

RECEIVED

AUG 12 2022

TOWN OF AYER  
TOWN CLERK

10:45am  
OO



Town of Ayer  
Select Board  
1 Main Street  
Ayer, MA 01432

**Tuesday August 16, 2022**  
**Open Session Meeting Agenda**

*This meeting/hearing of the Ayer Select Board will be held in-person at the location provided on this notice. Members of the public are welcome to attend this in-person meeting. Please note that while an option for remote attendance and/or participation via Zoom is being provided as a courtesy to the public, the meeting/hearing will not be suspended or terminated if technological problems interrupt the virtual broadcast, unless otherwise required by law. Members of the public with particular interest in a specific item on this agenda should make plans for in-person vs. virtual attendance accordingly. This meeting will be live on Zoom and Channel 8. The public may access the proceedings by joining Zoom (Meeting ID# 897 9080 0793) or by calling (929-205-6099). For additional information about remote participation, please contact Carly Antonellis, Assistant Town Manager at atm@ayer.ma.us or 978-772-8220 ext. 100 prior to the meeting.*

- 6:00 PM\***                    **Call to Order**  
Pledge of Allegiance; Review and Approve Agenda; Announcements
- 6:05 PM**                    **Public Input**
- 6:10 PM**                    **Ratification of Appointment of Benefits & Payroll Manager**
- 6:15 PM**                    **Mr. Peter Cunningham, Nashua River Rail Trail - Request for Letter of Support**
- 6:25 PM**                    **Susan Copeland, Town Clerk - Election Update**
- 6:30 PM**                    **Dan Van Schalkwyk, Director, Dept. Of Public Works**  
1. Update on Drought and Water Supply  
2. Agreement for Wastewater Treatment and Disposal Services – MassDevelopment  
3. Change Order 1 – Westford Road Water and Sewer Replacement  
4. Change Order 3 - Spectacle Pond Treatment Plant – PFAS Treatment Facility  
4. Main Street Traffic Calming
- 6:50 PM**                    **Opening of the Fall Special Town Meeting Warrant – October 24, 2022**
- 7:00 PM**                    **Town Manager’s Report**  
1. Administrative Update/Review of Town Warrant(s)  
2. Acceptance of Donation – COA  
3. September Meeting Schedule  
4. Update on Restoration of the Town Hall Cannon (Howitzer)
- 7:15 PM**                    **New Business/Select Board Member Questions**
- 7:20 PM**                    **Approval of Meeting Minutes**  
July 13, 2022
- 7:25 PM**                    **\*\*Executive Session Pursuant to MGL Chapter 30A, Section 21A**  
Exemption #2 (Non-Union Personnel) Benefits & Payroll Manager  
Personal Services Contract

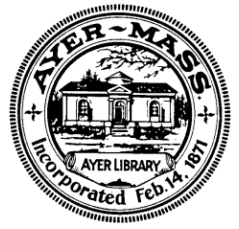
*\*Agenda Times are approximate and do not constitute exact times*

*\*\* The Select Board will adjourn at the conclusion of the Executive Session*

*The next regularly scheduled meeting of the Select Board is to be determined at this meeting.*

**Office of the Select Board  
Office of the Town Manager**

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Town of Ayer | Ayer Town Hall | 1 Main Street | Ayer, MA 01432 | 978-772-8220 | [www.ayer.ma.us](http://www.ayer.ma.us)

**MEMORANDUM**

**DATE:** August 12, 2022

**TO:** Ayer Select Board

**FROM:** Robert A. Pontbriand  
Town Manager

**SUBJECT: Ratification of Appointment – Benefits and Payroll Manager**

Dear Honorable Select Board Members,

I will be joined by Ms. Amanda Lewis at your meeting on Tuesday night to present her appointment as Benefits and Payroll Manager for your consideration and ratification. Attached for your review is Ms. Lewis' resume (see attached). Upon your ratification of the appointment, Ms. Lewis would begin work on September 12, 2022, and the terms of her employment will be governed by a Personal Services Contract of which will be presented and discussed in Executive Session on Tuesday night.

The position of Benefits and Payroll Manager was publicly advertised on the Towns' website and social media as well as on the Massachusetts Municipal Association's job posting website. Ms. Lewis comes to the position of Benefits and Payroll Manager with a wealth of knowledge and experience. She is currently the Payroll and Benefits Specialist for the Ayer Shirley Regional School District.

Ms. Lewis' appointment as Benefits and Payroll Manager is for three (3) years effective September 12, 2022, through June 30, 2025.

I look forward to introducing Ms. Amanda Lewis to the Select Board and to welcoming her and working with her here in the Town of Ayer.

Thank you.

Attachment: Cover Letter and Resume of Ms. Amanda Lewis

*Amanda Lewis*



Carly Antonellis  
Assistant Town Manager  
Town of Ayer  
1 Main Street  
Ayer, MA 01432

Dear Ms. Antonellis:

I am writing this letter to express my interest in the Benefits & Payroll Administrator position with the Town of Ayer.

I have been with the Ayer Shirley Regional School District, formerly the Town of Ayer Public School System, for the past 18 years. During this time, I have served in few different capacities. I started off as the Program Assistant to the Childcare Program, transitioned over to the Finance Assistant for the Town of Ayer School Department, and have been the Payroll and Benefits Specialist for the Regional School District past six years.

As the Payroll and Benefits Specialist with the Ayer Shirley Regional School District, I am responsible for payroll processing, processing health, dental, life insurance, long term disability enrollments, verification of employment requests, workman's compensation claims, tax sheltered annuity disbursements, retirement reporting, as well as W-2 and ACA processing.

I am proficient with Microsoft Excel, Word, Publisher, Google, Tyler Technologies (MUNIS), and Infinite Visions (Budgetsense).

Thank you for your time and consideration of my interest in the Benefits and Payroll Administrator position. I am delighted at the prospect of learning more details about this position.

Sincerely,

*Amanda Lewis*

Amanda Lewis

*Amanda Lewis*



**OBJECTIVE**

Town of Ayer Payroll & Benefits Administrator Position

**EXPERIENCE**

7/2011-Present                      Ayer Shirley Regional School District                      Ayer, MA

**Payroll & Benefits Specialist**

- Prepare and process bi-weekly payroll for Regional School Department
- Maintain employee deductions and pay increases
- Manage all administrative matters associated with benefits information, and open enrollment administration (health, life, dental, short/long term disability)
- Manage health benefit information, including Medicare questions, and open enrollment administration for all retirees
- Maintain and manage all time, attendance, leave accruals and leave of absences (LOAs)
- Prepare and process biweekly and monthly reporting for the Massachusetts Teacher Retirement System and the Middlesex County Retirement System
- Manage and distribute W-2 and ACA Forms
- Create custom reporting for payroll and finance
- Review and maintain all file feeds related to payroll
- Conduct employment verifications
- Process Unemployment Claims
- Provide regular status reports on District spending and commitments
- Reconcile and maintain payroll records with finance and accounting information management system (Infinite Visions)

12/2007-6/2011                      Ayer Public Schools                      Ayer, MA

**Finance Assistant: Payroll Specialist / Accounts Payables & Receivables Specialist**

- Prepare and process bi-weekly payroll for School Department
- Reconcile and maintain payroll records with finance and accounting information management system (Infinite Visions)
- Manage payroll and benefits information
- Maintain all employee deductions and pay increases
- Update employee distributions
- Responsible for all aspects of accounts payable and accounts receivable
- Review vendor statements and check for missing invoices
- Performed data entry related to the financial operations of department
- Reconcile all school accounts with Town Accountant
- Perform monthly and yearly closings
- Track all revolving and yearly funds
- Coordinate grant expenditures and reporting requirements
- Process end of year reports for all state and federal grants
- Provide regular status reports on District spending and commitments
- Proficient with finance and accounting information management system (MUNIS)

5/2004-12/2007

Ayer Public Schools/Ayer Childcare Program

Ayer, MA

**Program Assistant**

- Provide administrative support to the Program Director
- Manage payroll employee pay increases
- Update employee distributions
- Assist with all day to day operations of the Childcare Program
- Responsible for all aspects of accounts payable and accounts receivable
- Review vendor statements and check for missing invoices
- Performed data entry related to the operations of the department
- Perform monthly and yearly closings
- Track all revolving and yearly funds
- Provide regular status reports on spending and commitments
- Proficient with finance and accounting information management system (MUNIS)

The Honorable Charlie Baker  
Governor of the Commonwealth of Massachusetts  
State House  
24 Beacon St., Room 280  
Boston, MA 02133

Dear Governor Baker,

The Nashua River Rail Trail (NRRT) was constructed in 2001 and 21 years later continues to serve as a vital recreational resource in the Nashoba Valley towns of Ayer, Groton, Pepperell and Dunstable.

The trail is owned and maintained by the Department of Conservation & Recreation (DCR) which has demonstrated its inability to provide sufficient maintenance. This situation and the passage of time have left the NRRT in a deteriorated condition with many surface obstructions that impact public safety and user enjoyment. There have been incidents where EMT responses to rider crashes have occurred due to these unsafe conditions.

Despite efforts to work with DCR to schedule the NRRT for reconstruction, the agency has not started the process to access the Federal funds that are available for this purpose. In fact, Senator Ed Kennedy secured an earmark in a recent environmental bond bill which would have funded the engineering and permitting necessary for reconstruction, but DCR failed to submit this project as part of their trail reconstruction capital plan. This is in stark contrast to other areas of the state where DCR has undertaken the reconstruction of rail trails when their age and condition warrants.

The NRRT serves as a vital resource to our residents as well as others who travel to the Nashoba Valley to enjoy its unique and beautiful natural areas. The trail's current condition does not reflect well on DCR, the Commonwealth or on our towns. As the Select Boards of Ayer, Groton, Pepperell and Dunstable, we are respectfully requesting your assistance in directing DCR to initiate the planning process for the reconstruction of the NRRT.

Sincerely yours,

Ayer                  Groton                  Pepperell                  Dunstable

cc:

Sen. Jamie Eldridge                  Middlesex & Worcester District

Sen. Ed Kennedy                  First Middlesex District

Sen. John Cronin                  Worcester & Middlesex District

Rep. Danillo Sena                  37<sup>th</sup> Middlesex District

# State Primary Election

Tuesday, September 6th

7am – 8pm

Ayer Town Hall



Last Day to Register or Change Party Status

Saturday, August 27th, 5pm

## In-Person Early Voting For State Primary Election

Ayer Town Hall

2nd Floor, Great Hall

Saturday, Aug 27 9am – 3pm

Monday, Aug 29 8:30am – 4pm

Tuesday, Aug 30 8:30am – 6pm

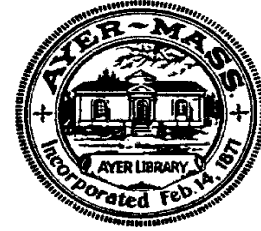
Wednesday, Aug 31 8:30am – 4pm

Thursday, Sept 1 8:30am – 4pm

Friday, Sept 2 8:30am – 2pm



Office of The Town Clerk  
1 Main Street  
Ayer, Massachusetts 01432  
(978) 772-8215  
[scopeland@ayer.ma.us](mailto:scopeland@ayer.ma.us)



Date: July 18, 2022

To: Select Board  
Robert Pontbriand, Town Manager

From: Susan Copeland, Town Clerk

RE: Assignment of Police Officers at Polling Locations

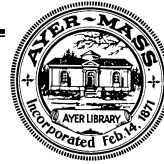
On June 22, the election reform law (the “VOTES act”) was signed into law by Governor Baker. The VOTES act makes many of the changes from the pandemic permanent (i.e., Vote by Mail and Early In-Person Voting). In addition, the assignment of police officers at polling places now requires a vote of the Select Board.

Previous practice has been an elected constable for the Town of Ayer would be assigned by the Town Clerk and in the absence of a constable, the Police Chief will assign a police officer. This would continue to be the same but, with a Select Board approval.

If the Board so approves, I ask the vote to be as follows:

“Vote to approve enough police officer(s), in the absence of a constable, at the polling location of every election therein to preserve order and to protect the election officers and supervisors from any interference with their duties and to aid in enforcing the laws relating to elections, as required by Section 72 of the Chapter 92 of the Acts of 2022.”





