMPLOYEES:
7. UTILITY HEARING(S) AND RELATED ORDER(S)
 - 7.1. Petition from National Grid for pole location to install pole in public way and anchor on private property to provide electric service to new home located at 9 Vincent av (Hearing June 25 2019)
8. HEARINGS AND RELATED ORDERS
 - 8.1. Document 55-C LME 19-1; Petition from Attorney Michael Migliori on behalf of *Full Harvest Moonz Inc* requesting Hearing for Special Permit under Chapter 255, Article XIX LME-RO to operate an *Adult Use Marijuana Establishment at 95 Plaistow rd*
Hearing continued from May 21 2019
Related communication from Attorney Michael Migliori requesting to continue Hearing to June 11 2019
Related communication from Council President Michitson announcing a Special City Council meeting on June 11 2019 at 7:00 pm in the City Council Chambers, Room 202, City Hall, 4 Summer st to discuss Document 55-C, LME 19-1, this Petition as listed above
9. PUBLIC PARTICIPATION- REQUESTS UNDER COUNCIL RULE 28
10. APPOINTMENTS:
 - 10.1. Confirming Appointments:
 - 10.1.1. Rocks Village Historic District Commission:
 - 10.2. Non-Confirming Appointments:
 - 10.2.1. Constables 2019:
Reappointments
Appointments
Resignations
 - 10.2.2. Haverhill Cultural Committee
11. PETITIONS
 - 11.1. Applications Handicap Parking Sign
 - 11.2. Tag Days:
 - 11.3. One Day Liquor License:
 - 11.4. Annual License Renewals
 - 11.4.1.1. Hawker Peddlers License 2019



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- 11.4.2. Coin-Op License Renewals 2019:
- 11.4.3. Sunday Coin-Op License Renewals 2019
- 11.4.4. Drainlayer License for 2019
- 11.4.5. Taxi Driver Licenses for 2019
- 11.4.6. Taxi License
- 11.4.7. Junk Dealer License
- 11.4.8. Pool Tables:
- 11.4.9. Sunday Pool:
- 11.4.10. Bowling
- 11.4.11. Sunday Bowling
- 11.4.12. Buy & Sell Second Hand Articles
- 11.4.13. Buy & Sell Second Hand Clothing -
- 11.4.14. Pawnbroker license
- 11.4.15. Fortune Teller - *renewal*
- 11.4.15.1. *Psychic Readings by Priscilla 101 So Main st Priscilla Miller*
- 11.4.16. Buy & Sell Old Gold
- 11.4.17. Roller Skating Rink - *renewal*
- 11.4.17.1. *Skateland 19 Railroad av March Pyche*
- 11.4.18. Sunday Skating
- 11.4.18.1. *Skateland 19 Railroad av*
- 11.4.19. Theater
- 11.4.20. Exterior Vending Machines
- 11.4.21. Limousine/Livery License/Chair Cars

12. MOTIONS AND ORDERS:

- 12.1. Order - authorize Mayor to enter into and execute a contract with *Whitsons New England Inc* for operation of a food service program for students, employees, visitors and guests of the *Haverhill Public Schools* on behalf of the *School Committee* and also Contract for 2019-2024 is submitted
Related communication from Brian A. O'Connell, Business Manager
- 12.2. Order – appropriate \$422,969.60 from Wastewater account Reserve for CSO Impact Fee and transferred to a new Capital Fund account Ph III CSO Tasks *Related communication from Robert Ward Deputy DPW Director*
- 12.3. Order-authorize Mayor to enter into and execute a “LEASE AGREEMENT” on behalf of City of Haverhill with *Roman Catholic Archbishop of Boston*, a Corporation Sole acting on behalf of *St. James Parish* for premises at 415 Primrose st, also known as the *St. James School*, and also submits the Lease
Related communication from William Cox Jr., City Solicitor
- 12.4. Order – Ballot Question for designated number of marijuana establishments – “Shall this City of Haverhill adopt this Ordinance”
Related communication from William Cox Jr., City Solicitor



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- 12.5. Order – Authorize payment of bills of previous/current year from current year departmental appropriations as listed:

| <u>Vendor</u> | <u>Amount</u> | <u>Account</u> |
|------------------------------|---------------|----------------------------|
| Nutter, McClennen & Fish LLP | \$26,354.37 | Highway Refuse & Recycling |

13. ORDINANCES (FILE 10 DAYS)

14. MONTHLY REPORT

15. RESOLUTIONS and PROCLAMATIONS

16. COMMUNICATIONS FROM COUNCILLORS:

- 16.1. Communication from Council President Michitson requesting to address citizen traffic and safety concerns at intersection of Bowdoin dr and Golden Hill av
- 16.2. Communication from Council President Michitson requesting to introduce Mirca Mejias of the Mt. Washington area to discuss neighborhood concerns and requests
- 16.3. Communication from Councillor Bevilacqua requesting the Council to approve a 2019 ballot question to ask the citizens to reduce the number of recreational retail marijuana establishments in Haverhill below the state established number of six
- 16.4. Communication from Councillor Macek requesting a wooden guard rail be installed on the access road to Winnekenni Castle
- 16.5. Communication from Councillor Macek requesting to introduce a request from Jeanne Cunningham to purchase City owned property on Brandy Brow rd; Map 462, Block 2014, Lot 25
- 16.6. Communication from Councillor Jordan requesting to introduce Lisa Marzilli to share her proposal regarding a cleaner and greener downtown Haverhill
- 16.7. Communication from Councillor McGonagle requesting to refer a request from *Northern Essex Community College* to review exit from College onto Kenoza st as the configuration of the intersection poses safety concerns
- 16.8. Communication from Councillor McGonagle requesting to discuss parking and signage on Fountain st at the intersection of Main st

17. UNFINISHED BUSINESS OF PRECEDING MEETINGS

- 17.1. Document 16-M; Ordinance re: Parking – 44 White st Est Handicap Parking
filed May 14 2019
- 17.2. Document 59-J; Communication from Councillor Barrett requesting to introduce communication from Legislative Delegation concerning the *Bradford Layover Station* and seeks Council endorsement
postponed from May 7 2019



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18. COUNCIL COMMITTEE REPORTS AND ANNOUNCEMENTS

- 18.1.** Councillor Joseph Bevilacqua submits Minutes and Recommendations of the *Planning & Development Committee* meeting that was held on May 22 2019 for acceptance and discussion of item Doc. 59-H – municipal fiber to the home network

19. DOCUMENTS REFERRED TO COMMITTEE STUDY

20. ADJOURN

JAMES J. FIORENTINI
MAYOR



**CITY OF HAVERHILL
MASSACHUSETTS**

511
CITY HALL, ROOM 100
FOUR SUMMER STREET
HAVERHILL, MA 01830
PHONE 978-374-2300
FAX 978-373-7544
MAYOR@CITYOFHAVERHILL.COM
WWW.CI.HAVERHILL.MA.US

May 31, 2019

City Council President John A. Michitson and Members of the Haverhill City Council

RE: FY 2020 Haverhill Municipal Operating Budget

Dear Mr. President and Members of the Haverhill City Council

I am aware that you have received the FY 2020 Haverhill Municipal Operating Budget. I am writing to request permission to address the City Council at your June 4th meeting on my proposed FY2020 budget.

Very truly yours,

James J. Fiorentini, Mayor

JJF/lyf

Hearing June 25 2019

Questions contact – Stefanie Steeves 978-725-1159

7.1

PETITION FOR POLE AND WIRE LOCATIONS

North Andover, Massachusetts

To the City Council
Of Haverhill, Massachusetts

NATIONAL GRID requests permission to locate poles, wires, and fixtures, including the necessary sustaining and protecting fixtures, along and across the following public way:

Vincent St. - National Grid to install (1) SO pole on Vincent St. beginning at a point approximately 105 +/- feet northeast of pole 37-1. National Grid to install new pole 37-2 in the public way and anchor on private property in order to provide electric service to new home located at 9 Vincent Ave., Haverhill, MA.

Location approximately as shown on plan attached.

Wherefore it prays that after due notice and hearing as provided by law, it be granted a location for and permission to erect and maintain poles and wires, together with such sustaining and protecting fixtures as it may find necessary, said poles to be erected substantially in accordance with the plan filed herewith marked – Vincent St. - Haverhill - Massachusetts.

28068196

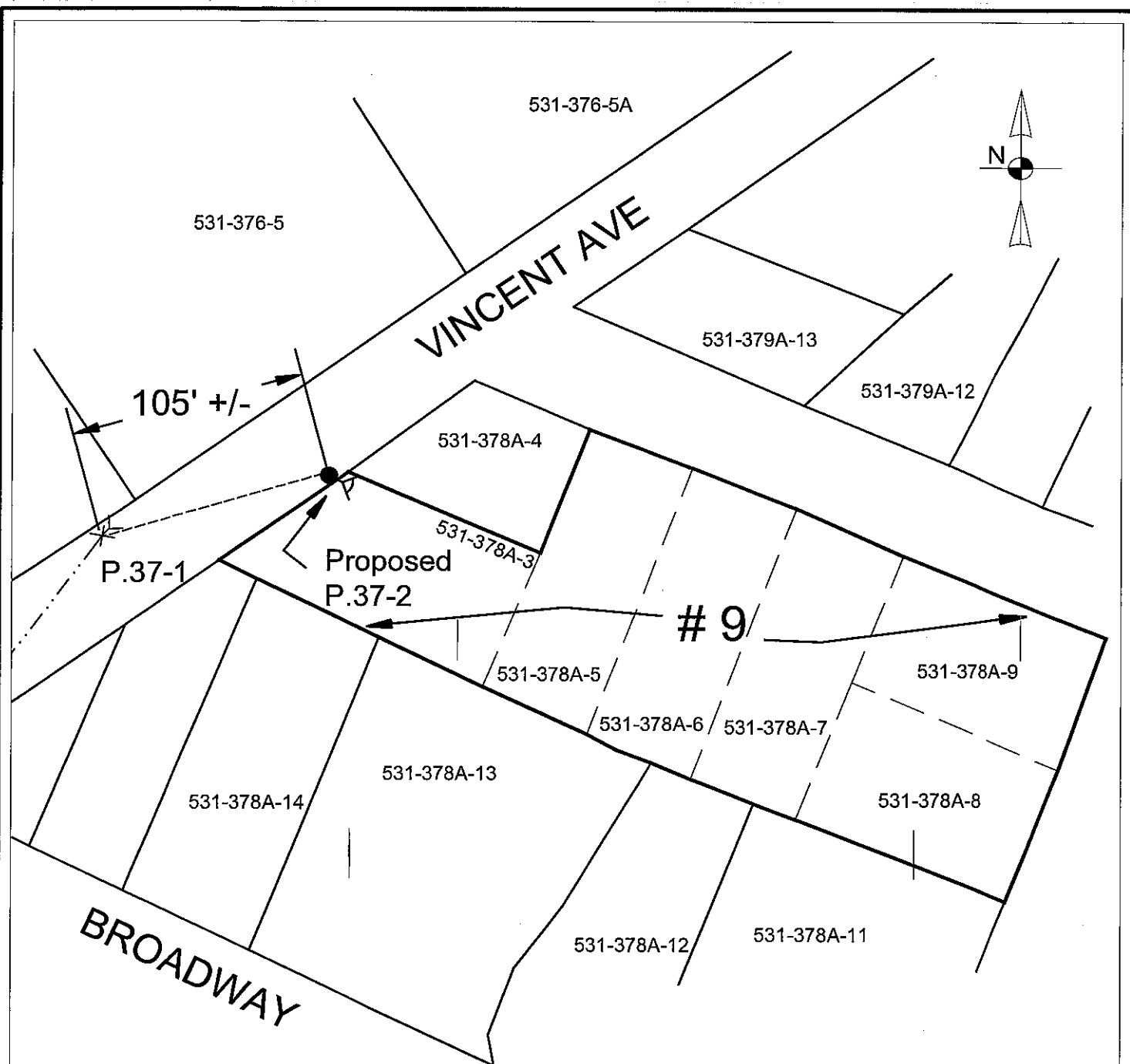
Also, for permission to lay and maintain underground laterals, cables, and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each of said petitioners may desire for distributing purposes.

Your petitioner agrees to reserve space for one cross-arm at a suitable point on each of said poles for the fire, police, telephone, and telegraph signal wires belonging to the municipality and used by it exclusively for municipal purposes.

NATIONAL GRID

BY Dave Johnson/lla
Engineering Department

May 22, 2019



SOLELY OWNED POLE PETITION

nationalgrid

| | |
|--|--|
| ● Proposed solely owned pole in Public way | ✕ Solely owned pole in public way existing |
| --- Proposed Overhead wire | └ Existing anchor in Public way |
| - - - Existing Overhead wire | └ Proposed anchor on Private property |

Nationalgrid to install new pole 37-2 in the public way and anchor on private property in order to provide electric service to new home located at 9 Vincent Ave, Haverhill, MA

DISTANCES ARE APPROXIMATE

Date: 5/21/2019

WORK REQUEST: 28068196

To The: City Of Haverhill

For Proposed: Pole Location: 9 Vincent Ave

Drawn By: S.Steeves

nationalgrid

May 22, 2019

The City Council of Haverhill, Massachusetts

To whom it may concern:

Enclosed please find a petition of NATIONAL GRID, covering NATIONAL GRID pole location(s)

If you have any questions regarding this permit, please contact:

Stefanie Steeves 978-725-1159

Please notify National Grid's Lisa Ayres at 978-725-1418 of the hearing date / time.

If this petition meets with your approval, please return an executed copy to:

National Grid Contact: Lisa Ayres; 1101 Turnpike Street; North Andover, MA 01845.

Very truly yours,

Dave Johnson/lla

Dave Johnson
Supervisor, Distribution Design

Enclosures

Council Hearing
May 21 2019

KLC

KAREN L. FIORELLO
kfiorello@fimilaw.com

FIORELLO & MIGLIORI
ATTORNEYS AT LAW

FIREHOUSE CONDOMINIUMS
18 ESSEX STREET
HAVERHILL, MASSACHUSETTS 01832

TEL 978/373-3003

FAX 978/373-3066
April 16, 2019

MICHAEL J. MIGLIORI
mmigliori@fimilaw.com

8.11

Hand Delivered

John A. Michitson, President
Haverhill City Council
City Hall - 4 Summer Street
Haverhill, MA 01830

Re: Special Permit: Chapter 255 Article XIX LME-RO
Owner: Water Street Retail LLC
Applicant: Full Harvest Moonz Inc.
Location: 95 Plaistow Road, Haverhill, MA
Parcel ID: 638-3-6

Dear President Michitson:

Please be advised this office represents Full Harvest Moonz Inc. regarding the property located at 95 Plaistow Road, (also sometimes referenced as 101 Plaistow Road) and being shown on Haverhill Assessor's Map 638 Block 3 Lot 6.

Full Harvest Moonz Inc. is requesting a Special Permit from the City of Haverhill to operate an Adult Use Marijuana Establishment. The Haverhill Zoning Ordinance Chapter 255 Section 201 requires a Special Permit to operate an Adult Use Marijuana Establishment.

The property is shown in Haverhill Assessor's Map 638 Block 3 Lot 6 and is located in the "LME-RO" Zoning District.

Kindly schedule a hearing with the Council. I have filed the appropriate plans, reports and fees in connection with the requested Special Permit.

The applicable further agrees to waive the statutory requirement for the Haverhill City Council to hold a hearing on the matter within sixty-five (65) days.

Should you have any questions or need any additional information, please don't hesitate to contact me.

IN CITY COUNCIL: April 23 2019
VOTED: that COUNCIL HEARING BE HELD
MAY 21 2019

Attest: _____ City Clerk

IN CITY COUNCIL: May 21 2019
HEARING CONTINUED TO JUNE 4 2019

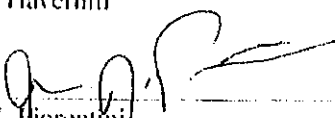
Attest: _____ City Clerk

Sincerely yours,

[Signature]
Michael J. Migliori

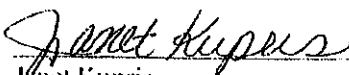
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

City of Haverhill



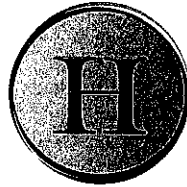
James J. Fiorentini
Mayor

Full Harvest Moonz



Janet Kupris
CEO





FULL
HARVEST MOONZ

Opening Contingency Plan For Parking and Appointments

Recreational customers – Will be required to make an appointment during the initial weeks of opening Full Harvest Moonz, Inc. A schedule of days and hours of operation with time slots in 15 minute intervals will be available to make an appointment online at www.harvestmoonz.com.

In order to enter the facility, it will be necessary to bring your valid government issued ID card proving that you are 21 or older. Typically, this is your driver's license, passport or military ID. **A PRINTOUT OF YOUR CONFIRMATION EMAIL WILL ALSO BE REQUIRED to enter the facility.** You may show us the confirmation email on your phone if you prefer.

No consumption of cannabis is permitted on Full Harvest Moonz premises, or parking lot. Please be respectful of our neighbors. **IT IS ILLEGAL TO SELL CANNABIS TO ANY OTHER INDIVIDUAL.** Penalties may include imprisonment and substantial fines. Customers found or reasonably believed to be illegally diverting cannabis will not be allowed to purchase products from Full Harvest Moonz, Inc.

A separate appointment is required for each 21+ adult.

As supply and demand in the region stabilizes over time, we fully intend to serve walk-in customers.

Marijuana Establishment (LME) Special Permit

LME-19-1

Applicant

👤 michael migliori
☎ 978-373-3003
@ mmigliori@fimilaw.com

Location

95 PLAISTOW RD
Haverhill, MA 01830

Business Owner Information

Describe Your Role in This Application

Attorney/Agent for Applicant

Business Owner Address

22 Veronica Lane

Business Owner State

MA

Business Owner Phone

781-254-6765

Business Owner Name

Janet Kupis

Business Owner City

Weymouth

Business Owner Zip

02189

Business Owner Email

jkupris@harvestmoonz.com

Applicant Information

Name of Attorney/Agent Firm

Fiorello & Migliori

Attorney/Agent City

Haverhill

Attorney/Agent Zip

01830

Attorney/Agent Address

18 Essex Street

Attorney/Agent State

MA

Is the Business Owner a Priority Applicant?

No

Business Information

Name of Establishment

Full Harvest Moonz, Inc.

Business Structure

Corporation

Company Website Address

www.harvestmoonz.com

Type of Establishment

Retailer

Taxpayer Identification Number (TIN)

832454860

Business Phone

781-254-6765

Is the Location Leased or Owner?

Leased

Which Zone are You Applying for?

LME-RO: Retail Sales Only

Are You Seeking to Locate in the Waterfront District Area (WDA)?

No

If Another Marijuana Business Within 1/2 mile of Your Property is Approved First, What Will You Do?

Attempt to Proceed

Corporate Information (Required for Business Entities)**Legal Business Name**

Full Harvest Moonz, Inc.

Doing Business As (DBA) If Any

--

Are You a MA Business Entity?

Yes

Filing Date w/Secretary of State

10/23/2018

Corporate Officers & Director Information**Officer/Director Address**

22 Veronica Lane, Weymouth, MA 02189

Officer/Director Name

Janet Kupris

Officer/Director % Ownership

100

Director/Officer Title

President, Treasurer, Secretary, Director

Hours of Operation**Monday**

9:00am - 9:00pm

Tuesday

9:00am - 9:00pm

Wednesday

9:00am - 9:00pm

Thursday

9:00am - 9:00pm

Friday

9:00am - 9:00pm

Saturday

9:00am - 9:00pm

Sunday

12:00pm - 9:00pm

Liability Agreement**Agree**

true

Indemnification Agreement

Agree

true

New Custom Section



Odor Mitigation Plan for 101 Plaistow Rd, Haverhill, MA.

All products coming into the Full Harvest Moonz facility will arrive pre-packaged from our wholesaler. These products will be hermetically sealed which will prevent any odor from escaping the packaging.

Full Harvest Moonz will also install charcoal filters throughout the building that will be more than sufficient to mitigate any residual odor that may be noticeable. This Protocol creates an odor free air quality environment.



City of Haverhill, Massachusetts
James J. Fiorentini, Mayor

Host Community Agreement

CITY OF HAVERHILL AND *Full Harvest Moonz, Inc.* THIS HOST COMMUNITY AGREEMENT ("AGREEMENT") is entered into this *17th* day of *Dec*, 2018, by and between *Full Harvest Moonz, Inc.* a Massachusetts Limited liability company, and any successor in interest, with a principal office address of *22 Veronica Lane Weymouth* ("the Company"), and the City of Haverhill, a Massachusetts municipal corporation with a principal address of 4 Summer Street, Haverhill MA 01830 ("the City"), acting by and through its Mayor in reliance upon all of the representations made herein.

101 Plaistow Rd WHEREAS, the Company wishes to locate an Adult Use Retail Marijuana Establishment at *101 Plaistow Rd*, Haverhill MA, known as ASSESSOR'S MAP *101* PARCEL *101* in accordance with and pursuant to applicable state laws and regulations, including, but not limited to 935 CMR 500.00 and such approvals as may be issued by the City in accordance with its Zoning Ordinance including a special permit and other applicable local regulations; and

WHEREAS, the Company intends to provide certain benefits to the City in the event that it receives the requisite licenses from THE CANNABIS CONTROL COMMISSION ("CCC") or such other state licensing or monitoring authority, as the case may be, to operate Adult Use Retail Establishment and receives all required local permits and approvals from the City including a special permit;

WHEREAS, Company desires to be a responsible corporate citizen and contributing member of the business community of the Municipality, and in the event the contingencies noted below are met, intends to provide certain benefits to the Municipality over and above typical economic development benefits attributable with similar new manufacturing and retail concerns locating in the Municipality; and

WHEREAS, the Municipality believes that the Company's operation of a Licensed Retail Marijuana Establishment in Haverhill, coupled with its contributions to the Municipality, as set forth herein, would advance the public good;

WHEREAS, the parties intend by this Agreement to satisfy the provisions of G.L. c.91G, Section 3(d), applicable to the operation of Adult Use Retail Establishment (hereinafter "Facility"), such activities to be only done in accordance with the applicable state and local laws and regulations in the City;

WHEREAS, the City and the Company agree that the Company will have a substantial impact on the traffic, neighborhood where they wish to locate and the entire city and

WHEREAS, the city and the Company agree that the city will be required to extend substantial additional resources as a result of the company's presence in the city and

WHEREAS, the company and the city acknowledge the additional costs and burdens imposed on the city as a result of the city being a border community with New Hampshire;

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

I. Recitals

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

II. Annual Payments

In the event that the Company obtains the requisite licenses and/or approvals as may be required for the operation of an Adult Use Retail Establishment and receives any and all necessary and required permits and licenses of the City, and at the expiration of any final appeal period related thereto, said matter not being appealed further, which permits and/or licenses allow the Company to locate, occupy and operate the proposed Adult Use Retail Establishment in the City, then the Company agrees to provide the following Annual Payments; provided, however, that if the Company fails to secure any such other license and/or approval as may be required, or any of the required municipal approvals, the Company shall reimburse the City for any fees associated with the negotiation of this Agreement. In the event that the Company fails to remit the agreed payments, and if said payments are not made to the City within 30 days of notice to the Company, the City reserves the right to terminate the Agreement and notify the Cannabis Control Commission.

A. Community Impact Fee

The Company anticipates that the City will incur additional expenses and impacts on the City's road and other infrastructure systems, law enforcement, fire protection services, inspectional services, and permitting and consulting services, as well as unforeseen impacts on the City. Accordingly, in order to mitigate the financial impact on the City and use of City resources, the Company agrees to pay an Annual Community Impact Fee to the City, in the amount and under the terms provided herein that is reasonably related to the costs imposed upon the City by the operation of the Company's Marijuana Establishment.

1. The Company shall make annual host community payments of **three percent (3%) of the gross sales of the Marijuana Establishment to the Municipality** (the "Annual Payment") for a period of five (5) years. The initial Annual Payment shall be due twelve (12) months after the issuance of a Final Certificate of Registration or its equivalent (the "Initial Payment"), and each subsequent Annual Payment shall be due on the anniversary date of the Initial Payment.



2. The Annual Community Impact Fee shall be paid quarterly per the City's fiscal year (July 1- June 30). The Annual Community Impact Fee for the first quarter of operation shall be prorated.
3. The City shall use the above referenced payments in its sole discretion but shall make a good faith effort to allocate said payments to off-set costs related to road and other infrastructure systems, law enforcement, fire protection services, inspectional services, public health and addiction services and permitting and consulting services, as well as unforeseen impacts upon the City.
4. The Company agrees to provide an **additional annual payment of:** The sum of Twenty Five Thousand Dollars (\$25,000) to be made to a charity chosen by city.
5. Payments: The Company shall make the payments set forth above in this Section of this Agreement made payable to the Municipality. The parties understand and acknowledge that the Municipality is under no obligation to use the payments described in this Section in any particular manner, provided, however, that the payments are reasonably related to the costs imposed upon the Municipality by the operation of the Marijuana Establishment.
6. Late Payment Penalty: The Company acknowledges that time is of the essence with respect to their timely payment of all funds required under Section 2 of this Agreement. In the event that any such payments are not fully made with ten (10) days of the date they are due, the Company shall be required to pay the City a late payment penalty equal to five percent (5%) per month of such required payments.

B. Additional Costs, Payments and Reimbursements

1. Permit and Connection Fees: The Company hereby acknowledges and accepts, and waives all rights to challenge, contest or appeal, the City's building permit fee and other permit application fees, sewer and water connection fees, and all other local charges and reasonable fees generally applicable to other commercial developments in the City.
2. Traffic and Parking Study Peer Review: The Company agrees that they will conduct and submit traffic and parking study or studies regarding the proposed location. The studies will include an analysis of traffic generation, circulation, and off street parking demand to determine sufficient parking and optimum configuration for site ingress and egress. The studies will include an analysis of any temporary effects of opening in that particular location and shall include a contingency mitigation plan in the event that the temporary effects causes traffic or parking problems in that location. Those contingency plans may include such items as appointment only sale periods, leasing spaces in areas not directly adjacent to the location and providing shuttle service, hiring of detail officers or flag personnel, or other mitigation plans as may be approved by the city. The City may require a peer review of any such traffic and parking study or studies, and the Company agrees to pay for reasonable consulting fees to provide peer review of the traffic and/or parking studies. The company shall submit detailed plans to mitigate any traffic or parking problems that are foreseen either in the study done by the applicant or in the peer review, including temporary problems. Approval of the traffic and parking plans and the mitigation plans by the Mayor and Police Chief shall be required prior to

QF JK

issuance of an occupancy permit or any other permits required by the city to the extent that this is allowed by law.

C. Annual Reporting for Host Community Impact Fees and Benefit Payments

The Company shall submit annual sales report to the City within 30 days after the payment of its Annual Community Impact Fee with a certification of its annual sales. The Company shall maintain books, financial records, and other compilations of data pertaining to the requirements of this Agreement in accordance with standard accounting practices and any applicable regulations or guidelines of the CCC. All records shall be kept for a period of at least seven (7) years. Upon request by the City, the Company shall provide the City with the same access to its financial records (to be treated as confidential, to the extent allowed by law) as it is required by the CCC and Department of Revenue for purposes of obtaining and maintaining a license for the Facility

During the term of this Agreement and for three years following the termination of this Agreement the Company shall agree, upon request of the City to have its financial records examined and audited by an Independent Financial Auditor, the expense of which shall be borne by the City. The Independent Financial Auditor shall review the Company's financial records for purposes of determining that the Annual Payments are in compliance with the terms of this Agreement. Such examination shall be made not less than thirty (30) days following written notice from the City and shall occur only during normal business hours and at such place where said books, financial records and accounts are maintained. The Independent Financial Audit shall include those parts of the Company's books and financial records which relate to the payment and shall include a certification of itemized gross sales for the previous calendar year, and all other information required to ascertain compliance with the terms of this Agreement. The independent audit of such records shall be conducted in such a manner as not to interfere with the Company's normal business activities.

1. Other Payments: Company anticipates that it will make annual purchases of water, sewer and other services from City agencies. Company will pay any and all fees associated with the local permitting and operation of the Marijuana Establishment.
2. Review: The Municipality and the Company will review the Annual Payment every twelve (12) months to ensure that the Annual Payment is reasonably related to the costs imposed upon the Municipality by the operation of the Marijuana Establishment.
3. Local Taxes: At all times during the Term of this Agreement, property, both real and personal, owned or operated by Company shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by Company or by its landlord, and neither Company nor its landlord shall object or otherwise challenge the taxability of such property and shall not seek a non-profit exemption from paying such taxes. The company shall also comply at all times with the collection and payment of the local option excise on the retail sales of marijuana for adult use as provided for by local and state law.

Handwritten signatures and initials, including a large 'M' and a stylized 'JK'.

III. Community Support and Additional Obligations

- A. The Company agrees to provide no less than 100 man hours annually to participate in community service activities including but not limited to: City-sponsored educational programs on public health and drug abuse prevention, senior assistance, community cleanup, veteran's assistance.
- B. Local Vendors - to the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, Company will make every effort in a legal and non-discriminatory manner to give priority to local businesses and vendors in the provision of goods and services called for in the construction, maintenance and continued operation of the Marijuana Establishment. Company shall use good faith efforts to utilize vendors and/or contractors based in the City.
- C. Employment/Salaries - except for senior management, and to the extent such practice and its implementation are consistent with federal, state, and municipal laws and regulations, Company shall use good faith efforts to hire employees that are City residents.
- D. To the extent that this practice is allowed by Federal and State law, and except for senior management, the company agrees to pay the prevailing wage in the construction or remodeling of their facilities and in the operation of the facility.
- E. Company shall provide the Municipality with annual reports indicating the percentages of vendors and employees in accordance with paragraphs (B) and (C) above.
- F. The Company shall, at least annually, provide the Municipality with copies of all reports submitted to the CCC regarding operations at the Marijuana Establishment.
- G. The Company will work with the Municipality's Health Department to ensure that all Company products are tested to the satisfaction of the Municipality.

