



Fairhaven Board of Selectmen

October 22, 2018 Meeting Minutes

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FAIRHAVEN,
MASS.

Present: Chairman Daniel Freitas, Vice Chairman Charles Murphy, Clerk Robert Espindola, Town Administrator Mark Rees, and Administrative Assistant Vicki Paquette.

Chairman Freitas called the meeting to order in the Town Hall Banquet Room at 6:35 p.m. The meeting was recorded by Cable Access.

MINUTES

Mr. Murphy motioned to approve the minutes of the October 1, 2018 meeting, open session. Mr. Espindola seconded. Vote was unanimous. (3-0)

TOWN ADMINSTRATORS REPORT

- Mr. Rees told the Board that he has been busy preparing the warrant and finalizing the pay and classification for the Special Town Meeting
- Mr. Rees reported that the work on the Town Hall slate roof and the snow guards has been completed. The architect will follow up in the spring to ensure that the lawn has been repaired from the damage that was done from the lift. There were also 2 terra cotta finials that were found to be broken and in need of repair while the workers were working on the roof. At the Architects instructions, they have been removed for safe keeping, and Mr. Rees will seek CPC funding to restore them and put them back on Town Hall
- Mr. Rees stated that members of the Fairhaven Police Department attended a monthly meeting on October 17, 2018 for North Fairhaven Improvement Association (NFIA). Some of the issues they discussed were the speeding on the streets in North Fairhaven and the graffiti. The Police will use the 2 new radar signs to gather data regarding the speeding. Sergeant Daniel Dorgan has agreed to attend the monthly meetings to help keep the communication with NFIA and the Police Department open
- Mr. Rees and Human Resources Director, Anne O'Brien had a meeting with representatives from Cook and Company and Blue Cross Blue Shield to discuss changes to the Medex formulary for the retired subscribers
- Ms. O'Brien will be sending out letters to Unions for negotiations
- Mr. Rees and Ms. O'Brien will be finalizing interviews for a Conservation Agent/Sustainability Officer this week

- Mr. Rees will be working with the Southeastern Regional Planning and Economic Development District (SRPEDD) on completing the Green Communities Program application and he will be going to a seminar put on by the Massachusetts Municipal Association (MMA) regarding energy options available to municipalities

COMMITTEE LIAISON REPORTS

- Mr. Espindola and the Economic Development Committee met with the Mass Development and the PACE Program regarding grant funding opportunities
- Mr. Espindola attended a meeting for SRPEDD and encouraged residents to apply for the training sessions they are offering
- Mr. Espindola was pleased to announce that Channel 95 is up and running. There will be a Haunted Open House on October 25, 2018 sponsored by Cable Access. This is a free event for families
- Mr. Espindola reminded residents that October 27, 2018 is "National Take Back" day. This is a day for residents to safely dispose of unused prescriptions at the Fairhaven Police Department

PAY AND CLASSIFICATION PLAN FOR NON-UNION EMPLOYEES

Human Resources Director, Anne O'Brien, presented two options for the Pay and Classification plan for non-union employees to the Board. Mr. Rees explained that the pay and classification has been a long time goal of the Board of Selectmen. The preliminary Plan was first presented at the Annual Town Meeting on May 5, 2018. Per the personnel by-law Mr. Rees held a public hearing regarding the plan on Tuesday, October 6, 2018. Ms. O'Brien explained that she engaged with Human Resources Inc. in December of 2017. Meetings were held with Department Heads and there was research done to complete the plan. A salary analysis was completed and compared to peer communities. Research showed that for some positions Fairhaven was 5% - 45% lower. This new plan will create equal pay for equal work and bring the Town into compliance with equal pay laws. The old plan was a 20 level plan with 5 steps, under the new plan there is 22 levels with 9 Steps. Some positions were reclassified to reflect the changes in the levels. Ms. O'Brien explained the money has already been reserved from at the May 2017 Annual Town Meeting vote. Selectmen Murphy and Selectmen Espindola both feel this plan has been long overdue and are happy with the results. Both Selectmen thanked Ms. O'Brien for all her hard work. Chairman Freitas asked about the fairness of the report and wants to ensure that all town departments are treated the same including the Department of Public Works. He does feel that the plan is good and the employees deserve a raise. All three selectmen felt that option two was in the best interest of the Town and its employees. (Attachment A)

Fire Chief Tim Francis, Police Chief Mike Myers and BPW Assistant Superintendent, Rene Rouillard all thanked Ms. O'Brien and the Board of Selectmen for her hard work and are happy to see this plan finally go forward. Mr. Murphy made a motion to adopt the pay and classification plan as recommended by the Town Administrator. Mr. Espindola seconded. Vote was unanimous. (3-0)

WAIVER FROM PERSONNEL POLICY REGULATION

Mr. Rees explained to the Board that the Town's personnel policy has not been updated in several years. Under current personnel rules an employee starts to accrue sick time after the first month of employment but cannot use it until a 6-month probationary period ends. Ms. McPherson was in attendance to request a waiver to use her sick time. She is currently in her 6-month probationary period but due to an unforeseen illness has had to take a few days off. Her probationary period ends November 7, 2018. Mr. Murphy made a motion to grant a waiver to personnel rules to allow Ms. McPherson to use sick time before her probationary period ends. Mr. Espindola seconded. Vote was unanimous. (3-0)

EXEMPTION FROM STATE ETHICS REGULATIONS

Mr. Rees informed the Board that the CDBG grant position was advertised as a temporary part-time CDBG Administrative Assistant. Out of the applicants that applied Amanda Blais was the only qualified applicant. Because Ms. Blais works full time in the Health Office, Planning Director, McPherson is asking for the Board to grant an exception from the State Ethics law. Mr. Murphy made the motion to grant the exception from the State ethics law for Ms. Blais to hold 2 positions in the Town. Mr. Espindola seconded. Vote was unanimous. (3-0)

CDBG CONTRACT AWARDS

Planning Director, Gloria McPherson explained to the Board that the Community Development Block Grant (CDBG) process was started by the previous Planning Director Bill Roth. Mr. Roth had put out a Request for Proposal (RFP) for the grant. There was only one bid for the Consultant Award, Two applicants for the Engineering Services and eight for the Construction Contract.

Mr. Murphy made a motion to award the CDBG Consultant Contract to Breezeway Farms Consulting LLC with a price proposal not exceed \$45,750. Mr. Espindola seconded. Vote was unanimous. (3-0) (Attachment B)

Mr. Murphy made a motion to approve the CDBG Hedge Street Engineering Services Contract grant Award to GCG Associates, Inc. for the amount of \$65,000. Mr. Espindola seconded. Vote was unanimous. (3-0) (Attachment C)

Mr. Murphy made a motion to approve CDBG Reconstruction Contract grant award to P.A. Landers for the amount of \$630,685. Mr. Espindola seconded. Vote was unanimous. (3-0) (Attachment D)

GREEN COMMUNITIES APPLICATION

Mr. Rees explained to the Board the Green Communities application is to help reduce the energy cost in the Town. This fuel efficiency vehicle policy, states that the Town must purchase fuel efficient vehicles for municipal use whenever such vehicles are commercially available and practicable. (Attachment E)

Mr. Murphy made a motion to adopt the Fuel Efficiency Vehicle Policy. Mr. Espindola seconded. Vote was unanimous. (3-0)

Mr. Murphy made a motion to authorize the Town Administrator to approve the energy reduction plan consistent with the energy comprehensive report by Energy Source. Mr. Espindola seconded. Vote was unanimous. (3-0)

NOVEMBER 13, 2018 SPECIAL TOWN MEETING WARRANT

Mr. Rees passed out and read the most updated copy of the warrant for November's Special Town meeting. A group of citizens represented by residents Bernard Roderick and Doug Brady are requested to have Article 7 placed on the warrant by the Board of Selectmen. Mr. Brady feels their whole goal was to make the petition as legal as possible and to ensure that voters knew what they were signing to eliminate anyone challenging the article. By asking the Selectmen to place it on the warrant this would eliminate that issue. The Selectboard all feel that the group of citizens had done its due diligence and the article should stay as written. The petitioners should be the ones to defend the article on the Town Meeting floor.

Nils Isaksen inquired about Article 10 regarding the sale of Rogers School. Mr. Rees explained that Article 10 authorizes the Board of Selectmen to sell Rogers School for the terms and conditions that are in the best interest of the community.

Mr. Murphy made a motion to close the and sign the warrant as presented. Mr. Espindola seconded. Vote was unanimous. (3-0)

DISSOLUTION OF COMMITTEES

Mr. Rees updated the Board regarding three Town Committees that need to be formally dissolved. The Hastings Middle School Roof Committee and the Town Clerk Study Committee have both completed their tasks and no longer needed. The Marijuana Advisory Committee when first organized should have been set up as a staff advisory group and not as a committee.

Mr. Murphy made a motion to dissolve the Marijuana Advisory Committee, The Hastings Middle School Roof Committee and the Town Clerk Study Committee and thank you to those that served for your service. Mr. Espindola seconded. Vote was unanimous. (3-0)

ANNUAL SANTA SING A LONG

Mr. Rees read the application for use of the Town Hall submitted by the Fairhaven Improvement Association for the annual Santa sing-a-long on December 8, 2018

Mr. Murphy made a motion to approve the use of Town Hall on Saturday, December 8, 2018 from 5pm -9pm for the Fairhaven Improvement Associations annual Santa sing -a-long and to waive the rental fee but to keep the custodial fee. Mr. Espindola seconded. Vote was unanimous. (3-0)

VETERANS DAY PARADE

Chairman Freitas read a letter from the Veterans Day Parade Committee inviting the Selectmen to participate in the 13th annual Veterans Day Parade on Sunday, November 11, 2018. Mr. Murphy made a motion to approve the Veterans Day Parade. Mr. Espindola seconded. Vote was unanimous. (3-0)

ROGERS SCHOOL

Rogers School reuse committee members, Doug Brady, Nils Isaksen, Sue Loo and Beverly Rasmussen, were in attendance to meet with the Board of Selectmen to discuss the proposed sale of Rogers School. Ms. Loo explained that the committee has been waiting for Kelliher Architects to get back to them with their recommendations on Rogers School. The Board will hold off until the next meeting and meet with the developer and the consultant.

MARINE RESOURCES COMMITTEE LIASION

Chairman Freitas told the Board that he would be resigning as his role of Selectmen liason on the Marine Resources Committee. Selectmen will discuss who will fill this position at their next meeting.

NOVEMBER 13, 2018 SPECIAL TOWN MEETING RECOMMENDATIONS

The Board read the warrant for the November 13, 2018 Special Town Meeting Town Meeting. (Attachment F). Based on Mr. Rees' recommendations, the Board took the following votes:

- Mr. Murphy made a motion for adoption of Article 1: Funding for Repair of Ceiling in Assessors Office. Mr. Espindola seconded. Vote was unanimous. (3-0)
- Mr. Murphy made a motion for adoption of Article 2: Funding for Repair of Sewer Pipe at Fire/Police Station. Mr. Espindola seconded. Vote was unanimous. (3-0)
- Mr. Murphy made a motion for adoption of Article 3: Funding for Replacement of hand held meter readers. Mr. Espindola seconded. Vote was unanimous. (3-0)

- Mr. Murphy made a motion for adoption of Article 4: Additional funding for door restoration and handicap access project at the Academy Building. Mr. Espindola seconded. Vote was unanimous. (3-0)
- Mr. Murphy made a motion for adoption of Article 5: Amended FY19 General Fund Operating Budget. Mr. Espindola seconded. Vote was unanimous. (3-0)
- Mr. Murphy made a motion for adoption of Article 6: Amended FY19 Sewer Enterprise Fund Operating Budget. Mr. Espindola seconded. Vote was unanimous. (3-0)
- Mr. Murphy made a motion for adoption of Article 7: Bills of Prior year. Mr. Espindola seconded. Vote was unanimous. (3-0)
- Mr. Murphy made a motion to yield to petitioner of Article 8: Temporary Moratorium on Sale and Distribution of Adult Use of Marijuana. Mr. Espindola seconded. Vote was unanimous. (3-0)
- Mr. Murphy made a motion to recommend at Special Town Meeting Article 9: Zoning Bylaw Amendment: Consolidated Marijuana Zoning. Mr. Espindola seconded. Vote was unanimous. (3-0)
- Mr. Murphy made a motion to recommend at Special Town Meeting Article 10: Sale of Rogers School. Mr. Espindola seconded. Vote was unanimous. (3-0)
- Mr. Murphy made a motion to recommend at Special Town Meeting Article 11: Rezoning of Rogers School. Mr. Espindola seconded. Vote was unanimous. (3-0)
- Mr. Murphy made a motion for adoption of Article 12: Authorization to settle claim against the Town – Robert D. Hobson. Mr. Espindola seconded. Vote was unanimous. (3-0)
- Mr. Murphy made a motion to recommend at Special Town Meeting Article 13: Petition State Legislature to change the Package store/All Alcohol License issued to Total Confections, LLC, 115 Huttleston Ave. Mr. Espindola seconded. Vote was unanimous. (3-0)
- Mr. Murphy made a motion to recommend at Special Town Meeting Article 14: Street Acceptance: Doane Court. Mr. Espindola seconded. Vote was unanimous. (3-0)
- Mr. Murphy made a motion to recommend at Special Town Meeting Article 15: Street Acceptance: Reynolds Drive. Mr. Espindola seconded. Vote was unanimous. (3-0)

SRPEDD WORKSHOPS

Mr. Espindola reminded residents that SRPEDD is offering workshops to citizens interested in land-use and development issues in their communities. The information has been posted onto the Town's Website.

