



**Fairhaven Board of Selectmen
Meeting Minutes
January 11, 2021**

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TOWN CLERK

2021 JAN 26 P 2:23

FAIRHAVEN,
MASS.

Present: Chairman Daniel Freitas Vice-Chairman Robert Espindola, Selectman Keith Silvia, interim Town Administrator Wendy Graves and Cable operator Nick Doyle.

Present via Zoom: Administrative Assistant Vicki Oliveira, Town Counsel Tom Crotty, Jeff Christensen and Cable Production Coordinator Eric Sa.

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

Chairman Freitas opened the meeting at 6:30 pm in the Town Hall Banquet Room 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.

MINUTES

Mr. Espindola would like to hold on the approval of the minutes of December 21, 2020 – Open Session until the next meeting to provide for edits to be added.

Mr. Espindola made a motion to approve the minutes of January 4, 2021 – Open Session. Mr. Silvia seconded. Vote was unanimous. (2-1)

TOWN ADMINISTRATOR’S REPORT

Ms. Graves told the Board:

- Town Administrator Mark Rees retired last Thursday January 7, 2021 and Wendy Graves has taken over as Interim Town Administrator.
- Fire Chief Tim Francis retired last Friday January 8, 2021 and Deputy Chief Todd Correia was appointed as the Provisional Fire Chief.
- RFP Bid openings for the Roger's school was today, January 11, 2021 and the Town received 1 bid. Planning Director Paul Foley will upload the RFP on the town website and the Roger's School Committee was given a copy.
- FY22 Capital budget project requests have all been rated based on six (6) criteria and will be presented at a future Selectmen's meeting when the financing has been completed.
- FY22 departmental budget hearings have been ongoing and they are almost completed at this point. The FY22 Budget is scheduled to be presented to the Selectmen and the Finance Committee at the January 25th Selectmen's meeting.

COMMITTEE LIAISON REPORTS

Mr. Espindola said he will meet with the Bikeway Committee on January 19, 2021, where they will discuss the Complete Streets program and will begin the process of outlining the areas in town that can use improvements.

Mr. Espindola said the Southcoast Bikeway alliance will meet this week and discuss the regional greenway study being conducted through SRPEDD

Mr. Espindola will meet with SRPEDD on January 27, 2021.

Mr. Espindola said the Marine Resources Committee has taken the month of January off and will meet again in February to discuss the waterway rules and regulations

Mr. Espindola said the Economic Development Committee will meet January 21, 2021 to discuss the new building fees.

Mr. Espindola said the Broadband study will meet Thursday to discuss community engagement plan and a budget for the plan

Mr. Silvia said he met with the Historical Commission and they vote unanimously to support a project to put period correct lighting around Town Hall. The Commission also voted to support the historic significance of the Whitfield- Manjiro House.

REQUEST TO JOIN HISTORICAL COMMISSION

Mr. Espindola made a motion to appoint John Medeiros to the Historical Commission as an associate member. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to appoint David Braga to the Historical Commission as an associate member. Mr. Silvia seconded. Vote was unanimous. (3-0)

RESIGNATION OF MARK REES, RETIRED TOWN ADMINISTRATOR, ON COMMITTEES AND POSITIONS

Mr. Espindola made a motion to accept the resignation of retired Town Administrator Mark Rees from the positions of:

- ADA Coordinator
- Capital Improvement Planning Committee
- Mattapoisett River Valley Water District
- Affirmation Action Officer
- Procurement Officer

Mr. Silvia seconded. Vote was unanimous. (3-0)

APPOINTMENT OF WENDY GRAVES, INTERIM TOWN ADMINISTRATOR

Ms. Graves explained that she is currently on the Capital Planning Committee in her role as Finance Director.

Mr. Espindola made a motion to appoint interim Town Administrator Wendy Graves to the positions of:

- ADA Coordinator
- Mattapoisett River Valley Water District
- Affirmation Action Officer
- Procurement Officer

Mr. Silvia seconded. Vote was unanimous. (3-0)

BUILDING DEPARTMENT FEES

Building Commissioner Chris Carmichael met with the Board to discuss his proposed fee changes for the building department. Mr. Carmichael explained that there is a slight increase in fees for commercial permits but the residential permit costs have been slightly reduced. (Attachment A)

These fees will help implement the algorithm for the new permitting software that will streamline the permitting process for applicants. Once the new fees are approved the online system can be in place as soon as the end of January.

Mr. Espindola made a motion to accept the new fees proposes by the Building Commissioner. Mr. Silvia seconded. Vote was unanimous. (3-0)

At 6:56 pm the Board took a 4-minute recess.

RECEIVE UPDATE ON THE STATUS AND TIMELINE FOR BROADBAND REQUEST FOR PROPOSALS

Mr. Espindola said he requested this item to help update the Board regarding the meeting today for the steps that will needed to be taken in order to move the Broadband forward.

Jeff Christensen of Entry Point Networks met with the Board via Zoom to discuss the Broadband request for proposal. (Attachment B) Mr. Christianson explained to the Board that the goals are to make sure there is enough support in the community for the broadband. The goal is that the system will not lead to a new tax in town and not create a financial burden to the town. There is a process before they can present this to the community.

Resident Gary Lavalette would like to see the Board hold a public forum so that residents can ask questions. He is concerned about the costs of the Broadband.

Mr. Espindola said if the broadband goes through, there would be no obligation to switch from their current provider.

COVID -19 VACCINE GUIDANCE

Mr. Freitas told the Board there was a letter from the Town's labor Counsel regarding the COVID-19 vaccination in the workplace. (Attachment C) The Board discussed whether the town would create a policy to make the vaccine mandatory for town employees. Mr. Espindola would like to discuss this information at the next meeting, along with the input from the Board of Health and a recommendation from labor attorney's Clifford and Kenny, LLP. Ms. Graves will send this information to the Health Agent for more guidance.

NOTES AND ANNOUNCEMENTS

Mr. Silvia said he would like to see the Tree Warden at the next meeting to discuss some resident's concerns. He would like to have the Public Works Department available for input.

Mr. Espindola addressed having more communication between the Board members when there are changes in the schedule.

At 8:11 pm Mr. Espindola made a motion to adjourn to executive session, not to reconvene to open session to discuss:

Strategy with Respect to Litigation: MGL Chapter 30A, Section 21(a)3:

1. West Island Realty (Petition for Certificate of Title-Ristuccia Tax Taking)
2. Anne O'Brien – MCAD complaint

Mr. Silvia seconded. Vote was unanimous. (3-0)

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

Respectfully submitted,



Vicki L. Oliveira
Administrative Assistant
(Approved 1/25/2021)

Attachments:

- A. Building Department Fees



TOWN OF FAIRHAVEN
BUILDING DEPARTMENT

COMMERCIAL BUILDING PERMIT FEE SCHEDULE

Table listing permit fees: New Construction* (Application fee of \$100.00 plus \$15 per thousand of total construction costs), Accessory Structures, Int. alterations, Docks & Piers* (fee of \$100.00 plus \$12 per thousand of total costs), Certificate of Occupancy (Temporary) (\$250.00), Certificate of Inspection (per 780 CMR Table 110) (\$75.00), Change of Occupancy (inspection required) (\$75.00), Demolition* (AQ06 form required) (Application fee of \$100.00 plus \$10 per thousand of total costs), Mechanical/Sheet Metal* (Application fee of \$100.00 plus \$10 per thousand of total costs), Plan Review (fee may be assessed for large scale projects), Re-Inspection Fee (\$100.00), Temporary Structures/ Tents (\$250.00), Trench permits (\$100.00), Signs (\$150.00 each), Solar Panels* (roof, ground or canopies) (\$100.00 plus \$15 per thousand of total construction costs), Sprinkler* (Application fee of \$100.00 plus \$10 per thousand of total costs), Wind Turbines* (1% of the total cost of the Project plus 3% Administration Fee), Zoning Determination Letter (\$250.00)

- 24 HOUR NOTICE REQUIRED FOR ALL INSPECTION REQUESTS
• RESPONSIBILITY OF LICENSEE TO CALL AND STAND FOR INSPECTIONS
• WORKING W/O A PERMIT, FEES WILL BE DOUBLED AND OR FINED
• FEES ARE NON-REFUNDABLE AND NON-TRANSFERABLE
• FEES ARE SUBJECT TO CHANGE WITHOUT NOTICE

It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes and that all work shall be conducted, installed, protected and completed in a workmanlike and acceptable manner so as to secure the results intended by 780 CMR. Neither the Building official nor the applicable enforcement authority shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

*Contracts may be required and shall include material, equipment, and labor costs

Chris Carmichael, Building Commissioner

Board of Selectmen



TOWN OF FAIRHAVEN
BUILDING DEPARTMENT

RESIDENTIAL BUILDING PERMIT FEES

New One and Two Family Dwellings*	Application fee of \$50.00 plus \$12 per \$1,000 of total costs
Additions, Garages, Docks/Piers*	Application fee of \$50.00 plus \$10 per \$1,000 of total costs
Accessory Structures (over 350 sq. feet)	\$200.00
Accessory Structures (under 350 sq. feet)	\$100.00
Certificate of Occupancy	\$150.00
Demolition of House (requires asbestos survey)	\$350.00
Demolition Accessory Structures (over 350 sq. ft.)	\$200.00
Demolition Accessory Structures (under 350 sq. feet)	\$100.00
Fireplace/Chimneys/Siding/Roofing/Windows/Doors	\$75.00 each
Interior Alterations (Kitchen/Bath/Basement)	\$200.00
Mechanical/Sheet Metal Permit Fee	\$75.00
Pools	Above ground/spa's/hot tub's = \$100.00, In-Ground = \$150.00
Re-Inspection Fee	\$75.00
Solid Fuel Appliance (wood/pellet stoves)	\$75.00
Sundecks (new/repairs)	\$150.00
Temporary Structures/Tents	\$100.00
Trench permits	\$55.00
Wind Turbine/Solar Panels* (ground or roof)	Application fee of \$50.00 plus \$10 per \$1,000 of costs
Zoning Determination Letter	\$150.00

- ALL STRUCTURAL WORK MUST BE PERFORMED BY A MA CSL
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It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes and that all work shall be conducted, installed, protected and completed in a workmanlike and acceptable manner so as to secure the results intended by 780 CMR. Neither the Building official nor the applicable enforcement authority shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

**Contracts may be required and shall include material, equipment, and labor costs*

APPROVED by Board of Selectmen:

Chris Carmichael, Building Commissioner



TOWN OF FAIRHAVEN
OFFICE OF THE BUILDING COMMISSIONER

PLUMBING / GAS DIVISION

*Norman Lussier, Plumbing Inspector
Henry Daigle, Gas Inspector*

Residential Plumbing/GasApplication fee of \$50.00, plus \$15 per fixture
Single Fixture..... one inspection=\$65.00, two inspections=\$100.00
Re-inspection Fee (Paid Prior to re-inspection)..... \$50.00
Sewer and/or Water Tie-in.....\$85.00

Commercial Plumbing/Gas*Application fee of \$100.00, plus \$12.00 per thousand of contract
Commercial Re-inspection fee (paid prior to re-inspection).....\$100.00
Commercial Sewer and/or Water Tie-in\$175.00
Multi Family Dwelling** (more than 2 units)...\$100.00 fee plus \$12.00 per thousand of contract

- ALL PLUMBING/GAS WORK MUST BE PERFORMED BY A MA LICENSEE
- 24 HOUR NOTICE REQUIRED FOR ALL INSPECTION REQUESTS
- RESPONSIBILITY OF LICENSEE TO CALL AND STAND FOR INSPECTIONS
- WORKING W/O A PERMIT, FEES WILL BE DOUBLED AND OR FINED
- FEES ARE NON-REFUNDABLE AND NON-TRANSFERABLE
- FEES ARE SUBJECT TO CHANGE WITHOUT NOTICE

It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes and that all work shall be conducted, installed, protected and completed in a workmanlike and acceptable manner so as to secure the results intended by 248 CMR. Neither the official nor the applicable enforcement authority shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

**Contracts may be required and shall include material, equipment, and labor costs*

***Each unit requires its own permit*

APPROVED by Board of Selectmen:

Chris Carmichael, Building Commissioner



TOWN OF FAIRHAVEN
OFFICE OF THE BUILDING COMMISSIONER

ELECTRICAL DIVISION

RESIDENTIAL RATES

Table listing residential rates for various services: New Single-Family Dwelling (\$200.00), New Two-Family Dwelling (\$200 each unit), New Multi Family Dwelling (See Commercial Rates), New/Temporary Service (\$75.00), Underground Service (\$100.00), Additions, Remodeling (two inspections) (\$100.00), Single Device/Appliance (one inspection \$55.00, two inspections \$100.00), Pools (Above Ground=\$55.00, In-Ground=\$100.00), House Alarms (Single Device one inspection=\$55.00, New Alarm System=\$100.00), Solar Installation (\$100.00), Re-inspection (\$55.00).

