The regular meeting of the City Council of the City of Fitchburg was held in the Memorial Middle School Library, 615 Rollstone St., Fitchburg, on March 19, 2019. The meeting was called to order by Michael Kushmerek at 7:05 P.M. The Clerk called the roll and eleven (11) Councilors were present. The meeting opened with a salute to the Flag led by Councillor Kaddy.

Noted for the record: FASTV was recording the audio and video of the meeting.

REPORT OF COMMITTEE ON RECORDS

The Committee on records reported the minutes of the Regular Meeting of March 5, 2019, were correctly recorded. Report accepted and minutes adopted.

COMMUNICATION FROM HIS HONOR THE MAYOR

- Appointment Letters:

1. Mr. David C. Brooks, as a member of the Board of Park Commissioners for a term to expire April 1, 2024.

March 11, 2019

The Honorable City Council
Fitchburg Municipal Offices
166 Boulder Drive, Suite 108
Fitchburg, MA 01420

Dear Honorable Councillors,

I hereby appoint and ask for your confirmation of Mr. David C. Brooks of 20 Dailey Terrace, Fitchburg, MA as a member of the Board of Park Commissioners for a term to expire April 1, 2024.

Thank you for your attention to this important matter.

Sincerely,

Stephen L. DiNatale
Mayor

Appointment read and referred to the Appointments Committee.
SPECIAL PRESENTATION
DPW-Wastewater Division
RE: Consent Decree

Mr. Jeff Murawski, DPW Deputy Commissioner for Wastewater and
Mr. Frank Occhipinti from Weston & Sampson provided the
following presentation:

Background

Sanitary Sewer System
- 131 miles of 6" to 54" diameter gravity pipe

Storm Sewer/Drainage System
- 104 miles of 6" to 72" diameter gravity pipe

Combined Sewer System
- 8.4 miles of 8" to 26"x39" diameter gravity pipe
- 11 Combined Sewer Overflow (CSO) Regulators = 10 CSO Outfalls
Background

- 2010 City receives its NPDES permit from EPA
- 2012 City receives Consent Decree (CD) from the EPA
- 2019 City receives Audit Report from EPA

Nashua River Watershed

North Nashua River Impairments

- E. Coli
  - CSOs
  - Illicit Connections
- Other Impairments
  - determined by water quality testing

CSO Locations
CSO Discharge Requirements

- EPA
  - Four (4) discharges to a waterbody, or
  - Capture of 85% of combined sewage
- MassDEP
  - Zero (0) discharges to a Class B Waterbody

CSO Discharges

- City of Fitchburg - 2018
  - 182 overflow discharge events
  - 31.2 million gallons discharged to North Nashua River
    (Approximately 47 Olympic-sized swimming pools)

Requirements Overview

- 2010 NPDES Permit
  - Permit Limits for Wastewater Discharges
  - Combined Sewer Overflows (CSOs)
    - Implement Nine Minimum Controls
    - Meet state and federal water quality standards
  - Combination Manholes

Timelines
Sewer System Requirements Overview

- 2012 Consent Decree
  - Sewer Separation Projects 2B, 3C, 4D
  - Sanitary Sewer Evaluation Survey (SSES)
  - Hydraulic Model and Capacity Assessment
  - Wastewater Management Plan

Requirements Overview

- Wastewater Management Plan
  - Schedule to meet a seasonal Phosphorus discharge limit of 0.2 mg/L
  - Schedule to meet CSO discharge requirements in 2010 NPDES Permit by December 31, 2030
MassDEP CSO Controls (Options)

- EPA's Nine Minimum Controls
- Storage Technologies
- Treatment Technologies
- Elimination/Relocation (Sewer Separation)

Estimated Cost

- Total Separation Estimate: $36.4 million

[Graph showing Municipal Preliminary Screener Sizes over years]
Preliminary Implementation Schedule

- Previous Separation Areas
  - Priority 1 - CSO 007, 039, 048
  - Priority 2 - CSO 032, 045, 063
  - Priority 3 - CSO 019
  - Priority 4 - CSO 004
  - Priority 5 - CSO 041 & 076
  - Priority 6 - CSO 064

Additional Requirements

**Long-Term Control Plan/ NPDES**
- Combination Manhole Separation
- Nine Minimum Controls
  - System Optimization

**Other**
- EWWTF Upgrades (underway)
- I/I Control Plan/System Improvements
Nineteen Minimum Controls

<table>
<thead>
<tr>
<th>Control Category</th>
<th>Minimum Control Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proper Operation and Maintenance Programs</td>
<td>1. Operate, maintain, and calibrate equipment.</td>
</tr>
<tr>
<td>Hydrologic Similarity</td>
<td>2. Simulate meteorological, seasonal, and climatic conditions.</td>
</tr>
<tr>
<td>Prevention of Accidental Discharges</td>
<td>3. Prevent the discharge of pollutants to surface water.</td>
</tr>
<tr>
<td>Non-Point Source Control</td>
<td>4. Minimize the impact of non-point source pollution.</td>
</tr>
<tr>
<td>Stormwater Management</td>
<td>5. Implement stormwater management practices.</td>
</tr>
<tr>
<td>Land Use Planning</td>
<td>7. Incorporate stormwater management into land use planning.</td>
</tr>
<tr>
<td>Construction Site Management</td>
<td>8. Implement construction site management practices.</td>
</tr>
</tbody>
</table>

Question and answer period ensued with various topics and points of information as follows:

- The sewer separation project sequence is being developed and will take in to consideration the bridges project so as to avoid duplicate street openings and traffic disruption;
- Other options to the sewer separation project (storage and treatment) are not on the table because the DEP requires sewer separation when the cost is less than 2% of median household income;
- It will take eleven years to complete the project and they are still evaluating the timing and sequencing;
- The project loans will be on a twenty year repayment term therefore will be paid off around the year 2050;
- City of Fitchburg median household income is approximately $50,000 therefore 2% ($1000) is a significant financial burden to many households; the 2% benchmark is an EPA prescribed methodology against which the City has no argument;
- The last sewer rate increase was a five year rate and it is guaranteed that there will be another increase that will remain in place until at least 2030 in order to pay off the loans;
- The $36 million estimate for the project has built in escalation for future cost increases;
- Although there is no immediate cause for downstream concern regarding wastewater discharge in to the Nashua River and the Wastewater Dept. is not in the business of health forecasting, it is advised not to swim or fish in the river after a rain storm;
- It is unknown whether or not there will be any additional environmental issues to address with the recent declaration by President Trump that the Nashua River is now part of the National Wild and Scenic River System.
REPORTS OF COMMITTEES

Appointments Committee Oral Report
Meeting of March 19, 2019

The Appointments Committee recommended the following Appointments be confirmed:

Re-Appointments:
Human Rights Commission
(Term to expire January 1, 2022)
Ms. Cheryl Maguy-Stewart

(Term to expire May 1, 2021)
Mr. David Roth

New Appointment:
Council on Aging
(Term to expire March 2, 2022)
Mr. George J. Bourque II

Report accepted. Appointments confirmed by unanimous vote. 11 members present. Board consists of 11 members.

Finance Committee
Meeting of March 12, 2019

The Finance Committee recommended the following Orders be adopted:

050-19. ORDERED THAT: There be and hereby is appropriated the sum of ONE HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS ($125,000.00) same to be charged against AVAILABLE FUNDS and credited to COMMUNITY DEVELOPMENT EXPENSES, ZONING ORDINANCE UPDATE account for the purpose of procuring a consultant to assist in the updating of the city's Zoning Ordinance.

051-19. ORDERED THAT: The City of Fitchburg hereby approves the expenditure of funds from the Massachusetts Department of Transportation, Aeronautics Division, Airport Safety and Maintenance Program grant in the approximate amount of $640,000.00 (SIX HUNDRED FORTY THOUSAND AND 00/100 DOLLARS) for the purpose of said grant, which is to pay for the installation of a self-serve fueling station at the airport.

Report read and accepted. Orders adopted by unanimous vote. 11 members present. Board consists of 11 members. Order signed by the Mayor March 26, 2019.
The Finance Committee recommended the following Order be adopted:

052-19. ORDERED THAT: There be and hereby is appropriated the sum of ONE HUNDRED SIXTY THOUSAND AND 00/100 DOLLARS ($160,000.00) same to be charged against AVAILABLE FUNDS and credited to AIRPORT CAPITAL, SELF-SERVE FUELING STATION account, for the purpose of installing a self-serve fueling station at the airport.

Discussion regarding the municipal airport took place with several Councillors participating. Comments were made and questions raised referencing the fact that Massport runs the airports in Boston and Worcester, questioning why the same could not be done in Fitchburg; an external document stating that $4 million + is spent on airport salaries for more than 100 employees; not having a quantifiable benefit to the City; the City’s responsibilities now and in the future for its operation and maintenance.

The Council President requested that the City Solicitor opine on the City’s current and future responsibilities for funding and operation of the airport.

Order adopted by vote of 9 in favor and 2 opposed (Beauchemin, Donnelly). 11 members present. Board consists of 11 members. Order signed by the Mayor March 20, 2019.

The Finance Committee recommended the following Orders be adopted:

053-19. ORDERED THAT: There be and hereby is appropriated the sum of ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($150,000) same to be charged against AVAILABLE FUNDS and credited to POLICE, CAPITAL EXPENDITURES, BUILDING REPAIRS for the purpose of replacing the main HVAC roof top unit and thermostat and PVC control valves regulating HVAC functions.

054-19. ORDERED THAT: There be and hereby is appropriated the sum of NINE THOUSAND AND 00/100 DOLLARS ($9,000.00) same to be charged against AVAILABLE FUNDS and credited to POLICE, CAPITAL EXPENDITURES, BUILDING REPAIRS for the purpose of construction design services for expansion of the female locker room.

Order adopted by unanimous vote. 11 members present. Board consists of 11 members.
Orders signed by the Mayor March 21, 2019.
The Finance Committee recommended the following Order be adopted:

055-19. ORDERED THAT: There be and hereby is appropriated the sum of ONE HUNDRED NINETY THOUSAND AND 00/100 DOLLARS ($190,000.00) same to be charged against AVAILABLE FUNDS and credited to DEPARTMENT OF PUBLIC WORKS, CAPITAL, STREET REPAIR for the purpose of repairing and repaving city streets.

Councilor DiNatale recused himself from the vote and discussion.

Discussion regarding the road paving schedule took place with several Councillors participating. Comments were made and questions raised regarding the methodology and factors considered in establishing the paving priority list. The Council President requested that the DPW Commissioner provide such information to the City Council.

Order adopted by vote of 10 in favor and 0 opposed. 10 members present. Board consists of 11 members.

The Finance Committee recommended the following Orders be adopted:

056-19. ORDERED THAT: There be and hereby is appropriated the sum of THIRTY-FIVE THOUSAND AND 00/100 DOLLARS ($35,000.00) same to be charged against AVAILABLE FUNDS and credited to DEPARTMENT OF PUBLIC WORKS, CAPITAL, ARBOR WAY for the purpose of designing repairs to the Arbor Way retaining wall.

057-19. ORDERED THAT: There be and hereby is appropriated the sum of EIGHTY-EIGHT THOUSAND AND 00/100 DOLLARS ($88,000.00) same to be charged against AVAILABLE FUNDS and credited to DEPARTMENT OF PUBLIC WORKS, CAPITAL, BUILDING RENOVATION for the purpose of designing and installing a new roof over the DPW Office Building.

058-19. ORDERED THAT: There be and hereby is transferred from within the sum of TWENTY-FOUR THOUSAND AND 00/100 DOLLARS ($24,000.00) same to be transferred from DPE HIGHWAY, EXPENSES, GAS & OIL ($20,000.00) and DPW HIGHWAY, EXPENSES, BUILDING & GROUNDS ($4,000.00) and credited to DPW HIGHWAY, PERSONAL SERVICES, OVERTIME.

059-19. ORDERED THAT: There be and hereby is transferred from within the sum of ONE THOUSAND AND 00/100 DOLLARS ($1,000.00) same to be transferred from PARKS, PERSONAL SERVICES, CERTIFICATIONS and credited to PARKS, PERSONAL SERVICES, OVERTIME.

060-19. ORDERED THAT: There be and hereby is transferred from within the sum of THREE THOUSAND AND 00/100 DOLLARS ($3,000.00) same to be transferred from CEMETERY, PERSONAL SERVICES, LABOR and credited to CEMETERY, PERSONAL SERVICES, OVERTIME.

Report read and accepted. Orders adopted by unanimous vote. members present. Board consists of 11 members.
Orders signed by the Mayor March 20, 2019.
The Finance Committee recommended the following Petition be granted:

066-19. Lenny Laakso, DFW Commissioner, to amend Chapter 44, Section 10 of the code of the City of Fitchburg by deleting the current rates for temporary seasonal employees and adding the attached table of wage rates, to be in compliance with minimum wage laws.

<table>
<thead>
<tr>
<th>City of Fitchburg</th>
<th>Wage Rates</th>
<th>Recreation Dept. and DFW</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Seasonal Employees</strong></td>
<td><strong>Current Ordinance</strong></td>
<td><strong>Calendar Year 2019 after May 1</strong></td>
</tr>
<tr>
<td>Playground Leader</td>
<td>$11</td>
<td>$12</td>
</tr>
<tr>
<td>Playground Coordinator</td>
<td>$15</td>
<td>$16</td>
</tr>
<tr>
<td>Lifeguard I</td>
<td>$12</td>
<td>$14</td>
</tr>
<tr>
<td>Lifeguard II</td>
<td>$13.50</td>
<td>$14.50</td>
</tr>
<tr>
<td>Head Lifeguard</td>
<td>$15</td>
<td>$16</td>
</tr>
<tr>
<td>Splash Park Attendant</td>
<td>$11</td>
<td>$12</td>
</tr>
<tr>
<td>Stormwater &amp; Sewer Collection Engineering Intern</td>
<td>$13</td>
<td>$15</td>
</tr>
<tr>
<td>Temporary Wastewater Operations Aide</td>
<td>$13</td>
<td>$15</td>
</tr>
<tr>
<td>Seasonal and/or Temporary Labour</td>
<td>$13</td>
<td>$14</td>
</tr>
</tbody>
</table>

Report read and accepted. Petition granted by unanimous vote. 11 members present. Board consists of 11 members. Petition forwarded to the City Solicitor for Ordinance Preparation.
The Finance Committee recommended the following Year 45 Block Grant Application be granted:

### YEAR 45 ESTIMATED FUNDING

Estimated CDBG funds available for Year 45 (2019-2020) are as follows:

<table>
<thead>
<tr>
<th>Source of Funds</th>
<th>Amount to be Determined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated Year 45 Entitlement*</td>
<td>980,427</td>
</tr>
<tr>
<td>Year 44 Entitlement</td>
<td>980,427</td>
</tr>
<tr>
<td>Estimated Program Income available from prior years (Misc.)</td>
<td>625</td>
</tr>
<tr>
<td>Potential Misc. Program Income available in Year 45</td>
<td>700</td>
</tr>
<tr>
<td>Reprogrammed Funds</td>
<td>66,809</td>
</tr>
</tbody>
</table>

**CDBG Housing Revolving Loan Funds:**
- Anticipated Program Income July 1, 2018 – June 30, 2019: $60,000
- Anticipated Fund Balance as of June 30, 2019: $150,000
- Potential Program Income from July 1, 2019 – June 30, 2020: $69,600

**CDBG Business Revolving Loan Funds:**
- Anticipated Program Income July 1, 2018 – June 30, 2019: $15,000
- Anticipated Fund Balance as of June 30, 2019: $25,000
- Potential Program Income July 1, 2019 – June 30, 2020: $15,000

**HOME Revolving Loan Funds:**
- Anticipated Program Income July 1, 2018 – June 30, 2019: $72,000
- Anticipated Fund Balance as of June 30, 2019: $175,000
- Potential Program Income July 1, 2019 – June 30, 2020: $75,000

*This figure may fluctuate pending budget approval by Congress*
**ESTIMATED FUNDING AVAILABLE – $1,048,561**

**CDBG YEAR 45 FUNDING REQUESTED**

<table>
<thead>
<tr>
<th>Project Category</th>
<th>Requested Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>PUBLIC FACILITIES AND IMPROVEMENTS (9)</td>
<td>$492,725</td>
</tr>
<tr>
<td>PUBLIC SERVICES (7)</td>
<td>$209,000</td>
</tr>
<tr>
<td>ECONOMIC DEVELOPMENT (3)</td>
<td>$80,000</td>
</tr>
<tr>
<td>REHABILITATION AND PRESERVATION (2)</td>
<td>$120,000</td>
</tr>
<tr>
<td>CLEARANCE ACTIVITIES (1)</td>
<td>$300,000</td>
</tr>
<tr>
<td>PLANNING AND ADMINISTRATION (3)</td>
<td>$230,000</td>
</tr>
<tr>
<td><strong>TOTAL YEAR 45 FUNDING REQUESTS (25)</strong></td>
<td><strong>$1,431,725</strong></td>
</tr>
</tbody>
</table>

**CDBG YEAR 45 FUNDING RECOMMENDED**

<table>
<thead>
<tr>
<th>Project Category</th>
<th>Recommended Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>PUBLIC FACILITIES AND IMPROVEMENTS (7)</td>
<td>$281,000</td>
</tr>
<tr>
<td>PUBLIC SERVICES (7)</td>
<td>$147,000</td>
</tr>
<tr>
<td>ECONOMIC DEVELOPMENT (3)</td>
<td>$75,000</td>
</tr>
<tr>
<td>REHABILITATION AND PRESERVATION (2)</td>
<td>$120,000</td>
</tr>
<tr>
<td>CLEARANCE ACTIVITIES (1)</td>
<td>$229,476</td>
</tr>
<tr>
<td>PLANNING AND ADMINISTRATION (1)</td>
<td>$196,085</td>
</tr>
<tr>
<td><strong>TOTAL YEAR 45 FUNDING RECOMMENDED (21)</strong></td>
<td><strong>$1,048,561</strong></td>
</tr>
</tbody>
</table>
# PUBLIC FACILITIES AND IMPROVEMENTS

<table>
<thead>
<tr>
<th>PROJECT</th>
<th>SPONSOR</th>
<th>YEAR 45 RECOMMENDATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parks &amp; Playgrounds</td>
<td>City of Fitchburg Disability Commission &amp; Board of Parks Commissioners</td>
<td>$60,000</td>
</tr>
</tbody>
</table>

Mirror Lake Trail Loop Accessibility Project: Phase I would receive priority funding, contingent upon receipt of grant funds. If grant is not awarded, funding will go toward Goodrich Playground: Phase II.

The Mirror Lake project is as follows: Project funds will be used to create an accessible loop around Mirror Lake in two phases. Phase I will create an over water boardwalk following the shoreline to connect the street sidewalks to the Gazebo, eliminating the need to use the stone stairs and walkway to access the Gazebo and Bandstand. This project meets the needs of the Five Year plan’s NA-50 Non-Housing Community Development Needs to explain the limited open space and recreational areas by creating an accessible trail.

Goodrich Playground is as follows: Project funds will be used to remove existing fencing and backstops surrounding the baseball facilities at Goodrich Playground. New fencing will be installed, followed by leveling and grading of the diamond. This will be followed by the cutting and installation of clay for the infield. This investment improves a currently defunct section of the park that is overgrown, while also improving the aesthetic of the park and the quality of life within the Goodrich Street neighborhood. The work will be done by Fitchburg DPW and be ADA compliant.

Croatier Field – Open Grandstand Rear Wall City of Fitchburg School Department $9,000

Project funds will be used to prepare final plans and specs, demolish 68 linear feet of concrete cap, and install 68 feet of new concrete cap, as well as construction contract administration and inspection.

Croatier Field Field House Roof: Phase II City of Fitchburg School Department $33,000

Project funds will be used to prepare final plans and specs; furnish and install 55 linear feet of copper gutters; furnish and install 36 feet of downspouts and collector pipes; clean out clogged underground drainage system; replace wood trim; scrape, sand and paint copper trim; and for contract administration.

Croatier Field – Restore Grandstand Benches City of Fitchburg School Department $9,000

Project funds will be used to remove, replace, and paint hazardous and rotted wood benches in the first three rows of the covered grandstand, totaling 24 benches, the dimensions of which are approximately 8’ x 11.5” x 2.5.” The work will be completed by the Fitchburg DPW.