TEMPORARY SIGNS

Chairman Freitas read a press release reminding residents to remove temporary yard sale and advertising signs from telephone poles and trees immediately after your scheduled event is completed with accordance to Fairhaven Town By-law 198-26 Section 3c. (Attachment G)

OTHER BUSINESS

- Mr. Espindola announced that Selectman Murphy has been nominated for a Leadership Southcoast Award. He will attend the Graduation along with Mr. Murphy
- Mr. Espindola reminded the Board that on Veterans Day residents are encouraged to ring bells for the Bells of Remembrance. The information will be made available onto the Town Webpage for those who are interested in participating
- Mr. Murphy told the Board that Mr. Espindola has been nominated for the Distinguished Alumni Award for the Leadership Southcoast program
- Mr. Murphy wished the Boston Red Sox good luck as they head to the World Series

At 8:07 pm Mr. Murphy made a motion to adjourn. Mr. Espindola seconded. Vote was unanimous. (3-0)

Respectfully Submitted,

Vicki L. Paquette

Vicki Paquette
Administrative Assistant
(Approved 11/05/2018)

Documents appended:

- A: Pay and Classification Cost-out Memorandum and Budgeted Salaries**
- B: CDBG Consultant Contract**
- C: CDBG Hedge Street Engineering Services Contract**
- D: CDBG Reconstruction Contract**
- E: Fuel Efficiency Policy**
- F: November 13, 2018 Special Town Meeting Warrant**
- G: Temporary Signs Press Release**

Attachment A



Town of Fairhaven
Massachusetts
Human Resources Office
40 Center Street
Fairhaven, MA 02719

Tel: (508) 979-4023
Fax: (508) 979-4079
HR@Fairhaven-MA.gov

MEMO

Date: October 12, 2018

From: Mark Rees, Town Administrator
Anne O'Brien, Human Resources Director

To: Board of Selectmen

Cc: Finance Committee

Re: Pay and Classification Cost-out

The Town has received the final report of HRS Consulting for the pay and classification study of non-union employees which we distributed to you electronically on October 10. At their October 11, 2018 meeting, the Finance Committee received a copy of this final report, with the recommendations for the creation of a new non-union, nine-step pay scale, and the classification of positions within that scale.

With the final report complete, administration must now use that information to place employees in their new, respective grades. Per the consultant's report, two different methods of placement were calculated: one that places the employee closest to his/her current rate of pay without consideration for their length of service to the Town, and another method, which places the employee at their current rate of pay, with one step increase for each five (5) continuous years of service to the Town.

Attached to this memo, please find a spreadsheet, that shows the budgeted salary per position for FY19. This sheet shows the transfer needed from the salary reserve (\$150,000) to reclassify employees pursuant to our consultant's recommendations in two scenarios:

- Option 1 – no consideration for longevity (transfer \$65,236.77)
- Option 2 – longevity placement (transfer \$116,627.66)

Based on the results of this study, and feedback we have received from department heads, we recommend Option 2. According to the results of this study, Fairhaven salaries and pay ranges have lagged behind comparable communities for several years. This makes it difficult to hire and retain qualified employees. Most recently, the Town had to extend a deadline and reclassify the position of Building Commissioner/Zoning Enforcement Officer, because the pay grade was so out of line with peer communities that the Town did not receive a pool of qualified candidates. After the reclassification, and after the position was re-advertised showing the new rate, there were several highly qualified candidates. Option 2 is also consistent with recent Board of Public Works personnel decisions regarding their non-union employees.

By accepting Option 2, we can bring our employees in line with their peers, and improve employee retention. Also layered into this plan is the ability to base annual step increases on an employee review process, instead of automatic anniversary step increases. This will allow management to motivate and monitor our employee's successes. Option 2 still falls well below the salary reserve of \$150,000.

At the Town Administrator's October 16 public hearing for this plan, the Fire Department requested that the scale for call firefighters be structured to consider rank and certification. Also, the Recreation Director requested a slight modification to the job title of "Adult Program Supervisor", revising it to "Recreation Supervisor". These comments will be taken into consideration when Mr. Rees compiles his recommended plan based on the report. BPW employees (Administrative Assistant and Assistant Sewer Superintendent) were added back into the plan on the recommendation of Town Counsel.

Thank you for your time and thoughtful consideration of this plan.

FY19	Department/Position	Budgeted FY19 (salary only)	New FY19 Request (Option 1)	New FY19 Request (Option 2)	Difference with Option 1	Difference with Option 2
	GENERAL FUND					
	SELECTMEN/TOWN ADMINISTRATOR					
	Assistant to the Town Administrator	56,413.92	58,401.36	59,862.96	(1,987.44)	(3,449.04)
	S/T	56,413.92	58,401.36	59,862.96	(1,987.44)	(3,449.04)
	HUMAN RESOURCES					
	Human Resources Director	69,027.84	74,687.76	76,546.08	(5,659.92)	(7,518.24)
	S/T	69,027.84	74,687.76	76,546.08	(5,659.92)	(7,518.24)
	TOWN ACCOUNTANT					
	Town Accountant	89,637.84	90,431.28	97,384.32	(793.44)	(7,746.48)
	Accounts Payable II	9,439.85	9,669.53	9,669.53	(229.68)	(229.68)
	Accounts Payable I	19,250.84	19,597.97	20,589.77	(347.13)	(1,338.93)
	S/T	118,328.53	119,698.78	127,643.62	(1,370.25)	(9,315.09)
	FINANCE DIRECTOR (TREASURER/COLLECTOR)					
	Finance Director/Treasurer/Collector	108,492.48	108,763.92	111,478.30	(271.44)	(2,985.82)
	S/T	108,492.48	108,763.92	111,478.30	(271.44)	(2,985.82)
	ASSESSORS					
	Principal Assessor	64,686.24	74,687.76	76,546.08	(10,001.52)	(11,859.84)
	S/T	64,686.24	74,687.76	76,546.08	(10,001.52)	(11,859.84)
	TOWN HALL					
	Town Hall Custodian (partial year)	27,047.50	27,931.00	27,931.00	(883.50)	(883.50)
	S/T	27,047.50	27,931.00	27,931.00	(883.50)	(883.50)
	PLANNING AND ECONOMIC DEVELOPMENT					
	Director of Planning and Economic Development	82,914.48	83,958.48	83,958.48	(1,044.00)	(1,044.00)
	Administrative Assistant	22,970.09	23,158.53	23,158.53	(188.44)	(188.44)
	Recording Secretary (shared-ZBA and ConCom)	3,264.00	3,305.22	3,305.22	(41.22)	(41.22)
	S/T	109,148.57	110,422.23	110,422.23	(1,273.66)	(1,273.66)
	BOARD OF APPEALS					
	Recording Secretary (shared - Planning and ConCom)	2,623.44	2,672.30	2,672.30	(48.86)	(48.86)
	S/T	2,623.44	2,672.30	2,672.30	(48.86)	(48.86)
	CONSERVATION COMM/SUSTAINABILITY					
	Conservation Agent/Sustainability Coordinator	42,459.20	45,464.80	45,464.80	(3,005.60)	(3,005.60)

	Recording Secretary (shared - Planning and ZBA)	1,049.58	1,054.86	1,054.86	(5.28)	(5.28)
	S/T	43,508.78	46,519.66	46,519.66	(3,010.88)	(3,010.88)
	POLICE DEPARTMENT & Animal Control					
	Animal Control Officer	38,586.24	46,082.16	46,082.16	(7,495.92)	(7,495.92)
	Assistant Animal Control Officer	12,149.55	12,209.06	12,209.06	(59.51)	(59.51)
	Executive Assistant	54,267.12	54,434.16	60,071.76	(167.04)	(5,804.64)
	S/T	105,002.91	112,725.38	118,362.98	(7,722.47)	(13,360.07)
	FIRE DEPARTMENT					
	Executive Assistant	54,267.12	54,434.16	60,071.76	(167.04)	(5,804.64)
	Fire Alarm Coordinator	12,498.77	12,498.77	14,148.29	-	(1,649.52)
	Fire Alarm Technician	7,157.66	10,648.80	10,648.80	(3,491.14)	(3,491.14)
	Call Firefighters	42,452.40	48,904.00	48,904.00	(6,451.60)	(6,451.60)
	S/T	116,375.95	126,485.73	133,772.85	(10,109.78)	(17,396.90)
	BUILDING DEPARTMENT					
	Assistant Building Commissioner (332 inspections)	9,528.40	9,757.48	9,757.48	(229.08)	(229.08)
	Wiring Inspector (762 inspections)	21,869.40	22,395.18	23,522.94	(525.78)	(1,653.54)
	Gas Inspector (359 inspections)	10,303.30	10,551.01	11,358.76	(247.71)	(1,055.46)
	Plumbing Inspector (359 inspections)	10,303.30	10,551.01	10,082.33	(247.71)	220.97
	S/T	52,004.40	53,254.68	54,721.51	(1,250.28)	(2,717.11)
	MARINE RESOURCES					
	Harbormaster/Shellfish Warden	68,528.16	69,801.84	73,351.44	(1,273.68)	(4,823.28)
	Deputies (5% increase on average)	25,706.04	26,462.10	26,462.10	(756.06)	(756.06)
	S/T	94,234.20	96,263.94	99,813.54	(2,029.74)	(5,579.34)
	BPW ADMINISTRATION					
	Administrative Assistant to the BPW	54,747.36	56,981.52	58,401.36	(2,234.16)	(3,654.00)
	S/T	54,747.36	56,981.52	58,401.36	(2,234.16)	(3,654.00)
	TREE WARDEN DEPARTMENT					
	Tree Laborers	30,870.00	32,104.80	32,104.80	(1,234.80)	(1,234.80)
	S/T	30,870.00	32,104.80	32,104.80	(1,234.80)	(1,234.80)
	HEALTH AND HUMAN SERVICES					
	Health Agent	72,620.64	73,351.44	73,351.44	(730.80)	(730.80)
	Health Inspector	21,206.77	25,641.68	25,641.68	(4,434.91)	(4,434.91)
	S/T	93,827.41	98,993.12	98,993.12	(5,165.71)	(5,165.71)
	COUNCIL ON AGING					

	COA Director	57,503.52	60,969.60	62,493.84	(3,466.08)	(4,990.32)
	Custodian	31,534.02	32,922.54	36,339.03	(1,388.52)	(4,805.01)
	S/T	89,037.54	93,892.14	98,832.87	(4,854.60)	(9,795.33)
	RECREATION					
	Recreation Director	57,503.52	60,969.60	64,059.84	(3,466.08)	(6,556.32)
	Programs Coordinator	40,528.08	43,075.44	46,395.36	(2,547.36)	(5,867.28)
	Custodian	12,441.87	14,109.66	14,462.01	(1,667.79)	(2,020.14)
	S/T	110,473.47	118,154.70	124,917.21	(7,681.23)	(14,443.74)
	OFFICE OF TOURISM					
	Tourism Director	54,267.12	56,981.52	62,890.56	(2,714.40)	(8,623.44)
	S/T	54,267.12	56,981.52	62,890.56	(2,714.40)	(8,623.44)
	TOTAL	1,400,117.66	1,469,622.30	1,522,433.03	(69,504.64)	(122,315.37)
	SEWER ENTERPRISE					
	SEWER DEPARTMENT	(from Sewer Retained Earnings)				
	Assistant Sewer Superintendent	72,620.64	73,789.92	79,469.28	(1,169.28)	(6,848.64)
	S/T	72,620.64	73,789.92	79,469.28	(1,169.28)	(6,848.64)

Attachment B

PROPOSED CONTRACT

THIS AGREEMENT, was made as of the 22nd day of September, 2018 by and between the TOWN of Fairhaven, Massachusetts (hereinafter referred to as the TOWN) and Breezeway Farm Consulting, Inc. (hereinafter referred to as the CONSULTANT.)

WHEREAS, the TOWN of FAIRHAVEN, 40 Center Street, Fairhaven, MA 02719, has entered into an agreement with the Commonwealth of Massachusetts' Department of Housing and Community Development (hereinafter referred to as "DHCD"), Massachusetts Community Development Block Grant Program CDFA #14-228 (hereinafter Mass. "CDBG") to undertake the following project: Hedge Street Reconstruction Project, pursuant to the Housing and Community Development Act of 1974 (hereinafter "Act"), as amended, and regulations hereunder, and

WHEREAS, professional services relating to the implementation and administration of the Program are sought to assist the TOWN in the timely achievement of its Mass. CDBG Grant Program objectives,

NOW, THEREFORE, THE PARTIES HERETO DO AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONSULTANT:** The TOWN hereby engages the CONSULTANT to perform the services set forth herein and the CONSULTANT hereby accepts the engagement.
2. **SCOPE OF SERVICES:** The CONSULTANT shall perform the services as described in the document "Specifications for Services", which is attached hereto as Attachment A.
3. **RESPONSIBILITY OF THE TOWN:** The TOWN shall assume responsibility for assisting the CONSULTANT insofar as possible for the purpose of efficiency and furnishing the CONSULTANT with information needed to satisfactorily complete the services.
 - 3.1 The TOWN shall designate a project representative authorized to act as liaison with respect to the project. The TOWN'S representative is Mr. Gloria McPherson, Planning Director, (508) 979-4082, Ext. 122.
4. **REPORTING:** The CONSULTANT will submit written reports to the TOWN on the status of the professional services, according to the schedule and dates specified in the Request for Proposals, or at other times as required by an information request or reporting requirement of Mass. CDBG or contained in the application.
5. **SUBCONTRACTS:** No subcontracts may be awarded by the CONSULTANT the purpose of which is to fulfill in whole or in part the services required of the CONSULTANT, without prior written approval of the TOWN and the Department of Housing and Community Development.
6. **TIME OF PERFORMANCE:** The services of the CONSULTANT are to commence on or about September 30, 2018, and shall be undertaken and completed in sequence as to assure

their expeditious completion.

