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Fairhaven Board of Selectmen

Meeting Minutes

April 13, 2020

2020 APR 30 A 10:54

FAIRHAVEN,
MASS.

Present: Chairman Charles Murphy, Town Administrator, Mark Rees, Public Works Superintendent Vinnie Furtado and Cable Access Director Derek Frates

Present via Zoom: Vice- Chairman Robert Espindola, Clerk Daniel Freitas, Finance Director Wendy Graves, Fire Chief Tim Francis, Deputy Fire Chief Todd Correia, Police Chief Michael Myers, Health Agent Mary Kellogg, Council on Aging Director Anne Silvia, Human Resources Director Anne O'Brien, Attorney Greg Carey, Nicholas Galletout, Auditor Zack Fentross, Administrative Assistant Vicki Oliveira, and Cable Access Production Coordinator Erick Sa.

The meeting was videotaped on Cable Access and Zoom meeting application.

Chairman Murphy opened the meeting at 4:37 pm and read the following statement:

"This Open Meeting of the Fairhaven Board of Selectmen is being conducted remotely consistent with Governor Baker's Executive Order of March 12, 2020, due to the current State of Emergency in the Commonwealth due to the outbreak of the "COVID-19 Virus."

In order to mitigate the transmission of the COVID-19 Virus, we have been advised and directed by the Commonwealth to suspend public gatherings, and as such, the Governor's Order suspends the requirement of the Open Meeting Law to have all meetings in a publicly accessible physical location. Further, all members of public bodies are allowed and encouraged to participate remotely.

The Order, which you can find posted with agenda materials for this meeting allows public bodies to meet entirely remotely so long as reasonable public access is afforded so that the public can follow along with the deliberations of the meeting.

Ensuring public access does not ensure public participation unless such participation is required by law. This meeting will allow public comment related to the posted agenda items only. For this meeting, Fairhaven Board of Selectmen is convening by telephone conference/video conference via Zoom App as posted on the Town's Website identifying how the public may join."

Roll Call was taken for all participants

MINUTES

Mr. Espindola made a motion to approve the minutes of March 9, 2020, Open Session. Mr. Freitas seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the minutes of March 9, 2020, Executive Session. Mr. Freitas seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the minutes of March 13, 2020, Open Session. Mr. Freitas seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the minutes of March 16, 2020, Open Session. Mr. Freitas seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the minutes of March 23, 2020, Open Session. Mr. Freitas seconded. Vote was unanimous. (3-0)

TOWN ADMINISTRATORS REPORT

This will be combined with agenda item: COVID 19 Response update

COMMMITTEE LIASON REPORTS

Mr. Espindola said he will participate in a video conference call on Thursday for the Good Energy Aggregation and the Broadband Study Committee is continuing their task with the help of the Town Assessors.

BLESSING OF THE BIKES

Chairman Murphy said he sits on the Saint Joseph's School Board but he receives no financial contributions.

Mr. Espindola made a motion to approve the 22nd Annual Blessing of the Bikes for Sunday, May 17, 2020. Mr. Freitas seconded. Vote was unanimous. (3-0)

Roll Call Vote: Mr. Murphy in favor, Mr. Espindola in favor, Mr. Freitas in favor.

PAPA JOHN MEMORIAL BIKE RUN

Mr. Rees said he consulted with Police Chief Myers and there is no police detail required for this event.

Mr. Espindola made a motion to approve the Papa John Memorial Bike Run on Saturday, June 27, 2020 from 12:00 pm to 8:00 pm for a Special One Day/ All Alcohol Beverages License to be held at the Fort Phoenix Post 2892, V.F.W outdoors, with tent area. Mr. Freitas seconded. Vote was unanimous. (3-0)

Roll Call Vote: Mr. Murphy in favor, Mr. Espindola in favor, Mr. Freitas in favor.

CDBG- HEDGE STREET PHASE 2 CONSTRUCTION AWARD

Mr. Rees told the Board this award is to continue the Community Development Block Grant (CDBG) phase 2 from Hedge Street to Cherry Street. (Attachment A)

Mr. Espindola made a motion to award the FY19 CDBG contract for Hedge Street Phase 2 construction to Gravity Construction for the amount of \$452,750.26 and to authorize the Town Administrator to sign all contract related documents. Mr. Freitas seconded. Vote was unanimous. (3-0)

Roll Call Vote: Mr. Murphy in favor, Mr. Espindola in favor, Mr. Freitas in favor.

PILOT AGREEMENTS: 279 MILL ROAD AND 20 YANKEE LANE

Attorney Greg Carey spoke to the Board on behalf of the property owners and said the owners have been working with the utility company to get the final permits and would like to start construction on both properties by the summer. (Attachment B & C)

Mr. Espindola made a motion to approve the PILOT (payment in lieu of taxes) agreement for personal property for 279 Mill Road with payments due on July 1 and January 2 each year. Mr. Freitas seconded. Vote was unanimous. (3-0)

Roll Call Vote: Mr. Murphy in favor, Mr. Espindola in favor, Mr. Freitas in favor.

Mr. Espindola made a motion to approve the PILOT (payment in lieu of taxes) agreement for personal property for 20 Yankee Lane with payments due on July 1 and January 2 each year. Mr. Freitas seconded. Vote was unanimous. (3-0)

Roll Call Vote: Mr. Murphy in favor, Mr. Espindola in favor, Mr. Freitas in favor.

TAX PAYMENTS DUE DATES AND EXEMPTIONS

Mr. Rees explained that on April 3, 2020, Governor Charlie Baker enacted an Act to Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19. This allows the Town to extend property tax payments and abatements until June 1, 2020 and to waive interest and other penalties for late payments. By doing this it allows flexibility to our tax payer's during the COVID -19 crisis. (Attachment D)

Mr. Espindola made a motion to vote to extend the due dates of property tax bills under G.L. c.59, sec 57 and 57C from May 1, 2020 to no later than June 1, 2020. Mr. Freitas seconded Vote was unanimous. (3-0)

Roll Call Vote: Mr. Murphy in favor, Mr. Espindola in favor, Mr. Freitas in favor.

Mr. Espindola made a motion to vote to extend the due date under G.L. c.59, sec 59 for applications for exemptions from April 1, 2020 to no later than June 1, 2020. Mr. Freitas seconded Vote was unanimous. (3-0)

Roll Call Vote: Mr. Murphy in favor, Mr. Espindola in favor, Mr. Freitas in favor.

Mr. Espindola made a motion to vote to waive interest and other penalty for late payment of any excise, tax, betterment assessment or apportionment thereof, water rate or annual sewer use or other charge added to a tax for any payments with a due date on or after March 10, 2020 where payment is made after its respective due date but before June 30, 2020. Mr. Freitas seconded Vote was unanimous. (3-0)

Roll Call Vote: Mr. Murphy in favor, Mr. Espindola in favor, Mr. Freitas in favor.

Under G.L. c.59 sec 57, 57C and 59, there is an automatic extension of due dates for tax payments and applications for exemptions when a municipal office is closed for a weather-related or other public safety emergency until the next day that the municipal office is open. Section 10(b) of the Act clarifies that these automatic extension do not apply if municipal offices are closed as a result of the outbreak of the 2019 novel coronavirus or the declaration of a state of emergency issued by the governor on March 10, 2020 and that due dates shall only be extended by the exercise of the local options describe in Sections VII-A and B of Bul-2020-02. Mr. Freitas seconded Vote was unanimous. (3-0)

Roll Call Vote: Mr. Murphy in favor, Mr. Espindola in favor, Mr. Freitas in favor.

NAME CHANGE FOR DUSSAULT AUTO SALES

Mr. Rees said this is on hold until the proper paperwork is received by the Dussaults.

PEASE PARK BOAT RAMP REIMBURSEMENT

Mr. Rees updated the Board that this contract is part of a state program and will authorize reimbursement from the state for some repairs at the Pease Park boat ramp. (Attachment E)

Mr. Espindola made a motion to approve the contract with the Office of Fishing and Boating Access to allow for the reimbursement of \$1,720 for repairs to the Pease Park Public access facility. Mr. Freitas seconded. Vote was unanimous. (3-0)

Roll Call Vote: Mr. Murphy in favor, Mr. Espindola in favor, Mr. Freitas in favor.

MELANSON AND HEATH: FY19 FINANCIAL STATEMENT

Auditors Zack Fentross of Melanson and Heath explained to the Board that the Town's FY19 financial statement audit revealed that the Town received a "clean opinion", which is the best report a town can receive from the auditors. This report shows that the Town is in a good financial position. (Attachment F)

The Board thanked Finance Director Wendy Graves, Town Accountant Anne Carreiro and Town Administrator Mark Rees for their hard work in maintaining a good financial position.

COVID 19 RESPONSE UPDATE

Mr. Rees told the Board he asked the Frontline Departments to join the meeting to provide and update regarding the COVID 19 crisis. Mr. Rees extended a "thank you" to the Departments and the townspeople of Fairhaven for all doing their part in keeping Fairhaven safe.

Health Agent Mary Kellogg thanked the Police and Fire Departments for all their help during the crisis and adding that all departments have come together for this pandemic. She most recently received a shipment of supplies and has shared them with all the town departments. Ms. Kellogg said the worst part of this crisis is still yet to come. The National Guard will be in town to help administer tests at the nursing homes and as of this meeting there is currently 35 cases of Coronavirus in Fairhaven. She reminded everyone to maintain social distancing especially when out on the bike path.

Fire Chief Tim Francis told the board that he has one Fire Fighter who is in quarantine for 14 days and one who has just returned after a 14 day quarantine. The Fire Department has maintained a steady amount of supplies throughout this crisis. Chief Francis thanked the townspeople for their cooperation and all the other departments in town for their help.

Mr. Murphy congratulated new Fire Fighter Michael Farias on his recent graduation from the fire academy and graduating at the top of his class.

Selectman Espindola thanked all the Town's first responders. Selectman Freitas gave praise to the Fire Department as he recently had to use their services in an emergency situation.

Police Chief Michael Myers said his Department has made a few adjustments so that there are less staff together at the same time and they are wearing the proper protection and maintaining social distancing. The Bristol County Sherriff's department has been disinfecting the police cruisers weekly.

Council on Aging Director Anne Silvia thanked Joe and Nancy Tremblay for the donation of 100 Easter dinners from Mac's Soda bar. Ms. Silvia has also put care packages together for many of the seniors in need. The Council on aging vans are currently not in use but Ms. Silvia is making other arrangements for seniors to get rides.

Public works superintendent Vinnie Furtado said the DPW is remaining to the same business as usual with the exception of the amount of staff who are in the building at the same time.

Mr. Rees thanked the IT Department and Cable Access Director Derek Frates for all their hard work in keeping Fairhaven residents informed.

Resident Karen Vilandry, joined the meeting via telephone and feels tht the town should be maintaining more than the recommended 6 foot social distancing. She would also like to have the health agent announce the amount of deaths in Fairhaven from COVID19 because she feels it is the right of the public to know.

Ms. Kellogg explained that the Town Health Department follows all the guidelines set forth by the State of Massachusetts and the CDC (Center for Disease Control).

RAVE COMMUNICATION SYSTEMS

Deputy Fire Chief Todd Correia spoke to the Board about the new RAVE Alert Communication System the Fire Department has implemented. He explained they did a "soft" roll out of the system recently with favorable results. Deputy Chief Correia demonstrated how the system works and explained to the Board how residents can sign up for this new system. The Board thanked Deputy Chief Correia for his hard work on this new system.

SEAPORT ECONOMIC COUNCIL GRANT AWRD

Mr. Rees told the Board the Town has recently been awarded \$1,000,000 by the Seaport Economic Council for the Phase IV Union Wharf Construction project. Mr. Rees will draft a thank you letter on behalf of the Board to the Chairwoman of the Seaport Economic Council, Lieutenant Governor Karyn Polito.

SRPEDD COMMISION MEMBER APPOINTMENT

Mr. Freitas made a motion to re-appoint Selectman Espindola for another term as the Selectmen's representative on the SRPEDD commission. Mr. Murphy seconded. Vote was unanimous. (3-0)

Roll Call Vote: Mr. Murphy in favor, Mr. Espindola in favor, Mr. Freitas in favor.

Mr. Murphy thanked all those who have participated in the remote meeting.

Mr. Espindola and Mr. Freitas thanked Mr. Murphy on running a great virtual meeting.

EXECUTIVE SESSION CANCELED

Mr. Murphy announced that executive session has been canceled for tonight's meeting.

Mr. Espindola made a motion to adjourn at 6:36 pm. Mr. Murphy seconded. Vote was unanimous. (2-0)

Roll Call vote: Mr. Murphy in favor, Mr. Espindola in favor, Mr. Freitas in favor

Respectfully submitted,



Vicki L. Oliveira
(Approved 4/28/2020)

Attachments:

- A. CDBG- Hedge Street Phase 2 Construction Award and memo
- B. PILOT Agreement: 279 Mill Road
- C. PILOT Agreement: 20 Yankee Lane
- D. Tax payments due dates and exemptions memo and law
- E. Pease Park boat ramp reimbursement contract and description
- F. Melanson and Heath: FY19 Financial Statement



Town of Fairhaven
Department of Planning & Economic Development

Town Hall · 40 Center Street · Fairhaven, MA 02719
 Telephone (508) 979-4082 · FAX (508)-979-4087

Date: April 7, 2020
 To: Board of Selectmen
 CC: Paul Foley, Planning & Economic Development
 Mark Rees, Town Administrator
 Vincent Furtado, BPW Superintendent
 RE: FY19 CDBG - Hedge Street Construction Contract award

Bids for the Hedge Street Phase 2 construction project (Main to Cherry Street) were opened on February 13. The low bid exceeded the CDBG funds available from the FY19 CDBG award. Subsequently, the BPW received approval to utilize \$80,000 of Chapter 90 funds for the project. Also, the Department of Housing & Community Development has approved the use of \$19,777.07 of surplus funds from the Town's FY18 CDBG for this project.

BPW has recommended that the base bid plus Alternates 1 and 2 be awarded to the low bidder, Gravity Construction Inc. of Plainville, for a total contract cost of \$452,750.26. GCG Associates, the engineer for this project, also recommends award of the contract to Gravity Construction, after review of its bid and references. Gravity has previously worked in Fairhaven on the Jeannette Street project. Please see the attached bid tabulation and recommendation.