Streetscape Improvements Community Development Department $150,000

Project funds will be used to design, install or replace sidewalks, curb-cuts, fencing, lighting, plantings or other streetscape, infrastructure, or accessibility improvements along City Gateways, North of Main or other strategic locations. Funds may support or be used as a match for other funding under the city’s Complete Streets program or be used to apply and provide design or match for the next round of MassWorks Public Infrastructure grant program. Middle Street Sidewalks (520 linear feet) to be included in streetscape work.
Project funds will be used to connect Centro's office at One Wood Place to high-speed internet. The facility is a 143-year-old, repurposed commercial building, and lacks sufficient internet speed. The office serves low- and moderate-income individuals and families. Of the three local carriers, Comcast/Xfinity is the only internet provider willing to work with Centro, and will cover approximately 30% of the cost.

### 6 PROPOSALS – $281,000

#### PUBLIC SERVICES

<table>
<thead>
<tr>
<th>PROJECT</th>
<th>SPONSOR</th>
<th>YEAR 45 RECOMMENDATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Homeless Intervention Program</td>
<td>Our Father's House</td>
<td>$28,000</td>
</tr>
</tbody>
</table>

Project funds will be used to pay staff salary for a 20 hour per week Street Outreach Worker solely dedicated to the homeless within the City of Fitchburg. Connections to health and social services, mental health and addiction services will be offered along with food, clothing, blankets, and human contact. Will work with Fitchburg FD and FD. In addition, $8,000 would be available to pay for a chronically homeless persons first month's rent only or one-time payment in order to enable individuals to acquire and live in permanent housing off the streets.

<table>
<thead>
<tr>
<th>Cleghorn Center After School Program, Summer Camp, and Youth Business Incubator</th>
<th>MOC, Inc.</th>
<th>$15,000</th>
</tr>
</thead>
</table>

Program funds will be used to support youth services programming, including the After School Program, Summer Camp, and Youth Business Incubator. The After School program is primarily focused on academics, but includes supports for health and nutrition; civic engagement projects; computer literacy; workplace readiness and soft skills; and leadership skills. The Summer Camp primarily promotes literacy throughout the summer months, while including programming for STEM activities, arts and culture, and other youth development activities. The Youth Business Incubator teaches youth how to develop their ideas into viable business models, provides mentorship and coaching, access to technology, workshops, and a launch event. Funding supports the Director of Youth Services (16 hours/week), and a Youth Program Assistant (24 hours/week).

<table>
<thead>
<tr>
<th>Spartacus Program Montachusett Regional YMCA</th>
<th>$10,000</th>
</tr>
</thead>
</table>

Program funds will be used to support staff salary of the Teen Center Spartacus Program, offering services to at-risk youth between the ages of 13 and 18 who live in Fitchburg. Emphasis will be on Youth Development, Healthy Living, and Social Responsibility through physical fitness, team building, life skills training, community service, and outdoor activities. It is estimated that 50 youth (unduplicated count) will be served between September and June.
<table>
<thead>
<tr>
<th>Drug Enforcement Patrol Program</th>
<th>Fitchburg Police Department</th>
<th>$60,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program funds will be used to provide for police overtime expenses related to drug investigation activities in the CDBG Strategy Area and foot/motorcycle/bicycle patrols in targeted CDBG areas. Police activities include narcotics investigations, surveillance, undercover buys, search warrant services, and arrests. CDBG funds will be used by the Drug Suppression Unit to conduct thorough investigations on mid- to high-level dealers in the City of Fitchburg, particularly targeting the heroin and opioid market in designated CDBG areas.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Transportation Services to After School Program, Project Learn STEAM</th>
<th>Boys &amp; Girls Club of Fitchburg and Leominster</th>
<th>$16,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program funds will be used to provide one-way transportation from Fitchburg schools to the Boys and Girls Club Afterschool Program located at 365 Lindell Street in Leominster. The Fitchburg schools include: Memorial, South Street, Reingold, Crocker, McKay, Longsjo, Sizer, and Fitchburg High School. It is estimated that approximately 1,440 transportation trips will be provided and 300 Fitchburg youth (unduplicated) served.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Family Pathways Project</th>
<th>Montachusett Interfaith Hospitality Network</th>
<th>$8,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program funds will provide emergency housing for homeless families in North Worcester County, including case management and follow up services. It is estimated MIHN will screen 230 referrals during the year, and expects to serve 15 Fitchburg families (with children, unduplicated count) in the shelter and emergency services. The CDBG funds will be used to partially pay for the MIHN Operations Manager salary costs.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fitchburg Homelessness Prevention Project</th>
<th>Community Legal Aid</th>
<th>$10,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program funds will be used to assist low-income and elderly tenants at risk of eviction or loss of housing subsidy, in order to help prevent homelessness. CLA will also take on cases related to housing that is in need of repair; CLA is able to assert legal claims that result in improvement to housing conditions, making the unit more livable for the tenant, and increases the quality of the City’s housing stock. In 2018, in the Central Division of the Housing Court, 93.2% of tenants were underrepresented, compared to 33.4% of landlords. Funding will support part of a Staff Attorney and the Senior Supervising Attorney.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

7 PROPOSALS – $147,000
ECONOMIC DEVELOPMENT

<table>
<thead>
<tr>
<th>PROJECT</th>
<th>SPONSOR</th>
<th>YEAR 45 RECOMMENDATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Business Technical Assistance Program</td>
<td>NewVue Communities</td>
<td>$21,000</td>
</tr>
</tbody>
</table>

Program funds will provide outreach and technical assistance to businesses. This program leverages loans for small businesses. It is estimated that 40 businesses will be served (unduplicated count), 65 jobs will be created/retained, 43 businesses will be counseled, 4 loans with a value of $100,000 total will be facilitated, and 26 business plans developed. Funds will be used to pay staff salary.

| Downtown Mural Project          | Community Development Department | $24,000                |

Program funds will be used to install 2-3 murals in the downtown area. The City will conduct an RFP process to solicit artists and designers interested in creating a mural for the downtown, and oversee the installation of murals.

| Fitchburg Downtown Coordinator | Fitchburg State University     | $30,000                |

Program funds will be used hire a Downtown Coordinator. This position will assist in planning and coordinating Main Street projects and special events; assist in the development of a shared brand strategy for Downtown Fitchburg as both a college town and arts and culture destination. This position will support 15 community and cultural events, engage 75 businesses to participate in said events, help draw one new business and at least one pop-up retail business, and help draw 40,000 residents from the Greater Fitchburg region to local events. This funding will be used to support part of one FTE.

3 Proposals - $75,000

REHABILITATION AND PRESERVATION

<table>
<thead>
<tr>
<th>PROJECT</th>
<th>SPONSOR</th>
<th>YEAR 45 RECOMMENDATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code Enforcement</td>
<td>Board of Health</td>
<td>$100,000</td>
</tr>
</tbody>
</table>

Program funds will be used to pay 100% of one existing full-time BOH Inspector positions and 50% of one full-time Clerk position. Through the enforcement of the State’s Sanitary and Building Codes, Fitchburg’s housing stock will be greatly improved. To be eligible, this activity must be part of a comprehensive strategy to arrest deterioration, including housing rehab and demolition. It is estimated that 1,000 housing units (duplicated count) will be inspected in the CDBG strategy area.

| Critical Home Repair  | Habitat for Humanity         | $20,000                |

Program funds will be used to fund up to 4 critical repairs in Fitchburg serving 10 households. Critical Home Repair is exterior or interior work to alleviate critical health, life, and safety issues or code violations for homeowners in need. Participants must own their own home and have a verifiable need that falls within scope and capabilities. The home must be a primary principal residence, current on mortgage, property taxes and insurance. Repairs must be necessary to function in the home and homeowners must partner with Habitat. Particular focus will be in the North of Main neighborhood.

2 PROPOSALS - $120,000
CLEARANCE ACTIVITIES

<table>
<thead>
<tr>
<th>PROJECT</th>
<th>SPONSOR</th>
<th>YEAR 45 RECOMMENDATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demolition</td>
<td>Community Development Department</td>
<td>$229,476</td>
</tr>
</tbody>
</table>

Project funds will be used to remove abandoned structures which pose an imminent threat to public safety and which contribute to slums and blight. The entire City will be served but the principal benefit will accrue to the CDBG Strategy Area in which the proposed activities will take place. It is estimated that 7 buildings containing up to 21 units will be demolished. Consultants will be hired for specific expertise such as environmental assessment or engineering services.

1 PROPOSAL – $229,476

PLANNING AND ADMINISTRATION

<table>
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<tr>
<th>PROJECT</th>
<th>SPONSOR</th>
<th>YEAR 45 RECOMMENDATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDBG Administration</td>
<td>Community Development Department</td>
<td>$196,085</td>
</tr>
</tbody>
</table>

Project funds will provide for the necessary administration of CDBG programs and sub-recipient contracts in accordance with federal guidelines, including staffing, technical services, and planning activities. This also includes the cost of various activities such as the Consolidated Plan; Consolidated Annual Performance Report; Analysis of Impediments to Fair Housing; and other strategic plans and services. These funds enable the City to apply for, receive, and administer additional federal and state grants.

1 PROPOSALS – $196,085
067-19. ORDERED THAT: The Honorable Mayor Stephen DiNatale is authorized on behalf of the City of Fitchburg to facilitate and execute the attached Community Host Benefit agreement with Stalk & Beans located at 431 Westminster Street, Fitchburg, MA.

ORDERED-- That

WHEREAS, the Commonwealth of Massachusetts has permitted the legal cultivation, processing, transportation, sale and use of marijuana through M.G.L. c. 94G and implementing regulations of the Cannabis Control Commission (the “CCC”) at 935 CMR 500.000 et seq. (the “CCC Regulations”); and

WHEREAS, Stalk & Beans, Inc., LLC (the “Company”) proposes to locate and operate a marijuana transportation facility at 431 Westminster Street, Fitchburg, Massachusetts (the “Facility”) in accordance with the Regulations issued by the CCC; the Parties agree that the site at 431 Westminster Street, Fitchburg, Massachusetts shall be considered the “area” in which the Facility is located and shall extend no further than the property boundaries of the premises leased or owned by the Company; and

WHEREAS, when permitted to do so by law, the Company wishes to operate and use the Facility for non-medical marijuana retail sales, as authorized by M.G.L. c. 94G if such operation is authorized and permitted by the City, and the City does not oppose such operation if lawful, authorized and permitted; and

WHEREAS, the proposed Facility is located in a zoning district that allows such use by right or by local permitting; and

WHEREAS, the Company promises to provide certain benefits to the City as provided for herein in the event that it opens and operates a lawful, authorized and permitted marijuana retail sales Facility in the City; and

WHEREAS, the Company’s representations are intended to induce reliance on the part of the City to whom the representation is made and in fact the Company has made a promise which the Company should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the City, including but not limited to the negotiation of this Agreement but excluding any zoning or permitting relief; and

WHEREAS, the acts or omissions by the City are in reasonable reliance on the representations and said promises and said representations and promises have induced such action or forbearance on the part of the City; and

WHEREAS, the detriment to the City as a consequence of the act or omission is fairly and adequately remedied by the enclosed provisions and only compliance or enforcement of the same can avoid an injustice and therefore enforcement would be necessary; and

WHEREAS, the promises laid out in the Host Agreement are indeed a true measure of the remedy needed to compensate the City for the detriment incurred and the impact cost as a result of the City’s acts and omissions in reliance on the promises contemplated by the parties; and
WHEREAS, the Company and the City understand that the promises contained herein are intended to commit the Company and the City to the same.

WHEREAS, in consideration of the foregoing, the Company offers the following and the City accepts this Agreement in accordance with G.L. c. 94G §3(d) upon approval of this City Council.

NOW THEREFORE, IT IS ORDERED that the Honorable Mayor Stephen L. DiNatale be hereby authorized for and on behalf of said City to execute and deliver any and all documents and take any and all acts necessary, convenient and helpful to facilitate and execute the Agreement as attached or in form substantially similar thereto, and to site the facility as set forth above.
CITY OF FITCHBURG AND STALK & BEANS, INC.
COMMUNITY HOST BENEFIT AGREEMENT FOR
THIRD-PARTY MEDICAL AND NON-MEDICAL MARIJUANA TRANSPORTER
ESTABLISHMENT

This Community Host Benefit Agreement (the "Agreement") is entered into this 26 day of January, 2019, by and between the City of Fitchburg, a Massachusetts municipal corporation, located at 166 Boulder Drive, Fitchburg, MA 01420 (the "City") and Stalk & Beans, Inc. (the "Company"), a Massachusetts for-profit corporation with an address of record of 5 Appleton Road, Natick, Massachusetts 01760.

WHEREAS, the Commonwealth of Massachusetts has permitted the legal cultivation, processing, sale and use of marijuana for non-medical purposes through M.G.L. c. 94G and implementing regulations of the Cannabis Control Commission (the "CCC") at 935 CMR 500.000 et seq. (the "CCC Regulations"), as well as for medical purposes through Chapter 369 of the Acts of 2012, An Act for Humanitarian Medical Use of Marijuana (the "Act") and its implementing regulations at 935 CMR 501 et seq. (the "Medical Regulations"), and such Act and Regulations allow for transport of medical and non-medical marijuana; and

WHEREAS, the Company proposes to locate and operate as a non-medical Marijuana Transporter from real estate located at 431 Westminster Street, Fitchburg, MA 01420 (the "Facility") in accordance with the CCC Regulations and to facilitate transport under the Medical Regulations; the Parties agree that the site at 431 Westminster Street, Fitchburg, Massachusetts shall be considered the "area" in which the Facility is located and shall extend no further than the property boundaries of the premises leased or owned by the Company; and

WHEREAS, the Commonwealth of Massachusetts has permitted the transport of marijuana for medical purposes via registration of a transportation company’s employees as agents of a Registered Marijuana Dispensary under the Medical Regulations; and

WHEREAS, when permitted to do so by law, the Company wishes to operate and use the Facility as both a non-medical Marijuana Transporter as authorized by the Act, M.G.L. c. 94G and the CCC Regulations, and to allow its employees to act from the Facility as an RMD Agent for transportation purposes under the Medical Regulations, if such operation is authorized and permitted by the City, and the City does not oppose such
operation if lawful, authorized and permitted; and

WHEREAS, the proposed Facility is located in a zoning district that allows such use by right or by local permitting; and

WHEREAS, the Company promises to provide certain benefits to the City as provided for herein in the event that it opens and operates a lawful, authorized and permitted non-medical Marijuana Transporter business or allows its employees to act as RMD Agents for transportation business in the City; and

WHEREAS, the Company’s representations are intended to induce reliance on the part of the City to whom the representation is made and in fact the Company has made a promise which the Company should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the City, including but not limited to the negotiation of this Agreement but excluding any zoning or permitting relief; and

WHEREAS, the acts or omissions by the City are in reasonable reliance on the representations and said promises and said representations and promises have induced such action or forbearance on the part of the City; and

WHEREAS, the detriment to the City as a consequence of the act or omission is fairly and adequately remediated by the enclosed provisions and only compliance or enforcement of the same can avoid an injustice and therefore enforcement would be necessary; and

WHEREAS, the promises laid out in this document are indeed a true measure of the remedy needed to compensate the City for the detriment incurred and the impact cost as a result of the City’s acts and omissions in reliance on the promises contemplated by the parties; and

WHEREAS, the Company and the City understand that the promises contained herein are intended to commit the Company and the City to the same.

NOW THEREFORE, in consideration of the foregoing, the Company offers the following and the City accepts this Agreement in accordance with G.L. c. 94G §3(d):

a. The Company agrees to pay an impact fee to the City, in the amounts and under the terms provided herein ("Impact Fee"). The Treasurer of the City shall hold the Impact Fee, pursuant to and consistent with G.L. c. 94G §3(d). The purpose of the Impact Fee is to alleviate the impacts from the siting of
the Facility within the City. The Parties have reviewed the various costs and impacts to the City of the siting and operation of the Facility. After review, the Parties agree that the Impact Fee listed herein is directly proportional and reasonably related to the costs and other impacts imposed upon the City by the siting and operation of the Facility; and the Company agrees to waive any claim that the Impact Fee specified in this Agreement is not a true measure of the costs and other impacts experienced by the City. The parties agree that siting this and similar facilities can have costs and impacts including, but not limited to, a) the need to promote a positive perception of the City to other residents, visitors and businesses, b) an increased impact on the health and security of its Citizens, c) an increased impact on the roads and public services of the City, d) increased administrative and compliance costs, e) increased regulatory, police and inspectional services. Therefore, the parties agree that it is appropriate to use any Impact Fee or other funds paid hereunder to combat blight and other economic issues facing the City; to support substance abuse education, prevention, treatment, and housing; to repair or improve the City's infrastructure and utility services; to increase public health, police and safety services; administrative, regulatory, inspectional and compliance services; legal fees and costs incurred in connection with the Company (except as otherwise provided for herein); and all other costs incurred in connection with the recited impacts. This Impact Fee has been calculated without reference to legal fees associated with the negotiation, drafting and execution of this Agreement. Notwithstanding the foregoing, the City may in its sole discretion expend the Impact Fee as it deems appropriate for alleviating the impacts of siting the Facility within the City, as it deems the impacts to be in its sole discretion.

b. The Company shall cooperate in supplying any documentation requested by the City as to itemization of any impact of siting the Facility within the City, upon the City's request.

2. Term: The term of this Agreement shall begin on the date in which the Final License for a transporter business for marijuana at the Facility is issued by the CCC or other regulatory authority (the "Commencement Date"), and shall terminate on:

a. Any date in which any CCC or local license or permit is revoked, rescinded or expires without having been renewed; or
b. Upon an Event of Default including any period set forth herein to cure, as hereinafter defined in this Agreement, and termination by the City; or

c. Upon termination by the Company pursuant to Paragraph 14 hereof provided all payments due hereunder have been made.

d. Regardless of the reason for termination, upon termination the next Annual Payment (as defined within this Agreement), abated pro rata to the date of termination, shall be paid to the City by the Company (the "Final Annual Payment"). The Company shall pay the Final Annual Payment to the City within thirty (30) days after the date of termination.

e. The Agreement shall continue until termination even if payment of the Annual Fee ceases pursuant to requirement of law. The parties acknowledge that the terms of G.L. c. 94G §3(4) apply to this Agreement.

3. The Company shall forward to the City the following amounts as the Impact Fee:

a. Twenty Thousand ($20,000.00) Dollars for the twelve (12) month period following the Commencement Date and due on each anniversary thereof (the "Annual Payment").

b. The first Annual Payment shall be due within 30 days of the one-year anniversary of the Commencement Date. Thereafter, the Company shall make the Annual Payment in equal quarterly installments every three months, with each payment due on the 30th day following the end of the three-month period. At the option of the Company, the due date may be amended once, by written request, to align with its fiscal or tax quarterly filing obligations for ease of administration, but such amendment shall not change the total amount due.

c. In the City's sole discretion, it may direct the Company to provide some services or materials on account of the amounts specified herein (the "Services"). In this event the Company shall provide independent verification of the value of said service or materials to the City upon request and in form satisfactory to the City (provided that any reasonable cost related solely to obtaining said independent verification shall be credited to the Annual Payments required hereunder), and the City shall credit the Annual Payment in said amounts. Notwithstanding the foregoing, the
Company shall not be required to provide any Services in conflict with the Regulations. In any case, the Services shall not include the distribution of any assets protected by the Act or the Regulations (e.g., marijuana and marijuana infused products) to an individual that is not duly authorized to possess the same.

d. To the extent that the Annual Payment is limited by the law of the Commonwealth of Massachusetts at the time the Annual Payment is due to an amount less than that specified in this Agreement, the Annual Payment shall be decreased to the maximum amount permissible.

e. The company shall be required to make the Annual Payment for a five-year period commencing on the Commencement Date. At the conclusion of this five-year period, the parties shall enter into a new agreement as to the amount of the Impact Fee.

4. The Company, in addition to any Services or Funds specified herein, shall establish a board within the Company (the “Community Relations Board”) with oversight authority over, to the extent the same is controlled by the Company, the site plan, the signage and appearance of the Facility. Intentionally omitted.

a. The Community Relations Board shall identify local charities or charitable purposes as recipients of a gift or grant of funds, goods and/or services by the Company, to benefit local charities or to contribute to addressing the City’s needs. The Company shall fund gifts or grants as local needs are identified to it by its Community Relations Board in an amount of Five Thousand Five Hundred ($5,500.00) Dollars annually, in excess of its obligation under any other agreement, to make a meaningful contribution to local charities or the City’s needs. The Community Relations Board shall identify local charities or charitable purposes to the Company on the first anniversary of the Commencement Date with subsequent gifts or grants occur on each anniversary thereof.

b. The City’s needs and local charities shall be identified by the Community Relations Board.

c. Unless otherwise agreed by the parties, the Community Relations Board shall be comprised of a board of at least three (3) individuals who are residents of the City and any number of other individuals who may be residents or nonresidents of the City. The Mayor may recommend City
residents to serve on the board. The Company shall then establish the Community Relations board. The Community Relations Board shall meet to identify City needs and local charities and to make gifts or grants as aforesaid not less than twice per calendar year.