- 6.1 All services required hereunder shall be completed by no later than January 31, 2018 but completion is expected to be sooner.
7. **COMPENSATION:** The TOWN will pay the CONSULTANT a Grant Administration fee of \$ 44,750, and general expenses not to exceed \$ 1,000 for a total fee and general expenses in the amount not to exceed (\$45,750). The Schedule of Payments is attached hereto as Attachment B.
8. **GENERAL PROVISIONS:**
 - 8.1 **RETENTION OF RECORDS:** The CONSULTANT SHALL MAINTAIN IN ACCORDANCE WITH 24 CFR Part 85, and any Mass. CDBG regulations, procedures or guidelines, those books, records, and other documents, including but not limited to payroll records, and purchase orders that are sufficient to document that activities carried out were in accordance with this Agreement, and the primary objectives of the Act, and any other applicable laws and regulations. Such records shall contain all information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, liabilities, outlays and income. The CONSULTANT shall maintain such records for a period of seven (7) years from the date of expiration of this Agreement, or if such records become the subject of audit findings, they shall be retained until such findings have been resolved, whichever is later.
 - 8.2 **ACCESS TO RECORDS:** The CONSULTANT shall make all books, accounts, records, reports, files, and other papers, things or property, that relate to its activities under this Agreement, available at all reasonable times for inspection, review, and audit by the TOWN, the Mass. CDBG, their authorized representatives, authorized representatives of HUD, the Inspector General of the United States, or of the Commonwealth, the Auditor of the Commonwealth, and the Attorney General of the United States, or of the Commonwealth reserves the right of the Governor or his designee, the Secretary of Administration and Finance, and the State Auditor and his designee, at reasonable times and upon reasonable notice, to examine the books, records, and other comparative data of the CONSULTANT which pertain to the performance of the revisions and requirements of this Agreements, as provided by Executive Order 195.
 - 8.3 **TERMINATION:** The TOWN may terminate the contract, for cause, upon 15 days written notice to the CONSULTANT. In case of termination, all finished and unfinished documents shall become the property of the TOWN.
 - 8.3.1 In the event of termination, the CONSULTANT will be compensated for services provided to the date of termination.
 - 8.4 **AMENDMENTS:** This Agreement may be amended provided such amendment is in writing by the signatories hereto, and receives approval from Mass. CDBG prior to its

effective date.

- 8.5 **NON-DISCRIMINATION:** The CONSULTANT shall adhere to the requirements set forth in Title VI of the Civil Rights Act of 1964 (public Law 88-352), and the regulations issued pursuant thereto by HUD; Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), as amended; section 109 of the Housing and Community Development Act of 1974, and the HUD regulations issued pursuant thereto (24 CFR 570.601); Federal Executive Order 11063, as amended by Executive Order 12259 and the HUD regulations issued pursuant thereto (24 CFR 107); The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Section 402 of the Veterans of Vietnam Era Act (for project of \$10,000 or more); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Massachusetts General Laws Chapter 151B Section 1 et seq.; State Executive Order 74, as amended and revised by Executive Orders 116, 113 and 227; and Mass. CDBG regulations, procedures or guidelines.
- 8.5.1 The CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, gender, age, ancestry, handicap, veteran's status, sexual orientation, sexual identity and any other legally recognized protected class. The CONSULTANT shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment without regard to their race, color, religious creed, national origin, gender, age, ancestry, handicap, veteran's status, sexual orientation, sexual identity and any other legally recognized protected class.. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. The CONSULTANT shall state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, national origin, gender, age, ancestry, handicap, veteran's status, sexual orientation, sexual identity and any other legally recognized protected class.
- 8.6 **PROCUREMENT STANDARDS:** The CONSULTANT shall adhere to the requirements set forth in 24 CFR 85.36 and Mass. CDBG regulations, procedures, and guidelines with respect to standards governing procurement, and any applicable provisions of State laws and regulations relative thereto, including Chapter 30, section 39 M; Chapter 149, section 44A through 44J; Chapter 484 of the Acts of 1984; the Massachusetts Modular Construction Statute, and Chapter 30B. All procurement transactions without regard to dollar value shall be conducted in a manner that provides maximum free and open competition. It is national and state policy that the recipient takes affirmative steps to award a fair share of contracts taken to assure that small, minority, and women-owned businesses are utilized when possible as sources of supplies, equipment, construction and services. The SUBRECIPIENT shall maintain records sufficient to detail the process for procurement.

- 8.7 **EMPLOYMENT OPPORTUNITIES:** Where applicable, the CONSULTANT shall comply with provisions of Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 1701u) and the HUD regulations issued pursuant thereto (24 U.S.C. 135), which shall serve as guidance for the implementation of said section.
- 8.8 **FAIR HOUSING:** In addition to the laws and regulations set forth herein with respect to ensuring fair housing opportunities, the CONSULTANT shall adhere to the provisions of State Executive Orders 215 and 227.
- 8.9 **LABOR STANDARDS:** Where applicable, the CONSULTANT shall adhere to the provisions of Section 110 of the Act and the Massachusetts General Laws Chapter 149 sections 26 to 27D inclusive (as amended by Chapter 484 of the Acts of 1984). In the case of rehabilitation of commercial property, or rehabilitation of residential property designed for residential use of eight or more families, the CONSULTANT shall adhere to the Federal Labor Standards Provisions (HUD Handbook 1344.1), the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and the Copeland Anti-Kickback Act.
- 8.10 **CONFLICT OF INTEREST:** The CONSULTANT shall adhere to the mandates of the Massachusetts Conflict of Interest Statute, M.G.L. c.268A, the federal Conflict of Interest Provisions at 24 CFR 570.489 and the federal Hatch Act, 5 U.S.C. ss 1501 et seq.
- 8.11 **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS, AND Mass. CDBG REGULATIONS, PROCEDURES, AND GUIDELINES:** All activities authorized by this agreement shall be subject to and performed in accordance with the provisions of the TOWN Grant Agreement with Mass. CDBG and all its attachments (including, where relevant, Section 4.14, Flood Disaster Protect, 4.15, Historic Preservation, 4.16, Additional Environmental Requirements, 4.17, Lead Paint Hazards, and 4.18 Relocation Assistance), all applicable federal, state, and local laws and regulations, including but not limited to any applicable regulations issued by HUD published in 24 CFR Part 570, as amended from time to time, OMB Circular A-133 Audits of State, Local, and Non-profit Organizations; OMB Circular A-87 Cost Principles of State and Local Government; 24 CFR Part 85 Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Government (including where relevant Subpart B and C-85.20 through 85.22; 85.25; 85.30 through 85.37), all applicable State and Local laws and regulations, including but not limited to those specifically stated herein, any additional regulations, procedures or guidelines as may be established or amended by DHCD.
9. **AVAILABILITY OF FUNDS:** The compensation provided by this agreement is subject to the continued availability of federal funds for the CDBG Program, and to the continued eligibility of the Commonwealth and the TOWN to receive such funds.
10. **INDEMINIFICATION:** The CONSULTANT shall indemnify, defend, and hold the TOWN harmless from and against any and all claims, demand, liabilities, actions, causes of actions, cost and expenses caused by or arising out of the CONSULTANT'S breach or performance

or failure to perform this agreement or the negligence or misconduct caused by the CONSULTANT, or the agents or employees.

11. **INSURANCE:** The CONSULTANT shall at all times during the Contract, maintain in full force and effect: Employer's Liability, Workers' Compensation, Professional Liability Insurance, including contractual liability coverage for the provisions of the Indemnification Section. All insurance shall be by insurers and for policy limits acceptable to TOWN, and before commencement of work here under the CONSULTANT agrees to provide the TOWN with certificates of insurance or other evidence satisfactory to the TOWN to the effect that such insurance has been procured and is in force. The certificates shall contain the following express obligation:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation of material change in a policy affecting the certificate holder, thirty (30) days prior written notice will be given the certificate holder."

For the purpose of the Contract, the CONSULTANT shall carry the following types of insurance in at least the limits specified below:

COVERAGE	LIMITS OF LIABILITY
Workers' Compensation Employers' Liability	\$1,000,000
General Liability	\$1,000,000 each occurrence
Automobile Liability	\$1,000,000 each occurrence

The TOWN shall be named as an additional insured under the liability and automobile insurance. The general liability insurance policy should contain a broad form general liability endorsement.

12. **LICENSES:** The CONSULTANT shall procure and keep current any licenses, certifications, or permits required for any activity to undertake as part of the Scope of Services, Attachment A, as required by federal, state, or local laws or regulations, and shall comply with the provisions of 24 CFR Part 85.36 with respect to any bonding or other insurance requirements.
13. **CONFIDENTIALITY:** The CONSULTANT will protect the privacy of, and respect the confidentiality of information provided by, program participants, consistent with applicable federal and state regulations, including M.G.L., C. 66 section 10, regarding access to public to public records.
14. **COPYRIGHT:** No material prepared in whole or in part under this agreement shall be subject to copyright in the United States of America or in any other country except with the prior written approval of Mass. CDBG.

15. **CLOSEOUT:** The CONSULTANT shall follow such policies and procedures with respect to close-out of any associated grant as may be required by Mass. CDBG.
16. The following Certificate of Tax Compliance, Certificate of Non-Collusion, Certification of Drug-Free Workplace, and EO 481 must be completed and submitted as part of this contract.
17. **SEVERABILITY:** If any provision of this agreement is held invalid, the remainder of the agreement shall not be affected thereby, and all other parts of this agreement shall nevertheless be in full force and effect.
18. Incorporated in this contract is the Grant Application for this project that details the administrative responsibilities of the consultant and the Town.
19. **GOVERNING LAW** This Agreement is to be governed by the laws of the Commonwealth of Massachusetts.
20. **DISPUTE RESOLUTION** All disputes arising under this Agreement shall be resolved through Arbitration subject to the following:
 - a. In the event the CONSULTANT intends to bring a claim under this Agreement, the CONSULTANT shall notify the TOWN in writing of its intent to Arbitrate. The TOWN may, within 30 days from receipt of such notice, give notice to the Consultant that it rejects arbitration. In the event the TOWN rejects arbitration, and the CONSULTANT intends to pursue its claim, the CONSULTANT shall bring suit in the Trial Court for Bristol County, Massachusetts.
 - b. In the event the TOWN intends to bring a claim under this Agreement, the TOWN may elect to either arbitrate the claim or bring its claim directly in the Trial Court for Bristol County, Massachusetts.
 - c. Unless otherwise agreed in writing by the parties, all arbitration hearings shall be held in Fairhaven and shall be governed by the rules of the "American Arbitration Association."
21. **DEBARMENT:** The contractor hereby certifies that they are not on the list of debarred contractors maintained by HUD, nor are they debarred from doing business in Massachusetts.
22. **REGISTRATION OF FOREIGN CORPORATION:** The Contractor hereby certifies that it meets the registration requirements for foreign corporations, under M.G.L. c. 30, §39L, specifically Northern Ireland or other prohibited nations as detailed by M.G.L., as amended.
23. **DRUG FREE WORKPLACE:** The contractor by their signature certifies that it has a drug free workplace and policy.

24. CERTIFICATION OF NON-SEGREGATED FACILITIES: The contractor by their signature asserts that they have a non-segregated workplace.

25. ATTACHMENTS: The following are attached and are an integral part of this contract:

- The firm's proposal to the Town and the Town, CDBG Application
- Attachment A - Scope of Services
- Attachment B - Proposed Fee Schedule
- Attachment C - Certifications
- Attachment D - HUD Financial Disclosure Form
- Attachment E - EO 481
- Attachment F - Company's Drug Free Policy
- Attachment G - Insurance Documents provided by the CONSULTANT pursuant to paragraph 11.

IN WITNESS THEREOF, the TOWN and the CONSULTANT have executed this Agreement under seal in triplicate as of the date above written.

For the TOWN:

By: [Signature]

Daniel Freitas
Chairman, Board of Selectman

Date: 10/22/18

By: [Signature]

Robert J. Espindola, Selectman

Date: 10/22/18

By: [Signature] Sr.