IV. Local Taxes

At all times during the Term of this Agreement, property, both real and personal, owned or operated by the Company shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by the Company or by its landlord and neither the Company nor its landlord shall object or otherwise challenge the taxability of such property and shall not seek a non-profit or agricultural exemption or reduction with respect to such taxes.

Notwithstanding the foregoing, (i) if real or personal property owned, leased or operated by the Company is determined to be non-taxable or partially non-taxable, or (ii) if the value of such property is abated with the effect of reducing or eliminating the tax which would otherwise be paid if assessed at fair cash value as defined in G.L. c. 59, §38, or (iii) if the Company is determined to be entitled or subject to exemption with the effect of reducing or eliminating the tax which would otherwise be due if not so exempted, then the Company shall pay to the City an amount which when added to the taxes, if any, paid on such property, shall be equal to the taxes which would have been payable on such property at fair cash value and at the otherwise applicable tax rate, if there had been no abatement or exemption; this payment shall be in addition to the payment made by the Company under Section 2 of this Agreement.



The Company shall also comply at all times with the collection and payment of the local option excise on the retail sales of marijuana for adult use as provided for by local and state law.

V. Security

To the extent requested by the City's Police Department, and subject to the security and architectural review requirements of the CCC, or such other state licensing or monitoring authority, as the case may be, the Company shall work with the Police Department in determining the placement of exterior security cameras.

The Company agrees to cooperate with the Police Department, including but not limited to periodic meetings to review operational concerns, security, delivery schedule and procedures, traffic and parking concerns, cooperation in investigations, and communications with the Police Department of any suspicious activities at or in the immediate vicinity of the proposed Adult Use Retail Establishment, and with regard to any anti-diversion procedures.

To the extent requested by the Police Department, the Company shall work with the Police Department to implement a comprehensive diversion prevention plan to prevent diversion, such plan to be in place prior to the commencement of operations at the Establishment.

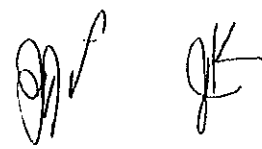
VI. Community Impact Hearing Concerns

The Company agrees to employ its best efforts to work collaboratively and cooperatively with its neighboring businesses and residents to establish written policies and procedures to address mitigation of any concerns or issues that may arise through its operation of the Facility, including, but not limited to any and all concerns or issues raised at the Company's required Community Outreach Meeting relative to the operation of the Facility; said written policies and procedures, as may be amended from time to time, shall be reviewed by the City and shall be incorporated herein by reference and made a part of this Agreement, the same as if each were fully set forth herein.

VII. Additional Obligations

The obligations of the Company and the City recited herein are specifically contingent upon the Company obtaining a license for operation of an Adult Use Retail Marijuana Establishment in the City, and the Company's receipt of any and all necessary local approvals to locate, occupy, and operate an Adult Use Retail Marijuana Establishment in the City including a special permit.

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



VIII. Re-Opener/Review

The Company shall be required to provide to the City notice and a copy of any other Host Community Agreement entered into for any establishment in which the Company is licensed by the CCC as the same type of establishment as the entity governed by this agreement.

In the event the Company enters into a Host Community Agreement for an Adult Use Retail Marijuana Establishment with another municipality in the Commonwealth that contains financial terms resulting in payments of a Community Impact Fee or other payments totaling a higher percentage of gross sales for the same type of establishment than the Company agrees to provide the City pursuant to this Agreement, then the parties shall reopen this Agreement and negotiate an amendment resulting in financial benefits to the City equivalent to those provided to the other municipality.

IX. Support

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

X. Term and Termination

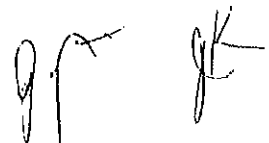
This Agreement shall take effect on the day above written and executed, subject to the contingencies noted herein. This agreement shall continue in effect for five (5) years from the date of this Agreement. In the event Company no longer does business in the Municipality or in any way loses or has its license revoked by the State, this Agreement shall become null and void. The Municipality may terminate this Agreement at any time. Company shall not be required to cease operations at the termination of this Agreement.

In the event that the Cannabis Control Commission suspends, cancels or revokes the license of the company, the company shall cease operation.

XI. Successors/Assigns

The Company shall not assign, sublet, or otherwise transfer this agreement in whole or in part, without the prior written consent from the City which consent shall not be unreasonably withheld or delayed, and shall not assign any of the monies payable under this Agreement, except by and with the written consent of the City and shall not assign or obligate any of the monies payable under this Agreement, except by and with the written consent of the City. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the City of Haverhill nor the Company shall assign, sublet, or otherwise transfer any interest in the Agreement without the written consent of the other.

Events deemed an assignment include, without limitation: (i) Company's final and adjudicated bankruptcy whether voluntary or involuntary; (ii) the Company's takeover with any other entity; (iii) the Company's outright sale of assets and equity, majority stock sale to another organization or



entity for which the Company does not maintain a controlling equity interest (iv) any assignment for the benefit of creditors; and/or (v) any other assignment not approved in advance in writing by the City.

XII. Notices

Any and all notices, consents, demands, requests, approvals or other communications required or permitted under this Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, and shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service, or, if sent by private overnight or other delivery service, when deposited with such delivery service.

To City of Haverhill: Mayor, 4 Summer Street, Haverhill MA 01830

To Licensee: *22 Veronica Lane Weymouth, MA 02189*

XIII. Severability

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

XIV. Governing Law

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

XV. Entire Agreement

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the Company and the City with respect to the matters described herein. 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.

XVI. Amendments/Waiver

Amendments, or waivers of any term, condition, covenant, duty or obligation contained in this Agreement may be made only by written amendment executed by all signatories to the original Agreement, prior to the effective date of the amendment.

XVII. Headings

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

XVIII. Counterparts

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

XIX. Signatures

Electronic signatures affixed to this Agreement shall have the same weight and authority as an original signature.

XX. No Joint Venture

The Parties hereto agree that nothing contained in this Agreement or any other documents executed in connection herewith is intended or shall be construed to establish the City as joint ventures or partners.

XXI. Nullity

This Agreement shall be null and void in the event that the Company does not locate an Adult Use Retail Establishment in the City or relocates the Facility out of the City, provided, however, that if the Company decides not to locate an Adult Use Retail Establishment in the City of Haverhill, the Company shall reimburse the City for reasonable fees associated with the negotiation of this Agreement. Further, in the case of any relocation out of the City, the Company agrees that an adjustment of Annual Payments due to the City hereunder shall be calculated based upon the period of occupation of the Facility in the City, but in no event shall the City be responsible for the return of any funds provided to it by the Company.

XXII. Indemnification

The Company shall indemnify, defend, and hold the City of Haverhill harmless from and against any and all claims, demands, liabilities, actions, causes of actions, defenses, proceedings and/or costs and expenses, including attorney's fees, brought against the City, their agents, departments, officials, employees, insurers and/or successors, by any third party arising from or relating to the development of the Property and/or Facility. Such indemnification shall include, but shall not be limited to, all reasonable fees and reasonable costs of attorneys and other reasonable consultant fees and all fees and costs (including but not limited to attorneys and consultant fees and costs) shall be at charged at regular and customary municipal rates, of the City's choosing incurred in defending such claims, actions, proceedings or demands. The Company agrees, within thirty (30) days of written notice by the City, to reimburse the City for any and all costs and fees incurred in defending itself with respect to any such claim, action, proceeding or demand.

XXIII. Third-Parties

Nothing contained in this agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or the Company.

A handwritten signature in black ink, appearing to be a stylized 'J' followed by a surname, located in the bottom right corner of the page.

*related
communication*

Linda Koutoulas

From: Michael Migliori <mmigliori@fimilaw.com>
Sent: Thursday, May 30, 2019 11:38 AM
To: Linda Koutoulas
Cc: Janet Kupris; jalex@reretail.onmicrosoft.com; jtarpinian@harvestmoonz.com; Joseph A. Giannino
Subject: Full Harvest Moonz Hearing Continuance

Linda,
In light of the unavailability of Councilor Sullivan for the June 4th Council Meeting I would like to request that the Council continue the hearing for Full Harvest Moonz until **June 11th at 7:00pm.**
Should you need anything else from me please let me know.
Thanks.

Michael J. Migliori, Esq.
FIORELLO & MIGLIORI
18-20 Essex Street
Haverhill, MA 01832
(978) 373-3003
Fax (978) 373-3066
www.fimilaw.com

CITY COUNCIL

JOHN A. MICHITSON
PRESIDENT
THOMAS J. SULLIVAN
VICE PRESIDENT
JOSEPH J. BEVILACQUA
MELINDA E. BARRETT
COLIN F. LEPAGE
TIMOTHY J. JORDAN
WILLIAM J. MACEK
MARY ELLEN DALY O'BRIEN
MICHAEL S. MCGONAGLE



Related Communication

CITY HALL, ROOM 204
4 SUMMER STREET
TELEPHONE: 978 374-2328
FACSIMILE: 978 374-2329
www.haverhillma.gov
citycncl@cityofhaverhill.com

CITY OF HAVERHILL
HAVERHILL, MASSACHUSETTS 01830-5843

May 30, 2019

TO: Linda Koutoulas
City Clerk

Dear Ms. Koutoulas:

There will be a Special City Council meeting on June 11, 2019 at 7:00PM in the Theodore Pelosi, Jr. City Council Chambers, Room 202, City Hall, 4 Summer Street. The purpose of the meeting is to discuss Document 55-C, LME 19-1, Petition from Attorney Michael Migliori on behalf of Full Harvest Moonz Inc. requesting Hearing for Special Permit under Chapter 255, Article XIX LME-RO to operate an Adult Use Marijuana Establishment at 95 Plaistow Road.

Sincerely,

John A. Michitson, President
Haverhill City Council

c: City Councillors
Mayor James Fiorentini

City of Haverhill

11,4,15,11

License

Honorable President and Members of the Haverhill City Council:

The undersigned respectfully asks that he/she may receive a Fortune Teller License

Place of business being: 101 South main st Bradford MA 01835

Name of Business: PSYCHIC Readings By Priscilla

Address: 101 South main st Bradford

Applicant: Priscilla Miller

Applicant phone number: 978-828-2961

Business Certificate # and expiration date:

Haverhill, MAY 22 2019, 20

5/24/2023

131557

Office use only

New/Renew (circle one)

Fee: 30.00

In Municipal Council, _____, 20

Attest: _____ City Clerk

Approve ☒ _____

Denied ☐ _____

[Signature]
Police Chief

_____(If needed, other Dept. Signoff)

Please complete back side of this application

City of Haverhill

11.4.17.7

License

Honorable President and Members of the Haverhill City Council:

The undersigned respectfully asks that he/she may receive a Roller Skating Rink License

Place of business being:

Name of Business:

Address:

Applicant:

Applicant phone number:

Business Certificate # and expiration date:

Haverhill,

Office use only

New/Renew (circle one)

Fee:

In Municipal Council,

Attest:

Approve ☒

Denied ☐

City Clerk

Police Chief

(If needed, other Dept. Signoff)

Please complete back side of this application

City of Haverhill

License

11, 4, 18, 1

Honorable President and Members of the Haverhill City Council:

The undersigned respectfully asks that he/she may receive a Sunday License

Place of business being:

Name of Business:

Skateland

Skating

Address:

19 Railroad av

P.O. Box
5270

Applicant:

Marc Pyche

Applicant phone number:

978-265-7533

Business Certificate # and expiration date:

Haverhill, MAY 06 2019, 20

Office use only

New/Renew (circle one)

Fee: \$50.00

In Municipal Council, _____, 20

Attest:

Approve ☒

Denied ☐

City Clerk

Alan R. DePaola

Police Chief

(If needed, other Dept. Signoff)

Please complete back side of this application



DOCUMENT

CITY OF HAVERHILL

In Municipal Council

ORDERED:

That the Mayor be and is hereby authorized to enter into and execute a contract with Whitsons New England, Inc. for the operation of a food service program for the students, employees, visitors and guests of the Haverhill Public Schools on behalf of the School Committee. The term of the contract exceeding three (3) years, City Council authorization is required by MGL c. 30B, §12(b). A copy of the contract is attached hereto and incorporated herein.



**City of Haverhill
Articles of Agreement**

**HPS Food Service Agreement
RFP024.19**

THIS FOOD SERVICE AGREEMENT ("Agreement") is made as of May 23, 2019, by and between the Haverhill Public Schools (the "School Food Authority" or "SFA"), having a principal place of operations at 4 Summer Street, Haverhill Massachusetts 01830, and Whitsons New England, Inc., a corporation with a usual place of business at 1800 Motor Parkway, Islandia, New York ("Whitsons" or "FSMC"), collectively the "Parties".

WITNESSETH:

WHEREAS, the SFA has advertised for and has solicited proposals for the purpose of managing and operating the Food Service Program for the SFA's students, employees, visitors and guests at its Premises located at all of the campuses within the jurisdiction of the SFA (collectively, the "Facility"). And whereas FSMC was selected as the successful vendor in the proposal process, and whereas the parties agree that the terms and conditions of the Contract to provide such services shall be incorporated into a written agreement.

NOW, THEREFORE, in consideration of the mutual agreements set forth below and other good and valuable consideration, acknowledged by each of the parties to be satisfactory and adequate, FSMC and the SFA agree as follows:

I. Purpose of the Contract

- Appointment of FSMC. The SFA hereby retains FSMC and grants to FSMC the exclusive right to provide and manage the SFA's food service program at the Facility. FSMC shall render the Food Services within the facilities of the Premises, including but not limited to, the food preparation, serving, dining and storage areas designated for the Food Service Program.
- General Purpose. FSMC will be responsible for all of the SFA's food service operations and will act in good faith and according to industry standards to prepare and serve wholesome, nutritious and appetizing meals to the reasonable satisfaction of the SFA. FSMC shall comply with the applicable provisions of the National School Lunch Act as amended, the School Breakfast Program and the Department of Agriculture regulations and any requirements imposed by any applicable state agency.
- Independent Contractor. FSMC shall be an independent contractor and shall retain control over its employees and agents. No employee, agent or representative of FSMC shall be entitled to receive any benefits of employment with the SFA, including, without limitation, salary, overtime, vacation pay, holiday pay, sick leave, health insurance, life insurance, pension or deferred compensation. FSMC shall be free to perform services for any other SFA, company or organization during the term of this Agreement; nothing herein, however, shall relieve FSMC of its contractual obligations under the remainder of this Agreement.
- Regulation and Access. The SFA may supervise FSMC's daily operation of the Food Service with respect to all matters (including working conditions for the Food Service employees and safety, sanitation, and maintenance of the Food Service facilities). SFA may make reasonable regulations with regard to all such matters, and shall give FSMC written notice thereof.
- FSMC shall perform the services and/or shall deliver the goods as set forth in the Specifications in the solicitation documents. The provisions of the solicitation documents, including, without limitation, the RFP, Instructions, Form for Proposal, General Conditions and Specifications, as applicable, are incorporated herein by reference. In the event of a conflict between a provision of any of those documents and a provision of this Contract, the provision of this Contract shall govern. To the extent any provision of this Agreement required by law is inconsistent with other, non-statutory sections in this agreement, any statutorily-mandated provisions contained herein shall control.

II. Definitions

- Accounting Period – All accounting periods shall be based on actual calendar month.
- Charge – A fee established by FSMC for goods or services provided by FSMC.
- Surplus – The excess of Net Sales over the total of Operating Expenses and Management and Administrative fees.

- Deficit – The excess of the total of Operating Expenses and Management & Administrative Fees over Net Sales.
- Food Service – The preparation, service and sale of food, beverages, and other related items at the Premises.
- General Support Services Allowance – Allowance for overhead services provided by FSMC for (i) the supervision of FSMC employees by executives not assigned to the Food Service operation; and (ii) General support provided by FSMC’s accounting, tax, marketing, training, human resource, law and internal audit departments. Also referred to in this agreement as Administrative Fee.
- Gross Hourly Wages – The total wages earned by an hourly employee (including overtime) without deducting taxes or other items.
- Gross Management Salary – The total salary earned by a salaried employee without deducting taxes or any other items.
- Gross Salaries and Wages – The total of Gross Management Salary and Gross Hourly Wages.
- Gross Sales – All sales of food, beverages, and other related items in the Food Service operation, plus sales and use taxes and federal and state reimbursements.
- Net Sales – Gross Sales less sales and use taxes.
- Opening Expenses – All costs, charges and expenses relating to the opening of the Food Service operation including, but not limited to, pre-opening labor expenses, supervisory and training expenses including travel, meals, lodging expenses, charges for finance and operating manuals, advertising, forms, opening promotions and opening office supplies.
- Operating Expenses – All costs, charges and expenses incurred in connection with the Food Service operation including, but not limited to, the following: (i) Goods, including food, beverages, merchandise and supplies, and the distribution of such goods. FSMC shall credit SFA with any discounts obtained from vendors, suppliers or distributors for goods procured for the SFA’s account. (ii) In the event that FSMC, either directly or indirectly or through one of its affiliates, furnishes products or services necessary for the efficient operation of SFA’s food service program, the charge to SFA shall be competitive with the cost of obtaining such products or services from an independent source in the open market. (iii) Labor, including salaries and bonuses, if any, wages, taxes, benefits, retirement plans and the cost of administering such plans and services. (iv) Other costs, charges and expenses including, but not limited to, medical benefits charges for workers’ compensation and general liability insurance based on the actual annual rates for FSMC for the Premises and other insurance maintained pursuant to the Agreement; out-of-pocket travel and related expenses of employees assigned to the Premises subject to the mutual agreement of the parties; sales and use taxes; and costs of licenses, permits, information systems, software, promotional or proprietary materials, flowers, decorations, overnight delivery, if necessary, smallwares and other services related to the Food Service operation.
 - SFA will pay allowable costs from the non-profit food service account to FSMC net of all discounts, rebates and other applicable credits accruing to or received by the FSMC or any assignee under the contract, to the extent those credits are allowable to the allowable portion of the costs billed to the SFA.
 - FSMC must either (i) separately identify and provide sufficient information to permit the SFA to identify for each cost submitted for payment to SFA the amount of cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account), or (ii) exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payments and that records have been established that maintain the visibility of unallowable contracts, including directly associated costs in a manner suitable for contract cost determination and verification.
 - FSMC’s determination of its allowable costs must be made in compliance with the applicable USDA and program regulations.
 - FSMC has identified the amount of each discount, rebate, and other applicable credit with the bills and invoices presented to SFA for payment and individually identified the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit.
 - FSMC has identified the method by which it will report discounts, rebates and other applicable credits allowable to the contract that are not reported prior to the conclusion of the contract
 - FSMC must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to SFA, the Massachusetts Department of Elementary & Secondary Education (MDESE) and the U.S. Department of Agriculture.
- Pattern Meal – A meal eligible for government reimbursement.
- Smallwares – Dishware, glassware, flatware, utensils and similar items.

III. Commencement & Termination

- **Contract Duration.** This term of this Agreement shall be for one (1) year beginning on July 1, 2019 and continuing until June 30, 2020 unless terminated by either party as hereinafter provided. The School Department, at its sole option, may renew this Agreement for up to four (4) successive one (1) year renewal periods. 7 CFR 210.16(d)
- **Termination.** Either party may terminate this Agreement without cause by giving sixty (60) days notice in writing to the other party of its intention to do so. 7 CFR 210.16(d)
- **Breach.** If either party breaches a material provision hereof ("Cause"), the non-breaching party shall give the other party written notice of such Cause. If the Cause is remedied within thirty (30) days of receipt of notice, the notice shall be considered satisfied. If such Cause is not remedied within thirty (30) days of receipt of notice, the party giving notice shall have the right to terminate the Agreement thirty (30) days from the receipt of the notice. However, neither party shall be responsible to the other for any losses or failure to perform its respective obligations under the Agreement when such failure is caused by conditions beyond the party's control or other force majeure event, such as fire, explosion, water, act of God, civil disorder or disturbances, labor disputes, vandalism, war, riot, sabotage, weather and energy related closings, governmental rules, and regulations or like causes beyond the reasonable control of such party or the damage or destruction of real or personal property caused by of such causes. In addition, the parties agree that nothing in this paragraph modifies the parties' right to terminate this Agreement by giving 60 days notice in accordance with Section 7 CFR 210.16(b)(2) and CFR Part 3016.36(i)
- **Penalty Provision.** If FSMC has breached the terms of this Agreement, and FSMC has not cured the breach, the SFA may elect to pursue any and all available administrative, contract or legal remedies. The SFA may also pursue the following penalties for an uncured breach: (i) for a first violation, a written reprimand; (ii) for a second violation, a \$25.00 penalty; or (iii) for a third violation, a \$50.00 penalty. For the purposes of the foregoing, a single violation means an event of the same or similar kind, no matter the duration or numbers of personnel, equipment, students or meals involved. 7 CFR Part 3016.36(i)

IV. Management Services & Special Functions

- **Management Services.** FSMC will provide all management, administrative services required for the efficient supervision and operation of SFA's food service programs. The resident food service director's salary and fringe benefits will be a direct reimbursable cost of operation.
- **Special Functions.** FSMC will provide food services for administration and student-related functions as reasonably requested by SFA. Such requests must be received at least ten (10) days prior to the date of the function. All food and labor costs for these functions will be billed directly to the school organization involved, unless otherwise specified by the SFA. Any special arrangements regarding other costs, which might be incurred at these functions, may be negotiated between FSMC and the organization.

V. Food Service

- **Meal Program.** FSMC shall provide nutritional breakfasts (if applicable), lunches, milk service and à la carte items in accordance with the following terms and conditions: (i) Food shall be prepared in the SFA's Food Service facilities for service at the Premises. (ii) Prices to be charged for meals during the contract year shall be approved by the SFA. (iii) Prices for à la carte items, faculty and staff meals, snack foods and beverages shall be approved by the SFA. (iv) All free and reduced price lunches and all ticketed lunches shall be administered by FSMC on behalf of the SFA. The SFA shall be responsible for establishing and notifying parents and guardians of program criteria for providing free and reduced price meals for eligible students. It shall be the joint responsibility of SFA and FSMC to protect the anonymity of children receiving free or reduced price meals and to establish methods for insuring such anonymity. Nothing herein, however, shall allow either the SFA or FSMC to violate any provision of the Commonwealth's Public Records law, M.G.L. c. 66, §10 and M.G.L. c. 4, §7, the Federal Education Privacy Rights Act (FERPA), or any other federal or state law.
- **Special Diets.** FSMC shall supply any special diets for students required for medical reasons when prescribed and approved in writing by a recognized medical authority for handicapped or non-handicapped students.
- **Food Committee and Advisory Board.** FSMC shall participate in Food Committee meetings at dates and times agreed upon by FSMC and the Food Committee members. FSMC shall cooperate with the SFA in the establishment of an Advisory Board composed of parents, teachers, students and a FSMC's representative to assist in planning menus.
- **Menus.** FSMC shall consult with an advisory board, comprised of such members as the SFA shall designate, regarding the overall operation of the SFA's food service program, including menus. FSMC will submit menus for approval to the SFA. Seasonal changes, special school programs, or shifts in student preferences shall be taken into consideration in menu preparation. All menus will be nutritionally acceptable to the SFA and in accordance with applicable regulations.

- Nutrition Education. FSMC shall promote the nutritional education aspects of the SFA's food service program and cooperate in the efforts of the SFA to coordinate these aspects with classroom instruction.

VI. Employees

- Personnel Obligations. FSMC shall be responsible for its employees on its payroll including, but not limited to, responsibility for recruitment, employment, promotion, payment of wages, pension benefits, layoffs and termination, and shall comply with all applicable laws and regulations related thereto. FSMC's employees and agents shall comply with and observe all applicable rules and regulations concerning conduct on the premises, which the SFA imposes upon its employees and agents. FSMC shall prepare and process the payroll for its employees and shall withhold and pay all applicable federal and state employment taxes and payroll insurance relating to its employees including, but not limited to, income, social security and unemployment taxes and worker's compensation costs and charges. The SFA has no authority to resolve disputes between FSMC and its employees.
- FSMC Employees. The SFA agrees to reimburse the FSMC for salary and benefits of the Food Service Director. Should the FSMC wish to provide an Assistant, or any other additional personnel, FSMC will assume full responsibility for the cost of all salaries and benefits of such additional personnel as it may choose to provide.
- Equal Opportunity Employer. Neither party shall discriminate because of race, color, religion, sex, age, national origin, disability, or status as a veteran, as defined and prohibited by applicable law, sexual orientation (provided that the object of such orientation is not a minor), or genetic status, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities concerning Food Service employees. In addition, FSMC affirms that it is an equal opportunity and affirmative action employer and shall comply with all applicable federal, state and local laws and regulations including, but not limited to, Executive Order 11246 as amended by 11375 and 12086; 12138; 11625; 11758; 12073; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1975; Civil Rights Act of 1964; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1967; Immigration Reform and Control Act of 1986; Public Law 95-507; the Americans with Disabilities Act; M.G.L. c. 151B, and any additions or amendments thereto.
- Work Hours. FSMC is expected to recommend the number of work hours and number of positions at each school location. FSMC and the SFA shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act as supplemented by Department of Labor regulations. 7 CFR Part 3016.
- SFA Employees. FSMC shall direct and supervise the SFA employees assigned to Food Service operations, except as otherwise provided in this agreement, provided that SFA shall be responsible for obligations described in this Section 6.
- Hours. FSMC is expected to recommend the number of work hours and the number of positions required at each school location.
- Background Checks. FSMC shall adhere to applicable state and federal regulations, including the CORI statute codified at M.G.L. c. 71, §38R, in screening prospective employees. FSMC shall comply with criminal background checks and fingerprint regulations required by law for all new hires. It is understood that background checks and fingerprinting for all existing employees have been completed as of the effective date of this agreement.
- Regulations. FSMC shall instruct its employees to abide by the policies, rules and regulations with respect to its use of SFA premises as established by the SFA from time to time and which are furnished in writing to FSMC.
- Removal of Employee. The SFA may provide FSMC with written notice that it requires the removal of an employee of FSMC, if such employee violates health requirements or conducts himself/herself in a manner which is detrimental to the physical, mental, or moral well-being of students, staff or faculty, provided that removal of said employee does not violate any applicable law or statute. In the event of the removal of any such employee, FSMC shall immediately restructure its staff without disruption in service.
- Emergency Devices. All food service personnel assigned to each school shall be instructed on the use of all emergency switches, fire and safety devices in the kitchen and cafeteria areas.
- Student Workers. The use of student workers or students enrolled in the SFA is prohibited without prior SFA approval.
- Senior Management. FSMC shall inform the SFA prior to hiring Senior Management positions for the SFA's Food Service Program. Specifically, all persons to be hired as Food Service Directors, Assistant Directors and Supervisors must be presented for the SFA's evaluation and approval. FSMC shall provide qualified management/professional employees to manage the Food Service operations and supervise all employees employed therein. During the term of this agreement and for one year thereafter, SFA shall not solicit FSMC management or professional employees to work in a similar food service capacity whether at the SFA food service facility or elsewhere, nor will SFA during this time permit the employment of said individuals by others in any operation providing food service throughout the district. SFA further covenants and agrees, during the term of this agreement and for one year thereafter, not to hire, nor allow to be hired by others to perform work on behalf of SFA or on SFA premises, any FSMC management/professional employees for a period of one (1) year following employee's termination of employment with FSMC. If at any time during the term of this agreement or upon the expiration or termination of this agreement, SFA or any parent, subsidiary, or affiliate of the SFA nevertheless hires an FSMC management/professional employee, then SFA in recognition of FSMC's considerable investment in attracting and training such employee agrees to pay a fee to FSMC of two times the annual salary of said employee as liquidated damages. Said fee shall become due and payable upon the commencement date of employment with SFA or any parent, subsidiary, vendor or affiliate of SFA.

VII. Equipment, Facilities & Utilities

- Facilities and Equipment. The SFA shall make available without any cost or charge to FSMC, the facilities and equipment necessary for FSMC to provide food service including, but not limited to, area(s) of the Facility agreeable to both parties in which FSMC shall render its services, kitchen equipment, smallwares, suitably furnished office space and facilities for the safekeeping of funds. The SFA shall provide all equipment necessary for the efficient and safe operation of the Food Service facilities. All equipment used in connection with the operation of the Food Service facilities shall be maintained by the SFA.
- Condition of Facilities and Equipment. The facilities and equipment provided by each party for use in food service operations shall be in good condition and shall be maintained to ensure compliance with applicable laws concerning building conditions, sanitation, safety and health. FSMC will take proper care of all furniture, fixtures, equipment and facilities provided by the SFA and shall timely notify the SFA of any known deficiencies. FSMC shall not be held accountable for pre-existing conditions. At the expiration of this Agreement, FSMC will return to the SFA the cafeteria premises and all furniture, fixtures and equipment furnished by the SFA in the condition in which received, except for ordinary wear and tear and damage by the elements, and except to the extent that such premises or equipment may have been lost or damaged by vandalism, fire, flood or other acts of God, or theft by persons other than employees of FSMC, except through the negligence of FSMC or its employees, or for any other reason beyond the control of FSMC.
- Utilities. The SFA shall furnish at its expense, light, power, hot and cold water, telephone service, high speed internet connection and other utilities as are necessary for the operation of the food services to be furnished hereunder.
- School's Use of the Facilities. The SFA is encouraged to utilize FSMC for catering and other food service needs in addition to the School Lunch and/or Breakfast and/or Special Milk Programs. However, the SFA reserves the right, in its sole discretion, to sell or dispense any food or beverage before or after the SFA's regularly scheduled lunch or breakfast periods, provided such use does not interfere with the operation of the School Lunch and/or Breakfast and/or Special Milk Programs.
- Extracurricular Activities. If the SFA utilizes the facilities for extracurricular activities before or after the SFA's regularly scheduled lunch or breakfast period, the SFA shall return facilities and equipment to FSMC in the same condition as received, normal wear and tear expected.
- Rental Facilities For Community Use. The SFA retains the right to rent or donate food service facilities during non-school hours or weekends, provided that such activity does not interfere with the normal food service operation. When such functions take place, the SFA may require that a member(s) of the food service staff be on duty to maintain the safe use of SFA-owned equipment and/or to provide access to the facilities. The SFA shall return the facilities and equipment to FSMC in the same condition as received, normal wear and tear expected. FSMC shall be reimbursed for the cost for food service staff to be utilized at said functions. Said cost shall not be considered an expense of the school lunch program.

