



*Select Board Regular Session Minutes  
Swampscott High School  
200 Essex Street, Room B129  
October 4, 2023, 6:30 PM*

*David Grishman, Chair  
Katie Phelan, Vice Chair  
Mary Ellen Fletcher  
Peter A. Spellios  
Douglas Thompson*

**Received by Town Clerk  
November 21, 2023 2:51pm**

*Sean R. Fitzgerald  
Town Administrator  
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**SELECT BOARD MEMBERS PRESENT:** DAVID GRISHMAN, MARY ELLEN FLETCHER, KATIE PHELAN, PETER SPELLIOS, DOUG THOMPSON

**MEMBERS ABSENT:** NONE

**OTHER TOWN OFFICIALS PRESENT:** SEAN FITZGERALD, TOWN ADMINISTRATOR, CHIEF RUBEN QUESADA, CHIEF GRAHAM ARCHER, GINO CRESTA, DIRECTOR OF DPW, AMY SARRO, FINANCE & ADMINISTRATION DIRECTOR

**OTHER:** ASSET MANAGEMENT & KING'S BEACH UPDATES: DAVID PETERSON, KLEINFELDER, COURTNEY EATON, KLEINFELDER, JOHN RAHILL, KLEINFELDER; NATIONAL GRID LAWSUIT: SHIRIN EVERETT, ATTORNEY, KP LAW

MEETING CALLED TO ORDER AT 6:35 PM

**A. TOWN ADMINISTRATOR'S REPORT:**

- i. MET WITH MR. GRISHMAN, SC CHAIR SUZANNE WRIGHT, FC CHAIR ERIC HARTMAN AND TOWN STAFF TO DISCUSS CHALLENGES THE TOWN AND SCHOOLS ARE FACING AS WELL AS OPPORTUNITIES.
- ii. THE PLANNING BOARD IS IN THE PROCESS OF UPDATING THE MASTER PLAN.
- iii. CHIEF QUESADA AND CHIEF ARCHER PROVIDED AN UPDATE OF THE LYNN/SWAMPSCOTT REGIONAL DISPATCH CONTRACT.
- iv. THE NEW TEEN ROOM "THE FATHOMS" IS OPEN AT THE LIBRARY. THERE WAS A DEDICATION CEREMONY ON SEPTEMBER 23<sup>RD</sup> IN MEMORY OF SANDY MOLTZ.
- v. THE PITMAN HOUSE IS SCHEDULED FOR DEMOLITION. THE AFFORDABLE HOUSING TRUST FUND HAS NOT AUTHORIZED FUNDS TO HELP RELOCATE THE HOUSE.
- vi. THE HADLEY RFP IS OUT AND IS GETTING SOME ATTENTION. TOURS ARE SCHEDULED FOR OCTOBER 19<sup>TH</sup>.
- vii. WORKED WITH KLEINFELDER AND DPW TO OUTLINE AN ASSET MANAGEMENT PLAN VALUED AT \$200M AND CONTINUES TO WORK WITH LYNN MAYOR NICHOLSON TO ADVANCE EFFORTS TO CLEAN UP KING'S BEACH.
- viii. NANCY SCHULZE, HISTORICAL COMMISSION CHAIR, HAS SOME WONDERFUL IDEAS TO MEMORIALIZE GENERAL GLOVER USING MATERIALS FROM THE GLOVER HOUSE.
- ix. STAKEHOLDERS ARE STILL WORKING HARD TO FIND ALTERNATIVES TO SAVING THIS PROPERTY.
- x. THE RFP FOR VETERANS HOUSING ON PINE STREET CLOSED LAST WEEK. WE RECEIVED ONE PROPOSAL AND ARE IN THE PROCESS OF REVIEWING IT.
- xi. CAPITAL PLANS WERE DUE TO THE FINANCE TEAM LAST WEEK AND ARE BEING REVIEWED TO BE PUT INTO A COHESIVE PLAN FOR THE CAPITAL IMPROVEMENT COMMITTEE'S REVIEW.
- xii. THE TOWN HALL GARAGE IS ALMOST COMPLETE AND THE RFPs FOR A NEW HOOD SYSTEM AT THE SENIOR CENTER HAVE BEEN RECEIVED AND A CONTRACTOR SELECTED.
- xiii. BOTH FIRE AND POLICE ARE IN THE PROCESS OF HIRING TO FILL VACANCIES.
- xiv. AMY SARRO WILL BE BEFORE THE BOARD ON OCTOBER 18<sup>TH</sup> TO GIVE ARPA UPDATES AND TO REVIEW TOWN FEES. SHE IS ALSO WORKING WITH DEP TO GET \$2.5M FOR KING'S BEACH. THE FINANCE TEAM IS ALSO HARD AT WORK UPGRADING THE TOWN'S BOND RATING.
- xv. WGBH WILL BE AT THE SENIOR CENTER PROMOTING ITS SEA GLASS VILLAGE PROGRAM.
- xvi. RECREATION IS BUSY WITH MANY EVENTS HAPPENING THIS MONTH AND WELL INTO DECEMBER.

MS. FLETCHER: 1) WHO EVALUATES THE PINE ST. RFP? (TYPICALLY, TOWN STAFF AND TWO SELECT BOARD MEMBERS); 2) ARE WE DISCUSSING THE ARPA MONEY AND \$2.5M FOR KING'S BEACH? (IN TWO DIFFERENT AGENDA ITEMS IN A FUTURE

MEETING); 3) MARY ANN HARTMANN WILL BE BRINGING THE PONIES, MINIS WITH A MISSION, TO A FARMER'S MARKET SOON.

- B. PUBLIC COMMENT:** MR. PETER BOORAS, 22 CHARLOTTE ROAD, PRECINCT 5: HERE WITH A PROPOSAL TO ALLOW TWENTY BOATS FOR WINTER STORAGE IN PHILLIPS PARK, ORGANIZE A THREE-PERSON COMMITTEE TO OVERSEE BOAT STORAGE. HE BELIEVES THE TOWN HAS MADE REVENUE, IS DISAPPOINTED THE WAY THIS ENDED UP.

SUSAN BOORAS, 22 CHARLOTTE ROAD, PRECINCT 5: ASKING FOR A CHANGE IN THIS DECISION AND TO ALLOW STORAGE THIS YEAR.

SUZANNE WRIGHT, 11 HARDY RD: IS IN SUPPORT OF THE TRAILER STORAGE, FEELS THE DECISION WAS MADE AT THE LAST MINUTE AND IT WAS DIFFICULT TO FIND ANOTHER SLIP. LYNN, SALEM AND MARBLEHEAD HAVE PUBLIC SPACES. SHE ALSO FEELS THAT IT IS HYPOCRITICAL TO TALK ABOUT ITS MARINE HISTORY AND TO SHUT OFF BOAT STORAGE. SHE ADVOCATES USING A BASEBALL FIELD AT ABBOTT PARK INSTEAD OF AT PHILLIPS PARK.

STEVE SPERANZA, STETSON AVE.: SPOKE IN FAVOR OF KEEPING BOAT STORAGE.

TA FITZGERALD COMMENTED THAT THE BOARD CAN'T RESPOND TO PUBLIC COMMENTS BUT HE IS WILLING TO MEET WITH EVERYONE PRESENT AT THE FISH HOUSE AND DISCUSS THIS.

**C. NEW & OLD BUSINESS:**

1. **READING OF INDIGENOUS PEOPLES' DAY PROCLAMATION:** THE SELECT BOARD TOOK TURNS READING THE PROCLAMATION IN HONOR OF INDIGENOUS PEOPLES' DAY.
2. **READING OF THE BREAST CANCER AWARENESS PROCLAMATION:** THE SELECT BOARD TOOK TURNS READING THE PROCLAMATION IN HONOR OF BREAST CANCER AWARENESS MONTH.

3. **HOLCIM-NER (AGGREGATE INDUSTRIES) EARTH REMOVAL PERMIT:**

UPON **MOTION**, DULY MADE BY KATIE PHELAN, SECONDED BY DOUG THOMPSON, TO CONTINUE THE PUBLIC HEARING FOR HOLCIM-NER'S EARTH REMOVAL PERMIT AT 7:04 P.M.

UPON **MOTION**, DULY MADE BY MARY ELLEN FLETCHER, SECONDED BY KATIE PHELAN, IT WAS UNANIMOUSLY **VOTED** TO CONTINUE THE HOLCIM-NER PUBLIC HEARING TO MARCH 6, 2024: ALL IN FAVOR: YES. ANY OPPOSED: NO. MOTION CARRIES.

4. **ASSET MANAGEMENT & KING'S BEACH UPDATE:** MS. EATON AND MR. PETERSON, KLEINFELDER, DISCUSSED ASSET MANAGEMENT AND CAPITAL IMPROVEMENT PLAN. THERE ARE 57 MILES OF WATER PIPES, 70% OVER 50 YEARS OLD, 475 HYDRANTS, 46 MILES OF SEWER, 50% OF WHICH IS OVER 100 YEARS OLD AND 28 MILES OF DRAIN PIPES & CULVERTS. PHASE I ADDRESSED THE WATER SYSTEM AND ARE NOW WORKING TO GET ENOUGH DATA TO TRANSITION FROM BEING REACTIVE TO PROACTIVE. THEY ARE USING EVERY IMPROVEMENT TO THE SEWER SYSTEM POSSIBLE INCLUDING LATERAL CIPP LINING OF MAIN LINES AND LINES TO HOMES AS WELL AS SEWER MANHOLES - LINING 7 MILES OF SEWER, REPLACED 470 HOUSE SERVICES AND 250 MANHOLES FOR A COST OF \$6.5M. PATHOGEN LEVELS ARE DECREASING BUT NOT CONSISTENTLY. ASSETS CAN FAIL DUE TO AGE, HIGH VOLUME, HIGH DENSITY, PROXIMITY TO ENVIRONMENTALLY SENSITIVE AREAS. HISTORICALLY, DRINKING WATER SERVICE LINES HAVE BEEN LEAD-BASED. MASSACHUSETTS IS IN THE PROCESS OF REMOVING THOSE. THERE ARE NO LEAD-BASED SERVICE LINES IN SWAMPSCOTT. KING'S BEACH IS A PRIORITY REGARDING DRAINAGE BUT IS NOT THE ONLY PRIORITY. THE AGE AND CONDITION OF THE DRAINAGE SYSTEM IS UNKNOWN, THERE ARE ASSETS WITH MISSING INFORMATION AND DATA GAPS THAT NEED TO BE CLOSED, SEAWALL REPAIR IS ONGOING AND KLEINFELDER SUGGESTS LOOKING AT THE 2017 FLOOD STUDY. FOR THE OUTFALL EXTENSION PROJECT \$50M IS HOPED FOR TO BE FUNDED BY STATE AND/OR FEDERAL GRANTS. THE STORMWATER 5-YEAR CIP INCLUDES KING'S BEACH IMPROVEMENTS, CONTINUED SEAWALL REPAIR, FLOOD MITIGATION PROJECTS, PROACTIVE ASSESSMENT AND REHAB PROGRAM FOR PIPES.

QUESTIONS:

MS. FLETCHER: ASKED ABOUT A REPORT AND WHY THIS HAS TAKEN TWO YEARS. (IT TAKES TIME COLLECTING THE DATA, PUTTING IT TOGETHER, WORKING WITH TOWN STAFF AND UNDERSTANDING OUTPUTS). 2) WILL THE REPORT STATE HOW VULNERABLE THE TOWN IS TO THE FORCE MAIN? (NO, WE DON'T HAVE THE SPECIFIC CONDITION OF THE FORCE MAIN BUT MR.

CRESTA IS WORKING ON GETTING US THAT INFORMATION); 3) DO WE HAVE A SAVINGS ONCE PIPES HAVE BEEN LINED? (UP TO \$50,000, NOT SIGNIFICANT); 4) ARE PIPES TESTED AGAIN? (THERE'S UNCERTAINTY IN THE DATA); 5) PHASE I, DOES ALL THAT DRAINAGE RUN INTO KING'S BEACH? WHAT PERCENTAGE OF MAINS & LATERALS HAVE BEEN LINED (44% MAINS, ROUGHLY SAME FOR LATERALS, FOR \$6.5M); 5) HAS CONCERNS ABOUT THE HUMPHREY STREET PUMP STATION FORCE MAIN, GIVEN THAT THE CONDITION IS UNKNOWN (MR. CRESTA IS REQUESTING FUNDING TO REPAIR). 7) DISCUSSED THE \$2.5M COMING FROM THE STATE 8) ASKED ABOUT THE OUTFALL NUMBERS ON THE 9/1 REPORT BECAUSE THEY'RE SO HIGH. THERE ARE RECREATIONAL PROGRAMS THERE AND SHE'S CONCERNED WE'RE NOT ADDRESSING THIS SITUATION IMMEDIATELY. (THE CONSENT DECREE INCLUDES FISHERMAN'S BEACH. THE TEST DATA IN THE 9/1 REPORT IS FROM THE OUTFALL BY MARSHALL ST. THE CONSENT DECREE REQUIRES THE TOWN TO PERFORM SAMPLING. THERE IS A DESIGN FOR IMPROVEMENTS TO THAT OUTFALL BUT NEEDS FUNDING FOR THE CONSTRUCTION PHASE); 9) IF YOU DON'T GET A RESULT, DO YOU RETEST? (NO).

MR. SPELLIOS: IS THERE A PRIOR INFRASTRUCTURE REPORT (NO, MR. CRESTA HAS A MAP OF THE WATER MAINS AND INSTALLATION DATES). HE FINDS IT IRRATIONAL THAT THERE IS NO PRIOR PLAN, THAT THIS IS THE FIRST EVER PLAN FOR ASSET MANAGEMENT (MS. EATON: THIS PLAN OF ASSET MANAGEMENT IS A NEWER IDEA, WITHIN THE LAST TWENTY YEARS. WE'RE STARTING TO UNDERSTAND THE IMPORTANCE OF PROACTIVE MANAGEMENT. MR. CRESTA: WE HAVE A DRAIN PLAN FROM A FEW YEARS AGO). 2) WHAT ARE THE I/I FEES. NOT A SINGLE HOUSEHOLD HAS PULLED A PERMIT FOR A SEWER CONNECTION SINCE DECEMBER? THERE WAS A DISCUSSION ABOUT SEWER CONNECTION PERMITS, HOW THE FEE IS CALCULATED AND HOW MUCH HAS BEEN COLLECTED. MR. THOMPSON AGREES, WATER REVENUE LOOKS CONSISTENT, WE HAVE PROJECTIONS, SEWER RATES MAY HAVE TO INCREASE. THERE ARE FUNDS AVAILABLE THAT WE CAN USE TO KEEP RATES DOWN. WE CAN CREATE AN ENTERPRISE FUND. HE FEELS WE'RE ALMOST THERE. 3) THERE HAVE NOT BEEN MATERIAL IMPROVEMENTS TO THE OUTFALL. (THE CLEANEST PLACE TO SEE RESULTS IS A SAMPLE SPOT ON PARADISE AT BURRILL. THE DRY WEATHER RESULTS HAVE BEEN LESS THAN 1,000 TO SHOW THE BENEFIT OF PHASE I.). HOW MUCH OF OUR OUTFALL PROBLEM ARE WE SOLVING WITH IDDE?

MS. PHELAN: DOES SLEEVING THE INSIDE OF THE PIPES, THEREBY MAKING THE PIPE SMALLER, CAUSE A SIGNIFICANT ISSUE AND CAN WE HANDLE IT (NO, IT'S A SMALL DIFFERENCE). MS. FLETCHER: WHAT IS THE LIFE EXPECTANCY OF THE LINERS (70-80). 2) ARE THERE AVENUES TO KEEP THE AREAS THAT HAVE BEEN COMPLETED IN GOOD REPAIR? (LINERS ARE GOOD FOR 70-80 YEARS SO THE NEED ISN'T IMMEDIATE BUT MAINTENANCE IS).

MR. GRISHMAN: ASKED ABOUT THE SPIKES, HOW MANY ILLICIT DISCHARGES WILL AFFECT? (ONE).

MR. THOMPSON: THERE'S KING'S BEACH IMPROVEMENTS HAPPENING IN BOTH THE WATER & SEWER IMPROVEMENTS? (YES). 2) DOES THE COST PROJECTION INCLUDE ENOUGH FUNDING TO GET US TO 56% AS WAS DISCUSSED EARLIER? (THERE ARE SPECIFIC ALLOCATIONS FOR PHASE II IDDE, SEWER AND STACEY'S BROOK. THE ADDITIONAL CIP HAS AN ONGOING PACE OF INVESTMENT TO BRING THE SYSTEM UP TO GOOD REPAIR, INCLUDING CONDUCTING AN I/I STUDY WHICH WILL PROVIDE DATA TO PRIORITIZE SEWER REHAB).

TA FITZGERALD: IS THIS AFFECTED SEASONALLY? (MR. PETERSON DOESN'T KNOW IF THIS IS AFFECTED SEASONALLY).

PUBLIC QUESTIONS:

ANDREA AMOUR, SHERIDAN RD., PRECINCT 3: FEELS THIS IS TAKING TOO LONG AND SWAMPSCOTT IS FAR BEHIND, SHE FEELS STAKEHOLDERS SHOULD BE LOOKING AT OTHER TOWNS AND HOW THEY RESOLVED THIS PROBLEM, START A TOWN COMMITTEE TO HELP MAKE PHONE CALLS, EXPLORE OTHER OPTIONS. IF IT'S THE RESPONSIBILITY OF THE HOMEOWNER TO FIX THEIR LATERALS, WHY IS THE TOWN PAYING? (THE TOWN WAS TRYING TO BE STRATEGIC AND FOCUSED; WE NEED TO DISCUSS SOME COSTS AND OBLIGATIONS. MR. SPELLIOS REPLIED THAT IT'S AN ORDINANCE THAT HOMEOWNERS PAY, WE SHOULD BE CHARGING THEM).

BRIAN DRUMMOND, REDDINGTON ST.: A REPORT IN 1990 INCLUDED LIFE EXPECTANCY OF THE FORCED MAIN. THIS GOES BACK TO THE 1970S. DISCUSSED A RECOMMENDED 2-3 YEAR DURATION WHICH WOULD FINISH.

LIZ SMITH, PRECINCT 3: DISCUSSED THE EPA REPORT, THERE ARE NO LOCATIONS ON PRIOR REPORTS, SHE THINKS THERE SHOULD BE MORE DISCUSSION, TEASING OUT CORRELATIONS, WE'RE NOT DOING ENOUGH FOR KING'S OR FISHERMAN'S BEACHES.

WAYNE SPRITZ, PRECINCT 3: ASKED ABOUT THE UNDERDRAIN WHICH IS CONNECTED TO A PIPE THAT RUNS TO LYNN, WHY ISN'T THE EXISTING PIPE BEING CONSIDERED, WHAT AFFECT DOES IT HAVE IF A DOG GOES TO THE BATHROOM OVER A DRAIN OR IF SOMEONE PUTS MANURE FERTILIZER ON THEIR LAWN?

5. **ARPA FUNDS UPDATE:** MS. SARRO UPDATED THE BOARD WITH THE STATUS OF ARPA FUNDS, INCLUDING PREVIOUS EXPENDITURE. THERE IS \$2.18M TO BE OBLIGATED BY 12/31/2024 AND SPENT BY 12/31/2026. SHE HAS REACHED OUT TO DEPARTMENT HEADS TO UPDATE THEIR PROPOSALS AS WELL AS THE TIMELINE. MS. SARRO HAS REACHED OUT TO DHR FOR AUTHORIZATION ON HOW THESE FUNDS CAN BE SPENT, THIS INCLUDES PROVIDING A SCOPE OF WORK TO DOR. WE DON'T NEED SELECT BOARD APPROVAL TO EXPEND THE REMAINING ARPA FUNDS (IT WAS LATER VERIFIED THAT SELECT BOARD APPROVAL IS REQUIRED). WE ARE ALSO RECEIVING AN ADDITIONAL \$2.5M FROM DEP FOR KING'S BEACH.

MS. FLETCHER REQUESTED THAT TA FITZGERALD SEND HER THE INFORMATION ON THE \$2.5M USED TO LINE SEWER PIPES WITH THE REMAINING \$2.18M USED FOR INFRASTRUCTURE BECAUSE SHE IS NOT IN AGREEMENT.

MS. PHELAN: KLEINFELDER LOOKS TO HAVE FUNDS DIRECTED TO SEWER LINING, CAN WE GET SOME FEEDBACK WHEN THE ARPA PRESENTATION IS DONE.

THERE WAS A DISCUSSION FOR THE TIMELINE ON WHEN THE SELECT BOARD WILL VOTE ON HOW ARPA FUNDS ARE SPENT.

6. **SETTLEMENT OF MASSACHUSETTS ELECTRIC COMPANY:** NATIONAL GRID PREFERENCES A GROUND LEASE OPTION FOR THE RAIL TRAIL, NOT AN EASEMENT TAKEN FOR IT. IN 2021 PERMISSION WAS SOUGHT IN TOWN MEETING IN 2021 SEEKING A 99-YEAR GROUND LEASE CONSISTENT WITH OTHER COMMUNITIES. NATIONAL GRID AND TOWN COUNSEL HAVE ENTERED INTO TALKS WITH MASSDOT. THE TOWN HAS BEEN ALLOCATED \$10M TO PAY COSTS ASSOCIATED WITH THE TRAIL, INCLUDING A NEW DESIGN AND PUBLIC PROCESS TO MAKE SURE IT MEETS MASSDOT TRAIL GUIDELINES. THE BOARD REVIEWED, IN EXECUTIVE SESSION, AN ESCROW AGREEMENT, AN ASSENT AGREEMENT AND A LEASE & ASSENT AGREEMENT ALLOWING THE TOWN TO USE THE PORTION OF THE TRAIL ALREADY CONSTRUCTED.

ELIZABETH PAPALARDO, PRECINCT 3: WHAT ARE THE ADDRESSES, DOES NATIONAL GRID OWN THE EASEMENT OR THE LAND? (IN PORTIONS WHERE NATIONAL GRID OWNS IN FEE (OWNS THE LAND), STETSONS AVE., CONTAINS PORTIONS THROUGH WALKER ROAD AND THE MIDDLE SCHOOL. NOTHING HAS CHANGED IN THE DESIGN. THE TOWN HAS TO MEET MASSDOT DESIGN STANDARDS WHICH WILL GO THROUGH A PUBLIC PROCESS). MS. PAPALARDO: IF DESIGN STANDARDS AREN'T WHAT WAS AGREED UPON IN TOWN MEETING, WHAT HAPPENS? DID ANYONE THINK TO NOTIFY NEIGHBORS? (THIS DISCUSSION IS FOR SETTLEMENT OF LITIGATION. THE SETTLEMENT CREATES A PROCESS WHERE EVERYONE WILL BE NOTIFIED AND MASSDOT WILL HAVE A DESIGN PROCESS).

UPON **MOTION**, DULY MADE BY PETER SPELLIOS, SECONDED BY KATIE PHELAN, IT WAS UNANIMOUSLY **VOTED** TO APPROVE AND AUTHORIZE THE SELECT BOARD TO SIGN THE ESCROW AGREEMENT WITH THE CORRESPONDING EXHIBITS, THE ASSENT AGREEMENT AND RELEASE OF EASEMENT IN THE FORMS PROVIDED, ON THE CONDITION OF THE SETTLEMENT OF THE LITIGATION: ALL IN FAVOR: YES. ANY OPPOSED: NO. **MOTION CARRIES.**

7. **DISCUSSION OF LYNN AND SWAMPSCOTT PUBLIC SAFETY ANSWERING POINT:** CHIEF ARCHER AND CHIEF QUESADA DISCUSSED THE HISTORY OF THE MUTUAL DISPATCH AGREEMENT WITH LYNN WHICH SAVES APPROXIMATELY \$114,000 PER YEAR. DISPATCHING IS DEMANDING AND DISPATCHERS ARE HIGHLY TRAINED. PROFESSIONAL LYNN DISPATCHERS PROVIDE A HIGH-QUALITY SERVICE. THIS IS ALSO ESSENTIAL IN TERMS OF PARTNERSHIP WITH LYNN POLICE AND FIRE TOO. THE CONTRACT INCLUDES "AUTOMATIC AID" FROM LYNN FIRE TO SWAMPSCOTT WHICH MEANS THAT IF A TELEPHONE ALARM COMES IN, LYNN RESPONDS AS WELL, WHICH IS A SIGNIFICANT BENEFIT. THIS REPLACED THE TOWN'S SECOND ENGINE WHEN THE SECOND STATION WAS CLOSED.

THERE IS A SIGNIFICANT INCREASE IN COST BUT WE HAVE TO KEEP IN MIND WHAT THE COST TO THE TOWN WOULD BE WITHOUT IT. WE BUDGETED \$140,000 THIS FISCAL YEAR, IT WAS \$71,000 + \$29,000 IN EQUIPMENT UPGRADES LAST YEAR. THERE IS A \$50,000 CAPITAL IMPROVEMENT REQUEST FOR EQUIPMENT UPGRADES FOR LYNN AND SWAMPSCOTT. THERE IS NO SERVICE INCREASE BUT THE CITY OF LYNN ASKED FOR AN ADJUSTMENT IN COST-SHARING BUT THEY FEEL THAT THE TOWN IS GETTING A GOOD DEAL.

UPON **MOTION**, DULY MADE BY PETER SPELLIOS, SECONDED BY MARY ELLEN FLETCHER, IT WAS UNANIMOUSLY **VOTED** TO APPROVE THE LYNN PSAP AS PRESENTED: ALL IN FAVOR: YES. ANY OPPOSED: NO. **MOTION CARRIES.**

- 8. DISCUSSION OF THE PITMAN HOUSE:** THE SELECT BOARD AGREED TO TRY TO SAVE THE PITMAN HOUSE A FEW MONTHS AGO. HABITAT FOR HUMANITY IS INTERESTED IN WORKING WITH THE TOWN AND HAVE A DETAILED PRO-FORMA FOR PUTTING TOGETHER 4-UNITS ON HILLSIDE INCLUDING THE PITMAN HOUSE. THE BOARD HAS TO ALLOCATE \$150,000 TO MOVE THE HOUSE TO A TEMPORARY STORAGE LOCATION AND GIVE THE TOWN ADMINISTRATOR THE AUTHORITY TO MAKE THAT HAPPEN. TIME IS OF THE ESSENCE. IF IT IS NOT MOVED IN THE NEXT WEEK, IT WILL BE DEMOLISHED. THE AFFORDABLE HOUSING TRUST HAS TO VOTE TO BUY THE LAND FOR HABITAT.

MS. FLETCHER: IF WE FINANCE THIS MOVE, WE SAVE A HISTORIC HOUSE AND GET FOUR AFFORDABLE UNITS. SHE FEELS THIS IS DOABLE.

MR. SPELLIOS: DISCUSSED THE PITMAN HOUSE, IT WAS IDENTIFIED AS A 40B IN THE PROCESS. HE CAN'T SUPPORT SPENDING THE MONEY ON THIS AND HOPES THE TOWN IDENTIFIES EVERY HOUSE WORTH SAVING. THIS IS THE TYPE OF PROJECT HE CAN SUPPORT BUT THERE ARE TOO MANY UNKNOWNNS WITH THIS ONE.

MS. PHELAN: DISCUSSED LISTING HISTORIC PROPERTIES IN TOWN AND BEING PROACTIVE WITH WHAT CAN BE DONE WITH WHAT IS LEFT RATHER THAN BEING REACTIVE AS WITH THIS AND THE GLOVER. SHE SUPPORTS A PROJECT LIKE THIS BUT THERE ARE TOO MANY "WHAT IF'S". WE NEED A PROCESS TO RANK HISTORICAL HOMES AND WHAT IS WORTH SAVING.

MR. THOMPSON: THE HISTORIC COMMISSION HAS SOME FUNDRAISERS AND GRANTS WHICH COULD DEFRAY WHATEVER THE BOARD PUTS FORWARD FOR THIS. SPENDING ARPA FUNDS WOULDN'T BE UNPRECEDENTED.

MR. GRISHMAN: YOU'VE WORKED HARD AT THIS. WE CAN'T FOCUS ON JUST ONE ISSUE. I'M AN ADVOCATE FOR AFFORDABLE HOUSING. THEY WERE NON-COMMITTAL TONIGHT. WE'VE RUN OUT OF TIME WITH THIS AND THE GLOVER. WE NEED TO CREATE POLICY WITH THE COMMUNITY PRESERVATION ACT WHERE WE HAVE FUNDS TO USE. HE WOULD LIKE TO SEE THE PRO-FORMA. HABITAT KNEW THIS WAS COMING AND DRAGGED THEIR FEET. HE CAN'T SUPPORT USING \$150,000 FROM ARPA FOR THIS.

**D. APPROVAL OF THE CONSENT AGENDA:**

1. ANNUAL FOX TROT 5K RUN/WALK
2. ONE-DAY LIQUOR LICENSE FOR FOX TROT 5K RUN/WALK
3. MINUTES OF 9/6/23 & 9/20/23

MS. FLETCHER ASKED TO HAVE ITEM #2, REQUEST FOR A ONE-DAY LIQUOR LICENSE, REMOVED. SHE IS A NO FOR A 9:00 AM LIQUOR LICENSE START TIME.

UPON **MOTION**, DULY MADE BY MARY ELLEN FLETCHER, SECONDED BY DOUG THOMPSON, IT WAS UNANIMOUSLY **VOTED** TO APPROVE THE CONSENT AGENDA AS AMENDED (REMOVAL OF ITEM 2): ALL IN FAVOR: YES. ANY OPPOSED: NO. **MOTION CARRIES.**

UPON **MOTION**, DULY MADE BY PETER SPELLIOS, SECONDED BY DOUG THOMPSON, IT WAS **VOTED** TO APPROVE CONSENT AGENDA ITEM #2, APPROVAL OF A ONE-DAY LIQUOR LICENSE: ALL IN FAVOR: 4 (GRISHMAN, PHELAN, SPELLIOS, THOMPSON). ANY OPPOSED: 1 (FLETCHER). **MOTION CARRIES.**

**E. SELECT BOARD MEMBER TIME:**

**MS. FLETCHER:** 1) THANKED THE SWAMPSCOTT CABLE STAFF; 2) THE RETIREMENT BOARD IS DISCUSSING AN ARTICLE FOR INCREASES IN COLA. SWAMPSCOTT IS IN THE TOP 14 OUT OF 130 COMMUNITIES FOR RETURNS; 3) SWAC IS PREPARING TO HAVE A PUBLIC MEETING TO ADDRESS A NEW PLASTICS BY-LAW; 4) THE BOARD OF HEALTH IS DOING SOME HOUSEKEEPING.

**MR. GRISHMAN:** THE CAHILL 5K TO BENEFIT DAN CAHILL & THE ANCHOR FOOD PANTRY ON OCTOBER 22ND. CONTACT THE ANCHOR FOOD PANTRY AT ANCHORFOODPANTRY@GMAIL.COM IF INTERESTED IN PARTICIPATING OR BECOMING A SPONSOR.

**MS. PHELAN:** THE POLICE DEPARTMENT IS PARTICIPATING IN NATIONAL DRUG TAKE BACK DAY. LIQUIDS AND CREAMS CAN BE BROUGHT IN AS LONG AS THEY ARE IN THEIR ORIGINAL PACKAGING AND PLACED IN A ZIP LOCK BAG. THIS INCLUDES PET MEDICATIONS. NO NEEDLES OR SHARP OBJECTS ARE ACCEPTED.

**MR. SPELLIOS:** NOTHING TO ADD.

**MR. THOMPSON:** NOTHING TO ADD.

UPON **MOTION**, DULY MADE BY KATIE PHELAN, SECONDED BY DOUGLAS THOMPSON, IT WAS UNANIMOUSLY **VOTED** TO ADJOURN AT 10:44 P.M.: ALL IN FAVOR: YES. ANY OPPOSED: NO. MOTION CARRIES.

TRUE ATTEST,

*Dianne Marchese*

DIANNE MARCHESE, ADMINISTRATIVE ASSISTANT TO THE TOWN ADMINISTRATOR & SELECT BOARD

MINUTES APPROVED BY THE SELECT BOARD ON NOVEMBER 20, 2023

ATTACHMENTS:

TA'S REPORT

INDIGENOUS PEOPLES' DAY PROCLAMATION

BREAST CANCER MONTH PROCLAMATION

KING'S BEACH PRESENTATION

ARPA FUNDS UPDATE

NATIONAL GRID SETTLEMENT DOCUMENTS

PUBLIC SAFETY ANSWERING POINT & SECONDARY PSAP AGREEMENT

FOX TROT 5K MAP

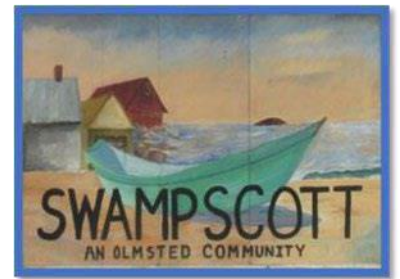
BENT WATER ONE-DAY LIQUOR LICENSE



# Town of Swampscott

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*Sean R. Fitzgerald*

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Town Administration  
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Swampscott, MA 01907

## RE: OCTOBER 4<sup>th</sup> REPORT TO THE SELECT BOARD

Dear Select Board:

I am pleased to be able to offer the following report on programs and initiatives that are on-going in the Town of Swampscott, as well as some updates on a variety of things that have happened since my last report.