, Charles K. Murphy, Sr., Selectman

Date: 10/22/18

The CONSULTANT:

By: _____

Date: _____

Title: _____

Address: _____

Attest to the Availability of Funds:

By: _____

Date: _____

Title: Anne Carreiro, Town Accountant

Attest to the Procurement Method:

By: _____

Date: _____

Title: Mark Rees, Town Procurement Officer

Attest to the Contract as to Form:

By: _____

Date: _____

Title: Thomas P. Crotty, Town Attorney

Attachment C

PROPOSED AGREEMENT

BY AND BETWEEN

TOWN OF FAIRHAVEN

AND

GCG ASSOCIATES, INC.

THIS AGREEMENT, was made as of the ____22nd____ day of October 2018 by and between the Town of Fairhaven Massachusetts (hereinafter referred as the TOWN), having a usual place of business at Municipal Building, 40 Center Street, Fairhaven, MA 02719 and **GCG Associates, Inc.** hereinafter referred to as the CONSULTANT), having a usual place of business at 184 Main Street, Wilmington, MA 01887.

WITNESSETH THAT:

WHEREAS, the Town of Fairhaven has entered into an agreement with the Commonwealth of Massachusetts' Department of Housing and Community Development (hereinafter "DHCD"), Massachusetts Community Development Block Grant Program (hereinafter "Mass. CDBG"), CDFA #14-228, to undertake a community development program of public infrastructure improvements to Hedge Street in Fairhaven (hereinafter "Program") pursuant to the Housing and Community Development Act of 1974 (hereinafter "Act"), as amended, and regulations thereunder, and

WHEREAS, professional services relating to the implementation and administration of the Program are sought to assist the TOWN in the timely achievement of its Mass. CDBG FY17 Grant Program objectives, and

WHEREAS the Consultant has presented itself as qualified and capable to perform the required services for said assignment and is willing to accept and perform said assignment; and

NOW, THEREFORE, THE PARTIES HERETO DO AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONSULTANT:** The TOWN hereby engages the CONSULTANT to perform the services set forth herein and the CONSULTANT hereby accepts the engagement. The CONSULTANT represents that he has made and will make reasonable investigation of all employees, subcontractors and other parties to be utilized in the performance of work under this Contract to determine that they possess the skill, knowledge and experience necessary to enable them to properly perform the services required. Nothing in this Contract shall relieve the CONSULTANT of his prime and sole responsibility for the proper performance of the work under this Contract and the CONSULTANT shall remain liable for all work performed by itself or any subcontractor or other person performing services under the authority of the CONSULTANT. The CONSULTANT shall only employ and permit employees and others who are competent to perform the work.
2. **SCOPE OF SERVICES:** The CONSULTANT shall perform the necessary services as described in the approved proposal to the TOWN which is incorporated by reference herein as Attachment A.
3. **RESPONSIBILITY OF THE TOWN:** The TOWN shall assume responsibility for assisting the CONSULTANT insofar as possible for the purpose of efficiency and furnishing the CONSULTANT with information needed to satisfactorily complete the services.

3.1 The TOWN shall designate a project representative authorized to act on its behalf with respect to the project. The TOWN'S representative is Gloria McPherson, Director of Planning and Economic Development

4 **REPORTING:** The CONSULTANT will submit written reports to the TOWN on the status of the professional services, according to the schedule and dates specified below, or at other times as required by an information request or reporting requirement of Mass. CDBG.

Quarterly Reports	Quarter Ending	Due Date
No. 1	September 30, 2018	October 5, 2018
No. 2	December 31, 2018	January 5, 2019
No. 3	March 31, 2019	April 5, 2019
No. 4	June 30, 2019	July 5, 2019
No. 5	September 31, 2019	October 5, 2019
No. 6	December 31, 2019	January 5, 2020

5. **SUBCONTRACTS:** No subcontracts may be awarded by the CONSULTANT the purpose of which is to fulfill in whole or in part the services required of the CONSULTANT, without prior written approval of the TOWN and the Department of Housing and Community Development.

6. **TIME OF PERFORMANCE:** The services of the CONSULTANT are to commence on or about October 1, 2018 and shall be undertaken and completed in sequence as to assure their expeditious completion. Time is of the essence.

6.1 All services required hereunder shall be completed by December 31, 2020.

7. **COMPENSATION:** The TOWN will pay the CONSULTANT a total fee in amount not to exceed Sixty-Five Thousand Dollars (\$65,000.00), with no reimbursements for out-of-pocket expenses, based on invoices submitted in the approved form and according to the "Method and Schedule of Compensation," found as Attachment B. The CONSULTANT shall submit invoices with supporting documentation to the Town for costs incurred. The Town shall have twenty (20) days to review and approve the invoice. The Town will endeavor to return any disapproved invoice to the CONSULTANT within twenty (20) days of receipt, with a written explanation for the rejection of the invoice. The Town agrees to make all reasonable efforts to process payments within thirty (30) days of approval of invoice in accordance with applicable rules and regulations. There shall be no further costs, fees or reimbursable charges due the CONSULTANT under this Contract unless said fees and/or costs are so set forth in writing. The Town will not pay any surcharge or premium on top of the direct out of pocket expenses, if any. Final payment including any unpaid balance of the CONSULTANT's compensation shall be due and payable when the Project/Goods/Services is/are delivered to the Town when the project is completed and the services are complete and/or the goods are delivered and accepted and following submission of the final invoice.

7.1 Reimbursement. In no event shall the CONSULTANT, if an individual, be reimbursed for holidays, sick days or time other than that spent providing services. CONSULTANT shall be reimbursed for those expenses only as stated in the Budget. Any expenses claimed by the CONSULTANT for which there is no supporting documentation shall be disallowed. If the Town determines that the CONSULTANT received payments not authorized under this Contract, The CONSULTANT shall reimburse the Town upon demand.

8. **GENERAL PROVISIONS:**

8.1 **RETENTION OF RECORDS:** The CONSULTANT shall maintain in accordance with 2 CFR Part 200.333, and any Mass. CDBG regulations, procedures or guidelines, those books, records, and other

documents, including but not limited to payroll records, and purchase orders that are sufficient to document that activities carried out were in accordance with this Agreement, and the primary objectives of the Act, and any other applicable laws and regulations. Such records shall contain all information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, liabilities, outlays and income. The CONSULTANT shall maintain such records for a period of seven (7) years from the date of expiration of this Agreement, or if such records become the subject of audit findings, they shall be retained until such findings have been resolved, whichever is later.

8.2 ACCESS TO RECORDS: The CONSULTANT shall make all books, accounts, records, reports, files, and other papers, things or property, that relate to its activities under this Agreement, available at all reasonable times for inspection, review, and audit by the TOWN, the Mass. CDBG and DHCD, their authorized representatives, authorized representatives of HUD, the Inspector General of the United States, or of the Commonwealth, the Auditor of the Commonwealth, and the Attorney General of the United States, or of the Commonwealth. The TOWN and the Commonwealth reserve the right of the Governor or his designee, the Secretary of Administration and Finance, and the State Auditor, the TOWN and their designee, at reasonable times and upon reasonable notice, to examine the books, records, and other compilative data of the CONSULTANT which pertain to the performance of the provisions and requirements of this Agreement, as provided by Executive Order 195.

8.3 OWNERSHIP OF STUDY AND DOCUMENTS: All documents and data prepared and obtained by the CONSULTANT under this contract, together with all materials and data furnished to the CONSULTANT by the Town under the provisions and scope of the work under this contract shall be returned to the Town upon completion of the terms of this contract (or upon termination of said contract) as being the property of the Town. All inventions and designs derived or generated from the work performed under this contract shall also be the property of the Town. The CONSULTANT acknowledges that he has been informed that some of the documents he and his associates will come into contact with during the course of this study may be confidential or otherwise of the nature which are maintained by the Town in confidence. CONSULTANT shall not in any way disclose said documents or the existence of same, without the prior written permission of the Town unless mandated by law.

8.4 SUSPENSION AND TERMINATION. This Contract may be suspended and/or terminated under the following conditions:

a. Suspension and Termination for Convenience. Notwithstanding any other provision of this Contract, the TOWN reserve the right at any time in its absolute discretion to suspend or terminate this Contract in whole or in part for its convenience upon written notice to the CONSULTANT. If any portion of this Contract so suspended is not recommenced by written notice of the TOWN (or its agent(s)) within the time period specified in the written notice of suspension if such a time period is specified, or in a subsequent notice, the suspended portion of this Contract may be terminated as to that portion for the convenience of the TOWN in accordance with this provision upon further notice from the TOWN. The TOWN shall incur no liability by reason of such termination for convenience except for the obligation to pay approved reimbursable expenses and an equitable adjustment of the contract price based upon the work performed to the date of termination, as provided for herein, accruing through and including the date of termination which obligation shall not exceed the limits established under this agreement for the entire study.

b. Termination for Cause. If, in the opinion of the TOWN, the CONSULTANT fails to fulfill its obligations, the TOWN may terminate this Contract by giving written notice to the CONSULTANT at least seven (7) calendar days before the effective date of termination stated in the notice. The notice shall state the circumstances of the alleged breach and may, if the TOWN so chooses, state a period, not less than seven (7) calendar days, during which the alleged breach may be cured, subject to the approval of the TOWN. In the event of a termination for cause, the CONSULTANT shall not be entitled to any further payment. If the total of the expense reasonably incurred by the

TOWN of completing the services exceeds the unpaid balance of any amounts due under this Contract, the CONSULTANT shall pay the deficiencies to the TOWN upon demand, and such payment shall not constitute a waiver of any other rights of the TOWN. This Contract may be terminated immediately in the event of fraud or program abuse.

c. Termination of Services. Upon receipt of any such notice of suspension or termination, the CONSULTANT shall: (a) Immediately discontinue all services affected (unless the notice directs otherwise); and (b) if and when terminated (and upon completion of this project) deliver to the TOWN all data, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONSULTANT in performing this contract, whether completed or in progress, unless otherwise directed.

d. Invalid Termination. If after the notice of termination for cause, it is determined that said cause was invalid, the termination shall be deemed to have been effected for the convenience of the TOWN. In such event, adjustment shall be made as provided in this clause.

e. Town's Right of Recovery. Any termination or suspension of this Contract shall not impair the right of the TOWN to recover damages occasioned by the fault of the CONSULTANT. Any suspension shall not limit the right of the TOWN to terminate.

8.5 AMENDMENTS: This Agreement may be amended provided such amendment is in writing by the signatories hereto, and receives approval from Mass. CDBG prior to its effective date.

8.6 NON-DISCRIMINATION: The CONSULTANT shall adhere to the requirements set forth in Title VI of the Civil Rights Act of 1964 (Public Law 88-352), and the regulations issued pursuant thereto by HUD; Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), as amended; section 109 of the Housing and Community Development Act of 1974, and the HUD regulations issued pursuant thereto (24 CFR 570.601); Federal Executive Order 11063, as amended by Executive Order 12259 and the HUD regulations issued pursuant thereto (24 CFR 107); The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Section 402 of the Veterans of the Vietnam Era Act (for projects of \$10,000 or more); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Massachusetts General Laws Chapter 151B Section 1 et seq.; State Executive Order 74, as amended and revised by Executive Orders 116, 113 and 227; and Mass. CDBG regulations, procedures or guidelines.

The CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, or national origin. The CONSULTANT shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. The CONSULTANT shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, handicap or national origin.

8.7 PROCUREMENT STANDARDS: The CONSULTANT shall adhere to the requirements set forth in 2 CFR Part 200.318 through 200.326 and Mass. CDBG regulations, procedures and guidelines with respect to standards governing procurement, and any applicable provisions of State laws and regulations relative thereto, including Chapter 30, section 39M; Chapter 149, section 44A through 44J; Chapter 484 of the Acts of 1984; and Chapter 30B. All procurement transactions without regard to dollar value shall be conducted in a manner that provides maximum free and open competition. It is national and state policy that the CONSULTANT take affirmative steps to award a fair share of contracts taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. The CONSULTANT shall maintain records sufficient to detail the process for procurement.

8.8 **EQUAL EMPLOYMENT OPPORTUNITY:** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

8.9 **EMPLOYMENT OPPORTUNITIES:** Where applicable, the CONSULTANT shall comply with provisions of Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 1701u) and the HUD regulations issued pursuant thereto (24 U.S.C. 135), which shall serve as guidance for the implementation of said section.

8.10 **FAIR HOUSING:** In addition to the laws and regulations set forth herein with respect to ensuring fair housing opportunities, the CONSULTANT shall adhere to the provisions of State Executive Orders 215 and 227.

8.11 **LABOR STANDARDS:** Where applicable, the CONSULTANT shall adhere to the provisions of Section 110 of the Act, and the Massachusetts General Laws Chapter 149 sections 26 to 27D inclusive (as amended by Chapter 484 of the Acts of 1984). In the case of the rehabilitation of commercial property, or rehabilitation of residential property designed for residential use of eight or more families, the CONSULTANT shall adhere to the Federal Labor Standards Provisions (HUD Handbook 1344.1), the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et. seq.) and the Copeland Anti-Kickback Act.

8.12 **CONFLICT OF INTEREST:** The CONSULTANT shall adhere to the mandates of the Massachusetts Conflict of Interest Statute, M.G.L. c.268A, the federal Conflict of Interest Provisions at 24 CFR 570.489 and the federal Hatch Act, 5 U.S.C. ss 1501 et seq.

