

# AGENDA PACKET

03/13/19 REGULAR MEETING



# BARNSTABLE COUNTY

COMMISSIONERS  
RONALD R. BEATY, Barnstable  
RONALD BERGSTROM, Chatham  
MARY PAT FLYNN, Falmouth

THE REGIONAL GOVERNMENT OF CAPE COD

Board of Regional Commissioners

## REGULAR MEETING AGENDA



DATE: March 13, 2019

TIME: 10:00 A.M.

PLACE: East Wing Conference Room  
Old Jail Building  
3195 Main Street, Barnstable, MA 02630

1. Call to Order
  2. Pledge of Allegiance
  3. Moment of Silence
  4. Public Comment
  5. Approval of Minutes
    - a. Regular Meeting of March 6, 2019
    - b. Executive Session of March 6, 2019
  6. General Business
    - a. Discussion on adopting the County's website as the official method of posting notices for meetings of the Board of Regional Commissioners pursuant to Title 940 of the Code of Massachusetts Regulations, section 29.03(2)(b)
- Note: For all items under General Business, the Board may take official action including votes*
7. New Business – Other business not reasonably anticipated by the Chair

## 8. Commissioners' Actions

- a. Authorizing the approval of a reimbursement request from Jack Yunits, County Administrator, for the period of January 7, 2019 through March 5, 2019
- b. Authorizing the appointment of Joshua Mason to the Barnstable County HOME Consortium, as the representative for the Town of Dennis, replacing James Kyrimes, for an unexpired term through January 31, 2020, as recommended by the Dennis Board of Selectmen
- c. Authorizing a cooperative agreement with the Town of Dennis to do and perform all dredge related work at Approach Channel for an amount not to exceed \$11,250.00
- d. Authorizing a cooperative agreement with the Town of Yarmouth to do and perform all dredge related work at Approach Channel for an amount not to exceed \$11,250.00
- e. Authorizing a cooperative agreement with the Town of Truro to do and perform all dredge related work in Pamet Harbor Basin for an amount not to exceed \$90,000.00
- f. Authorizing the execution of a Subaward Agreement with the Center for Coastal Studies in the amount of \$288,200.00 through June 30, 2021 for the Seafloor Mapping Program
- g. Authorizing the execution of amendments to mortgages and security agreements with 704 Falmouth Housing Corporation, LLC on property located at 587 Gifford Street in the town of Falmouth
- h. Authorizing the execution of Certificates for Dissolving Septic Betterments

## 9. Commissioners' Reports

## 10. County Administrator and Staff Reports

## 11. Adjournment

Reasonable accommodations for people with disabilities are available upon request. Please contact Justyna Marczak, Barnstable County ADA Coordinator at [jmarczak@barnstablecounty.org](mailto:jmarczak@barnstablecounty.org) or call 508-375-6646 at least 24 hours in advance of the meeting. The County Commissioners' meeting may be viewed in real time at <https://www.youtube.com/user/BarnstableCounty>, <https://www.barnstablecounty.org/>



# AGENDA ITEM 5a

Approval of Minutes: Regular Meeting of March 6, 2019

*COMMONWEALTH OF MASSACHUSETTS*

Barnstable, ss.

At a regular meeting of the Barnstable County Board of Regional Commissioners, held in the Superior Courthouse in Barnstable, on the sixth day of March, A.D. 2019

**Board Regional Commissioners:**

Ronald R. Beaty Present

Ronald Bergstrom Present

Mary Pat Flynn Present

**Staff Present:**

Jack Yunits County Administrator

Steve Tebo Interim Assistant County Administrator/Director, Facilities Department

Justyna Marczak Human Resources Director

Phil Burt Director, Fire Rescue Training Academy

Owen Fletcher Executive Assistant, Administration

Andrew Platt AmeriCorps Cape Cod Program Coordinator, Resource Development Office

Ian Roberts Technical Support Specialist, Information Technology

**1. Call to Order**

Chairman Bergstrom called the meeting to order at 10:00 A.M.

**2. Pledge of Allegiance**

**3. Moment of Silence**

#### **4. Public Comment**

Mr. Wayne Bergeron of Dennis and Abraham Kasparian of Yarmouthport individually expressed their disapproval of a recent tweet by Commissioner Beaty which read “Generally speaking, are gay politicians too self-absorbed and self-centered to adequately represent ALL of their constituents in a fair and equitable manner?”. Both individuals noted that these comments distracted the Board from focusing on more pressing issues.

#### **5. Approval of Minutes**

##### **a. Regular Meeting of February 27, 2019**

*Motion by Commissioner Beaty to approve the regular meeting minutes of February 27, 2019 as presented, 2nd by Commissioner Flynn, approved 3-0-0*

#### **6. General Business**

##### **a. Update on the AmeriCorps Cape Cod Program**

Mr. Platt gave a PowerPoint presentation to the Board on the current state of the program. The Board expressed their support for the program and engaged in a discussion regarding the specific work requested from and done by program participants.

##### **b. Discussion regarding requests for proposals regarding County legal services**

There was a lengthy discussion regarding the County’s legal services. Commissioner Beaty expressed his support for the current state of services provided, as well as Commissioner Flynn. However, the Board expressed that it wished a review of current legal services to assess the need to issue a request for proposals for services. Chairman Bergstrom stressed the need to assess what the County required. Robert Troy, the current County Counsel, addressed the Board. He noted that he had served in that capacity for three decades and the County was well served by a combination of his services and contracting for special counsel when required. The Board asked staff to perform an assessment of the County’s needs.

#### **7. New Business – Other business not reasonably anticipated by the Chair**

#### **8. Commissioners’ Actions**

- a. Authorizing the filling of twenty-four (24) vacant AmeriCorps Cape Cod Member positions for Program Year 21, from September 3, 2019 through July 23, 2020**

*Motion by Commissioner Beaty to authorize the filling of twenty-four (24) vacant AmeriCorps Cape Cod Member positions for Program Year 21, from September 3, 2019 through July 23, 2020, as presented, 2nd by Commissioner Flynn, approved 3-0-0*

- b. Authorizing the creation of the position of Director of the Cape Cod Municipal Police Academy and appointment Peter Carnes to that position, effective March 11, 2019, as recommended by the County Administrator**

*Motion by Commissioner Beaty to authorize the creation of the position of Director of the Cape Cod Municipal Police Academy and appointment Peter Carnes to that position, effective March 11, 2019, as recommended by the County Administrator, as presented, 2nd by Commissioner Flynn, approved 3-0-0*

- c. Authorization to create the position of Deputy Director of the Cape Cod Municipal Police Academy and appoint Wayne Sampson to that position, effective March 11, 2019, as recommended by the County Administrator**

*Motion by Commissioner Beaty to authorize the creation of the position of Deputy Director of the Cape Cod Municipal Police Academy and appoint Wayne Sampson to that position, effective March 11, 2019, as recommended by the County Administrator, as presented, 2nd by Commissioner Flynn, approved 3-0-0*

Mr. Tebo, Mr. Carnes, and Mr. Sampson address the Board on the current state of plans for the Academy. Ms. Marczak clarified the nature of the positions and the actions required of the Board.

- d. Authorizing the promotion of Phil Burt to the full-time position of Director of the County Fire and Rescue Training Academy, from the position of BCFRTA Interim Director effective March 6, 2019, as recommended by the County Administrator**

*Motion by Commissioner Beaty to authorize the promotion of Phil Burt to the full-time position of Director of the County Fire and Rescue Training Academy, from the position of BCFRTA Interim Director effective March 6, 2019, as recommended by the County Administrator, as presented, 2nd by Commissioner Flynn, approved 3-0-0*

Mr. Tebo and Mr. Burt addressed the Board regarding the needs of the Academy, and the benefits of having a full-time coordinator.

- e. **Authorizing the approval of unpaid leave for Stacy Gallagher, Director of Children's Cove, for the period of February 20, 2019 through February 27, 2019**

*Motion by Commissioner Beaty to authorize the approval of unpaid leave for Stacy Gallagher, Director of Children's Cove, for the period of February 20, 2019 through February 27, 2019, as presented, 2nd by Commissioner Flynn, approved 3-0-0*

- f. **Authorizing the execution of a Memorandum of Understanding with Cape Cod Healthcare, Inc., through the Barnstable County Regional Emergency Planning Committee, regarding a Regional Sheltering Plan**

*Motion by Commissioner Beaty to authorize the execution of a Memorandum of Understanding with Cape Cod Healthcare, Inc., through the Barnstable County Regional Emergency Planning Committee, regarding a Regional Sheltering Plan, as presented, 2nd by Commissioner Flynn, approved 3-0-0*

- g. **Authorizing the execution of Certificates for Dissolving Septic Betterments**

There were no certificates to execute at this meeting.

## 9. Commissioners' Reports

There were no Commissioner reports.

## 10. County Administrator and Staff Reports

Mr. Yunits spoke to the Commissioners regarding the need to publish a notice for a meeting with the Cape Cod State Legislative Delegation later in the week.

## 11. Executive Session

- a. **Executive Session to review Board of Regional Commissioner Executive Session minutes, pursuant to Massachusetts General Laws Chapter 30A, Section 21(a)(7) and Massachusetts General Laws Chapter 30A, Sections 22(f) and 22(g)**

*Motion by Commissioner Bergstrom to enter Executive Session to review Board of Regional Commissioner Executive Session minutes, pursuant to Massachusetts General Laws Chapter 30A, Section 21(a)(7) and Massachusetts General Laws Chapter 30A, Sections 22(f) and 22(g), and as Chair declare that an open meeting may have a detrimental effect on the litigating and negotiating position of the Board respectively*

Roll Call:

*Beaty: Aye*

*Bergstrom: Aye*

*Flynn: Aye*

The Chair announced that the Board would reconvene in Open Session to adjourn but would take no official action.

## 12. Adjournment

*Barnstable, ss. at 11:21 A.M. on this sixth day of March A.D. 2019, Commissioner Beaty made a motion to adjourn, 2nd by Commissioner Flynn, approved 3-0-0*

### List of Documents:

- Draft minutes of the Board of Commissioners Regular Meeting of February 27, 2019
- Barnstable County AmeriCorps Cape Cod Year 20 (2018-2019) Mid-Year Update PowerPoint Presentation
- Memorandum dated March 5, 2019 to the County Commissioners from Justyna Marczak, Human Resources Director, regarding AmeriCorps Cape Cod Year 21 Member Positions
- Memorandum dated March 6, 2019 to the County Commissioners from Stephen Tebo, Assistant County Administrator, regarding the Positions of Director and Deputy Director of Police Academy
- Memorandum dated March 6, 2019 to the County Commissioners from Stephen Tebo, Assistant County Administrator, regarding the Positions of Director and Deputy Director of Police Academy
- Memorandum dated March 6, 2019 to the County Commissioners from Stephen Tebo, Assistant County Administrator, regarding the Position of the Director of Fire Training Academy
- Memo dated February 28, 2019 to the Barnstable County Commissioners from Stacy Gallagher regarding Unpaid Time Off
- Memorandum of Understanding between Barnstable County Regional Emergency Planning Committee and Cape Cod Healthcare Inc. to establish a working relationship in preparing for and responding to disasters and storm events

Approved, Board of Regional Commissioners:

\_\_\_\_\_  
Ronald Bergstrom, Chair

\_\_\_\_\_  
Mary Pat Flynn, Vice-Chair

\_\_\_\_\_  
Ronald R. Beaty, Commissioner

\_\_\_\_\_  
Date

The foregoing records have been read and approved, March , 2018.

A true copy, attest:

\_\_\_\_\_  
Janice O'Connell, Regional Clerk

# AGENDA ITEM 5b

Approval of Minutes: Executive Session of March 6, 2019

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

At an Executive Session during a regular meeting of the Barnstable County Board of Regional Commissioners, held in the Superior Courthouse in Barnstable, on the sixth day of March, A.D. 2019

**Board Regional Commissioners:**

Ronald R. Beaty Present

Ronald Bergstrom Present

Mary Pat Flynn Present

**Staff Present:**

Jack Yunits County Administrator

Steve Tebo Interim Assistant County Administrator/Director, Facilities Department

Owen Fletcher Executive Assistant, Administration

The Board entered Executive Session at 11:12 A.M.

The Board discussed whether it was appropriate to release the minutes in question to the public. Mr. Yunits assured the Board that he reviewed the minutes, and there was nothing in them that was not already public or needed to be kept confidential.

*Motion by Commissioner Beaty to release the minutes of Executive Sessions held during the Board of Commissioners' Regular Meetings of: December 5, 2018; June 28, 2017; December 30, 2016; November 16, 2016; August 25, 2016; July 20, 2016; June 29, 2016; March 2, 2016 and; February 3, 2016 to the public, 2<sup>nd</sup> by Commissioner Flynn, approved 3-0-0*

*Motion by Commissioner Beaty to return to Open Session, 2<sup>nd</sup> by Commissioner Flynn, approved 3-0-0*

Roll Call:

*Beaty: Aye*

*Bergstrom: Aye*

*Flynn: Aye*

**List of Documents:**

- Minutes of the Executive Session of the Board of Commissioners Regular Meeting of December 5, 2018
- Minutes of the Executive Session of the Board of Commissioners Regular Meeting of June 28, 2017
- Minutes of the Executive Session of the Board of Commissioners Regular Meeting of December 30, 2016
- Minutes of the Executive Session of the Board of Commissioners Regular Meeting of November 16, 2016
- Minutes of the Executive Session of the Board of Commissioners Regular Meeting of August 25, 2016
- Minutes of the Executive Session of the Board of Commissioners Regular Meeting of July 20, 2016
- Minutes of the Executive Session of the Board of Commissioners Regular Meeting of June 29, 2016
- Minutes of the Executive Session of the Board of Commissioners Regular Meeting of March 2, 2016
- Minutes of the Executive Session of the Board of Commissioners Regular Meeting of February 3, 2016

Approved, Board of Regional Commissioners:

\_\_\_\_\_  
Ronald Bergstrom, Chair

\_\_\_\_\_  
Mary Pat Flynn, Vice-Chair

\_\_\_\_\_  
Ronald R. Beaty, Commissioner

\_\_\_\_\_  
Date

The foregoing records have been read and approved, March , 2018.

A true copy, attest:

\_\_\_\_\_  
Janice O’Connell, Regional Clerk

# AGENDA ITEM 6a

Discussion on adopting the County's website as the official method of posting notices for meetings of the Board of Regional Commissioners pursuant to Title 940 of the Code of Massachusetts Regulations, section 29.03(2)(b)



# BARNSTABLE COUNTY

OFFICE OF COUNTY ADMINISTRATOR  
SUPERIOR COURTHOUSE  
3195 MAIN STREET  
P.O. BOX 427  
BARNSTABLE, MASSACHUSETTS 02630

**Jack T. Yunits, Jr.**  
County Administrator  
Cell: (508) 510-1127  
Office: (508) 375-6771  
Fax: (508) 362-4136  
jack.yunits@barnstablecounty.org

## MEMORANDUM

**DATE:** March 12, 2019  
**TO:** County Commissioners  
**FROM:** Jack Yunits, County Administrator  
**SUBJECT:** Adopting the County's website as the Official Method of Posting

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Please authorize the adoption of the County website as the official method of posting notices for meetings of County Public Bodies pursuant to Title 940 of the Code of Massachusetts Regulations, section 29.03(2)(b).

Approved:

\_\_\_\_\_  
Ronald Bergstrom, Chair

\_\_\_\_\_  
Mary Pat Flynn, Vice-Chair

\_\_\_\_\_  
Ronald R. Beaty, Commissioner

\_\_\_\_\_  
Date

940 CMR 29.00: OPEN MEETINGS

Section

- 29.01: Purpose, Scope and Other General Provisions
- 29.02: Definitions
- 29.03: Notice Posting Requirements
- 29.04: Certification
- 29.05: Complaints
- 29.06: Investigation
- 29.07: Resolution
- 29.08: Advisory Opinions
- 29.09: Other Enforcement Actions
- 29.10: Remote Participation
- 29.11: Meeting Minutes

29.01: Purpose, Scope and Other General Provisions

- (1) Purpose. The purpose of 940 CMR 29.00 is to interpret, enforce and effectuate the purposes of the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25.
- (2) Severability. If any provision of 940 CMR 29.00 or the application of such provision to any person, public body, or circumstances shall be held invalid, the validity of the remainder of 940 CMR 29.00 and the applicability of such provision to other persons, public bodies, or circumstances shall not be affected thereby.
- (3) Mailing. All complaints, notices (except meeting notices) and other materials that must be sent to another party shall be sent by one of the following means: first class mail, email, hand delivery, or by any other means at least as expeditious as first class mail.

29.02: Definitions

As used in 940 CMR 29.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

County Public Body. A public body created by county government with jurisdiction that comprises a single county.

District Public Body. A public body with jurisdiction that extends to two or more municipalities.

Emergency. A sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

Intentional Violation. An act or omission by a public body or a member thereof, in knowing violation of M.G.L. c. 30A, §§ 18 through 25. Evidence of an intentional violation of M.G.L. c. 30A, §§ 18 through 25 shall include, but not be limited to, the public body or public body member that:

- (a) acted with specific intent to violate the law;
- (b) acted with deliberate ignorance of the law's requirements; or
- (c) was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08, that the conduct violates M.G.L. c. 30A, §§ 18 through 25. Where a public body or public body member has made a good faith attempt at compliance with the law, but was reasonably mistaken about its requirements, such conduct will not be considered an intentional violation of M.G.L. c. 30A, §§ 18 through 25.

Person. All individuals and entities, including governmental officials and employees. Person does not include public bodies.

Post Notice. To place a written announcement of a meeting on a bulletin board, electronic display, website, or in a loose-leaf binder in a manner conspicuously visible to the public, including persons with disabilities, at all hours, in accordance with 940 CMR 29.03.

## 29.02: continued

Public Body. Has the identical meaning as set forth in M.G.L. c. 30A, § 18, that is, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that Public Body shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

Qualification for Office. The election or appointment of a person to a public body and the taking of the oath of office, where required, and shall include qualification for a second or any subsequent term of office. Where no term of office for a member of a public body is specified, the member shall be deemed to be qualified for office on a biennial basis following appointment or election to office.

Regional Public Body. A public body with jurisdiction that extends to two or more municipalities.

Remote Participation. Participation by a member of a public body during a meeting of that public body where the member is not physically present at the meeting location.

29.03: Notice Posting Requirements(1) Requirements Applicable to All Public Bodies.

- (a) Except in an emergency, public bodies shall file meeting notices sufficiently in advance of a public meeting to permit posting of the notice at least 48 hours in advance of the public meeting, excluding Saturdays, Sundays and legal holidays, in accordance with M.G.L. c. 30A, § 20. In an emergency, the notice shall be posted as soon as reasonably possible prior to such meeting.
- (b) Meeting notices shall be printed or displayed in a legible, easily understandable format and shall contain the date, time and place of such meeting, and a listing of topics that the chair reasonably anticipates will be discussed at the meeting. The list of topics shall have sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.
- (c) Notices posted under an alternative posting method authorized by 940 CMR 29.03(2) through (5) shall include the same content as required by 940 CMR 29.03(1)(b). If such an alternative posting method is adopted, the municipal clerk, in the case of a municipality, or the body, in all other cases, shall file with the Attorney General written notice of adoption of the alternative method, including the website address where applicable, and any change thereto, and the most current notice posting method on file with the Attorney General shall be consistently used.
- (d) The date and time that a meeting notice is posted shall be conspicuously recorded thereon or therewith. If an amendment occurs within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, then the date and time that the meeting notice is amended shall also be conspicuously recorded thereon or therewith.

(2) Requirements Specific to Local Public Bodies.

- (a) The official method of posting notice shall be by filing with the municipal clerk, or other person designated by agreement with the municipal clerk, who shall post notice of the meeting in a manner conspicuously visible to the public at all hours in, on, or near the municipal building in which the clerk's office is located.
- (b) Alternatively, the municipality may adopt the municipal website as the official method of notice posting.

29.03: continued

1. The Chief Executive Officer of the municipality, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to adopt the municipal website as the official method of posting notice. Any municipality that has adopted its website as the official method of posting notice by another method as of October 6, 2017 will have satisfied the adoption requirement.
  2. If adopted, a description of the website as the notice posting method, including directions on how to locate notices on the website, shall be posted in a manner conspicuously visible to the public at all hours on or adjacent to the main and handicapped accessible entrances to the municipal building in which the clerk's office is located.
  3. Once adopted as the official method of notice posting, the website shall host the official legal notice for meetings of all public bodies within the municipality.
  4. Notices must continue to be filed with the municipal clerk, or any other person designated by agreement with the municipal clerk.
- (c) A municipality may have only one official notice posting method for the purpose of M.G.L. c. 30A, §§ 18 through 25, either 940 CMR 29.03(2)(a) or (b). However, nothing precludes a municipality from choosing to post additional notices *via* other methods, including a newspaper. Such additional notice will not be the official notice for the purposes of M.G.L. c. 30A, §§ 18 through 25.
- (d) Copies of notices shall also be accessible to the public in the municipal clerk's office during the clerk's business hours.
- (3) Requirements Specific to Regional or District Public Bodies.
- (a) Notice shall be filed and posted in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.
  - (b) As an alternative method of notice, a regional or district public body may, by majority vote, adopt the regional or district public body's website as its official notice posting method. A copy of each meeting notice shall be kept by the chair of the public body or the chair's designee in accordance with the applicable records retention schedules. The public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.
- (4) Requirements Specific to Regional School Districts.
- (a) The secretary of the regional school district committee shall be considered to be its clerk. The clerk of the regional school district committee shall file notice with the municipal clerk of each city and town within such district and each such municipal clerk shall post the notice in the manner prescribed for local public bodies in that city or town.
  - (b) As an alternative method of notice, a regional school district committee may, by majority vote, adopt the regional school district's website as its official notice posting method. A copy of each meeting notice shall be kept by the secretary of the regional school district committee or the secretary's designee in accordance with the applicable records retention schedules. The regional school district committee shall file and post notice of the website address, as well as directions on how to locate notices on the website, in each city and town within the region or district in the manner prescribed for local public bodies in that city or town.
- (5) Requirements Specific to County Public Bodies.
- (a) Notice shall be filed and posted in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.
  - (b) As an alternative method of notice, a county public body may, by majority vote, adopt the county public body's website as its official notice posting method. A copy of the notice shall be kept by the chair of the county public body or the chair's designee in accordance with the applicable records retention schedules. The county public body shall file and post notice of the website address, as well as directions on how to locate notices on the website, in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for this purpose.

29.03: continued

(6) Requirements Specific to State Public Bodies. Notice shall be posted on a website. A copy of each notice shall also be sent by first class or electronic mail to the Secretary of the Commonwealth's Regulations Division. The chair of each state public body shall notify the Attorney General in writing of its webpage for listing meeting notices and any change to the webpage location. The public body shall consistently use the most current website location on file with the Attorney General. A copy of the notice shall be kept by the chair of the state public body or the chair's designee in accordance with the applicable records retention schedules.

(7) Websites. Where a public body adopts a website as its method of noticing meetings, it must make every effort to ensure that the website is accessible to the public at all hours. If a website becomes inaccessible to members of the public within 48 hours of a meeting, not including Saturdays, Sundays, and legal holidays, the municipal clerk or other individual responsible for posting notice to the website must restore the website to accessibility within six hours of the time, during regular business hours, when such individual discovers that the website has become inaccessible. In the event that the website is not restored to accessibility within six business hours of the website's deficiency being discovered, the public body must re-post notice of its meeting for another date and time in accordance with M.G.L. c. 30A, § 20(b).

29.04: Certification

(1) For local public bodies, the municipal clerk, and for all other public bodies, the appointing authority, executive director, or other appropriate administrator or their designees, shall, upon a public body member's qualification for office, either deliver to the public body member, or require the public body member to obtain from the Attorney General's website, the following educational materials:

(a) The Attorney General's *Open Meeting Law Guide*, which will include an explanation of the requirements of the Open Meeting Law; the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25; and 940 CMR 29.00.