5. This Agreement and promises are contingent on the Company obtaining a Final License from the CCC to operate as a non-medical Marijuana Transporter business or a medical RMD Agent transportation business within the City, and the Company's operation of a lawful, authorized and permitted Facility within the City.

6. This Agreement and promises are contingent on the City Council's acceptance of the Agreement pursuant to G.L. c. 94G §3(d) and of any gift or grant being received pursuant to G.L. c. 44 § 53A, or at the option of the City pursuant to any other law or assignment.

7. If it at any time operates as a non-profit organization, the Company agrees that it will pay all personal property taxes that would otherwise be assessed if the Company was a for-profit non-manufacturing business organization for the property owned or used by the Company (hereinafter known as the “Full Personal Property Tax”) unless the Company supplies sufficient identifying information on the owners of all personal property used by the Company and the City collects the Full Personal Property Taxes from that entity. In no event shall the Company apply for a reduction or elimination of property taxes due to the Company's not-for-profit or other status.

8. If it at any time operates as a non-profit organization, the Company agrees that it will pay all real property taxes for the property owned or used by the Company to site the Facility that would otherwise be assessed if the Company was a for-profit, nonagricultural business organization owning the real estate in which the Facility is sited (hereinafter known as the “Full Real Estate Tax”). However, the Company will not be responsible if the Company supplies sufficient identifying information on the owners of all real property used by the Company and the City collects the Full Real Estate Tax from that entity or is otherwise capable of placing a lien in an amount equal to the Full Real-Estate Tax plus interest and penalties on the real estate for the nonpayment of the real estate taxes. In no event shall the Company apply for a reduction or elimination of property taxes due to the Company's not-for-profit or other status.

9. The Company agrees that jobs created at the Facility will be made available to City of
Fitchburg residents. City residency will be a positive factor in hiring decisions at the Facility, but this does not prevent the Company from hiring the most qualified candidates and complying with all employment laws and other legal requirements.

10. This Agreement does not affect, limit, or control the authority of any City department, including boards and commissions, to carry out their respective duties in deciding whether to issue or deny any necessary local permits or licenses, required under the laws of the Commonwealth, the Fitchburg Zoning Ordinance, the Board of Health or any other applicable laws and regulations. By entering into this Agreement the City is not required to issue such permits or licenses. The Company acknowledges that it is subject to a special permit or site plan review including façade improvements and screening of the facility.

11. The terms of this Agreement will not constitute a waiver of the City’s regulatory authority or of the Company’s applicant responsibilities not otherwise addressed by this Agreement. This Agreement does not affect, limit, or control the authority of any City departments, including boards and commissions, to issue fees, fines and penalties. This Agreement does not affect, limit, or control the authority of the City to levy taxes, whether authorized by any current or future regulation, act or statute or any amendment which may be enacted thereto, and any amounts specified above as Impact Fees, gifts or grants, including but not limited to Paragraph 3 shall not constitute taxes or be creditable thereto.

12. Events of Default: The Company shall be deemed to have committed an event of default if any of the following occur:

   a. the Company relocates the Facility outside of the City, without prior approval from the City or Ninety (90) day notice;

   b. the Company fails to obtain, and maintain in good standing, all necessary local licenses and permits, and such failure remains uncured for thirty (30) days following written notice from the City;

   c. the Company ceases to operate a Facility in the City;

   d. the Company fails to make payments to the City as required under this Agreement, and such failure remains uncured for Thirty (30) days following written notice from the City;
c. The Company fails to participate in the Community Relations Board, unless otherwise limited or prevented from doing so; and, [Intentionally Omitted]

d. The CCC revokes the Company’s license or denies the Company’s application for renewal of its license (as provided in the CCC Regulations and Medical Regulations), provided that the Company is able to exercise all available remedies to re-establish good standing with the CCC.

13. Termination for Cause: The City may terminate this Agreement following the passage of thirty (30) days after written notice of the occurrence of any Event of Default if such event is not cured. In addition, the City may terminate this Agreement for cause at any time by giving at least Ninety (90) days’ notice, in writing, to the Company, if Company thereafter fails to cure same prior to the expiration of such 90 day period. Cause is defined as the Company’s purposeful or negligent violation of any applicable laws of the Commonwealth, or local ordinances and regulations, with respect to the operation of a Facility. If the City terminates this Agreement the Final Annual Payment (as defined within this Agreement) shall be paid to the City by the Company. The Company shall pay the Final Annual Payment to the City within thirty (30) days following the date of termination.

14. Termination by the Company: The Company may terminate this Agreement Ninety (90) days after cessation of operations of any Facility within the City. The Company shall provide notice to the City that it is ceasing to operate a Facility in the City and/or it is relocating to another facility outside of the City at least ninety (90) days prior to the cessation or relocation of operations. If the Company terminates this Agreement the Final Annual Payment (as defined within this Agreement) shall be paid to the City by the Company. The Company shall pay the Final Annual Payment to the City within thirty (30) days following the date of termination.

15. Upon termination of this agreement the Company shall:

a. not be relieved of liability due under this contract until the Company discontinues operation of the Facility in Fitchburg; provided that, once the Company does discontinue operation of the Facility in any event, it shall have no further obligations under Paragraph 3(f) this Agreement except for the Final Annual Payment as set forth above;

b. not be relieved of liability to the City for damages sustained by the City for
personal injury or property damage, or any environmental impact caused by
the operation of the Facility;

c. secure the real estate and personal property owned or used at the time of
Default or Termination whichever is earlier, at its sole expense in such a
manner so as not to permit waste to occur to the property;

d. pay all amounts due and reasonably anticipated to be due under this
agreement through and until Company discontinues operation of the
Facility in Fitchburg;

e. provide the City with adequate security for amounts due and reasonably
anticipated to be due under this agreement, including but not limited to
security for any reasonable damages sustained by the City due to personal
injury, property damage or environmental impact caused by the operation
of the Facility; and

f. cease and desist operations immediately after the expiration of the Ninety
(90) Day notice for cause provided for in paragraph 14, unless otherwise
ordered by the Mayor.


g. Unless the Company ceases all operations within the City, enter into a new
Community Host Agreement which is consistent with the then existing law.

16. Anything contained herein to the contrary notwithstanding, in the event the
Company fails to locate a Facility in the City of Fitchburg this agreement shall
become null and void without further recourse of either party after the Company
contributes Three Thousand ($3,000.00) to the City’s Legal Department for the
meetings, the negotiation and execution of this Agreement as required in Paragraph
26 below.

17. In the event that the Company desires to relocate the Facility within the City of
Fitchburg it must obtain approval of the new location by the City.

18. The parties may execute a subsequent memo clarifying the application of the
terminology of this agreement to medical or non-medical marijuana activities should
changes in the regulations of the CCC or DPH require interpretation of this
agreement. This agreement is entered into in recognition that recent changes in the
DPH or CCC regulations as to medical marijuana may require the execution of this subsequent memo.

19. The Company, its successors, and assigns hereby agrees that it shall not engage in use as non-medical Marijuana Transporter or the operation of a medical marijuana RMD Agent transportation business within the City unless and until the Company is permitted therefore by law and by the City through any procedure the City may require. The parties have entered into this Agreement with the presumption, as set forth in Paragraph 18 above, that this Agreement shall serve as an acceptable host agreement for a non-medical Marijuana Transporter Establishment or a medical marijuana employee/RMD Agent transportation business. In order for the Company to operate the Facility as a Marijuana Retailer, a Marijuana Transporter, a Marijuana Cultivator, a Marijuana Manufacturer, an Independent Testing Facility, a Medical Marijuana Treatment Center, or under any other type of marijuana license issued by the CCC, in recognition that the impacts may be greater, the Company must enter into a new Community Host Agreement with the City as required by M.G.L. c. 94G §3(d) and comply with all local ordinances.

20. This Agreement shall be governed, construed, and enforced in accordance with the laws of the Commonwealth of Massachusetts, and the Company submits to the jurisdiction of the Worcester Superior Court for the adjudication of disputes arising out of this Agreement. Furthermore, in the event of litigation between the City and the Company, neither party shall contest the validity of this agreement, and will stipulate that this agreement shall be enforced as a valid legally binding contract requiring the Company to pay an Impact Fee and/or to make the gift or grant and that this obligation is supported by valuable consideration, or, at the City’s option, that the City is also entitled to enforcement under a theory known as detrimental reliance which is also identified commonly as promissory estoppel.

21. Any and all notices, or other communications required or permitted under this Agreement shall be in writing and delivered by hand or mailed, postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the following addresses:

The City: Vincent Pusateri
City Solicitor
Fitchburg City Hall
166 Boulder Dr.
Fitchburg, MA 01420
22. Subject to the final sentence of this Paragraph, the Company shall not assign, sublet, or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the City, and shall not assign any of the moneys payable under this Agreement, except by and with the written consent of the City. In the event that the Company sells all or substantially all of its assets then the Company will also assign the obligations under this Agreement to the purchasing entity. The City shall not unreasonably delay, condition or withhold assent to such an assignment, and in the case of a merger or acquisition of the Company or a sale of all or substantially all of the Company’s assets, the City shall limit its objections to such merger, sale or acquisition to financial stability or moral character of the resulting entity or purchaser, based on independent or objectively verifiable evidence.

23. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives.

24. The Company shall file with the City copies of the financial disclosures provided to the Commonwealth of Massachusetts including but not limited to the DPH, the CCC, the Department of Revenue and the Attorney General. The Company shall provide audited financial statements by a CPA firm qualified to do business in the Commonwealth of Massachusetts in the event that in the City’s discretion the same is required as a result of a legitimate material question or controversy relative to the Company’s financial disclosure. Within thirty (30) days following one year after the Commencement Date and on an annual basis thereafter, the Company agrees to provide the City with complete and accurate State Tax Form 2, “Form of List” and such other documentation as is reasonably requested by the Assessors.

25. In the event that the Company defaults on its obligations under this Agreement, the financial condition of the Company is in question, or there exists the likelihood that the Company is intending to leave the City, the Company shall convey a security interest in the assets of the Company, to the extent allowed by law, in an amount sufficient to
secure the outstanding balance and amounts which are reasonably anticipated to become due.

26. The Company shall contribute Three Thousand ($3,000.00) Dollars to the City’s Legal Department for the meetings, the negotiation and execution of this Agreement upon complete execution of the Agreement by all parties and approval by City Council. The Parties agree that this fee is for legal services associated with the drafting of this Agreement and is not part of the impacts experienced by the City due to the siting of the Facility, and does not compromise any portion of the Impact Fee referred to above. Said fee is due and payable upon execution of the Agreement.

27. If a suit, action, arbitration or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this Agreement, or to interpret or enforce any rights under this Agreement or the Laws of the Commonwealth of Massachusetts, the City shall be entitled to an award of attorney’s fees in the event it prevails.

28. The Company shall bring no claim contesting the amount or validity of any payment made under the terms of this Agreement later than one (1) year after the date each payment is due under the terms hereunder, and shall bring no claim contesting the validity of this Agreement later than one (1) year after the Commencement Date; provided, however, that the Company may later bring such claims under a claim that this limitation has been equitably tolled as provided by the law of the Commonwealth of Massachusetts.

29. The Company shall comply with all laws, rules, regulations, and orders applicable to the Facility; such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits and approvals required for the performance of such work.

30. If any term or condition of this Agreement, or any application thereof, shall to any extent be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the offending provision shall be amended only so much as necessary to comply with the law and the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

31. In the event that any Court of competent jurisdiction, department or agency of the Commonwealth of Massachusetts or other Regulatory Authority determines that the Impact Fee, gifts, grants or Services received under this Agreement cannot be
received pursuant to G.L. c. 94G §3(d), or pursuant to G.L. c. 44 §53A, or any other provision of law, this agreement shall not become null and void, but shall remain in full force and effect and the monies tendered to the city shall be received pursuant to the then nominee of the City including but not limited to the Fitchburg Redevelopment Authority or other charitable organization, unless otherwise ordered by a court of competent jurisdiction.

32. The Company agrees to institute policies and procedures in support of the intended goals of the Social Equity Program provided for in Massachusetts law, which are to promote and encourage full participation in the regulated marijuana industry by people from communities which have been disproportionately harmed by marijuana prohibition. Implementation of these procedures and policies is vital as the City has been identified as an area of disproportionate impact. To minimize delay in achieving these goals, the Company agrees to institute procedures and policies to benefit said communities, including outreach for employment, procurement, and other support. The parties are committed to implementing a variety of programs actively engaging persons from communities of disproportionate impact to ensure their inclusion in the legal cannabis industry.

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

34. This Agreement supersedes all prior Agreements, negotiations, and representations, either written or oral regarding a non-medical marijuana transportation facility between the parties, and it shall not be modified or amended except by a written document executed by the parties hereto.

35. Each of the parties acknowledges that it has been advised by counsel, or had the opportunity to be advised by counsel, in the drafting, negotiation, execution, and delivery of this Agreement, and has actively participated in the drafting, negotiation, execution and delivery of this Agreement. In no event will any provision of this Agreement be construed for or against either party as a result of such party having drafted all or any portion hereof.

36. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one in the same Agreement.

[The remainder of this page is intentionally left blank, signature pages to follow]
In WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

CITY OF FITCHBURG

Mayor Stephen L. DiNatale
For the City of Fitchburg

Vincent P. Pusateri, II Esq.
Approved as to legal form:
City Solicitor
Discussion took place regarding the number of jobs created, particularly for Fitchburg residents, and the number and type of host agreements currently in existence.
The Council President requested that the City Solicitor opine on the questions presented.
Order adopted under Suspension of the Rules by unanimous vote. 11 members present. Board consists of 11 members.
Order signed by the Mayor March 20, 2019.
The following Order was referred to the Finance Committee by vote of 10 in favor and 1 opposed (Squaila):

068-19. ORDERED THAT: The Airport Commission be authorized, in accordance with M.G.L. c. 90, s. 51F to lease said Parcel for a period of more than 20 years to the City of Fitchburg as outlined in the enclosed lease agreement.

WHEREAS M.G.L. c. 90 §51F provides “Any airport commission may let or lease, for a period not exceeding twenty years, those land areas at any airport under its control which are used for airport purposes, under such terms and conditions as it may prescribe, for hangars, shops, storage, industrial purposes, offices and other space rental, and for concessions, and may lease any other areas at such an airport for any purpose. With the approval of the mayor and the city council in cities or the approval of a town meeting, as the case may be, said commission may so let or lease for a longer period; provided, that no such airport in the cities of New Bedford and Beverly shall be let or leased except with the approval of the mayor and the city council, or in the town of Southbridge by vote of the town.”; and

WHEREAS the Fitchburg Municipal Airport owns a parcel of land which has been used by a recycling facility for many years; and

WHEREAS the Airport Commission desires to lease this parcel of land for a period of more than twenty years to the City of Fitchburg, which is described by plan entitled “Plan of Land of new Lease Area, City of Fitchburg to AKS Recycling, Inc.” dated July 26, 2018, prepared by Taupen Land Survey Inc., and attached hereto, said parcel being labeled “New Lease from City of Fitchburg” and comprising 18.23 acres, and being a portion of City of Fitchburg Assessor’s Parcel 122R-5-0; and

WHEREAS the City of Fitchburg desires to lease said parcel of land from the Fitchburg Municipal Airport for a period of more than twenty years so that it may sublease said Parcel as a recycling facility; and

WHEREAS the lease of said Parcel is for Airport purposes as the Parcel is not required by the Fitchburg Municipal Airport for aviation and the rental income will support the continued operations of the Fitchburg Municipal Airport;

WHEREAS the leasing arrangement set forth herein is required to bring the City of Fitchburg into compliance with certain grant assurances.

WHEREAS the leasing arrangement is part of a resolution of decrease of land use issues recently resolved in principle with the FAA.

WHEREAS absent this resolution, the Congress of the United States will be unable to continue to fund projects at the Fitchburg Municipal Airport.

NOW, THEREFORE it is ORDERED that, The Airport Commission be authorized, in accordance with M.G.L. c. 90 § 51F to lease said Parcel for a period of more than twenty years to the City of Fitchburg under the terms and conditions in form substantially similar to the attached Lease Agreement, and that the Honorable Mayor Stephen L. DiNatale be hereby authorized for and on behalf of said City to execute and deliver any and all documents and take any and all acts necessary, convenient and helpful to facilitate and execute the Lease Agreement in form substantially similar to the attached Lease Agreement.
FITCHBURG MUNICIPAL AIRPORT
Interdepartmental Ground Lease

This instrument is an indenture of interdepartmental lease by and between the FITCHBURG MUNICIPAL AIRPORT ("Airport") by and through the FITCHBURG MUNICIPAL AIRPORT COMMISSION, a public agency duly created by the City of Fitchburg, acting pursuant to the statutory powers set forth under Massachusetts General Laws, Chapter 90, Sections 51D through 51N and special laws in existence prior thereto, and having its usual place of business at the Fitchburg Municipal Airport, Fitchburg, Massachusetts ("Landlord") and the CITY OF FITCHBURG, a municipal corporation with a usual place of business of 166 Boulder Drive, Fitchburg, Massachusetts, and its successors and assigns ("Tenant").

WHEREAS the TENANT is the sponsor of the Airport and has given the Federal Aviation Administration ("FAA") certain assurances of compliance with applicable federal requirements; and

WHEREAS, in 2001 and 2004 the TENANT entered into two separate leases with AKS Recycling, Inc. ("AKS") for the use of certain premises located within the Airport; and

WHEREAS, the LANDLORD, TENANT and FAA have since determined that the fee owner of these certain premises is the LANDLORD; and

WHEREAS, the LANDLORD and the TENANT have since further learned that AKS has encroached upon both Airport land and other land belonging to the City of Fitchburg beyond the premises described in the 2001 and 2004 AKS leases; and

WHEREAS, both the LANDLORD and the TENANT want AKS to occupy sufficient leased area to continue its current business operations and propose to modify the 2001 and 2004 AKS leases to include the area described by plan attached hereto as Exhibit A (known as "Parcel Y"); and

WHEREAS, applicable federal law requires that the TENANT lease Parcel Y from the LANDLORD in order to sublease Parcel Y to AKS; and

WHEREAS, the FAA has determined that the TENANT must pay the Airport fair market value for its use of Airport property for non-aviation purposes, including the sublease of Parcel Y to AKS or any other subleases of Parcel Y, and an independent appraisal and an extrapolation therefrom over the area of Parcel Y has determined that the fair market rental value of Parcel Y is currently $7,200.00; and

WHEREAS, applicable federal law permits the TENANT to continue to lease and sublet Parcel Y for a certain period of time until needed by the Airport for aviation purposes or until such time as the use of Parcel Y interferes with aviation activities at the Airport; and
WHEREAS the LANDLORD wants to lease Parcel Y to the TENANT, and allow the TENANT to sublet the same, in compliance with applicable federal requirements as administered by the FAA;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the LANDLORD hereby agrees to lease Parcel Y to TENANT as set forth herein:

ARTICLE I SUMMARY OF BASIC LEASE PROVISIONS

1.1 INTRODUCTION

This document is a Ground Lease. As further supplemented in the balance of this instrument and its Exhibits, the following sets forth the basic terms of this Ground Lease, and, where appropriate, constitutes definitions of certain terms used in this Ground Lease.

1.2 BASIC DATA

Term Commencement Date: January 1, 2019
Landlord: The Fitchburg Municipal Airport
Present Mailing Address of Landlord: 567 Crawford Street
Payment Address: 567 Crawford Street
Managing Agent: The Airport Manager
Tenant: City of Fitchburg
Tenant Mailing Address: 166 Boulder Drive

Premises: A certain area of land consisting of 18.23 acres of land, known as Parcel Y, as more particularly described in Exhibit A attached hereto and incorporated herein, but not including the buildings thereon.
The Landlord reserves the right to install, use, maintain, repair and replace in the Premises (but in such manner as not unreasonably to interfere with Tenant's use of the Premises) utility lines, shafts, pipes, and the like, in, over, under and upon the Premises. Such utility lines, shafts, pipes and the like shall not be deemed part of the Premises under this Lease.