Project costs and sources of funding are summarized below;

HEDGE ST Ph. 2 - PROJECT COSTS		SOURCES OF FUNDING	
Gravity Construction Base Bid	\$439,950.26	FY 19 CDBG	\$407,570.00
Gravity Construction Alt #1	\$7,200.00	FY18 CDBG	\$19,777.07
Gravity Construction Alt #2	\$5,600.00	Chapter 90	\$80,000.00
TOTAL GRAVITY CONTRACT	\$452,750.26	TOTAL FUNDS AVAILABLE	\$507,347.07
Police Details, estimated cost	\$10,000.00		
10% contingency	\$44,596.81		
TOTAL PROJECT COST	\$507,347.07		

As of this date, construction activities have been classified as "essential" under the Governor's March stay-at-home advisory. The contractor will be required to comply with all COVID-19 safety guidelines.

I also recommend the award to Gravity Construction and the following motion:

I move to award the FY19 CDBG contract for Hedge Street Phase 2 construction to Gravity Construction for the amount of \$452,750.26 and to authorize the Town Administrator to sign all contract related documents.



GCG ASSOCIATES, INC.

CIVIL ENGINEERING AND LAND SURVEYING

84 Main Street
Wilmington, Massachusetts 01887
Phone: (978) 657-9714

February 21, 2020

Mr. Paul Foley
Director of Planning and Economic Development
Town of Fairhaven
40 Center Street
Fairhaven, MA 02719

RE: Hedge Street Phase 2 - Roadway Improvement Project

Dear Mr. Foley:

We have completed our review of the bids received on February 13, 2020 for the Hedge Street Phase 2 - Roadway Improvement Project. The lowest four bids were received as summarized below.

Contractor	Base	Alt. #1	Alt #2	Total
Gravity Const.	\$439,950.26	\$7,200	\$5,600	\$ 452,750.26
P.A. Landers	\$444,028.00	\$2,760	\$10,000	\$ 456,788.00
AD Paolini	\$446,200.00	\$4,050	\$19,000	\$ 469,250.00
IW Harding	\$453,651.00	\$3,600	\$14,200	\$ 471,451.00

See the attached spreadsheet for the bidders.

The CDBG Funds for Construction:

Construction	\$370,518(including details)
10% Contingencies	<u>\$ 37,052</u>
Total Construction Budget	\$407,570
Available Funds from Phase 1	<u>\$ 20,000 (Approx.)</u>
	\$427,570

Based upon the award of base bid and alt. #1 (F/I Traffic Signs/posts) and alt. #2 (Check Valves)

Low Bid (Base and Alternates 1 & 2)

<u>Gravity Construction</u>	\$452,750
Police Details (budget)	<u>\$ 10,000</u>
Total Projected Cost	\$462,750

The results of the base bid and alternates 1 & 2 require an additional \$35,180 and do not leave any contingency money. A contingency of 10% is recommended which would be \$46,275. This means additional chapter 90 funds of \$81,455 are required to award the base bid and alternates 1 & 2.

We have checked references for Gravity Const. and have worked with them on the Jeannette Street Project in Fairhaven and found them to be a well-qualified contractor.

Based upon this, I am recommending that the contract be awarded to Gravity Const. for the base bid and Alternates 1 and 2 for a total of \$452,750.26 once funds are approved and available. We have prepared a notice of award which is attached. If you have any questions or require additional information, please call.

Respectfully submitted,
GCG ASSOCIATES, INC.

Michael J. Carter

Michael J. Carter, P.E.
President

PHASE II - Hedge Street Bid Tabulation		Gravity Construction				P.A. Landers				AD Paolini				JW Harding	
Item	Description	Units	Quan.	Unit Cost (\$)	Total Cost (\$)	Unit Cost (\$)	Total Cost (\$)	Unit Cost (\$)	Total Cost (\$)	Unit Cost (\$)	Total Cost (\$)	Unit Cost (\$)	Total Cost (\$)	Unit Cost (\$)	Total Cost (\$)
DRAINAGE PIPE															
1A	8" Diam. DI Drain Pipe	LF	20	\$ 150.00	\$ 3,000.00	\$ 124.00	\$ 2,480.00	\$ 200.00	\$ 4,000.00	\$ 65.00	\$ 1,300.00				
1B	12" Diam. DI Drain Pipe	LF	23	\$ 150.00	\$ 3,450.00	\$ 146.00	\$ 3,358.00	\$ 200.00	\$ 4,600.00	\$ 90.00	\$ 2,070.00				
1C	12" Diam. CL4 RCP Drain Pipe	LF	190	\$ 75.00	\$ 14,250.00	\$ 90.00	\$ 17,100.00	\$ 120.00	\$ 22,800.00	\$ 95.00	\$ 18,050.00				
DRAINAGE SYSTEM APPURTANANCES															
2A	4" Diam. Gutter Inlet	EA	1	\$ 5,000.00	\$ 5,000.00	\$ 4,000.00	\$ 4,000.00	\$ 3,000.00	\$ 3,000.00	\$ 4,800.00	\$ 4,800.00				
2B	4" Diam. Catch Basin w/Offset Top	EA	2	\$ 5,200.00	\$ 10,400.00	\$ 5,100.00	\$ 10,200.00	\$ 5,000.00	\$ 10,000.00	\$ 12,000.00	\$ 12,000.00				
2C	4" Diam. Manhole w/Offset Top	EA	1	\$ 5,000.00	\$ 5,000.00	\$ 4,100.00	\$ 4,100.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00				
SIDEWALK AND CURB															
3A	Cement Concrete Sw 4" Min. Depth	S.Y.	375	\$ 85.00	\$ 31,875.00	\$ 56.00	\$ 21,000.00	\$ 70.00	\$ 26,250.00	\$ 65.00	\$ 24,375.00				
3B	Cement Concrete Drives 6" Min. Depth	S.Y.	200	\$ 95.00	\$ 19,000.00	\$ 86.00	\$ 16,000.00	\$ 75.00	\$ 15,000.00	\$ 80.00	\$ 16,000.00				
3E	Precast Concrete Curb all lengths- Str. Cvd. Trans.	L.F.	750	\$ 35.00	\$ 26,250.00	\$ 40.00	\$ 30,000.00	\$ 35.00	\$ 26,250.00	\$ 38.00	\$ 28,500.00				
PARTIWORK															
4A	Unclassified Excavation	C.Y.	125	\$ 10.00	\$ 1,250.00	\$ 63.00	\$ 7,875.00	\$ 50.00	\$ 6,250.00	\$ 130.00	\$ 16,250.00				
4B	Fine Grading	S.Y.	1400	\$ 5.00	\$ 7,000.00	\$ 3.85	\$ 5,390.00	\$ 5.00	\$ 7,000.00	\$ 2.30	\$ 3,270.00				
4C	Rock Excavation	C.Y.	25	\$ 0.01	\$ 0.25	\$ 175.00	\$ 4,375.00	\$ 100.00	\$ 2,500.00	\$ 300.00	\$ 7,500.00				
4D	Gravel Borrow Refill	S.Y.	100	\$ 18.00	\$ 1,800.00	\$ 48.00	\$ 4,800.00	\$ 15.00	\$ 1,500.00	\$ 0.01	\$ 1.00				
PAVEMENT															
5A	2" Trench Pavement	L.F.	1000	\$ 20.00	\$ 20,000.00	\$ 14.00	\$ 14,000.00	\$ 25.00	\$ 25,000.00	\$ 13.00	\$ 13,000.00				
5B	Reclaim.	S.Y.	1400	\$ 7.00	\$ 9,800.00	\$ 11.00	\$ 15,400.00	\$ 12.00	\$ 16,800.00	\$ 7.30	\$ 10,220.00				
5C	2 1/2" Base Course (Machine)	TON	225	\$ 165.00	\$ 37,125.00	\$ 320.00	\$ 72,000.00	\$ 120.00	\$ 27,000.00	\$ 135.00	\$ 30,375.00				
5D	1 1/2" Top Course (Machine)	TON	150	\$ 165.00	\$ 24,750.00	\$ 160.00	\$ 24,000.00	\$ 120.00	\$ 18,000.00	\$ 160.00	\$ 24,000.00				
5E	Base Course (Hand)	TON	35	\$ 175.00	\$ 6,125.00	\$ 170.00	\$ 5,950.00	\$ 250.00	\$ 8,750.00	\$ 200.00	\$ 7,000.00				
5F	Top Course (Hand)	TON	25	\$ 175.00	\$ 4,375.00	\$ 170.00	\$ 4,250.00	\$ 250.00	\$ 6,250.00	\$ 200.00	\$ 5,000.00				
MISCELLANEOUS WORK															
6A	Water Street/Service Box	EA.	30	\$ 750.00	\$ 22,500.00	\$ 380.00	\$ 11,400.00	\$ 300.00	\$ 9,000.00	\$ 400.00	\$ 12,000.00				
6B	Gas Street/Service Box	EA.	30	\$ 400.00	\$ 12,000.00	\$ 160.00	\$ 4,800.00	\$ 300.00	\$ 9,000.00	\$ 400.00	\$ 12,000.00				
6C	R/R Traffic Signs/Post Assembly	EA.	3	\$ 400.00	\$ 1,200.00	\$ 240.00	\$ 720.00	\$ 400.00	\$ 1,200.00	\$ 400.00	\$ 1,200.00				
6D	Concrete	C.Y.	25	\$ 100.00	\$ 2,500.00	\$ 150.00	\$ 3,750.00	\$ 180.00	\$ 4,500.00	\$ 250.00	\$ 6,250.00				
6E	Uniformed Police for Traffic Control	M.H.													
6F	Loam and Seed	S.Y.	350	\$ 10.00	\$ 3,500.00	\$ 8.40	\$ 2,940.00	\$ 25.00	\$ 8,750.00	\$ 10.00	\$ 3,500.00				
6G	Painted Crosswalks/Step Line	L.F.	120	\$ 10.00	\$ 1,200.00	\$ 15.50	\$ 1,860.00	\$ 10.00	\$ 1,200.00	\$ 22.00	\$ 2,640.00				
6H	Street Tree Removal (<24")	EA.	1	\$ 800.00	\$ 800.00	\$ 2,200.00	\$ 2,200.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00				
6I	Street Tree Removal (>24")	EA.	1	\$ 2,500.00	\$ 2,500.00	\$ 2,700.00	\$ 2,700.00	\$ 4,000.00	\$ 4,000.00	\$ 3,000.00	\$ 3,000.00				
6J	Street Tree (2 1/2" Cal.)	EA.	2	\$ 1,200.00	\$ 2,400.00	\$ 830.00	\$ 1,660.00	\$ 500.00	\$ 1,000.00	\$ 1,200.00	\$ 2,400.00				
6K	Traffic Sign/Post Assembly	EA.	4	\$ 500.00	\$ 2,000.00	\$ 340.00	\$ 1,360.00	\$ 400.00	\$ 1,600.00	\$ 400.00	\$ 1,600.00				
6L	Street Sign/Post Assembly	EA.	1	\$ 500.00	\$ 500.00	\$ 330.00	\$ 330.00	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00				
LUMP SUM															
7A	Mobilization	L.S.	1	\$ 18,000.00	\$ 18,000.00	\$ 21,000.00	\$ 21,000.00	\$ 15,000.00	\$ 15,000.00	\$ 18,000.00	\$ 18,000.00				
7B	Misc. Work	L.S.	1	\$ 0.01	\$ 0.01	\$ 31,000.00	\$ 31,000.00	\$ 10,000.00	\$ 10,000.00	\$ 8,000.00	\$ 8,000.00				
7C	Traffic Control	L.S.	1	\$ 8,000.00	\$ 8,000.00	\$ 1,000.00	\$ 1,000.00	\$ 5,000.00	\$ 5,000.00	\$ 10,000.00	\$ 10,000.00				
WATER SYSTEM															
8B	3/4" and 1" Dia. Type K Copper Tube	L.F.	100	\$ 50.00	\$ 5,000.00	\$ 85.00	\$ 8,500.00	\$ 100.00	\$ 10,000.00	\$ 150.00	\$ 15,000.00				

8C	3/4" and 1" Dia. Coporation Cocks	E.A.	3	\$ 1,200.00	\$ 3,600.00	\$ 230.00	\$ 690.00	\$ 2,500.00	\$ 7,500.00	\$ 600.00	\$ 1,800.00
8D	3/4" and 1" Dia. Curb Stops	E.A.	3	\$ 500.00	\$ 1,500.00	\$ 430.00	\$ 1,290.00	\$ 2,000.00	\$ 6,000.00	\$ 500.00	\$ 1,500.00
SEWER SYSTEM											
9A	PI 8" Dia. SDR 35 PVC Gravity Pipe	L.F.	420	\$ 125.00	\$ 52,500.00	\$ 130.00	\$ 54,600.00	\$ 115.00	\$ 48,300.00	\$ 110.00	\$ 46,200.00
9B	PI 6" Dia. SDR 35 PVC Gravity Pipe	L.F.	400	\$ 100.00	\$ 40,000.00	\$ 120.00	\$ 48,000.00	\$ 105.00	\$ 42,000.00	\$ 80.00	\$ 32,000.00
10B	PI sewer Manhole Frame/Cover	E.A.	1	\$ 800.00	\$ 800.00	\$ 1,050.00	\$ 1,050.00	\$ 800.00	\$ 800.00	\$ 1,000.00	\$ 1,000.00
10C	PI 4' Diam. Precast Sanitary Manhole	E.A.	1	\$ 5,000.00	\$ 5,000.00	\$ 4,900.00	\$ 4,900.00	\$ 6,500.00	\$ 6,500.00	\$ 15,000.00	\$ 15,000.00
10D	PI Cleanout Assembly	E.A.	20	\$ 1,200.00	\$ 24,000.00	\$ 850.00	\$ 17,000.00	\$ 800.00	\$ 16,000.00	\$ 500.00	\$ 10,000.00
TOTAL BASE BID				\$439,950.26	\$444,023.00	\$446,200.00	\$453,651.00				

ALTERNATE 1											
6K	Traffic Sign/Post Assembly	E.A.	7	\$ 800.00	\$ 5,600.00	\$ 300.00	\$ 2,100.00	\$ 450.00	\$ 3,150.00	\$ 400.00	\$ 2,800.00
6L	Street Sign/Post Assembly	E.A.	2	\$ 800.00	\$ 1,600.00	\$ 330.00	\$ 660.00	\$ 450.00	\$ 900.00	\$ 400.00	\$ 800.00
TOTAL ALTERNATE 1				\$7,200.00	\$2,760.00	\$4,950.00	\$3,600.00				

ALTERNATE 2											
2D	Inline Check Valve for 12" Outfall Pipe	E.A.	2	\$ 2,800.00	\$ 5,600.00	\$ 5,000.00	\$ 10,000.00	\$ 9,500.00	\$ 19,000.00	\$ 7,100.00	\$ 14,200.00
TOTAL ALTERNATE 2				\$5,600.00	\$10,000.00	\$19,000.00	\$14,200.00				

TOTAL BASE BID \$439,950.26

TOTAL BASE BID + ALTERNATE 1 \$447,150.26

TOTAL BASE BID + ALTERNATE 1 & 2 \$452,750.26

NOTICE OF AWARD

To: Gravity Construction, Inc.
86 Washington Street, Ste C2,
Plainville, MA 02762

PROJECT DESCRIPTION: _____
Phase 2 Hedge Street Roadway Improvement Project, Fairhaven, MA

The Owner has considered the BID submitted by you for the above-described WORK in response to its Advertisement for Bids dated February 13, 2020 and Information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of: \$452,750.26 which includes the total of the Base bid and Alternates 1 and 2.