### TRI CHAIR

Last Monday, SB Chair David Grishman, SC Chair Suzanne Wright, FC Chair Eric Hartman and Town Staff met to discuss some of the SPD and Town financial challenges and opportunities.

We all shared some candid discussions of the financial challenges and discussed how important it would be to help continue to meet and strategize on careful financial planning.

### MASTER PLAN UPDATE

Last week, I met with Marzie to review the efforts of the Planning Board to update the Master Plan.

She reviewed a list of residents who are interested in being appointed and we discussed the composition of those who would help shape this plan. The SB will need to meet to review and discuss this soon.

### REGIONAL DISPATCH CONTRACT

Both Chief Archer and Chief Quesada will be present to provide an updated on the contract renewal for the Lynn, Swampscott and Nahant Regional Dispatch Contract.

This is a great deal for the Town as the cost for a stand alone dispatch service center would be significantly more than this annual contract.

### THE FATHOMS

Last week, I held a staff meeting at a new teen space at the Swampscott Public Library called "The Fathoms". Teens were involved in naming it, helping pick colors and design. I was asked to speak at a dedication ceremony on Saturday, September 23<sup>rd</sup> to celebrate the life of former Swampscott Library employee, Sandy Molz.

It was wonderful to hear so many people remembering Sandy's love of service and support for music programs, focused on youth. Teens need a place to come together and gather more than ever and I am very proud of our Library and the legacy of Sandy Moltz that continues to shine. We have hired two teen pages to restock as there's been a big uptick in use of this space.

There's a recording of the dedication on their YouTube page: [Dedication of Teen Room in memory of Sandy Moltz - September 23, 2023 \(second half of speeches only\) - YouTube](#)

### **PITMAN HOUSE**

I have held several meetings with the Historical Commission Chair Nancy Shultz and Select Board member Doug Thompson to discuss relocating/preserving the Pitman House. We met with Habitat for Humanity and discussed logistics for how we move forward with a project. Unfortunately, the Affordable Housing Trust Fund Committee has not authorized funds to help relocate the house and it is immediately scheduled to be demolished. (There has been a slight delay to help grant some time for a few options.)

### **HADLEY RFP**

The Hadley RFP is out and getting some great attention and staff are receiving calls for tours on 10/19 or during times that week. Marzie is working with Max Kasper for these tours.

### **ASSET MANAGEMENT/KINGS BEACH UPDATE**

Over the last few month, I have been working with Gino Cresta and Dave Peterson from Kleinfelder to outline an Asset Management plan for the Town's Water, Sewer and Drainage systems. These systems are valued at over \$200M in value and comprise one of the largest assets for the Town.

This Asset Management Project has been in the works for some time. Since our kickoff in Nov 2021, we have compiled an asset inventory to understand fully the Town's utility (water, stormwater, wastewater) assets and to the degree available, reviewed and summarized any available information related to the condition of these assets. Using the gathered information as well as through discussions with staff, Kleinfelder has developed a prioritized 20-year Capital Improvement Plan (CIP) for all three systems, with a particular focus on detailing out the first 5 years of needed spending.

Additionally, I continue to work with Mayor Nicholson on the efforts to clean up King's Beach. We received the attached letter in response to a letter we sent back in August from Under Secretary Cooper on the efforts to move forward with an outfall extension and UV treatment. I have let the Mayor know that Swampscott is very much in favor of expediting the outfall permitting but we also support fully exploring the opportunities to expedite and funding the UV due diligence.

With this, I've shared that I would like to schedule a meeting ASAP with the Army Corp.; EPA; CZM; and DEP. We need to get a list of the names and responsibilities of all the critical staff and partners from all the state and federal agencies that have been assigned to help work with us as we seek to implement a solution. We need deadlines and deliverables for all agencies and permits.

We need to get a clear critical path for permitting, with schedules, scopes of work, and fees for UV and the outfall extension.

While I appreciate that expediting the permitting for the outfall by 6 month to 1 year, is helpful, it seems too vague, as our assumption is this will take 7-8 years. This is not an acceptable timeline. I believe that a critical meeting at this time may help build consensus for expediting a grand consensus for bringing this beautiful beach back to the resource we all desperately need.

With this, attached is a presentation on the Town's Asset Management for our water, drainage and sewer systems. We will also be providing more information on the IDDE report we filed on September 1<sup>st</sup>.

### **GLOVER**

Met with Nancy Schulze, Historical Commission Chair, and representatives from Leggat McCall to discuss preserving this historic property in some way this past week.

Unfortunately, the building is too far gone but Nancy has some wonderful ideas for how we can memorialize General Glover and use some of the materials from the original building.

### **PITMAN HOUSE/AFFORDABLE HOUSING**

After the ZBA denied the request for a zoning variance, stakeholders are hard at work trying to find alternatives



to saving this property before it has to be torn down to make way for the new Elm Street affordable housing project. Alternatives include a proposal to move it to the cemetery until such time a viable lot can be found.

### **VETERANS HOUSING FOR PINE STREET**

RFPs for this project closed last week. We received one proposal and are in the process of reviewing it with a fine-tooth comb.

### **CAPITAL PLAN**

Capital projects were due to the Finance team last Friday. Patrick & Amy are hard at work reviewing each plan and putting into a cohesive plan for the Capital Improvement Committee's review.

### **FACILITIES DEPARTMENT**

Max is also hard at work coordinating the new school construction, the completion of the Town hall garage and installing a new hood system for the Senior Center kitchen among other things.

The contractor has asked for, and been given, permission to continue working on the new elementary school on Monday, October 9<sup>th</sup>.

### **POLICE & FIRE UPDATES**

Both the SPD and SFD are in the process of hiring to fill vacancies. The Fire Department has a number of great candidates that they'll be bringing forth to me for consideration.

Chief Archer is also working with a representative of the Mass. Department of Emergency Medicine to ensure that EMTs can administer a dose of suboxone after someone has overdosed. This helps relieve the immediate withdrawal symptoms, thereby making the patient more willing to enter the medical system for treatment.

The Police Dept. has stepped up their hiring process, reducing it to 49 days. They currently have 13 candidates who have passed the physical test and 12 candidates scheduled for interviews this week. Gino Cresta and Pam Angelakis will be sitting on the selection committee.

October 4<sup>th</sup> is the annual bike & walk to school day. Marzie Galazka, the School Dept. and Police are working on encouraging students and parents to walk or ride their bikes to school and to do so safely.

### **FINANCE**

Amy Sarro will be before the board at its next meeting, October 18<sup>th</sup>, to give updates on ARPA funds and to discuss Town fees. She is also working with DEP to get \$2.5M for King's Beach. I will update the Board as soon as we have a status.

This past week I met with Amy and Patrick to review Town Finances with S&P to see if we can upgrade the Town's Bond rating.

### **SENIOR CENTER**

As always, Heidi and her staff are hard at work. WGBH will be promoting Sea Glass Village on their program "getting older" as part of their aging programs.

They are in need of another van driver. If anyone is interested, please visit the Town's HR website for the job description and application.

### **RECREATION DEPARTMENT**

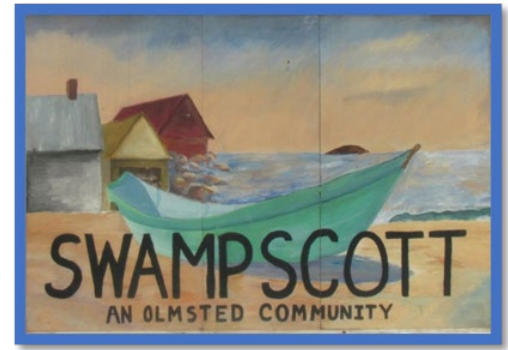
I encourage everyone to spend a little time at the Farmer's Market this month as there is something for everyone including the annual classic car show (10/8), a celebration honoring Indigenous Peoples' Day (10/15), minis with a mission (10/22) and the annual Halloween parade (10/29). In November, the market moves indoors. They will also host a turkey hunt!

Recreation collected 200 Halloween costumes as part of their recycling program. Costumes will be on sale in the Select Board's meeting room in Town Hall on Wednesday nights in October from 5PM – 7PM and are priced at between \$5-\$8. Anyone who donated a costume last year received a coupon to save 20% off a gently used costume this year!

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Sean R. Fitzgerald". The signature is stylized with a large, sweeping initial "S" and "F".

Sean R. Fitzgerald  
Town Administrator



## **TOWN OF SWAMPSCOTT, MASSACHUSETTS BREAST CANCER AWARENESS MONTH PROCLAMATION BY THE SELECT BOARD**

**WHEREAS:** WHILE CONSIDERABLE PROGRESS HAS BEEN MADE IN THE FIGHT AGAINST BREAST CANCER, IT REMAINS THE MOST FREQUENTLY DIAGNOSED TYPE OF NON-SKIN CANCER AND THE SECOND LEADING CAUSE OF CANCER DEATHS AMONG WOMEN IN OUR COUNTRY; AND

**WHEREAS:** UNFORTUNATELY, MANY OF US KNOW SOMEONE OR HAVE FAMILY MEMBERS WHO HAVE OR HAVE HAD BREAST CANCER; AND

**WHEREAS:** THANKS TO EARLIER DETECTION AND BETTER TREATMENTS, MORTALITY RATES FOR BREAST CANCER HAVE STEADILY DECREASED IN THE LAST DECADE; AND

**WHEREAS:** KNOWING WHAT MAY CONTRIBUTE TO BREAST CANCER, SYMPTOMS, DIAGNOSIS & TREATMENT ARE IMPORTANT PARTS OF ITS PREVENTION; AND

**WHEREAS:** HAVING AFFORDABLE ACCESS TO SCREENINGS AND EARLY DETECTION FOR ALL WOMEN IS AN ESSENTIAL COMPONENT IN THE FIGHT AGAINST BREAST CANCER; AND

**WHEREAS:** DURING NATIONAL BREAST CANCER AWARENESS MONTH, WE STAND WITH OUR FAMILIES, FRIENDS & NEIGHBORS AND RECOGNIZE ALL WHO HAVE JOINED THEIR LOVED ONES IN FIGHTING THEIR BATTLE AS WELL AS THE ADVOCATES, RESEARCHERS AND HEALTH CARE PROVIDERS WHOSE CARE AND HARD WORK GIVES HOPE TO THOSE LIVING WITH BREAST CANCER; AND

**WHEREAS:** BY EDUCATING OURSELVES AND SUPPORTING INNOVATIVE RESEARCH, WE WILL IMPROVE THE QUALITY OF CARE FOR ALL THOSE AFFECTED BY BREAST CANCER AND, ONE DAY, DEFEAT THIS TERRIBLE DISEASE.

**NOW THEREFORE:** ON BEHALF OF THE ENTIRE SELECT BOARD, WE DO HEREBY PROCLAIM THE MONTH OF OCTOBER 2023 AS

## **BREAST CANCER AWARENESS MONTH**

IN THE TOWN OF SWAMPSCOTT, MASSACHUSETTS AND ENCOURAGE ALL CITIZENS TO JOIN US IN THIS WORTHY OBSERVANCE.

**I**N WITNESS WHEREOF, WE HAVE HEREUNTO SET OUR HANDS AND CAUSED TO BE AFFIXED THE GREAT SEAL OF THE TOWN OF SWAMPSCOTT, MASSACHUSETTS, THIS 4<sup>TH</sup> DAY OF OCTOBER, 2023.

## SWAMPSCOTT SELECT BOARD

**DAVID GRISHMAN**  
CHAIR

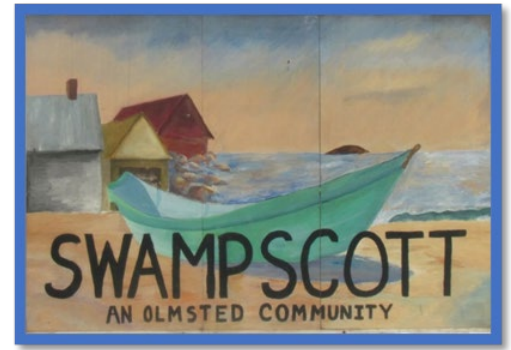
**CATHERINE PHELAN**   **MARY ELLEN FLETCHER**  
VICE CHAIR

**PETER SPELLIOS**

**DOUGLAS THOMPSON**

**SEAN FITZGERALD**  
TOWN ADMINISTRATOR





*TOWN OF SWAMPSCOTT, MASSACHUSETTS  
INDIGENOUS PEOPLES' DAY  
PROCLAMATION BY THE SELECT BOARD*

**WHEREAS:** INSTEAD OF COMMEMORATING CONQUEST TODAY, HERE, IN THE TOWN OF SWAMPSCOTT, WE RECOGNIZE OUR HISTORY AND, SINCE TIME IMMEMORIAL, PEOPLE INDIGENOUS TO THE LANDS WE NOW CALL SWAMPSCOTT BUILT COMMUNITIES, FOSTERED CULTURES, AND STEWARDED THE LAND SUSTAINABLY; AND

**WHEREAS:** FOR THE FIRST TIME IN OUR TOWN'S HISTORY, WE RECOGNIZE INDIGENOUS PEOPLE HERE AND ANYWHERE IN THE UNITED STATES, AS WE PAY RESPECT TO THE CULTURES AND POPULATIONS THAT EXISTED LONG BEFORE EUROPEAN CONTACT WITH THIS LAND. SO TOO, WE CELEBRATE THE CONTRIBUTIONS OF ALL INDIGENOUS PEOPLES TO THE CULTURE OF DIVERSITY, INNOVATION AND RESILIENCE THAT HAS HAD AN INDELIBLE IMPACT ON THE COMMONWEALTH OF MASSACHUSETTS; AND

**WHEREAS:** THE TOWN OF SWAMPSCOTT RECOGNIZES THAT THE INDIGENOUS PEOPLES OF THE LANDS (LATER KNOWN AS THE AMERICAS) HAVE LIVED ON THESE LANDS SINCE TIME IMMEMORIAL AND WE HONOR THE FACT THAT SWAMPSCOTT HAS BEEN BUILT UPON THE TRADITIONAL AND ANCESTRAL HOMELANDS OF NATIVE AMERICANS, REFERRED TO AS NAUMKEAGS AND CALLED SWAMPSCOTT THE "LAND OF THE RED ROCK"; AND

**WHEREAS:** INDIGENOUS PEOPLES' DAY WAS FIRST PROPOSED IN 1977 BY A DELEGATION OF NATIVE NATIONS TO THE UNITED NATIONS SPONSORED INTERNATIONAL CONFERENCE ON DISCRIMINATION AGAINST INDIGENOUS POPULATIONS IN THE AMERICAS; AND

**WHEREAS:** THE TOWN OF SWAMPSCOTT IS COMMITTED TO PROTECTING AND ADVOCATING FOR JUSTICE, HUMAN RIGHTS, AND THE DIGNITY OF ALL PEOPLE WHO LIVE, WORK AND VISIT OUR COMMUNITY AND TO SUPPORTING THE PRINCIPLES CONTAINED IN THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (THE "DECLARATION") ENDORSED BY THE UNITED STATES ON DECEMBER 16, 2010; AND

**WHEREAS:** THE DECLARATION OF HUMAN RIGHTS RECOGNIZES THE RIGHT OF INDIGENOUS PEOPLES "TO THE DIGNITY AND DIVERSITY OF THEIR CULTURES, TRADITIONS, HISTORIES AND ASPIRATIONS WHICH SHALL BE APPROPRIATELY REFLECTED IN EDUCATION AND PUBLIC INFORMATION," AND PLACES AN OBLIGATION TO "TAKE EFFECTIVE MEASURES, IN CONSULTATION AND COOPERATION WITH THE INDIGENOUS PEOPLES CONCERNED, TO COMBAT PREJUDICE AND ELIMINATE DISCRIMINATION AND TO PROMOTE TOLERANCE, UNDERSTANDING AND GOOD RELATIONS AMONG INDIGENOUS PEOPLES AND ALL OTHER SEGMENTS OF SOCIETY"; AND .

**NOW, THEREFORE:** ON BEHALF OF THE ENTIRE SELECT BOARD, WE DO HEREBY PROCLAIM OCTOBER 9<sup>TH</sup>, 2023 AS

*INDIGENOUS PEOPLES' DAY*

IN THE TOWN OF SWAMPSCOTT, MASSACHUSETTS AND ENCOURAGE ALL FAITH BASED AND NON-PROFIT ORGANIZATIONS, RESIDENTS, BUSINESSES, AND PUBLIC INSTITUTIONS TO ACKNOWLEDGE,

HONOR, VALUE AND CELEBRATE INDIGENOUS PEOPLES HISTORIC AND CURRENT CONTRIBUTIONS LOCALLY AND BEYOND, WHILE ALSO RECOGNIZING THE ONGOING AND INTERCONNECTED STRUGGLES OF ALL INDIGENOUS COMMUNITIES LOCALLY AND BEYOND.

IN WITNESS WHEREOF, WE HAVE HEREUNTO SET OUR HANDS AND CAUSED TO BE AFFIXED THE GREAT SEAL OF THE TOWN OF SWAMPSCOTT, MASSACHUSETTS, THIS 4<sup>TH</sup> DAY OF OCTOBER 2023.

SWAMPSCOTT SELECT BOARD

DAVID GRISMAN  
CHAIR

CATHERINE PHELAN  
VICE-CHAIR

MARY ELLEN FLETCHER

PETER SPELLIOS

DOUGLAS THOMPSON

SEAN FITZGERALD  
TOWN ADMINISTRATOR



# Swampscott Water, Sewer, and Stormwater Capital Improvement Plan / King's Beach EPA Update (09/01/23)

October 4, 2023





# Asset Management & Capital Improvement Plan

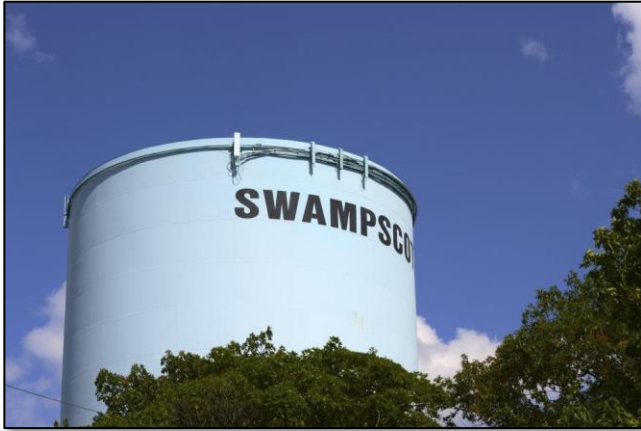
**OBJECTIVE:** *The Town is in need of a long-term plan to prepare for Capital Costs associated with Sewer, Drain and Drinking Water Management*

1. Existing Conditions & Risks
2. Approach to Asset Management Process
3. King's Beach / EPA Update
4. Capital Improvement Plan (CIP) & Financial Impact Assessment
5. Key Takeaways

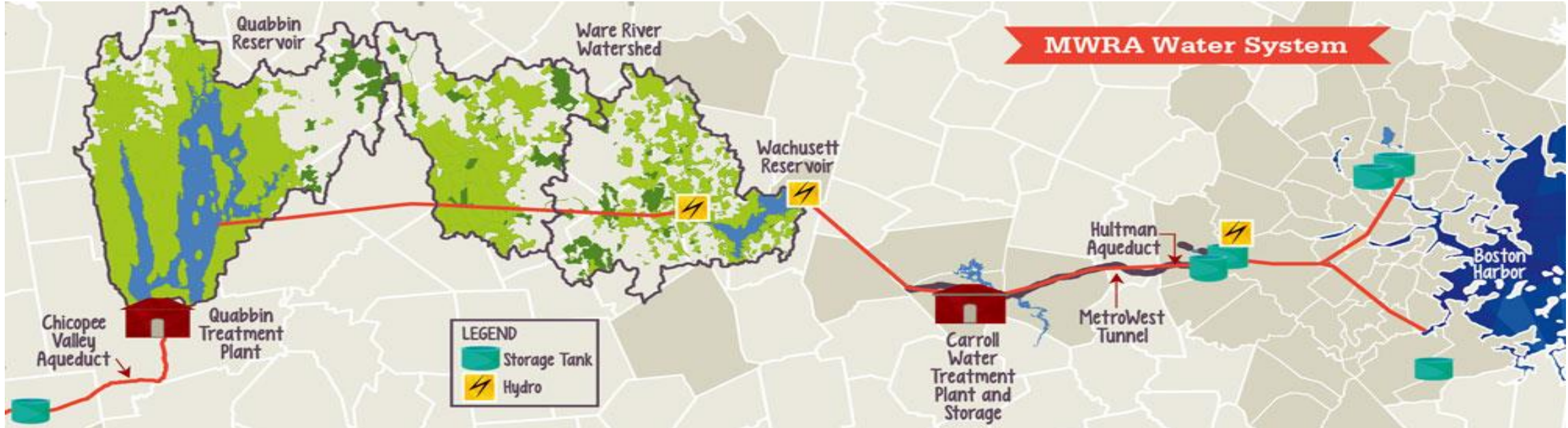




# Water System: Quick Facts

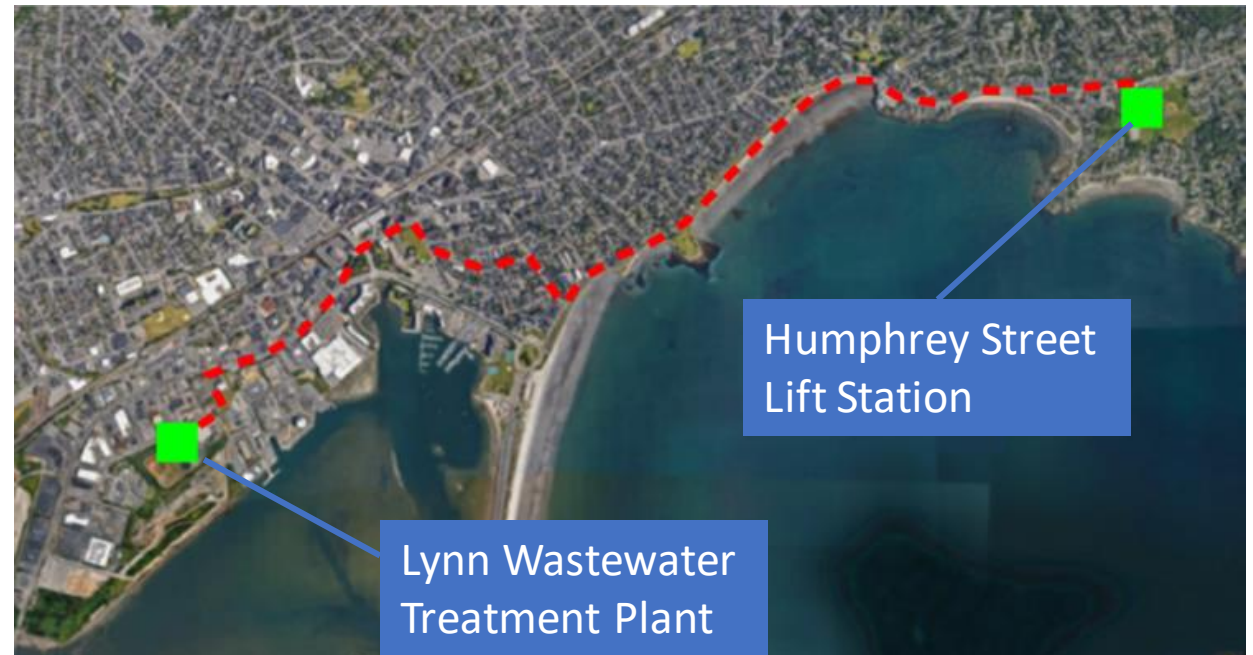
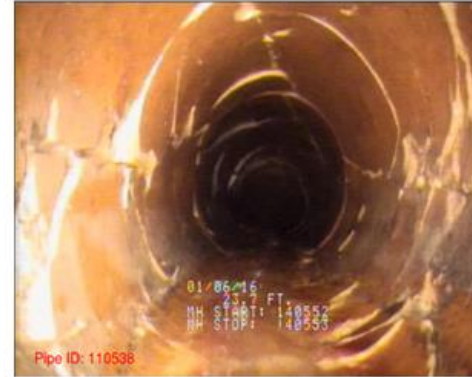


- 57 miles of pipe
  - 70% water pipe
  - 50+ years old
- 475 hydrants
- 1,435 gate valves
- Approx. 5,700 accounts



# Sewer System: Quick Facts

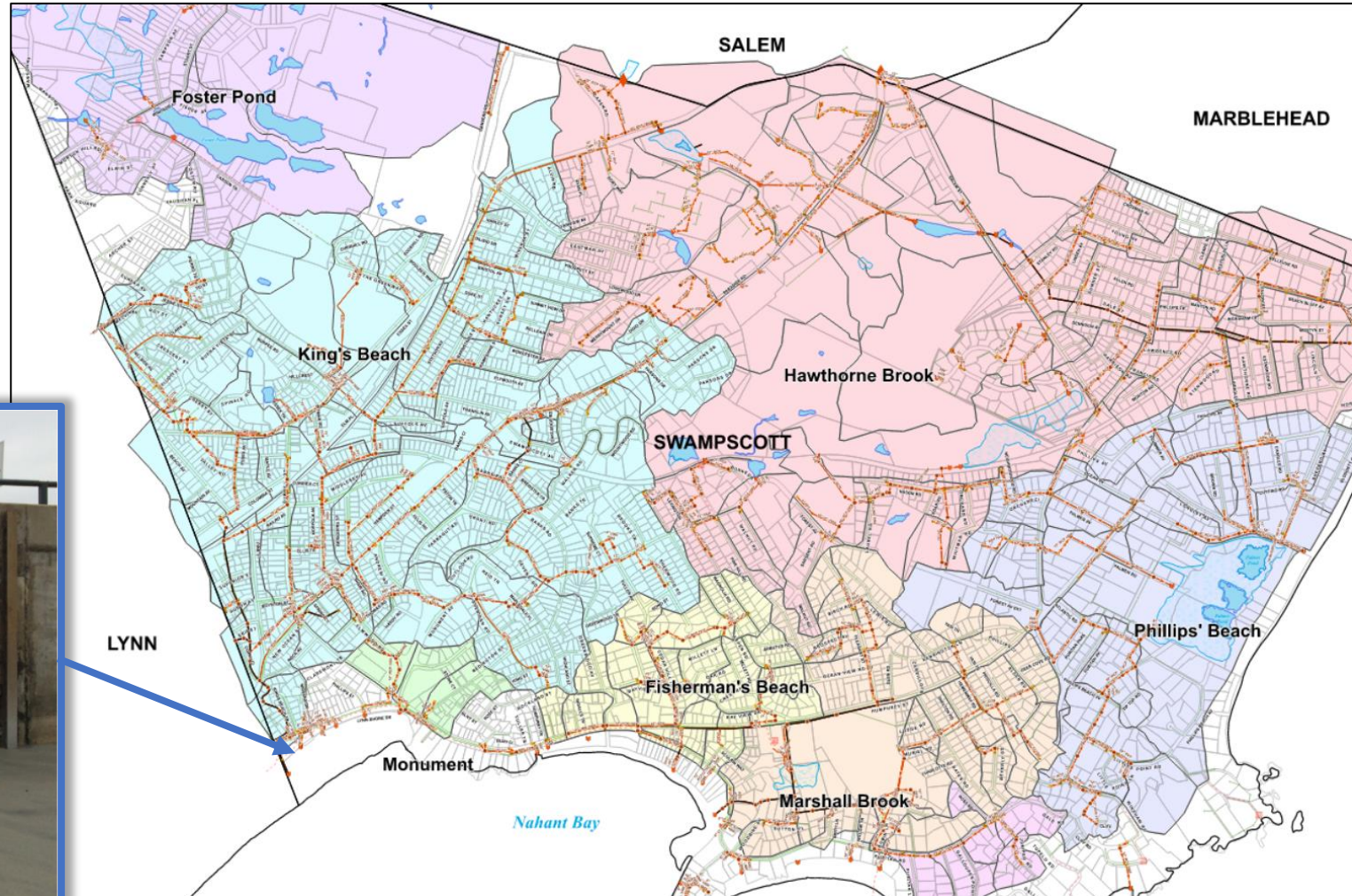
- Separated Sewer System (not combined with stormwater)
- 46 miles of sewer pipe
  - Over 50% = 100+ year old clay pipe
- 1,562 manholes
- 8 sewer pump stations
  - Main station: Humphrey Street Lift Station
- 3.5-mile Force Main (1990) from Humphrey Street Lift Station to Lynn Wastewater Treatment Plant
- Approx. 4,600 accounts





# Drainage System: Quick Facts

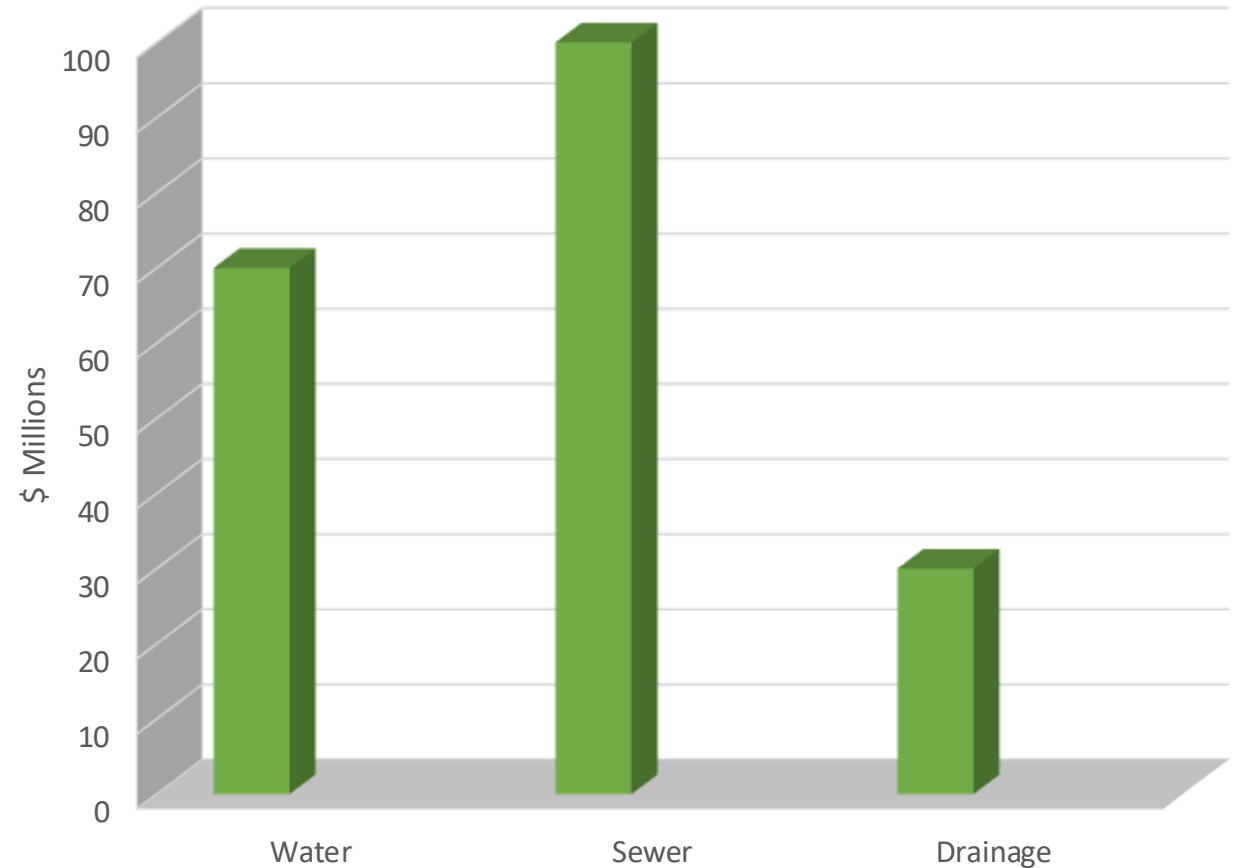
- 28 miles of pipes and culverts
- 61 discharge points/outfalls
  - 20 are coastal