Table listing commercial rates: COMMERCIAL RATES* (\$100.00 application fee plus \$12.00 per thousand), Annual Maintenance Permit (in-house electrician only) (\$200.00), Circus, Carnival, Fairs (\$100.00), Multi Family Dwelling*** (more than 2 units) (\$100.00 fee plus \$12.00/thousand), Re-inspection (paid prior to inspection) (\$100.00).

- ALL ELECTRICAL WORK MUST PERFORMED BY A MA LICENSEE
24 HOUR NOTICE REQUIRED FOR ALL INSPECTION REQUESTS
RESPONSIBILITY OF LICENSEE TO CALL AND STAND FOR INSPECTIONS
WORKING W/O A PERMIT, FEES WILL BE DOUBLED AND OR FINED
FEES ARE NON-REFUNDABLE AND NON-TRANSFERABLE
FEES ARE SUBJECT TO CHANGE WITHOUT NOTICE

It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes and that all work shall be conducted, installed, protected and completed in a workmanlike and acceptable manner so as to secure the results intended by 527-12 CMR. Neither the official nor the applicable enforcement authority shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

*Contracts may be required and shall include material, equipment, and labor costs
**Not for Projects over \$2500.00
***Each unit requires its own permit

APPROVED:

APPROVED by Board of Selectmen:

Chris Carmichael, Building Commissioner
Effective Date:

Blank lines for signature and date of Board of Selectmen.

Fiber Optic Project

SPECIFICATIONS AND CONTRACT DOCUMENTS

January, 2021

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Fiber Optic Project - 2020

TABLE OF CONTENTS

SECTION I: GENERAL INFORMATION

SECTION II: SCOPE OF SERVICES

SECTION III: MINIMUM INFORMATION REQUIRED

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XXXXXX

RFP process and compliance questions shall be e-mailed to:

Should any prospective offeror be in doubt as to the true meaning of any portion of this RFP or should the prospective offeror find any ambiguity, inconsistency, or omission therein, the prospective offeror shall make a written request for an official interpretation or correction by the due date for questions above.

All interpretational corrections, or additions to this RFP will be made only by an official addendum that will be posted and it shall be the prospective offeror's responsibility to ensure they have received all addenda before submitting a proposal. Any addenda issued by the Town shall become part of the RFP and must be incorporated in the proposal where applicable.

C. PRE-PROPOSAL MEETING

A pre-proposal meeting will be held:

WHERE: January 1, 2017 at 10:00 a.m.
WHERE: Town Address

The meeting is not mandatory; however, it is highly recommended that interested offerors attend the meeting. The purpose of this meeting is to discuss the project with projective officers and to answer any questions concerning the RFP.

Any questions and answer - furnished in the pre-proposal meeting will not be official nor verified as being the opinion of the Town for the RFP.

SECTION I - GENERAL INFORMATION

A. OBJECTIVE

The purpose of this Request for Proposal (RFP) is to select a firm or firms to work with the Town to design and build a municipal fiber optic network. Segments of this network may be aerial or underground.

B. QUESTIONS AND CLARIFICATIONS / DESIGNATED Town CONTACTS

All questions regarding this Request for Proposal (RFP) shall be submitted via e-mail. Questions will be accepted and answered in accordance with the terms and conditions of this RFP.

All questions shall be submitted on or before XXXXXXX, 2021, at 10:00 a.m., and should be e-mailed to:

XXXXXXX

RFP Process and Compliance questions shall be e-mailed to:

Should any prospective offeror be in doubt as to the true meaning of any portion of this RFP, or should the prospective offeror find any ambiguity, inconsistency, or omissions therein, the prospective offeror shall make a written request for an official interpretation or correction by the due date for questions above.

All interpretations, corrections, or additions to this RFP will be made only as an official addendum that will be posted and it shall be the prospective offeror's responsibility to ensure they have received all addenda before submitting a proposal. Any addendum issued by the Town shall become part of the RFP, and must be incorporated in the proposal where applicable.

C. PRE-PROPOSAL MEETING

A pre-proposal meeting will be held:

WHEN: **January X, 2021 at 10:00 a.m.**

WHERE: **Zoom Address**

The meeting is not mandatory; however, it is highly recommended that interested offerors attend the meeting. The purpose of this meeting is to discuss the project with prospective offerors and to answer any questions concerning the RFP.

Any questions and answers furnished in the pre-proposal meeting will not be official until verified in writing through an addendum to the RFP.

D. PROPOSAL FORMAT

To be considered, each firm or firms must submit a response to this RFP using the format provided in Section III. No other distribution of proposals is to be made by the prospective offeror. An official authorized to bind the offeror to its provisions must sign the proposal in ink. Each proposal must remain valid for at least **ninety** days from the due date of this RFP.

Proposals should be prepared simply and concisely, providing a straightforward description of the offeror's ability to meet the requirements of the RFP. No erasures are permitted.

E. SELECTION CRITERIA

Responses to this RFP will be evaluated using a point system as shown in Section III. A selection committee composed of staff from the Town will conduct the evaluation.

The Town will determine which, if any, firms will be interviewed. During the interviews, the selected firms will be given the opportunity to discuss their proposal, qualifications, past experience, and their fee proposal in more detail. The Town further reserves the right to interview the key personnel assigned by the selected offeror to this project.

All proposals submitted may be subject to clarifications and further negotiation. All agreements resulting from negotiations that differ from what is represented within the RFP or in the proposal response shall be documented and included as part of the final contract.

F. SEALED PROPOSAL SUBMISSION

All proposals are due and must be delivered to the Town on or before, **XXXXXXXX at **2:00 p.m. (Eastern Time)**.** Proposals submitted late or via oral, telephonic, electronic mail or facsimile **will not** be considered or accepted.

Each respondent must submit in a sealed envelope

- **one (1) original proposal**
- **three (3) additional proposal copies**
- **one (1) digital copy of the proposal preferably on a USB/flash drive as one file in PDF format**

Proposals submitted must be clearly marked: “RFP No. **XXXX** – Open Access Fiber Optic Network Design and Construction.” The proposals must list the offeror’s name and address.

Proposals must be addressed and delivered to:

Town Offices

c/o Procurement
Address

All proposals received on or before the due date will be publicly opened and recorded on the due date. No immediate decisions will be rendered.

Hand delivered proposals must be date/time stamped by the Procurement Department at the address above in order to be considered. Delivery hours are 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding Holidays.

The Town will not be liable to any prospective offeror for any unforeseen circumstances, delivery, or postal delays. Postmarking on the due date will not substitute for receipt of the proposal. Offerors are responsible for submission of their proposal. Additional time will not be granted to a single prospective offeror. However, additional time may be granted to all prospective offerors at the discretion of the Town.

A proposal will be disqualified if the following required forms are not included with the proposal:

- Attachment A -
- Attachment B -
- Attachment C -
- Attachment D -
-

Proposals that fail to provide these completed forms listed above upon proposal opening will be deemed non-responsive and will not be considered for award.

G. DISCLOSURES

H. SAMPLE CONTRACT

A sample of the Standard Construction Contract is included as Attachment X. **This Contract will be used for the project. The Town will not entertain changes to its Standard Construction Contract.**

The Town reserves the right to award the total proposal, to reject any or all proposals in whole or in part, and to waive any informality or technical defects if, in the Town's sole judgment, the best interests of the Town will be so served.

I. NONDISCRIMINATION

All offerors proposing to do business with the Town shall satisfy the contract compliance administrative policy adopted by the Town Administrator in accordance with the Section 9:158 of the Fairhaven Town Code. Breach of the obligation not to discriminate as outlined in Attachment J shall be a material breach of the contract. Contractors are required to post a copy of Fairhaven's Non-Discrimination Ordinance attached at all work locations where its employees provide services under a contract with the Town.

J. WAGE REQUIREMENTS

Section X, outlines the requirements for payment of prevailing wages and for payment of a "living wage" to employees providing service to the Town under this contract. The successful bidder and its subcontractors must comply with all applicable requirements and provide proof of compliance.

K. CONFLICT OF INTEREST DISCLOSURE

Town Policy requires that the contractor complete a Conflict of Interest Disclosure form. A copy of the Conflict of Interest Disclosure Form is attached.

L. COST LIABILITY

The Town assumes no responsibility or liability for costs incurred by the offeror prior to the execution of any agreement. The liability of the Town is limited to the terms and conditions outlined in the Agreement. By submitting a proposal, offeror agrees to bear all costs incurred or related to the preparation, submission, and selection process for the proposal.

M. DEBARMENT

Submission of a proposal in response to this RFP is certification that the Respondent is not currently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from participation in this transaction by any State or Federal

departments or agency. Submission is also an agreement that the Town will be notified of any changes in this status.

N. PROPOSAL PROTEST

All proposal protests must be in writing and filed with the Purchasing Manager within five (5) business days of the award action. The offeror must clearly state the reasons for the protest. If an offeror contacts a Town Service Area/Unit and indicates a desire to protest an award, the Service Area/Unit shall refer the offeror to the Purchasing Manager. The Purchasing Manager will provide the offeror with the appropriate instructions for filing the protest. The protest shall be reviewed by the Town Administrator or designee, whose decision shall be final.

Any inquiries or requests regarding this procurement should be only submitted in writing to the Designated Town Contacts provided herein. Attempts by the offeror to initiate contact with anyone other than the Designated Town Contacts provided herein that the offeror believes can influence the procurement decision, e.g., Elected Officials, Town Administrator, Selection Committee Members, Appointed Committee Members, etc., may lead to immediate elimination from further consideration.

O. SCHEDULE

The following is the schedule for this RFP process.

Activity/Event	Anticipated Date
Pre-Proposal Meeting	January X, 10:00 a.m.
Written Question Deadline	January X, 10:00 a.m.
Addenda Published (if needed)	January X, 10:00 a.m.
Proposal Due Date	January X, 10:00 a.m.
Tentative Interviews (if needed)	Week of X
Selection/Negotiations	January / February 2021

The above schedule is for information purposes only and is subject to change at the Town's discretion.

P. IRS FORM W-9

The selected offeror will be required to provide the Town an IRS form W- 9.

Q. RESERVATION OF RIGHTS

1. The Town reserves the right in its sole and absolute discretion to accept or reject any or all proposals, or alternative proposals, in whole or in part, with or without cause.
2. The Town reserves the right to waive, or not waive, informalities or irregularities in terms or conditions of any proposal if determined by the Town to be in its best interest.
3. The Town reserves the right to request additional information from any or all

offerors.

4. The Town reserves the right to reject any proposal that it determines to be unresponsive and deficient in any of the information requested within RFP.

5. The Town reserves the right to determine whether the scope of the project will be entirely as described in the RFP, a portion of the scope, or a revised scope be implemented.

6. The Town reserves the right to select one or more respondents to perform services.

7. The Town reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted.

8. The Town reserves the right to disqualify proposals that fail to respond to any requirements outlined in the RFP, or failure to enclose copies of the required documents outlined within RFP.

R. ENVIRONMENTAL COMMITMENT

The Town recognizes its responsibility to minimize negative impacts on human health and the environment while supporting a vibrant community and economy. The Town further recognizes that the products and services the Town buys have inherent environmental and economic impacts and that the Town should make procurement decisions that embody, promote, and encourage the Town's commitment to the environment.

Bonds

Performance and Labor and Material Bonds, each in the amount of the project, will be required for

General Safety Requirements

The Contractor shall be responsible for ensuring compliance with the most stringent provisions of the applicable statutes and regulations of Massachusetts Occupational Safety and Health regulations and all Town of Fairhaven safety policies. The Contractor shall supply all these requirements to any subcontractor performing work under the contract. Should charges of violation of any of the above be issued to the Contractor in the course of the work, a copy of each charge shall be immediately forwarded to the Town along with a plan to correct the violation.

Upon the failure of the Contractor to comply with any of these requirements, the Town's Representative shall have the authority to stop any and all operations of the Contractor affected by such failure until such failure is remedied. No part of the time lost due to any such stop orders shall be made subject to a claim or extension of time or increase in compensation.

All materials, equipment, and supplies used for projects under this contract with the Town of Fairhaven must comply fully with all safety requirements as set forth in Massachusetts Occupational Safety and Health regulations and all applicable OSHA Standards.

SECTION II - SCOPE OF SERVICES

Background

The Town has spent the past 9 months developing a Broadband Master Plan which included Strategic Planning, Assessment of Existing Broadband Infrastructure, Market Analysis, Community Engagement Planning, a Broadband Survey of Residents and Businesses, Comparison of Municipal Broadband Models, Network Design, Project Partners, Cost Analysis & Phasing, Financing Considerations, Legal Considerations, and Risk Analysis.