VIII. Maintenance, Repairs, & Sanitation

- Maintenance. The SFA shall furnish, without cost to FSMC, all building maintenance and all repairs to the food service areas and will replace, repair and maintain its equipment, except when damage results from the intentional, willful, or negligent act or omission of FSMC or its employees. The SFA shall, at its expense, provide maintenance personnel and outside maintenance services, parts and supplies for properly maintaining the facilities and its equipment.
- Cleaning. The SFA will be responsible for the cleaning and maintenance of floors, windows, walls, light fixtures, ceilings, hoods, ducts, grease traps and the general care of the dining, service and kitchen areas. FSMC will be responsible for the routine cleaning and sanitation of the kitchen, serving areas, dish rooms and storerooms, including the ordinary and routine cleaning of counters and operating equipment used in connection with the operation of the food service.
- Sanitation. FSMC shall transport refuse to designated refuse collection areas. The SFA shall provide, at its expense, for the daily removal of waste and garbage and regular extermination services.
- Recycling. FSMC will cooperate with and participate in all SFA mandated recycling programs.

IX. Inventory

- Inventory. FSMC shall purchase, on the SFA's behalf, all food and other supplies required under this Agreement. Such food and supplies shall be kept separate and apart and title thereto shall remain with the SFA at all times. FSMC and SFA shall jointly take inventory of all purchased food and supplies at both the beginning and the end of this Agreement. The SFA shall have access to the purchase records of the food purchased for review and audit as deemed necessary in the judgment of the SFA.
- Purchasing. FSMC will purchase all food for the SFA at the lowest prices possible, consistent with maintaining the quality standards prescribed by the SFA, including taking advantage of all local trade discounts. All procurement transactions must meet procurement standards set by the United States Department of Agriculture. Transactions shall be conducted in a manner so as to provide maximum open and free competition, as provided by law.
- FSMC will request, receive and inspect food delivered by vendors and retain a list of bills when billing the SFA in accordance with regulations.
- FSMC shall maintain adequate storage practices, inventory and control of federally donated foods in conformance with the SFA's agreement with the applicable state agency, if any.
- Buy American Provision. In accordance with the Buy American Provisions of 7 CFR Part 210.21(d) and 7 CFR Part 250.23, the FSMC will purchase, to the maximum extent practicable, domestic commodities that are produced in the United States and processed in the United States substantially using agricultural commodities that are produced in the United States. "Substantially" means that over 51 percent of the final processed products consist of agricultural commodities that were grown domestically.

- Any silence, absence or omission from the contract document specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.
- Rebates. All goods, services or monies received as the result of a rebate under a processing contract must be utilized in or credited to the SFA's nonprofit food service.

X. Accounting, Records & Audits

- Records. FSMC shall maintain such records as the SFA will need to support its Claim of Reimbursement and shall report thereon to the SFA promptly at the end of each calendar month, at a minimum. Such records shall be available for a period of three (3) years from the date of final payment under the Agreement for inspection and audit by representatives of the applicable Massachusetts Departments of Education and Agriculture, United States Department of Agriculture and the United States General Accounting Office at any reasonable time and place; except that, if audit findings have not been resolved, the records shall be retained beyond the three (3)-year period as long as required for the resolution of the issues raised by the audit. If the laws of the Commonwealth so require, such records shall be retained as prescribed therein. Such records include, but are not limited to, Daily Cash Reports, Edit Check Worksheets, Milk Rosters and Summary of Meal/Milk counts. An SFA official will review, in accordance with regulation, records maintained by FSMC for the purpose of preparing monthly reimbursement vouchers. FSMC shall observe all federal, state, and local laws related to accounts. 7 CFR 210.16c(1) and 7 CFR 210.23c
- Availability of Records. The SFA, the applicable Massachusetts Departments of Education and Agriculture, United States Department of Agriculture, or Comptroller General of the United States or any of their duly authorized representatives, shall have access to any books, documents, papers and records of FSMC which are directly pertinent to this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions. 7 CFR Part 3016
- Revenue Records. FSMC shall retain revenue records broken down by source, type and category of meal or food service (e.g., à la carte sales, reduced price and full price National School Lunch Program, School Breakfast Program meals and vending machine sales, etc.).
- Invoices. FSMC shall invoice the SFA monthly a sum not to exceed the amount necessary to cover FSMC's expenditures for the food service operation plus management and administrative fees. FSMC will provide a reconciled monthly statement with costs listed in the following categories: (i) operating expenses, and (ii) management and administrative fee. Payment shall be due within sixty (60) days of receipt of the monthly invoice. FSMC must separately identify for each cost submitted for payment to the SFA the amount of that cost that is allowable (can be paid from nonprofit school service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account). FSMC determination of its allowable costs must be made in compliance with the applicable U.S. Department of Agriculture and program regulations and Office of Management and Budget circulars.
- Invoice Statement. All invoices submitted by FSMC must represent that articles have been furnished or services rendered before payment can be made to FSMC from the SFA's food service account.
- Detailed Description. All invoices submitted by FSMC must include a detailed description of the goods, supplies, services or other items being submitted for reimbursement.
- Taxes and Assessments. FSMC will pay when due all federal, state, local and other governmental taxes or assessments in connection with the Services provided, as applicable. With regard to sales tax, the Parties will determine by mutual agreement and in accordance with relevant law if any of the Services are subject to sales tax. Even if SFA is tax exempt, SFA may be liable for the collection and remittance of sales tax to the applicable state department of revenue for some of the Services. If applicable, FSMC will collect all applicable sales tax and report the collection of said sales tax collections to SFA on a timely basis. SFA will be responsible for the remittance of said sales tax receipts to the appropriate agency on a timely basis. FSMC shall not be responsible for interest payments or penalties imposed on SFA associated with payments of said sales tax receipts. If the Parties are unable to resolve any dispute or controversy regarding the taxability of any of the Services, such dispute or controversy shall be settled by a relevant ruling by the Massachusetts Department of Revenue.
The SFA shall pay when due all federal, state, local and other governmental use and property taxes or assessments arising in connection with the Premises, equipment, offices and utilities. FSMC shall pay when due all licenses and permit fees in connection with Services. The SFA shall reimburse FSMC for all licenses and permit fees paid in connection with Services.

XI. Financial, Purchasing & Meal Payment

- Prohibited Contracts. Contracts that permit all income and expenses to accrue to the FSMC and "cost-plus-a-percentage-of-income" contracts are prohibited. Contracts that provide for fixed fees such as those that provide for management fees established on a per meal basis are allowed. 7 CFR 210.16(c)
- Operating Expenses. FSMC shall charge the SFA its costs of operating the food service which shall include, but not be limited to: (i) the cost of goods, including food, beverages and supplies; (ii) salaries and wages of all of FSMC employees, including payroll taxes and benefits; and (iii) other costs, charges and expenses necessary to perform the duties and obligations under this Agreement including, but not limited to, office supplies, insurance, marketing, training, licenses/permits, laundry, amortization expense, uniforms, postage, paper goods and taxes.
- Rebates. All costs charged to the SFA in management fee and cost-reimbursable contracts shall be net of all trade discounts and rebates received by FSMC. FSMC is required to identify the amount of each discount, rebate or applicable credit on each bill or invoice and whether the amount is a discount, rebate, or in the case of some other form of applicable credit, the nature of that

credit. FSMC must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to the conclusion of the contract.

- Administrative Fee. FSMC shall charge SFA an Administrative Fee of ~~\$110,380~~ for the one-year term of this contract. The Administrative fee shall be billed at ~~\$11,038~~ per month for 10 months. FSMC's Administrative and Management Fee represents its overhead expenses necessary to operate the food service including, but not limited to: area and zone supervision, and general support provided by FSMC's corporate offices (including without limitation, accounting, purchasing, tax, legal, research, auditing other related administrative functions). Upon renewal of this contract, the FSMC Administrative Fee shall be increased based on Appendix A of the Price Proposal.
- Management Fee. FSMC shall charge SFA a Management Fee of ~~\$44,150~~ for the one-year term of this contract. The Management fee shall be billed at ~~\$4,415~~ per month for 10 months. Upon renewal of this contract, the FSMC Management Fee shall be increased based on Appendix A of the Price Proposal.
- Allowable/Non-allowable Costs. FSMC shall separately identify for each cost submitted for payment to the District the amount of that cost that is allowable (that which can be paid from the non-profit food service account) and the amount, if any, that is not allowable (cannot be paid from the food service account). The determination of the allowable costs will be made in compliance with applicable USDA regulations and National School Lunch Program and Commodity School Program regulations as well as Office of Management and Budget circulars.
 - FSMC shall identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the District for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credit, the nature of the credit. If approved by the Massachusetts Department of Elementary and Secondary Education, the District may permit the FSMC to report this information on a less frequent basis than monthly, but no less than annually.
 - FSMC shall identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to the conclusion of the contract and shall maintain documentation of costs and discounts, rebates and other applicable credits and must furnish such documentation upon request to the District, the Massachusetts Department of Elementary and Secondary Education and the USDA.
 - For four successive quarters after the conclusion of the contract, FSMC shall conduct quarterly audits to determine if there are any applicable credits, discounts or rebates that are applicable to SFA. If any such credits, discounts or rebates are identified, FSMC will provide a report of such to SFA along with a credit on any amount owed to FSMC or payment in the form of a check if there is no outstanding balance due to FSMC from SFA.
- Computing Meals. Total meals are calculated by adding reimbursable meal pattern meals (breakfast and lunch) served and meal equivalents. Cash receipts, other than from sales of National School Lunch Program and School Breakfast Program meals served to children, shall be divided by \$3.30 to arrive at an equivalent meal count.
- Operating Budget. FSMC's proposal projects a profit of \$279,312 for the first year of operation, and if the contract is renewed by the City in subsequent years, a profit of \$304,207 for the first renewal year of operation, a profit of \$331,121 for the second renewal year of operation, a profit of \$358,983 for the third renewal year of operation and a profit of \$387,811 for the fourth renewal year of operation. FSMC guarantees the program will have this profit before the cost of repairs or any other SFA expense outside of Whitsons' reasonable control, and if necessary will reduce its management and administrative fee to achieve said profit. The projected operation is based on the following conditions and assumptions remaining in effect for the school year: (i) reimbursement rates for National School Lunch Program meals will not be less than the rates estimated in FSMC proposal (in a first-year agreement) or in effect for any prior school year (in subsequent year agreements); (ii) the value of government-donated commodities and/or cash in lieu thereof will not be less than the value of government-donated commodities and/or cash in lieu thereof estimated in FSMC proposal or received during the prior school year; (iii) the number of days meals are served during the school year will be not less than 179 days; (iv) the number of serving periods, locations, serving times and types of service will not differ from those as listed in the RFP; (v) the student enrollment for the term of the contract period will be not less than 7,500 students; (vi) the level of wages, salaries and fringe benefits will not exceed those proposed and listed in the original proposal; (vii) The actual costs charged to the Food Service budget by the SFA shall not exceed the projected operating expenses as set forth in FSMC proposal; (viii) service will not be interrupted as a result of fire, work stoppage, strike or school closing; (ix) Milk prices shall remain constant throughout the year; (x) There shall be no competitive sales prior to or during breakfast and lunch periods; (xi) selling prices of Menu Pattern Meals and A-La-Carte selections will be not less than those included in the proposal; (xii) SFA and its representatives, including but not limited to, school principals, teachers and SFA employees shall fully cooperate with FSMC in the implementation of the Food Service Program. The SFA shall fully cooperate with FSMC to limit the expansion of competitive food sales in order to maximize the gross receipts and other non-cash sales of the Food Service Program; (xiii) There shall be no competitive food and beverage sales during the meal service times; (xiv) legislation, regulations and SFA wellness policy or practice shall remain consistent with those at the time of the original proposal; and (xv) if applicable, SFA shall approve FSMC recommended changes relating to food service staff levels and/or staff schedules based on food service operational needs.
- In the event the foregoing conditions are not met during the school year, the Operating Budget and guarantee may be adjusted by an amount equivalent to any increased cost or loss of revenue attributable to the change in such conditions.
- Surplus Revenues. Any surplus revenues existing after deducting the approved operating expenses, Administrative Fee and Management Fee from verified food service receipts and all Federal and State reimbursements shall remain with the SFA.

XII. Commodities

- Proper Use and Handling. The liability for the proper use of these commodities will be the responsibility of FSMC. FSMC shall maintain accurate and complete records with respect to the receipt, use/disposition, storage and inventory of donated foods. Failure by FSMC to maintain records required under the Agreement shall be considered factual evidence of improper distribution or loss of donated foods. The SFA is responsible for obtaining restitution from FSMC in connection with any claim for improper distribution, use or loss of, or damage to donated foods. CFR 250.12(b)(4)
- Value of USDA Donated Foods. FSMC shall credit the District for the value of all donated foods received for use in the District's meal service in the school year (including both entitlement and bonus foods) and include the value of donated foods contained in processed end products in accordance with the contingencies in 7 CFR 250.51 (a). The method used to credit the District for the donated foods shall be crediting by disclosure, which will occur on the billing documents submitted each month.
- FSMC will ensure compliance with the requirements of subpart C of CFR Part 250 and with the provisions of the SFA's processing agreements in the procurement of process end products on behalf of the District and will ensure crediting of the District for the value of donated foods contained in such end products at the processing agreement value.

XIII. Insurance & Indemnity

- To the extent permitted by law, each party shall indemnify, defend, and hold harmless the other from any and all losses, damages or expenses, including reasonable attorneys' fees, arising out of or resulting from claims or actions for bodily injury, death, sickness, property damage or other injury or damage if caused by any negligent act or omission of such party.
- Notification of an event giving rise to an indemnification claim (Notice) must be received by the indemnifying party within thirty (30) days following receipt of such claim and shall include a brief factual summary of the damage and cause thereof. An indemnification claim is expressly subject to and conditioned upon compliance with the Notice provisions hereunder.
 - The successful Proposer shall procure and maintain, as a direct cost of operation, a comprehensive general liability policy, including products liability, in the amounts of at least \$3,000,000 for each accident provided by insurance companies authorized to do business in the Commonwealth of Massachusetts. A Certificate of Insurance indicating this amount must be submitted with the proposal.
 - The successful Proposer shall be required to provide insurance meeting the following requirements:
 - Firms must issue insurance policies, bid bonds and assurances with at least a Best's Insurance Reports rating of A to A- (excellent).
 - The City of Haverhill must be named as additional insured on all required insurance policies.
 - The contract for insurance shall provide for written notice to the Haverhill School Department of cancellation of insurance policies thirty (30) days before such cancellation is to take effect.
 - The successful Proposer shall provide a Certificate of Insurance for all required policies within ten (10) days of award.
- Certificates of insurance for such coverage naming the SFA as an additional insured will be furnished within 30 days and FSMC shall provide a replacement/renewal certificate at least 60 days prior to the expiration of the policy. Should any of the described policies be cancelled before the expiration date, the carrier shall endeavor to notify the SFA 30 days prior to cancellation.
- The SFA shall obtain and maintain insurance for the operation facilities, service equipment, offices and utilities against risks covered by standard forms of fire, theft and extended coverage in such amounts under such policies as appropriate.

XIV. FSMC Responsibilities

- 21-Day Cycle Menu. The FSMC will adhere to the 21-Day cycle menu, which was included in the Request for Proposal for the first 21 days of meal service. Changes thereafter may only be made with the approval of the SFA. 7 CFR 210.16(a)(1)
- Provision of Free and Reduced Meal Pricing. In order to offer a la carte food service, the FSMC must also offer free, reduced priced and full price reimbursable meals to all eligible children. 7 CFR 210.16(a)
- USDA Donated Food: To the maximum extent possible, the FMSC will utilize USDA donated foods made available by the SFA. The FSMC does not purchase foods that are available as commodities. The FMSC will use USDA donated foods solely for the purpose of providing benefits for the SFA's food service operation. 7 CFR 210.16(a)(6)
- Recordkeeping. The FSMC shall maintain records to support the SFA's Claim for Reimbursement, make all records available to the SFA upon request, and retain all records for a period of three (3) years after the SFA submits the final Claim for Reimbursement for the fiscal year for inspection and audit by representatives of the SFA, SA, USDA and Comptroller General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be retained beyond the 3-year period until resolution of the issues raised by the audit. 7 CFR Parts 3016.42; 3019.53 and §210.1616(c)(1)
- Reporting: The FMSC will report the claim information to the SFA promptly at the end of each month or more frequently as specified by the SFA. 7 CFR 210.16(c)(1)
- Purchasing, per Federal Register Vol. 72 and OIG 7/03. All payment discounts, rebates and allowances obtained from vendors must go to the SFA's food services account.
- Purchasing, per Federal Register Vol. 72 and OIG 7/03. Charges to the SFA for goods and services should be reasonable and necessary for the operation of the non-profit school food service.

XV. SFA Responsibilities

- Provisions Under Program Agreement. The SFA shall ensure that the food service operation is in conformance with the SFA's agreement under this program. 7 CFR 210.16(a)(2)

- Signature Authority. The SFA shall retain signature authority on the SA-SFA agreement and related document reports: Free/Reduced Application process, including hearings and verifying free and reduced meal applications: SFA's free and reduced price policy statement and agreement, Monthly claims for reimbursement and Commodity Order Forms. 7 CFR 210.16(a)(5)
- Control of the School Food Service Account and Overall Financial Responsibility. The SFA shall retain control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation, and retain control for the establishment of all prices, including price adjustments, for meals served under the nonprofit school food service account, e.g., pricing for reimbursable meals, a la carte service including vending machines, and adult meals. 7 CFR 210.16(a)(4)
- USDA, FNS Guidance for School Food Authorities Contracting with FSMC – If FSMC promises a guarantee to meet fiscal goals specified by the SFA, the SFA must ensure that all conditions and assumptions of a break-even fiscal operation be clarified and defined and any guaranteed return promised by the FSMC is defined (using actual numbers) and remains in the non-profit food service account. If the contract contains such guarantees, the contract should also contain language that ensures that the FSMC bears responsibility for failure to meet those goals. "Returns" cannot be contingent upon multi-year contract duration. 7 CFR 210.16(a)(4)
- USDA Donated Food: The SFA retains title to USDA donated foods, and all USDA donated foods made available to FSMC, including processed USDA donated foods, accrue only to the benefit of the SFA's nonprofit school food services and are fully utilized therein. All refunds received from processors must be retained by the SFA, and the methods delineating how the FSMC will pass along the full value of USDA donated food to the SFA shall be delineated. 7 CFR 210.16(a)(6)
- Quality, Extent and General Nature of Food Service. The SFA must provide detailed specifications for each food component or menu item as specified in 7 CFR Part 210.16, and include these specifications in all IFBs or RFPs. Specifications must cover other items such as grade, purchase units, style, condition, weight, ingredients, formulations and delivery time. The SFA shall retain control of the quality, extent and general nature of its food service. The SFA shall make no payment for meals that are spoiled or unwholesome at the time of delivery, that do not meet detailed specifications or do not otherwise meet the requirements of the contract. 7 CFR 210.16
- Health Regulations. The SFA shall maintain applicable health certifications, and ensure that all state and local regulations are being met by FSMC preparing or serving meals at a SFA Facility. 7 CFR 210.16(a)(7)
- Advisory Board. The SFA shall establish and maintain an advisory board composed of parents, teachers and students to assist in menu planning. 7 CFR 210.16(a)(8)
- Monitoring Responsibilities. The SFA shall monitor the food service operation through periodic on-site visits to ensure that the food service is in conformance with program regulations. 7 CFR 210.16(a)(3)
- 21-Day Cycle Menu. The SFA shall include in the request for proposal a 21-day cycle menu developed on accordance with the meal pattern requirements specified in 7 CFR Part 210
- Location of Records. All FSMC records pertaining to the SFA will be maintained at the SFA while the contract is in effect, and preferably for the required retention period.
- Pricing. The SFA shall establish all program and non-program meal and a la carte prices. The SFA shall establish all prices, including price adjustments for food items served under the nonprofit SFA food service account (e.g., reimbursable meals, a la carte service, adult meals and vending machines).
- Internal Controls. The SFA shall establish internal controls, which ensure the accuracy of lunch counts prior to the submission of the monthly Claim of Reimbursement. At a minimum, the SFA shall: (i) review worksheets and make comparisons of daily free, reduced price, and paid lunch counts against data which will assist in the identification of lunch counts in excess of the number of free, reduced price and paid lunches served each day to children eligible for such lunches; (ii) develop and implement a system for follow-up on those lunch counts which suggest the likelihood of lunch counting problems; and (iii) conduct an on-site review of the lunch counting and claiming system employed by each school within the jurisdiction of the SFA. 7 CFR 210.8(a)
- Reimbursement Claims. The SFA shall be responsible for signing reimbursement claims. This responsibility cannot be delegated to FSMC. 7 CFR 210.16(a)(5).
- Claim Liability. The FSMC accepts liability caused by FSMC negligence for claims assessed as a result of Federal / State reviews/audits, corresponding with the SFA's period of liability. In addition, the FSMC accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA donated foods.
- Contractual Responsibility. The SFA will be responsible for all contractual agreements entered into in connection with the food nutrition program (e.g., vending meals to other SFA food authorities). 7 CFR 210.19(a)(1)
- Financial Responsibility. The SFA shall retain control of the school food service account and overall financial responsibility for the School Nutrition Programs. 7 CFR 210.19(a)(1)
- Program Review. The SFA shall be responsible for ensuring resolution of program review and audit findings. 7 CFR 210.9(b)(17) and 210.18(k)(1)(2)
- Parent Letters. The SFA shall develop, distribute, and collect the parent letters and applications for free and reduced price meals and free milk. 7 CFR 245.6
- Verifying Free & Reduced Meal Applications. The SFA shall be responsible for determining and verifying applications for free and reduced price meals or free milk benefits and the conduct of any hearings related to such determinations. This responsibility shall not be delegated to FSMC. 7 CFR 245.6
- USDA-Donated Food. The SFA shall assure that the maximum amount of USDA-donated foods are received and utilized by FSMC. 7 CFR 210.9(b)(15)

- Commodity Processing Contracts. The SFA shall establish commodity processing contracts. This responsibility cannot be delegated to FSMC. 7 CFR 250.12(f)
- Losses. The SFA shall be responsible for any losses, which may arise due to circumstances beyond the control of the SFA or FSMC, such as loss of electrical power.
- Inventory. The SFA will provide a physical inventory of supplies and equipment available for use by FSMC prior to the commencement of this Agreement.
- Equipment Damage. The SFA shall be responsible for loss or damage not caused by FSMC to equipment owned by the SFA and located on its premises.
- Equipment Installation. The SFA shall furnish and install any equipment or make any structural changes needed to comply with federal, state and local laws.
- Fixture Repairs. The SFA shall be financially responsible for repairs to all permanent fixtures such as faucets, lights, sewers, air conditioning, heating vents, hoods and all other electrical work.
- Utilities. The SFA shall furnish at its expense, space, light, heat, power, hot and cold water, high-speed Internet connection and other utilities as are necessary for the operation of the food services to be furnished hereunder.
- Food Service Areas. The SFA shall make available without cost to FSMC areas of the Facility agreeable to both parties in which FSMC shall render its services, such areas being reasonably necessary for providing efficient food service.
- Additional Food Service Programs. The SFA may request that FSMC enter into a separate agreement to provide services for additional programs not currently in operation, including but not limited to, the Summer School Program and Child Care Feeding Program or others, upon terms and conditions mutually agreeable to the Parties.
- Access. The SFA shall have unlimited access to all areas used by FSMC for purposes of inspections and audits.
- Trash Removal. The SFA shall have designated areas for the removal of all garbage and trash.
- Painting. The SFA shall be responsible for painting within the dining areas.
- Toilet Facilities. The SFA shall make available sanitary toilet facilities for the employees of FSMC.

XVI. Donation of Foods for Use in the United States

- Crediting for the Value of Donated Foods In accordance with 7 CFR 250.51(a) and (b), contracts must ensure that the FSMC credits the SFA for the value of all donated foods received for use in the SFA's meal service in the school year, on at least an annual basis, through invoice reductions, refunds, discounts, or other means. Such requirement includes crediting for the value of donated foods contained in processed end products if the FSMC, in accordance with its contract, procures such end products on behalf of the SFA, or acts as an intermediary in passing the donated food value in such end products on to the SFA. All forms of crediting must include clear documentation of the value received from the donated foods. In cost-reimbursable contracts, crediting may be performed by disclosure. The SFA must ensure that the FSMC procurement of processed end products is restricted to those processors that have signed processing agreements with the State distributing agency or the SFA in accordance with 7 CFR Part 250.
- Donated Food Values Required in Crediting. In accordance with 7 CFR 250.51(c), the SFA must ensure that the FSMC uses the donated food values determined by the distributing agency, in accordance with 7 CFR 250.58(e), or, if approved by the distributing agency, donated food values determined by an alternate means of the SFA's choosing. The method of determining the donated food values must be included in procurement documents and in the contract, and must result in the determination of actual values. Negotiation of such values is not permitted.
- Use of Donated Foods. In accordance with 7 CFR 250.51(d), the FSMC must use all donated ground beef, donated ground pork, and all processed end products, in the SFA's food service, and must use all other donated foods, or commercially purchased foods of the same generic identity, or U.S. origin, and of equal or better quality than the donated foods, in the SFA's food service.
- Storage and Inventory Management. The FSMC must meet the general requirements for the storage and inventory management of donated foods in 7 CFR 250.14(b). In accordance with 7 CFR 250.52(a), the FSMC may store and inventory donated foods together with foods it has purchased commercially for the SFA's use, unless this is specifically prohibited in its contract. It may store and inventory such foods together with other commercially purchased foods only to the extent that such a system ensures compliance with the requirements for the use of donated foods in 7 CFR 250.51(d). Additionally, under cost-reimbursable contracts, the FSMC must ensure that its system of inventory management does not result in the SFA being charged for donated foods.
- Recordkeeping and Review Requirements. The SFA and FSMC must maintain records of receipt of donated foods and processed end products, or crediting for the value of donated foods, and other records relating to donated foods, in accordance with 7 CFR 250.54. The SFA must conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the FSMC has credited it for the value of all donated foods received for use in the SFA's food service in the school year including, in accordance with requirements in 7 CFR 250.51(a), the value of donated foods contained in processed end products. The FSMC must return all unused donated ground beef, donated ground pork, processed end products and (at the SFA's discretion) return all unused donated foods in accordance with 7 CFR 250.52(c) when a contract terminates, is not extended or renewed.

XVII. Health Certification

- Health Certification – The FSMC shall have state or local health certification for any facility outside the SFA in which it proposes to prepare meals and FSMC shall maintain this health certification for the duration of the contract. 7 CFR 210.16c(2)
- Safety Regulations – The FSMC shall comply with all health and safety regulations required by federal, state or local law.

XVIII. Compliance with Law

- FSMC shall comply with all applicable laws, ordinances, rules and regulations relating to Food Service sanitation, safety and health, including, without limitation, the following: (i) National School Lunch Program (in particular Title 7, Code of Federal Regulations, Section 210, 245, et seq.), (ii) the Child Nutrition Act, as amended (7 CFR Part 220), (iii) Special Milk Program for Children (7 CFR Part 215), (iv) Summer Food Service Program (7 CFR Part 225), (v) Child and Adult Care Food Program (7 CFR Part 226), (vi) Donation of Foods in the US (7 CFR Part 50), (vii) Section 103 of the Federal Contract Work Hours and Safety Standards Act (addressing overtime and compensation), (viii) the Clean Air Act, (ix) the Clean Water Act, and (x) the Environmental Protection Agency (EPA) regulations (7 CFR Part 3016.36(i)).
- The FSMC shall comply with the standards and policies relating to the Energy Policy and Conservation Act. 7 CFR Part 316.36(i).
- Violations shall be reported to the U.S. Department of Agriculture, Food and Nutrition Services, and the EPA. FSMC shall not knowingly utilize a facility listed on the EPA List of Violating Facilities. The Contractor shall not participate in or cooperate with an international boycott, as defined in Section 999 (b)(3) and (4) of the Internal Revenue Code of 1986, as amended, or engage in conduct declared to be unlawful by Section 2 of Chapter 151E of the Massachusetts General Laws.