You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance BOND, Payment BOND and Certificate of Insurance and all other forms included in the contract documents within five (5) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said BONDS within five (5) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated: _____ OWNER: Town of Fairhaven - Town Administrator

BY: _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged

BY _____

Dated: _____

BY _____

TITLE _____

AGREEMENT

FOR PAYMENT IN LIEU OF TAXES FOR PERSONAL PROPERTY

between

Fairhaven MA 1, LLC

and

Town of Fairhaven, MA

dated as of _____

AGREEMENT FOR PAYMENT IN LIEU OF TAXES

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES (this "Agreement") is made and entered into as of this __ day of _____, 2020 (the "Effective Date") by and between Fairhaven MA 1, LLC, a Colorado limited liability company, with a principal place of business at 3402 Pico Blvd, Santa Monica, CA 90405 ("Developer") and the TOWN OF FAIRHAVEN, a municipal corporation duly established by law and located in Bristol County, Commonwealth of Massachusetts and unless otherwise expressly stated, acting in all instances, by and through its Board of Selectmen (the "Town"). Developer and the Town are collectively referred to in this Agreement as the "Parties" and are individually referred to as a "Party".

WHEREAS, Developer plans to build, own and operate a solar photovoltaic energy system (the "Project") with an expected nameplate capacity (the "Anticipated Nameplate Capacity") of approximately 2.0 megawatts ("MW") alternating current ("AC") on approximately 11 acres of land leased to Developer located at 279 Mill Road, Fairhaven, Massachusetts, more particularly described in the attached Exhibit A (the "Property") under the terms of a lease, dated November 18th, 2016, by and between the owner of the Property, as landlord, and Developer, as tenant (the "Lease");

WHEREAS, it is the intention of the Parties that Developer make annual payments to the Town in lieu of personal property taxes on the Project, in accordance with M.G.L. c. 59, § 38H(b) (Acts of 1997 Chapter 164, Section 71(b), as amended) and the Massachusetts Department of Revenue regulations adopted in connection therewith;

WHEREAS, because both Developer and the Town need an accurate projection of their respective expenses and revenues with respect to the personal property that is taxable under law, the Parties believe that it is in their mutual best interests to enter into this Agreement fixing the payments that will be made with respect to all taxable personal property incorporated within the Project for the term of the Agreement;

WHEREAS, the Parties intend that, during the term of the Agreement, this Agreement will provide for the exclusive payments in lieu of all personal property taxes that Developer (or any successor owner of the Project) will be obligated to make to the Town with respect to the Project, provided, however, that the Parties do not intend for this Agreement to affect any direct payments for services provided by the Town to the Project, including but not limited to, permit fees, consultant services associated with any permit applications, water and sewer services, and similar payment obligations not in the nature of property taxes that Developer is otherwise obligated to pay the Town;

WHEREAS, the Town is authorized to enter into this Agreement with Developer; and

WHEREAS, the Parties recognize that the taxes that would otherwise be due under M.G.L. c. 59 based upon the full and fair cash valuation of the Project would result in a tax burden which would be highest at the inception of the Project and would decline over the life of the Project and that, in light of their agreement to a schedule of fixed annual payments in lieu of personal property tax, (i) at the end of the term of the Agreement, the sum of such fixed annual payments will equal such aggregate tax burden and (ii) there will be a stipulated accruing tax burden amount as set forth in Exhibit B (the "Accrued Tax Burden") which may be payable in certain circumstances as set forth below, and;

WHEREAS, the Parties have reached this Agreement after good faith negotiations:

NOW THEREFORE, in exchange for the mutual commitments set forth herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Payments in Lieu of Taxes. Developer agrees to make annual payments to the Town in lieu of all personal property taxes that would otherwise be assessed against the Project (the "Annual Payments") for a period of twenty (20) consecutive fiscal tax years, commencing with the first fiscal tax year following the Commercial Operations Date (as defined below) at a rate of \$17,662 per MW AC of the nameplate capacity of the Project per annum. Exhibit B sets forth the anticipated Annual Payments to be made hereunder based on the Anticipated Nameplate Capacity of the Project. Each Annual Payment will be paid to the Town in two (2) equal installments on _____ and _____ of each fiscal year following the Commercial Operations Date and continuing throughout the remainder of the Term, defined below, and the annual payment amount and payment date will be noted on a semi-annual bill issued by the Town to the Developer. Except to the extent that Paragraph 2 of the Agreement provides otherwise, Developer agrees that the payments in lieu of taxes under this Agreement will not be reduced on account of a depreciation factor, revaluation or reduction in the Town's tax rate or assessment percentage beyond that anticipated by the Parties and already reflected in the agreed per megawatt rate, and the Town agrees that the payments in lieu of taxes will not be increased on account of an inflation factor, revaluation or increase in the Town's tax rate or assessment percentage beyond that anticipated by the Parties and already reflected in the agreed per MW AC rate.

2. Adjustments to Annual Payments. Adjustments to Annual Payments shall be made, if at all, only in accordance with this Paragraph 2.

a. Nameplate Capacity Changes. If, as of the date Developer receives from the local

electric utility written authorization to interconnect and commence operations of the Project (the "Commercial Operations Date"), the installed MW AC nameplate capacity of the Project is more or less than the Anticipated Nameplate Capacity set forth herein by more than 0.001 MW AC, the dollar amount of the Annual Payments to be made hereunder as reflected on Exhibit B shall be increased (if more) or decreased (if less) by a unit price of \$17,662 per MW AC for each MW AC (or portion thereof) change in such capacity. [T4]In addition, if after the [SMS] Commercial Operations Date, as a result of the addition, replacement, enhancement, or removal of Project equipment, improvements or other property, the installed MW AC nameplate capacity of the Project is increased or decreased by more than 0.001 MW AC, the remaining Annual Payments, or portions thereof, shall be similarly adjusted for each MW AC change in such capacity, provided that, in the event of a removal resulting in a decrease in Annual Payments, such decrease shall not be effective unless and until the applicable Project equipment, improvements or other property has been removed from the Property and Exhibit B shall be updated such that the annual Tax Burden, Annual Payments, and Accrued Tax Burden after the effective date of the adjustment shall be adjusted to reflect that change, provided that the adjusted Annual Payments will be equal annual payments for the remainder of the Term; provided, however, that the portion of those future Annual Payments which constitutes payment toward the Accrued Tax Burden which existed prior to the effective date of the adjustment will not be adjusted. Within fourteen (14) days following the Commercial Operations Date, Developer shall provide written notice to the Town certifying that date and the MW AC nameplate capacity of the Project as installed as of that date.

b. Notice of Changes in Capacity. Within fourteen (14) days prior to the addition, replacement, removal or enhancement of Project equipment, improvements or other property resulting in a change in MW AC nameplate capacity of the Project, Developer shall provide written notice to the Town describing, in reasonable detail, the equipment, improvements or other property added, replaced, removed or enhanced; the resulting change in MW AC nameplate capacity of the Project; any corresponding adjustment to Annual Payments under this Paragraph 2; and the basis for such change in capacity.

c. Disputes. Any dispute between the parties arising under this Paragraph 2 shall be subject to the arbitration provisions of Paragraph 11.

3. Inventory and Inspection. Within six (6) months after the Commercial Operations Date, Developer shall prepare and provide to the Town an inventory of personal property incorporated into the Project as of the Commercial Operations Date (the "Inventory"). To the extent that inventory should change, Developer will promptly update the said Inventory and submit the same to the Town. The Town, its officers, employees and consultants and representatives shall have the right upon not less than ten (10) days prior written notice (except in an emergency) to Developer to periodically inspect the Project for the purpose of confirming and verifying the Project and compliance with this Agreement. During any such inspection, the Town shall

comply with all reasonable Developer safety requirements. Developer's representative may, at the Developer's sole election, accompany the Town on all such inspections.

4. Payment Collection, Security. To the extent allowed by law, the provisions of M.G.L. c. 60 and other applicable law will govern the collection of any payments in lieu of taxes provided for in this Agreement as though they were personal property taxes due and payable to the Town, and a claim or proceeding brought by the Town for non-payment under this Agreement, or for non-payment of taxes due on the Property, shall not be subject to arbitration. In the event of a bankruptcy filing by Developer, the Accrued Tax Burden shall be due and payable immediately, and the Town may revoke this Agreement.

5. Tax Status, Separate Tax Lot. The Town agrees that from the Effective Date until the end of the Term (defined below), the Town will not assess Developer for any personal property taxes with respect to the Project or the Property to which Developer might otherwise be subject under Massachusetts law, and the Town agrees that this Agreement will exclusively govern the payments of all ad valorem personal property taxes and payments in lieu of such taxes that Developer will be obligated to make to the Town with respect to the Project, provided, however, that this Agreement is not intended to affect, and will not preclude, other assessments of general applicability by the Town for excise taxes on vehicles due pursuant to M.G.L. c. 60A and for services provided by the Town to the Project, including but not limited to, permit fees and consultant services. The Town agrees that no personal property taxes will be due from or assessed to Developer with regard to the Project other than the payments in lieu of taxes described in this Agreement. Notwithstanding anything to the contrary in this Agreement, this Agreement does not affect or limit in any way the assessment and collection of (i) taxes for property not included in the Project, and (ii) real property taxes for the Property other than taxes attributable to the Project (provided that Developer acknowledges that, to the extent the Property is removed from M.G.L. c. 61A, the underlying land will no longer be classified and taxed as agricultural land). [SM6]

6. Successors and Assigns. This Agreement will be binding upon the successors and assigns of Developer, and the obligations created hereunder will run with the Property and the Project. In the event that Developer sells, transfers, leases or assigns the Property or all or substantially all of its interest in the Project, this Agreement will thereafter be binding on the purchaser, transferee, lessee or assignee. A Notice of this Agreement may be recorded in the applicable Registry of Deeds forthwith upon execution. Developer is expressly permitted to assign this Agreement to any affiliate or to any successor in interest in the Project and following such assignment Developer shall be relieved of all further liability hereunder provided that the assignee assumes in writing all further obligations of Developer hereunder. Developer is also permitted to collaterally assign this Agreement to its financing parties. In the event that the successor or assign of Developer is a tax-exempt entity and such tax-exempt entity does not agree in writing to assume Developer's remaining obligations under this Agreement, this Agreement shall terminate and

Developer shall pay to the Town the Accrued Tax Burden as of such date.

7. Statement of Good Faith. The Parties agree that the payment obligations established by this Agreement were negotiated in good faith in recognition of and with due consideration of the full and fair cash value of the Project, to the extent that such value is determinable as of the date of this Agreement in accordance with M.G.L. c.59, § 38H. Each Party was represented by counsel in the negotiation and preparation of this Agreement and has entered into this Agreement after full and due consideration and with the advice of its counsel and its independent consultants. The Parties further acknowledge that this Agreement is fair and mutually beneficial to them because it reduces the likelihood of future disputes over personal property taxes, establishes tax and economic stability at a time of continuing transition and economic uncertainty in the electric utility industry in Massachusetts and the region, and fixes and maintains mutually acceptable, reasonable and accurate payments in lieu of taxes for the Project that are appropriate and serve their respective interests. The Town acknowledges that this Agreement is beneficial to it because it will result in mutually acceptable, steady, predictable, accurate and reasonable payments in lieu of taxes to the Town. Developer acknowledges that this Agreement is beneficial to it because it ensures that there will be mutually acceptable, steady, predictable, accurate and reasonable payments in lieu of taxes for the Project.

8. Additional Documentation and Actions. Each Party will, from time to time hereafter, execute and deliver or cause to be executed and delivered, such additional instruments, certificates and documents, and take all such actions, as the other Party reasonably requests for the purpose of implementing or effectuating the provisions of this Agreement and, upon the exercise by a Party of any power, right, privilege or remedy pursuant to this Agreement that requires any consent, approval, registration, qualification or authorization of any third party, each Party will execute and deliver all applications, certifications, instruments and other documents and papers that the exercising Party may be so required to obtain.

9. Partial Invalidity. If, for any reason, including a change in applicable law, a property tax is imposed on the Project in addition to the payments in lieu of taxes due under this Agreement, the payments in lieu of taxes due under this Agreement will be decreased on an annual basis by the amount of the property taxes actually paid to the Town for each year. If for any reason, including a change in applicable law, a payment in lieu of taxes is provided for that is less than that provided for in Paragraph 1 of this Agreement, any amount provided for in this Agreement over and above such lesser amount shall be considered a payment by Developer to the Town as the host community of the Project. In no event, except as provided for in Paragraph 2 hereof, shall the payment amounts provided for herein be reduced below the level called for in Paragraph 1.