The Town had over **600** responses to its survey and the Town's residents were overwhelmingly supportive of a Town-wide initiative to design and build a fiber optic network.

From the Town's planning process, the following 8 Key Strategic priorities emerged to guide planning going forward:

1. Improve Affordability
2. Foster Competition & Choice
3. Promote Economic Development
4. Solve the Digital Divide
5. Mitigate Risk for the Town, Constituents, and Partners
6. Improve Network Reliability
7. Foster Innovation
8. Establish Local Control over Essential Infrastructure

RFP Purpose

The purpose of this RFP is:

- 1) Select a Design/Build partner to design and construct a Townwide, open access, fiber optic network, and
- 2) Harden the per premise costs so that the Town can approach residents with a clear and reliable cost structure for network and internet access.

Description

The key services requested in this RFP to achieve the purpose listed above include the following:

1. **Project Management:** Create and oversee the execution of a thorough project plan.

2. **Design:** the Town-wide network (seeking input from the Town and its open access vendor)
3. **Integration:** Evaluate and design integration options with existing fiber network
4. **Make-Ready:** Oversee the make-ready process with pole owners
5. **Construction:** Build the fiber optic network

It is the Town's expectation that once a design/build contractor is selected, the contractor will immediately begin the design process and begin engaging utility pole owners to initiate the make-ready process. During this time, the Town will begin executing on its community engagement process to establish the take-rate for the network. The Town seeks to be in a position to begin construction in phases as make-ready work is completed.

Timeline

The Contractor(s) selected through this process will provide a proposed timeline for the services requested in this RFP. The Town understands that the timeline for "Make Ready" work will not be fully controlled by the contractor.

Payment timing and process will be coordinated between the Town and the contractor after the contractor has been selected. The Town reserves the right to utilize different contractors based on availability, turnaround time for completion of tasks, experience and other factors relevant to the task.

Relevant Fairhaven Data Points:

- X residents,
- Y Households
- Z Residential Premises
- Number of businesses
- X residents per sq/mi
- Town footprint is X sq/mi
- There are approximately X mi of roads that need to have fiber installed to cover the FTTH footprint

Existing Town Fiber Network

A map of the existing Fairhaven Fiber Optic Metropolitan Area Network (FMAN) is attached in Exhibit X. This network was designed in a cascade star topology and the overall utilization of the existing strand count is at or about 90%. Key Project #2 is to work with Fairhaven I.T. personnel and the Town's open access vendor to determine whether this backbone can be leveraged for the deployment of the Town-wide FTTH network.

SECTION III - MINIMUM INFORMATION REQUIRED

PROPOSAL FORMAT

Offerors should organize Proposals into the following Sections:

1. Professional Qualifications
2. Past Involvement with Similar Projects
3. Proposed Work Plan
 - a. Project 1: Design the Town-wide network
 - b. Project 2: Evaluate and design integration options with existing fiber network
 - c. Project 3: Oversee the make-ready process with pole owners
 - d. Project 4: Construction: Build the fiber optic network
4. Fee Proposal
 - a. Project 1: Design the Town-wide network
 - b. Project 2: Evaluate and design integration options with existing fiber network
 - c. Project 3: Oversee the make-ready process with pole owners
 - d. Project 4: Construction: Build the fiber optic network
5. Authorized Negotiator
6. Attachments

The following describes the elements that should be included in each of the proposal sections and the weighted point system that will be used for evaluation of the proposals.

A. Professional Qualifications – X points

1. State the full name and address of your organization and, if applicable, the branch office or other subsidiary element that will perform, or assist in performing, the work hereunder. Indicate whether it operates as an individual, partnership, or corporation. If as a corporation, include whether it is licensed to operate in the State of Massachusetts.
2. Include the name of individuals by skill and qualification that will be employed in the work. Show where these personnel will be physically located during the time they are engaged in the work. Indicate which of these individuals you consider key to the successful completion of the project. Identify only individuals who will do the work on this project by name and title. Resumes and qualifications are required for all personnel identified as key. Identify all subcontractors doing work, including qualifications and capabilities.
3. State history of the firm, including length of existence, types of services provided, etc. Identify the technical details that make the firm uniquely qualified for this work. The Contractor should have the ability to work effectively with the public and regulatory agencies.

B. Past involvement with Similar Projects – X points

The written proposal must include a list of specific experience in the project area and indicate proven ability in implementing similar projects for the firm **and** the individuals to be involved in the project. A complete list of client references must be provided for similar projects recently completed. The list shall include the firm/agency name, address, telephone number, project title, and contact person.

C. Project Management – X points

Develop Detailed Project Plan

The selected Design/Build firm will create and manage a detailed overall project plan with input from the Town and its other advisors, identifying major milestones and critical path items throughout the project. The selected Design/Build firm will manage the creation of this plan with scheduling input from all members of the Project Team throughout the duration of the project.

As part of its Project Management responsibility, the selected Design/Build firm will develop, implement and maintain a System of Record that will be the authoritative source to ensure the integrity and validity of all data that is collected, created and maintained during the project. The System of Record will be used as an information repository and enable collaboration between all stakeholders to upload, manage, preserve, and disseminate project content. All project outputs will flow through the System of Record. Data stored in the System of Record will be used to support project management requirements, enabling the Town to view progress, make decisions, evaluate options, and generate maps, charts and reports.

A secure cloud-based system is preferred for the System of Record and will ideally allow for web-based accessibility, usability, and administration. The Town will require the System of Record to remain accessible to all users for one year after the close of the project and the data should be exported and delivered to the Town in a timely, logical and organized format.

The Town of Fairhaven will show preference to firms willing to utilize a Project Management Software tool specifically designed specifically for Fiber Optic Deployments, such as Ociusnet, Vitruvi, or Render, etc.

Provide a detailed and comprehensive description of how the offeror intends to oversee project management, including how the project will be managed and scheduled, how and when data and materials will be delivered to the Town, communication and coordination, and the working relationship between the offeror and Town staff. Provide documentation for similar projects that demonstrate the ability to manage and deliver a successful project.

Offerors shall be evaluated on the clarity, thoroughness, and content of their responses

to the above items.

D. Authorized Negotiator

Include the name, phone number, and e-mail address of persons(s) in your organization authorized to negotiate the agreement with the Town

E. Attachments

Legal Status of Offeror, Prevailing Wage Compliance Form, Conflict of Interest Form, Living Wage Compliance Form, and the Non-Discrimination Form must be completed and returned with the proposal. These elements should be included as attachments to the proposal submission.

PROPOSAL EVALUATION

1. The selection committee will evaluate each proposal by the above-described criteria and point system to select a short-list of firms for further consideration. The Town reserves the right to reject any proposal that it determines to be unresponsive and deficient in any of the information requested for evaluation. A proposal with all the requested information does not guarantee the proposing firm to be a candidate for an interview. The committee may contact references to verify material submitted by the offerors.
2. The committee then will schedule interviews with the selected firms if necessary. The selected firms will be given the opportunity to discuss in more detail their qualifications and past experience.
3. The interview must include the project team members expected to complete a majority of work on the project, but no more than six members total. The interview shall consist of a presentation of up to thirty minutes (or the length provided by the committee) by the offeror, including the person who will be the project manager on this contract, followed by approximately thirty minutes of questions and answers. Audiovisual aids may be used during the oral interviews. The committee may record the oral interviews.
4. The firms interviewed will then be re-evaluated by the above criteria and adjustments to scoring will be made as appropriate.

The Town reserves the right to waive the interview process and evaluate the offerors based on their proposals alone.

Work to be done under this contract is generally described through the Detailed Specifications, including any additions to the Detailed Specifications for an individual project, and must be completed fully in accordance with the contract documents.

Any proposal that does not conform fully to these instructions may be rejected.

PREPARATION OF PROPOSALS

Proposals should be printed double sided and should not be more than 30 sheets (60 sides), not including required attachments and resumes.

Each person signing the proposal certifies that they are a person in the offeror's firm/organization responsible for the decisions regarding the fees being offered in the Proposal and has not and will not participate in any action contrary to the terms of this provision.

ADDENDA

If it becomes necessary to revise any part of the RFP, notice of the addendum will be posted.

Each offeror must acknowledge in its proposal all addenda it has received. The failure of an offeror to receive or acknowledge receipt of any addenda shall not relieve the offeror of the responsibility for complying with the terms thereof. The Town will not be bound by oral responses to inquiries or written responses other than official written addenda.

SECTION IV - ATTACHMENTS (Insert Attachments appropriate for Fairhaven)

Attachment A – Sample Standard Contract

Attachment B – General Conditions

Attachment C – Standard Specifications

Attachment D – Detailed Specifications

Attachment E – Legal Status of Offeror

Attachment F – Prevailing Wage Declaration of Compliance Form

Attachment G– Living Wage Declaration of Compliance Form

Attachment H – Living Wage Ordinance Poster

Attachment I – Vendor Conflict of Interest Disclosure Form

Attachment J– Non-Discrimination Ordinance Declaration of Compliance Form

Attachment K – Non-Discrimination Ordinance Poster

Attachment L – Sample Prevailing Wage Form

ATTACHMENT A - SAMPLE STANDARD CONSTRUCTION CONTRACT

PERFORMANCE BOND

LABOR AND MATERIAL BOND

ATTACHMENT B - GENERAL CONDITIONS

Town to Insert their General Conditions - This is Example Only

Section 1 - Execution, Correlation and Intent of Documents

The contract documents shall be signed in 2 copies by the Town and the Contractor.

The contract documents are complementary and what is called for by any one shall be binding. The intention of the documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the work. Materials or work described in words which so applied have a well-known technical or trade meaning have the meaning of those recognized standards.

In case of a conflict among the contract documents listed below in any requirement(s), the requirement(s) of the document listed first shall prevail over any conflicting requirement(s) of a document listed later.

(1) Addenda in reverse chronological order; (2) Detailed Specifications; (3) Standard Specifications; (4) Plans; (5) General Conditions; (6) Contract; (7) Bid Forms; (8) Bond Forms; (9) Bid.

Section 2 - Order of Completion

The Contractor shall submit with each invoice, and at other times reasonably requested by the Supervising Professional, schedules showing the order in which the Contractor proposes to carry on the work. They shall include the dates at which the Contractor will start the several parts of the work, the estimated dates of completion of the several parts, and important milestones within the several parts.

Section 3 - Familiarity with Work

The Bidder or its representative shall make personal investigations of the site of the work and of existing structures and shall determine to its own satisfaction the conditions to be encountered, the nature of the ground, the difficulties involved, and all other factors affecting the work proposed under this Contract. The Bidder to whom this Contract is awarded will not be entitled to any additional compensation unless conditions are clearly different from those which could reasonably have been anticipated by a person making a diligent and thorough investigation of the site.

The Bidder shall immediately notify the Town upon discovery, and in every case prior to submitting its Bid, of every error or omission in the bidding documents that would be identified by a reasonably competent, diligent Bidder. In no case will a Bidder be allowed the benefit of extra compensation or time to complete the work under this Contract for extra expenses or time spent as a result of the error or omission.

Section 4 - Wage Requirements

Under this Contract, the Contractor shall conform to Chapter 14 of Title I of the Code of the

Town of Fairhaven as amended; which in part states "...that all craftsmen, mechanics and laborers employed directly on the site in connection with said improvements, including said employees of subcontractors, shall receive the prevailing wage for the corresponding classes of craftsmen, mechanics and laborers, as determined by statistics for the Fairhaven area compiled by the United States Department of Labor. At the request of the Town, any contractor or subcontractor shall provide satisfactory proof of compliance with the contract provisions required by the Section.

Pursuant to Resolution R-16-469 all public improvement contractors are subject to prevailing wage and will be required to provide to the Town payroll records sufficient to demonstrate compliance with the prevailing wage requirements.

Contractor agrees that all subcontracts entered into by the Contractor shall contain similar wage provision covering subcontractor's employees who perform work on this contract.

Section 5 - Non-Discrimination

The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of X code. The Contractor further agrees to comply with the provisions of the Fairhaven Town Code, and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

Section 6 - Materials, Appliances, Employees

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, and other facilities necessary or used for the execution and completion of the work. Unless otherwise specified, all materials incorporated in the permanent work shall be new, and both workmanship and materials shall be of the highest quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The Contractor shall at all times enforce strict discipline and good order among its employees, and shall seek to avoid employing on the work any unfit person or anyone not skilled in the work assigned.

Adequate sanitary facilities shall be provided by the Contractor.

Section 7 - Qualifications for Employment

The Contractor shall employ competent laborers and mechanics for the work under this Contract. For work performed under this Contract, employment preference shall be given to qualified local residents.

Section 8 - Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringements of any patent rights and shall hold the Town harmless from loss on account of infringement except that the Town shall be responsible for all infringement loss when a particular process or the product of a particular manufacturer or manufacturers is specified, unless the Town has notified the Contractor prior to the signing of the Contract that the particular process or product is patented or is believed to be patented.