Lease Term:

Forty-nine (49) years from the Term Commencement Date of January 1, 2019, unless earlier terminated pursuant to Paragraph 3.3 below.

Base Rent:

Starting on the Commencement Date and ending on December 31, 2068, at the rate of $7,200.00 per annum ($600.00 per month), subject to annual increases as stated in Paragraph 4.1(6) below (by an amount equal to the annual difference calculated as a percentage of the Consumer Price Index for Urban Consumers seasonally adjusted ("CPI-U"), with the Base Rent adjusted by fair market value appraisal every ten (10) years.

Due Date:

Equal monthly installments are due on the 1st day of each calendar month.

Guarantor of Tenant's Obligations:

Not applicable.

Permitted Use:

For the non-aviation purpose of subletting to a recycling facility so long as the same does not interfere with the use of the Airport for general aviation purposes, and such other uses and activities as shall be permitted by the FAA subject to such limitations thereon as shall be prescribed from time by the FAA, and for no other purpose or purposes (the “Permitted Use”).

1.3 ENUMERATION OF EXHIBITS

EXHIBIT A: PLAN SHOWING THE PREMISES
EXHIBIT B: TERM COMMENCEMENT DATE AGREEMENT
ARTICLE II DESCRIPTION OF PREMISES AND APPUR TENANT RIGHTS

2.1 LOCATION OF PREMISES. The Landlord hereby leases to Tenant, and Tenant hereby accepts from Landlord, the property identified on Exhibit A on Landlord’s property (the “Premises”), a certain area of land consisting of 18.23 acres of land as more particularly described in Exhibit A attached hereto and incorporated herein and also known as Parcel Y, but not including the buildings thereon, located at Fitchburg, Massachusetts.

2.2 APPUR TENANT RIGHTS AND RESERVATIONS. As a non-aviation lessor Tenant shall not have, as appurtenant to the Premises, any rights to use, in common with others entitled thereto, the common facilities located on the land which constitutes the Airport. Tenant’s right to use the Premises for the Permitted Use shall always be subject to reasonable rules and regulations from time to time established by Landlord by suitable notice, and to the right of Landlord to designate and to change from time to time the areas and facilities so to be used, provided that such changes do not unreasonably interfere with the use of the (i) Premises for the Permitted Use and (ii) the remainder of the Airport for general aviation purposes.

2.3 EXCLUSIONS AND RESERVATIONS

(a) Not included in the Premises are any buildings located on the land identified in Exhibit A. The Landlord reserves the right to install, use, maintain, repair and replace in the Premises (but in such manner as not unreasonably to interfere with permitted use of the Premises) utility lines, shafts, pipes, and the like, in, over and upon the Premises. Landlord agrees to repair any damage to the Premises caused by the installation, maintenance, repair or replacement of any such items. Such utility lines, shafts, pipes and the like shall not be deemed part of the Premises under this Lease.

(b) The Tenant shall ensure the Premises is used in a manner so as not to unreasonably annoy, disturb, or be offensive to others at the Airport or abutting properties consistent with the terms of Article V below.

ARTICLE III TERM OF LEASE; CONDITION OF PREMISES

3.1 TERM OF LEASE. The term of this Lease shall be the period specified in Section 1.2 hereof as the “Lease Term” commencing upon the Lease Term Commencement Date specified in Section 1.2. The parties agree that on the request of either party each will execute, acknowledge, and deliver a Notice of Lease in recordable form but excluding explicit financial provisions.

3.2 CONDITION OF PREMISES. Tenant acknowledges that it has inspected the Premises and agrees to accept same in its “as is” condition, and further Tenant agrees that Landlord has no obligation to perform any work whatsoever in order to prepare the Premises for Tenant’s
occupancy hereunder.

3.3 **EXTENSION OPTIONS** The parties agree that they may not extend the Term of this Lease beyond the Lease Term in accordance with current federal law. At the expiration of the Lease Term the parties may enter into a new Lease Agreement or, if permitted by federal law at that time, may extend this Lease Agreement for such period as may be permitted and is agreeable to both parties.

Any such extension shall be upon the same terms, covenants, and conditions contained in this Lease except that the Base Rent for any extension term to which the annual increase shall apply shall be at the rental rate payable per annum at the expiration of the previous Term as provided in Section 4.1(b).

3.4 **REMOVAL OF PROPERTY, IMPROVEMENTS AT LEASE TERMINATION** Upon termination of this Lease under whatever circumstances, the Tenant shall immediately remove all personal property, trash and debris and leave the Premises in a clean and neat condition, subject to reasonable wear and tear. All buildings, structures, fixtures and other improvements existing on the Premises six (6) months or less before the end of this Lease shall become the property of the Airport.

3.5 **TERMINATION FOR AIRPORT PURPOSES.** If at any point in time during the Lease Term the Premises are needed by the Airport for aviation purposes or the use of the Premises interferes with aviation activities at the Airport, pursuant to federal law this Lease may be terminated by the Landlord.

**ARTICLE IV**

**RENT**

4.1 **RENT PAYMENTS** The Base Rent (at the rates specified in Section 1.2 hereof) and the additional rent or other charges payable pursuant to this Lease (collectively the "Rent") shall be payable by Tenant to Landlord at the Payment Address or such other place as Landlord may from time to time designate by notice to Tenant without any demand whatsoever except as otherwise specifically provided in this Lease and without any counterclaim, offset or deduction whatsoever. Rent shall be made payable to the order of the Landlord.

(a) Beginning on the Rent Commencement Date, monthly installments of Base Rent and of Tenant's charges and fees, if any, shall be payable in advance on the first day of each and every calendar month during the term of this Lease. If the Rent Commencement...
Date falls on a day other than the first day of a calendar month, the first payment which Tenant shall make shall be made on the Rent Commencement Date and shall be equal to a proportionate part of such monthly Rent for the partial month from the Rent Commencement Date to the first day of the succeeding calendar month, and the monthly Rent for such succeeding calendar month. As used in this Lease, the term "lease year" shall mean any calendar year or part thereof falling within the Lease Term.

(b) Increases in Base Rent: The Base Rent shall be increased annually as of January 1 for each lease year beginning with the first increase on January 1, 2020, by an amount equal to the annual difference calculated as a percentage in the Consumer Price Index for Urban Consumers for the Boston-Brockton-Nashua Area (or successor index published by the Bureau of Labor Statistics) ("CPI-U") over the same CPI-U in effect as of the commencement of the immediately prior lease year.

(c) Fair Market Value Adjustment: The parties agree that the Tenant must pay the Landlord fair market value rent for the leased Premises pursuant to federal law. On or within six months before each tenth anniversary of the Rent Commencement Date, the Tenant shall, at Tenant’s expense, obtain an appraisal of the fair market rental value of the Premises. The Base Rent shall be adjusted as of each tenth anniversary of the Rent Commencement Date to such appraised fair market rental value, and the annual increases set forth in Paragraph 4.1(b) above shall thereafter be applied to the adjusted Base Rent.

(f) Rent, charges and fees not paid within ten (10) days of the date due shall bear interest at a rate (the "Lease Interest Rate") equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum legally permissible rate, from the due date until paid, plus any and all attorneys’ fees and costs incurred by the Landlord incurred in connection with the collection of the foregoing.

4.2 TAXES AND ASSESSMENTS

(a) Nothing in this Agreement shall relieve Tenant or its sublessees of any lawful obligation to pay taxes (including without limitation, assessments for public improvements or benefits and water and sewer use charges), assessed against them during any tax year (i.e., July 1 through June 30, as the same may change from time to time) or part thereof during the Lease Term.

(b) Tenant shall pay or ensure any sublessees pay, prior to delinquency, any and all taxes and assessments levied upon all real estate, structures, improvements, trade fixtures, inventories and other real or personal property placed in and upon the Premises by Tenant or its sublessees.

ARTICLE V USE
5.1 PERMITTED USE Tenant agrees that the Premises shall be used and occupied by Tenant only for the purposes specified as the Permitted Use thereof in Section 1.2 of this Lease, and for no other purpose or purposes. The Tenant shall comply and shall cause its sublessees, employees, agents, and invitees to comply with all requirements of the FAA for the use of the Premises and such rules and regulations as Landlord shall from time to time establish for the proper regulation of the Premises and the Airport. The Landlord makes no guarantee, warranty or representation that the Premises are fit for the uses to which they may be put by the Tenant, or for any other uses or purposes whatsoever. It shall be the sole duty of the Tenant to determine that the Premises are appropriate for its uses and purposes.

5.2 COMPLIANCE WITH LAWS Tenant agrees that no trade or occupation shall be conducted in the Premises or use made thereof which will be unlawful, improper or contrary to any law, ordinance, by-law, code, rule, regulation or order applicable in the municipality in which the Premises are located or which will disturb the quiet enjoyment of the other tenants of the Airport. Tenant shall obtain any and all approvals, permits, licenses, variances and the like from governmental or quasigovernmental authorities, including without limitation any Architectural Access Board and Board of Fire Underwriters (collectively, “Approvals”) which are required for Tenant’s use of the Premises, including, without limitation, any which may be required for any construction work and installations, alterations or additions made by Tenant to, in, on or about the Premises; provided, however, that Tenant shall give Landlord a reasonable opportunity to review any applications for Approvals and all materials and plans to be submitted in connection therewith. Tenant shall be responsible for all costs, expenses, and fees in connection with obtaining all Approvals. Without limiting the general application of the foregoing, Tenant shall be responsible for compliance of the Premises, including, without limitation, any alterations it may make to the Premises with the requirements of the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto, as the same may be amended from time to time (collectively, the “ADA”). Tenant’s inability to obtain or delay in obtaining any such Approval shall in no event reduce, delay, or terminate Tenant’s rental, payment, and performance obligations hereunder. Tenant shall, at its own cost and expense, (i) make all installations, repairs, alterations, additions, or improvements to the Premises required by any law, ordinance, by-law, code, rule, regulation or order of any governmental or quasi-governmental authority, except waste committed by Landlord; (ii) keep the Premises equipped with all required safety equipment and appliances; and (iii) comply with all laws, ordinances, codes, rules, regulations and orders and the requirements of Landlord’s and Tenant’s insurers applicable to the Premises and Airport, if any. Tenant’s duly authorized representative(s) shall execute such documentation as the Landlord may reasonably require to accept the duties and obligations set forth in this Lease.

5.3 INSURANCE RISKS Tenant shall not permit any use of the Premises which will make voidable or, unless Tenant pays the extra insurance premium attributable thereto as provided
below, increase the premiums for any insurance on the Airport’s common areas, which are contrary to any law or regulation from time to time established by the New England Fire Insurance Rating Association (or any successor organization), or which shall require any alteration or addition to the Airport’s common areas. Tenant shall, within thirty (30) days after written demand therefor, reimburse Landlord and all other tenants for the costs of all extra insurance premiums caused by Tenant’s use of the Premises. Any such amounts shall be deemed to be additional rent hereunder.

5.4 TENANT’S OPERATIONAL COVENANTS. (a) Affirmative Covenants: In regard to the use and occupancy of the Premises, Tenant will at its expense: either (1) maintain the Premises in a clean, orderly and sanitary condition so far as the same standard is applied to a recycling facility; (2) keep any garbage, trash, rubbish or other refuse in accordance with all applicable ordinances, regulations, statutes or standards for the operation of a recycling facility; (3) keep all mechanical apparatus free of vibration and loud noise above that contemplated by the Permitted Use of the Premises and which may be transmitted beyond the Premises; and (4) comply with and observe all rules and regulations reasonably established by Landlord from time to time. (b) Negative Covenants: In regard to the use and occupancy of the Premises and common areas, Tenant will not permit: (5) the placement or maintenance of any trash, refuse or other articles on the Premises which obstruct any sidewalk or common area; (6) permit undue accumulations of or burn garbage, trash, rubbish or other refuse which interfere with the use of the Airport; (7) cause or permit objectionable odors to emanate exceeding those contemplated by the Permitted Use to be dispelled from the Premises; (8) permit, commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant or occupant of the Fitchburg Municipal Airport, or use or permit the use of any portion of the Premises for any unlawful purpose; or (9) the erection or maintenance of any structure or object which affects navigable airspace surfaces except in accordance with Federal Aviation Title 14, Part 77, as the same may be amended from time to time. All laws, regulations and ordinances, and all amendments in existence now or made in the future thereto, including but not limited to the Airport Regulations and the Minimum Standards for Commercial Operations, are hereby incorporated and made part of this Lease. The Tenant, its officers, employees, tenants, subtenants, contractors, subcontractors, agents, and invitees shall comply with said laws, regulations and ordinances, and upon enactment, any amended provisions thereof. The Parties anticipate that during the Term of this Lease, applicable laws, ordinances, regulations (including but not limited to the Airport Regulations and Minimum Standards for Commercial Operations) may be amended from time to time. Tenant shall comply with any and all such future laws, ordinances and regulations as they are enacted.

5.5 SIGNS. Subject to Tenant obtaining all necessary approvals and permits therefor, Tenant or its subtenant may erect one (or more with permission of the Airport Manager) exterior sign in
a location designated by Landlord. Plans and specifications, including, without limitation, artwork, for such sign must be submitted to Landlord for its written approval before installation, which approval shall not be unreasonably withheld. The costs of all signs and the installation thereof, including the costs of any required permits or approvals, shall be the responsibility of Tenant. The Tenant shall comply at its own expense with the requirements of all laws and regulations affecting the maintenance of Tenant’s signs, including but not limited to the protection of navigable airspace as set forth in Federal Aviation Title 14, Part 77. Tenant shall remove all signs upon termination of this Lease and shall return the Premises to their condition prior to the placement or erection of said signs. Notwithstanding the foregoing, Landlord agrees to allow Tenant to maintain its current signage.

5.6 **HAZARDOUS MATERIALS** The Tenant shall not use, handle, store or dispose of any oil, hazardous or toxic substances, materials or wastes (collectively “Hazardous Materials”) in, under, on or about the Property except for (i) the storage and use of such materials, in accordance with applicable law and regulation in such reasonable amounts as shall customarily in connection with or the Permitted Use, and (ii), the storage and use of other Hazardous Materials consented to by Landlord in advance which consent may be withheld in Landlord’s sole and absolute discretion. Any Hazardous Materials in the Premises, and all containers therefor, shall be used, kept, stored and disposed of in conformity with all applicable laws, ordinances, codes, rules, regulations and orders of governmental authorities. If the transportation, storage, use or disposal of Hazardous Materials anywhere on the Property in connection with Tenant’s use of the Premises results in (1) contamination of the soil or surface or ground water or (2) loss or damage to person(s) or property, then Tenant agrees (i) to notify Landlord immediately of any contamination, claim of contamination, loss in full compliance with all applicable statutes, regulations and standards, and (ii) to indemnify, defend and hold Landlord harmless from and against any claims, suits, causes of action, costs and fees, including, without limitation, attorneys’ fees, arising from or connected with any such contamination, claim of contamination, loss or damage. This provision shall survive the termination of this Lease. No consent or approval of Landlord shall in any way be construed as imposing upon Landlord any liability for the means, methods, or manner of removal, containment or other compliance with applicable law for and with respect to the foregoing. The terms of this Section 5.6 shall apply to any transportation, storage, use or disposal of Hazardous Materials irrespective of whether Tenant has obtained Landlord’s consent therefor but nothing in this Lease shall limit or otherwise modify the requirement of obtaining Landlord’s prior consent as set forth in the first sentence of this Section 5.6.

**ARTICLE VI**

**INSTALLATIONS, ALTERATIONS AND ADDITIONS**

6.1 **INSTALLATIONS, ALTERATIONS, AND ADDITIONS** Tenant may make installations, alterations, additions or demolitions to the Premises provided that Landlord consents thereto in advance and in writing, which consent shall not be unreasonably withheld, delayed or conditioned. In no event shall Landlord’s approval of any proposed installations, alterations, or additions to the
Premises, whether in connection with Tenant’s initial leasehold improvements or otherwise, constitute a representation by Landlord that such work complies with the requirements of any applicable law or regulation, including without limitation the requirements of the ADA. Any installations, alterations, or additions made by Tenant shall be at Tenant’s sole cost and expense and shall be done in a good and workmanlike manner using materials of a quality at least equivalent to that of the existing improvements and in compliance with the requirements of Section 5.2; and prior to Tenant’s use of the Premises, after the performance of any such work, Tenant shall procure certificates of occupancy and any other required certificates. Tenant shall not suffer or permit any mechanics’ or similar liens to be placed upon the Premises for labor or materials furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed at the direction of Tenant, and shall cause any such lien to be released of record forthwith without cost to Landlord. At all times when any installation, alteration, or addition by Tenant is in progress, there shall be maintained, at Tenant’s cost and expense, insurance meeting the requirements of Article XI below and certificates of insurance evidencing such coverage shall be furnished to Landlord prior to the commencement of any such work. Any installations, alterations or additions made by Tenant to the Premises, shall become the property of Landlord at the termination or expiration of this Lease as set forth in Section 3.4 above.

6.2 EXISTING STRUCTURES. Landlord acknowledges and agrees that the buildings presently located on the Premises have been approved by the Landlord and conform to the requirements of this Lease.

ARTICLE VII TRANSFERS

7.1 PROHIBITION: Except as specified in Section 7.3 below, Tenant shall not, directly or indirectly, assign, mortgage, pledge or otherwise transfer, voluntarily or involuntarily, this Lease or any interest herein or sublet (which term, without limitation, shall include granting of concessions, licenses, and the like) or allow any other person or entity to occupy the whole or any part of the Premises, without, in each instance, having first received the express consent of Landlord, which consent shall not be unreasonably withheld. Any assignment of this Lease or subletting of the whole or any part of the Premises (other than as permitted to a subsidiary or a controlling corporation as set forth below) by Tenant without Landlord’s express consent shall be invalid, void and of no force or effect. This prohibition includes, without limitation, any assignment, subletting, or other transfer which would occur by operation of law, merger, consolidation, reorganization, acquisition, transfer or other change of Tenant’s corporate or proprietary structure, including a change in the partners of any partnership, and the sale, pledge, or other transfer of any of the issued or outstanding capital stock of any corporate Tenant (unless such stock is publicly traded on a recognized security exchange or over-the-counter market). Any request for consent under this Section 7.1 shall set forth, in detail reasonably satisfactory to Landlord, the identification of the proposed assignee or sub-Tenant, its financial condition and the terms on which the proposed
assignment or subletting is to be made, including, without limitation, the rent or any other consideration to be paid in respect thereto and such request shall be treated as Tenant's warranty in respect of the information submitted therewith.

In any case where Landlord shall consent to any assignment or subletting, Tenant originally named herein shall remain fully liable for Tenant obligations hereunder, including, without limitation, the obligation to pay the rent and other amounts provided under this Lease and such liability shall not be affected in any way by any future amendment, modification, or extension of this Lease or any further assignment, other transfer, or subleasing and Tenant hereby irrevocably consents to any and all such transactions. Tenant agrees to pay to Landlord, within fifteen (15) days of billing thereof, all reasonable legal and other out-of-pocket expenses incurred by Landlord in connection with any request to assign or sublet. It shall be a condition of the validity of any permitted assignment or subletting that the assignee or sublessee agree directly with Landlord, in form satisfactory to Landlord, to be bound by all Tenant obligations hereunder, including, without limitation, the obligation to pay all Rent and other amounts provided for under this Lease and the covenant against further assignment or other transfer or subletting.

Without limiting Landlord's discretion to grant or withhold its consent to any proposed assignment or subletting, if Tenant requests Landlord's consent to assign this Lease or sublet all or any portion of the Premises, Landlord shall have the option, exercisable by notice to Tenant given within thirty (30) days after Landlord's receipt of such request, to terminate this Lease as of the date specified in such notice which shall be not less than thirty (30) nor more than sixty (60) days after the date of such notice for the entire Premises, in the case of an assignment or subletting of the whole, and for the portion of the Premises, in the case of a subletting of a portion. In the event of termination in respect of a portion of the Premises, the portion so eliminated shall be delivered to Landlord on the date specified in good order and condition in the manner provided in Section 8.1 at the end of the Lease Term and thereafter, may have access to and may make modification to the Premises so as to make such portion a self-contained rental area.

Rent shall be adjusted according to the extent of the Premises for which this Lease is terminated.

7.2 ACCEPTANCE OF RENT FROM TRANSFEREE The acceptance by Landlord of the payment of Rent, additional rent, or other charges following assignment, subletting, or other transfer prohibited by this Article VII shall not be deemed to be a consent by Landlord to any such assignment, subletting, or other transfer, nor shall the same constitute a waiver of any right or remedy of Landlord.