10. Notices. All notices, consents, requests, or other communications provided for or permitted

to be given hereunder by a Party must be in writing and will be deemed to have been properly given or served upon the personal delivery thereof, via courier delivery service or in such other manner of delivery that results in a confirmation of receipt, such as certified mail or Federal Express. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

If to Developer:
Cypress Creek Renewables c/o Alex Schild
3402 Pico Blvd
Santa Monica, CA 90405
If to Town:

Board of Selectmen
Town Hall Center Street Fairhaven, MA 02719
Attn: Town Administrator

Any such addresses for the giving of notices may be changed by either Party by giving written notice as provided above to the other Party.

11. Applicable Law. This Agreement will be made and interpreted in accordance with the laws of the Commonwealth of Massachusetts. The Parties each consent to the jurisdiction of the Massachusetts courts or other applicable agencies of the Commonwealth of Massachusetts regarding any and all matters, including interpretation or enforcement of this Agreement or any of its provisions. Venue for any action brought hereunder shall be the courts of Bristol County, Massachusetts, provided that where the provisions of this Agreement expressly provide for arbitration, the subject dispute shall be submitted to final and binding arbitration before the American Arbitration Association under its Rules for Commercial Arbitration, Arbitration proceedings shall be held in Fairhaven, Massachusetts, unless otherwise agreed by the parties.

12. Good Faith. The Parties shall act in good faith to carry out and implement this Agreement.

13. Force Majeure. The Parties recognize that there is the possibility during the term of this Agreement that all or a portion of the Property or Project may be damaged or destroyed or otherwise rendered unusable due to events beyond the control of either Party. These events are referred to as "Force Majeure". As used herein, Force Majeure includes, without limitation, the following events

- a. Acts of god including floods, winds, storms, earthquake, fire or other natural calamity;
- b. Acts of War or other civil insurrection or terrorism; or

c. Taking by eminent domain by any governmental entity of all or a portion of the Property or the Project.

In the event an event of Force Majeure occurs during the term of this Agreement with respect to any portion of the Property or Project that renders the Property or Project unusable for the customary purpose of the production of electricity for a period of more than sixty(60) days, then Developer may, at its election, notify the Town of the existence of this condition as well as of its decision whether or not to rebuild that portion of the Property or Project so damaged or destroyed or taken.

The Developer may elect not to rebuild that portion of the Project that has been damaged or taken, but to continue with the Agreement as to the remaining portion of the Project and the Developer may notify the Town of its termination of all provisions of this Agreement as it relates to the damaged or taken portion of the Project, in which case the Accrued Tax Burden, pro-rated for the damaged or taken portion of the Project, shall be immediately due and payable, and the damaged or taken portion of the Property and Project will thereafter be assessed and taxed as though this Agreement does not exist, to the extent further taxation of the damaged or taken portion of the Project is applicable.

In the alternative, Developer may elect not to rebuild that portion of the Project that has been damaged or taken, and to terminate the Agreement as to the whole Project, in which case the Accrued Tax Burden, or as applicable, a pro-rated portion thereof, shall be immediately due and payable in full, and the Developer shall notify the Town of its termination of all provisions of this Agreement and the whole Property and Project will thereafter be assessed and taxed as though this Agreement does not exist, to the extent further taxation of the Project is applicable.

14. Covenants of Developer. During the term of the Agreement, Developer will not voluntarily do any of the following:

a. seek to invalidate this Agreement, or otherwise take a position adverse to the purpose or validity of this Agreement, except as expressly provided herein;

b. convey by sale, lease, assignment or otherwise any interest in the Project to any entity or organization that qualifies as a charitable organization pursuant to M.G.L. c.59 Section 5 (Third); or

c. fail to pay the Town all amounts due hereunder when due in accordance with the terms of this Agreement which failure becomes a Default.

15. Representation and Warranty of Developer. Developer represents and warrants:

a. It is a corporation or other business entity duly organized, validly existing and in good standing under the laws of the state in which it was formed, and if a foreign corporation or entity, is, to the full extent required by law or regulation, registered with the Massachusetts Secretary of the Commonwealth, and has full power and authority to carry on its business as it is now being conducted.

b. This Agreement constitutes the legal, valid and binding obligation of Developer enforceable in accordance with its terms, except to the extent that the enforceability may be limited by applicable bankruptcy, insolvency or other laws affecting enforcement of creditors' rights generally or by general equitable principles.

c. It has taken all necessary action to authorize and approve the execution and delivery of this Agreement.

d. To Developer's knowledge, none of the documents or information furnished by or on behalf of Developer to the Town in connection with the negotiation and execution of this Agreement contains any untrue, false or inaccurate statement of a material fact or omits to state any material fact required to be stated therein, or necessary to ensure that the statements contained herein or therein, in the light of the circumstances in which they were made, are not misleading.

e. The person executing this Agreement on behalf of Developer has the full power and authority to bind it to each and every provision of this Agreement.

f. Developer is a "generation company" as such term is used and defined in M.G.L. c. 59, § 38H(b) and M.G.L. c. 164, § 1 (or their successor provisions).

16. Covenants of the Town. So long as Developer is not in Default (defined below) under this Agreement, the Town will not do any of the following:

a. seek to invalidate this Agreement or otherwise take a position adverse to the purpose or validity of this Agreement;

b. seek to collect from Developer any property tax upon the Project or any other improvement thereon in addition to the amounts herein;

c. impose any lien or other encumbrance upon the Property or the improvements thereon (including the Project) except as is expressly provided herein.

17. Certification of Tax Compliance. Pursuant to M.G.L. c. 62C, § 49A the undersigned Developer by its duly authorized representative certifies that it is in tax compliance with the tax

laws of the Commonwealth of Massachusetts.

18. Enforceability. Developer and the Town understand and agree that this Agreement shall be null and void and that no portion of this Agreement shall be enforceable, if: (a) this Agreement, or any material portion of this Agreement, is determined or declared to be illegal, void, or unenforceable; or (b) Developer or any successor or assignee of Developer, if any, is not a "generation company" as such term is used or defined in M.G.L. c. 59, § 38H(b), and M.G.L. c. 164, § 1 (or their successor provisions), and the Developer shall be liable under all applicable laws for the payment of taxes owed to the Town, with credit for those payments made by the Developer to the Town in reliance on this Agreement.

19. Default.

a. It shall be a default under this Agreement (a "Default") if either Party or its successor or assignee (the "Defaulting Party") fails to perform any of the material terms and conditions of this Agreement and such failure is not cured within thirty (30) calendar days (the "Notice Period") of the Defaulting Party's receipt of written notice of such failure from the other Party (the "Notice of Default"), provided that if such cure cannot reasonably be made within the Notice Period, such failure shall not be a Default hereunder provided that the Defaulting Party commences the cure within the Notice Period and works towards the cure with reasonable diligence unless despite such efforts the failure has not been cured within one year of its receipt of the Notice of Default. Upon the occurrence of a Default, the non-defaulting Party may terminate this Agreement by notice to the Defaulting Party.

b. Notwithstanding any other provisions in this Agreement for payment in lieu of taxes, in the event that the Developer or its successor or assign fails for any reason to make any payment due under the terms of this Agreement when such payment is due, and fails to cure that default within thirty (30) days of receipt of written notice of such violation, then the Town may terminate this Agreement and in the event of such termination the full amount of the Accrued Tax Burden as of the date of termination shall be immediately due and payable, and, to the extent allowed by law, collectible under all laws applicable to the collection of taxes, and the Property and Project will thereafter be assessed and taxed as though this Agreement does not exist, to the extent further taxation of the Project is applicable.

20. Term. This term of this Agreement (the "Term") shall commence on the Effective Date and notwithstanding any provision contained herein to the contrary shall terminate on the earlier of (i) the last day of the twentieth (20th) consecutive fiscal tax year following the Commercial Operations Date, (ii) the date on which the non-defaulting Party terminates this Agreement following a Default by the Defaulting Party in accordance with the provisions of Paragraph 18 above, or (iii) the date on which Developer terminates this Agreement in accordance with Paragraph 13 or by written notice to the Town following a termination of the Lease in accordance with the terms of the Lease. In the event of Developer's termination of this Agreement following such termination of the Lease, the full amount of the Accrued Tax Burden as of the date of termination shall be immediately due and payable, and, to the extent allowed by law, collectible under all laws applicable to the collection of taxes, and the Property and Project will thereafter be assessed and taxed as though this Agreement does not exist, to the extent further taxation of the Project is applicable.

21. Successor Agreement; Counterparts. Unless otherwise undertaken beforehand, not less than six (6) months prior to the last payment called for in Paragraph 1 above, the Parties may meet and negotiate a successor agreement to the within Agreement governing the tax treatment of the Project and/or the continuation of payments to the Town of Fairhaven as the host community for the Project. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument.

Executed under seal by the undersigned as of the Effective Date set forth above, each of whom represents that it is fully and duly authorized to act on behalf of and bind its principals.

TOWN:

DEVELOPER:

TOWN OF FAIRHAVEN

Fairhaven MA 1, LLC

By its Board of Selectmen:

By:

Name: _____

Title: _____

EXHIBIT A

Description of Property

The Property:

LEASE AREA #1 of 2

BEGINNING AT A POINT, SAID POINT BEING THE SOUTHWESTERLY COMMON CORNER OF

THE LINE OF THE LEASE AREA AND THE LINE OF THE SURVEY TIE LINE BEING S 83°02'24" W, 881.47 FEET TO A CONCRETE BOUND ON THE EASTERLY SIDELINE OF LOT 32B, SAID CONCRETE BOUND BEING THE SOUTHWESTERLY CORNER OF PARCEL A SHOWN ON A PLAN RECORDED IN THE BRISTOL COUNTY REGISTRY OF DEEDS IN PLAN BOOK 111 PAGE 67,

THENCE, N 00°00'00" W, 130.88 FEET TO A POINT,
THENCE, N 24°33'22" W, 55.01 FEET TO A POINT,
THENCE, N 02°32'51" E, 87.91 FEET TO A POINT,
THENCE, N 76°06'15" E, 157.57 FEET TO A POINT,
THENCE, N 90°00'00" E, 251.86 FEET TO A POINT,
THENCE, S 66°57'05" E, 135.87 FEET TO A POINT,
THENCE, S 84°30'19" E, 83.20 FEET TO A POINT,
THENCE, S 10°11'57" W, 27.25 FEET TO A POINT,
THENCE, S 44°40'40" W, 67.00 FEET TO A POINT,
THENCE, S 16°16'00" E, 70.60 FEET TO A POINT,
THENCE, S 02°15'32" W, 49.81 FEET TO A POINT,
THENCE, S 10°34'33" W, 66.03 FEET TO A POINT,
THENCE, S 19°53'05" E, 71.55 FEET TO A POINT,
THENCE, S 01°17'02" E, 89.63 FEET TO A POINT,
THENCE, S 29°32'27" W, 62.55 FEET TO A POINT,
THENCE, S 10°51'22" E, 60.98 FEET TO A POINT,
THENCE, S 19°08'29" E, 97.23 FEET TO A POINT,
THENCE, S 22°29'00" E, 110.10 FEET TO A POINT,
THENCE, S 36°44'28" E, 66.78 FEET TO A POINT,
THENCE, S 00°00'00" E, 34.96 FEET TO A POINT,
THENCE, S 90°00'00" W, 178.66 FEET TO A POINT,
THENCE, N 21°45'25" W, 79.64 FEET TO A POINT,
THENCE, N 42°35'29" W, 54.46 FEET TO A POINT,
THENCE, N 00°00'00" W, 52.25 FEET TO A POINT,
THENCE, N 21°45'25" W, 42.67 FEET TO A POINT,
THENCE, N 78°42'46" W, 67.20 FEET TO A POINT,
THENCE, N 11°37'47" W, 67.17 FEET TO A POINT,
THENCE, N 53°52'49" W, 97.74 FEET TO A POINT,
THENCE, N 70°22'26" W, 94.02 FEET TO A POINT,
THENCE, N 40°20'59" W, 123.18 FEET TO A POINT,
THENCE, N 00°00'00" W, 39.88 FEET TO A POINT,
THENCE, N 54°51'28" W, 98.87 FEET TO THE POINT OF BEGINNING.

CONTAINING: 338,624 SQUARE FEET OR 7.77 ACRES OF LAND, MORE OR LESS. BEING THE AREA SHOWN AS SOLAR LEASE AREA #1 = ±338,624 SQ. FT./7.77 ACRES ON THE ABOVE-REFERENCED PLAN AND BEING A PORTION OF THE LAND ON MAP 39, LOT 32 AND MAP 38, LOT 6.

LEASE AREA #2 of 2

BEGINNING AT A POINT, SAID POINT BEING THE SOUTHWESTERLY COMMON CORNER OF THE LINE OF THE ACCESS, UTILITY AND STORMWATER EASEMENT AREA AND THE LINE

OF THE LEASE AREA,

THENCE, N 81°56'19" E, 396.77 FEET TO A POINT,
 THENCE, S 13°46'18" E, 100.53 FEET TO A POINT,
 THENCE, S 08°03'41" E, 209.78 FEET TO A POINT,
 THENCE, S 81°56'19" W, 319.34 FEET TO A POINT,
 THENCE, N 25°15'48" W, 162.06 FEET TO A POINT,
 THENCE, N 90°00'00" W, 19.53 FEET TO A POINT,
 THENCE, N 17°13'34" W, 126.59 FEET TO A POINT,
 THENCE, N 08°03'41" W, 27.28 FEET TO THE POINT OF BEGINNING.

CONTAINING: 114,355 SQUARE FEET OR 2.63 ACRES OF LAND, MORE OR LESS. BEING THE AREA SHOWN AS SOLAR LEASE AREA #2 = ± 114,355 SQ. FT./2.63 ACRES ON THE ABOVE-REFERENCED PLAN AND BEING A PORTION OF THE LAND ON MAP 38, LOT 6.