## MEMORANDUM

Date: August 11, 2022  
To: Select Board  
From: Dan Van Schalkwyk, P.E., Director  
Kimberly Abraham, Water and Sewer Superintendent  
Subject: **Agenda Items for August 16, 2022, Select Board Meeting**

**1. Update on Drought and Water Supply –**

The current drought status for Ayer is Level 3 – Critical Drought. Additionally, the Ayer DPW recently struggled to meet water demand requiring the issuance of a State of Water Supply Conservation. We will provide a brief update of the current drought status and Ayer’s water supply.

**2. Agreement for Wastewater Treatment and Disposal Services with MassDevelopment –**

The current Agreement with Devens for the Wastewater Treatment and Disposal Services was extended by amendment through September 9, 2022. The new Agreement has been finalized and is attached to this Memo for signature by the Board.

**3. Change Order 1 – Westford Road Water and Sewer Replacement –**

Attached is Change Order 1 for the construction of the Westford Road Water and Sewer Replacement. The change order includes the addition of one hydrant, one sewer manhole, and escalations as required by MGL c30 s39M in a total amount of \$20,090.87.

I recommend approval of Change Order No. 2 for Westford Road Water and Sewer Replacement, J.P. Cardillo & Sons, Inc., in the amount of \$20,090.87 and including the time extension for signature by the Board.

**4. Change Order 3 – Spectacle Pond Water Treatment Plant – PFAS Treatment Facilities**

Attached is Change Order 3 for the construction of the Spectacle Pond Wellfield PFAS Treatment Plant. This is the final change order for the project which moves the substantial completion date to June 6, 2022 and final completion to September 30, 2022. Additionally, the change order reduces the Contract amount by \$18,391.80.

I recommend approval of Change Order No. 3 for Spectacle Pond Water Treatment Plant – PFAS Treatment Facilities, Winston Builders Corporation, Inc. in the reduction of \$18,391.80 and including the time extension for signature by the Board.

**5. Main Street Traffic Calming –**

The Ayer DPW has developed a traffic calming plan for Main Street. Two plans are attached to show the calming. There will be the addition of dedicated bike lanes between Columbia and Washington Streets, pedestrian crossings with painted curb extensions, and a fog line near the Park Street intersection. We will provide a brief overview of the traffic calming.



# Drought and Water Supply Update

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AYER DEPARTMENT OF PUBLIC WORKS

PRESENTED

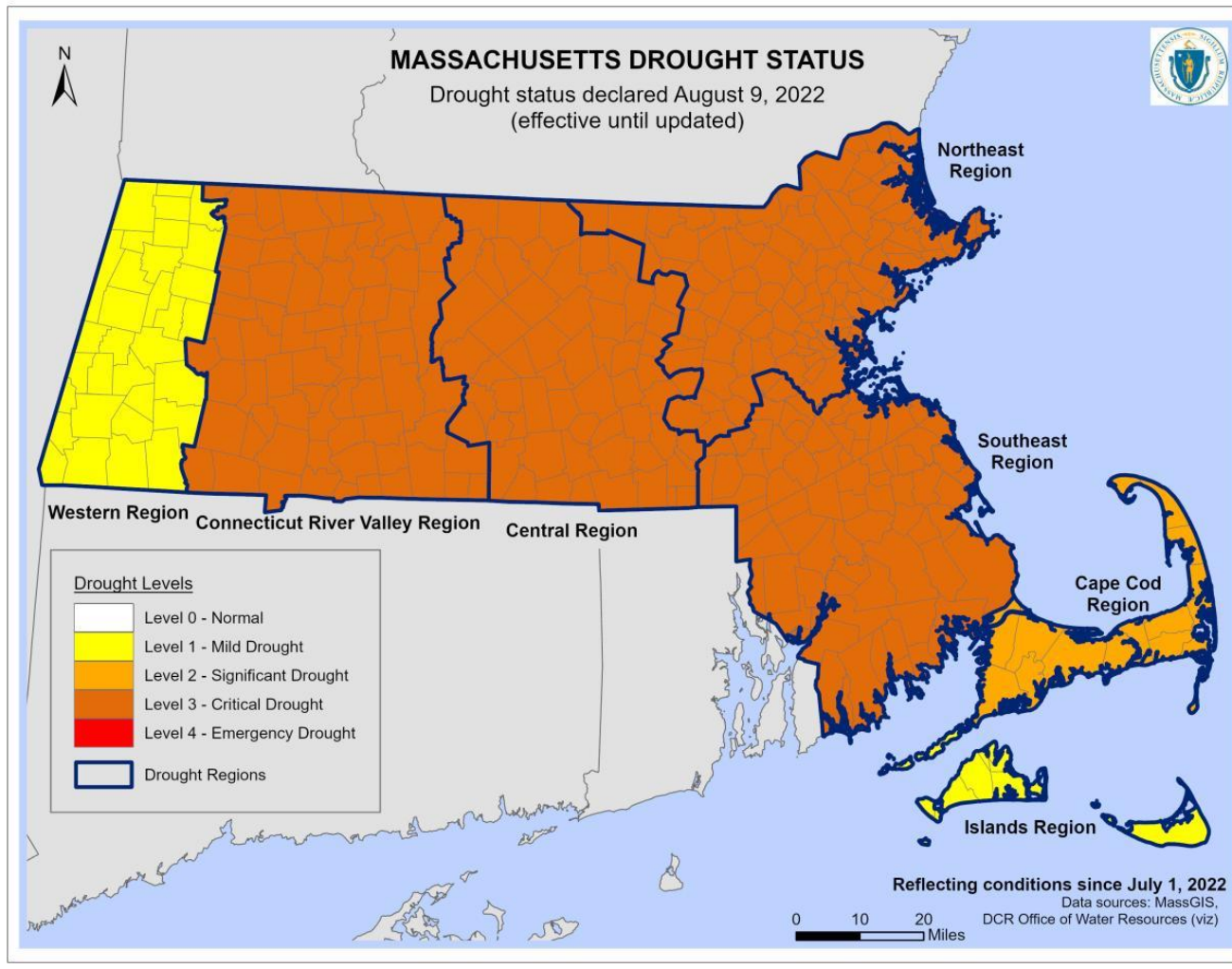
AUGUST 16, 2022

# Background – Massachusetts Drought Management

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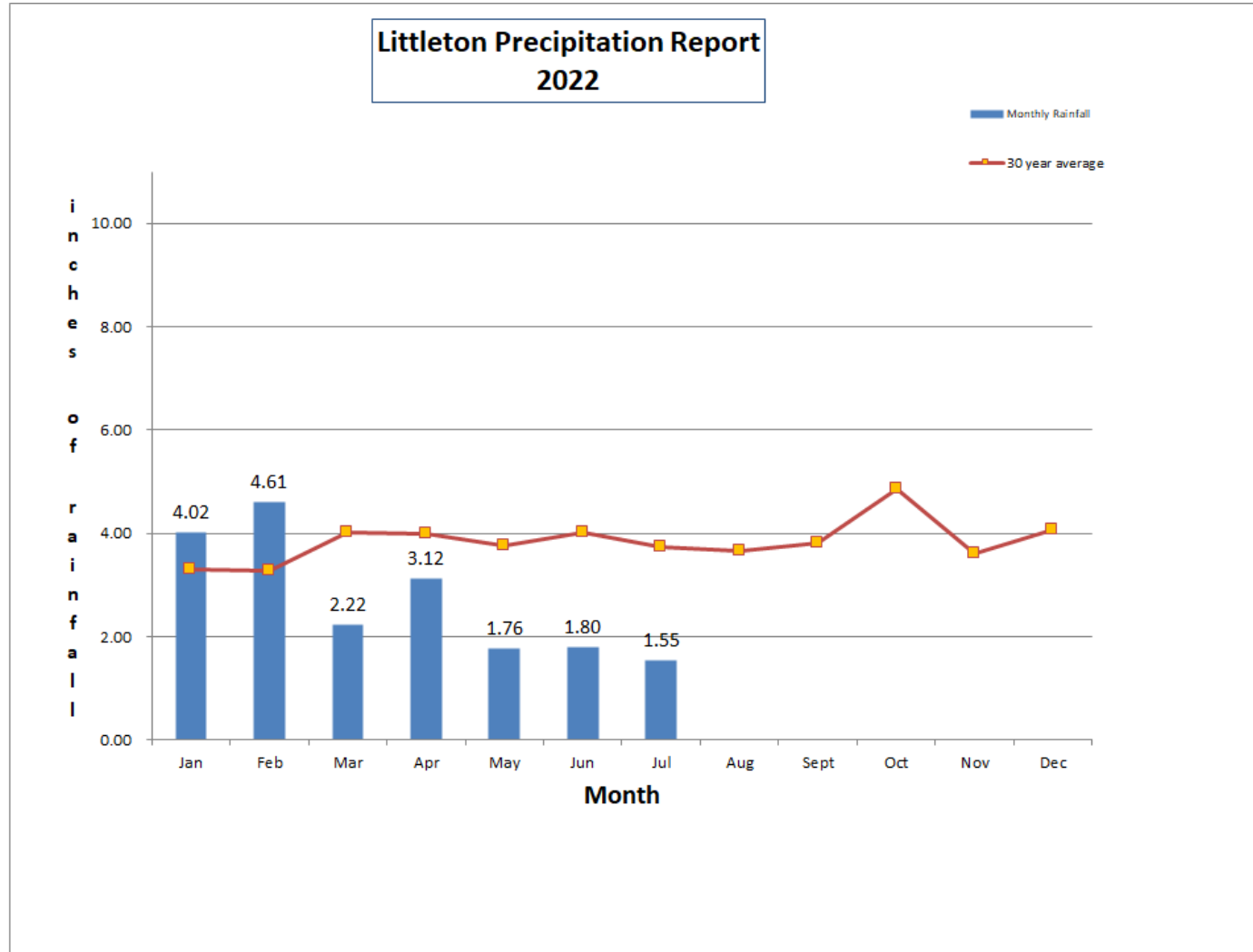
- Massachusetts Drought Management Plan (September 2019)
  - Several State agencies charged with monitoring and managing drought conditions and response actions in accordance with Plan
- 5 Levels of Drought:
  - Level 0 = Normal
  - Level 1 = Mild Drought
  - Level 2 = Significant Drought
  - Level 3 = Critical Drought
  - Level 4 = Emergency Drought

# Current Drought Status as of August 9 Level 3 - Critical



# Precipitation 2022

- 30-Yr Average thru July = 26.07"
- This Year = 19.08"
- Current Deficit = 6.99"



# Drought Status Guidance

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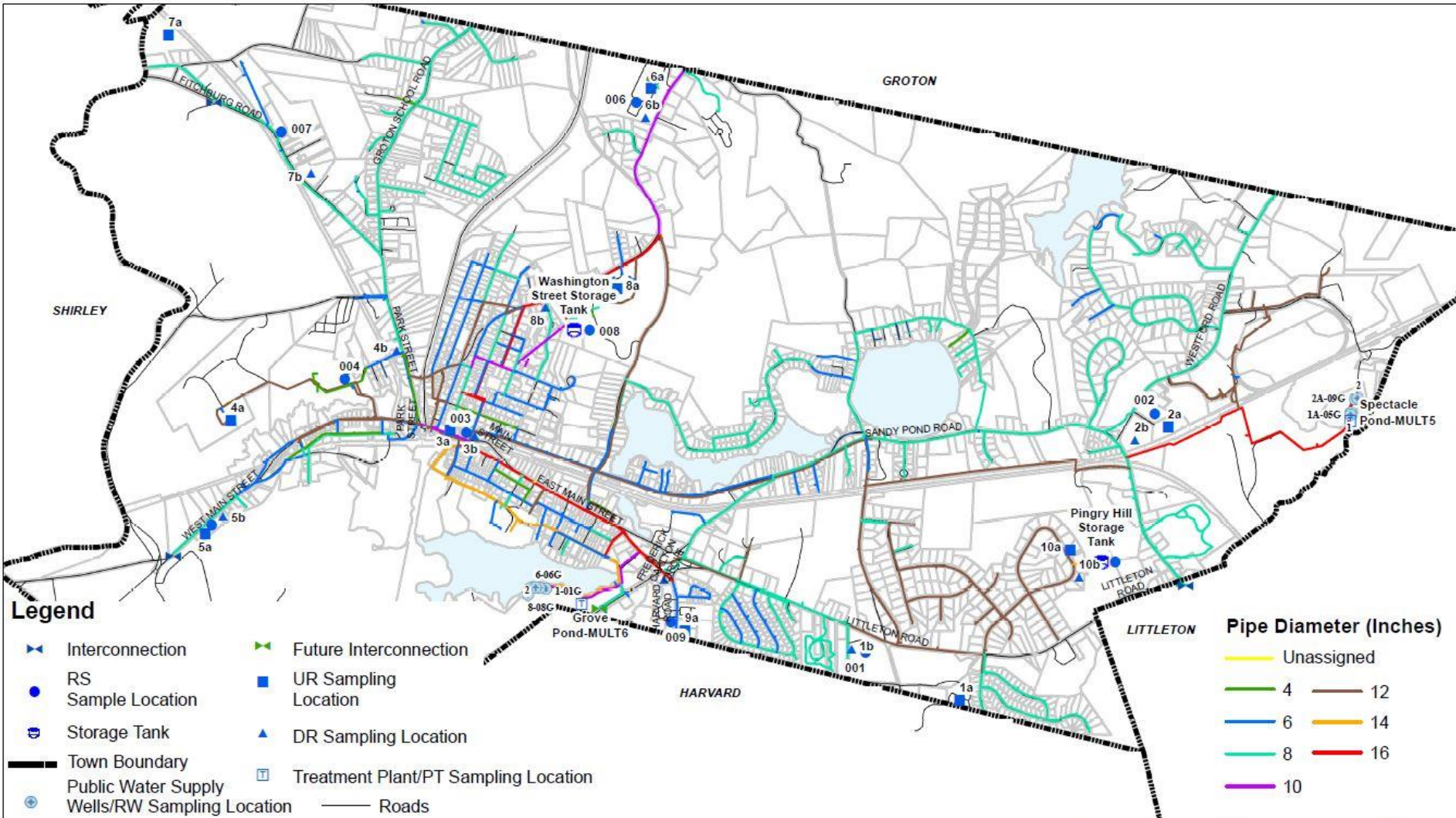
- Drought Management Plan Guidance for Drought Levels related to Outdoor Water-Use:

**Table 10: State Guidance on Nonessential Outdoor Water-Use Restrictions at Various Drought Levels**

State Drought Condition (by Region)	Nonessential Outdoor Water-Use Restrictions
Level 1 (Mild Drought)	1 day per week watering, after 5 p.m. or before 9 a.m. (to minimize evaporative losses)
Level 2 (Significant Drought)	Limit outdoor watering to hand-held hoses or watering cans, to be used only after 5 p.m. or before 9 a.m.
Level 3 (Critical Drought)	Ban on all nonessential outdoor water use
Level 4 (Emergency Drought)	Ban on all nonessential outdoor water use

- Water Management Act (WMA) Permit Requirements not tied to the Above:
  - Calendar Based Non-Essential Outdoor Water Use Restrictions (5PM-9AM, odd/even)
  - Drought conditions are incorporated into the Calendar Based Restrictions; however, State Drought conditions may require additional restrictions.
  - A MassDEP declaration of a State of Water Supply Emergency would trigger non-essential outdoor water use ban

# Water System Background



**TOWN OF AYER, MASSACHUSETTS  
WATER SYSTEM**



# Water Storage Tanks

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- Washington Street Tank (active in 1995)
  - Top Elevation 445-feet
  - Bottom Elevation 385-feet
  - 1.5 MG
  
- The Pingry Hill Tank (active in 2017)
  - Top Elevation 442-feet
  - Bottom Elevation 422-feet
  - 1.0 MG





# Water Treatment and Pumping

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- Spec Pond WTP
  - Average 1.2 MGD
  - 2 Wells
  - Greensand Fe Mn Treatment
  - GAC PFAS Treatment

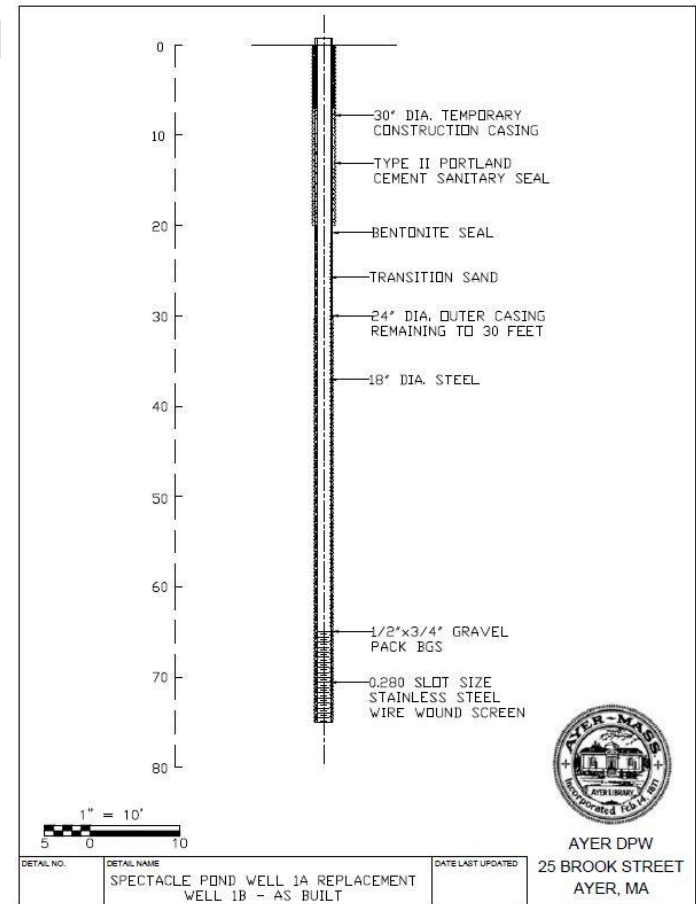


- Grove Pond WTP
  - Average 0.8 MGD
  - 3 Wells
  - Greensand Fe Mn Treatment
  - Anion Exchange PFAS Treatment



# Well Levels and Capacity

- DPW Monitors its groundwater wells and hydrologic conditions to determine if there is loss of capacity or excess stress on the wells
- Groundwater well capacity has not significantly decreased
- Devens, who also has groundwater supply wells, has observed similar conditions



# Week of August 1<sup>st</sup> Supply and Demand

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- The Plants have been able to maintain supply throughout the summer
- Water Levels in the Storage Tanks have fluctuated between 55-ft (full) to low 40s, with occasional dips into the high 30s, throughout the summer season
- Tanks were anticipated to rebound with maximum pumping but dropped to 33-ft in Washington Street
- No sign of rebound, situation required immediate action

# Combination of Likely Causes

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- High temperatures and drought causing excess water usage
- Businesses maximizing production
- Plants are running almost constantly with no rest
  - We do not have room to overcome an emergency such as high demand, mechanical failure, etc.
- Plant capacity limitations at Grove and Spec Pond with PFAS treatment addition

# Current Conditions

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- Water Storage and Tanks rebounded from August 5<sup>th</sup> through 8<sup>th</sup>
- Supply continues to meet demand
  - Water ban has been helpful as we continue to pump near constantly
- Water Ban Notifications and Enforcement ongoing

# Recommendations

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- The DPW recommends the following:
  - Maintain the current water use restrictions and continue to monitor drought and water supply status
  - Increase our use of datalogging meters to look for excessive use of water which could potentially be a leak or wasteful use and communicate with those users



Thank You



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DAN VAN SCHALKWYK, P.E.

DIRECTOR OF PUBLIC WORKS

KIMBERLY ABRAHAM

WATER AND SEWER SUPERINTENDENT

AGREEMENT

for

WASTEWATER  
TREATMENT AND  
DISPOSAL  
SERVICES

between the

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY

and the

TOWN OF AYER, MASSACHUSETTS



**AGREEMENT  
for  
WASTEWATER TREATMENT AND DISPOSAL SERVICES**

THIS AGREEMENT, made and entered into this \_\_ day of \_\_\_\_\_, 2022, (hereinafter referred to as the "Agreement"), by and between the Massachusetts Development Finance Agency, known as MassDevelopment, established pursuant to Chapter 289 of the Acts of 1998, and existing under Chapter 23G of the General Laws, as amended (hereinafter referred to as the "Agency"), and the Town of Ayer, a body politic and corporate in the Commonwealth of Massachusetts (hereinafter referred to as "Ayer"),

**WITNESSETH:**

WHEREAS, the Agency is the owner of the property known as Devens on which the Agency operates and maintains a public wastewater collection, conveyance, treatment and disposal system, and

WHEREAS, Devens has developed a regional facility for the treatment and disposal of wastewater and septage at Devens that is currently used by Devens, Town of Shirley, Town of Ayer and MCI-Shirley, and

WHEREAS, Ayer entered into a 20 year agreement with MassDevelopment on December 23, 2001 to provide treatment and disposal of wastewater from Ayer in excess of Ayer's wastewater treatment plant design capacity, and

WHEREAS, Ayer has a need for continuing treatment and disposal of wastewater from Ayer in excess of Ayer's wastewater treatment plant design capacity, and

WHEREAS, the Agency and Ayer both intend to comply with the applicable federal, state and local laws, rules, orders and regulations governing wastewater collection, treatment and discharge, and

WHEREAS, the provision of wastewater treatment and disposal services is necessary to protect the public health, safety, and welfare; and

WHEREAS, under the laws of the Commonwealth of Massachusetts, the Agency and Ayer have the power to contract with one another for the provision of wastewater management services, and the Agency and Ayer for the aforesaid reasons desire to enter into an agreement whereby the Agency would treat and dispose of wastewater collected and delivered to the Devens wastewater system from Ayer;

NOW THEREFORE, WITNESSETH that in consideration of the mutual promises and covenants herein set forth, and in order to secure the services described below, the parties hereto, each binding itself, its respective representatives, successors, and assigns, do mutually agree as follows:

## ARTICLE I

### SHORT TITLE, DEFINITIONS AND CONSTRUCTION

Section 101. Short Title.

This Agreement may be referred to as the "2022 Devens - Ayer Wastewater Agreement".

Section 102. Definitions.

A. Definitions. For all purposes of this Agreement, and any amendments or other changes thereto, the following terms shall have the meanings set forth below.

1. "Agency Conveyance System" shall mean the interceptors, trunk sewers, pump stations, including the main pump station, and other ancillary facilities used to transport wastewater from the point of connection of the Ayer - Devens Connection Facilities to the Agency Treatment Plant.
2. "Agency Treatment Plant" shall mean the wastewater treatment facility, residuals facilities, effluent discharge pipes, rapid infiltration beds and other ancillary facilities at Devens to which the Agency Conveyance System discharges.
3. "Annual Capital Cost" shall mean the total annual principal and interest payments on debt instruments used to finance the Agency Treatment Plant and the Agency Conveyance System.
4. "Annual Operating Cost" shall mean the total annual cost incurred by the Agency for operation and maintenance of the Agency Treatment Plant and Agency Conveyance System, including (1) administrative and insurance costs; (2) costs required to fund reserve accounts; (3) inspection fees; (4) capital repair and replacement costs; and (5) other costs necessary for operation and maintenance of the Agency Treatment Plant and Agency Conveyance System.
5. "Average Daily Flow" shall mean the total annual wastewater flow measured at a metering station divided by the number of days in the year.
6. "Ayer" -The Town of Ayer or the Town acting by and through its Select Board in its authority as the Ayer Sewer Commissioners.
7. "Ayer - Devens Connection Facilities" shall mean the pumping facilities, force main, metering equipment and other ancillary facilities necessary to convey excess wastewater flow from the Ayer System to the point of connection with the Agency Conveyance System.
8. "Ayer System" shall mean the publicly owned wastewater collection, pumping, treatment and disposal facilities within the Town of Ayer, excluding the Ayer- Devens Connection Facilities.
9. "Base Flow" shall mean the annually agreed upon minimum flow, which shall be no less than 50,000 gallons per day.
10. "BOD (Biochemical Oxygen Demand)" shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20° C, expressed in milligrams per liter.
11. "Building Drain" shall mean that part of the lowest level of horizontal piping of a building

drainage system, which receives the wastewater from the plumbing inside the walls of the building and conveys it to the building sewer that begins five (5) feet outside the inner face of the building wall.

