



SUDBURY SELECT BOARD
TUESDAY DECEMBER 7, 2021
6:30 PM, ZOOM

Item #	Time	Action	Item
	6:30 PM		CALL TO ORDER
			Opening remarks by Chair
			Reports from Town Manager
			Reports from Select Board
			Citizen's comments on items not on agenda
MISCELLANEOUS			
1.			Employee and Supervisor of the Year recognitions
2.		VOTE	Discussion and possible vote on finalization of Financial Policies draft document (~45 min.)
3.			Bruce Freeman Rail Trail update by Environmental Planner Beth Suedmeyer. (~35 min.)
4.		VOTE	Town Manager Hayes to present Key Performance Indicators (KPI) projects: Fairbank Community Center Rebuild; Eversource Litigation; Bruce Freeman Rail Trail (BFRT); Town Hall Restoration; Town-wide ADA Assessment; Comprehensive Wastewater Management Plan; and American Rescue Plan Act (ARPA). (~35 min.)
5.		VOTE	Sewataro Discussion: · Update on outstanding Sewataro questions list · Update on public education document to be drafted by Subcommittee Update on swimming/fishing ponds and ongoing MA Department of Public Health/MA Department of Environmental Protection meetings . Discussion on Camp Operator/Property Manager contract renewal decision approach/timeline · Sewataro Use Policy discussion · Other Outstanding Sewataro items (~45 min.)
6.			Fire Station discussion. Town Manager Hayes to provide update on design and project status for Fire Station 2. (~20 min.)
7.		VOTE	Open 2022 Annual Town Meeting warrant and announce that Annual Town Meeting will commence Monday, May 2, 2022 at Lincoln-Sudbury Regional High School. Warrant to close Monday, January 31, 2021 at 12:00 Noon. (~15 min.)

These agenda items are those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. Some items may be taken out of order or not be taken up at all. The Chair will strive to honor timed items as best as possible, however, the estimated timing may occasionally be inaccurate.

Item #	Time	Action	Item
8.		<i>VOTE</i>	Discuss potential 2022 Annual Town Meeting Select Board articles. (~20 min.)
9.			Discuss 2022 Annual Town Meeting logistics and potential costs. (~15 min.)
10.			American Rescue Plan Act (ARPA) funds discussion: Possible dedicated consultant/staff member; process recap and discussion on allocation tracking. (~20 min.)
11.		<i>VOTE</i>	Review open session minutes of 11/3/21 and possibly vote to approve minutes.
12.			Citizen's Comments (cont)
13.			Upcoming Agenda Items
CONSENT CALENDAR			
14.		<i>VOTE</i>	Vote to approve the Town Manager appointment of Karyn Jones, 27 Pendleton Road, to the Commission on Disability (COD) for a term expiring 5/31/23.

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SUDBURY SELECT BOARD

Tuesday, December 7, 2021

MISCELLANEOUS (UNTIMED)

1: Employee and Supervisor of the Year recognitions

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Employee and Supervisor of the Year recognitions

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

Approximate agenda time requested: 05 minutes

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Henry L Hayes	Pending
Jonathan Silverstein	Pending
Jennifer Roberts	Pending
Select Board	Pending

12/07/2021 6:30 PM



SUDBURY SELECT BOARD
Tuesday, December 7, 2021

MISCELLANEOUS (UNTIMED)

2: Discussion and possible vote on finalization of Financial Policy

REQUESTOR SECTION

Date of request:

Requestor: Chair Roberts

Formal Title: Discussion and possible vote on finalization of Financial Policies draft document (~45 min.)

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Henry L Hayes	Pending
Jonathan Silverstein	Pending
Jennifer Roberts	Pending
Select Board	Pending

12/07/2021 6:30 PM

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Town of Sudbury, Massachusetts
Financial Policies Manual
DRAFT **December 3, 2021**

Deleted: November 19



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Introduction

The Town of Sudbury is committed to safeguarding public funds, protecting local assets, and complying with financial standards and regulations. To that end, this manual of financial policies provides guidance for local planning and decision making. The policies as a whole are intended to outline objectives, provide formal direction, and define authority to help ensure sound fiscal stewardship and management practices. Each is a living document that should be reviewed periodically and updated as necessary.

With these policies, the Town of Sudbury, through its Select Board, Town Manager, and employees, commits to the following objectives:

- Sustaining a consistent level of service and value for residents [and enhancing as needed and able](#)
- Safeguarding financial integrity and minimizing risk through a system of internal controls
- Ensuring the quality and maintenance of capital assets.
- Conforming to general law, uniform professional standards, and municipal best practices
- Protecting and enhancing the town's credit rating
- Promoting transparency and public disclosure
- Revisiting and reviewing the policies every three years to assess thresholds and targets.

Commented [1]: Suggest appending the follow this sentence -- "and enhancing as needed and

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Town of Sudbury, Massachusetts

Financial Policies Manual

Table of Contents

Financial Reserves	4
Forecasting	7
Overlay	10
Debt Management	12
Investments	15
Capital Assets	16
Other Postemployment Benefits Liability (OPEB)	19

FINANCIAL RESERVES

PURPOSE

To help the Town stabilize finances and maintain operations during difficult economic periods, this policy establishes prudent practices for appropriating to and expending reserve funds. With well-planned sustainability, Sudbury can use its reserves to finance emergencies and other unforeseen needs, to hold money for specific future purposes, or in limited instances, to serve as revenue sources for the annual budget. Reserve balances and policies can also positively impact the Town's credit rating and consequently its long-term cost to fund major projects.

APPLICABILITY

This policy pertains to short- and long-range budget decision making and applies to the Select Board, Sudbury Public School Committee, and Town Manager in those duties. It also applies to the related job duties of the Finance Director, the Town Accountant, the Board of Assessors, and the Finance Committee.

POLICY

The Town of Sudbury commits to building and maintaining its reserves so as to have budgetary flexibility for unexpected events and significant disruptions in revenue-expenditure patterns and to provide a source of available funds for future capital expenditures. The Town will strive to maintain overall reserves in the level of 10-12% of the prior year General Fund budget. These reserves are comprised of the general stabilization fund, special purpose stabilization funds and free cash target. Adherence to this policy will help the Town withstand periods of decreased revenues and control spending during periods of increased revenues. Other types of reserves include retained earnings and overlay surplus.

A. Protection of Credit Rating

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Maintenance of the highest-level credit rating possible is important to the continued financial health of Sudbury as it reduces the costs of issuing debt. Credit rating firms consider management practices to be very important factors. Poor management practices can inadvertently jeopardize the financial health of a local government. To be proactive in assuring the Town of Sudbury does not engage in these practices, the Select Board of the Town of Sudbury has adopted the following credit rating protection policies. The Town will not rely on reserves to sustain operating budgets. Use of such reserves will be limited to helping the Town deal with short-term or emerging financial stress. In the subsequent year, the Town will either reduce spending to within the limits of recurring revenues or seek approval for additional revenues from the voters of the Town. The Town will not defer current costs, such as pension or benefit costs, to a future date.

B. Free Cash

The Division of Local Services (DLS) defines free cash as “the remaining, unrestricted funds from operations of the previous fiscal year, including unexpended free cash from the previous year.” DLS must certify free cash before the Town can appropriate it in the new year.

As close to fiscal year end as reasonably possible, the Town Accountant shall submit to DLS a year-end balance sheet, free cash checklist, and year-end reporting checklist. Once DLS certifies free cash, the Town Accountant will provide copies of the certified balance to the Select Board, Town Manager, and Finance Director.

- Deleted: By
- Deleted:
- Deleted: August
- Deleted: September 15th each year

Each spring, the Town Manager shall include the Town’s free cash balance in the proposed budget submitted to the Select Board and Finance Committee for the ensuing fiscal year, along with details on the proposed uses of and/or retention level of free cash. Any proposed use of free cash for capital equipment or improvements shall be consistent with needs identified in the Town’s capital improvement program.

The Town shall set a year-to-year goal of maintaining its free cash in the range of 3-5% of the prior year’s General Fund budget. To achieve this, the Finance Director shall assist the Town Manager in proposing budgets with conservative revenue projections, and department heads shall carefully manage their appropriations to produce excess income and budget turn backs. Further, budget decision makers will avoid fully depleting the Town’s free cash in any year, so that the succeeding year’s calculation can begin with a positive balance. Moreover, as much as practicable, the Town will limit its use of free cash to funding one-time expenditures (like capital projects or emergencies and other unanticipated expenditures) and should appropriate any free cash excess above 5% of the General Fund budget to reserves, to offset unfunded liabilities, or to set aside for existing debt.

C. Stabilization Funds

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A stabilization fund is a reserve account allowed by state law to set aside monies to be available for future spending purposes, including emergencies or capital expenditures, although it may be appropriated for any lawful purpose. Prior to the adoption of this policy, the Town established and appropriated to a general stabilization fund and special purpose stabilization funds for capital projects.

General Stabilization: The Town will endeavor to maintain a minimum balance of 5% of the prior year's General Fund budget in its general stabilization fund. Withdrawals from general stabilization should only be used to mitigate emergencies or other unanticipated events that cannot be supported by current General Fund appropriations. When possible, withdrawals of funds should be limited to the amount available above the 5% minimum reserve target level. If any necessary withdrawal drives the balance below the minimum level, the withdrawal should be limited to one-third of the general stabilization fund balance at a time, endeavoring to never fully deplete it. Replenishment of the funds should be made annually at the Fall Town Meeting, or the earliest available meeting after free cash has been certified.

Special Purpose Stabilization Funds

Capital Stabilization: The Town will appropriate annually to the capital stabilization fund so that over time it achieves a target balance sufficient to cover the Town's cash outlay for capital. Doing so enables the Town to pay outright for moderate-range (under \$1M) capital expenditures and thereby preserve debt capacity for major, higher-dollar purchases or projects. This approach balances debt with pay-as-you-go practices and protects against unforeseen costs. The Town should endeavor to achieve and maintain a combined target balance for all capital-related special purpose stabilization funds equal to 2% of prior year General Fund budget.

Withdrawals from the Capital Stabilization Fund should be avoided until the target balance has been achieved. Once achieved, funds can be used towards items on the CIP. Once funds are used, the Town will seek to make annual contributions to the fund until the target balance is achieved. ↓

Turf Stabilization: The Town maintains a special purpose fund to offset the cost of periodic replacement of designated town-owned turf fields. As originally created, this fund applies to the Cutting Field but could be expanded to other fields in the future. Contributions to this fund should be made annually from the General Operating Fund and Field Maintenance Enterprise Fund. ↓

D. Overlay Surplus

Commented [3]: This paragraph elicits several questions:

- 1) "Funds should be replenished annually...or a earliest available meeting after free cash has been certified" -- Is the assumption that the first priority free cash is to replenish this fund?
- 2) This seems like a slow/medium timeline for growth fund. So, while free cash could be a source for replenishment, this fund shouldn't necessarily be top priority for free cash.
- 3) This Fund could be used for projects that fall \$1-3 million dollar range - too small for debt exc too big for annual spend. Perhaps a project should be associated with this Fund. And then the replenishment of the Fund would be determined by the priority project in the CIP process.
- 4) For example: A new school roof could be in the million dollar range. So, for the next couple of years we know that money going into this Fund will be for a new roof. So, allocation into the fund should be determined by the priority of that roof project in the prioritization list.

Deleted: hieved, funds should be replenished annually at the Fall Town Meeting, or the earliest available meeting after free cash has been certified (subject to free cash availability). WHAT'S THE PRIORITY OF FILLING THIS FUND... ALWAYS TAG THE FUND WITH A PROJECT (PICK A PROJECT ~3 YRS OUT... IN \$1-3M RANGE THEN SAVE TOWARDS THAT... WITH WHATEVER PRIORITY THAT PARTICULAR PROJECT HAS... ¶
--- another thought... in the year if/when we have unexpectedly LOWWWW Free Cash, in that year we wouldn't we want the "Stabilization" fund to stabilize/smooth this valley... as opposed to neglecting that year's capital needs, or taking debt...

Commented [BS4]: FROM CIAC: The Capital and Stabilization Funds are good vehicles to fund capital projects. However, it is necessary to clearly define how and when these funds are to be funded, whether through the collection of fees or from the Town or a combination of both. The Turf Stabilization Fund should include the Town of Sudbury portion of the LS fields structure should be well defined and have clear funding goals to meet the needs of turf replacements, without having to go to the Town for additional funds. The present LS turf field agreement should be reviewed and the

Deleted: [AND SUDBURY PORTION OF LS FIELD].

Deleted: [CIAC SUGGESTS WE STATE FUNDING SOURCES (FEES?) AND GOAL (OFFSET REPLACEMENT?)]

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The overlay is a reserve the Town uses to offset unrealized revenues resulting from property tax abatements and exemptions. Sudbury officials will prudently manage the overlay in accordance with the Town's Overlay policy to avoid the need to raise overlay deficits in the tax levy. At the conclusion of each fiscal year, the Board of Assessors shall submit to the Town Manager and Finance Director an update of the overlay reserve with data that includes, but is not limited to, the gross balance, potential abatement liabilities, and any transfers to surplus. If the balance exceeds the amount of potential liabilities, the Town Manager may request that the Board of Assessors vote to declare those balances surplus, available for one-time expenditures (as with free cash).

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FORECASTING

PURPOSE

To assess the range of choices available to budget decision makers when determining how to allocate resources, this policy establishes guidelines for evaluating revenue sources and the requirement to determine an expenditure strategy as part of the annual budget process and longer-range fiscal planning. Forecasting helps local officials understand the long-range implications of pending near-term decisions.

APPLICABILITY

This policy applies to the Town Manager as the Town's chief budget decision maker. It also applies to the job responsibilities of the Finance Director, Sudbury Public Schools Superintendent, Sudbury Public Schools Business Manager, Select Board, Sudbury Public Schools Committee, and Finance Committee.

POLICY

A. Revenue Guidelines

The Town will continually seek to diversify its revenue to improve the equity and stability of sources. Each year and whenever appropriate, the Town will reexamine existing revenues and explore potential new sources. A balance will be sought between elastic and inelastic revenues to minimize any adverse effects caused by inflation or other economic changes. Additionally, intergovernmental revenues (e.g., local aid, grants) will be reviewed annually to determine their short- and long-term stability in order to minimize detrimental impacts.

The Town will generally avoid using one-time revenues to fund ongoing or recurring operating expenditures. These one-time revenue sources can include, but are not limited to, free cash, bond premiums, overlay surplus, sale of municipal equipment, legal settlements, insurance proceeds, and gifts. Additionally, the Town hereby establishes the following priority order when appropriating one-time revenues:

- General Stabilization Fund (maintenance of 5% of prior year's General Fund budget)
- Annual Capital Spending (non-debt; target of 3% of prior year's General Fund budget)
- Capital Stabilization Fund (target of 2% of prior year's General Fund budget)
- OPEB Trust Fund

New growth (residential or commercial) permanently adds to the tax base. The Town should endeavor to contribute any new growth in excess of 1% of prior year's General Fund budget to capital expenditures or reserves.

Economic downturns or unanticipated fiscal stresses may compel reasonable exceptions to the use of one-time revenue. In such cases, the Town Manager, in consultation with the Finance

Deleted: notional priority ranks of 1,2,3,4,6 pull in 6 until you fund '5' (in next bullet)

Commented [5]: The prioritization of these could be further discussed. Depending on the usage guidelines for the Capital Stabilization Fund, some might argue that these 2 should be swapped in priority. However, it's dependent on a clear definition of the usage of the Capital Stabilization Fund.

Deleted: - IF WE HAVE 'TAGGED' THE CAPSTABFUND WITH A SPECIFIC PROJECT, THEN THE PRIORITY OF THE CAPSTABFUND SLIDES IN '5'

Deleted: <#>Existing debt

Commented [6]: The Finance Committee discussed this concept of "new growth in excess of 1%...shifts towards capital or reserves." There was a general agreement that this was perhaps too general of a statement. The cause of the new growth should be a factor in the usage of the funds.

Deleted: ARGUMENT THAT THIS SHOULD BE A FUNCTION OF WHETHER THIS IS RESIDENTIAL (REQUIRING TOWN SERVICES) VS. LOW IMPACT / COMMERCIAL.

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Director, can recommend its use for operational appropriations. Such use will trigger the Town Manager to develop a plan to avoid continued reliance on one-time revenues.

State laws impose further restrictions on how certain types of one-time revenues may be used. The Town will consult the following General Laws when the revenue source is:

- Sale of real estate: [M.G.L. c. 44, §63](#) and [M.G.L. c. 44, §63A](#)
- Gifts and grants: [M.G.L. c. 44, §53A](#) and [M.G.L. c. 53A½](#)
- Bond proceeds: [M.G.L. c. 44, §20](#)
- Sale of moveable property: [M.G.L. c. 44, § 53](#)

This policy further entails the following expectations regarding revenues:

- The Assessing Department will maintain property assessments for the purpose of taxation at full and fair market value as prescribed by state law.
- [Town departments that charge fees](#) (Enterprise Funds and recreation programs, for example) shall annually review their fee schedules and propose adjustments when needed to ensure coverage of [service costs](#) and endeavor to generate retained earnings of 3-5% of prior year's enterprise fund budgets [towards asset maintenance / replacement](#).
- The Building Department will notify the Finance Director of any moderate-to-large developments that could impact building permit volume.
- Department heads will strive to be informed of all available grants and other aid and will carefully consider any related restrictive covenants or matching requirements (both dollar and level-of-effort) to determine the cost-benefit of pursuing them.
- Revenue estimates will be adjusted throughout the budget cycle as more information becomes available.

B. Expenditure Guidelines

Annually, the Town will determine a particular budget approach for forecasting expenditures, either maintenance (level service), level funded, or one that adjusts expenditures by specified increase or decrease percentages (either across the board or by department). A maintenance budget projects the costs needed to maintain the current staffing level and mix of services into the future. A level funded budget appropriates the same amount of money to each municipal department as in the prior year and is tantamount to a budget cut because inflation in mandated costs and other fixed expenses still must be covered.

C. Financial Forecast Guidelines

To determine the Town's operating capacity for each forthcoming fiscal year, the Finance Director will annually create and provide the Town Manager with a detailed budget forecast. The Finance Director shall also annually prepare a three-year financial projection of revenues and expenditures for all operating funds.

Commented [BS7]: Discussion about separating around 'Enterprise Funds' and around recreation pr

Commented [8]: A clear definition of "service c would be helpful.

Deleted: [ALL?]

Deleted: [CLARITY ABOUT WHAT'S INCLUD CONCERN ABOUT SHIFTING 'FRACTIONA PEOPLE?..AT LEAST CLARITY IN REPORT

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Commented [9]: How does this help to ensure operating budget captures all known/necessary maintenance/replacement items vs. CIP?

Commented [BS10R9]: FINCOM COMMENT COM ENSURING THAT DEPARTMENTS DON'T NEGLECT FORECASTING/INCLUDING MAINENTANCE INTO THE OP BUDGETS, AND PERFORMING THE MAINTENANC

Note: Police cars (purchase/replace) are in Police Di operating budget. But other departments not know include 'capital' in their budgets.

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These forecasts shall be used as planning tools in developing the following year's operating budget as well as the five-year capital improvement plan.

To ensure the Town's revenues are balanced and capable of supporting desired levels of services, forecasts for property taxes, local receipts, and state aid shall be conservative based on historical trend analyses and shall use generally accepted forecasting techniques and appropriate data. To avoid potential revenue deficits, estimates for local receipts (e.g., inspection fees, investment income, license fees) should generally not exceed 90% of the prior year's actual collections without firm evidence that higher revenues are achievable.

Additionally, the forecast model should assume that:

- The Town will maintain its current level of services.
- Property taxes (absent overrides) will grow within the limits of Proposition 2½.
- New growth will be projected conservatively, considering the Town's three-year average by property class.
- The Town will annually meet or exceed the state's net school spending requirements.
- Local receipts and state aid will reflect economic cycles.
- The Town will pay the service on existing debt and adhere to its Debt Management policy.
- The Town will make its annual pension contributions and continue appropriating to its other postemployment benefits trust fund.
- The Town will build and maintain reserves in compliance with its Financial Reserves policy.

D. Reporting

The Town financial results vs. forecast (REVENUES, AND EXPENSES) shall be reported out quarterly for the Select Board and public.

Deleted: Under Consideration:

Commented [11]: Town Financial Policies should establish increased transparency and timely communications among all stakeholders as a minimum threshold. FinCom is often hurried through their mandatory process by delays in presenting information. If even in draft form, early distribution to the Finance and others would alleviate bottlenecks and contribute to future avoidance of incomplete information to the Town and Warrant as has happened the last several years.

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OVERLAY

PURPOSE

To set guidelines for determining the annual overlay amount in the Town's budget and for deciding whether any overlay balance can be certified as surplus.

The allowance for abatements and exemptions, commonly referred to as the overlay, is an account whose purpose is to offset anticipated abatements and exemptions of committed real and personal property taxes. Effective December 7, 2016, the Municipal Modernization Act ([Chapter 218 of the Acts of 2016](#)) provides for a single overlay account. Previously, a community had to maintain separate overlay reserves for each fiscal year and could not use the surplus from one year to cover another year's deficit without a multistep process involving the assessors, accounting officer, and local legislative body. However, the Act allows all existing overlay balances to be transferred to a single account. Although this policy treats overlay as a single account, to continue historical information and facilitate reconciliations, the Town may elect to maintain subsidiary ledgers by levy year for overlay balances.

APPLICABILITY

This policy applies to the job duties of the Board of Assessors, Director of Assessing, Town Manager, and Finance Director.

POLICY

A. Annual Overlay

Each year, the Board of Assessors shall vote in an open meeting to authorize a contribution to the overlay account as part of the budget process and to raise it without appropriation on the Town's Tax Recap Sheet. The Principal Assessor will propose this annual overlay amount to the Board of Assessors based on the following:

- Current balance in the overlay account
- Five-year average of granted abatements and exemptions
- Potential abatement liability in cases pending before, or on appeal from, the Appellate Tax Board (ATB)
- Timing of the next certification review by the Division of Local Services (scheduled every five years under the Municipal Modernization Act) The Board of Assessors shall notify the Finance Director of the amount of overlay voted

B. Excess Overlay

Annually, the Finance Director and Director of Assessing will conduct an analysis to see if there is any excess in the overlay account by factoring the following:

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- Current balance in the overlay account after reconciling with the Town Accountant's records
- Balance of the property tax receivables, which represents the total real and personal property taxes still outstanding for all levy years
- Estimated amount of potential abatements, including any cases subject to ATB hearings or other litigation

Upon determining any excess in the overlay account, the Principal Assessor shall present the analysis to the Board of Assessors for its review.

C. Overlay Surplus

If there is an excess balance in the overlay account, the Board of Assessors shall formally vote in an open meeting to certify the amount to transfer to overlay surplus and shall notify the Town Manager and Finance Director in writing of its vote. If the Town Manager makes a written request for a determination of overlay surplus, the Board of Assessors shall vote on the matter within the next 10 days and notify the Town Manager and Finance Director of the result in writing. 30 days in advance of the annual Tax Classification Hearing, the Select Board shall request an update from the Board of Assessors on the balance of the overlay account.

After being certified, Town Meeting may appropriate overlay surplus for any lawful purpose until the end of the fiscal year. However, the appropriation should be as prescribed in the Town's Forecasting policy (re: treatment of one-time revenues) and its Financial Reserves policy (re: overlay surplus). Overlay surplus not appropriated by year-end closes to the General Fund's undesignated fund balance.

Commented [12]: A specification of "XX days before the Tax Classification Hearing" for reporting of the balance would help to clarify the process.

Commented [13]: We would just like to emphasize here that the balance of the overlay account should be reported annually. This is a slow/med growth account so it should not be a "surprise" when the balance grows to a significant amount.

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DEBT MANAGEMENT

PURPOSE

To provide for the appropriate issuance and responsible use of debt, this policy defines the parameters and provisions governing debt management. Policy adherence will help the Town to responsibly address capital needs, provide flexibility in current and future operating budgets, control borrowing, and maintain capital investment capacity. This policy is also intended to maintain and enhance the town's bond rating so as to achieve long-term interest savings.

APPLICABILITY

This policy applies to the Town Manager, Select Board, Sudbury Public School Committee, and Finance Committee in their budget decision making and in the Finance Director's debt reporting. It also applies to the Finance Director's budget analysis duties [and statutory responsibilities associated with debt management, in their](#) role as Treasurer/Collector.

Commented [14]: Incomplete sentence?

POLICY

Under the requirements of federal and state laws, the Town may periodically issue debt obligations to finance the construction, reconstruction, or acquisition of infrastructure and other assets or to refinance existing debt. The Town will issue and manage debt obligations in such a manner as to obtain the best long-term financial advantage and will limit the amount of debt to minimize the impact on taxpayers. Debt obligations, which include general obligation bonds, revenue bonds, bond anticipation notes, lease/purchase agreements, and any other debt obligations permitted to be issued under Massachusetts law, shall only be issued to construct, reconstruct, or purchase capital assets that cannot be acquired with current revenues.

A. Debt Financing

Debt may be financed either within the levy, or beyond the levy (a debt exclusion which requires a Proposition 2 ½ voter referendum).

In financing with debt, the Town will:

1. Issue long-term debt only for objects or purposes authorized by state law and only when the financing sources have been clearly identified.
2. Use available funds as appropriate to reduce the amount of borrowing on all debt-financed projects.
3. Confine long-term borrowing to capital improvements and projects that cost at least \$100,000 and that have useful lifespans of at least ten years or whose lifespans will be prolonged by at least ten years.
4. Restrict debt exclusion borrowing to proposals which meet all three of these criteria:
 - (1) useful life of 20 years or more
 - (2) estimated cost of the principal payment in the first year of the debt issuance greater than 0.5% of the prior year's General Fund revenue. This criterion

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applies after target level for in-levy debt of 3% is initially achieved, as per Section B. Debt Limits and Targets Item 3.

(3) the expenditure is either for town-owned land, buildings, or infrastructure or for a LSRHS capital assessment.

5. Refrain from using debt to fund any recurring purpose, such as current operating and maintenance expenditures.
6. The policy of the Select Board shall be to include sufficient debt capacity within the levy, such that capital items can be more predictably funded.
7. As debt within the levy decreases annually, this amount shall be used for capital, future debt, or set aside for future capital.

Commented [BS15]: From DPW: I would like to see if there is a method of including some dollar amount for vehicle replacement as an operating capital line item in the DPW budget. Therefore eliminating the need to always bring items to Town meeting particularly for replacement of an existing vehicle

B. Debt Limits and Targets

The Town will adhere to these debt parameters:

1. Total annual debt service, including debt exclusions and any self-supporting debt, shall be limited to 10% of General Fund revenues, with a reasonable range of 5-7%.
2. As dictated by state statute MGL ch 44 section 10, the Town's debt limit shall be 5% of its most recent equalized valuation.
3. The Town shall endeavor to gradually and consistently pursue future debt issuances financed by within-levy dollars with a target of 3% of prior year's General Fund budget.

C. Structure and Term of Debt

The following shall be the Town's guidelines on debt terms and structure:

1. The term of any debt shall not exceed the expected useful life of the capital asset being financed and in no case shall it exceed the maximum allowed by law.
2. The Town will limit bond maturities to no more than 10 years, except for major buildings, water and water facility projects, land acquisitions, and other purposes in accordance with the useful life borrowing limit guidelines published by the Division of Local Services (DLS).
3. For non-excluded debt the Town will generally choose terms less than 20 years and structure as level principal payments, so that over time the annual debt payment goes down, opening up capacity for future capital.
4. Any vote to authorize borrowing will include authorization to reduce the amount of the borrowing by the amount of the net premium and accrued interest.
5. The Town will work closely with its financial advisor to follow federal regulations and set time frames for spending borrowed funds to avoid committing arbitrage, paying rebates, fines and penalties to the federal government, and jeopardizing any debt issuance's tax-exempt status.

D. Bond Refunding

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To achieve potential debt service savings on long-term debt through bond refunding, the Town will:

1. Issue debt with optional call dates no later than 10 years from issue.
2. Analyze potential refunding opportunities on outstanding debt as interest rates change.
3. Use any net premium and accrued interest to reduce the amount of the refunding.
4. Work with the Town's financial advisor to determine the optimal time and structure for bond refunding.

E. Protection of Bond Rating

To protect its bond rating, the Town will:

1. Maintain good communications with bond rating agencies, bond counsel, banks, financial advisors, and others involved in debt issuance and management.
2. Follow a policy of full disclosure on every financial report and bond prospectus, including data on total outstanding debt per capita, as a percentage of per capita personal income, and as a percentage of total assessed property value.
3. The Town will not rely on reserves to sustain operating deficits. Use of such reserves will be limited to helping the Town deal with short-term or emerging financial stress, but then the Town will either reduce spending to within the limits of recurring revenues, or seek approval for additional revenues from the voters of the Town.
4. The Town will not defer current costs to a future date. This includes costs such as pension costs or benefits costs. From time to time, the State offers municipalities the option of deferring payments to their pension system, or other costs, as a short-term way of balancing a fiscal year's budget. However, it is the intention of the Town of Sudbury not to rely on these options.
5. The Town will follow the policies as outlined in this policy statement.

F. Reporting

1. The Town's Annual Town Report, Town Manager's Budget Request and Annual Town Meeting Warrant will give comprehensive summaries of the debt obligations of the Town.
2. The Finance Director will include an indebtedness summary as part of a report on receipts and expenditures in Sudbury's Annual Town Report.
3. The Finance Director, with the Town's financial advisor, will file the annual audit and official disclosure statement within 270 days of the end of the fiscal year.

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INVESTMENTS

PURPOSE

To ensure the Town's public funds achieve the highest possible, reasonably available rates of return while following prudent standards associated with safety, liquidity, and yield, this policy establishes investment guidelines and responsibilities. It is further designed to comply with the Governmental Accounting Standards Board's recommendation that each community disclose its key policies affecting cash deposits and other long-term investments to ensure they are managed prudently and not subject to extraordinary risk.

Commented [16]: Is there an Investments Adv group?

Commented [BS17R16]: The Town has a Financi Advisor. We think (confirm) See POLICY section edit below...

APPLICABILITY

This policy pertains to short-term operating funds, including general funds, special revenue funds, bond proceeds, capital project funds, and to all accounts designated as long-term (e.g., trusts, stabilization funds, other postemployment benefits trust fund (OPEB), and others the Town may set aside for long-term use, including scholarship and perpetual care funds). It does not pertain to the Town's retirement fund, which is managed by the Middlesex County Retirement Board. This policy applies to the Finance Director, in the role as Treasurer, his or her designee(s), and any advisors or other professionals in their responsibilities for investing and managing Town funds.

POLICY

[In consultation with the Town's Financial Advisor](#), the Finance Director shall invest funds in a manner that meets the Town's daily operating cash flow requirements and conforms to state statutes governing public funds while also adhering to generally accepted diversification, collateralization, and the prudent investment principles regarding safety, liquidity, and yield. The Finance Director will report investment performance to the Select Board each August. Additionally, they will report any deviation from the investment policy to the Select Board. (Other language from JD?)

Commented [BS18]: Note: we have proposed a s on Reporting, in the Forecasting policy...

See additional details in the Town of Sudbury Investment Policy (TODO: ADD DOC TO WEBSITE AND LINK) document as well as the [Town of Sudbury CPA Investment Policy](#) document.

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CAPITAL ASSETS

PURPOSE

To ensure Sudbury's capital assets can cost-effectively sustain the town's desired service levels into the future.

APPLICABILITY

This policy applies to the Town Manager as the Town's chief budget decision maker. It also applies to the job responsibilities of the Finance Director, School Superintendent, School Business Manager, Select Board, Sudbury Public School Committee, Finance Committee [and Capital Improvement Advisory Committee \(CIAC\)](#).

Capital Assets are defined as the community-owned collection of significant, long-lasting, and expensive real and personal property used in the operation of government, including land and land improvements; infrastructure, such as roads, bridges, water and sewer lines; easements; buildings and building improvements; vehicles, machinery and equipment. In order to be included in Sudbury's Capital Improvement Program, Capital Assets must cost \$20,000 or more and have a useful life of 5 or more years. Items or improvements that do not meet this threshold should be included within the Town's operating budget.

POLICY

A. Capital Improvement Plan

The Town Manager shall maintain an inventory of all Town 'capital assets.' The Town Manager will update and adopt annually a five-year capital improvement plan ("CIP"), including the upcoming annual capital improvement budget ("CIB") and a four-year projection of capital needs and expenditures, which details the estimated cost, description and anticipated funding sources for capital projects. The CIP should govern projects undertaken either to build, buy, expand or replace a long-life asset or to an asset's condition beyond its original state of quality, efficiency, or useful life expectation.

Annually, the minimum level of capital spending the town should target year to year should be equivalent to 6% of the prior year's General Fund budget, [endeavoring to draw equally from within-levy debt and cash capital sources.](#) [The chosen ratio of cash capital vs. in-levy debt used to fund capital may vary based on available cash capital, interest rates, and other factors.](#)

The 6% target shall guide how much capital spending can be planned in each year of the CIP.

- The Town Manager shall establish criteria to determine capital asset prioritization, including but not limited to:
 - mitigation of safety hazards
 - legal compliance

Commented [BS19]: from FINCOM: The MA Municipal Association suggests maintain an information-rich, comprehensive, integrated, and readily accessible asset inventory to use in planning. The MMA Finance Committee Handbook suggests a good set of asset attributes to include following:

- Location
- Age
- Useful life
- Condition
- Original cost
- Current value
- Maintenance and operating costs
- Type and extent of use
- Depreciation – method and balance
- Estimated replacement costs
- Any proposed date for rehabilitation or replacement

Commented [20]: There seems to be some confusion on the 6%.

Is this implying that 3% must be within-levy and must be from cash capital sources?

What if there isn't a project(s) to support 3% within-levy debt?

Specifying that the 6% must be "drawn equally" from cash and debt sources seems too specific and not necessarily feasible.

Furthermore, why set the "minimum level" to 6% if there aren't projects to do, then why would we require ourselves to spend money? Wouldn't a 6% "target" be a better choice?

Clarify (list) definitions for terms used, i.e., Cash Capital - perhaps add a Glossary appendix

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- ADA compliance (Americans with Disabilities Act)
 - operating cost reduction
 - service or efficiency improvement
 - availability of outside funding sources
 - conformance to asset replacement schedule
 - contributing to execution of Master Plan
 - enhancement of quality of life
2. Annually, the Town Manager shall request 5 and 15 year capital plans from Town Department Heads, SPS, and LSRHS. The Town's obligation per the LSRHS agreement shall be factored into the Town CIP.
 3. The Town Manager in consultation with Department Heads, SPS, and LSRHS, shall annually update the composition and prioritization of the 5 and 15 year capital plans and create an ordered list sorted by urgency score, with appropriate justification (identifying criteria and which department it supports).
 4. A Capital Project Submission Sheet shall be required for every item listed on the five-year CIP.
 5. The CIP shall not include items that cost less than \$20,000 or have a useful life of less than 5 years. Items that do not meet this threshold should be included within the Town's operating budget.
 6. Alongside the CIP prioritization, potential Funding Sources shall be identified. Wherever possible, funding sources should be derived from 'cash capital' and within levy debt funding options. Funding sources for capital may include:
 - Community Preservation Act (CPA) funds (if eligible; Open Space, Recreation, Historic)
 - Town Manager's Capital Budget (items less than \$100,000 in one year; less than \$200,000 over multiple years, and last more than 5 years)
 - New growth dedicated to capital
 - Capital Stabilization Fund
 - Special-purpose stabilization funds
 - Free Cash
 - In-levy Debt
 - Dedicated revenue sources (i.e. Sewataro revenue share).
 - Capital Exclusion
 - Debt Exclusion
 - Grants
 7. Capital Items which are CPA-eligible and prioritized for the upcoming budget year (i.e. to be included in the CIB) must be locked down and presented to the CPC according to their application/evaluation timeline. [EXAMPLE... LS FIELD NOT PRESENTED TO CPC IN FALL 2019 OR FALL 2020. TOWN HAD NO CHOICE BUT TO USE FREE CASH]
 8. The Town will emphasize preventive maintenance as a cost-effective approach to infrastructure maintenance. Exhausted capital goods will be replaced as necessary.
 9. The CIP shall not include items deemed to be departmental maintenance. Rather, such smaller, shorter life maintenance items should be included in departmental budgets.

Commented [21]: Is this consistent in approach Do we look at 10 years (vs. 15) elsewhere? Are there limiting factors here to consider i.e., the LSRHS RMA agreement? Are we using the same template for capturing a Capital across the 3 cost centers and all depart If now, why? How do we know that we have a complete picture of Capital needs; that Dept. maintenance/replacement dollars and small spend plus the CIP captures 100% of our needs?

We have inconsistencies and limited data presented regarding amortization/depreciation of assets to inform budget and CIP spend requirements. This should be corrected and sustained via the new policy.

Commented [22]: What is the origin of the \$20,000 limit?

Commented [BS23R22]: From conversation and how to define 'capital'

Commented [24]: Can the approach be defined? how funding sources are sought for various projects?

i.e., Project A seeks source 1a, if available then 1b ...? If not avail then what's the next source (2a, 2b, etc.)?

In particular consider CPC and other significant sources.

Deleted: items <\$100K

Commented [25]: What is the impact of this change? Is there an acknowledgement that operating budgets need to increase in order to achieve this? How will any increases be determined?

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- 10. The Police Department and the Department of Public Works shall maintain a capital line item in their departmental operating budget for vehicle replacement.

Commented [BS26]: DPW Staff Feedback: I would like to see if there is a method of including a dollar amount for vehicle replacement as an operational capital line item in the DPW budget. Therefore eliminating the need to always bring items to Town meeting for replacement of an existing vehicle

B. Risk Management

- 1. The Town will maintain an effective risk management program that provides adequate coverage, minimizes losses, and reduces costs.
- 2. The Town will annually work with the Town's insurance carrier to update all listings of Town owned assets and the value and condition of such covered assets.

C. Reporting and Process

- 1. Annually by December 31st, the 5 year capital improvement plan shall be posted and accessible for public view on town website for public review at all times, reflecting updates for any changes made. The Capital Project Submission Sheet for each project on the 5 year CIP shall be posted and linked from the CIP.
- 2. The Town Manager will submit CPA-eligible projects under consideration for the CIB to the the Community Preservation Committee by October 15.
- 3. The Town Manager and departments shall submit to the CIAC a summary for evaluation of projects over \$100,000 for a single year, or \$200,000 over multiple years, by . The CIAC also requests progress summary reports for prior years capital items approved by the town.
- 4. The Town Manager shall submit Town Meeting articles for the CIB by January 31st.
- 5. The Select Board shall report all requests for capital appropriations to the Finance Committee on or before February 5. (Bylaws Article IV Section 5).
- 6. The Town Manager shall coordinate, **by February 5**, the **timely distribution** of the CIB, CIP, and associated Capital Project Submission Sheets to the Select Board, CIAC, and Finance Committee and other stakeholders These materials will detail each capital project, the estimated cost, description and funding.
- 7. The Town Manager shall organize on or before February 15 a joint meeting of the Select Board, CIAC, Finance Committee, CPC representatives, and department heads. They will solicit and coordinate receipt of questions in advance of this joint meeting. At this joint meeting, the CIAC will present its opinions on capital projects within its scope. [DO WE ADD FURTHER COLOR TO THE FORMAT OF THE JOINT MEETING?]
- 8. The Town Manager will present **components of the CIB, in the form of Town Meeting Articles**, for approval at the Annual Town Meeting (generally the 1st Monday in May).

Commented [27]: Quarterly reporting of status capital projects is suggested. Furthermore, for inclusion of the KPI process would be recommended as well.

Commented [BS28]: Have an honest discussion, work? Intention is that the result of prioritizations rough 5 (FIVE) year plan is updated by Dec 31. Ref of the 1 (ONE) year CIB (budget) continues into Jan

Commented [29]: A clear definition of "timely distribution" would be helpful. A date would help

Commented [30]: Clarification -- What is the for the approval? As it is now, the TM Capital Budget town meeting article. And others are separate articles. Is this statement meant to change that

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OTHER POSTEMPLOYMENT BENEFITS LIABILITY (OPEB)

PURPOSE

To provide the basis for a responsible plan for meeting the Town's obligation to provide other postemployment benefits (OPEBs) to eligible current and future retirees. This policy provides guidelines designed to ensure OPEB sustainability and achieve generational equity among those called upon to financially support OPEBs, thereby avoiding transferring costs into the future.

APPLICABILITY

This policy encompasses OPEB-related budget decisions, accounting, financial reporting, and investment.

BACKGROUND

In addition to salaries, the Town of Sudbury compensates employees in a variety of other forms. Many earn benefits over their years of service that they will not receive until after retirement. A pension is one such earned benefit. Another is a set of retirement insurance plans for health and life. These are collectively referred to as other postemployment benefits or OPEBs.

Commented [BS31]: Per Staff feedback, not dent
Deleted: dental

OPEBs represent a significant liability for the Town that must be properly measured, reported, and planned for financially. As part of a long-range plan to fund this obligation, the Town established an OPEB Trust Fund, which allows for long-term asset investment at higher rates of return than those realized by general operating funds.

POLICY

The Town of Sudbury is committed to funding the long-term cost of the benefits promised its employees. To do so, the Town will accumulate resources for future benefit payments in a disciplined, methodical manner during the active service life of employees. The Town will also periodically assess strategies to mitigate its OPEB liability. This involves evaluating the structure of offered benefits and their cost drivers while at the same time avoiding benefit reductions that would place undue burdens on employees or risk making the Town an uncompetitive employer.

A. Accounting and Reporting

The Finance Director will obtain actuarial analyses of the Town's OPEB liability every two years and will annually report the Town's OPEB obligations in financial statements that comply with the current guidelines of the Governmental Accounting Standards Board.

The Town Auditor shall ensure that the Town's independent audit firm reviews compliance with the provisions of this policy as part of its annual audits.

B. Mitigation

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On an ongoing basis, the Town will assess healthcare cost containment measures and evaluate strategies to mitigate its OPEB liability. The Finance Director shall monitor proposed laws affecting OPEBs and Medicare and analyze their impacts. The Human Resources Director shall regularly audit the group insurance and retiree rolls and drop any participants found to be ineligible based on work hours, active Medicare status, or other factors.

C. Funding

To address the OPEB liability, decision makers shall analyze a variety of funding strategies and subsequently implement them as appropriate with the intention of fully funding the obligation. The Town shall derive funding to invest in the OPEB trust from taxation, free cash, and any other legal form.

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Town of Sudbury, Massachusetts
Financial Policies Manual
DRAFT [October 27](#)[August 9](#), 2021



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Introduction

The Town of Sudbury is committed to safeguarding public funds, protecting local assets, and complying with financial standards and regulations. To that end, this manual of financial policies provides guidance for local planning and decision making. The policies as a whole are intended to outline objectives, provide formal direction, and define authority to help ensure sound fiscal stewardship and management practices. Each is a living document that should be reviewed periodically and updated as necessary.

With these policies, the Town of Sudbury, through its Select Board, Town Manager, and employees, commits to the following objectives:

- Sustaining a consistent level of service and value for residents [and enhancing as needed and able](#)
- Safeguarding financial integrity and minimizing risk through a system of internal controls
- Ensuring the quality and maintenance of capital assets.
- Conforming to general law, uniform professional standards, and municipal best practices
- Protecting and enhancing the town's credit rating
- Promoting transparency and public disclosure
- Revisiting and reviewing the policies every three years to assess thresholds and targets.

Commented [1]: Suggest appending the follow this sentence -- "and enhancing as needed and

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Town of Sudbury, Massachusetts

Financial Policies Manual

Table of Contents

Financial Reserves	4
Forecasting	7
Overlay	10
Debt Management	12
Investments	15
Capital Assets	16
Other Postemployment Benefits Liability (OPEB)	19

FINANCIAL RESERVES

PURPOSE

To help the Town stabilize finances and maintain operations during difficult economic periods, this policy establishes prudent practices for appropriating to and expending reserve funds. With well-planned sustainability, Sudbury can use its reserves to finance emergencies and other unforeseen needs, to hold money for specific future purposes, or in limited instances, to serve as revenue sources for the annual budget. Reserve balances and policies can also positively impact the Town's credit rating and consequently its long-term cost to fund major projects.

APPLICABILITY

This policy pertains to short- and long-range budget decision making and applies to the Select Board, Sudbury Public School Committee, and Town Manager in those duties. It also applies to the related job duties of the Finance Director, the Town Accountant, the Board of Assessors, and the Finance Committee.

POLICY

The Town of Sudbury commits to building and maintaining its reserves so as to have budgetary flexibility for unexpected events and significant disruptions in revenue-expenditure patterns and to provide a source of available funds for future capital expenditures. **The Town will strive to maintain overall reserves in the level of 10-12% of the prior year General Fund budget.** These reserves are comprised of the general stabilization fund, special purpose stabilization funds and free cash target. Adherence to this policy will help the Town withstand periods of decreased revenues and control spending during periods of increased revenues. Other types of reserves include retained earnings and overlay surplus.

A. Protection of Credit Rating

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Maintenance of the highest-level credit rating possible is important to the continued financial health of Sudbury as it reduces the costs of issuing debt. Credit rating firms consider management practices to be very important factors. Poor management practices can inadvertently jeopardize the financial health of a local government. To be proactive in assuring the Town of Sudbury does not engage in these practices, the Select Board of the Town of Sudbury has adopted the following credit rating protection policies. The Town will not rely on reserves to sustain operating budgets. Use of such reserves will be limited to helping the Town deal with short-term or emerging financial stress. In the subsequent year, the Town will either reduce spending to within the limits of recurring revenues or seek approval for additional revenues from the voters of the Town. The Town will not defer current costs, such as pension or benefit costs, to a future date.

B. Free Cash

The Division of Local Services (DLS) defines free cash as “the remaining, unrestricted funds from operations of the previous fiscal year, including unexpended free cash from the previous year.” DLS must certify free cash before the Town can appropriate it in the new year.