Section 9 - Permits and Regulations

The Contractor must secure and pay for all permits, permit or plan review fees and licenses necessary for the prosecution of the work. These include but are not limited to Town building permits, right-of-way permits, lane closure permits, right-of-way occupancy permits, and the like. The Town shall secure and pay for easements shown on the plans unless otherwise specified.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the contract documents are at variance with those requirements, it shall promptly notify the Supervising Professional in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the work.

Section 10 - Protection of the Public and of Work and Property

The Contractor is responsible for the means, methods, sequences, techniques and procedures of construction and safety programs associated with the work contemplated by this contract. The Contractor, its agents or subcontractors, shall comply with the "General Rules and Regulations for the Construction Industry" as published by the State of Massachusetts and to all other local, State and National laws, ordinances, rules and regulations pertaining to safety of persons and property.

The Contractor shall take all necessary and reasonable precautions to protect the safety of the public. It shall continuously maintain adequate protection of all work from damage, and shall take all necessary and reasonable precautions to adequately protect all public and private property from injury or loss arising in connection with this Contract. It shall make good any damage, injury or loss to its work and to public and private property resulting from lack of reasonable protective precautions, except as may be due to errors in the contract documents, or caused by agents or employees of the Town. The Contractor shall obtain and maintain sufficient insurance to cover damage to any Town property at the site by any cause.

In an emergency affecting the safety of life, or the work, or of adjoining property, the Contractor is, without special instructions or authorization from the Supervising Professional, permitted to act at its discretion to prevent the threatened loss or injury. It shall also so act, without appeal, if authorized or instructed by the Supervising Professional.

Any compensation claimed by the Contractor for emergency work shall be determined by agreement or in accordance with the terms of Claims for Extra Cost - Section 15.

Section 11 - Inspection of Work

The Town shall provide sufficient competent personnel for the inspection of the work.

The Supervising Professional shall at all times have access to the work whenever it is in preparation or progress, and the Contractor shall provide proper facilities for access and for inspection.

If the specifications, the Supervising Professional's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Supervising Professional timely notice of its readiness for inspection, and if the inspection is by an authority other than the Supervising Professional, of the date fixed for the inspection.

Inspections by the Supervising Professional shall be made promptly, and where practicable at the source of supply. If any work should be covered up without approval or consent of the Supervising Professional, it must, if required by the Supervising Professional, be uncovered for examination and properly restored at the Contractor's expense.

Re-examination of any work may be ordered by the Supervising Professional, and, if so ordered, the work must be uncovered by the Contractor. If the work is found to be in accordance with the contract documents, the Town shall pay the cost of re-examination and replacement. If the work is not in accordance with the contract documents, the Contractor shall pay the cost.

Section 12 - Superintendence

The Contractor shall keep on the work site, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Supervising Professional. The superintendent will be responsible to perform all on-site project management for the Contractor. The superintendent shall be experienced in the work required for this Contract. The superintendent shall represent the Contractor and all direction given to the superintendent shall be binding as if given to the Contractor. Important directions shall immediately be confirmed in writing to the Contractor. Other directions will be confirmed on written request. The Contractor shall give efficient superintendence to the work, using its best skill and attention.

Section 13 - Changes in the Work

The Town may make changes to the quantities of work within the general scope of the Contract at any time by a written order and without notice to the sureties. If the changes add to or deduct from the extent of the work, the Contract Sum shall be adjusted accordingly. All the changes shall be executed under the conditions of the original Contract except that any claim for extension of time caused by the change shall be adjusted at the time of ordering the change.

In giving instructions, the Supervising Professional shall have authority to make minor changes in the work not involving extra cost and not inconsistent with the purposes of the work, but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless in pursuance of a written order by the Supervising Professional, and no claim for an addition to the Contract Sum shall be valid unless the additional work was ordered in writing.

The Contractor shall proceed with the work as changed and the value of the work shall be determined as provided in Claims for Extra Cost - Section 15.

Section 14 - Extension of Time

Extension of time stipulated in the Contract for completion of the work will be made if and as the Supervising Professional may deem proper under any of the following circumstances:

- (1) When work under an extra work order is added to the work under this Contract;
- (2) When the work is suspended as provided in Section 20;
- (3) When the work of the Contractor is delayed on account of conditions which could not have been foreseen, or which were beyond the control of the Contractor, and which were not the result of its fault or negligence;

- (4) Delays in the progress of the work caused by any act or neglect of the Town or of its employees or by other Contractors employed by the Town;
- (5) Delay due to an act of Government;
- (6) Delay by the Supervising Professional in the furnishing of plans and necessary information;
- (7) Other cause which in the opinion of the Supervising Professional entitles the Contractor to an extension of time.

The Contractor shall notify the Supervising Professional within 7 days of an occurrence or conditions which, in the Contractor's opinion, entitle it to an extension of time. The notice shall be in writing and submitted in ample time to permit full investigation and evaluation of the Contractor's claim. The Supervising Professional shall acknowledge receipt of the Contractor's notice within 7 days of its receipt. Failure to timely provide the written notice shall constitute a waiver by the Contractor of any claim.

In situations where an extension of time in contract completion is appropriate under this or any other section of the contract, the Contractor understands and agrees that the only available adjustment for events that cause any delays in contract completion shall be extension of the required time for contract completion and that there shall be no adjustments in the money due the Contractor on account of the delay.

Section 15 - Claims for Extra Cost

If the Contractor claims that any instructions by drawings or other media issued after the date of the Contract involved extra cost under this Contract, it shall give the Supervising Professional written notice within 7 days after the receipt of the instructions, and in any event before proceeding to execute the work, except in emergency endangering life or property. The procedure shall then be as provided for Changes in the Work-Section 13. No claim shall be valid unless so made.

If the Supervising Professional orders, in writing, the performance of any work not covered by the contract documents, and for which no item of work is provided in the Contract, and for which no unit price or lump sum basis can be agreed upon, then the extra work shall be done on a Cost-Plus-Percentage basis of payment as follows:

- (1) The Contractor shall be reimbursed for all reasonable costs incurred in doing the work, and shall receive an additional payment of 15% of all the reasonable costs to cover both its indirect overhead costs and profit;
- (2) The term "Cost" shall cover all payroll charges for employees and supervision required under the specific order, together with all worker's compensation, Social Security, pension and retirement allowances and social insurance, or other regular payroll charges on same; the cost of all material and supplies required of either temporary or permanent character; rental of all power-driven equipment at agreed upon rates, together with cost of fuel and supply charges for the equipment; and any costs incurred by the Contractor as a direct result of executing the order, if approved by the Supervising Professional;
- (3) If the extra is performed under subcontract, the subcontractor shall be allowed to compute its charges as described above. The Contractor shall be permitted to add an additional

charge of 5% percent to that of the subcontractor for the Contractor's supervision and contractual responsibility;

(4) The quantities and items of work done each day shall be submitted to the Supervising Professional in a satisfactory form on the succeeding day, and shall be approved by the Supervising Professional and the Contractor or adjusted at once;

(5) Payments of all charges for work under this Section in any one month shall be made along with normal progress payments. Retainage shall be in accordance with Progress Payments-Section 16.

No additional compensation will be provided for additional equipment, materials, personnel, overtime or special charges required to perform the work within the time requirements of the Contract.

When extra work is required and no suitable price for machinery and equipment can be determined in accordance with this Section, the hourly rate paid shall be 1/40 of the basic weekly rate agreed upon as applicable to the time period the equipment was first used for the extra work. The hourly rate will be deemed to include all costs of operation such as bucket or blade, fuel, maintenance, "regional factors", insurance, taxes, and the like, but not the costs of the operator.

Section 16 - Progress Payments (Insert Fairhaven Process)

The Contractor shall submit each month, or at longer intervals, if it so desires, an invoice covering work performed for which it believes payment, under the Contract terms, is due. The submission shall be to the Town's **Finance Department - Accounting Division**. The Supervising Professional will, within 10 days following submission of the invoice, prepare a certificate for payment for the work in an amount to be determined by the Supervising Professional as fairly representing the acceptable work performed during the period covered by the Contractor's invoice. To insure the proper performance of this Contract, the Town will retain a percentage of the estimate. The Town will then, following the receipt of the Supervising Professional's Certificate, make payment to the Contractor as soon as feasible, which is anticipated will be within 15 days.

An allowance may be made in progress payments if substantial quantities of permanent material have been delivered to the site but not incorporated in the completed work if the Contractor, in the opinion of the Supervising Professional, is diligently pursuing the work under this Contract. Such materials shall be properly stored and adequately protected. Allowance in the estimate shall be at the invoice price value of the items. Notwithstanding any payment of any allowance, all risk of loss due to vandalism or any damages to the stored materials remains with the Contractor.

In the case of Contracts which include only the Furnishing and Delivering of Equipment, the payments shall be; 60% of the Contract Sum upon the delivery of all equipment to be furnished, or in the case of delivery of a usable portion of the equipment in advance of the total equipment delivery, 60% of the estimated value of the portion of the equipment may be paid upon its delivery in advance of the time of the remainder of the equipment to be furnished; 30% of the Contract Sum upon completion of erection of all equipment furnished, but not later than 60 days after the date of delivery of all of the equipment to be furnished; and payment of the final 10% on final completion of erection, testing and acceptance of all the equipment to be furnished; but not later than 180 days after the date of delivery of all of the equipment to be furnished, unless testing has been completed and shows the equipment to be unacceptable.

With each invoice for periodic payment, the Contractor shall enclose a Contractor's Declaration -

Section 43, and an updated project schedule per Order of Completion - Section 2.

Section 17 - Deductions for Uncorrected Work

If the Supervising Professional decides it is inexpedient to correct work that has been damaged or that was not done in accordance with the Contract, an equitable deduction from the Contract price shall be made.

Section 18 - Correction of Work Before Final Payment

The Contractor shall promptly remove from the premises all materials condemned by the Supervising Professional as failing to meet Contract requirements, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute the work in accordance with the Contract and without expense to the Town and shall bear the expense of making good all work of other contractors destroyed or damaged by the removal or replacement.

If the Contractor does not remove the condemned work and materials within 10 days after written notice, the Town may remove them and, if the removed material has value, may store the material at the expense of the Contractor. If the Contractor does not pay the expense of the removal within 10 days thereafter, the Town may, upon 10 days written notice, sell the removed materials at auction or private sale and shall pay to the Contractor the net proceeds, after deducting all costs and expenses that should have been borne by the Contractor. If the removed material has no value, the Contractor must pay the Town the expenses for disposal within 10 days of invoice for the disposal costs.

The inspection or lack of inspection of any material or work pertaining to this Contract shall not relieve the Contractor of its obligation to fulfill this Contract and defective work shall be made good. Unsuitable materials may be rejected by the Supervising Professional notwithstanding that the work and materials have been previously overlooked by the Supervising Professional and accepted or estimated for payment or paid for. If the work or any part shall be found defective at any time before the final acceptance of the whole work, the Contractor shall forthwith make good the defect in a manner satisfactory to the Supervising Professional. The judgment and the decision of the Supervising Professional as to whether the materials supplied and the work done under this Contract comply with the requirements of the Contract shall be conclusive and final.

Section 19 - Acceptance and Final Payment

Upon receipt of written notice that the work is ready for final inspection and acceptance, the Supervising Professional will promptly make the inspection. When the Supervising Professional finds the work acceptable under the Contract and the Contract fully performed, the Supervising Professional will promptly sign and issue a final certificate stating that the work required by this Contract has been completed and is accepted by the Town under the terms and conditions of the Contract. The entire balance found to be due the Contractor, including the retained percentage, shall be paid to the Contractor by the Town within 30 days after the date of the final certificate.

Before issuance of final certificates, the Contractor shall file with the Town:

- (1) The consent of the surety to payment of the final estimate;
- (2) The Contractor's Affidavit in the form required by Section 44.

In case the Affidavit or consent is not furnished, the Town may retain out of any amount due the Contractor, sums sufficient to cover all lienable claims.

The making and acceptance of the final payment shall constitute a waiver of all claims by the Town except those arising from:

- (1) unsettled liens;
- (2) faulty work appearing within 12 months after final payment;
- (3) hidden defects in meeting the requirements of the plans and specifications;
- (4) manufacturer's guarantees.

It shall also constitute a waiver of all claims by the Contractor, except those previously made and still unsettled.

Section 20 - Suspension of Work

The Town may at any time suspend the work, or any part by giving 5 days notice to the Contractor in writing. The work shall be resumed by the Contractor within 10 days after the date fixed in the written notice from the Town to the Contractor to do so. The Town shall reimburse the Contractor for expense incurred by the Contractor in connection with the work under this Contract as a result of the suspension.