# Value of Water Infrastructure Assets

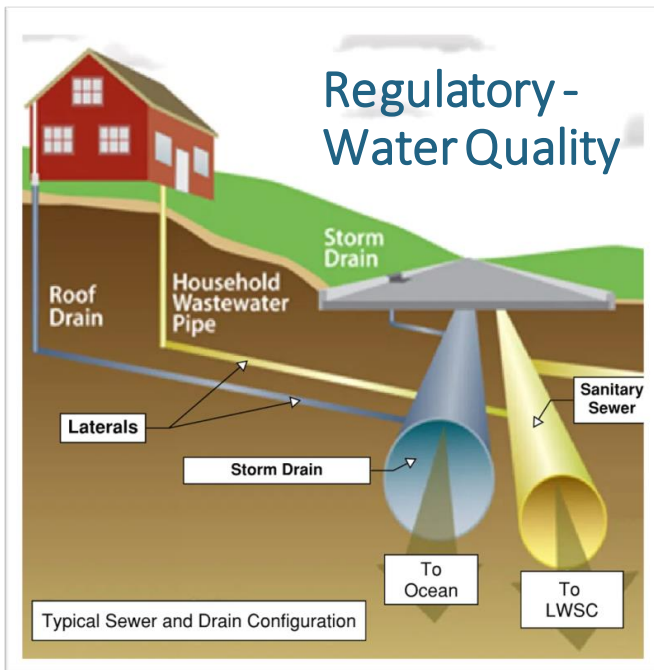
Total Water  
Infrastructure =  
**\$200M**

*Represents the total value of  
assets if replaced today*



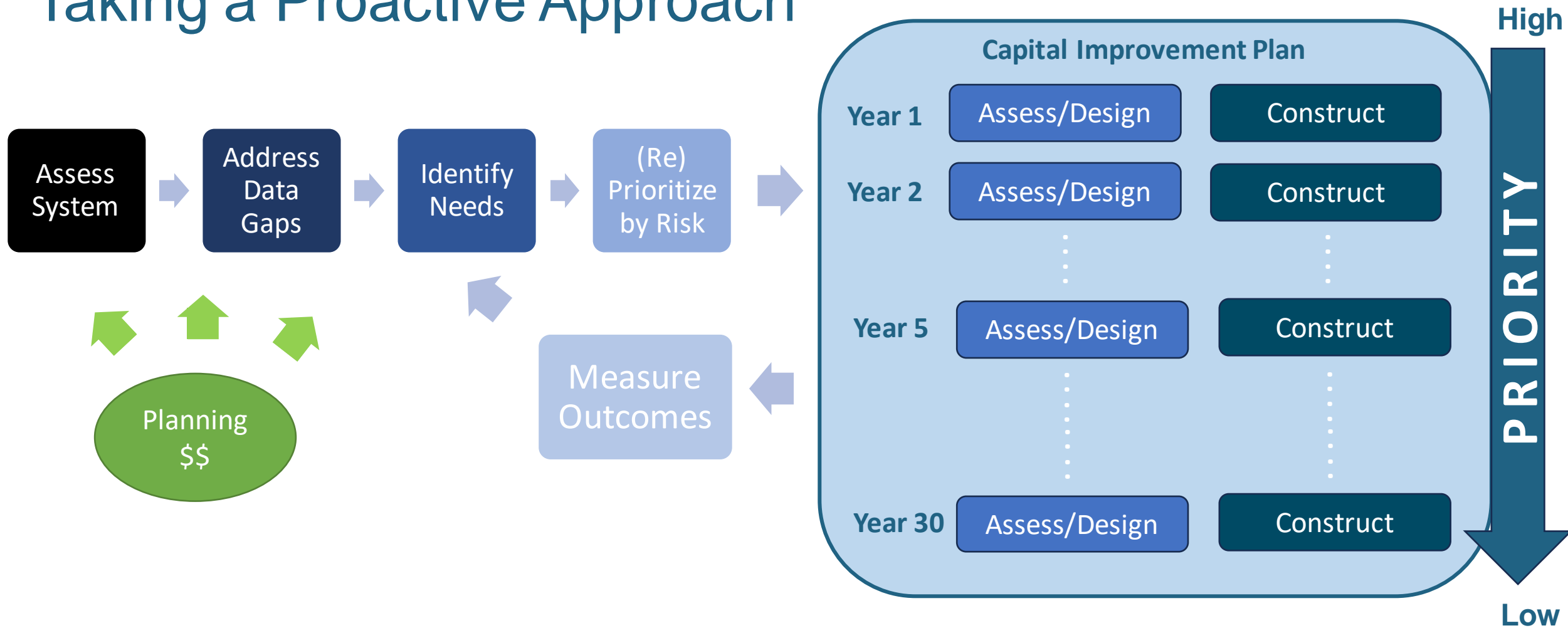


# System Risks & Consequences



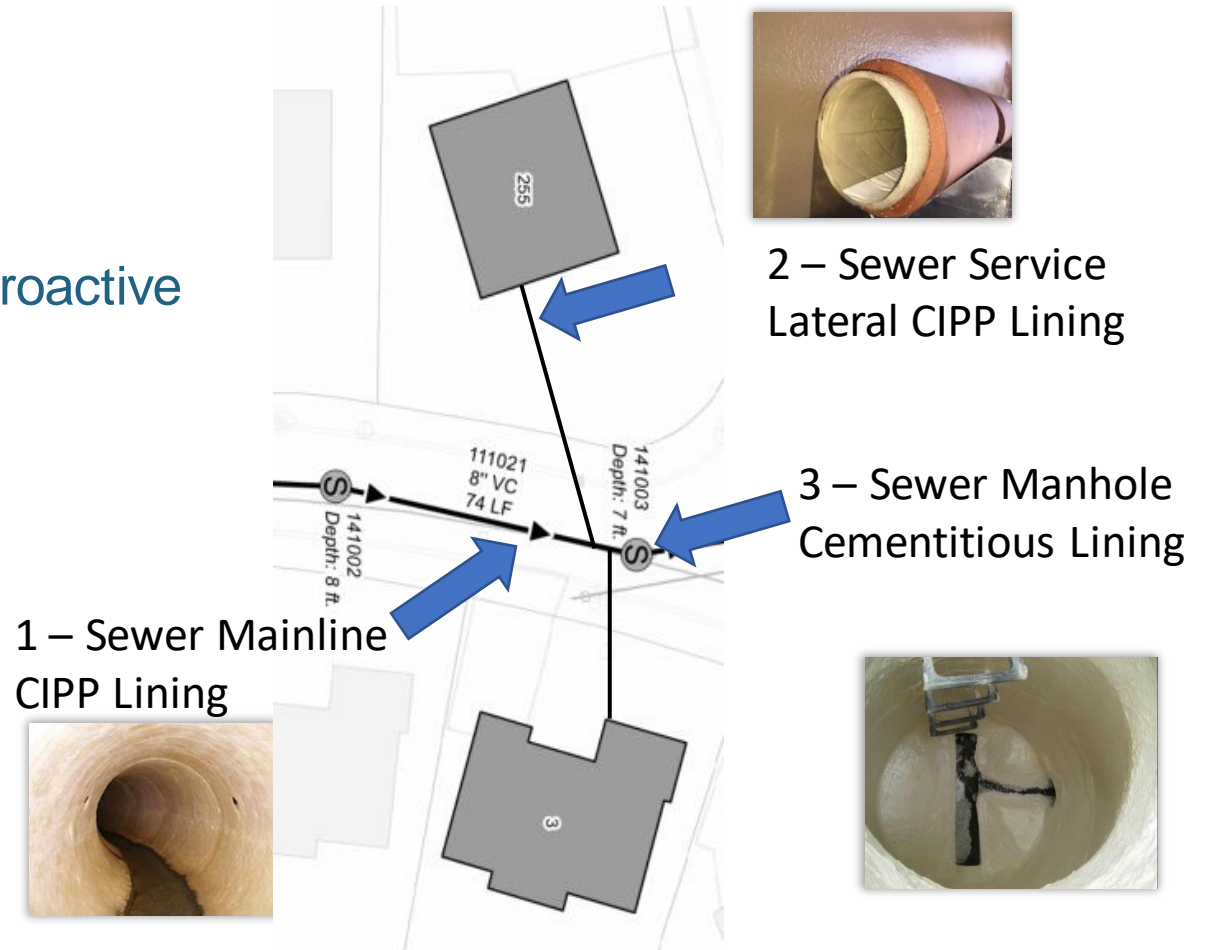
# Asset Management Strategy

## Taking a Proactive Approach



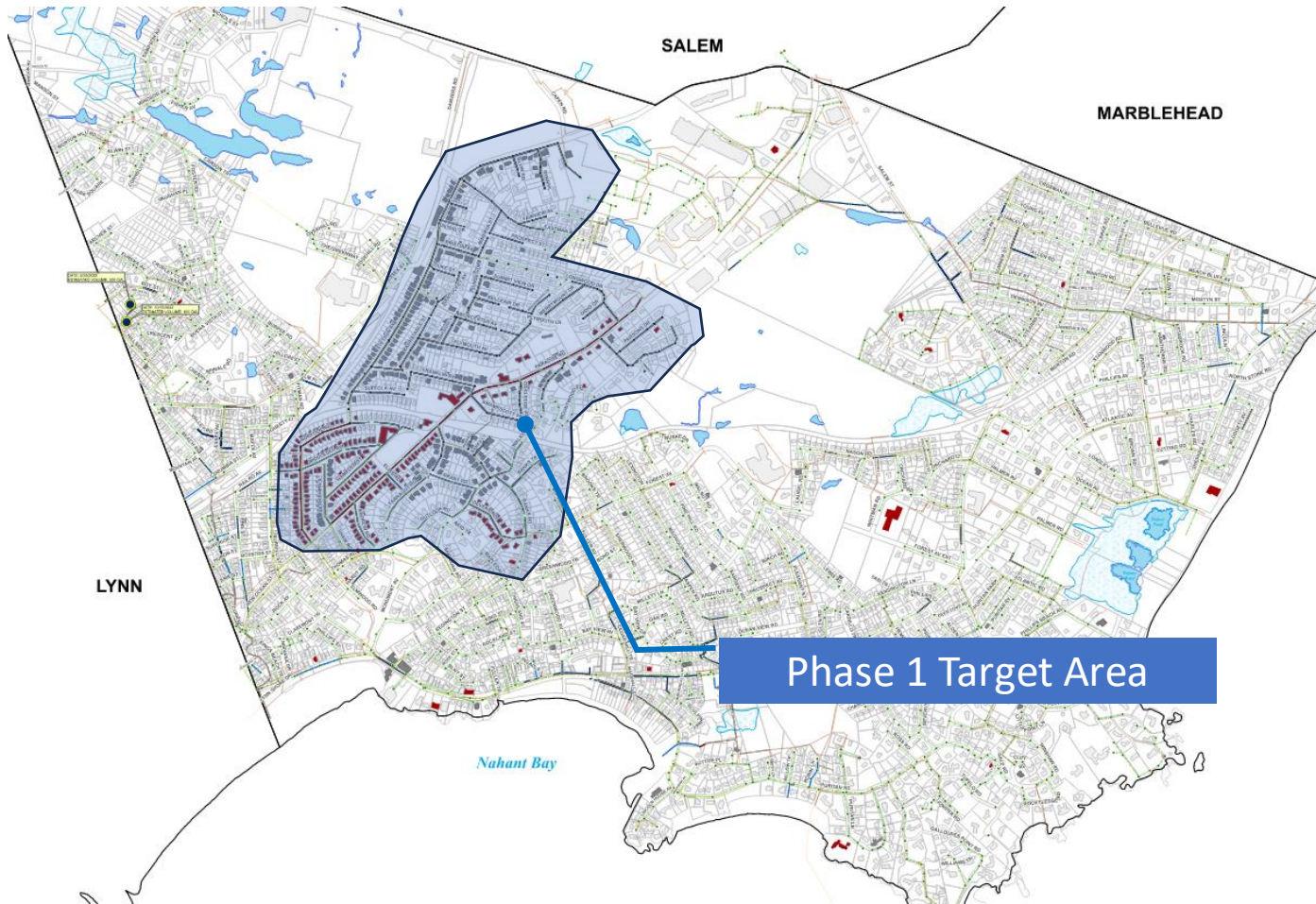
# Asset Management Strategy – Sewer System

- Infiltration and Inflow Bank
- Sewer Rehabilitation
  - Objective: Transition from Reactive to Proactive
- Outcomes to Date
  - Flow Reduction to LWSC
  - Water Quality Improvements





# Phase 1 Sewer Rehabilitation (2017-2022)



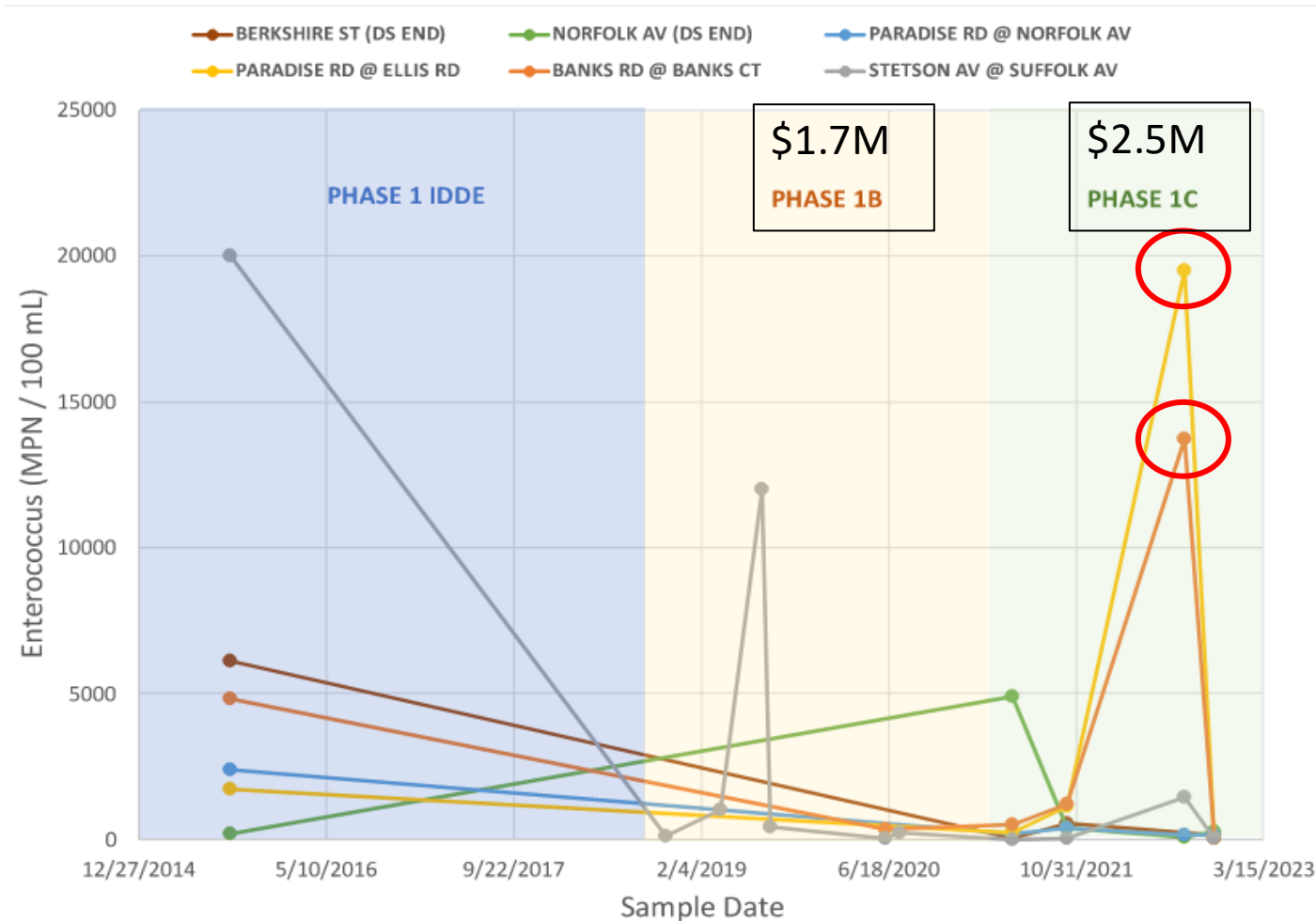
## Phase 1 Rehab Summary

- CIPP line or replace 7 miles of sewer (15% of Town)
- CIPP repair 470 house services (10% of accounts)
- Rehabilitate 250 sewer manholes (16% of Town)
- \$6.5M total project costs



# Phase 1 IDDE Results

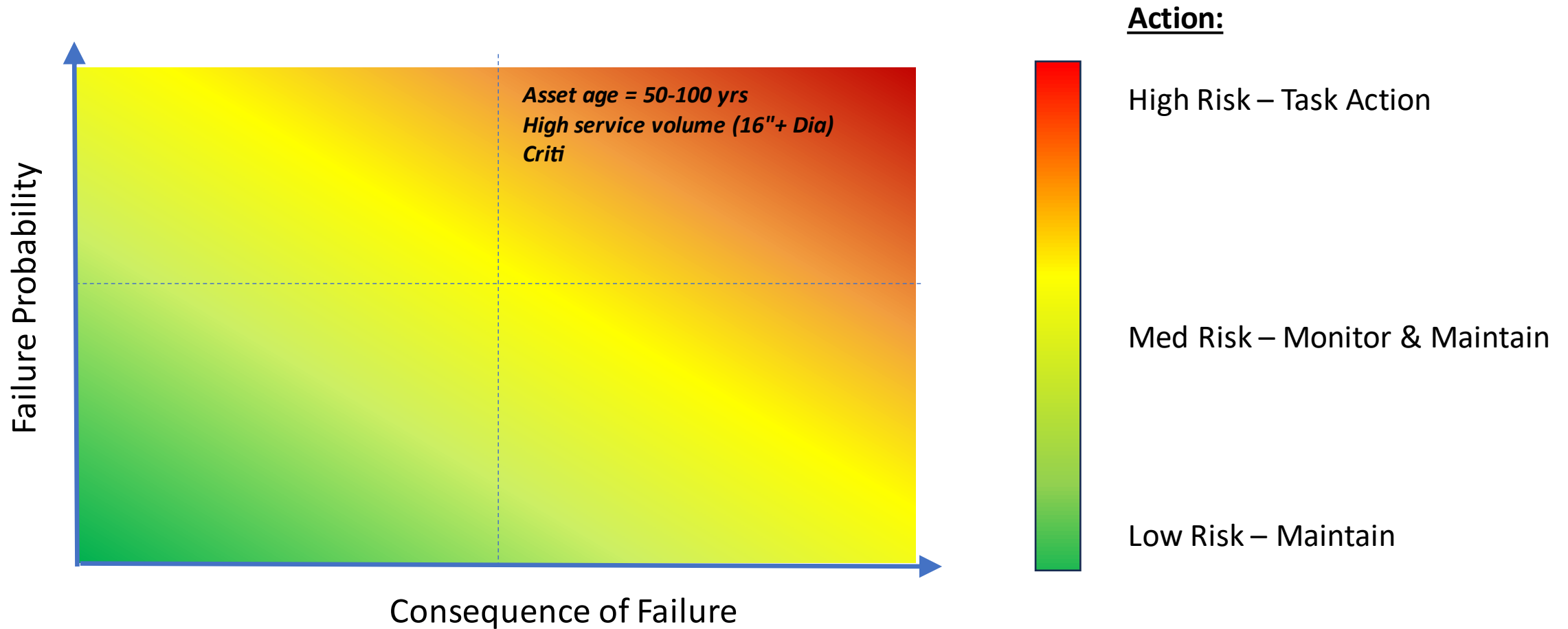
**Figure 1** displays the dry weather sampling results for bacteria (Enterococcus) for six (6) Phase 1 tributary area locations that were sampled at multiple dates between 2015 and 2023.



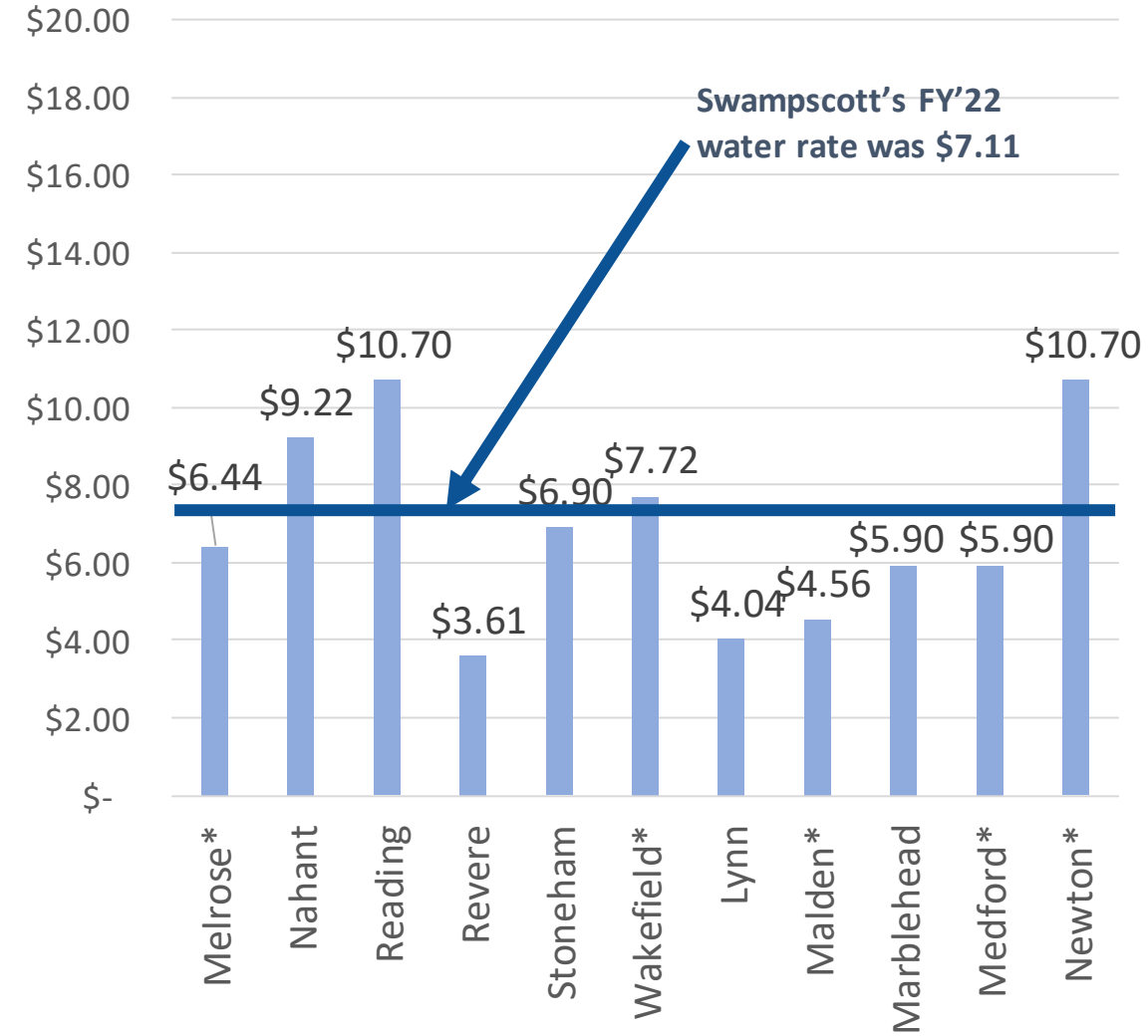
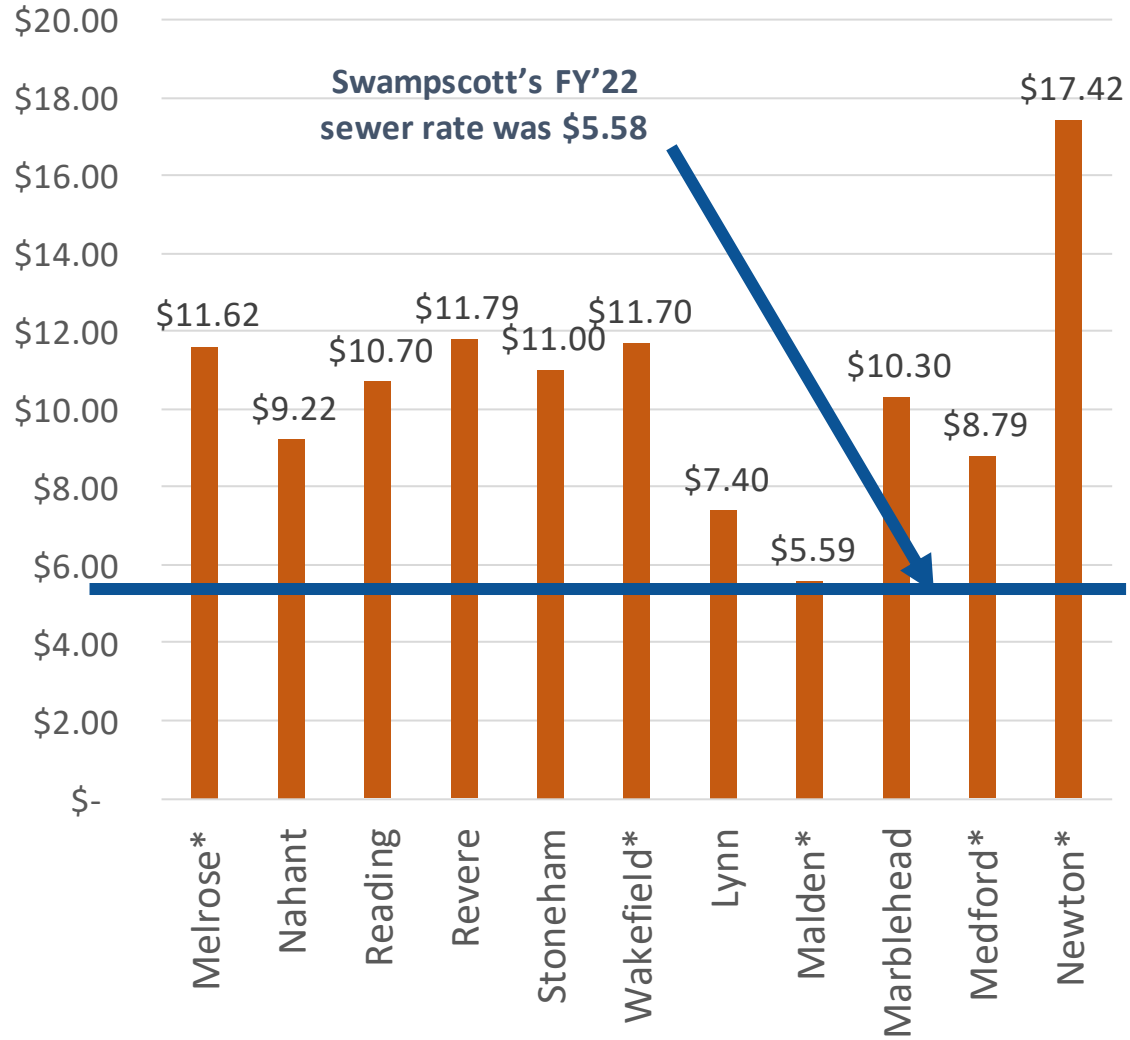
## Observations

- General downward trend in pathogens
- Notable spike after Phase 1C work at **Paradise and Ellis & Banks Road**
  - Known ongoing issue on Banks Road
- Overall Impressions of Sewer Rehab:
  - Not adequate to bring King's Beach back in the short term
  - Part of the long-term approach to bring sewer condition back to status of good repair
- Dec 2021 Town initiated Feasibility Study for other solutions to accelerate opening King's Beach

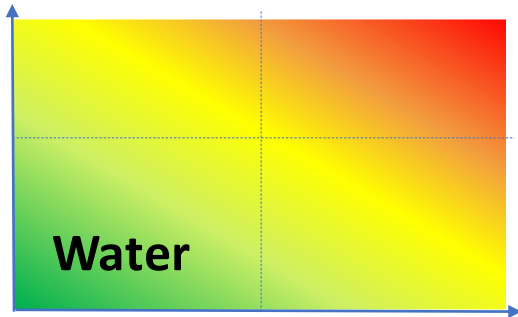
# Health of Swampscott Infrastructure



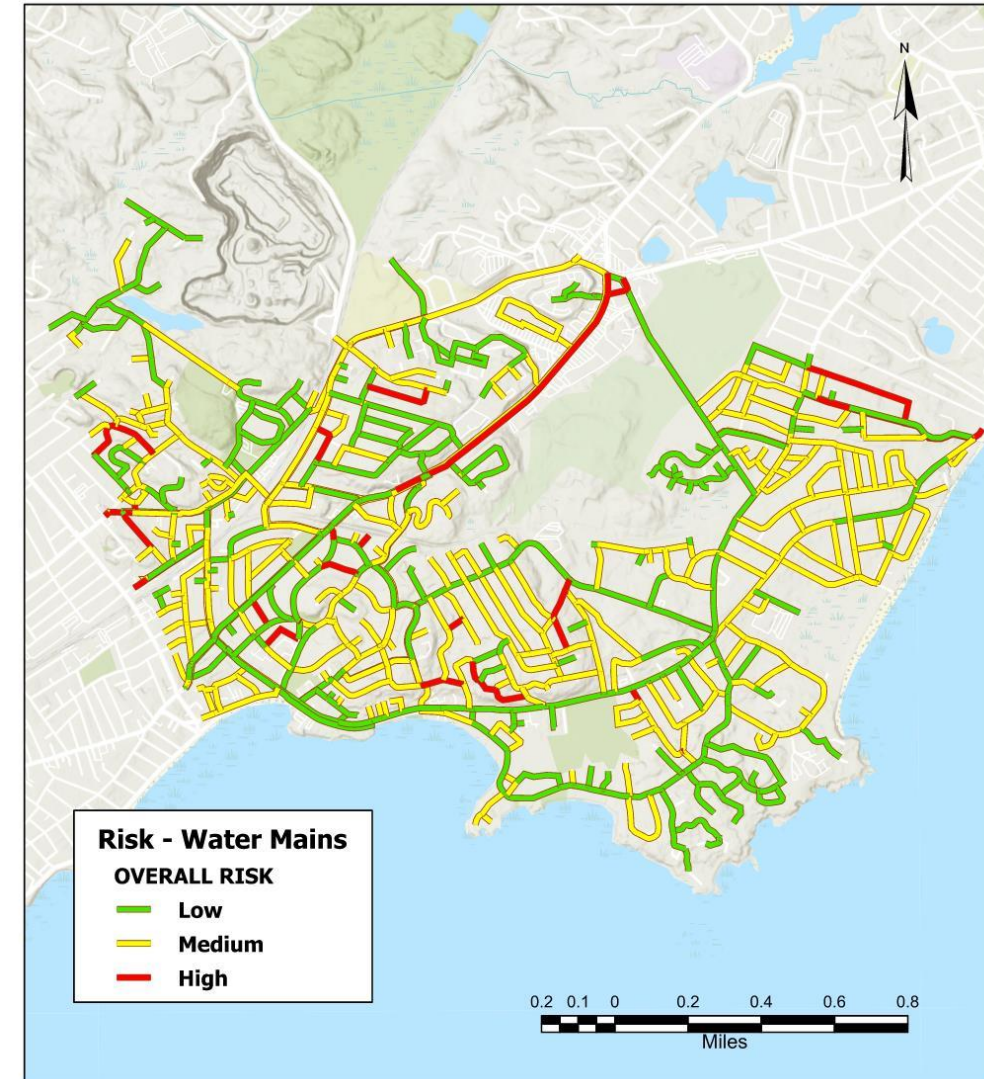
# Water / Sewer Rates (FY22, \$/HCF)



# Water System



- \$9M invested over 20 years
  - Water main replacement
- Tiered rates to ensure greater focus on conservation and equity
- Lead service line inventory underway
- Meter replacement important for good water system management