By August 15th each year, the Town Accountant shall submit to DLS a year-end balance sheet, free cash checklist, and year-end reporting checklist. Once DLS certifies free cash, the Town Accountant will provide copies of the certified balance to the Select Board, Town Manager, and Finance Director.

Each spring, the Town Manager shall include the Town’s free cash balance in the proposed budget submitted to the Select Board and Finance Committee for the ensuing fiscal year, along with details on the proposed uses of and/or retention level of free cash. Any proposed use of free cash for capital equipment or improvements shall be consistent with needs identified in the Town’s capital improvement program.

The Town shall set a year-to-year goal of maintaining its free cash in the range of **3-5% of the prior year’s General Fund budget**. To achieve this, the Finance Director shall assist the Town Manager in proposing budgets with conservative revenue projections, and department heads shall carefully manage their appropriations to produce excess income and budget turn backs. Further, budget decision makers will avoid fully depleting the Town’s free cash in any year, so that the succeeding year’s calculation can begin with a positive balance. Moreover, as much as practicable, the Town will limit its use of free cash to funding one-time expenditures (like capital projects or emergencies and other unanticipated expenditures) and should appropriate any free cash excess above **5%** of the General Fund budget to reserves, to offset unfunded liabilities, or to set aside for existing debt.

C. Stabilization Funds

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A stabilization fund is a reserve account allowed by state law to set aside monies to be available for future spending purposes, including emergencies or capital expenditures, although it may be appropriated for any lawful purpose. Prior to the adoption of this policy, the Town established and appropriated to a general stabilization fund and special purpose stabilization funds for capital projects.

General Stabilization: The Town will endeavor to maintain a minimum balance of **5% of the prior year's General Fund budget** in its general stabilization fund. Withdrawals from general stabilization should only be used to mitigate emergencies or other unanticipated events that cannot be supported by current General Fund appropriations. When possible, withdrawals of funds should be limited to the amount available above the 5% minimum reserve target level. If any necessary withdrawal drives the balance below the minimum level, the withdrawal should be limited to **one-third of the general stabilization fund balance** at a time, endeavoring to never fully deplete it. Replenishment of the funds should be made annually at the Fall Town Meeting, or the earliest available meeting after free cash has been certified.

Special Purpose Stabilization Funds

Capital Stabilization: The Town will appropriate annually to the capital stabilization fund so that over time it achieves a target balance sufficient to cover the Town's cash outlay for capital. Doing so enables the Town to pay outright for moderate-range (**under \$1M**) capital expenditures and thereby preserve debt capacity for major, higher-dollar purchases or projects. This approach balances debt with pay-as-you-go practices and protects against unforeseen costs. **The Town should endeavor to achieve and maintain a combined target balance for all capital-related special purpose stabilization funds equal to 2% of prior year General Fund budget.**

Withdrawals from the Capital Stabilization Fund should be avoided until the target balance has been achieved. Once achieved, funds should be replenished annually at the Fall Town Meeting, or the earliest available meeting after free cash has been certified (subject to free cash availability). **WHAT'S THE PRIORITY OF FILLING THIS FUND... ALWAYS TAG THE FUND WITH A PROJECT (PICK A PROJECT ~3 YRS OUT... IN \$1-3M RANGE... THEN SAVE TOWARDS THAT... WITH WHATEVER PRIORITY THAT PARTICULAR PROJECT HAS... --- another thought... in the year if/when we have unexpectedly LOWWW Free Cash, in that year wouldn't we want the "Stabilization" fund to stabilize/smooth this valley... as opposed to neglecting that year's capital needs, or taking on debt...**

Turf Stabilization: The Town maintains a special purpose fund to offset the cost of periodic replacement of designated town-owned turf fields. As originally created, this fund applies to the Cutting Field but could be expanded to other fields in the future.

Commented [2]: This paragraph elicits several questions:

1) "Funds should be replenished annually...or a earliest available meeting after free cash has been certified" -- Is the assumption that the first prior free cash is to replenish this fund?

2) This seems like a slow/medium timeline for growth fund. So, while free cash could be a source of replenishment, this fund shouldn't necessarily be top priority for free cash.

3) This Fund could be used for projects that fall \$1-3 million dollar range - too small for debt exc too big for annual spend. Perhaps a project should be associated with this Fund. And then the replenishment of the Fund would be determined by the priority project in the CIP process.

4) For example: A new school roof could be in the million dollar range. So, for the next couple of years we know that money going into this Fund will be for a new roof. So, allocation into the fund should be determined by the priority of that roof project in the prioritization list.

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D. Overlay Surplus

The overlay is a reserve the Town uses to offset unrealized revenues resulting from property tax abatements and exemptions. Sudbury officials will prudently manage the overlay in accordance with the Town's Overlay policy to avoid the need to raise overlay deficits in the tax levy. At the conclusion of each fiscal year, the Board of Assessors shall submit to the Town Manager and Finance Director an update of the overlay reserve with data that includes, but is not limited to, the gross balance, potential abatement liabilities, and any transfers to surplus. If the balance exceeds the amount of potential liabilities, the Town Manager may request that the Board of Assessors vote to declare those balances surplus, available for one-time expenditures (as with free cash).

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FORECASTING

PURPOSE

To assess the range of choices available to budget decision makers when determining how to allocate resources, this policy establishes guidelines for evaluating revenue sources and the requirement to determine an expenditure strategy as part of the annual budget process and longer-range fiscal planning. Forecasting helps local officials understand the long-range implications of pending near-term decisions.

APPLICABILITY

This policy applies to the Town Manager as the Town's chief budget decision maker. It also applies to the job responsibilities of the Finance Director, Sudbury Public Schools Superintendent, Sudbury Public Schools Business Manager, Select Board, Sudbury Public Schools Committee, and Finance Committee.

POLICY

A. Revenue Guidelines

The Town will continually seek to diversify its revenue to improve the equity and stability of sources. Each year and whenever appropriate, the Town will reexamine existing revenues and explore potential new sources. A balance will be sought between elastic and inelastic revenues to minimize any adverse effects caused by inflation or other economic changes. Additionally, intergovernmental revenues (e.g., local aid, grants) will be reviewed annually to determine their short- and long-term stability in order to minimize detrimental impacts.

The Town will generally avoid using one-time revenues to fund ongoing or recurring operating expenditures. These one-time revenue sources can include, but are not limited to, free cash, bond premiums, overlay surplus, sale of municipal equipment, legal settlements, insurance proceeds, and gifts. Additionally, the Town hereby establishes the following priority order when appropriating one-time revenues:

- General Stabilization Fund (maintenance of 5% of prior year's General Fund budget)
- Annual Capital Spending (non-debt; target of 3% of prior year's General Fund budget) notional priority ranks of 1,2,3,4,6 ← - don't pull in 6 until you fund '5' (in next bullet)
- Capital Stabilization Fund (target of 2% of prior year's General Fund budget) - IF WE HAVE 'TAGGED' THE CAPSTABFUND WITH A SPECIFIC PROJECT, THEN THE PRIORITY OF THE CAPSTABFUND SLIDES IN '5'
- OPEB Trust Fund
- Existing debt

New growth (residential or commercial) permanently adds to the tax base. The Town should endeavor to contribute any new growth in excess of 1% of prior year's General Fund budget to capital expenditures or reserves. ARGUMENT THAT THIS SHOULD BE A FUNCTION OF

Commented [3]: The prioritization of these could be further discussed. Depending on the usage guidelines for the Capital Stabilization Fund, some might argue that these 2 should be swapped in priority. However, it's dependent on a clear definition of the usage of the Capital Stabilization Fund.

Commented [4]: The Finance Committee discussed this concept of "new growth in excess of 1%...shifting towards capital or reserves." There was a general agreement that this was perhaps too general of a statement. The cause of the new growth should be a factor in the usage of the funds.

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WHETHER THIS BIG NEW GROWTH IS RESIDENTIAL (REQUIRING TOWN SERVICES) VS. LOW IMPACT / COMMERCIAL.

Economic downturns or unanticipated fiscal stresses may compel reasonable exceptions to the use of one-time revenue. In such cases, the Town Manager, in consultation with the Finance Director, can recommend its use for operational appropriations. Such use will trigger the Town Manager to develop a plan to avoid continued reliance on one-time revenues.

State laws impose further restrictions on how certain types of one-time revenues may be used. The Town will consult the following General Laws when the revenue source is:

- Sale of real estate: M.G.L. c. 44, §63 and M.G.L. c. 44, §63A
- Gifts and grants: M.G.L. c. 44, §53A and M.G.L. c. 53A½
- Bond proceeds: M.G.L. c. 44, §20
- Sale of moveable property: M.G.L. c. 44, § 53

This policy further entails the following expectations regarding revenues:

- The Assessing Department will maintain property assessments for the purpose of taxation at full and fair market value as prescribed by state law.
- Town departments that charge fees (Enterprise Funds and recreation programs, for example) shall annually review their fee schedules and propose adjustments when needed to ensure coverage of [ALL?] service costs [CLARITY ABOUT WHAT'S INCLUDED... CONCERN ABOUT SHIFTING 'FRACTIONAL' PEOPLE?... AT LEAST CLARITY IN REPORTING] and endeavor to generate retained earnings of 3-5% of prior year's enterprise fund budgets for towards asset maintenance / replacement.
- The Building Department will notify the Finance Director of any moderate-to-large developments that could impact building permit volume.
- Department heads will strive to be informed of all available grants and other aid and will carefully consider any related restrictive covenants or matching requirements (both dollar and level-of-effort) to determine the cost-benefit of pursuing them.
- Revenue estimates will be adjusted throughout the budget cycle as more information becomes available.

Commented [BS5]: Discussion about separating around 'Enterprise Funds' and around recreation programs.

Commented [6]: A clear definition of "service costs" would be helpful.

B. Expenditure Guidelines

Annually, the Town will determine a particular budget approach for forecasting expenditures, either maintenance (level service), level funded, or one that adjusts expenditures by specified increase or decrease percentages (either across the board or by department). A maintenance budget projects the costs needed to maintain the current staffing level and mix of services into the future. A level funded budget appropriates the same amount of money to each municipal department as in the prior year and is tantamount to a budget cut because inflation in mandated costs and other fixed expenses still must be covered.

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C. Financial Forecast Guidelines

To determine the Town's operating capacity for each forthcoming fiscal year, the Finance Director will annually create and provide the Town Manager with a detailed budget forecast. The Finance Director shall also annually prepare a three-year financial projection of revenues and expenditures for all operating funds.

These forecasts shall be used as planning tools in developing the following year's operating budget as well as the five-year capital improvement plan.

To ensure the Town's revenues are balanced and capable of supporting desired levels of services, forecasts for property taxes, local receipts, and state aid shall be conservative based on historical trend analyses and shall use generally accepted forecasting techniques and appropriate data. To avoid potential revenue deficits, estimates for local receipts (e.g., inspection fees, investment income, license fees) should generally not exceed 90% of the prior year's actual collections without firm evidence that higher revenues are achievable.

Additionally, the forecast model should assume that:

- The Town will maintain its current level of services.
- Property taxes (absent overrides) will grow within the limits of Proposition 2½.
- New growth will be projected conservatively, considering the Town's three-year average by property class.
- The Town will annually meet or exceed the state's net school spending requirements.
- Local receipts and state aid will reflect economic cycles.
- The Town will pay the service on existing debt and adhere to its Debt Management policy.
- The Town will make its annual pension contributions and continue appropriating to its other postemployment benefits trust fund.
- The Town will build and maintain reserves in compliance with its Financial Reserves policy.

D. Reporting

Under Consideration: The Town financial results vs. forecast (REVENUES, AND EXPENSES) shall be reported out quarterly for the Select Board and public. (to investigate: how much work, what would we do with it?)

Commented [7]: How does this help to ensure operating budget captures all known/necessary maintenance/replacement items vs. CIP?

Commented [BS8R7]: FINCOM COMMENT CONC ENSURING THAT DEPARTMENTS DON'T NEGLECT FORECASTING/INCLUDING MAINTNANCE INTO THE OP BUDGETS, AND PERFORMING THE MAINTENANC

Note: Police cars (purchase/replace) are in Police D operating budget. But other departments not know include 'capital' in their budgets.

Commented [9]: Town Financial Policies shoul to establish increased transparency and timely communications among all stakeholders as a m threshold. FinCom is often hurried through their mandatory process by delays in presenting info If even in draft form, early distribution to the Fin and others would alleviate bottlenecks and cont to future avoidance of incomplete information to Town and Warrant as has happened the last se years.

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OVERLAY

PURPOSE

To set guidelines for determining the annual overlay amount in the Town's budget and for deciding whether any overlay balance can be certified as surplus.

The allowance for abatements and exemptions, commonly referred to as the overlay, is an account whose purpose is to offset anticipated abatements and exemptions of committed real and personal property taxes. Effective December 7, 2016, the Municipal Modernization Act ([Chapter 218 of the Acts of 2016](#)) provides for a single overlay account. Previously, a community had to maintain separate overlay reserves for each fiscal year and could not use the surplus from one year to cover another year's deficit without a multistep process involving the assessors, accounting officer, and local legislative body. However, the Act allows all existing overlay balances to be transferred to a single account. Although this policy treats overlay as a single account, to continue historical information and facilitate reconciliations, the Town may elect to maintain subsidiary ledgers by levy year for overlay balances.

APPLICABILITY

This policy applies to the job duties of the Board of Assessors, Director of Assessing, Town Manager, and Finance Director.

POLICY

A. Annual Overlay

Each year, the Board of Assessors shall vote in an open meeting to authorize a contribution to the overlay account as part of the budget process and to raise it without appropriation on the Town's Tax Recap Sheet. The Principal Assessor will propose this annual overlay amount to the Board of Assessors based on the following:

- Current balance in the overlay account
- Five-year average of granted abatements and exemptions
- Potential abatement liability in cases pending before, or on appeal from, the Appellate Tax Board (ATB)
- Timing of the next certification review by the Division of Local Services (scheduled every five years under the Municipal Modernization Act) The Board of Assessors shall notify the Finance Director of the amount of overlay voted

B. Excess Overlay

Annually, the Finance Director and Director of Assessing will conduct an analysis to see if there is any excess in the overlay account by factoring the following:

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- Current balance in the overlay account after reconciling with the Town Accountant's records
- Balance of the property tax receivables, which represents the total real and personal property taxes still outstanding for all levy years
- Estimated amount of potential abatements, including any cases subject to ATB hearings or other litigation

Upon determining any excess in the overlay account, the Principal Assessor shall present the analysis to the Board of Assessors for its review.

C. Overlay Surplus

If there is an excess balance in the overlay account, the Board of Assessors shall formally vote in an open meeting to certify the amount to transfer to overlay surplus and shall notify the Town Manager and Finance Director in writing of its vote. If the Town Manager makes a written request for a determination of overlay surplus, the Board of Assessors shall vote on the matter within the next 10 days and notify the Town Manager and Finance Director of the result in writing. 30 days In advance of the annual Tax Classification Hearing, the Select Board shall request an update from the Board of Assessors on the balance of the overlay account.

Commented [10]: A specification of "XX days before the Tax Classification Hearing" for reporting of the balance would help to clarify the process.

Commented [11]: We would just like to emphasize here that the balance of the overlay account should be reported annually. This is a slow/med growth area so it should not be a "surprise" when the balance grows to a significant amount.

After being certified, Town Meeting may appropriate overlay surplus for any lawful purpose until the end of the fiscal year. However, the appropriation should be as prescribed in the Town's Forecasting policy (re: treatment of one-time revenues) and its Financial Reserves policy (re: overlay surplus). Overlay surplus not appropriated by year-end closes to the General Fund's undesignated fund balance.

DRAFT

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DEBT MANAGEMENT

PURPOSE

To provide for the appropriate issuance and responsible use of debt, this policy defines the parameters and provisions governing debt management. Policy adherence will help the Town to responsibly address capital needs, provide flexibility in current and future operating budgets, control borrowing, and maintain capital investment capacity. This policy is also intended to maintain and enhance the town's bond rating so as to achieve long-term interest savings.

APPLICABILITY

This policy applies to the Town Manager, Select Board, Sudbury Public School Committee, and Finance Committee in their budget decision making and in the Finance Director's debt reporting. It also applies to the Finance Director's budget analysis duties and statutory responsibilities associated with debt management, in their. ~~Additionally, in the~~ role as Treasurer/Collector, the ~~statutory responsibilities associated with debt management.~~

Commented [12]: Incomplete sentence?

POLICY

Under the requirements of federal and state laws, the Town may periodically issue debt obligations to finance the construction, reconstruction, or acquisition of infrastructure and other assets or to refinance existing debt. The Town will issue and manage debt obligations in such a manner as to obtain the best long-term financial advantage and will limit the amount of debt to minimize the impact on taxpayers. Debt obligations, which include general obligation bonds, revenue bonds, bond anticipation notes, lease/purchase agreements, and any other debt obligations permitted to be issued under Massachusetts law, shall only be issued to construct, reconstruct, or purchase capital assets that cannot be acquired with current revenues.

A. Debt Financing

Debt may be financed either within the levy, or beyond the levy (a debt exclusion which requires a Proposition 2 ½ voter referendum).

In financing with debt, the Town will:

1. Issue long-term debt only for objects or purposes authorized by state law and only when the financing sources have been clearly identified.
2. Use available funds as appropriate to reduce the amount of borrowing on all debt-financed projects.
3. Confine long-term borrowing to capital improvements and projects that cost at least \$100,000 and that have useful lifespans of at least ten years or whose lifespans will be prolonged by at least ten years.
4. Restrict debt exclusion borrowing to proposals which meet all three of these criteria:
 - (1) useful life of 20 years or more
 - (2) estimated cost of the principal payment in the first year of the debt issuance greater than 0.5% of the prior year's General Fund revenue. This criterion

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applies after target level for in-levy debt of 3% is initially achieved, as per Section B. Debt Limits and Targets Item 3.

(3) the expenditure is either for town-owned land, buildings, or infrastructure or for a LSRHS capital assessment.

5. Refrain from using debt to fund any recurring purpose, such as current operating and maintenance expenditures.
6. The policy of the Select Board shall be to include sufficient debt capacity within the levy, such that capital items can be more predictably funded.
7. As debt within the levy decreases annually, this amount shall be used for capital, future debt, or set aside for future capital.

B. Debt Limits and Targets

The Town will adhere to these debt parameters:

1. Total annual debt service, including debt exclusions and any self-supporting debt, shall be limited to 10% of General Fund revenues, with a reasonable range of 5-7%.
2. As dictated by state statute MGL ch 44 section 10, the Town's debt limit shall be 5% of its most recent equalized valuation.
3. The Town shall endeavor to gradually and consistently pursue future debt issuances financed by within-levy dollars with a target of 3% of prior year's General Fund budget.

C. Structure and Term of Debt

The following shall be the Town's guidelines on debt terms and structure:

1. The term of any debt shall not exceed the expected useful life of the capital asset being financed and in no case shall it exceed the maximum allowed by law.
2. The Town will limit bond maturities to no more than 10 years, except for major buildings, water and water facility projects, land acquisitions, and other purposes in accordance with the useful life borrowing limit guidelines published by the Division of Local Services (DLS).
3. For non-excluded debt the Town will generally choose terms less than 20 years and structure as level principal payments, so that over time the annual debt payment goes down, opening up capacity for future capital.
4. Any vote to authorize borrowing will include authorization to reduce the amount of the borrowing by the amount of the net premium and accrued interest.
5. The Town will work closely with its financial advisor to follow federal regulations and set time frames for spending borrowed funds to avoid committing arbitrage, paying rebates, fines and penalties to the federal government, and jeopardizing any debt issuance's tax-exempt status.

D. Bond Refunding

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To achieve potential debt service savings on long-term debt through bond refunding, the Town will:

1. Issue debt with optional call dates no later than 10 years from issue.
2. Analyze potential refunding opportunities on outstanding debt as interest rates change.
3. Use any net premium and accrued interest to reduce the amount of the refunding.
4. Work with the Town's financial advisor to determine the optimal time and structure for bond refunding.

E. Protection of Bond Rating

To protect its bond rating, the Town will:

1. Maintain good communications with bond rating agencies, bond counsel, banks, financial advisors, and others involved in debt issuance and management.
2. Follow a policy of full disclosure on every financial report and bond prospectus, including data on total outstanding debt per capita, as a percentage of per capita personal income, and as a percentage of total assessed property value.
3. The Town will not rely on reserves to sustain operating deficits. Use of such reserves will be limited to helping the Town deal with short-term or emerging financial stress, but then the Town will either reduce spending to within the limits of recurring revenues, or seek approval for additional revenues from the voters of the Town.
4. The Town will not defer current costs to a future date. This includes costs such as pension costs or benefits costs. From time to time, the State offers municipalities the option of deferring payments to their pension system, or other costs, as a short-term way of balancing a fiscal year's budget. However, it is the intention of the Town of Sudbury not to rely on these options.
5. The Town will follow the policies as outlined in this policy statement.

F. Reporting

1. The Town's Annual Town Report, Town Manager's Budget Request and Annual Town Meeting Warrant will give comprehensive summaries of the debt obligations of the Town.
2. The Finance Director will include an indebtedness summary as part of a report on receipts and expenditures in Sudbury's Annual Town Report.
3. The Finance Director, with the Town's financial advisor, will file the annual audit and official disclosure statement within 270 days of the end of the fiscal year.

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INVESTMENTS

PURPOSE

To ensure the Town's public funds achieve the highest possible, reasonably available rates of return while following prudent standards associated with safety, liquidity, and yield, this policy establishes investment guidelines and responsibilities. It is further designed to comply with the Governmental Accounting Standards Board's recommendation that each community disclose its key policies affecting cash deposits and other long-term investments to ensure they are managed prudently and not subject to extraordinary risk.

Commented [13]: Is there an Investments Adv group?

Commented [BS14R13]: The Town has a Financi Advisor. We think (confirm) See POLICY section edit below...

APPLICABILITY

This policy pertains to short-term operating funds, including general funds, special revenue funds, bond proceeds, capital project funds, and to all accounts designated as long-term (e.g., trusts, stabilization funds, other postemployment benefits trust fund (OPEB), and others the Town may set aside for long-term use, including scholarship and perpetual care funds). It does not pertain to the Town's retirement fund, which is managed by the Middlesex County Retirement Board. This policy applies to the Finance Director, in the role as Treasurer, his or her designee(s), and any advisors or other professionals in their responsibilities for investing and managing Town funds.

POLICY

In consultation with the Town's Financial Advisor, The Finance Director shall invest funds in a manner that meets the Town's daily operating cash flow requirements and conforms to state statutes governing public funds while also adhering to generally accepted diversification, collateralization, and the prudent investment principles regarding safety, liquidity, and yield. The Finance Director will report investment performance to the Select Board each August. Additionally, they will report any deviation from the investment policy to the Select Board. (Other language from JD?)

Commented [BS15]: Note: we have proposed a s on Reporting, in the Forecasting policy...

See additional details in the Town of Sudbury Investment Policy (TODO: ADD DOC TO WEBSITE AND LINK) document as well as the [Town of Sudbury CPA Investment Policy](#) document.

Attachment2.b: 2021-10-27-incorporateFinCom Feedback - Select Board Financial Policies (4943 : Discussion and possible vote on finalization

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CAPITAL ASSETS

PURPOSE

To ensure Sudbury's capital assets can cost-effectively sustain the town's desired service levels into the future.

APPLICABILITY

This policy applies to the Town Manager as the Town's chief budget decision maker. It also applies to the job responsibilities of the Finance Director, School Superintendent, School Business Manager, Select Board, Sudbury Public School Committee, and Finance Committee.

Capital Assets are defined as the community-owned collection of significant, long-lasting, and expensive real and personal property used in the operation of government, including land and land improvements; infrastructure, such as roads, bridges, water and sewer lines; easements; buildings and building improvements; vehicles, machinery and equipment. In order to be included in Sudbury's Capital Improvement Program, Capital Assets must cost \$20,000 or more and have a useful life of 5 or more years. Items or improvements that do not meet this threshold should be included within the Town's operating budget.

POLICY

A. Capital Improvement Plan

The Town Manager shall maintain an inventory of all Town 'capital assets'. The Town Manager will update and adopt annually a five-year capital improvement plan ("CIP"), including the upcoming annual capital improvement budget ("CIB") and a four-year projection of capital needs and expenditures, which details the estimated cost, description and anticipated funding sources for capital projects. The CIP should govern projects undertaken either to build, buy, expand or replace a long-life asset or to an asset's condition beyond its original state of quality, efficiency, or useful life expectation.

Annually, the minimum level of capital spending the town should target year to year should be equivalent to 6% of the prior year's General Fund budget, endeavoring to draw equally equally from within-levy debt and cash capital sources. The chosen ratio of cash capital vs. in-levy debt used to fund capital may vary based on available cash capital, interest rates, and other factors.

The 6% target shall guide how much capital spending can be planned in each year of the CIP.

1. The Town Manager shall establish criteria to determine capital asset prioritization, including but not limited to:
 - mitigation of safety hazards
 - legal compliance

Commented [BS16]: from FINCOM: The MA Municipal Association suggests maintain information-rich, comprehensive, integrated, and readily accessible asset inventory to use in planning. The MMA Finance Committee Handt suggests a good set of asset attributes to include following:

- i. Location
- ii. Age
- iii. Useful life
- iv. Condition
- v. Original cost
- vi. Current value
- vii. Maintenance and operating costs
- viii. Type and extent of use
- ix. Depreciation – method and balance
- x. Estimated replacement costs
- xi. Any proposed date for rehabilitation or replacement

Commented [17]: There seems to be some confusion on the 6%.

Is this implying that 3% must be within-levy and must be from cash capital sources?

What if there isn't a project(s) to support 3% within-levy debt?

Specifying that the 6% must be "drawn equally" from sources seems too specific and not necessarily feasible.

Furthermore, why set the "minimum level" to 6% if there aren't projects to do, then why would we require ourselves to spend money? Wouldn't a 6% "target" be a better choice?

Clarify (list) definitions for terms used, i.e., Cash Capital - perhaps add a Glossary appendix

Attachment 2.b: 2021-10-27-incorporateFinCom Feedback - Select Board Financial Policies (4943 : Discussion and possible vote on finalization

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- ADA compliance (Americans with Disabilities Act)
- operating cost reduction
- service or efficiency improvement
- availability of outside funding sources
- conformance to asset replacement schedule
- contributing to execution of Master Plan
- enhancement of quality of life

2. Annually, the Town Manager shall request 5 and 15 year capital plans from Town Department Heads, SPS, and LSRHS. The Town's obligation per the LSRHS agreement shall be factored into the Town CIP.

3. The Town Manager ~~shall consult~~ in consultation with Department Heads, SPS, and LSRHS, shall annually regarding update the composition and prioritization of the 5 and 15 year capital plans and create an ordered list sorted by urgency score, with appropriate justification (identifying criteria and which department it supports).

~~2.~~ 3.4. A Capital Project Submission Sheet shall be required for every item listed on the five-year CIP.

4.5. The CIP shall not include items that cost less than \$20,000 or have a useful life of less than 5 years. Items that do not meet this threshold should be included within the Town's operating budget.

5.6. Alongside the CIP prioritization, potential Funding Sources shall be identified. Wherever possible, funding sources should be derived from 'cash capital' and within levy debt funding options. Funding sources for capital may include:

- Community Preservation Act (CPA) funds (if eligible; Open Space, Recreation, Historic)
- Town Manager's Capital Budget (items <\$100K)
- New growth dedicated to capital
- Capital Stabilization Fund
- Special-purpose stabilization funds
- Free Cash
- In-levy Debt
- Dedicated revenue sources (i.e. Sewataro revenue share).
- Capital Exclusion
- Debt Exclusion
- Grants

~~7.~~ Capital Items which are CPA-eligible and prioritized for the upcoming budget year (i.e. to be included in the CIB) must be locked down and presented to the CPC according to their application/evaluation timeline. [EXAMPLE... LS FIELD NOT PRESENTED TO CPC IN FALL 2019 OR FALL 2020. TOWN HAD NO CHOICE BUT TO USE FREE CASH].

6.8. The Town will emphasize preventive maintenance as a cost-effective approach to infrastructure maintenance. Exhausted capital goods will be replaced as necessary.

Commented [18]: Is this consistent in approach Do we look at 10 years (vs. 15) elsewhere? Are there limiting factors here to consider i.e., the LSRHS RMA agreement? Are we using the same template for capturing a Capital across the 3 cost centers and all depart If now, why? How do we know that we have a complete picture of Capital needs; that Dept. maintenance/replacement dollars and small spend plus the CIP captures 100% of our needs?

We have inconsistencies and limited data present regarding amortization/depreciation of assets to inform budget and CIP spend requirements. This should be corrected and sustained via the new

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Commented [19]: What is the origin of the \$20 limit?

Commented [BS20R19]: From conversation and into how to define 'capital'

Commented [21]: Can the approach be defined: how funding sources are sought for various projects

i.e., Project A seeks source 1a, if available then 1b ...? If not avail then what's the next source (2)

In particular consider CPC and other significant sources.

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Attachment 2.b: 2021-10-27-incorporateFinCom Feedback - Select Board Financial Policies (4943 : Discussion and possible vote on finalization

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~~7-9.~~ The CIP shall not include items deemed to be departmental maintenance. Rather, such smaller, shorter life maintenance items should be included in departmental budgets.

~~8.~~ Annually, the Town shall request LSRHS's 5 and 15 year capital plans. The Town's obligation per the LSRHS agreement shall be factored into the Town CIP.

B. Risk Management

- 1. The Town will maintain an effective risk management program that provides adequate coverage, minimizes losses, and reduces costs.
- 2. The Town will annually work with the Town's insurance carrier to update all listings of Town owned assets and the value and condition of such covered assets.

C. Reporting

- 1. Annually by December 31st, the 5 year capital improvement plan shall be posted and accessible for public view on town website for public review at all times, reflecting updates for any changes made. The Capital Project Submission Sheet for each project on the 5 year CIP shall be posted and linked from the CIP.
- 2. ~~The Town Manager will submit a capital program annually to the Capital Improvement Advisory Committee (CIAC). The proposed program will detail each capital project, the estimated cost, description and funding. The Town Manager will submit CPA-eligible projects under consideration for the CIB to the the Community Preservation Committee by October 15.~~
- 3. The Town Manager shall submit Town Meeting articles for the CIB by January 31st.
- 4. The Select Board shall report all requests for capital appropriations to the Finance Committee on or before February 5. (Bylaws Article IV Section 5).
- 5. The Town Manager shall coordinate, by February 5, the timely distribution of the CIB, CIP, and associated Capital Project Submission Sheets to the Select Board, CIAC, and Finance Committee and other stakeholders. The proposed program will detail each capital project, the estimated cost, description and funding. They will also solicit and coordinate receipt of questions in advance of a joint meeting of the above-mentioned boards, committees, and commissions. This joint meeting shall occur on or before ~~March 4~~ February 15.
- 6. The Town Manager will present the components of the CIB, in the form of Town Meeting Articles, for approval at the Annual Town Meeting (generally the 1st Monday in May).

Commented [22]: What is the impact of this change? Is there an acknowledgement that op budgets need to increase in order to achieve this? How will any increases be determined?

Commented [23]: Is this consistent in approach? Do we look at 10 years (vs. 15) elsewhere? Are there limiting factors here to consider i.e., the LSRHS RMA agreement? Are we using the same template for capturing a Capital across the 3 cost centers and all depart? If now, why? How do we know that we have a complete picture of Capital needs; that Dept. maintenance/replacement dollars and small spend plus the CIP captures 100% of our needs?

We have inconsistencies and limited data present regarding amortization/depreciation of assets to inform budget and CIP spend requirements. This should be corrected and sustained via the new template.

Commented [24]: Quarterly reporting of status capital projects is suggested. Furthermore, for inclusion of the KPI process would be recommended as well.

Commented [BS25]: Have an honest discussion, work? Intention is that the result of prioritizations rough 5 (FIVE) year plan is updated by Dec 31. Ref of the 1 (ONE) year CIB (budget) continues into January.

Commented [26]: Should the TM also submit the capital program to the Finance Committee? This is only concerned with larger cost projects. The Finance Committee takes a comprehensive look at all projects.

Commented [27]: A clear definition of "timely distribution" would be helpful. A date would help.

Formatted: Not Highlight

Commented [28]: Clarification -- What is the form of the approval? As it is now, the TM Capital Budget is a town meeting article. And others are separate articles. Is this statement meant to change that?

Attachment 2.b: 2021-10-27-incorporateFinCom Feedback - Select Board Financial Policies (4943) : Discussion and possible vote on finalization

DOCUMENT ORIGIN: JAN 5, 2021 DRAFT BY DENNIS KEOHANE (Finance Dir.) INCORPORATING 2020 DLS RECCOMENDATIONS. EDITED BY SELECT BOARD POLICIES AND PROCEDURES SUBCOMMITTEE AS OF AUGUST 2, 2021, [then incorporating feedback from Fincom](#)

OTHER POSTEMPLOYMENT BENEFITS LIABILITY (OPEB)

PURPOSE

To provide the basis for a responsible plan for meeting the Town's obligation to provide other postemployment benefits (OPEBs) to eligible current and future retirees. This policy provides guidelines designed to ensure OPEB sustainability and achieve generational equity among those called upon to financially support OPEBs, thereby avoiding transferring costs into the future.

APPLICABILITY

This policy encompasses OPEB-related budget decisions, accounting, financial reporting, and investment.

BACKGROUND

In addition to salaries, the Town of Sudbury compensates employees in a variety of other forms. Many earn benefits over their years of service that they will not receive until after retirement. A pension is one such earned benefit. Another is a set of retirement insurance plans for health, dental, and life. These are collectively referred to as other postemployment benefits or OPEBs.

OPEBs represent a significant liability for the Town that must be properly measured, reported, and planned for financially. As part of a long-range plan to fund this obligation, the Town established an OPEB Trust Fund, which allows for long-term asset investment at higher rates of return than those realized by general operating funds.

POLICY

The Town of Sudbury is committed to funding the long-term cost of the benefits promised its employees. To do so, the Town will accumulate resources for future benefit payments in a disciplined, methodical manner during the active service life of employees. The Town will also periodically assess strategies to mitigate its OPEB liability. This involves evaluating the structure of offered benefits and their cost drivers while at the same time avoiding benefit reductions that would place undue burdens on employees or risk making the Town an uncompetitive employer.

A. Accounting and Reporting

The Finance Director will obtain actuarial analyses of the Town's OPEB liability every two years and will annually report the Town's OPEB obligations in financial statements that comply with the current guidelines of the Governmental Accounting Standards Board.

The Town Auditor shall ensure that the Town's independent audit firm reviews compliance with the provisions of this policy as part of its annual audits.

B. Mitigation

DOCUMENT ORIGIN: JAN 5, 2021 DRAFT BY DENNIS KEOHANE (Finance Dir.) INCORPORATING 2020 DLS RECOMMENDATIONS. EDITED BY SELECT BOARD POLICIES AND PROCEDURES SUBCOMMITTEE AS OF AUGUST 2, 2021, [then incorporating feedback from Fincom](#)

On an ongoing basis, the Town will assess healthcare cost containment measures and evaluate strategies to mitigate its OPEB liability. The Finance Director shall monitor proposed laws affecting OPEBs and Medicare and analyze their impacts. The Human Resources Director shall regularly audit the group insurance and retiree rolls and drop any participants found to be ineligible based on work hours, active Medicare status, or other factors.

C. Funding

To address the OPEB liability, decision makers shall analyze a variety of funding strategies and subsequently implement them as appropriate with the intention of fully funding the obligation. The Town shall derive funding to invest in the OPEB trust from taxation, free cash, and any other legal form.

DRAFT

Select Board members: Your efforts, along with Dennis, have produced a very solid product, thank you!

I solicited input from the Department Heads and have this for your consideration and follow-up with Dennis, regarding the Draft Financial Policies review.

REQUESTED CHANGES

Page 4-5: Free Cash. 8/15 is too early to submit. August 15 is a generally unrealistic date to submit free cash for approval to DOR. This year free cash was submitted on Sept. 13, which is still somewhat on the early side. I believe Dennis intends to address this with you. Free Cash can't be submitted before the year is closed, and there are many responsibilities that may make 8/15 unsustainable as an attainable annual goal.

Page 17: Town Manager's Capital Budget should be: items less than \$100,000 in one year; less than \$200,000 over multiple years; and last more than 5 years.

- Town Manager's Capital Budget (**items less than \$100,000 in one year; less than \$200,000 over multiple years; and last more than 5 years**) → expand the description as indicated

Page 19: OPEB Paragraph 3: we do not pay towards dental in retirement. Retirees can keep the plan but they pay 100%

BACKGROUND

In addition to salaries, the Town of Sudbury compensates employees in a variety of other forms. Many earn benefits over their years of service that they will not receive until after retirement. A pension is one such earned benefit. Another is a set of retirement insurance plans for health, **dental**, and life. These are collectively referred to as other postemployment benefits or OPEBs.

- Remove reference to dental.

COMMENT

DPW: "I would like to see if there is a method of including some dollar amount for vehicle replacement as an operating capital line item in the DPW budget. Therefore eliminating the need to always bring items to Town meeting particularly for replacement of an existing vehicle."

- **Dennis is equipped to speak to you on this**, however, there is a marked difference in DPW vehicles and Police, primarily the service/use life. Police vehicles are typically 3-year assets, so the approach for them is different. DPW vehicles last more than 5 years.

I greatly appreciate the opportunity for the professional staff to review and contribute comments/enhancements to the Policy draft.

Respectfully, Henry

Memo to Select Board regarding DLS report and Financial Policies Manual
Notes from CIAC meetings 8/30/21, 9/21/21

Items to be expanded on or included in Policies:

The purpose of the CIAC is to vet and research the capital items presented by the Departments.

- To better serve the Town of Sudbury, the CIAC requests that all departments submit a summary of projects brought to the committee for evaluation. This allows the group to apply lessons learned from similar projects and have a historic project information to make more informed evaluations. Each department should be responsible for providing a “subsequent year(s)” summary as to the progress of capital items that have been approved by the Town. The format should be a presentation and/or a written report on the follow-up on status of items purchased, project completion, etc. If something is delayed, that should also be noted.
- The efficiency of the joint Select Board/CIAC/Finance Committee needs to be addressed. Prior to this meeting, the CIAC will have heard presentations from the Department Heads and will have reviewed and opined on the capital items and projects. The CIAC should present its report at a joint meeting to the Select Board and Finance Committee, where the Department Heads and CPC representatives will also be present. Questions can be asked of the CIAC and/or the Department Heads. This will prevent redundancy in presentation time and will utilize the expertise and research done by the CIAC. At the same meeting, the Town Manager can present his Capital Budget.
- The Capital and Turf Stabilization Funds are good vehicles to fund capital projects. However, it is necessary to clearly define how and when these funds are to be funded, whether through the collection of fees or from the Town or a combination of both. The Turf Stabilization Fund should include the Town of Sudbury portion of the LS fields. Its fee structure should be well defined and have clear funding goals to meet the needs of turf replacements, without having to go to the Town for additional funds. The present LS turf field agreement should be reviewed and the responsible parties should be well defined to meet this goal.
- The CIAC supports the recommended policy that Sudbury should target a minimum capital project funding of 6% of the budget. We agree the funding should be a combination of free cash, using debt service within the levy, fees, the Capital Stabilization Fund and appropriations within the levy; we should avoid using capital exclusions and debt exemptions whenever possible.

We thank the Policies and Procedures Review Subcommittee, and the Select Board, for their time and effort in creating this document.

Respectfully submitted,
Capital Improvement Advisory Committee



SUDBURY SELECT BOARD
Tuesday, December 7, 2021

MISCELLANEOUS (UNTIMED)

3: BFRT update

REQUESTOR SECTION

Date of request:

Requestor: Member Dretler

Formal Title: Bruce Freeman Rail Trail update by Environmental Planner Beth Suedmeyer. (~35 min.)

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

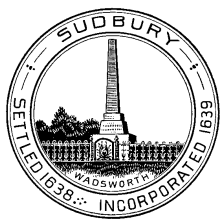
Approximate agenda time requested: 35 minutes

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Henry L Hayes	Pending
Jonathan Silverstein	Pending
Jennifer Roberts	Pending
Select Board	Pending

12/07/2021 6:30 PM



Town of Sudbury

Planning and Community Development Department

Flynn Building
278 Old Sudbury Rd
Sudbury, MA 01776
978-639-3387
Fax: 978-639-3314

<https://sudbury.ma.us/pcd>

TO: Select Board
FROM: Beth Suedmeyer, Environmental Planner, Planning and Community Development
RE: BFRT Design Project Update
DATE: December 3, 2021

I am pleased to provide this summary of project status in response to the request for an update on the Bruce Freeman Rail Trail (BFRT) Design Project (BFRT, Phase 2D, MassDOT ID 608164).

Design Schedule

Progress continues on the 100% Design stage, ROW process, and environmental permitting. The project design must be “shovel ready” by October 2022 to take advantage of the state and federal funds for construction. The project is on track to achieve this milestone.

Nick LaPointe of Fuss & O’Neill (F&O) and I attended the MassDOT Priority of Projects meeting on November 30th. This is an internal MassDOT meeting where projects are reviewed and project readiness is discussed. Periodically they invite project proponents to attend. The Project Manager, Environmental, and ROW staff at MassDOT discussed the project status and stated during the meeting that they are comfortable that the project is on track to advertise as scheduled. There were no significant concerns identified for the Sudbury BFRT project, and there were no questions for the Town or consultant.

Later, on November 30, Fuss and O’Neill updated the project schedule. A slight shift in the advertising date from June 25 to July 2, 2022 was noted. The standard MassDOT / F&O recommended timelines are still being used in this schedule estimate, and there are potential adjustments that may be made to accommodate keeping the June advertising date. We don’t feel the need to do that now, but we will discuss the schedule with the MassDOT staff and of course will all continue to do our best to advance the process. Ultimately, we still have a significant buffer before the end of fiscal year deadline of September 30, 2022. The updated schedule is available online.

F&O indicated with the updated schedule that ROW/Section 106/Categorical Exclusion (Programmatic National Environmental Policy Act (NEPA) / Federal Highway review) remain critical paths and the negotiations on any potential lease agreements with property owners and MassDOT Rail Division should begin as soon as possible. A ROW coordination meeting with the Town, ROW Division/Rail Division in early January to coordinate meeting with the abutters is planned once the title work is available. Title research reports are starting to trickle in, and it is possible we will be able to make up time. The lease agreement negotiations with MassDOT have advanced to the point that the draft lease will be shared with the Select Board for the December 7th meeting.

Schedule and Progress Updates:

- 100% Submission scheduled for Mid-January 2022
- Environmental Permits
 - Chapter 91 review by MassDEP is complete. MassDEP determined the project was jurisdictional, but exempt from permitting as it qualifies as a minor modification.
 - MEPA ENF – Submitted to MEPA on November 15. A virtual Consolation Session with MEPA will occur on Tuesday, December 7 at 10 AM. Comments are due on December 13 and the Secretary’s Certificate will be issued on December 22. Full details are available on the Project Website.
 - To be filed: All Applications will be submitted by MassDOT. Our estimates for timing are as follows:
 - NOI – Revised Final Draft under MassDOT review now and scheduled to be filed by MassDOT in late December.
 - Army Corps Pre-Construction Notification (PCN) – No Corps mitigation is required, as impact thresholds for mitigation are not exceeded. This will be filed after the NOI.
- Right-of-Way (ROW)
 - Town Counsel and MassDOT Counsel have reviewed revised drafts of the lease agreement and it is ready for Select Board review and consideration.
 - MBTA Agreement Application for temporary construction access of the MBTA corridor is under final review by MBTA.
 - Title research for temporary easements and private driveway crossings is underway.
 - Potential appraisers have been engaged.
 - The Preliminary (75%) ROW plans have been approved.
 - Next steps
 - Appraisals for temporary easements
 - Negotiations with property owners
 - Final Lease Agreement(s) with Rail Division
 - Town Meeting Approval – timing to be determined

Task Force Meetings

The Bruce Freeman Rail Trail Advisory Task Force held a productive meeting on November 4, 2021 and has scheduled their next meeting for December 14, 2021. Information on this group is available at <https://sudbury.ma.us/bfirt/>.

Community Preservation Act Funding Requests

Public Hearings for the two CPA Applications related to the BFRT project opened at the November 17th Community Preservation Committee Meeting. The Town through the Town Manager's Office has requested two CPA Funding Applications for continuing the BFRT Project Advancement. The first is for funds which may be used for elements of the final design, construction details that may not be covered by MassDOT (potentially rest area structures, signs, and amenities like art installations), graphic design of the interpretive signs, design for recreational facilities to tie into the BFRT area, art installations, and construction oversight by the Town's consultant. The placeholder amount indicated at this stage is \$500,000 until we have resolved the question of what items in BFRT construction will be paid for by MassDOT. The additional funds also provide the project flexibility in case additional needs arise.

Part of this request is a response to MassDOT indicating, during the 75% Design review process, they may not fund construction of some of the trail accessories proposed for the project. With this question outstanding and a desire to have the option to install the full trail accessories currently proposed, we are requesting CPA funds to have the option to pay for some project construction costs which may potentially not be covered by MassDOT.

The second request is for CPA funding for the Town's continued support of the BFRT, to expand from the terminus of the Phase 2D project south towards Route 20 and Framingham. A slight revision to this proposal is being considered at the request of the Community Preservation Committee. The addition of the design of the first ¼ mile of the CSX corridor to connect the terminus of Phase 2D to Route 20 is being considered. The work involved in this revised feasibility and design project will advance the planning of the BFRT into the newly acquired former CSX corridor and the design the trail to the Route 20 Crossing. The project involves hiring a consultant to perform data collection, feasibility study, alternatives analysis, and conceptual plan and cost estimate development to create baseline information and contribute to the design phase of the rail trail project and then also advance the design of the quarter mile section to Route 20. This request would be for \$300,000. Public engagement will be facilitated to solicit input on the concept that will be advanced.