If the work, or any part, shall be stopped by the notice in writing, and if the Town does not give notice in writing to the Contractor to resume work at a date within 90 days of the date fixed in the written notice to suspend, then the Contractor may abandon that portion of the work suspended and will be entitled to the estimates and payments for all work done on the portions abandoned, if any, plus 10% of the value of the work abandoned, to compensate for loss of overhead, plant expense, and anticipated profit.

Section 21 - Delays and the Town's Right to Terminate Contract

If the Contractor refuses or fails to prosecute the work, or any separate part of it, with the diligence required to insure completion, ready for operation, within the allowable number of consecutive calendar days specified plus extensions, or fails to complete the work within the required time, the Town may, by written notice to the Contractor, terminate its right to proceed with the work or any part of the work as to which there has been delay. After providing the notice the Town may take over the work and prosecute it to completion, by contract or otherwise, and the Contractor and its sureties shall be liable to the Town for any excess cost to the Town. If the Contractor's right to proceed is terminated, the Town may take possession of and utilize in completing the work, any materials, appliances and plant as may be on the site of the work and useful for completing the work. The right of the Contractor to proceed shall not be terminated or the Contractor charged with liquidated damages where an extension of time is granted under Extension of Time - Section 14.

If the Contractor is adjudged a bankrupt, or if it makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if it fails to make prompt payments to subcontractors or for material or labor, or persistently disregards laws, ordinances or the instructions of the Supervising Professional, or otherwise is guilty of a substantial violation of any provision of the Contract, then the Town, upon the certificate of the Supervising Professional that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor 3 days written notice, terminate this Contract. The Town may then take possession of the premises and of all materials, tools and appliances thereon and without

prejudice to any other remedy it may have, make good the deficiencies or finish the work by whatever method it may deem expedient, and deduct the cost from the payment due the Contractor. The Contractor shall not be entitled to receive any further payment until the work is finished. If the expense of finishing the work, including compensation for additional managerial and administrative services exceeds the unpaid balance of the Contract Sum, the Contractor and its surety are liable to the Town for any excess cost incurred. The expense incurred by the Town, and the damage incurred through the Contractor's default, shall be certified by the Supervising Professional.

Section 22 - Contractor's Right to Terminate Contract

If the work should be stopped under an order of any court, or other public authority, for a period of 3 months, through no act or fault of the Contractor or of anyone employed by it, then the Contractor may, upon 7 days written notice to the Town, terminate this Contract and recover from the Town payment for all acceptable work executed plus reasonable profit.

Section 23 - Town's Right To Do Work

If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this Contract, the Town, 3 days after giving written notice to the Contractor and its surety may, without prejudice to any other remedy the Town may have, make good the deficiencies and may deduct the cost from the payment due to the Contractor.

Section 24 - Removal of Equipment and Supplies

In case of termination of this Contract before completion, from any or no cause, the Contractor, if notified to do so by the Town, shall promptly remove any part or all of its equipment and supplies from the property of the Town, failing which the Town shall have the right to remove the equipment and supplies at the expense of the Contractor.

The removed equipment and supplies may be stored by the Town and, if all costs of removal and storage are not paid by the Contractor within 10 days of invoicing, the Town upon 10 days written notice may sell the equipment and supplies at auction or private sale, and shall pay the Contractor the net proceeds after deducting all costs and expenses that should have been borne by the Contractor and after deducting all amounts claimed due by any lien holder of the equipment or supplies.

Section 25 - Responsibility for Work and Warranties

The Contractor assumes full responsibility for any and all materials and equipment used in the construction of the work and may not make claims against the Town for damages to materials and equipment from any cause except negligence or willful act of the Town. Until its final acceptance, the Contractor shall be responsible for damage to or destruction of the project (except for any part covered by Partial Completion and Acceptance - Section 26). The Contractor shall make good all work damaged or destroyed before acceptance. All risk of loss remains with the Contractor until final acceptance of the work (Section 19) or partial acceptance (Section 26). The Contractor is advised to investigate obtaining its own builders risk insurance.

The Contractor shall guarantee the quality of the work for a period of one year. The Contractor shall also unconditionally guarantee the quality of all equipment and materials that are furnished and installed under the contract for a period of one year. At the end of one year after the Contractor's receipt of final payment, the complete work, including equipment and materials

furnished and installed under the contract, shall be inspected by the Contractor and the Supervising Professional. Any defects shall be corrected by the Contractor at its expense as soon as practicable but in all cases within 60 days. Any defects that are identified prior to the end of one year shall also be inspected by the Contractor and the Supervising Professional and shall be corrected by the Contractor at its expense as soon as practicable but in all cases within 60 days. The Contractor shall assign all manufacturer or material supplier warranties to the Town prior to final payment. The assignment shall not relieve the Contractor of its obligations under this paragraph to correct defects.

Section 26 - Partial Completion and Acceptance

If at any time prior to the issuance of the final certificate referred to in Acceptance and Final Payment - Section 19, any portion of the permanent construction has been satisfactorily completed, and if the Supervising Professional determines that portion of the permanent construction is not required for the operations of the Contractor but is needed by the Town, the Supervising Professional shall issue to the Contractor a certificate of partial completion, and immediately the Town may take over and use the portion of the permanent construction described in the certificate, and exclude the Contractor from that portion.

The issuance of a certificate of partial completion shall not constitute an extension of the Contractor's time to complete the portion of the permanent construction to which it relates if the Contractor has failed to complete it in accordance with the terms of this Contract. The issuance of the certificate shall not release the Contractor or its sureties from any obligations under this Contract including bonds.

If prior use increases the cost of, or delays the work, the Contractor shall be entitled to extra compensation, or extension of time, or both, as the Supervising Professional may determine.

Section 27 - Payments Withheld Prior to Final Acceptance of Work

The Town may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any certificate to the extent reasonably appropriate to protect the Town from loss on account of:

- (1) Defective work not remedied;
- (2) Claims filed or reasonable evidence indicating probable filing of claims by other parties against the Contractor;
- (3) Failure of the Contractor to make payments properly to subcontractors or for material or labor;
- (4) Damage to another Contractor.

When the above grounds are removed or the Contractor provides a Surety Bond satisfactory to the Town which will protect the Town in the amount withheld, payment shall be made for amounts withheld under this section.

Section 28 - Contractor's Insurance

- (1) The Contractor shall procure and maintain during the life of this Contract, including the

guarantee period and during any warranty work, such insurance policies, including those set forth below, as will protect itself and the Town from all claims for bodily injuries, death or property damage which may arise under this Contract; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor or by any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the Town, before the commencement of any work under this contract, certificates of insurance and other documentation satisfactory to the Town demonstrating it has obtained the policies and endorsements required on behalf of itself, and when requested, any subcontractor(s). The certificates of insurance endorsements and/or copies of policy language shall document that the Contractor satisfies the following minimum requirements.

(a) Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident Bodily Injury by
Disease - \$500,000 each employee Bodily Injury by Disease -
\$500,000 each policy limit

(b) Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The Town of Fairhaven shall be named as an additional insured. There shall be no added exclusions or limiting endorsements specifically for the following coverages: Products and Completed Operations, Explosion, Collapse and Underground coverage or Pollution. Further there shall be no added exclusions or limiting endorsements which diminish the Town's protections as an additional insured under the policy. The following minimum limits of liability are required:

1. \$1,000,000 Each occurrence as respecting Bodily Injury Liability or Property Damage Liability, or both combined.
2. \$2,000,000 Per Job General Aggregate
3. \$1,000,000 Personal and Advertising Injury
4. \$2,000,000 Products and Completed Operations Aggregate
- 5.

(c) Motor Vehicle Liability Insurance, including Massachusetts No-Fault Coverages. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. The Town of Fairhaven shall be named as an additional insured. There shall be no added exclusions or limiting endorsements which diminish the Town's protections as an additional insured under the policy. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

(d) Umbrella/Excess Liability Insurance shall be provided to apply excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

(2) Insurance required under subsection (1)(b) and (1)(c) above shall be considered primary as respects any other valid or collectible insurance that the Town may possess, including any self-insured retentions the Town may have; and any other insurance the Town does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the Town.

(3) Insurance companies and policy forms are subject to approval of the Town Attorney, which approval shall not be unreasonably withheld. Documentation must provide and

demonstrate an unconditional 30 day written notice of cancellation in favor of the Town of Fairhaven. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the Town, in its sole discretion; (c) that the policy conforms to the requirements specified Contractor shall furnish the Town with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the Town. If any of the above coverages expire by their terms during the term of this Contract, the Contractor shall deliver proof of renewal and/or new policies and endorsements to the Administering Service Area/Unit at least ten days prior to the expiration date.

(4) Any Insurance provider of Contractor shall be admitted and authorized to do business in the State of Massachusetts and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the Town.

(5) Town reserves the right to require additional coverage and/or coverage amounts as may be included from time to time in the Detailed Specifications for the Project.

(6) The provisions of General Condition 28 shall survive the expiration or earlier termination of this contract for any reason.

Section 29 - Surety Bonds

Bonds will be required from the successful bidder as follows:

- (1) A Performance Bond to the Town of Fairhaven for the amount of the bid(s) accepted;
- (2) A Labor and Material Bond to the Town of Fairhaven for the amount of the bid(s) accepted.

Bonds shall be executed on forms supplied by the Town in a manner and by a Surety Company authorized to transact business in Massachusetts and satisfactory to the Town Attorney.

Section 30 - Damage Claims

The Contractor shall be held responsible for all damages to property of the Town or others, caused by or resulting from the negligence of the Contractor, its employees, or agents during the progress of or connected with the prosecution of the work, whether within the limits of the work or elsewhere. The Contractor must restore all property injured including sidewalks, curbing, sodding, pipes, conduit, sewers or other public or private property to not less than its original condition with new work.

Section 31 - Refusal to Obey Instructions

If the Contractor refuses to obey the instructions of the Supervising Professional, the Supervising Professional shall withdraw inspection from the work, and no payments will be made for work performed thereafter nor may work be performed thereafter until the Supervising Professional shall have again authorized the work to proceed.

Section 32 - Assignment

Neither party to the Contract shall assign the Contract without the written consent of the other. The Contractor may assign any monies due to it to a third party acceptable to the Town.

Section 33 - Rights of Various Interests

Whenever work being done by the Town's forces or by other contractors is contiguous to work covered by this Contract, the respective rights of the various interests involved shall be established by the Supervising Professional, to secure the completion of the various portions of the work in general harmony.

The Contractor is responsible to coordinate all aspects of the work, including coordination of, and with, utility companies and other contractors whose work impacts this project.

Section 34 - Subcontracts

The Contractor shall not award any work to any subcontractor without prior written approval of the Town. The approval will not be given until the Contractor submits to the Town a written statement concerning the proposed award to the subcontractor. The statement shall contain all information the Town may require.

The Contractor shall be as fully responsible to the Town for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and all other contract documents applicable to the work of the subcontractors and to give the Contractor the same power to terminate any subcontract that the Town may exercise over the Contractor under any provision of the contract documents.

Nothing contained in the contract documents shall create any contractual relation between any subcontractor and the Town.

Section 35 - Supervising Professional's Status

The Supervising Professional has the right to inspect any or all work. The Supervising Professional has authority to stop the work whenever stoppage may be appropriate to insure the proper execution of the Contract. The Supervising Professional has the authority to reject all work and materials which do not conform to the Contract and to decide questions which arise in the execution of the work.

The Supervising Professional shall make all measurements and determinations of quantities. Those measurements and determinations are final and conclusive between the parties.

Section 36 - Supervising Professional's Decisions

The Supervising Professional shall, within a reasonable time after their presentation to the Supervising Professional, make decisions in writing on all claims of the Town or the Contractor

and on all other matters relating to the execution and progress of the work or the interpretation of the contract documents.

Section 37 - Storing Materials and Supplies

Materials and supplies may be stored at the site of the work at locations agreeable to the Town unless specific exception is listed elsewhere in these documents. Ample way for foot traffic and drainage must be provided, and gutters must, at all times, be kept free from obstruction. Traffic on streets shall be interfered with as little as possible. The Contractor may not enter or occupy with agents, employees, tools, or material any private property without first obtaining written permission from its owner. A copy of the permission shall be furnished to the Supervising Professional.

Section 38 - Lands for Work

The Contractor shall provide, at its own expense and without liability to the Town, any additional land and access that may be required for temporary construction facilities or for storage of materials.

Section 39 - Cleaning Up

The Contractor shall, as directed by the Supervising Professional, remove at its own expense from the Town's property and from all public and private property all temporary structures, rubbish and waste materials resulting from its operations unless otherwise specifically approved, in writing, by the Supervising Professional.

Section 40 - Salvage

The Supervising Professional may designate for salvage any materials from existing structures or underground services. Materials so designated remain Town property and shall be transported or stored at a location as the Supervising Professional may direct.