(b) A copy of each Open Meeting Law determination issued to that public body by the Attorney General within the last five years in which the Attorney General found a violation of M.G.L. c. 30A, §§ 18 through 25. Open Meeting Law determinations are available at the Attorney General's website.

(2) Educational materials may be delivered to public body members by paper copy or in digital form.

(3) Within two weeks after receipt of the educational materials, the public body member shall certify, on the form prescribed by the Attorney General, receipt of the educational materials. The municipal clerk, appointing authority, executive director or other appropriate administrator, or their designees, shall maintain the signed certification for each such person, indicating the date the person received the materials.

(4) An individual serving on multiple public bodies must sign a certification for each public body on which he or she serves. A public body member does not need to sign a separate certification when joining a subcommittee of the public body.

(5) A public body member must sign a new certification upon reelection or reappointment to the public body.

29.05: Complaints

(1) All complaints shall be in writing, using the form approved by the Attorney General and available on the Attorney General's website. A public body need not, and the Attorney General will not, investigate or address anonymous complaints. A public body need not address a complaint that is not signed by the complainant. A public body need not address a complaint that is not filed using the Attorney General's complaint form.

(2) Public bodies, or the municipal clerk in the case of a local public body, should provide any person, on request, with an Open Meeting Law Complaint Form. If a paper copy is unavailable, then the public body should direct the requesting party to the Attorney General's website, where an electronic copy of the form will be available for downloading and printing.

29.05: continued

(3) For local public bodies, the complainant shall file the complaint with the chair of the public body, who shall disseminate copies of the complaint to the members of the public body. The complainant shall also file a copy of the complaint with the municipal clerk, who shall keep such filings in an orderly fashion for public review on request during regular business hours. For all other public bodies, the complainant shall file the complaint with the chair of the relevant public body, or if there is no chair, then with the public body.

(4) The complaint shall be filed within 30 days of the alleged violation of M.G.L. c. 30A, §§ 18 through 25 or, if the alleged violation of M.G.L. c. 30A, §§ 18 through 25 could not reasonably have been known at the time it occurred, then within 30 days of the date it should reasonably have been discovered.

(5) Within 14 business days after receiving the complaint, unless an extension has been granted by the Attorney General as provided in 940 CMR 29.05(5)(b), the public body shall meet to review the complaint's allegations; take remedial action, if appropriate; and send to the complainant a response and a description of any remedial action taken. The public body shall simultaneously notify the Attorney General that it has sent such materials to the complainant and shall provide the Attorney General with a copy of the complaint, the response, and a description of any remedial action taken.

(a) Any remedial action taken by the public body in response to a complaint under 940 CMR 29.05(5) shall not be admissible as evidence that a violation occurred in any later administrative or judicial proceeding against the public body relating to the alleged violation.

(b) If the public body requires additional time to resolve the complaint, it may obtain an extension from the Attorney General by submitting a written request within 14 business days after receiving the complaint. A request may be submitted by the chair, the public body's attorney, or any person designated by the public body or the chair. The Attorney General will grant an extension if the request demonstrates good cause. Good cause will generally be found if, for example, the public body cannot meet within the 14 business day period to consider proposed remedial action. The Attorney General shall notify the complainant of any extension and the reason for it.

(6) If the public body needs additional information to resolve the complaint, then the chair may request it from the complainant within seven business days of receiving the complaint. The complainant shall respond within ten business days after receiving the request. The public body will then have an additional ten business days after receiving the complainant's response to review the complaint and take any remedial action pursuant to 940 CMR 29.05(5).

(7) If at least 30 days have passed after the complaint was filed with the public body, and if the complainant is unsatisfied with the public body's resolution of the complaint, the complainant may file a complaint with the Attorney General. When filing a complaint with the Attorney General, the complainant shall include a copy of the original complaint along with any other materials the complainant believes are relevant. The Attorney General shall decline to investigate complaints filed with the Attorney General more than 90 days after the alleged violation of M.G.L. c. 30A, §§ 18 through 25, or if the alleged violation of M.G.L. c. 30A, §§ 18 through 25, could not reasonably have been known at the time it occurred, then within 90 days of the date it should reasonably have been discovered. However, this time may be extended if the Attorney General grants an extension to the public body to respond to a complaint or if the complainant demonstrates good cause for the delay in filing with the Attorney General.

(8) The Attorney General shall acknowledge receipt of all complaints and will resolve them within a reasonable period of time, generally 90 days.

(9) Mediation to Resolve a Complaint.

(a) If a complainant files five complaints alleging violations of M.G.L. c. 30A, §§ 18 through 25, with the same public body or within the same municipality within 12 months, upon the fifth or subsequent complaint to that public body or a public body within that municipality within the 12-month period, the public body may request mediation with the complainant, at the public body's expense, to resolve the complaint. A mediator is defined by M.G.L. c. 233, § 23C, and will be selected by the Attorney General.

29.05: continued

- (b) A public body must request mediation prior to, or with, its response to the complaint. If the mediation does not produce an agreement, the public body will have ten business days from the last joint meeting with the mediator to respond to the complaint.
- (c) A public body may participate in mediation in open session, in executive session through M.G.L. c. 30A, § 21(a)(9), or by designating a representative to participate on behalf of the public body.
- (d) If the complainant declines to participate in mediation after a public body's request in accordance with 940 CMR 29.05(9)(a), the Attorney General may decline to review the complaint if it is thereafter filed with the Attorney General.
- (e) If the mediation does not resolve the complaint to the satisfaction of both parties, then the complainant may file a copy of his or her complaint with the Attorney General and request the Attorney General's review. The complaint must be filed with the Attorney General within 30 days of the last joint meeting with the mediator.
- (f) Any written agreement reached in mediation shall become a public record in its entirety and must be publicly disclosed at the next meeting of the public body following execution of the agreement.
- (g) Nothing in 940 CMR 29.05(9) shall prevent a complainant from filing subsequent complaints, however public bodies may continue to request mediation in an effort to resolve complaints in accordance with 940 CMR 29.05(9)(a).
- (h) Nothing in 940 CMR 29.05(9) shall prevent a public body or complainant from seeking mediation to resolve any complaint. However, only mediation requests that follow the requirements of 940 CMR 29.05(9)(a) will trigger the application of 940 CMR 29.05(9)(d).

29.06: Investigation

Following a timely complaint filed pursuant to 940 CMR 29.05, where the Attorney General has reasonable cause to believe that a violation of M.G.L. c. 30A, §§ 18 through 25 has occurred, then the Attorney General may conduct an investigation.

(1) The Attorney General shall notify the public body or person that is the subject of a complaint of the existence of the investigation within a reasonable period of time. The Attorney General shall also notify the public body or person of the nature of the alleged violation.

(2) Upon notice of the investigation, the subject of the investigation shall provide the Attorney General with all information relevant to the investigation. The subject may also submit a memorandum or other writing to the Attorney General addressing the allegations being investigated.

If the subject of the investigation fails to voluntarily provide the necessary or relevant information within 30 days of receiving notice of the investigation, the Attorney General may issue one or more civil investigative demands to obtain the information in accordance with M.G.L. c. 30A, § 24(a), to:

- (a) Take testimony under oath;
- (b) Examine or cause to be examined any documentary material; or
- (c) Require attendance during such examination of documentary material by any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material.

Any documentary material or other information produced by any person pursuant to 940 CMR 29.06 shall not, unless otherwise ordered by a court of the Commonwealth for good cause shown, be disclosed without that person's consent by the Attorney General to any person other than the Attorney General's authorized agent or representative. However, the Attorney General may disclose the material in court pleadings or other papers filed in court; or, to the extent necessary, in an administrative hearing or in a written determination to resolve the investigation pursuant to 940 CMR 29.07.

29.07: Resolution

(1) No Violation. If the Attorney General determines after investigation that M.G.L. c. 30A, §§ 18 through 25 has not been violated, the Attorney General shall issue a written determination to the subject of the complaint and copy any complainant.

## 29.07: continued

(2) Violation Resolved Without Hearing. If the Attorney General determines after investigation that M.G.L. c. 30A, §§ 18 through 25 has been violated, the Attorney General may resolve the investigation without a hearing. The Attorney General shall determine whether the relevant public body, one or more of its members, or both, were responsible. The Attorney General will notify in writing any complainant of the investigation's resolution. Upon finding a violation of M.G.L. c. 30A, §§ 18 through 25, the Attorney General may take one of the following actions:

(a) Informal Action. The Attorney General may resolve the investigation with a letter or other appropriate form of written communication that explains the violation and clarifies the subject's obligations under M.G.L. c. 30A, §§ 18 through 25, providing the subject with a reasonable period of time to comply with any outstanding obligations.

(b) Formal Order. The Attorney General may resolve the investigation with a formal order. The order may require:

1. immediate and future compliance with M.G.L. c. 30A, §§ 18 through 25;
2. attendance at a training session authorized by the Attorney General;
3. nullification of any action taken at the relevant meeting, in whole or in part;
4. that minutes, records or other materials be made public;
5. that an employee be reinstated without loss of compensation, seniority, tenure or other benefits; or
6. other appropriate action.

Orders shall be available on the Attorney General's website.

(3) Violation Resolved After Hearing. The Attorney General may conduct a hearing where the Attorney General deems appropriate. The hearing shall be conducted pursuant to 801 CMR 1.00: *Formal Rules*, as modified by any regulations issued by the Attorney General. At the conclusion of the hearing, the Attorney General shall determine whether a violation of M.G.L. c. 30A, §§ 18 through 25 occurred, and whether the public body, one or more of its members, or both, were responsible. The Attorney General will notify in writing any complainant of the investigation's resolution. Upon a finding that a violation occurred, the Attorney General may order:

- (a) immediate and future compliance with M.G.L. c. 30A, §§ 18 through 25;
- (b) attendance at a training session authorized by the Attorney General;
- (c) nullification of any action taken at the relevant meeting, in whole or in part;
- (d) imposition of a fine upon the public body of not more than \$1,000 for each intentional violation; however, a fine will not be imposed where a public body or public body member acted in good faith compliance with the advice of the public body's legal counsel, in accordance with M.G.L. 30A, § 23(g);
- (e) that an employee be reinstated without loss of compensation, seniority, tenure or other benefits;
- (f) that minutes, records or other materials be made public; or
- (g) other appropriate action.

Orders issued following a hearing shall be available on the Attorney General's website.

(4) A public body, subject to an order of the Attorney General following a written determination issued pursuant to 940 CMR 29.07, shall notify the Attorney General in writing of its compliance with the order within 30 days of receipt of the order, unless otherwise indicated by the order itself. A public body need not notify the Attorney General of its compliance with an order requiring immediate and future compliance pursuant to 940 CMR 29.07(2)(b)1. or 940 CMR 29.07(3)(a).

(5) A public body or any member of a body aggrieved by any order issued by the Attorney General under 940 CMR 29.07 may obtain judicial review of the order through an action in Superior Court seeking relief in the nature of *certiorari*. Any such action must be commenced in Superior Court within 21 days of receipt of the order.

### 29.08: Advisory Opinions

The Attorney General will generally not issue advisory opinions. However, the Attorney General may issue written guidance to address common requests for interpretation. Such written guidance will appear on the Attorney General's website.

29.09: Other Enforcement Actions

Nothing in 940 CMR 29.06 or 29.07 shall limit the Attorney General's authority to file a civil action to enforce M.G.L. c. 30A, §§ 18 through 25 pursuant to M.G.L. c. 30A, § 23(f).

29.10: Remote Participation

(1) Preamble. Remote participation may be permitted subject to the following procedures and restrictions. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. By promulgating 940 CMR 29.10, the Attorney General hopes to promote greater participation in government. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of M.G.L. c. 30A, §§ 18 through 25, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

(2) Adoption of Remote Participation. Remote participation in meetings of public bodies is not permitted unless the practice has been adopted as follows:

(a) Local Public Bodies. The Chief Executive Officer, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that authorization or vote applying to all subsequent meetings of all local public bodies in that municipality.

(b) Regional or District Public Bodies. The regional or district public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(c) Regional School Districts. The regional school district committee must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(d) County Public Bodies. The county commissioners must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of all county public bodies in that county.

(e) State Public Bodies. The state public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(f) Retirement Boards. A retirement board created pursuant to M.G.L. c. 32, § 20 or M.G.L. c. 34B, § 19 must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(g) Local Commissions on Disability. In accordance with M.G.L. c. 30A, § 20(e), a local commission on disability may, by majority vote of the commissioners at a regular meeting, authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

(3) Revocation of Remote Participation. Any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) may revoke that adoption in the same manner.

(4) Minimum Requirements for Remote Participation.

(a) Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other as required by M.G.L. c. 30A, § 20(d);

(b) A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location as required by M.G.L. c. 30A, § 20(d);

(c) Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of M.G.L. c. 39, § 23D.

29.10: continued

- (5) Permissible Reason for Remote Participation. If remote participation has been adopted in accordance with 940 CMR 29.10(2), a member of a public body shall be permitted to participate remotely in a meeting in accordance with the procedures described in 940 CMR 29.10(7) only if physical attendance would be unreasonably difficult.
- (6) Technology.
- (a) The following media are acceptable methods for remote participation. Remote participation by any other means is not permitted. Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.
    - 1. telephone, internet, or satellite enabled audio or video conferencing;
    - 2. any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.
  - (b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.
  - (c) The public body shall determine which of the acceptable methods may be used by its members.
  - (d) The chair or, in the chair's absence, the person chairing the meeting, may decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged wherever possible to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.
  - (e) The amount and source of payment for any costs associated with remote participation shall be determined by the applicable adopting entity identified in 940 CMR 29.10(2).
- (7) Procedures for Remote Participation.
- (a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.
  - (b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely. This information shall also be recorded in the meeting minutes.
  - (c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.
  - (d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.
  - (e) When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting and shall be listed in the meeting minutes and retained in accordance with M.G.L. c. 30A, § 22.
- (8) Further Restriction by Adopting Authority. 940 CMR 29.10 does not prohibit any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) from enacting policies, laws, rules or regulations that prohibit or further restrict the use of remote participation by public bodies within that person or entity's jurisdiction, provided those policies, laws, rules or regulations do not violate state or federal law.
- (9) Remedy for Violation. If the Attorney General determines after investigation that 940 CMR 29.10 has been violated, the Attorney General may resolve the investigation by ordering the public body to temporarily or permanently discontinue its use of remote participation.

29.11: Meeting Minutes

(1) A public body shall create and maintain accurate minutes of all meetings including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes in accordance with M.G.L. c. 30A, § 22(a).

(2) Minutes of all open and executive sessions shall be created and approved in a timely manner. A “timely manner” will generally be considered to be within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay. The Attorney General encourages public bodies to approve minutes at the next meeting whenever possible.

REGULATORY AUTHORITY

940 CMR 29.00: M.G.L. c. 30A, § 25(a) and (b).

# AGENDA ITEM 8a

Authorizing the approval of a reimbursement request from Jack Yunits, County Administrator, for the period of January 7, 2019 through March 5, 2019

**EMPLOYEE / ELECTED OFFICIAL  
REIMBURSEMENT FORM**



Jack Yunits  
EMPLOYEE NAME

28454  
EMPLOYEE VENDOR CODE#

County Commissioners  
DEPARTMENT

January - March 2019  
FOR THE MONTH OF

ALLOCATION OF CHARGES

ACCOUNT NUMBER	AMOUNT
0011002 5282	354.98
<b>TOTAL CHARGES</b>	<b>354.98</b>

*I certify that the foregoing is a true statement of the actual and proper cost of transportation and other necessary expenses incurred in the performance of official duties, and that I have paid the same:*

*Jack Yunits*  
Date

Signature of Employee requesting reimbursement

Approved and Ordered Paid:

Signature of Approving Official



# EMPLOYEE / ELECTED OFFICIAL REIMBURSEMENT FORM

**EMPLOYEE NAME**

Jack Yunits

**EMPLOYEE VENDOR CODE #**

28454

**DEPARTMENT**

County Commissioners

**DATE**

**TRIP PURPOSE**

1/7/2019

HED

1/9/2019

County Commissioners

1/10/2019

CZM

1/10/2019

TMA

2/7/2019

Dredge

2/14/2019

TMA

2/20/2019

MPTCP

3/5/2019

Mashpee

CZM Boston

\$21.00

01/10/19 08:37

A 01 045200

01/07/19 08:11 A 01 186107



045200



186107

MBTA PARKING Quincy Adams

TAKE TICKET WITH YOU  
PAY AT THE  
PAY STATIONS

Quincy Adams  
Device 202135  
Schedule & Fare Information: 617-222-3200 Website: www.mbta.com © MBTA

Stored Value  
Charlieticket  
Expires: Jul 07, 2020  
Avoid the surcharge - Use a Charlieticket. Ask for info or visit mbta.com  
Initial Value = \$5.50  
Ticket No: 1-178478201  
Debit 1837  
01/07/2019 08:22 AM

Subject to applicable tariff regulations and conditions of use. Ticket may be confiscated for misuse. Not replaceable if lost or stolen. Non-refundable.



Massachusetts Bay Transportation Authority

385012010711502019  
CREDIT CARDS ONLY  
Quincy Adams  
Quincy Adams  
Entry Time: 01/07/19 8:11 AM  
Exit Time: 01/07/19 11:50 AM  
Duration: 0d 3h. 38m.  
Pay Station: 12  
Trans: 3850  
Ticket# 186107  
Default \$ 9.00  
Total: \$ 9.00  
MasterCard \$ 9.00  
Last 4 digits: 1837  
Change: \$ 0.00  
Generated By: REPUBLIC PARKING

# AGENDA ITEM 8b

Authorizing the appointment of Joshua Mason to the Barnstable County HOME Consortium, as the representative for the Town of Dennis, replacing James Kyrimes, for an unexpired term through January 31, 2020, as recommended by the Dennis Board of Selectmen



**BARNSTABLE COUNTY  
DEPARTMENT OF HUMAN SERVICES**

3195 Main Street, Post Office Box 427  
Barnstable, Massachusetts 02630  
Office: 508-375-6628 | Fax: 508-362-0290  
www.bchumanservices.net

**BARNSTABLE COUNTY HOME PROGRAM**

**MEMORANDUM**

To: Barnstable County Commissioners  
From: Renie Hamman, HOME Program Manager  
RE: HOME Consortium Advisory Council  
Date: March 6, 2019

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The Town of Dennis Board of Selectmen have appointed Joshua Mason as the Dennis Representative to the Barnstable County HOME Consortium Advisory Council to fill a vacant term expiring January 31, 2021 (BOS appointment letter attached). This position on the Advisory Council has been vacant since the resignation of the former Town of Dennis Representative in September 2018.

I recommend that you support the Town's nominee and appoint Joshua Mason for the term expiring January 31, 2021.

---

Ronald Bergstrom, Commissioner

---

Mary Pat Flynn, Commissioner

---

Ronald R. Beaty, Commissioner

---

***Creating a Healthy Connected Cape Cod***

*The Mission of the Department of Human Services is to plan, develop, and implement programs which enhance the overall delivery of human services in Barnstable County and promote the health and social well-being of County residents through regional efforts that improve coordination of services.*



## Town of Dennis

685 Route 134 • South Dennis, MA 02660 / Telephone: 508-394-8300 • Fax 508-394-8309

Barnstable County Commissioners  
c/o Barnstable County Health and Human Services  
PO Box 427  
Barnstable, MA 02630

February 21, 2019

Re: Barnstable County HOME Consortium

Dear County Commissioners;

At their meeting on Tuesday, February 19, 2019, the Dennis Board of Selectmen unanimously voted to appoint Joshua Mason as the Dennis Representative to the Barnstable County HOME Consortium for a term to expire January 31, 2021. This position has been vacant since the resignation of the former Dennis Representative, James Kyrimes, in September. We respectfully request that the Barnstable County Commissioners confirm this appointment. Mr. Mason has been an active and appointed member of the Dennis Municipal Affordable Housing Trust since October 30, 2018. The Dennis Municipal Affordable Housing Trust voted to endorse Mr. Mason to serve on the HOME Consortium at their January meeting.

We thank you for your consideration of Mr. Mason's appointment to the Barnstable County HOME Consortium as the Dennis Representative.

Sincerely,

Paul McCormick Chairman  
Dennis Board of Selectmen



# AGENDA ITEM 8c

Authorizing a cooperative agreement with the Town of Dennis to do and perform all dredge related work at Approach Channel for an amount not to exceed \$11,250.00

COOPERATIVE AGREEMENT  
BETWEEN  
BARNSTABLE COUNTY  
AND  
TOWN OF DENNIS

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the County of Barnstable, hereinafter called the "County," and the Town of Dennis.

WHEREAS, the Town wishes to have the County undertake the dredging projects covered by this agreement more specifically described by way of the attached plan pursuant to the terms and conditions directed herein.

ARTICLE I.            STATEMENT OF WORK

NOW THEREFORE, in consideration of the above premises and in the interest of the mutual advantage in attainment of common objectives, the parties hereto agree as follows:

BARNSTABLE COUNTY AGREES:

1. To do and perform all dredge related work for the Town of Dennis at Approach Channel in accordance with the specifications, drawings and plans (Attachment I) up to a maximum contract amount of \$11,250.00. This is based on removing up to approximately 1,250 cubic yards of material at \$9.00 per cubic yard and the charge for mobilization/demobilization costs as set forth in Article III herein. Final and complete specifications, plans and drawings shall be provided to the County by the Town in a timely manner.
2. To observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the specifications, plans, drawings, and permits identified in Attachment I as applicable to dredging and rough placement of materials.
3. To provide a hydraulic dredge and all related equipment to conduct maintenance dredging for the Town, according to and guided by the specifications, plans, drawings as provided.
4. To pump dredge materials and provide rough beach placement of said materials at a rate of \$9.00 per cubic yard for standard dredge material. This price includes before and after dredge surveys to be performed by the County. The County warrants that the final surveys are performed for the limited purpose of substantiating dredge volumes and under no conditions should said surveys be utilized to delineate navigable channels. The County shall provide the Town access to detailed survey work through Provincetown Coastal at the Town's request and at the Town's expense.

5. To comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage injury or loss or on dredging or handling of dredge materials.
6. To the extent permitted by law, to indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the County and its employees with respect to the County's performance of its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this agreement.
7. Immediately notify the Town and cease operations whenever the dredging operations exceed by more than 10 % the specifications, drawings and plans agreed to as the volume scope of the agreement or whenever situations or conditions are encountered outside the scope of the specifications, drawings, and plans that were nor reasonably foreseeable. The parties agree that variations on the scope of 10 % more than or less than the proposed scope of work is reasonable due to climatic and coastal changes and that price adjustments shall be made accordingly. The parties further agree that changes in excess of 10 % shall require the parties to adjust this contract in writing pursuant to Article V.
8. Without the prior approval of the Town, the dredge will operate between the hours of 7:00 A.M. and 5:00 P.M, Monday through Saturday.

THE TOWN OF DENNIS AGREES:

1. To obtain all required federal, state, and local permits and approvals to conduct the dredge project.
2. To furnish all specifications, drawings, and plans required to perform the dredge project at the execution of this document. Said documents will be incorporated by reference as Attachment I.
3. To conduct required inspections and testing consistent with federal, state and local permits and approvals.
4. To inspect the County's on-site dredging work in a timely manner.
5. To obligate funds to conduct the dredging work specified in Attachment I.
6. To indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the Town with respect to the Town's performance of its obligations under this Agreement. No provisions in this agreement or otherwise shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act.