XIX. Debarment/Suspension Certificate

- Debarment/Suspension Certificate. The FSMC shall sign a Debarment/Suspension Certification for each renewal period certifying that the FSMC has not been debarred / suspended from participating in Federal contracts/grants/awards. 7 CFR 3017.510
- Location of Certificate. The certification is attached to the signed Agreement and kept on file at the SFA. A copy of the certification will be forwarded to the state agency with a copy of the signed Agreement. 7 CFR 3017.510

XX. Certificate of Independent Price Determination

Independent Price Certification. FSMC shall certify that the prices in the offer have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition. FSMC and the SFA shall sign and submit a Certification of Independent Price Determination with the Agreement. FSMC shall attach the certification to the signed Agreement and the certification shall be kept on file at the SFA. SFA shall also forward a copy of the certification to the state agency with a copy of the signed Agreement. 7 CFR 301

XXI. Lobbying Activities / Other Certifications

- Lobbying Certification. FSMC will sign and submit at each renewal period a certification regarding lobbying which conforms in substance with and to all applicable state laws. 7 CFR Part 3018. The certification shall be attached to the signed Agreement and kept on file at the SFA. A copy of any certification shall also be forwarded to the state agency with the signed Agreement. 7 CFR 3018
- Disclosure of Lobbying Activities. FSMC shall disclose lobbying activities in connection with school nutrition programs. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis. 7 CFR 3018. The lobbying disclosure form shall be attached to the signed Agreement and kept on file at the SFA. A copy of the certification shall also be forwarded to the state agency with the signed Agreement. 7 CFR 3018
- Certifications. Pursuant to Section 49A of Chapter 62C of the Massachusetts General Laws, FSMC hereby certifies under the penalties of perjury that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support. FSMC shall comply with M.G.L. c. 268A, the Commonwealth's Conflict of Interest Law.
- FSMC hereby certifies under penalties of perjury that its proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
- FSMC certifies that it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement;
- FSMC certifies that no consultant to or subcontractor for FSMC has given, offered or agreed to give any gift, contribution or offer of employment to the SFA, or to any other person, corporation, or entity as an inducement for, or in connection with, the award of this Agreement;
- FSMC certifies that no person, corporation or other entity, other than a bona fide full-time employee, has been retained or hired by FSMC to solicit for or in any way assist it in obtaining this Agreement contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the contract to FSMC.

XXII. General Terms & Conditions

- **Governing Law.** This Agreement, its construction, validity, effect, performance and enforcement shall be governed by and construed under the laws of the Commonwealth of Massachusetts.
- **Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to operation of food service and supersedes all prior or contemporaneous negotiations, discussions or understandings. There are no representations, inducements, promises, agreements, arrangements or undertakings, oral or written, between the parties relating to the matters covered by this Agreement other than those set forth in this Agreement.
- **Severability.** Each article, paragraph, subparagraph, term and condition of this Agreement, and any portions thereof, will be considered severable. If, for any reason, any portion of this Agreement is determined to be invalid, contrary to or in conflict with any applicable present or future law, rule or regulation in a final ruling issued by any court, agency or tribunal with valid jurisdiction, that ruling will not impair the operation of or have any other effect upon, any other portions of this Agreement, all of which will remain binding on the parties and continue to be given full force and effect.
- **Assignment.** Neither FSMC nor the SFA may assign or transfer this Agreement, or any part thereof, without the written consent of the other party, except the parties may assign this Agreement to an affiliated company or wholly owned subsidiary without prior approval and without being released from any of their responsibilities hereunder.
- **Captions.** All captions in this Agreement are intended solely for the convenience of the parties and none shall be deemed to affect the meaning or construction of any provision of this Agreement.
- **Construction and Effect.** No failure of either party to exercise any power reserved to it by this Agreement or to insist upon strict compliance by the other party with any obligation or condition hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with any of the terms of this contract. Waiver by either party of any particular default shall not affect or impair either party's right to exercise any or all of its rights and powers herein, nor shall that constitute a waiver by that party of any right hereunder, or of its right upon any subsequent breach or default to terminate this Agreement prior to the expiration of its terms.
- **Proprietary Materials.** SFA acknowledges that the names, logos, service marks, trademarks, trade dress, trade names and patents, whether or not registered, now or hereafter owned by or licensed to FSMC or its affiliated and parent companies (collectively "Marks") are proprietary Marks of FSMC and SFA will not use the Marks for any purpose except as expressly permitted in writing by FSMC. Upon termination of this Agreement, SFA shall (a) immediately and permanently discontinue the use and display of any Marks and make or cause to be made such changes to the Premises as FSMC shall reasonably direct so as to effectively distinguish the Premises from its former appearance (collectively "De-Image"), and (b) immediately remove and deliver to FSMC all goods bearing any Marks. If SFA shall fail to De-Image the Premises within 30 days of the termination date, FSMC and its agents shall have the right to enter the Premises and De-Image the Premises without prejudice to FSMC's other rights and remedies.
- **Notices.** If any notice or other correspondence is required to be delivered under this Agreement, it shall be given in writing, and shall be delivered personally, by overnight delivery service, or by United States registered or certified mail, postage prepaid with return receipt requested, in which event it shall be deemed given upon receipt, to the parties at the following addresses (or to such other address as a party may designate by notice).

To SFA:

Haverhill Public Schools
Superintendent
4 Summer Street, suite 104
Haverhill, MA 01830

To

Whitsons New England, Inc.
Attn: Paul Whitcomb
1800 Motor Parkway
Islandia, NY 11749

With a courtesy copy to the same address, attention, SVP, Administration and General Counsel, legal@whitsons.com

- **Waiver of Recovery.** Each party hereto waives its rights, and the rights of its subsidiaries and affiliates, to recover from the other party hereto and its subsidiaries and affiliates for loss or damage to such party's building, equipment, improvements and other property of every kind and description resulting from fire, explosion or other cause normally covered in standard broad form property insurance policies.
- **Confidentiality.** In the course of providing the Services hereunder, the Parties may be exposed to trade secrets or other confidential or proprietary information and materials of the other Party including, but not limited to, menus, recipes, signage, Food Service surveys and studies, management guidelines, procedures, operating manuals and software, all of which shall be identified as confidential ("Confidential Information"). The Parties agree to hold in confidence and not to disclose any Confidential Information during the Term of this Agreement and for two (2) years afterward, except that each Party may use or disclose Confidential Information: (a) to its employees and affiliates or others to the extent necessary to render any Service hereunder, provided that the other Party is first notified of the information that will be provided to any party outside of this

Agreement and provided further that such information is disclosed only after such outside party is required to maintain it in confidence as required hereunder; (b) to the extent expressly authorized by either Party; (c) to the extent that at the time of disclosure, such Confidential Information is in the public domain, or after disclosure enters the public domain other than by breach of the terms of this Agreement; (d) that is in the possession of either Party at the time of disclosure and is not acquired directly or indirectly from the other Party; (e) that is subsequently received on a non-confidential basis from a third party having a right to provide such information; or (f) as required by order during the course of a judicial or regulatory proceeding or as required by a government authority. The Parties agree not to photocopy or otherwise duplicate any Confidential Information without the express written consent of the other Party. Each Party's Confidential Information shall remain the exclusive property of the Party and shall be returned to the other Party upon termination or expiration of this Agreement.

In the event of any breach of this provision, each Party shall be entitled to equitable relief in addition to all other remedies otherwise available to it at law. This provision shall survive the *termination or expiration of this Agreement*.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as a sealed instrument as of the respective dates first written below.

Approved as to Form:

City of Haverhill:

William D. Cox, Jr.
City Solicitor

By: _____
James J. Fiorentini
Mayor

Witness

Steven S. Bucuzzo
Purchasing Director

FOR THE CONTRACTOR:

By: _____
Paul Whitcomb
President
Whitsons New England, Inc.

Margaret Marotta
Superintendent of the Haverhill Public Schools

President
Haverhill School Committee

Corporate Secretary:

related communication

SC Agenda 05.23.19 5 B

MEMORANDUM

To: Members of the School Committee
Margaret M. Marotta, Superintendent of Schools

APPROVED

From: Brian A. O'Connell, Business Manager

BAO

Re: Request for Proposal – Operation and Management of the School Food Service Program – 2019-2024

Date: May 17, 2019

We received only one proposal in response to this RFP. Although several contractors did request a proposal package from our Purchasing Department, only one - Whitsons New England, Inc., our current contractor ("Whitsons") - chose to attend our Pre-Bid meeting in April, and only Whitsons submitted a proposal. However, it is an attractive proposal, and I recommend that we accept it.

A copy of Whitsons' price proposal is attached, together - for comparison purposes - with the Financial Terms of the Whitsons current contract (2014-2019) with the HPS. Whitsons will hold its administrative / service fee at \$110,380 for FY 20 - one dollar less than it charged for FY 19. It will reduce its management fee from \$44,153 to \$44,150. The proposal includes a salary / benefits increase for the food service director of an aggregate 2.45%.

The proposal projects an "annual guarantee" of \$279,312. This will allow the program to operate on a fully self-sustaining basis, generating a profit of \$8,157. The profit is projected to grow during the five years of the contract to \$90,555. The RFP sets this forth in specific terms: "[i]n no event will any subsidy be available from the operating budget of the Haverhill Public Schools to offset any program cost deficit or FSMC [Food Service Management Company] management fee." RFP, Section VI (18) (b). The assumptions on which the guarantee is based are detailed in the Price Proposal. These assumptions, significantly, "Include no charge for student meals through the CEP [Community Eligibility Provision]." Also, they include "[i]mplementation of Breakfast in the Classroom at the elementary level. A delay in implementation may result [in] an adjustment to the guarantee."

The proposed 2019-2024 contract with Whitsons is very similar in general / functional terms to that under which it has operated the HPS food service program since 2014. However, it will now provide that Whitsons "shall operate and maintain a universal free school breakfast program in Haverhill public schools to the maximum degree to which the schools and the [HPS] are eligible therefor." Request for Proposals, Section VI (1) (k).

A copy of the complete Technical Proposal is submitted to you with this memorandum.

Brian A. O'Connell
Business Manager



PRICE PROPOSAL

May 9, 2019

Mr. Steven Bucuzzo
Chief Procurement Officer
Haverhill Public Schools
4 Summer St Room 105
Haverhill, MA 01830-5836

**Re: Price Proposal RFP #024.19 – HPS Food Service Program
May 9, 2019 @ 11:00 AM**

Dear Mr. Bucuzzo and Selection Committee Members:

We welcome the opportunity to build upon our partnership with Haverhill Public Schools, one that gives your Administration control over all aspects of our services while delivering an affordable, high quality program to your students. Our financial projections contained in this section are fiscally responsible, realistic projections that reflect the requirements set forth in the RFP and the program presented in our proposal.

We've developed our Price Proposal based on the information contained in the Request for Proposal, experience with your current operation and the Administration and School Committee's desire to move to the Community Eligibility Provision (CEP).

Financial Proposal

We propose to continue managing Haverhill Public Schools' nutrition program on a cost reimbursable basis in accordance with the terms of the Request for Proposal. We stand behind our financial projections and are confident that they reflect realistic expectations in year one and throughout the life of the contract.

- **Guarantee.** The District and Whitsons shall continue to work together to ensure a financially sound food service operation. We guarantee the food service program will operate profitably per the Request for Proposal. We are willing to put our administrative and management fees at risk as part of our guarantee.



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www.whitsons.com



PRICE PROPOSAL

- **Management & Administrative Fees.** Whitsons will receive an administrative and management fee for providing management services. We value our partnership and as such are proposing no increase in fees for the FY20 school year. Our administrative fee is \$110,380.00 per year and our management fee is \$44,150.00 per year, invoiced in ten (10) equal monthly installments during the FY20 school year. In years 2-5 our fees adjust annually based on the Northeast Urban CPI. The administrative fee represents Whitsons' corporate support necessary to operate the food service program.
- **District Labor.** Our projected District labor cost is consistent with current positions, hours and wages, plus considers an increase in staffing to accommodate the move to CEP and breakfast in the classroom at the elementary level.
- **Consulting Services.** All services Whitsons provides, either on a contractual or consulting basis, are also included in our administrative and management fee.
- **Payment Terms.** Payment terms are 60 days per the RFP.

Guarantee Conditions

Our guarantee is based on the data provided by the District and contained in the RFP, our assumptions outlined in the proposal response and mutually agreeable business terms in a State approved contract. The final contract will include financial terms that incorporate these assumptions and address changes in conditions beyond our control that could affect the guarantee, as well as mutual non-solicitation language. Examples of conditions that could affect the guarantee include: regulatory changes, District policy changes or significant variations and/or inconsistencies with the RFP.



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PRICE PROPOSAL

Assumptions

We've developed our financial proposal based on the information provided in the Request for Proposal, our knowledge of your current operation, and our understanding of the district's objectives. Our assumptions include no charge for student meals through the CEP:

| <u>Selling Prices</u> | <u>HS</u> | <u>MS</u> | <u>ES</u> |
|-----------------------|-----------|-----------|-----------|
| Breakfast Reduced | \$0.00 | \$0.00 | \$0.00 |
| Breakfast Full Price | \$0.00 | \$0.00 | \$0.00 |
| Lunch Reduced | \$0.00 | \$0.00 | \$0.00 |
| Lunch Full Price | \$0.00 | \$0.00 | \$0.00 |

| <u>Serving Days</u> | <u>HS</u> | <u>MS</u> | <u>ES</u> |
|---------------------|-----------|-----------|-----------|
| Breakfast | 181 | 181 | 181 |
| Lunch | 181 | 181 | 181 |

| <u>Enrollment</u> | <u>HS</u> | <u>MS</u> | <u>ES</u> |
|-------------------|-----------|-----------|-----------|
| | 1,873 | 3,132 | 3,164 |

Additional assumptions include:

- Implementation of Breakfast in the Classroom at the elementary level. A delay in implementation may result an adjustment to the guarantee.
- The District payroll and benefit cost of \$1,900,300.00 charged to the food service program.
- Staff remains employees of the district.
- No competitive food sales allowed by the District that conflict with State and NSLP regulations.
- Reimbursement rates equal to or greater than those included in the RFP and/or our proposal, including the additional \$0.06 federal reimbursement.
- ISP of 51.9% and CEP reimbursement rate of 83% free and 17% paid meals.
- Guarantee is before the cost of repairs or other District expenses not outlined Appendix A-3.


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PRICE PROPOSAL

Rebates, Discounts and Manufacturers Incentives

We negotiate the best pricing with our suppliers--net of all rebates. This means the lowest possible prices for your district, without any hidden fees. Plus, the costs submitted for payment to the District will be in full compliance with the USDA's Final Rule for Allowable Costs.

Why Whitsons?

- Our proposal is based on realistic projections that will ensure sustainable financial performance in years 2-5. We are not relying on unrealistic increases in participation or government reimbursements to make our program financially viable.
- Our financial reporting is transparent, timely and accurate.
- As your current food service provider, there are no costs or risk involved in a transition process. We offer a continuity of service and peace of mind that a new provider cannot provide.
- Our labor proposal is realistic and comparable to the current operating conditions. We are not creating a profit margin by reducing existing staff, hours or pay rates.
- Our recommendations are designed to help address food insecurities in the City and make the Administration's vision of free meals for all students a reality.
- Our program is nutrition-focused, featuring wholesome food with natural ingredients, whole grains and fresh fruits and vegetables, with an emphasis on using local vendors—and we've removed cheaper ingredients like high fructose corn syrup, hydrogenated oils and artificial colors and flavors.
- We promote nutritional awareness through award-winning nutrition education programs.
- Our program costs are net of rebates; always have been and always will be.



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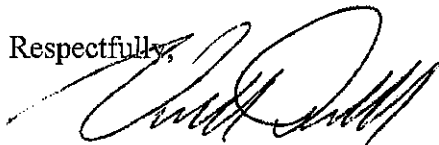


PRICE PROPOSAL

Conclusion

As your partner, we understand and share your vision for your school nutrition program. We will continue to work with the Administration and school community to build upon our successes. We look forward to continuing our partnership with the Haverhill school community.

Respectfully,



Vincent "Ozzie" Orsillo
Senior VP of Sales and Marketing



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APPENDIX A
RFP024-19
PRICE PROPOSAL FORM

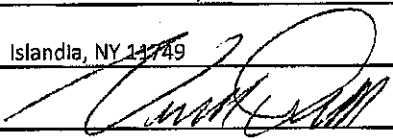
In evaluating the proposal price, the Haverhill School Department will consider the Total Annual Cost for the first year of the contract.

| Fees/Guarantees | Year 1 July 1 2019- June 30, 2020 | Year 2 July 1, 2020- June 30, 2021 | Year 3 July 1, 2021- June 30, 2022 | Year 4 July 1, 2022- June 30, 2023 | Year 5 July 1, 2023- June 30, 2024 |
|---|--|---|---|---|---|
| 1. Administrative / Service Fee | \$ 110,380 | \$ 112,588 | \$ 114,839 | \$ 117,136 | \$ 119,479 |
| 2. Food Service Director's Total Salary (From Appendix G- Food Service Director's Total Salary) | \$ 116,625 | \$ 118,957 | \$ 122,526 | \$ 126,202 | \$ 129,988 |
| 3. Management Fee | \$ 44,150 | \$ 45,033 | \$ 45,934 | \$ 46,852 | \$ 47,789 |
| 4. Fee Subtotal (Add Lines 1,2 &3) | \$ 271,155 | \$ 276,578 | \$ 283,299 | \$ 290,190 | \$ 297,256 |
| 5. Annual Guarantee (From Appendix A-2- Financial Budget Projection) | \$ 279,312 | \$ 304,207 | \$ 331,121 | \$ 358,983 | \$ 387,811 |
| 6. Total Annual Cost (Subtract Line 5 from Line 4) | \$ (8,157) | \$ (27,630) | \$ (47,822) | \$ (68,792) | \$ (90,555) |

This RFP includes addenda numbered ____ (if issued)

Name of Company Whitsons New England, Inc

Address 1800 Motor Parkway
Islandia, NY 11749

Signature of Company Official 

Printed Name of Company Official Vincent "Ozzie" Orsillo

Title of Company Official Senior Vice President

Phone number 978-521-6574 x210

E-Mail orsilloo@whitsons.com

Date 5/9/19

APPENDIX A-1
RFP024.19
FOOD SERVICE DIRECTOR'S Total Salary

| Salary Cost | Year 1 July 1 2019- June 30, 2020 | Year 2 July 1, 2020- June 30, 2021 | Year 3 July 1, 2021- June 30, 2022 | Year 4 July 1, 2022- June 30, 2023 | Year 5 July 1, 2023- June 30, 2024 |
|--|--|---|---|---|---|
| Food Service Director's Salary | \$ 89,060 | \$ 90,842 | \$ 93,567 | \$ 96,374 | \$ 99,265 |
| FICA | \$ 6,813 | \$ 6,949 | \$ 7,158 | \$ 7,373 | \$ 7,594 |
| Worker's Compensation | \$ 8,683 | \$ 8,857 | \$ 9,123 | \$ 9,396 | \$ 9,678 |
| Federal Unemployment | \$ 712 | \$ 727 | \$ 749 | \$ 771 | \$ 794 |
| State Unemployment | \$ 10,554 | \$ 10,765 | \$ 11,088 | \$ 11,420 | \$ 11,763 |
| Health Insurance | \$ - | \$ - | \$ - | \$ - | \$ - |
| Life Insurance | \$ - | \$ - | \$ - | \$ - | \$ - |
| Retirement / Pension Plan | \$ 445 | \$ 454 | \$ 468 | \$ 482 | \$ 496 |
| Other | \$ 356 | \$ 363 | \$ 374 | \$ 385 | \$ 397 |
| Total (Post In Appendix A-Item 2 Food Service Director's Total Salary) | \$ 116,625 | \$ 118,957 | \$ 122,526 | \$ 126,202 | \$ 129,988 |

APPENDIX A-2
RFP024.19
FINANCIAL BUDGET PROJECTIONS

INCOME

| Item | Year 1 July 1 2019- June 30, 2020 | Year 2 July 1, 2020- June 30, 2021 | Year 3 July 1, 2021- June 30, 2022 | Year 4 July 1, 2022- June 30, 2023 | Year 5 July 1, 2023- June 30, 2024 |
|---------------|---|--|--|--|--|
| Cash | \$ 184,874 | \$ 186,723 | \$ 188,590 | \$ 190,476 | \$ 192,381 |
| Reimbursement | \$ 3,458,574 | \$ 3,580,489 | \$ 3,706,701 | \$ 3,837,363 | \$ 3,972,630 |
| Total | \$ 3,643,449 | \$ 3,767,212 | \$ 3,895,291 | \$ 4,027,839 | \$ 4,165,010 |

EXPENSES

| Item | Year 1 July 1 2019- June 30, 2020 | Year 2 July 1, 2020- June 30, 2021 | Year 3 July 1, 2021- June 30, 2022 | Year 4 July 1, 2022- June 30, 2023 | Year 5 July 1, 2023- June 30, 2024 |
|---|--|--|--|--|--|
| Food (To include Volume Allowance & Rebate) | \$ 1,289,661 | \$ 1,346,804 | \$ 1,406,519 | \$ 1,468,923 | \$ 1,534,138 |
| District Labor | \$ 1,930,000 | \$ 1,968,600 | \$ 2,007,972 | \$ 2,048,131 | \$ 2,089,094 |
| Other (From Appendix A-3: Other Expenses) | \$ 144,475 | \$ 147,601 | \$ 149,679 | \$ 151,801 | \$ 153,967 |
| Fee | <i>This line was left blank intentionally. Reducing the Annual Guarantee on this page by the Fee amount would result in a double charge on Appendix A where the Total Annual Cost is calculated.</i> | | | | |
| Total | \$ 3,364,137 | \$ 3,463,005 | \$ 3,564,171 | \$ 3,668,856 | \$ 3,777,200 |

| | | | | | |
|---------------|------------|------------|------------|------------|------------|
| PROFIT (LOSS) | \$ 279,312 | \$ 304,207 | \$ 331,121 | \$ 358,983 | \$ 387,811 |
|---------------|------------|------------|------------|------------|------------|

| | | | | | |
|---|------------|------------|------------|------------|------------|
| Annual Guarantee (Post in Appendix A- Item 5 Price Proposal Form: Annual Guarantee) | \$ 279,312 | \$ 304,207 | \$ 331,121 | \$ 358,983 | \$ 387,811 |
|---|------------|------------|------------|------------|------------|

APPENDIX A-3
RFP024.19
OTHER EXPENSES

| Expense Item | Year 1 July 1 2019- June 30, 2020 | Year 2 July 1, 2020- June 30, 2021 | Year 3 July 1, 2021- June 30, 2022 | Year 4 July 1, 2022- June 30, 2023 | Year 5 July 1, 2023- June 30, 2024 |
|--|---|--|--|--|--|
| Cafeteria Supplies (paper, cleaning, etc) | 91,086 | 92,908 | 94,302 | 95,716 | 97,152 |
| Insurance | 16,864 | 17,437 | 18,030 | 18,643 | 19,278 |
| Training /Workshops | 1,800 | 1,836 | 1,864 | 1,891 | 1,920 |
| Telephone | - | - | - | - | - |
| Promotions | - | - | - | - | - |
| Office Supplies | 4,000 | 4,080 | 4,080 | 4,080 | 4,080 |
| Uniforms | - | - | - | - | - |
| Computer | - | - | - | - | - |
| Repairs | - | - | - | - | - |
| Replacements (Expendable Equipment) | 4,130 | 4,213 | 4,276 | 4,340 | 4,405 |
| Commodity Delivery | 12,000 | 12,240 | 12,240 | 12,240 | 12,240 |
| Auto Allowance | - | - | - | - | - |
| Performance Bond | 2,000 | 2,040 | 2,040 | 2,040 | 2,040 |
| Depreciation | - | - | - | - | - |
| Printing | - | - | - | - | - |
| Postage | - | - | - | - | - |
| SW Licensing Fees | 8,975 | 9,155 | 9,155 | 9,155 | 9,155 |
| Administrative Costs | - | - | - | - | - |
| Recruitment | 111 | 113 | 115 | 117 | 118 |
| Misc | 3,509 | 3,579 | 3,579 | 3,579 | 3,579 |
| Start Up Expense | - | - | - | - | - |
| Total (Post in Appendix A-2- Financial Budget Projections: Expenses - Other) | 144,475 | 147,601 | 149,679 | 151,801 | 153,967 |

1800 Motor Parkway
Islandia, NY 11749
p: 631.424.2700
f: 631.424.2745
www.whitsons.com

WHITSONS NEW ENGLAND, INC.

PRESIDENT'S CERTIFICATE

I, Paul Whitcomb, do hereby certify that I am the duly elected and acting President of WHITSONS NEW ENGLAND, INC., a New York corporation (the "Company"), and that, as such, I am authorized to execute this certificate on behalf of the Company and do further certify that:

1. Ozzie Orsillo is Senior Vice President.
2. Mr. Orsillo has been duly authorized by the Board of Directors of the Company to submit a bid to Haverhill Public Schools for the provision of food service management services, and to sign such documents and certificates as may be necessary or advisable in connection with such bid submission.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this 1 day of May, 2019.

By: [Signature]
Name: Paul Whitcomb
Title: President



School Nutrition

Residential Dining

Healthcare Dining

Corporate Dining

Prepared Meals

Emergency Dining



2014-2019

Paul Whitcomb
Executive Vice President
Whitsons New England, Inc.

James F. Scully
Superintendent of the Haverhill Public Schools

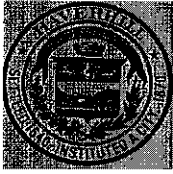
Shaun Toohey
President
Haverhill School Committee

Corporate Secretary:

EXHIBIT A

FINANCIAL TERMS AS PER FSMC'S PRICE PROPOSAL

| Fees/Guarantees | Year 1 July 1 2014- June 30, 2015 | Year 2 July 1, 2015- June 30, 2016 | Year 3 July 1, 2016- June 30, 2017 | Year 4 July 1, 2017- June 30, 2018 | Year 5 July 1, 2018- June 30, 2019 |
|---|---|--|--|--|--|
| 1. Administrative / Service Fee | \$ 100,000 | \$ 102,500 | \$ 105,063 | \$ 107,689 | \$ 110,381 |
| 2. Food Service Director's Total Salary (From Appendix G- Food Service Director's Total Salary) | \$ 101,638 | \$ 104,179 | \$ 107,304 | \$ 110,523 | \$ 113,839 |
| 3. Management Fee | \$ 40,000 | \$ 41,000 | \$ 42,025 | \$ 43,076 | \$ 44,153 |
| 4. Fee Subtotal (Add Lines 1, 2 & 3) | \$ 241,638 | \$ 247,679 | \$ 254,392 | \$ 261,288 | \$ 268,373 |
| 5. Annual Guarantee (From Appendix A-2- Financial Budget Projection) | \$ 478,244 | \$ 513,457 | \$ 553,202 | \$ 593,328 | \$ 633,799 |
| 6. Total Annual Cost (Subtract Line 5 from Line 4) | \$ (236,606) | \$ (265,778) | \$ (298,810) | \$ (332,040) | \$ (365,427) |



DOCUMENT

12.2

CITY OF HAVERHILL

In Municipal Council

ORDERED:

THAT the sum of **\$422,969.60** be appropriated from *Wastewater* account *Reserve for CSO Impact Fee* and transferred to a new *Capital Fund* account *Ph III CSO Tasks*.

JAMES J. FIORENTINI
MAYOR



CITY OF HAVERHILL
MASSACHUSETTS

CITY HALL, ROOM 100
FOUR SUMMER STREET
HAVERHILL, MA 01830
PHONE 978-374-2300
FAX 978-373-7544
MAYOR@CITYOFHAVERHILL.COM
WWW.CI.HAVERHILL.MA.US

May 31, 2019

City Council President John A. Michitson and Members of the Haverhill City Council

RE: Order to transfer \$422,969.60 from Wastewater Reserve Account for CSO Impact Fee to New Capital Fund Account Ph III CSO Tasks

Dear Mr. President and Members of the Haverhill City Council:

Please find attached an order to transfer \$422,969.60 from Wastewater Reserve Account for CSO Impact Fee to New Capital Fund Account Phase III CSO Tasks and a letter of support of this transfer from Bob Ward, Deputy DPW Director. I recommend approval.

Very truly yours,

James J. Fiorentini
Mayor

JJF/lyf



related communication
Haverhill

Robert E. Ward, Deputy DPW Director
Water/Wastewater Division
Phone: 978-374-2382 Fax: 978-521-4083
rward@haverhillwater.com

Date: May 30, 2019
To: The Honorable James J. Fiorentini
Mayor of Haverhill
From: Robert E. Ward *R.W.*
Deputy DPW Director
Subject: Request to Transfer Wastewater Funds

It is hereby requested that the amount of four hundred and twenty-two thousand, nine hundred and sixty-nine dollars and sixty cents (\$422,969. 60) be transferred to a new capital fund account from the account 6010040.1.0000.3245 Reserve for CSO Impact Fees.

These funds will be used to pay for Phase III CSO tasks which are not eligible for State Revolving Fund (SRF) loan funding. With your approval I will have the Auditor's Office prepare the City Council document for City Council approval.

If you need additional information, do not hesitate to call me at extension 2328 or via email at rward@haverhillwater.com.

cc: Charles Benevento, City Auditor/Finance Director, cbenevento@cityofhaverhill.com
Patricia Martel, Deputy Finance Director, pmartel@cityofhaverhill.com
Mike Stankovich, DPW Director, mstankovich@cityofhaverhill.com



DOCUMENT

CITY OF HAVERHILL

In Municipal Council

12.3

ORDERED:

That the Mayor be and is hereby authorized to enter into and execute a "LEASE AGREEMENT" on behalf of the City of Haverhill with Roman Catholic Archbishop of Boston, a Corporation Sole, acting on behalf of St. James Parish, for the premises located at 415 Primrose Street, also known as the St. James School, a copy of which is attached hereto and incorporated herein

APPROVED

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is entered into as of July 1, 2019, by and between **Roman Catholic Archbishop of Boston, a Corporation Sole**, ("Landlord") with its principal office located at 66 Brooks Drive, Braintree, Massachusetts 02184-3439, acting on behalf of St. James Parish ("Parish") located in Haverhill, Massachusetts, and the **City of Haverhill**, ("Tenant") a Massachusetts Municipality with its principal offices located at 4 Summer Street, Haverhill, Massachusetts 01830.