Section 41 - Night, Saturday or Sunday Work

No night or Sunday work (without prior written Town approval) will be permitted except in the case of an emergency and then only to the extent absolutely necessary. The Town may allow night work which, in the opinion of the Supervising Professional, can be satisfactorily performed at night. Night work is any work between 8:00 p.m. and 7:00 a.m. No Saturday work will be permitted unless the Contractor gives the Supervising Professional at least 48 hours but not more than 5 days notice of the Contractor's intention to work the upcoming Saturday.

Section 42 - Sales Taxes

Under State law the Town is exempt from the assessment of State Sales Tax on its direct purchases. Contractors who acquire materials, equipment, supplies, etc. for incorporation in Town projects are not likewise exempt. State Law shall prevail. The Bidder shall familiarize itself with the State Law and prepare its Bid accordingly. No extra payment will be allowed under this Contract for failure of the Contractor to make proper allowance in this bid for taxes it must pay.

Section 43 CONTRACTOR'S DECLARATION

I hereby declare that I have not, during the period _____, 20 , to _____, 20 , performed any work, furnished any materials, sustained any loss, damage or delay, or otherwise done anything in addition to the regular items (or executed change orders) set forth in the Contract titled _____, for which I shall ask, demand, sue for, or claim compensation or extension of time from the Town, except as I hereby make claim for additional compensation or extension of time as set forth on the attached itemized statement. I further declare that I have paid all payroll obligations related to this Contract that have become due during the above period and that all invoices related to this Contract received more than 30 days prior to this declaration have been paid in full except as listed below.

There is/is not (Contractor please circle one and strike one as appropriate) an itemized statement attached regarding a request for additional compensation or extension of time.

Contractor

Date

By _____ (Signature)

Its _____ (Title of Office)

Past due invoices, if any, are listed below.

Section 44 CONTRACTOR'S AFFIDAVIT

Insert Fairhaven Form

ATTACHMENT C - DESIGN SPECIFICATIONS

The Design/Build firm is expected to propose plans for a network capable of 1,000 x 1,000 Mbps to each subscriber across an ethernet network.

The Town desires to contract with one qualified firm that would serve as the Design, Engineering, and Project Management contractor for all related tasks outlined in this RFP.

This section provides descriptions of the work to be completed by the selected Design/Build firm and/or its subcontracting partners.

Perform Route/Premise Evaluations, Site Visits and Identification of Challenges

The selected Design/Build firm will be required to ride out each planned route and visit each premise to document the feasibility of the route and document any roadblocks and hurdles that may delay the construction of these routes. Evaluations will consist of the following: FTTP networks:

- Identify hut and/or Fiber Distribution Hub (FDH) location(s)
- Conduct a Town-wide survey to identify existing utility infrastructure along all roads to support development of a route design.
- Identify the extent to which new underground (conduit) or aerial (poles) infrastructure will need to be installed
- Conduct a survey to collect information about each premise that will be served by the Last Mile networks to support development of a customer premise design. The surveys must include information as to driveway lengths, types of entry, entry locations, and any privately-owned poles
- Identify extent to which new underground (conduit) or aerial (poles) infrastructure will need to be installed
- Identify any Multiple Dwelling Units (MDU), Multiple Tenant Units (MTU), and commercial and seasonal properties
- Consider design implications of approved buildable land parcels.

Develop Route Design Drawings

The Town has provided preliminary data, which includes:

- Estimated unit count (households or businesses consisting of one or more people living or working together that occupy all or part of a standalone building)
- Estimated number of telephone poles
- Estimated route miles in Square miles

The Design/Build firm will use the data collected from the route and premise evaluation and the selected route designs for the FTTP to identify the installation type for the fiber optic cables (e.g. new/existing aerial, new/existing underground, dark fiber and overlash) in the build-out. These drawings will in turn be used for pole application submittal for make-ready work.

Develop Final Designs

The selected Design/Build firm will create detailed designs based on the baseline requirements for the network as stipulated by the Town. These designs will include, but will not be limited to: FTTP networks:

- Fully developed, stamped GIS/CAD drawings detailing OSP cable construction with pole by pole detail, butterfly drawings, splice locations and splicing plans (fiber cable strand counts, cable management locations)
- Finalized detailed hut construction plans including, but not limited to:
 - Civil drawing requirements for hut location(s)
 - Fiber cable attachments and hut penetration locations
 - Infrastructure design including ladder tray, relay racks, vertical/horizontal wire management, patch panels, fiber trough, fiber modules/splice trays
- Network design drawings, equipment specifications, port mapping documentation, and system configurations
- Power requirements including commercial, backup and redundant systems.
- Grounding requirements
- HVAC requirements
- Floor plans
- Rack elevation drawings
- Environmental alarming (HVAC, Temperature, site/security access, etc.)
- Route definition (feeder, distribution and drop locations, construction types (aerial/underground new/existing, multiple egress connections))

ATTACHMENT D - CONSTRUCTION SPECIFICATIONS

A. All work under this contract shall be performed in accordance with the **Public Services Department Standard Specifications** in effect at the date of availability of the contract documents stipulated in the Bid. All work under this Contract which is not included in these Standard Specifications, or which is performed using modifications to these Standard Specifications, shall be performed in accordance with the Detailed Specifications included in these contract documents. Standard Specifications are available online

B. General Requirements

a. All work performed by the Contractor shall be in accordance with the Town's specifications and all applicable standards included but not limited to the following:

i. ANSI, ATIS, ASTM, BOCA, BICSI, EIA, IEEE, MI-OSHA, NEMA NESC, NFPA, OSHA, TIA, UL, and any other applicable industry standard(s).

b. All Traffic Control needed to perform any and all portions of the work is the responsibility of the Contractor and shall be included in the cost, regardless of the number of traffic control mobilizations and setups required.

c. Any damage to and not limited to: landscaping, private property, property, roads, curb and gutter, sidewalk, or existing utilities shall be repaired by the Contractor and/or any of their sub-contractor(s) immediately at no cost to the project.

d. The Contractor shall confine work to ROW property at all times. At no time, shall the Contractor enter private property, or perform any work not authorized by the Town of Fairhaven.

e. The Contractor is responsible for locating all existing underground services including:

i. Electric, gas, telephone, data, water, and sewer prior to beginning any underground work. Coordination and compliance with Dig Safe are required.

f. The Contractor will provide experienced installers who are licensed or certified to install fiber optic materials.

g. The Contractor is required to facilitate inspections of work with the Town of Fairhaven and the Town's designated representative (design, engineering services contractor) that is providing construction oversight under a separate contract. Any deficiencies revealed during inspections by Town and/or designated representatives of the Town of Fairhaven, are the sole responsibility of the Contractor to resolve.

h. When construction is completed, the Contractor shall perform continuity testing of optical fibers using OTDR and industry standards for testing. Refer to Section "Acceptance and Testing" for requirements.

i. The Contractor shall install necessary lighting protection in accordance with aforementioned standards.

j. Bonding on aerial network segments is required per pole attachment agreements. The Contractor must be familiar with pole attachment requirements.

k. Copies of the Town's pole attachment agreements will be provided to the Contractor upon award of the contract.

l. **Grounding for underground Network segments is required at every splice enclosure with a minimum of 8 (eight) feet of grounding rod. Grounding rods must meet applicable industry standard specifications.**

m. The Contractor must ensure adequate clearance exists between proposed fiber build and other utilities, ground, rail, roads, and water. At a minimum the

Contractor is required to build in a manner that conforms to NESC codes.

- n. The Contractor is also responsible to verify local utilities do not have more stringent clearance codes.
- o. The Contractor is responsible for adhering to all right-of-way and utility permitting terms and conditions as set forth in each right-of-way permit.
- p. Any construction changes must be pre-approved by the Town of Fairhaven and the Town of Fairhaven's design and planning contractor before commencing with said change. Redline edited drawings will be required to document any approved changes. (Is there a specific format for drawings desired?)
- q. If deficiencies and/or non-compliance issues are discovered by the Town of Fairhaven Project Manager or the Town of Fairhaven's design and planning contractor the Contractor is responsible for the correction.
- r. The Contractor is responsible for all jobsite cleanup and for removal of all spent fiber reels and other materials used during construction.
- s. Construction will be subject to periodic inspections and the construction Contractor must comply with any modifications made by the inspector.

C. Construction Restoration

a. The Contractor is responsible for the restoration of the work area, including landscaping, to its original condition after work is complete. Surrounding area must be filled, leveled and compacted. If grass restoration is required, contractors must apply seed or hydro seed. If work cannot be completed due to unseasonal conditions, the work will be completed when feasible and within the 1 year warranty period. Payment for projects with outstanding work due to unseasonal conditions will be negotiated on a per project basis. An active project punch list of items will be documented and tracked by the Town of Fairhaven Project Manager until all work has been completed.

D. Utility Engineering Fees and Permits

a. Town Right-Of-Way utility fees will be paid directly by the Town of Fairhaven. Contractors are responsible to coordinate efforts with the utilities involved.

E. Make Ready Fees

a. Make ready fees will be paid directly by the Town of Fairhaven. Contractors are responsible to coordinate efforts with utilities involved.

F. Cable Pulling

- a. Install cable specified in the Design through existing or new 3" (minimum) Town-owned conduit.
- b. Lateral connections will be spliced into the main fiber ring and will be terminated at a fiber distribution unit located at each location or predetermined termination point.
- c. Install the cable such that the optical and mechanical characteristics of the fiber are not degraded.
- d. The Contractor must comply with the manufacturer's recommended installation temperature, pulling tension and bend radius.

- e.* Cables must not violate the minimum bend radius or the maximum tension, both during and after installation. Corner rollers (wheels), if used, must not have radii less than the minimum installation bending radius of the cable. A series array of smaller wheels can be used for accomplishing the bend if the cable manufacturer specifically approves the array.
- f.* Use a clutch device to ensure the allowable pulling tension is not exceeded, if the cable is pulled by mechanical means. Also, attach a strain gauge to the pulling line at the cable exit location, and at a sufficient distance from the take-up device such that the strain gauge can be read throughout the entire cable pulling operation.
- g.* Cables should be fed directly in by hand or over large diameter bends to prevent kinks, small bends, sharp edges and crossovers. Cable should also be fed out of each pull box in a fashion that minimizes bends. Sufficient slack should be left so that each cable may be trained to its final location free of stress and completely clear of hand-hole openings.
- h.* The pulling tension should be continuously monitored to assure that the maximum recommended load is not exceeded. If the expected loads are close to maximum, additional pull boxes should be considered and/or the use of lubricants compatible with the outer jacket material of the cable.
- i.* Use entry guide chutes to guide the cable into the pull-box conduit ports.
- j.* Only lubricants approved by the cable manufacturer are permitted. Wipe the exposed cable in a pull box, junction box, or cabinet clean of cable lubricant with a cloth, after the cable has been installed.
- k.* Fiber optic cable ends must be sealed to prevent the entry of water.

G. Cable Lubricant

- a.* For new conduit, lubrication of the conduit before pulling is required— particularly if there are several bends.

H. Cable Splicing

- a.* All splices must be fusions splices. Splices shall conform to ANSI/TIA/EIA standards.
- b.* All fusion splices will have a maximum loss of < 0.05 dB unidirectional loss using 1550 nm optical source, a maximum bi-directional average loss of <0.15 dB using 1550 nm optical source.
- c.* Similarly, a maximum loss of < 0.3 dB unidirectional loss using 1310 nm optical source, and a maximum bi-directional average loss of <0.20 dB loss using a 1310 nm optical source, shall be achieved. Testing must use industry standard TIA-472D000-B and Measurement Method FOTP78. Refer to section “Acceptance and Testing” for specific requirements on testing.
- d.* Each spliced fiber must be packaged in a heat shrinkable splice protection sleeve.. The protection sleeve must cover the splice where any bare fiber is stripped of its coating. The use of RTV or silicone is strictly prohibited.

I. Labeling and Identification

- a.* Identification labels must be supplied by the Contractor and installed by the Contractor(s) on the fiber in each hand-hole and at every point of attachment on utility poles per specifications from the pole owner, per the utility pole attachment agreements, and the Town of Fairhaven requirements listed below.

b. Aerial Cables – The Contractor is responsible for supplying and installing aerial cable markers per Utility company specifications and/or pole attachment agreements.

i. Underground Cables and Splice Cables – The Contractor is responsible for supplying and installing underground cable markers identical to the Town's original fiber network construction to identify cable ID or Code, cable type, strand count and distance in feet.

J. Aerial Construction Requirements

a. Grounding – The Contractor is responsible to ensure proper grounding, bonding, and that lightning protection is installed according to standards.

b. Aerial Cable - All cable must be supported by support a strand (i.e., messenger cable) per industry standards.

c. Aerial Cable Slack Requirements -150 foot maintenance loops are required every 1,500 feet.

d. Maintenance loops must be dressed and stored properly. All slack shall be physically protected.

e. Provide aerial service loops with snowshoes in various locations (as specified on engineering drawings) to provide sufficient slack in the event that a repair becomes necessary.

f. Aerial Cable Lashing - All cable lashing will be double-lashed with 0.038 inches, Type 302 austenitic, non-magnetic and thermally non-hardening stainless steel with a break strength of at least 115 pounds or 0.045 inch, Type 430 Magnetic, thermally non-hardening ferritic stainless steel with a break strength of at least 125 pounds.