**BOTH BARNSTABLE COUNTY AND THE TOWN OF DENNIS AGREE:**

**That nothing herein shall be construed as obligating either Barnstable County or the Town of Dennis to expend funds or to be obligated to spend funds beyond the scope of this contract.**

**This AGREEMENT may only be modified in the form of amendments in writing by mutual agreement by both parties. Request for modification will be forwarded to one party by the other party by written notice.**

**ARTICLE II.            TERM OF AGREEMENT**

**This AGREEMENT shall be effective when signed by all parties and shall remain in effect until the dredging identified in Attachment I is completed to the mutual satisfaction of all parties.**

**ARTICLE III.            PAYMENT TO COUNTY:**

**The cost of the project shall be based on a per cubic yard basis and calculated on the total cubic yards of material moved, using standard engineering practices, except as specified in Article VIII, and the mobilization and demobilization costs. The cost per cubic yard is \$9.00. The Town shall be billed, and the County shall be paid for the following services:**

**Mobilization costs for project is 0% of total cost**

**100% movement/placement of dredge materials;**

**Demobilization costs for the project is 0% of total cost**

**The Town shall submit payment within 30 days of date of invoice to the County. Failure to pay said invoice within 30 days will result in the assessment of a late fee in the amount of 1% per month (12% annually) on the unpaid balance remaining after the 30th day. Said late fee will be assessed daily 0.033%. Failure to pay invoice within 90 days may result in legal action. The Town shall be responsible for all legal costs incurred by the County in collection of unpaid debts.**

**ARTICLE IV.            WEATHER CONDITIONS**

**In the event of temporary suspension of work due to inclement weather conditions, the County shall cease work with no adverse consequences to the County. The decision to cease work shall be made by the County in consultation with the Town.**

**ARTICLE V.            CHANGES IN WORK**

**No changes in the work covered by this Agreement shall be made without having prior written**

approval of both the Town and County. Costs for additional cubic yardage shall be determined utilizing the costs identified in Article III.

ARTICLE VI. COUNTY INSURANCE

The County shall maintain the following insurance coverage while conducting the dredge project:

1. Compensation insurance. The County shall maintain during the life of this Agreement Workmen's Compensation Insurance as required by applicable state law.
2. Protection and Indemnity insurance.
3. General liability and excess liability insurance.
4. Pollution insurance.
5. Contingent watercraft liability insurance.

ARTICLE VII. INDEMNIFICATION

To the extent permitted by law, Barnstable County agrees to defend, indemnify, defend and hold harmless the Town of Dennis from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of Barnstable County or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the County's liability under the Massachusetts Tort Claims Act or under other provisions of this Agreement.

To the extent permitted by law, the Town of Dennis agrees to defend, indemnify, defend and hold harmless Barnstable County from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of the Town of Dennis or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this Agreement.

ARTICLE VIII. TERMINATION

This Agreement may only be terminated after written mutual agreement to do so by both parties. The Town shall pay the County all costs incurred by the County to the date of termination, including staff time, review of documents and any other costs associated with the project up to said termination.

IN WITNESS WHEREOF, the TOWN and the COUNTY execute this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

BARNSTABLE COUNTY  
COMMISSIONERS:

\_\_\_\_\_  
Ronald Bergstrom

\_\_\_\_\_  
Ronald Beaty

\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Date

TOWN OF DENNIS:

  
\_\_\_\_\_

3/6/19  
Date

# AGENDA ITEM 8d

Authorizing a cooperative agreement with the Town of Yarmouth to do and perform all dredge related work at Approach Channel for an amount not to exceed \$11,250.00

COOPERATIVE AGREEMENT  
BETWEEN  
BARNSTABLE COUNTY  
AND  
TOWN OF YARMOUTH

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the County of Barnstable, hereinafter called the "County," and the Town of Yarmouth.

WHEREAS, the Town wishes to have the County undertake the dredging projects covered by this agreement more specifically described by way of the attached plan pursuant to the terms and conditions directed herein.

ARTICLE I.            STATEMENT OF WORK

NOW THEREFORE, in consideration of the above premises and in the interest of the mutual advantage in attainment of common objectives, the parties hereto agree as follows:

BARNSTABLE COUNTY AGREES:

1. To do and perform all dredge related work for the Town of Yarmouth at Approach Channel in accordance with the specifications, drawings and plans (Attachment I) up to a maximum contract amount of \$11,250.00. This is based on removing up to approximately 1,250 cubic yards of material at \$9.00 per cubic yard and the charge for mobilization/demobilization costs as set forth in Article III herein. Final and complete specifications, plans and drawings shall be provided to the County by the Town in a timely manner.
2. To observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the specifications, plans, drawings, and permits identified in Attachment I as applicable to dredging and rough placement of materials.
3. To provide a hydraulic dredge and all related equipment to conduct maintenance dredging for the Town, according to and guided by the specifications, plans, drawings as provided.
4. To pump dredge materials and provide rough beach placement of said materials at a rate of \$9.00 per cubic yard for standard dredge material. This price includes before and after dredge surveys to be performed by the County. The County warrants that the final surveys are performed for the limited purpose of substantiating dredge volumes and under no conditions should said surveys be utilized to delineate navigable channels. The County shall provide the Town access to detailed survey work through Provincetown Coastal at the Town's request and at the Town's expense.

5. To comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage injury or loss or on dredging or handling of dredge materials.
6. To the extent permitted by law, to indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the County and its employees with respect to the County's performance of its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this agreement.
7. Immediately notify the Town and cease operations whenever the dredging operations exceed by more than 10 % the specifications, drawings and plans agreed to as the volume scope of the agreement or whenever situations or conditions are encountered outside the scope of the specifications, drawings, and plans that were nor reasonably foreseeable. The parties agree that variations on the scope of 10 % more than or less than the proposed scope of work is reasonable due to climatic and coastal changes and that price adjustments shall be made accordingly. The parties further agree that changes in excess of 10 % shall require the parties to adjust this contract in writing pursuant to Article V.
8. Without the prior approval of the Town, the dredge will operate between the hours of 7:00 A.M. and 5:00 P.M, Monday through Saturday.

THE TOWN OF DENNIS AGREES:

1. To obtain all required federal, state, and local permits and approvals to conduct the dredge project.
2. To furnish all specifications, drawings, and plans required to perform the dredge project at the execution of this document. Said documents will be incorporated by reference as Attachment I.
3. To conduct required inspections and testing consistent with federal, state and local permits and approvals.
4. To inspect the County's on-site dredging work in a timely manner.
5. To obligate funds to conduct the dredging work specified in Attachment I.
6. To indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the Town with respect to the Town's performance of its obligations under this Agreement. No provisions in this agreement or otherwise shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act.

BOTH BARNSTABLE COUNTY AND THE TOWN OF YARMOUTH AGREE:

That nothing herein shall be construed as obligating either Barnstable County or the Town of Yarmouth to expend funds or to be obligated to spend funds beyond the scope of this contract.

This AGREEMENT may only be modified in the form of amendments in writing by mutual agreement by both parties. Request for modification will be forwarded to one party by the other party by written notice.

ARTICLE II.            TERM OF AGREEMENT

This AGREEMENT shall be effective when signed by all parties and shall remain in effect until the dredging identified in Attachment I is completed to the mutual satisfaction of all parties.

ARTICLE III.            PAYMENT TO COUNTY:

The cost of the project shall be based on a per cubic yard basis and calculated on the total cubic yards of material moved, using standard engineering practices, except as specified in Article VIII, and the mobilization and demobilization costs. The cost per cubic yard is \$9.00. The Town shall be billed, and the County shall be paid for the following services:

Mobilization costs for project is 0% of total cost

100% movement/placement of dredge materials;

Demobilization costs for the project is 0% of total cost

The Town shall submit payment within 30 days of date of invoice to the County. Failure to pay said invoice within 30 days will result in the assessment of a late fee in the amount of 1% per month (12% annually) on the unpaid balance remaining after the 30th day. Said late fee will be assessed daily 0.033%. Failure to pay invoice within 90 days may result in legal action. The Town shall be responsible for all legal costs incurred by the County in collection of unpaid debts.

ARTICLE IV.            WEATHER CONDITIONS

In the event of temporary suspension of work due to inclement weather conditions, the County shall cease work with no adverse consequences to the County. The decision to cease work shall be made by the County in consultation with the Town.

ARTICLE V.            CHANGES IN WORK

No changes in the work covered by this Agreement shall be made without having prior written approval of both the Town and County. Costs for additional cubic yardage shall be determined

utilizing the costs identified in Article III.

ARTICLE VI.            COUNTY INSURANCE

The County shall maintain the following insurance coverage while conducting the dredge project:

1.     Compensation insurance. The County shall maintain during the life of this Agreement Workmen's Compensation Insurance as required by applicable state law.
2.     Protection and Indemnity insurance.
3.     General liability and excess liability insurance.
4.     Pollution insurance.
5.     Contingent watercraft liability insurance.

ARTICLE VII.            INDEMNIFICATION

To the extent permitted by law, Barnstable County agrees to defend, indemnify, defend and hold harmless the Town of Yarmouth from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of Barnstable County or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the County's liability under the Massachusetts Tort Claims Act or under other provisions of this Agreement.

To the extent permitted by law, the Town of Yarmouth agrees to defend, indemnify, defend and hold harmless Barnstable County from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of the Town of Yarmouth or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this Agreement.

ARTICLE VIII            TERMINATION

This Agreement may only be terminated after written mutual agreement to do so by both parties. The Town shall pay the County all costs incurred by the County to the date of termination, including staff time, review of documents and any other costs associated with the project up to said termination.

IN WITNESS WHEREOF, the TOWN and the COUNTY execute this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

BARNSTABLE COUNTY  
COMMISSIONERS:

\_\_\_\_\_  
Ronald Bergstrom

\_\_\_\_\_  
Ronald Beaty

\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Date

TOWN OF YARMOUTH:

  
\_\_\_\_\_

\_\_\_\_\_  
Date

# AGENDA ITEM 8e

Authorizing a cooperative agreement with the Town of Truro to do and perform all dredge related work in Pamet Harbor Basin for an amount not to exceed \$90,000.00

COOPERATIVE AGREEMENT  
BETWEEN  
BARNSTABLE COUNTY  
AND  
TOWN OF TRURO

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the County of Barnstable, hereinafter called the "County," and the Town of Truro.

WHEREAS, the Town wishes to have the County undertake the dredging projects covered by this agreement more specifically described by way of the attached plan pursuant to the terms and conditions directed herein.

ARTICLE I.            STATEMENT OF WORK

NOW THEREFORE, in consideration of the above premises and in the interest of the mutual advantage in attainment of common objectives, the parties hereto agree as follows:

**BARNSTABLE COUNTY AGREES:**

1. To do and perform all dredge related work for the Town of Truro in Pamet Harbor Basin in accordance with the specifications, drawings and plans (Attachment I) up to a maximum contract amount of \$90,000.00. This is based on removing up to approximately 10,000. cubic yards of material at \$9.00 per cubic yard and the charge for mobilization/demobilization costs as set forth in Article III herein. Final and complete specifications, plans and drawings shall be provided to the County by the Town in a timely manner.
2. To observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the specifications, plans, drawings, and permits identified in Attachment I as applicable to dredging and rough placement of materials.
3. To provide a hydraulic dredge and all related equipment to conduct maintenance dredging for the Town, according to and guided by the specifications, plans, drawings as provided.
4. To pump dredge materials and provide rough beach placement of said materials at a rate of \$9.00 per cubic yard for standard dredge material. This price includes before and after dredge surveys to be performed by the County. The County warrants that the final surveys are performed for the limited purpose of substantiating dredge volumes and under no conditions should said surveys be utilized to delineate navigable channels. The County shall provide the Town access to detailed survey work through Provincetown

Coastal at the Town's request and at the Town's expense.

5. To comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage injury or loss or on dredging or handling of dredge materials.
6. To the extent permitted by law, to indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the County and its employees with respect to the County's performance of its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this agreement.
7. Immediately notify the Town and cease operations whenever the dredging operations exceed by more than 10 % the specifications, drawings and plans agreed to as the volume scope of the agreement or whenever situations or conditions are encountered outside the scope of the specifications, drawings, and plans that were nor reasonably foreseeable. The parties agree that variations on the scope of 10 % more than or less than the proposed scope of work is reasonable due to climatic and coastal changes and that price adjustments shall be made accordingly. The parties further agree that changes in excess of 10 % shall require the parties to adjust this contract in writing pursuant to Article V.
8. Without the prior approval of the Town, the dredge will operate between the hours of 7:00 A.M. and 5:00 P.M, Monday through Saturday.

THE TOWN OF TRURO AGREES:

1. To obtain all required federal, state, and local permits and approvals to conduct the dredge project.
2. To furnish all specifications, drawings, and plans required to perform the dredge project at the execution of this document. Said documents will be incorporated by reference as Attachment I.
3. To conduct required inspections and testing consistent with federal, state and local permits and approvals.
4. To inspect the County's on-site dredging work in a timely manner.
5. To obligate funds to conduct the dredging work specified in Attachment I.
6. To indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the Town with respect to the Town's performance of its obligations under this Agreement. No provisions in this agreement or otherwise shall be construed as a

waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act.

**BOTH BARNSTABLE COUNTY AND THE TOWN OF TRURO AGREE:**

That nothing herein shall be construed as obligating either Barnstable County or the Town of Truro to expend funds or to be obligated to spend funds beyond the scope of this contract.

This AGREEMENT may only be modified in the form of amendments in writing by mutual agreement by both parties. Request for modification will be forwarded to one party by the other party by written notice.

ARTICLE II.            TERM OF AGREEMENT

This AGREEMENT shall be effective when signed by all parties and shall remain in effect until the dredging identified in Attachment I is completed to the mutual satisfaction of all parties.

ARTICLE III.            PAYMENT TO COUNTY:

The cost of the project shall be based on a per cubic yard basis and calculated on the total cubic yards of material moved, using standard engineering practices, except as specified in Article VIII, and the mobilization and demobilization costs. The cost per cubic yard is \$9.00. The Town shall be billed, and the County shall be paid for the following services:

Mobilization costs for project is 0% of total cost

100% movement/placement of dredge materials;

Demobilization costs for the project is 0% of total cost

The Town shall submit payment within 30 days of date of invoice to the County. Failure to pay said invoice within 30 days will result in the assessment of a late fee in the amount of 1% per month (12% annually) on the unpaid balance remaining after the 30th day. Said late fee will be assessed daily 0.033%. Failure to pay invoice within 90 days may result in legal action. The Town shall be responsible for all legal costs incurred by the County in collection of unpaid debts.

ARTICLE IV.            WEATHER CONDITIONS

In the event of temporary suspension of work due to inclement weather conditions, the County shall cease work with no adverse consequences to the County. The decision to cease work shall be made by the County in consultation with the Town.

ARTICLE V.            CHANGES IN WORK

No changes in the work covered by this Agreement shall be made without having prior written approval of both the Town and County. Costs for additional cubic yardage shall be determined utilizing the costs identified in Article III.

ARTICLE VI.            COUNTY INSURANCE

The County shall maintain the following insurance coverage while conducting the dredge project:

1.        Compensation insurance. The County shall maintain during the life of this Agreement Workmen's Compensation Insurance as required by applicable state law.
2.        Protection and Indemnity insurance.
3.        General liability and excess liability insurance.
4.        Pollution insurance.
5.        Contingent watercraft liability insurance.

ARTICLE VII.            INDEMNIFICATION

To the extent permitted by law, Barnstable County agrees to defend, indemnify, defend and hold harmless the Town of Falmouth from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of Barnstable County or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the County's liability under the Massachusetts Tort Claims Act or under other provisions of this Agreement.

To the extent permitted by law, the Town of Truro agrees to defend, indemnify, defend and hold harmless Barnstable County from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of the Town of Truro or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this Agreement.

ARTICLE VIII            TERMINATION

This Agreement may only be terminated after written mutual agreement to do so by both parties. The Town shall pay the County all costs incurred by the County to the date of termination, including staff time, review of documents and any other costs associated with the project up to

said termination.

IN WITNESS WHEREOF, the TOWN and the COUNTY execute this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

BARNSTABLE COUNTY  
COMMISSIONERS:

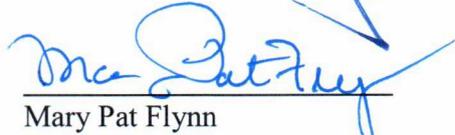
TOWN OF TRURO:

  
\_\_\_\_\_  
Leo G. Cakounes

  
\_\_\_\_\_

  
\_\_\_\_\_  
Ronald Beaty

2-12-19  
Date

  
\_\_\_\_\_  
Mary Pat Flynn

\_\_\_\_\_  
Date

# AGENDA ITEM 8f

Authorizing the execution of a Subaward Agreement with the Center for Coastal Studies in the amount of \$288,200.00 through June 30, 2021 for the Seafloor Mapping Program

SUBAWARD AGREEMENT  
BETWEEN

Barnstable County through  
Cape Cod Cooperative Extension  
3195 Main Street  
Barnstable, MA 02630

and

Center for Coastal Studies  
5 Holway Avenue  
Provincetown, MA 02657

**Subaward Start Date: Date of Execution**  
**Subaward Amount: \$288,200**  
**Subrecipient Match: \$0**  
**Subrecipient DUNS:**  
**Subaward Expiration Date: June 30, 2021**

**Extension Project Contacts:**

Michael Maguire, Director  
[mmaguire@barnstablecounty.org](mailto:mmaguire@barnstablecounty.org)  
(508) 375-6701

Shannon Jarbeau, Floodplain Specialist  
[Shannon.jarbeau@barnstablecounty.org](mailto:Shannon.jarbeau@barnstablecounty.org)  
(508) 375-6952

**Subrecipient Project Contacts:**

Mark Borrelli, Director, Seafloor  
Mapping Program  
[mborrelli@coastalstudies.org](mailto:mborrelli@coastalstudies.org)  
508-487-3623 x117

Steve Mague, Cartographer, Seafloor  
Mapping Program  
[smague@coastalstudies.org](mailto:smague@coastalstudies.org)

THIS SUBAWARD AGREEMENT (the "Agreement") is being entered into by and between the Center for Coastal Studies (the "Subrecipient"), and Ronald Bergstrom, Mary Pat Flynn, and Ronald Beaty and as they are the Commissioners of Barnstable County, acting by and through the Cape Cod Cooperative Extension ("the Extension") so that the Subrecipient may participate in a project titled 'Mapping Storm Tide Pathways' (the "Project").

1. Background and Prime Award. The Extension and the Seaport Economic Council (hereafter 'SEC') entered into Grant Agreement #2837 (hereafter referred to as Prime Award) to fund the Project. Under the terms of this Agreement, the Extension awards funds to the Subrecipient for its participation in the Project. Although funds to be provided to the Subrecipient under this Agreement will come ultimately from SEC, Subrecipient acknowledges that SEC is not a Party to this Agreement and has no obligations directly to Subrecipient under this Agreement. Notwithstanding the above, Subrecipient will be subject to and will comply with the terms and conditions contained in the Prime Award which are applicable to the Subrecipient, which are attached hereto as Attachment B and incorporated herein by reference.

2. Scope of Services/Budget. The Subrecipient will perform the scope of services for a maximum subaward of \$288,200 as set forth in Attachment A.

3. Disbursements and Accounting. The Subrecipient will separately account for expenditures made and payments received under this Subaward in its accounting records. The Extension will not be obligated to pay Subrecipient for any costs not detailed in Attachment A and will be under no obligation to disburse funds to the Subrecipient under the Agreement, except to the extent that funds are disbursed to the Extension under the Prime Award. Disbursements will be made to Subrecipient on a reimbursement basis no more frequently than monthly, based upon receipt of a complete and accurate Financial Report for the applicable period. Payments will be sent to Subrecipient via check.

4. Administration: The Subrecipient agrees to comply with the Prime Award Terms and Conditions detailed in Attachment B and with 2 CFR 200 Uniform Guidance.

#### 5. Reporting

Performance/Progress Reports – deliverables per Attachment A/final report due at Project conclusion

Financial Reports – A final financial report is due by June 30 each year during the Project duration

6. Termination or Suspension of Agreement for Cause. If through any sufficient cause, the Subrecipient or the Extension fails to fulfill or perform its duties and obligations under this Agreement, or if either party violates or breaches any of the provisions of this Agreement, either party will thereupon have the right to terminate or suspend this Agreement, by giving written notice to the other party of such termination or suspension and specifying the effective date thereof. Such notice will be given at least fifteen (15) calendar days before such effective date.

7. Termination for Convenience of Extension. The Extension will have the right to discontinue the work of the Subrecipient and cancel this Agreement by written notice to the Subrecipient of such termination and specifying the effective date of such termination. In the event of such termination or suspension of this Agreement, the Subrecipient will be entitled to just and equitable compensation for satisfactory work completed, for services performed and for reimbursable expenses necessarily incurred in the performance of this Agreement up to and including the date of termination or suspension.

8. Recordkeeping, Audit, and Inspection of Records. The Subrecipient agrees to maintain books, records, documents and other evidence pertaining to all costs and expenses incurred and revenues acquired under this Subaward (collectively "Records") to the extent and in such detail as will properly reflect all costs and expenses for which reimbursement is claimed. The Records will be maintained in accordance with 2 CFR 200.333. As may be requested, the Subrecipient will provide timely and unrestricted access to its books and accounts, files and other Records with respect to the Project for inspection, review and audit by the Extension, SEC, and their authorized representatives. Upon inspection, review or audit, if the Extension or SEC disallows any costs claimed by the Subrecipient related to this Agreement, the Subrecipient will be responsible for reimbursing the Extension for any of those costs.

If the Subrecipient has a single audit performed in accordance with Uniform Guidance, the Awardee must electronically submit (within the earlier of 30 calendar days after receipt of the auditor's report, or nine months after the end of the audit period) to the Federal Audit Clearinghouse (FAC) the data collection form and the reporting package. The collection form must be obtained from the FAC webpage. The reporting package must include the Financial Statements and Schedule of Expenditures of Federal awards, the summary schedule of prior audit findings, the auditors reports and a corrective action plan. If the Subrecipient does not submit the form and package within the required timeframe, the Extension may perform additional monitoring of the award.

9. Title to and Use of Work Products and Data. Except to the extent otherwise provided in the Prime Award, title to any and all work product, including but not limited to reports, samples of any kind, studies, photographs, drawings, calculations, designs, diagrams, maps, surveys, data, database records, computer programs, and any other items created, produced, or developed by the Subrecipient using Subaward Funds, whether or not such work product constitutes intellectual property (collectively, along with all supporting data and material, the "Work Product") will vest in the Subrecipient, but will be publicly available. The Subrecipient hereby grants to the Extension and to SEC an irrevocable, non-exclusive, royalty-free, perpetual license to use, reuse, print, reprint, publish, republish, reproduce, or otherwise disseminate, sublicense or distribute all or any portion of the Work Product as the Extension or SEC may deem appropriate from time to time in furthering their missions. Neither the Extension nor SEC will be required to notify the Subrecipient or obtain any form of permission or consent to use the Work Product in accordance with this section. The Subrecipient will provide the Extension with complete copies of the Work Product. Upon request by the Extension, the Subrecipient will provide SEC with complete copies of the Work Product.

10. Announcements and Acknowledgments. All public announcements or news stories concerning the Project will be subject to the prior approval of the Extension and will indicate the participation of the Extension and SEC in the funding of the Project.

11. Liability and Indemnification. The work done by or for the Subrecipient under this Agreement will be performed entirely at the risk of Subrecipient. The Subrecipient will be solely responsible for the payment of any and all claims with respect to, any loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with the performance of its work, and Subrecipient will indemnify and defend the Extension and SEC, and each of its officers, directors, employees, and agents (in each case, an "Indemnified Party") against, and shall hold each Indemnified Party harmless of and from, any and all claims, liabilities, losses, costs, damages, and other expenses of any kind or nature whatsoever (including, but not limited to, attorneys' fees and expenses, as well as costs of suit, which any Indemnified Party may incur as a result of or in connection with the Project, or which may cause the Extension to be in default under the Prime Award

12. Choice of Law. This Agreement will be construed under and governed by the laws of the Commonwealth of Massachusetts. The Subrecipient and the agents thereof, agree to bring any federal or state legal proceedings arising under this Agreement, in which the Extension is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This paragraph will not be construed to limit any rights a party may have to intervene in any action, wherever pending, in which the other is a party.