12. "Building Sewer" shall mean the pipe extension from the Building Drain, commencing at a point five (5) feet outside the inner face of the building wall and extending to a Sanitary Sewer or other place of discharge.
13. "Capital Improvement" shall mean permanent improvements to the Agency Conveyance System or the Agency Treatment Plant that have an estimated cost in excess of \$10,000 and have an anticipated useful life of more than one (1) year.
14. "Capital Repair and Replacement" shall mean the repair or replacement of roads, buildings, structures, grounds, equipment, replacement parts and spare parts undertaken as part of the operation and maintenance of the Agency Conveyance System or Agency Treatment Plant and not included in the Initial Capital Cost for Phase I or Phase II of the Agency Treatment Plant.
15. "Change in Law" means the occurrence of any of the following after the execution of this Agreement: (a) the enactment, adoption, modification, repeal or formal change in interpretation of any state, federal or local law or regulation; (b) the issuance or modification of an order, decree or judgment by any federal, state or local court, administrative agency or governmental body acting in a judicial capacity; or (c) the suspension, termination, denial, failure to issue or to renew any permit, license, approval or other legal requirement or authorization, or to any material change in the terms thereof, so as to change or otherwise affect the ability or means of the Agency to operate and maintain the Agency Treatment Plant or Agency Conveyance System or to significantly increase the cost of such operation and maintenance.
16. "Contract Date" shall mean the date this Agreement takes effect following its acceptance by the Board of Directors of the Agency and the Ayer Board of Selectmen, and its execution by Ayer and the Agency.
17. "Contract Year" shall mean a one-year period commencing on July 1, and ending on June 30 in each year during the term of this Agreement, and which, in the case of the first Contract Year, shall be the period beginning on the Contract Date and ending on the next June 30.
18. "Customer" shall mean a public entity or private company, which discharges wastewater, biosolids or other acceptable material to the sewer system, or treatment plant of one of the Users of the Agency Treatment Plant and which has not purchased Reserved Capacity at the Agency Treatment Plant.
19. "Daily Average" shall mean the sum of the measurements made over any given twenty-four (24) hour period divided by the number of measurements made.
20. "Dedicated Costs" shall mean the total annual capital and operation and maintenance costs for a particular wastewater treatment or conveyance facility, such as a pump station, force main or connecting sewer, used exclusively by a single User, 100% of such cost to be paid by the User as part of its Initial Capital or annual O&M Assessments in accordance with Article III of this Agreement.
21. "DEP" shall mean the Massachusetts Department of Environmental Protection.

22. "Design Capacity" shall mean the design flow of the Agency Conveyance System, and the Average Daily Flow of the Agency Treatment Plant permitted by the DEP and used for the sizing of unit processes and associated facilities.
23. "Devens" shall mean that portion of the former Fort Devens conveyed by the U.S. Army to the Agency and operated by the Agency.
24. "Disposal" shall mean the disposition of wastewater and residuals by the Agency after treatment at the Agency Treatment Plant.
25. "Domestic Wastewater" shall mean the wastewaters discharged from residential, sanitary facilities, such as toilets, sinks, urinals, showers, and laundries as defined in the Sewer Use Rules and Regulations.
26. "Easement" shall mean an acquired legal and enforceable right for a specific use of land owned by another person.
27. "Escalation Index" shall mean the Consumer Price Index-All Urban Consumers, All Items, for Boston – Cambridge Newton, MA - NH as defined and compiled by the United States Bureau of Labor Statistics.
28. "Escalation Factor", in the case of any dollar amount that was specified as of or before the Contract Date, shall mean, as of the date of application, the Escalation Index as of the date of application divided by the Escalation Index as of the Contract Date. The Escalation Factor will be multiplied by the dollar amount in question, as of the Contract Date, to produce the dollar amount as of the date of application. "Escalation Factor", in the case of any dollar amount that is specified as of a date after the Contract Date, shall mean, as of the date of application, the Escalation Index as of the date of application divided by the Escalation Index as of the date when such dollar amount was specified. The Escalation Factor will be multiplied by the dollar amount in question, as of the date that it was specified, to produce the dollar amount as of the date of application. In either case, where amounts are to be adjusted annually, the Escalation Index as of the Contract Date shall be the Escalation Index as of January 1, 2022 and the Escalation Index as of the date of application shall be the Escalation Index as of the immediately prior January 1. Annual escalations shall take effect as of the beginning of a Contract Year and shall apply for the full Contract Year.
29. "Fiscal Year" shall mean the period beginning July 1 and ending June 30 of the following calendar year.
30. "Force Majeure" means any act, event or condition or any combination thereof that is beyond the reasonable control of the Party relying on the same and that (i) materially interferes with its performance of its obligations or (ii) significantly increases the cost of performance of its responsibilities. Force Majeure includes the following categories of events, as well as other events that are unforeseen and not otherwise anticipated, specifically or by reasonable implication by the provisions of this Agreement:
  - (i) naturally occurring events such as landslides, lightning, earthquakes, hurricanes, tornadoes, or floods,
  - (ii) civil disturbances such as acts of a declared public enemy, wars, declared terrorist incident riots or blockades,
  - (iii) unexpected receipt of wastewater that exceeds the design capacity or capability of

- the Agency Treatment Plant,
- (iv) labor disputes and strikes,
- (v) loss of utility services necessary for operation of the Agency Treatment Plant,

31. "Industrial Wastewater" shall mean the wastewater from industrial or manufacturing processes or from a commercial, governmental or institutional activity, including restaurants and cafeterias, as defined in the Sewer Use Rules and Regulations.
32. "IPP" or "Industrial Pretreatment Program" shall mean a program administered and enforced by the applicable User for providing services with respect to sampling, inspecting, analyzing and record-keeping with respect to compliance by industrial and certain commercial Customers with the applicable Sewer Use Rules and Regulations, including technically based local limits.
33. "Infiltration" shall mean water entering a sewer system from the ground through such means as defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include and is distinguished from inflow, as defined in the Sewer Use Rules and Regulations.
34. "Inflow" shall mean water discharged to a sewer system (including service connections) from such sources as roof leaders, cellar, yard, and area drains; foundation drains; cooling water discharges; drainage from springs and swampy areas; manhole covers; cross-connections from storm sewers; catch basins; stormwater runoff; street wash waters; and drainage in general, as defined in the Sewer Use Rules and Regulations.
35. "Initial Capital Assessment" shall mean each User's share of the Initial Capital Cost of Phase I of the Agency Treatment Plant and the Agency Conveyance System, figured as the proportion of the User's designated Reserved Capacity to the Design Capacity of the Agency Treatment Plant and the proportion of the User's designated Reserved Capacity to the Design Capacity of the Agency Conveyance System, respectively.
36. "Initial Capital Cost" shall mean the total cost of planning, design, construction and engineering services during construction of Phase I of the improvements to the Agency Treatment Plant and Agency Conveyance System, less Dedicated Costs for capital facilities paid for directly by certain Users. The Initial Capital Cost shall be the actual costs for the design and construction of Phase I improvements.
37. "Maximum Daily Flow" shall mean the highest total flow measured at a metering station over any given twenty-four (24) hour period.
38. "MCI-Shirley" shall mean the Massachusetts Correctional Institution state prison in Shirley operated by the Massachusetts Department of Correction (hereinafter known as the "DOC") and its wastewater system, which discharges to the Agency Conveyance System.
39. "Mixed Flow" shall mean the combined municipal flow of the Town of Ayer as normally enters the Ayer Wastewater Treatment Facility.
40. "Monthly Average" shall mean the sum of the measurements made over any given thirty (30) day period divided by the number of measurements made.
41. "Operating Year" shall mean the same as Fiscal Year, such year being divided into four quarters, as described in Section 308.

42. "Operation and Maintenance (O&M) Budget" shall mean the annual Operation and Maintenance Plan (O&M Plan) and associated budget prepared by the Agency for the cost of labor, utilities, chemicals, metering, sampling and monitoring, materials and other costs associated with operation and maintenance of the Agency Treatment Plant and the Agency Conveyance System.
43. "Operation and Maintenance (O&M) Assessment" shall mean the quarterly charge to a User by the Agency for operation and maintenance costs to provide conveyance and treatment services to the User and shall be computed in accordance with Section 303.
44. "Agency's Wastewater O&M Contractor" shall mean the private company hired by the Agency to operate the Agency Treatment Plant and the Agency Conveyance System.
45. "Person" shall mean any individual, firm, company, association, society, corporation or group.
46. "Phase I" shall mean the initial Capital Improvements undertaken in 1999 involving construction of the Agency Treatment Plant.
47. "Phase II" shall mean the program of Capital Improvements anticipated to be required to meet more stringent effluent limitations or to receive wastewater flows greater than the Design Capacity of the Agency Treatment Plant constructed during the Phase I period.
48. "pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.
49. "Projected Average Daily Flow" shall mean the annually agreed upon average daily flow to be transferred from Ayer to the Agency Treatment Plant, which shall be no more than Ayer's Reserved Capacity.
50. "Public Sewer" shall mean a pipe or conduit for carrying wastewater, which is owned, maintained, and controlled by a public authority.
51. "Regional Interceptor" shall mean a sewer pipe that receives wastewater from more than one User and conveys it to the Agency Treatment Plant.
52. "Reserved Capacity" shall mean the capacity in the Agency Treatment Plant or the Agency Conveyance System that has been bought or contracted for by a User for the use of that User.
53. "Sanitary Sewage" shall mean liquid and solid human and domestic wastes conveyed by water. Groundwater, stormwater, roof and surface runoff, uncontaminated cooling water, non- contact process water and industrial wastewater are not sanitary sewage.
54. "Sanitary Sewer" shall mean a public sewer, which is designed to carry sanitary sewage, pretreated industrial wastewater, and limited amounts of infiltration and inflow.
55. "Septage" shall mean the wastes from holding tanks, such as chemical toilets, campers, or trailers, and wastes from septic tanks and cesspools.
56. "Sewerage Works" shall mean all facilities for collecting, pumping, treating, and disposing of wastewater.

57. "Sewer Use Rules and Regulations" shall mean the Devens Sewer Use Rules and Regulations, as amended from time to time by the Agency, including the industrial pretreatment requirements, governing connection and discharge to the Agency Conveyance System.
  58. Intentionally Deleted.
  59. "Storm Drain" (or "Storm Sewer") shall mean a public sewer pipe, which is designed to carry storm and surface water drainage, but not wastewater.
  60. "TSS (Total Suspended Solids)" shall mean solids that either float on the surface of, or are suspended in, water, wastewater, or other liquids, and which are removable by laboratory filtering, expressed in milligrams per liter.
  61. "Total Nitrogen" shall mean the quantity of nitrogen measured under standard laboratory procedure, expressed as nitrogen in milligrams per liter.
  62. "Total Phosphorus" shall mean the quantity of phosphorus measured under standard laboratory, expressed as phosphorus in milligrams per liter.
  63. "Treatment" shall mean the processing of Wastewater by the Agency at the Agency Treatment Plant so that it is suitable for disposal.
  64. "Unit Cost of Treatment" shall mean the cost per gallon for conveyance and treatment of wastewater at the Agency Treatment Plant estimated and established annually in the O&M Budget and charged to all Users of the Agency Treatment Plant in accordance with terms and conditions of this Agreement.
  65. "User" shall mean any town, city, wastewater authority or other public entity, including MCI-Shirley, or private owner entering into an agreement with the Agency for wastewater conveyance, treatment or disposal services and has purchased Reserved Capacity at the Agency Treatment Plant.
  66. "User Charges" shall mean charges levied by each User or the Agency upon the residential, commercial and industrial Users in proportion to their use of Sewerage Works of the User or the Agency. As required by Section 204 (b) (1) (A) of Public Law 92-500, as amended, and by regulations promulgated by the U.S. Environmental Protection Agency, such charges must, to the extent possible, distribute the Operation and Maintenance Assessment (including Capital Repair and Replacement) costs to each user in proportion to the User's contribution to the total loading of the User's or Agency's Sewerage Works.
  67. "Wastewater" shall mean the combination of Sanitary Sewage, pretreated Industrial Wastewater and Infiltration and Inflow transported in the Agency Conveyance System and discharged to the Agency Treatment Plant.
  68. "Wastewater Advisory Committee" shall mean the committee composed of representatives of Ayer, Shirley, MCI-Shirley and the Agency, which shall provide review, comments, and advice to the Agency regarding capital and operations and maintenance issues, treatment and conveyance system costs, and other matters affecting the Sewerage Works of the parties.
- B. Construction. This Agreement, except where the context indicates otherwise, shall be construed as follows:

1. Definitions include both singular and plural,
2. Pronouns include both singular and plural and include both genders, and
3. Terms not specifically defined herein shall have their commonly understood meaning or the meaning ascribed to them by virtue of their use in the context of sewage and septage transport and disposal.

## ARTICLE II

### GENERAL PROVISIONS

Section 201. Obligations of Ayer. Ayer understands and agrees to the following obligations, limitations, and commitments, made as part of this Agreement.