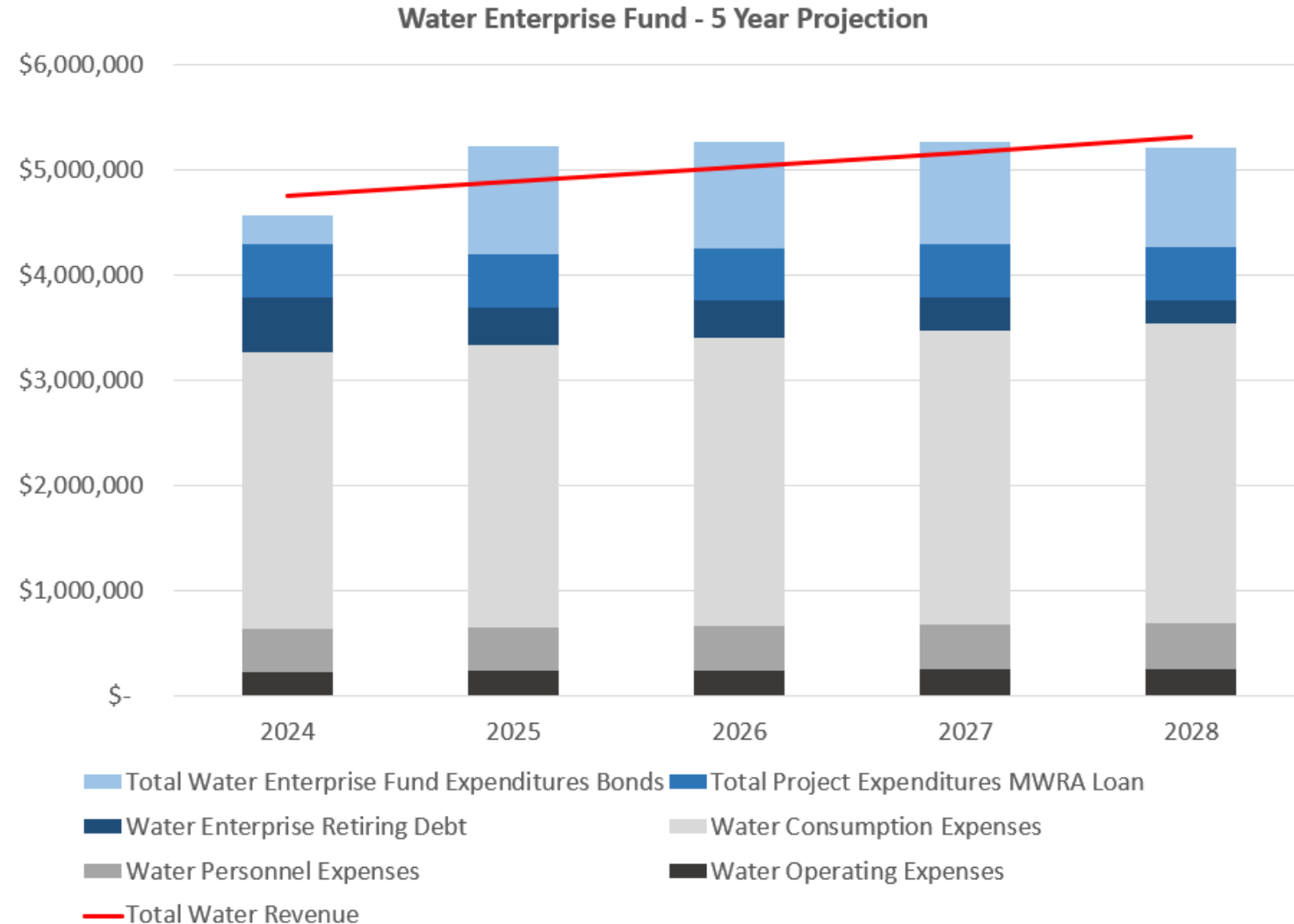
# Water CIP/Rates – 5-year Projection

## Water 5-Year CIP

- Lead Service Line Inventory
- Continued rehabilitation of water pipe

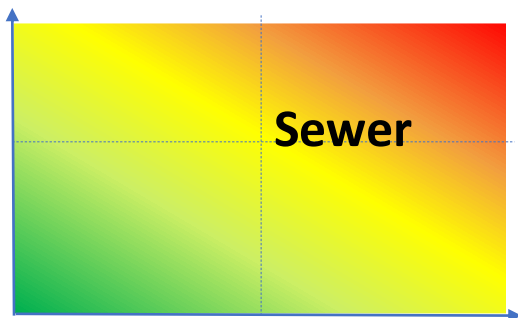
## Water Rate Targets

- Operational Cost Increase – 2% annually
- Retained earnings - at least 20% of operations budget
- Target annual water rate increase - 3% or less

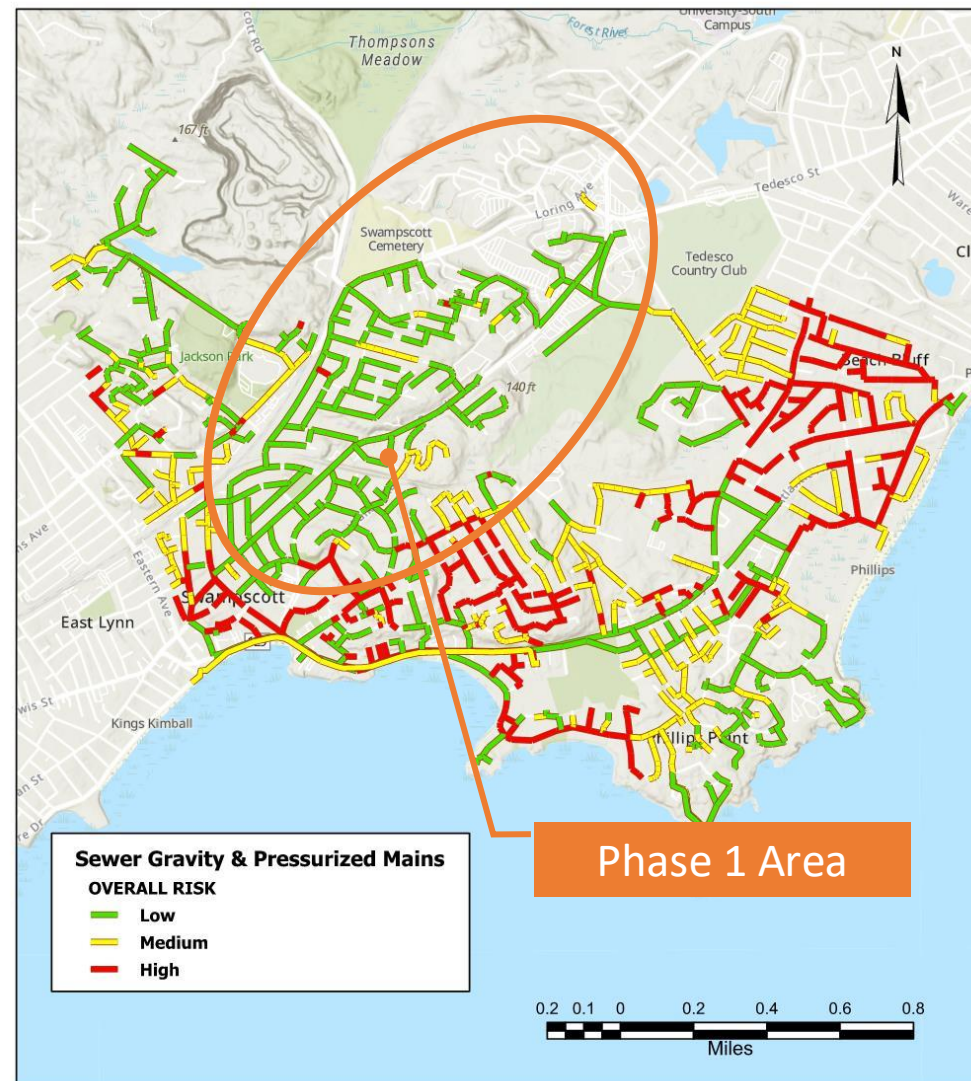




# Sewer System



- \$6.5M invested in Phase 1 Sewer Rehab Program (2017-2022)
  - Address aged/failing sewers as outlined in EPA Consent Decree
  - Targeted to address King's Beach Closures
  - Reduce Infiltration/Inflow
- Humphrey Street Pump Station Force Main – critical pipe but condition unknown
- Condition of system largely unknown



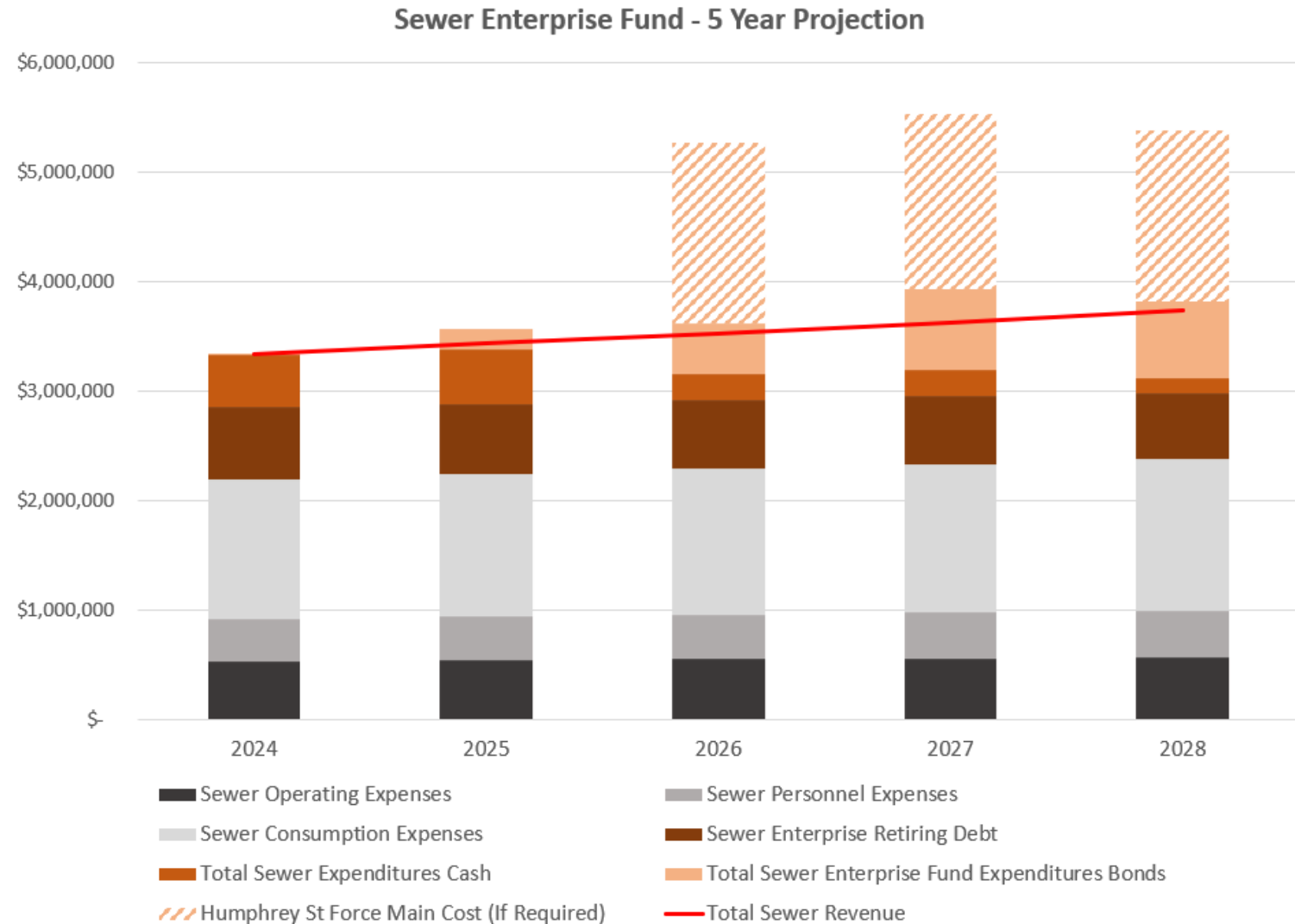
# Sewer CIP / Rates – 5-year Projection

## Sewer 5-Year CIP

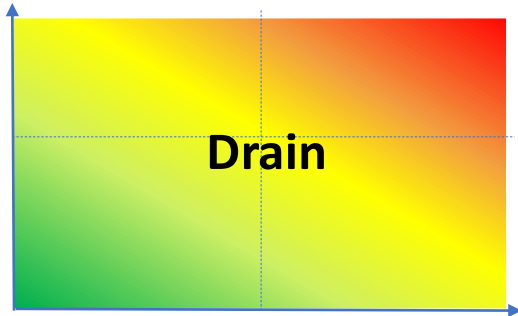
- Conduct I/I Study
- Advance Consent Decree
- Investigate Humphrey Street's Force Main/Pump Station
- Establish proactive assessment and rehab program

## Sewer Rate Targets

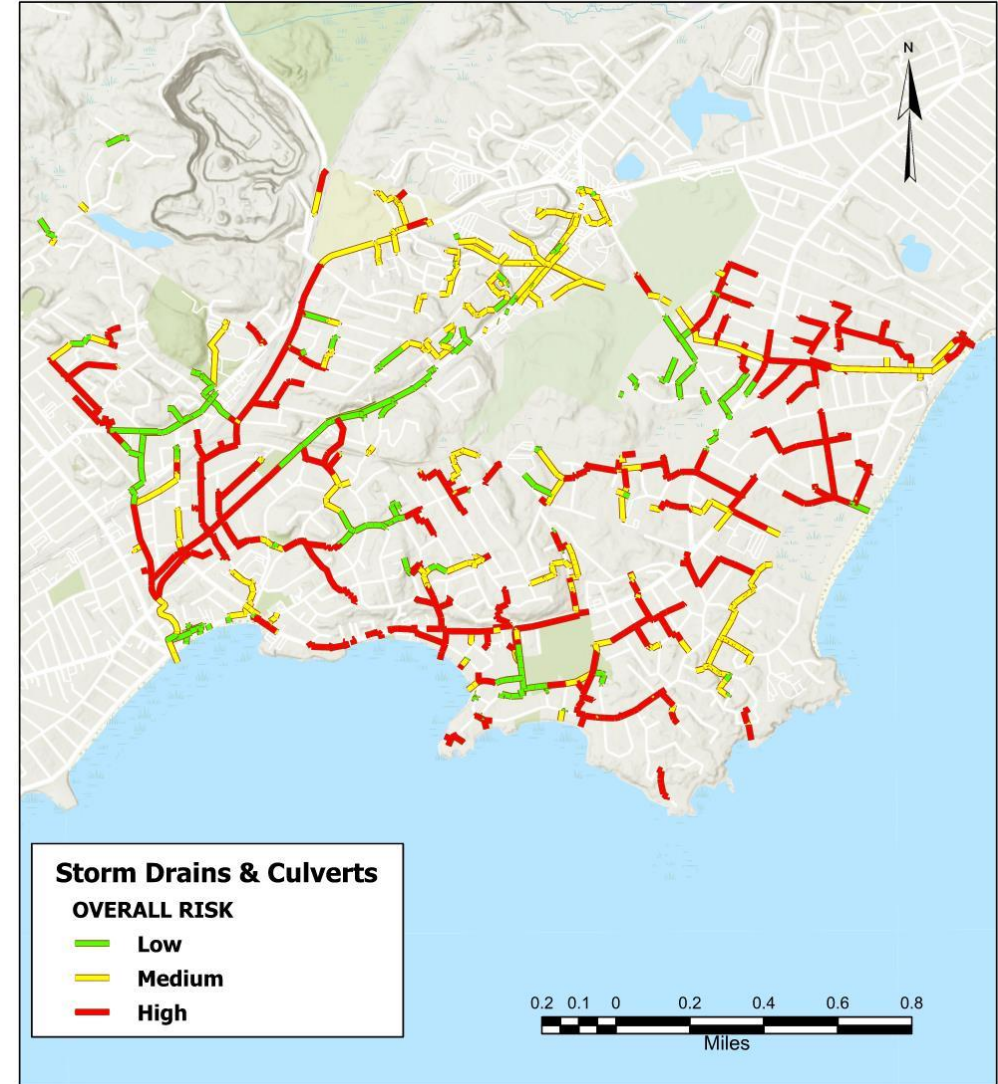
- Overhead Cost Increase – 2% annually
- Retained earnings - at least 20% of operations budget
- Target annual sewer rate increases - 3% or less



# Drainage System



- King's Beach – a **top priority** but not the only priority
- Seawall Repair ongoing
- Flood mitigation needs revisiting with updated climate projections
- Age and condition of system largely unknown
  - Assets with missing information assumed to be high risk
  - Data gaps need to be closed





# Drainage CIP – 5-year Projection

## Stormwater 5-Year CIP

- King's Beach Improvements
- Continued Seawall Repair
- Flood Mitigation
- Establish proactive assessment and rehab program

## Stormwater Funding Options

- Cost burden on general fund
- Start an Enterprise Fund for stormwater



# Swampscott CIP - Key Takeaways

## Water

- Water Enterprise Fund *will* fund 5-Year CIP projects with 3% annual rate increase, based on current assumptions (\$415K deficit)

## Sewer

- Sewer Enterprise Fund *won't* fund 5-Year CIP projects with 3% annual rate increase based on current assumptions (\$620K deficit)

## Storm

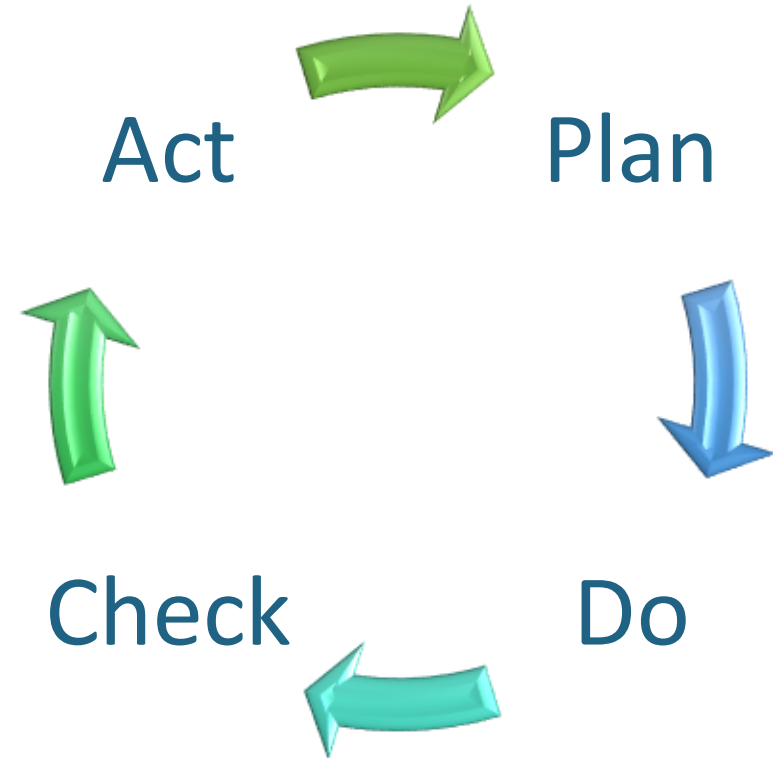
- 5-Year CIP projects would be primarily funded through General Fund Debt
- Continue to pursue funding at State and Federal Level
- Possibly consider establishing a Stormwater Enterprise Fund



Photo courtesy of Bobby Zee

# Next Steps

- Adopting a 30-year CIP for water, sewer, drainage
- Right-size budgets to accomplish CIP priorities
- Continue to pursue King's Beach State and Federal grant funding and improvements
- Continue to explore State and Federal grant funding for water, sewer, and drain routine maintenance
- Broaden lens to develop investment for other need areas



# Thank you!

# Questions?





# Extra Slides



# Water and Sewer – Annual Rate Increases 5-year Projection

Year	Water Base Rate	Water Cons. Rate	Water % Increase	Sewer Base Rate	Sewer Cons. Rate	Sewer % Increase
2024	\$13.65	\$7.74	3%	\$20.60	\$6.07	3%
2025	\$14.06	\$7.97	3%	\$21.22	\$6.25	3%
2026	\$14.48	\$8.21	3%	\$21.85	\$6.44	3%
2027	\$14.91	\$8.45	3%	\$22.51	\$6.63	3%
2028	\$15.36	\$8.71	3%	\$23.19	\$6.83	3%

- FY2023 rates are used as basis for projection, based on published rates on [Town website](#)
- For simplicity, this table shows only Tier 1 rates though our model includes Tiers 2 and 3 (high consumption users). We assume 3% annual increase for all rate Tiers
- Separate irrigation meters and rates are not included in our model
- Water and sewer base charges and consumption fees are paid quarterly

# Water CIP – 5-year Priority Projects

Key Driver	Project	Start Date	Cost	Funding Source
<b>Regulatory – Public Health</b>	Lead Services Improvement Implementation ( <i>Assumed 600 Replacements for Budgeting Purposes</i> )	2025	\$6,936,000	Bond
<b>Renewal of Aging Infrastructure</b>	Replacement of Highest Priority Water Mains	2024	\$5,000,000	MWRA Loan
	Water Meter Replacement	2024	\$2,500,000	Bond
<b>Asset Management</b>	Annual Asset Management Updates ( <i>Cost Shared Across Sewer and Storm</i> )	On-Going	\$50,000 / yr	Cash
	Updates to Water GIS Data ( <i>10-Year Duration</i> )	2025	\$10,000 / yr	Cash

# Water Cost – 20-year Priority Projects

Key Driver	Project	Start Date	Cost	Funding Source
Renewal of Aging Infrastructure	Rehabilitation of the Water Storage Tank	2029	\$3,694,000	Bond
	Hydrant Replacement	2030	\$164,000	Bond
	Replacement of High Priority Water Mains	2030	\$4,252,000	MWRA Loan
	Ongoing Water System Improvements (10-Year Duration – through 2044)	2035	\$500,000 / yr	MWRA Loan
Asset Management	Annual Asset Management Updates ( <i>Cost Shared Across Sewer and Storm</i> )	On-Going	\$50,000 / yr	Cash
	Updates to Water GIS Data (10-Year Duration – through 2034)	2025	\$10,000 / yr	Cash



# Sewer CIP – 5-year Priority Projects

Key Driver	Project	Start Date	Cost	Funding Source
Regulatory – Water Quality	Stacy’s Brook Phase 2 IDDE and Design	2024	\$400,000	Cash/ARPA
	Infiltration / Inflow Study	2025	\$165,000	Cash
	Stacy’s Brook Phase 2A and Areas Beyond Stacy’s Brook Construction	2025	\$1,713,000	Bond/ARPA
	Inflow Targeted Program ( <i>2-Year Duration</i> )	2026	\$222,000	Cash
Renewal of Aging Critical Infrastructure	Humphrey St. Force Main Inspection and Evaluation	2024	\$27,000	Cash/ARPA
	<i>Humphrey St. Force Main Replacement (If necessary)</i>	2026	\$15,000,000	SRF Loan
Renewal of Aging Infrastructure	Annual Sewer Pipe / Manhole Inspection Program ( <i>5-Year Duration</i> )	2025	\$81,400 / yr	Cash
	Phased Sewer Rehabilitation Program ( <i>Every 3 Years</i> )	2027	\$2,500,000	Bond
Maintain Reliability	Operational Improvements to Pump Stations	2024	\$84,000	Bond
	Engineering Review of Pump Stations	2025	\$200,000	Cash
	Rehabilitation of Pump Stations	2026	\$2,000,000	Bond
Asset Management	Annual Asset Management Updates ( <i>Yearly – Cost Shared Across Water and Storm</i> )	On-Going	\$50,000 / yr	Cash

# Sewer Cost – 20-year Priority Projects

Key Driver	Project	Start Date	Cost	Funding Source
Renewal of Aging Infrastructure	Annual Sewer Pipe / Manhole Inspection Program – High Priority <i>(5-Year Duration – through 2029)</i>	2025	\$81,400 / yr	Cash
	Phased Sewer Rehabilitation Program <i>(Every 3 Years)</i>	2029 - 2038	\$2,500,000 / 3yr	Bond
	Annual Sewer Pipe / Manhole Inspection Program – Remaining System <i>(15-Year Duration)</i>	2030	\$37,467/ yr	Cash
Asset Management	Annual Asset Management Updates <i>(Yearly – Cost Shared Across Water and Storm)</i>	On-Going	\$50,000 / yr	Cash

# Drainage Cost – 5-year Priority Projects

Key Driver	Project	Start Date	Cost	Funding Source
Regulatory – Water Quality	Annual System Permit Obligations <i>(Yearly)</i>	2024	\$30,000 / yr	Cash
	Water Quality Monitoring at Outfalls <i>(Yearly)</i>	2024	\$43,350 / yr	Cash
	King’s Beach Improvements – Pre-Design and Modeling	2024	\$200,000	Cash/ARPA
	King’s Beach Improvements – Design and Permitting	2024	\$4,500,000	Grants or SRF Loan
	Rehabilitation of Stormwater Diversion Structure	2025	\$408,000	Bond
	King’s Beach Improvements – Construction	2026	\$50,000,000	Grants or SRF Loan
Renewal of Aging Infrastructure	Annual Pipe / Manhole Inspection Program <i>(Yearly)</i>	2025	\$31,500 / yr	Cash
	Seawall Repair – Whales Beach	2025	\$69,000	Bond
	Seawall Repair – Eismans Beach	2025	\$952,000	Bond
	Seawall Repair – Fisherman’s Beach	2028		Bond
Climate / Flood Mitigation	Town-wide Flood Model Recalibration / Updated Recommendations	2026	\$250,000	Cash
	Burrill Street Drainage Upgrades	2027	\$1,760,000	Bond
Asset Management	Annual Asset Management Updates <i>(Yearly – Cost Shared Across Water and Sewer)</i>	On-Going	\$50,000 / yr	Cash

# Drainage Cost – 20-year Priority Projects

Key Driver	Project	Start Date	Cost	Funding Source
Renewal of Aging Infrastructure	Annual Pipe / Manhole Inspection Program ( <i>Yearly – through 2044</i> )	2025	\$31,500 / yr	Cash
	Phased and Prioritized Stormwater Rehabilitation Program ( <i>Every 3 Years</i> )	2032 - 2038	\$2,447,000 / 3yr	Bond
Climate / Flood Mitigation	Phillips Beach Improvement Project No. 1	2032	\$1,250,000	Bond
	Phillips Beach Improvement Project No. 2	2032	\$1,222,000	Bond
	Fisherman’s Beach Improvement Project No. 1	2037	\$889,000	Bond
	Fisherman’s Beach Improvement Project No. 2	2037	\$326,000	Bond
New Infrastructure	Drainage Study in the Water Tower Area	2040	\$200,000	Bond
	Implement Drainage Improvements in the Water Tower Area	2041	\$2,000,000	Bond
Asset Management	Annual Asset Management Updates ( <i>Yearly – Cost Shared Across Water and Sewer</i> )	On-Going	\$50,000 / yr	Cash





# Town of Swampscott

Elihu Thomson Administration Building  
22 Monument Avenue  
Swampscott, MA 01907-1940

**TO:** SELECT BOARD  
CC: TOWN ADMINISTRATOR

**FROM:** AMY SARRO, DIRECTOR OF FINANCE & ADMINISTRATION

**SUBJECT:** AMERICAN RESCUE PLAN ACT UPDATE

**DATE:** 10/02/2023

The Town of Swampscott received \$4.5 million of relief funds from the American Rescue Plan Act (ARPA) in fiscal years 2022 and fiscal year 2023. As of today 52.3% of those funds have been allocated between supplemental compensation for employees, a portion of the Stacy's Book sewer project, some health department needs, and the acquisition of 12-24 Pine Street for affordable housing.

In September 2022 we closed the community survey where residents and business owners were able to provide input on where they felt these funds would be best invested. These results were presented at the 09/28/2022 Select Board meeting. The leading uses were infrastructure improvements, such as Roadway & Sidewalk improvements and Stormwater/Wastewater upgrades, Mental Health Assistance, and Increased Green Spaces.

Internally, we solicited ideas from the various Town departments for uses and received proposals from the Health Department, Public Library, Public Works, Senior Center, and the Building Department. I have asked the departments to update their proposals for the current timeline so they can be shared at a future Select Board meeting.

These funds do need to be obligated by December 31, 2024 and spent by December 31, 2026.

<b>ARPA Award</b>	<b>\$4,572,677</b>
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Authorized Use	Authorized Amount	Spent to Date
One-Time Supplemental Comp.	\$546,750	\$546,750
Sewer Repair Project	\$76,447	\$76,447
Health Dept for Covid Tracing & Vaccine Clinics	\$3,965	\$3,965
Covid at-Home Tests	\$3,960	\$3,960
Acquisition 12-24 Pine Street	\$1,760,000	\$130,078
<b>Total Authorized</b>	<b>\$2,391,122</b>	<b>\$761,199</b>

<b>Remaining Award to Allocate</b>	<b>\$2,181,555</b>
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<https://home.treasury.gov/system/files/136/SLFRF-Final-Rule.pdf>

## **ASSENT AGREEMENT**

THIS ASSENT AGREEMENT (this "Agreement") is entered into on this \_\_\_\_\_ day of January, 2022, by and between **MASSACHUSETTS ELECTRIC COMPANY** a Massachusetts corporation having a usual place of business at 40 Sylvan Road, Waltham, Massachusetts 02451 (hereinafter "Holder"), and the **TOWN OF SWAMPSCOTT**, a municipal corporation having a principal place of business at Swampscott Town Hall, 22 Monument Avenue, Swampscott, Massachusetts 01907 (hereinafter the "Town").

### **RECITALS:**

WHEREAS, the Holder is the owner of certain perpetual rights and easements in, over, across, under, through and upon certain lands in Swampscott, Massachusetts, all as more particularly described in the easements referenced on Exhibit A attached hereto (hereinafter, collectively, the easement parcels are referred to as the "Holder's Easement Areas"); and

WHEREAS, the Town, by virtue of the Order of Taking recorded with the Essex South District Registry of Deeds (the "Registry") in Book 37335, Page 58 (the "First Order"), has acquired the perpetual right and easement to use the portions of the Holder's Easement Areas shown as "PE-2", "PE-3", and "PE-4" (the "Assent Areas") on a plan of land entitled "Easement Plan of Land, Swampscott Rail Trail, Swampscott, MA, Prepared for: Stantec Consulting Services, Inc." dated January 29, 2019, and prepared by Stantec Consulting (the "Engineer") (10 sheets), recorded with the Registry in Plan Book 470, Page 8, reduced copies of which plans are attached hereto as Exhibit B-1 and made a part hereof (the "Project Plans"), for the Town's construction and operation of the Swampscott Rail Trail Project (the "Project"), which involved the construction and maintenance of a paved rail trail for pedestrian and bicycle use (the "Walkway") with appurtenant features and improvements and with graded shoulders, as shown on the final 100% construction, utility and lighting plans entitled "Town of Swampscott Massachusetts Swampscott Rail Trail Bid Plans", prepared by Stantec Consultants, along with the associated detail and cross-section plans (the "Approved Plans and Specifications") prepared by Engineer, reduced copies of which Approved Plans and Specifications are attached hereto as Exhibit B-2 and made a part hereof;

WHEREAS, pursuant to the Order of Taking, the Town's rights in and to the Assent Area are subject and subordinate to Holder's rights in and to the Holder Easement Areas, as more particularly set forth herein;

WHEREAS, the Town has requested that Holder assent to the Town's use of the Assent Area for the purposes of a recreational trail; and

WHEREAS, Holder has agreed to grant its assent to the Town's use of the Assent Area for the purposes of a recreational trail pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties agree as follows:

### **1. GRANT OF ASSENT**

Holder assents to the Town's installation, construction, maintenance, repair and replacement of the Walkway and certain other improvements within the Assent Area, as shown more particularly on the Approved Plans and Specifications (collectively, the Walkway and the other improvements are the "Approved Improvements") and the Additional Improvements, as hereinafter defined, solely for

use as a recreational trail for pedestrians, bicycles and ADA compliant motorized vehicles and wheelchairs only (the "Permitted Use") subject to the terms and conditions of this Agreement and the rights of any underlying landowners. In all instances, any use of the Walkway, the Assent Area and the Holder's Easement Areas that would prevent the application of the protections afforded by M.G.L. c.21 §17C shall be prohibited hereunder.

## **2. THE TOWN'S USE AND OCCUPANCY OF THE ASSENT AREA**

(a) The Town's use and occupancy of the Assent Area shall be restricted exclusively to the installation, repair, security, maintenance and replacement of the Approved Improvements and the Additional Improvements (hereinafter, the "Improvements"), and the use of the Walkway for the Permitted Uses. No motorized vehicles are allowed on the Assent Area other than vehicles for first responders, emergency and maintenance and construction vehicles and motorized ADA compliant wheelchairs of disabled persons. Equestrian use is prohibited.

(b) With respect to such use and occupancy and/or the performance of any obligations set forth in this Agreement, the Town covenants, agrees and acknowledges that:

(i) Access over Holder's Easement Areas by the Town and any other Town Party (as hereinafter defined) and the Town's invitees, which, as used in this Agreement, shall be deemed to include visitors and members of the general public, shall occur only within the Assent Areas. Access to the Assent Areas shall be from abutting public rights of way only and shall not cross any other portion of the Holder's Easement Areas or other private property without the Town obtaining the consent of Holder or other applicable property owner(s).

(ii) The Holder acknowledges that the Approved Improvements have already been installed in the Assent Area, and that certain additional improvements, including a large fence, were also installed that were not shown in the Approved Plans and Specifications. The Holder has agreed to accept such additional improvements (the "Additional Improvements") subject to the conditions in this Agreement, including, without limitation, that no further changes (other than *de minimis* changes) from the as-built Improvements shall be made to the Improvements or the Assent Area, nor shall any other improvements be constructed or installed therein, without the prior written approval of Holder as set forth in Section 15 below. Within sixty (60) days following execution of this Agreement, the Town agrees to deliver to Holder an "as built" plan prepared by a registered professional engineer indicating the exact location of all of the Improvements and all final grades within the Assent Areas. The Town shall promptly remove any improvement not approved by Holder at the Town's sole cost and expense. The Improvements and the care thereof shall be the sole property and responsibility of the Town.