8.13 **COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS, AND Mass. CDBG REGULATIONS, PROCEDURES, AND GUIDELINES:** All activities authorized by this agreement shall be subject to and performed in accordance with the provisions of the TOWN'S Grant Agreement with Mass. CDBG and all its attachments (including, where relevant, Section 4.14, Flood Disaster Protection, 4.15, Historic Preservation, 4.16, Additional Environmental Requirements, 4.17, Lead Paint Hazards, and 4.18 Relocation Assistance), all applicable federal, state, and local laws and regulations, including but not limited to any applicable regulations issued by HUD published in 24 CFR Part 570, as may be amended from time to time, 2 CFR Part 200, all applicable State and local laws and regulations, including but not limited to those specifically stated herein, any additional regulations, procedures or guidelines as may be established or amended by DHCD.

9. **AVAILABILITY OF FUNDS:** The compensation provided by this agreement is subject to the continued availability of federal or state funds for the CDBG Program, and to the continued eligibility of the Commonwealth and the TOWN/ to receive such funds.

10. **INDEMNIFICATION:** To the fullest extent permissible by law, the CONSULTANT agrees to indemnify, defend, and save harmless the TOWN and each of their elected or appointed officers, employees and agents from and with respect to any claims, demands, suits, liabilities, losses and expenses, made against and/or incurred by the TOWN. The obligations of indemnification under the contract shall not be construed to negate or abridge any other obligation of indemnification running to the TOWN which would otherwise exist. The extent of this agreement of indemnification shall not be limited by any obligation or any term or condition of any insurance policy pursuant to this contract. This obligation will survive any expiration or termination of this contract. The obligations under this clause shall include being responsible for the actual notification of any person or entity or other required actions as may be required under G.L. c. 93H and c. 93I, any other state or federal law and

the applicable regulations thereunder pertaining to privacy rights or reimbursing the TOWNS for any costs associated therewith they may incur. The indemnification, defense and hold harmless rights and obligations shall accrue immediately upon the utterance of a claim or complaint covered by this agreement, regardless of other claims simultaneously brought, and shall not be contingent upon the merits of such claim or questions of fact raised by the claim or complaint.

11. INSURANCE.

11.1 General: The CONSULTANT shall provide and maintain at its own expense until the completion and acceptance of its services under this Contract, the following minimum insurances and limits. The intent of the Specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the CONSULTANT's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the TOWN from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the work, including and not limited to Professional liability insurance where applicable.

11.2 Workmen's Compensation and Liability Insurance. Workmen's Compensation Insurance, including Employer's Liability Insurance in accordance with the laws of the State in which the CONSULTANT may be required to pay compensation. Public Liability Insurance, with an individual limit of at least \$2,000,000.00 and a total limit for any one accident of at least \$4,000,000.00. Property Damage Liability Insurance, with a limit for each accident of at least \$200,000.00 and a total limit of liability for all accidents of at least \$4,000,000.00. CONSULTANT shall also maintain an umbrella liability policy of at least \$5,000,000.00. Automobile Bodily Injury Liability, with an individual limit of at least \$500,000.00 and a total limit for any one accident of at least \$1,000,000.00, unless included in other insurance provided under this contract. Automobile Property Damage Liability Insurance, with a limit of at least \$50,000.00 for any one accident, unless included in other insurance provided under this contract.

11.3 Professional Liability Insurance. The CONSULTANT shall maintain at all times during the performance of services under this Contract professional liability insurance coverage for negligent errors, omissions and acts arising out of the performance of this Contract in an amount of not less than \$2,000,000.00 per claim and \$4,000,000.00 aggregate, or such other amount as is in compliance with Massachusetts law, whichever is greater. Such insurance shall extend to CONSULTANT and to its legal representatives in the event of death, dissolution or bankruptcy, and shall cover the negligent errors, omissions or acts of CONSULTANT's agents and employees. Such insurance shall extend to any negligent act, error or omission in the performance of services under this agreement committed by CONSULTANT or alleged to have been committed by CONSULTANT or any person for whom CONSULTANT is legally responsible.

The CONSULTANT shall maintain a professional liability insurance policy with a deductible clause in an amount approved by the TOWN if in the judgment and opinion to the TOWN the CONSULTANT's financial resources are sufficient to adequately cover possible liability in the amount of the deductible. The CONSULTANT shall submit promptly to the TOWN upon request as often as quarterly detailed financial statements and any other information requested by the TOWN to reasonably determine whether or not the CONSULTANT's financial resources are sufficient to adequately cover possible liability in the amount of the deductible.

The CONSULTANT shall furnish to the TOWN a Certificate of Insurance for Professional Liability Insurance in the amounts called for in this contract.

11.4 Valuable Papers Insurance. The CONSULTANT shall maintain during the life of this Contract a Valuable Papers Insurance Policy in the minimum amount of the value of this contract for losses on premises at locations where the documents may be kept.

11.5 Certificate of Insurance. The CONSULTANT shall submit to the TOWN a Certificate of Insurance outlining insurance coverage with the minimum coverage stipulated above, and such other

evidence of insurance requested, with companies authorized to do business in Massachusetts and showing limits no lower than those indicated above, including the TOWN as an additional insured and in such terms and conditions as approved by the TOWN. The CONSULTANT's failure to provide and continue in force and effect and insurance required under this Contract shall be deemed a material breach of this Contract for which TOWN, in its sole discretion, may terminate this Contract immediately or on such other terms as it sees fit. All insurance policies maintained by the CONSULTANT pursuant to this Contract shall provide that insurance as applying to the TOWN shall be primary and the TOWN's own insurance shall be non-contributing. All property damage insurance shall be endorsed with a waiver of subrogation by the insurer as to the TOWN. Said insurance shall include Contractual Insurance. The terms and conditions of the insurance shall be subject to the approval of the TOWN.

11.6 Additional Insured. The CONSULTANT shall name the TOWN as an additional insured on all insurance carried by the vendor, except such insurance for which the TOWN cannot be an additional insured and as approved by the TOWN. Such insurance shall be such that the inclusion of the TOWN as an additional insured shall not impair by reason thereof the insurance coverage of any claim by the TOWN against the CONSULTANT.

12. LICENSES: The CONSULTANT shall procure and keep current any licenses, certifications, or permits required for any activity to undertaken as part of the Scope of Services, Attachment A, as required by federal, state or local laws or regulations, and shall comply with the provisions of 2 CFR Part 200.325 with respect to any bonding or other insurance requirements.

13. CONFIDENTIALITY: The CONSULTANT will protect the privacy of, and respect the confidentiality of information provided by, program participants, consistent with applicable federal and state regulations, including M.G.L., C. 66 section 10, regarding access to public records.

14. COPYRIGHT: No material prepared in whole or in part under this agreement shall be subject to copyright in the United States of America or in any other country except with the prior written approval of Mass. CDBG and the TOWN.

15. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency and seek the approval of the TOWN. All inventions shall be the property of the TOWN unless the law places ownership elsewhere.

16. Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

17. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201)(l)

18. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that

implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

19. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

20. **CLOSEOUT:** The CONSULTANT shall follow such policies and procedures with respect to close-out of any associated grant as may be required by Mass. CDBG and the TOWN.

21. **Terms Required by Law:** All terms required by law to be included in this Contract are hereby included and shall be in as full effect as if set forth in full herein. **Headings and Captions.** All section headings and captions used in this agreement are solely for convenience and shall not affect the interpretation of this agreement.

22. **No Waiver:** The failure of the TOWN to insist on compliance with any clause and/or take action under any clause of the contract shall not constitute a waiver of any rights or remedies of the TOWN and shall not preclude the TOWN from insisting on compliance and/or taking action for any prior or subsequent non-compliance.

23. **Correlation and Interpretation:** The contract documents shall include this contract, the Request for Proposals and the Response to the Request for Proposal, Budget and such other documents as are included as attachments. The documents are to be read collectively and complementary to one another; any requirement under one shall be as binding as if required by all. In the event of a conflict between any of the documents, the documents shall take precedence in the following order: this contract, the Request for Proposals, and the Response to the Request for Proposals, unless the provision is more favorable to the TOWN, in which event the more favorable provision shall, at the option of the TOWN, prevail. All services which are normally and customarily included in an assignment of this nature are deemed to be included.

24. **Entire Agreement:** This Contract, including all documents incorporated herein by reference, constitutes an and the entire integrated agreement between the parties with respect to the matters described. This Contract supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto. The Contract shall be amended as necessary to comply with state or federal requirements.


25. **GOVERNING LAW:** The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Venue for any litigation shall be Bristol County, Massachusetts.

26. The Certificate of Tax Compliance and Certificate of Non-Collusion in Attachment C must be completed and submitted as part of this contract

27. **SEVERABILITY:** If any provision of this agreement is held invalid, the remainder of the agreement shall not be affected thereby, and all other parts of this agreement shall nevertheless be in full force and effect.

IN WITNESS THEREOF, the TOWN and the CONSULTANT have executed this AGREEMENT under seal in triplicate as of the date above written.

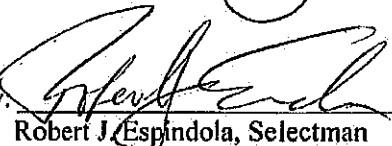
Approvals and Signatures

By: 
Daniel Freitas, Chairman
Fairhaven Board of Selectmen

Date: 10/22/18

By: 
Charles K. Murphy, Sr., Selectman

Date: 10/22/18

By: 
Robert J. Espindola, Selectman

Date: 10/22/18

The CONSULTANT:

By: _____

Date: _____

Title: _____

Address: _____

Attest to the Availability of Funds:

By: _____

Date: _____

Title: Anne Carreiro, Town Accountant

Attest to the Procurement of Services:

By: _____
Title: Mark Rees, Town Procurement Officer

Date: _____

Approval as to Form Only:

By: _____
Title: Thomas P. Crotty, Town Counsel

Date: _____

Attachment D

NOTICE OF AWARD

To: P.A. Landers
351 Winter Street
Hanover, MA 02339

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

The Owner has considered the BID submitted by you for the above-described WORK in response to its Advertisement for Bids dated September 13, 2018 and Information for Bidders. You are hereby notified that your BID has been accepted for items in the amount of: \$630,685.00 which includes the total of the base bid.

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

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

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

Dated: _____ OWNER: Town of Fairhaven - Board of Selectman

BY [Signature]

BY [Signature]

BY [Signature]

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged

BY _____

Dated: _____

BY _____

TITLE _____

00500-8

Agreement and
Additional Contract Documents

TOWN OF FAIRHAVEN FUEL EFFICIENT VEHICLE POLICY

Effective Date	
Revisions	
Board of Selectmen Approval Date	10/22/18
School Superintendent Approval Date	

INTRODUCTION

The Green Communities Program states that communities must purchase only fuel-efficient vehicles for municipal use whenever such vehicles are commercially available and practicable. The purpose behind this criterion is to reduce carbon dioxide emissions by municipal vehicles, which has a positive impact on the environment and saves the municipality money.

As background, the US Environmental Protection Agency's Green Vehicle Guide states that:

Vehicles with lower fuel economy create more carbon dioxide - the most prevalent greenhouse gas - than vehicles with higher fuel economy. Every gallon of gasoline your vehicle burns puts about 20 pounds of carbon dioxide into the atmosphere because air has weight and mass, and it takes a lot of it to burn a gallon of gasoline. One of the most important things you can do to reduce your contribution to global warming is to buy a vehicle with higher fuel economy. The difference between 25 miles per gallon and 20 miles per gallon can amount to the prevention of 10 tons of carbon dioxide over a vehicle's lifetime. Buying a more fuel efficient vehicle will also will help to reduce our nation's dependence on fossil fuels. And of course, you will save money by having to fuel up less often.

DEFINITIONS

Combined city and highway MPG (EPA Combined fuel economy): Combined Fuel Economy means the fuel economy from driving a combination of 43% city and 57% highway miles and is calculated as follows:

$$=1/((0.43/\text{City MPG})+(0.57/\text{Highway MPG}))$$

Drive System: The manner in which mechanical power is directly transmitted from the drive shaft to the wheels. The following codes are used in the drive field:

- AWD = All Wheel Drive: four-wheel drive automatically controlled by the vehicle powertrain system
- 4WD = 4-Wheel Drive: driver selectable four-wheel drive with 2-wheel drive option
- 2WD = 2-Wheel Drive

Heavy-duty vehicle: A vehicle with a manufacturer's gross vehicle weight rating (GVWR) of more than 8,500 pounds.

POLICY STATEMENT

In an effort to reduce the Town of Fairhaven's fuel consumption and energy costs over the next 10 years, the Fairhaven Board of Selectmen and School Committee hereby adopts a policy to purchase only fuel efficient vehicles to meet this goal.

PURPOSE

To establish a requirement that the Town of Fairhaven purchase only fuel efficient vehicles for municipal/school use whenever such vehicles are commercially available and practicable.

APPLICABILITY

This policy applies to all departments of the Town of Fairhaven.

GUIDELINES

All departments shall purchase only fuel-efficient vehicles for municipal use whenever such vehicles are commercially available and practicable. (See Appendix A – Model Year 2010 Fuel Economy Guide).

The Town of Fairhaven will maintain an annual vehicle inventory for ALL vehicles and a plan for replacing any non-exempt vehicles with vehicles that meet, at a minimum, the fuel efficiency ratings contained in the most recent guidance for Criteria 4 published by the MA Department of Energy Resources' Green Communities Division. This Green Communities' Guidance for Criteria 4 must be checked for updates prior to ordering replacement vehicles.