7.3 SUBLEASE BY TENANT Landlord acknowledges and consents to the sublease of the Premises as a recycling facility by the Tenant to AKS Recycling, Inc., or to any other person or entity during the term of this Lease with the Landlord's consent as stated in Paragraph 7.1 above.
If a proposed subtenant will use the Premises for any use other than the Permitted Use, the Tenant must obtain Landlord’s consent to modify the Permitted Use.

7.4 MORTGAGE BY TENANT It is anticipated by the parties to this Lease that Tenant or its subtenants, successors or assigns may construct further improvements on the Premises and may seek Landlord’s permission as in Section 7.1 to place a mortgage or mortgages on the Premises or various mortgages on parts of the Premises to finance such improvements. Tenant shall make all such requests in writing, and shall inform Landlord in writing of all such mortgages, pledges or hypothecations of this Lease.

ARTICLE VIII REPAIRS AND MAINTENANCE

8.1 TENANT OBLIGATIONS From and after the date that possession of the Premises is delivered to Tenant and until the end of the Lease Term, Tenant shall keep the Premises and every part thereof in good order, condition, and repair, reasonable wear and tear and damage by casualty, as a result of condemnation, or as a result of the failure of Landlord to provide services required to be provided hereunder only excepted; and shall return the Premises to Landlord at the expiration or earlier termination of the Lease Term in such condition as set forth in Section 3.4 above. Notwithstanding any other provision in this Lease to the contrary, Tenant shall not be liable for any damage whatsoever to the Premises caused solely by any party other than the Tenant or its authorized agents, employees or invitees. If the tenant is partially responsible for any damage then the tenant shall be held liable in an amount proportionate to its responsibility.

8.2 LANDLORD OBLIGATIONS. The parties agree that there are no common areas for which Landlord is responsible. Tenant shall reimburse Landlord, as additional rent hereunder, for the costs of maintaining, repairing, or otherwise correcting any condition caused by an act, omission, neglect or default under this Lease of Tenant or any employee, agent, or contractor of Tenant or any other party for whose conduct Tenant is responsible. Any repairs made by the tenant shall be done in accordance with any public construction statutes, rules and regulations to the extent the same are applicable to the tenant and project, and must be completed under the supervision and direction of the Airport Manager. If Landlord chooses to make improvements to the Airport which benefit the Leased Premises, in its sole discretion, Landlord may assess an additional fee to Tenant for the costs incurred for such improvements. Landlord shall notify the Tenant in writing no less than six months before the assessment of such a fee, which shall be treated as Additional Rent hereunder. The assessment of such an additional fee shall not constitute a "Force Majeure" under Article 24.

8.3 SNOWPLOWING AND WEED CONTROL. The Landlord shall not be responsible to maintain the Premises free from weeds and other vegetation and shall not be responsible for
the removal of snow and ice from paved surfaces on the Premises.

ARTICLE IX SERVICES TO BE FURNISHED BY LANDLORD; UTILITIES

9.1 LANDLORD'S SERVICES. The Landlord shall provide no services to the Tenant. The Tenant acknowledges that this is a fully net lease and agrees to contract separately for all utilities and building and other services required for Tenant's use and occupancy of the Premises hereunder. Upon the request of Tenant from time to time, Landlord shall use reasonable efforts to provide services at hours other than the times set forth above and Tenant shall reimburse Landlord as additional rent for the cost of such services within thirty (30) days after invoice therefor.

9.2 CAUSES BEYOND CONTROL OF THE LANDLORD. The Landlord shall in no event be liable for failure to perform any of its obligations under this Lease when prevented from doing so by causes beyond its reasonable control, including without limitation labor dispute, breakdown, accident, order or regulation of or by any governmental authority, or failure of supply, or inability by the exercise of reasonable diligence to obtain supplies, parts, or employees necessary to furnish services required under this Lease, or because of war or other emergency, or for any cause due to any act, neglect, or default of Tenant or Tenant's servants, contractors, agents, employees, licensees or any person claiming by, through or under Tenant, and in no event shall Landlord ever be liable to Tenant for any indirect, special or consequential damages under the provisions of this Section 9.2 or any other provision of this Lease.

9.3 SEPARATELY METERED UTILITIES. Tenant shall pay directly to the utility, as they become due, all bills for electricity, gas, water and sewer, and other utilities (whether they are used for furnishing heat or for other purposes) that are furnished to the Premises and now or hereafter separately metered or billed by the utility to the Premises. If any utilities used or consumed by Tenant are not separately metered, Tenant shall pay its allocable share of such utilities, based on use, as reasonably determined by Landlord, which shall be considered additional Rent. Barring unusual circumstances, an allocation of utilities which are not separately metered based on Tenant's proportional square footage of the structures which lie upon the Premises shall be considered a reasonable allocation of such utility charges.

ARTICLE X
INDEMNITY

10.1 THE TENANT'S INDEMNITY. The Tenant shall indemnify and save harmless Landlord, the directors, officers, agents, and employees of Landlord, against and from all claims, expenses, or liabilities of whatever nature (a) arising directly or indirectly from any default or breach by Tenant or Tenant's contractors, licensees, agents, servants, or employees under any of the
terms or covenants of this Lease (including without limitation any violation of Landlord's Rules and Regulations and any failure to maintain or repair equipment or installations to be maintained or repaired by Tenant hereunder) or the failure of Tenant or such persons to comply with any rule, order, regulation, or lawful direction now or hereafter in force of any public authority, in each case to the extent the same are related, directly or indirectly, to the Premises, or Tenant's use thereof; or (b) arising directly or indirectly from any accident, injury, or damage, however caused, to any person or property, on or about the Premises; or (c) arising directly or indirectly from any accident, injury, or damage to any person or property occurring outside the Premises but on the Airport, where such accident, injury, or damage results, or is claimed to have resulted, from any act, omission, or negligence on the part of Tenant, or Tenant's contractors, licensees, agents, servants, employees or customers, or anyone claiming by or through Tenant; provided, however, that in no event shall Tenant be obligated under this clause (c) to indemnify Landlord, the directors, officers, agents, or employees of Landlord, to the extent such claim, expense, or liability results from any omission, fault, negligence, or other misconduct of Landlord or the officers, agents, or employees of Landlord on or about the Premises.

This indemnity and hold harmless agreement shall include, without limitation, indemnity against all expenses, attorney's fees and liabilities incurred in connection with any such claim or proceeding brought thereon and the defense thereof with counsel reasonably acceptable to Landlord. At the request of Landlord, Tenant shall defend any such claim or proceeding directly on behalf and for the benefit of Landlord.

10.2 THE TENANT’S RISK. The Tenant agrees to use and occupy the Premises as Tenant is herein given the right to use at Tenant’s sole risk; and Landlord shall have no responsibility or liability for any loss or damage, however caused, to furnishings, fixtures, equipment, or other personal property of Tenant or of any persons claiming by, through, or under Tenant except to the extent caused by Landlord or its contractors, licensees, agents, servants, employees or customers, or anyone claiming by, through or under Landlord.

10.3 INJURY CAUSED BY THIRD PARTIES. The Tenant agrees that Landlord shall not be responsible or liable to Tenant, or to those claiming by, through, or under Tenant, for any loss or damage resulting to Tenant or those claiming by, through, or under Tenant, or its or their property, that may be occasioned by or through the acts or omissions of others using the Airport, or for any loss or damage from the breaking, bursting, crossing, stopping, or leaking of electric cables and wires, and water, gas, sewer, or steam pipes, or like matters, except as such injury may be caused in whole or in part by the negligent acts or omissions of the Landlord, its employees, agents or assigns If the Landlord is partially responsible for any damage then the Landlord shall be held liable in an amount proportionate to its responsibility.
10.4 **SECURITY** Tenant agrees that, in all events, Tenant is responsible for providing security to the Premises and its own personnel.

**ARTICLE XI**

**INSURANCE**

11.1 **PUBLIC LIABILITY INSURANCE** The Tenant agrees to maintain in full force from the date upon which Tenant first enters the Premises for any reason, throughout the Lease Term, and thereafter so long as Tenant is in occupancy of any part of the Premises, (a) a policy of commercial general liability insurance, written on an occurrence basis and including contractual liability coverage to cover any liabilities assumed under this Lease, insuring against all claims for injury to or death of persons or damage to property on or about the Premises or arising out of the use of the Premises, including products liability, and completed operations liability, and (b) automobile liability insurance covering all owned vehicles, hired vehicles and all other non-owned vehicles. Each such policy shall designate Tenant as a named insured, shall be reasonably satisfactory to Landlord, including, without limitation, the amount of any deductible thereunder, and Landlord, its managing agent, if any, and any mortgagees (as may be set forth in a notice given from time to time by Landlord) shall be named as additional insureds, as their interests appear.

Each such policy shall expressly provide that it shall not expire or be amended or canceled without at least thirty (30) days’ prior written notice to Landlord in each instance and that the interests of Landlord thereunder or therein shall not be affected by any breach by Tenant of any policy provision, and a duplicate original or certificate thereof shall be delivered to Landlord. The minimum limits of liability of such insurance shall be bodily injury and property damage combined single limit of $1,000,000 per occurrence. The Landlord shall have the right from time to time to increase such minimum limits upon notice to Tenant, provided that any such increase shall provide for coverage in amounts similar to like coverage being carried on like property in the greater Worcester County.

11.2 **HAZARD INSURANCE** The Tenant agrees to maintain in full force from the date upon which Tenant first enters the Premises for any reason, throughout the Lease Term, and thereafter so long as Tenant is in occupancy of any part of the Premises, a policy, reasonably satisfactory to Landlord, including, without limitation, the amount of any deductible thereunder, insuring any leasehold improvements paid for by Tenant and all fixtures, equipment, and other personal property of Tenant against damage or destruction by fire or other casualty in an amount equal to the full replacement cost of such property. Tenant shall also maintain insurance against such other hazards as may from time to time reasonably be required by Landlord or the holder of any mortgage on the Premises, provided that such insurance is customarily carried in the area in which the Premises are located on similar property and that Tenant receives written notice specifying all such additional insurance as may be required. At Landlord’s request, any such
policies of insurance shall name any such mortgagee as loss payee under a standard mortgagee’s clause. Notwithstanding any other provision this section to the contrary, the amount of such insurance, if any, for Tenant’s Personal property is and shall be at Tenant’s sole discretion.

ARTICLE XII CASUALTY

12.1 DEFINITION OF "SUBSTANTIAL DAMAGE" AND "PARTIAL DAMAGE". The term “substantial damage,” as used herein, shall refer to damage which is of such a character that in Landlord’s reasonable, good faith estimate the same cannot, in ordinary course, be expected to be repaired within 60 calendar days from the time that such repair work would commence. Any damage which is not “substantial damage” is “partial damage.”

12.2 SUBSTANTIAL DAMAGE TO THE PREMISES. If during the Lease Term there shall be substantial damage to any of the Premises by fire or other casualty and if such damage shall materially interfere with Tenant’s use of the Premises as contemplated by this Lease, Landlord may, within ninety (90) days after the occurrence of such damage, give notice to Tenant of Landlord’s election to terminate this Lease. If Landlord shall give such notice, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof. Upon such termination, damages shall be calculated in accordance with Article XXV.

12.3 TENANT’S TERMINATION. In no event shall Landlord have any obligation to make any repairs or perform any restoration work under this Article XII. Further, Landlord shall not be obligated in any event to make any repairs or perform any restoration work to any alterations, additions, or improvements to the Premises performed by or for the benefit of Tenant (all of which Tenant shall repair and restore) or to any fixtures in or portions of the Premises which were constructed or installed by or for some party other than Landlord or which are not the property of Landlord. Upon substantial damage to the Premises which materially interferes with Tenant’s use of the Premises as contemplated under this Lease, the Tenant may elect to terminate this Lease rather than repair or restore the Premises, but would have the right to clean the Premises and remove debris. In such case, no damages for the remaining term of the Lease would be payable.

ARTICLE XIII EMINENT DOMAIN

13.1 RIGHTS OF TERMINATION FOR TAKING. If the Premises, or such portion thereof as to render the balance (if reconstructed to the maximum extent practicable in the circumstances) physically unsuitable for Tenant’s purposes, shall be taken (including a temporary taking in excess of 180 days) by condemnation or right of eminent domain or sold in lieu of condemnation, Landlord or Tenant may elect to terminate this Lease by giving notice to the other of such election not later than thirty (30) days after Tenant has been deprived of possession.
Further, if so much of the Premises shall be so taken, condemned or sold or shall receive any direct or consequential damage by reason of anything done pursuant to public or quasi-public authority such that continuation of this Lease would, in Landlord’s opinion, be uneconomical for Landlord, Landlord may elect to terminate this Lease by giving notice to Tenant of such election not later than thirty (30) days after the effective date of such taking.

13.2 PAYMENT OF AWARD Nothing contained herein shall be construed to prevent Tenant from prosecuting in any condemnation proceedings a claim for the value of any of Tenant’s improvements on the Premises by Tenant at Tenant’s expense and for relocation expenses.

13.3 ABATEMENT OF RENT In the event of any such taking of the Premises, the Base Rent or a fair and just proportion thereof, according to the nature and extent of the damage sustained, shall be suspended or abated, as appropriate and equitable in the circumstances.

ARTICLE XIV
DEFAULT

14.1 TENANT’S DEFAULT

(a) If at any time any one or more of the following events (herein referred to as a “Default of Tenant”) shall occur:

(i) Tenant shall fail to make payment of rent or any other monetary amount due under this lease within five (5) days after Landlord has sent to Tenant notice of such default. However, if (A) Landlord shall have sent to Tenant a notice of such default, even though the same shall have been cured and this Lease not terminated; and (B) during the lease year in which said notice of default has been sent by Landlord to Tenant, Tenant thereafter shall default in any monetary payment, the same shall be deemed to be a Default of Tenant upon Landlord giving Tenant written notice thereof, within the five (5) day grace period set forth above; or

(ii) Tenant shall fail to perform or observe any other covenant or provision herein contained on Tenant’s part to be performed or observed and Tenant shall fail to remedy the same within thirty (30) days after notice to Tenant specifying such neglect or failure, or, if such failure is of such a nature that Tenant cannot reasonably remedy the same within thirty (30) day period, Tenant shall fail to commence promptly to remedy the same and to prosecute such remedy to completion with diligence and continuity.

However, if (A) Landlord shall have sent to Tenant two notices of such default, even
though the same shall have been cured and this Lease is not terminated; and (B) during the lease year in which said notices of default have been sent by Landlord to Tenant, and the Tenant thereafter shall default in any nonmonetary matter, the same shall be deemed to be a Default of Tenant upon Landlord giving Tenant written notice thereof, and Tenant shall have a ten (10) day grace period within which to cure the same; or

(iii) Except as otherwise provided by applicable law, if the estate hereby created shall be taken on execution or by other process of law, or if Tenant shall be judicially declared bankrupt or insolvent according to law, or if any assignment shall be made of the property of Tenant for the benefit of creditors, or if a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of Tenant’s property by a court of competent jurisdiction, or if a petition shall be filed for the reorganization of Tenant under any provisions of law now or hereafter enacted, and such proceeding is not dismissed within sixty (60) days after it is begun, or if Tenant shall file a petition for such reorganization, or for arrangements under any provisions of such laws providing a plan for a debtor to settle, satisfy or extend the time for the payment of debts; or

(iv) Tenant shall vacate or abandon the Premises, then, in any such case, Landlord may, in addition to any remedies otherwise available to Landlord, immediately or at any time thereafter, and without demand or notice, enter into and upon the Premises or any part thereof in the name of the whole and repossess the same as of Landlord’s former estate, and expel Tenant and those claiming by, through or under it and remove its or their effects (forcibly if necessary) without being deemed guilty of any manner of trespass, and without prejudice to any remedies that might otherwise be used for arrears of rent or preceding breach of covenant and/or Landlord may terminate this Lease by notice to Tenant and this Lease shall come to an end on the date of such notice as fully and completely as if such date were on the date herein originally fixed for the expiration of all terms of this Lease (Tenant hereby waiving any rights of redemption, if any, under G.L. c. 186, § 11 to extent that such rights may be lawfully waived), and Tenant will then quit and surrender the Premises to Landlord, but Tenant shall remain liable as herein provided. To the extent permitted by law, Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed, or in the event of Landlord obtaining possession of the Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease. In the event of any such termination, entry or re-entry, Landlord shall have the right to remove and store Tenant’s property and that of persons claiming by, through or under Tenant at the sole risk and expense of Tenant and, if Landlord so elects, to sell such property at public auction or private sale and apply the net proceeds to the payment of all sums due to Landlord from Tenant and pay the balance, if any, to Tenant, or to dispose of such property in any manner in which Landlord shall elect, Tenant hereby agreeing to the fullest extent permitted by law that it shall have no
right, title or interest in any property remaining in the Premises after such termination, entry or reentry.

(b) Tenant covenants and agrees, notwithstanding any termination of this Lease as aforesaid or any entry or reentry by Landlord, whether by summary proceedings, termination or otherwise, to pay and be liable for on the days originally fixed herein for the payment thereof, amounts equal to the several installments of Rent and other charges reserved as they would become due under the terms of this Lease if this Lease had not been terminated or if Landlord had not entered or re-entered, as aforesaid, and whether the Premises be re-let or remain vacant, in whole or in part, or for a period less than the remainder of the Term, or for the whole thereof, but in the event the Premises be re-let by Landlord, Tenant shall be entitled to a credit in the net amount of rent received by Landlord in re-letting, after deduction of all expenses incurred in re-letting the Premises (including, without limitation, remodeling costs, brokerage fees, attorney fees and the like), and in collecting the rent in connection therewith. As an alternative, at the election of Landlord, Tenant will upon such termination pay to Landlord, as damages, such a sum as at the time of such termination represents the amount of the excess, if any, of the then value of the total Rent and other benefits that would have accrued to Landlord under this Lease for the remainder of the Lease Term if the lease terms had been fully complied with by Tenant over and above the then cash rental value (in advance) of the Premises for what would be the then unexpired Lease Term if the same remained in effect.

(c) In case of any Default of Tenant, reentry, entry, expiration and dispossession by summary proceedings or otherwise, Landlord may (i) re-let the Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms that may at Landlord’s option be equal to or less than or exceed the period that would otherwise have constituted the balance of the Lease Term and may grant concessions or free rent to the extent that Landlord considers advisable or necessary to re-let the Premises and (ii) make such alterations, repairs and decorations in the Premises as Landlord, in its sole judgment, considers advisable or necessary for the purpose of re-letting the Premises; and no action by Landlord in accordance with the foregoing shall operate or be construed to release Tenant from liability hereunder as aforesaid. It is specifically understood and agreed that Landlord shall be entitled to take into account in connection with any re-letting of the Premises all relevant factors that would be taken into account by a sophisticated developer in securing a replacement tenant for the Premises. Landlord shall in no event be liable in any way whatsoever for failure to re-let the Premises, or, in the event that the Premises are re-let, for failure to collect the rent under such re-letting, and Tenant hereby waives, to the extent permitted by applicable law, any obligation Landlord may have to mitigate Tenant’s damages. The Landlord agrees to list the Premises with a broker in the event of a termination, entry or reentry under this Article XIV, provided that Landlord’s obligation to list the Premises as provided herein is independent of Tenant’s obligations under this Article XIV and shall not be construed to entitle Tenant to set-off against any amounts payable by Tenant hereunder in the event of a breach or alleged breach by Landlord of such obligation. In no event shall Landlord be obligated to give
priority to the re-letting of the Premises over any other premises owned by Landlord.

(d) If there is at any time a guarantor or assignee of this Lease or any interest of Tenant herein or any sublessee, franchisee, concessionee or licensee of all or any portion of the Premises, the happening of any of the events described in paragraph (a)(iii) of this Section with respect to such guarantor, assignee, sublessee, franchisee, concessionee or licensee shall constitute a Default of Tenant hereunder.

(e) The specified remedies to which Landlord may resort hereunder are not intended to be exclusive of any remedies or means of redress to which Landlord may, at any time, be entitled lawfully and Landlord may invoke any remedy (including the remedy of specific performance) allowed at law or in equity as if specific remedies were not herein provided for.

(f) All costs and expenses incurred by or on behalf of Landlord (including, without limitation, attorney fees and expenses) in enforcing its rights hereunder or occasioned by any Default of Tenant shall be paid by Tenant.