13. Force Majeure. Neither party will be liable to the other nor be deemed to be in breach of this Agreement for failure or delay in rendering performance arising out of causes factually beyond its control and without its fault or negligence. Such causes may include, but are not limited to: acts of God or the public enemy, wars, fires, floods, epidemics, strikes, or unusually severe weather. Dates or times of performance will be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

14. Compliance with Laws. The Subrecipient will promptly comply with all applicable laws, rules, regulations, ordinances, orders and requirements of the Commonwealth and any state or federal governmental authority relating to the delivery of the services described in this Agreement.

15. Headings, Interpretation and Severability. The headings used herein are for reference and convenience only and will not be a factor in the interpretation of the Agreement. If any provision of this Agreement is declared or found to be illegal, unenforceable,

or void, then both parties will be relieved of all obligations under that provision. The remainder of the Agreement will be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Extension and Subrecipient have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_ in the year two thousand and nineteen.

BARNSTABLE COUNTY COMMISSIONERS:

\_\_\_\_\_  
Ronald Bergstrom, Chair

\_\_\_\_\_  
Mary Pat Flynn, Vice-Chair

\_\_\_\_\_  
Ronald Beaty, Commissioner

\_\_\_\_\_  
Date

FOR THE SUBRECIPIENT:

\_\_\_\_\_  
*[Handwritten Signature]*

\_\_\_\_\_  
2/25/19  
Date

FOR THE EXTENSION:

\_\_\_\_\_  
*[Handwritten Signature]*  
Michael Maguire, Executive Director

\_\_\_\_\_  
3-6-19  
Date

## SCOPE OF WORK

### PROJECT OVERVIEW

The Cape Cod Cooperative Extension, in partnership with the Center for Coastal Studies, will enable the protection of coastal businesses, homes, property and infrastructure by precisely identifying and mapping “storm tide pathways,” the lowest elevation where water will begin to flow inland during a flood event. This project will provide field-verified data on where, when, and how storm surge and floodwaters approach and then inundate coastal communities. The information will help municipalities identify critical locations where action is necessary to minimize or eliminate coastal flooding, providing a cost-effective means to protect their communities from the significant damage and economic loss associated with storm surge and sea level rise.

As the winter of 2017-2018 illustrated – beginning with a record-breaking storm surge on January 4<sup>th</sup> and culminating in four destructive nor’easters in March – Massachusetts’ seaside communities must be focused on coastal resiliency to ensure continued viability of their maritime economies. Management challenges are becoming acute as current climate conditions appear to be producing more frequent, high intensity storms that result in significant flooding, causing damage to infrastructure and disrupting commercial activities that sustain local coastal communities. In addition to storm activity, “nuisance flooding” driven by sea level rise has begun to appear in some coastal areas along Cape Cod Bay (most notably Sandwich and Barnstable), where spring high tides, typically occurring several days per month, are already encroaching into areas not previously observed.

Coastal managers are charged with ensuring, to the best of their ability, a stable physical environment within which businesses can thrive and grow. Flood damage to residential and commercial properties and infrastructure – and any subsequent loss of business, tourism, property value, or tax income – can result in millions of dollars in economic losses with a wide-ranging, long-lasting impact. Retail Trade, along with Accommodation and Food Services account for 32.9% of Barnstable County’s economy in terms of total employment.<sup>1</sup> Tourism and recreation make up 95% of Cape Cod’s Total Ocean Economy, providing over \$372 million in wages<sup>2</sup> while properties in floodplains along Cape Cod Bay have a total value in excess of \$2 billion. In order to maintain this critical economic sector, shoreline infrastructure, access to beaches, and the coastal businesses that support that industry must be protected.

Consequently, it is incumbent upon the Commonwealth’s policy- and decision-makers to implement maritime programs and projects that mitigate risk through smart, long-term planning practices. The critical first step in this vetting process is employing innovative and

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<sup>1</sup> U.S. Bureau of Labor Statistics. (2016). *Jobs & Wages (BLS) for Barnstable County, MA*. *StatsAmerica*. Available online at [http://www.statsamerica.org/USCP/default.aspx?geo\\_id=25001](http://www.statsamerica.org/USCP/default.aspx?geo_id=25001).

<sup>2</sup> National Oceanic and Atmospheric Administration. (2014). *Data for Barnstable County. Economics: National Ocean Watch dataset*. Available online at <https://coast.noaa.gov/digitalcoast/tools/enow.html>.

implementable tools that help officials pinpoint the most critical coastal vulnerabilities in their communities and in doing so, enable them to pursue strategies to address and reduce the impacts of those vulnerabilities.

This project will map existing storm tide pathways<sup>3</sup> using the latest, Cape-wide, high-resolution elevation data (lidar); advanced spatial analysis and data visualization software; and science-grade, Real-Time-Kinematic GPS (RTK-GPS) positional data collected in the field by an experienced field team of surveyors and scientists. While maps exist of the predicted extent of current and future flood risk, the pathways that floodwaters take to reach those extents are currently unidentified. Between 2015 and 2017, the Center for Coastal Studies (CCS) mapped storm tide pathways for the towns of Provincetown, Nantucket, and Truro using methodology developed in the context of three grants funded by the Massachusetts Office of Coastal Zone Management's (CZM) Coastal Resiliency Grant Program. This project will build on that methodology, resulting in clear, concise and straightforward maps of the precise locations of all storm tide pathways for the Cape Cod Bay shorelines of Sandwich, Barnstable, Yarmouth, Dennis, Brewster, Orleans, Eastham, Wellfleet, Truro, and Provincetown. This methodology can be replicated for other parts of the Massachusetts coast as well.

As part of the 2016-2017 CZM Resiliency Grant CCS worked with the National Weather Service (NWS) to develop real-time, internet-based maps (Figures 1 and 2) that combined NWS's storm surge predictions with the accurate locations of storm tide pathways. Based on the lessons learned from this project, the maps of pathways and supporting GIS data will be accessible on personal computers and handheld devices through a web-based application developed for each community. When combined with information provided by the NWS's Storm Surge Forecasting website, real-time USGS tide elevations at Provincetown and Sesuit Harbors, and newly installed datum-referenced tide staffs, for this project, in Sandwich, Barnstable, Eastham and Wellfleet these maps will provide invaluable resources for pre- and post-storm planning. Recognizing the heightened interest in this type of information prior to storm events by managers, recreational and commercial boaters, marina operators, and local businesses and industries, this online product will be modified to provide each community and the public with direct access to town-specific data, as opposed to being hosted solely on the NWS website, ([www.weather.gov/box/coastal](http://www.weather.gov/box/coastal)). This will allow users to implement protective measures proactively in anticipation of storm tide pathway activation or overtopping.

The utility of these projects was demonstrated when the information was used to prepare for coastal storm flooding during the January and March storms of 2018 (Figures 3 and 4), where identified storm tide pathways were closed to floodwaters through short-term flood-protection

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<sup>3</sup> A *storm tide pathway* is the mapped location where water will begin to flow inland during a flood event. In addition, the precise elevation at which water will begin to flow over that pathway is also determined in the field using high accuracy GPS instruments. Both the location and elevation of each pathway are then incorporated into a database that is linked to interactive maps stored in a GIS database.

measures. This response significantly minimized short-term damage, allowing commercial hubs such as Provincetown to quickly return to normal operations after the storms. Significantly, this same information is now being used to support longer-term solutions that will increase community awareness and coastal resiliency.

Mapping storm tide pathways will provide added value for several related projects. The data can be used to inform local Multi-Hazard Mitigation Plans, plans communities develop consistent with the State Hazard Mitigation Plan to identify actions to reduce or eliminate loss of life and property from natural hazards. The resultant GIS data can be used in the Cape Cod Commission's National Oceanic and Atmospheric Administration-funded Resilient Cape Cod project, creating tools for towns to use to make decisions about resiliency. Emergency Managers and first responders can benefit from the data, knowing where roads will be under water and finding alternative access routes. Finally, towns in the Community Rating System can earn additional credit for data that will be developed as well as planning that can be pursued with the new data.

This project will provide communities with maps of the routes that floodwaters take as well as a web-based product that combines existing storm related information into one application. These products will allow towns to implement short-term flood response during storm events (such as where and when to deploy sand bags or temporary flood walls), as well as provide information that can be used to develop and implement a plan that prioritizes infrastructure improvements with a goal of increasing community and coastal economic resiliency.

### **Project Success**

The fundamental measure of success will be the development and delivery, to each town, of the GIS-based maps and spatial data, installation of up to four tide staffs and development of a web-based application that combines existing NWS storm tide predictions and links to existing tide stations at Sesuit and Provincetown Harbors in Cape Cod Bay. The final product will include a web-based GIS application that will be accessible on personal computers and handheld devices via the internet for the Cape Cod Bay shorelines of Sandwich, Barnstable, Yarmouth, Dennis, Brewster, Orleans, Eastham, Wellfleet, Truro, and Provincetown. The work done for the pilot projects in Truro and Provincetown will be updated to reflect upgrades to the pilot project methodology and integrated with the new mapping of the other eight Cape Cod Bay towns resulting in up-to-date storm tide pathway maps of the ten Cape Cod Bay towns at the completion of the 2-year project.

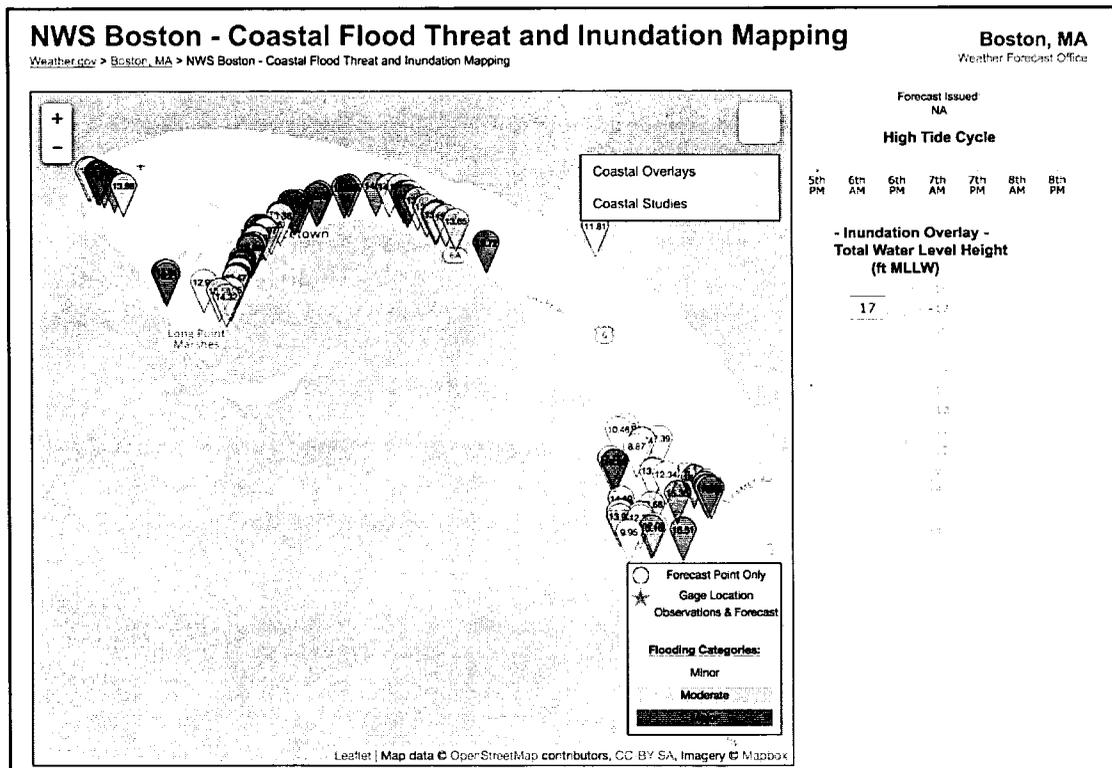


Fig. 1. Screenshot of STP locations on National Weather Service (NWS) site for Provincetown and Truro.

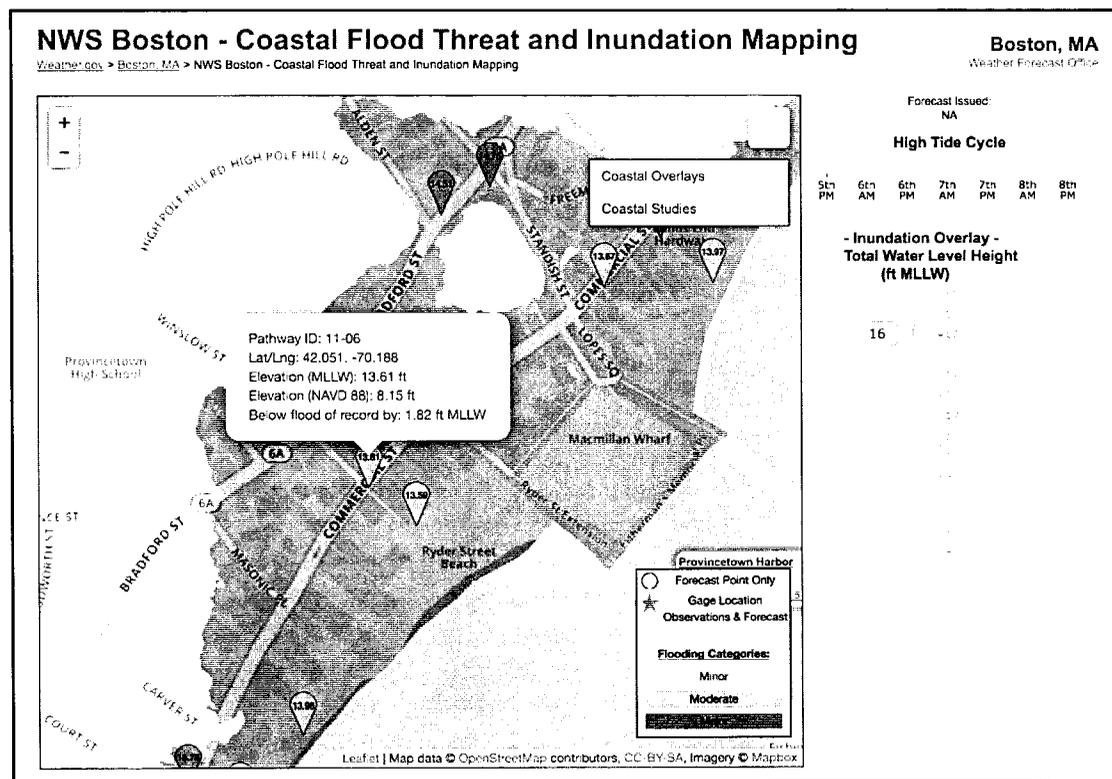
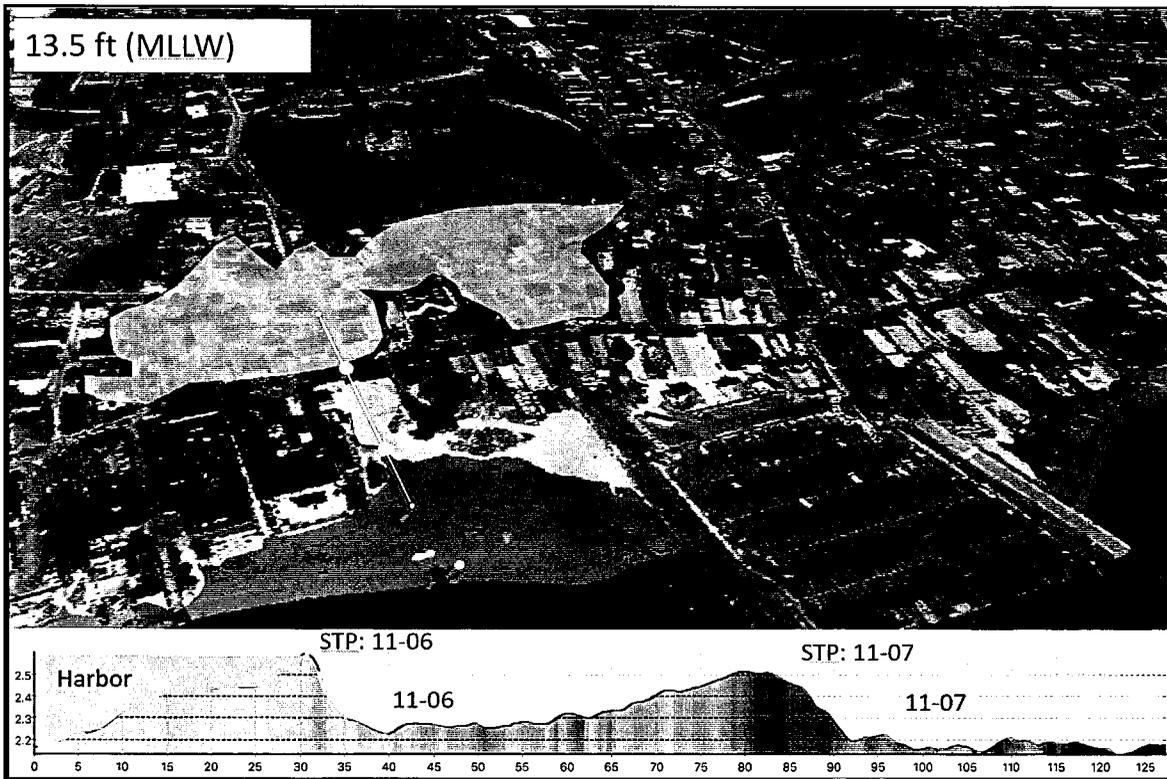


Fig. 2. Screenshot of STP locations and inundation extents on National Weather Service site.



*Fig. 3. Example of storm tide pathways using data visualization software developed for the 2015-2016 MCZM Coastal Resiliency grant program in Provincetown. As water levels reach the elevation of the STPs areas landward become flooded. During the January 4<sup>th</sup> storm water flowed over STPs 11-06 and 11-07. During subsequent 2018 storms the town took actions to stop inundation based on the STP data.*



*Fig. 4. Still frame of video of flooding at STP #11-07 (from Fig 1.). Saltwater from Provincetown Harbor flowing across Commercial Street on January 4<sup>th</sup>, 2018. Video was taken ~1.5-2 hours before high tide. Significant flooding occurred and many buildings, both public and private were flooded with salt water in Provincetown.*

## BUDGET AND SOURCES

Source	Total	Secured/Pending	Additional Details
Seaport Economic Council	\$317,020	Secured Grant Award	Funding from the Massachusetts Seaport Economic Council
Barnstable County	\$25,000	Secured	In-kind match; Cape Cod Cooperative Extension (Community Rating System & Floodplain Coordinator, technical assistance and project oversight for an average of 5 hours/week)
Barnstable County	\$15,000	Secured	In-kind match; Health Department/Regional Emergency Planning Committee (Emergency Preparedness Project Specialist, technical assistance and project oversight for an average of 2 hours/week)
Municipalities	\$20,000	Secured	In-kind match; support from multiple communities
University of Massachusetts, Boston	\$5,000	Secured	In-kind match; will be used to partially support creation of web-based application for pathway maps
<b>Total Budget</b>	<b>\$382,020</b>		

### DETAILED BUDGET (Funded by Seaport Economic Council)

- | Est. Cost  | Major Project Activity  |
|------------|---|
| • \$19,775 | Development of storm tide profiles for towns  |
| • \$53,450 | Computer-based mapping of all potential Storm Tide Pathways (STP)   |
| • \$24,395 | Install water level (tide) recorders to correlate storm tide profiles (NAVD88) to local tidal datums (MLLW) |
| • \$77,850 | Field verification and survey of potential STPs and identification of new STPs not apparent in lidar        |
| • \$22,375 | Development of Preliminary STP data layers and maps (Digital)   |
| • \$37,875 | Development of online/app of map-based STP data for each town   |
| • \$19,700 | Final STP maps and related digital data and on-line/app for each town                                       |
| • \$32,780 | Final town-specific reports describing GIS data, observations, and recommendations                          |
| • \$28,820 | Barnstable County grant administration  |

**TIMELINE AND DELIVERABLES**

1) Development of storm tide profiles for towns	\$19,775	Early Spring 2019
2) Computer-based mapping of all potential Storm Tide Pathways (STP)	\$53,450	Spring 2019
3) Install water level (tide) recorders to correlate storm tide profiles (NAVD88) to local tidal datums (MLLW)	\$24,395	Summer 2019
4) Field verification and survey of potential Storm Tide Pathways (STPs) and identification of new STPs not apparent in lidar	\$77,850	Winter 2019-20
5) Development of Preliminary STP data layers and maps (Digital)	\$22,375	Spring 2020
6) Development of online/app of map-based STP data for each town	\$37,875	Summer 2020
7) Final STP maps and related digital data and on-line/app for each town	\$19,700	Spring 2021
8) Final town-specific reports describing GIS data, observations, and recommendations	\$32,780	Spring 2021
9) Barnstable County grant administration	\$28,820	Winter 2019 – Spring 2021
10) *Barnstable County Cape Cod Cooperative Extension in-kind match (technical assistance and project oversight)	\$25,000	Winter 2019 – Spring 2021
11) *Barnstable County Regional Emergency Planning Committee in-kind match (technical assistance and project oversight)	\$15,000	Winter 2019 – Spring 2021
12) *Municipalities in-kind match (support from multiple communities)	\$20,000	Winter 2019 – Spring 2021
13) *University of Massachusetts, Boston in-kind match (support creation of web-based app for maps)	\$5,000	Winter 2019 – Spring 2021
TOTAL	\$382,020	

\*Indicates 20% match

**Milestones:**

Milestone	Timeframe	
▪ - Work Start Date	February 2019	
▪ 1) Storm tide profiles for towns	Spring 2019	
▪ <b>2) Computer-based mapping STP</b>	<b>Spring 2019</b>	<b>25% complete</b>
▪ 3) Install water level recorders	Summer 2019	
▪ <b>4) Field verification of (STPs)</b>	<b>Winter 2019-20</b>	<b>50% complete</b>
▪ 5) Prelim. STP data	Spring 2020	
▪ <b>6) Prelim. online/app STPs</b>	<b>Summer 2020</b>	<b>75% complete</b>
▪ 7) Final STP maps	Early Spring 2021	
▪ <b>8) Final Report</b>	<b>Early Spring 2021</b>	<b>100% complete</b>
▪ - Contract Expiration Date	March 2021	

**Drawdown Schedule:**

*The drawdown schedule is a quarterly breakdown of the project's future spending projections.*

*Please speak with your contractor to have the most up-to-date and accurate information.*

*EOHED will be using the projection you provide to ensure that the project remains on time and on budget. Do not limit yourself to these rows if additional months are needed.*

<i>Quarter/Year</i>	<i>Invoice Amount</i>	
[1ST/2019]	\$ 79,255.00	25% of total project
[2ND/2019]	\$ 27,739.25	1/8 of budget after first quarter + retainage
[3RD/2019]	\$ 27,739.25	1/8 of budget after first quarter + retainage
[4TH/2019]	\$ 27,739.25	1/8 of budget after first quarter + retainage
[1ST/2020]	\$ 27,739.25	1/8 of budget after first quarter + retainage
[2ND/2020]	\$ 27,739.25	1/8 of budget after first quarter + retainage
[3RD/2020]	\$ 27,739.25	1/8 of budget after first quarter + retainage
[4TH/2020]	\$ 27,739.25	1/8 of budget after first quarter + retainage
[MAR/2021] Final Invoice Retainage (5%)*	\$ 27,739.25	1/8 of budget after first quarter + retainage
	\$ 15,851.00	

*\*EOHED will set aside 5% of the total grant award as retainage until the project (or the portion of the project completed with grant funds) is demonstrated to be complete. The 5% will be deducted from the final invoice and will be paid promptly upon demonstration that the project has been completed.*

**ATTACHMENT B**  
**AWARD CONTRACT: BARNSTABLE COUNTY AND SEAPORT ECONOMIC COUNCIL**

# COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



This form is jointly issued and published by the Executive Office for Administration and Finance (AEF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. Any changes to the official printed language of this form shall be void. Additional non-conflicting terms may be added by Attachment. Contractors may not require any additional agreements, engagement letters, contract forms or other additional terms as part of this Contract without prior Department approval. Click on hyperlinks for definitions, instructions and legal requirements that are incorporated by reference into this Contract. An electronic copy of this form is available at [www.mass.gov/osc](http://www.mass.gov/osc) under Guidance For Vendors - Forms or [www.mass.gov/osd](http://www.mass.gov/osd) under OSD Forms.