The fuel efficiency ratings contained therein are based on the most recently published US Environmental Protection Agency data on fuel efficient vehicles. Vehicles are to have a combined city and highway MPG no less than the following:

- 2 wheel drive car: 29 MPG
- 4 wheel drive car: 24 MPG
- 2 wheel drive small pickup truck: 21 MPG
- 4 wheel drive small pickup truck: 19 MPG
- 2 wheel drive standard pickup truck: 17 MPG
- 4 wheel drive standard pickup truck: 16 MPG
- 2 wheel drive sport utility vehicle: 21 MPG
- 4 wheel drive sport utility vehicle: 18 MPG

Hybrid or electric vehicles in these vehicle classes will meet these criteria.

**NOTE: The EPA maintains a database on vehicle fuel efficiency that is updated occasionally throughout the year, as new models are released. As increasing numbers of fuel efficient vehicle models are released, the minimum combined MPG requirements of the Green Communities Program may be revised. This policy may be updated from time to time to reflect any changes to the MPG requirements. The latest fuel efficiency MPG ratings are available through Massachusetts Department of Energy Resources Green Communities Program.*

Exemptions

- Heavy-duty vehicles, as defined above, such as fire-trucks, ambulances, public works trucks, and buses are exempt from this criterion.
- Police cruisers, passenger vans and cargo vans are exempt from this criterion as fuel efficient models are not currently available. However, the Town of Fairhaven shall purchase fuel efficient cruisers, passenger vans, and cargo vans when they become commercially available. Police department and fire department administrative vehicles are NOT exempt and must meet fuel efficient requirements.

Inventory

In order to maintain efficient driving practices before, during and after procuring fuel-efficient cars, the Town Administrator, or his/her designee(s), shall maintain a record of vehicle model, make, model year, year purchased, drive system, weight class, MPG, whether the vehicle is exempt or nonexempt, and vehicle function for each vehicle in every department. (See Appendix ? for current inventory). The vehicle inventory list will be updated on an annual basis and provided to the Green Communities Program.

FUEL EFFICIENT VEHICLE REPLACEMENT PLAN

All non-exempt vehicles shall be replaced with fuel-efficient vehicles that adhere to the most recent Green Communities Criterion 4 Guidance. Vehicles shall be replaced when they are no

longer operable and will not be recycled from one municipal department to another unless the recycled replacement vehicle meets the fuel efficiency ratings outlined in the Policy. In addition, when replacing exempt vehicles, the function of the vehicle will be reviewed for potential replacement with a more fuel efficient vehicle, including a fuel efficient non-exempt vehicle. The Town of Fairhaven will review on an annual basis the Vehicle Inventory, along with the Green Communities Criterion 4 Guidance, to plan for new acquisitions as part of planning for the new fiscal year budget.

QUESTIONS / ENFORCEMENT

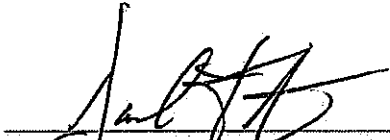
All inquiries should be directed to the department responsible for fleet management and/or fleet procurement. This policy is enforced by the Town Administrator and/or his/her designee(s).

MA Department of Energy Resources
Green Communities Division
100 Cambridge Street – Suite 1040
Boston, MA 02114

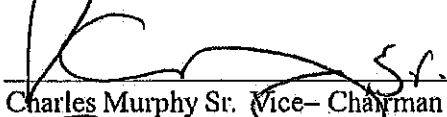
October 22, 2018

At a public Board of Selectmen meeting held on October 22, 2018 the Board of Selectmen voted to adopt the attached Fuel Efficiency Vehicle Policy.

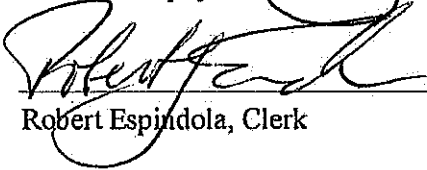
Thank you,



Daniel Freitas, Chairman of the Board of Selectmen



Charles Murphy Sr. Vice-Chairman



Robert Espindola, Clerk

MA Department of Energy Resources
Green Communities Division
100 Cambridge Street – Suite 1040
Boston, MA
02114

_____, 2018

Please be advised that the Public Schools of the Town of Fairhaven hereby adopted the attached Fuel Efficient Vehicle Policy.

Thank you,

Robert Baldwin, Fairhaven Superintendent of Schools

Attachment F

**WARRANT AND REPORT OF THE FINANCE COMMITTEE
FOR THE SPECIAL TOWN MEETING
TUESDAY, NOVEMBER 13, 2018 AT 7:00 P.M.
AT THE ELIZABETH I. HASTINGS MIDDLE SCHOOL**

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, s.s

To the Constable of the Town of Fairhaven in said county:

GREETINGS:

In the name of the Commonwealth of Massachusetts you are hereby directed to notify and warn the inhabitants of the Town of Fairhaven qualified to vote on town affairs to meet as follows:

On Tuesday, the thirteenth day of November 2018 at 7:00 p.m. in the Walter Silveira Auditorium at the Elizabeth I. Hastings Middle School, then and there, to act upon the following articles:

ARTICLE 1. FUNDING FOR REPAIR OF CEILING IN ASSESSORS OFFICE

To see if the Town will vote to transfer \$50,000 from General Fund Surplus Revenue to repair the ceiling in the Assessors Office at Town Hall, or take any other action relative there to.

Petitioned by: Board of Selectmen

ARTICLE 2. FUNDING FOR REPAIR OF SEWER PIPE AT FIRE/POLICE STATION

To see if the Town will vote to transfer \$147,000 from General Fund Surplus Revenue to repair/replace a sewer pipe at the Fire/Police Station, or take any other action relative there to.

Petitioned by: Board of Selectmen

ARTICLE 3. FUNDING FOR REPLACEMENT OF HANDHELD METER READERS

To see if the Town will vote to transfer \$75,000 from Water Retained Earning to replace handheld meter readers, or take any other action relative there to.

Petitioned by: Board of Public Works

ARTICLE 4. ADDITIONAL FUNDING FOR DOORWAY RESTORATION & HANDICAP ACCESS PROJECT AT THE ACADEMY BUILDING

To see if the Town will vote to amend Article 31, "Community Preservation Program Appropriation -FY18", Section F, "Historical Commission-Academy Building-Doorway Restoration & Handicap Access Project" of the May 6, 2017 Annual Town Meeting by adding an additional sum of money to the existing appropriation of \$119,000 to be paid for from the

Community Preservation Fund and/or General Fund Surplus Revenue, or take any other action relative there to.

Petitioned by: Board of Selectmen

ARTICLE 5. AMENDED FY 19 GENERAL FUND OPERATING BUDGET

To see if the Town will vote to amend Article 10 of the May 5, 2018 Annual Town Meeting "General Fund Operating Budget-FY19" or take any other action relative thereto.

Petitioned by: Board of Selectmen

ARTICLE 6. AMENDED FY 19 SEWER ENTERPRISE FUND OPERATING BUDGET

To see if the Town will vote to amend Article 12 of the May 5, 2018 Annual Town Meeting "Sewer Enterprise Fund Operating Budget-FY19, or take any other action relative thereto.

Petitioned by: Board of Public Works/Board of Selectmen

ARTICLE 7. BILLS OF PRIOR YEARS

To see if the Town will vote to authorize the payment of the following bills of the Prior Years from General Fund Surplus Revenue:

<u>Vendor</u>	<u>Amount</u>	<u>Petitioner</u>
Assoc. Phys. Of HMFP@BIDMC	\$61.34	Fire Chief
Dr. Brian Bowcock D.C.	\$665.19	Fire Chief
Southcoast Physicians Group	\$282.04	Fire Chief
Cape Medical Supply, Inc.	\$82.99	Fire Chief
Stewart Medical Group-St. Anne's Hosp.	\$2,322.90	Police Chief
Staples	\$54.68	Health Agent

Or take any other action relative there to.

Petitioned by: Board of Selectmen

ARTICLE 8. TEMPORARY MORATORIUM ON SALE AND DISTRIBUTION OF ADULT USE MARIJUANA

To see if the Town will vote to amend the Town's Zoning Bylaws by adding the following new section:

"TEMPORARY MORATORIA" and the ensuing parts as proposed herein.

A Temporary Moratorium on the Sale and Distribution of Adult Use Marijuana

(1) **Purpose:** By vote at the State election on November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, distribution, possession and use of marijuana for recreational purposes.

Currently under the Zoning Bylaw, Adult Use Marijuana Establishments are not permitted uses in the Town. Regulations promulgated by the Cannabis Control Commission have provided guidance to the Town in regulating Adult Use Marijuana Establishments; however, guidance for On-Site Social Consumption and Delivery Only (to consumers) Retailers, are not expected until February 2019. Further, the ballot measure establishes two important provisions that require action by the Town prior to the adoption of zoning. First, the Town must determine whether, and to what extent, it will exercise local control over Adult Use Marijuana Establishments and second, by ballot that cannot occur prior to November 6, 2018, the next biennial state election, on whether to allow on-site consumption of marijuana products should the Town decide to allow licenses for such facilities.

The regulation of Adult Use Marijuana Establishments raise novel and complex legal, planning, and public safety issues and the Town needs additional time to study and consider the regulation of Adult Use Marijuana Establishments and address such novel and complex issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding the regulation of Adult Use Marijuana Establishments and other uses related to the regulation of recreational marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Adult Use Marijuana Establishments so as to allow the Town sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to adopt provisions of the Zoning Bylaw in a manner consistent with sound land use planning goals and objectives.

(2) Definitions

- a) **MARIJUANA** — As defined or amended by State regulations, all parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided, however, that “Marijuana” shall not include (1) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks, fiber, oil or

cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (2) hemp; or (3) the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink or other products. Marijuana also includes Marijuana Products except where the context clearly indicates otherwise.

1. **Marijuana, Hemp** — As defined or amended by State regulations, the plant of the genus *Cannabis* or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus *Cannabis*, or per volume or weight of Marijuana product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus *Cannabis* regardless of moisture content.

b) **ADULT USE MARIJUANA ESTABLISHMENT** — As defined or amended by State regulations, a Marijuana Retailer, Marijuana Product Manufacturer, Marijuana Cultivator, Independent Testing Laboratory, or any other type of Marijuana-related business that has been duly licensed by the Massachusetts Cannabis Control Commission or relevant State agency.

1. **Craft Marijuana Cultivator Cooperative** — As defined or amended by State regulations, a Marijuana Cultivator comprised of residents of Massachusetts organized as a limited liability company or limited liability partnership under Massachusetts law, or an appropriate business structure as determined by the Massachusetts Cannabis Control Commission, and that is licensed by the Cannabis Control Commission to cultivate, obtain, manufacture, process, package, and brand Marijuana and Marijuana Products to deliver Marijuana to Marijuana Establishments but not to consumers.

2. **Marijuana Cultivator** — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to cultivate, process, and package Marijuana, to deliver Marijuana to Marijuana Establishments and to transport Marijuana to other Marijuana Establishments, but not to consumers.

3. **Delivery-Only Marijuana Retailer** — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission that does not provide a retail location accessible to the public, but is authorized to deliver directly from a Marijuana Cultivator facility, Craft Marijuana Cultivator Cooperative facility, Marijuana Product Manufacturer facility, or Micro-Business to consumers.

4. Independent Marijuana Testing Laboratory — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission that is (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation Mutual Recognition Arrangement or that is otherwise approved by the Cannabis Control Commission; (ii) independent financially from any Medical Marijuana Treatment Center or any Cannabis Control Commission licensee or Marijuana Establishment of which it conducts a test; and (iii) qualified to test Marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, § 34.

5. Marijuana Micro-Business — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to act as a co-located licensed Tier 1 Marijuana Cultivator of up to 5,000 square feet in accordance with 935 CMR 500.005, Cannabis Control Commission Regulations, and/or a licensed Marijuana Product Manufacturer, in compliance with operating procedures for each such license and siting requirements for each type of licensee. A Micro-business that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments.

6. Marijuana Product Manufacturer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to obtain, manufacture, process and package Marijuana and Marijuana Products, to deliver Marijuana and Marijuana Products to Marijuana Establishments and to transfer Marijuana and Marijuana Products to other Marijuana Establishments, but not to consumers.

7. Marijuana Research Facility — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to engage in research projects, including cultivation, purchase or acquisition otherwise of Marijuana for the purpose of conducting research regarding Marijuana and Marijuana Products or any analogous uses. A Marijuana Research Facility may not sell marijuana it has cultivated.

8. Marijuana Retailer — As defined or amended by State regulations, an entity licensed by the Massachusetts Cannabis Control Commission to purchase and deliver Marijuana and Marijuana Products from Marijuana Establishments and to deliver, sell or otherwise transfer Marijuana and Marijuana Products to Marijuana

Establishments and to consumers, providing a retail location accessible to consumers 21 years of age or older or in possession of a registration card demonstrating that the individual is a registered qualifying patient with the Medical Use of Marijuana Program.