- A. Sewer Use By-law. Ayer agrees to adopt, implement and enforce rules and regulations related to use of the Ayer System. Said rules and regulations shall be acceptable to federal and state authorities and to the Agency. Such rules and regulations shall prescribe conditions and requirements for use of the Ayer System so as to comply with all limitations set forth in the Sewer Use Rules and Regulations of the Agency.

Ayer shall notify the Agency of any Notices of Non-Compliance (NON) or other regulatory actions received from the DEP or any other State or Federal Agency.

Ayer shall provide a report to the Agency of all Industrial Discharge Permits issued and any NON or other violations issued to dischargers to the Ayer system. Such report can be either in summary form or by providing copies of such documents to the Agency.

Ayer shall provide the Agency with a copy of the Monthly Sampling Report provided to DEP.

Ayer shall enforce in a reasonable manner, consistent with Applicable Law, all rules and regulations of Ayer, including the Sewer Use By-law and other regulations related to the IPP. At the request of the Agency, Ayer shall consider for adoption other rules, regulations, and by-laws reasonably related to such matters. At the request of the Agency or its contractors, Ayer shall promptly and diligently move to enforce rules, regulations, and by-laws intended to secure the effective performance of the IPP against any user that is in violation of any Applicable Law with respect thereto.

- B. Wastewater Capacity and Strength Limitations. Subject to maximum flow provisions of Section 305 of the Agreement, Ayer agrees not to exceed its designated Reserved Capacity at the Agency Treatment Plant and in the Agency Conveyance System on a weekly basis.

Ayer's Reserved Capacity at the Agency Treatment Plant and in the Agency Conveyance System is designated by this Agreement as an Average Daily Flow of 350,000 gallons per day (GPD) with wastewater strength that does not exceed an average monthly load of BOD of 1580 lb/day and TSS of 1620 lb/day, excluding septage disposed of at the Agency Treatment Plant.

Ayer agrees that the total flow discharged from Ayer to the Agency Treatment Plant via the Agency Conveyance System will comply with the local limits and other limitations and conditions of the Agency's Sewer Use Rules and Regulations.

Notwithstanding the maximum flow provisions as provided in Section 305 of this Agreement, the



Agency agrees, upon request from Ayer, to accept from Ayer wastewater flow from Ayer's wastewater treatment facility (WWTF) in excess of 1.5 times Ayer's Reserved Capacity during upgrades, improvements, and repairs of the Ayer WWTF undertaken by Ayer. Ayer shall provide written notice ninety (90) days in advance of its need to divert wastewater flow in excess of 2.0 times its Reserved Capacity and shall provide the Agency with a schedule of such upgrade or improvement project with an estimated completion date. Ayer's wastewater flow to the Agency during this period shall be measured and Ayer shall make capital and operation and maintenance payments for such actual measured flow consistent with the provisions of Article III of this Agreement. Transfer of flow during the period of construction of upgrades or improvements to the Ayer WWTF shall not be considered a case of incapacity or emergency under the following provision below.

Notwithstanding the maximum flow provisions as provided in Section 305 of this Agreement, in case of incapacity or emergency at the Ayer WWTF, the Agency shall endeavor, subject to available capacity, to accept all or a portion of the wastewater flow from the Ayer WWTF during the period of such emergency or incapacity. Ayer shall provide notice to the Agency of Ayer's need for emergency capacity in advance of such need. Ayer's wastewater flow to the Agency during the period of emergency or incapacity shall be measured and Ayer shall make payment for such actual measured flow consistent with the provisions of Article III of this Agreement. Upon, or as soon as practicable after, request by Ayer to transfer wastewater during a period of incapacity or emergency, Ayer shall provide to the Agency a schedule for correction of the incapacity or emergency situation including an estimate of the total duration of the transfer. Ayer shall undertake all reasonable efforts to correct the incapacity or emergency situation to minimize the duration of the transfer to the Agency WWTF.

- C. Notification Requirements. Ayer shall provide the Agency with seven (7) days verbal notice of a planned shutdown or reduction of Ayer's wastewater processing capabilities or change in process or schedule that will significantly impact the rate or quality of flows conveyed to Devens. Such verbal notice shall be followed by a written confirmation to the Devens Utility Manager and the Agency's Wastewater O&M Contractor, Veolia or its successor, within 48 hours.

Ayer shall provide verbal notice to the Devens Utility Manager and the Agency Treatment Plant O&M contractor within one hour (1) hour of the discovery of any equipment failure that can significantly impact flow to the Agency Treatment Plant. For this purpose, "significantly" shall be defined as changes in total daily flow, flow rate or pollutant concentration that would adversely impact the ability of the Agency's wastewater plant operator to meet discharge permit limitations or inhibit normal operations of the Agency's wastewater plant, including the rapid infiltration beds. Failure by Ayer to provide notice as required above shall not in itself be considered a material breach of this Agreement.

Under no circumstances shall Ayer transfer more than 2.0 times its Reserved Capacity without prior notification to and approval of the Devens Utility Manager and the Agency's Wastewater O&M contractor.

- D. Transfer of Reserved Capacity. In the event that Ayer desires to increase or decrease its Reserved Capacity in the Agency Treatment Plant through transfer of Reserved Capacity to or from the Agency or another User, such transfer shall be accomplished in accordance with the terms and conditions in Article III, Section 311 of this Agreement and only with prior written request to and approval of the Agency. Should Ayer determine at any time after construction of the Agency Treatment Plant that it has excess capacity that it will not use in the future, the Agency shall have first right to receive the transfer of such excess capacity under Section 311 of this Agreement.

- E. Renegotiation of Reserved Capacity and Base Flow. Prior to the tenth anniversary of this Agreement, Ayer shall notify the Agency of a desire to extend this Agreement for another ten year period or to negotiate the Reserved Capacity in the Agency Treatment Plant. Notification and changes to this Agreement shall be in accordance with Article IV, Sections 405 and 415.
- F. Ayer - Devens Connection Facilities. Ayer agrees to bear the full capital and annual costs of facilities planning, other studies, permits, design, construction, operations and maintenance required for facilities to transport wastewater from the point of connection of the Ayer System to the Agency Conveyance System.
- G. Charges and Fees. Ayer agrees to make payment of all invoices, charges and fees for the capital and operating costs of wastewater conveyance and treatment services, including penalties for late payment and capital cost adjustments due to Change In Law, in accordance with applicable provisions of Article III of this Agreement. Ayer's account shall be credited with any overpayment, including any interest earned thereon, that is determined by the parties to have been made by Ayer after resolution of any billing dispute. The Agency shall make a good faith effort to resolve billing errors prior to the payment of the invoice in question.
- H. Control of Infiltration and Inflow. Ayer agrees that it will design, construct and maintain the Ayer System so as to control Infiltration and Inflow to the Agency Conveyance System to the standards defined by the DEP and as contained in the Inflow/Infiltration Report for the Town of Ayer prepared by ARCADIS and submitted to the DEP in April 2018, and reviewed and approved by the DEP, and that, in the future, Ayer will undertake studies and other measures as necessary to identify, quantify and remediate excessive Infiltration or Inflow in the Ayer System in accordance with the Agency's and Ayer's Sewer Use Rules and Regulations. Excessive Infiltration or Inflow shall be determined based upon applicable regulations as promulgated by the DEP or any Administrative Consent Order as entered into between Ayer and the DEP, whichever is more stringent.
- I. Conformance to Law. Ayer agrees to abide by, and conform to, all applicable laws of the United States and the Commonwealth of Massachusetts, together with such rules and regulations as the Agency may promulgate from time to time with regard to the Agency Treatment Plant and the Agency Conveyance System. Ayer shall be responsible for the operational and cost impacts, including penalties and fines as well as repair, clean-up or extraordinary maintenance costs, resulting from improper discharge of liquid or other material into the Ayer System that is in violation of the Agency's Sewer Use Rules and Regulations for Devens.
- J. Participation in Wastewater Advisory Committee. Ayer shall have the right, but not the obligation, to designate up to two persons to represent Ayer on the Wastewater Advisory Committee, which shall perform oversight and review activities as defined in Article IV, Section 418.
- K. Limitation of Rights. Nothing in this Agreement shall be construed as a grant by the Agency of any exclusive right or privilege. Ayer agrees to comply in all respects with the Sewer Use Rules and Regulations of the Agency.
- L. Provision of Services to Other Communities. The Agency shall have the right, at its sole discretion, to enter into agreements and to provide wastewater conveyance or treatment or residuals management services to other municipalities, agencies, businesses or other entities outside of the borders of Ayer. Such services or agreements with other entities shall not relieve the Agency of, nor significantly interfere with, its obligations to Ayer under this Agreement.

Section 202. Obligations of the Agency. The Agency agrees to the following obligations, limitations and commitments, made as part of this Agreement:

- A. Treatment and Disposal of Ayer Wastewater. The Agency agrees to accept, at the points of delivery shown in Exhibit A, treat, and dispose of up to an average daily flow of 350,000 GPD of Mixed Flow wastewater from Ayer during the term of this Agreement, subject to the volumetric and strength limitations and other provisions of this Agreement.
- B. Septage Disposal. The Agency agrees to accept septage generated by persons or entities located within Ayer, subject to the ability of the Agency Treatment Plant to receive, store and treat such septage at the time of delivery and provided that such septage is in conformance with Ayer's Sewer Use By-law. Rates for septage disposal shall be established annually as part of the annual Operations and Maintenance Budget for the Agency Treatment Plant. Certification of the origin of septage delivered to the Agency Treatment Plant will be required by the Agency. Septage accepted by the Agency under this agreement shall be carried by haulers permitted by the Devens Enterprise Commission (DEC).
- C. Measurement of Wastewater Flows and Strengths. Ayer and the Agency shall be jointly responsible for and shall undertake the measurement of wastewater flows from Ayer. Flow measurements shall be taken by wastewater flow meters located at the Ayer Main Pump Station.

Flow measurement data from the meters at the Ayer WWTF shall be electronically transmitted directly to the Agency. Costs of metering and telemetry equipment at the Ayer WWTF, including the cost of installation, maintenance, operation, reading, and testing of such equipment shall be borne by Ayer. At Ayer's expense, all such meters shall be inspected at least quarterly and calibrated at least annually. A copy of the inspection and calibration reports shall be provided to the Agency and the original kept on file in Ayer. The Agency may install and operate, at its own expense, additional flow meters as required to monitor flows from the Ayer Main Pump Station.

If determined in the sole discretion of the Agency that it is necessary to sample the strength of wastewater from Ayer, the Agency may at its own cost undertake appropriate sampling on a periodic basis and at such points as it determines necessary. Such samples, if needed, shall be taken by the Agency or its contractor in such manner and with such frequency as to ensure collection of a fair representation of the strength of Ayer's wastewater. Records and results of sampling of wastewater strength shall be on file at the Agency and a copy shall be provided to Ayer directly from the laboratory performing the analyses. The Agency reserves the right to incorporate the systemwide cost of wastewater strength sampling into the Unit Cost for Treatment in the Annual O&M Budget.

Ayer agrees to provide unlimited rights of access to the metering and sampling facilities within Ayer to the Agency or its contractor. The Agency shall notify Ayer reasonably in advance of the days and times that access to the flow meters is required or sampling is to be done.

In case of missing or inaccurate flow records or wastewater sampling data, due to faulty meter operation or otherwise, an estimate of flow volume or strength shall be made by the Agency based on the most representative records of previous measurements. In such case, the said estimates shall be used by the Agency to establish Ayer's payments to the Agency in accordance with Article III of this Agreement for the period of missing or inaccurate data. Ayer shall not be responsible for any costs associated with such estimating made necessary by such missing or inaccurate records or data. The Agency shall inform Ayer in writing when such estimates are

being used by the Agency to establish Ayer's payments, and the Agency shall provide Ayer with all data utilized to calculate the estimated payments.

- D. Rates for Wastewater Services. The Agency shall compute rates annually for use of the Agency Treatment Plant and the Agency Conveyance System and shall present the proposed rates to Ayer at least sixty (60) days prior to the intended implementation date. Should Ayer question or require additional information regarding computed rates, such questions or requests shall be submitted in writing to the Agency. Ayer may request, and the Agency shall provide, a review and meeting to address the request or issues.
- E. Records, Accounts and Audits. The Agency shall keep books of records and accounts, in which complete and correct entries shall be made of all its transactions with Ayer, which, together with all other books and papers dealing with the Agency Treatment Plant and the Agency Conveyance System, shall at all reasonable times be subject to the inspection of any officer or agent of Ayer, including representatives of the Wastewater Advisory Committee, the Board of Sewer Commissioners or other duly authorized representatives of Ayer. The Wastewater Advisory Committee shall have the right to review the Agency's annual financial statements and accounts
- F. Participation in Wastewater Advisory Committee. The Agency shall designate up to two persons to serve on the Wastewater Advisory Committee, which shall perform oversight and review activities as defined in Article IV, Section 418.