(g) Upon any Default of Tenant, or the expiration or termination of this Lease, Landlord shall have the right of summary process under G.L. c. 239, or other applicable statutes, and such other rights to recover possession as permitted by law. Tenant and Landlord each hereby waives any and all rights under the laws of any state to the right, if any, to trial by jury. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy, insolvency or like proceedings by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater than, equal to or less than the amount of the loss or damages referred to above.

(h) Notwithstanding any provision herein, LANDLORD shall have a duty to mitigate any losses or damages

14.2 LANDLORD’S DEFAULT. Landlord shall in no event be in default in the performance of any of Landlord’s obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after notice by Tenant to Landlord specifying wherein Landlord has failed to perform any such obligation.

ARTICLE XV THE LANDLORD’S ACCESS TO PREMISES

15.1 THE LANDLORD’S RIGHT OF ACCESS. The Landlord and its agents, contractors and
employees shall have the right to enter the Premises at all reasonable hours upon reasonable advance notice, except in exigent circumstances, or any time in case of emergency, for the purpose of inspecting or of making repairs or alterations, to the Premises, and Landlord shall also have the right to make access available at all reasonable hours to prospective or existing mortgagees or purchasers of any part of the Premises.

For a period commencing twelve (12) months prior to the expiration of the Lease Term, Landlord may have reasonable access to the Premises at all reasonable hours for the purpose of exhibiting the same to prospective tenants.

**ARTICLE XVI RIGHTS OF MORTGAGEES**

16.1 SUBORDINATION AND ATTORNMENT

(a) Forthwith upon the request of Landlord or the holder of any mortgage or deed of trust affecting the Premises, Tenant shall execute and deliver to such party an attornment agreement providing that Tenant shall attorn to such holder or lessor in the event of a foreclosure of such mortgage or deed of trust or transfer in lieu thereof or a termination of such ground lease and incorporating such other terms and conditions as such party may reasonably require, provided that such agreement includes an agreement by such other party to recognize the rights of Tenant under this Lease. Irrespective of whether any such attornment agreement has been executed, Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage or deed of trust made by Landlord, its successors or assigns, encumbering the Premises, or any part thereof or upon any grant of a deed in lieu of foreclosure and recognize such purchaser as Landlord under this Lease.

(b) Tenant agrees on request of Landlord to execute and deliver from time to time any instrument that Landlord may reasonably deem necessary to implement the provisions of this Section 16.1.

16.2 NOTICE TO MORTGAGEE; OPPORTUNITY TO CURE After receiving notice from any person, firm or other entity (or from Landlord on behalf of any such person, etc.) that it holds a mortgage that includes the Premises as part of the mortgaged premises, no notice from Tenant to Landlord shall be effective unless and until a copy of the same is given to such holder, and the curing of any of Landlord’s defaults by such holder shall be treated as performance by Landlord. Accordingly, no act or failure to act on the part of Landlord that would entitle Tenant under the terms of this Lease, or by law, to be relieved of Tenant’s obligations hereunder shall have such an effect unless and until:
(a) Tenant shall have first given written notice to such holder, if any, specifying the act or failure to act on the part of Landlord that could or would give basis to Tenant’s rights; and

(b) Such holder, after receipt of such notice, has failed or refused to correct or cure the condition complained of within a reasonable time thereafter, but nothing contained in this Section 16.2 or elsewhere in this Lease shall be deemed to impose any obligation on any such holder to correct or cure any such condition.

16.3 ASSIGNMENT OF RENTS. With reference to any assignment by Landlord of Landlord’s interest in this Lease, or the rents payable hereunder, conditional in nature or otherwise, which assignment is made to the holder of a mortgage on property that includes the Premises, Tenant agrees:

(a) that the execution thereof by Landlord, and the acceptance thereof by the holder of such mortgage, shall never be treated as an assumption by such holder of any of the obligations of Landlord hereunder, unless such holder shall, by notice sent to Tenant, specifically otherwise elect; and (b) that, except as aforesaid, such holder shall be treated as having assumed Landlord’s obligations hereunder only upon foreclosure of such holder’s mortgage and the taking of possession of the Premises.

ARTICLE XVII EMERGENCY TERMINATION OR SUSPENSION BY LANDLORD

17.1 EMERGENCY TERMINATION. Notwithstanding any provision to the contrary, if, in the Landlord’s sole discretion, there is an emergency situation, including but not limited to a danger to public health or safety, a danger to public or private property, a danger to public air travel, a failure to comply with any federal, state or local law, or FAA or Massachusetts DOT Aeronautics Division regulation such that the Fitchburg Municipal Airport could be ordered closed, whether temporarily or permanently, or could be fined or otherwise penalized, the Landlord may, without waiving any other right or remedy it may have, terminate or suspend this Lease, in whole or in part, and shall be required to give only such notice as was actually given. In such event, Rent and other payments shall be suspended or abated in proportion to the diminution of rights of the Tenant. By such action, neither the Landlord nor the City of Fitchburg shall be liable to the Tenant, or to any of its officers, employees, tenants, subtenants, contractors, subcontractors, agents, invitees, or any other individual or entity related thereto. In the event of such termination or suspension, the Landlord and its designee may take over all or any portion of the services being provided under this Lease by the Tenant unless Landlord’s action is determined by a court of competent jurisdiction to have been arbitrary or capricious and not supported by fact.

17.2 PRECLUSION OF DAMAGES. The Landlord’s suspension or termination of this Lease, in whole or in part, in accordance with this Section shall preclude the Tenant’s recovery of damages against the Landlord or their respective officers, attorneys, employees or agents, relating to or arising from said suspension or termination, including but not limited to any and all costs of relocation, lost profits, lost opportunity, or any other direct, indirect, consequential, or incidental loss.
ARTICLE XVIII FEDERAL AVIATION ADMINISTRATION REQUIREMENTS

18.1 NONEXCLUSIVE USE. Nothing herein contained shall be construed to grant to Tenant any exclusive right to the use of the Fitchburg Municipal Airport or any of its facilities within the meaning of Section 308 of the Federal Aviation Act of 1958, nor shall anything contained herein be construed to prevent Landlord from entering into a similar lease with any other person, firm or corporation.

18.2 SUBORDINATION. This Lease shall be subordinate to the provision of any existing or future agreements and grant assurances between Landlord and the United States of America and/or the Commonwealth of Massachusetts relative to the Airport. Tenant acknowledges that it is aware of all such agreements and grant assurances or has the ability to request the same from Landlord.

This shall specifically include, but shall not be limited to, Executive Order 13513 and DOT Order 3902.10 on Text Messaging While Driving, under which Tenant is encouraged to:

(a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Tenant.

(b) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:

i. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

18.3 NATIONAL EMERGENCY. During the time of war or other national emergency declared by the President of the United States, Landlord shall have the right to lease the landing area and other facilities of the Fitchburg Municipal Airport or any part thereof to the United States for military or normal use for the duration of such national emergency. The term of the Lease, insofar as it is inconsistent with the terms of any such lease entered into with the United States or the Commonwealth of Massachusetts, shall be suspended during the period of such national emergency.

Tenant shall have the option, at any time during such period of national emergency, of terminating the Lease by giving Landlord ninety (90) days advance notice of its intention to terminate by certified mail.

ARTICLE XIX
FEDERALLY REQUIRED NON-DISCRIMINATION PROVISION

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19.1 **Nondiscrimination**. The Tenant for itself, its personal representatives, successor in interest and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the Premises, that, (1) no person on the grounds of race, color, gender, religion, national origin or other protected class shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such Premises and the furnishings of services thereon, no person on the grounds of race, color, gender, religion, national origin or other protected class shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A Office of the Secretary of State, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

19.2 **Nondiscrimination Covenants.** This Lease and any sublease entered into regarding the Premises shall be subject to the following provisions:

(a) This Lease is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23. The Tenant agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

(b) The Tenant agrees to include the above statements in any subsequent agreement or contract covered by 49 CFR Part 23 that it enters and shall cause those businesses to similarly include the statements in further agreements.

19.3 **Services and Charges.** Tenant agrees that in the exercise of the rights and privileges herein granted for the furnishing of aeronautical services to the public that it shall:

(a) Furnish said services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

(b) Charge a fair, reasonable, and not unjustly discriminatory price for each unit or service; provided, that the Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

19.4 **Remedy.** In the event of a breach of any of the above non-discrimination covenants, after forty-five (45) days’ written notice remaining uncured, Landlord shall have the right to terminate the Lease, and to reenter and repossess the said Premises and all facilities and improvements thereon, and hold the same as if the Lease had never been made or issued.
ARTICLE XX TENANT’S USE OF AIRPORT

20.1 AIRPORT USE Tenant agrees that Tenant shall comply with the laws, rules and regulations of the Federal Aviation Administration (FAA) and the MassDOT Aeronautics Division as the same may be applicable to the Tenant’s non-aeronautical use of the Premises as described in this Lease.

ARTICLE XXI INGRESS AND EGRESS

21.1 ACCESS Tenant shall have at all times the full and free right of ingress and egress to the Premises and the improvements and facilities referred to herein, for the Tenant and its subtenants, employees, guests, and other invitees, including persons supplying materials or furnishing services to Tenant and also, including the use of vehicles, machinery and equipment reasonably required for such supply or service.

ARTICLE XXII AGENCY

22.1 NO AGENCY Tenant shall not at any time during the period of this Lease or any extension thereof act as agent, servant, or employee of the Landlord, unless requested and duly authorized by the Fitchburg Airport Commission

ARTICLE XXIII MISCELLANEOUS PROVISIONS

23.1 CAPTIONS The captions throughout this Lease are for convenience or reference only and shall in no way be held or deemed to define, limit, explain, describe, modify, or add to the interpretation, construction, or meaning of any provision of this Lease.

23.2 BIND AND INURE Except as herein otherwise expressly provided, the obligations of this Lease shall run with the land, and this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The reference herein to successors and assigns of Tenant is not intended to constitute a consent to assignment by Tenant, but has reference only to those instances in which Landlord may later give consent to a particular assignment as required by the provisions of Article VII. Neither the assignment by Landlord of its interest in this Lease as security to a lender holding a mortgage, nor the acceptance thereof by such lender, nor the exercise by such lender of any of its rights pursuant to said assignment shall be deemed in any way an assumption by such lender of any of the obligations of Landlord hereunder unless such lender shall specifically otherwise elect in writing or unless such lender shall have completed foreclosure proceedings under said mortgage. Whenever the Premises are
owned by a trustee or trustees, the obligations of Landlord shall be binding upon Landlord's trust estate, but not upon any trustee, beneficiary or shareholder of the trust individually.

23.3 NO WAIVER The failure of Landlord or of Tenant to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Lease shall not be deemed to be a waiver of such violation or to prevent a subsequent act, which would originally have constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of Rent or additional rent with knowledge of the breach of any covenant of this Lease shall not be deemed to be a waiver of such breach by Landlord unless such waiver be in writing signed by Landlord. No consent or waiver, express or implied, by Landlord or Tenant to or of any breach of any agreement or duty shall be construed as a waiver or consent to or of any other breach of the same or any other agreement or duty.

23.4 NO ACCORD AND SATISFACTION No acceptance by Landlord of a lesser sum than the minimum and additional rent then due shall be deemed to be other than on account of the earliest installment of such rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed to be an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy in this Lease or at law or in equity provided.

23.5 CUMULATIVE REMEDIES The specific remedies to which Landlord may resort under the terms of this Lease are cumulative and not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any breach or threatened breach by Tenant of any provisions of this Lease. In addition to the other remedies provided in this Lease, Landlord shall be entitled to the restraint by injunction of the violation or attempted or threatened violation of any of the covenants, conditions or provisions of this Lease or to a decree compelling specific performance of any such covenants, conditions or provisions. Except as otherwise set forth herein, any obligations of Tenant as set forth herein (including, without limitation, rental and other monetary obligations, repair obligations and obligations to indemnify Landlord) shall survive the expiration or earlier termination of this Lease, and Tenant shall immediately reimburse Landlord for any expense incurred by Landlord in curing Tenant's failure to satisfy any such obligation (notwithstanding the fact that such cure might be effected by Landlord following the expiration or earlier termination of this Lease).

23.6 PARTIAL INVALIDITY If any term or provision of this Lease or any portion thereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Lease and of such term or provision and the those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.
23.7 **LANDLORD’S RIGHT TO CURE** If Tenant shall at any time default in the performance of any obligation under this Lease, Landlord shall have the right, but not the obligation, to enter upon the Premises and/or to perform such obligation, notwithstanding the fact that no specific provision for such substituted performance by Landlord is made in this Lease with respect to such default. In performing any such obligations, Landlord may make any payment of money or perform any other act. All sums so paid by Landlord (together with interest at the Lease Interest Rate) and all necessary incidental costs and expenses in connection with the performance of any such act by Landlord, shall be deemed to be additional rent under this Lease and shall be payable to Landlord immediately on demand. Landlord may exercise the foregoing rights without waiving any other of its rights or releasing Tenant from any of its obligations under this Lease.

23.8 **ESTOPPEL CERTIFICATES**

(a) Tenant agrees on the Term Commencement Date and from time to time thereafter, upon not less than fifteen (15) days’ prior written request by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing, certifying that this Lease is unmodified and in full force and effect, that Tenant has no defenses, offsets or counterclaims against its obligations to pay rent and other charges required under this Lease and to perform its other covenants under this Lease and that to the best of Tenant’s knowledge having made reasonable inquiry, there are no unsecured defaults of Landlord or Tenant under this Lease (or, if there have been any modifications, that this Lease is in full force and effect, as modified, and stating the modifications, and, if there are any defenses, offsets, counterclaims or defaults, setting them forth in reasonable detail), and the dates to which the Rent and other charges have been paid. Any such statement delivered pursuant to this Section 23.8(a) may be relied upon by any prospective purchaser or mortgagee of the property which includes the Premises or any prospective assignee of any such mortgagee.

(b) Landlord agrees, upon not less than fifteen (15) days’ prior written request by Tenant or any subtenant, to execute, acknowledge and deliver to the requesting party, a statement in writing, certifying that this Lease is unmodified and in full force and effect, and that to the best of Landlord’s knowledge having made reasonable inquiry, there are no unsecured defaults of the Tenant or the subtenant, or if there are any unsecured defaults, setting them forth in reasonable detail. Any such statement delivered pursuant to this Section 23.8(b) may be relied upon by any prospective purchaser or mortgagee.

23.9 **BROKERAGE** Each party hereto warrants and represents that it has dealt with no real estate broker or agent in connection with this transaction and agrees to defend, indemnify and save the other party harmless from and against any and all claims for commissions or fees arising out of this Lease which, as to the respective parties, are inconsistent with such party’s warranties and
representations. Landlord shall be responsible for any commissions or fees owed to any Broker in connection with this transaction in accordance with a separate agreement between Broker and Landlord.

23.10 ENTIRE AGREEMENT. All negotiations, considerations, representations, and understandings between Landlord and Tenant are incorporated herein and this Lease expressly supersedes any proposals or other written documents relating hereto. This Lease may be modified or altered only by written agreement between Landlord and Tenant, and no act or omission of any employee or agent of Landlord shall alter, change, or modify any of the provisions hereof.

23.11 HOLDOVER. If Tenant remains in the Premises after the termination of this Lease, by its own terms or for any other reason, such holding over shall not be deemed to create any tenancy, but Tenant shall be a tenant at sufferance only, at a daily rate equal to one hundred ten percent (110%) of the Rent applicable immediately prior to such termination plus the then applicable additional rent and other charges under this Lease for the first year of holdover, and thereafter at a daily rate equal to one hundred and fifty percent (150%) of the Rent applicable immediately prior to such termination plus the then applicable additional rent and other charges under this Lease. Tenant shall also pay to Landlord all damages, direct or indirect, sustained by Landlord by reason of any such holding over. Otherwise, such holding over shall be on the terms and conditions set forth in this Lease as far as applicable.

23.12 COUNTERPARTS. This Lease is executed in any number of counterparts, each copy of which is identical, and any one of which shall be deemed to be complete in itself and may be introduced in evidence or used for any purpose without the production of the other copies.

23.13 CONSTRUCTION AND GRAMMATICAL USAGE. This Lease shall be governed, construed and interpreted in accordance with the laws of The Commonwealth of Massachusetts, and Tenant agrees to submit to the personal jurisdiction of any court (federal or state) in said Commonwealth for any dispute, claim or proceeding arising out of or relating to this Lease. In construing this Lease, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so admits or requires. If there be more than one party tenant, the covenants of Tenant shall be the joint and several obligations of each such party and, if Tenant is a partnership, the covenants of Tenant shall be the joint and several obligations of each of the partners and the obligations of the firm.

Each of the parties acknowledges that it has been advised by counsel, or had the opportunity to be advised by counsel, in the drafting, negotiation, execution and delivery of this Agreement, and has actively participated in the drafting, negotiation, execution and delivery of this Agreement. In no
event will any provision of this Agreement be construed for or against either party as a result of such party having drafted all or any portion hereof.

23.14 **WHEN LEASE BECOMES BINDING** Employees or agents of Landlord have no authority to make or agree to make a lease or any other agreement or undertaking in connection herewith. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises, and this document shall become effective and binding only upon the execution and delivery hereof by both Landlord and Tenant.

23.15 **SECURITY DEPOSIT** If, in Section 1.2 hereof, a security deposit is specified, Tenant agrees that the same will be paid upon execution and delivery of this Lease, and that Landlord shall hold the same, throughout the term of this Lease, as security for the performance by Tenant of all obligations on the part of Tenant to be kept and performed. In no event shall said security deposit be deemed to be a prepayment of rent nor shall it be considered a measure of liquidated damages. Landlord shall have the right from time to time without prejudice to any to cure a default by Tenant hereunder or Landlord’s damages arising from any default on the part of Tenant. If any amount of such deposit is so applied, Tenant shall pay the amount so applied to Landlord upon demand therefor. Tenant not then being in default, Landlord shall return the deposit, or so much thereof as shall not have theretofore been applied in accordance with the terms of this Section 23.15 to Tenant on the expiration or earlier termination of the Lease Term and surrender of possession of the Premises by Tenant to Landlord. While Landlord holds such deposit, Landlord shall have no obligation to pay interest on the same and shall have the right to commingle the same with Landlord’s other funds. If Landlord conveys Landlord’s interest under this Lease, the deposit or any part thereof not previously applied may be turned over by Landlord to Landlord’s grantee, and if so turned over, Tenant agrees to look solely to such grantee for proper application of the deposit in accordance with the terms of this Section 23.15 and the return thereof in accordance herewith.

Neither a successor landlord nor the holder of a mortgage which includes the Premises shall ever be responsible to Tenant for the return or application of any such deposit, whether or not it succeeds to the position of Landlord hereunder, unless such deposit shall have been received in hand by such successor or holder.

23.16 **ENFORCEMENT EXPENSES** Each party shall bear their own costs fees and expenses (including, without limitation, attorneys’ fees and costs) incurred arising out of or resulting from any act or omission by either party with respect to this Lease or the Premises, including without limitation, any breach by either party of its obligations hereunder, irrespective of whether party resorts to litigation as a result thereof.

23.17 **NO SURRENDER** The delivery of keys to any employee of Landlord or to Landlord’s
agents or employees shall not operate as a termination of this Lease or a surrender of the Premises.

23.18 **COVENANT OF QUIET ENJOYMENT** Subject to the terms and provisions of this Lease and on payment of the Rent, additional rent, and other sums due hereunder and compliance with all of the terms and provisions of this Lease, Tenant shall lawfully, peaceably and quietly have, hold, occupy, and enjoy the Premises during the term hereof, without hindrance or ejection by Landlord or by any persons claiming under Landlord, subject to the emergency exceptions provided for previously in this Agreement; the foregoing covenant of quiet enjoyment is in lieu of any other covenant, express or implied.

23.19 **NO PERSONAL LIABILITY**
(a) The Tenant agrees to look solely to Landlord's then equity interest in the Premises at the time owned, or in which Landlord holds an interest as ground lessee, for recovery of any judgment from Landlord; it being specifically agreed that neither Landlord (whether Landlord be an individual, partnership, firm, corporation, trustee, or other fiduciary) nor any partner, policyholder, officer, manager, member, shareholder or director of Landlord, nor any trust of which any person holding Landlord’s interest is trustee nor any successor in interest to any of the foregoing shall ever be personally liable for any such judgment, or for the payment of any monetary obligation to Tenant. The covenants of Landlord contained in this Lease shall be binding upon Landlord and Landlord’s successors only with respect to breaches occurring during Landlord’s and Landlord’s successors’ respective periods of ownership of Landlord’s interest hereunder.