NOW, THEREFORE, in consideration of the mutual conditions and agreements and covenants set forth herein, and for other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1: REFERENCE DATA & DEFINITIONS: Each reference in this Lease to any of the following subjects shall be construed to incorporate the data stated for that subject in this Section 1:

- 1.1 Landlord. Roman Catholic Archbishop of Boston, a Corporation Sole
- 1.2 Landlord's Address. 66 Brooks Drive
Braintree, Massachusetts 02184-3439
Attention: Chancellor's Office
- 1.3 Tenant. City of Haverhill
- 1.4 Tenant's Address. 4 Summer Street
Haverhill, Massachusetts 01830
Attention: _____
Telephone: _____
Facsimile No.: _____
Email: _____
- 1.5 Premises. The land and building located at 415 Primrose Street, Haverhill, Massachusetts all as further described in Section 2.1 hereof.
- 1.6 Commencement Date. July 1, 2019.
- 1.7 Term. As defined in Section 2.2 hereof.
- 1.8 Termination Date. June 30, 2022.
- 1.9 Lease Year. "Lease Year" means each twelve consecutive month period during the Term commencing on the Commencement Date for the first Lease Year, and

commencing on the anniversary of the Commencement Date each Lease Year thereafter, and ending on the day immediately preceding the anniversary of the Commencement Date.

1.10 Annual Base Rent. "Annual Base Rent" means payments by Tenant to Landlord as follows:

| Lease Year | Starting Date | Ending Date | Annual Rent (\$) | Monthly Rent (\$) |
|------------|---------------|---------------|---------------------|----------------------|
| 1 | July 1, 2019 | June 30, 2020 | \$335,000.00 | \$27,916.67 |
| 2 | July 1, 2020 | June 30, 2021 | \$341,700.00 | \$28,475.00 |
| 3 | July 1, 2021 | June 30, 2022 | \$348,534.00 | \$29,044.50 |
| Option 1 | July 1, 2022 | June 30, 2023 | \$355,505.00 | \$29,625.42 |
| | July 1, 2023 | June 30, 2024 | \$362,615.00 | \$30,217.92 |
| Option 2 | July 1, 2024 | June 30, 2025 | \$369,867.00 | \$30,822.25 |
| | July 1, 2025 | June 20, 2026 | \$377,265.00 | \$31,438.75 |

1.11 Rent. "Rent" means the Annual Base Rent plus all Additional Rent.

1.12 Additional Rent. "Additional Rent" means those additional amounts payable to Landlord as provided throughout this Lease.

1.13 Rent Payment Date. As defined in Section 3.1 hereof.

1.14 Permitted Uses. "Permitted Uses" means use of the Premises as more fully described in Section 7 hereof.

SECTION 2: PREMISES & TERM.

2.1 Premises.

(a) Lease Premises. Subject to the provisions of this Lease and all matters of public record, Landlord hereby leases to Tenant, and Tenant leases from Landlord, the Premises, consisting of the adjacent land and building located at 415 Primrose Street, Haverhill, Massachusetts more specifically referred to as shown on Exhibit "A" attached hereto and incorporated by reference.

(b) Common Areas. Tenant may use the common areas of the Premises to the extent necessary and appropriate in connection with tenant's use and access to the Premises and in accordance with the Permitted Uses. Such uses will be subject to reasonable rules and regulations established by Landlord from time to time by suitable notice to Tenant. Landlord may designate and change from time to time the common areas open for such use, provided that such changes do not unreasonably interfere with Tenant's Permitted Uses of the Premises.

(c) Condition of Premises. Tenant acknowledges that it has inspected the

Premises and, by execution of this Lease, agrees to accept the Premises "AS IS." Tenant agrees that Landlord has no obligation to perform any work whatsoever in order to prepare the Premises for Tenant's occupancy under this Lease.

2.2 Term. The term of this Lease (the "Term") shall be the period commencing on the Commencement Date and ending on the Termination Date, unless sooner terminated in accordance with the provisions of this Lease. Tenant shall have two separate options to extend the term for two additional years each by providing notice in writing to the Landlord on or before December 31, 2021 with respect to the first option and, if the first option is exercised, notice in writing on or before December 31, 2023 with respect to the second option.

SECTION 3: RENT, INSURANCE, REAL ESTATE TAXES AND OTHER CHARGES; PAYMENT.

3.1 Rent. Commencing on the Commencement Date, Tenant shall pay Rent without any offset or reduction (except as made in accordance with the express provisions of this Lease) in advance on the first day of each and every calendar month during the Term of this Lease in an amount equal to one-twelfth of the Annual Base Rent plus any unpaid Additional Rent then due and payable; provided, however, that if the Commencement Date falls on a day other than the first day of a calendar month, (i) Tenant's first Rent payment will be made on the Commencement Date and will be in an amount equal to one-twelfth of the Annual Base Rent, multiplied by a fraction, the numerator of which shall be the number of days remaining in the partial calendar month, and the denominator of which shall be the total number of days in such calendar month, plus any unpaid Additional Rent then due and payable and (ii) Tenant's Rent payment for the final calendar month of the Term will be made on first day of the last calendar month during the Term and will be in an amount equal to one-twelfth of the Annual Base Rent, multiplied by a fraction, the numerator of which shall be the number of days remaining in the partial calendar month, and the denominator of which shall be the total number of days in such calendar month, plus any unpaid Additional Rent then due and payable Each date on which Rent is payable hereunder is referred to as a "Rent Payment Date."

3.2 Insurance, Real Estate Taxes & Other Charges.

(a) Tenant Insurance. Tenant shall, at Tenant's expense and at no expense to Landlord, procure and maintain, in full force from the date upon which Tenant first enters the Premises for any reason, throughout the Term of this Lease, and thereafter so long as Tenant is in occupancy of any part of the Premises, (1) policies of comprehensive general liability insurance and casualty/property insurance (including broad form contractual liability coverage to cover any liabilities assumed under this Lease, insuring against all claims for injury to or death of persons or damage to property on or about the Premises or arising out of the use of the Premises, including products liability, and independent contractor's hazard and completed operations liability) with initial limits of \$1,000,000 each occurrence and \$2,000,000 in the aggregate (combined single limit) for property damage, bodily injury or death or such greater amounts as Landlord in its reasonable discretion shall from time to time request, under which Tenant is named as an insured and Landlord, and, at Landlord's request, Landlord's property manager, any mortgagee, and such other persons as Landlord reasonably may request are named as additional

insureds; (2) medical payment insurance with limits of \$5,000.00 each person and \$25,000 per occurrence, under which Tenant is named as an insured and Landlord, and, at Landlord's request, Landlord's property manager, any mortgagee, and such other persons as Landlord reasonably may request are named as additional insureds, (3) special form (formerly known as "all-risk") property insurance on a "replacement cost" basis, insuring Tenant's Property (as defined in Section 11.8, herein) and any Improvements (as defined in Section 8, herein) located from time to time in the Premises, whether made by Tenant pursuant to Section 8 or otherwise existing in the Premises as of the Commencement Date under which Tenant is named as an insured and Landlord, and, at Landlord's request, Landlord's property manager, any mortgagee, and such other persons as Landlord reasonably may request are named as additional insureds; (4) self-insured workers' compensation insurance with statutory limits, and (5) business interruption insurance insuring interruption or stoppage of Tenant's business at the Premises for a period of not less than twelve (12) months. Tenant may satisfy such insurance requirements by including the Premises in a so-called "blanket" and/or "umbrella" insurance policy, provided that the amount of coverage allocated to the Premises is pursuant to a "per occurrence" endorsement and shall otherwise fulfill the requirements set forth herein. The policies of insurance required to be maintained by Tenant hereunder shall be issued by companies domiciled in the United States and qualified and licensed to conduct business in The Commonwealth of Massachusetts, and shall be rated A:X or better in the most current issue of Best's Key Rating Guide (or any successor thereto). At all times during the Term, such insurance shall be maintained, and Tenant shall cause a current and valid certificate of such policies to be deposited with Landlord. If Tenant fails to have a current and valid certificate of such policies on deposit with Landlord at all times during the Term and such failure is not cured within three (3) Business Days following Tenant's receipt of notice thereof from Landlord, Landlord shall have the right, but not the obligation, to obtain such an insurance policy, and Tenant shall be obligated to pay Landlord the amount of the premiums applicable to such insurance within ten (10) days after Tenant's receipt of Landlord's request for payment thereof. Tenant's insurance policies shall not include deductibles in excess of Twenty-five Thousand Dollars (\$25,000.00).

Such policies shall cover the use and occupation of the Premises and all operations and activities conducted at, on or from the Premises by Tenant, its agents, employees, servants or invitees. Tenant's insurance shall be primary to, and not contributory with any insurance carried by Landlord, whose insurance shall be considered excess only. Each such policy shall provide that it must not be canceled and that its limits must not be reduced without at least thirty (30) days' prior written notice to Landlord and its designees, and that the interests of Landlord and its designees thereunder or therein will not be affected by any breach by Tenant of any policy provision. Evidence of these policies, in the form of insurance certificates reasonably satisfactory to Landlord, must be submitted to Landlord no later than the earlier of thirty (30) days prior to the Commencement Date and thirty (30) days the commencement of any Improvements by Tenant in or about the Premises Tenant shall, if requested, submit the actual policies of insurance to Landlord within ten (10) days of a request therefor in writing. Tenant shall also submit to Landlord renewal certificates of any expiring policy hereunder within ten (10) days of expiration thereof. If Tenant fails to have a current and valid certificate of such policies on deposit with Landlord at all times during the Term and such failure is not cured within three (3) Business Days following Tenant's receipt of notice thereof from Landlord, Landlord shall have the right, but not the obligation, to obtain such an insurance policy, and Tenant shall be obligated to pay

Landlord the amount of the premiums applicable to such insurance within ten (10) days after Tenant's receipt of Landlord's request for payment thereof. Tenant's insurance policies shall not include deductibles in excess of Five Thousand Dollars (\$5,000.00).

Such insurance must be effected under valid and enforceable policies with insurers authorized to do business in Massachusetts as stock or mutual companies that are rated in the current edition of Best's Key Rating Guide, property and Casualty as A- and as Class VIII or higher. Landlord shall have the right from time to time to increase such minimum limits upon notice to Tenant, provided that any such increase shall provide for coverage in amounts similar to like coverage being carried on like property in the greater Boston area.

(b) Waiver of Subrogation. Notwithstanding anything herein to the contrary, Landlord and Tenant each hereby waives any and all rights of recovery, claim, action, or cause of action against the other, its agents, employees, licensees, or invitees for any loss or damage to or at the Premises or any personal property of such party therein or thereon by reason of fire, the elements, or any other cause which is covered, or would have been covered, by the insurance coverages required to be maintained by Landlord and Tenant, respectively, under this Lease, regardless of cause or origin, including omission of the other party hereto, its agents, employees, licensees, or invitees. Landlord and Tenant covenant that no insurer shall hold any right of subrogation against either of such parties with respect thereto. This waiver shall be ineffective against any insurer of Landlord or Tenant to the extent that such waiver is prohibited by the laws and insurance regulations of The Commonwealth of Massachusetts. The parties hereto agree that any and all such insurance policies required to be carried by either party shall be endorsed with a subrogation clause, substantially as follows: *"This insurance shall not be invalidated should the insured waive, in writing prior to a loss, any and all right of recovery against any party for loss occurring to the Premises described therein,"* and shall provide that such party's insurer waives any right of recovery against the other party in connection with any such loss or damage.

(c) Tenant's Risk. Tenant agrees to use and occupy the Premises and to use such other portions of the property owned by Landlord as Tenant is herein given the right to use at Tenant's own risk and Tenant assumes liability for any and all injury, loss or damage to any person or property on the Premises or other such property, whether covered by insurance or not. Landlord shall not be liable to Tenant, its employees, agents, invitees or contractors for any damage, injury, loss, compensation, or claim (including, but not limited to, claims for the interruption of or loss to Tenant's business) based on, arising out of or resulting from any cause whatsoever, including, but not limited to, Improvements to any portion of the Premises or other property owned by the Landlord, any fire, robbery, theft, mysterious disappearance and/or any other crime or casualty, the actions of any other tenants of the Building (if any) or of any other person or persons, or any leakage in any part or portion of the Premises or the Building, or from water, rain or snow that may leak into, or flow from any part of the Premises or the Building, or from drains, pipes or plumbing fixtures in the Building, unless due to the gross negligence or willful misconduct of Landlord or Landlord's agents, contractors or employees. Any goods, property or personal effects stored or placed in or about the Premises shall be at the sole risk of Tenant, and neither Landlord nor Landlord's insurers shall in any manner be held responsible therefor. Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage that may be occasioned by or through the acts or

omissions of persons occupying adjoining premises or any part of the premises adjacent to or connecting with the Premises or any part of the other property owned by the Landlord or otherwise. Notwithstanding the foregoing, Landlord shall not be released from liability for any injury, loss, damages or liability to the extent arising from any gross negligence or willful misconduct of Landlord, its servants, employees or agents acting within the scope of their authority on or about the Premises; provided, however, that in no event shall Landlord, its servants, employees or agents have any liability to Tenant based on any loss with respect to or interruption in the operation of Tenant's business. The provisions of this Section 3.2(d) shall be applicable from and after the execution of this Lease and until the end of the Term of this Lease, and during any additional period as Tenant may use or be in occupancy of any part of the Premises or of the Building.

(d) Tenant's Other Liability. Tenant further covenants and agrees to restore, repair and replace any furniture, furnishings, fixtures or equipment of Landlord on the Premises which may be lost, damaged or destroyed during the Term of this Lease, except to the extent of Landlord's negligence.

(e) Taxes, Levies and Charges. Real estate taxes and all other government levies and charges, general and special, foreseen and unforeseen, assessed against or levied on the Premises or any betterments and attributable in whole or in part to the Term of the Lease with respect to the Premises, to the extent there are any, shall be imputed to the Tenant. Landlord shall present to Tenant copies of the statements for such real estate taxes and all other government levies and charges promptly after they are received. Tenant shall pay to Landlord, as Additional Rent, an amount equal to the full amount due under such statements on the Rent Payment Date next preceding the date on which such amount is due and payable in accordance with such statements. If Tenant desires to have proceedings instituted for an abatement of any real estate taxes or other such levies or charges upon the Premises and so requests in writing, Landlord may but is not obligated to institute such proceedings, provided, however, in any event, that all costs of such proceeding shall be borne by Tenant. If any abatement is received in accordance with the provisions of this Section 3.2(e), the proceeds thereof, to the extent they represent payments actually made by Tenant to Landlord in accordance with this Section 3.2(e), shall be distributed to Tenant. All remaining proceeds shall be paid to Landlord. Nothing herein shall prevent Landlord, on its own volition, from applying for an abatement of said real estate taxes, levies or charges.

SECTION 4: PAYMENTS

4.1 Payments Accepted. All payments of Annual Base Rent and Additional Rent shall be made to Landlord by check, by wire transfer of immediately available funds or by direct deposit in accordance with account information supplied by Landlord (the "Account"), or to such other person as Landlord may from time to time designate in writing. All payments to be made hereunder shall be deemed paid when received in the Account as determined by the banking institution at which the Account is maintained.

4.2 Account Information. As indicated above, all payments hereunder shall be made by check payable to the Parish and sent in care of the pastor at the notice address for the

Parish provided in Section 14.1 hereof.

4.3 Default Interest. Any Annual Base Rent, Additional Rent or any other amounts due and payable under this Lease that have not been paid within thirty (30) calendar days of the due date thereof will bear interest from the original due date until paid in full at an annual rate equal to the prime rate as announced from time to time in the *Wall Street Journal*, or if the *Wall Street Journal* shall no longer exist any comparable financial publication, plus three percent (3%) (the "Default Rate"), which will be due and payable as Additional Rent. Such amounts will accrue on a daily basis.

SECTION 5: SECURITY DEPOSIT.

[This Section intentionally deleted]

SECTION 6: UTILITIES; CERTAIN OTHER CHARGES.

Tenant shall pay for all heating and utility costs associated with the Premises, including but not limited to gas, oil, electricity, water and sewer, cable, telephone or other such charges.

SECTION 7: PERMITTED USES

7.1 Operations. Tenant shall use the Premises solely for the purposes of operating a public school, grades K through 12 or any segment thereof, and all other related uses, Monday through Friday, 7:00 a.m. to 4:00 p.m. and in accordance with the terms and conditions of Section 11.4 of this Lease (the "Permitted Uses"). Tenant may from time to time have occasional use of the Premises for evening and weekend use. Tenant shall not use the Premises for any other purposes or in any way which could reasonably be considered to cause discomfort or annoyance to Landlord or to other tenants or legal occupants of the Building. It is expressly agreed and understood by and between Landlord and Tenant that only Tenant has the use, as set forth in this Lease, of the Premises leased hereunder for the purposes and uses herein stated. Tenant shall not use the Premises in any other manner.

7.2 Landlord's Use of Premises. It is understood that Landlord shall have the right to use the Premises nights and on weekends for Parish Programs or for whatever purposes it deems appropriate during those periods Tenant is not using the Premises or where joint use is possible (e.g., for parking). In the event Landlord utilizes the Premises, Landlord shall be responsible for leaving the Premises in the condition found.

7.3 Cancellation. Notwithstanding anything in this Lease to the contrary the Landlord may cancel this Lease Agreement with or without cause by giving one hundred twenty (120) days prior written notice to the Tenant. At the conclusion of said one hundred twenty (120) day period the term shall expire in the same manner and to the same effect as if it were the expiration of the original term.

SECTION 8: IMPROVEMENTS

8.1 During the Term of this Lease, neither Landlord nor Tenant is obliged by this Lease to make any repairs, replacements, modifications, improvements, alterations or additions of any nature ("Improvements"), other than those specifically provided in this Lease.

8.2 Tenant shall make all essential non-structural interior repairs to the Premises necessitated by Tenant's occupancy and shall keep the Premises in good repair, excepting only ordinary wear and tear, damage caused by fire and other casualty and repairs for which Landlord is expressly responsible under this Lease.

8.3 Except with respect to necessary repairs for which Tenant is obligated to perform under Section 8.2, Tenant shall make no Improvements to the Premises without the prior written consent of Landlord, which consent may be withheld in its sole discretion. All such Improvements will be made solely at Tenant's cost and expense (which Tenant agrees to pay promptly when due) and must be performed in accordance with plans and specifications approved in writing by Landlord, in its sole discretion, prior to being commenced. All such Improvements will be performed in such manner, and by such persons as will not cause any damage to the Premises. Except as otherwise expressly set forth herein, such work will be performed by general contractors first approved by Landlord, which approval will not unreasonably be withheld or delayed. Tenant shall secure and pay for all licenses and permits necessary for any of the foregoing Improvements. Before any such work is started, Tenant shall deliver to Landlord a statement of the names of all its contractors (as approved by Landlord) and the estimated cost of all labor and material to be furnished by them. Tenant shall cause each contractor to carry (i) workmen's compensation insurance in statutory amounts covering all the contractor's and subcontractor's employees and (ii) comprehensive public liability insurance with such limits as Landlord may reasonably require, but in no event less than a combined single limit of \$1,000,000 (all such insurance insuring Landlord and Tenant as well as the contractors), and, upon request by Landlord, to deliver to Landlord certificates of all such insurance. Landlord may, at its discretion and at the request of Tenant and at Tenant's sole cost and expense, make such Improvements requested by Tenant. All costs associated with such Improvements shall be billed to Tenant and shall constitute Additional Rent.

8.4 If any Improvements are consented to as provided in Section 8.3, Tenant shall, if Landlord notifies Tenant in writing at the time Landlord approves of an Improvement, at the end of the Term remove the same and restore the Premises to the condition and state of construction and arrangement in which they were at prior to the installation thereof, ordinary wear and tear, damage by fire and casualty only excepted (other than to the extent that such casualty is caused by Tenant, its agents, servants, employees and invitees). Landlord may, at its discretion, waive this requirement in writing upon written request from Tenant.

SECTION 9: LANDLORD'S COVENANTS DURING THE TERM

9.1 Landlord covenants during the Term or until earlier termination of this Lease, in each case except for any of the following matters being caused by Tenant, its agents, servants, employees and invitees :

(a) to maintain, repair, and replace as necessary, all structural elements of the Building and Premises, including, without limitation, the roof, the foundation, all load bearing walls and floor slabs of the Building and Premises, and all exterior elements of the Building;

(b) to maintain in good order and repair all electrical, mechanical, plumbing, heating, fire/life safety and mechanical systems serving the Premises;

(c) to repair, replace, and maintain as necessary all asphalt, brick and concrete and other areas of the sidewalks and facade of the building, and exterior and interior common area lighting; and

(d) to provide and maintain adequate connections with local water supply, sewerage systems, electrical and other utilities.

9.2 Quiet Enjoyment. Tenant, on paying the Rent and performing its obligations hereunder, shall peacefully and quietly have, hold, and enjoy the full possession and the use of the Premises throughout the Term. The foregoing covenant of quiet enjoyment is in lieu of any other covenant, express or implied.

SECTION 10: INTERRUPTIONS

10.1 Landlord will not have any liability for, nor will there be any reduction in Rent on account of (a) any power losses, shortages, or any other interruption in the provision of any utilities not caused by Landlord's negligence, (b) Landlord's entering the Premises for any of the purposes authorized in this Lease, or (c) repairing the Premises or any part thereof to the extent permitted in this Lease. In case Landlord is prevented or delayed from making any Improvements, or furnishing any service or performing any other covenant or duty to be performed on Landlord's part, by reason of any cause beyond Landlord's reasonable control, Landlord shall not be liable to Tenant therefor, nor, except as expressly otherwise provided in this Section 10 or in Section 12, shall Tenant be entitled to any abatement or reduction of Rent by reason thereof.

10.2 Landlord reserves the right to stop any service or utility system when necessary by reason of accident or emergency or until necessary repairs have been completed. Except in case of emergency repairs, Landlord will give Tenant reasonable advance notice of any contemplated stoppage and will use its commercially reasonable efforts and all reasonable diligence to avoid unnecessary inconvenience to Tenant by reason thereof.

10.3 Notwithstanding the foregoing, if as a result of negligence of Landlord, the Premises are rendered untenable to such an extent that Tenant is unable to, and does not actually, occupy and use the Premises or a portion thereof for the operation of its business, and if such problem continues for a period in excess of two (2) consecutive business days, Tenant, as its sole remedy, will be entitled to an abatement for Rent to the extent such Rent is

attributable to both the portion of the Premises rendered unfit for use and the period for which it is unfit.

SECTION 11: TENANT'S COVENANTS DURING THE TERM.

Without limiting any other covenant of Tenant under this Lease, Tenant covenants, during the Term and such further time as Tenant occupies any part of the Premises:

11.1 Tenant's Payments. To pay when due (a) all Rent; (b) all taxes which may be imposed on Tenant's personal property in the Premises (including, without limitation, Tenant's fixtures and equipment) regardless to whomever assessed, and (c) all other payments required to be made by Tenant under this Lease.

11.2 Yielding Up. At the expiration or termination of this Lease, to peaceably yield up the Premises, and all alterations and additions therein, in good order, repair and condition, reasonable wear and tear, casualty and condemnation only excepted. Prior to yielding up the Premises, Tenant shall remove all goods and effects of Tenant and all of Tenant's Trade Fixtures and any Improvements specified pursuant to Section 8.1 and shall repair all damage caused by such removal and shall leave the Premises in broom clean condition.

11.3 Occupancy and Use.

(a) To use and occupy the Premises only for the Permitted Uses;

(b) not to injure or deface the Premises;

(c) not to use or permit any use of the Premises which will (i) make voidable the insurance covering the Building or its contents, or (ii) increase the premiums for any insurance on the Building or on the contents of the Premises (Tenant hereby agreeing that if such premiums are increased Tenant shall reimburse Landlord for the costs of all such increased insurance premiums caused by Tenant's use of the Premises and all such amounts will constitute Additional Rent and will accrue immediately) or (iii) require any alteration or addition to the Building;

(d) not to dump, flush, or in any way introduce any hazardous substance or any other toxic substances into the septic, sewage, or other waste disposal system serving the Premises; not to generate, store or dispose of hazardous substances in or on the Premises (excluding normal office and cleaning supplies [and Tenant's inventory], without first submitting to Landlord a list of all such hazardous substances and all permits required therefor and thereafter providing to Landlord on an annual basis Tenant's certification that all such permits have been renewed with copies of such renewed permits) or dispose of hazardous substances from the Premises to any other location without the prior written consent of Landlord and then only in compliance with the Resource Conservation and Recovery Act of 1976, as amended 42 U.S.C. § 6901 et seq., the Massachusetts Hazardous Waste Management Act, G.L. c. 21C, as

amended, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, G.L. c. 21E, as amended, and all other applicable laws, ordinances, and regulations;

(e) If the transportation, storage, use or disposal of hazardous substances anywhere on the Premises in connection with Tenant's use of the Premises results in (i) contamination of the soil or surface or ground water or (ii) loss or damage to person(s) or property, then Tenant agrees (1) to notify Landlord immediately of any contamination, claim of contamination, loss or damage, (2) after consultation with and approval by Landlord, to clean up all contamination in full compliance with all applicable statutes, regulations and standards, and (3) to indemnify, defend, and hold Landlord harmless from and against any claims, suits, causes of action, costs and fees, including, without limitation, attorneys' fees, arising from or connected with any such contamination, claim of contamination, loss or damage, Tenant hereby agreeing that this provision shall survive the termination of this Lease and that no consent or approval of Landlord shall in any way be construed as imposing upon Landlord any liability for the means, methods, or manner of removal, containment, or other compliance with applicable law for and with respect to the foregoing and that it is the specific intent and purpose hereof to ensure that Tenant takes no actions on or at the Premises that would result in either the Premises or Tenant's activities therein failing to comply with any applicable governmental orders or regulations. ("hazardous substances" shall have the meaning as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601 and regulations adopted pursuant to said Act);

(f) to notify Landlord of any incident which would require filing of a notice under applicable federal, state, or local law; and

(g) without limiting its obligations pursuant to Sections 7 or 8, (i) to conduct its operations under this Lease in strict compliance with, and not to permit any use or activity contrary to, the laws of the United States (including, without limitation, Title III of the Americans with Disabilities Act if applicable to Tenant's use of the Premises), the laws of The Commonwealth of Massachusetts and the ordinances, standards, rules, and requirements, if any, established by the City of Haverhill or any other state or municipal agency having jurisdiction; (ii) to comply with the orders and regulations of all governmental authorities with respect to zoning, building, fire, health and other codes, regulations, ordinances or laws applicable to the Premises and not to be contrary to any codes or standards from time to time established by the National Fire Protection Association (or any successor organization), (iii) to make, at its sole cost and expense, all Improvements to the Premises required by such codes, regulations, ordinances, or laws as a result of Tenant's use of the Premises, and to keep the Premises equipped with all safety appliances so required (Landlord may, if it so elects, make any of the Improvements referred to in this section that affect the Building structure or the Building systems, and Tenant shall reimburse Landlord for the cost thereof on demand, such amounts constituting Additional Rent); at Tenant's sole cost and expense, to procure and pay for all licenses, certificates, and permits necessary for the conduct of its operations hereunder and its occupancy of the Premises (including, without limitation, payment for any Improvements of any nature which are necessary in order to obtain and maintain all such licenses, certificates, and permits);

11.4 To:

(a) keep the inside and outside of all glass in the doors and windows of the Premises reasonably clean;

(b) replace promptly any cracked or broken glass of the Premises with glass of like kind and quality;

(c) maintain the Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests;

(d) keep any garbage, trash, rubbish or other refuse in vermin-proof containers within the interior of the Premises until removed (and Tenant shall cause the Premises to be inspected and exterminated on a regular basis by a reputable, licensed exterminator and shall provide Landlord, on request, with a copy of Tenant's contract for such services);

(e) keep all mechanical apparatus free of vibration and loud noise which may be transmitted beyond the Premises; and

(f) Keep the parking areas and access to the Premises and Building free and clear of ice and snow

11.5 To not:

(a) place or maintain any trash, refuse or other articles in any vestibule or entry of the Premises, on the sidewalks or corridors adjacent thereto or elsewhere on the exterior of the Premises so as to obstruct any corridor, stairway, sidewalk or common area;

(b) permit undue accumulations of or burn garbage, trash, rubbish or other refuse within or without the Premises;

(c) cause or permit objectionable odors to emanate or to be dispelled from the Premises; or

(d) commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant or occupant of the Building.

11.6 Rules and Regulations. To comply with rules and regulations, as may be reasonably promulgated in good faith and in writing from time to time by Landlord, for the care and use of the Premises and their facilities and approaches and provided such rules and regulations do not unreasonably interfere with the Tenant's use and enjoyment of the Premises or impose any unreasonable additional costs on Tenant and are not applied or enforced in a discriminatory manner.

11.7 Landlord's Right of Entry. To permit Landlord and Landlord's agents, contractors, and employees entry: (a) upon reasonable notice (except no notice is required in

the event of any emergency), and at reasonable times, to make repairs, alternations or substitutions for the protection and maintenance of the Building or Premises or any part thereof; (ii) to examine the Premises upon reasonable notice (except no notice is required in the event of any emergency), at reasonable times in the company of a Tenant representative; (iii) upon not less than five (5) calendar days' prior notice, to remove, at Tenant's expense, any Improvements, signs, shades, awnings, aerials, flagpoles, or the like required to be approved by and not approved by Landlord; and (iv) to show the Premises to prospective tenants during the six (6) months preceding the expiration of the Term and to any prospective mortgagees at all reasonable times upon written notice to Tenant.