9. Social Consumption Marijuana Retailer — As defined or amended by State regulations, a Marijuana Retailer licensed by the Massachusetts Cannabis Control Commission to purchase Marijuana and Marijuana Products from Marijuana Establishments and to sell Marijuana and Marijuana Products on its premises only to consumers or allow consumers to consume Marijuana and Marijuana Products on its premises only.

10. Marijuana Transporter — As defined or amended by State regulations, an entity, not otherwise licensed by the Massachusetts Cannabis Control Commission, that is licensed by the Cannabis Control Commission to purchase, obtain and possess Marijuana and Marijuana Products solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, not for sale to consumers.

12. Marijuana Standards Laboratory — As defined or amended by State regulations, a laboratory meeting the requirements of the Independent Testing laboratory that is licensed by the Massachusetts Cannabis Control Commission as a Standards Laboratory to ensure consistent and compliant testing by the Independent Testing Laboratories.

(3) Temporary Moratorium

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for Adult Use Marijuana Establishments. The moratorium shall be in effect through June 30, 2019. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreation marijuana in the Town, consider the Cannabis Advisory Board regulations regarding Recreational Marijuana Establishments and related uses, determine whether, and to what extent, the Town shall exercise local control over Recreational Marijuana Establishments and shall consider adopting new provisions of the Zoning Bylaw to address the impact and operation of Recreational Marijuana Establishments and related uses.

(4) Severability. The provisions of this bylaw are severable. If any provision, paragraph, sentence, or clause of this bylaw or the application thereof to any

person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this bylaw.

And by amending Section 198-16 of the Town's Zoning By-Law by adding the following entry under the heading COMMERCIAL USES

Adult Use Marijuana N N N N N N N N
Establishments (22)

(22) Subject to moratorium. See Section 198-32.3

Or take any other action relative thereto.

Petitioned by: Doug Brady, et. al.

ARTICLE 9. ZONING BYLAW AMENDMENT: CONSOLIDATED MARIJUANA ZONING.

To see if the Town of Fairhaven will vote to amend the Fairhaven Zoning Bylaw as follows:
(Deletions shown in strike-through and new text shown as underlined.)

1. By deleting §198-29.7, Medical Marijuana Facilities, in its entirety, and replacing it with a new §198-29.7, Marijuana Establishments, as follows: 198-29.7 - MARIJUANA ESTABLISHMENTS

A. Purpose

The purpose of this section of the Zoning Bylaw is to permit Marijuana Establishments to operate and be located in such a way as to protect the health and safety of Fairhaven residents, as well as patients seeking treatment and customers seeking to purchase marijuana for recreational use, while minimizing adverse impacts on adjacent properties, residential neighborhoods, schools, and other sensitive locations, by regulating the siting, design, placement, security, modification and removal of such uses.

B. Applicability

- 1) **Definitions.** See Massachusetts General Laws Chapter 94G, Section 1, Chapter 94I, Section 1, and the 18 regulations promulgated thereunder, as they may be amended, as well as Section 198-33, Definitions and Word Use, of the Fairhaven Zoning Bylaws for further definitions of applicable terms.

2) Severability. If any provision of this Chapter or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this Chapter, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Chapter are severable.

3) Special Permit. All Marijuana Establishments shall be permitted by Special Permit pursuant to this section and Site Plan Review pursuant to §198-29. The Special Permit Granting Authority shall be the Planning Board.

A Special Permit granted under this section of the Zoning Bylaws shall have a term limited to the duration of the applicant's continued use of the premises for a Marijuana Establishment licensed by the state. Any new or additional license, or a transfer of an existing license to a new owner, shall require a new Special Permit pursuant to the Fairhaven Zoning Bylaws.

4) A special permit issued prior to November 13, 2018, allowing the use of premises for a Medical Marijuana Treatment Center shall remain in effect subject to its own terms and conditions; provided that any subsequent change in use, including the use of the premises for an additional or different form of Marijuana Establishment, or for the expansion or alteration of the existing Medical Marijuana Treatment Center, or a change in ownership of the licensed establishment, shall be subject to the terms of this section.

C. Eligible Locations for Marijuana Establishments

(1) Marijuana Establishments may be allowed by Special Permit from the Planning Board only in the Medical Marijuana Overlay District provided the facility meets the requirements of this Chapter.

(2) Medical Marijuana Overlay District shall be comprised of the following Map and Lot numbers: Map 24: Lots 16, 16A, 18; Map 26: Lots 62, 62A, 63, 71, 71A, 72; Map 30A: Lots 86A, 86C, 86D, 86H; Map 36: Lots 13, 14, 14A, 14B, 14C, 14D, 14E, 14F, 14K, 14N, 15, 15A, 15B, 15C, 15D, 15F, 15G, 15J. A map of the over lay district is also on file at the Town Clerk's Office and the Planning Board's Office.

D. Limit on the Number of Special Permits for Marijuana Retailers

- 1) No new Special Permit shall be issued if the resulting number of Special Permits for Marijuana Retailers within the Town exceeds the smallest whole number which is not less than twenty per cent (20%) of the number of liquor licenses for off premises alcohol consumption issued within the Town pursuant to Chapter 138, § 15 of the General Laws. Special Permits previously granted for Marijuana Retailer shall not be affected by a change in the number of liquor licenses for off premises alcohol consumption.
- 2) All Marijuana Establishments are prohibited from offering marijuana or marijuana products for consumption on the premises of a Marijuana Establishment.

E. Limit on the Number of Special Permits for Adult Use Marijuana Establishment Licenses other than Marijuana Retailers

No new Special Permits shall be issued if the resulting number of Special Permits for each particular type of adult use Marijuana Establishment, except Marijuana Retailers, exceeds the number of licensed Medical Marijuana Treatment Centers permitted in the Town. Special Permits previously granted each particular type of adult use Marijuana Establishment, except Marijuana Retailers, shall not be affected by a change in the number of licensed Medical Marijuana Treatment Centers permitted in the Town.

F. Application Requirements. Above and beyond the standard application requirements for Special Permits and Site Plan Review approval, an application for a use under this section shall include the following:

- 1) The name and address of each owner of the facility/operation;
- 2) Copies of all documentation demonstrating appropriate application status under state law, or registration or license, issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the facility;
- 3) Evidence that the Applicant has site control and the right to use the site for a facility in the form of a deed or valid purchase and sale agreement, or, in the case of a lease, a notarized statement from the property owner and a copy of the lease agreement;
- 4) A notarized statement signed by the organization's Chief Executive Officer and corporate attorney, if any, disclosing all of its designated representatives, including officers and directors, shareholders, partners, members, managers, directors, officers, or other similarly-situated individuals and entities and their addresses. If any of the

above are entities rather than persons, the Applicant must disclose the identity of all such responsible individual persons;

- 5) A Security Plan, approved by the Cannabis Control Commission as part of the issuance of a Provisional License, to be approved by the Police and Fire Departments prior to the issuance of a Special Permit, with details showing all exterior proposed security measures for the premises, including lighting, fencing, gates and alarms, etc. ensuring the safety of employees and patrons and protecting the premises from theft or other criminal activity;
- 6) A Management Plan, including a description of all activities to occur on site, including all provisions for the delivery of marijuana and related products to Marijuana Establishments or off-site direct delivery consistent with state law and regulations;
- 7) A Resource Plan, for all marijuana cultivators, shall be submitted to the Planning Board and the Board of Health to demonstrate best practices for waste disposal, use of energy, water, and other common resources, and to ensure that there will be no undue damage to the natural environment. The Resources Plan shall include an electrical system overview, proposed energy demand and proposed electrical demand off-sets, ventilation system and air quality, proposed water system and utility demand;
- 8) A Traffic Impact Report shall be required for all Marijuana Establishments. The Planning Board may require a traffic study if in their determination one is warranted because of public safety concerns.

G. Special Permit Requirements for Marijuana Establishments

1) General Requirements

- a) Marijuana Establishments shall comply with applicable State and local laws, regulations, bylaws, codes, conditions and agreements with the Town.
- b) An approved Host Community Agreement shall be required prior to the granting of a Special Permit for a Marijuana Establishment.
- c) Marijuana Establishments shall maintain all permits and licenses required by State and local laws. Any voiding, revocation or suspension of the Marijuana Establishment's Cannabis Control Commission license shall result in an automatic suspension of the Special Permit, pending hearing or the opportunity therefore afforded to the Marijuana Establishment by the CCC, and pending determination by

the Planning Board during a regularly scheduled public meeting that the Marijuana Establishment has cured any violation with State laws and is duly licensed by and in good standing with the CCC.

- d) A violation of the Host Community Agreement shall result in automatic suspension of the Special Permit and may result in the revocation of the Special Permit.
- e) A Special Permit may also be revoked under the following circumstances:
 - i. Upon determination by the Building Commissioner that the permit holder is no longer operating under the Special Permit and its conditions or under the requirements of this bylaw, or that the use has been abandoned;
 - ii. The applicant has failed to report annually as required under this bylaw, or on the schedule approved as part of a Special Permit;
 - iii. Upon request by the permit holder of a desire to cease operations.
- f) The process for revoking a Special Permit shall be as follows:
 - i. Determination of violation, abandonment, or other cause for revocation by the Building Commissioner;
 - ii. Notice sent by the Building Commissioner to the permit holder and the Planning Board;
 - iii. Vote of the Planning Board to either continue or revoke/terminate the Special Permit;
 - iv. Record notice of revocation/termination in the Registry of Deeds.

2) Use Regulations.

- a) No smoking, burning, consumption or use of Marijuana or Marijuana Products shall be permitted on the premises of a Marijuana Establishment.
- b) Marijuana manufacturing or extraction shall not be done in any building containing residential units including transient housing such as motels and dormitories, assembly, educational, health care, ambulatory health care, residential board and care, motels, or detention and correctional facilities, or inside a movable or mobile structure such as a van or truck.
- c) The hours of operation shall be set by the Planning Board as a condition of the Special Permit.

- d) Marijuana Establishment operations shall not create nuisance conditions in parking areas, sidewalks, streets and areas surrounding its premises and adjacent properties. "Nuisance" includes, but is not limited to, disturbances of the peace, open public consumption of Marijuana, excessive pedestrian or vehicular traffic, odors emanating from the Marijuana Establishment's premises, lighting trespass on adjacent properties, illegal drug activity under State or local law, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, excessive citation for violations of State traffic laws and regulations and/or Transportation Division Rules and Regulations, queuing of patrons (vehicular or pedestrian) in or other obstructions of the public way (sidewalks and streets), collisions between vehicles, bicyclists, and pedestrians, lewd conduct or police detentions and arrests.
- e) Marijuana Establishments are prohibited from use of on-site self-service displays. Self-service displays are defined to mean displays from which customers may select Marijuana or Marijuana Products without assistance from an employee or store personnel, and include vending machines.
- f) The proposed use shall not display on-premises signage or other marketing on the exterior of the building or in any manner visible from the public way, which may promote or encourage the use of marijuana or other drugs by minors.

3) Locational and Physical Requirements

- a) All Marijuana Establishments' licensed operations must take place within a building at a fixed location and shall not be visible from the exterior of the business.
- b) Marijuana Establishments may cultivate, process, test, store and manufacture Marijuana or Marijuana Products only within an area that is enclosed and secured in a manner that prevents access by persons not permitted by the Marijuana Establishment to access the area.
- c) No outside storage of marijuana, related supplies, or educational materials is permitted.
- d) All business signage, marketing, advertising, and branding shall be subject to the requirements promulgated by the Cannabis Control Commission and the requirements of the Fairhaven Zoning Bylaws and Sign Code. In the case of a conflict, the stricter requirement shall apply.
- e) The gross floor area of Marijuana Establishments accessible to patients or customers, and not including space dedicated to administration or operations and accessible only to employees of the facility, shall be no greater than the following:

i. Medical Marijuana Treatment Centers: 4,500 square feet

ii. Marijuana Retailers: 2,500 square feet

f) Ventilation. All facilities shall be ventilated in such a manner that:

- i. No pesticides, insecticides or other chemicals or products used in the cultivation or processing are dispersed into the outside atmosphere; and
- ii. No odor from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the Marijuana Establishment or at any adjoining use or property.

4) Reporting Requirements.

- a) All Special Permit holders for uses under this section shall provide the Police Department, Fire Department, Building Commissioner, Board of Health, and Special Permit Granting Authority with the names, phone numbers, mailing and email addresses of all management staff and key-holders, including a minimum of two (2) operators or managers of the facilities identified as designated contact persons to whom notice should be made if there are operating problems associated with any use under this section. All such contact information shall be updated as needed to keep it current and accurate
- b) One of the two designated contact persons shall notify the Police Department, Fire Department, Building Commissioner, Board of Health and Special Permit Granting Authority in writing a minimum of thirty (30) days prior to any change in ownership or management of a facility regulated under this section.
- c) The designated representatives of permitted facilities shall file an annual report with the Special Permit Granting Authority and shall appear before said Authority to present the report no later than 30 days following renewal of a state license or registration, providing a copy of all current applicable state licenses for the owners and facilities, to demonstrate continued compliance with the conditions of the Special Permit. If there is a notice of deficiencies or violations said notice shall be included with the Annual Report.
- d) The designated contact persons shall be required to respond by phone or email within twenty-four (24) hours of the time of contact and inquiry regarding operation of the facility by a town official to the telephone number or email address provided as the contact for the business.