As always, more information on the project and the 75% design plans may be found at the BFRT project webpage. <https://sudbury.ma.us/pcd/?p=354>

12-2-21 DRAFT

LEASE AGREEMENT

This LEASE AGREEMENT (the "*Lease*") is entered into this _____ day of _____, 2022 (the "*Commencement Date*") by and between the **MASSACHUSETTS DEPARTMENT OF TRANSPORTATION**, a body politic and corporate and a public instrumentality of the Commonwealth of Massachusetts duly established and existing pursuant to M.G.L. Chapter 6C, as amended (the "*Enabling Act*"), having an address of Ten Park Plaza, Boston, Massachusetts 02116 ("*Landlord*" or "*MassDOT*"); and the **TOWN OF SUDBURY**, a municipal corporation and a body politic and corporate having an address of Flynn Building, 278 Old Sudbury Road, Sudbury, MA 01776, Massachusetts ("*Tenant*" or "*Town*").

WHEREAS, MassDOT is the owner of the right-of-way known as _____ (USRA Line Code _____), (the "*MassDOT ROW*"), which MassDOT ROW is located in the Town of Sudbury, and which comprises a portion of the Premises, as defined herein.

WHEREAS, the Federal Highway Administration (the "*FHWA*") has or will provide MassDOT with funds in an amount (the "*Appropriation*") sufficient to pay for _____ (____%) of the costs associated with the design and construction of a transportation path on the Premises (the "*Multi-Use Path*"), which Multi-Use Path will comprise a portion of the Bruce Freeman Rail Trail.

WHEREAS, as a condition of providing the Appropriation, the FHWA requires, among other things, that Tenant coordinate and oversee the design of the Multi-Use Path and that Landlord coordinate and oversee the construction of the Multi-Use Path.

WHEREAS, Tenant has completed and the FHWA has approved the final design plans and specifications for the Multi-Use Path.

WHEREAS, as a further condition of providing the funds for the construction of the Multi-Use Path, the FHWA requires that the Town obtain possession of the Premises prior to the solicitation of bids for the construction of the Multi-Use Path.

NOW, THEREFORE, FOR CONSIDERATION PAID, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

Attachment3.b: KP-#790524-v1-SUDB-_BFRT_MassDOT_Lease (4906 : BFRT update)

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ARTICLE I
FUNDAMENTAL LEASE PROVISIONS

1.1 Reference Subjects

Each reference in this Lease to any of the following subjects shall incorporate the following information:

- Commencement Date:** As defined above.
- Premises:** (1) The parcel or parcels of land owned by the Massachusetts Department of Transportation, in the Town of Sudbury, MA: from a point located at approximately Railroad Valuation Station _____ as shown on Railroad Valuation Series __, Map __ (Project Station _____) to a point approximately _____, located at approximately Railroad Valuation Station _____ as shown on Railroad Valuation Series ____, Map _____; and as more particularly shown on a Plan prepared by _____, entitled “ _____ Federal Aid Project No. _____ ”, dated _____, (the “**Plan**”). Sheet 1 of _____ of the Plan is attached hereto as *Exhibit A* and incorporated herein by this reference. The entire Plan (Sheets 1 through _____) is on file with the Massachusetts Department of Transportation and the Town of Sudbury, and incorporated herein by this reference.
- Landlord:** Massachusetts Department of Transportation
- Tenant:** Town of Sudbury
- Term:** Ninety-nine (99) years, commencing on the Commencement Date (subject to Section 2.2 hereof).
- Rent:** Ten and 00/100 Dollars (\$10.00).
- Permitted Uses:** Subject to Article II below, the Premises shall be used for the construction, reconstruction, operation, maintenance and repair of a transportation path for pedestrians, bicycles, and other non-motorized vehicles, and amenities thereon and related thereto and for no other uses except those specifically approved in writing by MassDOT.
- Design Plans:** The plans and specifications for the Multi-Use Path approved by the FHWA, identified as

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Exhibit B and incorporated herein by this reference.

1.2 Exhibits

The Exhibits listed below are attached hereto and incorporated into this Lease:

- Exhibit A – Plan of the Premises
- Exhibit B -- Design Plans
- Exhibit C -- Certificates of Insurance
- Exhibit D -- Tenant’s Beneficial Disclosure Statement
- Exhibit E -- Evidence of Authority
- Exhibit F -- MEPA Certificate
- Exhibit G -- MEPA Agreement

**ARTICLE II
PREMISES, TERM AND USE**

2.1 Premises

Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord for the Term, subject to matters of record existing as of the Commencement Date and matters referred to herein, to all of which Tenant shall conform.

Notwithstanding any provision of this Lease to the contrary, this Lease is not intended to transfer land or easements for purposes protected by or to create a perpetual right to any use that may be subject to protection by Article XCVII (97), as amended by the Amendments to the Constitution of the Commonwealth of Massachusetts or by legislation enacted to pursuant thereto.

2.2 Term

The term of this Lease shall be for a period of ninety-nine (99) years (the “*Term*”). The Term shall commence on the Commencement Date and shall terminate on the ninety-ninth (99th) anniversary of the day immediately preceding the Commencement Date (the “*Term Expiration Date*”), unless terminated sooner as hereinafter provided.

2.3 Landlord Reservation of Rights

Notwithstanding anything to the contrary contained herein, Landlord hereby reserves and retains the following rights and easements in and with respect to the Premises:

- a. Landlord reserves the right to enter upon any portion of the Premises for any purpose deemed necessary by the Landlord in connection with the construction, reconstruction, or maintenance of any Landlord-owned conduits, inner ducts, manholes, hand holes or other installations appurtenant thereto, or in connection with the construction, reconstruction, or maintenance of any property of Landlord adjacent to the Premises, or in connection with rights granted to third parties to use and occupy portions of the Premises as further set forth herein. Throughout any such entry, Landlord shall maintain and/or require its contractors to maintain insurance as required by, and in accordance with, the terms and conditions of Section 9.6 herein, and Landlord may require its contractors to maintain such additional coverages deemed necessary by Landlord.

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- b. Landlord reserves the right to use, or to allow any party to use the Premises, or to grant and relocate licenses, leases or easements for any use so long as such use does not materially interfere with the Permitted Uses of the Premises. Tenant shall cooperate with Landlord in this regard to accommodate any such use by Landlord or such other party, provided Tenant shall incur no monetary obligations with respect thereto. Without limitation, such other uses may include utilities, wireless telephone facilities (including, without limitation, cellular and PCS), fiber optic lines and communications facilities, microwave and other antennas, and all types of cable communications, and any other uses that do not materially interfere with the permitted uses of the Premises. Without limitation, the foregoing reservation by Landlord includes, whether the same now exist or are hereafter installed or used after the date of this Lease, the right to locate any or all such facilities (including, without limitation, towers, antennas, cables, fiber, above-ground, below-ground, indoor and outdoor equipment) and other improvements on and within the Premises so long as such use does not materially interfere with the Permitted Uses of the Premises. All rights (including, without limitation, revenue therefrom) pertaining to all such other uses are specifically reserved to, and shall be the sole property of, Landlord. Tenant agrees to cooperate with Landlord and any designated party in connection with any exercise by Landlord of its rights hereunder. Throughout any such use, Landlord shall maintain and/or require its grantees and their contractors to maintain insurance as required by, and in accordance with, the terms and conditions of Section 9.6 herein, and Landlord may require its grantees and their contractors to maintain such additional coverages deemed necessary by Landlord.

2.4 Early Termination

If the Premises shall cease to be used for the Permitted Uses or shall be used by Tenant for any other purposes, this Lease shall terminate upon notice from Landlord and the Tenant's leasehold estate in the Premises shall revert to Landlord.

If at any time during the Term, Landlord determines, in its sole discretion but subject to any provisions or conditions of the Appropriation, that all or any portion of the Premises are needed for highway, railroad or transportation-related purposes, this Lease may be terminated by Landlord by giving Tenant ninety (90) days' prior written notice of Landlord's intention to terminate this Lease. If such notice is given by Landlord, then the Term shall end on the date set forth in such notice with respect to all or such portion of the Premises designated in such notice, all with the same force and effect as though the Term had originally been scheduled to expire on such date. Where termination or modification of this Lease for any reason requires permanent or temporary total or partial displacement of Tenant prior to or at the expiration of the Lease Term, Tenant waives any benefits that Tenant may be deemed entitled to under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, and Tenant shall thereafter be excluded from any relocation benefits available under said act or amendment.

2.5 Uses of Premises

Tenant agrees that the Premises shall be used and occupied by Tenant only for the Permitted Uses.

- a) Tenant shall maintain the Premises in good repair and in clean condition, in compliance with all applicable laws and regulations, including, without limitation, making all necessary repairs and maintenance. Such maintenance shall be at no cost, expense, or liability to Landlord.

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- b) Except as otherwise expressly set forth in this Lease, it shall be the responsibility of the Tenant to obtain any and all necessary permits and approvals for the Permitted Uses, at the Tenant's sole cost and expense. Landlord will cooperate in all reasonable respects, but at no expense to Landlord, with the Tenant in connection with obtaining such permits and approvals as Tenant reasonably wishes to seek for the Permitted Uses, and Landlord shall sign such permits and applications as reasonably necessary, provided that (i) the Landlord incurs no obligation or liability in connection therewith, (ii) no such permit or approval shall materially adversely affect any of Landlord's adjacent or proximate real property or otherwise, in Landlord's reasonable determination, adversely affect or interfere in a material way with any of Landlord's operations or obligations.
- c) Tenant shall not perform any act or any practice which may injure the Premises. Tenant shall, in its use of the Premises, comply with the requirements of all applicable governmental laws, rules and regulations. Tenant shall not cause or permit any unlawful conduct, unreasonable annoyance or nuisance to exist or arise at the Premises or otherwise on account of the exercise of the rights granted to Tenant hereunder.
- d) The Premises shall be open to the public, and Tenant shall establish reasonable policies governing access to the Premises by the public. Such policies shall be subject to review and approval by Landlord. Tenant shall not charge any fee or other consideration, or receive any other benefit for the use of the Premises.

2.6 Construction Period Restrictions

Notwithstanding any provision of this Agreement to the contrary, Tenant's right to use or occupy the Premises for the Permitted Uses, other than for construction of the path, shall be suspended prior to the Substantial Completion Date (as hereinafter defined), and Tenant shall not enter upon the Premises for any purpose prior to the Substantial Completion Date without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed provided that such entry or purpose will not interfere with Landlord's Work (as hereinafter defined).

ARTICLE III CONDITION OF PREMISES

3.1 Acceptance of Premises by Tenant

Landlord shall have no obligation with respect to the condition of the Premises except as expressly set forth in this Lease. Tenant's occupancy shall be deemed an acknowledgement that the condition of the Premises is fully satisfactory and suitable for the Permitted Uses and Tenant's purposes under this Lease. Tenant has leased the Premises after a full and complete examination of the Premises and appurtenant areas, as well as title thereto, and accepts the same in their present condition. Tenant further acknowledges that neither Landlord nor any officer, agent, employee or other person acting under Landlord, disclosed or undisclosed, has made or implied any representations or warranties other than those expressly set forth in this Lease concerning the Premises, their condition, title thereto, future plans of Landlord with respect to the Premises or appurtenant areas, or this Lease.

Tenant's rights herein are granted subject to existing easements, leases, licenses and other rights to the extent that such rights are still in effect and applicable. Landlord shall use reasonable efforts to

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provide Tenant with copies of the documents that establish the location and term of existing easements, leases, licenses and other rights (if any) of record to the extent that such easements, leases, licenses and other rights are still in effect and applicable.

Tenant expressly agrees that if there is any encroachment onto the Premises by a third-party, Landlord will have the right to cure said encroachment and to obtain revenue from such cure or to permit such encroachment, provided that such cure does not materially interfere with Tenant's use of the Premises.

Tenant acknowledges that there may be surface and subsurface utilities on and adjacent to the Premises and agrees to exercise extreme caution in performance of the Permitted Uses. Tenant shall comply with Massachusetts General Laws, Chapter 82, Section 40 (said statute also known as the "Dig Safe" law) and the regulations promulgated pursuant thereto including but not limited to the Code of Massachusetts Regulations, more particularly, 220 CMR 99.00 et seq. After the Substantial Completion Date, any damage to any such utilities caused by Tenant shall be the sole responsibility of Tenant. In this section, the term "Tenant" shall not include any parties performing the Landlord's Work (as defined below). Any such damage caused by any such party performing the Landlord's Work shall be the responsibility of such party. If Tenant does not immediately repair any utilities it has damaged, Landlord may, but shall not be required to repair any utilities damaged by Tenant immediately and without notice in case of emergency. In the event Landlord exercises such right, Tenant shall pay to Landlord immediately upon demand all of Landlord's cost of performing such repairs plus a fee equal to five percent of the Landlord's cost of performing such repairs to reimburse Landlord for its administrative costs.

ARTICLE IV RENT AND ADDITIONAL CONSIDERATION

4.1 Amount of Rent

Tenant covenants and agrees to pay Landlord rent in the amount of Ten and 00/100 Dollars (\$10.00) upon the execution of this Lease. The parties acknowledge and agree that the mutual promises and covenants contained herein constitute additional consideration hereunder, the receipt and sufficiency of which are hereby acknowledged.

ARTICLE V LANDLORD'S REQUIRED IMPROVEMENTS

5.1 Landlord's Required Improvements

Subject to Section 5.2 below, Landlord shall at its own cost construct the Multi-Use Path on the Premises in accordance with the Design Plans and the terms and conditions of the Appropriation ("**Landlord's Work**"). Landlord shall be solely responsible for procuring the contractor and subcontractors in connection with Landlord's work, and shall be solely responsible for managing and overseeing Landlord's Work. It shall be Landlord's responsibility to obtain and pay for any and all applicable federal, state and local permits, inspections, and approvals necessary to construct and perform Landlord's Work. Prior to the Substantial Completion Date, Landlord reserves the right to remove any rail infrastructure or other materials located or existing on the Premises as of the date hereof.

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Landlord shall commence Landlord's Work as soon as practicable after the Commencement Date, and Landlord expects that Landlord's Work will be substantially complete no later than _____ (the "**Target Substantial Completion Date**"). Landlord's failure to substantially complete Landlord's Work by the Target Substantial Completion Date shall not be a default by Landlord or otherwise render Landlord liable for damages. Landlord's Work shall be "substantially complete" when (a) Landlord completes Landlord's Work in accordance with the Design Plans, other than any details of construction, mechanical adjustment or any other similar matter, the non-completion of which does not materially interfere with Tenant's use of the Premises for the Permitted Uses, and (b) notifies Tenant in writing thereof (the date of such notice, the "**Substantial Completion Date**"). Landlord shall perform or complete any details of construction, mechanical adjustment or any other similar matter not completed by the Substantial Completion Date as soon as practicable thereafter.

Throughout Landlord's Work, Landlord shall require its contractors and subcontractors to maintain insurance as required by, and in accordance with, the terms and conditions of Section 9.6 herein, and Landlord may require its contractors to maintain such additional coverages deemed necessary by Landlord.

5.2 MassDOT Obligations Subject to Appropriation

Notwithstanding any provision of this Lease to the contrary, MassDOT's obligations to construct the Multi-Use Path shall be limited by and subject to the availability of the Appropriation for such construction. In the event that MassDOT fails to receive all or any portion of the Appropriation, reasonably determines that the Appropriation will not be available to reimburse MassDOT for any construction costs, or is unable to lawfully use all of any portion of the Appropriation to pay for any construction costs, then (a) MassDOT will within thirty (30) days so notify the Tenant, (b) MassDOT shall have the option, but not the obligation, to terminate this Lease upon ten (10) days' prior written notice to Tenant, and (c) Tenant shall after consultation with MassDOT as to whether the construction of the affected portion of the Multi-Use Path will be commenced and completed within a reasonable time thereafter, have the option (upon thirty (30) days' prior written notice to Landlord), but not the obligation, to terminate this Lease as to any portion of the Premises upon which the construction of the Multi-Use Path has not been, and based on said consultation with MassDOT, will not be commenced and completed by MassDOT within a reasonable time thereafter.

5.3 Tenant's Permitted Improvements

Except as set forth in this section or in Article VI and Article XI below, Tenant shall not construct any improvements on, or make any modifications or alterations to the Premises without the prior written consent of Landlord, which consent may be granted or withheld in Landlord's sole discretion. Tenant may add minor amenities to the Multi-Use Path such as signage, benches, pavement markings, and landscaping without the Landlord's prior written consent, provided that the installation of such amenities conforms to any applicable FHWA or MassDOT regulations, guidance, or standards for a Multi-Use Path ("**Permitted Amenities**").

5.4 Tenant's Election for Landlord to Perform Tenant's Non-Participating Improvements

Tenant may in writing request, prior to the Substantial Completion Date set forth in Section 5.1, that Landlord have its contractor perform for the benefit of the Tenant certain work that is outside the scope of the Landlord's Work under Section 5.1 ("**Tenant's Non-Participating Improvements**"). If Landlord agrees to have its contractor perform the Tenant's Non-Participating Improvements, Landlord and Tenant will memorialize in a separate written agreement the scope of

DRAFT FOR TOWN OF SUDBURY REVIEW

that work, its price, and other material terms concerning the Tenant's Non-Participating Improvements, and Tenant shall timely pay the cost of the Tenant's Non-Participating Improvements in cash or its equivalent so that both Landlord's and Tenant's interests in the Premises shall always be free of liens and for labor and materials. If any lien relating to the Tenant's Non-Participating Improvements constructed pursuant to said agreement is filed against the Premises, then Tenant shall discharge the same by payment or by filling any necessary bond within thirty (30) days after Tenant has notice from any source of such lien. Tenant's Non-Participating Improvements shall not include any of Landlord's Work; and Landlord shall remain responsible for the cost of Landlord's Work as set forth in Section 5.1 and 5.2.

ARTICLE VI TENANT'S PERMITTED IMPROVEMENTS

6.1 Design Guidelines

Any improvements to the Premises which, pursuant to this Lease, Tenant is required or permitted to make (hereafter referred to as "**Tenant's Permitted Improvements**") shall be in conformity with this Lease, all applicable federal, state and local laws, ordinances, regulations and codes, including, without limitation, the Americans With Disabilities Act of 1990, 42 U.S.C. section 12101, et seq., the Massachusetts Environmental Policy Act, applicable rules and regulations of MassDOT and Tenant's insurance policies.

6.2 Design Approval

Tenant shall not commence construction of any Tenant's Permitted Improvements until Landlord has approved plans and specifications for the proposed work.

Prior to commencing construction of any Tenant's Permitted Improvements, Tenant shall submit to Landlord a certificate of an architect or engineer licensed in the Commonwealth of Massachusetts or an opinion of an attorney licensed in the Commonwealth of Massachusetts, stating that all applicable local, state and federal permits have been obtained for the proposed work, and that the proposed work, if constructed in accordance with the plans and specifications submitted to Landlord pursuant to the preceding paragraph, will comply with all applicable laws, codes and regulations. Said certificate or opinion shall be in form reasonably acceptable to Landlord and shall state that Landlord may rely without further investigation on such certificate or opinion.

6.3 Permits

It shall be the Tenant's responsibility to obtain and pay for any and all applicable federal, state and local permits, inspections, and approvals necessary to construct any Tenant's Permitted Improvements.

Prior to commencing construction of any Tenant's Permitted Improvements, Tenant shall provide Landlord with a written statement addressed to Landlord from Tenant's attorney, licensed architect or engineer containing the following: (i) a list of all permits and approvals required for the construction of the Tenant's Permitted Improvements, and (ii) a statement confirming that all such permits and approvals have been obtained.

6.4 Changes in Plans

DRAFT FOR TOWN OF SUDBURY REVIEW

If Tenant desires to make any material change in the plans and specifications after approval by Landlord, Tenant shall submit the proposed change to Landlord for its approval.

6.5 Contracts for Construction of Tenant's Permitted Improvements

As used in this Article, the term "contractor" shall mean any person or entity that provides labor and/or materials for the construction, repair, restoration or rehabilitation of any portion of the Premises, whether or not paid by Tenant, but excluding third-party materials suppliers.

Tenant shall select and propose to Landlord one or more qualified contractors to construct the Tenant's Permitted Improvements. Tenant agrees that it shall not select any contractor who is then debarred from public contracting pursuant to M.G.L. Chapter 29, § 29E or any other comparable state or federal laws. Said selection(s) shall be subject to Landlord's approval. Tenant shall enter into written contracts for all construction services to be provided by its contractor(s). Said contracts shall obligate Tenant to pay all fees and costs related to the constructions of the Tenant's Permitted Improvements. Upon request of Landlord, a complete copy of each such contract shall be furnished to Landlord.

6.6 General Provisions Governing Construction of Tenant's Permitted Improvements

- A. No contractor shall commence construction of any Tenant's Permitted Improvements until all permits, certificates, and approvals required by law for the commencement of such construction have been issued.
- B. Once commenced, the construction of each Permitted Improvement shall be diligently and continuously prosecuted.
- C. Each contractor shall warrant to the Tenant and Landlord that all materials and fixtures furnished by such contractor will be new, except as may otherwise be required by the plans and specifications as approved by Landlord, and that all construction work will be of good quality, free from faults and defects. Construction work not conforming to these requirements may be considered defective and not in conformity with the terms of this Lease.
- D. Each contractor shall be obligated to confine its operations to the portion of the Premises within which its construction work is to be performed, and shall not store materials or equipment elsewhere on the Premises unless permitted by Landlord. Storage of materials or equipment shall be limited to what is reasonably necessary for the construction of the Tenant's Permitted Improvements.
- E. Each contractor shall be obligated at all times to keep the Premises reasonably free from accumulation of waste materials or rubbish caused by its operations. At the completion of the contractor's work, the contractor shall remove all waste materials and rubbish from the Premises as well as all tools, construction equipment, and surplus materials. If any contractor fails to comply with these provisions, it shall be the responsibility of Tenant to cause such compliance and to immediately remedy any non-compliance. All construction waste shall be disposed of in a lawful manner.
- F. Each contractor under a contract with Tenant shall be required to furnish and keep in force a performance bond and a labor and material payment bond in an amount sufficient to guarantee the faithful performance of its obligations under such contract and to pay all obligations arising in connection therewith. Such bonds shall be in a form and with such sureties as Landlord may approve.

DRAFT FOR TOWN OF SUDBURY REVIEW

- G. When any construction of Tenant's Permitted Improvements is in progress, Tenant shall require its general contractor to maintain insurance as required by, and in accordance with, the terms and conditions of Section 9.1 herein, and may require Tenant and/or its general contractor to maintain such additional or different coverages deemed necessary by Landlord which may include, without limitation, so-called "Builders Risk Insurance."

6.7 Payment for Tenant's Permitted Improvements

In no event shall any work related to the Tenant's Permitted Improvements, or any other improvements constructed by, on behalf of or under Tenants or Landlord's approval thereof, give rise to any lien on Landlord's interest in the Premises. Tenant shall pay the entire cost of all Tenant's Permitted Improvements promptly in cash or its equivalent so that both Landlord's and Tenant's interests in the Premises shall always be free of liens for labor and materials. If any lien relating to Tenant's Permitted Improvements constructed by, on behalf of or under Tenant is filed against the Premises, then Tenant shall discharge the same by payment or by filing any necessary bond within thirty (30) days after Tenant has notice from any source of such lien. Tenant's Permitted Improvements shall not include Landlord's Work; and Landlord shall be responsible for the cost of Landlord's Work as set forth in Sections 5.1 and 5.2.

6.8 Nonconforming Improvements

In its construction of the Tenant's Permitted Improvements, Tenant shall ensure that there is no material deviation from the plans and specifications as approved by Landlord, except and only to the extent that changes have been requested in writing and have been approved in writing by Landlord. Landlord's representatives may enter upon the Premises from time to time on reasonable notice to Tenant for the purpose of inspecting the work being performed by Tenant, and such entry shall not be construed to be a violation of the Tenant's right to use and occupancy of the Premises.

In the event Tenant shall fail to comply with the foregoing requirements in proceeding with construction or modification of all or any part of the Tenant's Permitted Improvements, the Landlord may, within a reasonable time after discovery thereof, direct in writing that the Tenant modify or reconstruct such portion or portions of the Tenant's Permitted Improvements as deviate from the approved plans and specifications, or any change with respect to same, in order to bring them into conformance therewith. Tenant shall promptly comply with such a directive. In addition to any other remedies available to it under law or under this Lease, Landlord may enforce the provisions of this paragraph by an action in a court of appropriate jurisdiction to compel specific performance.

6.9 As Built Drawings

Tenant shall provide Landlord with a complete set of "as built" plans and specifications for the Tenant's Permitted Improvements constructed by Tenant for which plans and specifications are required by this Lease, together with copies of all final permits and approvals issued by federal, state or local agencies and state or local plumbing gas, electrical, building and other inspectors.

In addition, Tenant shall advise Landlord in writing whenever Tenant permanently relocates or modifies in any material respect any utility services within the Premises, including, but not limited to, the addition or rerouting of any electric, gas, water or sewer service or line.

6.10 Mechanics' Liens

No mechanics', materialmen's or similar liens shall ever attach against Landlord's interest in and to the Premises by reason of any work performed by Tenant on or to the Premises. If any such lien

DRAFT FOR TOWN OF SUDBURY REVIEW

shall be put on record, Tenant agrees promptly (but in any event, within thirty (30) days of the date that such lien is put on record) to arrange for the discharge of said lien by payment, bonding or otherwise as may be required to discharge said lien of record.

ARTICLE VII UTILITIES

7.1 Utilities

Tenant shall pay the appropriate suppliers for all water, gas, fuel oil, electricity, telephone and any other utilities and communications services used by Tenant on the Premises, and Tenant shall instruct said suppliers to bill Tenant directly therefore. Upon request, Tenant shall supply Landlord with such documentation as Landlord may reasonably request to verify compliance with the foregoing. Tenant shall also pay all costs associated with the installation, repair and maintenance of the wires, pipes, conduits, and other equipment needed to deliver utilities to the Premises, and shall procure, without cost to Landlord, any and all necessary permits, licenses, or other authorizations required for the lawful and proper installation and maintenance of such utility systems. Landlord agrees to cooperate and, if necessary, join with Tenant in any application required for obtaining or continuing such services.

Landlord makes no warranty or representation as to the availability of water, gas, or any other utility service, and Landlord shall not be in default hereunder or be liable for any damages directly or indirectly, resulting from Tenant's inability to obtain such services or from the limitation, curtailment, rationing or restriction on use of water, electricity, gas or any other form of energy or utility service.

ARTICLE VIII TAXES

8.1 Tenant to Pay All Taxes

In the event real estate taxes or property taxes shall be levied on the Premises or any part thereof for any reason, Tenant agrees to pay any such taxes when and as due. Tenant shall also be responsible for payment of all taxes levied on any good or services sold on the Premises, and any other taxes arising out of Tenant's occupancy, use, sub-leasing, alterations, maintenance, improvement, or operation of the Premises.

ARTICLE IX INSURANCE

9.1 Required Liability Insurance

Tenant shall, at its sole cost and expense, obtain and keep in full force and effect, throughout the Term and for a reasonable time thereafter at least equaling any applicable statute of limitations period where necessary to provide coverage for claims asserted based on events occurring during the Term (and shall cause each of its contractors that will enter upon the Premises to obtain and keep during the period of the applicable contract and for a reasonable time thereafter at least equaling any applicable statute of limitations period where necessary to provide coverage for claims asserted based on events occurring during the term of such contract), adequate insurance coverage

DRAFT FOR TOWN OF SUDBURY REVIEW

for the benefit of Landlord, but in no even shall such insurance coverage be less than the following types and amounts of coverage:

- A. Commercial General Liability Insurance with combined limits for bodily injury and property damage liability of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Such insurance shall apply to: (i) liability arising out of the intentional or negligent acts, omissions or other activities of the Tenant and its contractor(s) and their respective employees, agents, contractors, subcontractors, representatives and any other party for whom the Tenant or its contractor(s) is legally responsible; (ii) liability assumed under contract; and (iii) liability imputed to the Tenant or its contractor(s) through the activities of independent contractors. Coverage shall be written on an occurrence basis and shall include but not be limited to:

Products and completed operations hazard
Contractual liability covering this contract
Personal Injury coverage
Property damage
Coverage for the so-called “x, c, u hazards”, i.e., collapse of buildings, blasting, and damage to underground property.

- B. Massachusetts Worker’s Compensation insurance in compliance with applicable federal and Massachusetts law.
- C. Automobile Liability Insurance covering all of Tenant’s owned, rented, leased or borrowed vehicles in accordance with applicable automobile insurance laws of the Commonwealth of Massachusetts, with limits of \$1,000,000 combined single limits for bodily injury and property damage liability. Coverage shall be written on a per accident basis.
- D. Umbrella Liability coverage, providing excess coverage over the above named primary policies. Coverage shall be written on an occurrence basis with limits of not less than **\$2,000,000** combined single limit. The coverage provided by the policy shall afford coverage that is no less broad than the underlying policies.
- E. Such additional or different coverages and/or coverage amounts as Landlord may reasonably require from time to time while this Lease is in effect, or as may be required pursuant to applicable law.
- F. If any required coverage is to be self-insured, it must be approved by Landlord prior to execution of contract.

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9.2 Required Property Insurance

From and after the Substantial Completion Date, if and to the extent there are any buildings constructed by, for or on behalf of the Tenant on the Premises, Tenant, at its sole cost and expense, shall keep in full force and effect property insurance on the Premises, all improvements thereon and equipment and property installed or used in, on or about the Premises, naming Landlord and Tenant as their respective interests may appear, in amounts sufficient at all times to prevent Landlord from becoming a co-insurer under the provisions of applicable policies of insurance, but, in any event, at least equal to the full replacement cost thereof, without deduction for depreciation, against all risks of direct physical loss or damage as may from time to time be included within the definition of an “All Risk” or “Broad Form” property insurance policy and extended to include

DRAFT FOR TOWN OF SUDBURY REVIEW

coverage against earthquake, earth movement, flood (including back-up of sewers and drains), sprinkler leakage, breakdown of boilers, machinery and electrical equipment, war risk, nuclear reaction, lightning, wind storm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, demolition and such other risks as Landlord may reasonably designate. The insurance also shall cover increased cost of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction and shall include an agreed amount provision. The replacement cost of all improvements and of any other property installed or used in, on or about the Premises shall be determined at least once every thirty-six (36) months by Landlord.

9.3 Other Insurance Policy Requirements

Through the Massachusetts Interlocal Insurance Association, Inc. ("MIIA"), the non-profit member-based corporation serving the insurance needs of Massachusetts cities and towns, or through its successor or through another provider or providers, Tenant's insurance will comply with the following provisions, unless commercially unavailable to Tenant:

- A. Duly executed certificate of insurance evidencing all insurance policies specified above, shall be submitted to Landlord prior to Landlord's execution of this Lease, which certificates shall be attached hereto as *Exhibit C*. At least thirty (30) days prior to the expiration of each such insurance policy, Tenant shall furnish Landlord with the re-issuance of a policy continuing the insurance in force as required hereunder. Tenant's contractor(s) performing work or conducting activities under this Lease shall submit certificates of insurance within ten (10) days of the award of their subject contract or license. Certificates shall be addressed to Landlord. Landlord is entitled to rely upon the information provided in the certificates. Tenant agrees that, if any certificate of insurance required hereunder does not conform with the requirements set forth in this Article IX, that said certificate does not confer rights to the certificate holder, or otherwise disclaims responsibility for Landlord's reliance thereon, Tenant must deliver to Landlord endorsements demonstrating the specified additional insured status of Landlord and/or providing substantially and unequivocally that Landlord may, but shall not be obligated to, make premium payments to prevent such cancellation for non-payment of premiums and that such payments shall be accepted by the insurer.
- B. All insurance to be provided hereunder shall be with insurance companies licensed or approved by the Commonwealth of Massachusetts and shall have a Best's Rating of not less than "A-minus", Financial Size Code IX.
- C. All insurance to be provided hereunder shall provide Landlord with a minimum of thirty (30) days prior notice of cancellation or nonrenewable or ten (10) days prior notice in case of cancellation due to the nonpayment of any premium.
- D. Except for Workers' Compensation and Automobile Liability insurance policies, all insurance policies specified above shall be endorsed to name Landlord as an additional insured. This provision must be specifically stated as being endorsed to each required insurance policy on the certificate of insurance evidencing such coverage.
- E. All insurance maintained by the Tenant's contractor(s), except Worker's Compensation and Automobile Liability insurance policies, shall provide that insurance for the benefit of Landlord shall be primary and non-contributory. This provision must be specifically stated as applying to each required policy on the certificate of insurance evidencing such coverage

DRAFT FOR TOWN OF SUDBURY REVIEW

Landlord hereby retains the right to periodically review the types and amounts of insurance being maintained by Tenant and to require additional insurance or higher coverage limits to the extent that such additional insurance is commercially available and reasonably prudent under the then existing circumstances.

If Tenant fails either to acquire the insurance required by this Article IX, or to pay the premium for such insurance, Landlord may, in addition to any other rights or remedies available to Landlord, and notwithstanding any other provisions of this Lease concerning notice and cure of defaults, acquire such insurance and pay the requisite premiums for them. Such premiums will be payable by Tenant to Landlord immediately upon demand.

In proof of any damages which Landlord may claim against Tenant arising out of Tenant's failure to maintain insurance, Landlord will not be limited to the amount of unpaid insurance premium but rather Landlord will also be entitled to recover as damages for such breach, the amount of any uninsured loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suits, including attorneys' fees arising out of damage to, or destruction of, the Premises occurring during any period for which Tenant has failed to provide such insurance.

9.4 Personal Property at Tenant's Risk

All of the furnishings, fixtures, equipment, effects, improvements and property of every kind, nature and description of Tenant shall be at the sole risk and hazard of Tenant, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, no part of said loss or damage is to be charged to or to be borne by Landlord or the Federal Highway Administration, except that Landlord shall in no event be indemnified or held harmless or exonerated from any liability to Tenant or to any other person, for any injury, loss, damage or liability to the extent caused by the gross negligence or willful misconduct of Landlord, or its agents, servants, or employees acting within the scope of their agency, service or employment.

9.5 Application of Insurance Proceeds

In the event of any partial or total damage to or destruction of an insured building, structure, or other improvement, Tenant shall: (i) give immediate notice thereof to Landlord, (ii) proceed immediately to establish and collect all valid claims which may have arisen against insurers based upon any such damage or destruction, and (iii) promptly repair or reconstruct the damaged building, structure or other improvement upon the same general plan and dimensions and to the same general quality as before the damage or destruction. Such repair or reconstruction shall be performed in accordance with the requirements of Article VI hereof. All proceeds of any insurance claim shall be held in trust and applied only for the purpose of repairing or reconstructing the buildings, structures or other improvements which have been destroyed or damaged.

9.6 Landlord's Required Insurance

Throughout Landlord's entry onto the Premises under Section 2.3 (a), Landlord's or its grantees' use of the Premises under Section 2.3(b), and Landlord's Work under Section 5.1, and for a reasonable time thereafter at least equaling any applicable statute of limitations period where necessary to provide coverage for claims asserted based on events occurring during such entry, use or work, Landlord shall cause each of its contractors and grantees that will enter upon the Premises to obtain and keep in force and effect adequate insurance coverage which in no event shall be less than the types and amounts of coverage specified in Sections 9.1 (A) through 9.1 (C).

DRAFT FOR TOWN OF SUDBURY REVIEW

ARTICLE X INDEMNIFICATION

10.1 Assumption of Risk

Tenant, without waiving or abridging any defenses or immunity from liability it may be able to assert against a party other than the Landlord, assumes all risk of damage or injury to any person or property located in, on or about the Premises from any cause except to the extent that: (a) such damage or injury occurs prior to the Substantial Completion Date as a result of Landlord's Work, (b) such damage or injury is caused by the gross negligence or willful misconduct of Landlord or its agents, employees, or contractors acting within the scope of their agency, employment or contract, (c) such damage or injury is caused by any person using or occupying all or any portion of the Premises pursuant to Landlord Reservation of Rights set forth in Section 2.3 hereof, or (d) such damage or injury is caused by any person using or occupying all or any portion of the Premises pursuant to an existing easement, lease, license or other right to the extent that such rights are still in effect and applicable as of the Commencement Date.

10.2 Release of Landlord

Except for matters set forth in Sections 10.1(a) through 10.1(d), Tenant hereby releases Landlord from any responsibility for Tenant's losses or damages related to the condition of the Premises and Tenant covenants and agrees that it will not assert or bring, nor cause any third party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim or fourth-party claim) (hereinafter "*Claims*") against Landlord including, without limitation, claims for response actions, response costs, assessments, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by the Massachusetts Department of Environmental Protection, fines and penalties, permit and annual compliance fees, reasonable attorney and expert fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages and damages related to a person's illness or death relating to, or arising from, Tenant's use of the Premises (or the use of the Premises by those permitted onto the Premises by Tenant) pursuant to this Lease.

10.3 Indemnification of Landlord by Tenant

If and to the extent permitted by law, Tenant hereby covenants and agrees to indemnify and hold harmless the Commonwealth of Massachusetts and the Landlord and their respective bond trustees and mortgagees, directors, officers, agents, and employees (collectively, the "*Indemnitee*") from any and all claims, actions at law, suits in equity, losses, damage, costs (including reasonable attorney's fees) or injury of whatever kind and nature, whether direct or indirect, arising out of the acts, omissions or negligence of Tenant, its agents, employees, contractors, or licensees during the Term in or about the Premises, or caused by any act, neglect, fault, work, improper conduct, omission, or breach of any covenant or condition of this Lease during the Term by Tenant, its agents, employees, contractors, or licensees. Tenant's liability hereunder extends to the acts or omissions during the Term of any sub-tenant, and any agent, employee, contractor, or licensee of any sub-tenant.

Tenant agrees, to the extent permitted by law, to indemnify and hold Indemnitee harmless from and against all bills for labor performed and equipment, fixtures and materials furnished to Tenant, and applicable sales taxes thereon as required by Massachusetts law, and from and against any and all liens, bills or claims therefor against the Premises, and from and against all losses, damages, costs,

DRAFT FOR TOWN OF SUDBURY REVIEW

expenses, suits, and claims whatsoever in connection with any improvements or alterations made by Tenant during the Term.

Notwithstanding any provision of this Lease to the contrary, if either of the indemnifications set forth in this Section 10.3 proves ineffective for any reason, except by virtue of the operation of law including without limitation M.G.L. c. 23A, § 3I, Landlord shall have the right to immediately terminate this Lease by written notice to Tenant.

10.4 Legal Proceedings

Landlord shall, as soon as reasonably possible, notify the Tenant in a timely manner by telephone and in writing (pursuant to Section 19.7 hereof) of any Claims against an Indemnitee that potentially fall within the scope of Sections 10.1 through 10.3 above. In the event Tenant is prejudiced by the Landlord's failure to provide such notice in a timely manner, the Tenant shall have no obligation to defend or indemnify the Indemnitee with respect thereto. Subject to the preceding sentence and to the limitations set forth in Sections 10.1 through 10.3 above, during the Term, Tenant, at Tenant's sole cost and expense, will defend by counsel satisfactory to Indemnitee, any and all suits may be brought and claims which may be made against Indemnitee, or in which Indemnitee may be impleaded with others, whether Indemnitee shall be liable or not, upon any such above-mentioned liability, loss, damages, expenses, costs of action, suits, interests, fines, penalties, claims, judgements and shall satisfy, pay and discharge any all judgments that may be recovered against Indemnitee in any such action or actions in which Indemnitee may be a party defendant, or that may be filed against the Premises, or any interests therein. Landlord will reasonably cooperate in and Tenant will have control over the defense and settlement of any such suits and claims defended by Tenant pursuant to Article X; provided, however, that Landlord's consent shall be required with respect to any settlement affecting the Landlord, and Landlord's consent with respect thereto shall not be unreasonably withheld. In the event of the failure of the Tenant to pay the sum or sums for which Tenant shall be liable as aforesaid, then Landlord may pay such sum or sums, with all interests and charges which may have accrued thereon, and such amount if so paid by Landlord shall be additional rent payable by Tenant to Landlord within thirty (30) days following the date on which demand therefor shall be made by Landlord. The foregoing indemnity shall survive the expiration or termination of this Lease and/or any transfer of all or any portion of the Premises, or of any interest in this Lease.

ARTICLE XI MAINTENANCE, REPAIRS, SAFE OPERATION

11.1 Buildings, Structures and Grounds

On and after the Substantial Completion Date, Landlord will cooperate with Tenant to cause each contractor that performed all or any portion of Landlord's Work to make good on any warranty provided by the contractor to the Landlord with respect to materials, fixtures, construction work, or otherwise, such that any faults and defects covered by any such warranty and not conforming thereto are addressed by the contractor pursuant to the warranty.

Otherwise, on and after the Substantial Completion Date, Tenant shall, at its sole cost and expense, maintain the Premises, the Multi-Use Path and any and all Tenant's Permitted Improvements, buildings, structures, and equipment located upon the Premises and make repairs, restorations, and replacements to any Tenant's Permitted Improvements and when needed to preserve them in good working order and condition, and of good appearance, regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital

DRAFT FOR TOWN OF SUDBURY REVIEW

or non-capital, or the responsibility or not the responsibility of the Tenant, its agents, employees, contractors, invitees, or licensees (unless caused solely by the gross negligence or willful misconduct of Landlord, or its agents, servants or employees acting within the scope of their agency, service or employment).

Tenant shall, at its sole cost and expense, maintain any and all bridges, culverts, drainage systems, roads, private crossings, paths and sidewalks located upon or within the Premises, and/or that comprise the Multi-Use Path or any Tenant's Permitted Improvements, in good repair and shall promptly remove all accumulations of snow and ice therefrom. Tenant shall, at its sole cost and expense, perform any and all capital improvement or repairs to all bridges, culverts, drainage systems, roads, private crossings, paths and sidewalks located upon or within the Premises, and/or that comprise the Multi-Use Path. Landlord agrees to use good faith efforts to assist Tenant with finding and securing funding for the costs of said capital improvement or repairs. Tenant shall maintain, and if necessary replace, lawns, shrubbery, trees and ground discharge of substances in concentrations which will result in harm to water supply, fish and wildlife. All activities of Tenant shall preclude the discharge of substances in concentrations which will result in harm to water supply, fish and wildlife. Chemicals may not be used to control undesirable vegetation, insects or rodents without prior written approval of Landlord. Only those materials approved and registered by the U.S. Environmental Protection Agency for the specific purpose planned will be considered for use on the Premises. Tenant shall follow label instructions in the preparation and applications of pesticides and disposal of excess materials and containers.

All work performed by Tenant shall be accomplished in a manner so as to cause no unreasonable interference with any State highway.

11.2 Sanitation

Tenant, at its sole cost and expense, shall keep the Premises in a clean and sanitary condition at all times. Tenant shall be responsible for all litter pickup, trash disposal, cleaning and sanitation. Tenant shall strictly comply with all state and local laws and regulations regarding sanitation and public health.

11.3 Safe Operation of Facilities: Compliance with Laws

Tenant shall periodically inspect all areas of the Premises for the presence of unsafe and hazardous conditions and shall promptly remedy such conditions when found.

Unless expressly authorized by Landlord, Tenant shall not permit the sale or consumption of alcoholic beverages on the Premises.

This Lease shall be absolutely net to Landlord. Without in any way limiting Tenant's other obligations under this Article XI, Tenant shall, at Tenant's sole cost and expense, maintain the Premises and all buildings and improvements thereon in accordance with all applicable laws, rules, ordinances, requirements, and regulations of any board, bureau, commission, agency, body, or other entity of any municipal, county, state, federal or other governmental body now or hereafter having or acquiring jurisdiction over the Premises or the use or the improvement thereof (each a "**Governmental Authority**") over all or any part of the Premises and of all insurance companies insuring Tenant's interest in all or any part of the Premises.

ARTICLE XII HAZARDOUS MATERIALS

DRAFT FOR TOWN OF SUDBURY REVIEW

12.1 Hazardous Materials Activities

Tenant shall not cause any hazardous materials or toxic wastes, hazardous or toxic substances or hazardous or toxic materials (collectively, "**Hazardous Materials**") to be used, generated, stored, released or disposed of in, on, under or about, or transported to or from the Premises (collectively, "**Hazardous Materials Activities**") without first receiving Landlord's prior written consent, which may be withheld for any reason or revoked at any time. If Landlord consents to any such Hazardous Materials Activities, Tenant shall conduct them in strict compliance with all applicable Hazardous Waste Laws, as hereinafter defined, using all necessary and appropriate precautions, and shall not cause or permit any release or threat of release of Hazardous Materials. In the event of a release or threat of release of any (i) Hazardous Materials on account of any Hazardous Materials Activities of Tenant or its employees, agents, contractors, licensees or invitees, or (ii) any release or migration of Hazardous Materials within, onto or under the Premises from adjoining property owned by parties other than Landlord, Tenant shall, at its sole cost and expense, conduct and complete all investigations, studies, sampling and testing, and all remediation, removal and other actions necessary to clean up the release or eliminate the threat of release in accordance with all applicable legal requirements. Landlord shall not be liable to Tenant under this Lease for any Hazardous Materials Activities by Tenant, Tenant's employees, agents, contractors, licensees or invitees or any other third-party, whether or not consented to by Landlord.

For purposes of this Lease, "Hazardous Materials" shall include, but not be limited to, gasoline of all types and all substances defined as "hazardous substances", "toxic substances", "oil", "asbestos", "solid waste", "hazardous materials" or "hazardous wastes" in any federal, state or applicable local statute, law, ordinance, code, rule, regulation, order, decree, notice or policy now or hereafter enacted or promulgated concerning hazardous materials (collectively, "**Hazardous Waste Laws**").

Prior to using, storing or maintaining any Hazardous Materials on or about the Premises, Tenant shall provide Landlord with a list of the types and quantities thereof, and shall update such list as necessary for continued accuracy. Tenant shall also provide Landlord with a copy of any Hazardous Materials inventory statement required by any applicable Hazardous Waste Laws, and any update filed in accordance with any applicable Hazardous Waste Laws. If Tenant's activities violate or create a risk of violation of any Hazardous Waste Laws, Tenant shall cease such activities immediately upon notice from Landlord. Tenant shall notify all government agencies required by law and Landlord, immediately by telephone and in writing of any release or discharge of Hazardous Materials or of any condition constituting a threat of release of Hazardous Materials.