11.8 Tenant's Property. All the furnishings, fixtures, furniture, equipment, inventory, effects and property of every kind, nature and description of Tenant and of all persons claiming by, through or under Tenant which may be on the Premises during the Term of this Lease or any occupancy of the Premises by Tenant or anyone claiming under Tenant, as well as all property that may be brought to the Premises by Tenant ("Tenant's Property"), will remain the personal property of Tenant or such other person and will be at the sole risk and hazard of Tenant, and if the whole or any part thereof is destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, steam pipes, or other pipes, by theft, or from any other cause or in any other way or manner, no part of said loss or damage is to be charged to or to be borne by Landlord in any case whatsoever unless and to the extent, subject to the provisions of Section 14.19 hereof, due to the gross negligence of Landlord, its employees, agents, contractors or other representatives.

11.9 Security. To provide, at all times and under all circumstances during the Term of this Lease, adequate security to the Premises and its own personnel.

11.10 Labor or Materialmen's Liens. To pay promptly when due the entire cost of any work done on the Premises by Tenant, its agents, employees, or independent contractors, unless Tenant is disputing such items in good faith; not to cause or permit any liens for labor or materials performed or furnished in connection therewith to attach to the Premises; and to discharge or bond off any such liens which may so attach within thirty (30) calendar days of notice of the same.

11.11 Holdover. To vacate the Premises immediately upon the expiration or sooner termination of this Lease. If Tenant retains possession of the Premises or any part thereof after the expiration or termination of the Term without Landlord's express prior written consent, Tenant shall pay Landlord Annual Base Rent at double the monthly rate specified in Section 3.1 for the time Tenant thus remains in possession and, in addition thereto, shall pay Landlord for all damages, consequential as well as direct, sustained by reason of Tenant's retention of possession. The provisions of this Section 11.11 do not exclude or be deemed to constitute a waiver of Landlord's rights of re-entry or any other right hereunder, including, without limitation, the right to refuse triple the monthly Annual Base Rent and instead to remove Tenant through summary proceedings for holding over beyond the expiration of the Term of this Lease. Such holding over shall not be deemed to create any tenancy, but Tenant shall be a tenant at sufferance only.

11.12 Signs. Not to erect any signs visible from the exterior of the Building, excepting the existing sign(s) which have already been approved by Landlord, or in any way alter the exterior of the Premises without Landlord's prior written consent.

11.13 No Transfers. Not to assign, sublet, underlet, mortgage, pledge or encumber all or any part of the Lease or any of Tenant's rights or obligations hereunder.

11.14 Indemnity.

(a) Except to the extent arising from the gross negligence or willful misconduct of Landlord or its agents or employees, to defend, with counsel approved by Landlord, all actions against Landlord, any trustee, manager, member, beneficiary, agent, employee, representative or any other affiliate of Landlord (collectively, "Indemnified Parties"), and to pay, protect, indemnify and save harmless all Indemnified Parties from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature owed to or asserted by any third party arising from or related to (a) injury to or death of any person, or damage to or loss of property, occurring in or on the Premises or connected with the use, condition, or occupancy of any thereof, unless caused by the negligence of Landlord or its servants or agents; (b) violation of any of the provisions of this Lease by Tenant; (c) any act, fault, omission, or other misconduct of Tenant or its agents, employees, representatives, contractors, licensees, invitees, assignees or sublessees; (d) any violation of any federal, state, or local statute, ordinance, or bylaw, including, without limiting the generality of the foregoing, any violation of Title III of the Americans with Disabilities Act arising from or related to this Lease; (e) any charges assessed under state, local, and federal statutes and ordinances governing the use, occupancy, or both, of the Premises; or (f) Tenant's use and occupancy of the Premises.

(b) To indemnify Landlord for all costs and expenses incurred in connection with the reasonable enforcement of the terms and provisions of this Lease.

This Section 11.14 will survive expiration or earlier termination of this Lease.

11.15 Cleaning, etc.. The cleaning of the Premises shall be the sole responsibility and at the sole cost and expense of the Tenant. Tenant shall at its sole cost and expense provide such cleaning, janitorial, and maintenance services of the Building and the rest of the Premises as may be reasonably required including, but not limited to, trash removal. Tenant shall also be responsible for keeping the parking areas, walkways, stairs and access to the Premises free of snow and ice.

11.16 Pets. No pets shall be allowed on or in the Premises, except in the case of service animals.

SECTION 12: DAMAGE; DESTRUCTION; CONDEMNATION

12.1 Fire or other casualty.

(a) Subject to the provisions of Section 12.1(b) hereof, in the event during the Term hereof any portion of the Building or Premises shall be partially damaged (as distinguished from "Substantially Damaged" as such term is hereinafter defined) by fire, explosion, casualty or any other occurrence covered or as may be required to be covered by Landlord's insurance as herein provided; Landlord shall forthwith proceed to repair such damage and restore the Building (including the Premises) but exclusive of Tenant's Property and leasehold improvements installed by Tenant, to substantially its condition at the time of such fire, explosion, casualty or occurrence. Landlord shall not be responsible for any delay which may result from any cause beyond Landlord's reasonable control.

(b) In the event of a casualty which renders the Building or the Premises unfit for use or occupancy by Tenant, then Landlord will make a determination in its reasonable judgment as to whether or not Landlord, using its commercially reasonable efforts, and proceeding diligently, can repair or restore the Building or Premises (exclusive of Tenant's Property and leasehold improvements installed by Tenant) to their condition prior to said casualty within a period of ninety (90) days from the date of such casualty. Within thirty (30) days of any such casualty, Landlord shall provide Tenant notice of its intent to repair or restore the Building or Premises to their condition prior to such casualty within such 90-day period. If, however, Landlord, exercising its reasonable judgment, determines that said repair or restoration cannot be completed within a period of ninety (90) days from the date of such casualty (in which case the Building and Premises shall be deemed to be "Substantially Damaged"), then either Landlord or Tenant, upon ten (10) calendar days' prior notice, may terminate this Lease without further obligation on either party's part, except for the return of any pre-paid Rent, pro-rated to the time of the casualty. If this Lease is not terminated pursuant to the terms of this Section 12.1(b), then Landlord shall perform such repairs set forth in Section 12.1(c) hereof and Tenant shall perform such repairs as set forth in Section 12.1(d) hereof and the Term shall continue without interruption and this Lease shall remain in full force and effect, except as otherwise expressly provided herein.

(c) If this Lease is not terminated pursuant to the terms of Section 12.1(b) hereof and if Tenant is not then in default of any of its obligations under this Lease beyond any applicable notice and cure period provided for herein, Landlord shall, provided the mortgagee of the Building makes insurance proceeds available for restoration, reconstruct the Building and Premises using such insurance proceeds only (it being understood by Tenant that Landlord shall not be responsible for any reconstruction of leasehold improvements constructed by Tenant, which reconstruction is the sole responsibility of Tenant) to substantially its condition at the time of such damage, but Landlord shall not be responsible for any delays which may result from any cause beyond Landlord's reasonable control. In the event the repairs and restoration are not completed within said period of ninety (90) days from the date of such casualty, then, at any time thereafter, Tenant may terminate the Lease at its sole election.

(d) If this Lease is not terminated as provided in Section 12.1(b) hereof,

Tenant shall, at its own cost and expense, repair and restore leasehold improvements constructed by Tenant in the Premises in accordance with the provisions of this Section 12, including, but not limited to, the repairing or replacement of its merchandise, Trade Fixtures, furnishings and equipment in a manner and to at least a condition equal to that prior to its damage or destruction. Tenant agrees to commence the performance of its work when notified by Landlord that the work to be performed by Tenant can, in accordance with good construction practices, then be commenced and Tenant shall complete such work as promptly thereafter as is practicable, but in no even more than ninety (90) days thereafter except for causes beyond the Tenant's reasonable control, including governmental permitting.

(e) All proceeds payable from Landlord's insurance policies with respect to the Building shall belong to and shall be payable to Landlord. If this Lease is not terminated as provided in Section 12.1(b) hereof, Landlord shall disburse and apply so much of any insurance recovery as shall be necessary against the cost to Landlord of restoration and reconstruction of the Building and Premises referred to in Section 12.1(c) hereof, subject to the rights of any holder of any mortgage liens against the Building.

(f) In the event that the provisions of Section 12.1(a) or Section 12.1(b) shall become applicable, the Annual Base Rent and Additional Rent will be abated or reduced proportionately during any period in which Tenant may be required to discontinue in whole or in part its business on the Premises, and such abatement or reduction will continue for the period commencing with such destruction or damage and ending with the completion by Landlord of such work of restoration or reconstruction as Landlord is obligated to do hereunder (exclusive of any of Tenant's fixtures, furnishings, equipment and the like or work performed therein by Tenant and the prompt completion of any required Tenant leasehold improvements).

12.2 Eminent Domain.

(a) If after the execution and before termination of this Lease, access to the Premises shall be materially reduced as a direct result of a taking by eminent domain or in the event of conveyance in lieu thereof, or more than ten percent (10%) of the Premises is so taken or conveyed or such lesser amount, if such taking or conveyance otherwise materially interferes with the Tenant's use and enjoyment of the Premises, then, at the election of Tenant, the Lease shall terminate as of the day possession shall be taken by such authority, and Tenant shall pay Rent up to that date, with a pro-rata refund by Landlord of such Rent as will have been paid in advance for a period subsequent to the date of the taking of possession.

(b) If after the execution and before termination of this Lease, as a direct result of a taking by eminent domain or in the event of conveyance in lieu thereof, access to the Premises is not materially reduced or if less than ten percent (10%) of the Premises is taken or conveyed, or if such taking does not otherwise materially interfere with Tenant's use and enjoyment of the Premises, then, at the election of Tenant, this Lease will terminate only as respects the portions so taken or conveyed, as of the day possession is taken, and Tenant shall pay Rent up to that day, with an appropriate refund by Landlord of such Rent as may have been paid in advance for a period subsequent to the date of the taking of possession, and thereafter the Annual Base Rent will be equitably adjusted. Pending agreement of such Rent adjustment,

Tenant agrees to pay to Landlord the Annual Base Rent in effect immediately prior to the taking by eminent domain, reduced pro-rata by the square footage taken. Landlord shall, at its expense, make all necessary repairs or alterations so as to reconstitute the remaining portion of the Premises a complete architectural unit and in substantially the same conditions as prior to the taking.

(c) If after the execution and before termination of this Lease, as a direct result of a taking by eminent domain or in the event of conveyance in lieu thereof, access to the Premises is materially reduced or more than ten percent (10%) of the Premises is taken or conveyed (or if Tenant otherwise has the right to terminate this Lease pursuant to Section 12.2(a)) and Tenant has not elected to terminate, the Term will cease only as respects the part so taken or conveyed, from the day possession is taken, and Tenant shall pay Rent to that date with an appropriate refund by Landlord of such Rent as may have been paid in advance for a period subsequent to the date of the taking of possession, but Landlord will have the right to terminate this Lease upon notice to Tenant in writing within thirty (30) calendar days after such taking of possession. If Landlord does not elect to terminate the Lease, all of the terms herein provided shall continue in effect except that the Annual Base Rent and Additional Rent will be equitably adjusted, and Landlord shall make all necessary repairs or alterations so as to constitute the remaining portion of the Premises a complete architectural unit and in substantially the same condition as prior to the taking.

(d) All compensation awarded for any such taking or conveyance, whether for the whole or a part of the Premises, except as expressly provided below, will be awarded to Landlord. Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such compensation except as provided below. Notwithstanding any of the foregoing, the Tenant will be entitled to seek a separate award for Tenant's leasehold improvements, leasehold interest, Trade Fixtures, relocation expenses and any other claim permitted by law. In the event of any taking of the Premises or any part thereof for temporary use, this Lease will be and remain unaffected thereby and Annual Base Rent and Additional Rent will be equitably adjusted.

SECTION 13: DEFAULT

13.1 Events of Default. If any default in the payment of Annual Base Rent, Additional Rent or any other monetary obligation due to Landlord by Tenant (a "Monetary Default") is not cured within ten (10) calendar days of written notice of such Monetary Default from Landlord to Tenant, *provided, however*, Landlord shall not be required to give more than two (2) such written notices during any twelve (12) month period, in which case Landlord may exercise its remedies under this Section 13 immediately upon any such Monetary Default; or if any other default under the terms hereof continues for more than thirty (30) calendar days following written notice thereof from Landlord to Tenant plus such additional time, if any, as is reasonably necessary to cure the default if the default is of such a nature that it can be cured but cannot reasonably be cured in thirty (30) calendar days and Tenant is diligently and continuously endeavoring to cure such default; or if Tenant files a petition under any chapter of the U.S. Bankruptcy Code, 11 U.S.C. 101 et seq., as it may be amended, or if any such petition is filed against Tenant and is not dismissed within ninety (90) calendar days; or if Tenant commences any dissolution, liquidation, composition, financial reorganization or

recapitalization with creditors, makes an assignment or trust mortgage for benefit of creditors; or if a receiver, trustee, custodian or similar agent is appointed or takes possession with respect to any property of Tenant and such appointment as ordered is not dismissed within ninety (90) calendar days; or if the leasehold hereby created is taken on execution or other process of law in any action against Tenant; then, and in any such case, Landlord and the agents and servants of Landlord may, in addition to and not in derogation of any remedies for any preceding breach of covenant, immediately or at any time thereafter while such default continues and without further notice, at Landlord's election, do any one or more of the following: (1) give Tenant written notice stating that the Lease is terminated, effective ten (10) calendar days after the giving of such notice or upon a date stated in such notice, as Landlord may elect, in which event the Lease shall be irrevocably terminated as stated in such notice without any further action, or (2) with an execution for possession issued by a court of competent jurisdiction, enter and repossess the Premises as of Landlord's former estate, and expel Tenant and those claiming through or under Tenant, and remove its and their effects, without being guilty of trespass, in which event the Lease shall be irrevocably terminated at the time of such entry, or (3) pursue any other rights or remedies permitted by law. Any such termination of the Lease will be without prejudice to any remedies which might otherwise be used for arrears of Rent or prior breach of covenant, and, in the event of such termination, Tenant shall remain liable under this Lease as hereinafter provided. In any such event, Tenant hereby waives all statutory rights (including, without limitation, rights of redemption, if any) to the extent such rights may be lawfully waived, and Landlord, without notice to Tenant, may store Tenant's effects and those of any person claiming through or under Tenant at the expense and risk of Tenant and, if Landlord so elects, after not less than thirty (30) calendar days' written notice without Tenant's having removed its property from the Premises, may sell such effects at public auction or private sale and apply the net proceeds thereof to the payment of all sums due to Landlord from Tenant, if any, and pay over the balance, if any, to Tenant.

13.2 Tenant's Obligations after Termination. In the event that this Lease is terminated under any of the provisions contained in Section 13.1, Tenant shall pay forthwith to Landlord, as compensation, the excess of the total Rent reserved for the residue of the Term over the fair market rental value of the Premises for the residue of the Term. In calculating the Rent reserved there shall be included, in addition to the Annual Base Rent and Additional Rent, the value of all other considerations agreed to be paid or performed by Tenant during the residue of the Term. As additional and cumulative obligations after any such termination, Tenant shall also pay punctually to Landlord all the sums and shall perform all the obligations that Tenant covenants in this Lease to pay and to perform in the same manner and to the same extent and at the same time as if this Lease had not been terminated. In calculating the amounts to be paid by Tenant pursuant to the preceding sentence, Tenant shall be credited with any amount paid to Landlord pursuant to the first sentence of this Section 13.2 and also with the net proceeds of any Rent obtained by Landlord by re-letting the Premises, after deducting all Landlord's reasonable expenses in connection with such re-letting, including, without limitation, all repossession costs, brokerage commissions, fees for legal services, and expenses of preparing the Premises for such re-letting, it being agreed by Tenant that Landlord may (i) re-let the Premises or any part or parts thereof for a term or terms that may, at Landlord's option, be equal to or less than or exceed the period that would otherwise have constituted the balance of the Term hereof and may grant such concessions and free rent as Landlord in its

reasonable judgment considers advisable or necessary to re-let the same and (ii) make such alterations, repairs, and decorations in the Premises as Landlord in its reasonable judgment considers advisable or necessary to re-let the same, and no action of Landlord in accordance with the foregoing or failure to re-let or to collect rent under re-letting shall operate or be construed to release or reduce Tenant's liability as aforesaid.

13.3 Nothing contained in this Lease will limit or prejudice the right of Landlord to prove and obtain, in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether such amount be greater, equal to, or less than the amount of the loss or damages referred to above.

13.4 Landlord shall in no event be in default in the performance of any of Landlord's obligations hereunder unless and until Landlord has failed to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after notice by Tenant to Landlord specifying Landlord's defaulted obligation. Tenant shall have no right, for any default by Landlord, to offset or counterclaim against any Rent due hereunder.

SECTION 14: MISCELLANEOUS

14.1 Notices from One Party to the Other. All notices required or permitted hereunder must be addressed to the respective addresses of Landlord and Tenant indicated in Section 1 hereof and must be sent by certified or registered mail, return receipt requested or by a national overnight carrier, with copies in each instance as follows:

With respect to Landlord:

Archdiocese of Boston
66 Brooks Drive
Braintree, Massachusetts 02184
Attn: Chancellor

Archdiocese of Boston
66 Brooks Drive
Braintree, Massachusetts 02184
Attn: General Counsel

With a copy to:

St. James Parish
6 Cottage Street
Haverhill, Massachusetts 01830

With respect to Tenant:

City of Haverhill
4 Summer Street
Haverhill, Massachusetts 01830
Attn: Office of the Mayor

With a copy to:

Superintendent of Schools
Haverhill Public Schools
4 Summer Street, Suite 104
Haverhill, Massachusetts 01830

All notices will be deemed received on the day immediately following the day on which such notice is deposited with the U.S. Postal Service or national overnight carrier, as applicable.

14.2 Bind and Inure. This Lease is binding upon and inures to the benefit of the parties hereto and their respective authorized successors and assigns, except that Landlord named herein and each successive owner of the Premises will be liable only for the obligations accruing during the period of its ownership. No officer, trustee, manager, member, beneficiary, employee or any other affiliate of Landlord will be personally liable or subject to levy, execution or other enforcement procedure against their personal assets for the satisfaction of the remedies of Tenant against Landlord. The reference herein to authorized successors and assigns of Tenant is not intended to constitute consent to assignment from Landlord to Tenant, but has reference only to those instances in which Landlord may later give consent to a particular assignment as permitted by the provisions of this Lease.

14.3 No Surrender. The delivery of keys to any employee of Landlord or to Landlord's agent or any employee thereof will not operate as a termination of this Lease or a surrender of the Premises.

14.4 No Waiver, Etc. The failure of Landlord or of Tenant to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Lease, or, with respect to such failure of Landlord, any of the rules and regulations referred to in Section 11.6 hereof, whether heretofore or hereafter adopted by Landlord, shall not be deemed a waiver of such violation nor prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of Annual Base Rent or Additional Rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach by Landlord, unless such waiver is in writing and signed by Landlord. No consent or waiver, express or implied, by Landlord or Tenant to or of any breach of any agreement or duty will be construed as a waiver or consent to or of any other breach of the same or any other agreement or duty.

14.5 No Accord and Satisfaction. No acceptance by Landlord of a lesser sum than the Rent then due shall be deemed to be other than on account of the earliest installment

of such Rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy provided in this Lease or at law or in equity.

14.6 Cumulative Remedies. The specific remedies to which Landlord may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means or redress to which it may be lawfully entitled in case of any breach or threatened breach by Tenant of any provisions of this Lease. In addition to the other remedies provided in this Lease, Landlord may seek injunctive relief regarding any attempted or threatened violation of any of the covenants, conditions or provisions of this Lease or to a decree compelling specific performance of any such covenants, conditions or provisions. Tenant shall immediately reimburse Landlord for any expense incurred by Landlord in curing Tenant's failure to satisfy any of its obligations (notwithstanding the fact that such cure might be effected by Landlord following the expiration or earlier termination of this Lease).

14.7 Landlord's Right to Cure. If Tenant defaults at any time in the performance of any obligation under this Lease beyond the applicable notice and grace period or cure period, if any, then, if Tenant has failed to cure or to have commenced to cure such default within five (5) calendar days following an additional written notice to Tenant (but in cases of emergency, no notice will be required), Landlord will have the right, but not the obligation, to enter upon the Premises, if necessary, and to perform such obligation, notwithstanding the fact that no specific provision for such substituted performance by Landlord is made in this Lease with respect to such default. In performing such obligation, Landlord may make any payment of money or perform any other act. All sums so paid by Landlord (together with interest at the Default Rate and all necessary and reasonable incidental costs and expenses in connection with the performance of any such act by Landlord) shall be deemed to be Additional Rent under this Lease and shall be payable to Landlord immediately on demand. Landlord may exercise the foregoing rights without waiving any other of its rights or releasing Tenant from any of its obligations under this Lease.

14.8 Estoppel Certificate. Tenant agrees, from time to time, upon not less than thirty (30) calendar days' prior written request by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect; that Tenant has no defenses, offsets or counterclaims against its obligations to pay the Annual Base Rent and Additional Rent and to perform its other covenants under this Lease; that there are no uncured defaults of Landlord or Tenant under this Lease (or, if there have been modifications, or if there are any defenses, offsets, counterclaims, or defaults, setting them forth in reasonable detail); and the dates to which the Annual Base Rent, Additional Rent and other charges have been paid. Any such statement delivered pursuant to this Section 14.8 shall be in a form reasonably acceptable to and may be relied upon by a prospective purchaser or mortgagee of the Building or the Premises or any prospective assignee of any such mortgagee.

14.9 Acts of God. In any case where either party hereto is required to do any act and delays are caused by or result from causes beyond such party's reasonable control, these delays will not be counted in determining the time during which the work or cure must be completed, whether such time be designated by a fixed date, fixed time or a "reasonable time" and such time will be deemed to be extended by the period of such delay.

14.10 Submission Not an Offer. The submission of a draft of this Lease or a summary of some or all of its provisions does not constitute an offer to lease or demise the Premises, it being understood and agreed that neither Landlord nor Tenant will be legally bound with respect to the leasing of the Premises unless and until this Lease has been executed by both Landlord and Tenant and a fully executed copy has been delivered to each of them.

14.11 Service of Process; Jury Trial Waiver.

(a) TENANT AND LANDLORD EACH HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS LEASE OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS LEASE OR ANY AGREEMENT OR TRANSACTION RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. TENANT AND LANDLORD EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT TENANT OR LANDLORD MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS LEASE WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(b) Tenant and Landlord each hereby consents to the service of process in the manner provided for notices under this Lease.

14.12 Severability. If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstances is declared invalid or unenforceable by the final ruling of a court of competent jurisdiction having final review, the remaining terms, covenants, conditions and provisions of this Lease and their application to persons or circumstances will not be affected thereby and will continue to be enforced and recognized as valid agreements of the parties, and in the place of such invalid or unenforceable provision, there will be substituted a like, but valid and enforceable provision which comports to the findings of the aforesaid court and most nearly accomplishes the original intention of the parties. Notwithstanding the previous sentence, it is expressly understood and agreed by Landlord and Tenant that if Section 7.3 is severed, found invalid or unenforceable for any reason, this Lease Agreement will terminate upon written notice from Landlord, such termination to become immediately effective upon Landlord giving notice thereof.

14.13 Integration. This Lease supersedes all prior oral or written agreements or understanding concerning the terms hereof and constitutes and represents the complete and final agreement between the parties hereto.

14.14 Headings. The titles of the several Sections contained herein are for convenience only and must not be considered in construing this Lease.

14.15 Unless repugnant to the context, the words "Landlord" and "Tenant" appearing in this Lease shall be construed to mean those named above and their respective heirs, executors, administrators, successors and assigns, and those claiming through or under them, respectively.

14.16 Amendments. This Lease may be amended and the provisions hereof may be waived or modified, only by instruments in writing executed by Landlord and Tenant.

14.17 Authority of Tenant. Tenant represents and warrants to Landlord (which representations and warranties shall survive the delivery of this Lease) that: (a) Tenant has the power to execute and deliver and perform its obligations under this Lease; and (b) (i) the execution, delivery, and performance by Tenant of its obligations under this Lease have been duly authorized, and will not violate the organizational documents of the Tenant or any indenture, agreement or other instrument to which it is a party or by which it is bound; and (ii) the signatory to this Lease is duly authorized to execute this Lease on the Tenant's behalf.

14.18 Authority of Landlord. Landlord represents and warrants to Tenant (which representations and warranties shall survive the delivery of this Lease) that: (a) Landlord (i) is a Corporation Sole, established and maintained as a religious corporation pursuant to Chapter 506 of the Massachusetts Acts of 1897, (ii) has the power and authority to carry on businesses now being conducted and is qualified to do business in Massachusetts, and (iii) has the power to execute and deliver and perform its obligations under this Lease; and (b) the execution, delivery and performance by Landlord of its obligations under this Lease have been duly authorized by all requisite organizational action and will not violate the organizational documents of Landlord or any indenture, agreement, or other instrument to which it is a party or by which it is bound.

14.19 Mutual Waiver of Claims. Insofar as and to the extent that the following provisions may be effective without invalidating or making it impossible to secure insurance coverage from responsible insurance companies doing business in The Commonwealth of Massachusetts (even though extra premium may result therefrom): Landlord and Tenant mutually agree that with respect to any loss which is covered by insurance then being carried by them, the one carrying such insurance and suffering said loss releases the other of and from any and all claims with respect to such loss; and they further mutually agree that their insurance companies will have no right of subrogation against the other on account thereof. In the event that an additional premium is payable by either party as a result of this provision, the other party shall reimburse the party paying such premium the amount of such extra premium. If, at the written request of one party, this release and non-subrogation provision is waived, then the obligation of reimbursement will cease for such period of time as such waiver will be

effective, but nothing contained in this Section will be deemed to modify or otherwise affect any releases elsewhere contained in this Lease. Notwithstanding the forgoing, each party reserves any rights with respect to any excess of loss or injury over the amount recovered by such insurance.

14.20 Counterparts. This Lease may be executed in any number of counterparts, but all of such counterparts will together constitute but one and the same agreement. In making proof of this Lease, it will not be necessary to produce or account for more than one counterpart thereof signed by each of the parties hereto. Delivery of an executed counterpart of this Lease by facsimile or other electronic method of transmission will have the same force and effect as delivery of an original executed counterpart of this Lease.

14.21 Limitation on Damages. Neither Landlord nor Tenant will be liable to the other for any consequential damages, including, without limitation, any so-called "lost profits". Nor shall Landlord be liable to Tenant for any reason for any losses resulting from any computer or electronics failures, including, without limitation, any losses or damages suffered in connection with a loss of data.

14.22 Enforcement Expenses. Unless prohibited by applicable law, Tenant agrees to pay to Landlord the amount of all fees and expenses (including, without limitation, attorneys' fees and costs) incurred by Landlord arising out of or resulting from any act or omission by Tenant with respect to this Lease or the Premises, including, without limitation, any breach by Tenant of its obligations hereunder, irrespective of whether Landlord resorts to litigation as a result thereof.

14.23 Interpretation. Unless indicated otherwise, the term "or" in this document is used in the inclusive sense.

14.24 Survival. In addition to those provisions specifically noted as surviving termination of this Lease, the following provisions will survive termination of this Lease: this Section 14.24 (Survival), Section 11.11 (Holdover), and Section 14.1 (Notices). In addition, if the Lease is terminated because of a breach of the Lease by the non-terminating party, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

[Remainder of page intentionally left blank; signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as an instrument under seal and delivered as of the day and year first above written.

**ROMAN CATHOLIC ARCHBISHOP OF BOSTON, A
CORPORATION SOLE, as Landlord**

By: _____

Title: Assistant Clerk

CITY OF HAVERHILL, as Tenant

By: _____

Title: Mayor

By: _____

Title: City Solicitor
Approved as to Form

Date: _____

HAVERHILL SCHOOL COMMITTEE, as Tenant

By: _____

DATE: _____

Subject: **School Committee Action - May 23, 2019 - Approval of Lease (St. James)**

Date: 5/29/2019 5:51:48 PM Eastern Standard Time

From: superintendent@haverhill-ps.org

To: brian.oconnell@haverhill-ps.org

Cc: billcoxlaw@aol.com, kathleen.smith@haverhill-ps.org

Good afternoon,

The attached lease agreement was approved at the May 23, 2019 School Committee Meeting.

Regards,

Beverly

*related
communication*


**CITY OF HAVERHILL
MASSACHUSETTS
CITY SOLICITOR'S OFFICE**

145 South Main Street
Bradford, MA 01835
(978) 373-2360
FAX: 978/891-5424
EMAIL: billcoxlaw@aol.com

**WILLIAM D. COX, JR.
CITY SOLICITOR**

May 31, 2019

TO: John A. Michitson, President and Members of the Haverhill City Council

FROM: William D. Cox, Jr., Esq., City Solicitor 

RE: Order - Lease of St. James School

As you are aware, the Haverhill Public Schools have been renting St. James School, Primrose Street for many years from the Roman Catholic Archbishop of Boston, acting on behalf of St. James Parish. The current lease expired on June 30, 2019. At this time, they are desirous of continuing the lease of the facility.

The Haverhill Public Schools, through the City Purchasing Agent, issued and advertised a Request for Proposals in accordance with MGL c. 30B. A proposal from the Archdiocese was the only one received.

The Haverhill School Committee approved the new lease at their May 23, 2019 meeting. The lease now requires approval by the City Council in order to allow the Mayor to execute the lease on behalf of the City. The lease calls for a 2.5% increase annually in the rent paid and is for a term of 3 years with two 2 year options.