<b>CONTRACTOR LEGAL NAME:</b> County of Barnstable (and d/b/a):	<b>COMMONWEALTH DEPARTMENT NAME:</b> Executive Office of Housing and Economic Development <b>MMARS Department Code:</b> EED
<b>Legal Address: (W-9, W-4, T&amp;C):</b> 3225 Main Street, Barnstable, MA 02630	<b>Business Mailing Address:</b> One Ashburton Place, Room 2101, Boston, MA 02108
<b>Contract Manager:</b> Michael Maguire	<b>Billing Address (if different):</b> same as
<b>E-Mail:</b> mmaguire@barnstablecounty.org	<b>Contract Manager:</b> Robin Pezzone
<b>Phone: (508) 375-6701</b>	<b>E-Mail:</b> robin.pezzone@state.ma.us
<b>Contractor Vendor Code:</b> VC6000194979	<b>Phone:</b> 617-788-3627
<b>Vendor Code Address ID (e.g. "AD001"):</b> AD001 (Note: The Address ID must be set up for EFT payments.)	<b>Fax:</b> 617-788-3605
<input checked="" type="checkbox"/> <b>NEW CONTRACT</b>	<input type="checkbox"/> <b>CONTRACT AMENDMENT</b>
<b>PROCUREMENT OR EXCEPTION TYPE: (Check one option only)</b> <input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget) <input checked="" type="checkbox"/> Department Procurement (includes State or Federal grants §15 CMR 2.00) (Attach RFR and Response or other procurement supporting documentation) <input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget) <input type="checkbox"/> Contract Employee (Attach Employment Status Form, scope, budget) <input type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification, scope and budget)	Enter Current Contract End Date <u>Prior</u> to Amendment: _____, 20____. Enter Amendment Amount: \$ _____ (or "no change") <b>AMENDMENT TYPE: (Check one option only. Attach details of Amendment changes.)</b> <input type="checkbox"/> Amendment to Scope or Budget (Attach updated scope and budget) <input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> Contract Employee (Attach any updates to scope or budget) <input type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification and updated scope and budget)
The following <b>COMMONWEALTH TERMS AND CONDITIONS (T&amp;C)</b> has been executed, filed with CTR and is incorporated by reference into this Contract. <input checked="" type="checkbox"/> Commonwealth Terms and Conditions <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services	
<b>COMPENSATION: (Check ONE option):</b> The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under §15 CMR 9.00. <input type="checkbox"/> Rate Contract (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input checked="" type="checkbox"/> Maximum Obligation Contract Enter Total Maximum Obligation for total duration of this Contract (or new Total if Contract is being amended). \$ <u>317,020</u>	
<b>PROMPT PAYMENT DISCOUNTS (PPD):</b> Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days ___% PPD; Payment issued within 15 days ___% PPD; Payment issued within 20 days ___% PPD; Payment issued within 30 days ___% PPD. If PPD percentages are left blank, identify reason: <input checked="" type="checkbox"/> agree to standard 45 day cycle ___ statutory/legal or Ready Payments (G.L.c. 29, § 23A); <input type="checkbox"/> only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)	
<b>BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.)</b> Seaport Economic Council grant funding for the Mapping Stormtide Pathways project	
<b>ANTICIPATED START DATE: (Complete ONE option only)</b> The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: <input checked="" type="checkbox"/> 1. may be incurred as of the <u>Effective Date</u> (latest signature date below) and <u>no</u> obligations have been incurred <u>prior</u> to the <u>Effective Date</u> . <input type="checkbox"/> 2. may be incurred as of _____, 20____, a date <u>LATER</u> than the <u>Effective Date</u> below and <u>no</u> obligations have been incurred <u>prior</u> to the <u>Effective Date</u> . <input type="checkbox"/> 3. were incurred as of _____, 20____, a date <u>PRIOR</u> to the <u>Effective Date</u> below, and the parties agree that payments for any obligations incurred prior to the <u>Effective Date</u> are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.	
<b>CONTRACT END DATE:</b> Contract performance shall terminate as of <u>June 30</u> , 20 <u>21</u> , with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.	
<b>CERTIFICATIONS:</b> Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached <u>Contractor Certifications</u> (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable <u>Commonwealth Terms and Conditions</u> , this Standard Contract Form including the <u>instructions and Contractor Certifications</u> , the Request for Response (RFR) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in <u>801 CMR 21.07</u> , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.	
<b>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</b> X:  Date: <u>01/30/19</u> (Signature and Date Must Be Handwritten At Time of Signature) Print Name: <u>Ronald Bergstrom</u> Print Title: <u>County Commissioner</u>	<b>AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:</b> X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature) Print Name: _____ Print Title: _____

# COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



## INSTRUCTIONS AND CONTRACTOR CERTIFICATIONS

The following instructions and terms are incorporated by reference and apply to this Standard Contract Form. Text that appears underlined indicates a "hyperlink" to an Internet or bookmarked site and are unofficial versions of these documents and Departments and Contractors should consult with their legal counsel to ensure compliance with all legal requirements. Using the Web Toolbar will make navigation between the form and the hyperlinks easier. Please note that not all applicable laws have been cited.

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

**Contractor Legal Address:** Enter the Legal Address of the Contractor as it appears on the Contractor's W-9 or W-4 Form (Contract Employees only) and the applicable Commonwealth Terms and Conditions, which must match the legal address on the 10991 table in MMARS (or the Legal Address in HR/CMS for Contract Employee).

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

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

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

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

**COMMONWEALTH DEPARTMENT NAME:** Enter the full Department name with the authority to obligate funds encumbered for the Contract.

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

**Department Business Mailing Address:** Enter the address where all formal correspondence to the Department must be sent. Unless otherwise specified in the Contract, legal notice sent or received by the Department's Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address for the Contract Manager will meet any requirements for legal notice.

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

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

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

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

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

## NEW CONTRACTS (left side of Form):

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

**PROCUREMENT OR EXCEPTION TYPE:** Check the appropriate type of procurement or exception for this Contract. Only one option can be selected. See State Finance Law and General Requirements, Acquisition Policy and Fixed Assets, the Commodities and Services Policy and the Procurement Information Center (Department Contract Guidance) for details.

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

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

**Department Contract Procurement:** Check this option for a Department procurement including state grants and federal sub-grants under 815 CMR 2.00 and State Grants and Federal Subgrants Policy, Departmental Master Agreements (MA). If multi-Department user Contract, identify multi-Department use is allowable in Brief Description.

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

**Contract Employee:** Check this option when the Department requires the performance of an Individual Contractor, and when the planned Contract performance with an Individual has been classified using the Employment Status Form (prior to the Contractor's selection) as work of a Contract Employee and not that of an Independent Contractor.

**Legislative/Legal or Other:** Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Supporting documentation must be attached to explain and justify the exemption.

## CONTRACT AMENDMENT (Right Side of Form)

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

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

**Enter Amendment Amount:** Enter the amount of the Amendment increase or decrease to a Maximum Obligation Contract. Enter "no change" for Rate Contracts or if no change.

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

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

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

**Legislative/Legal or Other:** Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Attach supporting documentation to explain and justify the exemption and whether Contractor selection has been publicly posted.

# COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



## COMMONWEALTH TERMS AND CONDITIONS

Identify which Commonwealth Terms and Conditions the Contractor has executed and is incorporated by reference into this Contract. This Form is signed only once and recorded on the Vendor Customer File (VCUST). See Vendor File and W-9s Policy.

## COMPENSATION

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

## PAYMENTS AND PROMPT PAY DISCOUNTS

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

## BRIEF DESCRIPTION OF CONTRACT PERFORMANCE

Enter a brief description of the Contract performance, project name and/or other identifying information for the Contract to specifically identify the Contract performance, match the Contract with attachments, determine the appropriate expenditure code (as listed in the Expenditure Classification Handbook) or to identify or clarify important information related to the Contract such as the Fiscal Year(s) of performance (ex. "FY2012" or "FY2012-14"). Identify settlements or other exceptions and attach more detailed justification and supporting documents. Enter "Multi-Department Use" if other Departments can access procurement. For Amendments, identify the purpose and what items are being amended. Merely stating "see attached" or referencing attachments without a narrative description of performance is insufficient.

## ANTICIPATED START DATE

The Department and Contractor must certify WHEN obligations under this Contract/Amendment may be incurred. Option 1 is the default option when performance may begin as of the Effective Date (latest signature date and any required approvals). If the parties want a new Contract or renewal to begin as of the upcoming fiscal year then list the fiscal year(s) (ex. "FY2012" or "FY2012-14") in the Brief Description section. Performance starts and encumbrances reflect the default Effective Date (if no FY is listed) or the later FY start date (if a FY is listed). Use Option 2 only when the Contract will be signed well in advance of the start date and identify a specific future start date. Do not use Option 2 for a fiscal year start unless it is certain that the Contract will be signed prior to fiscal year. Option 3 is used in lieu of the Settlement and Release Form when the Contract/Amendment is signed late, and obligations have already been incurred by the Contractor prior to the Effective Date for which the Department has either requested, accepted or deemed legally eligible for reimbursement, and the Contract includes supporting documents justifying the performance or proof of eligibility, and approximate costs. Any obligations incurred outside the scope of the Effective Date under any Option listed, even if the incorrect Option is selected, shall be automatically deemed a settlement included under the terms of the Contract and upon payment to the Contractor will release the Commonwealth from further obligations for the identified performance. All settlement payments require justification and must be under same encumbrance and object codes as the Contract payments. Performance dates are subject to G.L. c.4, § 9.

## CONTRACT END DATE

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

## CERTIFICATIONS AND EXECUTION

See Department Head Signature Authorization Policy and the Contractor Authorized Signatory Listing for policies on Contractor and Department signatures.

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

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

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

Department Name /Title: Enter the Authorized Signatory's name and title legibly.

## CONTRACTOR CERTIFICATIONS AND LEGAL REFERENCES

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

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

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

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

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

**Public Records and Access** The Contractor shall provide full access to records related to performance and compliance to the Department and officials listed under Executive Order 195 and G.L. c. 11 s.12 seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor

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records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor can not claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under 950 C.M.R. 32.00.

**Debarment.** The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation including, Executive Order 1417; G.L. c. 29, s. 29F; G.L. c. 30, § 39R; G.L. c. 149, § 27C; G.L. c. 149, § 44C; G.L. c. 149, § 148B and G.L. c. 152, s. 25C.

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

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

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

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

**Tax Law Compliance.** The Contractor certifies under the pains and penalties of perjury tax compliance with Federal tax laws; State tax laws including but not limited to G.L. c. 62C, G.L. c. 62C, s. 49A; compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under G.L. c. 62E, withholding and remitting child support including G.L. c. 119A, s. 12; TJR 05-11: New Independent Contractor Provisions and applicable TIRs.

**Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts.** The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing at least 45 days prior to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is any risk to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

**Federal Anti-Lobbying and Other Federal Requirements.** If receiving federal funds, the

Contractor certifies compliance with federal anti-lobbying requirements including 31 USC 1352; other federal requirements; Executive Order 11246; Air Pollution Act; Federal Water Pollution Control Act and Federal Employment Laws.

**Protection of Personal Data and Information.** The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under G.L. c. 93H and c. 66A and Executive Order 504. The Contractor is required to comply with G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information, provided further that the Contractor is required to ensure that any personal data or information transmitted electronically or through a portable device be properly encrypted using (at a minimum) Information Technology Division (ITD) Protection of Sensitive Information, provided further that any Contractor having access to credit card or banking information of Commonwealth customers certifies that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards and shall provide confirmation compliance during the Contract, provide further that the Contractor shall immediately notify the Department in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the Commonwealth and provide access to any information necessary for the Commonwealth to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to G.L. c. 214, s. 3E.

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

**Employer Requirements.** Contractors that are employers certify compliance with applicable state and federal employment laws or regulations, including but not limited to G.L. c. 5, s. 1 (Prevailing Wages for Printing and Distribution of Public Documents); G.L. c. 7, s. 22 (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); minimum wages and prevailing wage programs and payments; unemployment insurance and contributions; workers' compensation and insurance, child labor laws, AGO fair labor practices; G.L. c. 149 (Labor and Industries); G.L. c. 150A (Labor Relations); G.L. c. 151 and 455 CMR 2.00 (Minimum Fair Wages); G.L. c. 151A (Employment and Training); G.L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); G.L. c. 152 (Workers' Compensation); G.L. c. 153 (Liability for Injuries); 29 USC c. 8 (Federal Fair Labor Standards); 29 USC c. 28 and the Federal Family and Medical Leave Act.

**Federal And State Laws And Regulations Prohibiting Discrimination** including but not limited to the Federal Equal Employment Opportunity (EEO) Laws the Americans with Disabilities Act; 42 U.S.C. Sec. 12,101, et seq., the Rehabilitation Act, 29 USC c. 16, s. 794; 29 USC c. 16, s. 701; 29 USC c. 14, 623; the 42 USC c. 45 (Federal Fair Housing Act); G.L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); the Public Accommodations Law G.L. c. 272, s. 92A; G.L. c. 272, s. 98 and 98A, Massachusetts Constitution Article CXIV and G.L. c. 93, s. 103; 47 USC c. 5, sc. II, Part II, s. 255 (Telecommunication Act; Chapter 149, Section 105D, G.L. c. 151C, G.L. c. 272, Section 92A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and Resources.

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

**Limitation of Liability for Information Technology Contracts (and other Contracts as Authorized).** The Information Technology Mandatory Specifications and the IT Acquisition Accessibility Contract Language are incorporated by reference into Information Technology Contracts. The following language will apply to Information Technology contracts in the U01, U02, U03, U04, U05, U06, U07, U08, U09, U10, U75, U98 object codes in the Expenditure Classification Handbook or other Contracts as approved by CTR or OSD. Pursuant to Section 11, Indemnification of the Commonwealth Terms and Conditions, the term "other damages" shall include, but shall not be limited to, the reasonable costs the Commonwealth incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. "Other damages" shall not include damages to the Commonwealth as a result of third party claims, provided, however, that the foregoing in no way limits the Commonwealth's right of recovery for personal injury or property damages or patent and copyright infringement under Section 11 nor the Commonwealth's ability to join the contractor as a third party defendant. Further, the term "other damages" shall not include, and in no event shall the contractor be liable for, damages for the Commonwealth's use of contractor provided products or services, loss of Commonwealth records, or data (or other intangible property), loss of use of equipment, lost

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revenue, lost savings or lost profits of the Commonwealth. In no event shall "other damages" exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. Section 11 sets forth the contractor's entire liability under a Contract. Nothing in this section shall limit the Commonwealth's ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference Section 11 of the Commonwealth Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement. These terms may be applied to other Contracts only with prior written confirmation from the Operational Services Division or the Office of the Comptroller. The terms in this Clarification may not be modified.

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

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

**Consultant Contractor Certifications (For Consultant Contracts "HH" and "NN" and "U05" object codes subject to G.L. Chapter 29 s. 29A).** Contractors must make required disclosures as part of the RFR Response or using the Consultant Contractor Mandatory Submission Form.

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

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

## EXECUTIVE ORDERS

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

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

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

**Executive Order 346, Hiring of State Employees By State Contractors.** Contractor certifies compliance with both the conflict of interest law G.L. c. 268A specifically s. 5 (f) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the Commonwealth. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the

Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

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

**Executive Order 504, Regarding the Security and Confidentiality of Personal Information.** For all Contracts involving the Contractor's access to personal information, as defined in G.L. c. 93H, and personal data, as defined in G.L. c. 66A, owned or controlled by Executive Department agencies, or access to agency systems containing such information or data (herein collectively "personal information"), Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read Commonwealth of Massachusetts Executive Order 504 and agrees to protect any and all personal information; and (2) has reviewed all of the Commonwealth Information Technology Division's Security Policies. Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all state agencies in the Executive Department, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with the contracting agency's Information Security Program (ISP) and any pertinent security guidelines, standards, and policies; (2) comply with all of the Commonwealth of Massachusetts Information Technology Division's "Security Policies"; (3) communicate and enforce the contracting agency's ISP and such Security Policies against all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information to which the Contractor is given access by the contracting agency from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information (collectively referred to as the "unauthorized use"): (a) immediately notify the contracting agency if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the contracting agency to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the contracting agency and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 11 of the Commonwealth's Terms and Conditions, withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under G.L. c. 214, § 3B for violations under M.G.L. c. 66A.

**Executive Orders 523, 524 and 526, Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes Executive Order 478), Executive Order 524 (Establishing the Massachusetts Supplier Diversity Program which supersedes Executive Order 390), Executive Order 523 (Establishing the Massachusetts Small Business Purchasing Program.)** All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices; and the Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and the Contractor commits to purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. These provisions shall be enforced through the contracting agency, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.



## COMMONWEALTH TERMS AND CONDITIONS

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

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

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

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

**4. Contract Termination Or Suspension.** A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

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

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

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

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

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

**10. Affirmative Action, Non-Discrimination In Hiring And Employment.** The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

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



# COMMONWEALTH TERMS AND CONDITIONS

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

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

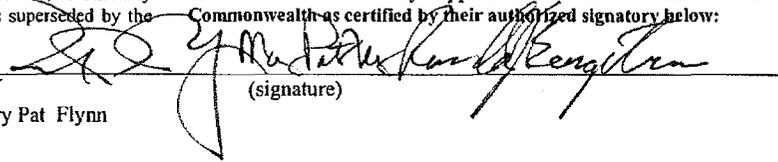
**14. Forum, Choice of Law And Mediation.** Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The Department, with the approval of the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

**15. Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration.** Any amendment or attachment to any Contract which contains conflicting language or has the affect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially published by ANF, CTR and OSD, shall be interpreted as superseded by the

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

IN WITNESS WHEREOF, The Contractor certify under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by their authorized signatory below:

CONTRACTOR AUTHORIZED SIGNATORY:

  
(signature)

Print Name: Ronald Beaty, Ronald Bergstrom, Mary Pat Flynn

Title: County Commissioners

Date:

(Check One):  Organization  Individual

Full Legal Organization or Individual Name: County of Barnstable

Doing Business As: Name (If Different): Barnstable County

Tax Identification Number: 04-6001419

Address: 3195 Main Street, Barnstable , MA 02630

Telephone: 508 375 -6671

FAX: 508 362 -4136

### INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS

A "Request for Verification of Taxation Reporting Information" form (Massachusetts Substitute W-9 Format), that contains the Contractor's correct TIN, name and legal address information, must be on file with the Office of the Comptroller. If the Contractor has not previously filed this form with the Comptroller, or if the information contained on a previously filed form has changed, please fill out a W-9 form and return it attached to the executed COMMONWEALTH TERMS AND CONDITIONS.

If the Contractor is responding to a Request for Response (RFR), the COMMONWEALTH TERMS AND CONDITIONS must be submitted with the Response to RFR or as specified in the RFR. Otherwise, Departments or Contractors must timely submit the completed and properly executed COMMONWEALTH TERMS AND CONDITIONS (and the W-9 form if applicable) to the: **Payee and Payments Unit, Office of the Comptroller, 9th Floor, One Ashburton Place, Boston, MA 02108** in order to record the filing of this form on the MMARS Vendor File. Contractors are required to execute and file this form only once.

COMMONWEALTH OF MASSACHUSETTS  
CONTRACTOR AUTHORIZED SIGNATORY LISTING

Issued May  
2004



CONTRACTOR LEGAL NAME :  
CONTRACTOR VENDOR/CUSTOMER CODE:

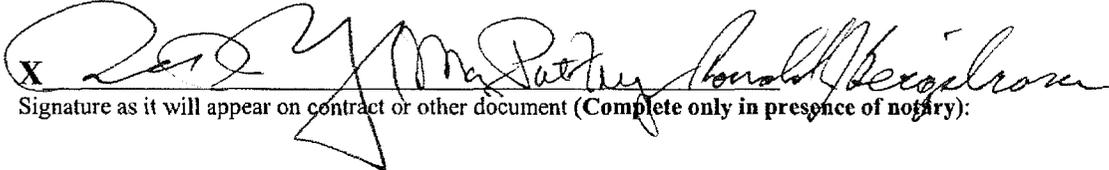
PROOF OF AUTHENTICATION OF SIGNATURE

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

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

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

Title: County Commissioners

X 

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

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

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

January 30, 2019

My commission expires on: 02/21/25

AFFIX NOTARY SEAL

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

\_\_\_\_\_, 20 \_\_\_\_.

AFFIX CORPORATE SEAL



## COMMONWEALTH OF MASSACHUSETTS CONTRACTOR AUTHORIZED SIGNATORY LISTING

**CONTRACTOR LEGAL NAME:** [Click here to enter text.](#)

**CONTRACTOR VENDOR/CUSTOMER CODE:**

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

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

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

AUTHORIZED SIGNATORY NAME	TITLE
Ronald Bergstrom	County Commissioner
Mary Pat Flynn	County Commissioner
Ronald R. Beaty	County Commissioner

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

Signature

Date: 01-30-19

Title: Barnstable County Administrator

Telephone: (508) 375-6771

Fax: (508) 362-4136

Email: jack.yunits@barnstablecounty.org

# AGENDA ITEM 8g

Authorizing the execution of amendments to mortgages and security agreements with 704 Falmouth Housing Corporation, LLC on property located at 587 Gifford Street in the town of Falmouth



**BARNSTABLE COUNTY**  
**DEPARTMENT OF HUMAN SERVICES**  
3195 Main Street, Post Office Box 427  
Barnstable, Massachusetts 02630  
Office: 508-375-6628 | Fax: 508-362-0290  
www.bchumanservices.net

**BARNSTABLE COUNTY HOME PROGRAM**  
**MEMORANDUM**

To: Jack Yunits, Town Administrator / County Commissioners  
CC Michael Dutton  
From: Renie Hamman, HOME Program Manager  
RE: 587 Gifford Street, Falmouth  
Amendment of Mortgages  
Date: March 6, 2019

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Enclosed are two Amendments of Mortgages for 587 Gifford Street, Falmouth, Massachusetts (the “Existing Property Site”) that our Attorney, Michael Dutton, reviewed and approved. The Existing Property Site currently contains thirty-six (36) residential housing units on 12.4± acres of land. The property is owned by 704 FHC, LLC, (“FHC”)<sup>1</sup>.

FHC is now proposing to construct twenty (20) new one-bedroom housing units at the site under the DHCD’s Community Scale Housing Initiative. This new project will require that the Existing Property Site be divided by a recorded plan to create a new 1.2 acre± parcel of land (the “New Parcel”) to facilitate the construction and financing of the 20 one-bedroom project. Thus, an Amendment to the original mortgages held by Barnstable County are required to release the 1.2 acre± New Parcel from these mortgages. (*Copy of Letter of Request and copy of existing plan and new proposed plan are enclosed for reference*)

There are currently two existing Barnstable County mortgages held on the Existing Site, copies of which are attached hereto:

- Mortgage and Security Agreement in the amount of \$125,000
- HOME Investment Partnership Program Mortgage and Security Agreement in the amount of \$100,000

An Amendment of Mortgage for each of the above referenced mortgages requiring County Commissioners’ signature and notarization of same is enclosed.

Please note the Plan Book and Page of the Plan of Land referenced in the Amendments will be filled in at time of closing as it will be recorded at the same time of the Amendments.