EXHIBIT B

Annual Payments (PILOT); Accrued Tax Burden

Fairhaven MA 1, LLC (Fairhaven E) – 279 Mill Road

\$17,662 per MW (AC) per year. Assuming Project size of 2.0 MW (AC), the payments would be per the following schedule. Project size is subject to adjustment per the terms of the Agreement.

Year	Tax Burden	Tax Burden Per MW	Tax Payment Per MW	Annual Payments (PILOT)	Accrued Tax Burden
1	63,838	31,919	17,662	35,325	28,513
2	59,465	29,733	17,662	35,325	52,654
3	55,392	27,696	17,662	35,325	72,721
4	51,598	25,799	17,662	35,325	88,994
5	48,063	24,032	17,662	35,325	101,732
6	44,771	22,385	17,662	35,325	111,178
7	41,704	20,852	17,662	35,325	117,558
8	38,847	19,424	17,662	35,325	121,080
9	36,186	18,093	17,662	35,325	121,942
10	33,708	16,854	17,662	35,325	120,324
11	31,399	15,699	17,662	35,325	116,398
12	29,248	14,624	17,662	35,325	110,321
13	27,244	13,622	17,662	35,325	102,240
14	25,378	12,689	17,662	35,325	92,293
15	23,640	11,820	17,662	35,325	80,608
16	22,020	11,010	17,662	35,325	67,304
17	20,512	10,256	17,662	35,325	52,491
18	19,107	9,553	17,662	35,325	36,273
19	17,798	8,899	17,662	35,325	18,746

20	16,579	8,289	17,662	35,325	0
Total	706,498	353,249	353,249	706,498	1,613,371

AGREEMENT

FOR PAYMENT IN LIEU OF TAXES FOR PERSONAL PROPERTY

between

Fairhaven MA 2, LLC

and

Town of Fairhaven, MA

dated as of _____

AGREEMENT FOR PAYMENT IN LIEU OF TAXES

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES (this “Agreement”) is made and entered into as of this ___ day of _____, 2020 (the “Effective Date”) by and between Fairhaven MA 2, LLC, a Colorado limited liability company, with a principal place of business at 3402 Pico Blvd, Santa Monica, CA 90405 (“Developer”) and the TOWN OF FAIRHAVEN, a municipal corporation duly established by law and located in Bristol County, Commonwealth of Massachusetts and unless otherwise expressly stated, acting in all instances, by and through its Board of Selectmen (the “Town”). Developer and the Town are collectively referred to in this Agreement as the “Parties” and are individually referred to as a “Party”.

WHEREAS, Developer plans to build, own and operate a solar photovoltaic energy system (the “Project”) with an expected nameplate capacity (the “Anticipated Nameplate Capacity”) of approximately 2.875 megawatts (“MW”) alternating current (“AC”) on approximately 15 acres of land leased to Developer located at 20 Yankee Lane, Fairhaven, Massachusetts, more particularly described in the attached Exhibit A (the “Property”) under the terms of a lease, dated September 1st, 2017, by and between the owner of the Property, as landlord, and Developer, as tenant (the “Lease”);

WHEREAS, it is the intention of the Parties that Developer make annual payments to the Town in lieu of personal property taxes on the Project, in accordance with M.G.L. c. 59, § 38H(b) (Acts of 1997 Chapter 164, Section 71(b), as amended) and the Massachusetts Department of Revenue regulations adopted in connection therewith;

WHEREAS, because both Developer and the Town need an accurate projection of their respective expenses and revenues with respect to the personal property that is taxable under law, the Parties believe that it is in their mutual best interests to enter into this Agreement fixing the payments that will be made with respect to all taxable personal property incorporated within the Project for the term of the Agreement;

WHEREAS, the Parties intend that, during the term of the Agreement, this Agreement will provide for the exclusive payments in lieu of all personal property taxes that Developer (or any successor owner of the Project) will be obligated to make to the Town with respect to the Project, provided, however, that the Parties do not intend for this Agreement to affect any direct payments for services provided by the Town to the Project, including but not limited to, permit fees, consultant services associated with any permit applications, water and sewer services, and similar payment obligations not in the nature of property taxes that Developer is otherwise obligated to pay the Town;

WHEREAS, the Town is authorized to enter into this Agreement with Developer; and

WHEREAS, the Parties recognize that the taxes that would otherwise be due under M.G.L. c. 59 based upon the full and fair cash valuation of the Project would result in a tax burden which would be highest at the inception of the Project and would decline over the life of the Project and that, in light of their agreement to a schedule of fixed annual payments in lieu of personal property tax, (i) at the end of the term of the Agreement, the sum of such fixed annual payments will equal such aggregate tax burden and (ii) there will be a stipulated accruing tax burden amount as set forth in Exhibit B (the "Accrued Tax Burden") which may be payable in certain circumstances as set forth below, and;

WHEREAS, the Parties have reached this Agreement after good faith negotiations:

NOW THEREFORE, in exchange for the mutual commitments set forth herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Payments in Lieu of Taxes. Developer agrees to make annual payments to the Town in lieu of all personal property taxes that would otherwise be assessed against the Project (the "Annual Payments") for a period of twenty (20^[SB1]) consecutive fiscal tax years, commencing with the first fiscal tax year following the Commercial Operations Date (as defined below) ^[r2]at a rate^[SM3] of \$16,364 per MW AC of the nameplate capacity of the Project per annum. Exhibit B sets forth the anticipated Annual Payments to be made hereunder based on the Anticipated Nameplate Capacity of the Project. Each Annual Payment will be paid to the Town in two (2) equal installments on _____ and _____ of each fiscal year following the Commercial Operations Date and continuing throughout the remainder of the Term, defined below, and the annual payment amount and payment date will be noted on a semi-annual bill issued by the Town to the Developer. Except to the extent that Paragraph 2 of the Agreement provides otherwise, Developer agrees that the payments in lieu of taxes under this Agreement will not be reduced on account of a depreciation factor, revaluation or reduction in the Town's tax rate or assessment percentage beyond that anticipated by the Parties and already reflected in the agreed per megawatt rate, and the Town agrees that the payments in lieu of taxes will not be increased on account of an inflation factor, revaluation or increase in the Town's tax rate or assessment percentage beyond that anticipated by the Parties and already reflected in the agreed per MW AC rate.

2. Adjustments to Annual Payments. Adjustments to Annual Payments shall be made, if at all, only in accordance with this Paragraph 2.

a. Nameplate Capacity Changes. If, as of the date Developer receives from the local

electric utility written authorization to interconnect and commence operations of the Project (the “Commercial Operations Date”), the installed MW AC nameplate capacity of the Project is more or less than the Anticipated Nameplate Capacity set forth herein by more than 0.001 MW AC, the dollar amount of the Annual Payments to be made hereunder as reflected on Exhibit B shall be increased (if more) or decreased (if less) by a unit price of \$16,364 per MW AC for each MW AC (or portion thereof) change in such capacity. [T4]In addition, if after [the[SMS] Commercial Operations Date, as a result of the addition, replacement, enhancement, or removal of Project equipment, improvements or other property, the installed MW AC nameplate capacity of the Project is increased or decreased by more than 0.001 MW AC, the remaining Annual Payments, or portions thereof, shall be similarly adjusted for each MW AC change in such capacity, provided that, in the event of a removal resulting in a decrease in Annual Payments, such decrease shall not be effective unless and until the applicable Project equipment, improvements or other property has been removed from the Property and Exhibit B shall be updated such that the annual Tax Burden, Annual Payments, and Accrued Tax Burden after the effective date of the adjustment shall be adjusted to reflect that change, provided that the adjusted Annual Payments will be equal annual payments for the remainder of the Term; provided, however, that the portion of those future Annual Payments which constitutes payment toward the Accrued Tax Burden which existed prior to the effective date of the adjustment will not be adjusted. Within fourteen (14) days following the Commercial Operations Date, Developer shall provide written notice to the Town certifying that date and the MW AC nameplate capacity of the Project as installed as of that date.

b. Notice of Changes in Capacity. Within fourteen (14) days prior to the addition, replacement, removal or enhancement of Project equipment, improvements or other property resulting in a change in MW AC nameplate capacity of the Project, Developer shall provide written notice to the Town describing, in reasonable detail, the equipment, improvements or other property added, replaced, removed or enhanced; the resulting change in MW AC nameplate capacity of the Project; any corresponding adjustment to Annual Payments under this Paragraph 2; and the basis for such change in capacity.

c. Disputes. Any dispute between the parties arising under this Paragraph 2 shall be subject to the arbitration provisions of Paragraph 11.

3. Inventory and Inspection. Within six (6) months after the Commercial Operations Date, Developer shall prepare and provide to the Town an inventory of personal property incorporated into the Project as of the Commercial Operations Date (the “Inventory”). To the extent that inventory should change, Developer will promptly update the said Inventory and submit the same to the Town. The Town, its officers, employees and consultants and representatives shall have the right upon not less than ten (10) days prior written notice (except in an emergency) to Developer to periodically inspect the Project for the purpose of confirming and verifying the Project and compliance with this Agreement. During any such inspection, the Town shall

comply with all reasonable Developer safety requirements. Developer's representative may, at the Developer's sole election, accompany the Town on all such inspections.

4. Payment Collection, Security. To the extent allowed by law, the provisions of M.G.L. c. 60 and other applicable law will govern the collection of any payments in lieu of taxes provided for in this Agreement as though they were personal property taxes due and payable to the Town, and a claim or proceeding brought by the Town for non-payment under this Agreement, or for non-payment of taxes due on the Property, shall not be subject to arbitration. In the event of a bankruptcy filing by Developer, the Accrued Tax Burden shall be due and payable immediately, and the Town may revoke this Agreement.

5. Tax Status, Separate Tax Lot. The Town agrees that from the Effective Date until the end of the Term (defined below), the Town will not assess Developer for any personal property taxes with respect to the Project or the Property to which Developer might otherwise be subject under Massachusetts law, and the Town agrees that this Agreement will exclusively govern the payments of all ad valorem personal property taxes and payments in lieu of such taxes that Developer will be obligated to make to the Town with respect to the Project, provided, however, that this Agreement is not intended to affect, and will not preclude, other assessments of general applicability by the Town for excise taxes on vehicles due pursuant to M.G.L. c. 60A and for services provided by the Town to the Project, including but not limited to, permit fees and consultant services. The Town agrees that no personal property taxes will be due from or assessed to Developer with regard to the Project other than the payments in lieu of taxes described in this Agreement. Notwithstanding anything to the contrary in this Agreement, this Agreement does not affect or limit in any way the assessment and collection of (i) taxes for property not included in the Project, and (ii) real property taxes for the Property other than taxes attributable to the Project (provided that Developer acknowledges that, to the extent the Property is removed from M.G.L. c. 61A, the underlying land will no longer be classified and taxed as agricultural land). ~~SMG~~

6. Successors and Assigns. This Agreement will be binding upon the successors and assigns of Developer, and the obligations created hereunder will run with the Property and the Project. In the event that Developer sells, transfers, leases or assigns the Property or all or substantially all of its interest in the Project, this Agreement will thereafter be binding on the purchaser, transferee, lessee or assignee. A Notice of this Agreement may be recorded in the applicable Registry of Deeds forthwith upon execution. Developer is expressly permitted to assign this Agreement to any affiliate or to any successor in interest in the Project and following such assignment Developer shall be relieved of all further liability hereunder provided that the assignee assumes in writing all further obligations of Developer hereunder. Developer is also permitted to collaterally assign this Agreement to its financing parties. In the event that the successor or assign of Developer is a tax-exempt entity and such tax-exempt entity does not agree in writing to assume Developer's remaining obligations under this Agreement, this Agreement shall terminate and

Developer shall pay to the Town the Accrued Tax Burden as of such date.

7. Statement of Good Faith. The Parties agree that the payment obligations established by this Agreement were negotiated in good faith in recognition of and with due consideration of the full and fair cash value of the Project, to the extent that such value is determinable as of the date of this Agreement in accordance with M.G.L. c.59, § 38H. Each Party was represented by counsel in the negotiation and preparation of this Agreement and has entered into this Agreement after full and due consideration and with the advice of its counsel and its independent consultants. The Parties further acknowledge that this Agreement is fair and mutually beneficial to them because it reduces the likelihood of future disputes over personal property taxes, establishes tax and economic stability at a time of continuing transition and economic uncertainty in the electric utility industry in Massachusetts and the region, and fixes and maintains mutually acceptable, reasonable and accurate payments in lieu of taxes for the Project that are appropriate and serve their respective interests. The Town acknowledges that this Agreement is beneficial to it because it will result in mutually acceptable, steady, predictable, accurate and reasonable payments in lieu of taxes to the Town. Developer acknowledges that this Agreement is beneficial to it because it ensures that there will be mutually acceptable, steady, predictable, accurate and reasonable payments in lieu of taxes for the Project.

8. Additional Documentation and Actions. Each Party will, from time to time hereafter, execute and deliver or cause to be executed and delivered, such additional instruments, certificates and documents, and take all such actions, as the other Party reasonably requests for the purpose of implementing or effectuating the provisions of this Agreement and, upon the exercise by a Party of any power, right, privilege or remedy pursuant to this Agreement that requires any consent, approval, registration, qualification or authorization of any third party, each Party will execute and deliver all applications, certifications, instruments and other documents and papers that the exercising Party may be so required to obtain.

9. Partial Invalidity. If, for any reason, including a change in applicable law, a property tax is imposed on the Project in addition to the payments in lieu of taxes due under this Agreement, the payments in lieu of taxes due under this Agreement will be decreased on an annual basis by the amount of the property taxes actually paid to the Town for each year. If for any reason, including a change in applicable law, a payment in lieu of taxes is provided for that is less than [that] provided for in Paragraph 1 of this Agreement, any amount provided for in this Agreement over and above such lesser amount shall be considered a payment by Developer to the Town as the host community of the Project. In no event, except as provided for in Paragraph 2 hereof, shall the payment amounts provided for herein be reduced below the level called for in Paragraph 1. [T8]

10. Notices. All notices, consents, requests, or other communications provided for or permitted

to be given hereunder by a Party must be in writing and will be deemed to have been properly given or served upon the personal delivery thereof, via courier delivery service or in such other manner of delivery that results in a confirmation of receipt, such as certified mail or Federal Express. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

If to Developer:
Cypress Creek Renewables c/o Alex Schild
3402 Pico Blvd
Santa Monica, CA 90405
If to Town:

Board of Selectmen
Town Hall Center Street Fairhaven, MA 02719
Attn: Town Administrator

Any such addresses for the giving of notices may be changed by either Party by giving written notice as provided above to the other Party.