(iii) The Town shall keep the Assent Area and the Improvements in good condition and repair at the Town's sole cost and expense. In accordance with the foregoing, when clearing vegetation, the Town shall ensure such work does not result in any erosion or damage to the surface or subsurface of Holder's Easement Areas or any of its poles, wires, and any structures, utilities, facilities and/or improvements now or hereafter located thereon or thereunder (the "Holder's Facilities"), and the Town shall protect the Assent Area against erosion and similar damage by instituting appropriate erosion control measures at the Town's sole cost and expense and approved in advance by Holder, such approval not to be unreasonably withheld, conditioned or delayed. The Town shall properly restore, repair and maintain the Assent Area or any physical condition of the

surface or subsurface of the Assent Area in the condition that it is in immediately following the substantial completion of the Improvements (including but not limited to sinkholes) that impacts the use of the Assent Area, and shall keep the Assent Area free of debris, trash, rubbish or other obstructions. In addition to the foregoing, when Holder needs to perform work on Holder's Easement Areas that requires removal of any of the tall privacy fencing installed by the Town (such fencing being part of the Additional Improvements) for access to Holder's Facilities, Holder shall provide prior verbal notice to the Town at least seven (7) days ahead of the scheduled date for Holder's work, and the Town agrees to remove the fencing identified by Holder prior to such scheduled date at the Town's sole cost and expense. Upon completion of such work, Holder shall provide verbal notice to the Town, and the Town shall then restore the fencing at the Town's sole cost and expense in the same locations as shown on the as-built plan referenced in Section 2(b)(ii) above. In the event of an emergency requiring immediate access by Holder to Holder's Facilities, the Holder shall remove the fencing and store, at the Town's sole cost and expense, the same to one side of the Assent Area or in a location provided by the Town, and following completion of such emergency work, Holder shall inform the Town of such completion and the Town shall restore the fencing at the Town's sole cost and expense in the same locations as shown on said as-built plan. The Holder shall endeavor not to damage the fencing during any removal during an emergency and shall only be responsible to replace damaged fencing if such damage was caused by the Holder's gross negligence or willful misconduct.

(iv) The Town shall notify Holder in writing at least thirty (30) days prior to making any changes to the initial Improvements (other than *de minimis* changes), and any repairs that require excavation or grade changes that may impair any of the Holder's Facilities (any such changes or repairs, a "Major Repair"), which notice shall include detailed plans and, if applicable, specifications, and obtain Holder's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. If a Major Repair has a likelihood of impairing Holder's Facilities, as determined by Holder in its sole, but reasonable discretion, Holder may, at Holder's option, supervise the Major Repair, and the Town agrees to reimburse Holder for any reasonable third-party out of pocket cost, as well as internal costs and expenses calculated at Holder's standard rates universally applied by Holder to cities and towns in Massachusetts when charging for the same or similar services, incurred by Holder for such supervision. No prior notice shall be required for the Town's routine maintenance of the Walkway or the Improvements thereon. The Town shall also give Holder's Manager of Overhead Operations, Jeffery Faber (or any subsequent Manager of Overhead Operations, as identified by Holder to the Town), at least forty-eight (48) hours' prior notice prior to making any other alteration to the Assent Area or the Improvements or repairs that are Major Repairs, provided, however, that if the Town is unable to notify Holder in advance as a result of an emergency, the Town may provide fewer than forty-eight (48) hours' notice to Holder for such access. In the event that the Town requires temporary access to areas of Holder's Easement Areas outside the Assent Area in order to maintain or repair the Improvements, the Town shall so notify Holder at least forty-eight (48) hours in advance and obtain Holder's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(v) Except in connection with the repair of the Improvements in accordance with subsection (iv) above, the Town shall not excavate or change the grade of the Assent Area. The Town shall locate all underground lines and wires buried in areas to be excavated and shall protect them against damage. If a buried underground line, wire or appurtenance is damaged or broken by the Town or any Town Party, the Town shall



immediately notify Holder, stop work in the vicinity of the line or wire and prevent anyone from having any contact with it until such time as Holder determines working in that area is safe.

(vi) Holder is under no obligation to restore, repair, maintain or secure any portion of the Holder's Easement Areas (including the Assent Area), provide any watchmen or other security for the Assent Area for the safety of the Town's agents, employees, contractors subcontractors and invitees upon, within, or about the Assent Area, furnish for the Town any services of any nature whatsoever, or make the Improvements, including the Walkway, serviceable for passage or any other purpose in any respect, including, without limitation, the removal of debris, trash, rubbish or other obstructions, or water, ice or snow, all of which are the sole responsibility of the Town, except that Holder shall repair any damage to the Improvements and/or repair the surface of the Assent Area caused by the gross negligence or willful misconduct of the Holder or any of the other Holder Parties (defined below).

(vii) It is understood and agreed that Holder is not making and has not at any time made, and Holder hereby disclaims, any warranties or representations of any kind or character, express or implied, with respect to the Holder's Easement Areas, including the Assent Area (or the condition, safety, title, or fitness thereof), including but not limited to any warranties or representations as to habitability, merchantability, fitness or suitability for a particular purpose, including the Permitted Uses, and the Town hereby expressly waives any such warranties. The Town, on behalf of itself and any other Town Party (as defined in Section 4) further accepts the Assent Area in its "as is, where is, with all faults" condition and shall use the same at its sole risk. The Town has not relied on, will not rely on, and Holder is not liable for or bound by, any express or implied warranties, guaranties, covenants (including, not limited to, any express or implied covenant of quiet enjoyment), statement, representations, or information pertaining to the Assent Area and/or Holder's Easement Areas or relating thereto made or furnished by Holder or any employee representing or purporting to represent Holder, to whomever made or given, directly or indirectly, orally or in writing, unless specifically set forth in this Agreement. The Town also acknowledges that the consideration reflects and takes into account that the Assent Area is being used "as is."

(c) The Town represents and warrants to Holder that it is not relying on any statement, representation, warranty, or information made or provided by any of the Holder Parties as to the physical and environmental conditions thereof and suitability thereof for the construction of the Improvements and the Permitted Uses, the suitability of the Assent Area for construction of the Improvements and the Permitted Uses, and the existence or nonexistence or curative action to be taken with respect to any hazardous or toxic substances on or discharged from the Assent Area, and will rely upon its inspection of the same and not upon any information provided by or on behalf of the Holder or its agents or employees with respect thereto. The Town represents and warrants to Holder that upon the commencement date of this Agreement, the Town shall assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, the unsuitability of the Assent Area for the Town's intended use, or the current and future existence of Holder's Facilities on the Holder's Easement Area and the inherently dangerous nature thereof, may exist and the Town, on behalf of itself and any other Town Party, shall be deemed to have waived, relinquished, and released Holder and Holder's affiliates, successors, assigns, officer, directors, shareholder, employees and agents (each, a "Holder Party" and collectively, the "Holder Parties"), from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including attorney fees) of any and every kind or character, known or unknown, which the Town or any other Town Party

might have asserted or alleged against Holder or any Holder Party, at any time by reason of or arising out of any latent or patent physical conditions, violations of Applicable Laws, unsuitability of the Assent Area for the Town's intended use, the existence of Holder's Facilities, both current and to be constructed in the future, and the inherently dangerous nature thereof, breach of any express or implied covenant of quiet enjoyment, and any and all other acts, omission, events, circumstances, or matters regarding the Holder's Easement Area, excluding in all instances the gross negligence or willful misconduct of the Holder or any other Holder Party.

(d) The Town and the Town Parties shall at all times (1) comply with the terms and conditions of this Agreement including, without limitation, the conditions, as applicable, set forth in Exhibit C attached hereto and made a part hereof entitled "Conditions for Activities Within Electric Transmission Line Rights of Way;" (2) take all necessary precautions for the safety of the Town Parties and its invitees in its use of the Assent Area and use best efforts to prevent unauthorized or inappropriate activities, accidents or injury to persons and property on the Assent Area; and (3) comply with all Applicable Laws (defined below) The Town shall ensure that the Assent Area is used by the Town Parties and invitees only for the purposes expressly authorized in this Agreement.

(e) The Town shall comply with all provisions of federal, state, and municipal laws, statutes, codes, rules, regulations and ordinances and any successor laws, statutes, codes, rules, regulations and ordinances thereto applicable to the Assent Area and its occupancy and the use thereof pursuant to the terms of this Agreement, including without limitation, the National Electric Safety Code, 220 CMR 125.00 ("Installation and Maintenance of Electric Transmission"), MGL Chapter 166 Section 21A ("Coming into Close Proximity to High Voltage Lines"), and all OSHA regulations governing working clearances to electric distribution and transmission lines. Although OSHA Regulations 29 CFR 1926 Subpart CC and 29 CFR 1926.1501 may be specific to equipment that can hoist, lower, and horizontally move a suspended load, all equipment operating within a right-of-way shall maintain the clearances specified in these regulations, including but not limited to cranes, backhoes, excavators, forklifts, pile drivers, and drill-rigs (collectively, "Applicable Laws"). If any provision of this Agreement is less restrictive than the Applicable Laws, then the Town shall comply with the more restrictive Applicable Laws.

(f) The Town shall not damage bridges, culverts, roads or trails used by the Holder to gain access to or along Holder's Easement Areas (including the Assent Area) or interfere with, block, or impede the Holder's access to or along the Assent Area or Holder's Easement Areas, including without limitation, Holder's Facilities. The Town shall ensure that the Walkway's design allows for Holder's unlimited access to Holder's Easement Areas and any and all of Holder's Facilities located thereon or thereunder, including, without limitation, access to any manholes and any underground facilities. Further, the Town covenants and agrees to construct the Improvements to withstand the weight and impact of heavy load vehicles, including, without limitation, H-20 Load vehicles, and equipment operated by Holder during the maintenance and operation of its existing structures and facilities at or within Holder's Easement Areas or operated by Holder during the construction, installation, operation and maintenance of additional structures or facilities at Holder's Easement Areas.

(g) The Town shall not place, store, or stockpile, either temporarily or permanently, or otherwise accumulate any items, objects or articles within the Assent Area, including, without limitation, earth, construction materials or debris, excavated soils, trailers, storage containers, equipment or vehicles upon the Assent Area without Holder's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(h) The Town covenants and agrees to pay Holder on demand any and all actual and reasonable costs and expenses incurred by Holder (including without limitation internal costs and expenses calculated at Holder's standard rates universally applied by Holder to cities and towns in Massachusetts when charging for the same or similar services, costs, or expenses, which costs and expenses Holder would not have had to incur but for the existence of the Walkway, the Improvements, the Project, or this Agreement, including but not limited to, any and all costs for repairs of, or modifications to, any structures, clearances, or any guys, anchors, grounds, counterpoises, culverts or any other utility facility or equipment on the Holder's Easement Areas.

(i) Prior to construction of any other improvements that have been approved in advance by Holder such as those described in Section 15, the Town shall have obtained any and all final federal, state, local and other leases, permits, approvals and authorizations (including without limitation, from applicable conservation and/or wetland commissions and any third parties) that are necessary or required for the construction and use of the Improvements, including the Walkway (collectively, the "Approvals" and individually an "Approval"), which Approvals shall be in form and substance acceptable to Holder (including without limitation all conditions made a part of any Approval). The Town hereby represents, warrants and covenants to Holder that the Town has obtained all of the Approvals for the Improvements. The terms and provisions of the immediately foregoing sentence shall survive the expiration or earlier termination of this Agreement.

### **3. HOLDER'S RESERVATION OF RIGHTS**

(a) The parties hereto agree and acknowledge that Holder and its affiliates serve a public purpose to which the Town's use is subject and subordinate, and the Town agrees that it shall not interfere unreasonably with Holder's or any of its affiliates' present and/or future business operations, including, but not limited to, the construction, reconstruction, repair, maintenance, renewal, replacement, expansion, use and operation of the Holder's Facilities, including but not limited to transmission lines, structures and facilities, located or to be located over, across, under or adjacent to the Assent Area, provided that Holder acknowledges that the Improvements will not constitute an unreasonable interference with Holder's use of the Assent Area as it is currently used by Holder as of the date of this Agreement provided the Town complies with the terms and conditions of this Agreement. Furthermore, Holder expressly reserves the right to enter upon the Assent Area, including without limitation, the Walkway, at any time for any purpose whatsoever, including without limitation in connection with the construction, reconstruction, repair, maintenance, renewal, replacement, expansion, use, or operation of the Holder's Facilities, and to temporarily restrict or prohibit access to and along the Assent Area, when required by Holder's business activities as determined by Holder in its reasonable discretion. Holder shall endeavor to give the Town at least forty eight (48) hours prior verbal notice (which may be given verbally) of any such restriction or prohibition on access to the Assent Area along with the estimated duration of such restriction or prohibition (provided that Holder shall not be bound by said estimate), except that (1) in the event of an emergency, prior notice shall not be required but shall be given to the Town as soon as practicable and (2) no notice shall be required for routine maintenance (including without limitation, tree trimming) or in the event that access is restricted or prohibited for less than 48 hours. The Town agrees that neither the Holder nor the other Holder Parties shall be liable to the Town or the other Town Parties with respect to any claim or cause of action or right to payment for any personal injury or property damage resulting from or in any way connected with the rights herein reserved except to the extent caused by Holder's negligence or willful misconduct.

(b) If, in the Holder's sole but reasonable discretion, the Improvements affect Holder's ability to utilize the Assent Area for its business operations, namely the construction, reconstruction, repair, maintenance, renewal, replacement, expansion, use and operation of Holder's Facilities, , or if an order

or orders issued by the Federal Energy Regulatory Commission ("FERC") and/or the state Department of Public Utilities ("DPU") requires the relocation of the Improvements, Holder shall have the right to relocate the Improvements, or any of them, all at the Town's sole cost and expense ; and (2) the Town shall pay to relocate the same to another location within the Assent Area or within Holder's Easement Areas, at its sole cost and expense, or reimburse the Holder to do the same, provided, however, that Town gives the Holder at least thirty (30) days prior written notice of any such relocation, together with plans and specifications showing the proposed relocated area. Holder agrees to use reasonable efforts to find an alternate location within Holder's Easement Areas to which to relocate the portion of the Improvement affected by the business activities of Holder or its affiliates and/or such overriding governmental regulatory actions, and the parties shall work together to describe and delineate all revisions to the property description and plans for the Improvements within appropriate documents that will amend this Agreement.

#### **4. INDEMNIFICATION**

To the fullest extent permitted by law, the Town agrees that the Town shall, or shall cause any person or entity acting on behalf of the Town (including, without limitation, any contractors and subcontractors) to, pay and release, protect, defend with counsel reasonably satisfactory to Holder, indemnify and save harmless Holder and the other Holder Parties from and against, any and all liabilities, loss, damages, costs, expenses (including any and all attorneys' fees, costs and expenses of Holder), penalties, fines, assessments, causes of action, suits, claims, obligations, demands or judgments of any nature whatsoever to the extent caused by or arising from the Town's exercise of its rights or performance of its obligations under this Agreement and (i) any work, act or omission to act done in, on or about the Assent Area or any part thereof, by or on behalf of the Town or any Town Party; (ii) injury to, or the death of, persons or damage to property (including without limitation real property, personal property and environmental or natural resource damages) within the Assent Area or upon Holder's Easement Areas directly or indirectly caused by or in any way arising out of or in any way connected with the use, nonuse, condition, possession, operation, maintenance, management or occupation of the Assent Area by the Town or any person claiming under the Town, or the employees, agents, licensees, servants, and contractors or any such person (each, a "Town Party" and collectively, the "Town Parties"), or resulting from the condition of the Assent Area, including without limitation any annoyance caused by discharge currents; (iii) with Holder's rights reserved in this Agreement; or (iv) violation of any agreement or condition of this Agreement or of any Applicable Laws affecting the Assent Area or the occupancy or use thereof by the Town or any of the other Town Parties. The foregoing indemnification shall not include injury or damage to the extent caused by the gross negligence or willful misconduct of the Holder or other Holder Parties as set forth in a final judgment rendered by a court of competent jurisdiction. The Town shall take prompt action to defend (with counsel reasonably satisfactory to Holder) and indemnify Holder against claims, actual or threatened, but in no event later than notice by Holder to the Town of the service of a notice, summons, complaint, petition or other service of process against Holder, alleging damage, injury, liability, or expenses attributed in any way to this Agreement or the acts, fault, negligence, equipment, materials, properties, facilities, personnel, or property of the Town or any other Town Party. The Town shall defend any such claim or threatened claim, including, as applicable, engagement of legal counsel (satisfactory to Holder), to respond to, defend, settle, or compromise any claim or threatened claim. Furthermore, the Town understands and agrees it is responsible for any and all costs and expenses incurred by Holder to enforce this indemnification provision. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

#### **5. INSURANCE**

The Town shall comply with the Insurance Requirements prior to commencement of work on

the Project as set forth in the attached Exhibit D, incorporated herein by reference and made a part hereof. The Town agrees that Holder shall have no obligation to insure the Improvements.

## **6. HAZARDOUS MATERIALS; OIL**

The Town covenants and agrees with the Holder that neither the Town nor any of the other Town Parties shall bring onto, store, generate, or permit to be stored or generated on the Holder's Easement Areas, including but not limited to the Assent Area, any oil, hazardous material, hazardous waste or hazardous substance as those terms are defined by any applicable federal, state or municipal law, regulation, code, or ordinances including, without limitation, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E, the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended 42 U.S.C. §§ 9601 et seq., and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§6901 et seq.

In the event, during installation, operation, repair, replacement or maintenance of the Improvements or at any other time or for any other reason, any such oil, hazardous material, hazardous waste or hazardous substance (collectively, "hazardous materials") are discovered to be present at the Assent Area or at the Holder's Easement Areas, without any obligation by the Town to discover same, the Town shall immediately inform the Holder of such discovery and, if the hazardous materials were brought upon, discharged, or released by the Town or any the other Town Parties, or the general public in its use of the Walkway, and not by the Holder or any of the other Holder Parties, the Town shall, at Holder's option, perform or cause to be performed at the Town's sole cost and expense the remediation or removal of such hazardous materials and in accordance with (i) any and all Applicable Laws and (ii) a remedial action work plan reviewed and approved in advance by Holder which approval shall not be unreasonably withheld, conditioned or delayed. The Town shall, to the fullest extent permitted by law, indemnify and hold the Holder harmless from and against any claim, liability, loss, damage or expense (including without limitation attorneys' fees, costs, expenses, assessments, remedial or response actions) arising from or related to any violation of any Applicable Laws or from a breach of the terms and provisions of this Section 6. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

## **7. DEFAULT**

If the Town shall fail to observe or perform any of its agreements or obligations under this Agreement, Holder shall provide written notice thereof to the Town, and if said default is not be cured within thirty (30) days of Holder's delivery of written notice of default, which written notice shall be delivered to the Town's usual place of business set forth in the recitals of this Agreement, or such longer time as is necessary to cure such default, provided the Town is diligently and continuously pursuing such cure, but under no circumstances shall such cure period exceed sixty (60) days from Holder's delivery of written notice of a default without Holder's written agreement, such agreement not to be unreasonably withheld, conditioned or delayed, Holder may, at its sole option, (i) seek specific performance or other equitable relief from a court of competent jurisdiction, (ii) without obligation, cure such default if such default can be cured by Holder, which cure may include, without limitation, performing maintenance and repairs to the Assent Area, and Holder shall invoice the Town for actual and reasonable third-party costs of such cure, which invoice the Town shall promptly pay, without setoff, abatement, suspension, deferment, reduction or deduction, within thirty (30) days from the date of such invoice without condition or delay; and/or (iii) exercise any other remedy at law or in equity. Notwithstanding the foregoing, in the event that Town's failure to comply with the terms of this Agreement constitutes a safety hazard to persons on the Assent Area, in Holder's sole but reasonable discretion, Holder may notify the Town and the Town shall have a period of three (3) days



to make the Assent Area safe (which may include, without limitation, the Town prohibiting the use of the portion of the Assent Area impacted by such safety hazard) and if the Town fails to make the Assent Area safe within such 3-day cure period, Holder may suspend use of and deny all public access to the Walkway until such time as said default is cured; provided, however, that if Holder determines, in Holder's sole but reasonable discretion, that the Town's failure to comply with the terms of this Agreement constitutes an imminent safety hazard to persons on the Assent Area, then Holder may suspend use of and deny all public access to the Walkway until such time as said default is cured without providing any prior notice or cure period to the Town, and Holder shall endeavor to provide written notice of such suspension to the Town promptly thereafter. Failure on the part of the Holder to suspend use of or deny access to the Assent Area in accordance with this paragraph shall not be deemed to create any additional responsibility or liability to Holder. Further, if any Holder's remedies hereunder shall be cumulative and not exclusive to any other available remedy. Holder and the Town also hereby waive trial by jury in any action to which they are parties.

## **8. REMOVAL**

(a) The parties hereto agree and acknowledge that Holder and its affiliates serve a public purpose to which the Town's use of the Assent Area as set forth herein is subject and subordinate, as set forth in this Agreement. Notwithstanding anything contained in this Agreement to the contrary, in the event that Holder determines, in its sole discretion, that it needs to use all or a portion of the Assent Area in connection with the present and/or future business operations of Holder or its affiliates (as the same is or may be approved by the DPU, FERC, or other appropriate regulatory authority), such that the Town's continued use thereof for the purposes set forth herein materially and adversely affects Holder's or its affiliates use of the Assent Area, Holder, in its sole discretion, reserves the right to require that the Town cease its use of all or a portion of the Assent Area at any time by giving to the Town at least twelve (12) months prior written notice. During such twelve (12) month period, Holder and the Town shall use commercially reasonable efforts to find an alternate location within Holder's Easement Areas to which to relocate the Walkway; provided, however, that Holder shall not be obligated to make available an alternate location if Holder deems the presence of the Walkway or the activities conducted thereon to be incompatible, by more than a *de minimis* amount, with Holder's business operations. If Holder and the Town are unable to find a mutually acceptable alternate location, then effective upon the expiration of such 12-month period, the Town shall cease its use of all or such portion of the Walkway and Assent Area.

(b) Notwithstanding anything herein contained to the contrary, in the event that Holder determines, in its sole but reasonable discretion, that the condition of the Assent Area constitutes a safety and/or security risk to persons within the Assent Area or property abutting the Assent Area, Holder may immediately restrict access to the Assent Area so long as such condition exists in Holder's sole but reasonable discretion and shall provide the Town written notice of the condition(s) creating such safety and/or security risk. In the event that the Town cannot correct or does not commence to correct any such condition(s) creating such safety and/or security risk within ten (10) days after notice from Holder, Holder may, at any time thereafter while such failure continues, (a) if such condition(s) can be corrected by the Town, exercise its rights and remedies set forth in Section 7 above, or (b) if not capable of being corrected, Holder and the Town shall have twelve (12) months from the date of such notice to use commercially reasonable efforts to find an alternate location within Holder's Easement Areas to which to relocate the Walkway at no cost or expense to Holder; provided, however, that Holder shall not be obligated to make available an alternate location if Holder deems the presence of the Walkway or the activities conducted thereon to be incompatible by more than a *de minimis* amount with maintaining the safety and/or security risk to persons within the Assent Area or property abutting the Assent Area. If Holder and the Town are unable to find a mutually acceptable alternate location, then effective upon the expiration of such 12-month period, the Town shall cease its use of

all or such portion of the Walkway and Assent Area that Holder deems unsafe or posing such a security risk. In addition, in the event a change in the Applicable Laws, including, without limitation, M.G.L. ch.21 §17C, or a reinterpretation of said Applicable Laws results in, in Holder's reasonable discretion, increased liability to the Holder, and the Town cannot mitigate or does not commence to mitigate such liability within twenty (20) days after notice from Holder, Holder may, immediately or at any time thereafter while such failure continues, require that the Town shall cease its use of all or such portion of the Walkway and Assent Area.

## **9. INTENTIONALLY OMITTED**

## **10. INTENTIONALLY OMITTED**

## **11. ASSIGNMENT**

This Agreement is not assignable voluntarily, involuntarily or by operation of law, in whole or in part, by the Town.

## **12. NOTICE**

All notices required or permitted under this Agreement shall be in writing and either delivered in hand or mailed (a) by certified mail (return receipt requested) with the United States Postal Service, or (b) by Federal Express or other nationally recognized overnight mail carrier furnishing evidence of receipt, to:

Holder:                      Massachusetts Electric Company d/b/a National Grid  
40 Sylvan Road  
Waltham, MA 02451  
Attention: Director, Real Estate Transactions

with a copy to:            National Grid USA Service Company, Inc.  
Legal Department  
40 Sylvan Road  
Waltham MA 02451  
Attention: Assistant General Counsel, Real Estate

The Town:                Town of Swampscott  
Swampscott Town Hall  
22 Monument Avenue  
Swampscott, MA 01907  
Attn: Town Administrator  
Telephone: (781) 596-8850  
Fax: (781) 596-8851

with a copy to:            KP Law, P.C  
101 Arch Street  
Boston, Massachusetts 02110  
Attn: Shirin Everett, Esq.  
Telephone: (617) 556-0007  
Fax: (617) 654-1735

Either party may change the address at which it is to receive notices by giving notice as hereinabove set forth. Any notice or other communication in connection with this Agreement shall be deemed duly served when received (or upon attempted delivery if delivery is not accepted).

### **13. GENERAL PROVISIONS**

(a) Failure of the Holder or the Town to complain of any act or omission hereunder on the part of the Town or the Holder, as the case may be, no matter how long the same may continue, shall not be deemed a waiver by the Holder or by the Town of any of its rights hereunder. No waiver by the Holder or the Town at any time, express or implied, of any breach of any provision of this Agreement shall ever be deemed a waiver of a breach of any other provision of this Agreement, or a consent to any subsequent breach of the same or any other provision. If any action by the Town shall require the Holder's consent or approval, such consent or approval on any particular occasion shall not be deemed a consent or approval of any other action on any subsequent occasion.

(b) If any provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected. Each provision of this Agreement shall be deemed valid and enforceable to the fullest extent permitted by law.

(c) The paragraph and section headings contained in this Agreement are for reference and convenience only and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.

(d) This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior oral and written offers, negotiations, proposals, representations, agreements, courses of dealing and understandings between the parties relating to the subject matter hereof, and is subject to no understandings, conditions, or representations other than those expressly stated herein.

(e) This Agreement may only be amended or modified by a writing signed by the Holder and the Town and which refers to this Agreement.

(f) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and the Town and Holder agree that any disputes regarding this Agreement shall be brought in state court in Essex County, Commonwealth of Massachusetts.

(g) Neither party to this Agreement shall be responsible to the other for delays or errors in its performance or other breach of this Agreement occurring solely by reason of circumstances beyond its reasonable control, including acts of civil or military authority, national emergencies, fire, epidemics, pandemics labor disputes, flood or catastrophe, acts of God, insurrection, war, riots, delays of suppliers, or failure of transportation or communication, provided, however, that the foregoing shall not excuse the late payment of any sums or amounts due or owing hereunder.

(h) The parties agree that a memorandum or notice of this Agreement shall be recorded at the applicable registry of deeds in the form attached hereto as Exhibit E.

(i) If the Town executes this Agreement through an agent or representative, each such agent or representative hereby warrants and represents to the Holder that he or she is authorized to execute,

acknowledge, and deliver this Agreement on behalf of the Town and to thereby bind the Town to the same.

(j) This Agreement: (i) may be executed in counterparts, each of which when executed by all parties to this Agreement shall be deemed to be an original; (ii) shall take effect as a sealed instrument; (iii) shall bind and inure to the parties and their respective legal representatives, successors and assigns, except that the Town may not delegate any of its obligations under this Agreement or assign this Agreement; and (iv) is not intended to inure to any third-party beneficiary.

(k) Holder and the Town acknowledge that each of them and their counsel have had an opportunity to review this Agreement and that this Agreement shall not be construed against Holder merely because Holder has prepared it.

#### **14. EMINENT DOMAIN; CASUALTY**

If the entire Assent Area or the Holder's Easement Areas is appropriated or acquired by any governmental agency or other party having the power of eminent domain (other than the Town and the Holder and/or by any agency or party acting on behalf of Holder), this Agreement shall terminate as of the date of the taking provided, however, that if only a portion of the Assent Area is taken and/or taken only on a temporary basis, and such portion or temporary taking adversely affects by more than a *de minimis* amount, in Holder's reasonable discretion, Holder's use of Holder's Easement Areas such that it is unable to access or use the same unless the Improvements are removed, then Holder may require the Town to relocate the Improvements in accordance with the provisions of Section 3(b) of this Agreement. Any damages recoverable in respect to such appropriation or acquisition shall be the sole property of Holder, and the Town hereby releases unto Holder any interest it may have in the same, provided, however, that nothing herein shall impair the rights of the Town to seek compensation from the taking authority for the value of the Improvements. If the Improvements, in whole or in part, are damaged or destroyed by any fire or other casualty, Holder shall have no obligation to Town to repair or restore the Improvements; all such repairs and restoration shall be the sole obligation of the Town, at its sole cost and expense excepting that caused by Holder's gross negligence or willful misconduct.

#### **15. PLANS AND SPECIFICATIONS; ACCESS PRIOR TO EFFECTIVE DATE**

The design and construction of the Improvements shall be at the sole cost and expense of Town. At least sixty (60) days prior to installation of any additional improvements on the Holder's Easement Areas beyond the Improvements shown on the Approved Plans and Specifications, the Town shall deliver a complete set of amended plans and specifications ("Amended Plans and Specifications") for such improvements to the Holder for Holder's review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Any modifications to the Approved Plans and Specifications or the Amended Plans and Specifications after Holder's original approval shall also require the Holder's written approval, which approval shall not be unreasonably withheld or delayed.

#### **16. INTENTIONALLY OMITTED**

#### **17. NO ASSIGNMENT OF RIGHTS**

The Town acknowledges and agrees that this Agreement does not constitute an assignment, conveyance or any other type of transfer of any rights, privileges or interests of Holder in and to Holder's Easement Areas, and Holder continues to hold all of its rights, privileges and interests in the Easement Areas fully and completely subject to the terms of this Agreement.

## **18. DEFAULT INTEREST**

If the Town fails to pay any monetary payments due hereunder when due, such unpaid amounts shall bear interest from the due date until payment is received by Holder at a per annum rate equal to the rate announced from time to time by Bank of America as its Prime Rate, but in no event greater than the maximum rate permitted by law. Such amounts shall be paid within thirty (30) days of receipt of written notice from Holder that such amount is due.

[End of Document - Signature Page Follows]



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers under seal effective upon the date first above written.

HOLDER: MASSACHUSETTS ELECTRIC COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Hereunto Authorized

TOWN: TOWN OF SWAMPSCOTT  
By its Select Board

\_\_\_\_\_  
David Grishman, Chair

\_\_\_\_\_  
Catherine Phelan, Vice-Chair

\_\_\_\_\_  
Mary Ellen Fletcher, Member

\_\_\_\_\_  
Peter Spellios, Member

\_\_\_\_\_  
Douglas Thompson, Member

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_ of Massachusetts Electric Company, who proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of Massachusetts Electric Company.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_, member of the Select Board of the Town of Swampscott as aforesaid, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of the Town of Swampscott.

\_\_\_\_\_  
Notary Public

My Commission Expires:

791120.2/SWAM/0138

## EXHIBIT LIST

EXHIBIT A- HOLDER'S EASEMENT AREAS

EXHIBIT B-1 – PROPERTY PLAN

EXHIBIT B-2 – PLANS AND SPECIFICATIONS

EXHIBIT C- CONDITIONS FOR ACTIVITIES WITHIN RIGHTS OF WAY

EXHIBIT D- INSURANCE REQUIREMENTS

EXHIBIT E – FORM OF NOTICE OF AGREEMENT

**EXHIBIT A**

**HOLDER'S EASEMENT AREAS**

The real property encumbered by the easements granted to Massachusetts Electric Company by \_\_\_\_\_ and recorded with the Essex South District Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_.

**EXHIBIT B-1**  
**PROJECT PLAN**



**EXHIBIT B-2**

**PLANS AND SPECIFICATIONS**

## **EXHIBIT C**

### **CONDITIONS FOR PROPOSED ACTIVITIES WITHIN ELECTRIC TRANSMISSION LINE RIGHTS-OF-WAY**

#### **1. Compliance/Safety**

A. All activities conducted by the Town shall comply with all applicable Federal, state, and local laws, statutes, rules, regulations, and codes. In particular, the requirements of the following statutes, regulations, and safety codes and guidelines, appropriate for the voltage(s) of the lines within the Assent Area, must be met:

- *National Electrical Safety Code*
- In Massachusetts, 220 CMR 125.00, "Installation and Maintenance of Electric Transmission Lines;" and MGL Chapter 166 Section 21A "Coming into Close Proximity to High Voltage Lines" except that the required clearance of six feet is insufficient. The minimum clearance allowed by OSHA shall be maintained.
- OSHA regulations governing working clearances to electric distribution and transmission lines. Although regulations 29 CFR 1926 Subpart CC and 29 CFR 1926.1501 may be specific to equipment that can hoist, lower, and horizontally move a suspended load, all equipment operating within a right-of-way shall maintain the clearances specified in these regulations, including but not limited to cranes, backhoes, excavators, forklifts, pile drivers, and drill-rigs. In accordance with 1926.1408, if the Town asks to encroach upon the 20 foot clearance requirement and requests voltages of electric lines near the proposed work or activity, the Town shall provide an aerial photograph or detailed survey plan delineating the area of work or activity in proximity to electric lines and structures.
- The Town must contact Dig Safe (888-344-7233 or 811) prior to any excavation work on the Assent Area, and take any and all reasonable measures to protect and secure worksite from entry by the general public.