Landlord and officers, employees, contractors or agents of Landlord may (but shall not be obligated to) enter upon the Premises at any time during the Term of inspect Tenant's compliance herewith or to determine whether Tenant or occupants of adjacent properties are complying with all applicable Hazardous Waste Laws, and may disclose any violation of any Hazardous waste Laws to any governmental agency. Landlord shall also have the right to establish test wells on or near the Premises to monitor whether any chemical levels are increasing on or near the Premises because of the activities of Tenant or other occupants of the Premises or adjacent properties. Landlord shall use its best efforts to minimize interference with the Tenant's business or that of other occupants of the Premises or adjacent properties, but shall not be liable for any interference caused thereby.

12.2 Indemnification for Hazardous Materials Activities

If and to the extent permitted by law, and except as provided by M.G.L. c. 23A, §31, and except for matters identified in the Phase 1 ESA and Hazardous Materials required to be remediated as

DRAFT FOR TOWN OF SUDBURY REVIEW

part of Landlord's Work under Section 5.1, and except as to Hazardous Materials Activities of any person using or occupying all or any portion of the Premises pursuant to Landlord Reservation of Rights in Section 2.3 hereof or pursuant to an existing easement, lease, license or other right to the extent that such rights are still in effect and applicable as of the Commencement Date, Tenant hereby agrees to indemnify, hold harmless, and defend Indemnitee from and against all losses, damages, claims, liens, encumbrances, obligations, liabilities, actions, causes of action, response costs and expenses including reasonable attorney's, engineer's, and other costs and expenses and fees actually and reasonably incurred in connection therewith, suffered by, asserted or assessed against the Indemnitee, which arise during the Term from (i) Hazardous Materials Activities during the Term of Tenant or its agents, employees, contractors, or licensees, (ii) the Hazardous Materials Activities on the Premises during the Term of any persons other than those of Landlord or its agents, employees, or contractors, (iii) any currently existing Hazardous Materials or related conditions during the Term at, under, on, or in the Premises except to the extent such Hazardous Materials or related conditions were released, exacerbated or addressed by Landlord or its agents, employees, or contractors during the Landlord's Work or from property off the Premises, and (iv) any release or migration of Hazardous Materials at, under, on, in, over or affecting the Premises during the Term unless caused by Landlord or its agents, employees, or contractors during the Term. The indemnification provided in this Section 12.2 shall also specifically cover, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal or restoration work required during the Term by any board, bureau, commission or body of any municipal, county, state, federal or other governmental body, now or hereafter having or acquiring jurisdiction over the Premises or the use of the improvement thereof (each a "**Governmental Authority**") because of the presence or suspected presence of Hazardous Materials at, under, on, in, over or affecting the Premises, or any allegation thereof, whether such claim proves to be true or false, and additional costs necessary to protect against the release or threat of release of Hazardous Materials at, on, in, under, over or affecting the Premises, into the air, any body of water or any adjacent and surrounding areas. Those costs may include, but are not limited to, diminution in the value of the Premises, damages for the loss of restriction on use of rentable or usable space or of any amenity of the Premises, sums paid in settlement of claims, attorney's fees, consultants' fees and experts' fees, and the enforcement of Tenant's obligations hereunder. Landlord will reasonably cooperate in and Tenant will have control over the defense and settlement of any such suits and claims defended by Tenant pursuant to Article X; provided, however, that Landlord's consent shall be required with respect to any settlement affecting the Landlord, and Landlord's consent with respect thereto shall not be unreasonably withheld.

Except with respect to any known Hazardous Materials or related conditions at, under, on, or in the Premises as of the Effective Date of this Lease, this indemnification shall survive the expiration or earlier termination of this Lease and any transfer of all of any portion of the Premises, or of any interest in the Lease. Notwithstanding any provision of this Lease to the contrary, if the indemnification set for in this Section 12.2 proves ineffective for any reason, except by virtue of the operation of law including without limitation M.G.L. c. 23A, §31, Landlord shall have the right to immediately terminate this Lease by written notice to Tenant.

12.3 Notices of a Release of Hazardous Materials

Landlord and Tenant shall promptly notify the other by telephone and in writing (such notice to be given pursuant to Section 19.7 hereof) of all spills, releases or discharges of any Hazardous Materials; any condition constituting a threat of such spill, release or discharge; all failures to comply with any federal, state or local law, or with any regulation or ordinance; all inspections of the Premises by any regulatory entity concerning the same; all notices, orders, fines or communications of any kind from any Governmental Authority of third party that relate to the

DRAFT FOR TOWN OF SUDBURY REVIEW

presence or suspected presence of any Hazardous Materials on the Premises or the migration or suspected migration of any Hazardous Materials from other property onto or beneath the Premises or to other property from the Premises; and all responses to interim cleanup action taken by or proposed to be taken by any government entity or private party on the Premises. Landlord and Tenant shall provide the other with copies of all notices with respect to any of the foregoing received from any federal, state or local authority or official or from any other third party. In the even Tenant is prejudiced by the Landlord's failure to provide timely notice, the Tenant shall have no obligation to defend or indemnify the Indemnitee under Article XII with respect thereto.

12.4 Remedial Work

If and to the extent covered by the Indemnification for Hazardous Materials Activities set forth in Section 12.2 and except as provided in Section 12.3, if any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work (the "**Remedial Work**") of any kind is necessary under any applicable local, state or federal laws or regulations, or is required by any Governmental Authority because of or in connection with the presence or suspected presence of Hazardous Materials on or under the Premises, Tenant shall have sole responsibility for all such Remedial Work and all costs and expenses of such Remedial Work shall be paid by Tenant.

Landlord shall have the right to contest the assertion by any Governmental Authority or any third party of any obligation or liability affecting Tenant, Landlord, or all or any portion of the Premises for performance of any Remedial Work. Landlord shall have the right to perform any Remedial Work, and if and to the extent covered by the Indemnification for Hazardous Materials Activities set forth in Section 12.2, Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord in connection therewith as set forth above.

Failure by Landlord to object to any actions taken by Tenant shall not be construed to be an approval by Landlord of such actions. Nothing contained herein shall be construed as creating any obligation for Landlord to review any plans for Remedial Work, or to perform, or review Tenant's or any other party's performance of any Remedial Work. However, in the even that Remedial Work is required, and Landlord elects to perform such Remedial Work, Tenant shall provide Landlord and its agents and employees with such access to the Premises as shall be required in connection therewith. Landlord shall have the right, in its sole discretion, to undertake such Remedial Work, and Landlord shall not be liable for any loss sustained by Tenant resulting from any Remedial Work undertaken by Landlord or from any other act or omission of Landlord in connection therewith except to the extent such loss is caused by the gross negligence or willful misconduct of Landlord, or its agents, servants, or employees acting within the scope of their agency, service or employment.

ARTICLE XIII INSPECTION AND ACCESS

13.1 Landlord's Right to Inspect Premises

Throughout the Term, Landlord and its representatives, including, without limitation, representatives of the Federal Highway Administration, shall have the right, but not the duty, to inspect the Premises for the purpose of ascertaining Tenant's compliance with the terms of this Lease. If requested by Landlord, Tenant shall provide a representative to accompany Landlord on each such inspection. Landlord shall also have the right to establish tests wells on or near the Premises to monitor chemical levels on or near the Premises.

DRAFT FOR TOWN OF SUDBURY REVIEW

13.2 Landlord's Access

Throughout the Term, Landlord and its representatives shall have the right to pass in, on and over the Premises for the purpose of maintenance, repair and/or replacement of Landlord's adjacent facilities.

Tenant shall allow any public or private utility holding an easement, license or permit regarding the Premises or any portion thereof, to enter the Premises and perform routine and emergency repairs and maintenance work.

**ARTICLE XIV
ACCOUNTING AND REPORTING**

14.1 Repair and Maintenance Records

In addition to any other books and records maintained by Tenant which pertain to the Premises, the Multi-Use Path or any Tenant's Permitted Improvements or to the performance of the provisions and obligations of this Lease, Tenant shall maintain proper records of all repairs and maintenance made to the Premises, the Multi-Use Path and any Tenant's Permitted Improvements and shall make these available to Landlord for review, audit and analysis upon request. Tenant shall preserve all such books and records pertaining to the Premises, the Multi-Use Path or any Tenant's Permitted Improvements for a period of six (6) years following the close of each fiscal year of the Tenant.

**ARTICLE XV
ASSIGNMENT AND SUBLETTING**

15.1 Limitations

Tenant shall not assign, transfer, convey, sublet, encumber or dispose of its right, title or interest in the whole or any part of the Premises or in this Lease, nor enter into any agreement with any entity or person, except for employees of the Tenant, to exercise substantial management responsibilities for the operations authorized hereunder or any part thereof, without the prior written consent of Landlord, which may be withheld for any reason whatsoever.

The failure of a transferee or any other successor in interest to Tenant to assume the obligations of Tenant hereunder or to obtain the approval of Landlord as herein required shall not relieve such transferee or successor of such obligations or limit Landlord with respect to any rights, remedies or controls it may have under this Lease.

Any transfer by operation of law or otherwise of Tenant's interest in this Lease or of a controlling interest in Tenant's ownership so as to permit the exercise of substantial managerial influence over the operations of Tenant by such transferee shall be deemed a transfer of Tenant's interests in the Premises for the purposes of this Article XV. Tenant agrees to comply with the requirements of Massachusetts General Laws, Chapter 7C, Section 39, regarding the filing of updated beneficial interest disclosure statements.

**ARTICLE XVI
EMINENT DOMAIN**

DRAFT FOR TOWN OF SUDBURY REVIEW

16.1 Taking by Eminent Domain

If a substantial part of the Premises shall be taken for any public or quasi-public use under governmental law or by right of eminent domain and such taking would materially interfere with the use of the Premises by Tenant for the purposes contemplated by this Lease, then the Lease may be terminated by either Landlord or Tenant. Landlord or Tenant shall make such election by giving the other party written notice within sixty (60) days after the event giving rise to a right to terminate. Any such termination shall be effective thirty (30) days after the date of notice thereof.

Landlord reserves all rights to damages payable by reason of anything lawfully done in pursuance of any public or other authority and, by way of confirmation, Tenant grants to Landlord all of Tenant's rights to such damages and agrees to execute and deliver such further instruments of assignment thereof as Landlord may from time to time request. Where, as the result of a taking by eminent domain or for any other reason, the Lease is terminated or modified so as to require the permanent or temporary, total or partial displacement of Tenant from the Premises prior to or at the expiration of the Term, Tenant waives any benefits to which Tenant may be entitled under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, an Tenant shall be excluded from any relocation benefits available under said Act or any amendments thereto.

**ARTICLE XVII
RIGHT OF LANDLORD TO PERFORM**

17.1 Landlord's Right to Perform Tenant's Obligations

If Tenant fails to pay when due amounts payable under this Lease, except for payments of Rent, or to perform any of its other obligations under this Lease within the time permitted for its performance, then Landlord, after thirty (30) days' prior written notice to Tenant (or, in the case of any emergency, upon such notice or without notice, as may be reasonable under the circumstances) and without waiving any of its right under this Lease, may, but shall not be required to, pay such amount or perform such obligations.

All amounts paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such obligations (together with interest at the statutory rate) per annum from the date of Landlord's payment of such amount until the date of full repayment by Tenant) will be payable by Tenant to Landlord as additional rent on demand.

**ARTICLE XVIII
DEFAULTS AND REMEDIES**

18.1 Events of Default by Tenant

The following events shall be deemed to be events of default by Tenant under this Lease:

- (a) Tenant shall fail to pay when due any sum of money due Landlord hereunder or any other payment or reimbursement due Landlord by the terms of this Lease, and such failure shall continue for a period of ten (10) days from the date when such payment was due.
- (b) Tenant shall fail to comply with any term, provision or covenant of this Lease, other than the failure to pay a sum of money due Landlord, and shall not cure such failure within thirty (30) days after written notice thereof to Tenant or, in the case of failures that cannot be cured within

DRAFT FOR TOWN OF SUDBURY REVIEW

thirty (30) days, commence to cure such failure within thirty (30) days and thereafter diligently pursue such cure to completion.

- (c) Tenant shall attempt to assign, transfer, convey, sublet, encumber or dispose of any of its right, title or interest in the whole or any part of the Premises without the prior approval of Landlord.
- (d) Tenant shall abandon any substantial portion of the Premises or cease to use a substantial portion of the Premises for the Permitted Uses.
- (e) This Lease or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon and subjected to any attachment by any creditor of Tenant or claimant against Tenant, and such attachment is not discharged within fifteen (15) days after its levy.
- (f) Tenant shall fail to contest diligently the validity of any lien or claimed lien and give sufficient security to Landlord to insure payment thereof or shall fail to satisfy any judgement rendered thereon and have the same released within ten (10) days after Tenant has notice from any source of such lien.
- (g) Tenant shall file a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy law of the United States, or is dissolved, or makes an assignment for the benefit of creditors.
- (h) Involuntary proceedings under any such bankruptcy laws or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for all or substantially all of Tenant's property, and such proceeding is not dismissed or such receivership or trusteeship is not vacated within ninety (90) days after such institution or appointment.
- (i) Tenant shall fail to use the Premises for the Permitted Uses or shall use the Premises for any other uses.
- (j) Tenant shall fail to maintain the Premises in a safe, orderly and clean condition, and as otherwise required by this Lease.

18.2 Remedies of Landlord

Upon the occurrence of any of the events of default in Section 18.1, Landlord shall have, in addition to the rights set forth in Article XVII of this Lease and any other remedies available to Landlord at law or equity, the immediate option, or the option at any time thereafter, to immediately terminate this Lease and all rights of Tenant hereunder by written notice to Tenant and this Lease will come to an end on the date such notice is deemed delivered to Tenant as fully and completely as if the Term had expired. Upon the termination of this Lease, Tenant shall immediately quit and surrender the Premises to Landlord in accordance with the terms of Section 19.2 herein, but Tenant shall remain liable for damages as hereinafter provided. In the event Tenant fails to quit and surrender the Premises, Landlord may re-enter and repossess the Premises and any improvements or any part thereof and remove Tenant and those claiming through Tenant from the Premises without being deemed guilty or liable in any manner of trespass and without prejudice to any remedies for arrears of rent or other default. Termination under this paragraph shall not relieve Tenant from the payment of any sum then due to Landlord, or from any claim for damages previously accrued against Tenant. Tenant hereby waives all statutory and equitable rights to its leasehold after termination of this Lease by Landlord under this paragraph, including, without limitation, rights in the nature of further cure or redemption, if any.

DRAFT FOR TOWN OF SUDBURY REVIEW

18.3 Termination Damages

If this Lease is terminated for default, then Tenant covenants as an additional cumulative obligation after such termination, to pay all of Landlord's reasonable costs and expenses, including attorney's fees, related to (i) the termination of this Lease, (ii) the recovery of the Premises from Tenant, and (iii) the collection of the amounts due hereunder; all of said costs and expenses collectively referred to as "**Landlord's Termination Expenses.**" Landlord's Termination Expenses shall be due and payable immediately from time to time upon notice from Landlord.

18.4 Remedies Cumulative

The specific remedies to which Landlord or Tenant may resort under this Lease, and all other rights and remedies of Landlord and Tenant are cumulative, and any two or more may be exercised at the same time. Nothing in this Lease shall limit the right of Landlord to prove and obtain in proceedings for bankruptcy or insolvency an amount equal to the maximum allowed by any statute or rule of law in effect at that time.

18.5 Waiver of Relocation Assistance

Where termination or modification of this Lease for any reason requires permanent or temporary, total or partial, displacement to Tenant, prior to or at the expiration of this Lease, Tenant waives any benefit that Tenant may be deemed entitled to under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, and Tenant shall thereafter be excluded from any relocation benefits available under said act or amendments thereto.

ARTICLE XIX MISCELLANEOUS

19.1 Quiet Enjoyment

Landlord agrees that, except as otherwise provided in this Lease, and so long as Tenant performs and observes the agreements, conditions and covenants of this Lease on its part to be performed and observed, Tenant's use and enjoyment of the Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord.

19.2 Surrender of Premises

At the end of the Term, or any extension or renewal thereof, or other sooner termination of this Lease, the Tenant peaceably will deliver to the Landlord possession of the Premises, together with the Multi-Use Path, all Tenant's Permitted Improvements, Permitted Amenities, and any other improvements or additions thereto within the Leased Premises, (unless Landlord has requested removal as a condition to approving construction of same) in the condition in which Tenant is required to maintain them under the terms of this Lease. Tenant may, upon termination of this Lease, remove all moveable furniture, trade fixtures, equipment, and other personal property belonging to Tenant, and Tenant shall repair any damage caused by such removal. Property not so removed shall be deemed abandoned by the Tenant, and Landlord may at its option, keep the same for its use or remove and dispose of the same in any manner as Landlord shall choose, and Tenant shall pay on demand any and all expenses incurred in such removal and disposal.

19.3 Holding Over

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Tenant has no right to hold over at the end of the Term. If Tenant retains possession of the Premises or any part thereof after expiration of the Term or earlier termination of the Lease, Landlord may at its option, serve written notice upon Tenant that such holding over consists creation of tenancy at will, upon the terms and conditions set forth in this Lease, except for the rental rate, which shall be at market rent for comparable Multi-Use Paths in the Commonwealth at that time. If no such notice is given, then a tenancy at sufferance shall be deemed to be created and the rental described in the preceding sentence shall apply. The provisions of this paragraph shall not constitute a waiver by Landlord of any right or re-entry or any other remedy given by this Lease or otherwise available at law or equity; nor shall the acceptance of Rent operate as a waiver of Landlord's right to terminate this Lease for a default by Tenant hereunder.

19.4 Status Report

Recognizing that both Landlord and Tenant may find it necessary or desirable to establish to third parties, such as accountants, lenders, government agencies, or the like, the then current status of performance hereunder, either party, upon the written request of the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Lease. Without limiting the foregoing, Tenant shall at any time and from time to time, but only after ten (10) days' prior written notice from Landlord, execute, acknowledge and deliver a written statement certifying that this Lease is in full force and effect subject only to such modification as may be set out; that Tenant is in possession of the Premises and is paying rent as provided in this Lease or specifying the amount of any unpaid rent; and that there are not any uncured defaults on the part of the Landlord, or specifying such defaults if they are claimed. If Tenant fails to deliver such statement in a timely manner, Tenant shall be deemed to have acknowledged that this Lease is in full force and effect, without modifications except as may be represented by Landlord, and that there are no uncured defaults in Landlord's performance. Any statement provided by either Landlord or Tenant hereunder may be relied upon by the other or any other party to whom Landlord or Tenant requests the statement be addressed.

19.5 Waiver

If either Landlord or Tenant waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein. Furthermore, the acceptance of rent by Landlord shall not constitute a waiver of any preceding breach of this Lease by Tenant, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepted such rent. Failure by either Landlord or Tenant to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or to diminish the right of such party to insist upon strict performance in the future. No provision of this Lease shall be deemed to have been waived by either Landlord or Tenant unless such waiver is in writing and signed by a duly authorized representative of the party to be bound thereby.

19.6 No Brokerage

Landlord and Tenant each represents and warrants that no broker, agent, commission salesman or other person has represented it in connection with the procurement or consummation of this Lease. In the event any brokerage claims are asserted against Landlord predicated upon prior dealings with the Tenant, Tenant agrees to indemnify and hold Landlord harmless against any such claim.

19.7 Notices: Time of Essence

DRAFT FOR TOWN OF SUDBURY REVIEW

All notices and other communications require or permitted to be given under this Lease shall, unless otherwise expressly permitted hereunder, be in writing, signed by a duly authorized representative of the party giving notice and shall be deemed delivered when given: (a) upon hand delivery, (b) one (1) business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, or (c) three (3) business days after being deposited in the United States mail, certified, return receipt requested, postage prepaid; and address as follows:

<u>If to Landlord:</u> Massachusetts Department of Transportation Highway Division Ten Park Plaza Boston, Massachusetts, 02116	<u>If to Tenant:</u> Town of Sudbury ATTN: Town Manager 278 Old Sudbury Road Sudbury, Massachusetts 01776
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Landlord or Tenant may, by notice given hereunder, at any time and from time to time, designate a different address to which notices shall be sent.

19.8 Landlord’s and Tenant’s Consent

MassDOT’s consent required by this Lease may be provided by (a) _____, or (b) _____; provided, however, that consent regarding access to and use of the Premises by third parties pursuant to Section 2.3 and other applicable provisions hereof shall be made through the Director of Railroad Properties, MassDOT Rail Division, or such other person as MassDOT may designate from time to time, by written notice to the Town.

Tenant’s consent required by this Lease may be provided by the Sudbury Town Manager.

19.9 Status of Parties

Landlord reserves no control whatsoever over the employment, discharge, compensation of or services rendered by Tenant’s employees, agents or contractors. Tenant covenants and agrees that it will neither hold itself out as, nor claim to be, a partner, agent, joint venturer, officer or employee of the Landlord by reason of this Lease, and that it will not, by reason of this Lease, make any claim, demand or application to or for any right or privilege applicable to an employee or officer of the Commonwealth of Massachusetts. Nothing contained in this Lease shall create or be construed as creating a partnership or joint venture between Landlord and Tenant or constitute Tenant as an agent of Landlord.

19.10 Governing Law

This Lease will be governed by and construed in accordance with the law of the Commonwealth of Massachusetts, and all legal actions brought in connection with this Lease shall be brought in courts within the Commonwealth of Massachusetts.

19.11 Entire Agreement

This Lease, together with its Exhibits, whether physically appended to this document or incorporated by reference without being so appended, contains all of the agreements of the parties

DRAFT FOR TOWN OF SUDBURY REVIEW

and supersedes any previous negotiations. There are no agreements between Landlord and Tenant with respect to the subject matter of this Lease other than those set forth in this Lease and its Exhibits.

19.12 Headings

The headings herein are for convenience of reference only and shall in no way define, increase or limit the scope or intent of any provision of this Lease.

19.13 Partial Invalidity

If any term or provision of this Lease, or the application thereof to any person or circumstance, shall to any extent be deemed invalid or unenforceable, the remainder of this Lease, or the application of such term to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Lease shall remain valid and enforceable to the fullest extent permitted by law.

19.14 Force Majeure

In any case where either Landlord or Tenant is required to perform any act pursuant to this Lease, delays caused by or resulting from war, fire, flood, unusually severe weather, strikes or other causes beyond such party's reasonable control shall not be counted in determining the time during which such act shall be completed, whether such time be designated by a fixed date, a fixed time or a "reasonable" time, and such time shall be deemed to be extended by the period of the delay.

19.15 Recording

Landlord and Tenant agree not to record this Lease. Both parties will, at the request of either party, execute, acknowledge and deliver a Notice of Lease in recordable form. Such notice shall contain only the information required by law for recording. Tenant shall be responsible for the preparation of any plans required for the recording of any such notice and the recording costs thereof.

19.16 No Agreement Until Signed

No legal obligations shall arise with respect to the Premises or other matters herein until this Lease is executed and delivered by Land and Tenant, with all required signatures.

19.17 Accord and Satisfaction

No acceptance by Landlord of a lesser sum than any charge due hereunder shall be deemed to be other than an acceptance of the earliest installment of such charge due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent or other charge be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy provided in this Lease.

19.18 Successors and Assigns

This Lease and the covenants and conditions herein contained shall insure to the benefit of and be binding upon Landlord, its successors and assigns, and shall be binding upon Tenant, its successors and assigns, and shall inure to the benefit of Tenant and only such transferees of Tenant as are permitted hereunder.

19.19 State Employees Barred from Interest

DRAFT FOR TOWN OF SUDBURY REVIEW

No official, employee or consultant of the Commonwealth of Massachusetts or Landlord shall have any personal interest, direct or indirect, in this Lease, nor shall any such official, employee or consultant participate in any decision relating to this Lease which affects their personal interest or the interests of any corporation, partnership, or association in which they are directly or indirectly interested. Tenant has on or prior to the date hereof delivered to Landlord and to the Commonwealth of Massachusetts Division of Capital Asset Maintenance and Management (“DCAMM”) Tenant’s Beneficial Interest Disclosure Statement, a copy of which is attached hereto as *Exhibit D*. Tenant agrees in case of any change of Tenant’s interest in the Premises during the Term, that is shall deliver to Landlord and to DCAMM a new Beneficial Interest Disclosure Statement within (30) days of such change.

19.20 Limitation of Liability

No official, employee, agent, officer or consultant of the Commonwealth of Massachusetts or Landlord shall be personally liable to Tenant or to any partner or shareholder thereof, or to any successor in interest of person claiming by, through, or under Tenant or any partner or shareholder thereof, in the event of any default or breach of this Lease, or for any amount which may become due or on any claim, cause or obligation whatsoever under the terms of this Lease.

No official, employee, agent, officer, or consultant of the Tenant shall be personally liable to Landlord or to any partner or shareholder thereof, or to any successor in interest of person claiming by, through, or under Landlord or any partner or shareholder thereof, in the event of any default or breach of this Lease, or for any amount which may become due or on any claim, cause or obligation whatsoever under the terms of this Lease.

All claims against Landlord and Tenant shall be governed by the provisions of this Lease and Chapter 258 of the Massachusetts General Laws.

Except as between MassDOT and the Town under the terms and conditions of this Lease, nothing herein shall be construed, act, and/or operate to alter, limit, waive, eliminate, terminate, or otherwise modify statutory provisions, exemptions, exceptions, limits, and/or defenses available to either party under any applicable statutes and/or regulations relating to any claims or causes of actions asserted against either party.

19.21 Nondiscrimination

Tenant agrees that it shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Tenant, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. Tenant shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation. Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as said Regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, Landlord shall have the right to terminate this Lease and reenter and repossess the Premises and hold the same as if this Lease had never been made or issued.

19.22 Counterparts

DRAFT FOR TOWN OF SUDBURY REVIEW

This Lease may be executed in any number of counterparts and each of such counterparts shall, for all purposes, be deemed to be an original and all such counterparts shall together constitute but one and the same Lease.

19.23 Tenant's Due Authority and Compliance with Laws

Tenant has on or prior to the date hereof delivered to Landlord: (i) Tenant's Vote(s) and Town Clerk's Certificate, a copy of which is attached hereto as **Exhibit E** (ii) the Certificate dated _____, of the Secretary of Energy and Environmental Affairs on the Environmental Notification Form for the [Project Name], EEA Number _____, a copy of which is attached hereto as **Exhibit F**, and (iii) the executed MEPA Agreement, a copy of which is attached hereto as **Exhibit G**.

19.24 Executive Order 526

By signing this Lease, the Tenant hereby certifies under the pains and penalties of perjury that the Tenant currently complies with and will continue to 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.

19.25 Minority-, Women-, and Service Disabled Veteran-Owned Business Enterprises

Landlord encourages to the greatest extent possible, the active and meaningful equity participation of Minority-Owned Business Enterprises (MBEs), Women-Owned Business Enterprises (WBEs) and Service Disabled Veteran-Owned Business Enterprises (SDVBE), as certified by the Commonwealth of Massachusetts Supplier Diversity Office. Landlord also encourages Tenant to use, to the greatest extent possible, MBEs, WBEs and SDVBEs to provide services and materials. Tenant agrees, to the greatest extent possible, to purchase supplies and services concerning this Lease from certified MBEs, WBEs and SDVBEs.

[Signature page of this Lease follows.]

DRAFT FOR TOWN OF SUDBURY REVIEW

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be signed and delivered as an instrument under seal by their duly authorized officers or representatives as of the date first set forth above.

**MASSACHUSETTS DEPARTMENT OF
TRANSPORTATION**

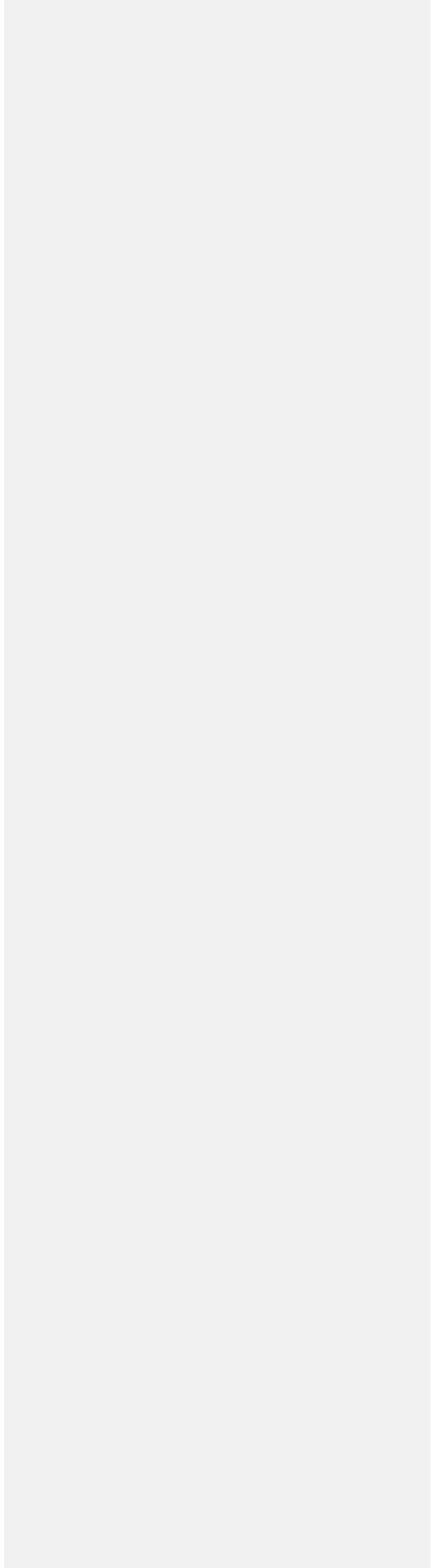
By: _____

Jamey Tesler
Secretary & Chief Executive Officer

TOWN OF SUDBURY

By: _____

[Name]
[Title]

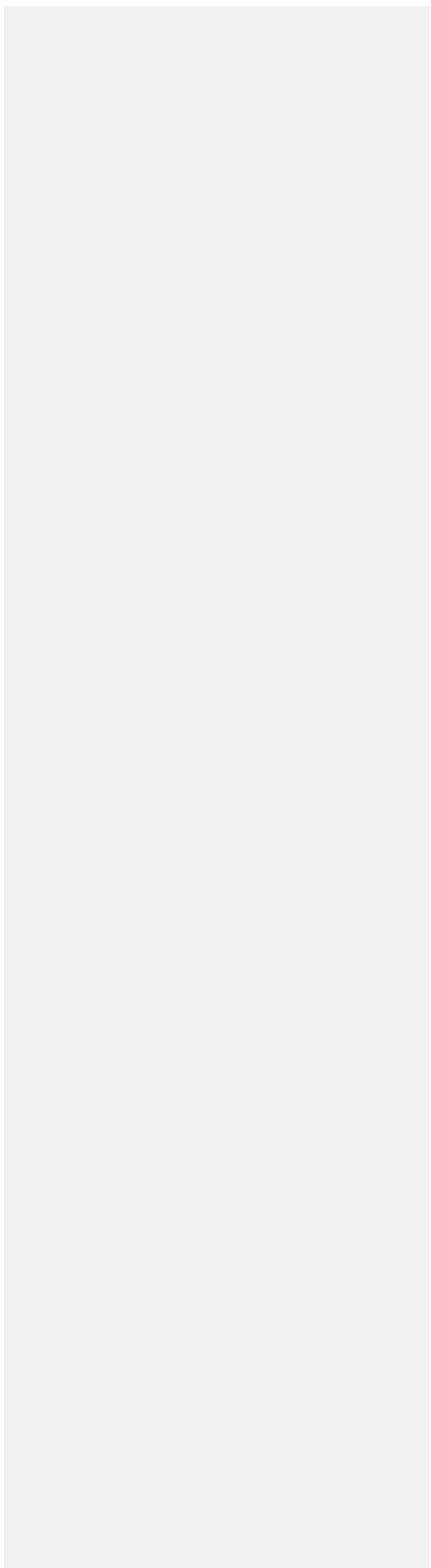


Attachment3.b: KP-#790524-v1-SUDB- BFRT_MassDOT_Lease (4906 : BFRT update)

12-2-21 DRAFT

EXHIBIT A
Plan

DRAFT



Attachment3.b: KP-#790524-v1-SUDB- BFRT_MassDOT_Lease (4906 : BFRT update)

DRAFT FOR TOWN OF SUDBURY REVIEW

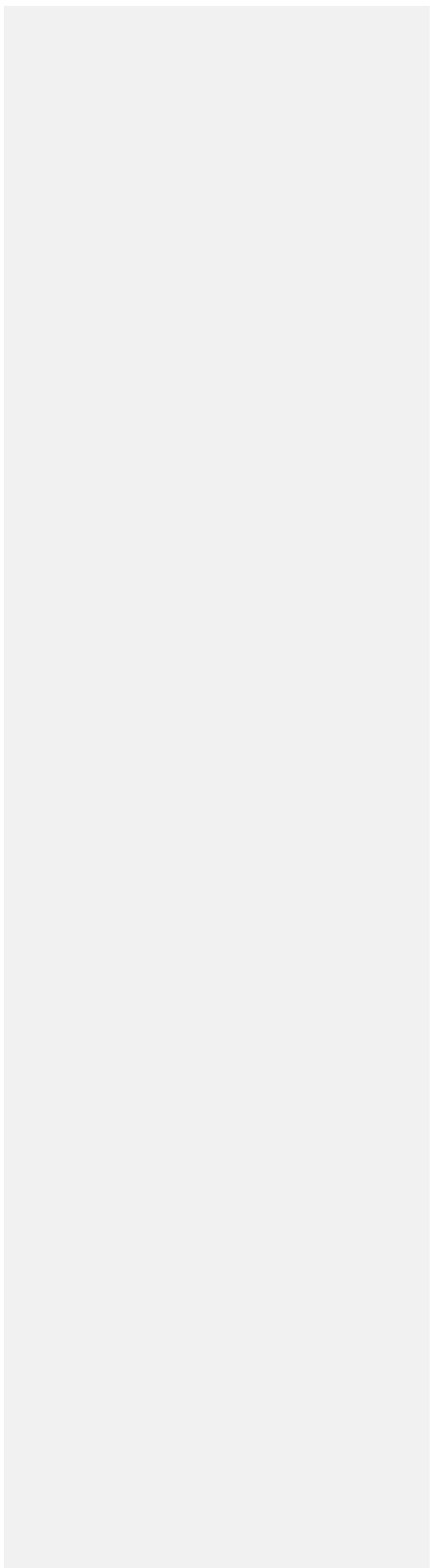
**EXHIBIT B
DESIGN PLANS**

Exhibit B is the set of plans and specifications for the Multi-Use Path in the Town of Sudbury, _____ County, MA, from the Beginning Project Station ____ to the End Project Station _____, as approved by the FHWA, which are incorporated herein by reference. The plans prepared for the Massachusetts Department of Transportation, Highway Division, by _____, entitled “Plan and Profile of _____ in the Town of Sudbury (_____ County) Preliminary Right of Way Federal Aid Project No. _____””, dated _____, consisting on that date of _____ pages, with all amendments through the final Plans and Specifications and Estimate set of plans as approved by the FHWA (the “Design Plans”). Sheet 1 of _____, of the Design Plans is attached hereto and incorporated herein by reference. The entire set of Design Plans is on file with the Massachusetts Department of Transportation and the Town of Sudbury, and incorporated herein by reference.

Attachment3.b: KP-#790524-v1-SUDB-_BFRT_MassDOT_Lease (4906 : BFRT update)

DRAFT FOR TOWN OF SUDBURY REVIEW

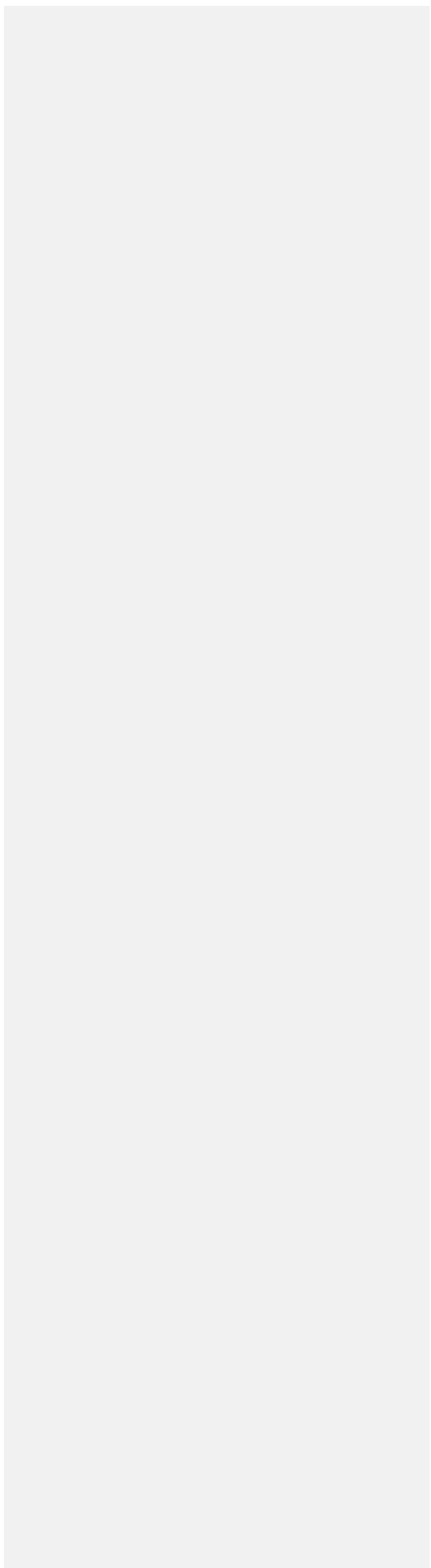
**EXHIBIT C
CERTIFICATES OF INSURANCE**



Attachment3.b: KP-#790524-v1-SUDB- BFRT_MassDOT_Lease (4906 : BFRT update)

DRAFT FOR TOWN OF SUDBURY REVIEW

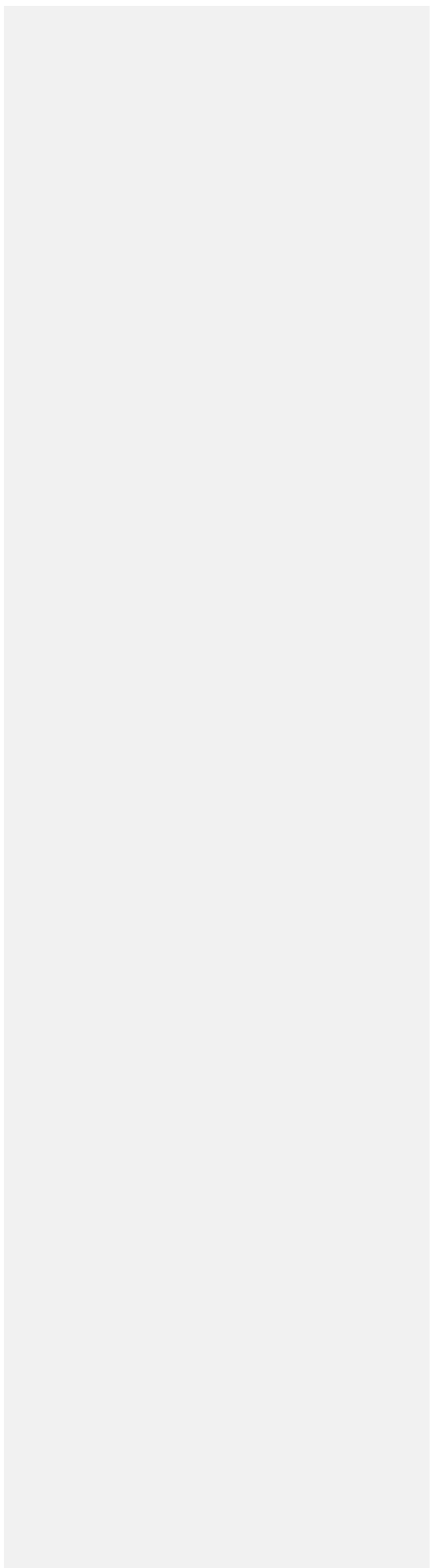
**EXHIBIT D
TENANT'S BENEFICIAL DISCLOSURE STATEMENT**



Attachment3.b: KP-#790524-v1-SUDB-_BFRT_MassDOT_Lease (4906 : BFRT update)

DRAFT FOR TOWN OF SUDBURY REVIEW

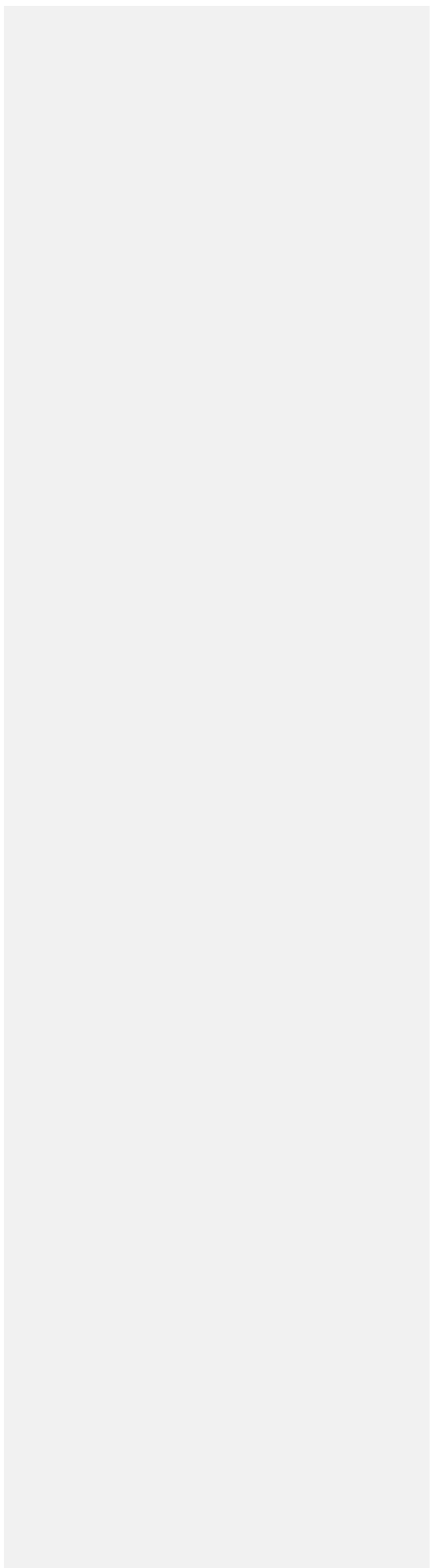
**EXHIBIT E
EVIDENCE OF AUTHORITY**



Attachment3.b: KP-#790524-v1-SUDB- BFRT_MassDOT_Lease (4906 : BFRT update)

DRAFT FOR TOWN OF SUDBURY REVIEW

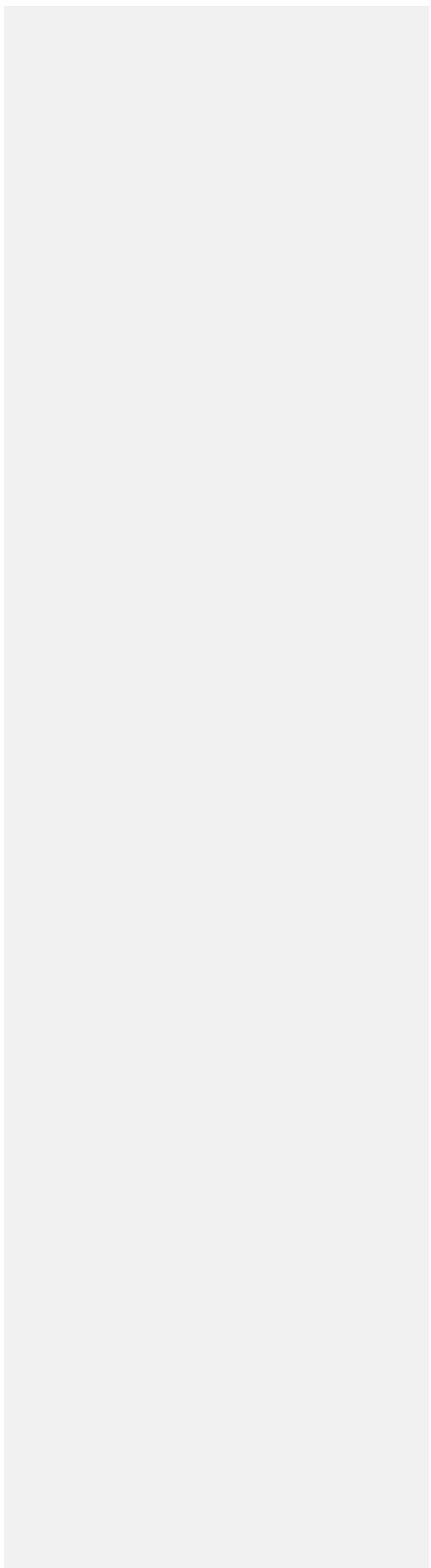
**EXHIBIT F
MEPA CERTIFICATE**



Attachment3.b: KP-#790524-v1-SUDB- BFRT_MassDOT_Lease (4906 : BFRT update)

DRAFT FOR TOWN OF SUDBURY REVIEW

**EXHIBIT G
MEPA AGREEMENT**



Attachment3.b: KP-#790524-v1-SUDB-_BFRT_MassDOT_Lease (4906 : BFRT update)



SUDBURY SELECT BOARD
Tuesday, December 7, 2021

MISCELLANEOUS (UNTIMED)

4: Discussion on Key Performance Indicators

REQUESTOR SECTION

Date of request:

Requestor: Chair Roberts

Formal Title: Town Manager Hayes to present Key Performance Indicators (KPI) projects: Fairbank Community Center Rebuild; Eversource Litigation; Bruce Freeman Rail Trail (BFRT); Town Hall Restoration; Town-wide ADA Assessment; Comprehensive Wastewater Management Plan; and American Rescue Plan Act (ARPA). (~35 min.)