K. Underground Construction Requirements

a. All fiber buried with directional boring must be a minimum of 3 (three) feet below grade.

b. Newly installed conduits will be clear of all dirt, foreign matter, water and debris before cable is installed.

c. Conduit - For FON segments requiring new conduit installation that conduit must be 3 (three) inch diameter Dura-Line Smooth-wall HDPE Conduit or an equivalent. Provide as an option, conduit with Silicore-TM permanently lubricated lining so greater pulling and jetting distances can be achieved where necessary.

d. Cables that are pulled or blown through existing conduit cannot not go through the center of an existing slack loop of cable (fiber/electric/etc.) so as to render the existing slack loop useless, or so that it could not be taken out of the handhole and uncoiled.

e. Conduits added to existing handholes, or new handholes, that enter through the side wall need to be concrete sealed so that mud/dirt does not fill the handholes over time. This includes locations where handholes are upgraded with existing infrastructure in place. All conduit entries and handhole cuts need to be sealed up.

f. Upward angled conduits in handholes need to be at least 8 inches from the bottom of the lid – or some value similar to that to allow bend radius of cables.

g. When conduits enter the handhole lower than the bottom lip, they need to have elbows, or sweeps, that get them above the bottom lip. This prevents dirt from getting in and plugging the conduit.

h. Above Ground Markers - Above ground markers must be installed

~500 feet or a lesser line-of-site along burial path, depending on Network segment geography.

- i.* Cable Slack Requirements - Throughout the underground cable plant, pull and store excess cable slack at designated intervals per the engineering drawings.
- j.* The Contractor must provide adequate drainage for handholes using a stone-based material.
- k.* All underground work needs to be inspected by the Town before acceptance. The Contractor is responsible for correcting all deficiencies in their work.

L. Above-Ground Hut Construction

- a.* Install Network Aggregation Huts according to manufacturer's specifications and the Town of Fairhaven's specifications.

M. Materials Specifications

- a.* ALL materials required to complete construction will be **supplied and installed by the Contractor**, including the following materials:
- b.* Fiber Optic Cable
 - i.* All fiber optic cables must be indoor/outdoor, plenum-rated cables for inter-building and intra-building backbones in aerial, duct and riser applications. Deliver the cable on reels without splices. Ensure both ends of the cable are sealed to prevent moisture ingress.
- c.* 144F Single Mode Fiber Cable
 - i.* Provide Outside Plant Single Jacket/Single Armor, Gel-Free, Dry-Lock, Outdoor Stranded Loose Tube Cable (Part # D- 144-LA-8W-F12NS), or an approved equivalent.
- d.* 48F Single Mode Fiber Cable
 - i.* Provide Outside Plant Single Jacket/Single Armor, Gel-Free, Dry-Lock, Outdoor Stranded Loose Tube Cable (Part # D- 048-LA-8W-F12NS), or an approved equivalent.
- e.* Communications Tracer wire
 - i.* Encore Wire Corporation Tracer Wire HMWPE 45 MIL 600 Volt (UL) DIR – 14AWG
- f.* Cable Connectors
 - i.* LC connectors are required, providing a small form ceramic ferrule with 1.25 mm ferrule that are easily terminated with any adhesive.
- g.* Cable Risers
 - i.* FREEDOM tight-buffered cable, risers, 48F and 144F, single-mode (OS2), by Optical Communications, or an approved equal.
 - ii.* Risers need to be galvanized rigid conduit for the first 10' from grade going up. Then, Schedule 80 PVC is acceptable from that point going up the pole to the aerial attachment location.
- h.* Splice Closures
 - i.* Optics Splice Closure Fiber (SCF) or equivalent, preloaded splice trays that are aerial and underground rated allowing up to 288 single fiber splices. The closure must provide ports for uncut feeder cables and ports for drop cables. The closure, in canister configuration, with a quick-seal mechanical seal port, must allow for rapid and easy addition of cables after initial installation is complete.
- i.* Conduit

i. Three-inch Dura-Line Smoothwall HDPE Conduit or an equivalent is required for each Network segment needing newly installed underground conduit. Dura-Line is made to Industry standards for power and communications applications. It can be installed using open trench methods, HDD (Horizontal Directional Drilled) plowed, or pulled into conduit. Price Smoothwall HDPE conduit with optional Silicore™ permanently lubricated lining, Smoothwall, so ducts can be maximized for greater pulling and jetting distances, reducing the coefficient of friction over standard HDPE conduit.

j. Handholes

i. Quazite Handholes. All Handholes at splice locations and underground slack loop locations are 30"x48" double deep, cover test load ratings of 15,000/22,500, box test load rating of 22,500/33,750, minimum.

k. Closet Connector Housing (CCH) and Patch Panels

i. Several locations will require CCHs and patch panels. CCHs provide interconnect or cross-connect capabilities between outside plant, riser or distribution cables and opto-electronics. See below for CCH specifications:

Closet Connector Housing (CCH) and Patch Panels Specifications		
Item	Supplier	Description
CCH-04U		CLOSET CONN HSG 4U F/12 PNLS
WCH-02P		Wall-MNTD CLST HOUS/2CCH PNL
CCH-01U		CLOSET CONN HSG 1U F/2 PNLS
CCH-CP24-A9		CCH PNL W/12 LC DUPLEX SM
CCH-CP12-A9		CCH PNL W/6 LC DUPLEX SM

N. Acceptance and Testing

a. The Contractor is required to construct per detailed engineering drawings..

b. Any deviation from the original design must be requested by the Contractor and approved by the Town of Fairhaven before the work is done.

c. Deviations to splicing and/or site location terminations must be pre-approved by the Town of Fairhaven and then appropriately documented with red-line drawings and supporting documentation.

d. All testing results are to be provided and accepted by in order for the Town to maintain its warranty.

e. The Contractor(s) is required to test the fiber after installation, including all splicing and termination, after completion. Test the fiber from end to end through any interconnections to ensure that the path is properly installed and that polarization and routing are correct and documented. Out of specification deficiencies identified must be properly corrected per industry standards.

f. For each network segment or fiber optic link, including spare fibers, determine whether the optical loss is within the limits permissible under

applicable testing industry standards below.

- g.* A link is defined as a continuous segment of fiber between one connector and another connector.
- h.* When testing links that do not have connectors on both ends, the Contractor shall use a mechanical splice to attach a pigtail to the unterminated fiber for the duration of the test.
- i.* The following industry testing standards shall be used to verify proper construction and installation:
 - i.* Testing industry standard FOTP-78 (Fiber Optic Test Procedure) will be applied to all fiber splicing and unused fibers within the following parameters using the bidirectional method established by FOTP-78, as follows:
 - 1. All fusion splices will have less than 0.05 dB loss using 1550 nm optical source. The test will be bi-directional with no splice loss being greater than 0.05 dB. Since the test is bi-directional, the splice loss refers to the final loss value obtained once the test results are averaged at each splice; none being greater than 0.05 dB.
 - 2. Terminations will have loss less than 0.4 dB using 1550 nm and 1310 nm optical source. Testing methods will apply industry standard TIA-472D000-B Section 8.2.1 (Telecommunications Industry Association) using Optical Time Domain Reflectometer (OTDR) as the measurement device.
 - 3. No manual calculations of bi-directional averages are allowed.
 - 4. Record and document all splice losses and termination losses and submit to the Town of Fairhaven for approval.
 - ii.* Perform OTDR testing which captures optical attenuation on all fibers after post installation. Optical attenuation performance shall meet or exceed standard TIA472D000-B Section 8.1 for single-mode fiber. The maximum optical attenuation loss cannot exceed 0.25 dB/km at 1550 and 0.35 dB/km 1310 nm testing.

O. Splice Testing Documentation

a. Documentation of the fiber optic cable plant (test results) should follow ANSI/TIA/EIA-606 Administrative Standard for Telecommunications infrastructure of commercial Buildings. This documentation shall include the insertion loss data.

P. Documentation All fiber optic cables have a unique lot number shown on the shipping spool. It is important that this number be recorded. Cable pre- and post-installation test data should be recorded in an orderly and logical fashion.

- a.* Prepare diagrams showing all the links tested in this project. On each line representing a link, show the maximum allowable loss and the actual loss. Ensure the actual loss is the one measured after all corrective actions have been taken.
- b.* Provide an OTDR trace for all fibers to document the location of the sources of optical loss in the cable (refer Acceptance and Testing).
- c.* All Red-line drawings, field notes, documentation, and As-Built drawings must be submitted to the Town of Fairhaven in a format acceptable to the Town of Fairhaven (e.g., Spatially-referenced AutoCad files, GIS shapefile, etc.).
- d.* Schematics and detailed circuit diagrams of all splice locations shall be provided in an acceptable format to the Town of Fairhaven.

- e. All fiber testing documentation must be provided to the Town and .

Q. Warranty and Workmanship

- a. The Contractor warrants that all materials furnished shall be new, and free from defects.
- b. The Contractor warrants that the materials and workmanship used in the construction are as herein specified, and shall provide all material and labor required to make good any defects due to faulty materials or workmanship which become apparent within a one year period from project completion.
- c. The equipment and materials manufacturers are expected to recognize that they are responsible for the failure of their products to perform in accordance with data furnished by them or their authorized representatives, as well as misrepresentations of such data.
- d. When the products have been installed in accordance with the manufacturer's published or written instructions and recommendations, and such products fail, the Contractor is responsible for replacement of the products and all associated work and materials without additional cost to the Town of Fairhaven.
- e. Contractor shall obtain and assign to the Town of Fairhaven warranties from the manufacturers of the materials it installs.
- f. Damage by vandals, fire, traffic accidents or "acts of God" are excluded from labor and materials warranty.

R. Project Supervision

- a. The Contractor shall designate a full-time Project Supervisor to act as the Contractor's agent/representative, and to be responsible for scheduling and coordination of all subcontractors, suppliers, other governmental agencies, and all public and private utility companies.
- b. The Project Supervisor shall work harmoniously with the Engineer, the Town, the public, subcontractors, and all other parties typically involved with work of this nature.
- c. The Project Supervisor shall be responsible for all of the work of all of the Contractor, subcontractor and/or supplier work forces.
- d. The Project Supervisor shall submit to the Town an updated, detailed schedule of the proposed work on a schedule determined at the initial project kickoff meeting.
- e. The Project Supervisor and all subcontractors shall attend a progress meeting to discuss the work. Upon the completion of each meeting, the Project Supervisor shall prepare and distribute, to all present, a written summary of the meeting's minutes. Those in attendance shall review the minutes and, if necessary, comment on any deficiencies or errors prior to or at the next scheduled progress meeting.
- f. The Town of Fairhaven recommends that the contractor utilize a Project Management Software tool specifically designed for Fiber Optic Deployments, such as Ociusnet, Vitruvi, or Render, etc.

Town of Fairhaven, Massachusetts
Responses to Questions Posed by Jeff Christensen

Set forth below are my responses to questions posed by Jeff Christensen regarding the role of municipal light plants in the establishment of municipal broadband systems:

- If the Town of Fairhaven constructs and owns a fiber-optic network, but has a 3rd Party, Private Network Operator manage and oversee the operations of the network, is the Town required to establish a Municipal Light Plant?

Yes, the Supreme Judicial Court recognizes G.L. c. 164 as providing the authority for the operation by local governments of municipal light plants, which themselves are authorized to operate municipal broadband systems. However to the extent that a community is simply building-out the system, to be operated by others, the establishment of a municipal lighting plant is not required in order for a city or town to borrow to pay costs of designing and constructing a municipal broadband system. This model has been utilized in several western Massachusetts communities. However, if the system is to be operated as a municipal activity, the establishment of a municipal light plant under G.L. c. 164 would be necessary.

- Is the Municipal Light Plant the only mechanism under Massachusetts law that provides the authority to a city or Town to deploy a municipal fiber-optic network or is there another path the Town can follow?

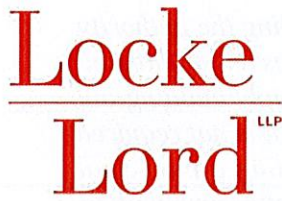
As mentioned above, if no municipal light plant has been established, the Town can build-out a system to be operated by others, but cannot undertake operations as a municipal activity without establishing a municipal light plant.

- Our consultants and the Broadband Committee will provide our Broadband Plan and Feasibility Analysis to the Board of Selectmen in early January. Is there detailed information available that outlines the requirements to establish and then operate a Municipal Light Plant?