B. The Town shall adequately ground vehicles, equipment, fences and gates, at all times and in accordance with applicable Federal, state, and local laws, statutes, rules, regulations, and design codes, including, but not limited to, those listed in paragraph A above and IEEE Standard 80.

#### **2. Protection of Transmission Line Facilities**

The Town shall, at all times, protect transmission line facilities from damage. In addition to compliance with safety codes as described in paragraph 1 above, protection of transmission facilities shall, as a minimum, include the following:

- A. The Town shall operate any and all equipment at least 50 feet horizontally away from any transmission line pole, tower, guy wire, or guy anchor.
- B. When making a rough cut during excavation, the Town shall disturb no earth within an area bounded by a line drawn 25 feet plus 2.5 times the depth of the cut from the nearest transmission line pole, tower leg, guy wire, or guy anchor, but not less than 50 feet. Upon

completion of the rough cut, the slopes of the bank shall be graded on a slope no steeper than one vertical to five horizontal and stabilized with vegetation or rip-rap. The top of the slope shall be at least 50 feet from the nearest pole, tower leg, guy wire, or guy anchor.

- C. The Town shall not store or use explosives within the right-of-way.
- D. No construction materials or debris, excavated soils, explosives, junk vehicles or other trash of any kind shall be stockpiled or disposed of on the Assent Area, and no oil or hazardous wastes or substances shall be stored or disposed of on the Assent Area.
- E. The Town shall not unload or load vehicles or equipment within the right-of-way.
- F. The Town shall place no above or below ground structures within the right-of-way, including, but not limited to, streetlights, signs, sheds, fences, septic systems, and swimming pools, other than as shown on the approved Plans and Specifications.
- G. The Assent Area shall not be used as a staging or marshalling yard for contractors, employees, equipment or materials.
- H. No parking or storage of vehicles of any kind is allowed on the Assent Area including, but not limited to, automobiles, trucks, all-terrain vehicles (ATV's), four-wheel vehicles and boats.

### **3. Access to Right-of-way**

- A. The Town shall not at any time block or impede access to or along the right-of-way.
- B. The Town shall not damage roads or trails used to gain access to or along the right-of-way.

### **4. Preservation of Rights and Future Use**

- A. Holder reserves the right to determine any area(s) where any future improvements will not be permitted due to its need for these area(s) for its future facilities, as set forth in the Agreement. This includes the bisector of angles in the right-of-way and generally includes areas adjacent to existing structures.

### **5. Protection of Interests**

- A. Mild shocks due to electrostatic currents may be felt when touching conductive structures or objects within the right-of-way. Although these shocks may be annoying, Holder is unable to eliminate them.

### **6. Additional Conditions**

- A. The Town shall install suitable two-inch (2") plastic markers, extending a minimum of three (3') feet above ground, at the point of entrance and exit of any pipelines, cables or other underground facilities installed by the Town on the Assent Area.
- B. The Town shall notify Holder of any survey monument, marker or stake that has become dislodged, lost or misplaced during installation of the Town's facilities. Holder will

resurvey the Assent Area and replace any such survey monument. Resurvey expense shall be reimbursed by the Town to Holder.

- C. In the event Holder determines that injury or damage to, or interference with, its facilities may occur as a result of loss of metal from Holder's, the Town's or a third party's facilities due to corrosion or electrolysis caused or hastened by the installation of the Town's facilities or by the Town's activities, Holder may require the following protective measures to be taken by the Town. The Town shall cover said facilities and shall install and maintain cathodic protection devices, all subject to prior approval of Holder. The Town shall keep accurate records of each such cathodic protection device, furnish Holder with a copy of such records, and shall from time to time take such other and further protective measures as Holder may require.
- D. The Town shall install, maintain and provide adequate drainage facilities so that there will not be a collecting or pooling of surface or run-off waters upon the Assent Area resulting from the installation, construction, maintenance and operation of the Town's equipment and facilities.
- E. The Town shall provide not less than thirty (30") inches of cover over any underground facilities installed by the Town pursuant hereto; such cover shall be compacted so as to be capable of withstanding AASHTO H20 highway load rating.
- F. The Town is hereby notified that other underground physical occupations of the subject Assent Area may exist that do not appear upon the attached drawing and/or maps and property records maintained by Holder. Accordingly, the Town is cautioned to excavate carefully and comply with all applicable state and local laws and regulations with respect thereto.

## **EXHIBIT D**

### **INSURANCE REQUIREMENTS**

1. The Town shall provide and maintain, at its own expense, or require its contractors to provide and maintain, insurance policies, intended to be primary (with no right of contribution by any other coverage available to National Grid USA, its direct and indirect parents, subsidiaries and affiliates (the “Insured Entities”)), covering all activities to be performed under or in connection with and all uses permitted under this Agreement, issued by reputable insurance companies with an A.M. Best Rating of at least B+, which at least meet or exceed the requirements listed herein:

- (a) **Workers’ Compensation and Employers Liability Insurance** as required by the State in which the work activities under this Agreement will be performed. If applicable, coverage shall include the U.S. Longshoreman’s and Harbor Workers Compensation Act, and the Jones Act. The employer’s liability limit shall be at least \$500,000 each per accident, per person disease, and disease by policy limit.
- (b) **Commercial General Liability (CGL) Insurance**, covering all operations to be performed by or on behalf of the Town under or in connection with this Agreement, with minimum limits of:

Bodily Injury (BI)	- \$1,000,000 per occurrence
Property Damage (PD)	- \$ 500,000 per occurrence
OR	
Combined Single Limit	- \$1,000,000 per occurrence
OR	
BI & PD per Occurrence	- \$1,000,000
General Aggregate & Product Aggregate	- \$2,000,000 each

- Coverage shall include: contractual liability (with this Agreement, and any associated verbal agreements, being included under the definition of “Insured Contract” thereunder), products/completed operations, and if applicable, explosion, collapse and underground (XC&U).
  - If the products-completed operations coverage is written on a claims-made basis, the retroactive date shall not precede the effective date of this Agreement and coverage shall be maintained continuously for the duration of this Agreement and for at least two years thereafter.
  - Additional Insured as required in Article 3 below,
  - The policy shall contain a separation of insureds condition.
- (c) **Automobile Liability**, covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of the Town under or in connection with this Agreement with minimum limits of:

Bodily Injury	- \$500,000 per occurrence; 1,000,000 aggregate
Property Damage	- \$500,000 per occurrence
OR	
Combined Single Limit	- \$1,000,000 per occurrence



- Additional Insured as required in Article 3 below.
- (d) **Umbrella Liability or Excess Liability** coverage, with a **minimum** per occurrence limit of \$4,000,000. This coverage shall run concurrent to the CGL required in Article 1(b) above, shall apply excess of the required automobile, CGL and employer's liability coverage required in this Insurance Exhibit, and shall provide additional insured status as outlined in Article 3 below.
- (e) **Watercraft Liability**, if used in connection with this Agreement, with the same **minimum** limits of liability as outlined in requirement 1(b) above, and naming the Insured Entities, including their officers and employees, as additional insured as outlined in article 3.
- (f) **Aircraft Liability**, if used in connection with this Agreement, with a limit of liability of not less than \$10,000,000 combined single limit per occurrence, and naming the Insured Entities, including their officers and employees, as Additional Insureds as required in Article 3 below. Such coverage shall not include a per-passenger or per seat coverage limit.
- (g) **Risk of Loss:** the Town shall be responsible for all risk of loss to its equipment and materials, and any other equipment and materials owned by its employees or by other third parties that may be in their care, custody and control, except to the extent damaged by Holder or any of the other Holder Parties, who shall be responsible for repairing and/or restoring the same to their condition prior to such damage. If this coverage is excluded from the Commercial General Liability policy, then coverage will be acceptable under the Town's property policy.

In the event that any equipment or materials (Goods) are supplied by the Insured Entities, an Insured Entities representative will provide the insurable value of the Goods to the Town in writing, both cumulatively and on a maximum per item basis. The Town will provide replacement cost insurance for these Goods under a blanket builder's risk policy, an equipment floater, or other equivalent coverage, while such Goods are under the care, custody and control of the Town. Such insurance shall cover all Goods outlined in the Assent Agreement or as noted on subsequent contract amendments. The coverage limit shall apply on either a per location basis or a maximum per item basis, and shall name the Insured Entities, as a Loss Payee with respect to their insurable interest as required in Article 3 below.

- (i) **Limits:** Any combination of Commercial General Liability, Automobile Liability and Umbrella Liability policy limits can be used to satisfy the limit requirements in items 1 b, c & d above.
2. **Self-Insurance:** Proof of qualification as a qualified self-insurer, if approved in advance in writing by an Insured Entities representative, will be acceptable in lieu of securing and maintaining one or more of the coverages required in this Insurance Section. Such acceptance shall become a part of this insurance provision by reference herein.

For Workers' Compensation, such evidence shall consist of a copy of a current self-insured certificate for the State in which the work will be performed.

In order for self insurance to be accepted, the Town's unsecured debt must have a financial rating of at least investment grade. For purposes of this section, "Investment Grade" means (i) if the Town has a Credit Rating from both S&P and Moody's then, a Credit Rating from S&P equal to

or better than “BBB-” and a Credit Rating from Moody's equal to or better than “Baa3”; (ii) if the Town has a Credit Rating from only one of S&P and Moody’s, then a Credit Rating from S&P equal to or better than “BBB-“ or a Credit Rating from Moody’s equal to or better than “Baa3; or (iii) if the parties have mutually agreed in writing on an additional or alternative rating agency, then the equivalent credit rating assigned to an entity by such additional or alternative rating agency that is equal to or better than “BBB-” from S&P and/or “Baa3” from Moody’s.

3. **Additional Insured and Loss Payee:** The intent of the Additional Insured requirement under the CGL, Auto, CPL, Umbrella/Excess, Aircraft and Watercraft policies is to include the Insured Entities, their directors, officers and employees, as Additional Insureds for liabilities associated with, or arising out of, all operations, work or services to be performed by or on behalf of the Town, including ongoing and completed operations, under this Agreement. The following language should be used when referencing the additional insured status: **National Grid USA, its subsidiaries and affiliates shall be named as Additional Insured.**

The Loss Payee language, as required in article 1.h above, shall read as follows: **National Grid USA, its subsidiaries and affiliates shall be included as a Loss Payee as their interest may appear.**

To the extent the Town’s insurance coverage does not provide the full Additional Insured coverage as required herein, the Town agrees to indemnify and hold harmless the Insured Entities against any and all liability resulting from any deficiency in the Town’s insurance coverage that may be out of compliance with this insurance requirement.

4. **Waiver of Recovery:** The Town and its insurance carrier(s) shall waive all rights of recovery against the Insured Entities and their directors, officers and employees, for any loss or damage covered under those policies referenced in this insurance provision, or for any required coverage that may be self-insured by the Town. To the extent the Town’s insurance carriers will not waive their right of subrogation against the Insured Entities, the Town agrees to indemnify the Insured Entities for any subrogation activities pursued against them by the Town’s insurance carriers. However, this waiver shall not extend to the negligence or willful misconduct of the Insured Entities or their employees, sub-contractors, or agents.
5. **Contractors:** In the event the Town uses Contractors in connection with this Agreement, it is expressly agreed that the Town shall have the sole responsibility to make certain that all Contractors are in compliance with these insurance requirements and remains in compliance throughout the course of this Agreement, and thereafter as required. The Town shall remain liable for the performance of the Contractor, and such sub-contract relationship shall not relieve the Town of its obligations under this agreement.

Unless agreed to in writing the by the Risk Management Department of National Grid USA Service Company, any deductible or self insured retentions maintained by any Contractor, which shall be for the account of the Contractor, and shall not exceed \$100,000. In addition, Contractor shall name both the Town and National Grid USA, (including their subsidiaries, affiliates, officers and employees), as Additional Insureds under the Commercial General Liability and Umbrella/Excess Liability insurance. If requested by National Grid, the Town shall provide National Grid with an insurance certificate from its Contractor evidencing this coverage.

In the event any Contractor is unable to maintain all of the same insurance coverage as required in this insurance article, the Town agrees to indemnify and hold the Insured Entities harmless

against any and all liability resulting from any deficiency in Contractor's insurance coverage that may be out of compliance with these insurance requirements.

6. **Insurance Certification:** Upon execution of this Agreement, the Town shall promptly provide National Grid with (a) **Certificate(s) of Insurance** for all coverage's required herein at the following address:

National Grid  
Attn: Risk Management Bldg. B-3  
300 Erie Boulevard West  
Syracuse, NY 13202

Such certificates, and any renewals or extensions thereof, shall outline the amount of deductibles or self-insured retentions which shall be for the account of the Town. Such deductibles or self-insured retentions shall not exceed \$100,000 unless agreed to in writing by the Risk Management Department of National Grid USA Service Company, whose approval shall not be unreasonably withheld, delayed or conditioned.

The Town shall provide National Grid with at least 30 days prior written notice of any cancellation or diminution of the insurance coverage required in this insurance article.

7. **Insurance Obligation:** If any insurance coverage is not secured, maintained or is cancelled and the Town fails immediately to procure other insurance as specified, National Grid has the right, but not the obligation, to procure such insurance and to invoice the Town for said coverage.
8. **Incident Reports:** the Town shall furnish the Risk Management Department of National Grid USA Service Company with copies of any non-privileged accident or incident report(s) (collectively, the "Documents") sent to the Town's insurance carriers covering accidents, incidents or events occurring as a result of the performance of all operations, work and services to be performed by or on behalf of the Town under or in connection with this Agreement, excluding any accidents or incidents occurring on the Town property. If any of the National Grid Companies are named in a lawsuit involving the operations and activities of the Town associated with this Agreement, the Town shall promptly provide copies of all insurance policies relevant to this accident or incident if requested by National Grid. However, in the event such Documents are deemed privileged and confidential (Attorney Client Privilege), the Town shall provide the relevant facts of the accident or incident in a format that does not violate such Attorney Client Privilege.
9. **Other Coverage:** These requirements are in addition to any which may be required elsewhere in this Agreement. In addition, the Town shall comply with any governmental site specific insurance requirements even if not stated herein.
10. **Coverage Representation:** The Town represents that it has the required policy limits available, and shall notify National Grid USA Service Company's Risk Management Department in writing when the minimum coverage's required in this article herein have been reduced as a result of claims payments, expenses, or both. However, this obligation does not apply to any claims that would be handled solely within the Town's deductible or self-insured retention.
11. **Responsibility:** The complete or partial failure of the Town's insurance carrier to fully protect and indemnify the Insured Entities per the terms of the Assent Agreement, including without

limitation, this exhibit, or the inadequacy of the insurance shall not in any way lessen or affect the obligations of the Town to the Insured Entities.

12. **Coverage Limitation:** Nothing contained in this article is to be construed as limiting the extent of the Town's responsibility for payment of damages resulting from all operations, work and services to be performed by or on behalf of the Town under or in connection with this Agreement, or limiting, diminishing, or waiving the Town's obligation to indemnify, defend, and save harmless the Insured Entities in accordance with this Agreement.

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and among the TOWN OF SWAMPSCOTT, a body politic acting by and through its Select Board located at 22 Monument Avenue, Swampscott, Massachusetts 01907 (the “Town”), and MASSACHUSETTS ELECTRIC COMPANY dba NATIONAL GRID with an address of 170 Data Drive, Waltham, Massachusetts 02451 (“MEC”) and ANDERSON & KREIGER LLP, with an address of 50 Milk Street, 21<sup>st</sup> Floor, Boston, MA 01209 (“Escrow Agent”).

## BACKGROUND

A. The Town and MEC are parties to that certain Lease and Assent Agreement (the “Lease”), a copy of which is attached hereto as Exhibit A, for certain premises located in the Town of Swampscott, as more particularly described in the Lease, for the use of MEC’s property as a recreational trail (the “Recreational Trail”).

B. The Lease, which is not yet in effect, will become effective when the Town has provided fully-designed plans and specifications for the Recreational Trail for MEC’s review, MEC has approved the same, and the other Escrow Release Conditions (defined below) set forth in this Agreement have been satisfied.

C. The Town and MEC desire to enter into this Agreement to provide for the Lease and certain other documents to be held in escrow (the “Escrow”) by Escrow Agent until the Escrow Release Conditions have been satisfied.

D. Escrow Agent has agreed to act as escrow agent under this Agreement pursuant to the terms and provisions hereof.

## AGREEMENT

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto intending to be legally bound, hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Capitalized Terms. Capitalized terms used but not defined in this Agreement, shall have the meanings ascribed to them in the Lease, unless otherwise set forth herein.

3. Escrow.

(a) Simultaneously herewith, the Town shall deliver to Escrow Agent two (2) originals each of the following documents, executed by the Town: (i) the Lease, (ii) the Memorialization of Dates Agreement in the form attached hereto as Exhibit B, and (iii) the Notice of Lease in the form attached hereto as Exhibit C (collectively, the “Town Documents”).

(b) Simultaneously herewith, MEC shall deliver to Escrow Agent two (2)

originals each of the following documents, executed by MEC: (i) the Lease, (ii) the Memorialization of Dates Agreement, and (iii) the Notice of Lease (collectively, the “National Grid Documents”).

4. Conditions to Release of the Escrow.

(a) Escrow Agent shall hold the Town Documents and the National Grid Documents in the Escrow pending satisfaction of all of the following conditions (the “Escrow Release Conditions”):

- (i) The Town has provided to MEC (with a copy to Escrow Agent) a final set of Plans and Specifications (the “Final Plans and Specifications”) fully depicting the Improvements to be installed on the Premises to construct the Walkway;
- (ii) MEC has approved the Final Plans and Specifications by notifying the Town in writing of such approval (with a copy of such approval provided to Escrow Agent);
- (iii) The Town has obtained all Approvals required by the Lease, including without limitation, all Approvals required by the Massachusetts Department of Transportation, and has provided copies of such Approvals to MEC and Escrow Agent;
- (iv) MEC has reasonably approved the Approvals, in accordance with the Lease, and provided written notice of its approval of the Approvals to the Town and Escrow Agent;
- (v) The Town has obtained the insurance required by Section 6 of the Lease and has delivered certificates of insurance to MEC (with a copy to Escrow Agent) evidencing such insurance;
- (vi) The Town has provided to MEC (with a copy to Escrow Agent) written confirmation, which may be in the form of a written representation by the Town, that it has complied with the requirements of the Community Compliance Section of the Massachusetts Department of Transportation’s Right-of-Way Bureau for relocation and real property acquisition on Federal aid projects;
- (vii) The Town has provided a clerk’s certificate to MEC (with a copy to Escrow Agent) evidencing the Town Meeting/governing authorization for its entry into the Lease.
- (viii) The Town and MEC have approved in writing the construction schedule for the Project, which such schedule shall specify the schedule for any work to be performed by MEC to its facilities;
- (ix) If, based on the Final Plans and Specifications approved by MEC, MEC determines that any portion of MEC’s facilities (including without

limitation any structures, clearances, guys, anchors, grounds, counterpoises, culverts or any other utility facility or equipment) needs to be altered, modified, or relocated to accommodate the Town's Improvements, the Town shall pay to MEC all costs and expenses (including without limitation hard and soft costs and expenses) MEC reasonably estimates it will incur, including, without limitation, internal costs and expenses calculated at MEC's standard rates universally applied by MEC to cities and towns in Massachusetts when charging for the same or similar services, to relocate MEC's facilities in order to accommodate the construction of the Improvements, including a contingency of twenty percent (20%) of such estimated costs and expenses (collectively, "Lessor's Project Relocation Costs"). Such payment to MEC of Lessor's Project Relocation Costs may be through a force account funded by MassDOT with the full amount of Lessor's Project Relocation Costs for the benefit of MEC on or prior to the release of the documents being held under the Escrow. MEC shall provide to the Town a detailed budget of the estimated Lessor's Project Relocation Costs within a reasonable amount of time following MEC's review of the Final Plans and Specifications; and

- (x) MEC has confirmed in writing to the Town and Escrow Agent that it has received Lessor's Project Relocation Costs.

(b) Upon the Escrow Agent's determination that all of the Escrow Release Conditions have been satisfied, it shall notify the Town and MEC in writing (the "Escrow Agent's Release Notice"). Within five (5) business days after each of the Town's and MEC's receipt of the Escrow Agent's Release Notice, it shall notify Escrow Agent and the other party either that (i) it agrees that all of the Escrow Release Conditions have been satisfied (a "Release Confirmation Notice") or (ii) it does not agree that the Escrow Release Conditions have been satisfied (a "Release Non-Confirmation Notice"), in which case such party shall provide with reasonable detail the reasons why it believes the Escrow Release Conditions have not been satisfied. If either the Town or MEC fails to timely send a Release Confirmation Notice or a Release Non-Confirmation Notice after its receipt of the Escrow Agent's Release Notice, it shall be deemed that such party has sent a Release Non-Confirmation Notice.

(c) Upon Escrow Agent's receipt of Release Confirmation Notices from **both** the Town and MEC, Escrow Agent shall:

- (i) Date the Lease, Notice of Lease, and Memorialization of Dates Agreement with the date that is the date of Escrow Agent's receipt of the last of the Town's or MEC's, as the case may be, Release Confirmation Notice;
- (ii) Attach the Final Plans and Specifications approved by MEC to the Lease as Exhibit B thereto;
- (iii) Fill in the blanks in the Lease with respect to the date, name, title and other relevant information of the Final Plans and Specifications;



- (iv) Fill in the blanks in the Memorialization of Dates Agreement; and
- (v) Return to each of the Town and MEC two (2) fully-executed originals of the Lease and the Memorialization of Dates Agreement, and return to the Town the fully-signed original Notice of Lease (with a copy of the fully-signed Notice of Lease to MEC).

The date which Escrow Agent dates the Lease pursuant to this Section 3(c) shall be the Escrow Release Date under the Lease.

(d) If, following the Town's and MEC's receipt of Escrow Agent's Release Notice, either of the Town or MEC sends, or is deemed to have sent, a Release Non-Confirmation notice to Escrow Agent, Escrow Agent shall not release the Escrow.

(e) If Escrow Agent has not received Release Confirmation Notices from **both** the Town and MEC on or prior to **June 30, 2028** (the "Escrow Deadline"), Escrow Agent shall return the Town Documents to the Town and the National Grid Documents to MEC, and the Escrow shall be deemed terminated and no longer of any force and effect. Notwithstanding the immediately foregoing sentence, the Town shall have the one-time right, upon written notice from the Town to MEC and Escrow Agent that is received by MEC and Escrow Agent on or before 5:00 pm local Boston time on the Escrow Deadline (the "Town's Extension Notice"), to extend the Escrow Deadline to **October 31, 2028**. If MEC and Escrow Agent receive the Town's Extension Notice prior to the Escrow Deadline, the Escrow Deadline shall be extended from June 30, 2028 to the date specified in the Town's Extension Notice, not to extend beyond **October 31, 2028** (such extended date, the "Extended Escrow Deadline").

(f) The Town shall be liable to MEC for those Lessor's Project Relocation Costs actually and reasonably incurred by MEC prior to the Escrow Deadline or Extended Escrow Deadline, as the case may be, in reviewing the Final and Plans and Specifications. If the Escrow Release Conditions are not satisfied by the Escrow Deadline or Extended Escrow Deadline, as the case may be, the Town shall pay such Lessor's Project Relocation Costs incurred by MEC within thirty (30) days of its receipt of an invoice therefor. Unpaid Lessor's Project Relocation Costs shall bear interest at the rate of five percent (5%) per annum, compounded monthly, from the date due until timely paid by the Town. The terms and provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

5. Notices. All notices, demands, requests or other communications required or permitted to be given hereunder shall be sent in accordance with the notice provisions of the Lease, except that notices to Escrow Agent shall be delivered to:

Anderson & Kreiger LLP  
50 Milk Street, 21<sup>st</sup> Floor  
Boston, MA 02109  
Attn: David L. Wiener  
Email: [dwiener@andersonkreiger.com](mailto:dwiener@andersonkreiger.com)

Escrow Agent may from time to time, upon prior written notice to the Town and MEC, change its address for notices.

6. Limitation of Liability of Escrow Agent. In performing any of its duties hereunder, Escrow Agent shall not incur any liability to the Town or MEC for any damages, losses, or expenses, except for its gross negligence, intentional misconduct or bad faith, and it shall accordingly not incur any such liability with respect to (i) any action taken or omitted in good faith or (ii) any action taken or omitted in reliance upon any instrument, including any written notice or instruction provided for in this Agreement, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, signed or presented by a proper person or persons, and confirms with the provisions of this Agreement. The Town and MEC do hereby jointly and severally agree that Escrow Agent shall incur no liability whatsoever in connection with its good faith performance under this Agreement, and do hereby jointly and severally release and waive any claims they may have against Escrow Agent which may result from its performance in good faith of its function under this Agreement, including but not limited to, a delay in the electronic wire transfer of funds. Notwithstanding any other provisions of this Agreement to the contrary, the Town and MEC jointly and severally indemnify and hold harmless the Escrow Agent against any loss, liability or expense incurred without bad faith or willful misconduct on its part arising out of or in connection with its services under the terms of this Agreement, including without limitation the reasonable cost and expense of defending itself against any claim or liability, except that (i) MEC shall not have an obligation to indemnify the Escrow Agent for any claim against the Escrow Agent brought solely by the Town and (ii) the Town shall not have an obligation to indemnify the Escrow Agent for any claim against the Escrow Agent brought solely by MEC. Escrow Agent shall be entitled to rely upon the authenticity of any signature and the genuineness and validity of any writing received by Escrow Agent relating to this Agreement either through third-party attorneys retained by Escrow Agent or through attorneys at Escrow Agent undertaking such defense at Escrow Agent's reasonable billing rates. Escrow Agent may resign and be discharged of its duties hereunder by giving not less than ten (10) days written notice to the Town and MEC. In such event, the Town and MEC shall, within ten (10) days after the date of Escrow Agent's resignation notice, jointly furnish Escrow Agent with written instructions for the release of any funds and documents then held by Escrow Agent pursuant to this Agreement to a successor escrow agent. If the Town and MEC fail to timely provide such joint written instructions, Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent and upon such appointment deliver the Escrow, and any amounts then-being held by Escrow Agent under the Escrow, to such court or such successor, as the case may be. In the event that Escrow Agent receives conflicting written instructions from the Town and MEC, it may elect not to act unless and until it receives joint written instructions from the Town and MEC or a nonappealable order from a court of competent jurisdiction. Notwithstanding anything in this Agreement to the contrary, and due to the potential nearly five (5) year duration of the Escrow, if Escrow Agent misplaces or cannot locate any of the Town Escrow Documents or National Grid Escrow Documents, Escrow Agent shall not be liable under this Agreement, and the Town and MEC shall promptly replace the Town Escrow Documents and the National Grid Escrow Documents, as the case may be, with newly executed documents. The terms and provisions of this Section 6 shall survive the expiration or earlier termination of this Agreement.

7. [Intentionally omitted].

8. No Conflict. Without limiting Anderson & Kreiger LLP's obligations as Escrow

Agent hereunder, the Town and MEC agree that Escrow Agent's status as a party to this Agreement shall not affect its ability to act as MEC's counsel in connection with this Agreement, the Lease, the Recreational Trail, Lessor's Property, and the Project. The Town and MEC hereby waive any current or future conflict of interest which may result from the same. The terms and provisions of this Section 8 shall survive the expiration or earlier termination of this Agreement.

9. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, and assigns.

10. Termination of this Agreement. This Agreement and the Escrow shall terminate upon the earliest to occur of the following events: (i) upon the release of the Lease and other documents in the Escrow by the Escrow Agent in accordance with this Agreement; (ii) at 11:59 pm local Boston time on the Escrow Deadline or the Extended Escrow Deadline if MEC and Escrow Agent timely receive the Town's Extension Notice; and (iii) if applicable as provided above, upon the taking of any action by Escrow Agent with respect to the Escrow in accordance with the final, nonappealable or unappealed order, judgment or decree of a court of competent jurisdiction.

11. Time is of the Essence. Time is of the essence of this Agreement.

12. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

13. Waiver of Jury Trial. The parties hereto waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or connected with this Agreement or the Escrow.

14. Governing Law. This Agreement is governed by and is to be construed under the laws of the Commonwealth of Massachusetts and may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

15. Counterparts. This Agreement: (i) may be executed in counterparts, each of which when executed by all parties to this Agreement shall be deemed to be an original; (ii) shall take effect as a sealed instrument; and (iii) is not intended to inure to any third-party beneficiary. Without limitation, in addition to electronically produced signatures (e.g., via DocuSign), "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, the parties hereto have signed and sealed this Agreement as of the date first above written.

**TOWN OF SWAMPSCOTT:**

By its Select Board

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*[Signature Page of the Town of Swampscott]*

**MASSACHUSETTS ELECTRIC COMPANY  
dba NATIONAL GRID**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Signature Page of Massachusetts Electric Company dba National Grid]*

**ESCROW AGENT:**  
ANDERSON & KREIGER LLP,  
a Massachusetts limited liability partnership

By: \_\_\_\_\_  
Name: David L. Wiener  
Title: Partner

*[Signature Page of Anderson & Kreiger LLP]*

**Exhibit A**

Lease

(see attached)



**Exhibit B**

Memorialization of Dates Agreement

(see attached)

**Exhibit C**

Notice of Lease

(see attached)

## **LEASE AND ASSENT AGREEMENT**

THIS LEASE AND ASSENT AGREEMENT (this "Lease" or "Agreement") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 202[\_\_\_\_], by and between **MASSACHUSETTS ELECTRIC COMPANY** a Massachusetts corporation having a usual place of business at 40 Sylvan Road, Waltham, Massachusetts 02451 (hereinafter the "Lessor"), and the **TOWN OF SWAMPSCOTT**, a municipal corporation having a principal place of business at Swampscott Town Hall, 22 Monument Avenue, Swampscott, Massachusetts 01907 (hereinafter the "Lessee").

### **RECITALS:**

WHEREAS, the Lessor is the owner of certain real property located in Swampscott, Massachusetts, and is the owner of certain perpetual rights and easements in, over, across, under, through and upon certain lands in Swampscott, Massachusetts, as more particularly described in the deed referenced on Exhibit A attached hereto (hereinafter, collectively, both fee and easement parcels are referred to as the "Lessor's Property"); and

WHEREAS, the Lessee desires to use a portion of Lessor's Property for the construction and maintenance of an approximately 10-12 foot wide pedestrian walkway (hereinafter, the "Walkway") located on Lessor's Property, as a recreational trail layout for pedestrian and bicycle use with appurtenant features and improvements and with graded shoulders, depicted on the plans containing [\_\_\_\_\_] sheets entitled ["\_\_\_\_\_"], dated [\_\_\_\_\_] and prepared by [\_\_\_\_\_] (hereinafter the "Plans and Specifications") attached hereto as Exhibit B and made a part hereof, in connection with Lessee's construction and operation of a rail trail in the Town of Swampscott (the "Project").

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties agree as follows:

### **1. GRANT OF LEASE AND ASSENT**

The Lessor hereby (A) leases to the Lessee the areas on Lessor's Property depicted in the Plans and Specifications over which Lessor holds a fee title interest, for the purpose of installing and maintaining the Walkway and certain other improvements as shown on the Plans and Specifications (collectively, the Walkway and the other improvements are the "Improvements") within the Leased Area and to use the same as a recreational use trail for pedestrians, bicycles and ADA compliant motorized vehicles and wheelchairs only (the "Permitted Uses") and (B) assents to Lessee's installation and maintenance of the Improvements and the use of the Walkway for the Permitted Uses over that portion of the Premises where Lessor has easement rights (the "Assent Area"), subject to the terms and conditions set forth in this Lease. The Leased Area and the Assent Area are hereinafter referred to as the "Premises." Said assent is further granted upon the condition that Lessee acquire, heretofore or hereafter by grant or order of taking or other lawful means, easements or rights from said underlying landowners. In all instances, any use of the Walkway, the Premises and the Lessor's Property that would prevent the application of the protections afforded by M.G.L. ch.21 §17C shall be prohibited hereunder.

This Lease shall take effect upon the date this Lease is released from escrow (the "Escrow Release Date") pursuant to the escrow agreement among Lessor, Lessee and Anderson & Kreiger LLP on or about [\_\_\_\_\_, 2023] (the "Escrow Agreement").