11. Applicable Law. This Agreement will be made and interpreted in accordance with the laws of the Commonwealth of Massachusetts. The Parties each consent to the jurisdiction of the Massachusetts courts or other applicable agencies of the Commonwealth of Massachusetts regarding any and all matters, including interpretation or enforcement of this Agreement or any of its provisions. Venue for any action brought hereunder shall be the courts of Bristol County, Massachusetts, provided that where the provisions of this Agreement expressly provide for arbitration, the subject dispute shall be submitted to final and binding arbitration before the American Arbitration Association under its Rules for Commercial Arbitration, Arbitration proceedings shall be held in Fairhaven, Massachusetts, unless otherwise agreed by the parties.

12. Good Faith. The Parties shall act in good faith to carry out and implement this Agreement.

13. Force Majeure. The Parties recognize that there is the possibility during the term of this Agreement that all or a portion of the Property or Project may be damaged or destroyed or otherwise rendered unusable due to events beyond the control of either Party. These events are referred to as "Force Majeure". As used herein, Force Majeure includes, without limitation, the following events

- a. Acts of god including floods, winds, storms, earthquake, fire or other natural calamity;
- b. Acts of War or other civil insurrection or terrorism; or

c. Taking by eminent domain by any governmental entity of all or a portion of the Property or the Project.

In the event an event of Force Majeure occurs during the term of this Agreement with respect to any portion of the Property or Project that renders the Property or Project unusable for the customary purpose of the production of electricity for a period of more than sixty(60) days, then Developer may, at its election, notify the Town of the existence of this condition as well as of its decision whether or not to rebuild that portion of the Property or Project so damaged or destroyed or taken.

The Developer may elect not to rebuild that portion of the Project that has been damaged or taken, but to continue with the Agreement as to the remaining portion of the Project and the Developer may notify the Town of its termination of all provisions of this Agreement as it relates to the damaged or taken portion of the Project, in which case the Accrued Tax Burden, pro-rated for the damaged or taken portion of the Project, shall be immediately due and payable, and the damaged or taken portion of the Property and Project will thereafter be assessed and taxed as though this Agreement does not exist, to the extent further taxation of the damaged or taken portion of the Project is applicable.

In the alternative, Developer may elect not to rebuild that portion of the Project that has been damaged or taken, and to terminate the Agreement as to the whole Project, in which case the Accrued Tax Burden, or as applicable, a pro-rated portion thereof, shall be immediately due and payable in full, and the Developer shall notify the Town of its termination of all provisions of this Agreement and the whole Property and Project will thereafter be assessed and taxed as though this Agreement does not exist, to the extent further taxation of the Project is applicable.

14. Covenants of Developer. During the term of the Agreement, Developer will not voluntarily do any of the following:

a. seek to invalidate this Agreement, or otherwise take a position adverse to the purpose or validity of this Agreement, except as expressly provided herein;

b. convey by sale, lease, assignment or otherwise any interest in the Project to any entity or organization that qualifies as a charitable organization pursuant to M.G.L. c.59 Section 5 (Third); or

c. fail to pay the Town all amounts due hereunder when due in accordance with the terms of this Agreement which failure becomes a Default.

15. Representation and Warranty of Developer. Developer represents and warrants:

a. It is a corporation or other business entity duly organized, validly existing and in good standing under the laws of the state in which it was formed, and if a foreign corporation or entity, is, to the full extent required by law or regulation, registered with the Massachusetts Secretary of the Commonwealth, and has full power and authority to carry on its business as it is now being conducted.

b. This Agreement constitutes the legal, valid and binding obligation of Developer enforceable in accordance with its terms, except to the extent that the enforceability may be limited by applicable bankruptcy, insolvency or other laws affecting enforcement of creditors' rights generally or by general equitable principles.

c. It has taken all necessary action to authorize and approve the execution and delivery of this Agreement.

d. To Developer's knowledge, none of the documents or information furnished by or on behalf of Developer to the Town in connection with the negotiation and execution of this Agreement contains any untrue, false or inaccurate statement of a material fact or omits to state any material fact required to be stated therein, or necessary to ensure that the statements contained herein or therein, in the light of the circumstances in which they were made, are not misleading.

e. The person executing this Agreement on behalf of Developer has the full power and authority to bind it to each and every provision of this Agreement.

f. Developer is a "generation company" as such term is used and defined in M.G.L. c. 59, § 38H(b) and M.G.L. c. 164, § 1 (or their successor provisions).

16. Covenants of the Town. So long as Developer is not in Default (defined below) under this Agreement, the Town will not do any of the following:

a. seek to invalidate this Agreement or otherwise take a position adverse to the purpose or validity of this Agreement;

b. seek to collect from Developer any property tax upon the Project or any other improvement thereon in addition to the amounts herein;

c. impose any lien or other encumbrance upon the Property or the improvements thereon (including the Project) except as is expressly provided herein.

17. Certification of Tax Compliance. Pursuant to M.G.L. c. 62C, § 49A the undersigned Developer by its duly authorized representative certifies that it is in tax compliance with the tax

laws of the Commonwealth of Massachusetts.

18. Enforceability. Developer and the Town understand and agree that this Agreement shall be null and void and that no portion of this Agreement shall be enforceable, if: (a) this Agreement, or any material portion of this Agreement, is determined or declared to be illegal, void, or unenforceable; or (b) Developer or any successor or assignee of Developer, if any, is not a "generation company" as such term is used or defined in M.G.L. c. 59, § 38H(b), and M.G.L. c. 164, § 1 (or their successor provisions), and the Developer shall be liable under all applicable laws for the payment of taxes owed to the Town, with credit for those payments made by the Developer to the Town in reliance on this Agreement.

19. Default.

a. It shall be a default under this Agreement (a "Default") if either Party or its successor or assignee (the "Defaulting Party") fails to perform any of the material terms and conditions of this Agreement and such failure is not cured within thirty (30) calendar days (the "Notice Period") of the Defaulting Party's receipt of written notice of such failure from the other Party (the "Notice of Default"), provided that if such cure cannot reasonably be made within the Notice Period, such failure shall not be a Default hereunder provided that the Defaulting Party commences the cure within the Notice Period and works towards the cure with reasonable diligence unless despite such efforts the failure has not been cured within one year of its receipt of the Notice of Default. Upon the occurrence of a Default, the non-defaulting Party may terminate this Agreement by notice to the Defaulting Party.

b. Notwithstanding any other provisions in this Agreement for payment in lieu of taxes, in the event that the Developer or its successor or assign fails for any reason to make any payment due under the terms of this Agreement when such payment is due, and fails to cure that default within thirty (30) days of receipt of written notice of such violation, then the Town may terminate this Agreement and in the event of such termination the full amount of the Accrued Tax Burden as of the date of termination shall be immediately due and payable, and, to the extent allowed by law, collectible under all laws applicable to the collection of taxes, and the Property and Project will thereafter be assessed and taxed as though this Agreement does not exist, to the extent further taxation of the Project is applicable.

20. Term. This term of this Agreement (the "Term") shall commence on the Effective Date and notwithstanding any provision contained herein to the contrary shall terminate on the earlier of (i) the last day of the twentieth (20th) consecutive fiscal tax year following the Commercial Operations Date, (ii) the date on which the non-defaulting Party terminates this Agreement following a Default by the Defaulting Party in accordance with the provisions of Paragraph 18 above, or (iii) the date on which Developer terminates this Agreement in accordance with Paragraph 13 or by written notice to the Town following a termination of the Lease in accordance with the terms of the Lease. In the event of Developer's termination of this Agreement following such termination of the Lease, the full amount of the Accrued Tax Burden as of the date of termination shall be immediately due and payable, and, to the extent allowed by law, collectible under all laws applicable to the collection of taxes, and the Property and Project will thereafter be assessed and taxed as though this Agreement does not exist, to the extent further taxation of the Project is applicable.

21. Successor Agreement; Counterparts. Unless otherwise undertaken beforehand, not less than six (6) months prior to the last payment called for in Paragraph 1 above, the Parties may meet and negotiate a successor agreement to the within Agreement governing the tax treatment of the Project and/or the continuation of payments to the Town of Fairhaven as the host community for the Project. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument.

Executed under seal by the undersigned as of the Effective Date set forth above, each of whom represents that it is fully and duly authorized to act on behalf of and bind its principals.

TOWN:

DEVELOPER:

TOWN OF FAIRHAVEN
By its Board of Selectmen:

Fairhaven MA 2, LLC

By: _____
Name: _____
Title: _____

EXHIBIT A

Description of Property

The Property:

LEASE AREA #1 of 2
BEGINNING AT A POINT, SAID POINT BEING N 09°20'40" W, 1,380.27 FEET FROM A POINT

ON A STONE WALL ON THE NORTHERN PROPERTY LINE OF LAND NOW OR FORMERLY OF DETERRA, SHOWN AS FAIRHAVEN ASSESSOR MAP 39 LOT 32, SAID POINT BEING THE SOUTHWEST CORNER OF LAND NOW OR FORMERLY OF LOPES, SHOWN AS FAIRHAVEN ASSESSOR MAP 39, LOT 30.

THENCE, N 18°09'58" W, 244.87 FEET TO A POINT,
THENCE, N 15°42'53" W, 196.61 FEET TO A POINT,
THENCE, N 33°45'02" W, 80.11 FEET TO A POINT,
THENCE, N 30°40'02" E, 38.59 FEET TO A POINT,
THENCE, N 78°50'00" E, 514.21 FEET TO A POINT,
THENCE, N 90°00'00" E, 128.56 FEET TO A POINT,
THENCE, S 00°00'00" E, 271.82 FEET TO A POINT,
THENCE, S 11°28'02" W, 146.78 FEET TO A POINT,
THENCE, S 58°33'16" W, 162.97 FEET TO A POINT,
THENCE, S 30°03'25" W, 186.74 FEET TO A POINT,
THENCE, N 40°48'55" W, 54.18 FEET TO A POINT,
THENCE, N 90°00'00" W, 181.45 FEET TO THE POINT OF BEGINNING.

CONTAINING: 297,783 SQUARE FEET OR 6.84 ACRES OF LAND, MORE OR LESS, BEING THE SAME AREA SHOWN AS NORTHERN SOLAR LEASE AREA ON THE ABOVE REFERENCED PLAN AND BEING A PORTION OF THE LAND ON FAIRHAVEN ASSESSOR MAP 39, LOT 23 AND LOT 16.

LEASE AREA #2 of 2

BEGINNING AT A POINT, SAID POINT BEING N 06°49'36" W, 383.00 FEET FROM A POINT ON A STONE WALL ON THE NORTHERN PROPERTY LINE OF LAND NOW OR FORMERLY OF DETERRA, SHOWN AS FAIRHAVEN ASSESSOR MAP 39 LOT 32, SAID POINT BEING THE SOUTHWEST CORNER OF LAND NOW OR FORMERLY OF LOPES, SHOWN AS FAIRHAVEN ASSESSOR MAP 39, LOT 30.

THENCE, N 10°11'01" W, 497.43 FEET TO A POINT,
THENCE, N 26°27'24" E, 140.40 FEET TO A POINT,
THENCE, N 13°54'06" W, 37.16 FEET TO A POINT,
THENCE, N 66°19'43" E, 25.77 FEET TO A POINT,
THENCE, S 62°10'15" E, 65.90 FEET TO A POINT,
THENCE, S 10°09'15" E, 94.11 FEET TO A POINT,
THENCE, S 75°20'48" E, 229.55 FEET TO A POINT,
THENCE, N 64°16'41" E, 49.06 FEET TO A POINT,
THENCE, S 54°21'23" E, 108.11 FEET TO A POINT,
THENCE, S 36°59'59" E, 122.32 FEET TO A POINT,
THENCE, S 29°12'15" W, 61.93 FEET TO A POINT,

THENCE, S 23°14'34" E, 240.31 FEET TO A POINT,
THENCE, S 36°51'06" E, 206.79 FEET TO A POINT,
THENCE, S 17°14'23" W, 67.85 FEET TO A POINT,
THENCE, S 72°22'23" W, 97.25 FEET TO A POINT,
THENCE, N 70°19'38" W, 82.41 FEET TO A POINT,
THENCE, N 89°19'30" W, 55.04 FEET TO A POINT,
THENCE, N 54°30'28" W, 60.56 FEET TO A POINT,
THENCE, N 70°58'33" W, 29.30 FEET TO A POINT,
THENCE, N 90°00'00" W, 88.02 FEET TO A POINT,
THENCE, N 16°32'27" W, 73.37 FEET TO A POINT,
THENCE, N 39°44'39" W, 65.44 FEET TO A POINT,
THENCE, N 90°00'00" W, 207.34 FEET TO A POINT, THE POINT OF BEGINNING.

CONTAINING: 346,715 SQUARE FEET OR 7.96 ACRES OF LAND, MORE OR LESS BEING THE SAME AREA SHOWN AS SOUTHERN SOLAR LEASE AREA ON THE ABOVE REFERENCED PLAN AND BEING A PORTION OF THE LAND ON FAIRHAVEN ASSESSOR MAP 39, LOT 30 AND LOT 23.

EXHIBIT B

Annual Payments (PILOT); Accrued Tax Burden

Fairhaven MA 2, LLC (Fairhaven F) – 20 Yankee Lane

\$16,364 per MW (AC) per year. Assuming Project size of 2.875 MW (AC), the payments would be per the following schedule. Project size is subject to adjustment per the terms of the Agreement.