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<sup>1</sup> 704 FHC, LLC, is a successor in record title to Falmouth Housing Corporation, the Mortgager in the Mortgage Security Agreement

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*LAURA M. MOYNIHAN*  
*Attorney at Law*

*17 Academy Lane, Suite 1*  
*Falmouth, Massachusetts 02540*  
*Telephone: 508-548-5558*  
*Fax: 508-548-5553*  
*Email: laura@lmoynihanlaw.com*



Ms. Michelle Springer  
Home Program Manager  
Barnstable County Department of Human Services  
P.O. Box 427  
3195 Main Street  
Barnstable, MA 02630

January 4, 2019  
Via Email and First Class Mail

**Re: Falmouth Housing Corporation-587 Gifford Street, Falmouth, MA**

Dear Ms. Springer:

I am writing to follow up on my letter of September 18, 2018, copy enclosed.

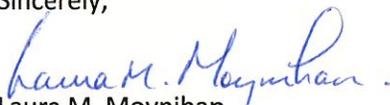
I represent the Falmouth Housing Corporation ("FHC") and Affirmative Investments, Inc. ("Affirmative"). FHC and Affirmative are participating in DHCD's Community Scale Housing Initiative funding program in order to facilitate construction of 20 new one bedroom housing units at 587 Gifford Street in Falmouth. They are developing the new project as Gifford Workforce, LLC, a single purpose entity. This property currently contains 36 housing units on 12.4 acres of land. The new project will require the 12.4 acre site to be divided by recorded plan to create a new 1.2 acre parcel of land for construction of the 20 new units. This will reduce the existing project site at 587 Gifford to 11.2 acres. Copies of the existing plan and new plan are enclosed for reference.

The existing project site at 587 Gifford is subject to mortgages in favor of Massachusetts Housing Partnership (first and second), DHCD (third), and Barnstable County (fourth). Massachusetts Housing Partnership ("MHP") has agreed to revise its mortgages to exclude the 1.2 acres from the existing collateral. The existing project site has been appraised by MHP with a zero value assigned to the 1.2 acres. FHC and Affirmative are requesting release of the 1.2 acres from the existing Barnstable County mortgage as well.

The proposed plan to divide the property, the appraisal secured by MHP, the Project Eligibility Letter for the new 20 unit project, the first page and Exhibit A of the County's mortgage were provided with my September 18<sup>th</sup> letter.

I have enclosed the proposed Amendment of Mortgage for signature. If you require further information, please do not hesitate to contact me.

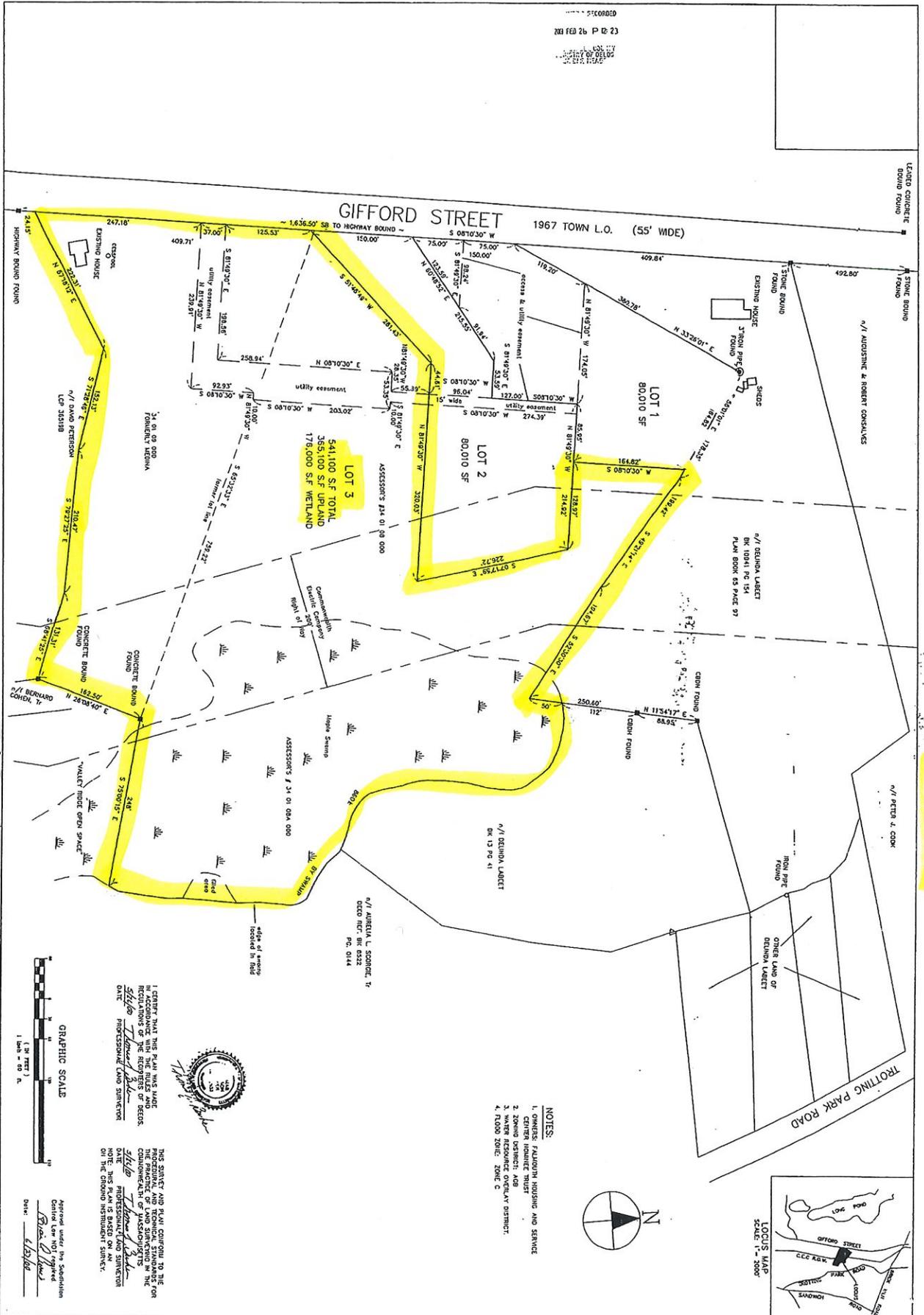
Sincerely,

  
Laura M. Moynihan

LMM/dms

cc: Falmouth Housing Corporation, Linda J. Clark (via email)  
Affirmative Investments, Inc., Tara Mizrahi (via email)

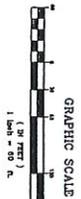
RECORDED  
201 FEB 26 P 02 23



FORMER LOT 3

563-40

BOOK 563 PAGE 40



I CERTIFY THAT THIS PLAN WAS MADE IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

*Stella Thomas*  
STELLA THOMAS  
PROFESSIONAL LAND SURVEYOR



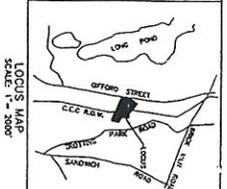
THIS SURVEY AND PLAN CONFORM TO THE REQUIREMENTS OF THE REGISTER OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

*Stella Thomas*  
STELLA THOMAS  
PROFESSIONAL LAND SURVEYOR

NOTE: THIS PLAN IS BASED ON SURVEY DATA ON THE GROUND INSTRUMENT SURVEY.

Approved under the Supervision  
of the Registrar of Deeds  
Roxbury, MA  
Date: 4/23/10

- NOTES:
1. OWNERS: FALMOUTH HOUSING AND SERVICE CENTER
  2. CENTER FALMOUTH TRUST
  3. ZONING DISTRICT: A-2
  4. FLOOD ZONE: ZONE C



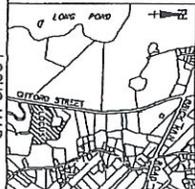
PLAN OF LAND  
PREPARED FOR  
FALMOUTH HOUSING AND SERVICE CENTER  
NOMINEE TRUST  
GIFFORD STREET  
FALMOUTH, MASSACHUSETTS

**BSS**  
DESIGN  
LAND SURVEYING  
ENGINEERING  
AND PLANNING

180 North, Hempstead  
St. Matthews, Va. 22066  
Tel: 703.938.8888  
Fax: 703.938.8888

Drawing Number:	B8-339
Date:	4/23/10
Scale:	1" = 50'
Author:	MAK 26, 2000
Checker:	TJN/CLP
Job Number:	99193
Revisions:	

NEW LOT 4



I certify that this plan was made in accordance with the rules and regulations of the Registrar of Deeds.

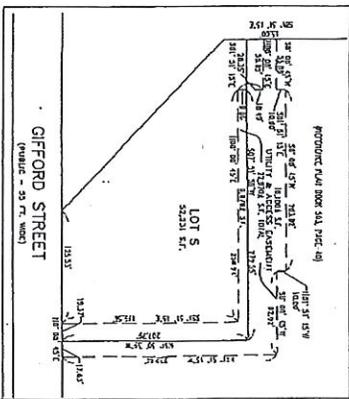
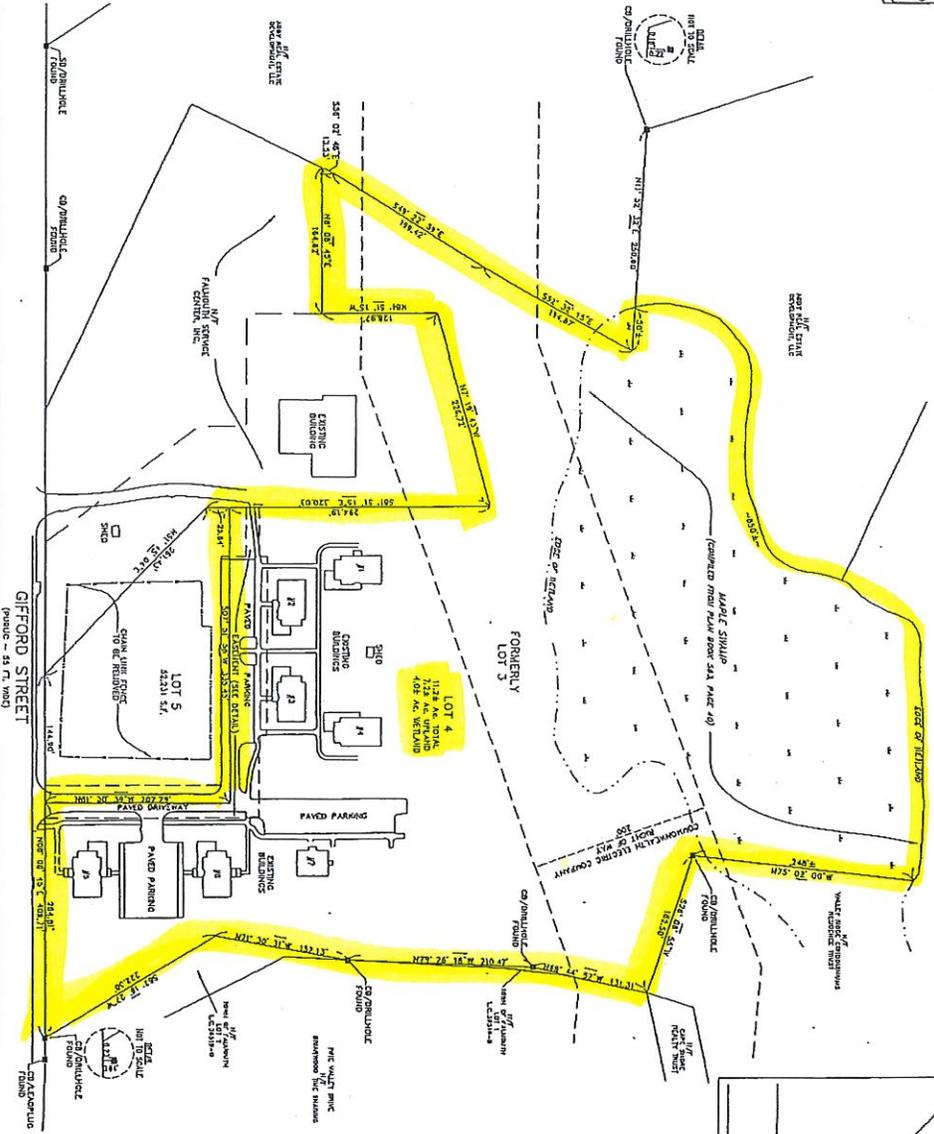
HOLMES AND MCGRATH, INC.  
 Registered Professional Land Surveyor  
 Date: 09-23-2010

This survey and plan conform to the standards for the professional land surveying in the Commonwealth of Massachusetts.

HOLMES AND MCGRATH, INC.  
 Registered Professional Land Surveyor  
 Date: 09-23-2010

Note: This plan is based on an on-ground instrument survey.

- NOTES
1. ADDRESS: 897 GIFFORD STREET
  2. ASSessor'S NUMBER: 34 01 006 003
  3. ZONING DISTRICT: R-1
  4. FLOOD HAZARD ZONES: X
  5. REFERENCE: PLAN BOOK 553, PAGE 40
  6. WIND EXPOSURE CATEGORY: 1 (AS PER 91A-10-08)
  7. OVERLAY DISTRICT: COASTAL POND - GREAT POND
  8. WATER RESOURCE PROTECTION DISTRICT:



OWNER/APPLICANT  
 202 FID 116  
 115 SPANANTON AVENUE  
 FALMOUTH, MA 02540

AT A MEETING OF THE FALMOUTH PLANNING BOARD HELD ON \_\_\_\_\_

APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED.

NOTE: THE PLANNING BOARD'S APPROVAL UNDER THE SUBDIVISION CONTROL LAW IS NECESSARY FOR THE LOT'S SQUARE FOOTAGE REGULATIONS AND SHOULD BE OBTAINED PRIOR TO THE RECORDING OF THIS PLAN.

DATE	DESCRIPTION	Drawn/Checked
09-23-2010	REVISIONS	
	PLAN OF LAND	
	PREPARED FOR	
	GIFFORD WORKFORCE HOUSING	
	IN	
	FALMOUTH,	MA

holmes and mcgrath, inc.  
 489 EAST STREET  
 FALMOUTH, MA 02540  
 PHONE: (508) 548-2200  
 FAX: (508) 548-2201  
 WWW.HOLMESANDMCGRATH.COM

## MORTGAGE AND SECURITY AGREEMENT

This Mortgage is made this 16<sup>th</sup> day of December, 2001 by and between Falmouth Housing Corporation, a duly authorized non profit corporation, validly existing under Chapter 180 of the Massachusetts General Laws, with a mailing address of 1115 Scranton Ave, Falmouth, Massachusetts 02540 as Mortgagor and Barnstable County by and through the Cape Cod Commission with a mailing address at 3225 Main Street, P.O. Box 228, Barnstable, MA 02630 as Mortgagee.

### ARTICLE I. GRANTING CLAUSE

The Mortgagor, FOR CONSIDERATION PAID, HEREBY GRANTS to the Mortgagee, to secure the payment of One hundred and twenty-five thousand and 00/100 (\$125,000.00) Dollars, with interest and any other charges due thereon, payable as provided in Mortgagor's promissory note of even date, (the "Note"), to secure the performance of all covenants and agreements contained herein, in the Note and to secure the payment and performance of all other debts, covenants and agreements of or by Mortgagor to or for the benefit of Mortgagee now existing or hereafter arising while this mortgage is still undischarged of record: (i) the buildings and other improvements, fixtures and equipment now or hereafter located on that certain parcel of real property presently known as and numbered 587 Gifford Street, Falmouth, Massachusetts, described in Exhibit "A" attached hereto (collectively, the "Land"); and (ii) any and all further or additional title, estate, interest or rights which may, at any time, be acquired by Mortgagor in and to the Land and (iii) all rents, issues, benefits and profits arising from the foregoing.

As further security for all of Mortgagor's obligations described or referred to herein, Mortgagor grants to Mortgagee a continuing security interest in the following property, whether now owned or hereafter acquired, and all additions, accessions, replacements and substitutions thereto and therefor and the proceeds, including insurance proceeds, thereof (hereinafter collectively called the "Collateral"):

All fixtures, machinery, equipment, furniture, furnishings, goods, chattel and other articles of personal property now or at any time hereafter attached to or used in any way in connection with the Premise described in Exhibit A hereto or intended for such use, whether or not so attached, and whether now owned or hereafter acquired, provided the same are owned by Mortgagor and not tenants or occupants of the Premise (hereinafter defined); all cash and non-cash proceeds from the foregoing; and all general intangibles, contract rights and profits and all books of account and records pertaining to, or arising out of the operation of such premises.

Mortgagor covenants and agrees that, as of the execution hereof and upon the subsequent acquisition of such Collateral, Mortgagor shall:

- (a) provide Mortgagee with a precise inventory of the same, as and when required by Mortgagee;
- (b) execute and deliver to Mortgagee, in form appropriate for recording and filing, a security agreement and financing statements on all such Collateral;
- (c) provide Mortgagee with such other assurances as it may require to establish Mortgagee's security interest in such Collateral; and
- (d) execute, deliver and cause to be recorded and filed from time to time, without notice or demand, and at the Mortgagor's sole cost and expense, continuances and such other instruments as will maintain Mortgagee's priority of security in such Collateral, and in the event of default hereunder Mortgagor hereby grants Mortgagee free power and authority as attorney irrevocable of Mortgagor to execute, deliver and record and/or file such instruments.

Mortgagor's interests in said Land, improvements, and collateral are hereinafter referred to as the "Premise".

## ARTICLE II. COVENANTS

Mortgagor covenants and agrees with Mortgagee:

- (1) to perform all of the covenants and agreements contained in the Note, the Mortgage, the Loan Agreement, the Affordable Housing Restriction, with and in all other documents or instruments executed by Mortgagor in connection herewith;
- (2) to pay at least ten (10) days prior to the last date on which the same may be paid without penalty or interest, all taxes, charges for water, sewer and other municipal services, and assessments, whether or not assessed against Mortgagor, if applicable or related in any way to the Premise, or any interest in the Premise of Mortgagor, Mortgagee or any other person or organization, or the debt, obligations or performance secured hereby, or the disbursement or application of the proceeds there from, excluding, however, any income or corporation excise tax of Mortgagee;
- (3) to carry with respect to the Premise and its use such insurance as Mortgagee may from time to time reasonably require and as may from time to time be required by any applicable Federal, State or local law or regulation, including, without limitation, all insurance specified as required to be provided by the Mortgagor in a Mortgage existing as of the date hereof between Mortgagor and the holder of the Senior Mortgages; such insurance to name Mortgagee as loss payee, subject to the Senior Mortgages, and as an additional insured party.
- (4) to maintain the Premise at all times in as good repair and condition as the same

now are or hereafter may be put, damage from casualty expressly not excepted, permitting no waste or strip of the Premise, nor any violation of any law, by-law, ordinance, restriction, regulation, order or code affecting the Premise or the use thereof; and not to remove or alter any of the improvements, equipment, appliances, furnishings and fixtures constituting part of the Premise without the prior written consent of Mortgagee; and to permit Mortgagee, its agents and employees reasonable opportunity to enter upon the Premise for the purpose of inspecting the condition of the Premise and determining Mortgagor's compliance with the covenants contained herein. Mortgagor covenants to cure any violation of law, by-law, ordinance, restriction, regulation, order or code affecting the Premise or any use thereof disclosed by Mortgagee's inspection or otherwise, within a reasonable period of time, but in no event longer than 30 days after written notice from the Mortgagee to the Mortgagor;

(5) to observe and perform all the obligations imposed upon Mortgagor under any lease of the Premises or any portion thereof, and not to do or permit to be done anything which would impair the security of such lease to Mortgagee, nor to enter into any lease except upon such lease form as may have been approved by Lender, nor to execute any lease providing for the payment of rent for more than one month in advance, nor to receive rent from any tenant of all or any part of the Premise for more than one month in advance without the prior written consent of Mortgagee, and any such advance rent in excess of one month received shall be held by Mortgagor in trust for the benefit of Mortgagee; and Mortgagor shall maintain true and accurate records of all security deposits and payments of the last month's rent, and the disposition thereof, shall pay interest thereon as required by law, and shall not violate any law or regulation applicable thereto; if so request by Mortgagee, Mortgagor shall place all security deposits and advance payments of rent, if any, in an escrow account satisfactory to Mortgagee;

(6) to occupy the entire Premise, or cause the same to be occupied by Mortgagor's lessees, in compliance with the Affordable Housing Restriction recorded herewith and, Mortgagor hereby assigns to Mortgagee any and all lease and sublease of the Premise or any part thereof, and all of Mortgagor's right to receive any or all rent and other income reserved in such lease, provided, however, that Mortgagor or its designee shall retain the right to receive such rent until the occurrence of a default under any instrument executed in connection with this transaction. Upon demand of Mortgagee, Mortgagor shall execute and deliver any such further instruments as Mortgagee may request to evidence further the foregoing assignment. Such assignments shall be in form satisfactory to Mortgagee, and Mortgagor hereby grants mortgagee full power and authority as attorney irrevocable of Mortgagor to make, execute, acknowledge, deliver and record such assignments. After any default by Mortgagor hereunder or under the terms of such assignments, Mortgagee shall be entitled to modify and otherwise deal with all such lease with the same power and discretion that Mortgagee would have if it were the lessor thereunder and Mortgagee shall be entitled to collect all of the rent and other income reserved in such lease, to collect and endorse any checks issued in the name of Mortgagor, and to apply the same to the debt secured hereby, and after foreclosure Mortgagee shall not be liable to account to Mortgagor for rents or other income thereafter accruing, provided however, that any such assignments shall also provide that Mortgagor or its designee may have and retain such rent and

profits until such default occurs;

(7) to furnish Mortgagee, from time to time, within a reasonable time after its demand, a true and complete statement of the annual expenses and income of the Premise, and financial statements of Mortgagor and any guarantors and endorsers, such statements to be in a form reasonably satisfactory to Mortgagee and to be certified by the Mortgagor as accurate and complete provided however, that such statements shall be delivered to Mortgagee within sixty days after the end of the fiscal year of Mortgagor and of any guarantor or endorser;

(8) if the Premise or any part thereof shall be damaged or destroyed by fire or other hazard insured against, or if the Premise or any portion thereof shall be taken by eminent domain, no settlement on account of any loss, damage or taking shall be made without the consent of Mortgagee, provided, however, after an Event of Default hereunder, Mortgagee may, at its option, settle any claims with the insurers or taking authority, and provide further that any proceeds from insurance or damages for such taking, as the case may be, shall be paid to Mortgagee, and Mortgagor hereby irrevocably assigns the same to Mortgagee, and Mortgagor hereby grants to Mortgagee full power and authority as attorney irrevocable of Mortgagor to settle such claims and to collect and endorse any checks issued in the name of Mortgagor. Mortgagee, in its discretion, may either apply any insurance proceeds or eminent domain award against any of the debt or obligations secured hereby (in which case Mortgagor's obligations hereunder to restore such damage to the Premises as may have been caused by such fire, other hazard or taking, shall terminate), or release such portion of the proceeds to Mortgagor as is necessary to restore the Premise to their prior condition insofar as is practicable upon such terms and conditions as Mortgagee deems appropriate and apply the balance thereof, if any, to the debt secured hereby; provided, however, that if any insurer of the Premise denies liability, Mortgagor shall not be relieved of its obligation to restore the Premise.