### **2. TERM**

Unless otherwise terminated as provided in this Lease and so long as Lessee is in compliance with the terms and conditions of this Lease, the Lessee shall have the right to use the Premises as set forth herein for a term of ninety-nine (99) years (the "Term"), which Term shall commence on the Escrow Release Date (the "Term Commencement Date") and expire on the date which is the ninety-ninth (99<sup>th</sup>) anniversary of the Term Commencement Date. Lessor shall, at its cost and expense, have the right but not the obligation to review and reasonably revise the terms and conditions of this Lease from time to time during the Term as Lessor deems reasonably necessary in connection with Lessor's business operations, but not more frequently than once every five (5) years, and the parties shall enter into a written amendment to this Lease in order to incorporate any such revised terms and conditions into this Lease, the execution of which shall not be unreasonably withheld, conditioned or delayed. Under no circumstance shall any revision by Lessor materially diminish the rights granted to Lessee herein to utilize the Premises for the purposes herein expressed.

### **3. LESSEE'S USE AND OCCUPANCY OF THE PREMISES**

(a) The Lessee's use and occupancy of the Premises shall be restricted exclusively to the installation, repair, security, maintenance and replacement of the Improvements, and the use of the Walkway for the Permitted Uses, during the Term. No motorized vehicles are allowed on the Premises except, to the extent the Premises support the same, first responders, emergency and maintenance vehicles and motorized ADA compliant vehicles and wheelchairs of disabled persons. Equestrian use is also prohibited.

(b) With respect to such use and occupancy and/or the performance of any obligations set forth in this Lease, Lessee covenants, agrees and acknowledges that:

(i) Access over Lessor's Property by Lessee and its agents, employees, licensees, servants, contractors and invitees (the term "invitees", as used in this Lease, shall be deemed to include visitors and members of the general public) shall occur only within the Premises. Access to the Premises shall be from abutting public rights of way only and shall not cross any other portion of the Lessor's Property or other private property without Lessee obtaining the consent of Lessor or other applicable property owner.

(ii) The Improvements shall only be installed within the Premises in those locations and using those methods set forth in the approved Plans and Specifications. No changes shall be made to the Improvements without the prior written approval of Lessor as set forth in Section 15 below. Within sixty (60) days following completion of installation of the Improvements, the Lessee agrees to deliver to Lessor an "as built" plan prepared by a registered professional engineer indicating the exact location of the Improvements and all final grades within the Premises and certifying that the Improvements have been located in strict compliance with the approved Plans and Specifications. No other improvements other than the Improvements may be installed within the Premises without Lessor's prior written approval and in accordance with Section 15 hereof. Lessee shall promptly remove any improvement not approved by Lessor at Lessee's sole cost and expense. At all times during the Term of this Lease and following the expiration or termination hereof, the Improvements and the care thereof shall be the sole property and responsibility of the Lessee.

(iii) Lessee shall keep the Premises and the Improvements in good condition and repair at all times at the Lessee's sole cost and expense. Lessee shall properly restore, repair and maintain, to the reasonable satisfaction of Lessor, the Premises or any physical condition of the surface or subsurface of the Premises (including but not limited to sinkholes) that impacts the use of the Premises, and shall at all times keep the Premises reasonably free of any debris, trash, rubbish or other obstructions, and if Lessee does not gate off or

otherwise expressly prohibit the use of the Premises during winter months, free of water, ice and snow.

(iv) Lessee shall notify the Director of Overhead Lines, Robert Schneller (603-231-2443), at least forty-eight (48) hours before commencing the initial installation of the Improvements within the Premises. Following initial installation of the Improvements, Lessee shall notify Lessor at least forty-eight (48) hours in advance of the commencement of any repair to the Improvements; provided, however, that if Lessee is unable to notify Lessor in advance as a result of an emergency, Lessee may provide fewer than forty-eight (48) hours notice to Lessor for such access. In addition, Lessee shall obtain Lessor's prior written consent to any repairs that require excavation or grade changes or replacement of all or substantially all of an Improvement ("Major Repair"), which consent shall not be unreasonably withheld, conditioned or delayed, and, at Lessor's option, Major Repairs may be under the supervision of Lessor, and any cost of such supervision shall be paid for by Lessee. In the event that Lessee requires temporary access to areas of Lessor's Property outside the Premises in order to maintain or repair the Improvements, Lessee shall so notify Lessor at least forty-eight (48) hours in advance and obtain Lessor's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(v) Except in connection with the initial installation and repair of the Improvements in accordance with the approved Plans and Specifications and subsection (iv) above, Lessee shall not excavate or change the grade of the Premises. Lessee shall locate all underground lines and wires buried in areas to be excavated and shall protect them against damage. If a buried underground line, wire or appurtenance is damaged or broken, the Lessee shall immediately notify Lessor, stop work in the vicinity of the line or wire and prevent anyone from having any contact with it until such time as Lessor determines working in that area is safe.

(vi) Lessor is under no obligation to restore, repair, maintain or secure any portion of the Lessor's Property (including the Premises), provide any watchmen or other security for the Premises for the safety of Lessee's agents, employees, lessees, servants, contractors and invitees upon, within, or about the Premises, furnish for the Lessee any services of any nature whatsoever, or make the Improvements, including the Walkway, serviceable for passage or any other purpose in any respect, including, without limitation, the removal of debris, trash, rubbish or other obstructions, or water, ice or snow, all of which are the sole responsibility of Lessee.

(vii) It is understood and agreed that Lessor is not making and has not at any time made, and Lessor hereby disclaims, any warranties or representations of any kind or character, express or implied, with respect to the Lessor's Property, including the Premises (or the condition, safety, title, or fitness thereof), including but not limited to any warranties or representations as to habitability, merchantability, fitness or suitability for a particular purpose, including the Permitted Uses, and Lessee hereby expressly waives any such warranties. Lessee further accepts the Premises in their "as is, where is, with all faults" condition and shall use the same at its sole risk. Lessee has not relied on will not rely on, and Lessor is not liable for or bound by any express or implied warranties, guaranties, covenants (including, not limited to, any express or implied covenant of quiet enjoyment), statement, representations, or information pertaining to the Premises and/or Lessor's Property or relating thereto made or furnished by Lessor or any employee representing or purporting to represent Lessor, to whomever made or given, directly or indirectly, orally or in writing, unless specifically set forth in this Lease. Lessee also acknowledges that the consideration reflects and takes into account that the Premises are being used "as is."

(viii) Lessee represents and warrants to Lessor that Lessee has conducted, prior to the Escrow Release Date, such investigations of the Premises including, but not limited to, the physical and environmental conditions thereof and suitability thereof for the construction of the Improvements and the Permitted Uses, as the Lessee deems necessary or desirable to satisfy itself as to the condition of the Premises, the suitability of the Premises for construction of the Improvements and the Permitted Uses, and the existence or nonexistence or curative action to be taken with respect to any hazardous or toxic substances on or discharged from the Premises, and will rely upon the same and not upon any information provided by or on behalf of the Lessor or its agents or employees with respect thereto. Lessee represents and warrants to Lessor that upon the commencement date of this Lease, Lessee shall assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, the unsuitability of the Premises for the Lessee's intended use, or the current and future existence of Lessor's facilities on the Lessor's Property and the inherently dangerous nature thereof, may exist and Lessee shall be deemed to have waived, relinquished, and released Lessor and Lessor's affiliates, successors, assigns, officer, directors, shareholder, employees and agents, from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including attorney fees) of any and every kind or character, known or unknown, which Lessee might have asserted or alleged against Lessor or Lessor's affiliates, successors, assigns, officer, directors, shareholder, employees and agents, at any time by reason of or arising out of any latent or patent physical conditions, violations of applicable laws, unsuitability of the Premises for the Lessee's intended use, the existence of Lessor's facilities, both current and to be constructed in the future, and the inherently dangerous nature thereof, breach of any express or implied covenant of quiet enjoyment, and any and all other acts, omission, events, circumstances, or matters regarding the Lessor's Property.

(ix) Lessee's agents, employees, licensees, servants and contractors shall at all times (1) comply with the terms and conditions of this Lease including, without limitation, the conditions, as applicable, set forth in Exhibit C attached hereto and made a part hereof entitled "Conditions for Activities Within Electric Transmission Line Rights of Way;" (2) take all necessary precautions for the safety of Lessee's agents, employees, licensees, servants, contractors and invitees upon, within, or about the Premises including, without limitation, maintaining any enclosures (such as fences) and providing for such watchmen or other security as necessary in order to prevent unauthorized or inappropriate activities, accidents or injury to persons and property on, about or adjacent to the Premises; and (3) comply with all applicable provisions of federal, state, and municipal laws, statutes, codes, rules, regulations and ordinances and any successor laws, statutes, codes, rules, regulations and ordinances thereto in order to prevent unauthorized or inappropriate activities, accidents or injury to persons and property on, about, or adjacent to the Premises, including, without limitation, the National Electric Safety Code, 220 CMR 125.00 ("Installation and Maintenance of Electric Transmission"), MGL Chapter 166 Section 21A ("Coming into Close Proximity to High Voltage Lines"), and all OSHA regulations governing working clearances to electric distribution and transmission lines. Although OSHA Regulations 29 CFR 1926 Subpart CC and 29 CFR 1926.1501 may be specific to equipment that can hoist, lower, and horizontally move a suspended load, all equipment operating within a right-of-way shall maintain the clearances specified in these regulations, including but not limited to cranes, backhoes, excavators, forklifts, pile drivers, and drill-rigs. Lessee shall ensure that the Premises are used by Lessee's agents, employees, lessees, servants, contractors and invitees only for the purposes expressly authorized in this Lease.

(x) Lessee shall comply with all provisions of federal, state, and municipal laws, statutes, codes, rules, regulations and ordinances and any successor laws, statutes, codes, rules, regulations and ordinances thereto affecting the Premises and its occupancy and the use thereof pursuant to the terms of this Lease (the "Applicable Laws"). If any provision of this Lease is less restrictive than the Applicable Laws, then Lessee shall comply with the more restrictive Applicable Laws.

(xi) Subject to Section 4 of this Lease, Lessor shall have the right to use the Premises, including use of the Walkway, at such times and in a manner not inconsistent with this Lease. Lessee shall not damage bridges, culverts, roads or trails used by the Lessor to gain access to or along the Lessor's Property (including the Premises) or interfere with, block, or impede the Lessor's access to or along the Premises or the Lessors' Property, including without limitation, Lessor's transmission/distribution/gas lines, equipment, structures and facilities. Lessee shall ensure that the Walkway's design allows for Lessor's unlimited access to Lessor's Property and any and all of its facilities located thereon or thereunder, including, without limitation, access to any manholes and any underground facilities. Further, Lessee covenants and agrees to construct the Improvements to withstand the weight and impact of heavy load vehicles, including, without limitation, HS-25 Load vehicles, and equipment operated by Lessor during the maintenance and operation of its existing structures and facilities at or within Lessor's Property or operated by Lessor during the construction, installation, operation and maintenance of additional structures or facilities at Lessor's Property.

(xii) Lessee shall not place, store, or stockpile, either temporarily or permanently, or otherwise accumulate any items, objects or articles within the Premises, including, without limitation, earth, construction materials or debris, excavated soils, trailers, storage containers, equipment or vehicles upon the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

(xiii) Lessee covenants and agrees to pay Lessor on demand any and all costs and expenses incurred by Lessor, including without limitation internal costs and expenses calculated at Lessor's standard rates universally applied by Lessor to cities and towns in Massachusetts when charging for the same or similar services and including without limitation costs and expenses incurred by Lessor prior to the Escrow Release Date if such costs and expenses are not required to be paid by Lessee at the time this Lease is released from escrow pursuant to the Escrow Agreement, which are directly or indirectly related to Lessee's exercise of its rights or the performance of its obligations under this Lease, including but not limited to, any and all costs for repairs of, or modifications to, any structures, clearances, or any guys, anchors, grounds, counterpoises, culverts or any other utility facility or equipment on the Lessor's Property.

(xiv) Prior to construction of the Improvements, or any other improvements that have been approved in advance by Lessor such as those described in Section 15, Lessee shall have obtained any and all final federal, state, local and other leases, permits, approvals and authorizations (including without limitation, from applicable conservation and/or wetland commissions and any third parties) that are necessary or required for the construction and use of the Improvements, including the Walkway, with all appeal periods for such Approvals having expired with no appeals having been taken (collectively, the "Approvals" and individually an "Approval"), which Approvals shall be in form and substance reasonably acceptable to Lessor (including without limitation all conditions made a part of any Approval). In the event that Lessee fails to secure all of said Approvals, then both parties acknowledge and agree that this Lease shall be null and void



and without recourse to the parties hereto, except for any provisions of this Lease which by their terms shall survive termination.

#### **4. LESSOR'S RESERVATION OF RIGHTS**

(a) The parties hereto agree and acknowledge that Lessor and its affiliates serve a public purpose to which the Lessee's use of the Premises as set forth herein is subject and subordinate. Accordingly, the Lessee agrees that this Lease and the exercise of its rights or performance of its obligations under this Lease by the Lessee shall not interfere with Lessor's or any of its affiliates' present and/or future business operations, including, but not limited to, the construction, reconstruction, repair, maintenance, renewal, replacement, expansion, use and operation of the Lessor's present or future facilities, including but not limited to transmission lines, structures and facilities, located or to be located over, across, under or adjacent to the Premises. Furthermore, Lessor expressly reserves the right to enter upon the Premises, including without limitation, the Walkway, at any time for any purpose whatsoever, including without limitation all of the above purposes, and to temporarily restrict or prohibit access to and along the Premises, when required by Lessor's business activities as determined by Lessor in its sole reasonable discretion. Lessor shall endeavor to give Lessee at least forty eight hours prior verbal notice of any such restriction or prohibition on access to the Premises along with the estimated duration of such restriction or prohibition (provided that Lessor shall not be bound by such estimate), except that (a) in the event of an emergency, prior notice shall not be required but shall be given to Lessee as soon as practicable and (b) no notice shall be required for routine maintenance (including without limitation, tree trimming) or in the event that access is restricted or prohibited for less than 48 hours. Lessee agrees that neither the Lessor nor its affiliates, employees or agents of any of them shall be liable to the Lessee, its agents, employees, licensees, servants, contractors and invitees with respect to any claim or cause of action or right to payment for any personal injury or property damage resulting from or in any way connected with the rights herein reserved except to the extent caused by Lessor's gross negligence or willful misconduct.

(b) If relocation or removal of any of the Improvements, including the Walkway, is deemed necessary by Lessor in connection with the present and/or future business activities of Lessor or any of its affiliates at the Lessor's Property, or following an order or orders issued by the Federal Energy Regulatory Commission ("FERC") and/or the state Department of Public Utilities ("DPU"), and the resulting relocation or removal of Improvements impacts a portion of the leasehold interest or assent granted to Lessee under this Agreement but does not block or significantly interfere with the use and operation of the Walkway, (1) Lessor shall have the right to require Lessee to relocate or remove the Improvements, or any of them, at Lessee's sole cost and expense, including without limitation any and all costs to place underground Lessor's facilities, equipment and structures; and (2) Lessee acknowledges and agrees that Lessor shall have no obligation to pay or reimburse Lessee or any person or entity that provides funding to the Lessee for the installation, operation, security, repair, or maintenance of the Improvements (or any replacements thereof or additions thereto). Lessor agrees to use reasonable efforts to find an alternate location within Lessor's Property to which to relocate the portion of the Walkway affected by the business activities of Lessor or its affiliates and/or such overriding governmental regulatory actions, and the parties shall work together to describe and delineate all revisions to the property description and plans for the Improvements with appropriate documents that will amend this Agreement.

#### **5. INDEMNIFICATION**

To the fullest extent permitted by law, Lessee agrees that Lessee shall, or shall cause any person or entity acting on behalf of Lessee (including, without limitation, any contractors and subcontractors) to, pay and release, protect, defend with counsel reasonably satisfactory to Lessor, indemnify and save harmless Lessor and its affiliates, and employees or agents of any of them, from

and against, any and all liabilities, loss, damages, costs, expenses (including any and all attorneys' fees, costs and expenses of Lessor), causes of action, suits, claims, obligations, demands or judgments of any nature whatsoever caused by, arising from, or in any way related to Lessee's exercise of its rights or performance of its obligations under this Lease, and (i) any work, act or omission to act done in, on or about the Premises or any part thereof, by or on behalf of the Lessee or any person claiming under the Lessee, or the, employees, agents, lessees, servants, contractors and invitees of the Lessee or any such person; (ii) injury to, or the death of, persons or damage to property (including real property, personal property and environmental or natural resource damages) within the Premises or upon Lessor's Property or economic damages directly or indirectly caused by or in any way arising out of or in any way connected with the use, nonuse, condition, possession, operation, maintenance, management or occupation of the Premises by the Lessee or any person claiming under the Lessee, or the employees, agents, licensees, servants, contractors and invitees of the Lessee or any such person, or resulting from the condition of the Premises; including without limitation any annoyance caused by discharge currents; (iii) with Lessor's rights reserved in this Lease; or (iv) violation of any agreement or condition of this Lease or of any Applicable Laws or other requirements affecting the Premises or the ownership, occupancy or use thereof, by Lessee or any person claiming under the Lessee (including the failure to obtain the necessary Approvals as required herein), or the employees, agents, lessees, servants, contractors and invitees of the Lessee or any such person hereunder. The foregoing indemnification shall not include injury or damage to the extent directly caused by the gross negligence or willful misconduct of the Lessor as set forth in a final judgment rendered by a court of competent jurisdiction. Lessee shall take prompt action to defend (with counsel reasonably satisfactory to Lessor) and indemnify Lessor against claims, actual or threatened, but in no event later than notice by Lessor to the Lessee of the service of a notice, summons, complaint, petition or other service of process against Lessor, alleging damage, injury, liability, or expenses attributed in any way to this Lease or the acts, fault, negligence, equipment, materials, properties, facilities, personnel, or property of the Lessee, its agents, employees, contractors, servants or suppliers. The Lessee shall defend any such claim or threatened claim, including, as applicable, engagement of legal counsel (reasonably satisfactory to Lessor), to respond to, defend, settle, or compromise any claim or threatened claim. Furthermore, the Lessee understands and agrees it is responsible for any and all costs and expenses incurred by Lessor to enforce this indemnification provision. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

## **6. INSURANCE**

Lessee shall comply with the Insurance Requirements prior to the commencement of the work on the Project as set forth in the attached Exhibit D, incorporated herein by reference and made a part hereof. Lessee agrees that Lessor shall have no obligation to insure the Improvements.

## **7. HAZARDOUS MATERIALS; OIL**

The Lessee covenants and agrees with the Lessor that neither the Lessee nor any person claiming under the Lessee, nor the employees, agents, contractors, lessees, servants, or invitees of the Lessee or any such person shall bring onto, store, generate, or permit to be stored or generated on the Lessor's Property, including but not limited to the Premises, any oil, hazardous material, hazardous waste or hazardous substance as those terms are defined by any applicable federal, state or municipal law, regulation, code, or ordinances including, without limitation, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E, the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended 42 U.S.C. §§ 9601 et seq., and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq. In the event, during installation, operation or maintenance of the Improvements, any such oil, hazardous material, hazardous waste or hazardous substance (collectively, "hazardous materials") are discovered to be present at the Premises or at the Lessor's Property, without any obligation by Lessee to discover the

same except to the extent as set forth in Section 3(b)(viii) above, Lessee shall immediately inform the Lessor of such discovery and, at Lessor's option, Lessee shall perform or cause to be performed, if associated with Lessee's activities and not caused by Lessor's gross negligence or willful misconduct, at Lessee's sole cost and expense and to the reasonable satisfaction of Lessor, remediation or removal of said hazardous materials in accordance with (i) any and all Applicable Laws and (ii) a remedial action work plan reviewed and approved in advance by Lessor which approval shall not be unreasonably withheld, conditioned or delayed. The Lessee shall, to the fullest extent permitted by law, indemnify and hold the Lessor harmless from and against any claim, liability, loss, damage or expense (including attorneys' fees, costs, expenses, assessments, remedial or response actions) arising from a violation of any law or from a breach of the conditions of this paragraph by any person utilizing the Premises including the Lessee and its employees, agents, tenants, contractors, licensees, invitees, or visitors. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

## **8. DEFAULT**

If the Lessee shall fail to observe or perform any of its agreements or obligations under this Lease, Lessor shall provide written notice thereof to the Lessee, and, in its sole discretion, may suspend use of and deny all public access to the Walkway until such time as said default is cured. If any such default shall not be cured within thirty (30) days of Lessor's delivery of written notice of default, which written notice shall be delivered to the Lessee's usual place of business set forth in the recitals of this Lease, or such longer time as is necessary to cure such default, provided Lessee is diligently and continuously pursuing such cure, but under no circumstances shall such cure period exceed sixty (60) days from Lessor's delivery of written notice of a default without Lessor's prior written agreement, Lessor may, at its sole option, (i) seek specific performance or other equitable relief from a court of competent jurisdiction; (ii) without obligation, cure such default if such default can be cured by Lessor, which cure may include, without limitation, performing maintenance and repairs to the Premises, and Lessor shall invoice the Lessee for the cost of such cure, which invoice the Lessee shall promptly pay without setoff, abatement, suspension, deferment, reduction or deduction, no later than thirty (30) days from the date of such invoice without condition or delay; (iii) terminate this Lease (subject to the following sentences); and/or (iv) exercise any other remedy at law or in equity. Lessor's remedies hereunder shall be cumulative and not exclusive to any other available remedy. Lessor and Lessee also hereby waive trial by jury in any action to which they are parties. If Lessor elects to terminate this Lease, Lessor shall give written notice thereof to Lessee of the proposed date of termination in order to provide the Lessee the opportunity to contact the Massachusetts Division of the Federal Highway Administration (FHWA), and the Massachusetts Department of Transportation Highway Division (MassDOT), and to schedule and convene as soon as practicable and to the extent necessary an emergency meeting with Lessor, FHWA, and MassDOT representatives and any other interested parties, in order to discuss the circumstances and possible alternative measures which may be available and reasonable. If the parties cannot agree on said alternative measures, this Lease shall terminate and be of no further force and effect as of the date stated in said notice, except as to such of Lessee's liabilities or obligations hereunder, actual or contingent, as shall have arisen on or prior to such date of termination or which by their terms survive said termination.

## **9. TERMINATION**

(a) The parties hereto agree and acknowledge that Lessor and its affiliates serve a public purpose to which the Lessee's use of the Premises as set forth herein is subject and subordinate. Accordingly, notwithstanding anything contained in this Lease to the contrary, in the event that Lessor determines, in its sole discretion, that it needs to use all or a portion of the Premises in connection with the present and or future activities of Lessor or its affiliates as a public utility (as the same is or may be

approved by DPU, FERC or other appropriate regulatory authority), such that continued use of all or a portion of the Premises by Lessee as provided in this Lease is deemed by Lessor in its sole discretion to be incompatible with Lessor's or its affiliates activities as a public utility, Lessor reserves the right to terminate this Lease with respect to all or a portion of the Premises at any time by giving to Lessee a written notice of termination at least twelve (12) months prior to the effective date of said termination. On or prior to the filing for any approvals from the DPU or FERC in connection therewith, if any, Lessor agrees to provide notice to the Lessee of its need to remove the Improvements in connection with its present and future business activities and its intention to file for such approvals, in order to provide the Lessee the opportunity to contact the FHWA and MassDOT, and to schedule and convene as soon as practicable and to the extent necessary an emergency meeting with Lessor, FHWA and MassDOT representatives and any other interested parties, in order to discuss the circumstances and possible alternative measures which may be available and reasonable. During such twelve (12) month period, Lessor and Lessee shall use commercially reasonable efforts to find an alternate location within Lessor's Property to which to relocate the Walkway; provided, however, that Lessor shall not be obligated to make available an alternate location if Lessor deems the presence of the Walkway or the activities conducted thereon to be incompatible with Lessor's business operations. Upon the effective date of termination, this Lease shall be of no further force and effect except as to such of Lessee's liabilities or obligations hereunder, actual or contingent, as shall have arisen on or prior to such date of termination or which by their terms survive the termination of this Lease.

(b) Notwithstanding anything herein contained to the contrary, in the event that Lessor determines, in its sole discretion, that the condition of the Premises constitutes a safety and/or security risk, Lessor may immediately restrict access to the Premises so long as such condition exists in Lessor's sole discretion and shall provide Lessee written notice of the condition(s) creating such safety and/or security risk. In the event that Lessee cannot correct or does not commence to correct any such condition(s) creating such safety and/or security risk within twenty (20) days after notice from Lessor, Lessor may, immediately or at any time thereafter while such failure continues, terminate this Lease by giving notice of termination to Lessee. In addition, in the event a change in the Applicable Laws, including, without limitation, M.G.L. ch.21 § 17C, or a reinterpretation of said Applicable Laws results in, in Lessor's sole discretion, increased financial or reputational risk to the Lessor, and Lessee cannot mitigate or does not commence to mitigate such financial or reputational risk within twenty (20) days after notice from Lessor, Lessor may, immediately or at any time thereafter while such failure continues, terminate this Lease by giving notice of termination to Lessee. In any such event, Lessee shall schedule and convene as soon as practicable and to the extent necessary an emergency meeting with Lessor, FHWA and MassDOT representatives and any other interested parties, in order to discuss the circumstances and possible alternative measures which may be available and reasonable regarding the foregoing.

## **10. EXPIRATION OF TERM**

Lessee agrees that upon the expiration or earlier termination of this Lease, the Lessee shall, at the Lessee's sole cost and expense, remove the Improvements (unless otherwise directed by Lessor or otherwise provided in this Lease) and restore the Premises to a condition reasonably satisfactory to Lessor. If the Lessee fails to remove the Improvements and restore the Premises within thirty (30) days from the expiration or termination of this Lease, then the Lessor may remove the Improvements and restore the Premises at the sole cost and expense of the Lessee, and any costs so incurred by Lessor shall be paid to Lessor by the Lessee promptly upon demand. In the event that the Lessor removes the Improvements and restores the Premises pursuant to this paragraph, Lessee agrees that neither Lessor nor its affiliates, employees or agents of any of them shall be liable to the Lessee, its employees or agents with respect to any claims for or rights of any personal injury or property damages resulting from or in any way connected with the Lessor's exercise of any rights reserved in this paragraph. Lessee agrees that no acts or omissions of Lessor, including, without limitation, termination of this Lease, shall constitute an eviction, constructive

or otherwise. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease.

## **11. ASSIGNMENT**

This Lease is not assignable voluntarily, involuntarily or by operation of law, in whole or in part, by Lessee. For the purposes hereof, care, custody, management and control of the Lessee's leasehold interest by any of its various councils, boards and commissions shall not be considered an assignment of this Lease, it being understood that said councils, boards and commissions are part of Lessee and that Lessee has full responsibility and control over the same.

## **12. NOTICE**

All notices required or permitted under this Lease shall be in writing and either delivered in hand or mailed (a) by certified mail (return receipt requested) with the United States Postal Service, or (b) by Federal Express or other nationally recognized overnight mail carrier furnishing evidence of receipt, to:

Lessor:                      Massachusetts Electric Company d/b/a National Grid  
40 Sylvan Road  
Waltham, MA 02451  
Attention: Director, Real Estate Transactions

with a copy to:            National Grid USA Service Company, Inc.  
Legal Department  
40 Sylvan Road  
Waltham MA 02451  
Attention: Assistant General Counsel, Real Estate

Lessee:                      Town of Swampscott  
Swampscott Town Hall  
22 Monument Avenue  
Swampscott, MA 01907  
Attn: Town Administrator  
Telephone: (781) 596-8850  
Fax: (781) 596-8851

and with a copy to:      KP Law, P.C  
101 Arch Street  
Boston, Massachusetts 02110  
Attn: Shirin Everett, Esq.  
Telephone: (617) 556-0007  
Fax: (617) 654-1735

Either party may change the address at which it is to receive notices by giving notice as hereinabove set forth. Any notice or other communication in connection with this Lease shall be deemed duly served when received (or upon attempted delivery if delivery is not accepted).

## **13. GENERAL PROVISIONS**

(a) Failure of the Lessor to complain of any act or omission hereunder on the part of the Lessee, no matter how long the same may continue, shall not be deemed a waiver by the Lessor of any

of its rights hereunder. No waiver by the Lessor at any time, express or implied, of any breach of any provision of this Lease shall ever be deemed a waiver of a breach of any other provision of this Lease, or a consent to any subsequent breach of the same or any other provision. If any action by the Lessee shall require the Lessor's consent or approval, such consent or approval on any particular occasion shall not be deemed a consent or approval of any other action on any subsequent occasion.

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

(c) The paragraph and section headings contained in this Lease are for reference and convenience only and in no way define or limit the scope and contents of this Lease or in any way affect its provisions.

(d) This Lease constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior oral and written offers, negotiations, proposals, representations, agreements, courses of dealing and understandings between the parties relating to the subject matter hereof, and is subject to no understandings, conditions, or representations other than those expressly stated herein.

(e) This Lease may only be amended or modified by a writing signed by the Lessor and the Lessee and which refers to this Lease.

(f) This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. The Lessee agrees and consents that venue and jurisdiction shall be proper in the state court of any county of the Commonwealth of Massachusetts.

(g) Neither party to this Lease shall be responsible to the other for delays or errors in its performance or other breach of this Lease occurring solely by reason of circumstances beyond its control, including acts of civil or military authority, national emergencies, , epidemics, pandemics, fire, labor disputes, flood or catastrophe, acts of God, insurrection, war, riots, delays of suppliers, or failure of transportation or communication.

(h) The parties agree that, following the Escrow Release Date, a memorandum or notice of lease shall be recorded at the applicable registry of deeds.

(i) If the Lessee executes this Lease through an agent or representative, each such agent or representative hereby warrants and represents to the Lessor that he is authorized to execute, acknowledge, and deliver this Lease on behalf of the Lessee and to thereby bind the Lessee to the same.

(j) The rights of the Lessee under this Lease are subject to any and all existing rights held by others within the Premises.

(k) This Lease: (i) may be executed in counterparts, each of which when executed by all parties to this Lease shall be deemed to be an original; (ii) shall take effect as a sealed instrument; (iii) shall bind and inure to the parties and their respective legal representatives, successors and assigns, except that the Lessee may not delegate any of its obligations (except as may be shared with MassDOT) under this Lease or assign this Lease; and (iv) is not intended to inure to any third-party beneficiary.

(l) Lessor and Lessee acknowledge that each of them and their counsel have had an opportunity to review this Lease and that this Lease shall not be construed against Lessor merely because Lessor has prepared it.

#### **14. EMINENT DOMAIN; CASUALTY**

If the Premises or the Lessor's Property, in whole or in part, is appropriated or acquired by any governmental agency or other party having the power of eminent domain, the Lessor may terminate this Lease; provided, however, that if only a portion of the Premises or Lessor's Property is taken for easement purposes and/or if the Premises or Lessor's Property is taken only on a temporary basis, and such portion or temporary taking does not adversely or substantially affect, in Lessor's sole discretion, Lessor's use of Lessor's Property such that it needs to remove the Improvements, then Lessor shall not terminate this Lease but Lessor may require the Lessee to relocate the Improvements in accordance with the provisions of Section 4(b) of this Lease. Any damages recoverable in respect to such appropriation or acquisition shall be the sole property of Lessor, and the Lessee hereby releases unto Lessor any interest it may have in the same. If the Improvements, in whole or in part, are damaged or destroyed by any fire or other casualty, Lessor shall have no obligation to Lessee to repair or restore the Improvements; all such repairs and restoration shall be the sole obligation of the Lessee, at its sole cost and expense excepting that caused by Lessor's gross negligence or willful misconduct.

#### **15. PLANS AND SPECIFICATIONS; ACCESS PRIOR TO TERM COMMENCEMENT DATE**

(a) The design and construction of the Improvements shall be at the sole cost and expense of Lessee. Prior to installation of any additional improvements on the Lessor's Property beyond the Improvements shown on the Plans and Specifications, the Lessee shall deliver a complete set of amended plans and specifications ("Amended Plans and Specifications") for such additional improvements to the Lessor for Lessor's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Any modifications to the Plans and Specifications or any Amended Plans and Specifications after Lessor's original approval shall also require the Lessor's written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) It is understood and agreed that Lessee shall not have the right to access Lessor's Property prior to the Term Commencement Date hereof. To the extent the Lessee, or its agents, contractors or consultants, require access to the Lessor's Property prior to the Term Commencement Date of this Lease, Lessee agrees to execute an access agreement using Lessor's standard form.

#### **16. MEMORIALIZATION OF DATES AGREEMENT**

On or after the Escrow Release Date, Lessor and Lessee shall enter into the Memorialization of Dates and Location of Premises Agreement, in the form attached hereto as Exhibit E (the "MOD Agreement").

[End of Document - Signature Page Follows]



IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their respective duly authorized officers under seal effective upon the date first above written.