Year	Tax Burden	Tax Burden Per MW	Tax Payment Per MW	Annual Payments (PILOT)	Accrued Tax Burden
1	85,020	29,572	16,364	47,046	37,974
2	79,196	27,547	16,364	47,046	70,125
3	73,771	25,660	16,364	47,046	96,850
4	68,718	23,902	16,364	47,046	118,522
5	64,011	22,265	16,364	47,046	135,487
6	59,626	20,739	16,364	47,046	148,068
7	55,542	19,319	16,364	47,046	156,563
8	51,737	17,995	16,364	47,046	161,255
9	48,193	16,763	16,364	47,046	162,402
10	44,892	15,615	16,364	47,046	160,248
11	41,817	14,545	16,364	47,046	155,019
12	38,952	13,549	16,364	47,046	146,925
13	36,284	12,621	16,364	47,046	136,164
14	33,799	11,756	16,364	47,046	122,916
15	31,483	10,951	16,364	47,046	107,354
16	29,327	10,201	16,364	47,046	89,635
17	27,318	9,502	16,364	47,046	69,907
18	25,447	8,851	16,364	47,046	48,308
19	23,704	8,245	16,364	47,046	24,966
20	22,080	7,680	16,364	47,046	0
Total	940,916	327,275	327,275	940,916	2,148,689

TOWN OF FAIRHAVEN

Memo

To: Board of Selectmen
From: Wendy L. Graves, Finance Director
cc: Mark Rees, Town Administrator
Date: April 9, 2020
Re: Local options to be voted

Honorable Board of Selectmen,

Governor Charlie Baker enacted an Act to Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19. The following Local Options need to be voted by the Board of Selectmen.

Section 10 & 11 of the Act

- A. Local Option to extend the Due Dates of Property Tax Bills
Sections 10 (a)(i-iii)
Motion: vote to extend the due dates of property tax bills under G.L. c.59, sec 57 and 57C from May 1, 2020 to no later than June 1, 2020.

- B. Local Option to Extend the Due Date for Exemption and Deferral Applications
Section 10 (a)(iv)
Motion: vote to extend the due date under G.L. c.59, sec 59 for applications for exemptions from April 1, 2020 to no later than June 1, 2020

- C. Local Option to Waive Interest on Certain Payments Made after Due Dates
Section 11
Motion: vote to waive interest and other penalty for late payment of any excise, tax, betterment assessment or apportionment thereof, water rate or annual sewer use or other charge added to a tax for any payments with a due date on or after March 10, 2020 where payment is made after its respective due date but on or before June 30, 2020.

Legal System

Maintain Bulletin

Status: CLOSED

Bulletin Number BUL-2020-2

Record Number 487

Title

An Act to Address Challenges Faced by Municipalities and State Authorities Resulting From COVID-19

Types

Announcement, Recent Legislation

Keywords

COVID-19 emergency declaration governor town meeting delays budget adoption expenditure amortization free cash undesignated fund balance moderator recess continue district tax bills due dates exemptions applications selectmen selectboard appropriation departmental revolving funds right of first refusal classified lands interest waiver city cities

Statutes

St. 2020, c. 53; St. 2015, c. 10, s. 58; 39:9; 39:10A; 41:119; 48:66; 41:1A; 44:31; 59:23; 44:53E1/2; 61:8; 61A:14; 61B:9; 59:57; 59:57C; 59:59; 59:5; 59:5C; 59:5I; 32

Cases

Summary

This Bulletin explains the municipal finance law changes included in An Act to Address Challenges Faced by Municipalities and State Authorities Resulting From COVID-19, signed into law by Governor Baker on April 3, 2020. The Act includes provisions to delay a town meeting beyond June 30th in case of a declared emergency; delays due to a public health emergency by a moderator of a scheduled town or district meeting; emergency deficit spending beyond June 30 on a month to month basis with the director's approval in the event a town or district is unable to adopt its FY 2021 budget due to the emergency; amortization of deficits due to the emergency over a three-year period; appropriations from free cash certified as of July 1, 2019 after June 30, 2020, with the director's approval, when a city, town or district has been unable to adopt its FY 2021 budget by June 30; continued expenditures from departmental revolving funds; suspension of times for cities and towns to act after receiving a notice that triggers a right of first refusal regarding classified lands; extension of due dates of property tax bills and exemption applications and waiver of interest on certain bills paid by June 30th; waiver on limit of hours worked and earnings for certain retirees under c. 32.

Status

In effect.

Comments

No comment is available

Current Documents

Name
BUL-2020-2

Print

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Bulletin

BUL-2020-02

An Act to Address Challenges Faced by Municipalities and State Authorities Resulting From COVID-19

TO: Local Officials
FROM: Patricia Hunt, Chief, Bureau of Municipal Finance Law
DATE: April 3, 2020
SUBJECT: **An Act to Address Challenges Faced by Municipalities and State Authorities Resulting From COVID-19**

This Bulletin provides guidance to local officials regarding changes in municipal finance laws included in An Act to Address Challenges Faced by Municipalities and State Authorities Resulting From COVID-19, Chapter 53 of the Acts of 2020, (the Act). Unless otherwise noted below, these changes became effective on April 3, 2020, upon Governor Baker's signing the Act into law.

I. Town Meeting Delays

A. Power of Boards of Selectmen and Town Councils to Delay Annual Town Meeting

Section 1 of the Act - Before its amendment, G.L. c. 39, § 9 provided that an annual town meeting must take place during the months of February, March, April, May or June; however, a board of selectmen or town council, by vote, could delay the annual town meeting as long as the town meeting completed its business on or before June 30th. Section 1 adds the following exception to the June 30th deadline "in the event of an emergency that poses an immediate threat to the health or safety of persons or property that prevents the completion of the business of the delayed town meeting on or before June 30 if the governor has declared a state of emergency with respect to such emergency."

This exception is available, if necessary, to towns that must delay their town meetings beyond June 30, 2020 due to the COVID-19 outbreak and the declaration of a state of emergency by the governor. Towns are advised to consult with their local counsel regarding the form of vote. See Section I-B of this Bulletin for recess and continuation of town meetings by a town moderator where the town meeting warrant has already been issued.

B. Power of Moderator to Continue Scheduled Town Meetings in Event of Public Health Emergency (Application to Districts)

Sections 2 through 4 of the Act - These sections amend G.L. c. 39, § 10A by adding "public health" emergencies as a reason for a moderator to recess and continue town meetings already scheduled by warrant. Prior to the amendment, section 10A applied to weather-related and public safety emergencies. Under the amended section 10A, during and for a period of five days after a weather-related, public safety or public health emergency, a town moderator may, in consultation with public safety or public health officials and the board of selectmen, declare a recess and continuance of the town meeting to another time, date and place certain; however, the continuance is limited to a period of 30 days. There are notice, posting and other requirements regarding the time, date and place of the recessed and continued meeting. Additionally, within 10 days after the initial declaration by the moderator of recess and continuance, a local public safety or public health official designated by the board of selectmen must submit a report to the Attorney General providing the justification for the moderation's continuance.

These amendments also clarify that a moderator may invoke section 10A more than once to recess and continue a town meeting during the same emergency; however, each continuance period must not exceed 30 days and the moderator may not continue the meeting more than 30 days after the rescission of the declaration of emergency by the governor. Additionally, if a town does not have a moderator, the board of selectmen may recess and continue the town meeting under the amended section 10A.

Under G.L. c. 41, § 119 and c. 48, § 66 (fire districts only), the moderator of a district meeting has the powers of a moderator of a town meeting. As a result, a district moderator may recess and continue scheduled district meetings under G.L. c. 39, § 10A. For purposes of section 19, a district means a fire, water, sewer, water pollution abatement, refuse disposal, light, or improvement district, or any other district formed for the purpose of carrying out any of these functions, whether established under general law or special act. G.L. c. 41, § 1A.

Because several town moderators had already invoked Section 10A to recess and continue a scheduled town meeting due to the outbreak of COVID-19, the amendments to section 10A were made retroactive to March 10, 2020. (See Section 19 of the Act.)

II. Emergency Liabilities in Excess of Appropriation if the COVID-19 Emergency Prevents the Adoption of an Annual Budget

Section 5 of the Act - Under G.L. c. 44, § 31, no department financed by municipal revenue, or in whole or in part by taxation, of any city, town or special purpose district, except Boston, may incur liabilities in excess of appropriation "except in cases of major disaster, including, but not limited to, flood, drought, fire, hurricane, earthquake, storm or other catastrophe, whether natural or otherwise, which poses an immediate threat to the health or safety of persons or property, and then only upon a declaration by the governor of a state of emergency with respect to the disaster" On March 10, 2020, the Governor declared a state of emergency regarding COVID-19. As a result, cities, towns and special purpose districts may, with the approval of the Director of Accounts (director) of the Division of Local Services (DLS), expend from any available funds in the treasury in relation to the emergency without an appropriation by following the procedure described in Bulletin 2020-1.

Section 5 amends G.L. c. 44, § 31 by inserting the following:

If the declared emergency prevents the adoption of an annual budget by a town or district by the June 30 preceding the start of the fiscal year, the board of selectmen, town council or district commissioners shall notify the director and the director may approve expenditures, from any appropriate fund or account, of an amount sufficient for the operations of the town or district during the month of July not less than 1/12 of the total budget approved by the town or district in the most recent fiscal year pursuant to a plan approved by the board of selectmen, town council or district commissioners and such authority shall continue for each successive month while the emergency continues to prevent the adoption of a budget. The director may promulgate and revise rules or regulations regarding the approval of emergency expenditures described in this section and accounting with regard to such expenditures.

This amendment will allow deficit spending, with the approval of the director, on a month-to-month basis in fiscal year 2021 if the town or district was prevented from adopting a budget for fiscal year 2021 due to Governor Baker's Declaration of Emergency issued on March 10, 2020. Additional guidance will be issued by the director, like that contained in Bulletin 2020-01, that will explain the procedure to follow to obtain the director's approval to deficit spend under this provision.

III. Director's Authority to Allow Appropriations after June 30, 2020 from Free Cash Certified as of July 1, 2019

Section 6 of the Act provides:

"...[I]f the adoption of an annual budget in a city, town or district is delayed beyond June 30, 2020, as a result of the governor's March 10, 2020 declaration of a state of emergency or the outbreak of the 2019 novel coronavirus, also known as COVID-19, the director of accounts of the department of revenue may authorize the appropriation from the available balance of the city's, town's or district's undesignated fund balance or "free cash" certified by the director under section 23 of chapter 59 of the General Laws as of July 1, 2019, as a funding source for the city's, town's or district's fiscal year 2021 expenditures, including, but not limited to any such undesignated fund balance in an enterprise fund or special revenue account...."

Ordinarily, under G.L. c. 59, § 23, appropriations from certified free cash may only be made until the June 30th following its July 1 certification date. As a result, free cash certified by the director as of July 1, 2019 is available for appropriation only up to and including June 30, 2020. This section allows the director to authorize the appropriation from free cash certified as of July 1, 2019 after June 30, 2020 where the city, town or district has been prevented from adopting its FY 2021 annual budget by June 30, 2020 due to the Governor's March 10, 2020 declaration of a state of emergency or the outbreak of the 2019 novel coronavirus. Once a city, town or district can meet and adopt its FY 2021 budget, this section will allow the director to permit appropriations from free cash certified as of July 1, 2019 as a funding source for its FY 2021 expenditures. Pursuant to Section 6, the director will issue additional guidance regarding the implementation of this provision.

IV. Amortization of Deficit Resulting from COVID-19 Over a Three-year Period

Section 7 of the Act - Under G.L. c. 44, § 31, deficit expenditures not otherwise provided for must be funded in full when setting the tax rate for the next fiscal year. Section 7 of the Act permits the amortization over a three-year period of the amount of a city, town or district's fiscal year 2020 deficit resulting from the outbreak of the 2019 novel coronavirus also known as COVID-19, as described in the governor's March 10, 2020 declaration of a state of emergency. This applies to both expenditure deficits and revenue deficits related to the emergency. Examples of revenue deficits that could result from the emergency are reduced meals tax and room occupancy revenues. This legislation is similar to St. 2015, c. 10, § 58 which, due to the extreme snow removal costs incurred the previous winter, permitted amortization of snow and ice expenditure deficits over three years. Again, the director will issue additional guidance on the implementation of this section.

V. Continuation of Expenditure Authorization for Departmental Revolving Funds under G.L. c. 44, § 53 E ½ in FY 2021

Section 8 of the Act - Under G.L. c. 44, § 53 E ½, a city or town may authorize by bylaw or ordinance one or more revolving funds and must annually before July 1 vote the limit on the total amount that may be expended from each revolving account. Section 8 of the Act allows the continued expenditure in FY 2021 from these departmental revolving funds at the same level of expenditure authorized by the city or town for FY 2020 until the city or town adopts its FY 2021 annual budget at which time the legislative body of the city or town must adopt the FY 2021 expenditure limits for each departmental revolving fund.

VI. Suspension of Time Period for Cities and Towns to Exercise Right of First Refusal to Purchase Lands Classified under G.L. c. 61, 61A and 61B

Section 9 of the Act - Section 9 suspends the time periods that require a city or town to "act, respond, effectuate or exercise an option to purchase" under G.L. c. 61, § 8, c. 61A, § 14 and c. 61 B, § 9. The suspension is during and for a period of 90 days after the termination of the governor's March 10, 2020 declaration of a state of emergency. If a city or town receives notice of intent to convert or sell classified land during this period, we advise that local counsel be contacted for advice.

VII. Due Dates of Real and Personal Property Tax Bills and Applications for Exemptions and Waiver of Interest on Certain Late Payments

Sections 10 and 11 of the Act include several provisions regarding local tax bills.

A. Local Option to extend the Due Dates of Property Tax Bills

Sections 10(a)(i-iii) include a local option to extend the due dates of property tax bills under G.L. c. 59, §§ 57 and 57C from April 1, 2020 (for semi-annual billing communities with annual

preliminary bills) or May 1, 2020 to a date not later than June 1, 2020. This local option applies to semi-annual tax billing communities and quarterly tax billing communities. The local option is exercised by the chief executive officer of a city, town or district. The chief executive officer is a mayor in a city and the board of selectmen in a town unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter. In a district, the chief executive officer is the prudential committee or commissioners.