Recommendations/Suggested Motion/Vote: Town Manager Hayes to present Key Performance Indicators (KPI) projects: Fairbank Community Center Rebuild; Eversource Litigation; Bruce Freeman Rail Trail (BFRT); Town Hall Restoration; Town-wide ADA Assessment; Comprehensive Wastewater Management Plan; and American Rescue Plan Act (ARPA). (~35 min.)

Background Information:
see attached documents.

Financial impact expected:

Approximate agenda time requested: 35 minutes

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Henry L Hayes	Pending
Jonathan Silverstein	Pending
Jennifer Roberts	Pending
Select Board	Pending

12/07/2021 6:30 PM

Fairbank Community Center

https://sudbury.ma.us/boardofselectmen/2018/06/13/fairbank_community_center_project

4.a



Attachment 4.a: KPI - Fairbank SB Project Status Update 21-12-

Update: 2021-12-03

Bill Barletta,
Staff Project Lead

Goal: Replacement of current building		
Risk		Controls (Options)
Secure OPM, take from feasibility to design phases	Low	• RFQ clearly states deadline.
Final Design to Construction	Low	• This project has an aggressive timeline, delays on decisions may impact timeline and costs based on rates at any given time.

Original Plan	Current Budget
\$28,832,000	\$28,832,000

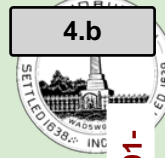
Milestone	Original	Current (Actual)	Notes
<ul style="list-style-type: none"> Interview and select OPM Architect / Designer Selection CMR Selection 	<ul style="list-style-type: none"> 2021-01-29 2021 FEB 2021 SUMMER 	Completed 2021 April	Compass. 14 RFQ proposals rcv'd 2021 Jan 14 NLT 2 PM, Interviews 2021 Jan 28.. BH+A.. 12 submissions, 3 interviews scheduled 2021 April 15.. RFQ/25 Feb. Design/Bid/ Build process selected over Construction Manager at Risk.
SD/DD/CD/100% CD	2021 JAN	In Process 2021 July	Geo Tech and Site Survey work complete. Schematic Design very nearly complete. Next step is Design Development.
Early Bid packages (if needed). Schematic Design and Design Development phases. Value engineering. Contractor Prequalification. ZBA, Design Review, and Planning Bd. Hearings.	2021 FALL		Early Bid Packages not needed. SD and DD estimates were over the approved construction costs. Users met with Project Team and Design Team to identify items that would be excluded from scope or funded separately. Budget is currently in line with approved costs, FF&E w/ IT costs still to be completely vetted. A Contractor Prequalification committee was formed consisting of members of the OPM, Architects and Owner. Prequal GC and Subcontractor RFQ's received and in process of evaluation, to be complete in January 2022. The project is on schedule.
Bidding	2022 FEB		
Construction	2022 MAY - 2023 DEC		Construction to begin, duration of 20 months.
Demolition			
Project completion	2024	2024	

Funding Source	Appropriated	Unspent	Contracts
2020 Annual Town Meeting (passed Nov 2020 Ballot)	\$28,832,000	\$28,223,158	OPM: Compass Project Manage Samiotes Consultants, Inc. (thru 1 and 7/31/21, respectively) Archite Bargmann Hendrie+Archetype, In 9/30/21) \$608,842 spent to dat
	\$	\$	
List the contingency funds	\$		
	\$	\$	
	\$	\$0	
	\$	\$	
TOTAL	\$28,832,000	\$28,223,158	

Packet Pg. 89

Tracking Started: FEB 10 2021

Eversource Litigation



Law Office

Goal: Seek the best and safest options for Sudbury with regard to utility expansion and related unintended consequences

Original Target	Current Target

Risk	Controls (Options)
Efforts or Eversource to advance beyond authorization	<ul style="list-style-type: none"> Track and reinforce processes and consult with Counsel on matters that may violate them

Original Plan	Current Budget
\$185,000	\$

Eversource Appropriations and Spending				
Acct #	Appropriation	Orig. Amt.	Spent	Balance
0011206/555016	STM 5/16 Art 2	\$ 185,000.00	\$ 185,000.00	\$ -
0011206/556018	ATM 5/17 Art 12	\$ 200,000.00	\$ 200,000.00	\$ -
	STM 10/17 Art 9	\$ 300,000.00	\$ 300,000.00	\$ -
	RFT-1, 12/12/17	\$ 200,000.00	\$ 200,000.00	\$ -
	RFT-2, 3/5/18	\$ 120,000.00	\$ 120,000.00	\$ -
	ATM 5/18 Art 12	\$ 115,000.00	\$ 115,000.00	\$ -
	ATM 5/19 Art 18	\$ 75,000.00	\$ 75,000.00	\$ -
0011206/550120	ATM 9/20 Art 15	\$ 150,000.00	\$ 142,333.22	\$ 7,666.78
0011206/550121	ATM 5/21 Art 14	\$ 150,000.00	\$ -	\$ 150,000.00
Total Balance:		\$ 1,495,000.00	\$ 1,337,333.22	\$ 157,666.78

Attachment 4.b: KPI - Eversource Project Status Update 12-01-

Packet Pg. 90

Bruce Freeman Rail Trail (BFRT) Phase 2D <https://sudbury.ma.us/pcd/2017/10/01/bruce-freeman-rail-trail-update-info>

*Beth Suedmeyer,
Staff Project Lead*



4.c

Goal: Create rail trail from Concord line south ending at Station Road.

Original Target	Current Target
2024	2024

Risk		Controls (Options)
FY22 State Funding at risk Final Design misses advertising deadline	Med	<ul style="list-style-type: none"> Final Design on schedule Ongoing dialogue with Massachusetts Department of Transportation (MassDOT) re: schedule and progress
Final Design Funds may be insufficient to complete	Low	<ul style="list-style-type: none"> Final Design Contract under budget.

Original Plan	Current Budget
\$1,171,967	\$1,280,000

Milestone	Original	Current (Actual)	Notes
25% Design with Sketch Plans Submitted to MassDOT	2019-08-30	(2019-11-27)	DONE.
MassDOT Sketch Plans Reviewed and Design Public Hearing Scheduled	2019-11-15	(2020-06-22)	DONE. MassDOT didn't route sketch plans for review until late Jan 2020. Letter from BOS to MassDOT 2020-02-12. Covid. Last of Comment Resolution Meetings June 22, 2020.
MassDOT Design Public Hearing	2019-11-04	(2020-07-30)	DONE. July 16-30, 2020
Final Design Request for Proposals released	2020-08-31	(2020-08-31)	DONE. Released with 9/25 deadline for responses.
Final Design Contract Signed	2020-10-31	(2020-11-05)	
75% Design Submitted to MassDOT	2021-04-08	(2021-05-12)	DONE. MassDOT comments on the submission received 2021-07-08. Comment resolution meeting held 2021-08-25.
100% Design Submitted to MassDOT	2021-10-25	2021-1-10	100% Design Underway. Delays not anticipated to affect advertising target or construction timeline.
Final Design Submitted to MassDOT	2021-12-15	2021-06-14	
MassDOT Advertises Construction RFP	2022-04-23	2021-07-02	FY22 funding requires advertising by the end of September 2022.
Trail complete	2024		MPO TIP Funding programmed for FY22. Estimate 2 year construction.

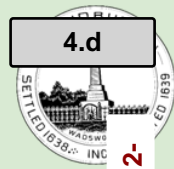
Funding Source	Appropriated	Unspent	Contracts
2014 Town Meeting (for 25%)	\$202,492	\$0	25% Design - Original
Donation Friends of BFRT (for 25%)	\$58,700	\$0	25% Design - Original
Planning, DPW, Town Manager budgets	\$30,550	\$0	25% VHB Am
2016 Town Meeting (75% design)	\$150,000	\$0	Fuss & O'Neil
2017 Town Meeting (for advancing design)	\$330,000	\$0	<ul style="list-style-type: none"> 25% Structu Jacobs (\$146 Leaves \$180: 75/100% Des
Planning, DPW, Town Manager budgets	\$36,675	\$0	25% Jacobs Amendment
2018 Special Town Meeting (for advancing design)	\$650,000	\$355,950.98	Fuss & O'Neil
TOTAL	\$1,458,417	\$355,950.98	

Attachment 4.c: BFRT SB Project Status Update 21-12-03

Town Hall Restoration/ Rehabilitation Design (2017 Town Meeting Article 31)

PBC
Project Lead

Goal: Upgrades, adjustments and repairs to increase utilization of Town resource within historic district



4.d

Original Target	Current Target
2026?	2026?

Risk	Controls (Options)
Determination of the plan's viability or need for change	<ul style="list-style-type: none"> Review with PBC prior to proceeding with current intent
	<ul style="list-style-type: none">

Original Plan	Current Budget
\$ 600,000	\$ 600,000

Milestone	Original	Current (Actual)	Notes
Preparing Design and Construction Documents and Associated Cost Estimates			Design documents are approximately 90% complete. Project undergoing review by Sudbury Historic Districts Commission, Sudbury Historical Commission and Sudbury Commission on Disability. Current design issues being considered by the Commissions include whether or not the Town Hall Front Entrance should remain accessible by all as part of the final design documents and the exterior configuration of the new rear entrance.
100% Design			Upon receipt of Certificate of Appropriateness from the Sudbury Historic Districts Commission, project design will be presented to Historical Commission, Commission on Disability and Sudbury Design Review Board for review and approval. Upon incorporating review comments from the above review agencies into the 100% design, the design will be presented to the Sudbury Planning Board for Site Plan Review.
Project completion	2026?		

Funding Source	Appropriated	Unspent	Contracts
CPC Funds, ATM 5/17 Art 31	\$600,000	\$191,867.23	Total Spent in FY21 \$1,386.00 Total Spent in prior fiscal years \$408,132.77
	\$	0	
	\$	\$0	
	\$	\$	
	\$	\$0	
	\$	\$	
TOTAL	\$600,000	\$191,867.23	

Attachment 4.d: KPI - Town Hall - Project Status Update 21-12-

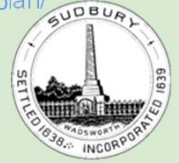
Packet Pg. 92

Update: 2021-12-03

Town Manager &
Facilities Staff
Project Lead

Original Target	Current Target
2026?	2026?

ADA Self-Assessment & Transition Plan <https://sudbury.ma.us/townmanager/2021/04/09/ada-evaluation-and-transition-plan/>



Goal: Upgrades, adjustments and repairs to increase accessibility for Town resources	
Risk	Controls (Options)
ADA non-compliant inventory of facilities and assets should be remedied as best as practicable.	<ul style="list-style-type: none"> Utilize Self-Assessment and Transition Plan files, along with feedback from others to identify mitigation strategies.
	<ul style="list-style-type: none">

Original Plan	Current Budget
\$	\$

Milestone	Original	Current (Actual)	Notes
Institute for Human Centered Design (IHCD) as consultant - evaluation	2020 SUMMER	2021 Feb	Finalizing. (5) public schools and 14 public buildings – including one (1) police station, three (3) fire stations, one (1) library, two (2) DPW facilities, two (2) historic buildings, one (1) transfer station and four (4) municipal buildings. The outdoor facility set includes 11 recreation facilities.
Community feedback	2021 Apr 14	2021 Apr 27	Finalizing. Expecting final report May/June 2021. Public meeting held 27 April 2021 with COD. Final report received 22 July 2021
Final Reports		2021 Jul 22	
36-60 month compliance and adjustment goal	INFO		If the work done in any 36-month period is greater than \$100,000, the “work being performed” is required to comply. In addition, an accessible entrance and an accessible toilet room, telephone and drinking fountain (if toilets, telephones and drinking fountains are provided) shall also be provided.
Transition Plan and mitigation actions	2021 Aug start	2021 Aug	IHCD reports/files will be utilized, priorities will be set based on staff input and COD feedback assessment. As we move throughout the process, all items will be tracked and made visible.
Recommendations actions	Sept. 2021		Items identified in Town buildings begun to be addressed by Facilities staff. Projects planning and design undertaken within ADA recommendations and requirements; new Fairbank CC, proposed new Noyes classroom sinks. SPS will be addressing school bldg. items with school bldg. based groups working on mitigation as applicable and awareness. Dec. 21
Project completion	2026?		

Funding Source	Appropriated	Unspent	Matters Addressed
	\$	\$	
	\$	\$0	
	\$	\$0	
	\$	\$	
	\$	\$0	
	\$	\$	
TOTAL	\$	\$	

Tracking Started: 2021-04-09

Comprehensive Wastewater Management Plan (CWMP) Updates



Dan Nason,
Staff Project Lead

Goal: Completion of Town-wide Comprehensive Wastewater Management Plan and Environmental Impact Report

Original Target	Current Target
2021	2022

Risk	Low	Controls (Options)
Public Outreach/Education & Gaining Support for CWMP and Future Town Meeting	Low	<ul style="list-style-type: none"> Public support has been mostly positive. Outreach/education efforts will ramp up in December and January to bring the Project to the public for education and solicitation of comments is in place. The Town, with assistance from Woodard & Curran and a professional public relations firm (working through the SRF Loan Program), is developing and implementing an aggressive outreach/education plan with a goal of bringing the public up to date with the CWMP to build consensus before the Town brings a final CWMP to Town Meeting.

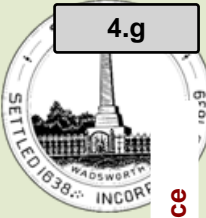
Original Plan	Current Budget
\$500,000	\$500,000

Milestone	Original	Current (Actual)	Notes
Assess existing conditions	2019 Sept	2020 Sept	Reviewed Study Areas Town-wide and updated Needs Areas; State Revolving Fund (SRF) Loan Application.
Update Flows & Loads & disposals options	2019 Nov	2020 Nov	Historical water use records utilized to determine current and build out flows. Hydrogeological investigations completed on several sites. Final discharge proposed at Curtis Middle School field.
Review & Update 2013 Report	2019 Nov	2021 Nov	2013 Report dealt with Route 20 only. This is updated and includes comprehensive review of entire Town, both existing and future conditions.
Public Participation	ONGOING	ONGOING	Due to continued COVID restrictions, outreach had been limited to webpage updates, Town internal meetings and Memorandums. The Public Outreach campaign, organized by a sub-contractor working alongside W&C will ramp up over the next few months.
Single Report Update	2020 SEPT		2021 Dec. anticipated completion. Draft Recommended Plan ready for Regulatory filing. Coordination with MassDEP is on-going.
MEPA Filing	2020		2021 Dec. anticipated completion. Filing through the Massachusetts Environmental Policy Act (MEPA) Office to determine Final Recommended Plan Scope of Work.
Report Update / SEIR	2021		2022 March anticipated completion. Final filing as determined above.
Project completion	2021	2022	

Funding Source	Appropriated	Unspent	Contracts
May 7, 2019 Annual Town Meeting – Article 23 –Comprehensive Wastewater Management Plan Impact Report	\$500,000	\$0	Executed contract with Woodard & Curran (W&C) 8/19/2019
2019 State Revolving Fund (SRF) Loan	\$500,000	\$137,700	Contract on Budget (\$13 remaining) \$362,300 expended
	\$	\$0	
	\$	\$	
	\$	\$	
	\$	\$	
TOTAL	\$500,000	\$137,700	

Attachment 4.f: KPI - CWMP - Project Status Update 21-1-11

American Rescue Plan Act - ARPA



4.g

Attachment 4.g: KPI - ARPA - 2021 Dec 3 (4948 : Discussion on Key Performance

Update: 2021-11-05

Goal: Utilize funding in accordance within the Federal guidelines

Risk		Controls (Options)
Not utilizing the funds in timeline authorized	Low	<ul style="list-style-type: none"> The requests that come in will exceed the amount available to the Town
Funding items that an auditor deems inappropriate	Low	<ul style="list-style-type: none"> We will continue to watch the guidance and compare to the requested support

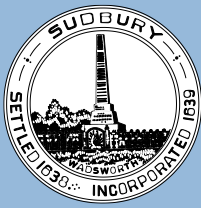
Select Board

Original Target	Current Target
2024-2026	2026

Original Plan	Current Budget
\$5,875,013	\$5,875,0

Milestone	Original	Current (Actual)	Notes
Conduct Community FlashVote Survey	2021 OCT 26-28	Completed	815 of 1321 potential participants. ARPA Flashvote Results
Web page establishment with survey for the public	2021 NOV	Completed 2021 Nov 3	https://sudbury.ma.us/ARPA Town will be utilize a website to track and post relevant data associated with ARPA.
Town Survey	2021 NOV	2021 Nov 30	
Discussion about possible consultant/staff member to support process	2021 DEC 7		Some communities have the assistance from an additional person or contracted service
All final ARPA project submission	2021 DEC 31		Staff and Committees, then list clean up and consolidation
Select Board Identify items to explore deeper			Afterwards, an assessment of eligibility
Project completion	2026		

Funding Source	Allocated	Unspent	Expenditures
Town Allocation	\$2,057,260.44	\$2,057,260.44	
County Allocation	\$3,817,753.34	\$3,817,753.34	
	\$		
	\$	\$	
	\$	\$0	
	\$	\$	
TOTAL	\$5,875,013.78	\$5,875,013.78	



SUDBURY SELECT BOARD
Tuesday, December 7, 2021

MISCELLANEOUS (UNTIMED)

5: Sewataro discussion on Public Access and Contract Renewal

REQUESTOR SECTION

Date of request:

Requestor: Chair Roberts

Formal Title: Sewataro Discussion: ·Update on outstanding Sewataro questions list ·Update on public education document to be drafted by Subcommittee Update on swimming/fishing ponds and ongoing MA Department of Public Health/MA Department of Environmental Protection meetings . Discussion on Camp Operator/Property Manager contract renewal decision approach/timeline ·Sewataro Use Policy discussion ·Other Outstanding Sewataro items (~45 min.)

Recommendations/Suggested Motion/Vote: Sewataro Discussion:

- Update on outstanding Sewataro questions list
- Update on public education document to be drafted by Subcommittee
- Update on swimming/fishing ponds and ongoing MA Department of Public Health/MA Department of Environmental Protection meetings
- . Discussion on Camp Operator/Property Manager contract renewal decision approach/timeline
- Sewataro Use Policy discussion
- Other Outstanding Sewataro items (~45 min.)

Background Information:
attached documents (continued from 11/30 meeting)

Financial impact expected:

Approximate agenda time requested: 45 minutes

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Henry L Hayes	Pending
Jonathan Silverstein	Pending
Jennifer Roberts	Pending
Select Board	Pending

12/07/2021 6:30 PM

From: Town Manager

Sent: Tuesday, November 9, 2021 6:20 PM

Subject: SB/TM Note - Sewataro update regarding Public Bathing Beach discussion

Do not reply all

Select Board: Good day to all. Below are some notes regarding the conversations held recently, some questions and concepts are being explored.

Sewataro discussion: Health and Conservation, Scott Brody & Emmy Niinimaki, Town Manager & Assistant Town Manager

- Modified Pool vs bathing beach... **state does not call it a pool**, based on the water not being filtered or circulated, among the total definition.
 - **Registration required as a Public Bathing Beach**
 - Camp Operator will register the Bathing Beach
 - Small body of water: not the same size as a lake, better for maintenance and mitigation efforts
- Environmental:
 - **Need to know the pre-chlorine water quality**
 - Develop an Operations and Management Plan and water quality testing program for facility
 - **No further use of chlorine**
 - Historically, the amount used in the past was not measurable in previous testing
 - Primarily to maintain clarity down to 4 ft
 - Can the water be dechlorinated prior to going back into the water bodies or surrounding areas?
 - Carbonization use as an option, or other technology?
 - Chlorine reduces with sunlight, a natural mitigation to test and confirm levels
 - Remove water when draining pool instead of draining to water bodies?
 - Bathing beaches are not treated by chlorine in MA
 - **Algaecide will need to be permitted in advance of use**, and only used to treat a bloom, not to prevent a bloom
 - **NOI filing: Algaecide and changes to the spillway**
 - Primarily used to reduce slick surfaces
 - 8-10 week process

- **There is confidence that there is a way to satisfy the DEP and DPH requirements**
 - The mitigation efforts are under consideration and have been anticipated by the Camp Operator and team
 - Can the upper pond be separated from the lower pond and be a stand-alone system, without feeding the lower pond and eco-system?
 - We anticipate that there is a healthy eco-system is in place now, based on the wildlife not being adversely impacted to date.
 - Consider changes to the spillway routing in order to control the water that is utilized in that body of water
 - Water discharge distance, will measure to ensure the regulations are met
- Accountability is welcomed, in effort to be good stewards
 - Safe water for bathers, wildlife and authorities of concern
 - Scott Brody is the person that reached out to DPH and DEP, in effort to deepen the understanding and anticipated actions
 - Will explore other acceptable methods
 - Wetlands and Waterways team has not provided input to the Town yet

Respectfully, Henry

Henry L. Hayes, Jr. (he, him)
 Town Manager
 Town of Sudbury
 278 Old Sudbury Road
 Sudbury MA 01776

Phone: (978) 639-3381
 Fax: (978) 443-0756

Sustaining a SAFE, SECURE, SERVICED & STRONG SUDBURY!

The Secretary of State's office has determined that most e-mails to and from municipal offices and officials are public records. Consequently, confidentiality should not be expected.

DRAFT**Discussed by Sewataro Assessment and Recommendations Subcommittee 2021-11-23**

Sudbury residents voted to acquire Camp Sewataro June 2019 for \$11.27M and the Town took ownership on October 28, 2019. The Town immediately issued a Request for Proposals, selected a private camp operator Sewataro LLC (Manager Scott Brady) to manage & maintain the property year round, continue the day camp on summer weekdays, and facilitate public access during non-camp hours. The town granted Sewataro LLC the same special permit to operate the camp as a business on the residentially zoned land as it has for past decades, and increased the number of camper slots by 50 per session which the operator offers as 'scholarships' to Sudbury families in need through the Town Social Worker. The camp operated successfully in 2020 (at state-mandated 1/2-2/3 capacity due to Covid, with 1:10 staff:camper ratio and increased Covid protocol costs. Max 400 campers permitted 10 per group) and 2021 (full capacity), and has sold out for summer 2022.

Per negotiated Day Camp Operator and Management of Real Property contract with Camp Sewataro, LLC, the LLC covers all expenses, and pays the town a fixed \$120K plus a profit share each year. In 2020 (Covid year), the Town received \$120K + \$3136 = \$123,136. In 2021 (at normal 650 camp capacity), the Town received \$120K + \$338,940 (\$176,866 profit share + \$162,073 Covid PPP revenue share) = \$458,940. The Town Finance Director had estimated annual revenues of \$349K / year. (For reference, this is comparable to, exceeds the commercial tax which Sudbury Farms plaza paid the Town in 2021 of \$144K. Another point of comparison, Bosse paid town \$182K taxes in 2021.)

Additionally, Sewataro LLC's community liaison facilitated two large town-wide events each year, free use of facilities by over 30 groups, including scouts, HOPE Sudbury fundraisers, Food Pantry drives. LS Adult Education classes and several local businesses have used the property for outdoor performances and classes at no charge with the Town's permission. A public calendar of Sewataro reservations is maintained on the town's website. The Town is considering a nominal fee schedule for reservations going forward.

From Fall 2019 to present, Sewataro has provided:

- 3 town events (2 scarecrow events and 1 summer concert)
- Successful partnerships with local charitable organizations
 - o Site of sorting for SPS Sudbury Community Food Pantry drives 9/20 - present
 - o HOPEsudbury fishing derbies 8/20 and 8/21 and other fundraiser
 - o Annual Sponsor and donor to HOPEsudbury auction
 - o SMILE Mass classes last fall/winter
- Meeting space for over 30 other local groups and organizations including Scouts, Sudbury Family Network, and Sudbury Villagers (seniors)
- Work with Town Social Worker Bethany Hadvab to identify and place dozens of Sudbury residents in scholarship program summers of 2020 and 2021
- Working with SPS to expand the scholarship program to Middle Schoolers enrolled in the Extended School Year Program
- Camp Drive for the Sudbury Care Pantry & Gifts of Hope Unlimited

Commented [BS1]: 201K property tax that Libert owners were paying in 2019. Zoned for 33 parcels f future development.

Prior to town's acquisition, the Camp operation paid to the property owners to rent the property.

Commented [BS2R1]: Community Liaison Krister Drummey notes that the prior owner's internal acc should be further reviewed to ensure not misrepres

Commented [BS3]: source Dennis K's estimate.

- Prompt response whenever an issue is presented
 - o Opening up the back gate for ease of access to Liberty Lodge and tennis courts
 - o Installed toilet facilities on both ends of the property year round (port-a-potties)
 - o Purchase (installation Spring 2022) of ADA compliant benches when the Girl Scout Memorial Bench discussion pointed to a need

Sewataro has proposed facilitating public outdoor swimming starting 2022.

The Town's debt obligations average \$667K/year through the year 2041 after which the property will be fully paid off. Under the current arrangement, the Town incurs zero operating costs, as Sewataro LLC maintains and makes improvements to the property year round.

The Day Camp Operator and Management of Real Property contract covered an initial 3 year term from Fall 2019 through September 2022, with option for two 5 year renewals. The Town and the Operator must notify each other of agreement to renew by June 30, 2022.

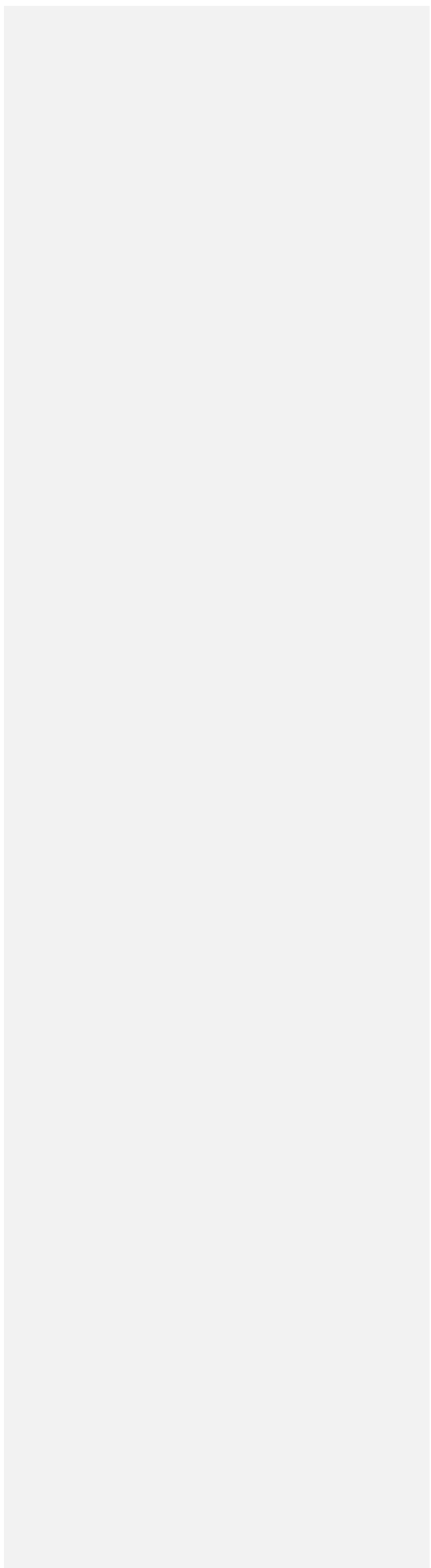
Renewing the existing contract for next 5 year term would mean that Sewataro LLC would continue to manage the property, and the Town budget would not incur operating costs in upcoming Fiscal Year 2023 and through September, 2027.

An early decision to renew for the next 5 years would give lead time to Sewataro LLC to make investments in the property to facilitate enhanced public access in 2022 as outlined in their proposal. The Select Board makes the decision to renew the contract.

- 2019 real-estate appraisal determined The highest and best use for the site under the current zoning is single family residential \$10,370,000
- Select Board, Fin Com, others have opined that increasing non-residential tax revenue (revenues other than residential property taxes) is a desire. Currently Sudbury revenues are 93% residential taxes.
- 2019 community flashvote survey
- Town-wide ADA accessibility report by IHCD to recommend accessibility improvements
- Interest from Council on Aging and Parks and Rec Commission in an external consultant to recommend the best use of the property
- Council on Aging highlighted slope of property and temperature of Liberty Lodge as accessibility issues for seniors; advocate for accessibility improvements
- Parks and Recreation concern about fee structure impacting Parks and Recreation operations
- Parks and Recreation indicated they do not currently have sufficient resources to run programming at Sewataro
- Discussions about updating water treatment practices on the site (swimming pond (gunite-lined pool) that flows to fishing pond
- Comparison of what property taxes per household are for various properties, and public use of those properties, and costs to maintain properties (see slide 9 of <http://documents.sudburyma.s3.amazonaws.com/Presentation/TM-2019%20Article%2025%20Rodrigues%2C%20Melissa.pdf?1557334778257> update for current)

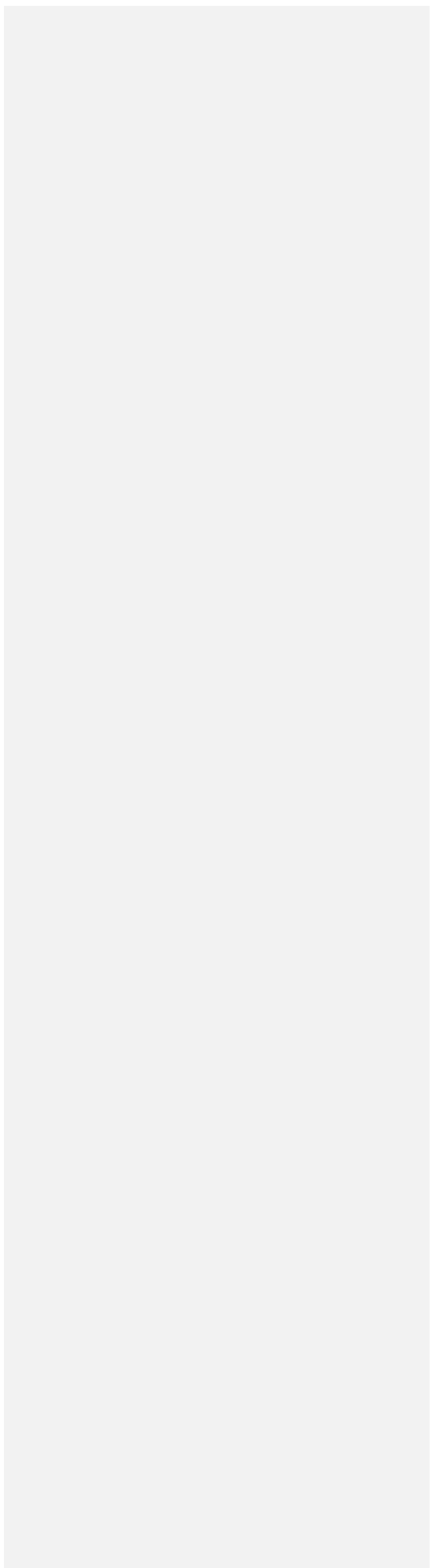
Property	Resident payment*	Usage of Property	Acquisition Warrant purpose
Sewataro	168 -> 98 over 20 yrs @4% *actual interest rate and payment lower	Summer camp, programming, events (currently facilitated by Sewataro LLC). Swimming proposal.	
Broadacres	\$53 -> \$20 @4% (plus the \$1.86M CPA investment) *actual interest rate and payment lower	Per charrette, rail trail parking, athletic fields, other municipal. Pending funding. Conservation	
Johnson Farm	Avg \$22/yr over 20 yrs. (plus \$1M CPA and private SVT)	Open space (block 40B at time of acquisitions)	
Town Center	Exchange for Melone		

DRAFT



Attachment5.b: DRAFT Sewataro Info for Public 2021-11-23 (4944 : Sewataro discussion on Public Access and Contract Renewal)

DRAFT



Attachment5.b: DRAFT Sewataro Info for Public 2021-11-23 (4944 : Sewataro discussion on Public Access and Contract Renewal)

TO: Select Board (*By Electronic Mail Only*)

CC: Town Manager

FROM: Janelle M. Austin, Esq.
 Lee Smith, Esq.

RE: Sewataro Property – Legal Inquiries

DATE: November 16, 2021

The Town has asked Town Counsel a series of questions regarding the use and operation of the Sewataro property (“Sewataro” or the “Property”), including operating a public swimming facility at the Property located at 1 Liberty Ledge. The consolidated responses to the recent inquiries are contained in this memorandum.

1. Is it an issue to have different fee for resident versus non-resident?

In our opinion, the Town may charge a different fee for residents versus non-residents, but it must have a rational basis for charging a different fee. Generally, any regulation that differentiates between residents and non-residents is subject to the limitations of the State and Federal Constitutions prohibiting discrimination in violation of a non-resident’s right to equal protection of the laws. LCM Enterprises, Inc. v. Town of Dartmouth, 14 F.3d 675, 679 (1st Cir. 1994) (analyzing constitutional challenge to Town system of charging higher harbor usage fees to nonresidents than to residents). Therefore, the local law or regulation must bear a “reasonable relation to a permissible legislative objective.” Id. According to the United States Supreme Court, it is reasonable to charge non-residents a higher user fee when residents assist in the operation and maintenance of the service through the payment of taxes and non-residents do not. Baldwin v. Fish and Game Commission of Montana, 436 U.S. 371, 389-390 (1978). In this regard, use of the property by non-residents may lead to the exclusion of residents, increased operation and maintenance costs, and increased burdens on the Town’s departments, including, for example, fire, police and public works. Property taxes alone may not fully cover these increased costs, which are born solely by Town residents. Therefore, it is our opinion that charging non-residents a higher fee for use of the Property would not violate the Equal Protection Clause of the United States Constitution, provided that the different fee structure is reasonably related to the increased Town costs associated with use of the property by non-residents.

2. In the case of a group of people, is it sufficient that the applicant/point of contact/responsible person for the reservation be a Sudbury resident to qualify as a resident group, and further, is there an issue with setting a minimum percentage of participating group members being residents to establish the group as a Resident group? (Responsible applicant attests to this)

With respect to these inquiries, in our opinion, as a matter of policy, the Town may identify what criteria will need to be satisfied to establish the resident criteria, including that the applicant or the group is located in Sudbury. In my experience in other communities, towns will establish residency criteria based on the primary address and/or organization of the group in a particular community or a particular percentage of individuals in a group or sponsored activity who are residents (e.g. 80% or 60%), as a matter of policy.

3. If there are no anticipated incremental custodial or related expenses (i.e., because of small size of event (e.g., < X participants) and because maintenance person performs daily tasks anyway) is there an issue with not requiring per use fee?

In our opinion, the Town can determine whether based on the nature or size of a particular event that no fee is needed. As you know, any fee imposed by the Town must comply with the provisions of the Massachusetts Constitution with respect to the authority of municipalities to charge fees. In Emerson College v. City of Boston, 391 Mass. 415 (1984), the Supreme Judicial Court set forth three factors to determine whether a charge is a fee that can be assessed on a case-by-case basis, or whether it is a tax that must be levied upon all residents equally. First, the fee must be levied in exchange for a particular governmental service, which benefits the party paying the fee in a manner not shared by other members of the community. Second, the service must not be compulsory, meaning that the person paying the fee must utilize the service as a matter of choice. Finally, the fee must not be used to raise revenue, and must instead be used to offset the cost of governmental services.

4. Can the definition of non-profit be tightened up to be a registered 501(c)(3) organization? Further, can the definition of Sudbury non-profit group be tightened up to combine:
 - a. the applicant/responsible person is a Sudbury resident
 - b. that resident applicant/responsible person is a member of the non-profit organization
 - c. the event is an activity for/of that nonprofit organization
 - d. the individuals participating in the event are Sudbury residents

In our opinion with respect to the above inquiries, the Town can if it chooses to, clarify the definition of non-profit to include only organizations that have 501(c)(3) status. If the Town wishes to modify such definition, the Town may require a non-profit to submit current documentation of 501(c)(3) status for its records. For example, please see breakdown of priority groups in this policy for consideration: https://www.wayland.ma.us/sites/g/files/vyhlf4016/f/news/2020_field_facility_user_packet.pdf, pp. 4-5, which sets percentage of resident criteria and discusses 501(c)(3) status. Please let us know if you want me to review or draft such language.

5. Can definition of ‘Sudbury group besides non-profits’ be: applicant/responsible person is a Sudbury resident and the event is not an activity for/of a 501(c)(3) organization of which the applicant is a member?

In our opinion, the Town can make such a determination as matter of policy to further clarify such group classifications and eligibility for organizations that do not have 501(c)(3) status. We recommend that any such criteria be designated in the use policy.

6. Can the Town regulate the use of the Property by non-governmental entities?

In our opinion, the Town has the discretion to permit or prohibit the use of municipal facilities by non-governmental entities. Lamb’s Chapel v. Center Moriches Sch. Dist., 508 U.S. 384, 390 (1993). In Lamb’s Chapel, the United States Supreme Court held that a school district may preserve its municipal property for its dedicated purpose. Id., at 390. However, once the Town makes its property available to a non-municipal entity, constitutional principles require that Town facilities be made available to such groups in an even-handed and content-neutral manner that does not discriminate between groups based on race, political philosophy, religion, or message. In our further opinion, in making public facilities available to private groups, the same basic restrictions are applicable to municipalities as applied to other governmental action. As always, the Town should not discriminate among different groups, but should evenhandedly provide access to its facilities. Under applicable constitutional principles, a municipality should not support or align itself with any particular group or position. Limiting access to certain types of groups could raise issues as to whether a variety of different nonprofit or religious groups or even political groups should fall within the term “non-profit organizations.”

Accordingly, in our opinion, is important that the Town not appear to be favoring one group over another group because of the content of the ideas or beliefs of any particular group. Distinctions based on content could raise First Amendment, free speech and other constitutional objections to choices made in behalf of the Town. When choices are made solely within the discretion of a Town officer or employee and such choices have the potential to be based upon distinctions of ideas, beliefs, race, creed, color, or religion, the ability to exercise such discretion, without guidelines designed to guarantee equal access, may be subject to a facial constitutional challenge. A facial constitutional challenge is a challenge to the way a policy or regulation reads “on its face” without regard to how fairly the policy may actually be applied in practice. Facial challenges are allowed by the courts in First Amendment matters because of the sanctity with which courts view First Amendment rights.

Accordingly, to minimize potential liability, in our opinion, the Town’s Use Policy for Sewataro should neutral and objective conditions for the grant and for use of public space. Such Policy should: (1) establish conditions on such grant and use so that grants of use are given when neutral criteria are met without undue exercise of Town discretion and so that the full responsibility for supervision of such events is that of the private organization; the presence of Town employees is certainly allowed, but care should be taken not to create the appearance that the Town is endorsing or sponsoring the ideas of any particular private group; (2) charge a fee for custodial and related costs; and (3) regulate private use so that all groups have equal and

adequate access to such public facilities. The goal of such Policy is to satisfy the Town’s legal duty to administer the use of public facilities by private groups consistently and evenhandedly so that no group is favored or excluded in fact or in appearance.

In addition to legal matters related to equal access to public facilities, in our opinion, there can be potential liability from injury suffered by a participant or from injury resulting from the conduct of a participant in such use, either by way of personal injury to another participant or to a Town employee or by property damage to personal property or the public facility. A number of options are available to limit the Town’s liability, including obtaining waivers as the Town does in other programs, as noted in the attached draft, and indemnification agreements from participants or requiring insurance by a group to cover its use of the property. The Policy in its current form contemplates that all users will execute a waiver form.

Further, in our opinion, the Town will want to confirm with its insurer whether the form of waiver is sufficient and whether any of the intended uses would affect the Town’s premium or require additional insurance coverage.

7. Please provide an outline of the imposition of fees for the Property.

In our opinion, if the Town has accepted G.L. c.40, §22F, the Town Manager may set the fees if the Board so chooses as a matter of policy, which can be included in the policy or as a separate document referenced therein, with approval by the Select Board to cover the administrative costs. Please note that G.L. c.40, §22F, if accepted, authorizes any municipal board or officer “empowered to issue a license, permit, certificate, or to render a service or perform work for a person or class of persons,” to establish fees for any board or officer that is appointed by an elected board, however, the appointing board must vote to approve the fees. Town Counsel understands that the Town has previously accepted this provision, but you may wish to confirm with the Town Clerk that the Town has accepted Section 22F. As in the case of any fee setting, the fee set by a board of officer pursuant to §22F must be “reasonable,” in order to not become an impermissible tax. Therefore, Section 22F cannot and does not authorize the imposition of fees that exceed the amount necessary to compensate the Town for providing the services for its expenses.

As noted above, to the meaning of the term “reasonable” in the context of local fees, the Supreme Judicial Court in Emerson College v. The City of Boston, 391 Mass. 415 (1984), established a three-part test to determine whether fees charged by municipalities would be lawful. If a fee imposed by the Town does not meet all three of the criteria, it is subject to challenge as being unreasonable charge. As such, as noted in the above comments, any fee set for the use of the Property must therefore meet Emerson College standards of reasonableness.

With respect to your questions regarding differentiating between the Town collecting user fees and the Property Manager collecting user fees, in our opinion, the terms of Section 1.2.6 of the Contract (defined below) control. Programmatic activities may be planned by the Property Manager and/or the Town and “The cost of programmatic events planned with the Town, if any, shall be allocated by mutual agreement of the parties.” In our further opinion, the allocation of fees collected would depend on costs associated with the use and which parties

incur such costs. Further, by mutual agreement of the parties, either the Town or the Property Manager could collect and process the fees and then account for them in a manner consistent with the agreement regarding the allocation of fees. The limitation in the last paragraph of Section 3.1.1 of the Contract requiring that “Camp Sewataro, LLC shall be the only entity to receive revenues and receipts and to pay expenses in any way related to the camp and the Property and that no individual, natural person or other legal entity shall be utilized to receive revenues or to pay expenses in any way related to the Property” is intended to prevent the Property Manager from utilizing multiple legal entities to act in a way to frustrate the intent of the Contract with respect to the Management Fee as set forth in Article 3. In the event that a mutual agreement regarding programmatic events would result in a conflict with respect to this clause, such language could be modified as an amendment to the Contract.

8. How should the permitting authority be defined in the Policy Document for Sewataro?

In our opinion, the Town may consider using the following language to define the permitting authority in the policy document: “Users shall obtain all necessary permits for Town activities, as required by law or Town bylaws, rules or regulations.”

Part III, Section 5(b) of the Town Charter provides “The [Select Board] shall be the chief policy making board of the town and shall act by the issuance of policy statements and guidelines to be followed and implemented by all town agencies serving under the board.” Section 11(g) states that the Town Manager is “to be responsible for the efficient use, maintenance and repair of all town facilities, except those under the jurisdiction of the school committee.” In our opinion, the Select Board has the authority to establish policies with respect to the use of the Sewataro property, including establishing the Town Manager as the permitting authority.

With respect to your question regarding requiring Town Manager permission to allow use of the property by “for-profit, religious, or lobbying purposes”, such determinations are policy decisions, however, consistency should be maintained throughout the policy with respect to any specific requirements such as 501(c)(3) corporations, as addressed above.

9. Does the Town have the ability to operate a public swimming facility at Sewataro?

In our opinion, at present, the Town does not have the ability to operate a public swimming facility at Sewataro. As you know, Sewataro is owned by the Town and is the subject of that certain “Contract for Day Camp Operator and Management of Real Property” dated as of September 10, 2019 (the “Contract”), by and between the Town and Camp Sewataro, LLC (the “Manager”). Under the Contract, Sewataro is under the care and control of the Town by and through the Select Board, and is managed by the Manager during the term of the Contract (initial Term expires September 10, 2022).

Pursuant to the Contract, the Manager operates a day camp at Sewataro each year between approximately June 1 and August 31 (the “Camp Season”). During the Camp Season,

unless otherwise agreed in writing, use of the property by the Town and/or residents of the Town is limited to the defined “Camp Season Public Access Area” as shown in Exhibit 3 to the Contract (see Contract, Section 1.2.2.) It is our understanding that Sewataro presently has four small in-ground swimming pools, a swimming pond, and a recreational pond. At present, the swimming areas are not included within the Camp Season Public Access Area, however, such area may be modified by mutual written agreement of the parties.

Under Section 1.2.3 of the Contract, outside of the Camp Season, the Town and/or residents of the Town may use portions of the Property, which is presently limited to “all open field areas, basketball courts, tennis courts and wooded areas. Use of the swimming areas is not presently permitted under the Contract outside of the Camp Season. The scope of the defined areas that may be used by the Town and/or residents outside of the Camp Season may also be modified by mutual written agreement of the parties to include additional areas of the Property including the swimming areas.

Accordingly, the Town would need to seek to amend the terms of the Contract with the Manager in order to address future use of the swimming areas. In our opinion, as part of that process, the Manager could seek to negotiate other Contract amendments that may or may not be favorable to or in the best interests of the Town.

10. What additional liability might the Town incur by operating public swimming facilities at Sewataro if (a) the Town runs the program or (b) if the Manager runs the program?

In our opinion, the Town could be exposed to additional liability for operating public swimming facilities at Sewataro under both scenarios- if the Town runs the program or if the Manager runs the program.

Pursuant to Section 9.5 of the Contract, the Manager provides a broad indemnification to the Town for both day camp and non-camp operations at the Property other than that which is undertaken by the Town including its employees, contractors, agents or representatives. Thus, in our opinion, if the Town were to operate a swimming program at Sewataro with its own employees, contractors, agents or representatives, the Town would likely not have the benefit of the Manager’s indemnification set forth in Section 9.5 of the Contract and therefore be potentially exposed to additional liability than if it does not operate a swimming program on the Property.

Further, under Section 9.6(i) of the Contract, the Town provides a similar indemnification to the Manager for “all operations, programs or activities at the Property managed, operated or coordinated by or for the benefit of the Town” and (ii) for “any use of, or access to, the Property by the Town, residents of the Town or the general public....” As such, in our opinion, even if the Manager operated a swimming program on the Property on behalf of the Town and with its own employees, contractors, agents or representatives, the Town could be exposed to additional liability related to operating a swimming program at Sewataro.