As always, I remain available should you have any questions or concerns.

cc: James J. Fiorentini, Mayor



DOCUMENT

12.4

CITY OF HAVERHILL

In Municipal Council

ORDERED:

That the following question shall be included on the November 5, 2019 regular municipal election ballot pursuant to the provisions of MGL. C. 94G, §3:

“Shall this City of Haverhill adopt the following ordinance?

OPTION 1: City Solicitor Summary: Massachusetts General Laws, Chapter 94G, Section 3, allows a city, through adoption of an ordinance, to limit the number of all or certain types of adult use (recreational) marijuana establishments from operating in that town. In a city such as Haverhill that voted “yes” on Question 4 at the November 8, 2016 State Election in favor of the legalization, regulation and taxation of marijuana, a ballot question is also required to implement such a limitation. The Zoning Ordinance amendment set forth below would limit the number of “Marijuana Retailers” and “Social Consumption Establishments” as those terms are defined in the Zoning Ordinance. A “yes” vote on this Ballot Question would be in favor of adopting the below Zoning Ordinance to limit the number of Marijuana Retailers and Social Consumption Establishments in the City. A “no” vote would be opposed to adopting the limiting Zoning Ordinance.

§ 255-200 Designated number of marijuana establishments.

A. The total number of all marijuana retailers or social consumption establishments may not exceed _____ within the City.

B. There shall be no restrictions on the number of any particular type of establishment permitted within the City, other than as regulated in Subsection A.”

OPTION 2: City Solicitor Summary: Massachusetts General Laws, Chapter 94G, Section 3, allows a city, through adoption of an ordinance, to prohibit all or certain types of adult use (recreational) marijuana establishments from operating in that town. In a city such as Haverhill that voted “yes” on Question 4 at the November 8, 2016 State Election in favor of the legalization, regulation and taxation of marijuana, a ballot question is also required to implement such a prohibition. The Zoning

Ordinance amendment set forth below would prohibit “Marijuana Retailers” and “Social Consumption Establishments” as those terms are defined in the Zoning Ordinance. A “yes” vote on this Ballot Question would be in favor of adopting the below Zoning Ordinance to prohibit Marijuana Retailers and Social Consumption Establishments in the City. A “no” vote would be opposed to adopting the prohibitory Zoning Ordinance.

§ 255-200 Designated number of marijuana establishments.

A. Marijuana retailers and social consumption establishments shall not be permitted within the City.

B. There shall be no restrictions on the number of any particular type of establishment permitted within the City, other than as regulated in Subsection A.”

related communication

**CITY OF HAVERHILL
MASSACHUSETTS
CITY SOLICITOR'S OFFICE**

145 South Main Street
Bradford, MA 01835
(978) 373-2360
FAX: 978/891-5424
EMAIL: billcoxlaw@aol.com

**WILLIAM D. COX, JR.
CITY SOLICITOR**

May 31, 2019

TO: John Michitson, President and Members of the Haverhill City Council

FROM: William D. Cox, Jr., Esq., City Solicitor *WDC*

RE: Order - Ballot Question for Designated number of marijuana establishments

As requested, I have drafted an Order which provides for the inclusion of a ballot question on the November 5, 2019 regular municipal election ballot pursuant to the provisions of MGL. C. 94G, §3 which would limit or prohibit marijuana retailers or social consumption establishments. In the Order I have provided you with two options. Option One would be to limit the number of marijuana retailers or social consumption establishments to a number below the current 6. Option Two would be to prohibit marijuana retailers or social consumption establishments altogether.

In reviewing this matter I have also determined that, in addition to passage of the ballot question by a majority of those casting votes at the November 5, 2019 regular municipal election, the Council and Mayor would also need to separately enact a zoning ordinance as required by our City Code and MGL c. 40A, which mirrors the ballot question, in order to implement such a limitation or prohibition. The passage of such an ordinance may occur before or after the November 5, 2019 regular municipal election.

I will be attending the Council meeting on June 4, 2019 to answer any questions you may have. Thank you.

cc: James J. Fiorentini, Mayor



Document
CITY OF HAVERHILL
In Municipal Council

12.5

Ordered:

That in accordance with General Laws, Chapter 44, Section 64, authorize the payment of bill(s) of the previous years and to further authorize the payment from current year departmental appropriations as listed below:

| <u>Vendor</u> | <u>Amount</u> | <u>Account</u> |
|-------------------------------|---------------|----------------------------|
| Nutter, McClennen & Fish, LLP | \$26,354.37 | Highway Refuse & Recycling |

Nutter, McClennen & Fish, LLP

Seaport West
155 Seaport Boulevard
Boston, MA 02210-2604
(617) 439-2000

Client No.: 0101989

May 10, 2018

Resp. Atty.: MAL

Bill No. 610338/03

City of Haverhill
Board of Health
4 Summer Street
Haverhill, MA 01830

Attention: Bonnie Dufresne

FOR PROFESSIONAL SERVICES rendered and unbilled through April 30, 2018 in connection with the following:

Matter Name: Covanta Site Assignment

Matter No.: 00035

| <u>Date</u> | <u>Description</u> | <u>Timekpr</u> | <u>Hours</u> |
|-------------|---|----------------|--------------|
| 02/16/18 | E-mail from S. Zemba (invoice); e-mail to B. Dufresne regarding same | GLG | 0.10 |
| 02/23/18 | Prepare site assignment hearing cost accounting | GLG | 0.60 |
| 02/26/18 | E-mail from B. Scully; telephone call to B. Dufresne | GLG | 0.10 |
| 03/05/18 | E-mail from (2) M. Leon; e-mail to T. Mackie and M. Leon; e-mail to and e-mail from T. Mackie; e-mail to M. Leon | GLG | 0.30 |
| 03/06/18 | E-mail from M. Leon; review NMF bills regarding site assignment work; e-mail to T. Mackie regarding same | GLG | 0.90 |
| 03/12/18 | E-mail from T. Mackie regarding invoices for site assignment process; e-mail to and e-mail from M. Leon regarding same; e-mail to and e-mail from T. Mackie regarding same; revise final accounting; e-mail to T. Mackie regarding same | GLG | 0.50 |
| 03/14/18 | Voice mail to and telephone call from B. Dufresne; e-mail to T. Mackie | GLG | 0.10 |
| 04/06/18 | E-mail from T. Mackie regarding final decision copy; e-mail to and e-mail from B. Dufresne regarding same; e-mail to T. Mackie regarding same | GLG | 0.20 |

Total Hours for Matter 00035

2.80

Total Fees

\$1,190.00

Total of Matter 00035

\$1,190.00

PAYMENT DUE UPON RECEIPT
BALANCES OVER THIRTY DAYS ARE SUBJECT TO A MONTHLY FINANCE CHARGE OF ONE AND ONE HALF PERCENT
FEDERAL TAX ID: 04-2106505

Nutter, McClennen & Fish, LLP

Seaport West
155 Seaport Boulevard
Boston, MA 02210-2604
(617) 439-2000

Client No.: 0101989

December 19, 2017

Resp. Atty.: MAL

Bill No. 598174/03

City of Haverhill
Board of Health
4 Summer Street
Haverhill, MA 01830

Attention: Bonnie Dufresne

FOR PROFESSIONAL SERVICES rendered and unbilled through November 30, 2017 in connection
with the following:

Matter Name: Covanta Site Assignment**Matter No.: 00035**

| <u>Date</u> | <u>Description</u> | <u>Timekpr</u> | <u>Hours</u> |
|-------------|---|----------------|--------------|
| 11/02/17 | On technical fee budget; e-mail to M. Leon regarding same | GLG | 0.70 |
| 11/06/17 | Conference with M. Leon; prepare for 11/7/17 meeting with Board | GLG | 0.60 |
| 11/07/17 | Voice mail to S. Zemba; voice mail to B. Scully; prepare for meeting with Board; voice mail to and telephone call from T. Mackie; travel to Haverhill; meeting with Board; travel from Haverhill | GLG | 4.30 |
| 11/07/17 | Prepare for and attend Board of Health meeting regarding site assignment; telephone conference with B. Cox | MAL | 4.20 |
| 11/08/17 | Telephone call from S. Zemba | GLG | 0.10 |
| 11/09/17 | Voice mail message to B. Scully; telephone call to B. Haskell; revise project budget; telephone call from B. Scully; telephone call to C. Myrhum; drafting letter to T. Mackie regarding technical fee; telephone call from T. Mackie | GLG | 1.50 |
| 11/10/17 | E-mail to and e-mail from S. Zemba (draft proposal); telephone call to and e-mail to (2) C. Myrhum; e-mail from B. Dufresne (DEP site suitability report); e-mail to and e-mail from T. Mackie; e-mail to and e-mail from B. Dufresne; e-mail from (2) M. Leon; e-mail from (2) T. Mackie; e-mail to S. Zemba, B. Scully and B. Haskell (site suitability report); review S. Zemba proposal; e-mail to and e-mail from S. Zemba regarding same; telephone call from M. Leon | GLG | 1.30 |
| 11/10/17 | Telephone conference with G. Gill-Austern and T. Mackie | MAL | 0.90 |

PAYMENT DUE UPON RECEIPT

BALANCES OVER THIRTY DAYS ARE SUBJECT TO A MONTHLY FINANCE CHARGE OF ONE AND ONE HALF PERCENT

FEDERAL TAX ID: 04-2106505

Page 1

Nutter, McClennen & Fish, LLP

Seaport West
155 Seaport Boulevard
Boston, MA 02210-2604
(617) 439-2000

Client No.: 0101989

December 19, 2017

Resp. Atty.: MAL

Bill No. 598174/03

| | | | |
|----------|---|-----|------|
| 11/13/17 | Review DEP site suitability determination; e-mail from B. Scully (proposal); review same; telephone call from and e-mail from T. Mackie regarding public notice; voice mail message to M. Leon regarding same; telephone call to Rumbo; telephone call to B. Dufresne; telephone call from M. Leon; voice mail message to, e-mail to and telephone call from T. Mackie; voice mail message to B. Dufresne; telephone call from M. Leon; e-mail from S. Zemba regarding Sanborn Head proposal; e-mail to and conference with M. Leon regarding same; e-mail to and e-mail from S. Zemba regarding same; e-mail to B. Scully regarding proposal | GLG | 2.90 |
| 11/14/17 | E-mail from and e-mail to S. Zemba; drafting letter to T. Mackie regarding technical fee; e-mail to M. Leon regarding same; e-mail to and e-mail from T. Mackie regarding hearing date; e-mail from and e-mail to B. Scully; telephone call to C. Myhrum; voice mail from and voice mail to B. Scully; e-mail from T. Mackie; e-mail from C. Myhrum (draft engagement letter); voice mail to S. Zemba; e-mail to B. Dufresne (draft public notice); telephone call from and e-mail from S. Zemba | GLG | 2.10 |
| 11/15/17 | E-mail from B. Dufresne; telephone call from M. Leon; conference call with T. Mackie and M. Leon; voice mail to C. Myhrum; e-mail from M. Leon; e-mail to and papers to S. Zemba (signed proposal); revise draft public hearing notice; e-mail to T. Mackie regarding same; telephone call from S. Zemba; telephone call from and e-mail to B. Scully; telephone call from and e-mail from (2) M. Leon | GLG | 2.00 |
| 11/15/17 | Review and sign expert contracts; telephone conference with T. Mackie regarding hearing procedures; telephone conference with C. Myhrum regarding public hearing options and schedules | MAL | 1.60 |
| 11/16/17 | E-mail T. Mackie regarding public notice; e-mail from M. Leon regarding same; e-mail from (3) and e-mail to T. Mackie regarding same; e-mail from (2) and e-mail to (2) B. Scully (revised proposal) | GLG | 0.30 |
| 11/16/17 | Review and comment on public notices; telephone conference with G. Gill-Austern | MAL | 0.60 |
| 11/17/17 | E-mail from B. Haskell; e-mail from M. Leon; e-mail from and e-mail to B. Dufresne | GLG | 0.10 |
| 11/20/17 | Conference regarding fee provisions letter and expert report | MAL | 0.90 |
| 11/20/17 | Telephone call from M. Leon; revise letter to T. Mackie regarding technical fee; letter to and e-mail to T. Mackie regarding same; e-mail to B. Scully; e-mail to B. Dufresne (Zemba & Scully contracts); voice mail to C. Myhrum | GLG | 0.70 |

PAYMENT DUE UPON RECEIPT

BALANCES OVER THIRTY DAYS ARE SUBJECT TO A MONTHLY FINANCE CHARGE OF ONE AND ONE HALF PERCENT

FEDERAL TAX ID: 04-2106505

Page 2

Nutter, McClennen & Fish, LLP

Seaport West
 155 Seaport Boulevard
 Boston, MA 02210-2604
 (617) 439-2000

Client No.: 0101989

December 19, 2017

Resp. Atty.: MAL

Bill No. 598174/03

| | | | |
|----------|---|-----|------|
| 11/21/17 | E-mail from B. Scully; telephone call to T. Mackie; e-mail to B. Scully; e-mail from and e-mail to C. Myhrum; e-mail from T. Mackie regarding technical fee; e-mail to (2) and e-mail from (2) M. Leon regarding same; e-mail to T. Mackie regarding same; e-mail from B. Scully; telephone call from S. Zemba; telephone call from, telephone call to, e-mail from (2) and e-mail to C. Myhrum | GLG | 0.70 |
| 11/22/17 | E-mail from C. Myhrum; e-mail from S. Zemba (draft memorandum regarding air quality impact); review same | GLG | 0.40 |
| 11/27/17 | Telephone call from M. Leon; voice mail to and voice mail from B. Dufresne; telephone call from M. Leon; e-mail to (2) and e-mail from S. Zemba; e-mail to (2) and e-mail from T. Mackie regarding public notices, letter regarding fees; email to M. Leon regarding same; review S. Zemba draft memorandum; conference call with S. Zemba and M. Leon; M. Leon e-mail to T. Mackie; voice mail to T. Mackie regarding experts; e-mail from B. Cox; e-mail to B. Dufresne | GLG | 1.80 |
| 11/27/17 | E-mail to and e-mail from S. Meeks regarding same; e-mail to and e-mail from J. Schiff regarding same and e-mail to E. Lardiere regarding same | GLG | 0.10 |
| 11/27/17 | Reviewed S. Zemba memo; call with G. Gill-Austern; conference call with S. Zemba regarding air quality analysis; emails with T. Mackie | MAL | 2.20 |
| 11/28/17 | E-mail from and e-mail to T. Mackie; e-mail from (2), voice mail to and telephone call from B. Dufresne; e-mail from B. Cox; review site suitability report air analysis; telephone call from M. Leon; e-mail from C. Myhrum | GLG | 0.60 |
| 11/28/17 | Follow-up on expert access to Covanta experts; telephone conference with T. Mackie and G. Gill-Austern | MAL | 0.60 |
| 11/29/17 | E-mail from (2) T. Mackie; e-mail from G. Drew; e-mail from M. Leon; e-mail to and e-mail from S. Zemba; e-mail from B. Haskell; e-mail from M. Leon; e-mail to B. Scully | GLG | 0.30 |
| 11/30/17 | E-mail from B. Scully; e-mail from M. Leon | GLG | 0.10 |

Total Hours for Matter 00035

31.60

Total Fees

\$13,430.00

DISBURSEMENTS and other charges recorded and unbilled
 through November 30, 2017

Digital Reproduction

\$15.96

PAYMENT DUE UPON RECEIPT

BALANCES OVER THIRTY DAYS ARE SUBJECT TO A MONTHLY FINANCE CHARGE OF ONE AND ONE HALF PERCENT
 FEDERAL TAX ID: 04-2106505

Page 3

Nutter, McClennen & Fish, LLP

Seaport West
155 Seaport Boulevard
Boston, MA 02210-2604
(617) 439-2000

Client No.: 0101989

December 19, 2017

Resp. Atty.: MAL

Bill No. 598174/03

Travel Related Charges

76.07

Total Disbursements and Other Charges for Matter 00035

\$92.03

Total of Matter 00035

\$13,522.03

PAYMENT DUE UPON RECEIPT
BALANCES OVER THIRTY DAYS ARE SUBJECT TO A MONTHLY FINANCE CHARGE OF ONE AND ONE HALF PERCENT
FEDERAL TAX ID: 04-2106505

Nutter, McClennen & Fish, LLP

Seaport West
155 Seaport Boulevard
Boston, MA 02210-2604
(617) 439-2000

Client No.: 0101989

February 23, 2018

Resp. Atty.: MAL

Bill No. 602633/03

City of Haverhill
Board of Health
4 Summer Street
Haverhill, MA 01830

Attention: Bonnie Dufresne

FOR PROFESSIONAL SERVICES rendered and unbilled through January 31, 2018 in connection with the following:

Matter Name: Covanta Site Assignment

Matter No.: 00035

| <u>Date</u> | <u>Description</u> | <u>Timekpr</u> | <u>Hours</u> |
|-------------|---|----------------|--------------|
| 01/03/18 | E-mail from B. Dufresne; e-mail from (2) and e-mail to M. Leon; telephone call to B. Dufresne | GLG | 0.20 |
| 01/08/18 | Conference with M. Leon; prepare decision for Board signature; e-mail from (2) T. Mackie (transcript) | GLG | 0.50 |
| 01/09/18 | E-mail from (2) and e-mail to (2) B. Dufresne; telephone call from M. Leon | GLG | 0.10 |
| 01/09/18 | Review final draft; telephone conference with E. Myhrum; travel to and attend BOH meeting | MAL | 4.90 |
| 01/11/18 | Telephone call from, e-mail from and e-mail to M. Leon | GLG | 0.10 |
| 01/12/18 | E-mail from (2) and e-mail to T. Mackie regarding notice of decision | GLG | 0.10 |
| 01/16/18 | Papers from B. Scully (Green invoice); e-mail to (3) and e-mail from (2) B. Dufresne regarding same | GLG | 0.10 |
| 01/30/18 | E-mail to T. Mackie (notices); e-mail to B. Dufresne regarding same | GLG | 0.10 |

Total Hours for Matter 00035

6.10

Total Fees

\$2,592.50

PAYMENT DUE UPON RECEIPT
BALANCES OVER THIRTY DAYS ARE SUBJECT TO A MONTHLY FINANCE CHARGE OF ONE AND ONE HALF PERCENT
FEDERAL TAX ID: 04-2106505

Nutter, McClennen & Fish, LLP

Seaport West
155 Seaport Boulevard
Boston, MA 02210-2604
(617) 439-2000

Client No.: 0101989

February 23, 2018

Resp. Atty.: MAL

Bill No. 602633/03

DISBURSEMENTS and other charges recorded and unbilled
through January 31, 2018

| | |
|----------------------|---------|
| Digital Reproduction | \$24.84 |
|----------------------|---------|

Total Disbursements and Other Charges for Matter 00035

\$24.84

Total of Matter 00035

\$2,617.34

Nutter, McClennen & Fish, LLP

Seaport West
155 Seaport Boulevard
Boston, MA 02210-2604
(617) 439-2000

Client No.: 0101989

October 18, 2017

Resp. Atty.: MAL

Bill No. 592433/03

City of Haverhill
Board of Health
4 Summer Street
Haverhill, MA 01830

Attention: Bonnie Dufresne

FOR PROFESSIONAL SERVICES rendered and unbilled through September 30, 2017 in connection with the following:

Matter Name: Covanta Site Assignment**Matter No.: 00035**

| <u>Date</u> | <u>Description</u> | <u>Timekpr</u> | <u>Hours</u> |
|-------------|--|----------------|--------------|
| 08/08/17 | E-mail from M. Leon regarding Covanta payment for site assignment major modification; review 310 CMR 16.000 regarding Board of Health application fee | GLG | 0.80 |
| 08/09/17 | Telephone call to B. Dufresne regarding technical fee payments; telephone call to M. Van Weelden regarding same; e-mail from M. Van Weelden (site suitability application) | GLG | 0.20 |
| 08/10/17 | E-mail to and e-mail from M. Leon regarding meeting schedule; e-mail to M. Van Weelden regarding same; e-mail from T. Mackie regarding same; e-mail from and e-mail to (2) M. Van Weelden regarding Board of Health receipt of Covanta payment of tech fee; e-mail from (2) and e-mail to T. Mackie regarding same; email from and e-mail to M. Leon regarding same; voice mail to B. Cox regarding same; e-mail from (2) and e-mail to M. Van Weelden regarding same; telephone call to (2) T. Mackie regarding same; review site suitability application; drafting letter to MassDEP regarding receipt of Covanta payment of tech fee; e-mail to and email from T. Mackie regarding same; letter to and e-mail to M. Fairbrother (MassDEP) regarding same; e-mail from T. Mackie regarding same; email to B. Cox and M. Leon regarding same; e-mail from and email to B. Cox regarding same; e-mail from (2) and e-mail to B. Dufresne regarding August 22 meeting | GLG | 2.60 |
| 08/10/17 | Review site suitability documents; emails with W. Cox | MAL | 1.00 |
| 08/15/17 | E-mail from T. Mackie (letter from MassDEP regarding admin completeness of site suitability application); review 310 CMR 16.00 | GLG | 0.50 |

PAYMENT DUE UPON RECEIPT

BALANCES OVER THIRTY DAYS ARE SUBJECT TO A MONTHLY FINANCE CHARGE OF ONE AND ONE HALF PERCENT
FEDERAL TAX ID: 04-2106505

Page 1

Nutter, McClennen & Fish, LLP

Seaport West
155 Seaport Boulevard
Boston, MA 02210-2604
(617) 439-2000

Client No.: 0101989

October 18, 2017

Resp. Atty.: MAL

Bill No. 592433/03

| | | | |
|----------|---|-----|------|
| 08/16/17 | E-mail from M. Leon; e-mail to B. Dufresne regarding site assignment modification process | GLG | 0.70 |
| 08/17/17 | E-mail from M. Leon (response to e-mail from B. Dufresne regarding Covanta issue); review site assignment file in preparation for 8/22 meeting | GLG | 2.40 |
| 08/21/17 | Telephone call from and e-mail to M. Leon; review 310 CMR 16.00 | GLG | 0.80 |
| 08/22/17 | E-mail from and telephone call to T. Mackie; e-mail to and e-mail from M. Van Weelden; e-mail from T. Mackie | GLG | 3.20 |
| 08/22/17 | Prepare for, meet with M. Van Weeldon; telephone conference with Mackie regarding site assignment issues, hearing officer for issue, schedule; follow-up to same | MAL | 3.00 |
| 08/23/17 | E-mail to and e-mail from T. Mackie regarding draft motion to modify site assignment; e-mail from T. Mackie regarding procedural schedule; e-mail from M. Van Weelden regarding truck wait times; e-mail to and e-mail from B. Cox regarding same | GLG | 0.60 |
| 08/29/17 | Conference with M. Leon regarding hearing officers; e-mail to (2) and e-mail from (3) T. Mackie regarding schedule | GLG | 0.20 |
| 08/30/17 | E-mail from B. Dufresne (Covanta presumptive approval request for temp metals storage) | GLG | 0.20 |
| 08/31/17 | Email to T. Mackie (proposed fee agreement) | GLG | 0.20 |
| 08/31/17 | E-mail from (2) M. Leon regarding surcharging Cedar's | GLG | 0.10 |
| 09/01/17 | Telephone conference with B. Haskell; telephone conference with C. Myhrum regarding hearing officer role | MAL | 0.70 |
| 09/05/17 | E-mail from C. Rosenbloom; e-mail from M. Leon; e-mail from and e-mail to B. Haskell; conference with M. Leon; review site assignment; e-mail to M. Leon regarding same; e-mail to T. Mackie | GLG | 0.50 |
| 09/06/17 | E-mail from T. Mackie; e-mail from (3) and e-mail to (2) B. Haskell; conference with M. Leon | GLG | 0.20 |
| 09/12/17 | E-mail from B. Dufresne (draft notice of site assignment modification); voice mail to T. Mackie regarding same; e-mail from B. Haskell; telephone call from M. Leon; voice mail to (2) and e-mail from B. Haskell; conference call with B. Haskell and M. Leon regarding experts; telephone call from M. Leon | GLG | 0.80 |
| 09/12/17 | Conference call with B. Haskell regarding site assignment technical expert requirements | MAL | 0.60 |

PAYMENT DUE UPON RECEIPT

BALANCES OVER THIRTY DAYS ARE SUBJECT TO A MONTHLY FINANCE CHARGE OF ONE AND ONE HALF PERCENT

FEDERAL TAX ID: 04-2106505

Page 2

Nutter, McClennen & Fish, LLP

Seaport West
155 Seaport Boulevard
Boston, MA 02210-2604
(617) 439-2000

Client No.: 0101989

October 18, 2017

Resp. Atty.: MAL

Bill No. 592433/03

| | | | |
|----------|---|-----|------|
| 09/13/17 | E-mail from C. Myrhum regarding hearing officer; voice mail to M. Stankovich regarding city traffic consultant; voice mail to and voice mail from T. Mackie; voice mail to B. Dufresne | GLG | 0.20 |
| 09/14/17 | Telephone call from B. Dufresne regarding site assignment status | GLG | 0.10 |
| 09/15/17 | Telephone call from, e-mail to (2) and e-mail from (2) T. Mackie regarding public notice; conference with M. Leon regarding same | GLG | 0.30 |
| 09/18/17 | Telephone call from and e-mail from M. Stankovich regarding traffic consultant; e-mail to M. Leon regarding same; telephone call to M. Vignale (traffic consultant); conference with M. Leon regarding same | GLG | 0.30 |
| 09/20/17 | E-mail from M. Vignale (traffic consultant); review same | GLG | 0.30 |
| 09/21/17 | Meet with M. Leon | MES | 0.30 |
| 09/25/17 | Voice mail to B. Haskell | GLG | 0.10 |
| 09/26/17 | Telephone call from and e-mail to B. Haskell | GLG | 0.10 |
| 09/29/17 | E-mail from (2) B. Haskell regarding expert consultants; e-mail to M. Leon regarding same | GLG | 0.10 |

Total Hours for Matter 00035

21.10

Total Fees

\$8,967.50

DISBURSEMENTS and other charges recorded and unbilled
through September 30, 2017

| | |
|----------------------|--------|
| Client Supplies | \$2.99 |
| Client Luncheons | 18.75 |
| Digital Reproduction | 35.76 |

Total Disbursements and Other Charges for Matter 00035

\$57.50

Total of Matter 00035

\$9,025.00

PAYMENT DUE UPON RECEIPT
BALANCES OVER THIRTY DAYS ARE SUBJECT TO A MONTHLY FINANCE CHARGE OF ONE AND ONE HALF PERCENT
FEDERAL TAX ID: 04-2106505

JAMES J. FIORENTINI
MAYOR



**CITY OF HAVERHILL
MASSACHUSETTS**

CITY HALL, ROOM 100
FOUR SUMMER STREET
HAVERHILL, MA 01830
PHONE 978-374-2300
FAX 978-373-7544
MAYOR@CITYOFHAVERHILL.COM
WWW.CI.HAVERHILL.MA.US

May 31, 2019

City Council President John A. Michitson and Members of the Haverhill City Council

RE: FY2018 Bills


Dear Mr. President and Members of the Haverhill City Council:

Attached, please find an order to pay bills from the previous fiscal year:

| Vendor | Amount | Account |
|------------------------------|--------------------|----------------------------|
| Nutter, McClennan & Fish LLP | \$26,354.37 | Highway Refuse & Recycling |
| TOTAL | \$26,354.37 | |

I recommend approval.

Very truly yours,


James J. Fiorentini, Mayor

JJF/lyf

CITY COUNCIL

JOHN A. MICHITSON

PRESIDENT

THOMAS J. SULLIVAN

VICE PRESIDENT

JOSEPH J. BEVILACQUA

MELINDA E. BARRETT

COLIN F. LEPAGE

TIMOTHY J. JORDAN

WILLIAM J. MACEK

MARY ELLEN DALY O'BRIEN

MICHAEL S. MCGONAGLE



CITY OF HAVERHILL

HAVERHILL, MASSACHUSETTS 01830-5843

1611

CITY HALL, ROOM 204

4 SUMMER STREET

TELEPHONE: 978 374-2328

FACSIMILE: 978 374-2329

www.haverhillma.gov

citycncl@cityofhaverhill.com

May 29, 2019

TO: Members of the City Council:

Council President Michitson wishes to address citizen traffic and safety concerns at intersection of Bowdoin Drive and Golden Hill Avenue.

Council President John A. Michitson

CITY COUNCIL

JOHN A. MICHITSON
PRESIDENT
THOMAS J. SULLIVAN
VICE PRESIDENT
JOSEPH J. BEVILACQUA
MELINDA E. BARRETT
COLIN F. LEPAGE
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WILLIAM J. MACEK
MARY ELLEN DALY O'BRIEN
MICHAEL S. MCGONAGLE



CITY OF HAVERHILL
HAVERHILL, MASSACHUSETTS 01830-5843

16.2
CITY HALL, ROOM 204

4 SUMMER STREET

TELEPHONE: 978 374-2328

FACSIMILE: 978 374-2329

www.haverhillma.gov

citycncl@cityofhaverhill.com

May 28, 2019

TO: Members of the City Council:

Council President Michitson wishes to introduce Mirca Mejias of the Mt. Washington area to discuss neighborhood concerns and requests.

Council President John A. Michitson

From: Mirca mejias <mirca.mejias28@gmail.com>

Sent: Saturday, May 11, 2019 11:31 AM

To: Michitson, John A <michitson@mitre.org>; Fabian Mejias <lovemywife4614@gmail.com>; Christine Soundara <csoundara@communityactioninc.org>

Subject: [EXT] We are requesting to be on the Agenda

Good day everyone,

My Name is Mirca Mejias. I live in Mt Washington Neighborhood. I am willing to stand before the City Council as a Haverhill Residents of over 8 years, a mother, wife, and an advocate/ mentor for neighborhood teens and Haverhill youth.