### **ARTICLE III**

#### **PAYMENTS FOR TREATMENT AND CONVEYANCE SERVICES**

Section 301. General. Payments by Ayer to the Agency, shall include the Initial Capital Assessment, which shall be in proportion to Ayer's Reserved Capacity of the Agency Treatment Plant and the Agency Conveyance System, and calculated in accordance with Section 302; and the Operation and Maintenance Assessment, which shall be Ayer's proportional share of the operation and maintenance expenses for the Agency Treatment Plant, computed in accordance with section 303.

Section 302. Initial Capital Assessment. Ayer shall make payments to the Agency equal to Ayer's proportionate share of the annual amount required for amortization of the Initial Capital Cost of the Agency Treatment Plant and the Agency Conveyance System, with additional annual cost in the amount of 0.3 percent of the Initial Capital Assessment for administration of the capital account. Ayer's share shall be determined on the basis of its Reserved Capacity at the Agency Treatment Plant and in the Agency Conveyance System in proportion to the total Design Capacity of the Agency Treatment Plant and the Agency Conveyance System.

Section 303. Intentionally Deleted.

Section 304. Operation and Maintenance (O&M) Assessment. Ayer shall make payments to the Agency equal to Ayer's proportional share of the Annual Operating Cost of the Agency Treatment Plant and Agency Conveyance System. Said share shall be determined on the basis of the average daily flow discharged by Ayer to the Agency Treatment Plant and Agency Conveyance System in proportion to the total average daily flow of the Agency Treatment Plant and Agency Conveyance

System. Average Daily Flow used to compute the O&M Assessment to Ayer shall be estimated using available recorded amounts from the immediately preceding calendar year, adjusted for the current year using projections of flow from the O&M Plan.

Ayer's share of the O&M Assessment shall be, on a per unit basis, the same approved unit cost per unit of flow and strength as established by the Agency's Board of Directors and charged to all other Users of the Agency Treatment Plant and the Agency Conveyance System. The Wastewater Advisory Committee shall have the right to review and comment on the proposed rates before presentation to the Board of Directors. Costs for operation and maintenance of metering and sampling equipment used in establishing wastewater flows and strengths from the Ayer System shall be as specified in Section 202.C. See Exhibit B attached hereto as a sample budget.

Section 305. Maximum and Minimum Flow Assessments. The O&M Assessment shall be subject to a minimum flow charge of the Unit Cost of Treatment times the Base Flow for any period of seven consecutive days during which the average flow falls below the Base Flow, and a maximum flow charge of a total of 1.5 times the Unit Cost of Treatment for daily flow over 2 times the Base Flow for any period of seven consecutive days, unless Ayer has notified the Agency and the Agency has approved in writing such increased or reduced flow. Any of the terms and conditions in this section regarding maximum and minimum flow rates may be changed with written consent of both parties.

Section 306. Intentionally Deleted.

Section 307. Budget Preparation. By February 28 of each year, the Agency shall prepare and submit to Ayer an O&M Budget for the upcoming Operating Year, which includes estimated Agency expenditures, estimated contributions by the Users of average daily flow, and estimated payments by the Users.

Section 308. Capital Improvements Due to Change in Law. The Agency shall have the right to modify the Initial Capital Assessment and the subsequent capital assessments of each user as necessary to amortize debt incurred due to capital modifications to the Agency Treatment Plant and the Agency Conveyance System resulting from Change in Law. Such modifications to the capital assessments shall be made in proportion to the Reserved Capacity of each user existing at the time of the Change in Law. The Agency shall, to the extent possible, provide Ayer with notice at least sixty days before any capital improvement due to change in law is undertaken by the Agency, and shall include in that notice an estimate of the total cost of the capital improvement and the proportional share to be assessed to Ayer.

Section 309. Billing Cycle and Late Payments. The Agency shall bill Ayer for its share of the net annual capital cost and of the net operating costs based on actual flow, subject to terms of Section 305 above, on a monthly or quarterly basis, at the Agency's discretion, provided, however, that Agency shall notify Ayer in writing in advance of any change in billing schedule; such amounts to be based on the annual O&M Budget prepared in accordance with section 306. If billed on a quarterly basis, the billing periods shall be: (1) July 1 through September 30; (2) October 1 through December 31; (3) January 1 through March 31; and (4) April 1 through June 30. Ayer shall make payments to the Agency no later than thirty days after receipt of each bill. Agency may assess a late payment penalty

at a rate no greater than 1.5% per month to be assessed on amounts not paid within thirty (30) days of the date of the invoice.

Section 310. Payment Adjustments. Within two months after the conclusion of each Operating Year, the Agency shall compute revised payments due from Ayer based on actual Agency expenditures and actual wastewater flow (and wastewater characteristics, if necessary) contributed by each User during the preceding year. The Agency shall provide Ayer with a copy of all data and computations used by the Agency in determining any revised payments due from Ayer. Any underpayments or overpayments shall be billed or refunded as one transaction within 30 days of the close of the fiscal year.

Section 311. New Users and Transfer of Reserved Capacity. Should the Agency enter into an agreement for wastewater conveyance or treatment services with a User not currently served by the Agency Treatment Plant or the Agency Conveyance System, Agency shall provide Ayer with a copy of such agreement and the new User shall be required to pay the Agency an Initial Capital Assessment calculated to reimburse the Agency and the existing User(s) for the principal and interest payments made on that portion of their Reserved Capacity to be assigned to the new User. Said Initial Capital Assessment shall also include a carrying charge based upon the average annual interest rates offered by commercial savings banks during the period that principal and interest was paid by the existing Users for the portion of the Reserved Capacity to be transferred. The Initial Capital Assessment shall be refunded by the Agency to the existing Users in proportion to the amount of Reserved Capacity obtained from each existing User to accommodate the new User.

Transfer of Reserved Capacity between Ayer and other Users already being served by the Agency Treatment Plant or the Agency Conveyance System shall likewise be in accordance with the above procedure and Section 201.D of this Agreement. Throughout the term of this Agreement, the Agency shall have first right to receive the transfer of excess Reserved Capacity from Ayer in accordance with the above terms should Ayer decide at its sole discretion to transfer such excess capacity.

In addition to said Initial Capital Assessment, any new User shall make principal and interest payments to the Agency as they come due for the Reserved Capacity assigned to the new User in accordance with the terms of this Agreement. Ayer shall no longer be liable for future principal and interest payments in connection with the Reserved Capacity transferred from Ayer to any new User.

Section 312. Expansion and/or Upgrading of Agency Sewerage Works. Should the Agency expand the capacity of any of its Sewerage Works solely to accommodate a User or Users other than Ayer, Ayer shall not be liable for the capital costs incurred by the Agency for said expansion. Should the Agency provide, at Ayer's request, additional Reserved Capacity for use by Ayer in any of the Agency's Sewerage Works (i.e., Reserved Capacity in excess of that indicated in Article II, Section 201.B of this Agreement), Ayer shall make payments of principle and interest to the Agency in accordance with the provisions under which the additional Reserved Capacity is financed, and in the proportion of Ayer's additional Reserved Capacity to the total additional Reserved Capacity provided.

#### **ARTICLE IV**

#### **MISCELLANEOUS PROVISIONS**

Section 401. Status of Former Agreements. This Agreement supersedes all written or unwritten agreements for treatment services between the Agency and Ayer and constitutes the entire agreement between the Agency and Ayer for wastewater management services; provided, however, that the Agency retains full rights and authority to enforce the provisions of any preceding or currently existing agreement as it pertains to any outstanding indebtedness to the Agency.

Section 402. Incurring of Debt. Nothing in this Agreement shall be construed so as to prevent either Ayer or the Agency from incurring any debt necessary to ensure the sufficiency of funds required to construct, maintain and operate their respective Sewerage Works.

Section 403. Severability. If any clause or provision of this Agreement or its application shall be held unlawful or invalid, no other clause or provision of this Agreement or its application shall be affected, and this Agreement shall be construed and enforced as if such unlawful or invalid clause or provision had not been contained herein.

Section 404. Status of Legal Representatives, Successors and Assigns. The Agency and Ayer agree that each one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, successors, and assigns of the parties hereto.

Section 405. Amendments To This Agreement. The provisions, terms and conditions of this Agreement shall be modified only by written amendment, executed with the same formality as this Agreement. This Agreement may be amended in whole, or in part, by the parties as follows:

- A. Proposed amendments to this Agreement may be offered by either Party, directly, or through the Wastewater Advisory Committee, which shall make its recommendations to the Ayer Select Board and Agency leadership.
- B. If both parties unanimously agree to the amendment to this Agreement, it shall be submitted in writing to the Parties and shall become effective upon approval and execution by the Signatories of the Parties.

Section 406. Force Majeure. The performance of either party hereunder shall be excused if such party is reasonably precluded from performance by the occurrence of a Force Majeure event. Such excuse of performance shall be only to the minimum extent reasonably forced on such party by such event and such party shall continue to perform all other responsibilities under this Agreement. The occurrence of a Force Majeure event may occasion an adjustment in costs payable under this Agreement, but the existence of such costs shall not, in and of itself, excuse performance by either party. A party relying on the occurrence of a Force Majeure event as an excuse for non-performance shall as soon as is reasonably possible upon becoming aware of such event and its consequences notify the other party of such event and its consequences and shall take all reasonable efforts to eliminate the cause of such non-performance and to resume full performance in accordance with this Agreement.

Section 407. Third Parties. The Agency is not responsible for any facility not included in its Sewerage Works or for any facility it does not control or for which it is not responsible for operating, and in the event that a facility of a third party shall be involved in the furnishing of service to, or the

receipt of service from Ayer, the Agency shall not be responsible for regulation, control or compliance of such facility or third party in order for Ayer to fulfill its responsibilities under this Agreement. Ayer assumes sole responsibility for any and all discharges to the Ayer System and for full compliance with this Agreement in light of such discharges. Ayer shall ensure that all Users and customers of the Ayer System comply with the Ayer's Sewer Use By-law, as adopted and amended from time to time by Ayer. Ayer is not responsible for any facility not included in its Sewerage Works which it does not control or have the responsibility to control.

Section 408. Assignment. Each of the parties shall have the right to assign its rights and obligations under this Agreement to its duly authorized public or quasi-public successors, assigns or affiliates and shall notify the other party no later than ninety (90) days prior to such assignment. This Agreement may not be assigned to a private entity by either party without approval by the other party, in writing, which approval shall not be unreasonably withheld or delayed. This Agreement in its entirety shall be binding upon the successors, assigns and affiliates of each party. The Agency shall have the right to contract with another party or other parties to provide planning, design, construction, contract operations, asset management, billing or other services necessary to provide wastewater services to Ayer and fulfill its responsibilities under this Agreement.

Section 409. Default and Right to Cure.

- A. The following will be deemed a default by Ayer and a breach of this Agreement: (i) non-payment of charges and assessments if such charges and assessments remain unpaid for more than thirty (30) days after receipt of written notice of such failure to pay from Agency; or (ii) Ayer's failure to perform any other material term or condition under this Agreement within sixty (60) days after receipt of written notice from the Agency specifying the failure. No such failure, however, will be deemed to exist if Ayer has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Ayer. If Ayer remains in default beyond any applicable cure period, the Agency will have the right, at its sole discretion, to exercise any and all rights and remedies available to it under law and equity, including the reselling of capacity allocated to Ayer pursuant to this Agreement.
- B. The following will be deemed a default by the Agency and a breach of this Agreement: the Agency's failure to perform any material term or condition under this Agreement within sixty (60) days after receipt of written notice from Ayer specifying the failure. No such failure, however, will be deemed to exist if the Agency has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of the Agency. If the Agency remains in default beyond any applicable cure period, Ayer will have the right to exercise any and all rights available to it under law and equity.

Section 410. Waiver. Failure of either party hereto to exercise any right hereunder shall not be deemed a waiver of such party's right and shall not affect the right of such party to exercise at some future time said right or rights or any other right it may have hereunder.