However, depending on the facts and circumstances of a particular claim, the Town’s liability may be limited.

The Recreational Use Statute, G.L. c. 21, § 17C, grants an exemption from liability for any negligence claims where a prospective plaintiff was injured when engaged in a recreational activity on the Town’s land, and the Town did not “impos[e] a charge or fee” for the injured plaintiff’s use of that land. G.L. c. 21, §17C; Patterson v. Christ Church in Boston, 85 Mass. App. Ct. 157, 160 (2014), review denied, 468 Mass. 1104 (2014). Specifically, the Recreational Use Statute states that any person who “lawfully permits the public to use such land for recreational ... purposes without imposing a charge or fee therefor, ... shall not be liable for personal injuries or property damage sustained by such members of the public, including without limitation a minor, while on said land in the absence of willful, wanton, or reckless conduct by such person.”

In evaluating the application of the Recreational Use Statute, courts will look to “the objective circumstances surrounding [the injured plaintiff’s] entry and subsequent activities” to determine whether a plaintiff is a recreational user. Dunn v. City Of Boston, 75 Mass. App. Ct. 556, 559 (2009). When determining a defendant-town’s protection under the statute, “the issue is whether the landowner charges a fee for the particular use to which the plaintiff puts the land.” Marcus v. Newton, 462 Mass. 148, 155 (2012). The Supreme Judicial Court, however, clarified in Marcus that a town, as landowner, may impose a charge or fee “intended solely to reimburse it for marginal costs directly attributable to a specific user’s recreational use of the property” and remain exempt from ordinary negligence claims under the statute, but in general, a Town may not charge a general fee for the use of the swimming area in order to have the protections afforded by the Recreational Use Statute. See also Seich v. Town of Canton, 426 Mass. 84, 84 (1997) (even though plaintiff’s daughter paid basketball registration fee, plaintiff was not charged an “entrance fee for members of the public to use the property” and recreational use immunity thus applied).

Therefore, in our opinion, assuming that the swimming area(s) is made open to members of the public for recreational use, and the Town does not charge any fees for use of the swimming area(s), the Town could be exempt from liability for injuries or property damage to anyone who uses the swimming area(s).

The Town also may be immune from liability under the Massachusetts Tort Claims Act (“MTCA”), G.L. c. 258, if there is negligence on the part of a public employee or official. Section 10 of the MTCA provides a set of enumerated circumstances under which the Town would not be liable. Specifically, it states that a Town is not liable for any claims involving:

- (a) acts of employees acting with care in implementing a statute or by-law; (b) discretionary or individual decisions made by employees that involve policy or planning; (c) intentional torts, including, among others, assault and battery; (d) collecting taxes; (e) licensing and permitting decisions; (f) failure to inspect property to determine whether the property complies with or violates any law, regulation, ordinance or code, or contains a hazard to health or safety; (g) failure to establish a fire protection service; (h) failure to establish a police service; (i) actions by released or escaped prisoners; and (j) failure to act or prevent harm to a party.

Notably, however, the MTCA does not protect a Town from the negligent maintenance of public property. G.L. c. 258, §10(j)(3). A Town is not, however, required to maintain public property in ways to prevent every type of possible injury that may occur from the use of the property. See, e.g., Moore v. Town of Billerica, 83 Mass. App. Ct. 729, 733 (2013) (failure to post warning signs or erect barriers on playground not negligent maintenance, and as such, Town was immune from liability under § 10(j)). This analysis further implicates the provisions of the Contract discussed above as, at present, the Manager is responsible for maintaining the Property, however, the Manager’s indemnification of the Town is limited where the Property is open to residents pursuant to a Town program.

Note further that G.L. c. 140, §206 imposes certain requirements for “every public and semipublic outdoor inground swimming pool” including fencing, gates, and rescue equipment including a life ring and rescue hook. And, the state Board of Health Regulations (see 105 CMR 435), impose a broad range of minimum standards for swimming pools relating to public health and safety.

In addition to statutory limitations on liability that may be available, the Town can seek to limit its exposure to financial liability for claims by obtaining sufficient insurance coverage for the use in question. Town Counsel recommends consulting with the Town’s insurance representatives on this topic to determine whether offering the use of the swimming areas for residents is insurable, what risks they determine need to be addressed and the types and costs of insurance coverage may be available.

11. What are the issues associated with the Town charging fees to use the facilities at Sewataro?

In our opinion, as noted in the fee analysis above, the Town may charge fees (as distinguished from an impermissible tax), if it can be demonstrated that a three part test set forth in the case of Emerson College v. City of Boston, 391 Mass. 415 (1984) has been met. The three-party analysis contained in Emerson is referenced above. Thus, in our opinion, provided that that the Town is able to ensure that the fees to use facilities at Sewataro are particularized, avoidable, and reasonably reflect the costs to the Town for providing the services at issue, fees may be imposed for the use of the Property. However, as is described above, if the Town imposes lawful fees for use of the Property, the Town may lose the benefit of the limitations on liability afforded by the Recreational Use Statute, G.L. c. 21, § 17C.

12. Per section 1.2.6 of the Contract, when not in conflict with the operation of the Camp at the Property (e.g. summer weekends and after last camp session through Labor Day weekend) can the Manager facilitate public swimming at Sewataro?

Context: the Manager has indicated a willingness to facilitate public swimming in the swimming pond (not necessarily the 4 teaching pools) at such non-camp hours, in response to the attached request. This is a separate and distinct approach from the Town (e.g. Parks & Rec) facilitating swimming.

Section 1.2.6 of the Contract states:

“Programmatic Activities. The Manager has proposed, and the Town supports, the scheduling of programmatic activities on the Property from time to time, utilizing the Property and selected facilities thereon when not in conflict with the operation of the Camp at the Property. Such activities may include access by residents of the Town, and other invited members of the general public. Such events may be planned by the Manager, or shall be planned and coordinated with the Town, by and through its Parks and Recreation Department, or such other delegates as the Town Manager may designate. The cost of programmatic events planned with the Town, if any, shall be allocated by mutual agreement of the Parties.”

In our opinion, pursuant to Section 1.2.6, the Manager may facilitate public swimming at Sewataro when not in conflict with the operation of the Camp at the Property for residents of the Town and other invited members of the general public.

However, as set forth above, the Town could be exposed to additional liability for the public swimming because under the scenario presented above, under Section 9.6(i) of the Contract, the Town provides an indemnification to the Manager for “all operations, programs or activities at the Property managed, operated or coordinated by or for the benefit of the Town” and (ii) for “any use of, or access to, the Property by the Town, residents of the Town or the general public....”

In our further opinion, the Recreational Use statute would still apply, subject to its limitations described above, thus consideration should be given to whether fees are charged to users of the Property because if fees are charged, exemption from liability may not apply.

13. Can the Select Board modify or add anything new to the contract (extension), or would changes beyond what is already in the original contract/amendments require a need for a new bid/RFP process?

In our opinion, the analysis as to whether modifications (amendments) to the current contract would require a new bid/RFP process will depend on the particular proposed modification and whether it is consistent with the Request for Proposals for Management of Camp Sewataro dated July 24, 2019 (the “RFP”). The guiding principle is whether the subject of the modification is within or outside of the “four corners” of the RFP and whether the modification would create a competitive disadvantage to a party responding to the RFP. For example, as was set forth in the RFP, the current contract term is for three years and the Town has the option at its sole discretion to extend the agreement for two additional five year terms. In our opinion, the Town could extend the current contract by one year rather than five, assuming the other party to the contract agrees to do so (i.e. by mutual agreement). However, if there is a subsequent extension, it is our opinion that the term could not be for more than 4 years so as to remain consistent with the five year extension term specified in the RFP. In contrast, if the Town sought to extend the contract term beyond the two additional five-year terms, a new request for proposals would be necessary.

As always, please contact us with any questions.

Attachment5.c: KP-#787874-v3-SUDB- Consolidated_Memo- Sewatro (4944 : Sewataro discussion on Public Access and Contract Renewal)

November 18, 2021

Lee S. Smith
 lsmith@k-plaw.com

Mr. Henry Hayes
 Town Manager
 Flynn Building
 278 Old Sudbury Road
 Sudbury, MA 01776

Re: Operating a Public Swimming Facility at the Sewataro Property located at 1 Liberty Ledge

Dear Mr. Hayes:

You have asked a series of questions regarding operating a public swimming facility at the Sewataro property located at 1 Liberty Ledge (“Sewataro” or the “Property”). My responses are as follows.

1. Does the Town have the ability to operate a public swimming facility at Sewataro?

In my opinion, at present, the Town does not have the ability to operate a public swimming facility at Sewataro. As you know, Sewataro is owned by the Town and is the subject of that certain “Contract for Day Camp Operator and Management of Real Property” dated as of September 10, 2019 (the “Contract”), by and between the Town and Camp Sewataro, LLC (the “Manager”). Under the Contract, Sewataro is under the care and control of the Town by and through the Select Board, and is managed by the Manager during the term of the Contract (initial Term expires September 10, 2022).

Pursuant to the Contract, the Manager operates a day camp at Sewataro each year between approximately June 1 and August 31 (the “Camp Season”). During the Camp Season, unless otherwise agreed in writing, use of the property by the Town and/or residents of the Town is limited to the defined “Camp Season Public Access Area” as shown in Exhibit 3 to the Contract (see Contract, Section 1.2.2.) It is my understanding that Sewataro presently has 4 small in-ground swimming pools, a swimming pond, and a recreational pond. At present, the swimming areas are not included within the Camp Season Public Access Area, however, such area may be modified by mutual written agreement of the parties.

Under Section 1.2.3 of the Contract, outside of the Camp Season, the Town and/or residents of the Town may use portions of the Property which is presently limited to “all open field areas, basketball courts, tennis courts and wooded areas. Use of the swimming areas is not presently permitted under the Contract outside of the Camp Season. The scope of the defined areas that may be used by the Town and/or residents outside of the Camp Season may also be modified by mutual



Mr. Henry Hayes
 Town Manager
 September 10, 2021
 Page 2

written agreement of the parties to include additional areas of the Property including the swimming areas.

Accordingly, the Town would need to seek to amend the terms of the Contract with the Manager in order to address future use of the swimming areas. In my opinion, as part of that process, the Manager could seek to negotiate other Contract amendments that may or may not be favorable to or in the best interests of the Town.

2. What additional liability might the Town incur by operating public swimming facilities at Sewataro if (a) the Town runs the program or (b) if the Manager runs the program?

In my opinion, the Town could be exposed to additional liability for operating public swimming facilities at Sewataro under both scenarios- if the Town runs the program or if the Manager runs the program.

Pursuant to Section 9.5 of the Contract, the Manager provides a broad indemnification to the Town for both day camp and non-camp operations at the Property other than that which is undertaken by the Town including its employees, contractors, agents or representatives. Thus, in my opinion, if the Town were to operate a swimming program at Sewataro with its own employees, contractors, agents or representatives, the Town would likely not have the benefit of the Manager's indemnification set forth in Section 9.5 of the Contract and therefore be potentially exposed to additional liability than if it does not operate a swimming program on the Property.

Further, under Section 9.6(i) of the Contract, the Town provides a similar indemnification to the Manager for "all operations, programs or activities at the Property managed, operated or coordinated by or for the benefit of the Town" and (ii) for "any use of, or access to, the Property by the Town, residents of the Town or the general public...." As such, in my opinion, even if the Manager operated a swimming program on the Property on behalf of the Town and with its own employees, contractors, agents or representatives, the Town could be exposed to additional liability related to operating a swimming program at Sewataro.

However, depending on the facts and circumstances of a particular claim, the Town's liability may be limited.

The Recreational Use Statute, G.L. c. 21, § 17C, grants an exemption from liability for any negligence claims where a prospective plaintiff was injured when engaged in a recreational activity on the Town's land, and the Town did not "impos[e] a charge or fee" for the injured plaintiff's use of that land. G.L. c. 21, §17C; Patterson v. Christ Church in Boston, 85 Mass. App. Ct. 157, 160 (2014), review denied, 468 Mass. 1104 (2014). Specifically, the Recreational Use Statute states that



Mr. Henry Hayes
 Town Manager
 September 10, 2021
 Page 3

any person who “lawfully permits the public to use such land for recreational ... purposes without imposing a charge or fee therefor, ... shall not be liable for personal injuries or property damage sustained by such members of the public, including without limitation a minor, while on said land in the absence of willful, wanton, or reckless conduct by such person.”

In evaluating the application of the Recreational Use Statute, courts will look to “the objective circumstances surrounding [the injured plaintiff’s] entry and subsequent activities” to determine whether a plaintiff is a recreational user. Dunn v. City Of Boston, 75 Mass. App. Ct. 556, 559 (2009). When determining a defendant-town’s protection under the statute, “the issue is whether the landowner charges a fee for the particular use to which the plaintiff puts the land.” Marcus v. Newton, 462 Mass. 148, 155 (2012). The Supreme Judicial Court, however, clarified in Marcus that a town, as landowner, may impose a charge or fee “intended solely to reimburse it for marginal costs directly attributable to a specific user’s recreational use of the property” and remain exempt from ordinary negligence claims under the statute, but in general, a Town may not charge a general fee for the use of the swimming area in order to have the protections afforded by the Recreational Use Statute. See also Seich v. Town of Canton, 426 Mass. 84, 84 (1997) (even though plaintiff’s daughter paid basketball registration fee, plaintiff was not charged an “entrance fee for members of the public to use the property” and recreational use immunity thus applied).

Therefore, in my opinion, assuming that the swimming area(s) is made open to members of the public for recreational use, and the Town does not charge any fees for use of the swimming area(s), the Town could be exempt from liability for injuries or property damage to anyone who uses the swimming area(s).

The Town also may be immune from liability under the Massachusetts Tort Claims Act (“MTCA”), G.L. c. 258, if there is negligence on the part of a public employee or official. Section 10 of the MTCA provides a set of enumerated circumstances under which the Town would not be liable. Specifically, it states that a Town is not liable for any claims involving:

(a) acts of employees acting with care in implementing a statute or by-law; (b) discretionary or individual decisions made by employees that involve policy or planning; (c) intentional torts, including, among others, assault and battery; (d) collecting taxes; (e) licensing and permitting decisions; (f) failure to inspect property to determine whether the property complies with or violates any law, regulation, ordinance or code, or contains a hazard to health or safety; (g) failure to establish a fire protection service; (h) failure to establish a police service; (i) actions by released or escaped prisoners; and (j) failure to act or prevent harm to a party.



Mr. Henry Hayes
 Town Manager
 September 10, 2021
 Page 4

Notably, however, the MTCA does not protect a Town from the negligent maintenance of public property. G.L. c. 258, §2 10(j)(3). A Town is not, however, required to maintain public property in ways so as to prevent every type of possible injury that may occur from the use of the property. See., e.g., Moore v. Town of Billerica, 83 Mass. App. Ct. 729, 733 (2013) (failure to post warning signs or erect barriers on playground not negligent maintenance, and as such, Town was immune from liability under § 10(j)). This analysis further implicates the provisions of the Contract discussed above as, at present, the Manager is responsible for maintaining the Property, however, the Manager's indemnification of the Town is limited where the Property is open to residents pursuant to a Town program.

Note further that G.L. c. 140, s. 206 imposes certain requirements for "every public and semipublic outdoor inground swimming pool" including fencing, gates, and rescue equipment including a life ring and rescue hook. And, the state Board of Health Regulations (see 105 CMR 435) impose a broad range of minimum standards for swimming pools relating to public health and safety.

In addition to statutory limitations on liability that may be available, the Town can seek to limit its exposure to financial liability for claims by obtaining sufficient insurance coverage for the use in question. I recommend consulting with the Town's insurance representatives on this topic to determine whether offering the use of the swimming areas for residents is insurable, what risks they determine need to be addressed and the types and costs of insurance coverage may be available.

3. What are the issues associated with the Town charging fees to use the facilities at Sewataro?

In my opinion, the Town may charge fees (as distinguished from an impermissible tax), if it can be demonstrated that a three part test set forth in the case of Emerson College v. City of Boston, 391 Mass. 415 (1984) has been met.

First, the fee must be charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of the community. Second, the service must not be compulsory, meaning that the person paying the fee must utilize the service as a matter of choice. And third, the fee must not be used to raise revenue, but instead is intended to offset the cost of governmental services.

Thus, in my opinion, provided that that the Town is able to ensure that the fees to use facilities at Sewataro are particularized, avoidable, and reasonably reflect the costs to the Town for providing the services at issue, fees may be imposed for the use of the Property.



Mr. Henry Hayes
 Town Manager
 September 10, 2021
 Page 5

However, as is described above, if the Town imposes lawful fees for use of the Property, the Town may lose the benefit of the limitations on liability afforded by the Recreational Use Statute, G.L. c. 21, § 17C.

4. Per section 1.2.6 of the Contract, when not in conflict with the operation of the Camp at the Property (e.g. summer weekends and after last camp session through Labor Day weekend) can the Manager facilitate public swimming at Sewataro?

Context: the Manager has indicated a willingness to facilitate public swimming in the swimming pond (not necessarily the 4 teaching pools) at such non camp hours, in response to the attached request. This is a separate and distinct approach from the Town (e.g. Parks & Rec) facilitating swimming.

Section 1.2.6 of the Contract states:

“Programmatic Activities. The Manager has proposed, and the Town supports, the scheduling of programmatic activities on the Property from time to time, utilizing the Property and selected facilities thereon when not in conflict with the operation of the Camp at the Property. Such activities may include access by residents of the Town, and other invited members of the general public. Such events may be planned by the Manager, or shall be planned and coordinated with the Town, by and through its Parks and Recreation Department, or such other delegates as the Town Manager may designate. The cost of programmatic events planned with the Town, if any, shall be allocated by mutual agreement of the Parties.”

In my opinion, pursuant to Section 1.2.6, the Manager may facilitate public swimming at Sewataro when not in conflict with the operation of the Camp at the Property for residents of the Town and other invited members of the general public.

However, as set forth above, the Town could be exposed to additional liability for the public swimming because under the scenario presented above, under Section 9.6(i) of the Contract, the Town provides an indemnification to the Manager for “all operations, programs or activities at the Property managed, operated or coordinated by or for the benefit of the Town” and (ii) for “any use of, or access to, the Property by the Town, residents of the Town or the general public....”

In my further opinion, the Recreational Use statute would still apply, subject to its limitations described above, thus consideration should be given to whether fees are charged to users of the Property because if fees are charged, exemption from liability may not apply.



Mr. Henry Hayes
Town Manager
September 10, 2021
Page 6

Please let me know if you have any questions or if I can be of further assistance.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Lee S. Smith".

Lee S. Smith

LSS/kes

779139/SUDB/0001

Town of Sudbury

Sewataro Use Policy

V2.1 Updated November 3, 2021 (reviewed & lightly edited 11.23)

1. Intent

It is the Town of Sudbury's desire that all residents of Sudbury enjoy safe and appropriate use of Town property, including Sewataro. This use should take place with proper regard to accessibility for all residents, safety of participants, and with respect for the preservation of the property for future Town use. The intent of this document is to be consistent with the Contract for Day Camp Operator and Management of Real Property agreement, dated Sept. 10, 2019, and its subsequent Amendments between the Town and the camp Operator and with existing Town policies regarding Town facilities.

2. Public Access Times

While Camp Sewataro is operating, public access of the grounds is allowed for recreational purposes only during designated times in order to avoid conflicts. These designated public access times are:

Camp Season Public Access (June 1 – August 31)

- Monday-Friday: 6pm-Dusk in the front section of the property
- Saturdays, Sundays and Federal holidays: 9am-Dusk in the front section of the property

Note: During camp season, public access is available only to the front section of the property to ensure the security of Town, Camp, and camper property.

"Off" season Public Access (September 1 – May 31)

- Monday-Sunday: 9am – Dusk

3. Permitting Authority

Users shall obtain all necessary permits for Town activities, as required by law or Town bylaws, rules, or regulations. Larger events involving food trucks, electrical equipment, or stage work may require additional inspections, approvals, or fees from the Town Manager, Health Department, Building Department, or other Town departments.

First-time reservations for exclusive use of property facilities (e.g., lodges and pavilions as listed below) by organized groups is not allowed without permission from the Town Manager or his/her delegate, which may be the Sewataro Community Liaison. In certain circumstances Town Manager may seek input from the Select Board in its role as policy-making body in Town. No applicant is guaranteed to receive permission.

4. Facility Reservations

For organized events and meetings, specific spaces can be reserved during designated times.

The scheduling of reservations shall be the responsibility of the Camp Sewataro community liaison.

Reservations can be made with the Camp Sewataro Community liaison at Reservations@sewataro.com. A calendar depicting Sewataro reservations is available here:

<https://sudbury.ma.us/townmanager/2021/03/15/sewataro-resident-event-calendar/>

Reservations should be made at least forty-eight (48) hours, excluding Saturdays, Sundays and legal holidays, in advance prior to the event. In the event of extenuating circumstances, the 48-hour advance notice requirement may be waived by the Town Manager. Larger events involving food trucks, electrical equipment, or stage work may require additional inspections and several weeks' notice is recommended.

Written reservations must include:

- Name of the group requesting the reservation
- The primary contact person for the group, along with their phone number and email address
- Additional information as required by the Sewataro Reservation Form.

5. Group Reservation Responsibilities

A group's primary contact person is responsible for coordinating the event and shall be responsible for ensuring:

- That the space, facility, and/or general location used is kept in clean condition and proper order following the conclusion of the meeting, including removal of all garbage or waste materials, removal of all decorations, and return of any furniture or equipment to their original locations at the conclusion of the event.
- All restrictions are adhered to.
- Completion of the Sewataro Reservation Form in advance of the event.

6. Reservation Priority

Reservations shall be made on a first-come, first-served basis. However, when in conflict, priority shall be given to local government organizations, then local residents, then local groups, and then non-Sudbury organizations or individuals.

There may be times when a site plan and additional equipment may be required, this coordination will begin with the reservation process. If additional toilets are needed to complement the event, at least one shall be in compliance with Americans with Disabilities Act (ADA) requirements.

7. Available spaces and Fees

The spaces available to reserve include:

Facility	Maximum Occupancy	Attributes	Municipal Committees and Depts. and Sudbury-based 501(c)3	Sudbury Groups	Non-Resident / Corporate / Private Groups
Liberty Lodge	150	4000 sq. ft. Covered roof	0	\$25/hr	\$50/hr
Meeting Hall	50	1200 sq. ft. Covered Roof	0	\$15/hr	\$30/hr
Tree House	40	Covered roof	0	\$10/hr	\$20/hr
Craft Deck	50	1400 sq ft Tented Roof (usually seasonally available in the summer)	0	\$10/hr	\$20/hr
Tennis Courts*	4 players	two available	\$18.40/hr	\$18.40/hr	\$24.15/hr
Basketball Court*	10 players		\$18.40/hr	\$18.40/hr	\$24.15/hr

* Court fees to be kept consistent with Park & Rec Tennis Court Field Request Form fees.

Groups that leave garbage will be charged double the normal fee.

Additional permit application fees may apply (example, food permit, building inspection (structural/electrical)).

Deposits / Cancellations: At this time, any deposits are fully refundable upon event cancellation.

The Select Board shall set the amount of the fee so as to recover a reasonable approximation of the costs to the Town in processing the requested item, and to recoup reasonable maintenance and repair costs of the property. Fees shall be paid to the Town in the same account as the Management Fee per Article 3 of Contract for Day Camp Operator and Management of Real Property agreement, dated Sept. 10, 2019.

- (1) Facilities may be reserved without a rental fee by the following groups:
 - a. Town departments and committees.
 - b. 501(c)3 registered organizations based or with members residing in Sudbury.
- (2) Facilities may be reserved with rental fee by:
 - a. Sudbury groups and any Non-Resident, Corporate, or Private group.
- (3) Rental fee Schedule – per hour: Shall be in accordance with the Fee Schedule in Section 7.

Commented [CR1]: Maybe clarify deposit – must front? Deposit? OR delete sentence?

Any revenue from fees charged for use of programming/meetings held at the Sewataro property during “public access hours” shall remain with the Town. Any revenues generated from Town-organized programming/meetings shall remain with the Town.

8. Insurance Requirements

Insurance requirements shall be in accordance with Town Park & Recreation Department policies (<https://sudbury.ma.us/recreation/wp-content/uploads/sites/335/2014/08/TownofSudburyFacilityusepolicyJune12012update.pdf>). Proof of insurance coverage may be required of any organized group requesting reservations at Sewataro and requested at any time. Groups and/or individuals that carry liability insurance should add the property to their policies and share a copy with the camp operator for file.

The Town or its representative shall request an event’s group’s primary contact person should obtain a special event policy listing the camp and the town as additional insured. In the event this special event policy cannot be obtained, a liability waiver or deposit will suffice.



Liability Waiver
Town of Sudbury.pc

9. Acceptable Use

Any use of the Sewataro property shall adhere to acceptable use guidelines as put forth by the Town Park & Recreation Department. Refreshments shall be allowed, but all garbage must be cleaned up and disposed of in appropriate receptacles.

10. Maximum Occupancy

Maximum Occupancy of each structure shall be in accordance with Town Fire Department regulations. Maximum occupancy is listed in the table above.

11. Restrictions

- All use of facilities is at your own risk.
- Residents are required to “carry in and carry out” anything brought onto the property, including trash.
- Smoking or vaping is not permitted in Sewataro.
- Vehicles are prohibited from driving on interior roadway, walkways, and any grassed area without express permission.
- Parking is permitted only in the designated lower and upper parking lots.
- No alcoholic beverages are allowed at Sewataro without express permission from the licensing authority.
- Sledding: Sledding is at your own risk. It is recommended that any sledding be done on the hill towards the fields.
- No dogs or large pets allowed, leashed or otherwise.
- No ice skating on the ponds in the winter.
- No swimming in the ponds.

- No firearms are allowed on the property.
- Any fishing in the ponds should be catch-and-release. These fish should not be eaten.
- No open fires or grills without a special permit issued by the Select Board, with review by the Fire Department required.

12. Exclusive Use

Under no circumstances will exclusive use of the Sewataro property be granted to one group during the public access hours as described in Section 2.0 Public Access Hours.

13. Emergency Contact

In case of an emergency, user is to call 911.

14. Postings

Any posting at the Sewataro property shall be consistent with the Town's policy on Advertising and Directional Signs; no "signs of an advertising nature" on behalf of for-profit organizations shall be allowed. Public postings shall be allowed only at the informational kiosks located at the front and back entrances to Sewataro.

16. Restrooms

There are two (2) Port-a-Potties available, an ADA-accessible one located near Liberty Lodge and a general use one available near the lower parking lot, available for use as restrooms during public access times.

For events with 100+ people, the user will be required to contract for its own port-a-pottie services.

17. Traffic Management

Should the event be large enough, the Police Department may require a police detail or other arrangements to appropriately direct traffic.

18. Parking Spaces

Parking is permitted only in the designated lower and upper parking lots. There are 10 parking spaces in the upper lot with 90 parking spaces in the lower lot, and approximately 30 additional overflow parking spaces in the front field. Event organizers shall consider the number of required parking spaces when making reservations.

Lower parking lot has more spaces available but requires travel up an uphill slope to reach most activity areas. The upper lot has fewer spaces available but is closer to and level with Liberty Lodge. Some path areas are not entirely smooth but are navigable. Accommodations are available upon request.

19. Park and Recreation Coordination

Sewataro event organizers shall confer with the Park and Recreation and other Town departments as appropriate to ensure there are no similar events scheduled for conflicting dates (e.g., the two contract community events per year). In the event of a conflict, the Town-organized event shall take precedence.

20. Hold Harmless Individual User Agreements

On behalf of myself and/or my minor child, (User), I understand that part of the facility and experience involves activities and group interactions that may be new to us, and that they come with uncertainties beyond what we may be used to dealing with at home, including but not limited to uneven terrain, collisions, being struck by thrown objects, insects, wild and domestic animals, inclement weather, remote locations, communicable diseases including but not limited to COVID-19, and other risks, including use of the facility by members of the public. I am aware of these risks and am assuming them on behalf of me and my child. We realize that no environment is risk-free, and understand and, if applicable, have instructed my child on the importance of abiding by the facility's rules, and we agree that we are familiar with these rules and will obey them.

To the fullest extent permissible by law, user agrees to save and hold harmless Camp Sewataro, LLC and the Town of Sudbury, including its owners, employees, trustees, agents or officers from and against any claim, suit, cause of action settlement or judgment brought against it by any party arising out of user's breach of its duty of reasonable care or intentional act arising out of user's use of the property or facilities, including attorneys' fees and other costs of suit, and further to waive any and all claims or causes of action against Camp Sewataro, LLC and the Town of Sudbury, except those that are the result of their gross negligence or intentional acts.

21. Hold Harmless Group User Agreements

User understands that part of the facility and experience involves activities and group interactions that may be new to our participants, and that they come with uncertainties beyond what our participants may be used to dealing with at home, including but not limited to uneven terrain, collisions, being struck by thrown objects, insects, domestic and wild animals, inclement weather, remote locations, communicable diseases including but not limited to COVID-19, and other risks, including use of the facility by members of the public. We are aware of these risks, and we are assuming them on behalf of our participants. We realize that no environment is risk-free, and so we have instructed our participants on the importance of abiding by the facility's rules, and we agree that they are familiar with these rules and will obey them.

To the fullest extent permissible by law, user agrees to save and hold harmless Camp Sewataro, LLC and the Town of Sudbury, including its owners, employees, trustees, agents or officers from and against any claim, suit, cause of action settlement or judgment brought against it by any party arising out of user's breach of its duty of reasonable care or intentional act arising out of user's use of the property or facilities, including attorneys' fees and other costs of suit, and further to waive any and all claims or causes of action against Camp Sewataro, LLC and the Town of Sudbury, except those that are the result of their gross negligence or intentional acts.

The undersigned represents that they are authorized to execute this agreement and to bind the group.

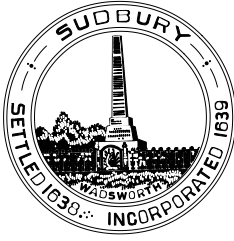
22. Accessibility

To the greatest extent practicable, event organizers shall work with the Camp Operator and Town, as appropriate, to implement temporary adjustments that will offer access to the widest population use during the planned event. This may require coordination with the fire, building, and combined facilities departments. This may also include things like ADA compliant ramp use, potable restrooms, protective surface enhancements, or other appropriate considerations.

23. Reportable

It is imperative to report to the Camp Sewataro Community liaison at Reservations@sewataro.com any additional service or logistical items required by an event. These include:

- Food
- Electricity
- Noise
- Stage



Sewataro Reservation Form

Applicant Information

Applicant Name: _____
 Person preparing form: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____ Alt Phone: _____
 Email: _____

Use Request Information

Desired Date of Use: _____
 Starting Time: _____ Ending Time: _____
 Purpose of Use: _____
 # of Attendees**:

Admission Charged? No: Yes: If yes, \$ Per Person: _____

Group Type:

Municipal Local Non-Profit/Sudbury 501(c)(3)* Other

Use:

One-time Recurring

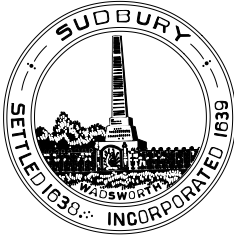
Facility Request Information

Site Requested:

Full Site Liberty Lodge Meeting House
 Tree House Crafts Deck Fishing Pond
 Tennis Courts Basketball Courts
 Other: _____

*Proof of 501c3 status may be requested.

**To qualify as a Sudbury-based group, a minimum of 50% of attendees must be Sudbury residents.



Sewataro Reservation Form

Insurance Requirements

Insurance requirements shall be in accordance with Town Park & Recreation Department policies (<https://sudbury.ma.us/recreation/wp-content/uploads/sites/335/2014/08/TownofSudburyFacilityusepolicyJune12012update.pdf>).

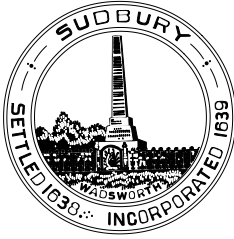
Proof of insurance coverage may be required of any organized group requesting reservations at Sewataro and requested at any time. Groups and/or individuals that carry liability insurance shall add the property to their policies and share a copy with the camp operator for file.

The Town or its representative shall request an event's group's primary contact person should obtain a special event policy listing the camp and the town as additional insured. In the event this special event policy cannot be obtained, a liability waiver or deposit will suffice.

Hold Harmless Individual User Agreements

On behalf of myself and/or my minor child, (User), I understand that part of the facility and experience involves activities and group interactions that may be new to us, and that they come with uncertainties beyond what we may be used to dealing with at home, including but not limited to uneven terrain, collisions, being struck by thrown objects, insects, wild and domestic animals, inclement weather, remote locations, communicable diseases including but not limited to COVID-19, and other risks, including use of the facility by members of the public. I am aware of these risks and am assuming them on behalf of me and my child. We realize that no environment is risk-free, and understand and, if applicable, have instructed my child on the importance of abiding by the facility's rules, and we agree that we are familiar with these rules and will obey them.

To the fullest extent permissible by law, user agrees to save and hold harmless Camp Sewataro, LLC and the Town of Sudbury, including its owners, employees, trustees, agents or officers from and against any claim, suit, cause of action settlement or judgment brought against it by any party arising out of user's breach of its duty of reasonable care or intentional act arising out of user's use of the property or facilities, including attorneys' fees and other costs of suit, and further to waive any and all claims or causes of action against Camp Sewataro, LLC and the Town of Sudbury, except those that are the result of their gross negligence or intentional acts.



Sewataro Reservation Form

Hold Harmless Group User Agreements

User understands that part of the facility and experience involves activities and group interactions that may be new to our participants, and that they come with uncertainties beyond what our participants may be used to dealing with at home, including but not limited to uneven terrain, collisions, being struck by thrown objects, insects, domestic and wild animals, inclement weather, remote locations, communicable diseases including but not limited to COVID-19, and other risks, including use of the facility by members of the public. We are aware of these risks, and we are assuming them on behalf of our participants. We realize that no environment is risk-free, and so we have instructed our participants on the importance of abiding by the facility's rules, and we agree that they are familiar with these rules and will obey them.

To the fullest extent permissible by law, user agrees to save and hold harmless Camp Sewataro, LLC and the Town of Sudbury, including its owners, employees, trustees, agents or officers from and against any claim, suit, cause of action settlement or judgment brought against it by any party arising out of user's breach of its duty of reasonable care or intentional act arising out of user's use of the property or facilities, including attorneys' fees and other costs of suit, and further to waive any and all claims or causes of action against Camp Sewataro, LLC and the Town of Sudbury, except those that are the result of their gross negligence or intentional acts.

The undersigned represents that they are authorized to execute this agreement and to bind the group.

Agreement

If said permission is granted, I hereby agree to comply with the rules and regulations of the Town of Sudbury, Sewataro Use Policy document, insurance requirements, and all other applicable Town rules and regulations governing the use of the Sewataro property, and to take proper care of the grounds and to make good any damage to, or loss of, Town Property arising from the use of the property.

Signature: _____ Date: _____

ITEM	STATUS	ACTION	Assigned To	Select Board Coments
<p>Short Term</p> <p>Increase public use (swimming summer weekends)</p>	<p>Not currently planned</p>	<ul style="list-style-type: none"> • FlashVote to gauge interest? <ul style="list-style-type: none"> ○ \$100 annual fee? ○ \$10 per visit fee? ○ \$25 per family per visit fee? • Check with Dennis M. • Check with Bill Murphy on BoH concerns • Get update – would this interfere with camp activities? 	<p>Charlie R. Check with Dennis M.</p> <p>Bill S. dialog with Scott Brody</p>	<p>Accelerate questions to Board of Health</p> <p>Request via Henry for 1. Town Counsel opinion re: whether Town has the ability to operate a public swimming facility in off hours at Sewataro 2. what additional liability might this incur (changes to insurance requirements? In two scenarios: 1. As Town 2. As Camp Operator)</p> <p>Henry feedback: P&R workload is high. Challenge to accomplish with Town staff.</p>
<p>Increase documentation of activities and uses</p>	<p>Incorporate into third party use agreement?</p>	<p>Review documentation being submitted by Sewataro. Is this data we can track?</p>	<p>First November update. March 5 request put in for monthly update. 2 newsletter/reports to date (March and April). To be submitted on the 15th of each month.</p> <p>Calendar has been posted on Town</p>	<p>IN PROGRESS / COMPLETE</p>

			website. Latest one on July 13 -Sept. 14	
Safeguard property	Is this an issue? At least one full-time property manager lives on site to provide safeguarding services.	Fencing has been added. No action necessary at this time. Check with Bill Barletta		COMPLETE
Add policy addendum regarding user fees	In process. Compare with Park & Rec, Police Community Room, Goodnow Library, School spaces - Consistency across town		-	<u>Closing the back gate at 5 p.m.? and during holidays?</u> <u>Desire to understand when/why gate is closed?</u> <u>Comments from Drummey: back gate not part of the initial agreement, based on resident feedback, got agreement with Henry to keep open until 5 p.m. (i.e., dusk). Holidays was that staff were unavailable to open/close gates.</u>
Prior To June 2022				
Update Agreement	In process.			
Consider tax exempt debt	Seek input from Dennis K., consider in advance			

option (lease vs management agreement)	of agreement update.			
Longer Term:				
Formulate evaluation team	Form a citizens committee on Sewataro?			
Define strategic vision, options and next steps	Sewataro as a Town forum?			
Compare data from other communities	Make a list: NARA Park, Acton Walden Pond area, Concord Everwood, Sharon Rec Park, Andover Stevens Estate, North Andover			
Examine / evaluate best uses for the property	Unsure what additional information has come in since taking ownership? What information do we need?			

Select Board members regarding
Sewataro Dec 2021

Below are questions **from Select Board members** regarding Sewataro

This document is an assembly of inputs that can be addressed by multiple parties. I appreciate you using track changes or clearly indicating your inputs so I can update the primary file and know who submitted what data. **(hit EDIT, then REVIEWING when making changes – this enables tracked changes)**

Submitted by Janie Dretler:

This first section may apply to multiple areas of responsibility. Please review for applicability to your expertise.

As a follow up to our meeting last night, I would appreciate a response to the following questions. I've copied Dennis and Jonathan as well as the Chair. Question 2 may require a legal opinion.

- 1) Will the Town perform its own independent review of the 2021 financials? Similar to last year, will Joseph Mercurio MST, CPA (GEORGE KAPLAN, PC) review the financials for the Town? If so, when do you expect that we will receive that information? It was noted last year that the Camp used a depreciation method that was different than what is required by AICPA. The Town's independent review can confirm that this did not occur again this year. I do not know if a full audit needs to be performed per the contract, but at a minimum, I believe the Town should repeat what it did for the 2020 financials.

Sewataro Management contract – p. 6.

- o **Recordkeeping.** Proper books and records of all revenues and expenses of the Manager shall at all times be kept by the Manager and subject to inspection and audit by the Town as hereinafter described. The Manager shall at all times keep and maintain complete and accurate records of all camper tuitions and other charges, usage or rental agreements, income, costs, and expenses in any way related to the Property. The Manager shall provide the Town with a financial statement and/or profit and loss statement audited by a certified public accountant (the "Manager's Financial Statement") reflecting all such information and such other information as the Town may reasonably request. Such statements shall be provided to the Town on or before November 15 of each year during the Term. Within thirty (30) days following its receipt of the Manager's Financial Statement, the Town, upon written notice to the Manager, may elect to audit the books and records of the Manager to determine the accuracy of the Revenue Share Payment. Such audit shall be conducted by a certified public accountant with at least ten (10) years' experience in the auditing of books and records who is not compensated on

Select Board members regarding
Sewataro Dec 2021

a contingent fee basis. The Manager may elect to provide electronic records to the Town and its auditor. The Manager agrees to meet from time to time with the Town for purposes of reviewing such records and discussing the management of the Property.

The Town is not anticipating the task of performing an audit of the financial statements provided. The Manager submitted the report from a CPA. Finance Director/Keohane & Town Manager/Hayes

2) Can you please confirm that the PPP loan is appropriate to include in the revenue share calculation to the Town? I believe this is a gain on debt (loan) forgiveness and not revenue or income. Is the inclusion of the PPP loan amount considered a gift if it is not revenue or receipts? Can the Town accept a gift of this type? If so, what is the method to accept it? Does the contract allow a gift as written?

[Sewataro Management contract – p. 5](#)

1. Net Revenue. Manager's "Net Revenue" shall be defined as any and all revenues and receipts of any kind the Manager received during its fiscal year minus reasonable usual and customary operating expenses associated with day camp operations, programmatic activities on the Property, or other events on the Property.

Explanation provided by Scott Brody 11/3/21:

A: Under the terms of our Management Agreement, "Net Revenue" is defined as "any and all revenues and receipts of any kind the Manager received during the fiscal year". Our accountant believes that the forgiven PPP CARE's Act money is not technically "revenue" or "receipts". However, though it may not be strictly required, we have chosen to include it in the revenue share calculation as an addition to net income from operations for the calculation of the revenue share amount due to the Town of Sudbury. It is our intention to do this again next year, assuming the second PPP loan is forgiven.

Town Counsel response has been redacted.

Select Board members regarding
Sewataro Dec 2021

- 3) Please confirm whether this prohibits the Town from charging fees directly to any entity other than the property manager? How does **Attorney Smith's opinion** fit in with this language.

Sewataro Management contract – p. 6 – Section 3.1.1 Net Revenue

The Manager agrees that Camp Sewataro, LLC shall be the only entity to receive revenues and receipts and to pay expenses in any way related to the camp and the Property and that no individual, natural person or other legal entity shall be utilized to receive revenues or to pay expenses in any way related to the Property.

Town Counsel response has been redacted.

- 4) Regarding **Town Counsel opinion** dated September 10, 2021 about the loss of the benefit of the limitations on liability afforded by the [Recreational Use Statute G.L. c. 21, § 17C](#). What is the impact financially and legally to the Town? Please provide further context and an example.

Town Counsel response has been redacted.

- 5) Can revenue and/or fees be applied directly to debt service to reduce the Sewataro debt obligation? If so, how would applying the \$120k annual rent payment impact the existing budget? Would removing it from the budget, have an impact on existing services? How so?

Sewataro Management contract – p. 5 – Article 3 – Management Fee

3.1 Management Fee

(A) The Annual Fee shall be One Hundred Twenty Thousand Dollars (\$120,000.00) per each year of the initial Term to be paid in equal installments of Sixty Thousand Dollars (\$60,000.00) each due and payable on or before May 1, 2020, December 1, 2020, May 1, 2021, December 1, 2021, May 1, 2022, and December 1, 2022;

Select Board members regarding
Sewataro Dec 2021

No. The debt cannot be paid off early. Town Manager/Hayes

- 6) I would like to receive a written summary of the MA DEP and DPH meeting that was held on Thursday, November 4 with Town staff. I also request that the Board have a discussion with Town staff including the Conservation Coordinator and the Health Director.

Sewataro discussion: Health and Conservation, Scott Brody & Emmy Niinimaki, Town Manager & Assistant Town Manager (From an email sent from the Town Manager to the Select Board on 2021 Nov 9)

- Modified Pool vs bathing beach... **state does not call it a pool**, based on the water not being filtered or circulated, among the total definition.
 - **Registration required as a Public Bathing Beach**
 - Camp Operator will register the Bathing Beach
 - Small body of water: not the same size as a lake, better for maintenance and mitigation efforts
- Environmental:
 - **Need to know the pre-chlorine water quality**
 - Develop an Operations and Management Plan and water quality testing program for facility
 - **No further use of chlorine**
 - Historically, the amount used in the past was not measurable in previous testing
 - Primarily to maintain clarity down to 4 ft
 - Can the water be dechlorinated prior to going back into the water bodies or surrounding areas?
 - Carbonization use as an option, or other technology?
 - Chlorine reduces with sunlight, a natural mitigation to test and confirm levels
 - Remove water when draining pool instead of draining to water bodies?
 - Bathing beaches are not treated by chlorine in MA
 - **Algaecide will need to be permitted in advance of use**, and only used to treat a bloom, not to prevent a bloom
 - **Notice of Intent (NOI) filing: Algaecide and changes to the spillway**
 - Primarily used to reduce slick surfaces
 - 8-10 week process
- **There is confidence that there is a way to satisfy the Department of Environmental Protection (DEP) and Department of Public Health (DPH) requirements**
 - The mitigation efforts are under consideration and have been anticipated by the Camp Operator and team
 - Can the upper pond be separated from the lower pond and be a stand-alone system, without feeding the lower pond and eco-system?
 - We anticipate that there is a healthy eco-system is in place now, based on the wildlife not being adversely impacted to date.
 - Consider changes to the spillway routing in order to control the water that is utilized in that body of water
 - Water discharge distance, will measure to ensure the regulations are met

Select Board members regarding
Sewataro Dec 2021

- Accountability is welcomed, in effort to be good stewards
 - Safe water for bathers, wildlife and authorities of concern
 - Scott Brody is the person that reached out to DPH and DEP, in effort to deepen the understanding and anticipated actions
 - Will explore other acceptable methods
 - Wetlands and Waterways team has not provided input to the Town yet

Following are a few notes from Bill Murphy's meeting with Mike Beattie of DPH regarding Sewataro: added 2 Dec 2021

- No State registration for swimming bathing beach required. All permitting through local health department;
- Town should develop weekly testing program with beach closure policies throughout operation. Recommended to begin testing lower pond to get some baseline information about bacteriological quality. Closure largely influenced by weather (rain), temperature, and bather loads. Board of Health (BoH) can appoint camp as agent to test but not recommended with heavy pressure to open if closure is necessary.
- Permanent signage needed with clear operational dates and disclosure that water is not tested out of season. Signage primary location to post closure if necessary
- Bacteria standards discussed. One sample vs. geometric mean sampling
- Increased correspondence with DPH throughout season regarding testing results.