5) Discontinuance of Use. Any Marijuana Establishment permitted under this section shall be required to remove all marijuana and marijuana products, equipment and other paraphernalia by the earlier of:

- a) immediately following the expiration, revocation or voiding of its state issued license or permit or
- b) within 120 days of ceasing operations.

H. Findings. In addition to the findings required under Section 198-29 of the Zoning Bylaw and meeting the provisions of all other applicable sections of this Bylaw, the Planning Board shall not issue a Special Permit for a Marijuana Establishment unless it finds that the use as proposed:

- 1) Does not contravene the limit on the number of Special Permits that may be granted.
- 2) Meets all of the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will as proposed be in compliance with all applicable state laws and regulations.
- 3) Meets all the applicable conditions and requirements as set forth in this Chapter.
- 4) Will provide copies of registrations and licenses and a copy of a signed Host Community Agreement with the Town of Fairhaven, in accordance with M.G.L. Chapter 94G and subsequent regulations, including 935 CMR 500, to the Building Commissioner prior to the issuance of a Certificate of Occupancy.
- 5) Is designed to minimize adverse visual impacts on abutters and other parties in interest.
- 6) Provides a secure waiting area, as required by state law or regulations.
- 7) Provides adequate security measures to ensure that no individual or group participant will pose a direct threat to the health or safety of other individuals, and that the storage and/or location of cultivation of marijuana is adequately secured in enclosed, locked facilities.
- 8) Adequately addresses issues of vehicular and pedestrian traffic, circulation, parking and queuing, especially during peak periods at the facility, and adequately mitigates the impacts of vehicular and pedestrian traffic on neighboring uses.
- 9) Adequately demonstrates best practices with regard to the use of energy, water, waste disposal and other common resources, with no undue damage to the natural environment.

2. And by amending §198-33, Definitions and Word Use, by deleting the definitions of "Marijuana" and "Marijuana for Medical Use," and inserting new definitions as follows:

MARIJUANA—The same substance defined as "marihuana" under the provisions of M.G.L. c. 94C, as amended from time to time. [Added 2-12-2014 STM by Art. 8]

MARIJUANA FOR MEDICAL USE — Marijuana that is designated and restricted for use by, and for the benefit of, Qualifying Patients in the treatment of Debilitating Medical Conditions as set forth in the provisions of M.G.L. c. 94C, as amended from time to time. [Added 2-12-2014 STM by Art. 8]

MARIJUANA — All parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94C; provided, however, that “Marijuana” shall not include (1) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (2) hemp; or (3) the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink or other products. Marijuana also includes Marijuana Products except where the context clearly indicates otherwise.

a. Hemp — The plant of the genus Cannabis or any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 per cent on a dry weight basis of any part of the plant of the genus Cannabis, or per volume or weight of Marijuana product, or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

MARIJUANA ESTABLISHMENT — A Marijuana Retailer, Marijuana Product Manufacturer, Marijuana Cultivator, Craft Marijuana Cultivator Cooperative, Independent Testing Laboratory, Standards Laboratory, Research Facility, Marijuana Micro-business, Marijuana Transporter, or any other type of Marijuana-related business, including a Medical Marijuana Treatment Center, that has been duly licensed by the Massachusetts Cannabis Control Commission or relevant State agency.

a. Marijuana Retailer — An entity licensed to purchase and transport cannabis or marijuana product from Marijuana Establishments; and to sell or otherwise transfer this product to Marijuana Establishments; and to sell this product to consumers. Retailers are prohibited from delivering cannabis or marijuana products to consumers; and from

offering cannabis or marijuana products for the purposes of on-site social consumption on the premises of a Marijuana Establishment. A Marijuana Retailer is an entity authorized to purchase and deliver marijuana and marijuana products from Marijuana Establishments and to sell or otherwise transfer marijuana and marijuana products to Marijuana Establishments and to consumers.

b. Medical Marijuana Treatment Center — An entity registered by the State under 105 CMR 725.100 that acquires, cultivates, possesses, processes (including development of related products such as edible Marijuana products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers Marijuana, products containing Marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of cannabis or marijuana for medical use.

MARIJUANA PRODUCTS —Products that have been manufactured and contain Marijuana or an extract from Marijuana, including concentrated forms of Marijuana and products composed of Marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

3. And by amending §198-16, Use Regulation Schedule, COMMERCIAL USES, of the Fairhaven Zoning Bylaw by deleting the “Medical Marijuana Facilities” use and inserting the following new uses, and by amending footnote 21 as follows:

Activity or Use	RR/RA	RB	RC	District		I	AG	MU ¹⁴	WRP ¹⁶
				P	B				
Medical Marijuana Facilities									
<u>Marijuana Establishment (except Social Consumption)</u>	N	N	N	N	N	A ²¹	N	N	N
<u>Marijuana Retailer Social Consumption</u>	N	N	N	N	N	N	N	N	N

Footnote 21: May only be allowed by Special Permit from the Planning Board only in the Medical Marijuana Overlay District. Any alterations, additions and/or changes of an approved ~~Medical~~ Marijuana ~~Facilities Establishment~~ Special Permit shall require a new Special Permit.

4. And by deleting §198-32.3, Temporary Moratoria, Temporary Moratorium on the Sale and Distribution of Recreational Marijuana, in its entirety.

Or to take any action relative thereto.

Petitioned by: Planning Board

ARTICLE 10. SALE OF ROGERS SCHOOL

To see if the Town will vote to authorize the Board of Selectmen to sell the Rogers School Property including three parcels: (1) the school building parcel, (2) former Union Street discontinued between Chestnut Street and Pleasant Street, (3) and a strip of the school yard property abutting the south line of former Union Street and measuring up to 60 feet from north to south along the lines of Chestnut and Pleasant Streets under the terms and conditions they deem to be in the best interest of the Town or take any other action relative thereto

Petitioned by: Board of Selectmen

ARTICLE 11. REZONING OF ROGERS SCHOOL PROPERTY

To see if the Town will vote to amend the Zoning Map as follows:

Rezone the following described property from Single Residence (RA) to Apartment/Multifamily (RC):

That portion of Assessors Map 8, Lot 9, as described in a deed recorded at the Bristol County (S.D.) Registry of Deeds at Book 113, Pages 331 – 333;

Commencing at the northeast corner of the lot, then

Southerly 225.02 feet by the westerly line of Pleasant Street, then

Westerly 250.00 feet in a line running S 82°02'52"W, to the easterly line of Chestnut Street, then

Northerly 224.64 feet along the easterly line of Chestnut Street, then
Easterly 250.00 feet along the southerly line of Center Street, to the point of origin,
Being 56,207 square feet in area;

or to take any other action relative thereto.

Petitioned by: Board of Selectmen

ARTICLE 12. AUTHORIZATION TO SETTLE CLAIM AGAINST THE TOWN- ROBERT D. HOBSON.

To see if the Town will authorize the Board of Selectmen to settle a claim of Robert D. Hobson against the Town in an amount not to exceed \$1,000 to be paid from General Fund Surplus Revenue or take any other action relative thereto.

Petitioned by: Board of Selectmen

ARTICLE 13. PETITION THE STATE LEGISLATURE TO CHANGE THE PACKAGE STORE/ALL ALCOHOL LICENSE ISSUED TO TOTAL CONFECTIONS, LLC, 115 HUTTLESTON AVENUE.

To see if the Town will vote to authorize the Board of Selectmen to petition the State Legislature to amend the Chapter 328 of the Acts of 2012: AN ACT RELATIVE TO THE TOWN OF FAIRHAVEN ISSUING A PACKAGE STORE/ALL ALCOHOL LICENSE TO TOTAL CONFECTIONS, LLC, 115 HUTTLESTON AVENUE IN THE TOWN OF FAIRHAVEN by deleting the following sentence: "This license is non-transferable to a different location, but may grant the license to a new applicant at the same location", or take any other action relative thereto.

Petitioned by: Board of Selectmen

ARTICLE 14. STREET ACCEPTANCE: DOANE COURT

To see if the Town will vote to accept the layout of a parcel of land known as Doane Court as a public way as described as follows:

BEING a 0.29- acre tract of land situated in the Town of Fairhaven, County of Bristol, Massachusetts. Being shown as Doane Court on plan titled "Plan of Land, James Street & Harbor View Ave. in Fairhaven, Ma., Scale: 1"=40" , Date 06/07/07," Prepared by Michael J. Koska & Associates, Inc. and recorded at the Bristol County Registry of Deeds in Plan Book 161, Page 97.

BEGINNING at a concrete bound with a drill hole set at the point of intersection of the easterly right-of-way line of Doane Street with the westerly right-of-way line of Doane Court, said point

being SOUTH 89°21'50" EAST a distance of 49.45 feet from a concrete bound with drill hole set found in the easterly right-of-way line of James Street, a 40 foot wide public way.

THENCE SOUTH 03°37'50" EAST a distance of 2.50 feet to a concrete bound with drill hole set;

THENCE NORTH 84°51'39" EAST a distance of 18.19 feet to a point;

THENCE SOUTH 84°21'50" EAST a distance of 15.04 feet to a concrete bound with drill hole set for the point of curvature to the left having a radius of 60.00 feet;

THENCE northeasterly along said curve to the left, through a central angle of 320°37'25", an arc distance of 335.76 feet to a concrete bound with drill hole set for the point of intersection;

THENCE NORTH 89°21'50" WEST a distance of 43.01 feet to a concrete bound with drill hole set;

THENCE SOUTH 04°54'14" EAST a distance of 39.48 feet along the Easterly right of way line of Doane Street to the point of beginning.

As shown on plan entitled "Roadway Description Plan, Doane Court, Fairhaven, MASS, dated November 29, 2017, Scale 1"=40' by Michael J. Koska & Associates, Inc., or take any other action relative there to.

Petitioned by: Board of Public Works

ARTICLE 15. STREET ACCEPTANCE: REYNOLDS DRIVE

To see if the Town will vote to take by eminent domain and/or accept the layout of parcel of land known as Reynolds Drive as a public way as described as follows:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY SIDELINE OF FARMFIELD STREET AND THE WESTERLY SIDELINE OF GREEN STREET; THENCE

A BEARING OF S 00° 01' 05" E, ALONG THE WESTERLY SIDELINE OF GREEN STREET, DISTANCE OF 328.27' TO A POINT OF BEGINNING; THENCE

A BEARING OF S 00° 01' 05" E, ALONG THE WESTERLY SIDELINE OF GREEN STREET, 30.00' TO A POINT; THENCE

A BEARING OF S 89° 59' 22" W, ALONG THE SOUTHERN SIDELINE OF REYNOLDS DRIVE, DISTANCE OF 295.81' TO A POINT; THENCE

A BEARING OF N 05° 02' 05" W, ALONG THE EASTERLY SIDELINE OF FORT STREET, DISTANCE OF 30.12' TO A POINT;

A BEARING OF N 89° 52' 22" E, ALONG THE NORTHERLY SIDELINE OF REYNOLDS DRIVE, A DISTANCE OF 298.44' TO THE POINT OF BEGINNING

As shown on a plan entitled "Street Layout and Acceptance Plan for Reynolds Drive", scale: 1" = 30', dated April 19, 2018 and prepared by GCG Associates, Inc., Wilmington, MA., said Reynolds Drive is 30.00 feet in width and contains 8914 square feet +/-, or take any other action relative thereto.

Petitioned by: *Board of Public Works*

And you are hereby directed to serve this warrant by posting an attested copy thereof on or near the front or main entrance of the polling place in Precinct 1, Town Hall; and on or near the entrance of the polling place in Precinct 2 and 3, Elizabeth I. Hastings Middle School, School Street; and on or near the entrance of the polling place in Precinct 4, Fire Station meeting room, 146 Washington Street; and on or near the front or main entrance of the polling place in Precinct 5 and 6, Recreation Center, 227 Huttleston Ave; fourteen days at least prior to the date of the meeting.

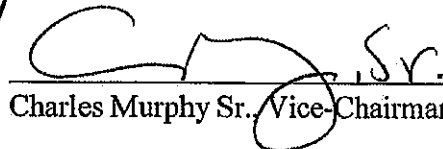
HEREOF FAIL NOT, and make due return of this warrant to the Town Clerk at the time and place of the meeting aforesaid.

Given under our hands this 22nd day of October in the year two thousand eighteen.

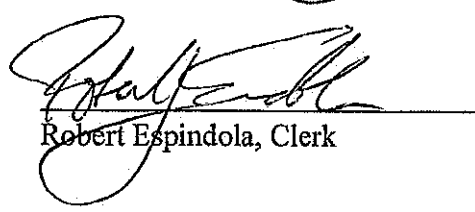
Selectmen of Fairhaven,



Daniel Freitas, Chairman



Charles Murphy Sr., Vice-Chairman



Robert Espindola, Clerk



Town of Fairhaven
Massachusetts
40 Center Street
Fairhaven, MA 02719

Attachment G

PRESS RELEASE: The Town of Fairhaven would like to remind residents to kindly remove your yard sale and advertising signs from telephone poles and trees immediately after your scheduled event is completed. Residents are responsible for the immediate removal of all signs. In accordance with Fairhaven By-law 198-26 Section 3c, the Building Commissioner may implement fines of up to \$300 per sign per-day until removed. Please help to keep our town beautiful by doing your part. Keep a list of where you have placed signs and remove them immediately after your advertised event is done.