(9) if an Event of Default in the performance or observance of any covenant or agreement herein in the Note contained, Mortgagee shall have the right (without regard to the adequacy of any security) to apply toward the debt secured hereby any deposit, payment or any sum due from Mortgagee to Mortgagor without first enforcing any other rights of Mortgagee against Mortgagor, or against any endorser or guarantor of the Note or against the Premise;

(10) if Mortgagee shall become involved in any action or course of conduct with respect to the Note, this Mortgagee, the Premise, or any other security for the debt or obligations secured hereby, in order to protect its interest therein, including without limitation: Mortgagee's commencement and prosecution of foreclosure proceedings; the payment of real estate taxes, insurance premiums, prior or subsequent mortgages or security interests; involvement in bankruptcy proceedings concerning Mortgagor; entering the Premise for the care and management thereof; or defending or participating as a party in any action at law or in equity brought by Mortgagor or any other person or organization with respect to the Premise (or other security for the debt secured hereby), Mortgagor shall promptly reimburse Mortgagee for all charges, costs and expenses incurred by Mortgagee in connection therewith, including without

limitation reasonable attorneys' fees and an additional reasonable fee to compensate Mortgagee for overhead and personnel salaries and wages attributable to undertaking such actions or conduct;

(11) that at any foreclosure sale of the Premise, the Premise or any portion thereof may be offered for sale for one total price or separately, and the proceed of such sale or sales may be accounted for in one account without distinction between the items of security or without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshalling of assets. Mortgagee may, in the exercise of the power of sale herein given, sell the Premise and said sales may be held from time to time, by public or private sale, and the powers shall not be fully executed until all of the Premise and shall have been sold; if surplus proceeds are realized from a foreclosure sale, Mortgagee shall not be liable for any interest thereon pending distribution of such proceeds by Mortgagee; in the case of a foreclosure sale, Mortgagee shall be entitled to retain one (1%) percent of the purchase money (exclusive of prior liens) in addition to the costs, charges and expenses permitted by the Note and the Statutory Power of Sale;

(12) to notify Mortgagee promptly of the existence of any the exact details of any other lien or security interest affecting any portion of the Premise, now existing or hereafter arising and to make all payments that become due to any secured party having such security interests. Mortgagor represents that no lien or security interest presently exists in the Premise except as has heretofore been disclosed in writing to Mortgagee;

(13) that Mortgagee shall be entitled, but not obligated, to cure any default of Mortgagor hereunder, and shall be reimbursed by Mortgagor for all reasonable costs, charges, and expenses, including without limitation attorneys' fees, incurred in connection therewith, and that all sums for which Mortgagee may be entitled to reimbursement shall be added to the principal sum of the debt secured hereby, shall earn interest at the rate set forth in the Note, shall be secured by this Mortgage, and shall be payable on demand of Mortgagee, whether or not the remaining principal balance of the Note has been declared due and payable;

(14) that Mortgagor shall not:

- (a) create, permit to be created or suffer any lien or encumbrance on the premises (except for the lien for unpaid real estate taxes and betterment assessments prior to the commencement of interest and penalties thereon);
- (b) liquidate, terminate its existence, merge or consolidate with any other entity or dissolve;
- (c) file a petition under any chapter of the federal Bankruptcy code or institute any other proceeding under any law relating to bankruptcy, bankruptcy reorganization, insolvency or relief of debtors, or consent to an

assignment, composition or similar arrangement for the benefit of Mortgagor's creditors, or consent to appointment of a receiver for any of Mortgagor's property;

(15) if this Mortgage is at any time subject or subordinate to another mortgage, Mortgagor shall not modify, amend, or extend such prior mortgage, or the debt or any obligation secured thereby, without the consent of Mortgagee, which consent shall not be unreasonably withheld, delayed or conditioned. Any default under such prior mortgage or any obligations secured thereby shall be a default hereunder, and Mortgagee shall be entitled, but not obligated, to cure said default, as provided herein;

### **ARTICLE III. DEFAULT CLAUSE**

In the event: (i) of a failure to pay interest, principal or any other amount due on the Note in accordance with its terms continuing for ten days after Mortgagor receives written notice thereof, or of a breach of any other covenant, condition or agreement contained in this Mortgage remaining uncured for a period in excess of thirty (30) days after Mortgagor receives written notice thereof, or any breach in the covenants, conditions or agreements in any instrument given in connection with the Note and debt secured hereby, or in any other mortgage, debt or obligation of or from Mortgagor to Mortgagee remaining uncured after the expiration of any applicable grace periods; or (ii) if any involuntary proceedings shall be commenced against Mortgagor, if any, under any chapter of the federal Bankruptcy Code or other law relating to bankruptcy, bankruptcy reorganization, insolvency or relief of debtors, and such petition or proceeding is not dismissed within thirty (30) days from the date of which it is filed or instituted; or (iii) if Mortgagor becomes insolvent or is unable to pay its debts as they become due, become insolvent or unable to pay debts when due; then, at the option of Mortgagee, the entire debt secured hereby, together with all prepayment charges to which Mortgagee would be entitled under the Note or by law if the Note were prepaid in full, shall be due and payable, and Mortgagee shall have the Statutory Power of Sale as hereinafter provided. The failure at anytime of Mortgagee to exercise this option shall not constitute a waiver of the right to exercise the right at any other time.

### **ARTICLE IV. MISCELLANEOUS**

(a) Whether or not for additional interest or other consideration paid or payable to Mortgagee, no forbearance on the part of Mortgagee or extension of the time for the payment of the whole or any part of the obligations secured hereby, whether oral or in writing, or any other indulgence given by Mortgagee to Mortgagor or to any other party claiming any interest in or to the Premise, shall operate to release or in any manner affect the original liability of Mortgagor, or the priority of this Mortgage or to limit, prejudice or impair any right of Mortgagee, including without limitation, the right to realize upon the security, or any part thereof, for the obligations secured hereby or any of them, notice of any such extension, forbearance or indulgence being hereby waived by Mortgagor and all those claiming by, through or under Mortgagor; and no consent or waiver, express or implied, by Mortgagee to or of any default by Mortgagor shall be

construed as a consent or waiver to or of any further default in the same or any other term, condition, covenant or provision of this Mortgage or of the obligations secured hereby; in case redemption is had by the Mortgagor after foreclosure proceedings have begun, the holder shall be entitled to collect all reasonable costs, charges and expenses incurred up to the time of redemption.

(b) This instrument is intended to also be a Security Agreement under the Uniform Commercial Code ("U.C.C."). The conveyance of the Collateral shall constitute a grant of a U.C.C. Security Interest therein and the recording of this instrument shall have the effect of a fixture filing. In addition to any other remedy contained herein, upon the occurrence of any Event of Default by Mortgagor and at any time thereafter, Mortgagee shall have all of the remedies of a secured party under the U.C.C. as now in effect in The Commonwealth of Massachusetts, and such further remedies as may from time to time hereafter be provided under Massachusetts law for a secured party. Mortgagee will give to Mortgagor reasonable notice of the time and place of any public sale of Collateral or of the time after which any private sale or other intended disposition thereof is to be made, and such requirement of reasonable notice shall be met if such notice is provided at least five (5) days before the time of the sale or disposition; provided, however, that if the provisions of the U.C.C. as adopted in Massachusetts are applicable to any Collateral which is sold in connection with or as part of the Premise, or any part thereof, at one or more foreclosure sales, any notice required under such provision shall be fully satisfied by the notice given in execution of the Statutory Power of Sale. Expenses of retaking, holding, preparing for sale, selling and the like shall include the reasonable attorneys' fees and legal expenses of Mortgagee.

(c) Mortgagor agrees that all rights of Mortgagee may be exercised together or separately and further agrees that in exercising its Power of Sale, Mortgagee may sell the Collateral or any part thereof either separately from, or together with, the real property, or any part thereof, all as Mortgagee may in its sole discretion elect.

(d) In case any provision of the Note, this Mortgage, or any instrument executed by any person or organization in connection therewith shall be found unenforceable or invalid for any reason, the enforcement of any other provision shall be deemed modified to the extent necessary to be enforceable or if such modification is not practicable, such provision shall be deemed deleted from this Mortgage.

(e) This Mortgage is upon the STATUTORY CONDITION and upon the further condition that all covenants and agreements of Mortgagor in the Note, this Mortgage, all other instruments executed in connection therewith and in all other mortgages, debts and obligations of or from Mortgagor to or for the benefit of Mortgagee shall be kept and fully performed, and upon any breach of the same Mortgagee shall have the STATUTORY POWER OF SALE and any other given by statute.

#### **ARTICLE V. NOTICES**

All notices, requests, demands, consents or other communications given hereunder or in connection herewith shall be in writing and shall be deemed duly given if delivered by hand or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed to the party to receive such notice at its address first set forth above. Either party may, by notice given as aforesaid, change its address for all subsequent notices. Notice shall be deemed given when mailed as aforesaid.

The word "Mortgagor" as used herein means the Mortgagor named herein, whether one or several, and also means any subsequent owner or owners of the equity of redemption of the Premise, and all of the covenants and agreements of Mortgagor herein contained shall be binding upon Mortgagor, its heirs, executors, administrators, successors and assigns and shall be joint and several if more than one person constitutes Mortgagor. The word "Mortgagee" as used herein means Mortgagee named herein and any subsequent holder or holders of this Mortgage.

This Mortgage is executed under seal this 18<sup>th</sup> day of December, 2001

MORTGAGOR:

Falmouth Housing Corporation

By: [Signature]  
Name: Robert Murray  
Its: President

THE COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss. 12/18, 2001

Then personally appeared the above-named Robert Murray, the President of Falmouth Housing Corporation, aforesaid and acknowledged the foregoing instrument to be his/her free act and deed, and the free act and deed of Falmouth Housing Corporation, before me,

[Signature]  
Notary Public  
My commission expires: 12/27/07  
Jeffrey W Oppenheim

EXHIBIT ADescription of Land of Falmouth Housing Corporation

the land in Falmouth, Barnstable County, Massachusetts, shown as LOT 3, containing total area (both upland and wetland) of 541,100 square feet, more or less, on a plan entitled "Plan of Land prepared for Falmouth Housing and Service Center Nominee Trust, Gifford Street, Falmouth, Massachusetts," scale: 1"=60', date: May 26, 2000, prepared by BSS Design, Inc., which plan is recorded in Barnstable County Registry of Deeds Plan Book 563, Page 40.

Said LOT 3 is more particularly bounded and described as follows:

Beginning at the southwesterly corner of LOT 3, at a point on the easterly sideline of Gifford Street, a public way,

- Thence N 67° 18' 12" E by registered land now or formerly of David Peterson, 222.31 feet
- Thence S 71° 28' 46" E by said Peterson land, 152.13 feet;
- Thence S 79° 27' 25" E by said Peterson land 210.47 feet;
- Thence S 68° 41' 25" E by said Peterson land 131.31 feet;
- Thence N 26° 08' 40" E by land now or formerly of Bernard Cohen, Trustee, and by land shown on said plan as "Valley Ridge Open Space", 162.50 feet;
- Thence S 75° 00' 15" E by said Valley Ridge Open Space, 248 feet, more or less, to the easterly edge of a maple swamp as shown on said plan;
- Thence generally northerly, then northwesterly and then westerly by land now or formerly of Aurelia L. Scorgie, Trustee, and by land now or formerly of Delinda Labeet, running by the easterly and northerly limits of said swamp as shown on said plan, a total distance of 860 feet, more or less, to the land of Delinda Labeet described in a deed recorded in Barnstable County Registry of Deeds, Book 10941, Page 154, and shown on the plan recorded at Plan Book 65, Page 97;
- Thence S 11° 54' 17" W by said last mentioned Labeet land, 50 feet to a point within said maple swamp;

- Thence N 52° 30' 30" W by said Labeet land, 194.67 feet;
- Thence N 49° 21' 14" W by said Labeet land, 199.42 feet;
- Thence N 56° 01' 01" W by said Labeet land, 13.53 feet;
- Thence S 08° 10' 30" W by Lot 1 on the plan dated May 26, 2000, referred to hereinabove, 164.82 feet;
- Thence S 81° 49' 30" E by Lot 2 on said plan dated May 26, 2000, 128.97 feet;
- Thence S 07° 17' 59" E by said Lot 2, 226.72 feet;
- Thence N 81° 49' 30" W by said Lot 2, 320.03 feet;
- Thence S 51° 46' 49" W by said Lot 2, 261.43 feet; and
- Thence S 08° 10' 30" W by Gifford Street, 409.71 feet, to the point of beginning.

LOT 3 is subject to a utility easement for the benefit of Lot 1 and Lot 2, within that area of LOT 3 shown on said plan dated May 26, 2000, labeled "utility easement," within which easement area the owners from time to time of Lots 1 and 2 may install, maintain, replace an use utility service lines and conduits to serve such lots, including the right to assign or convey such easement to include the right to assign or convey rights therein to the Town of Falmouth and to public utility companies, provided that all utility service lines and conduits shall be installed underground (excepting transformer boxes or other fixtures normally installed on or above ground).

LOT 3 has the benefit of an easement to install, maintain, replace and use utility service lines and conduits to serve LOT 3, within that portion of Lot 2 labeled "15' wide utility easement" and within the portion of Lot 1 labeled "access & utility easement," such easement to include the right to assign or convey rights therein to the Town of Falmouth and to public utility companies, provided that all utility service lines and conduits shall be installed underground (excepting transformer boxes or other fixtures normally installed on or above ground). Said rights include only utility rights and not the right to use Lot 1 or Lot 2 for access to or from LOT 3.

The premises are conveyed subject to a first Mortgage and Security Agreement and Financing Statement from Falmouth Housing Corporation to Citizens Bank of Massachusetts recorded with Barnstable County Registry of Deeds in Book 13964, Page 217.

CERTIFICATE OF VOTE

I, Frank K. Duffy, Jr., Clerk of FALMOUTH HOUSING CORPORATION and keeper of records and corporate seal of said corporation, hereby certify that, upon motion duly made and seconded, it was unanimously *voted by the Board of Directors of Falmouth Housing Corporation at a duly called meeting on December 14th 2001;*

VOTED: That Robert Murray, President of Falmouth Housing Corporation is hereby authorized and empowered to, on behalf of, and in the name of this corporation to negotiate and procure a commercial mortgage loan from Barnstable County Rental Housing Program in the original amount of \$125,000.00 secured by a second mortgage and assignment of leases and rents on the property located on Gifford Street, Falmouth, Massachusetts. Additional security for the transaction will be a security interest in all personal property of Falmouth Housing Corporation used in connection with said premises, an assignment of the corporate contracts for the construction, permits, architects and engineers drawings, if any.

VOTED: To authorize Robert Murray, President to do any and all acts necessary to consummate said loan and to execute any documents including a promissory note and security agreement and perform any acts which he deems necessary for the business of the Corporation.

I, Frank K. Duffy, Jr. certify that I am the Clerk of Falmouth Housing Corporation and that the above votes are in full force and effect and have not been amended, rescinded or revoked.

IN WITNESS WHEREOF, I have hereunto affixed my name as secretary and have caused the corporate seal of said corporation to be hereto affixed this 17<sup>th</sup> day of December, 2001.

*Frank K. Duffy, Jr.*  
Frank K. Duffy, Jr., Clerk



BARNSTABLE REGISTRY OF DEEDS

**HOME INVESTMENT PARTNERSHIPS PROGRAM  
MORTGAGE AND SECURITY AGREEMENT**

(Property Address: 587 Gifford Street, Falmouth, MA)

This MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), made as of this 11<sup>th</sup> day of January, 2005, is given by 704 FHC LLC, a Massachusetts limited liability company having an address at 115 Scranton Avenue, Falmouth, Massachusetts 02540, as Mortgagor, in favor of BARNSTABLE COUNTY, a body politic of the Commonwealth of Massachusetts, acting by and through the Cape Cod Commission, with a mailing address at 3225 Main Street, P.O. Box 226, Barnstable, Massachusetts 02630, as Mortgagee.

**ARTICLE I. GRANTING CLAUSE**

Mortgagor, FOR CONSIDERATION PAID, HEREBY GRANTS to Mortgagee, with mortgage covenants, to secure the payment of ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00), with interest and any other charges due thereon, payable as provided in Mortgagor's Promissory Note of even date herewith (the "Note"), to secure the performance of all covenants and agreements contained herein, in the Note and in a loan agreement of even date between Mortgagor and Mortgagee (the "Loan Agreement"), and to secure the payment and performance of all other debts, covenants and agreements of or by Mortgagor to or for the benefit of Mortgagee now existing or hereafter arising while this Mortgage is still undischarged of record, the land, with buildings and other improvements, whether now existing or hereafter constructed or located thereon, commonly known as and numbered 587 Gifford Street, Falmouth, Barnstable County, Massachusetts, as more particularly described in Exhibit A attached hereto, together with (i) any and all further or additional title, estate, interest or rights which may, at any time, be acquired by Mortgagor in and to such land and improvements; and (ii) all rents, issues, benefits and profits arising from the foregoing.

As further security for all of Mortgagor's obligations described or referred to herein, Mortgagor grants to Mortgagee a continuing security interest in the following property, whether now owned or hereafter acquired, and all additions, accessions, replacements and substitutions thereto and therefor and the proceeds, including insurance proceeds, thereof (hereinafter collectively called the "Collateral"):

All fixtures, machinery, equipment, furniture, furnishings, goods, chattel and other articles of personal property now or at any time hereafter attached to or used in any

Please return to:

*Paul Ruchinskas  
Cape Cod Commission  
3225 Main Street, P.O. Box 226  
Barnstable, MA 02630*

The land in Falmouth, Barnstable County, Massachusetts, shown as **LOT 3**, containing total area (both upland and wetland) of 541,100 square feet, more or less, on a plan entitled "Plan of Land prepared for Falmouth Housing and Service Center Nominee Trust, Gifford Street, Falmouth, Massachusetts," scale: 1" = 60', date: May 26, 2000, prepared by BSS Design, Inc., which plan is recorded in Barnstable County Registry of Deeds Plan Book 563 Page 40.

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Thence N 26° 08' 40" E by land now or formerly of Bernard Cohen, Trustee, and by land shown said plan as "Valley Ridge Open Space," 162.50 feet;

Thence S 75° 00' 15" E by said Valley Ridge Open Space, 248 feet, more or less, to the easterly edge of a maple swamp as shown on said plan;

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Thence N 56° 01' 01" W by said Labeet land, 13.53 feet;

Thence S 08° 10' 30" W by Lot 1 on the plan dated May 26, 2000, referred to hereinabove,

164.82 feet;

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Thence S 07° 17' 59" E by said Lot 2, 226.72 feet;

Thence N 81° 49' 30" W by said Lot 2, 320.03 feet;

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Address of Premises: 587 Gifford Street, Falmouth, MA 02540

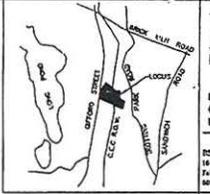
*FOR TITLE SEE BOOK 19383, PAGE 163.*

### Exhibit B

#### List of Senior Mortgages

1. That certain first priority mortgage granted to Massachusetts Housing Partnership Fund Board securing a promissory note in the original principal amount of \$3,780,000.00.

2. That certain shared second priority mortgage granted to Massachusetts Housing Partnership Fund Board securing a promissory note in the original principal amount of \$1,745,000.00.
  
3. That certain shared second priority mortgage granted to the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development under the Affordable Housing Trust Fund Statute, M.G.L. c. 121D, acting by the Massachusetts Housing Finance Agency as Administrator, securing a promissory note in the original principal amount of \$483,801.00.



**BSS**  
DESIGN

LAND SURVEYING  
CIVIL ENGINEERING  
LAND PLANNING

BSS Design, Incorporated  
184 Southwold Lane, Suite 104  
Falmouth, Massachusetts 02540  
508.548.8800 FAX 508.548.8333



**NOTES:**

- OWNERS: FALMOUTH HOUSING AND SERVICE CENTER HOMESEEK TRUST
- ZONING DISTRICT: AGD
- WATER RESOURCE OVERLAY DISTRICT.
- FLOOD ZONE: ZONE C

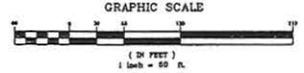
PLAN OF LAND  
PREPARED FOR  
FALMOUTH HOUSING AND SERVICE CENTER  
NOMINEE TRUST  
GIFFORD STREET  
FALMOUTH, MASSACHUSETTS

Scale  
1" = 60'  
Date  
MAY 26, 2000  
Drawn  
TJB/EJP  
Checked  
  
Job Number  
99193  
Revisions



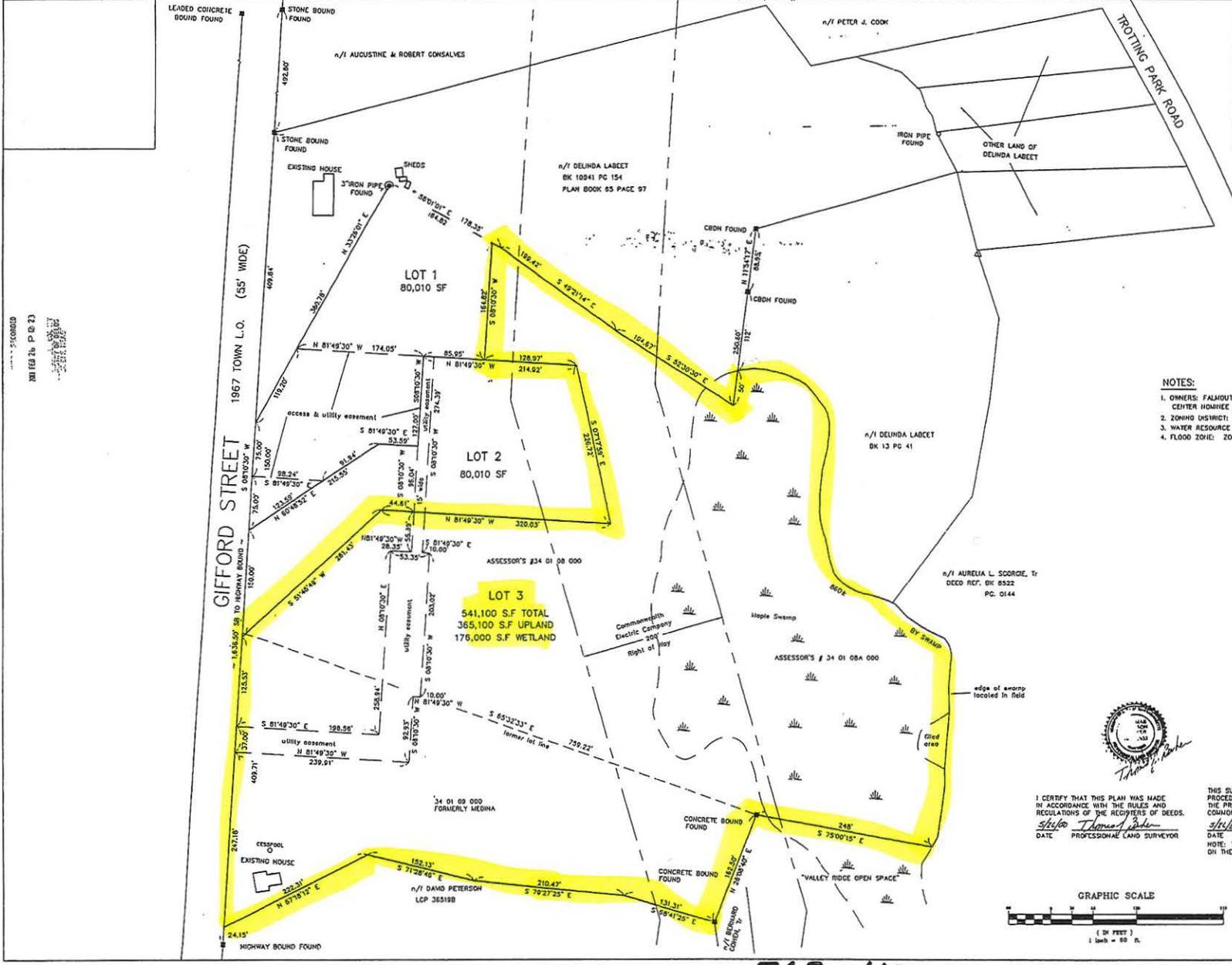
I CERTIFY THAT THIS PLAN WAS MADE  
IN ACCORDANCE WITH THE RULES AND  
REGULATIONS OF THE RECORDERS OF DEEDS.  
*Shirley Thomas-Polun*  
DATE: PROFESSIONAL LAND SURVEYOR

THIS SURVEY AND PLAN CONFORM TO THE  
PROCEDURAL AND TECHNICAL STANDARDS FOR  
THE PRACTICE OF LAND SURVEYING IN THE  
COMMONWEALTH OF MASSACHUSETTS  
*Shirley Thomas-Polun*  
DATE: PROFESSIONAL LAND SURVEYOR  
NOTE: THIS PLAN IS BASED ON AN  
ON THE GROUND INSTRUMENT SURVEY.