7) How will the costs for each of the options presented by the Manager be paid for? Will they pay them directly or are they proposing to share the cost with the Town? If so, will the Town need to pay prevailing wage and bid out the projects?

Access Enhancement Proposal:

- Who will pay for these upgrades?
- Camp Sewataro will cover the costs, according to the process laid out in the contract as we have done with previous capital improvements.
- Extra Maintenance & Clean-up
- The Camp Operator will assume all responsibility for clean-up and rubbish removal at the conclusion of each swim session, by a designated member of the camp's Grounds Crew.

Sewataro Team

8) Regarding the pools, is the Manager proposing to allow adults in the training pools? If so, how deep is each pool? Would the capacity change if adults are allowed in the outside heated pools?

- Can adults swim?

- Yes, the proposal is for adults and children to swim in the pond or pools (Option 1.b "Pool Swimming" in the 2022 Resident Access Enhancement Alternatives document, submitted on October 29, 2021.
- The bather load in each pool is 53 people. We have proposed the number of swimmers (25 per pool, per swim session) based on safety and hiring lifeguards. This allows adults and children plenty of space to swim safely and comfortably. **Sewataro Team**

Select Board members regarding
Sewataro Dec 2021

I will reserve additional questions about the water features at Sewataro regarding environmental, conservation and health related to the spring and Pantry Brook until we receive an update from the Town Manager about the MA DEP and DPH meeting that was held with Town staff on Thursday, November 4.

- Insurance: “In addition to statutory limitations on liability that may be available, the Town can seek to limit its exposure to financial liability for claims by obtaining sufficient insurance coverage for the use in question. I recommend consulting with the Town’s insurance representatives on this topic to determine whether offering the use of the swimming areas for residents is insurable, what risks they determine need to be addressed and the types and costs of insurance coverage may be available.” Brought up in Select Board meeting / 2021 Nov 30
 - **Right now we don’t have coverage for public use. They would have to add that to liability exposure but would need to know if we were charging for the use and if we would be providing lifeguards. ATM/HR/Bilodeau**
- KP Law Question brought up in Select Board meeting / 2021 Nov 30 regarding previous Opinion: And third, the fee must not be used to raise revenue, but instead is intended to offset the cost of governmental services.
 - How is this a cost of governmental services when the Camp Operator is performing the service? Is this legal for the fees to be charged?

Town Counsel response has been redacted.

Submitted by Charlie Russo:

Town Counsel

- What modifications are legal to institute in any renewal of the Camp Operator contract? Specifically:
 - Can the renewal be changed to a 1-year term?
 - Can the minimum annual payment of \$120,000 be changed?
 - Can the “Amendment” process that has been previously used play a role in the renewal process? If yes, how? If no, why not?

Select Board members regarding
Sewataro Dec 2021

- Has Town Counsel reviewed the “semi-public beach” concept of the Access Enhancements (additional swimming) proposal? Does Town Counsel agree with this approach and its feasibility?
- Does Town Counsel have any advice, from a legal compliance standpoint, after reviewing the Access Enhancement Proposal regarding whether the additional Resident Swimming or Phase One ADA Compliance Upgrades is safer choice, in legal or liability terms?

Town Counsel information has been redacted.

- This has been brought up previously, but I’d like some clarification. Is there the opportunity to extend the current Sewataro contract by one year? Would that be an acceptable change within the current contract or would it require it to go out to bid again? I’m just wondering if it’s an option at all.

Town Counsel information has been redacted.

Town Staff in General (Conservation & Public Health):

- Is the fishing pond considered a wetland under Town Bylaw and/or state WPA?
 - **A pond is any open body of fresh water with a surface area observed or recorded within the last ten years of at least 10,000 square feet. Ponds may be either naturally occurring or human-made by impoundment, excavation, or otherwise. Ponds shall contain standing water except for periods of extended drought. The following human-made bodies of open water shall not be considered ponds: basins or lagoons which are part of wastewater treatment plants; swimming pools or other impervious human-made basins; and individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years. The Bylaw reduces the size threshold of a pond from 10,000 to 5,000 s.f. and contains the same exceptions.**
Conservation/Capone

Select Board members regarding
Sewataro Dec 2021

- **The fishing pond is around 100,000 s.f. in size and does not possess an impervious basin, therefore the fishing pond is a wetland resource area under both the Wetlands Protection Bylaw and the Sudbury Wetlands Administration Bylaw. Conservation/Capone**

- Is the swimming pond considered a wetland under Town Bylaw and/or state WPA?
 - **The swimming pond is a human-made basin with an impervious barrier and would not qualify as a pond under the Wetlands Protection Act or the Sudbury Wetlands Administration Bylaw. However, the swimming pond is hydrologically connected to the fishing pond and Pantry Brook. Discharges from the swimming pool to regulated wetlands resource areas would be activities that require review and approval from the Conservation Commission under the Act and Bylaw. Conservation/Capone**

- If yes for any wetlands, have these factors and potential required permits been considered as part of any updated swimming or renovation proposals? What ConCom permits might these enhancement proposals require?
 - **The Commission reviewed the camp operations in 1988 when the property was being subdivided for housing. No permitting was required at that time for the camp operation. The proposed expanded use of the camp raised concerns that this expanded use would require increases in chemical treatment of the water. The introduction of chemicals into a wetland resource area does require review and approval from the Conservation Commission. A recent meeting between representatives of the Town, DEP and DPH resulted in a question as to whether the existing operation is permissible, given the chlorination component, and that a Notice of Intent would need to be submitted for the algaecide treatments and any structural modifications that may be needed within wetlands jurisdiction. This NOI application would be needed with or without the enhancement proposal and should include an Operation and Maintenance Plan for the ponds/pools and maintenance work within 100 feet of the wetlands and should also include a Water Quality Monitoring Program for upgradient and downgradient wetlands resource areas and within the ponds/pool. DEP Wetlands and Waterways Program is yet to provide comment. Conservation/Capone**

 - **In regards to the 2022 Resident Access Enhancement Alternatives, a Notice of Intent may be needed for some of the proposed improvements. If the**

Select Board members regarding
Sewataro Dec 2021

proposed new parking area and walkway between the pool and pond are proposed within 100 feet of the fishing pond, they may require a Notice of Intent or Request for Determination of Applicability to be filed with the Commission, depending on the extent of work. If drainage from the parking area is proposed to discharge to the fishing pond, then this would require permitting with Conservation whether or not the parking facility is located within wetlands jurisdiction. Conservation/Capone

- Has the health department weighed in on the Access Enhancements (additional swimming) proposal? If yes, please provide that information. **See above**
- Has the state DPH reviewed the Access Enhancements (additional swimming) proposal? What was their reaction? Please share what questions they had that were asked and answered. Does DPH have any unresolved questions? **See above**
- Does Town Staff foresee any additional Town staff resources/time/effort be required should either/or Access Enhancement option move forward? If yes, please provide that information.
 - **No additional conservation staff or resources would be needed. Conservation/Capone**

Town Finance Director: there are different scenarios to examine in the totality of the things being put forth here...

- Can you confirm the details and sequence of this line of thinking:
 - Before the Town's purchase, Camp Sewataro paid \$575,000 in "rent" per the Town Manager's 2019 Town Meeting presentation
 - Of the \$575,000, approximately \$200,000 was property taxes paid to the Town, which left a ~\$375,000 annual rent payment to the previous owner?
 - As a result of the purchase, the Town "loses" the ~\$200,000 in property tax revenue because it now owns the land?
 - But the ~\$200,000 didn't get chopped off the budget; this amount gets redistributed among taxpayers, correct? This redistributed amount comes to approximately **\$27** per household, assuming the median home value of **\$682,450**
 - The debt payments are currently **\$109 (FY22)** per household (decreasing over **19** years), assuming **the median** value of **\$682,450**
 - So total to taxpayer, assuming the **median** home value of **\$682,450** is **\$27+\$109=\$136 Finance Director/Keohane**
- We pay 50% of utility costs? **The Town does not pay 50% of the utility costs for Camp Sewataro. Finance Director/Keohane**

Select Board members regarding
Sewataro Dec 2021

Camp Sewataro

- What are the forecasts for the amount of annual revenue share payment to the Town over the next five years assuming max camper capacity?
 - What is the predicted revenue share over the next 5 years?**
 - Using 2021 expenses and revenue as a baseline for projections, rent and revenue share for 2022 is likely to be the same as 2021, including additional funds due to the anticipated forgiveness of the 2nd PPP loan. Going forward, if camper enrollment remains steady, and price increases offset increased expenses, we would anticipate annual revenue share plus rent would be approximately \$295,000. Of course, this does not include the 50 scholarship camper spots offered to Sudbury residents in need for each and every 2 week session, nor the other benefits enjoyed by Sudbury residents which are paid for by the operator. Sewataro Team
- Please confirm that camper capacity was 100% for the 2021 season?
 - Camp was open at 100% capacity. There are some enrollment nuances year too year that mean we don't always max out ever week. We also did not fill all scholarship spots despite ours and Bethany's best efforts. We are working with Bethany and the school system to find new scholarship campers for 2022. Sewataro Team
- 200 campers from Sudbury is an oft-cited figure. What is the number of Sudbury families attending Camp Sewataro? Is it safe to assume most families have 2 kids attending, so assuming the 200 camper figure is accurate, is 100 the rough estimate of Sudbury families attending Camp Sewataro?
 - Numbers of Campers 2021**
 - 230 Sudbury Families
 - 352 Sudbury Campers
 - 70 Sudbury Staff Members
 - Average of 612 campers/session
 - Average 1245 campers/summer (over the previous 5 summers, excluding 2020)
 - Sewataro Team
- What are the physical dimensions of the four pools?
 - What are the dimensions of the pools?**
 - 20'x40'
 - Depths: 2 ½ feet, 3 feet, 3 ½ feet, 4-5 feet Sewataro Team
- Can you provide the current O&M plan for the pools and the swimming pond used in Camp operations?

Capital projects/enhancements/maintenance items

- Capital Projects/Expenses/Maintenance October 2019 - Present Sewataro Team

Select Board members regarding
Sewataro Dec 2021

	10/1/19 - 9/30/20	10/1/20-9/30/21	10/1/21-present	Totals
Adjustment of fence at back of property for new fence line (Andover Fence)		13,775.00		13,775.00
Public access fence & climbing wall fence (Reliable)		19,475.00	19,475.00	38,950.00
Prep for front gate - electric (Jack Nemesky)	2,301.56			2,301.56
Prep for front gate - excavation (Tony D'Amato)	1,850.00			1,850.00
Storm Damage Repairs (Arrow Fence)	1,392.44	454.50		1,846.94
Garage door for #2 (Diamond Overhead Door)	2,000.00			2,000.00
Tree Work (Rusty)	3,400.00	4,600.00		8,000.00
Signage (Signarama & Alpha Graphics)	2,546.38	3,745.88		6,292.26
Work on parking lots/paths (in house, materials from Kane Perkins)	660.00			660.00
Parking/Paths (Lombado Loam & Gravel)	6,672.50			6,672.50
Water pump repair Feb 2020 (Skillings & Sons)	512.32			512.32
Security cameras (Arlo)		165.60		165.60
Security cameras (Best Buy)	424.99			424.99
Liberty Lodge strip/stain (Heritage Natural Finishes)		563.84		563.84
Heritage Heating & Solar Corp (Furnace Cleaning, new boiler)	1,734.00	8,257.00		9,991.00
Winter Pool Covers (Discounters Pool and Spa)	295.96			295.96
Pool 1&2 liner replacement & add 2nd main drains (Central Pools)		8,039.27	7,400.00	15,439.27
Pool 1&2 liner replacement & add 2nd main drains (Puraqua)		1,005.77		1,005.77
Pool/Pond Maintenance (Intheswim, Aquacide Co.)	6,268.66	8,530.36		14,799.02
Pond Stocking (Hicklings Fish Farm Inc.)	1,910.00			1,910.00
Cleaning Services (Irma Torres)		650.00	11,600.00	12,250.00
Septic Maintenance (Wind River)	530.10	837.78	505.32	1,873.20
Septic Maintenance (CPP)		3,480.00	460.00	3,940.00
Irrigation Maintenance (SiteOne)	956.05	767.68		1,723.73
Landscaping Maintenance (PJL)	23,932.00	33,763.82	1,905.00	59,600.82
Landscaping Maintenance (Douglas)	22,307.19	76,148.13	16,832.00	115,287.32
Insect Control (Lawn Management Corporation)	6,228.20	6,775.20		13,003.40
Total	85,922.35	191,034.83	58,177.32	335,134.50

Potential Future projects: Our ability to make capital enhancements depends upon developing a shared understanding with the Town about priorities for non-camp and camp use. The greater certainty provided by a longer renewal period provides us with the ability to make larger investments in the site, as these need to be depreciated over time. With a term of sufficient length, it could be possible to add additional indoor sports and other facilities. All such projects will be undertaken with our accessibility goals in mind and after consultation with all appropriate stakeholders. - The operator has met or exceeded all of the management objectives embedded in the agreement with the town, including maintenance of the site and the successful operation through Covid. In a post-pandemic environment, we could devote even more of our attention and resources to successful management of this property and the programs that operate on it. Sewataro Team

Submitted by Dan Carty:

- Is Scott Brody and team willing to continue for another 5 years?

Submitted by Jen Roberts:

Questions for Property Manager/Camp Operator

- How many user groups have used the Sewataro in the past year?

Select Board members regarding
Sewataro Dec 2021

- What were their activities?
- How many are repeat users?
- Have they provided any feedback?

Resident Programming/Reservations:

- User Groups 2021

- 35 Groups
- All but 2 of those were repeat users
- Those 2 hosted recitals on property, and 1 has inquired about booking in the spring of 2022.
- Number of uses varies considerably. Some Scout Groups have met twice a month, year round since we opened access to residents.
- By the month:
 - January 2021: 6 groups, 20 hours
 - February 2021: 6 groups, 24 hours
 - March 2021: 9 groups, 44 hours
 - April 2021: 18 groups, 121 hours
 - May 2021: 19 groups, 194 hours
 - September 2021: 9 groups, 43 hours
 - October 2021: 13 groups, 98 hours
 - November 2021 (as of 11/13): 9 groups, 42 hours
- This is a tally of scheduled pavilion use only. We do not track the many groups and individuals that come to the property to use the tennis and basketball courts, fish, walk, bike, sled, snowshoe, etc.
- **Types of Events Scheduled include:** Book Clubs, Sudbury Villagers (seniors), Scouting groups, martial arts, dance and fitness classes, garden club, local music and theater schools.
- One question asked specifically about winter use. Our winter users are mostly Scout Groups, although a few fitness classes continue to take place in colder weather. We do not have information on the number of attendees for winter (or fall/spring) scheduled events.
- Many groups initially expressed that they chose to meet at Sewataro because they needed outdoor space due to COVID, but have continued to gather on the property because they enjoyed their experiences so much.
- 2 groups scheduled events and cancelled
- 1 due to weather conditions (moved indoors); 1 cancelled due to COVID
- 1 group inquired and chose not to schedule on the property because they wanted to serve alcohol at their event
- **Feedback from Users**
 - We have received a great deal of positive feedback about our responsiveness, the ease of scheduling, and the facilities and grounds.
 - Early on, groups requested access to parking on the back side of the property and we worked with the Town to open up the back gate and parking area.
 - We also received feedback about bathrooms, and put portable toilets on both ends of the property to meet user needs.
 - We also have a great deal of positive feedback from countless camp families regarding their experiences at Sewataro, which we are not including here.
 - Below, please find some of the notes we have received from individuals and user groups

Select Board members regarding
Sewataro Dec 2021

over the past year and a half: the following two colors are used (**Bold**, **Color**), however, the altering colors are from patrons of the Camp.

- ◆ **What a wonderful time we had! While I'm partial to the pond because I love fishing, that hidden field by the Treehouse was like a dream. We played freeze tag, danced, opens gifts, and ate pizza. It was a gathering before my pops had knee surgery and my sister and her family move to Maine. The ambiance was just perfect. What a special place to have less than a mile from our front door. We look forward to spending more and more time there. THANK you for your communication and support, Kristen. It really was one of the more dear family gatherings we've had.**
- ◆ **Great time at Sewataro today. Thanks for all your help, Kristen!**
- ◆ **Kristen, Thank you to all the staff and volunteers for last Thursday's event. It was so fun for the kids and the grown ups. A treat during these times! Thank you!!!**
- ◆ **I'm glad that ADA consideration are underway! Excellent. I'm hoping that post Covid my tendonitis issues will have been resolved, but it's already been almost a year. It makes me quite aware of the limitations that others have for the rest of their lives. It's too bad that the darn virus prohibits a meet-up; that would've been wonderful, but I would be more than happy to stay in touch with you if you think I could be of any help in brainstorming, etc. And I would love to be able to take my friend who's 89 up there for a drive someday. She'd love it. Thank you for your help and most importantly, your kind interest. Maybe we can continue our discussion someday!**
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Select Board members regarding
Sewataro Dec 2021

- know if there are any issues - I think we left everything as it was when we arrived. Thanks again!
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 - ◆ We had 225 student musicians perform. We had over 600 guests. Reasons to be Cheerful served 230 cups of ice cream (they had to have more ice cream brought over twice). Juliana's served 335 slices of pizza. I do not know how many drinks or chips they sold. We had 1 scraped knee, countless rounds of applause and an infinite number of smiles under face masks. We would love to make this an annual event and select a date for 2022 if permitted to do so.
 - ◆ Dear Kristen, On behalf of the Sudbury Community Food Pantry, President Pat Mullen and the Board of Directors, JT and I want to thank you for all you did to make this years' school food drive program a success. I believe you initiated the idea of Sewataro being a possible site for providing accommodations for the food drives and Board Member Michelle Meal presented the possibility to the Board. From there we were off and running. You were great at taking us to the next level and readily being available through text/email to answer our questions and requests or to coordinate something with Ramon or Chuck for us. Your having been involved with the Haynes School food drives in the past was certainly helpful in determining which facilities at Sewataro you thought would best meet our needs. Your choices were perfect. The open air atmosphere of the huge garage was just what we needed to make the school parent and pantry volunteers feel comfortable

Select Board members regarding
Sewataro Dec 2021

sorting together during the pandemic. The space provided fresh air and adequate space for social distancing. Also, being allowed to store the banana boxes there and to be able to leave the sorting boxes intact was extremely convenient and time saving. JT, Tom, Ron and I were always so impressed with your energy, your can do attitude, your problem solving skills and your willingness to get involved. You had tables, etc. set up for us, doors open before we got there, signs out to direct the school parent volunteers, and food donations from the bin onto the sorting table in the garage. We appreciated how you became directly involved in the sorting and giving helpful directions to the new volunteers trying to figure out which box to put what in. The food bin idea of yours was excellent. It certainly added to the total of our donations and gave an opportunity to non-school parents, who had contacted you, a convenient location to leave their donations. You were an essential factor in the success of the 2020-2021 school drives and we thank you very much. We wish you continued success in your role at Sewataro and as the Sewataro Liaison to the Town of Sudbury.

Sewataro Team

- Do you know how much Sewataro is used by residents: **See above**
 - o during camp season? **See above**
 - o during non-camp season? **See above**
- How many campers attend the camp each year? **See above**
- How many campers are Sudbury residents?
 - o **352 Sudbury Campers/2021 Sewataro Team**
- How many Sudbury residents are employed by the camp?
 - o **70 Sudbury residents on staff Sewataro Team**
- Are there any additional ways to increase camp season resident access to Sewataro? (In addition to swimming access and enhanced ADA access proposals)
 - o For example, back tennis and basketball courts?
- What are the differences between a camp beach, semi-public beach, and public beach?
 - **What is a semi-public bathing beach?**
 - Per 105 CMR 445.00: MINIMUM STANDARDS FOR BATHING BEACHES (STATE SANITARY CODE, CHAPTER VII) Semi-public Bathing Beach means any bathing beach that has common access and/or common use by a group or organization, which includes:
 - 1. Any bathing beach used in connection with a hotel, motel, a manufactured home pack, other similar establishment where the primary purpose of the establishment is not the operation of the bathing beach, and where admission to the use of the bathing beach is included in the fee or consideration paid or given for the primary use of the premises; or
 - 2. Any bathing beach used in connection with a neighborhood or residential association; or
 - 3. Any bathing beach operated solely for the use of members and guests of an organization that maintains such a bathing beach
 - Public Bathing Beach means any bathing beach open to the general public, whether or not any entry fee is charged, that permits access to bathing waters.

There is not a specific 'camp beach' designation. Our swim pond is very unique (man-made, gunite-lined) and has historically been considered somewhere between a pool and semi-public beach. **Sewataro Team**
- What are the dimensions and capacity of the current pools?
 - What are the dimensions of the pools?**
 - 20'x40'

Select Board members regarding
Sewataro Dec 2021

- Depths: 2 ½ feet, 3 feet, 3 ½ feet, 4-5 feet **Sewataro Team**

- Would increasing resident swimming access have any impact on water quality?
 - o Can this be mitigated? How?
 - **How would resident swimming impact the pond/pools?**
 - Although possible, it is not anticipated that resident swimming in the swimming pond would have a significant impact on water quality, provided that current water quality measures are allowed to continue.
 - We do anticipate that increased bather load in the pools would affect water quality, which is the reason that chlorine automation is included in the pool only swimming option for the Town. **Sewataro Team**

- Do you have other recommendations for improvements at the Sewataro property for residents and campers:
 - o access enhancements?
 - o capital enhancements?

Access Enhancement Proposal:

 - **Who will pay for these upgrades?**
 - Camp Sewataro will cover the costs, according to the process laid out in the contract as we have done with previous capital improvements.
 - **Extra Maintenance & Clean-up**
 - The Camp Operator will assume all responsibility for clean-up and rubbish removal at the conclusion of each swim session, by a designated member of the camp's Grounds Crew. **Sewataro Team**

- Are there any issues/challenges in managing the Sewataro property that the Town should be aware of? Please describe.

Financials

- What impact has the Covid pandemic had on the camp financials?
- Do you believe this past year is a typical camp financial results year? Why or why not?
- Do you believe this past year is a typical Town revenue share year? Why or why not?
- How has the PPP loan:
 - o affected fiscal management of the camp?
 - o affected Town revenue share?
- What are the capital projects/enhancements/significant maintenance items you have addressed at the property?
 - o How much have they cost? **SEE ABOVE CHART AND RESPONSE**
- If you continue to manage the property, what future capital projects would you like to address?
 - o How much do you think they would cost?

Financials:

- **Is the audited financial information accurate?**

Select Board members regarding
Sewataro Dec 2021

- The Camp Sewataro Financial Reports were sent to the town dated 9/30/2021 (sent on 10/28/2021 of the 9/30/2021 statements). Certified Public Accounting Firm Korbey Lague was contracted to do the independent review. This is a separate firm from Camp Sewataro LLC's accounting firm Joseph Mercurior MST, CPA (George Kaplan, PC).
- As noted in the notes within the Financial Report, the accelerated depreciation method was used.
- This was all carried out in accordance with the Sewataro Management Contract (p. 6): "Such statements shall be provided to the Town on or before November 15 of each year during the Term. Within thirty (30) days following its receipt of the Manager's Financial Statement, the Town, upon written notice to the Manager, may elect to audit the books and records of the Manager to determine the accuracy of the Revenue Share Payment. Such audit shall be conducted by a certified public accountant with at least ten (10) years' experience in the auditing of books and records who is not compensated on a contingent fee basis. The Manager may elect to provide electronic records to the Town and its auditor."
- **Is it appropriate to include the PPP loan in the revenue share?**
 - According to Sewataro Management Contract (p. 5): "Manager's 'Net Revenue' shall be defined as any and all revenues and receipts of any kind the Manager received during its fiscal year..."
 - According to our accountant, "The PPP CARE's Act money is not revenue, and its inclusion in the Revenue share may not be entirely correct. Based on our discussions, we have included it in the revenue share calculation as an addition to net income from operations for the calculation of the revenue share amount due to the Town of Sudbury."
 - It is our intent to do this again next year, assuming the second PPP loan is forgiven.
 - The PPP loan had no impact on the fiscal management of the camp. **Sewataro Team**

Questions for Sudbury Town Staff

- How much time does Town staff (including Town Manager) currently spend on Sewataro-related topics? **Since the Town acquired the camp, the Facilities Director has spent on average 6 hours per month on camp issues. That's the average with no major items, some items can be quite time intensive. The Town Manager does not specifically track the amount of time on every subject, regarding Sewataro, it could be considered that between preparing for Select Board meetings, reviewing monthly reports, fielding other questions and comments, it may be fair to estimate close to 4 hours per month maximum, however, this most likely is not reached each month. The Health Department often fields questions or attends meetings relative to the Camp, this could be estimated near 3 hours, depending on the inputs and requirements. Town Manager/Hayes**
 - o What do you do?
 - **As the Sewataro Property was not purchased for conservation purposes, prior to this present request, I have not spent time on Sewataro-related matters. Conservation/Capone**
- From the Town staff perspective, what are the capital projects that should be addressed at Sewataro if any?
 - o **That depends entirely on the Town's overall plan for the property, specifically enhanced public access and potential Town operation and to what extent. Accessibility issues will be at the center of those costs. Facilities/Barletta**
 - o How much do you think they would cost?

Select Board members regarding
Sewataro Dec 2021

- **Cost would be driven by the Town's overall plan. A consultant should be engaged to determine any costs. Facilities/Barletta**
- How much would it cost to maintain the Sewataro property if there were no property manager:
 - as a camp?
 - **Town Facilities would not be able to determine that. A consultant should be engaged to determine any costs. Facilities/Barletta**
 - as open, recreational space?
 - **If the property were reverted for open space purposes, additional funds and personnel would be needed for the Town to be able to mow the property, plow the roads, and upkeep the buildings or the land would revert back to forest and the buildings would go into disrepair. The ability to take on the required management is not currently in the Conservation, Public Works and/or Facilities budgets.**
 - **The Facilities Director is the Town staff liaison to the camp operational staff. Responds to questions and advises on any issues they may have regarding interaction with Town Depts. and the public. Work with camp staff on items related to buildings, grounds and public access. Keeps Town Manager informed of camp related issues and responds to Select Board and other inquiries. Facilities/Barletta**
 - **Town Facilities would not be able to determine that. A consultant should be engaged to determine any costs. Facilities/Barletta**
- Does the Town currently have the resources/ability to maintain the Sewataro property if there is no camp operator? **From the Town Facilities Dept. perspective absolutely not. Facilities/Barletta**
 - Please describe. **Town Facilities is a very minimally staffed Dept. Facilities/Barletta**
- Are there any public health concerns associated with the property or its use?
 - If yes, can those be mitigated and how? **The Board of Health has concerns about the water meeting acceptable standards without chlorination shall be addressed with the outcomes of the way the Camp moves forward with testing and maintaining the bodies of water on the site, there are no current negative outcomes. Town Manager/Hayes**
- Are there any environmental concerns associated with the property or its use?
 - If yes, can those be mitigated and how?
 - **In addition to the chlorination and algaecide concerns expressed above, activities contained within the 1988 Level of Existing Maintenance of Pool/Ponds Program that require review and approval from the Conservation Commission include the dewatering of the fishing pond to fill the swimming beach and/or to conduct maintenance on the spillway or around the fishing pond. Filling of the swimming beach results in a temporary 3-4 foot drawdown of the fishing pond. Alternatives to filling the swimming beach from the fishing pond should be evaluated.**

Select Board members regarding
Sewataro Dec 2021

Questions for Sudbury Residents

- Do any of your family members attend Camp Sewataro?
- If yes, how would you describe their experience at Camp Sewataro?
- What do you use the property for outside of the camp operation?
- How often do you use the Sewataro property?
- How do you feel about the current level of community access at Sewataro?
 - o Please elaborate with any feedback or suggestions.
- Are you willing to pay a moderate fee for use of the property facilities?
 - o How much are you willing to pay?
- What do you *like* about the Sewataro property and its current property manager/camp operator arrangement?
- What do you *not like* about the Sewataro property and its current property manager/camp operator arrangement?
- How would you like to see the Sewataro property managed and used in the future?
- What questions do you have about the current property manager/camp operator arrangement?
- Do you have any other questions about the Sewataro property?

Submitted by Bill Schineller:

These are things I would like to learn from a FlashVote on Sewataro to help inform decision about renewal.

1) Which strategy for Sudbury do you prefer?

- Attract and retain businesses that provide significant revenue to the town and require minimal town services and have low traffic impact
- Promote more housing development in Sudbury that grows residential tax base and vehicle registrations to pay for additional town services they consume (education, road plowing, etc)
- Both

2) Do you consider the public/private partnership enabling Camp Sewataro to continue to operate as a business providing revenue to the Town and public access to the property's recreational assets during non-camp hours a Win-Win?

The Town voted to acquire Camp Sewataro in June 2019 and took ownership in October 2019. The Town immediately issued a Request for Proposals, selected a private camp operator Sewataro LLC to manage & maintain the property year round, continue the day camp on summer weekdays, and facilitate public access during non-camp hours. The town granted Sewataro LLC the same special permit to operate the camp as a business on the residentially zoned land as it has for past decades, and increased the number of camper slots by 50 per session which the operator offers as 'scholarships' to Sudbury families in need through the Town Social Worker. The camp operated successfully in 2020 (at state-mandated 1/3 capacity due to Covid) and 2021 (full capacity), and has sold out for summer 2022.

Select Board members regarding
Sewataro Dec 2021

Per negotiated contract, Sewataro LLC covers all expenses, and pays the town a fixed \$120K plus a profit share each year. In 2020 (Covid year), the Town received \$120Kv+ \$XXX = \$YYY). In 2021 (at normal 650 camp capacity), the Town received \$120K + \$338K = \$ 458K. The Town Finance Director had conservatively estimated annual revenues of \$315K / year. (For reference, this is comparable to, exceeds the commercial tax which Sudbury Farms plaza paid the Town in 2021 of \$309K. Another point of comparison, Bosse paid town \$182K taxes in 2021.)

Additionally, Sewataro LLC's community liaison facilitated two large town-wide events each year, free use of facilities by ZZZ groups, including scouts, HOPE Sudbury fundraisers, Food Pantry drives. LS Adult Education classes and several local businesses have used the property for outdoor performances and classes at no charge with the Town's permission. The Town is considering a nominal fee schedule for reservations going forward.

Sewataro has proposed facilitating public outdoor swimming starting 2022.

The Town's debt obligations average \$667K through the year 2041 after which the property will be fully paid off. Under the current arrangement, the Town incurs zero operating costs, as Sewataro LLC maintains and makes improvements to the property year round.

Do you consider this a Win-Win

- Yes
- No

3) Which would you prefer for the future of Sewataro?

- continue the public/private partnership described in #2, a hybrid of generating revenue for the Town, and facilitating public access to unique open space and recreation assets (well manicured picnic area, courts, outdoor swimming, fishing, pavilions). Significant revenue from business, no additional residential tax impact.
- transfer responsibility for maintenance, operation, insurance, and programming at Sewataro to Town staff. Increase taxes and town staffing to provide these services in Town operating budget. Discontinue Camp Sewataro in its current form.
- Pursue developing housing on Sewataro land. Attempt to recoup Town's acquisition costs. Raise additional taxes necessary to provide town services and education for new residents and accommodate increased student population. Discontinue Camp Sewataro and give up business revenue stream, returning to residential taxation model.

4) Would you be in favor of Town divesting any of its other open space acquisitions which are currently non-revenue generating with little to no public access, and encouraging development of additional housing on these properties? Select all that apply:

- Broadacres Farm
- Town Center
- Johnson Farm
- None of the above.

5) Do you think supervised public outdoor swimming at the Town's Sewataro property would be appealing to Sudbury residents, including those on waiting lists for Sudbury Swim & Tennis and Greenwood Swim Club in Sudbury.

- yes
- no

Questions FOR the Select Board
by Residents

Sewataro Questions FOR the Select Board, presented by Residents:

This document is an assembly of inputs that can be addressed by multiple parties. I appreciate you using track changes or clearly indicating your inputs so I can update the primary file and know who submitted what data. **(hit EDIT, then REVIEWING when making changes – this enables tracked changes)**

Submitted by Jeff Levine, Bob May, Tom Travers, and Len Simon:

Please note that the questions are divided into 2 major categories:

1. Questions related to current operations including specifically a renewal option
2. Questions related to the future use of the Site

Category 1 Current Operations

Is it accurate to say that just over 100 Sudbury families enroll in Camp Sewataro in each summer?

What community groups have used Sewataro over the past year, have any of them given any written feedback on their experience, and if so, what are all the comments, both pro and con?

Of the community groups that have used Sewataro over the past year:

- how many different groups have used it,
- how many times has each group used it,
- has the town identified why Sewataro was chosen for use, and if so, what are the reasons Sewataro was selected,
- which groups have committed to using Sewataro again, and why; and
- Have any groups reserved Sewataro for an event but cancelled or moved the event to another venue, and if so, please list the groups and identify the reason for not going forward with the Sewataro reservation?

What has been the usage of the Sewataro facilities by the public over the past year, i.e. how many hours of court use and/or lodge use have been recorded, in what months and by whom?

Resident Programming/Reservations:

- User Groups 2021

- 35 Groups
- All but 2 of those were repeat users
- Those 2 hosted recitals on property, and 1 has inquired about booking in the spring of 2022.
- Number of uses varies considerably. Some Scout Groups have met twice a month, year round since we opened access to residents.

- By the month:

- January 2021: 6 groups, 20 hours
- February 2021: 6 groups, 24 hours

Questions FOR the Select Board
by Residents

- March 2021: 9 groups, 44 hours
 - April 2021: 18 groups, 121 hours
 - May 2021: 19 groups, 194 hours
 - September 2021: 9 groups, 43 hours
 - October 2021: 13 groups, 98 hours
 - November 2021 (as of 11/13): 9 groups, 42 hours
- This is a tally of scheduled pavilion use only. We do not track the many groups and individuals that come to the property to use the tennis and basketball courts, fish, walk, bike, sled, snowshoe, etc.
- **Types of Events Scheduled include:** Book Clubs, Sudbury Villagers (seniors), Scouting groups, martial arts, dance and fitness classes, garden club, local music and theater schools.
- One question asked specifically about winter use. Our winter users are mostly Scout Groups, although a few fitness classes continue to take place in colder weather. We do not have information on the number of attendees for winter (or fall/spring) scheduled events.
- Many groups initially expressed that they chose to meet at Sewataro because they needed outdoor space due to COVID, but have continued to gather on the property because they enjoyed their experiences so much.
- 2 groups scheduled events and cancelled
 - 1 due to weather conditions (moved indoors); 1 cancelled due to COVID
 - 1 group inquired and chose not to schedule on the property because they wanted to serve alcohol at their event
- **Feedback from Users**
- We have received a great deal of positive feedback about our responsiveness, the ease of scheduling, and the facilities and grounds.
 - Early on, groups requested access to parking on the back side of the property and we worked with the Town to open up the back gate and parking area.
 - We also received feedback about bathrooms, and put portable toilets on both ends of the property to meet user needs.
 - We also have a great deal of positive feedback from countless camp families regarding their experiences at Sewataro, which we are not including here.
 - Below, please find some of the notes we have received from individuals and user groups over the past year and a half: the following two colors are used (**Bold**, **Color**), however, the altering colors are from patrons of the Camp.
- ◆ **What a wonderful time we had! While I'm partial to the pond because I love fishing, that hidden field by the Treehouse was like a dream. We played freeze tag, danced, opens gifts, and ate pizza. It was a gathering before my pops had knee surgery and my sister and her family move to Maine. The ambiance was just perfect. What a special place to have less than a mile from our front door. We look forward to spending more and more time there. THANK you for your communication and support, Kristen. It really was one of the more dear family gatherings we've had.**
 - ◆ **Great time at Sewataro today. Thanks for all your help, Kristen!**
 - ◆ **Kristen, Thank you to all the staff and volunteers for last Thursday's event. It was so fun for the kids and the grown ups. A treat during these times! Thank you!!!**
 - ◆ **I'm glad that ADA consideration are underway! Excellent. I'm hoping that post Covid my tendonitis issues will have been resolved, but it's already been almost a year. It makes me**

Questions FOR the Select Board
by Residents

quite aware of the limitations that others have for the rest of their lives. It's too bad that the darn virus prohibits a meet-up; that would've been wonderful, but I would be more than happy to stay in touch with you if you think I could be of any help in brainstorming, etc. And I would love to be able to take my friend who's 89 up there for a drive someday. She'd love it. Thank you for your help and most importantly, your kind interest. Maybe we can continue our discussion someday!

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Questions FOR the Select Board
by Residents

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- ◆ **Thank you for having Sudbury Girls Lacrosse on your fields! We're done for the Fall, but would love to return in the spring if that works for you.**
- ◆ **We had 225 student musicians perform. We had over 600 guests. Reasons to be Cheerful served 230 cups of ice cream (they had to have more ice cream brought over twice). Juliana's served 335 slices of pizza. I do not know how many drinks or chips they sold. We had 1 scraped knee, countless rounds of applause and an infinite number of smiles under face masks. We would love to make this an annual event and select a date for 2022 if permitted to do so.**
- ◆ **Dear Kristen, On behalf of the Sudbury Community Food Pantry, President Pat Mullen and the Board of Directors, JT and I want to thank you for all you did to make this years' school food drive program a success. I believe you initiated the idea of Sewataro being a possible site for providing accommodations for the food drives and Board Member Michelle Meal presented the possibility to the Board. From there we were off and running. You were great at taking us to the next level and readily being available through text/email to answer our questions and requests or to coordinate something with Ramon or Chuck for us. Your having been involved with the Haynes School food drives in the past was certainly helpful in determining which facilities at Sewataro you thought would best meet our needs. Your choices were perfect. The open air atmosphere of the huge garage was just what we needed to make the school parent and pantry volunteers feel comfortable sorting together during the pandemic. The space provided fresh air and adequate space for social distancing. Also, being allowed to store the banana boxes there and to be able to leave the sorting boxes intact was extremely convenient and time saving. JT, Tom, Ron and I were always so impressed with your energy, your can do attitude, your problem solving skills and your willingness to get involved. You had tables, etc. set up for us, doors open before we got there, signs out to direct the school parent volunteers, and food donations from the bin onto the sorting table in the garage. We appreciated how you became directly involved in the sorting and giving helpful directions to the new volunteers trying to figure out which box to put what in. The food bin idea of yours was excellent. It certainly added to the total of our donations and gave an opportunity to non-school parents, who had contacted you, a convenient location to leave their donations. You were an essential factor in the success of the 2020-2021 school drives and we thank you very much. We wish you continued success in your role at Sewataro and as the Sewataro Liaison to the Town of Sudbury.**

Sewataro Team

Questions FOR the Select Board
by Residents

Has the property experienced any vandalism or unauthorized use since the town acquired it? If so, please list all of the incidents with times and dates.

- **4-16-2021 0900 Phone - B&E & LARCENY SPD/Nix**

Have the police been called to the property over the past 18 months to address unauthorized use of the property by school-age children? If so, please list all of the incidents with times and dates.

- **No SPD/Nix**

Has Park and Rec been asked formally to comment on impacts of the camp on other Town services or programs?

- **No until now. Allowing groups, vendors and LSHS and others to use the site from free while P&R needs to charge for these services to pay for the programs, expenses and staff will have a impact on programs. We are not sure whom is using and what the future may hold. For example if LSHS adult ED ect... are allow to use this site for free then they can charge or pocket 100% of the revenues they collect to increase margin. If we charge \$100 for said program but LSHS can charge \$80 then people will naturally go the cheaper way. Sewataro camp Scholarships for 50 kids could also cut into our current Sudbury Summer enrollments as we do not have money to offer scholarships because we are self-funding but Sewataro can offer. Does this money get taken off of the revenues back to the town? Why would the town not fund "town" scholarships for its Town Camp. Park & Rec/Mannone**

Has there been any Board of Health or hygienic analysis of the ability of the swimming area (not the pools) to accommodate 200 swimmers on a Saturday or a Sunday?

The only record of water quality analysis is post chlorination testing conducted by the camp throughout its operation, which has always produced acceptable results for the recreational camp. There has not been pre-chlorination testing that we know of. The chlorination process, an acceptable past practice, will need to discontinue based upon environmental concerns raised by the Department of Environment Protection. The Board of Health has concerns about the water meeting acceptable standards without chlorination. Water quality testing and engineering studies are, and have been, recommended. The Department of Public Health ruled out this water body as a swimming pool even though it is manmade, concrete lined, has a main drain. It is one of a kind in Massachusetts. The Health Director has a meeting scheduled with the Department of Public Health on Dec.10th to discuss registering the beach and testing requirements. The number of swimmers could impact bacteriological quality and clarity. The exact impact is unknown. Health/Murphy

Beaches such as Lake Cochituate in Wayland and Framingham and White's Pond in Concord have closed recently due to algae blooms, clarity, and negative bacteriological quality results.

Questions FOR the Select Board
by Residents

The Board of Health will need to institute a mandated water quality testing program and develop policies for closure if necessary. Health/Murphy

Or 400 swimmers on a weekend?

Pools regulations limit capacity for pools but bathing beach regulations do not. It is logical that larger bathing capacities will have greater impact. Health/Murphy

If there are no bath houses or permanent bathrooms, are you expecting 400 people over a weekend to use 1 or 2 Port-A-Potties while they are at the swimming area?

105 CMR 445.000 Minimum Standards for Bathing Beaches does not set a bathroom quantity requirement but I expect the Board of Health will require a minimum number. Lifeguards are not required but the Board will likely require them as well. Health/Murphy

Has there been any Board of Health or hygienic analysis of the ability of the swimming area (not the pools) to accommodate small children in diapers?

No. This could be incorporated into signage requirements and recommendations. Health/Murphy

Has the Conservation Commission discussed the plan for swimming at Sewataro? If not, why not?

- **The Commission discussed Sewataro at their meeting on November 15, 2021. Additional review and discussion is needed to evaluate the existing operation and expansion thereof. Conservation/Capone.**

Has the state Department of Environmental Protection evaluated Sewataro for use as a community swimming area (the concrete basin, not the pools)?

- **There have been no previous applications to the Department of Environmental, Wetlands and Waterways Division, under the Wetlands Protection Act for evaluation of the current operations or the proposed expanded use. Conservation/Capone.**

Will any additional environmental permitting be needed if it is determined there is drainage from the concrete swimming basin into any of the town's ponds, waterways, or wetlands?

- **Water is circulated between the swimming basin and the fishing pond and water from the swimming basin has been discharged to Pantry Brook when the basin is drained. Permitting will be needed for any proposed introduction of chemicals into the system and/or structural modifications within wetlands jurisdiction. Any withdrawal from or discharge to a wetland resource area will require environmental permitting. Conservation/Capone.**

Will chlorine from the swimming basin be dumped into a pond or waterway? If so, will this require DEP evaluation and or Con Com permitting?

- **The current operation continuously circulates water between the swimming basin and fishing pond, which is treated with chlorine. There is no permitting mechanism to permit chlorine to be introduced into a regulated wetland. We are currently evaluating the current operation to determine appropriate permitting needed. Conservation/Capone.**

If the town proposes to allow public swimming at Sewataro, in addition to the M-F camp usage, with hundreds of additional swimmers on the weekends, so the swimming basin will be used 7 days a week,

Questions FOR the Select Board
by Residents

has there been any guarantee the existing water treatment system for the swimming area will be adequate?

- **This question would be resolved through the development of a Water Quality Monitoring Program that evaluates both water quality parameters for the safety of visitors as well as the environment. Conservation/Capone.**
- **New treatment options are being assessed from a public health and environmental standpoint now that chlorine is not an option. Health/Murphy.**

Has the new 7-days a week swimming proposal been accepted into existing swimming permitting? Has the town sought to grandfather it in since acquiring ownership?

No. Health/Murphy.

What arrangements have been made for trash collection and cleanup of public areas at the end of the day on Saturday and Sunday?

There is no current arrangement in place as this is a future activity that is not guaranteed to occur at the time of this question. The Camp is equipped to make the needed adjustments to take care of the property if there is an increased service delivery. Town Manager/Hayes

Has the camp operator coordinated activities at the property with Park and Rec.? if so, please describe the coordination.

- **We sometimes will get an email let us know they are offer a community event and if we see any conflicts. Again if Sewataro is allowed to offer FREE community Events but the "TOWN" P&R has to charge or eat the cost from the profits for other programs to other a summer concert series does not seem equal. These FREE community events are not really free at the town it looks like gets charged on the back end anyway for these events out of the revenues collected? Should the "Town" Not fund its own P&R dept for said community events?**
- **The Fields do have very limited use due to space, ADA and parking concerns.**
- **We also have concerns about adding additions Public Swimming options for the town could/will take revenue away from the Atkinson Pool receipts. We have a hard time funding and supporting the "towns" Current Pool why would we take on another pool/beach option. Park & Rec/Mannone.**
- **In addition to reaching out to make sure there are no scheduling conflicts when we are planning our two annual town events (per the management agreement), we have offered to share the planning/sponsorship of these events. Dennis and I spoke on the phone regarding the scarecrow event and the summer concert event in 2020, and in both cases we offered to fully fund and staff these events, but to run them as a collaboration with park and rec. Our goal is certainly never to undercut their programming. Sewataro/Drummey.**

The financials released by the camp operator identified \$338,940 as the Town's share of net camp revenue. This included a portion of a one-time windfall of \$534,389 resulting from a PPP loan forgiveness. What would the Town's share be without the PPP loan, and is this likely to be what the town can expect to receive going forward when the camp has a good season?

Questions FOR the Select Board
by Residents

See other file for financial information as described by the Sewataro Team.

At the time the property was purchased by the Town, the former owner was paying the Town approximately \$200,000 each year in real estate taxes. What would the Town have received in real estate taxes on the property in 2021 if the Town had not purchased the property?