(b) The Landlord agrees, without limitation, to look solely to the assets of Tenant for the recovery of any judgment of Landlord from the Tenant, it being agreed that no Trustee shall ever be personally liable for any such judgment or for the payment to Landlord of any monetary obligation of the Tenant.

23.20 **LIMITATION.** Nothing herein shall abrogate the application of Massachusetts General Laws Chapter 258, as the same may be amended from time to time.

23.21 **REASONABLENESS.** Throughout this Agreement, whenever either Tenant or Landlord is given the right to seek recovery of costs, expenses or attorney’s fees, recovery of such costs, expenses and attorney’s fees shall be limited to those which are reasonable in nature.

23.22 **NOTICES.** Any and all notices, or other communications required or permitted under this Agreement shall be in writing and delivered by hand or mailed, postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at their addresses of record or at such other addresses as the parties shall designate from time to time by written notice.

**ARTICLE XXIV FORCE MAJEURE**

30
24.1 Neither party shall be liable to the other or deemed to be in breach under this Lease for any failure to perform, including, without limitation, a delay in rendering performance due to causes beyond its reasonable control such as an order, injunction, judgment, or determination of any Court of the United States or the Commonwealth of Massachusetts, an Act of God, war, civil disobedience, extraordinary weather conditions, labor disputes, or shortages, or fluctuation in electric power, heat, light, or air conditioning. Dates or time of performance will be extended automatically to the extent of such delays, provided that the party whose performance is affected promptly notifies the other of the existence and nature of such delay.

24.2 It is agreed, however, that since the rights and obligations set forth in this Lease are important, continued failure to perform for periods aggregating ninety (90) days or more, even for causes beyond the control of party failing to perform, shall be deemed to render performance impossible and the other party shall thereafter have the right to terminate this Lease in accordance with the provisions set forth herein.

24.3 If the Tenant is the terminating party under this provision, it shall give Landlord thirty (30) days advanced notice of its intention to terminate by certified mail and shall remove its personal property and such improvements as the Landlord determines it does not wish to retain, within said thirty (30) days of notice to do so. Tenant shall be removed from all liability for future rent, upon vacating the Premises on the date specified in such notice and paying all Rent and any other monies due, and shall remove its personal property and such improvements as the Landlord determines it does not wish to retain, within thirty (30) days of notice to do so.

24.4 If the Landlord is the terminating party under this provision, it shall give the Tenant as much advance notice, in writing, as practicable under the circumstances. The Landlord’s termination of this Lease in accordance with this Section shall preclude the Tenant’s recovery of damages against the Landlord or the City of Fitchburg or their respective officers, attorneys, employees or agents, relating to or arising from said termination or the underlying Force Majeure circumstance or event, including but not limited to any and all costs of relocation, lost profits, lost opportunity, or any other direct, indirect, consequential, incidental loss. In the event of damages hereunder the parties shall attempt, in good faith, to negotiate a resolution of the damages issue.

ARTICLE XXV TERMINATION FOR CONVENIENCE

25.1 TERMINATION FOR CONVENIENCE. Notwithstanding any other provision of this Lease, the Landlord reserves the right at any time in its absolute discretion to suspend or terminate this Lease in whole or in part for its convenience upon written notice to the Landlord. If any portion of this Lease so suspended is not recommenced by written notice of the Landlord within
the time period specified in the written notice of suspension, the suspended portion of this Lease shall thereupon be deemed terminated as to that portion for the convenience of the Landlord in accordance with this provision. Neither the Landlord nor the City of Fitchburg shall incur liability by reason of such termination for convenience. The Tenant shall have no right to recover damages against the Landlord or the City of Fitchburg or their respective officers, attorneys, employees or agents, relating to or arising from said termination or suspension under this provision, including but not limited to any and all costs of relocation, lost profits, lost opportunity, or any other direct, indirect, consequential, or incidental loss. The Landlord expressly agrees that it shall not exercise its right as set forth in this section to terminate for its convenience for twenty (20) years from the date of this Lease.

ARTICLE XXVI EXECUTION

26.1 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same Agreement. This Agreement is subject to City Council approval or authorization of the City’s Mayor to execute the same.
IN WITNESS WHEREOF, the City of Fitchburg, has caused its corporate seal to be affixed hereto and these present to be signed in its name on its behalf by its Mayor, Stephen L. DiNatale, by Jack Naylor, the Chairperson of the Fitchburg Airport Commission, thereto duly authorized, and by the Fitchburg Airport Manager under their hands and seals as of the______ day of_______, 2019.

TENANT:

CITY OF FITCHBURG

By:__________________________

Stephen L. DiNatale, Mayor of the City of Fitchburg

Approved as to form:

By:__________________________

Vincent P. Pusateri, II, City Solicitor

LANDLORD:

Fitchburg Airport Commission

By:__________________________

Jack Naylor, Chairperson

Scott Ellis, Fitchburg Airport Manager

EXHIBIT A: PLAN SHOWING THE PREMISES
EXHIBIT B: TERM COMMENCEMENT DATE AGREEMENT
EXHIBIT A
(To Be Inserted)
EXHIBIT B
TERM COMMENCEMENT DATE AGREEMENT

The parties hereto agree that the Effective Date of this Amended and Restated Ground Lease is January 1, 2019, and that as of the execution hereof the provisions regarding payment of Rent shall apply as of January 1, 2019, and that all amounts paid prior to this date shall be accepted as all Rent due prior to January 1, 2019.
ORDERS—OTHER

069-19. ORDERED THAT: The City of Fitchburg shall, through its Mayor Stephen L. DiNatale, approve and authorize the execution and delivery of the Grant of Easement between the City and MA. Electric Co. and Verizon New England, Inc., (Mare Meadow Reservation), as outlined in the enclosed Order. (Reference Petition #26-19)

WHEREAS, the City and MASSACHUSETTS ELECTRIC COMPANY, a Massachusetts Corporation having an address of 40 Sylvan Road, Waltham, MA 02451 and VERIZON NEW ENGLAND, INC., a New York corporation having an address of 125 High Street – Oliver Tower, 07 Floor, Boston, MA 02110, have entered into an Easement for an overhead system over, across, under and upon Mare Meadow Reservoir authorized by the City Council pursuant to Petition 026-2019, approved on February 19, 2019.

NOW THEREFORE, IT IS ORDERED that the City of Fitchburg shall, through its Mayor Stephen L. DiNatale, approve and authorize the execution and delivery of the Grant of Easement, between the City and Massachusetts Electric Company and Verizon New England, Inc. and to authorize all other acts and documents which will be necessary, helpful or convenient, to effectuate and ensure the completion of the Grant of Easement.

Order adopted by unanimous vote. 11 members present. Board consists of 11 members. Order signed by the Mayor March 20, 2019.
070-19. ORDERED THAT: The City Petition the General court of the Commonwealth to enact Special Legislation as follows:
Notwithstanding Section 17 of Chapter 138 of the General laws, the licensing authority of the City of Fitchburg may grant an additional license for the sale of all alcohol beverages not to be drunk on the premises under Section 15 of said Chapter 138 for the premises located 381 John Fitch Highway, Fitchburg, Massachusetts. The license shall be subject to all of said Chapter 138, except said Section 17.
(Reference Petition #274-18)

RESOLUTION and ORDER this 19th day of March 2019

Pursuant to the provisions of Section 8 of Article LXXXIX of the Amendments to the Constitution of the Commonwealth, the City of Fitchburg, acting through its Council and Mayor, hereby petitions the General Court of the Commonwealth to enact the Special Legislation for the City of Fitchburg as follows:

Notwithstanding Section 17 of Chapter 138 of the General laws, the licensing authority of the City of Fitchburg may grant an additional license for the sale of all alcohol beverages not to be drunk on the premises under Section 15 of said Chapter 138 for the premises located 381 John Fitch Highway, Fitchburg, Massachusetts. The license shall be subject to all of said Chapter 138, except said Section 17.

The licensing authority shall not approve the transfer of the license to any other location. The licenses may be reassigned by the licensing authority to a new applicant at the same location, if the applicant files with the licensing authority a letter from the Department of Revenue indicating that the license is in good standing with the department and that all applicable taxes have been paid.

If the license granted under this act is cancelled, revoked or no longer in use, it shall be returned physically, with all of the legal rights, privileges and restrictions pertaining thereto, to the licensing authority which may then grant the license to a new applicant.

NOW THEREFORE BE IT RESOLVED AND ORDERED that the City of Fitchburg shall petition the General Court to adopt the above Special Act.
ORDINANCES

071-19. AN ORDINANCE: Section 169-24 of the City Code, entitled "Parking prohibited at all times" shall be amended as follows:

A new line shall be inserted below the line beginning "Wallace Street" and the following words shall be inserted thereon:
The words "Wallace Avenue" shall be inserted under the "Name of Street" column;
The words "Easterly" shall be inserted under the "Side" column;
The word "From a point of 72 feet northerly from the intersection of Elm Street and Wallace Avenue".

The resulting inserted line shall read as follows:

<table>
<thead>
<tr>
<th>Name of Street</th>
<th>Side</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wallace Avenue</td>
<td>Easterly</td>
<td>From a point of 72 feet northerly from the intersection of Elm Street and Wallace Avenue</td>
</tr>
</tbody>
</table>

(Reference Petition #256-18)

Ordinance was sent to a first and second reading and ordered advertised by unanimous vote. 11 members present. Board consists of 11 members.

072-19. AN ORDINANCE: Section 169-42.1 of the City Code, entitled "Additional meter zones" at the line which references in the first column "Wallace Avenue" shall be amended as follows:

In the third column of said line, the words "From Elm Street to Prichard Street" shall be struck and insert "From Elm Street to Prichard Street, except for the first four (4) 9' x 18' foot parking spaces on the easterly side beginning at the intersection of Elm Street and Wallace Avenue" in its place.

The resulting amendment shall read as follows:

<table>
<thead>
<tr>
<th>Name of Street</th>
<th>Side</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wallace Avenue</td>
<td>Both</td>
<td>From Elm Street to Prichard Street, except for the first four (4) 9' x 18' foot parking spaces on the easterly side beginning at the intersection of Elm Street and Wallace Avenue</td>
</tr>
</tbody>
</table>

(Reference Petition #256-18)

Ordinance was sent to a first and second reading and ordered advertised by unanimous vote. 11 members present. Board consists of 11 members.
073-19. AN ORDINANCE: Section 169-42 of the City Code, entitled “Parking meter zones” at the line which references in the first column “Grove Street” shall be amended as follows:

In the third column of said line, the words “From Elm Street north to Prichard Street” shall be struck and insert “From a point of 18 feet northerly from the intersection Grove Street and Elm Street to Prichard Street” in its place.

A “No Parking Prisoner Loading Area” sign shall be erected in its place.

The resulting amended line shall read as follows:

<table>
<thead>
<tr>
<th>Name of Street</th>
<th>Side</th>
<th>Hours</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grove Street</td>
<td>East</td>
<td>10 hrs.</td>
<td>From a point of 18 feet northerly from the intersection of Grove Street and Elm Street to Prichard Street</td>
</tr>
</tbody>
</table>

(Reference Petition #256-18)

Ordinance was sent to a first and second reading and ordered advertised by unanimous vote. 11 members present. Board consists of 11 members.
PETITIONS

The following Petition was referred to the City Property Committee by vote of 10 in favor and 1 opposed (Squailla):

074-19. Councillor Amy Green, on behalf of resident Janice Kennefick-Perez, 11 Washington Street, to petition that the easement placed on 11 Washington Street be removed subjecting it to the side yard sales program & deem it as surplus property.

The following Petition was forwarded to the Legislative Affairs Committee by vote of 10 in favor and 1 opposed (Squailla):

075-19. Anna M. Farrell, City Clerk, to discuss the options and vote to designate the Ward 5A and 5B polling locations.

WARD 5 POLLING LOCATION DISCUSSION POINTS:

Options:

1. Leave 5A and 5B at Saima Park
   Both precincts at same location – easy for voters to find the correct precinct when they arrive without going to a different location;
   Plenty of parking;
   Parking lot is dark but we have addressed that with FFD auxiliary lighting;
   Complaints from 5B voters that they cannot get to Saima Park – not in a central location, no scheduled public transportation and too far to walk;
   Dirt road leading to function building gets pretty rough in bad weather;
   Portable ramp must be installed for each election to be handicapped accessible per election regs.

2. Move 5A and 5B to Rollstone Church
   Both precincts at same location – easy for voters to find the correct precinct when they arrive without going to a different location;
   Central location and on the bus route;
   Church is amenable to making the small changes necessary to being handicapped accessible per election regs;
   Parking is an issue – existing lot has 20 spaces and 17 spaces will be needed for poll workers alone but, the FRA has expressed that they will donate vacant land adjacent to the parking lot which will provide some amount of additional parking;
   There is the MART parking garage across the street and poll workers could be asked to park there. Voters could park there also although we had complaints about that even when voting was in the MART station.

3. Move 5B only to the Senior Center (5B is adjacent to the Senior Center which is in 4B therefore it is allowable) and either leave 5A at Saima or move it to Rollstone Church
   Ward 5 precincts in two different locations would require voters who arrive at the wrong precinct to go to an entirely different location to vote. Could create confusion and more complaints. This may be exacerbated after the ward lines are reviewed after the 2020 census e.g. 5A/5B precinct lines may change;
   Parking is already an issue for voters around the Senior Center and adding a precinct may exacerbate the situation although many 5B voters could walk or take public transportation to the Senior Center;
March 6, 2019

Note to file:

In response to the two violation notes in the attached MA polling place accessibility survey conducted by the Secretary of the Commonwealth Elections Division, Rollstone Congregational Church has agreed to do the following:

1. Install a new door with an accessible lever handle;
2. Build a deck over part of the outside, unprotected stairwell that abuts the entrance door. The State has opined that this will meet accessibility requirements.

Please see attached correspondence concerning these matters.

Anna M. Farrell
City Clerk
Hi Anna,

The church’s Trustees have voted unanimously to move forward on your request to use the church as a voting location. We believe that not only is it good for the community, but has some advantages to the church as well.

After the review by the state we have moved forward on several items. We have requested a quote on a complete replacement of the back door that would be in compliance with the state’s requests. I expect this work can be completed by early summer at the latest.

To address the concerns about the step on the right of the entrance we are planning on installing a permanent 2 foot wide “deck” that would be level with the entrance door. This will allow the staircase to the basement door to be used with out interference.

We have met with the Redevelopment Authority and they have offered to give us the vacant lot behind our parking lot. We will be looking at ways to improve the parking situation with the addition of this area.

Feel free to contact me at any time if you have any questions or concerns. I will keep you apprised of our progress meeting the state’s requirements.

Thanks you for your help with the FRA.

Regards,

Paul Stansel

Paul Stansel
MPS Systems
(978) 337-1698
paul.mpssys@gmail.com
Farrell, Anna

From: Murphy, Bridget Simmons (SEC) <bridget.simmons.murphy2@state.ma.us>
Sent: Wednesday, March 06, 2019 2:14 PM
To: Farrell, Anna
Subject: RE: Rollstone Entrance

Hi Anna,

Thank you for sending the sketch of the proposed plan. It appears it does the sketch will meet the following accessibility guidelines for a polling place entrance:

(3) Entrance.
(a) At least one entrance to the building must be accessible to physically disabled persons.
If the main entrance to the building is not accessible, signs must be posted directing persons from the ordinary path of travel to the accessible entrance.
1. If the main entrance to the building is not accessible, the path of travel to the accessible entrance shall be the same or a substantially similar distance as the path of travel to the main entrance.
2. If the main entrance is not the accessible entrance, the door to the accessible entrance shall be unlocked and capable of being operated without assistance during the hours the polling place is open and at the same hours as the main entrance.
(b) The approach to the accessible entrance shall be a paved walk or ramp with a non-slip surface, uninterrupted by steps or abrupt changes in level greater than 1/8 inch. Such entrance shall have a level space 60 inches from the door on the interior and exterior of the doors.
(c) Doors to such entrances shall be a minimum of 32 inches clear, measured at 90°. No door threshold shall be higher than 1/8 inch above the floor on either side. Lever handles or other accessible hardware must be provided on doors, so that they may be operated with a closed fist.

Please let me know if you have any questions.

Thanks!

-Bridget

From: Farrell, Anna [mailto:AFarrell@fitchburgma.gov]
Sent: Wednesday, March 06, 2019 1:26 PM
To: Murphy, Bridget Simmons (SEC); Murphy, Bridget Simmons (SEC)
Subject: FW: Rollstone Entrance

Bridget,

Please find attached a sketch of the proposed alteration to the entrance door at Rollstone Congregational Church. Please advise.

Thank you,
Anna

Thank you and please feel free to contact me with any questions or concerns.

Anna M. Farrell
City Clerk
166 Boulder Drive
Fitchburg MA 01420
Phone - 978-829-1820
Fax - 978-829-1964
afarrell@fitchburgma.gov
www.fitchburgma.gov

From: Paul Stansel [mailto:paul.mpssys@gmail.com]
Sent: Wednesday, March 06, 2019 1:17 PM
To: Farrell, Anna <AFarrell@fitchburgma.gov>
Subject: Rollstone Entrance

Anna,

Here are 2 pictures showing the concept of what we are proposing. Let me know if you have any questions.

Regards,

Paul

-------- Forwarded Message --------
Subject:RCC
Date:Wed, 6 Mar 2019 13:05:45 -0500
From:Paul Stansel <paul.mpssys@gmail.com>
To:paul.mpssys@gmail.com

Created with JotNot.
The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Elections Division

19 February 2019

Ms. Anna Farrell
City Clerk
168 Boulder Drive
Fitchburg, MA 01420

Dear Anna,

I am writing to follow-up on the polling location survey we conducted with Paul Stansel on Thursday, February 14, 2019. Specifically, we surveyed a possible new polling location at the Rollstone Congregational Church (Cookman Hall) located at 199 Main Street, to ensure compliance with the Polling Place Accessibility for Elderly and Handicapped Voters regulations, 950 C.M.R. § 51.00, et seq.

During the survey, we reviewed a number of issues, including site access, parking, entrance, and building interior at each location. After a thorough review of this proposed polling location, it appears it requires changes to be fully compliant with the regulations governing accessibility of polling places.

Please see the attached report indicating whether or not the location complies with 950 CMR § 51.00. The non-compliant specific deficiencies are identified. To help you understand the enclosed report, the following explains the column titles.

- **Municipality:** The city/town of the polling locations.
- **Polling Location:** The actual location of the polling place.
- **Ward:** The ward of the polling location.
- **Precinct(s):** The precinct(s) of the polling location.
- **Location Complies:** If yes, the polling location meets the requirements of 950 CMR § 51.00. If no, the polling location does not meet the requirements of 950 CMR § 51.00.
- **Violation Category:** Of this column has data, then the notes include information regarding the reason the polling location does not meet the requirements of 950 CMR § 51.00.

As we discussed, please provide this office with an action plan of how the city of Fitchburg intends to make the polling place accessible in accordance with 950 CMR § 51.00 et seq.

One Ashburton Place, 17th Floor, Boston, Massachusetts 02108
(617) 727-2828 • 1-800-462-VOTE (8683)
website: www.sec.state.ma.us/ele • e-mail: elections@sec.state.ma.us
2.

I hope you find this report helpful. If you have any questions, please let me know. I look forward to hearing back from you.

Thank you for all that you do to ensure voting is fully accessible in Fitchburg!

Sincerely,

[Signature]

Project Manager

Enc.

cc: Michelle Tassinari, Director/Legal Counsel, Elections Division, Office of the Secretary of the Commonwealth
    Jeffrey Dougan, Assistant Director for Community Services, Massachusetts Office on Disability
950 CMR: OFFICE OF THE SECRETARY OF THE COMMONWEALTH

950 CMR 51.00: POLLING PLACE ACCESSIBILITY FOR ELDERLY AND HANDICAPPED VOTERS

Section

51.01: Purpose
51.02: Accessibility Defined
51.03: Exemptions

51.01: Purpose

950 CMR 51.00 implements the federal Voting Accessibility for the Elderly and Handicapped Act, 42 U.S.C. §§ 1973ee to 1973ee-6 (the "Act"), and applies to all Massachusetts elections in which a federal office appears on the ballot. The purpose of 42 U.S.C. §§ 1973ee to 1973ee-6 and of 950 CMR 51.00 is to promote the fundamental right to vote by improving access for handicapped and elderly individuals to polling places for federal elections.