LESSOR:

MASSACHUSETTS ELECTRIC COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LESSEE:

TOWN OF SWAMPSCOTT

By its Select Board

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## EXHIBIT LIST

EXHIBIT A- LESSOR'S PROPERTY

EXHIBIT B-PLANS AND SPECIFICATIONS

EXHIBIT C- CONDITIONS FOR ACTIVITIES WITHIN RIGHTS OF WAY

EXHIBIT D- INSURANCE REQUIREMENTS

EXHIBIT E- MEMORIALIZATION OF DATE AND LOCATION OF PREMISES AGREEMENT

**EXHIBIT A**

**LESSOR'S PROPERTY**

Those certain parcels of land located in \_\_\_\_\_, Massachusetts, as more particularly described in the following deeds:

**EXHIBIT B**

**PLANS AND SPECIFICATIONS**

## **EXHIBIT C**

### **CONDITIONS FOR PROPOSED ACTIVITIES WITHIN ELECTRIC TRANSMISSION LINE RIGHTS-OF-WAY**

#### **1. Compliance/Safety**

- A. All activities conducted by the Lessee shall comply with all applicable Federal, state, and local laws, statutes, rules, regulations, and codes. In particular, the requirements of the following statutes, regulations, and safety codes and guidelines, appropriate for the voltage(s) of the lines within the Premises, must be met:
- *National Electrical Safety Code*
  - In Massachusetts, 220 CMR 125.00, "Installation and Maintenance of Electric Transmission Lines;" and MGL Chapter 166 Section 21A "Coming into Close Proximity to High Voltage Lines" except that the required clearance of six feet is insufficient. The minimum clearance allowed by OSHA shall be maintained.
  - OSHA regulations governing working clearances to electric distribution and transmission lines. Although regulations 29 CFR 1926 Subpart CC and 29 CFR 1926.1501 may be specific to equipment that can hoist, lower, and horizontally move a suspended load, all equipment operating within a right-of-way shall maintain the clearances specified in these regulations, including but not limited to cranes, backhoes, excavators, forklifts, pile drivers, and drill-rigs. In accordance with 1926.1408, if the Lessee asks to encroach upon the 20 foot clearance requirement and requests voltages of electric lines near the proposed work or activity, Lessee shall provide an aerial photograph or detailed survey plan delineating the area of work or activity in proximity to electric lines and structures.
  - Lessee must contact Dig Safe (888-344-7233 or 811) prior to any excavation work on the Premises, and take any and all reasonable measures to protect and secure worksite from entry by the general public.
- B. The Lessee shall adequately ground vehicles, equipment, fences and gates, at all times and in accordance with applicable Federal, state, and local laws, statutes, rules, regulations, and design codes, including, but not limited to, those listed in paragraph A above and IEEE Standard 80.

#### **2. Protection of Transmission Line Facilities**

The Lessee shall, at all times, protect transmission line facilities from damage. In addition to compliance with safety codes as described in paragraph 1 above, protection of transmission facilities shall, as a minimum, include the following:

- A. The Lessee shall operate any and all equipment at least 50 feet horizontally away from any transmission line pole, tower, guy wire, or guy anchor.
- B. When making a rough cut during excavation, the Lessee shall disturb no earth within an area bounded by a line drawn 25 feet plus 2.5 times the depth of the cut from the nearest transmission line pole, tower leg, guy wire, or guy anchor, but not less than 50 feet. Upon completion of the rough cut, the slopes of the bank shall be graded on a slope no steeper

than one vertical to five horizontal and stabilized with vegetation or rip-rap. The top of the slope shall be at least 50 feet from the nearest pole, tower leg, guy wire, or guy anchor.

- C. The Lessee shall not store or use explosives within the right-of-way.
- D. No construction materials or debris, excavated soils, explosives, junk vehicles or other trash of any kind shall be stockpiled or disposed of on the Premises, and no oil or hazardous wastes or substances shall be stored or disposed of on the Premises.
- E. The Lessee shall not unload or load vehicles or equipment within the right-of-way.
- F. The Lessee shall place no above or below ground structures within the right-of-way, including, but not limited to, streetlights, signs, sheds, fences, septic systems, and swimming pools, other than as shown on the approved Plans and Specifications.
- G. The Property shall not be used as a staging or marshalling yard for contractors, employees, equipment or materials.
- H. No parking or storage of vehicles of any kind is allowed on the Premises including, but not limited to, automobiles, trucks, all-terrain vehicles (ATV's), four-wheel vehicles and boats.

### **3. Access to Right-of-way**

- A. The Lessee shall not at any time block or impede access to or along the right-of-way.
- B. The Lessee shall not damage roads or Walkways used to gain access to or along the right-of-way.

### **4. Preservation of Rights and Future Use**

- A. Lessor reserves the right to determine any area(s) where improvements will not be permitted due to its need for these area(s) for its future facilities. This includes the bisector of angles in the right-of-way and generally includes areas adjacent to existing structures.

### **5. Protection of Interests**

- A. Mild shocks due to electrostatic currents may be felt when touching conductive structures or objects within the right-of-way. Although these shocks may be annoying, Lessor is unable to eliminate them.

### **6. Additional Conditions**

- A. Lessee shall install suitable two-inch (2") plastic markers, extending a minimum of three (3') feet above ground, at the point of entrance and exit of any pipelines, cables or other underground facilities installed by Lessee on the Premises.
- B. Lessee shall notify Lessor of any survey monument, marker or stake that has become dislodged, lost or misplaced during installation of Lessee's facilities. Lessor will resurvey the Premises and replace any such survey monument. Resurvey expense shall be reimbursed by Lessee to Lessor.

- C. In the event Lessor determines that injury or damage to, or interference with, its facilities may occur as a result of loss of metal from Lessor's, Lessee's or a third party's facilities due to corrosion or electrolysis caused or hastened by the installation of Lessee's facilities or by Lessee's activities, Lessor may require the following protective measures to be taken by Lessee. Lessee shall cover said facilities and shall install and maintain cathodic protection devices, all subject to prior approval of Lessor. Lessee shall keep accurate records of each such cathodic protection device, furnish Lessor with a copy of such records, and shall from time to time take such other and further protective measures as Lessor may require.
- D. Lessee shall install, maintain and provide adequate drainage facilities so that there will not be a collecting or pooling of surface or run-off waters upon the Premises resulting from the installation, construction, maintenance and operation of Lessee's equipment and facilities.
- E. Lessee shall provide not less than thirty (30") inches of cover over any underground facilities installed by Lessee pursuant hereto; such cover shall be compacted so as to be capable of withstanding AASHTO HS-25 highway load rating.
- F. Lessee is hereby notified that other underground physical occupations of the subject Premises may exist that do not appear upon the attached drawing and/or maps and property records maintained by Lessor. Accordingly, Lessee is cautioned to excavate carefully and comply with all applicable state and local laws and regulations with respect thereto.

## **7. Definitions**

- A. For the purposes of this Exhibit D only, the term "Lessee" shall include Lessee, its Invitees, and all other persons entering upon the Premises in connection with this Lease and/or the Permitted Uses.

## **EXHIBIT D**

### **INSURANCE REQUIREMENTS**

1. **Insurance Requirements.** From the commencement of the Agreement, through final expiration or longer where specified below, Lessee shall provide and maintain, at its own expense, insurance policies, intended to be primary (with no right of contribution by any other coverage available to National Grid USA, its direct and indirect parents, subsidiaries and affiliates including, without limitation, Lessor (collectively, the “Insured Entities”)), covering all operations, work and services to be performed under or in connection with this Agreement, issued by reputable insurance companies with an A.M. Best Rating of at least A-, which at least meet or exceed the requirements listed herein:

- (a) **Workers’ Compensation and Employers Liability insurance** as required by the State in which the work activities under this Agreement will be performed. The employer’s liability limit shall be at least \$500,000 each per accident, per person disease, and disease by policy limit.
- (b) **Commercial General Liability (CGL) Insurance**, covering all operations to be performed by or on behalf of Lessee under or in connection with this Agreement, with minimum limits of:

Combined Single Limit	- \$1,000,000 per occurrence
General Aggregate & Product Aggregate	- \$2,000,000 each

Coverage shall include: contractual liability (with this Agreement being included under the definition of “Insured Contract” thereunder), products/completed operations, and if applicable, explosion, collapse and underground (XC&U), additional insured as required in Section 5 below, and shall contain a separation of insureds condition. If the products-completed operations coverage is written on a claims-made basis, the retroactive date shall not precede the effective date of this Agreement and coverage shall be maintained continuously for the duration of this Agreement and for at least two years thereafter.

- (c) **Automobile Liability**, covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of Lessee under or in connection with this Agreement with minimum limits of:

Combined Single Limit - \$1,000,000 per occurrence

Additional insured as required in Section 5 below.

- (d) **Umbrella Liability or Excess Liability** coverage, with a **minimum** per occurrence limit of \$4,000,000. This coverage shall run concurrent to the CGL required in Section 1(b) above, shall apply excess of the required automobile, CGL and employer’s liability coverage required in this Exhibit, and shall provide additional insured status as required in Section 5 below.
- (e) **Commercial Property Insurance**, on an “all risk” basis, covering all personal property of every description owned or brought onto the Premises by Lessee, its employees, agents, contractors, tenants, subtenants or assignees, including stock-in-trade, furniture, fittings, trade fixtures, in an amount not less than one hundred percent (100%) of the full replacement cost thereof.



- (f) **Watercraft Liability**, if used in connection with this Agreement, with the same **minimum** limits of liability as outlined in Section 1(b) above, and naming the Insured Entities, including their officers and employees, as additional insured as required in Section 5 below.
- (g) **Aircraft Liability**, if used in connection with this Agreement, with a limit of liability of not less than \$10,000,000 combined single limit per occurrence, and naming the Insured Entities, including their officers and employees, as additional insured as required in Section 5 below. Such coverage shall not include a per-passenger or per seat coverage limit.
- (h) **Contractors Pollution Liability (CPL)** covering any sudden and accidental pollution liability which may arise out of, under, or in connection with this Agreement, including all operations to be performed by or on behalf of Lessee, or that arise out of the Lessee's use of any owned, non-owned or hired vehicles, with a **minimum** liability limit of not less than \$1,000,000 combined single limit per occurrence.

This requirement may be satisfied by providing either this CPL policy, which would include naming the Insured Entities, including their officers and employees, as additional insured's as outlined in Section 5 below; **OR** by providing coverage for sudden and accidental pollution liability under the CGL and commercial automobile insurance policies required above, limited solely by the Insurance Services Organization (ISO) standard pollution exclusion, or its equivalent.

In the event Lessee is unable to secure and/or maintain any or all of this sudden and accidental pollution liability coverage, Lessee agrees to indemnify and hold the Insured Entities harmless against any and all liability resulting from any coverage deficiency that is out of compliance with this insurance requirement.

2. **Homeowners/Sole Proprietors Insurance:** In the event that Lessee is either a homeowner or sole proprietor, the requirements in Sections 1(a) and (d) above do not apply. However, these requirements do apply to any contractors that have been hired by Lessee to perform any work activities on the premises as defined in this Agreement.

In addition, if a homeowners insurance company will not provide the additional insured status to the Insured Entities as required in Section 5, Lessee agrees to indemnify and hold harmless the Insured Entities for any liability that would have otherwise been covered had the insurance carrier recognized the additional insured status.

3. **Limits:** Any combination of Commercial General Liability, Automobile Liability and Umbrella Liability policy limits can be used to satisfy the limit requirements in Sections 1(b), (c) and (d) above.
4. **Self-Insurance:** Proof of qualification as a qualified self-insurer, if approved in advance in writing by an Insured Entities' representative, will be acceptable in lieu of securing and maintaining one or more of the coverages required in this Agreement. Such acceptance shall become a part of this insurance provision by reference herein.

For Workers' Compensation, such evidence shall consist of a copy of a current self-insured certificate for the State in which the work will be performed.

5. **Additional Insured and Loss Payee:** The intent of the Additional Insured requirement under the CGL, Auto, CPL, Umbrella/Excess, Aircraft and Watercraft policies is to include the Insured Entities, their directors, officers and employees, as Additional Insured for liabilities associated with, or arising out of, all operations, work or services to be performed by or on behalf of Lessee,

including ongoing and completed operations, under this Agreement. The following language should be used when referencing the additional insured status: **National Grid USA, its direct and indirect parents, subsidiaries and affiliates shall be named as additional insured.**

To the extent Lessee's insurance coverage does not provide the full Additional insured coverage as required herein, Lessee agrees to indemnify and hold harmless the Insured Entities against any and all liability resulting from any deficiency in Lessee's insurance coverage that may be out of compliance with this insurance requirement.

6. **Waiver of Recovery:** Lessee and its insurance carrier(s) shall waive all rights of recovery against the Insured Entities and their directors, officers and employees, for any loss or damage covered under those policies referenced in this Agreement, or for any required coverage that may be self-insured by Lessee. To the extent Lessee's insurance carriers will not waive their right of subrogation against the Insured Entities, Lessee agrees to indemnify the Insured Entities for any subrogation activities pursued against them by Lessee's insurance carriers. However, this waiver shall not extend to the gross negligence or willful misconduct of the Insured Entities or their employees, sub-contractors or agents.
7. **Contractors:** In the event Lessee uses contractors in connection with this Agreement, it is expressly agreed that Lessee shall have the sole responsibility to make certain that all contractors are in compliance with these insurance requirements and remains in compliance throughout the course of this Agreement, and thereafter as required. Lessee shall remain liable for the performance of the contractor, and such subcontract relationship shall not relieve Lessee of its obligations under this agreement.

Unless agreed to in writing by the Risk & Insurance Department of National Grid USA, any deductible or self-insured retentions maintained by any contractor, which shall be for the account of the contractor, and shall not exceed \$100,000. In addition, contractor shall name both the Lessee and the Insured Entities as additional insureds under the Commercial General Liability and Umbrella/Excess Liability insurance. If requested by a representative of the Insured Entities, Lessee shall provide the Insured Entities with an insurance certificate from its contractor evidencing this coverage.

In the event any contractor is unable to maintain all of the same insurance coverage as required in this Agreement, Lessee agrees to indemnify and hold the Insured Entities harmless against any and all liability resulting from any deficiency in contractor's insurance coverage that may be out of compliance with these insurance requirements.

8. **Insurance Certification:** Upon execution of this Agreement, Lessee shall promptly provide the Insured Entities with (a) **Certificate(s) of Insurance** for all coverages required herein at the following address:

National Grid  
Attn: Risk & Insurance, Bldg. A-4  
300 Erie Boulevard West  
Syracuse, NY 13202  
With a copy to:

MassDOT Right of Way Bureau  
Attn: Pamela Marquis, Right of Way Compliance/LPA Administrator  
499 Plantation Parkway  
Worcester, MA 01605

Lessee shall provide the Insured Entities with at least 30 days prior written notice at the above address of any cancellation or diminution of the insurance coverage required in this Agreement (10 days in the event of non-payment of premium).

9. **Insurance Obligation:** If any insurance coverage is not secured, maintained or is cancelled and Lessee fails immediately to procure other insurance as specified, Lessor has the right, but not the obligation, to procure such insurance and to invoice Lessee for said coverage.
10. **Incident Reports:** Lessee shall furnish the Risk & Insurance Department of National Grid USA at the address referenced in Section 8 above with copies of any non-privileged accident or incident report(s)(collectively, the “Documents”) sent to Lessee’s insurance carriers covering accidents, incidents or events occurring as a result of the performance of all operations, work and services to be performed by or on behalf of Lessee under or in connection with this Agreement, excluding any accidents or incidents occurring on Lessee's property not included in the Premises. If any of the Insured Entities are named in a lawsuit involving the operations and activities of Lessee associated with this Agreement, Lessee shall promptly provide copies of all insurance policies relevant to this accident or incident if requested by Lessor. However, in the event such Documents are deemed privileged and confidential (Attorney/Client Privilege), Lessee shall provide the relevant facts of the accident or incident in a format that does not violate such Attorney/Client Privilege.
11. **Other Coverage:** These requirements are in addition to any which may be required elsewhere in this Agreement. In addition, Lessee shall comply with any governmental site specific insurance requirements even if not stated herein.
12. **Coverage Limitation:** Nothing contained in this article is to be construed as limiting the extent of the Lessee’s responsibility for payment of damages resulting from all operations, work and services to be performed by or on behalf of Lessee under or in connection with this Agreement, or limiting, diminishing, or waiving Lessee’s obligation to indemnify, defend, and save harmless the Insured Entities in accordance with this Agreement.

**EXHIBIT E**

**MEMORIALIZATION OF DATES AND LOCATION OF PREMISES AGREEMENT**

THIS MEMORIALIZATION OF DATES AND LOCATION OF PREMISES AGREEMENT (this "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ corporation having a principal place of business at \_\_\_\_\_ (hereinafter "Lessor"), and \_\_\_\_\_, a \_\_\_\_\_ corporation having a principal place of business at \_\_\_\_\_ (hereinafter the "Lessee"). Capitalized terms used but not defined in this Agreement shall have the meanings ascribed to them in the Lease (as hereinafter defined).

**RECITALS:**

WHEREAS, Lessor and Lessee have entered into that certain Lease Agreement dated \_\_\_\_\_ (the "Lease"), which Lease is hereby incorporated by reference herein and made a part hereof, pursuant to which Lessor granted to Lessee the nonexclusive terminable right to use a portion of Lessor's Property for the purpose of maintaining a [description of Walkway]; and

WHEREAS, the parties agreed to enter into this Agreement in order to establish the Term Commencement Date, the location of the Premises, and certain other items;

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Each reference in the Lease to any of the following terms shall be construed to incorporate the following data:
  - (a) The Term commenced on \_\_\_\_\_, 20\_\_\_\_.
  - (b) The expiration date is \_\_\_\_\_, 21\_\_\_\_.
  - (c) The Plans and Specifications shall consist of the following, and are attached hereto as Exhibit A.
  - (d) The Premises leased under the Lease constitute the premises depicted on the Plans and Specifications attached hereto as Exhibit A.
2. Except as modified and amended hereby, the Lease shall remain in full force and effect and is in all other respects ratified and confirmed.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective duly authorized officers under seal effective upon the date first above written.

LESSOR:

MASSACHUSETTS ELECTRIC COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LESSEE:

TOWN OF SWAMPSCOTT  
By its Select Board

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## **RELEASE OF EASEMENTS**

This **RELEASE OF EASEMENTS** is made as of this \_\_\_\_ day of \_\_\_\_\_, 2023 by the **TOWN OF SWAMPSCOTT**, a municipal corporation, having a principal place of business at Swampscott Town Hall, 22 Monument Avenue, Swampscott, Massachusetts 01907 (the "Town"), for the benefit of **MASSACHUSETTS ELECTRIC COMPANY**, a Massachusetts corporation, having a principal place of business at 170 Data Drive, Waltham, Massachusetts 02451 ("MEC"), its successors and assigns.

WHEREAS, by Order of Taking by the Town dated June 30, 2019 and recorded with the Essex (South) Registry of Deeds (the "Registry") in Book 37335, Page 58 (the "Order of Taking"), the Town acquired by eminent domain under G.L. c. 79 certain permanent and temporary easements in real property in the Town of Swampscott, Massachusetts, and described more particularly in the Order of Taking (the "MEC Real Property"), which MEC Real Property is shown more particularly on a plan entitled "Easement Plan of Land, Swampscott Rail Trail, Swampscott, MA, Prepared for: Stantec Consulting Services, Inc." dated January 30, 2019, and prepared by Stantec Consulting and recorded in the Registry in Plan Book 470, Page 8, for the location, construction, installation, maintenance, repair, and reconstruction of a rail trail and/or shared-use public way;

WHEREAS, MEC has requested that the Town release the easements acquired by the Town pursuant to the Order of Taking, and the Town is amenable to the same;

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town, for itself and its successors and assigns, hereby releases and remises all of its rights, title and interest acquired by the Town in and to the MEC Real Property pursuant to the Order of Taking. From and after the date hereof, the Order of Taking any and all rights, title and interest of the Town in the MEC Real Property under and pursuant to the Order of Taking shall be no further force and effect.

*[Signature page follows]*

IN WITNESS WHEREOF, the Town has hereunto set its hand and seal as of the date first above written.

**TOWN OF SWAMPSCOTT**  
By its Select Board

\_\_\_\_\_  
David Grishman, Chair

\_\_\_\_\_  
Catherine Phelan, Vice-Chair

\_\_\_\_\_  
Mary Ellen Fletcher, Member

\_\_\_\_\_  
Douglas Thompson, Member

\_\_\_\_\_  
Peter Spellios, Member

**COMMONWEALTH OF MASSACHUSETTS**

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_, member of the Select Board of the Town of Swampscott as aforesaid, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of the Town of Swampscott.

\_\_\_\_\_  
Notary Public  
My Commission Expires:





## **LYNN/SWAMPSCOTT MUTUAL AID AGREEMENT**

Agreement entered into this 1st day of July, 2023 by and between the City of Lynn ("LYNN") and the Town of Swampscott ("SWAMPSCOTT").

WHEREAS, General Laws, Chapter 40, Section 4A, as amended, allows the chief executive officer of a city or town to enter into an agreement with one or more other municipality to perform, jointly activities or undertakings which any one of them is authorized by law to perform;

WHEREAS, the Lynn Fire Department, through its Fire Alarm Office, currently performs the dispatch function for Swampscott Fire Department and Swampscott Ambulance, (when not otherwise dispatched by Swampscott's ambulance provider) and Lynn and Swampscott agree to continue the dispatch agreement that is currently in place;

WHEREAS, Lynn agrees to serve as the Public Safety Answering Point ("PSAP") and secondary PSAP for Swampscott Police, Fire and Emergency Medical Services ("EMS") and provide additional services to Swampscott as set forth herein; and

WHEREAS, the parties have agreed to a mechanism for compensating Lynn for providing such services to Swampscott;

NOW, THEREFORE, in consideration of the above and the mutual benefits derived by the parties hereto, the parties agree as follows:

- I. TERM. The term of this Agreement shall be from July 1, 2023 through June 30, 2026.
- II. OBLIGATIONS OF LYNN
  1. Lynn shall provide all fire and ambulance dispatch for Swampscott. Said services shall be provided at an operational standard determined jointly by the Fire Chiefs of Lynn and Swampscott, which standard shall include, but not be limited to, the national Incident Command System ("ICS") and Personnel Accountability System ("PAS").
  2. Lynn shall serve as the PSAP and Secondary PSAP for Swampscott Police, Fire and EMS, and shall dispatch any calls received as the PSAP or Secondary PSAP for Swampscott in accordance with an operational standard determine jointly by the Fire and Police Chiefs of Lynn and Swampscott.
  3. Lynn Fire Department shall provide "automatic aid" to the Swampscott Fire Department. "Automatic aid" shall consist of Lynn Fire dispatch sending, along with Swampscott apparatus, the closest available Lynn Fire engine to the Town of Swampscott on all telephone alarms of fire and any other such aid agreed to by the Chiefs of Lynn and Swampscott.
  4. Lynn Police Department shall accept transfers at the Lynn Police Department Headquarters of persons taken into custody by Swampscott

Police Department, where Lynn shall assume custody and responsibility for all persons so transferred, including responsibility for their general well-being, including meals. The Lynn Police Department will be responsible for their transport to Lynn District Court. These functions will be performed in accordance with current Lynn Police Department policy and procedures. Should said persons in custody be transferred to any other facility, including a medical or other detention facility, the responsibility for their care will no longer lie with the Lynn Police Department.

5. Lynn shall allow, at no additional cost, all full-time Swampscott police officers to utilize the firing range located at the Lynn Police Department Headquarters for two (2) annual certifications per officer as determined by the Chiefs of Police of Lynn and Swampscott, and the Massachusetts Police Training Council,
6. Lynn and Swampscott will continue to cooperate in securing any and all available grants to support this regional dispatch center.

### III. OBLIGATIONS OF SWAMPSCOTT

1. Swampscott shall provide to Lynn on a continuing basis the following data:
  - a. All running cards and street location information;
  - b. All necessary Swampscott Fire Department Standard Operating Guidelines, General Orders and Memorandums; and
  - c. Any and all other documents reasonably necessary for Lynn to perform the services required under this Agreement.
2. Swampscott shall pay the annual amount of the contract as outlined in Exhibit A. The annual amount is subject to the City and its two partners receiving the annual grant allocation from the state for operating a regional dispatch. For any reason the grant no longer exists and the unit as a whole does not receive grant funds the payment for dispatch services, it would be subject to the whole amount. Presently the annual amount for each participating community is reduced by the prorated share of grants received for the dispatch center.

**ALL PAYMENTS SHOULD BE PAYABLE TO THE CITY OF LYNN AND SUBMITTED TO THE TREASURER'S OFFICE, 3 CITY HALL SQUARE, LYNN MASSACHUSETTS, 01901 AND DIRECTED TO THE ATTENTION OF ELYSE FANNON, TREASURER/COLLECTOR.**

3. Swampscott shall maintain all Swampscott portable and mobile radio equipment to a level that insures efficient use of Swampscott's communications system.

4. Capital received from this agreement are set aside by the City and spent in agreement by the respective Chiefs.
- IV. **TERMINATION.** Either party may terminate this Agreement by written notice at least one hundred and eighty (180) advance notice.
- V. **ASSIGNMENT.** Neither party shall assign this Agreement or any part thereof, or the right to receive services or compensation hereunder, without the prior written consent of the other party.
- VI. **INDEMNIFICATION.** Lynn agrees that it shall defend, indemnify and hold harmless Swampscott, its officers, agents and employees from and against any and all claims, damages, losses and expenses arising directly or indirectly from any acts, errors or omissions of the Lynn Police Department related to the housing, transportation or treatment of any person transferred by the Swampscott Police Department to the custody of the Lynn Police Department.
- VII. **ADDITIONAL MEMBERS.** In the event that Lynn enters into an agreement with any additional municipality for the provision of fire, police or EMS dispatch or PSAP services, Lynn and Swampscott shall renegotiate the provisions of this Agreement to determine whether Swampscott shall be entitled to an equitable adjustment of the contract price.
- VIII. **AMENDMENT.** Any amendments or modifications to this Agreement can only occur when mutually agreed upon by Lynn and Swampscott, and all such amendments or modification shall be in writing and signed by officials with the authority to bind each respective party. Any amendment or modification shall not become effective until the written execution of the amendment or modification to the Agreement has been made.
- IX. **GOVERNING Law.** This Agreement and all rights' of the parties hereunder shall be governed by the laws of the Commonwealth of Massachusetts.
- X. **LIABILITY.** Each party shall be liable for the acts and omissions of its own employees, and not for the employees of any other agency in the performance of this Agreement to the extent provided by the Massachusetts Tort Claims Act, G.L. c. 258. By entering into this Agreement, neither party has waived any governmental immunity or limitations of damages which may be extended to them by operation of law.

Executed and witnessed on this \_\_\_\_ day of \_\_\_\_\_ 2023.

APPROVED AS TO FORM:

CITY OF LYNN

\_\_\_\_\_

By: \_\_\_\_\_

GEORGE S. MARKOPOULOS  
CITY SOLICITOR

JARED C. NICHOLSON  
MAYOR

TOWN OF SWAMPSCOTT  
BOARD OF SELECTMAN

BY: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## EXHIBIT A

### NON-LUMP SUM PAYMENT SCHEDULE

Swampscott 911	FY	Due	Grant Credit	Capital Payment	Balance Due	Due Date
July 1, 2023 to June 30, 2024	2024	\$185,249.03	(\$37,756.00)	\$50,000.00	\$190,000.00	9/30/23
July 1, 2024 to June 30, 2025	2025	\$231,289.53	(\$37,756.00)	\$50,000.00	\$243,533.53	9/30/24
July 1, 2025 to June 30, 2026	2026	\$190,806.50	(\$37,756.00)	\$50,000.00	\$283,4632.22	9/30/25



September 14, 2023

Attn: Swampscott Board of Selectman

We can't thank you enough for your continued support over the years in granting us permission to host the Michael J. Fox 5K Run/Walk in Swampscott, MA. We are so excited to be back this FALL!

We are requesting your permission and your continued support in hosting the 5<sup>th</sup> **Fox Trot 5K Run/Walk at Linscott Park on Sunday, October 29, 2023 starting at 10AM.** We'd ask that you'd once again allow us to close the North Bound side of Monument Ave from 9:00AM-12 to setup the finish line. The same 5K course will be followed, course turn by turn directions are attached.

As usual we will reach out to the Swampscott Police Department to coordinate police details for that morning and have received confirmation from Danielle at the recreation department for usage of Linscott Park.

Also, the beer garden has gone very smoothly in the past and we'd like to continue to offer that opportunity for participants sponsored by local Brewery, Bent Water. Again, this small section, will be enclosed to those who wish to indulge. ID's will be required upon entrance to the beer garden.

That being said, attached is a request for one day liquor license. Bent Water has agreed to sponsor the beer garden and they have provided the necessary attached Tip Certification.

If you could please keep us updated when the Selectman will review this that would be wonderful.

Thank you very much.

Ashley Steeves

Ashley Steeves  
**Co-Founder/Co-Owner**

**High5EM**

978-594-7050

3 Pond Hill Rd.

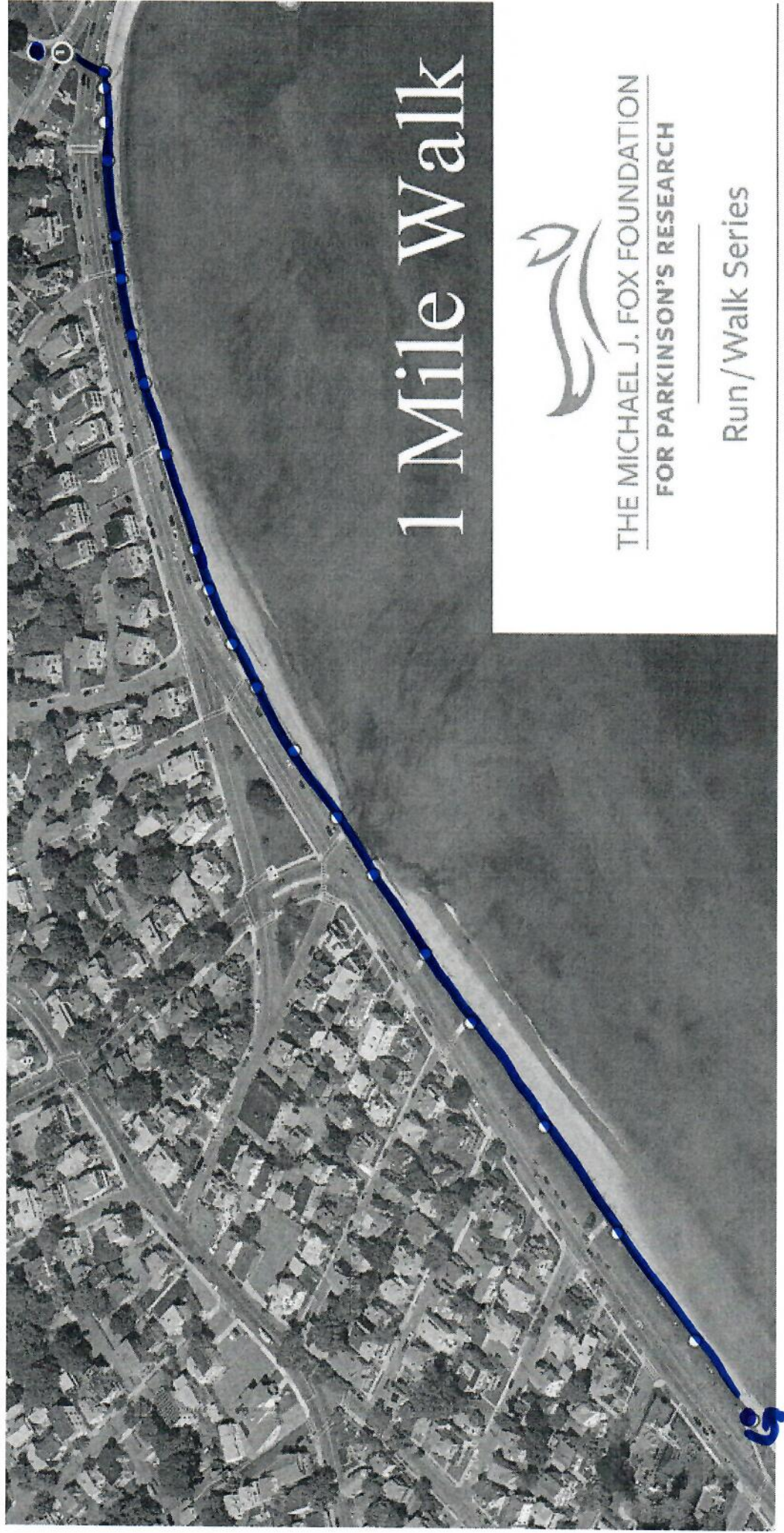
Amesbury, MA 01913

[www.High5EM.com](http://www.High5EM.com)









# 1 Mile Walk



THE MICHAEL J. FOX FOUNDATION  
FOR PARKINSON'S RESEARCH

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