Due to limited staff, current established priorities and the unknown of what would have been in place regarding different ownership options, this question has not been answered. Town Manager/Hayes

Approximately how many individuals have used the property for any purpose between December 1 and March 31 of the past two years? If this includes any formal events, please identify the events and the number of individuals attending each event. **See above**

Category 2 Long Term Use of Site (please note the focus is on the Site not A Camp)

Integration with our existing Park Resources

Can we please have a Master Vision for the Parks in Sudbury? If not, why not for the assets are substantial and could be made to be a major draw for the town. The recreational facilities at Sewataro seem redundant to some citizens, especially when it comes to hiking and running trails. Many athletic/recreational activities (except as an example, the ropes course, which requires trained supervisory personnel and special outdoor pool activities) at Sewataro are available at other multiple venues though not always as a structured camp. The rail trails, which will come online in a couple of years will potentially create new options for citizens. The Master Plan did not go into any depth about the site. Park and Rec has not placed programmed athletic games at Sewataro. Why? See below.

- No plan on how to integrate Sudbury's public camp model (\$503 per 2 week session) versus high-end private camp model (\$1,620 per 2 two week session)
- No business plan for how the town would run the property and the camp.
- Concern regarding the expertise and staffing to run the Site.
- Concern regarding the cost to operate the Site as a town owned property.
- Infrastructure concerns and cost to the Town – **fields have limited utility as playing fields with no infrastructure to support them, i.e. parking, etc.** Also costs relative to ADA compliance foreseen if to be used as playing fields.
- Concern regarding impact on existing Park and Recreation programs including Atkinson Pool.

VISION For the Site

Is this, from 2019, still an accurate "vision" for the site in light of any Master Plan guidance?

- **2019 Vision:** "use the land for open space, recreation, preservation, and other municipal

Questions FOR the Select Board
by Residents

purposes.”

- **Where is the follow-up to this from the 2019 presentation? This is a unique land preservation acquisition because there is the possibility and opportunity for future uses, some of which could be potential revenue sources.**
- **Yes, the 2019 Vision is still accurate for the site in light of the recently approved Master Plan update. The general direction from the Master Plan related to this topic is to improve and an enhance existing properties owned by the Town which are already being used for recreational purposes (as opposed to acquiring new land/resources for recreational purposes.). The following Action Item in the Master Plan support this position: “Conservation and Recreation Land. B.3: Continue planning efforts to increase public conservation and recreational benefits of Sewataro and Broadacre properties.” However, the ultimate use and future of this property are determined by the Select Board. Planning/Duchesneau.**

Accessibility—Accessibility is a major issue for the site because the facilities on the site were not designed to be ADA compliant and most of the site is on a hill. These issues must be dealt with under almost all options for the town to open the property for public use. Has Town management identified what needs to be done to make the site and its facilities ADA compliant, and if so, what must be done, what are the identified the cost to do it, and when will the Town management present a plan for this?

- **The Town has hired the Institute for Human Centered Design (IHCD) to assist with the Americans with Disabilities Act (ADA) self-evaluation process. Information may be found at the links below.**
- <https://sudbury.ma.us/townmanager/2021/04/09/ada-evaluation-and-transition-plan/>
- https://sudbury.ma.us/townmanager/wp-content/uploads/sites/357/2021/07/Parks-ADA-Transition-Plan_rs.pdf?version=e65ff2e688a0284347c918e1fcab201d

Action Plan -possible next steps to achieve a plan for the Site.

What has the Town done to identify and evaluate all reasonable options for future use of the property, other than as a private day camp, and what is the estimated cost to the town to implement and maintain each of these options? What are the pros and cons for the town to implement each of these options?

- **During my tenure, I have not explored identified and evaluated all reasonable options for future use of the property, neither have I or any other staff member been directed to seek associated costs for the potential options that may be available to explore. The current high priorities and limited professional staff have not produced this type of evaluation to an extent that would be predictive in nature. Town Manager/Hayes**

Questions FOR the Select Board
by Residents

Are there any potential uses that would allow the town to recover a meaningful portion of its \$11 million investment to purchase the property?

- **This has not been fully explored in ways that would lend itself to project confidence in a future outcome. Town Manager/Hayes**

The site is currently zoned residential and is divided into 33 parcels. Has the town considered reviewing and changing zoning so that multiple use options can be implemented at the same time, and if so, what are they and how would this be implemented and at what cost to the town?

- **No zoning changes for the Camp Sewataro property have been considered. In the opinion of Planning and Community Development Department staff, changing the zoning for the parcels which make up Camp Sewataro would most likely receive stiff opposition from the residents in the surrounding area as all of the immediate area and the vast majority of north Sudbury is zoned the same way (Single Residence A-1). This is a heavy residential area with few other existing uses at present. Planning/Duchesneau.**

In Summary:

A possible option for creating the needed plan for the Site.

1. Draft an article for an upcoming Town Meeting to retain and fund a consultant.
2. Receive the consultant's report (about 3-6 months later)
3. Distribute the consultant's report to residents.
4. Solicit the input of Town boards and committees to the consultant's report.
5. Hold a Sewataro Town Forum to answer questions and take comments.
6. Decide on a long-term plan for the Sewataro property.

Why is it not in the Town's interest to undertake this approach?

- **The collaboration between the Select Board and Town Manager has not produced a way forward on this concept. I agree with the thought of utilizing a consultant to review and provide a comprehensive report, based on findings and research. The Town is accustomed to forums, question submissions and the like, as demonstrated with Fairbank and Broadacres. Town Manager/Hayes**

REM 11.07.2021 as compiler for Len, Jeff, Tom, and Bob

Additional Question Raised by the Public at the November 16, 2021 Select Board Meeting

Swimming Pond Disinfection: Best practices today may include dechlorination after disinfection, but prior to discharge to the receiving water to mitigate adverse impacts to the reviving water.

- **There are dechlorination processes that could be explored if the bathing water was self-contained was not being continuously circulated between the swimming beach and the fishing**

Questions FOR the Select Board
by Residents

pond. This would not be an option with the existing mechanics. Additionally, the direct discharge of chemically treated water, even if neutralized, to any wetland system should be discontinued as there are alternatives to this activity. Conservation/Capone.

Submitted by Pat Brown:

It was my understanding from the November 16, 2021, Sudbury Select Board meeting that the Board would entertain questions, comments and general input from all citizens concerning the operation and future of Camp Sewataro from the general public.

Both Town Meeting and the voters of Sudbury approved the purchase of Sewataro in the fall of 2019.

Here are the questions I have.

1) It would be helpful to have **a comparison table for recent land purchases** by the Town—specifically, Johnson Farm, Broadacres and Sewataro. This should include:

Cost to purchase per buildable lot; Cost to purchase per buildable acre

Estimated tax revenue and cost to provide municipal services (public safety, education, infrastructure maintenance and so on) if the property were fully developed

Conservation value of the parcel

Municipal cost to maintain the purchase both per property and per acre (cost of security, mowing and trimming, plowing, paving, building or structure maintenance, new construction, insurance, liability and other upkeep)

- **We do not currently have a complete responsive answer for these questions/comments at this time. If the Select Board wishes to take this up, in order to work on this type of approach. Combined department answer.**

Availability of amenities on the property to town residents, listing restrictions and plans for expansion

Annual revenue to town from the property under current circumstances, minus expenses. This number may be negative.

2) It has been proposed that the town undertake a process for long-term planning for the property. That proposal includes the following steps:

Questions FOR the Select Board
by Residents

In summary a responsible plan of action would include:

1. Draft an article for an upcoming Town Meeting to retain and fund a consultant.
2. Receive the consultant's report (about 3-6 months later)
- 3.. Distribute the consultant's report to residents.
4. Hold a Sewataro Town Forum to answer questions and take comments.
5. Solicit the input of Town boards and committees to the consultant's report.
6. Decide on a long term plan for the Sewataro property.

Please **provide a timeline and description** for how such a process would proceed and how long it would take to complete, reporting both (a) the predicted working time to complete the steps described and (b) a realistic timeline taking into account the actual calendar period required to accommodate the predicted number of work days, plus some contingencies for holidays, other activities (e.g. Town Meeting) and unexpected holdups.

- **The Town does not currently have such a process as a task, therefore, I am unable to provide a timeline and description for the mentioned process. Town Manager/Hayes**

3) What is **the estimated cost of an outside consultant**, who will write the RFP and select the consultant, and what qualifications will the town require? Specifically, will the Select Board be accepting citizen input in this selection process?

- **We do not currently have this data, we have not reached out to any consultants at this time. Town Manager/Hayes**

4) **What is the town's plan for maintaining, insuring and otherwise securing the property if the lease to the camp operator is not renewed?** Please include the estimated annual cost, and indicate if it will be funded within the levy or using other revenue sources? Loss of revenue should be reported separately. This chart should extend five years.

- **We do not currently have a plan in place. Adjustments can be made when a decision is made on the future use of the property. Town Manager/Hayes**



SUDBURY SELECT BOARD
Tuesday, December 7, 2021

MISCELLANEOUS (UNTIMED)

6: Fire Station discussion

REQUESTOR SECTION

Date of request:

Requestor: Chair Roberts

Formal Title: Fire Station discussion. Town Manager Hayes to provide update on design and project status for Fire Station 2. (~20 min.)

Recommendations/Suggested Motion/Vote: Fire Station discussion. Town Manager Hayes to provide update on design and project status for Fire Station 2. (~20 min.)

Background Information:

Financial impact expected:

Approximate agenda time requested: 20 minutes

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Henry L Hayes	Pending
Jonathan Silverstein	Pending
Jennifer Roberts	Pending
Select Board	Pending

12/07/2021 6:30 PM



Henry L. Hayes, Jr.
Town Manager

TOWN OF SUDBURY
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December 5, 2021

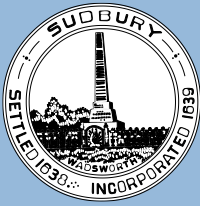
Honorable Select Board:

Please see the information below regarding the Fire Station No. 2 as it relates to the progress of planning and actions. The Permanent Building Committee has held several meetings on this subject. The data below is from their meetings and discussions I have had.

On the basis of the recently completed Schematic Design cost estimate, it has been determined that the budget for the design and construction of the Fire Station No. 2, living/office building portion (Phase 1), voted at the 2021 Annual Town Meeting is currently insufficient by approximately \$1.5M due to COVID-19 supply issues associated with a projected 2022 construction start date. At the direction of the Permanent Building Committee, the architectural firm Kaestle Boos Associates is continuing design efforts to 100% Design Development utilizing as many cost saving measures as possible without significantly affecting the program components and project quality. The intention is to have an updated cost estimate prepared based on the more accurate and detailed Design Development drawings and specifications. The updated cost estimate will provide more accurate information as to any additional funding required for construction during these inflationary times and allow for a more informed decision on whether or not to proceed with the Phase 1 project at that time.

Sincerely,

//eSigned/HLHJr/5 Dec 2021//
Henry L. Hayes, Jr.
Town Manager



SUDBURY SELECT BOARD
Tuesday, December 7, 2021

MISCELLANEOUS (UNTIMED)

7: Open ATM warrant for 2022

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Open 2022 Annual Town Meeting warrant and announce that Annual Town Meeting will commence Monday, May 2, 2022 at Lincoln-Sudbury Regional High School. Warrant to close Monday, January 31, 2021 at 12:00 Noon. (~15 min.)

Recommendations/Suggested Motion/Vote: Open 2022 Annual Town Meeting warrant and announce that Annual Town Meeting will commence Monday, May 2, 2021 at Lincoln-Sudbury Regional High School. Warrant to close Monday, January 31, 2021 at 12:00 Noon. (~15 min.)

Background Information:

Financial impact expected:

Approximate agenda time requested: 15 minutes

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Henry L Hayes	Pending
Jonathan Silverstein	Pending
Jennifer Roberts	Pending
Select Board	Pending

12/07/2021 6:30 PM

ARTICLE I

TOWN MEETINGS

[ATM 4/8/2008](#)

SECTION 1. The Annual Town Elections shall be held on the last Monday in March at such place and time as the Selectmen may determine. Those elected at the Annual Town Election, with the exception of the Moderator, shall take office at the close of the Annual Town Meeting. The Moderator shall take office on the day after election, or as soon thereafter qualified for a term of three years.

[ATM 4/6/2010](#)

SECTION 2. The Annual Business Meeting shall begin on the first Monday in May at such place as the Selectmen shall determine. The Selectmen, after a Public Hearing, may delay the start of the Annual Town Meeting for up to 7 days provided that they act no later than the last day in February preceding. All sessions of the meeting shall begin at 7:30 P.M. and, unless otherwise voted by two-thirds of those present and voting, shall be adjourned to 7:30 P.M. of the next Monday, Tuesday, or Wednesday, whichever comes first (legal holidays excluded), upon completion of the article under discussion at 10:30 P.M.; except that any such meeting shall be adjourned before that time if a quorum shall be declared to have been lost, or at 8:30 P.M. if a quorum has not been assembled by then.

[ATM 5/4/2016, ATM 5/7/2018](#)

SECTION 3. A Town Meeting shall be held during the months of September, October or November at such date, time and place as the Selectmen shall determine, unless the following applies. By the end of July, the Board of Selectmen shall discuss in public session, hold a public hearing and vote to determine whether a fall Town Meeting should occur. The public hearing shall be posted in accordance with the Open Meeting Law. The Board of Selectmen shall also solicit input from the Town via email or mail for a period of one week before the public hearing.

[ATM 5/4/2016](#)

SECTION 4. The Selectmen shall cause a Warrant Report to be printed and distributed to the citizens of the Town at least seven days prior to commencement of the Annual Town Meeting and fourteen days prior to commencement of a Special Town Meeting. The Warrant Report will contain a copy of the articles as set forth in the official warrant, a summary of the intent and scope of each article prepared by the submitter, the report and recommendations of the Finance Committee, reports by other Town officials, boards or committees having an interest in a specific article, and supporting data such as maps and charts. The individual or group submitting information shall meet requirements for timing, format and brevity established by the Selectmen.

[ATM 5/4/2016](#)

SECTION 5. Notice of every Town Meeting shall be given by posting a printed attested copy of the warrant therefor at the Town Hall at least seven days before the Annual Town Meeting and at least fourteen days before any Special Town Meeting.

ARTICLE II



SUDBURY SELECT BOARD
Tuesday, December 7, 2021

MISCELLANEOUS (UNTIMED)
8: Discuss potential ATM SB articles

REQUESTOR SECTION

Date of request:

Requestor: Chair Roberts

Formal Title: Discuss potential 2022 Annual Town Meeting Select Board articles. (~20 min.)

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

Approximate agenda time requested: 20 minutes

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Henry L Hayes	Pending
Jonathan Silverstein	Pending
Jennifer Roberts	Pending
Select Board	Pending

12/07/2021 6:30 PM



SUDBURY SELECT BOARD
Tuesday, December 7, 2021

MISCELLANEOUS (UNTIMED)

9: 2022 Annual Town Meeting logistics and potential costs

REQUESTOR SECTION

Date of request:

Requestor: Town Manager Hayes

Formal Title: Discuss 2022 Annual Town Meeting logistics and potential costs. (~15 min.)

Recommendations/Suggested Motion/Vote: Discuss 2022 Annual Town Meeting logistics and potential costs. (~15 min.)

Background Information:

Financial impact expected:

Approximate agenda time requested: 15 minutes

Representative(s) expected to attend meeting:

Review:

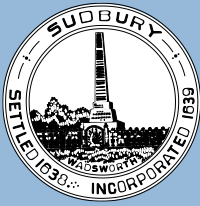
Patty Golden	Pending
Henry L Hayes	Pending
Jonathan Silverstein	Pending
Jennifer Roberts	Pending
Select Board	Pending

12/07/2021 6:30 PM

Comparison of Town Meeting Expenses

Account Name	ATM Exp FY19 May 2019	ATM Exp FY20 Sep 2020	ATM Exp FY21 May 2021
Town Meeting/Elections	13,802.63	10,881.38	12,871.97
CARES ACT FUND		30,518.74	19,415.00
Total:	13,802.63	41,400.12	32,286.97

Attachment 9.a: ATM Exp FY19-FY21 (4951 : 2022 Annual Town Meeting logistics and potential costs)



SUDBURY SELECT BOARD
Tuesday, December 7, 2021

MISCELLANEOUS (UNTIMED)

10: ARPA funds discussion

REQUESTOR SECTION

Date of request:

Requestor: Chair Roberts

Formal Title: American Rescue Plan Act (ARPA) funds discussion: Possible dedicated consultant/staff member; process recap and discussion on allocation tracking. (~20 min.)

Recommendations/Suggested Motion/Vote: American Rescue Plan Act (ARPA) funds discussion: Possible dedicated consultant/staff member; process recap and discussion on allocation tracking. (~20 min.)

Background Information:

Financial impact expected:

Approximate agenda time requested: 20 minutes

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Henry L Hayes	Pending
Jonathan Silverstein	Pending
Jennifer Roberts	Pending
Select Board	Pending

12/07/2021 6:30 PM

Sudbury American Rescue Plan Act (ARPA) Project Decision Process moving forward as of 11/30/21 (Recap from Select Board meeting)

- All final ARPA project submission requests by 12/31.
- Town staff "cleans up" project list. This work can start now and after final submissions.
 - ✓ No deletions
 - ✓ Bucket into categories.
 - ✓ Show tally of requests where there are multiple for same concept.
 - ✓ To extent possible, make sure it is clear what projects are, descriptions, and dollar amounts (if included).
- 12/21: Select Board discussion with SPS on SPS requests.
- Cleaned-up list brought to Select Board to do high-level yes/no votes: Majority yes items advance on. Majority no items removed.
- Town staff reviews majority yes list and assesses for eligibility based on eligibility standards.
- Presumed eligible list brought to Select Board for further deliberation, clarification on outstanding questions, possible live discussions.
- Final Select Board decisions in consultation with Town Staff.

Parallel to process will be discussion about possible consultant/staff member to support process. Discussion to be held at Select Board meeting on 12/7.



Henry L. Hayes, Jr.
Town Manager

TOWN OF SUDBURY
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December 5, 2021

Honorable Select Board:

I have been in contact with other communities regarding ARPA, to discover and share approaches to executing the processes. Some municipalities are utilizing a non-staff member to assist. Some have added funds to an existing staff member to dedicate specific time and energy to this process.

Metropolitan Area Planning Council (MAPC) actually has been helping some communities identify a partner to help account for, report on and comply with ARPA funding rules. I discovered that MAPC is executing a contract with the audit firm Powers and Sullivan to do this work. They have a lot of experience already on working with cities and towns on ARPA accounting. Thru a procurement MAPC conducted, they have received a flat hourly rate from Powers and Sullivan for MAPC cities and towns.

I am requesting the support of the Select Board to not only discover more about this, but to enter an agreement that closely resembles and aligns with MAPC's process that is already established, if the opportunity exists, and if we cannot join with them, seek a similar agreement elsewhere. I intend to get more information, and request your full support on this approach. If desired, an invitation can be offered to Mark Fine to explain this from his perspective.

Having an agreement for administrative support for the ARPA processes can be paid out of ARPA funds and would greatly benefit the Town, Select Board and our professional staff. Thank you for your consideration and support on this matter.

Sincerely,

//eSigned/HLHJr/5 Dec 2021//
Henry L. Hayes, Jr.
Town Manager

Attachment 10.b: Request - ARPA Administrator - 12-05-21 (4949 : ARPA funds discussion)



SUDBURY SELECT BOARD
Tuesday, December 7, 2021

MISCELLANEOUS (UNTIMED)

11: Minutes review

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Review open session minutes of 11/3/21 and possibly vote to approve minutes.

Recommendations/Suggested Motion/Vote: Review open session minutes of 11/3/21, and possibly vote to approve minutes.

Background Information:
attached draft

Financial impact expected:

Approximate agenda time requested: 30 minutes

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Henry L Hayes	Pending
Jonathan Silverstein	Pending
Jennifer Roberts	Pending
Select Board	Pending

12/07/2021 6:30 PM

SUDBURY SELECT BOARD

TUESDAY, NOVEMBER 3, 2021

(Meeting can be viewed at www.sudburytv.org)

Present: Chair Jennifer Roberts, Vice-Chair Charles Russo, Select Board Member Daniel Carty, Select Board Member William Schineller, Select Board Member Janie Dretler, Town Manager Henry L. Hayes, Jr.

The statutory requirements as to notice having been complied with, the meeting was convened at 7:04 p.m., via Zoom telecommunication mode.

Chair Roberts announced the recording of the meeting and other procedural aspects included in the meeting.

Call to Order/Roll Call

Select Board Roll Call: Dretler-present, Russo-present, Carty-aye, Schineller-aye, Roberts-aye

Opening remarks by Chair:

- Community Preservation Committee met for the first time this season
- Financial Policies Subcommittee (she and Board Member Schineller) met with Jean Nam – incorporating feedback, and will include feedback from other departments, as well
- Resident email about vocational education for their child, Board discussion to continue
- Spoke with Senator Markey’s assistant today regarding the two letters submitted by the Board regarding sustainability structures; as well as and letter to Gov. Baker and CEO Nolan regarding the Eversource project

Reports from Town Manager:

- Town Manager Office Hours on Saturday, November 13, 2021, 11:00 a.m.
- Thanked Recreation staff for pumpkin walk-through - with good participation
- Real Estate and Personal property taxes due November 1, 2021
- Sudbury Municipal Minute – Commission on Disability
- “Creating a Welcoming Community for People with Brain-Based Conditions” virtual presentation by Valerie Fletcher of the Institute for Human Centered Design – November 10, 2021, 7:00 p.m.
- COA hosting Veteran’s Day Breakfast November 10, 2021 at the Senior Center

Board Member Carty:

- SPS meeting covered anticipated projects – totaling approximately \$1,000,000
- Superintendent Crozier met with Town Manager Hayes regarding ARPA funds
- Vocational Education topic to be considered as a Select Board goal
- Sudbury might be adding another Congressional District
- Veteran’s Day Event in Sudbury on November 11, 2021

Board Member Dretler:

- ARPA web page

- Attended PBC meeting, Fire Station project was discussed – looking forward to an update
- Park & Recreation Commission discussed ARPA funding at recent meeting
- Attended SPS Committee meeting, vaccine options for students discussed
- SHC completed the Historic Resources Survey

Board Member Schineller:

- Financial Polices draft integrating comments from FinCom and CIAC
- HOPEsudbury Day – November 6, 2021 marks the 20th anniversary; annual telethon will continue this weekend
- Town website includes Eversource Project/CSX letters written by the Select Board
- Eversource requested start of soil testing in corridor and road crossings

Vice-Chair Russo:

- Eversource soil testing will start in the next few weeks

Citizen comments on items not on agenda

None

Discussion and vote whether to enter an Intermunicipal Agreement (IMA) between the Towns of Sudbury, Wayland, Lincoln, Bedford, Concord, Carlisle, and Weston in accordance with the Public Health Excellence for Shared Services grant by the Commonwealth of Massachusetts, awarded to Sudbury, to create a cross-jurisdictional public health services sharing program by hiring regional public health nurses, an inspector, and public relations professionals to address critical public health needs

Present: Bill Murphy, Health Director

Chair Roberts provided background regarding the IMA Program regional health services program with Wayland, Lincoln, Bedford, Concord, Carlisle and Weston. Mr. Murphy stated five towns have already voted to join the cross-jurisdictional public health services sharing program, with Concord and Sudbury being the last towns to join the program to sign.

Mr. Murphy explained many health services were lacking due to COVID, and this regional program will assist in that area. He noted that all grant funding going forward would be covered by IMA Program grants.

Vice-Chair Russo commented that as a lead town, Sudbury would qualify for proportionate health services. Mr. Murphy confirmed because Sudbury is a larger municipality within the IMA because it will likely get more hours of service.

Select Board Member Schineller inquired about additional regional agreements regarding housing and transportation intermunicipal agreements. Mr. Murphy responded additional towns would likely not be added to the group, indicating that seven municipalities were being considered for this year.

Board Member Carty stated regionalization is a benefit, and the State will monitor the health services aspect as well as the housing topic.

Board Member Carty asked who would represent each municipality included in the IMA. Mr. Murphy replied the representatives would be the prospective Directors of the seven Health Departments.

Chair Roberts inquired about the logistics of the plan. Mr. Murphy maintained that such details were being worked on, and he would keep the Board apprised of such progress.

Resident Pat Brown, 24 Whispering Pine Road, inquired about ongoing employee benefits, such as OPEB and pensions, in consideration of the regional plan. Mr. Murphy suggested Ms. Brown get that information from the Town of Sudbury Human Resources Department.

Chair Roberts moved in the words of the motion. Board Member Carty moved in the words of the Chair. Board Member Dretler seconded the motion.

It was on motion 5-0; Schineller-aye, Russo-aye, Dretler-aye, Carty-aye, Roberts-aye

VOTED: To enter an Intermunicipal Agreement (IMA) between the Towns of Sudbury, Wayland, Lincoln, Bedford, Concord, Carlisle, and Weston in accordance with the Public Health Excellence for Shared Services grant by the Commonwealth of Massachusetts, awarded to Sudbury, to create a cross-jurisdictional public health services sharing program by hiring regional public health nurses, an inspector, and public relations professionals to address critical public health needs.

Interview and vote to appoint Mark Sevier, 14 Arborwood Road, to the Permanent Building Committee for a term expiring 5/31/23

Present: Mark Sevier, 14 Arborwood Road

Chair Roberts confirmed Mr., Sevier has been active in Town Boards/Committees, and was one of the original members of the Energy and Sustainability Committee when it was formed in 2008. She added that Mr. Sevier has been involved in various aspects regarding Town-owned buildings, as well as membership on the Conservation Commission.

Vice-Chair Russo stated that Mr. Sevier has been a valuable addition to the Conservation Commission.

Chair Roberts moved in the words of the motion. Vice-Chair Russo moved in the words of the Chair. Board Member Dretler seconded the motion.

It was on motion 5-0; Carty-aye, Dretler-aye, Schineller-aye, Russo-aye, Roberts-aye

VOTED: To appoint Mark Sevier, 14 Arborwood Road, to the Permanent Building Committee for a term expiring 5/31/23.

Discussion on Sewataro Property resident survey. Subcommittee members Russo and Schineller to present

Chair Roberts mentioned the importance of including Town residents in determining next steps for the Sewataro property. She commented at some point a survey might be considered.

Vice-Chair Russo stated he appreciated the Flash Vote presentation by Mr. Lyons last night.

Board Member Schineller indicated that related information-gathering should not be a prerequisite for renewing the five-year renewal term for Camp Sewataro, He referenced the suggested Sewataro plan as submitted which

outlines camp scholarships, proposed time opening schedule for residents, and public swimming schedule to begin next summer.

Board Member Carty noted that long-term goals for the site present a different consideration.

Chair Roberts recommended the Board consider what might be best for the Town going forward, including the renewal of contract aspect.

Board Member Schineller motioned that the renewal process be reviewed by the Select Board, and be voted on at the next Select Board meeting. Board Member Carty seconded the motion.

It was on motion 2-3-0; Schineller-aye; Russo-no, Carty-aye, Dretler-no, Roberts-no

VOTED: The motion that the renewal process be reviewed by the Select Board, and be voted on at the next Select Board meeting. The motion failed.

Board Member Dretler opined about the Town receiving PPP funds.

Town Manager Hayes stressed the related importance of the annual budget season from November through January.

Chair Roberts suggested Select Board Members submit related questions/comments to Town Manager Hayes, and the Sewataro Subcommittee Members Russo and Schineller can create a document which reflects the property chronology over the last two years. Vice-Chair Russo and Board Member Schineller agreed to draft such document to be reviewed by the Select Board at the November 16th meeting.

Resident Len Simon, 40 Meadowbrook Circle, stated that the residents should be able to review the Sewataro financials, and stressed that now was the time to analyze the long-term use of Sewataro. He asserted a consultant should be hired to help assess the situation.

Resident Pat Brown, 24 Whispering Pine Road, addressed items listed on the meeting agenda, recommending the Board adhere to what items are on tonight's agenda.

Resident and COA Member Robert May, 98 Maynard Farm Road, asked the Board to review all necessary information; and hoped that there is additional discussion in the next six to eight months.

Mr. Brody confirmed he was working on increased public access to Sewataro for the upcoming summer season, and provided various options. In terms of the financials, he stressed the influence COVID had over the past couple of years; though the past year was better, and the PPP loan helped. He confirmed that he would work on adjustments to the program if needed.

Resident and COA Member Jeff Levine, 42 Chanticleer Road, stated the Camp Sewataro was not appropriately addressed and recommended that the Town hire a consultant.

Resident and COD Member Kay Bell thanked the Board for their handling of the situation.

Resident and CPC Member Kristen Roopenian, 45 Harness Lane, stated she appreciated the Board's attention to detail regarding the matter.

Discussion on Sewataro Use Policy Document and discussion on other Sewataro goals

Mr. Brody and Kristen Drummey presented the “Sewataro Summer of 2022 – Resident Access Enhancement Alternatives” document which included the following topics:

- Resident Swimming
- Phase One ADA Compliance Upgrades
- Summer 2022 swimming schedule
- Swimming & Staffing Logistics
- Accessibility Upgrades – additional accessible parking areas and pathways
- Expenses – Pond Swimming and Pool Swimming

Mr. Brody addressed October 2020–September 2021 Sewataro Financials, including direct payments, Town use expenditures, and upkeep costs.

Chair Roberts thanked Ms. Drummey and Mr. Brody for submission and presentation of Sewataro reports as requested by Board Member Schineller.

Chair Roberts suggested that Town Manager Hayes review Board Member questions/comments, and submit the inquires to the Camp Sewataro team for discussion at the Select Board meeting on November 16, 2021.

Vice-Chair Russo confirmed that recommendation was received from Town Counsel regarding implementation of a fee schedule at Sewataro.

Board Member Dretler questioned if the Town should charge resident fees, or if Camp Sewataro should implement such fees. Chair Roberts commented the Camp operator would collect the fees, and apply such fees to the revenue share plan. Mr. Brody acknowledged any user fees suggested by the Town should go entirely to the Town.

Board Member Dretler motioned to create a fee schedule for the Sewataro property. Board Member Schineller seconded the motion.

It was on motion 5-0; Dretler-aye, Schineller-aye, Russo-aye, Carty-aye, Roberts-aye

VOTED: To create a fee schedule for the Sewataro property

Board Member Carty indicated he was in favor of the user fee concept, but was not in favor of establishing that schedule.

Chair Roberts asked about added detail regarding such fees. Board Members reviewed the “Town of Sudbury Sewataro Use Policy,” and discussed appropriate language edits.

Board Member Schineller offered to present Board questions and fee consideration to Town Counsel with Town Manager Hayes.

Mr. Simon addressed the Camp Sewataro schedule as presented by Ms. Drummey, with recommendation that resident (including disabled resident) options be considered simultaneously. He stressed that additional swimming time should be allotted to the residents. Mr. Simon maintained that the Sewataro financial piece was very confusing/exaggerated and should be amended.

Mr. Brody indicated he disagreed with statements made by Mr. Simon. He emphasized that he was committed to public swimming times as well as to handicapped accessibility.

Discussion and possible vote regarding Town Manager outside activities (book agreement and other outside engagements) in accordance with Town Manager Contract

Town Manager Hayes confirmed he had an opportunity to sign with a book publisher. He confirmed he would not be an employee of the publisher.

Vice-Chair Russo thanked Town Manager Hayes for bringing this activity before the Board, and stated he had no concerns about it.

Board Member Carty commented a leader of the community should be able to write a book.

Board Member Dretler requested assurance that any activities associated with the publication would be outside of Town business working hours. Town Manager Hayes confirmed any such activity would take place outside of Town Manager hours.

Board Member Dretler asked if any additional engagements would take place. Town Manager Hayes detailed he would be involved with a Veterans Day presentation, Air Force events, podcasts, sermons at churches, and that no mentioned activities involved his employment with mentioned organizations.

Board Member Schineller appreciated transparency efforts exemplified by Town Manager Hayes noting that this aspect could have been handled via email and not be included necessarily as an agenda item.

Chair Roberts recommended going forward Town Manager Hayes might consider informing the Board via email.

Discussion on future plans for Broadacres building structures

Vice-Chair Russo recused himself from the discussion.

Town Manager Hayes provided an update, noting that the structures are being increasingly dilapidated.

Board Member Carty asked when the demolition process for such structures would begin. Town Manager Hayes responded the clock starts when the request for action goes before the Sudbury Historical Commission.

Board Member Dretler inquired about specifics associated with the mentioned timeline. Town Manager Hayes confirmed hazards were not imminent at this time, and he would continue to actively research that associated timeline.

Board members agreed with commencing with the demolition process.

Vice-Chair Russo rejoined the Board meeting.

Recess

Chair Roberts moved to recess and resume the Board meeting at 10:10 p.m. Board Member Schineller moved in the words of the Chair. Board Member Dretler seconded the motion.

It was on motion 5-0; Dretler-aye, Schineller-aye, Carty-aye, Russo-aye, Roberts-aye

VOTED: To recess and resume the Board meeting at 10:10 p.m.

Discussion on Remote Participation Policy. Subcommittee members Roberts and Schineller to present

Chair Roberts confirmed the policy subcommittee members, she and Board Member Schineller, drafted edits to the “Policy on Remote Participation” in consideration of some outdated language. She affirmed COVID-related language was included in the draft.

Board Members included additional edits.

Vote whether to support signing MAPC/MAGIC letter to State requesting that State cover COVID-related expenses

Board Member Dretler presented the finalized MAPC/MAGIC letter, highlighting changes made by MAPC after receiving comments.

Chair Roberts moved in the words of the motion. Board Member Dretler moved in the words of the Chair. Vice-Chair Russo seconded the motion.

It was on motion 4-2-0; Carty-no, Schineller-no, Russo-aye, Dretler-aye, Roberts-aye

VOTED: To support signing MAPC/MAGIC letter to State requesting that State cover COVID-related expenses, as edited by MAPC. The motion passed.

Review and possible vote to support signature of Arlington Town Manager letter on Energy Stretch Codes

Chair Roberts inquired about other entities/towns signed the letter. Town Manager Hayes responded several local communities have endorsed the letter.

Board Member Dretler asked if Town Manager Hayes wanted to sign the letter. Town Manager Hayes responded Board Members could sign the letter, and he did agree with the principle.

Chair Roberts indicated that she generally supported the letter, especially in consideration of sustainability, but did not want to obligate the Town.

Board Member Carty commented he viewed the letter as a policy, but not necessarily an action plan; and would not sign the letter for that reason.

Vice-Chair Russo expressed his support regarding the concept, but was somewhat unclear on the process.

Chair Roberts suggested presenting the letter to the Energy and Sustainability Committee to get their input. Board Member Schineller suggested also presenting the letter to the Planning Department to get their prospective.

Board Members agreed with receiving input from the Planning Board and the Energy and Sustainability Committee before endorsing the letter.

Debrief on 2021 Town Forum and discussion on future forum

Select Board Members discussed the recently held Master Plan Town Forum, agreeing it went well. Members agreed that increased advertising as well as social media involvement might help with public participation at the next Town Forum.

Chair Roberts stated that the Forum was informative and resulted in added resident participation for advancing the Master Plan action phase.

Review the Select Board's Fall 2021 Newsletter articles and approve for distribution

Chair Roberts moved in the words of the motion. Board Member Dretler moved in the words of the Chair. Board Member Schineller seconded the motion.

It was on motion 5-0; Carty-aye, Russo-aye, Schineller-aye, Dretler-aye, Roberts-aye

VOTED: To approve the Select Board's Fall 2021 Newsletter articles and approve for distribution

Review open session minutes of 9/14/21, 9/28/21 and possibly vote to approve minutes

9/14/21 Minutes

Chair Roberts moved in the words of the motion. Board Member Dretler moved in the words of the Chair. Board Member Carty seconded the motion.

It was on motion 5-0; Carty-aye, Schineller-aye, Russo-aye, Dretler-aye, Roberts-aye

VOTED: To approve the 9/14/21 minutes, as edited

9/28/21 Minutes

Chair Roberts moved in the words of the motion. Board Member Carty moved in the words of the Chair. Board Member Schineller seconded the motion.

It was on motion 5-0; Dretler-aye, Schineller-aye, Russo-aye, Carty-aye, Roberts-aye

VOTED: To approve the 9/28/21 minutes, as edited

Citizen's Comments (cont.)

No citizen comments

Upcoming Agenda Items

11/16/21 Meeting Items:

- Sewataro access options and financials with questions submitted to Town Manager
- ARPA
- 2022 Office Hours

Future:

- DEI Update
- Executive Session minutes for Chief Nix review for public safety
- Vocational Education
- Sewataro revenue to be applied to Sewataro Bond
- Unspent funds from previous Town Meeting Articles/reversion of funds
- BFRT Special Town Meeting

- KPI
- Town Hall

Consent Calendar

Vote to authorize the chair to execute a letter requesting data from the Group Insurance Commission (GIC) to use in processing employees' W-2 forms, as requested by Christine Nihan, Town Accountant

Chair Roberts moved in the words of the motion. Board Member Dretler moved in the words of the Chair. Vice-Chair Russo seconded the motion.

It was on motion 5-0; Schineller-aye, Dretler-aye, Russo-aye, Carty-aye, Roberts-aye

VOTED: To authorize the chair to execute a letter requesting data from the Group Insurance Commission (GIC) to use in processing employees' W-2 forms, as requested by Christine Nihan, Town Accountant

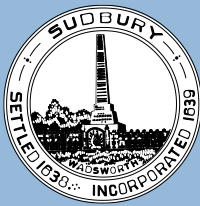
Adjourn

Chair Roberts moved in the words of the motion. Board Member Dretler moved in the words of the Chair. Vice-Chair Russo seconded the motion.

It was on motion 5-0; Dretler-aye, Russo-aye, Carty-aye, Schineller-aye, Roberts-aye

VOTED: To adjourn the Select Board meeting

There being no further business, the meeting adjourned at 11:30 p.m.



SUDBURY SELECT BOARD
Tuesday, December 7, 2021

MISCELLANEOUS (UNTIMED)

12: Citizen's Comments (cont)

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Citizen's Comments (cont)

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Henry L Hayes	Pending
Jonathan Silverstein	Pending
Jennifer Roberts	Pending
Select Board	Pending

12/07/2021 6:30 PM



SUDBURY SELECT BOARD
Tuesday, December 7, 2021

MISCELLANEOUS (UNTIMED)

13: Upcoming Agenda Items

REQUESTOR SECTION

Date of request:

Requested by: Patty Golden

Formal Title: Upcoming Agenda Items

Recommendations/Suggested Motion/Vote:

Background Information:

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

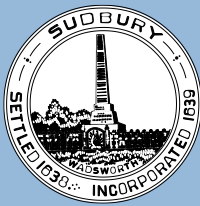
Review:

Patty Golden	Pending
Henry L Hayes	Pending
Jonathan Silverstein	Pending
Jennifer Roberts	Pending
Select Board	Pending

12/07/2021 6:30 PM

POTENTIAL UPCOMING AGENDA ITEMS/MEETINGS

MEETING	DESCRIPTION
December 21	Annual License renewals
	Senator Eldridge letter
	Renew Opt Out Incentive Program
January 4, 2022	DEI update
January 18	Annual update with legislators (Sen. Eldridge, Sen. Barrett, Rep. Gentile)
Mon, January 31	2022 Annual Town Meeting Warrant closes at 12:00 Noon
Date to be Determined	By-law items to examine - Special Events & Demonstration Permits; Common Victualler License Holders (Related to Farm Act exemptions, citizen request); Nuisance / Blight Bylaw; Removal Authority of members from appointments
	Citizen Leadership Forum
	Fairbank Community Center update (ongoing)
	FinCom joint meeting re: Financial policy review
	Health/COVID-19 update (as of 3/18/20)
	Housing Choice discussion
	Invite Commission on Disability Chair to discuss Minuteman High School
	Local receipts – fee schedule review (Vice-chair Russo)
	Quarterly update from Diversity, Equity and Inclusion Commission (DEI) (November, February, May, August)
	Quarterly update on Key Performance Indicators (KPIs) projects to track (August, November, February, May)
	Quarterly review of approved Executive Session Minutes for possible release (February, May, August and November). Consider separate meeting solely for this purpose.
	Quarterly update on Bruce Freeman Rail Trail (BFRT) (March, June, September, December)
	Quarterly update on CSX (January, April, July, October)
	Route 20 empty corner lot – former gas station
	Sewataro Financial Statement review
	Sewataro Future planning - \$ for negotiations, insurance, contract
	Sidewalks discussion
	Town Manager Goals and Evaluation process
	Town meeting recap – year in review
	Town-wide traffic assessment and improve traffic flow
	Update from SB Policy Subcommittee
	Update on crosswalks (Chief Nix/Dan Nason)
	Update on traffic policy (Chief Nix)
	Work Session with Town Counsel: Select Board/Town Manager Code of Conduct and other procedural training
Standing Items for All Meetings	Select Board requests for future agenda items at end of meeting
	Citizens Comments, continued (if necessary)



SUDBURY SELECT BOARD
Tuesday, December 7, 2021

CONSENT CALENDAR ITEM
14: COD appointment of Karyn Jones

REQUESTOR SECTION

Date of request:

Requestor: Town Manager Hayes

Formal Title: Vote to approve the Town Manager appointment of Karyn Jones, 27 Pendleton Road, to the Commission on Disability (COD) for a term expiring 5/31/23.

Recommendations/Suggested Motion/Vote: Vote to approve the Town Manager appointment of Karyn Jones, 27 Pendleton Road, to the Commission on Disability (COD) for a term expiring 5/31/23.

Background Information:
attached application and letter of recommendation from COD.

Financial impact expected:

Approximate agenda time requested:

Representative(s) expected to attend meeting:

Review:

Patty Golden	Pending
Henry L Hayes	Pending
Jonathan Silverstein	Pending
Jennifer Roberts	Pending
Select Board	Pending

12/07/2021 6:30 PM



Sudbury Commission on Disability

disability@sudbury.ma.us

(978) 639 – 3265

<https://sudbury.ma.us/disability/>

November 17, 2021
 Select Board Town of Sudbury
 278 Old Sudbury Road
 Sudbury, MA 01776

Dear Town Manager Hayes,

As Chair of the Sudbury Commission on Disability I am writing to express the Commission's unanimous and strong support of the application for membership by Karyn Jones. Pat Guthy, former COD Chair, spoke with Ms. Jones twice and at length, and on November 4 reported to the full Commission on the areas of experience and skill Ms. Jones has to offer the Commission and, thereby, the Town of Sudbury. We are enthusiastic about Ms. Jones' candidacy and anticipated membership on the Commission.

After her education at the University of Chicago Ms. Jones worked in marketing and quantitative analysis at Allston Trading. Later she went on to work at the May Institute for seven years.

The May Institute is a nationwide non-profit organization headquartered in MA which provides educational, rehabilitative, and behavioral healthcare services to children and adults with autism spectrum disorder and other developmental disabilities, brain injury and neurobehavioral disorders, and other special needs. Ms. Jones first worked as a market and research analyst, later becoming their Director of Philanthropy. She had direct connection with families who have a member who experienced brain injury or who was on the autism spectrum. Ms. Jones researched grant opportunities, wrote successful grant applications, increased fundraising, and developed a donor relation program to provide those served by the May Institute with greater opportunities to train staff, teachers, and families.

Recently Ms. Jones has been engaged with Parks and Recreation and Representative Carmine Gentile seeking to direct state funding toward accessible recreation projects.

Ms. Jones' family includes an individual with a disability. In her application she insightfully observed that having a family member with needs opens one's eyes to the many physical barriers not noticed by those without those needs. She also encounters programmatic obstacles that have an impact on her loved one living with an invisible disability. Ms. Jones expresses her hope and desire to work on removing some of those barriers so people with disabilities, visible or invisible disabilities, can participate fully in town activities and feel included.

We believe that Ms. Jones possesses a strong set of skills and positive motivation that will be valuable resources to the Commission and we fully support your request that the Select Board approve your appointment of Ms. Jones' to the Commission on Disability.

Sincerely,
 Kay Bell, Chair, on behalf of the Sudbury Commission on Disability

Assess * Educate * Assist
 making an inclusive community

**TOWN OF SUDBURY
APPLICATION FOR APPOINTMENT**

SELECT BOARD
278 OLD SUDBURY ROAD
SUDBURY, MA 01776

FAX: (978) 443-0756
E-MAIL: selectboard@sudbury.ma.us

Board or Committee Name: Commission on Disability

Name: Karyn Jones

Address: 27 Pendelton Road

Email Address: [REDACTED]

Home phone: _____

Work or Cell phone: [REDACTED]

Years lived in Sudbury: 1 year

Brief resume of background and pertinent experience:

I worked as a market and research analyst at the May Institute and later changed tracks in being promoted to Director of Philanthropy at the May Institute. Through that work I had the opportunity to speak to families and write their stories of what it is like to have a family member with a brain injury or on the spectrum. I also wrote grants to provide more opportunities t those May Intitute served as well as trainings for staff, teachers, and families. I worked at the May Institute for almost 7 years, leaving to stay home and take care of my then two children. I also worked in marketing and as a quantitative anlzyst for Allston Trading, a black box trading firm located in Chicago.

Municipal experience (if applicable):

None.

Educational background:

University of Chicago

Reason for your interest in serving:

When you have family members with needs, you begin to realize how much is not accessible. By accessible, I mean both physical accessibe as well as structural barriers in programming that doesn't make an activity inclusive to someone with an invisiable disability. I hope to work to remove some of these barriers so people with disabilities can participate in more activities in town and feel included.

Times when you would be available (days, evenings, weekends):

MTWF: 8-10:15am, 7pm-10pm

SSu: Flexible

Do you or any member of your family have any business dealings with the Town? If yes, please explain:
No.

KJ (Initial here that you have read, understand and agree to the following statement)

I agree that if appointed, I will work toward furtherance of the committee's mission statement; and further, I agree that I will conduct my committee activities in a manner which is compliant with all relevant State and Local laws and regulations, including but not limited to the Open Meeting Law, Public Records Law, Conflict of Interest Law, Email Policy and the Code of Conduct for Town Committees.

I hereby submit my application for consideration for appointment to the Board or Committee listed above.

Signature Karyn Jones

Date 9/25/2021

Attachment 14.b: Karyn Jones appl COD (4947 : COD appointment of Karyn Jones)