51.02: Accessibility Defined

Section 3(a) of the Act, 42 U.S.C. § 1973ee-1(a), requires every city and town to ensure that all polling places for federal elections are accessible to handicapped and elderly voters, unless the Secretary exempts them. A polling place is "accessible" to handicapped and elderly voters, for the purpose of sections 3(a) and 4(a), if all of the following requirements are met:

1. Site Access: A clear, reasonably flat, unobstructed path of travel must be provided from the designated spaces in the parking lot, and from the street, to the accessible entrance to the building where the polling place is located. Such path of travel shall have a continuous common surface, not interrupted by steps or abrupt changes in level greater than 1/8 inch.

2. Parking: If a parking lot is available on the premises of the polling place, then the following requirements apply:
   a. Pursuant to the Americans With Disabilities Act (ADA) Accessibility Guidelines (4.1.2.3), the number of required handicapped parking spaces is:

<table>
<thead>
<tr>
<th>Total no. of parking spaces</th>
<th>No. of handicapped required</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 - 20</td>
<td>1</td>
</tr>
<tr>
<td>26 - 50</td>
<td>2</td>
</tr>
<tr>
<td>51 - 75</td>
<td>3</td>
</tr>
<tr>
<td>76 - 100</td>
<td>4</td>
</tr>
<tr>
<td>101 - 150</td>
<td>5</td>
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<tr>
<td>151 - 200</td>
<td>6</td>
</tr>
<tr>
<td>201 - 300</td>
<td>7</td>
</tr>
<tr>
<td>301 - 400</td>
<td>8</td>
</tr>
<tr>
<td>401 - 500</td>
<td>9</td>
</tr>
<tr>
<td>510 - 1,000</td>
<td>2% of total</td>
</tr>
<tr>
<td>1,001 and over</td>
<td>20 plus 1 for each 100 over 1,000</td>
</tr>
</tbody>
</table>

   b. For parking lots striped prior to September 1, 1996:
      1. The handicapped parking spaces shall be eight feet wide and have an adjacent four-foot access aisle which is painted or strip yellow. The lot shall be reasonably flat.
      2. Identification of handicapped spaces shall be by a sign at each space or pair of spaces. The signs shall be at a height of not less than five feet nor more than eight feet in height of the sign. The sign shall also contain the International Symbol of Accessibility and may include wording identifying its use.

   c. For parking lots striped after September 1, 1996:
      1. The handicapped parking spaces shall be eight feet wide and have an adjacent five-foot access aisle which is marked by high contrast painted lines or other high contrast delineation. The lot shall be reasonably flat.

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51.02: continued

2. There shall be at least one "van accessible" space, but not less than one, per eight accessible spaces. The van accessible space shall be eight feet wide and have an adjacent 8 foot wide access aisle which is marked by high contrast painted lines or other high contrast delineation. The lot shall be reasonably flat.

3. Identification of handicapped spaces shall be by a sign at each space or pair of spaces. The signs shall be a height of not less than five feet nor more than eight feet from the top of the sign. The sign shall also contain the International Symbol of Accessibility and may include wording identifying its use. Van accessible spaces shall include the words "Van Accessible."

4. If a sidewalk is provided at each parking space, a curb cut (sidewalk ramp) shall be installed at each space or pair of spaces. The slope of the curb cut shall not exceed 1:12.

5. If no parking lot is available on the premises of the polling place, at least one no-street parking space in front of the polling place shall be at least temporarily designated as a handicap parking space. Identification of the handicap space shall be by the sign provided in 950 CMR 51.02(3)(a).

3: Entrance

(a) At least one entrance to the building must be accessible to physically disabled persons. If the main entrance to the building is not accessible, signs must be posted directing persons from the ordinary path of travel to the accessible entrance.

1. If the main entrance to the building is not accessible, the path of travel to the accessible entrance shall be the same or a substantially similar distance as the path of travel to the main entrance.

2. If the main entrance is not the accessible entrance, the door to the accessible entrance shall be unlocked and capable of being opened without assistance during the hours the polling place is open and at the same hours as the main entrance.

(b) The approach to the accessible entrance shall be a paved walk or ramp with a non-slip surface, uninterrupted by steps or abrupt changes in level greater than ½ inch. Such entrance shall have a level space 60 inches from the door on the interior and exterior of the doors.

(c) Doors to such entrance shall be a minimum of 33 inches clear, measured at 90°. No door threshold shall be higher than ½ inch above the floor on either side. Lever handles or other accessible hardware must be provided on doors, so that they may be operated with a closed fist.

4: Ramps

(a) If the entrance has stairs, a ramp must be provided. A permanent ramp must comply with the following:

1. The slope of the ramp must be no steeper than 1:12.

2. The width of the ramp shall not be less than 48 inches.

3. Two pairs of handrails must be set on both sides of the ramp. Such handrails must be round or oval in shape and set in pairs, one at a height between 34 and 38 inches and a lower rail set at a height between 18 and 20 inches.

(b) If it is impractical to install a permanent ramp, portable ramps shall be provided. Portable ramps shall have a slope as close to 1:12 as possible, and if a portable ramp has no handrails or side rails, it must have wheel guards at least two inches high on both sides. Portable ramps may be used to gain access from the parking lot or street to the sidewalk as well as at the entrance to a building. Portable ramps shall be securely anchored.

5: Building Interior

(a) All interior doors, approaches, and ramps necessary within the building to obtain access to the polling place must comply with 950 CMR 51.02(3) and (4).

(b) An accessible route which provides a continuous unobstructed path at least 36 inches wide shall be maintained inside the polling place and shall coincide with the route for the general public.

6: Voting Equipment

(a) In every polling place, a specimen ballot must be posted at a height no greater than 48 inches.

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51.02: continued

(b) Where paper or punch-card ballots are used, at least one marking stall at each polling place (at a primary where punch-card ballots are used, one for each party) must provide clear space under the stall not less than 30 inches wide, at least 27 inches clear to the underside of the shelf, and not more than 32 inches in height to the top of the shelf, and must contain privacy barriers on both sides of the stall. For this special marking stall, the handle of any stylus used for punching punch-card ballots shall be at least one inch thick and at least three inches long.

c) Where voting machines are used, a specimen ballot must be placed at least one machine at each polling place, at a height no greater than 48 inches. For voting machines which have any levers higher than 48 inches above the floor, a "reacher" must be made available to motor disabled persons in reaching the upper levers.

(7) Variances. A city or town may apply to the Architectural Access Board, under 521 CMR 3.00(4.1.1), for a variance from the accessibility requirements of 950 CMR 51.02 or, to the extent that they apply to any polling place, from the requirements of the Architectural Access Board's regulations in 521 CMR 3.00. Notice of an application for any such variance shall be given in the manner required by 950 CMR 51.01(4)(b), and shall also be given to the Director of Elections. No such variance shall be allowed which substantially impairs the accessibility of a polling place to handicapped and elderly voters.

(8) Time Accessibility Required. All non-exempt polling places must be accessible no later than three weeks before the first federal election of an even-numbered year.

51.03: Exemptions

(1) Delegation in Director of Elections. The Secretary delegates to the Director of Elections (the "Director") the authority to determine whether a polling place is exempt from the accessibility requirements under section 3(b) of the Act, 42 U.S.C. § 1973ee-1(b), and under 950 CMR 51.03.

(2) Emergency Exemptions. In emergencies under section 3(b)(1) of the Act, 42 U.S.C. § 1973ee-1(b)(1), an exemption may be applied for and determined by telephone, but both the city or town and the Director shall confirm their communications in writing. More failure of the city or town to make adequate and timely plans and arrangements does not constitute an emergency. If an exemption is allowed, it applies only to one election, and the city or town must exercise its best efforts to find another accessible polling place, and if none is available, to provide whatever assistance is possible to handicapped and elderly voters. If an emergency exemption is allowed, handicapped or elderly voters assigned to such an emergency exempt polling place may vote by absentee ballot in the office of the city or town clerk or election outstanding without applying in advance. The procedures set forth in section 29 paragraphs of M.G.L. c. 51, § 39 shall apply to such voters, except that the absentee ballot envelope shall be marked "Emergency Polling Place Exemption".

(3) Non-availability Exemptions. Standards. In determining under section 3(b)(2)(A) of the Act, 42 U.S.C. § 1973ee-1(b)(2)(A), that all potential places have been surveyed and that no accessible place is available, nor in the city or town able to make one temporarily accessible in the area involved, the Director shall consider the following factors:

a) Whether each location has been studied by a trained person to determine whether or not it is accessible.
   1. Polling places should not be presumed to be accessible simply because there are no obvious barriers, but 950 CMR 51.02 must be applied.
   2. A trained person is one with knowledge of what constitute structural barriers to handicapped individuals.
   3. Handicapped persons, representatives of handicap groups or professionals who work with handicapped individuals should be consulted.
   4. If a location is inaccessible, then the city or town should either seek an alternative accessible location or seek to have the barriers removed.

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(b) Whether the owners or proprietors of the building have been consulted regarding the modifications. If the owners or proprietors are unwilling to make the modifications, then an alternative location should be sought. Possible locations include those which are currently accessible and those where the owners or proprietors are willing to make necessary modifications.

(c) Whether an estimate of the cost to make the modifications has been obtained from a qualified person (construction contractor, carpenter), and whether different options for removing the barriers have been explored (e.g., temporary ramps).

(d) With respect to polling places in inaccessible government buildings, whether the city or town has urged government officials to make the modifications necessary for the buildings to be accessible.

(e) The record of the city or town's percentage of polling places in compliance in the past.

(f) The city or town's expressed plans for providing an accessible polling place in the future.

4) Non-availability Exemptions: Procedures.

(a) The city or town body responsible for selecting polling places under M.G.L. c. 54, § 24 (city council, board of selectmen, or election commission) must file application for any exemption under section 3(b)(3) of the Act, 42 U.S.C. § 1973ee-1(b)(2). The application must be filed with the Director of Elections, under the penalties of perjury, and in a form prescribed by him, not later than 180 days before the first federal election of an even-numbered year.

(b) Not later than the application deadline, the city or town must provide notice that it has applied for the exemption, by posting notice on the principal bulletin board, sending copies to all local media news, and mailing copies to the local council on aging, to any municipal, handicapped office or commission, to the state office of handicapped Affairs (One Ashburn Place, Room 1305, Boston, MA 02108), and to any additional organizations which the Director may prescribe. The notice shall state the designation and address of the polling place or places for which exemption is sought, the reason for the application. The exemption for which application may be inspected, and the fact that any person may file a written response within 30 days with the state Director of Elections, One Ashburn Place, Room 1705, Boston, MA. 02108, telephone (617) 727-2828 or (800) 462-8663.

(c) Any person may file with the Director a written response to an exemption application within 30 days after it is filed.

(d) The Director may, in his discretion, seek further information from the city or town or hold an informal hearing before himself or his designee.

(e) Not later than 90 days before the first federal election of an even-numbered year, the Director shall notify the city or town in writing whether an exemption is allowed and of the reasons for the decision. The period of an exception shall be two calendar years, beginning with an even-numbered year. Renewal of the exception requires a new application.

5) Alternative Voting Methods: As required by section 3(b)(2)(b) of the Act, 42 U.S.C. § 1973ee-1(b)(2), handicapped or elderly voters assigned to an exempt polling place may vote by absentee ballot, either by mail or in the office of the city or town clerk or election commission, if they previously apply in writing, under M.G.L. c. 54, §§ 86 through 103Q. Current state law prevents assigning such voters to another polling place, as well as “curbside voting” outside the polling place on election day.
Changes to Regulations: Chapter 51.00:
Polling Place Accessibility for Elderly and Handicapped Voters

In 950 CMR § 51.01, replace the entire section with the following:
950 CMR § 51.00 implements the federal Voting Accessibility for the Elderly and Handicapped Act, 42 USC §§ 1973ee to 1973ee-6 (the “Act”), and Amended Article 114 of the Massachusetts Constitution and applies to all Massachusetts elections. The purpose of 42 USC 42 USC §§ 1973ee to 1973ee-6, Amended Article 114 of the Massachusetts Constitution and 950 CMR § 51.00 is to promote the fundamental right to vote by improving access for handicapped and elderly individuals to polling places and the voting process.

In 950 CMR 51.02(6), add the following new section as (a) and re-designate the remaining sections accordingly:
(a) For every state, federal, municipal election, preliminary or primary, either regular or special, each polling place shall have at least one accessible voting unit that is usable by people with disabilities. Any accessible voting unit must first be approved for use by the state secretary. Accessible voting units shall be located within a polling place so as to be readily available for use by voters during the voting hours.
The following Petition was referred to a City Council Public Hearing May 21, 2019, and the Planning Board:

076-19. Fitchburg Planning Board, to amend the Fitchburg Zoning Ordinance by revising Section 181.87, Smart Growth Overlay District (SG) in its entirety and replacing it with a new Section 181.87.

The following Petition was referred to the Public Works Committee by vote of 10 in favor and 1 opposed (Squilla):

077-19. Councilor Paul Beauchemin, to request that the Department of Public Works submit annually on or about February 1st to the City Council a prioritized list of streets to be paved.

The following petitions were referred to the Public Safety Committee by vote of 10 in favor and 1 opposed (Squilla):

078-19. Councilor Ady Green, on behalf of Katherine Polis, 31 Second Street, to install a no parking sign at the intersection of Second Street & Middle Street.

079-19. Carlos Humberto Castano, CHC Auto Sales, to petition for a Class II Dealer’s License to be located at 426 River Street.

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APPLICATION FOR A LICENSE TO BUY, SELL, EXCHANGE OR ASSEMBLE SECOND HAND MOTOR VEHICLES OR PARTS THEREOF.

<table>
<thead>
<tr>
<th>Class</th>
<th>License No.</th>
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<tbody>
<tr>
<td>II</td>
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<table>
<thead>
<tr>
<th>Name</th>
<th>Carlos Humberto Castano</th>
</tr>
</thead>
<tbody>
<tr>
<td>St. and No.</td>
<td>dba CHC Auto Sales</td>
</tr>
<tr>
<td></td>
<td>426 River Street</td>
</tr>
<tr>
<td>City — Town</td>
<td>Fitchburg, MA 01420</td>
</tr>
</tbody>
</table>

Date Issued          In City Council March 19, 2019
Remarks               

The Public Safety Committee recommended: 
- The petition be: 
  - Granted,   Not be Granted,  

Committee Members:  

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THE COMMONWEALTH OF MASSACHUSETTS

City OF Fitchburg

APPLICATION FOR A LICENSE TO BUY, SELL, EXCHANGE,
OR ASSEMBLE SECOND HAND MOTOR VEHICLES
OR PARTS THEREOF

I, the undersigned, duly authorized by the concern herein mentioned, hereby apply for a . . . .
class license, to Buy, Sell, Exchange or Assemble second hand motor vehicles or parts thereof, in accordance with
the provisions of Chapter 140 of the General Laws.

1. What is the name of the concern? C&H Auto Sales

Business address of concern. No. 934 River St.,
Fitchburg. City — Town.

2. Is the above concern an individual, co-partnership, an association or a corporation?

3. If an individual, state full name and residential address.
Carla M. Bartosz
231 North St., Leominster, MA 01453

4. If a co-partnership, state full names and residential addresses of the persons composing it.

5. If an association or a corporation, state full names and residential addresses of the principal officers.
President
Secretary
Treasurer

If so, is your principal business the sale of new motor vehicles? . . .
Is your principal business the buying and selling of second hand motor vehicles? . . .
Is your principal business that of a motor vehicle junk dealer? . . .

FORM 53 A.M. BULIN CO.
7. Give a complete description of all the premises to be used for the purpose of carrying on the business. 
Office area, rest room, small lot, one service bay with a lift.

8. Are you a recognized agent of a motor vehicle manufacturer? [No] (Yes or No)
If so, state name of manufacturer

9. Have you a signed contract as required by Section 58, Class I? [No] (Yes or No)
10. Have you ever applied for a license to deal in second-hand motor vehicles or parts thereof? [Yes] (Yes or No)
If so, in what city — town 5704 MAIN ST., LEOMINSTER, MA 01453
Did you receive a license? [Yes] (Yes or No) For what year?
11. Has any license issued to you in Massachusetts or any other state to deal in motor vehicles or parts thereof ever been suspended or revoked? [No] (Yes or No)

Sign your name in full. (Duly authorized to represent the concerns hereinafter mentioned)

Residence 5704 MAIN ST., LEOMINSTER, MA 01453

IMPORTANT
EVERY QUESTION MUST BE ANSWERED WITH FULL INFORMATION, AND FALSE STATEMENTS HEREBIN MAY RESULT IN THE REJECTION OF YOUR APPLICATION OR THE SUBSEQUENT REVOCATION OF YOUR LICENSE IF ISSUED.

NOTE: If the applicant has not held a license in the year prior to this application, he must file a duplicate of the application with the registrar. (See Sec. 59)
CHAPTER 140 OF THE GENERAL LAWS, TER. ED., WITH AMENDMENTS THERETO (EXTRACT)

SECTION 37. No person, except one whose principal business is the manufacture and sale of new motor vehicles but who incidentally acquires and sells second hand vehicles, or a person whose principal business is financing the purchase of or insuring motor vehicles but who incidentally acquires and sells second hand vehicles, shall engage in the business of buying, selling, exchanging or assembling second hand motor vehicles or parts thereof without securing a license as provided in section fifty-nine. This section shall apply to any person engaged in the business of conducting auctions for the sale of motor vehicles.

SECTION 58. Licenses granted under the following section shall be classed as follows:

Class 1. Any person who is a recognized agent of a motor vehicle manufacturer or a seller of motor vehicles made by such manufacturer whose authority to sell the same is created by a written contract with such manufacturer or with some person authorized in writing by such manufacturer to enter into such contract, and whose principal business is the sale of new motor vehicles, the purchase and sale of second hand motor vehicles being incidental or secondary thereto, may be granted an agent's or a seller's license; provided, that with respect to second hand motor vehicles purchased for the purpose of sale or exchange and not tax is in trade for new motor vehicles, such dealer shall be subject to all provisions of this chapter and of rules and regulations made in accordance therewith applicable to holders of licenses of class 2.

Class 2. Any person whose principal business is the buying or selling of second hand motor vehicles may be granted a used car dealer's license.

Class 3. Any person whose principal business is the buying of second hand motor vehicles for the purpose of remolding, taking apart or rebuilding the same, or the buying or selling of parts of second hand motor vehicles or tires, or the assembling of second hand motor vehicle parts, may be granted a motor vehicle junk license.
City of Fitchburg
OFFICE OF THE TREASURER

166 Boulder Drive
Fitchburg, MA 01420

Anne M. Cervantes
Treasurer/Collector

Date: 1-8-19
Name: CHC Auto Sales
Parcel ID: New Business
Address: 426 River St

CERTIFICATE OF TAX COMPLIANCE

This document signed by the Treasurer certifies that as of the above date, that the above named Applicant is in compliance and in good standing with its tax obligations and fees payable under City code, including real estate, personal property and water and sewer fees and is not a delinquent taxpayer (longer than 12 months outstanding). This Certificate is issued in compliance with Part II, Article 3, Chapter 120, Section 22, Subsection (C) as amended by City Council. This Certificate is required for all original applications and renewal applications for any license or permit, other than those referred to in Section 120-24, and issued by any Department, Officer, Board, or Commission of the City but not limited to Building Permits, Zoning Board Appeals Applicants, Planning Board Applications, and Special Permits.

Very truly yours,

Anne M. Cervantes
Treasurer/Collector
City of Fitchburg
Carlos Castano  
570 North Main Street  
Leominster, MA 01453

Re: Form of Intent for 426 River Street Map 50 Block 25Lot 0

Dear Carlos Castano,

I have reviewed your 11/14/2018 form of intent to open an automotive dealership at 426 River Street Fitchburg, MA. The building is located in the Commercial & Automotive zoning district. Based on Table 181.313 of the Fitchburg Zoning Code a Motor vehicle and equipment sales is permitted by right in this district.

You will need to apply for the following permits/licenses:

1. Building permit from the building department.
2. Certificate of inspection from the building department.
3. Approved site plan review from the Planning Board.
4. A dealer license from the public safety committee

If you are aggrieved by a Zoning interpretation, order, requirement, direction or failure to act by the Building Commissioner you may file notice of appeal with the Zoning Appeals Board by 12/14/2018.

Don’t hesitate to call or email me with any questions. Phone 978-829-1880 email mbarbadoro@fitchburgma.gov.

Respectfully,

Mark Barbadoro  
Building Commissioner

City Hall, 166 Boulder Drive, Fitchburg, MA 01420 (978) 829-1880 Fax (978) 829-1963  
Page 1 of 1

The meeting adjourned at 8:55 P.M.

Anna M. Farrell, Clerk