The steps for establishing a municipal light plant are set forth in G.L. c. 164 §36 which provides that:

A town shall not acquire such a plant until authorized by a two thirds vote, taken by ballot with the use of the voting list, at each of two town meetings called therefor and held at intervals of not less than two nor more than thirteen months. If the first of such votes is favorable and the second unfavorable, or if both such votes are unfavorable, no similar vote shall be passed within two years thereafter.

Once established, a Town needs to decide if the plant will be overseen by the Selectmen or an elected municipal light board. In either case, the Town will need to appoint a manager to oversee its operations.



Memorandum

Date: December 3, 2020

To: John E. Bacon, Esquire, Assistant City Solicitor, City of Quincy

From: Richard A. Manley, Jr.

Subject: Municipal Broadband Considerations

You have asked us to address a number of questions we have been discussing regarding the possibility of borrowing money to pay costs of designing, building out and operating a municipal broadband system in the City of Quincy (the “City”). The questions we have been discussing appear below. Our answers appear in italics.

1. Can the City authorize the borrowing of money to design and construct a municipal broadband system?

Yes, G.L. c. 44, §8(9) provides that a Massachusetts city or town, by a two-thirds vote, can authorize the borrowing of money for the purpose of: “. . . establishing, purchasing, extending, or enlarging a municipally owned gas or electric lighting plant, community antenna television system, or telecommunications system”

In many western Massachusetts communities, debt has been authorized to be pay the local cost (these communities have been receiving significant state assistance to complete these projects) of designing and constructing their own municipal broadband networks. In most of these cases, the individual communities are not intending to operate the networks. Instead, they expect to contract with a third party operator to handle day-to-day operations that would operate their business on the community’s broadband infrastructure.

The nature of the ultimate operator of the municipal broadband system is of importance because if the system is not expected to be operated by a governmental entity, subject to certain exceptions, the borrowing to pay costs of the system is likely ineligible for federally tax exempt financing. As you know, the interest rates on tax-exempt bonds are typically less than rates on debt that is subject to federal income taxation.

2. Does the City need to establish a municipal light plant under G.L. c. 164 if it should want to operate a municipal broadband system?

Yes, the Supreme Judicial Court recognizes G.L. c. 164 as providing the authority for the operation by local governments of municipal light plants, which themselves are authorized to operate municipal broadband systems. To the extent that a community is simply building-out the system, to be operated by others, the establishment of municipal lighting plant is not required in order for a city or town to borrow to pay costs of designing and constructing a municipal broadband system. This model has been utilized in several western Massachusetts communities. However, if the system is to be operated as a municipal activity, the establishment of a municipal light plant under G.L. c. 164 would be necessary.

3. What is involved in the establishment of a municipal light plant under G.L. c. 164?

G.L. c. 164, §35 provides that: [a] . . . city shall not acquire such a plant until authorized by a two thirds vote of its city council, . . . passed in each of two consecutive municipal years and thereafter ratified by a majority of the voters at an annual or special city election. If such a vote is not ratified, no similar vote shall be submitted for ratification within one year thereafter.

Once it has been established, the Mayor is authorized to appoint a manager of municipal lighting, with full charge of the operations of the municipal lighting plant. A municipal lighting plant can be created solely for the purpose of operating a municipal broadband system, without the need to also establish and operate a municipal electric system.

4. How would the City provide for the repayment of debt issued to design and construct the municipal broadband network?

Ideally, revenues derived from customers of the system will be available in annual amounts necessary to operate the system and pay debt service on general obligation bonds of the City issued to pay costs of designing and constructing the system. Of course, this will depend on the pick-up rate (that is, the number of residents opting to sign-up for the system), and the levels at which subscription rates are set. In addition, however, significant expenses (including debt service) will be incurred by the City well before subscription revenue begins to be collected. The City can address these costs with a general fund subsidy (simply making the payments from the general fund until such time as the system is constructed and the subscription revenue begins to flow), borrowing additional funds to capitalize interest on debt issued to design and construct the system, or a combination of the two. Under present law, however, cities and towns are not generally permitted to issue debt to capitalize interest. If this is an option of interest to the City, we can draft special legislation that would permit such a borrowing. If such legislation were to be sought, we would also suggest that the legislation should provide the City with flexibility in the amount of principal that would need to be repaid in each year, to provide further debt service relief until subscription revenue becomes more robust.

I hope these answers are helpful to you. Please let me know if I can provide you with any further background on this issue.

December 29, 2020

RE: Client Advisory – COVID-19 Vaccine Guidance

Dear Clients:

The administration of the COVID-19 vaccine presents unique challenges for employers. The safety of employees and the communities they serve is paramount, but employers must be mindful of their obligations under state and federal law, as well as applicable collective bargaining agreements. We have prepared the following memo to address questions regarding employers' ability to require employees to get the COVID-19 vaccine and what to do if an employee cannot or will not be vaccinated.

As we have seen throughout the COVID-19 pandemic, circumstances will continuously change, and unique situations will arise. Many questions that you encounter will be fact-specific, so we encourage you to contact us for guidance as you navigate this process.

Can employers require employees to get the COVID-19 vaccine?

It has been widely reported in recent weeks that **employers may mandate COVID-19 vaccinations** for their employees, but any employer considering such a mandate should review this advisory and understand the legal ramifications of such a mandate.

The Americans with Disabilities Act (ADA) limits employers' ability to make disability-related inquiries or require medical examinations of employees. The Equal Employment Opportunity Commission (EEOC) has determined that the COVID-19 vaccination is not a medical examination for purposes of the ADA, however, there are circumstances surrounding the vaccine that could implicate the ADA.

Pre-vaccination medical screening questions are likely to elicit information regarding a disability. For example, a screening question may require an employee to disclose existing medical conditions in order to assess whether they should receive the vaccine. As a result, employers who are administering the vaccine and are requiring employees to receive it must show that disability-related screening inquiries are job-related and consistent with business necessity. In order to show this, an employer would need to have a reasonable belief, based on objective evidence, that an employee who does not answer the questions and, therefore, does not receive a vaccination, will pose a direct threat to the health or safety of her or himself or others.

Pre-vaccination screening questions may also implicate Title II of the Genetic Information Nondiscrimination Act (GINA). GINA prohibits the use, acquisition and required disclosure of employees' genetic information in making employment decisions, except in certain narrow circumstances.

Employers can avoid making disability-related inquiries in violation of the ADA and avoid obtaining genetic information in violation of GINA in two ways:

1. Employers can offer the vaccine on a voluntary basis rather than requiring it. In this case, employees can opt not to answer the questions and thus, not receive the vaccine.
2. Employers can require that employees receive the vaccine from a third party that does not have a contract with the employer, such as pharmacies or health care providers. By not administering the vaccine itself, the employer avoids the need to ask pre-vaccination screening questions.

Employers should use caution when requiring or requesting employees to provide proof that they have received the COVID-19 vaccine. Requesting proof of COVID-19 vaccination is not a disability-related inquiry. However, follow-up questions about *why* an employee did not receive the vaccine are likely to elicit information about a disability, so employers must be able to prove that such follow-up questions are job-related and consistent with business necessity. If an employee notifies their supervisor or manager that they will not receive a COVID-19 vaccine, we recommend that they do not ask follow-up questions. The supervisor or manager should escalate the issue to Human Resources or the Town Administrator/Manager, who will follow up to determine whether the employee may be requesting an accommodation. More information about accommodations is described below.

When requesting or requiring proof of a vaccination, we recommend that employers specifically warn employees not to include any medical information as part of the required proof.

In conclusion, employers can require employees to get the COVID-19 vaccine, however, they must exercise caution surrounding potential disability-related inquiries, particularly if the employer itself is administering the vaccine. If an employer requires employees to get the vaccine, they must still comply with other ADA requirements detailed below concerning employees who cannot or will not be vaccinated for health or religious reasons.

As a practical matter, employers may want to consider other alternatives to strictly requiring all employees to get the COVID-19 vaccine. Aside from the health and religious accommodations explained below, some individuals will decline to get the vaccine for other personal reasons. Employers requiring the vaccine will likely face questions from employees, labor unions and elected officials. One potential approach is to make the vaccine permissive for employees, but require that all unvaccinated employees continue the same safety measures that are currently in place, such as masks, social distancing, plexiglass boundaries, etc., even if those standards are subsequently relaxed for other employees. This approach may encourage employees to get vaccinated without explicitly requiring it and will provide a measure of safety to coworkers and residents who are interacting with unvaccinated employees.

What if an employee cannot or will not get the vaccine due to a health condition?

If an employee claims that they are not getting the COVID-19 vaccine due to a health condition, the employer should initiate an interactive discussion with the employee regarding possible reasonable accommodations, in accordance with the requirements of the ADA.

Employers are obligated to allow reasonable accommodations to the vaccine, so long as the accommodations allow the employee to perform the essential functions of his/her position and do not impose an undue burden on the employer. Potential accommodations include remote work, modified schedules and continued use of safety protocols such as masks and social distancing. We are happy to provide helpful suggestions for having the interactive dialogue with employees for those managers not familiar with that process.

Employers cannot exclude an employee from the workplace, or take any other adverse employment action, unless the unvaccinated employee would pose a direct threat due to a “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.” 29 C.F.R. 1630.2(r).

Terminating an employee for being unvaccinated is only appropriate when the employee is either not entitled to an accommodation under the law or when there is no reasonable accommodation available that does not impose an undue burden on the employer and that prevents the employee from being a direct threat to themselves or others.

For most positions, alternative safety protocols or remote work would be reasonable accommodations and therefore, the unvaccinated employee could remain in the workplace without posing a direct threat to themselves or others. If an employee is unvaccinated and his/her duties cannot be performed remotely, they must continue to comply with all safety protocols that have been in place in recent months, including wearing a mask at all times, maintaining social distancing and any other necessary precautions.

We recommend that employers remind managers and supervisors that it is unlawful to disclose that an employee is receiving a reasonable accommodation or retaliate against an employee who has requested an accommodation. Employers should ensure that managers and supervisors recognize and escalate employee requests for accommodations to his/her Human Resources department or Town Administrator/Manager.

If you have specific questions about an employee’s request for accommodation, please contact us for additional guidance.

What if an employee cannot or will not get the vaccine due to religious beliefs?

Title VII of the Civil Rights Act requires that employers provide a reasonable accommodation for the sincerely held religious belief practice or observance, unless the accommodation would pose

an undue hardship on the employer. Undue hardship is defined as having more than a *de minimus* cost or burden on the employer.

Similar to employees with health-related reasons for not being vaccinated, reasonable accommodations would include remote work or continued safety protocols, such as masks and social distancing.

Although accommodations are required only for sincerely held religious beliefs, we recommend that employers assume a religious belief is sincere and do not require additional proof or scrutiny. If you have legitimate, objective reasons to believe the religious belief is not sincerely held, please contact us and we will provide additional guidance before you question the employee.

Special Considerations for Public Safety Personnel

Police and fire personnel are entitled to the same protections described above, however, there are special considerations due to the unique nature of the jobs and the laws that govern employment. For those clients considering mandatory vaccination, navigating the ADA for police officers and firefighters refusing the vaccine will be more challenging. There are far fewer options for reasonable accommodations for public safety personnel, as options such as remote work are not practical.

Claims for injury on duty pay pursuant to General Laws, c. 41, §111F, from public safety employees who decline vaccination should be carefully examined. It should be made clear that public safety employees declining vaccination may be required to use contractual paid time off for any such absence or illness going forward. Those employees should also be advised that they will remain subject to masking and social distancing requirements while on duty, even if those standards are relaxed for other employees who have been vaccinated.

Collective Bargaining Considerations

If you will be implementing a policy requiring employees to receive the COVID-19 vaccine, you must bargain with unions regarding the **impact** of the policy. We will be happy to assist in drafting sample policies and notices to unions if you are considering mandating the vaccine for your employees. We encourage you to engage your unions as early as possible to ensure there are no delays in implementing the policy once the vaccine becomes available.

As with all impact bargaining, if a union does not respond to your offer to discuss the policy within the time period prescribed in the notice, or you reach an impasse and are unable to come to an agreement, you may unilaterally implement the policy.

Conclusion

As discussed above, mandatory vaccination is an option for employers, but there are several factors that should give you pause before considering such a mandate. One of the biggest challenges faced in vaccinating the population lies in educating the general public as to the benefits and risks associated with the vaccine. We would generally recommend providing as much information as possible about the vaccine to your employees and hope that they voluntarily participate in a vaccination program.

As always, we are happy to assist you with the legal ramifications of this issue as we go forward. Please don't hesitate to call or email us with any questions.

This advisory is intended only for the clients of Clifford & Kenny, LLP. If another municipality or third-party requests these materials, please suggest that they contact our office and we would be happy to offer a consultation on the issue.

Best,

Clifford & Kenny, LLP