Also, here with me are my Husband Fabian other friends, parents, and residents.

We're willing to stand and show up for what we know what we need for our town, we are asking you to hear our outcry by the sound of our voices in unity, in action, for the safety of our children and pedestrians that rely on buses, walk in our neighborhood, and cross our streets every day and night.

We are requesting you to consider the following ideas and requests: (There will be 3 speakers in total about these request)

1. Introduce myself and speak about the purpose of these request standing in support for the residents as they are coming out of their comfort zone to give a voice for positive change for city council committee
2. (Fabian Mejias want to request about the bus booths, phones & cameras)
3. (Cristina Diaz requesting cross guards and flashing light stop signs) * There is a statement of concern and request, from my friend Christina Diaz a mother. She also a resident in the Mt. Washington area. (This is her statement and Concerns)
4. (Jonathan Cruz my son 18 Years old, would like to speak experience how hard is trying to cross the street on Broadway St. off Grove St
5. Maybe parents and residents will dare to go up a speak

I've Crossed the kids from, and off the bus because it is extremely dangerous! A school bus almost hit Abdiel my son, the bus driver even got scared, said sorry to me. He said he did not see Abdiel! We are saying this is a red flag!

We are requesting this council to consider our needs and suggestions. Which are as follows:

- A. Bus stop booths
- B. Camera for safety and observations,
- C. Lights inside booths
- D. Phone inside booths for Emergency's directly calls to the police officers (emergency response call boxes like ones you find on college campuses) We should have these city wide.
- E. We are willing also to set up an assembly in schools to show students, how to use the emergency response call boxes and when is an appropriate time for these phones booths to be used In emergencies for an example, as if there is a car accident, bullying, a fight going on, etc.
- F. Ideally these booths would also have a laminated flip holder for with safety information with response numbers and and simple protocols for reporting, who to call if you see a needle, come across someone overdosing, important city numbers like 311, and the bus route schedules.
- G. Flashing lights stop signs

- H. Pedestrian crossing signs by the cross walks
- I. Crossing guards
- J. Warning Flashing speed lights, showing when going over the speed limit
- K. More Bus Booths Wider and lengthier than the one that already exist on Monument Street off of Lowell Avenue with posted bus routes.

I hope these concerns and requests are taking into consideration when planning and discussions are going on regarding the city budget.

- Having the bus booths will benefits students and all residents that rely on city transportation.
- It will help keep students and residents protected from weather wind, rain, and snow. Hopefully it will also encourage the kids who rely on the school bus to improve attendance on bad weather days as they have a safe place to stand or sit in.
- This will also be helpful for our handicap community and seniors who often struggle with crossing due to lack of signage or crosswalk signals to assist them in crossing.
- Cameras will be beneficial to keep away drug dealers and hopefully cut back on drug use, to serve as a witness and help protect kids from bullying that spills over from school into the community.
- Emergency phones can be beneficial connect residents directly to emergency dispatchers. As mentioned before.
- A recycling and trash bin will help to have also outside the booth a little away from as well the booth Lights inside the booths so it illuminates the inside.

Thank you all for your time

CITY COUNCIL

JOHN A. MICHITSON
PRESIDENT
THOMAS J. SULLIVAN
VICE PRESIDENT
JOSEPH J. BEVILACQUA
MELINDA E. BARRETT
COLIN F. LEPAGE
TIMOTHY J. JORDAN
WILLIAM J. MACEK
MARY ELLEN DALY O'BRIEN
MICHAEL S. MCGONAGLE



CITY OF HAVERHILL
HAVERHILL, MASSACHUSETTS 01830-5843

16.3

CITY HALL, ROOM 204
4 SUMMER STREET
TELEPHONE: 978 374-2328
FACSIMILE: 978 374-2329
www.haverhillma.gov
citycncl@cityofhaverhill.com

May 22, 2019

TO: Mr. President and Members of the City Council:

Councillor Bevilacqua requests the Council to approve a 2019 municipal ballot question to ask the citizens to reduce the number of recreational retail marijuana establishments in Haverhill below the state established number of six.


City Councillor Joseph Bevilacqua

16.4

CITY COUNCIL



JOHN A. MICHITSON
PRESIDENT
THOMAS J. SULLIVAN
VICE PRESIDENT
JOSEPH J. BEVILACQUA
MELINDA E. BARRETT
COLIN F. LePAGE
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citycncl@cityofhaverhill.com

CITY OF HAVERHILL
HAVERHILL, MASSACHUSETTS 01830-5843

May 28, 2019

Mr. President and Members of the City Council:

Councillor Macek requests that a wooden guard rail be installed on the access road to Winnekenni Castle.


City Councillor William J. Macek

CITY COUNCIL

JOHN A. MICHITSON

PRESIDENT

THOMAS J. SULLIVAN

VICE PRESIDENT

JOSEPH J. BEVILACQUA

MELINDA E. BARRETT

COLIN F. LEPAGE

TIMOTHY J. JORDAN

WILLIAM J. MACEK

MARY ELLEN DALY O'BRIEN

MICHAEL S. MCGONAGLE



CITY OF HAVERHILL

HAVERHILL, MASSACHUSETTS 01830-5843

1615
CITY HALL, ROOM 204

4 SUMMER STREET

TELEPHONE: 978 374-2328

FACSIMILE: 978 374-2329


www.haverhillma.gov

citycnci@cityofhaverhill.com

May 28, 2019

Mr. President and Members of the City Council:

Councillor Macek requests to introduce a request from Jeanne Cunningham to purchase city owned property on Brandy Brow Road, Map 462, Block 204, Lot 25.


City Councillor William J. Macek

Jeanne Cunningham
49 Myron Road
Haverhill MA 01830
978-697-6275

May 20, 2019

Councilor William J. Macek
227 Concord Street
Haverhill MA 01830

RE: Purchase of City Owned Property
Map 462, Block 204, Lot 25

Dear Councilor Macek:

I recently purchased a piece of property at 206 Brandy Brow Road in Haverhill – Map 462, Block 204, Lot 24. The property I purchased runs contiguous to a parcel of land owned by the City of Haverhill – Map 462, Block 204, Lot 25. My intention for the property at 206 Brandy Brow Road is to return the land to its original agricultural and horticultural farm use, primarily as a Christmas Tree Farm and pick your own blueberries/strawberries.

I would like to purchase the above referenced land locked piece of property from the City of Haverhill to improve access to my property and to increase the area to be used for the Christmas Tree Farm.

I have no intention of using the land for anything but agricultural and horticultural use and will not pursue any type of subdivision option. Additionally, the parcel owned by the City of Haverhill is land locked and, according to my research, has been for over 100 years

I hope the city will allow me to purchase the above listed parcel and return it to the active tax rolls

I would be happy to answer any questions or concerns that you or the city may have.

Sincerely

Jeanne Cunningham
978-697-6275

EXTERIOR INFORMATION

| | |
|-----------------|--|
| Year Built | |
| Foundation | |
| Roofing | |
| Exterior Siding | |
| Driveway | |
| Pool | |
| Other | |
| Remarks | |

BATH FEATURES

| | |
|----------------|--|
| Bathrooms | |
| Half Bathrooms | |
| Other | |
| Remarks | |

COMMENTS

WATER SHED AT MILLVALE ALSO
LANDLOCKED

SKETCH

Hand-drawn sketch of the property, showing the layout of the building, driveway, and surrounding area. The sketch is oriented with the street on the left and the property extending to the right.

EXTERIOR INFORMATION

| | |
|-----------------|--|
| Year Built | |
| Foundation | |
| Roofing | |
| Exterior Siding | |
| Driveway | |
| Pool | |
| Other | |
| Remarks | |

BATH FEATURES

| | |
|----------------|--|
| Bathrooms | |
| Half Bathrooms | |
| Other | |
| Remarks | |

COMMENTS

WATER SHED AT MILLVALE ALSO
LANDLOCKED

SKETCH

Hand-drawn sketch of the property, showing the layout of the building, driveway, and surrounding area. The sketch is oriented with the street on the left and the property extending to the right.

EXTERIOR INFORMATION

| | |
|-----------------|--|
| Year Built | |
| Foundation | |
| Roofing | |
| Exterior Siding | |
| Driveway | |
| Pool | |
| Other | |
| Remarks | |

BATH FEATURES

| | |
|----------------|--|
| Bathrooms | |
| Half Bathrooms | |
| Other | |
| Remarks | |

COMMENTS

WATER SHED AT MILLVALE ALSO
LANDLOCKED

SKETCH

Hand-drawn sketch of the property, showing the layout of the building, driveway, and surrounding area. The sketch is oriented with the street on the left and the property extending to the right.

RESIDENTIAL GRID

| | |
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| Grid 3 | |
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| Grid 100 | |

OTHER FEATURES

| | |
|---------|--|
| Other | |
| Remarks | |

GENERAL INFORMATION

| | |
|-----------------|--|
| Year Built | |
| Foundation | |
| Roofing | |
| Exterior Siding | |
| Driveway | |
| Pool | |
| Other | |
| Remarks | |

CONDO INFORMATION

| | |
|---------|--|
| Condo | |
| Remarks | |

INTERIOR INFORMATION

| | |
|-----------------|--|
| Year Built | |
| Foundation | |
| Roofing | |
| Exterior Siding | |
| Driveway | |
| Pool | |
| Other | |
| Remarks | |

DEPRECIATION

| | |
|--------------|------|
| AV - Average | 0.0% |
| Depreciation | |
| Remarks | |

REMODELING

| | |
|------------|--|
| Remodeling | |
| Remarks | |

RES BREAKDOWN

| | |
|---------------|--|
| Res Breakdown | |
| Remarks | |

SUB AREA

| | |
|----------|--|
| Sub Area | |
| Remarks | |

SUB AREA DETAIL

| | |
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| Sub Area Detail | |
| Remarks | |

COMPARABLE SALES

| | |
|------------------|--|
| Comparable Sales | |
| Remarks | |

CALC SUMMARY

| | |
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| Calc Summary | |
| Remarks | |

IMAGE

AssessPro Patriot Properties, Inc

MOBILE HOME

| | |
|-------------|--|
| Mobile Home | |
| Remarks | |

SPEC FEATURES

| | |
|---------------|--|
| Spec Features | |
| Remarks | |

PARCEL ID

| | |
|-----------|------------|
| Parcel ID | 462-204-25 |
| Remarks | |

N

CITY COUNCIL

JOHN A. MICHITSON

PRESIDENT

THOMAS J. SULLIVAN

VICE PRESIDENT

JOSEPH J. BEVILACQUA

MELINDA E. BARRETT

COLIN F. LePAGE

TIMOTHY J. JORDAN

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MICHAEL S. MCGONAGLE



CITY OF HAVERHILL

HAVERHILL, MASSACHUSETTS 01830-5843

16.6

CITY HALL, ROOM 204

4 SUMMER STREET

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FACSIMILE: 978 374-2329


www.haverhillma.gov

citycncl@cityofhaverhill.com

May 31, 2019

TO: Mr. President and Members of the City Council:

Councilor Jordan requests to introduce Lisa Marzilli to share her proposal regarding a cleaner and greener downtown Haverhill.


City Councilor Timothy Jordan

CITY COUNCIL

JOHN A. MICHITSON

PRESIDENT

THOMAS J. SULLIVAN

VICE PRESIDENT

JOSEPH J. BEVILACQUA

MELINDA E. BARRETT

COLIN F. LEPAGE

TIMOTHY J. JORDAN

WILLIAM J. MACEK

MARY ELLEN DALY O'BRIEN

MICHAEL S. MCGONAGLE



CITY OF HAVERHILL

HAVERHILL, MASSACHUSETTS 01830-5843

16.7

CITY HALL, ROOM 204

4 SUMMER STREET

TELEPHONE: 978 374-2328

FACSIMILE: 978 374-2329

www.haverhillma.gov

citycncl@cityofhaverhill.com

May 31, 2019

TO: Mr. President and Members of the City Council:

Councillor Michael McGonagle would like to refer request from Northern Essex Community College to review exit from college onto to Kenoza Street as the configuration of the intersection poses safety concerns.


City Councillor Michael McGonagle

1618

CITY COUNCIL

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PRESIDENT
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May 31, 2019

TO: Mr. President and Members of the City Council:

Councillor Michael McGonagle requests to discuss parking and signage on Fountain Street at the intersection of Main Street.

Michael McGonagle
City Councillor Michael McGonagle



DOCUMENT 16-M

CITY OF HAVERHILL

In Municipal Council May 14 2019

17.1

~~XXXXXX~~

Municipal Ordinance

Chapter 240

An Ordinance Relating to Parking
(44 White St.-ESTABLISH Handicapped Parking)

BE IT ORDAINED by the City Council of the City of Haverhill that Article XIII, Section 240-1302 Schedule B: Parking Restrictions and Prohibitions of the Haverhill City Code, as amended be further amended by ESTABLISHING the following:

| LOCATION | REGULATION | HOURS/DAYS |
|--|------------|------------|
| 44 White Street | No Parking | 24 Hours |
| In front of No. 44 White Street Except for One 24 hour handicap parking space at #44 White Street | | |

APPROVED as to legality:

City Solicitor

PLACED ON FILE for at least 10 days
Attest:

City Clerk



Haverhill

Economic Development and Planning
Phone: 978-374-2330 Fax: 978-374-2315
wpillsbury@cityofhaverhill.com

May 7, 2019

Mr. John A. Michitson, Council President
City Council Members
City Hall – Room #204
City of Haverhill

Re: ESTABLISHMENT OF HANDICAP PARKING – **44 White Street**

Dear Council President & Councilors:

As per your request dated, May 8, 2019, I am submitting a Municipal Ordinance that will allow for handicap parking in front **44 White Street**.

Sincerely,

William Pillsbury Jr.
Economic Development and Planning Director

WP/lp

DON'T copy

1311

4 Summer Street
Haverhill, MA 01830
Phone: (978) 374-2312
Fax: (978) 373-8490

Fax

To: KATIE - GAZETTE

From: MARIA BEVILACQUA
City Clerk's Office

Fax: 978-685-2432

Date: MAY 10 2019

Phone: 978-946-2157 Hand-Planing

Pages: 2

re: Legal AD: 44 White St

CC:

☐ Urgent

☒ For Review

☐ Please Comment

☐ Please Reply

☐ Please Recycle

Hi Katie -

Please run 2 times - from the
week's agenda -

Thanks! Maria

978-420-3624

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 citycncl@cityofhaverhill.com

May 3, 2019

TO: Mr. President and Members of the City Council:

Councillor Melinda Barrett would like to introduce communication from Legislative Delegation concerning the Bradford Layover Station and seeks Council endorsement.

Melinda Barrett
 City Councillor Melinda Barrett

IN CITY COUNCIL: May 7 2019
 POSTPONED TO JUNE 4 2019
 Attest:

 City Clerk



THE GENERAL COURT OF MASSACHUSETTS
STATE HOUSE, BOSTON 02133-1053

May 1, 2019

Steve Poftak, General Manager
Massachusetts Bay Transportation Authority
10 Park Plaza, Suite 4510
Boston, MA 02116

Subject: Bradford Layover Station Relocation Request

Dear General Manager Poftak,

First, we would like to thank you for your continued efforts to resolve the environmental and health issues associated with the Bradford layover station in the City of Haverhill.

For over two decades, the residents of the Bradford neighborhood adjacent to the layover station have faced health risks associated with the idling of trains. **We are certain that we the undersigned and the affected residents have done all we can to work with Keolis to mitigate the public health impacts, and we can substantiate that Keolis has not been proactive in trying to prevent unnecessary idling.** Continued idling poses a significant and documented risk for all who live in the neighborhood.

We write today to request the relocation of the Bradford layover station to a different location in Haverhill further from residential areas. We have inspected a possible location near the New Hampshire border located at the following addresses:

- 1451 Hilldale Avenue – a vacant 3.48-acre parcel with a market value of \$470,000
- 1445 Hilldale Avenue – an adjoining vacant 5-acre parcel containing an industrial storage building with a market value of \$980,000

This location presents not only an opportunity to mitigate the above health concerns, but also an opportunity for the MBTA to expand its ridership in this area by providing the residents of both Massachusetts and New Hampshire with a public transit option convenient to Interstate 495.

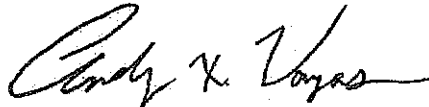
We respectfully request that the MBTA include funding in its Capital Investment Plan to purchase these vacant parcels to facilitate the relocation of the Bradford layover station.

Thank you for your time and attention to this matter. Please do not hesitate to reach out if there is any way we can be helpful regarding this opportunity.

Most Sincerely,



Linda Dean Campbell
State Representative
15th Essex District



Andy X. Vargas
State Representative
3rd Essex District



Lenny Mirra
State Representative
2nd Essex District



Christina A. Minicucci
State Representative
14th Essex District

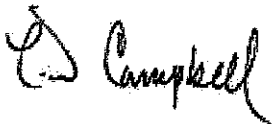
From: "Campbell, Linda D. - Rep. (HOU)" <Linda.Campbell@mahouse.gov>
Date: May 2, 2019 at 5:27:18 PM EDT
To: J Michitson <michitson@mitre.org>, "mbarrett@cityofhaverhill.com" <mbarrett@cityofhaverhill.com>
Cc: "mayor@cityofhaverhill.com" <mayor@cityofhaverhill.com>, "McGahie, Brian (HOU)" <Brian.McGahie@malegislature.gov>
Subject: Bradford Layover Station Relocation: Sign-On Letter

Dear President Michitson and Councillor Barrett,

Thank you for your prompt attention to the sign-on letter I sent earlier regarding the Bradford layover station relocation request. I greatly appreciate your leadership on this issue and would appreciate your assistance in garnering signatures from your fellow Council members. The MBTA has asked for this letter as soon as possible so that they can begin investigating the request, so we are hoping to submit it by the end of this week.

Please don't hesitate to reach out to either myself or Brian McGahie in my office (brian.mcghie@mahouse.gov, 617-722-2380) with any questions.

Most Sincerely,

A handwritten signature in black ink, appearing to read "Linda Campbell". The signature is written in a cursive, flowing style.

CITY COUNCIL

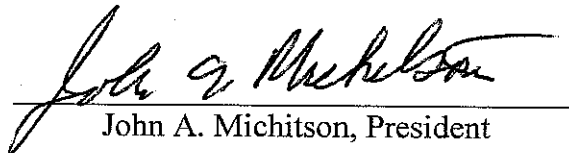
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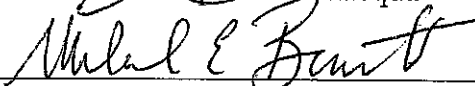
CITY OF HAVERHILL
HAVERHILL, MASSACHUSETTS 01830-5843

The Haverhill City Council unanimously endorses the relocation of the Bradford MBTA Layover Station to another location in Haverhill.

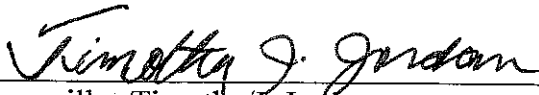

John A. Michitson, President

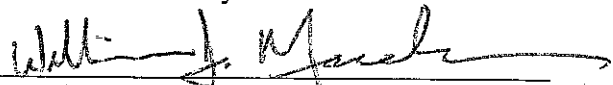

Vice-President Thomas J. Sullivan

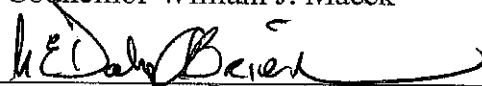

Councillor Joseph J. Bevilacqua



Councillor Melinda E. Barrett


Councillor Colin F. LePage


Councillor Timothy J. Jordan


Councillor William J. Macek


Councillor Mary Ellen Daly O'Brien


Councillor Michael S. McGonagle

May 7, 2019

CITY COUNCIL

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May 29, 2019

TO: Mr. President and Members of the City Council:

City Councillor Joseph Bevilacqua submits the attached Minutes and recommendations of the Planning and Development Committee meeting that was held on May 22, 2019 for acceptance and discussion of item Doc. 59-H – municipal fiber to the home network.


City Councillor Joseph Bevilacqua

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MINUTES OF THE PLANNING AND DEVELOPMENT COMMITTEE MEETING HELD ON MAY 22, 2019

A Planning & Development Committee meeting was held on Wednesday, May 22, 2019 at 6:00PM in the City Council office, Room 204.

Committee Members: Committee Chairperson Joseph Bevilacqua, Councillors Jordan and Macek. President Michitson and Councillor Barrett also attended.

Attendees: Bill Gould and Joshua Dionne.

The following item was discussed:

1. Doc. #59-H - Communication from Councillor Bevilacqua requesting a discussion to introduce an established company to discuss Haverhill's interest in exploring a municipal fiber to the home network.

The Chairman welcomed all to the meeting and read the statement regarding taping the meeting and no one present was taping. The Chairman noted that the Committee would follow the same format as they did with the first company that came before the Committee, and all would be given an opportunity to be heard and make any comments or ask any questions.

Mr. Chris Lynch from Matrix Design was introduced and he discussed his company. He noted they have been in business 22 years and that they design and build fiber optic network. They have ten fiber to home projects in New England in addition to a public private partnership in Petersham, Mass. Millenium Communications is an affiliate and they do the installation of electronics. One project he highlighted was Concord, Mass which bonded to connect all electric substations with fiber and then all municipal offices; then thought they could connect homes and that installation to homes is under way about 17% completed.

Mr. Lynch noted one option is to build some type of municipal network funded by the E-Rate for educational connection. He noted there was an option for municipal network and suggested the City's IT Department evaluate need for requirements, bandwidth, etc. and then add up all city bills and see if there was a possibility for cost savings. Bill Gould noted that all city schools were all set.

Mr. Lynch noted Matrix is paying to design, build and operate Petersham system build. Petersham is paying for R-O-W on utility poles for their fiber optic on pole and the Town will also be providing a small room probably 2/6' for electronics. In response to a question, Mr Lynch noted their fee will come from subscribers. In response to a question from the Chairman, Mr. Lynch noted that to undertake a project in Haverhill he would need a partnership with the City and 8 subscribers per mile. They could do city wide or residential only which would reduce the number of miles or there was a possibility of a betterment district type arrangement where everyone within the district would pay or only those having service. He noted there is an upfront cost from pole placement and a yearly rental fee and needed 8 subscribers per mile. There would be a \$4 or 5 pole annual fee for all subscribers. And a \$95.00 month for internet access for subscribers. He noted one option is for a \$20.00 voice over IP line to get over Verizon line TV choices. Mr. Lynch noted could be \$10-40 options depending on choices selected by the subscriber. Mr. Lynch noted in response to a question that in Leverett Mass. there was a tax increase to

cover the cost of the bonds for the fiber system but that was offset by the subscribers savings on internet and telephone costs.

In response to a question about timeline, he noted 6 months to a year to make pole access ready, and then they build usually 1 mile of fiber a day and they connect 10 customers a day with 2 crews. In response to another question the ISP is Matrix choice if they pay for system and the provider is agreed upon at time of contract and at the end of 20 year term buy out value is \$20. In response to another question there is no difference from a renter tenant or homeowner they are just subscribers.

Bill Gould discussed that the City needs to analyze data for costs and savings. In response to a question Mr. Lynch noted they can't dig underground due to ledge in New England but they use poles. He suggested maybe put out a survey asking if people would be interested in another cable provider.

There was a discussion about the Comcast community access fee and if that would remain in the future and if cable as we know it today would remain which could have the effect of reducing the access fee which provides city with money per subscriber for public education and government fee.

The Chairman noted and stressed that the Committee was not endorsing any company but simply reviewing potential opportunities for another cable provider if the City desired to seek one. Mr. Lynch and the audience discussed that the future may bring Starlink, Verizon and maybe Comcast in the future and cable as we now know it may change.

The Committee reviewed tonight's discussion and Councillor Macek made a motion to send the minutes of this meeting to the City Council asking them to accept the minutes and asking the Council to vote to send this discussion to the Mayor and suggest the Mayor also meet with this company as he did with the first company that came. Motion was seconded and voted in favor by each of the Committee members.

A motion was subsequently made, seconded and voted in favor by all Committee members to adjourn at 7:15pm.

Respectfully submitted,



Joseph J. Bevilacqua, Chairperson
Planning & Development Committee
Haverhill City Council

May 29, 2019

JJB/bsa

c: Mayor Fiorentini
Councillors

CITY COUNCIL

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DOCUMENTS REFERRED TO COMMITTEE STUDY

| | | | |
|-------|--|------------------|---|
| 38-F | Communication from Councillors Barrett and LePage requesting to discuss double poles in the City | A & F | 3/15/16 9/6/16, 11/31/16, 1/17/17, 5/11/17, 10/24/17 3/6/19 |
| 38-W | Communication from Councillor Barrett requesting to give an update on response from MBTA/Keolis & US EPA about idling trains in Bradford | Citizen Outreach | 4/5/16 1/31/17 |
| 26E | City of Haverhill – Mayor’s Recommendations, Capital Improvement Program – 2016-2020 | A & F | 5/31/16 11/3/16, 5/11/2017, 7/25/17, 2/15/18 3/6/19 |
| 10-B | Communication from President Michitson asking to request from Mayor status of facility improvements to public buildings and parks to comply with American w/ Disabilities Act (ADA) | Citizen Outreach | 1/3/17 1/31/17, 8/15/17 |
| 10-U | Communication from President Michitson requesting discussion on next steps to provide comprehensive long range plan for Haverhill | Citizen Outreach | 1/31/17 8/15/17, 4/23/18 |
| 58-G | Communication from President Michitson requesting to present an update on the meeting with group homes stakeholders to address severe problems in Haverhill | Public Safety | 5/2/17 |
| 7-M | Communication from Councillor Daly O’Brien re: street parking change after storms by providing alternate street parking the night after storm to improve plowing & clearing in inner city streets | Citizen Outreach | 1/16/18 |
| 38-D | Communication from Councillors Sullivan and Barrett requesting an update on City’s emergency management plan and status of working generators in all public building in City | Public Safety | 3/20/18 1/23/19 |
| 82 | Ordinance re: Vehicles & Traffic – Amend Ch. 240-108, Article XVI, Central Business District Parking – Fees, Rate and Terms | A & F | 7/10/18 |
| 8-B | Ordinance re: Vehicles & Traffic – Amend Ch. 240-108, Article XVI, Central Business District Parking – Chart | A & F | 7/10/18 |
| 93-L | Communication from President Michitson requesting to introduce Dave Labrode to discuss street tree plantings | NRPP | 8/7/18 2/28/19 |
| 2-C | Ordinance re: Vehicles & Traffic; Central Business District Parking Fees Rates and Terms | A & F | 8/21/18 |
| 93-W | Communication from Councillor Sullivan and Bevilacqua request to discuss possibility of entering into an agreement with Lorraine Post 29 VFW to rehab and lease Clement Farm House located at 1314 Main St., Haverhill | NRPP | 9/11/18 2/28/19 |
| 107-N | Communication from Councillor Macek requesting to discuss Micro-paving | Public Safety | 9/25/18 |
| 121-H | Communication from Councillor Bevilacqua requesting to introduce discussion re: Haverhill Youth Soccer with David Lefcourt, Pres. & Edward Felker, Chair Field Committee | NRPP | 12/4/18 2/28/19 |

DOCUMENTS REFERRED TO COMMITTEE STUDY (cont.)

| | | | |
|------|--|---------------|---------|
| 20-B | Communication from Mayor Fiorentini submitting the Haverhill Public Library Parking Study Draft Technical Report | P & D | 3/12/19 |
| 38-G | Communication from President Michitson requesting to provide update on broadband needs & competition to lower TV costs for resident and stimulate economic development | P & D | 3/12/19 |
| 38-I | Communication from Councillor Macek to refer City's Ch. 255 – Zoning, Article XVIII, Solar Energy Systems, Sec. 255-185 thru 255-194 to Administration & Finance Committee | A & F | 3/12/19 |
| 13-Y | Communication from Councillor LePage to discuss accounting of revenue funds received from Licensed Marijuana establishments & their allocation to mitigate costs and impacts to city | A& F | 3/12/19 |
| 38-J | Communication from Councillor Macek requesting a discussion about reserve parking spaces at City Hall designated for Registry of Motor Vehicles | NRPP | 3/19/19 |
| 38-K | Communication from Councillor Macek requesting to discuss solar panels on proposed commercial buildings | A&F | 3/19/19 |
| 38S | Communication from Councillor Bevilacqua regarding construction vehicle parking in Washington St. Historic District lots and on-street parking | P & D | 4/2/19 |
| 38T | Communication from Councillor Macek requesting to send Planning & Development Committee request to have meeting with City Engineer & MASS DOT personnel to review plans for reconstruction of Main St. from City Hall through Monument Sq. | P & D | 4/2/19 |
| 38X | Communication from Councillor Bevilacqua requesting a discussion regarding the Veterans Clinic parking on Merrimack St. | P & D | 4/9/19 |
| 59 | Communication from Councillor Macek to discuss intersection of Lake St. and W. Lowell Ave. | P & D | 4/23/19 |
| 59B | Communication from Councillor Bevilacqua to discuss moveable basketball hoops | Public Safety | 4/23/19 |
| 59C | Suspension – Councillor Bevilacqua request for stop sign at Saltonstall Sq. turning right onto Mill St | “ | 4/23/19 |
| 59-H | Communication from Councillor Bevilacqua re: discussion to introduce an established company to discuss Haverhill's interest in exploring a municipal fiber to the home network | P & D | 4/30/19 |