B. Local Option to Extend the Due Date for Exemption and Deferral Applications

Section 10(a)(iv) includes a local option to extend the due date under G.L. c. 59, § 59 for applications for exemptions from April 1, 2020 to a date not later than June 1, 2020. This due date extension, if exercised, will automatically apply to deferrals under G.L. c. 59, § 5[18A] and [41A], residential exemptions under G.L. c. 59, § 5C and small commercial exemptions under G.L. c. 59, § 5I. This second local option is exercised in the same manner described in Section VII-A of this Bulletin.

C. Local Option to Waive Interest on Certain Payments Made After Due Dates

Section 11 includes a local option to waive interest and other penalty for late payment of any excise, tax, betterment assessment or apportionment thereof, water rate or annual sewer use or other charge added to a tax for any payments with a due date on or after March 10, 2020 where payment is made after its respective due date but before June 30, 2020. This third local option is also exercised in the same manner described in Section VII-A of this Bulletin.

This section allows the waiver of interest and penalties regarding late payments of bills with a due date of March 10, 2020 or after, when such bills are paid late but paid on or before June 30, 2020. This section does not permit waiver of interest and penalties regarding bills with due dates before March 10, 2020 or if the bill is not paid by June 30, 2020.

Section 11 also provides that a city or town shall not terminate an essential service of a resident, including but not limited to, water, trash collection or electricity, for nonpayment of taxes or fees with due dates on or after March 10, 2020 if paid on or before June 30, 2020, if the inability to pay resulted from circumstances related to the outbreak of COVID-19 or the governor's March 10, 2020 declaration of a state of emergency.

D. Clarification of Due Dates When Municipal Office is Closed Due to COVID-19

Section 10(b) - Under G.L. c. 59, §§ 57, 57C and 59, there is an automatic extension of due dates for tax payments and applications for exemptions when a municipal office is closed for a weather-related or other public safety emergency until the next day that the municipal office is open. Section 10(b) of the Act clarifies that these automatic extensions do not apply if municipal offices are closed as a result of the outbreak of the 2019 novel coronavirus or the declaration of a state of emergency issued by the governor on March 10, 2020 and that due dates shall only be extended by the exercise of the local options described in Sections VII- A and B of this Bulletin.

E. Notice to Taxpayers

Tax bills (with due dates of April 1, 2020 or May 1, 2020) should have already been mailed in the formats described in IGR 2019-1, IGR 2019-2, IGR 2019-3 or IGR 2019-4, as applicable. Where

tax bills have been mailed, the attached Notice must be sent to taxpayers by separate mailing if any of the local options described above are exercised. If a city or town has not adopted all three local options or June 1, 2020 due dates, the attached Notice must be amended, as appropriate, by the city or town to reflect its exercised options.

If the tax bills have not been mailed and any of the above local options are exercised, the format and content of the tax bills themselves should not be changed. Instead, tax bills should be issued in the form described in IGR 2019-1, IGR 2019-2, IGR 2019-3 and IGR 2019-4, as applicable, and the mailing must include the attached Notice (worded to reflect the local options and due dates approved by the city/town) in the same mailing as the tax bill. (See Sections IV-B-1 of IGR 2019-1, IGR 2019-2 and IGR 2019-3 and Section V-B-1 of IGR 2019-4 for insertion by collector of tax billing information in same envelope as a tax bill.)

VIII. Waiver for Hours Worked and Earnings Received During State of Emergency Regarding Services Performed by Certain Retirees Under G.L. c. 32

Section 14 of the Act includes a waiver for hours worked and earnings received by certain retirees during the state of emergency. Cities and towns are advised to contact the Public Employee Retirement Administration Commission (PERAC) for more information regarding this section.

IX. Other Provisions of the Act

The Act also includes other non-finance provisions related to cities and towns, including **Section 17** regarding the suspension of certain deadlines affecting local permits and local permitting authorities. Cities and towns are advised to review the Act with their local counsel.

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SAMPLE NOTICE TO TAXPAYERS
TO BE INCLUDED WITH TAX BILL OR SEPARATELY MAILED
(Samples should not be used without the advice of municipal counsel.)

Town/City of _____

Important information Regarding Your Tax Bill

Under "An Act to Address Challenges Faced by Municipalities and State Authorities Resulting From COVID-19," Chapter 53 of the Acts of 2020, the town/city has adopted local options to extend due dates for real and personal property tax payments and applications for exemptions and a waiver of interest on certain municipal tax and other bills paid by June 30, 2020. See below.

1. **The due date of your real and personal property tax bill has been extended to June 1, 2020.** June 1, 2020 is the new due date even if the due date for payment on your enclosed or previously mailed tax bill is April 1, 2020 or May 1, 2020.
2. **The due date for applications for property tax exemptions has also been extended to June 1, 2020.** June 1, 2020 is the new due date even if the due date for applications on your enclosed or previously mailed tax bill is April 1, 2020.

This extension applies to applications for the exemptions listed in the third paragraph of G.L. c. 59, § 59, including exemptions under clauses 17, 17C, 17C1/2 and 17D (seniors, surviving spouses, minor children of deceased parent); 18 (financial hardship – activated military, age and infirmity); 22, 22A, 22B, 22C, 22D, 22E, 22F and 22H (veterans, surviving spouses and surviving parents); 37 and 37A (blind persons); 41, 41B, 41C and 41C1/2 (seniors); 42 and 43 (surviving spouse and minor children of firefighter/police officer killed in line of duty); 52 (certain eligible seniors); 53 (certain eligible properties with septic systems); 56 (National Guard and reservists on active duty in foreign countries); and 57 (local option tax rebates). This extension also automatically applies to applications for residential exemptions under G.L. c. 59, § 5C, for small commercial exemptions under G.L. c. 59, § 5I and for deferrals under G.L. c. 59, § 5, clauses 41A (seniors) and 18A (poverty or financial hardship due to change to active military).

3. The town/city has also voted to waive interest and other penalty for late payment of any excise, tax, betterment assessment or apportionment thereof, water rate or annual sewer use or other charge added to a tax for any payments with a due date on or after March 10, 2020 where payment is made late but before June 30, 2020. This applies to late payments of bills that have a due date of March 10, 2020 or after, when such bills are paid late but paid on or before June 30. This waiver of interest does not apply to bills with due dates before March 10, 2020 or if the bill is not paid by June 30.

NOTE - If the municipal offices are closed on the June 1, 2020 extended due date for tax payments or filing of exemption applications as a result of the outbreak of the 2019 novel coronavirus or the declaration of a state of emergency issued by the governor on March 10, 2020, the due dates for tax payments and applications for exemptions are not extended – they will be due on June 1, 2020 even if the municipal offices are closed. (See section 10(b) of the Act.)

[City/town should add information on how/where to make tax payments and file applications for exemptions, for example, by mail, through an on-line payment system or dropping payment into a lockbox (with the location). The city/town should also provide a telephone number where questions to local officials can be directed and the address of any relevant website information.]

The Commonwealth of Massachusetts
Department of Fish and Game
Office of Fishing and Boating Access

CONTRACT

Clause 1. This agreement, made this _____, 20__ between the Commonwealth of Massachusetts, by the Department of Fish and Game, Office of Fishing and Boating Access for the said Commonwealth and the Town of Fairhaven, herein called the Contractor.

Clause 2. Witnesseth that the parties to this agreement each in consideration of the agreements of the part of the other herein contained do hereby agree, the Commonwealth of Massachusetts, for itself and said Contractor for itself and its successors and assigns as follows:

The Contractor agrees to furnish all equipment, machinery, tools and labor, to furnish and deliver all materials required to be furnished and delivered in and about the improvement, and to do and perform all work in the Acushnet River Basin (Pease Park) Public Access Facility at Middle Street in strict conformity with the provisions herein contained replacement of the skids for the floating docks.

Clause 3. In consideration of the foregoing premises, the Commonwealth agrees to pay the Contractor and the Contractor agrees to receive as full reimbursement for everything furnished and done by the Contractor under this Contract, including all work required for the items herein mentioned, and also for all loss or damage arising out of the nature of the work aforesaid, or from the actions of the elements, or from any Delay or from any unforeseen obstruction or difficulty encountered in the prosecution of the work, and for all risks of every description connected with the work, and for all expenses incurred by or in consequence of the suspension or discontinuance of work herein specified, and for well and faithfully completing the work, and the whole hereof, as herein provided, and reimbursement as in provided for the aforesaid specifications. Such reimbursement shall not exceed \$ 1,720.00.

In witness whereof, the said Contractor has caused these presents to be assigned in its name and behalf and its corporate seal to be hereto affixed by:

_____, Its Selectman
(Print Name)

_____, Its Selectman
(Print Name)

_____, Its Selectman
(Print Name)

_____, Its Selectman
(Print Name)

_____, Its Selectman
(Print Name)

Thereunto duly authorized, and the said Commonwealth has executed these presents by its Office of Fishing and Boating Access on the year and day above written.

Ronald Amidon, Commissioner Department of Fish and Game

Douglas H. Cameron, Acting Director Office of Fishing and Boating Access (DF&G)

Town of Fairhaven
Contractor

By: _____ Selectman
Signature

Corporate Seal

_____ Selectman
Signature

_____ Selectman
Signature

_____ Selectman
Signature

_____ Selectman
Signature

Certificate of the Town Clerk:

I hereby certify that the individual(s) who execute this agreement currently hold office in the Town of Fairhaven.

_____ Town Clerk

the Governor or his designee, the Secretary of Administration and Finance, and the State Auditor his designee shall have the right to reasonable times and upon reasonable notice to examine the books, records and other compilations of data of the vendor which pertain to the performance of the provisions and requirements of this contract or agreement.

Attachment F

MELANSON HEATH
ACCOUNTANTS • AUDITORS

10 New England Business
Center Dr. • Suite 107
Andover, MA 01810
(978)749-0005
melansonheath.com

Mark Rees, Town Administrator
Board of Selectmen
Town of Fairhaven
Town Hall
40 Center Street
Fairhaven, MA 02719

Additional Offices:
Nashua, NH
Manchester, NH
Greenfield, MA
Ellsworth, ME

Dear Mr. Rees and Board Members:

We have audited the financial statements of the Town of Fairhaven, Massachusetts (the Town) as of and for the year ended June 30, 2019, and have issued our report thereon dated March 30, 2020. Professional standards require that we advise you of the following matters relating to our audit.

Our Responsibility in Relation to the Financial Statement Audit

As communicated in our engagement letter, our responsibility, as described by professional standards, is to form and express an opinion about whether the financial statements that have been prepared by management with your oversight are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America. Our audit of the financial statements does not relieve you or management of your respective responsibilities.

Our responsibility, as prescribed by professional standards, is to plan and perform our audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control over financial reporting. Accordingly, as part of our audit, we considered the internal control of the Town solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.

We are also responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

We have provided our findings regarding other matters noted during our audit in a separate letter to you dated March 30, 2020.

Planned Scope and Timing of the Audit

We conducted our audit consistent with the planned scope and timing we previously communicated to you.

Compliance with All Ethics Requirements Regarding Independence

The engagement team and others in our firm have complied with all relevant ethical requirements regarding independence. Safeguards that have been applied to eliminate threats to independence or reduce them to an acceptable level include annual certification by all firm staff of independence, or when circumstances changes during the year.

Qualitative Aspects of the Entity's Significant Accounting Practices

Significant Accounting Policies

Management has the responsibility to select and use appropriate accounting policies. A summary of the significant accounting policies adopted by the Town is included in the notes to the financial statements. There have been no initial selection of accounting policies and no changes in significant accounting policies or their application during the year ended June 30, 2019. No matters have come to our attention that would require us, under professional standards, to inform you about (1) the methods used to account for significant unusual transactions and (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

Significant Accounting Estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's current judgments. Those judgments are normally based on knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ markedly from management's current judgments.

The most sensitive accounting estimates affecting the financial statements are:

- Estimated lives and depreciation methods for depreciable assets.
- Collectability of receivables.
- Accrued interest on long-term debt.
- Net pension liability.
- Net OPEB liability.
- Estimated liability for potential tax refunds.

Management's estimate of the above are based on various criteria. We evaluated the key factors and assumptions used to develop these estimates and determined that it is reasonable in relation to the basic financial statements taken as a whole and in relation to the applicable opinion units.

Financial Statement Disclosures

Certain financial statement disclosures involve significant judgment and are particularly sensitive because of their significance to financial statement users. We noted no particularly sensitive disclosures affecting the Town's financial statements.

Identified or Suspected Fraud

We have not identified or have obtained information that indicates that fraud may have occurred.

Significant Difficulties Encountered during the Audit

We encountered no significant difficulties in dealing with management relating to the performance of the audit.

Uncorrected and Corrected Misstatements

As an added service to the Town, we assisted in compiling the government-wide financial statements, including consolidating various funds into governmental activities, converting to the accrual basis of accounting, and recording all long-term assets, long-term liabilities, and net position classifications. This consolidation and conversion process was based on information from the Town's accounting records.

For purposes of this communication, professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that we believe are trivial, and communicate them to the appropriate level of management. Further, professional standards require us to also communicate the effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial statements as a whole and each applicable opinion unit. There were no uncorrected financial statement misstatements whose effects in the current and prior periods, as determined by management, are immaterial, both individually and in the aggregate, to the financial statements taken as a whole and each applicable opinion unit.

In addition, professional standards require us to communicate to you all material, corrected misstatements that were brought to the attention of management as a result of our audit procedures. There were no material misstatements that we identified as a result of our audit procedures.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, reporting, or auditing matter, which could be significant to the Town's financial statements or the auditor's report. No such disagreements arose during the course of the audit.

Representations Requested from Management

We have requested certain written representations from management, which are included in their letter dated March 30, 2020.

Management's Consultations with Other Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters. Management informed us that, and to our knowledge, there were no consultations with other accountants regarding auditing and accounting matters.

Other Significant Matters, Findings, or Issues

In the normal course of our professional association with the Town, we generally discuss a variety of matters, including the application of accounting principles and auditing standards, operating and regulatory conditions affecting the entity, and operational plans and strategies that may affect the risks of material misstatement. None of the matters discussed resulted in a condition to our retention as the Town's auditors.

This report is intended solely for the information and use of the governing body and management of the Town and is not intended to be and should not be used by anyone other than these specified parties.

Sincerely,

Melanson Heath

March 30, 2020