Approval under the Subdivision  
Control Law NOT required  
*Patricia G. Jones*  
Date: 6/27/00

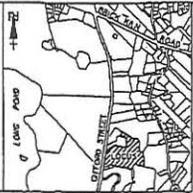
Drawing number  
88-338



563-40

FORMER LOT 3

# NEW LOT 4



I certify that this plan was made in accordance with the rules and regulations of the Registrars of Deeds.

HOLMES AND McGRATH, INC.

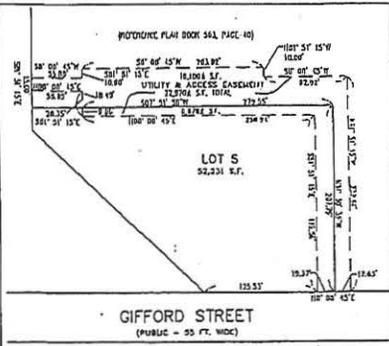
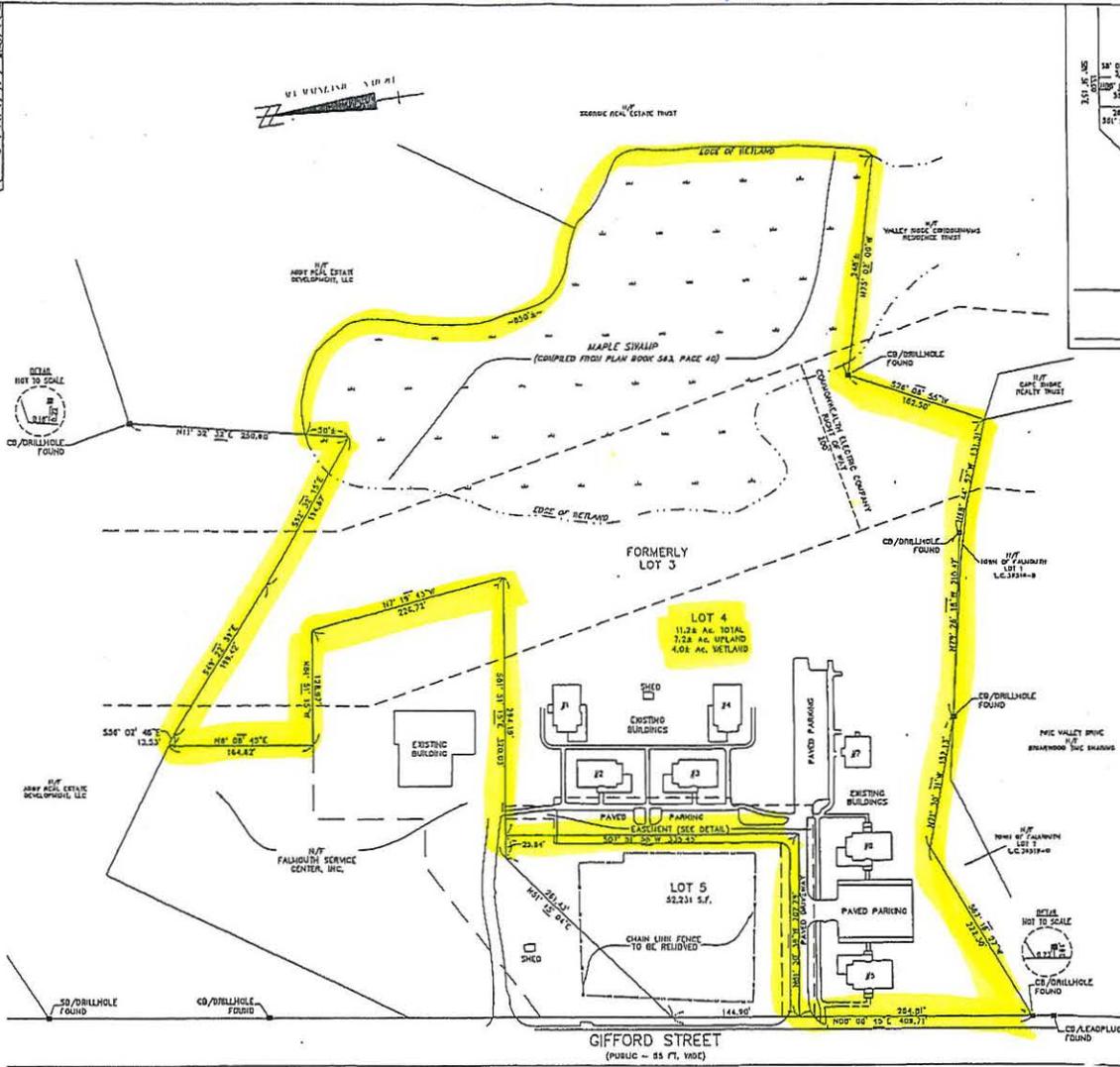
*Michael B. McGrath*  
 Michael B. McGrath  
 Registered Professional Land Surveyor Date

This survey and plan conform to the procedural and technical standards for the practice of Land Surveying in the Commonwealth of Massachusetts.

HOLMES AND McGRATH, INC.

*Michael B. McGrath*  
 Michael B. McGrath  
 Registered Professional Land Surveyor Date

Note: This plan is based on an on-the-ground instrument survey.

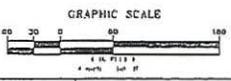


**OWNER/APPLICANT**  
 704 FHO LLC  
 115 SCRANTON AVENUE  
 FALMOUTH, MA 02540

AT A MEETING OF THE FALMOUTH PLANNING BOARD HELD IT WAS VOTED: "APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED."

NOTE: THE PLANNING BOARD'S ENDORSEMENT UNDER THE SUBDIVISION CONTROL LAW IS NOT A DETERMINATION THAT THE LOTS COMPLY WITH ZONING REGULATIONS AND SHOULD NOT BE CONSTRUED AS AN APPROVAL THAT THE LOTS DEPICTED ON THE PLAN ARE ENTITLED TO A BUILDING PERMIT.

- NOTES**
1. ADDRESS: 587 GIFFORD STREET
  2. ASSESSOR'S NUMBER: 34 01 008 003
  3. ZONING DISTRICT: AG8
  4. FLOOD HAZARD ZONES: X
  5. REFERENCE: PLAN BOOK 363, PAGE 40 LAND COURT PLAN 36515-B
  6. WIND EXPOSURE CATEGORY: 0
  7. OVERLAY DISTRICTS: COASTAL POND - GREAT POND
  8. WATER RESOURCE PROTECTION DISTRICT



DATE	DESCRIPTION	Drawn	Checked
REVISIONS			
PLAN OF LAND PREPARED FOR GIFFORD WORKFORCE HOUSING IN FALMOUTH, MA			
SCALE: 1" = 40'	DATE: AUG. 28, 2010		
<b>holmes and mcgrath, inc.</b>			
<small>205 West Street, Suite 101, Falmouth, MA 02540 508-546-3384 www.holmesandmcgrath.com</small>			
DRAWN BY: <i>[Signature]</i>	CHECKED: <i>[Signature]</i>	JOB NO: 2010078	
DATE: 08-28-10		SHEET 1 OF 1	

**AMENDMENT OF MORTGAGE**

**Mortgaged Property: 587 Gifford Street, Falmouth, Barnstable County, Massachusetts.**

This Amendment of Mortgage and Security Agreement dated as of \_\_\_\_\_, 2019 (this "Agreement") is by and between FALMOUTH HOUSING CORPORATION, a Massachusetts non-profit corporation, having an address of 704 Main Street, Falmouth, MA 02540 ("Mortgagor") and **704 FHC, LLC, A Massachusetts limited liability company, having an address of 704 Main Street, Falmouth, MA 02540 ("704 FHC")**, as successor in record title to the **Mortgaged Property**; and BARNSTABLE COUNTY, a body politic of the Commonwealth of Massachusetts, acting by and through its County Commissioners (as authorized successor to the Cape Cod Commission), with a mailing address of 3195 Main Street, P.O. Box 427, Barnstable, Mass 02630 (the "Mortgagee")

Reference is hereby made to a certain Mortgage and Security Agreement dated December 18, 2001 and recorded with the Barnstable Registry of Deeds (the "Registry") in Book 14605, Page 281 (the "Mortgage") from Mortgagor in favor of Mortgagee and covering the property known as 587 Gifford Street, Falmouth, MA (the "Mortgaged Property").

WHEREAS, the Mortgage secures a loan in the original principal amount of ONE HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$125,000.00) (the "Loan") owed by Mortgagor to Mortgagee pursuant and subject to the terms and conditions of a certain promissory note dated as of December 18, 2001 between Mortgagor and Mortgagee (the "Loan Agreement"); and

WHEREAS, the Mortgagor and **704 LLC** wish to amend the Mortgaged Property to release from the Mortgage 1.2 acres of land to facilitate the construction and financing of twenty (20) new housing units, which parcel of land is identified as Lot 4 on a certain plan "Plan of Land prepared for Gifford Workforce Housing in Falmouth, MA, Scale: 1"=60', Date: October 11, 2018" recorded with the Registry in Plan Book \_\_\_\_\_ Page \_\_\_\_\_.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt whereof is hereby acknowledged, it is hereby agreed by and among Mortgagor, **704 LLC**, and Mortgagee as follows:

1. The Mortgage is hereby amended by deleting the Exhibit A attached thereto (Legal Description of Mortgaged Property) and replacing it with the new Exhibit "A" attached hereto.

2. All references to the Mortgage in the Loan Agreement or any other Loan Document (as defined in the Loan Agreement) shall mean and refer to the Mortgage as hereby modified, and as the Mortgage may be further amended or modified.
3. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
4. Mortgagor **and 704 LLC** hereby confirm the grant of the Mortgage to the Mortgagee and as modified pursuant to this Agreement, ratifies and confirms the terms, covenants, provisions and conditions of the Mortgage which remain in full force and effect.
5. This Agreement shall not waive, annul, vary, or affect any provisions, conditions, covenants or agreements contained in the Loan Documents nor affect or impair any rights, powers or remedies thereunder, except for the modification of the Mortgaged Property as provided in this Agreement.
6. This Agreement may be executed in any number of counterparts by the parties hereto, each of which counterparts when so executed shall be an original, but all the counterparts shall together constitute one and the same agreement.

IN WITNESS WHEREOF, this Amendment of Mortgage is executed as a sealed instrument as of the day and year first above written.

MORTGAGOR:

FALMOUTH HOUSING CORPORATION

By: \_\_\_\_\_  
Name:  
Title: President

By: \_\_\_\_\_  
Name:  
Title: Treasurer

**704 FHC, LLC**

By: \_\_\_\_\_  
Name:  
Title: **Manager**

COMMONWEALTH OF MASSACHUSETTS

County of \_\_\_\_\_, ss.

On this \_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, \_\_\_\_\_ personally appeared, proved to me through satisfactory evidence of identification, which was: [ ] at least one current document issued by a federal or state government agency bearing the photographic image of the signatory's face and signature, [ ] the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to me and who personally knows the signatory, or [ ] identification of the signatory based on my personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as President of Falmouth Housing Corporation, as the voluntary act of said corporation.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

County of \_\_\_\_\_, ss.

On this \_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, \_\_\_\_\_ personally appeared, proved to me through satisfactory evidence of identification, which was:  at least one current document issued by a federal or state government agency bearing the photographic image of the signatory's face and signature,  the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to me and who personally knows the signatory, or  identification of the signatory based on my personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as **Manager of 704 FHC, LLC**, as the voluntary act of said LLC.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

MORTGAGEE:  
BARNSTABLE COUNTY,  
By its County Commissioners,  
Duly Authorized

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

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

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

COMMONWEALTH OF MASSACHUSETTS

County of Barnstable, ss.

On this \_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, \_\_\_\_\_ personally appeared, proved to me through satisfactory evidence of identification, which was:  at least one current document issued by a federal or state government agency bearing the photographic image of the signatory's face and signature,  the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to me and who personally knows the signatory, or  identification of the signatory based on my personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as County Commissioner in and for Barnstable County.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

EXHIBIT A

The land with all buildings and improvements thereon located in Falmouth, Barnstable County, Massachusetts, shown as LOT 4, containing total area of 11.2± acres, on a plan entitled "Plan of Land prepared for Gifford Workforce Housing in Falmouth, Massachusetts," scale 1"=60' date October 11, 2018, prepared by Holmes and McGrath, Inc., which plan is recorded in Barnstable County Registry of Deeds Plan Book \_\_\_\_\_ Page \_\_\_\_\_.

LOT 4 is subject to a utility easement for the benefit of LOT 1 and LOT 2 shown on a plan dated May 26, 2000 recorded at said Registry in Plan Book 563 Page 40 within that area of LOT 4 shown on said plan and labeled "utility easement," within which easement area the owners from time to time of said LOT 1 and LOT 2 may install, maintain, replace and use utility service lines and conduits to serve such lots, including the right to assign or convey such easement to include the right to assign or convey rights therein to the Town of Falmouth and to public utility companies, provided that all utility service lines and conduits shall be installed underground (excepting transformer boxes or other fixtures normally installed on or above the ground).

LOT 4 has the benefit of an easement to install, maintain, replace and use utility service lines and conduits to serve LOT 4, within that portion of the above-referenced LOT 2 labeled "15' wide utility easement" on the plan recorded at said Registry in Plan Book 563 Page 40 and within the portion of the above-referenced LOT 1 labeled "access & utility easement" on said plan in Plan Book 563 Page 40, such easement to include the right to assign or convey rights therein to the Town of Falmouth and to public utility companies, provided that all utility service lines and conduits shall be installed underground (excepting transformer boxes or other fixtures normally installed on or above ground). Said rights include only utility rights and not the right to use said LOT 1 or said LOT 2 for access to or from LOT 4.

Address of Premises: 587 Gifford Street, Falmouth, MA 02540

For title, see deed recorded at the Barnstable County Registry of Deeds in Book 19383, Page 163.

## AMENDMENT OF MORTGAGE

**Mortgaged Property: 587 Gifford Street, Falmouth, Barnstable County, Massachusetts.**

This Amendment of Mortgage and Security Agreement dated as of \_\_\_\_\_, 2019 (this "Agreement") is by and between 704 FHC, LLC, a Massachusetts limited liability company having an address of 704 Main Street, Falmouth, MA 02540 (the "Mortgagor"); and BARNSTABLE COUNTY, a body politic of the Commonwealth of Massachusetts, acting by and through its County Commissioners (as authorized successor to the Cape Cod Commission), with a mailing address of 3195 Main Street, P.O. Box 427, Barnstable, Mass 02630 (the "Mortgagee")

Reference is hereby made to a certain Mortgage and Security Agreement dated January 11, 2005 and recorded with the Barnstable Registry of Deeds (the "Registry") in Book 19435, Page 343 (the "Mortgage") from Mortgagor in favor of Mortgagee and covering the property known as 587 Gifford Street, Falmouth, MA (the "Mortgaged Property").

WHEREAS, the Mortgage secures a loan in the original principal amount of ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00) (the "Loan") owed by Mortgagor to Mortgagee pursuant and subject to the terms and conditions of a certain Loan Agreement dated as of January 11, 2005 between Mortgagor and Mortgagee (the "Loan Agreement"); and

WHEREAS, the Mortgagor wishes to amend the Mortgaged Property to release from the Mortgage 1.2 acres of land to facilitate the construction and financing of twenty (20) new housing units, which parcel of land is identified as Lot 4 on a certain plan "Plan of Land prepared for Gifford Workforce Housing in Falmouth, MA, Scale: 1"=60', Date: October 11, 2018" recorded with the Registry in Plan Book \_\_\_\_\_ Page \_\_\_\_\_.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt whereof is hereby acknowledged, it is hereby agreed by and among Mortgagor and Mortgagee as follows:

1. The Mortgage is hereby amended by deleting the Exhibit A attached thereto (Legal Description of Mortgaged Property) and replacing it with the new Exhibit "A" attached hereto.
2. All references to the Mortgage in the Loan Agreement or any other Loan Document (as defined in the Loan Agreement) shall mean and refer to the Mortgage as hereby modified, and as the Mortgage may be further amended or modified.

3. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
4. Mortgagor hereby confirms the grant of the Mortgage to the Mortgagee and as modified pursuant to this Agreement, ratifies and confirms the terms, covenants, provisions and conditions of the Mortgage which remain in full force and effect.
5. This Agreement shall not waive, annul, vary, or affect any provisions, conditions, covenants or agreements contained in the Loan Documents nor affect or impair any rights, powers or remedies thereunder, except for the modification of the Mortgaged Property as provided in this Agreement.
6. This Agreement may be executed in any number of counterparts by the parties hereto, each of which counterparts when so executed shall be an original, but all the counterparts shall together constitute one and the same agreement.

IN WITNESS WHEREOF, this Amendment of Mortgage is executed as a sealed instrument as of the day and year first above written.

MORTGAGOR:

704 FHC, LLC

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

Name:

Title: Manager

COMMONWEALTH OF MASSACHUSETTS

County of \_\_\_\_\_, ss.

On this \_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, \_\_\_\_\_ personally appeared, proved to me through satisfactory evidence of identification, which was: [ ] at least one current document issued by a federal or state government agency bearing the photographic image of the signatory's face and signature, [ ] the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to me and who personally knows the signatory, or [ ] identification of the signatory based on my personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as Manager of 704 FHC, LLC, as the voluntary act of 704 FHC, LLC.

\_\_\_\_\_  
Notary Public

My Commission Expires:

MORTGAGEE:  
BARNSTABLE COUNTY,  
By its County Commissioners,  
Duly Authorized

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

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

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

COMMONWEALTH OF MASSACHUSETTS

County of Barnstable, ss.

On this \_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, \_\_\_\_\_ personally appeared, proved to me through satisfactory evidence of identification, which was: [ ] at least one current document issued by a federal or state government agency bearing the photographic image of the signatory's face and signature, [ ] the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to me and who personally knows the signatory, or [ ] identification of the signatory based on my personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as County Commissioner in and for Barnstable County.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## EXHIBIT A

The land with all buildings and improvements thereon located in Falmouth, Barnstable County, Massachusetts, shown as LOT 4, containing total area of 11.2± acres, on a plan entitled "Plan of Land prepared for Gifford Workforce Housing in Falmouth, Massachusetts," scale 1"=60' date October 11, 2018, prepared by Holmes and McGrath, Inc., which plan is recorded in Barnstable County Registry of Deeds Plan Book \_\_\_\_\_ Page \_\_\_\_\_.

LOT 4 is subject to a utility easement for the benefit of LOT 1 and LOT 2 shown on a plan dated May 26, 2000 recorded at said Registry in Plan Book 563 Page 40 within that area of LOT 4 shown on said plan and labeled "utility easement," within which easement area the owners from time to time of said LOT 1 and LOT 2 may install, maintain, replace and use utility service lines and conduits to serve such lots, including the right to assign or convey such easement to include the right to assign or convey rights therein to the Town of Falmouth and to public utility companies, provided that all utility service lines and conduits shall be installed underground (excepting transformer boxes or other fixtures normally installed on or above the ground).

LOT 4 has the benefit of an easement to install, maintain, replace and use utility service lines and conduits to serve LOT 4, within that portion of the above-referenced LOT 2 labeled "15' wide utility easement" on the plan recorded at said Registry in Plan Book 563 Page 40 and within the portion of the above-referenced LOT 1 labeled "access & utility easement" on said plan in Plan Book 563 Page 40, such easement to include the right to assign or convey rights therein to the Town of Falmouth and to public utility companies, provided that all utility service lines and conduits shall be installed underground (excepting transformer boxes or other fixtures normally installed on or above ground). Said rights include only utility rights and not the right to use said LOT 1 or said LOT 2 for access to or from LOT 4.

Address of Premises: 587 Gifford Street, Falmouth, MA 02540

For title, see deed recorded at the Barnstable County Registry of Deeds in Book 19383, Page 163.

# AGENDA ITEM 8h

Authorizing the execution of Certificates for Dissolving Septic Betterments



**BARNSTABLE COUNTY  
COMMUNITY SEPTIC MANAGEMENT  
LOAN PROGRAM**

3195 MAIN STREET/ P.O.BOX 427  
BARNSTABLE, MASSACHUSETTS 02630



Kendall Ayers  
Program Administrator

Phone: (508) 375-6610

Fax: (508) 375-6854

[www.barnstablecountysepticloan.org](http://www.barnstablecountysepticloan.org)

**MEMORANDUM**

**DATE:** March 12, 2019  
**TO:** County Commissioners  
**FROM:** Community Septic Management Loan Program  
**SUBJECT:** Certificates for Dissolving Septic Betterments

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Please execute Certificates for Dissolving Septic Betterments certifying that the betterment assessments upon the hereinafter described parcels of real estate in the Notices of Betterment Assessment recorded in Barnstable County Registry of Deeds or Barnstable Registry District of the Land Court as listed below, stating that betterments to be assessed pursuant to a betterment agreement for septic improvements, in accordance with General Laws, Chapter 111, Section 127B 1/2 have, together with any interest and costs thereon, been paid or legally abated.

Approved:

Board of Regional Commissioners

\_\_\_\_\_  
Ronald Bergstrom, Chair

\_\_\_\_\_  
Ronald R. Beaty, Vice-Chair

\_\_\_\_\_  
Mary Pat Flynn, Commissioner

\_\_\_\_\_  
Date

# CERTIFICATES FOR DISOLVING SEPTIC BETTERMENTS FOR 03/13/19

Barnstable Registry District of the Land Court		Barnstable County Registry Of Deeds						
Notice of Betterment Assessment Document No.	Deed Reference Document No.	Deed Reference Certificate of Title No.	Notice of Betterment Assessment Book	Notice of Betterment Assessment Page	Deed Reference Book	Deed Reference Page	Owner(s) Named in Betterment Assessment	Location of Property
X	X	X	31675	214	23554	106	Eileen F. Powers	Assessors Map 209 Parcel 069 156 Old Stage Road Centerville (Barnstable)
X	X	X	23848	44	8224	14	Christopher M. Hamilton Karen E. Hamilton	Assessors Map 8-185 Parcel 163 21 Ryder Circle Sandwich
X	X	X	31771	136	4928	246	Eileen Mescall Patricia A. Mescall	Assessors Map 212 Parcel 59 17 Hazelwood Road South Dennis (Dennis)
X	X	X	30629	175	28738	187	David P. Scanlon William R. Bennett	Assessors Map 172 Parcel 112 9 Vinland Drive South Dennis (Dennis)
X	X	X	30848	133	7304	41	Robert J. Knepper Holly L. Knepper	Assessors Map 107 Parcel 55 9 Rhine Road Yarmouth Port (Yarmouth)
X	X	X	31632	325	29045	179	Joel W. Chamberlain Linda R. Chamberlain	Assessors Map 90 Parcel 64 39 Green Way South Yarmouth (Yarmouth)
1255430	1021155 Lot 103 Plan 6139-Q Sh 3	178770	X	X	X	X	Cherri-Ann Strom f/k/a Cherri-Ann Stinnett	Assessors Map 10 Parcel 123 29 Meredith Road Forestdale (Sandwich)
1053815	691335 Lot 41 Plan 28120-B Sh 3	144044	X	X	X	X	Nancy Ellis Melanson a/k/a Nancy J. Ellis	Assessors Map 98 Parcel 57-41 22 Fredericksburg Avenue East Harwich (Harwich)