Section 411. Subsurface Conditions. Except to the extent attributable to wastewater received from



Ayer under this agreement, Ayer shall not be held responsible for the presence of, nor costs or expenses related to the presence, identification, remediation or other results of, contamination, hazardous materials, unexploded ordnance, or other known or unknown environmental contamination conditions existing at the Agency Treatment Plant, including the Rapid Infiltration Basins, upon the date of execution of this Agreement.

Section 412. Indemnification. Notwithstanding anything to the contrary in this Agreement:

- A. To the extent permitted by law, Ayer shall indemnify, and hold harmless the Agency, its elective and appointive officers, and its duly authorized employees and contractors (collectively, the "Agency Indemnitees" for purposes of this Section 412) from (i) any costs, expenses or liabilities, (including costs, expenses or liabilities to third parties) for bodily injury (including death), damage to tangible property, or (ii) any fines or penalties for violations of applicable law to the extent that they are directly caused by, or arise from, Ayer's breach of this Agreement or the negligent or wrongful intentional acts or omissions of Ayer or its agents, servants, contractors, subcontractors, customers, or employees. Ayer shall not be responsible to the Agency Indemnitees for any liability for bodily injury, including death, or claims for property damages or any fines or penalties arising out of circumstances that are not caused by Ayer's breach of this Agreement or by the negligence or wrongful intentional acts or omissions of Ayer, its employees, servants, contractors, subcontractors, customers, or agents or that are caused by the negligent or wrongful intentional acts or omissions of the Agency Indemnitees or are attributable to Force Majeure.
- B. To the extent permitted by law, the Agency shall indemnify, and hold harmless Ayer, its officers, directors, employees and contractors (collectively, the "Ayer Indemnitees" for purposes of this Section 412) from (i) any costs, expenses or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) for bodily injury (including death), damage to tangible property or (ii) any fines or penalties for violations of applicable law to the extent that they are directly caused by, or arise from the Agency's breach of this Agreement or the negligent or wrongful intentional acts or omissions of the Agency or its agents, servants, employees, contractors or subcontractors. The Agency shall not be responsible to the Ayer Indemnitees under this section for any liability for bodily injury, including death, or claims for property damages or any fines or penalties arising out of circumstances that are not caused by the Agency's breach of this Agreement or by the negligent or wrongful intentional acts or omissions of the Agency, its agents, servants, employees, contractors or subcontractors or that are caused by the negligent or wrongful intentional acts or omissions of the Ayer Indemnitees or are attributable to Force Majeure.
- C. In the event of a claim for indemnification by either party, the party claiming the indemnity shall immediately notify the other party (the "Indemnifying Party") of the claim and the Indemnifying Party shall have the right but not the obligation to assume the defense against the claim, and the right to approve the settlement of the claim.
- D. Each party's indemnification shall include the reimbursement to the other of all legal fees and expenses reasonably incurred, unless it is determined that such other party bears responsibility for the claims asserted.

Section 413. Limitation on Extent of Damages. It is the intent of the parties hereto that any damages on account of breach of this Agreement and any indemnification amounts payable under Section 412 or otherwise shall be limited to the actual, out-of-pocket expenses of the other party and that, except as otherwise specifically stated in this Agreement, damages and indemnity amounts shall not be measured by such intangible factors as loss of business opportunity, good will or reputation. In the absence of willful misconduct or grossly negligent action or failure to act, it is the intent of the parties hereto that punitive damages not be awarded. The parties hereto, and, in the case of indemnity obligations under Section 412, the Agency Indemnitees and the Ayer Indemnitees, shall be entitled to damages or indemnities only as principal and not as the representative of any other interest, group or class. Sections 412 and 413 shall survive the expiration or termination of the Agreement.

Section 414. Dispute Resolution. In the event of dispute under this Agreement, the parties may agree to mediate the dispute as follows:

Notice The moving party shall notify the other of the nature of the dispute and the issue or issues that are contested through a brief written statement of its position along with a request that the matter be mediated.

Response The non-moving party shall respond in writing within fifteen (15) calendar days briefly stating its position regarding the disputed issues and identifying any additional issues. Both statements of the issues and positions shall be provided to a third party mediator to be agreed to by the parties within thirty (30) calendar days of the moving party's notice. If the parties cannot agree to a mediator, the parties shall request that the state office of dispute resolution or a registered mediation service designate a mediator.

Mediation The mediator shall consider the briefs along with any relevant witness testimony or oral arguments requested by either party. The mediator shall attempt to get the parties to resolve their differences and if this is not possible, shall render a written decision detailing the most reasonably equitable resolution of the matter or matters in dispute.

Cost The cost of the mediation shall be borne equally by the parties, unless the mediator concludes in his/her decision that either party was unreasonably disputing the contested matter or matters, in which case the party determined to be unreasonably disputing a matter shall bear all costs.

To the extent the parties do not agree to mediate a dispute, such dispute shall be resolved by referral to a Massachusetts court of competent jurisdiction.

Section 415. Notice. Any notices required to be given under this Agreement shall be in writing and shall be delivered or mailed to the parties at the following addresses:

Notices to MassDevelopment:

Executive Vice President, Devens  
MassDevelopment

33 Andrews Parkway  
Devens, Massachusetts 01434  
Fax 978-772-7577

with a copy to:

General Counsel  
Massachusetts Development Finance Agency  
99 High Street  
11<sup>th</sup> Floor  
Boston, MA 02110

Notices to the Town of Ayer:

Board of Water and Sewer Commissioners / Selectboard  
One Main Street  
Ayer, Massachusetts 01432  
FAX 978-772-8222

with a copy to:

Ayer Department of Public Works  
25 Brook Street  
Ayer, Massachusetts 01432  
FAX 978-772-8244

All notices concerning non-compliance with state, federal or local regulations, permits or other legal requirements shall be given in the most expeditious manner possible and shall include, at a minimum, both facsimile and mailed notice.

Section 416. Effective Date, Duration and Termination. This Agreement shall be effective as of the date of its acceptance by the Agency's Board of Directors and execution by the parties. This Agreement shall be in full force and effect and shall be binding on Ayer and the Agency for a period of ten (10) years commencing with the date first entered above. The Parties may extend the Agreement for an additional ten (10) years with re-negotiation of Reserved Capacity for wastewater flow, strength and payment provisions. All other existing terms of the current Agreement will remain in full force and effect.

Section 417. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, and any and all legal actions brought in connection with this Agreement shall be brought in courts within the Commonwealth of Massachusetts. Ayer and the Agency shall comply with all applicable laws, regulations and codes in performance of this Agreement.

Section 418. Wastewater Advisory Committee. The Agency and Ayer shall have the options, rights

and obligations, as defined elsewhere in this Agreement, to serve on the Wastewater

Advisory Committee, which shall provide review, comments, and advice to the Agency regarding capital and operations and maintenance issues, treatment and conveyance system costs, and other matters affecting the Sewerage Works of the parties and matters regarding this Agreement. The Wastewater Advisory Committee shall meet at regularly scheduled intervals and shall have the right to define additional procedures and policies for the Committee that are not contrary to this Agreement and that allow the Committee to fulfill its obligations under the Agreement. Meetings of the Committee shall be attended by the operator of the Agency Treatment Plant and other Users served by the Agency Treatment Plant, if any.

Section 419. Points of Contact. The Agency shall be responsible for providing Ayer with the names and numbers for primary and secondary contacts of the Agency and the Agency's O&M Contractor. Ayer shall be responsible for providing the Agency with the names and numbers for primary and secondary contacts of Ayer.

IN WITNESS WHEREOF, the parties have hereunto set their hands and fixed their seals as of the first date above written.

MASSACHUSETTS DEVELOPMENT  
FINANCE AGENCY

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Legal Form

\_\_\_\_\_  
Agency Counsel

TOWN OF AYER  
By its Select Board

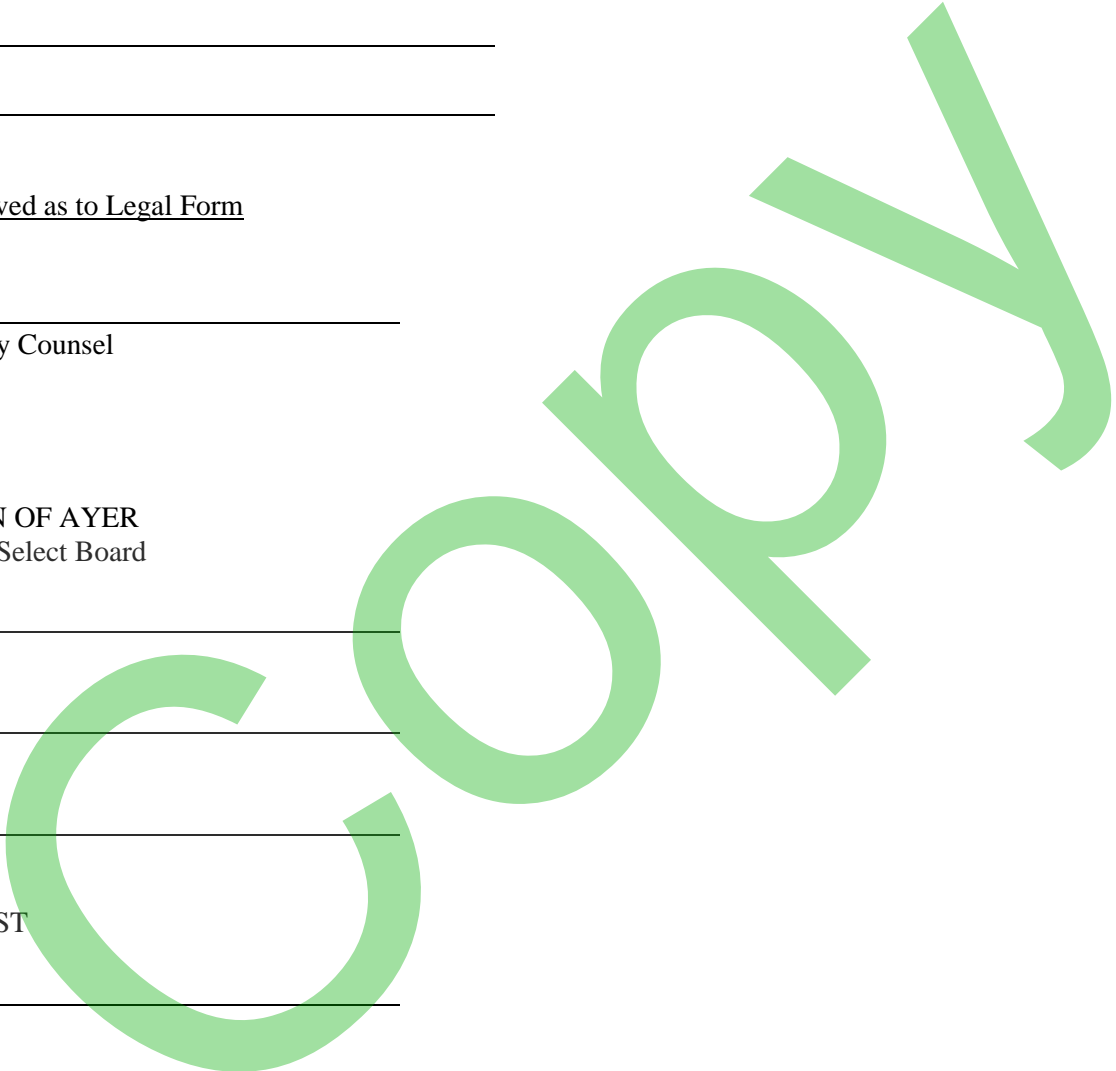
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ATTEST

\_\_\_\_\_



**EXHIBIT A**  
**Drawing of Ayer-Devens Sewer Connection Point**

## **Exhibit B**

### **Example of Annual Budget and Operation and Maintenance Assessment**



# Change Order No. 1

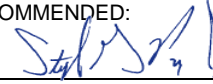
Date of Issuance: \_\_\_\_\_ Effective Date: \_\_\_\_\_

Project: Westford Road Water and Sewer Replacement	Owner: Town of Ayer, MA	Owner's Contract No.: 21DPW08
Contract: Westford Road Water and Sewer Replacement		Date of Contract: April 5, 2022
Contractor: Joseph P. Cardillo & Sons, Inc.		Engineer's Project No.:

**The Contract Documents are modified as follows upon execution of this Change Order:**

- Description: **Item 1:** Additional Sewer Manhole – Installation of a new sewer manhole and re-alignment of the new 12-inch sanitary sewer to mitigate traffic disruption and avoid a complete road closure of Westford Road.
- Item 2:** Additional Hydrant and 8"x6" Tee – Installation of a new hydrant assembly to reduce the distance between existing hydrants.
- Item 3:** Price Adjustment Clause – In accordance with M.G.L. Chapter 30, Sec. 39M, water and sewer projects shall allow for a price adjustment for fuel (both diesel and gas), liquid asphalt, and portland cement contained in cast-in-place concrete.
- Attachments: (List documents supporting change): 1. Work Change Directive No. 001, issued 5/24/2022 – Additional Sewer Manhole  
2. Work Change Directive No. 002, issued 6/27/2022 – Additional Hydrant and Tee

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price:  \$ <u>572,500.00</u>	Original Contract <input type="checkbox"/> Working days <input checked="" type="checkbox"/> Calendar days Substantial completion (days or date): <u>October 11, 2022</u> Ready for final payment (days or date): <u>November 10, 2022</u>
[Increase] [Decrease] from previously approved Change Orders No. <u>    </u> x <u>    </u> to No. <u>    </u> x <u>    </u> :  \$ <u>0.00</u>	[Increase] [Decrease] from previously approved Change Orders No. <u>    </u> x <u>    </u> to No. <u>    </u> x <u>    </u> : Substantial completion (days): _____ Ready for final payment (days): _____
Contract Price prior to this Change Order:  \$ <u>572,500.00</u>	Contract Times prior to this Change Order: Substantial completion (days or date): <u>October 11, 2022</u> Ready for final payment (days or date): <u>November 10, 2022</u>
Increase of this Change Order:  \$ <u>20,090.87</u>	[Increase] [Decrease] of this Change Order: Substantial completion (days or date): <u>0</u> Ready for final payment (days or date): <u>0</u>
Contract Price incorporating this Change Order:  \$ <u>592,590.87</u>	Contract Times with all approved Change Orders: Substantial completion (days or date): <u>October 11, 2022</u> Ready for final payment (days or date): <u>November 10, 2022</u>

<b>RECOMMENDED:</b> By: <u></u> Engineer (Authorized Signature)	<b>ACCEPTED:</b> By: _____ Owner (Authorized Signature)	<b>ACCEPTED:</b> By: _____ Contractor (Authorized Signature)
Date: <u>8/11/2022</u>	Date: _____	Date: _____

**WORK CHANGE DIRECTIVE NO.: 001**

Owner: Town of Ayer, MA  
Engineer: Arcadis U.S., Inc.  
Contractor: Joseph P. Cardillo & Sons, Inc.  
Project: Westford Road Water and Sewer Replacement  
Contract No: 22DPW08  
Date Issued: 5/24/2022  
Effective Date of Work Change Directive: 5/24/2022

Contractor is directed to proceed promptly with the following change(s):

Description:  
**Installation of a new sanitary sewer manhole between SMH-105 and SMH-103. Re-alignment of the new 12-inch sanitary sewer in the southbound lane of Westford Road.**

Attachments:

**Attachment A: C-2 Westford Road Plan and Profile**

Purpose for the Work Change Directive:

**Mitigate traffic disruption by limiting excavation to a single travel lane on Westford Road and eliminate any potential need for a complete road closure.**

Directive to proceed promptly with the Work described herein, prior to agreeing to change in Contract Price and Contract Time, is issued due to:

Non-agreement on pricing of proposed change.  Necessity to proceed for schedule or other reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price: **\$ 10,456.62**

(Line Item 7 at \$10,000 plus Line Item 12 at 4.5662% for Mobilization and Demobilization)

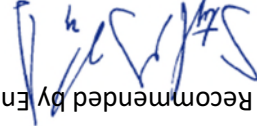
Contract Time: **0** days

Basis of estimated change in Contract Price:

Lump Sum  Unit Price  Cost of the Work  Other

By:

Recommended by Engineer



Title: Project Manager

Director of Public Works

Date: 5/24/2022

5/24/2022

Authorized by Owner



User: KRA6401, Spec: #, File: C:\USERS\YRAB401\ARCADIS\GEC INDIA - ANA WATER - ANA WATER PROJECTS 2021\10053161-01\_WESTFORD ROAD\D-PROJECTWORKING\02-DRAWINGS\SHEETS\CIVIL\C-1 TO C-2.DWG, Scale: 1:1, Saved Date: 2/15/2022, Time: 22:50, Plot Date: K R, Arjun Kumar, 2/15/2022, 23:11, Layout: 4



LEGAL ENTITY:  
ARCADIS U.S., INC.

CONSULTANTS

SEALS



TOWN OF AYER, MA

**WESTFORD ROAD WATER AND SEWER REPLACEMENT**

ARCADIS PROJ. NO. 30104709

NO.	DATE	ISSUED FOR	BY

COPYRIGHT: ARCADIS U.S., INC. 2015

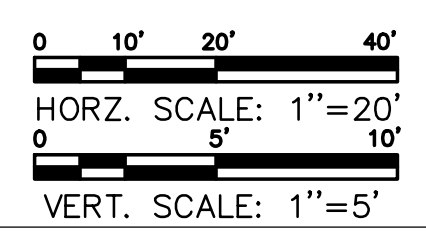
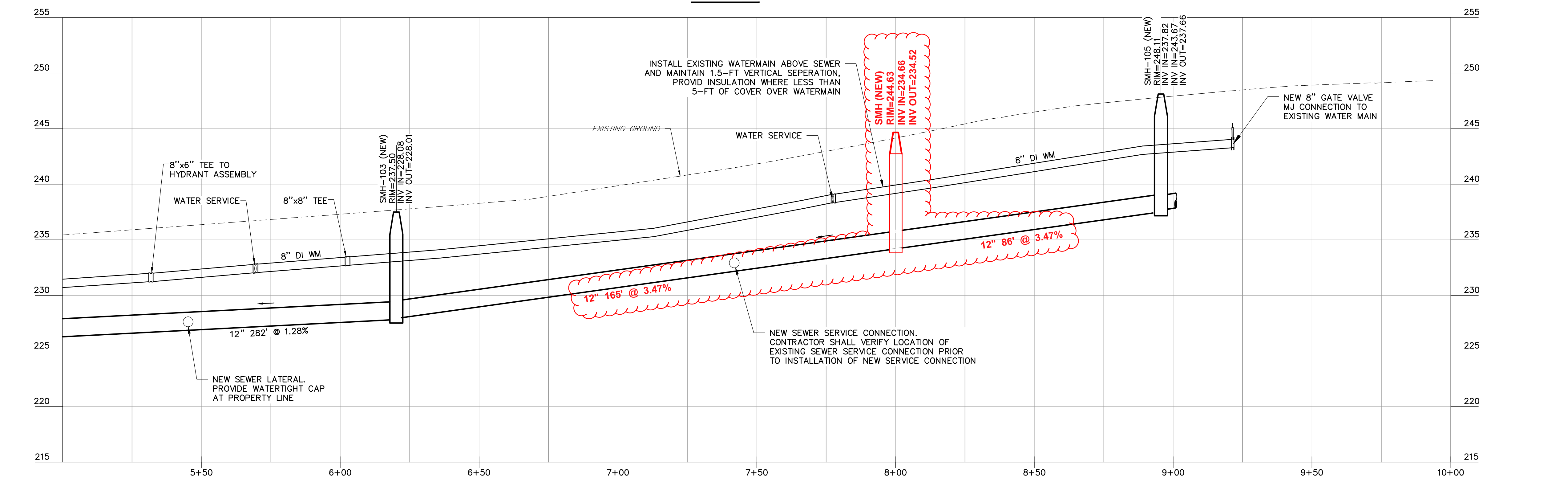
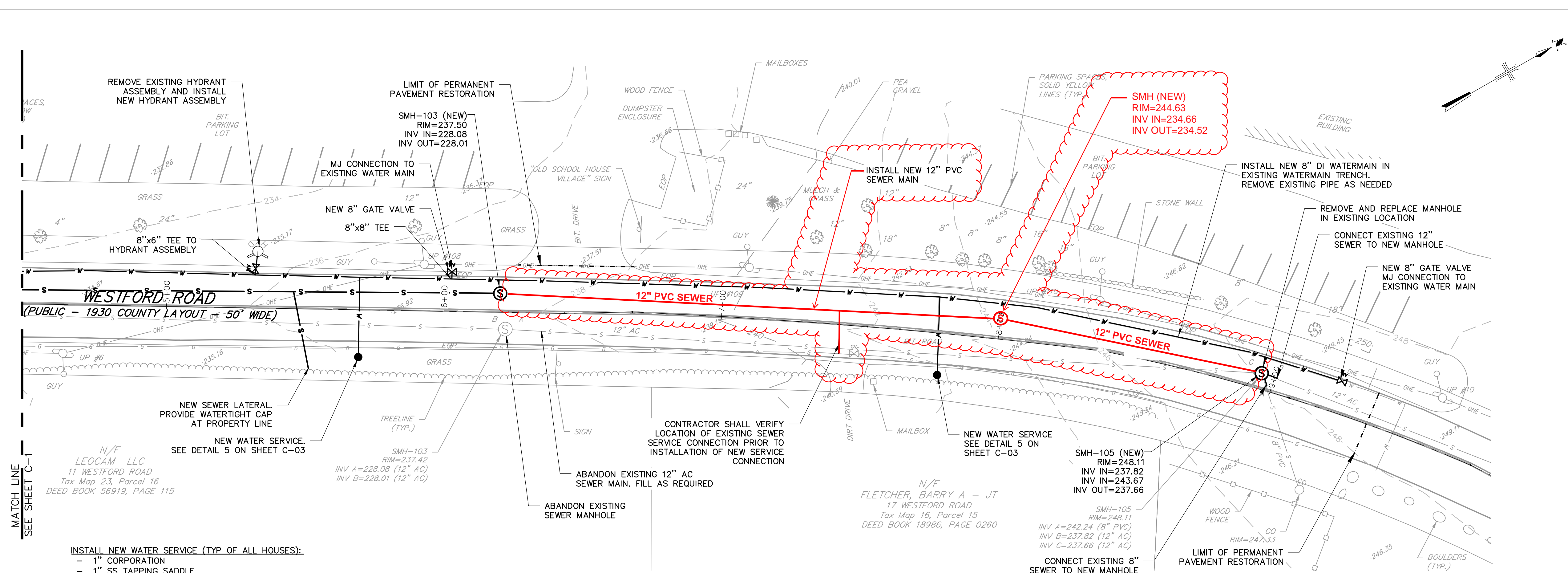
DATE: FEBRUARY 2022  
 PROJECT NO.: 30104709  
 FILE NAME: C-1 TO C-2  
 DESIGNED BY: A. ANDERSON  
 DRAWN BY: K. ARJUN  
 CHECKED BY: S. HAYNES

SHEET TITLE

CIVIL  
**WESTFORD ROAD PLAN AND PROFILE**

SCALE: AS SHOWN

C-2  
SHEET 4 OF 7



**WORK CHANGE DIRECTIVE NO.: 002**

Owner: Town of Ayer, MA  
Engineer: Arcadis U.S., Inc.  
Contractor: Joseph P. Cardillo & Sons, Inc.  
Project: Westford Road Water and Sewer Replacement  
Contract Name: 22DPW08  
Date Issued: 6/27/2022 Effective Date of Work Change Directive: 6/27/2022

Contractor is directed to proceed promptly with the following change(s):

Description:

**Installation of new hydrant assembly and 8" x 6" tee to hydrant assembly before new water gate on Southerly end of new water main.**

Attachments:

**Attachment A: C-1 Westford Road Plan and Profile**

Purpose for the Work Change Directive:

**Provide a new hydrant to reduce distance between existing hydrants and to provide connection location for temporary bypass during construction.**

Directive to proceed promptly with the Work described herein, prior to agreeing to change in Contract Price and Contract Time, is issued due to:

Non-agreement on pricing of proposed change.  Necessity to proceed for schedule or other reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

Contract Price: **\$ 8,365.30** **increase.**

(Line Item 3. at \$8,000 plus Line Item 12 at 4.5662% for Mobilization and Demobilization)

Contract Time: **0** days

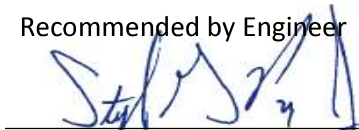
Basis of estimated change in Contract Price:

Lump Sum  **Unit Price**  Cost of the Work  Other

Recommended by Engineer

Authorized by Owner

By:



Title: Project Manager

Director of Public Works

Date: 6/27/2022

6/27/2022



CHANGE ORDER FORM

Ayer Spectacle Pond WTP PFAS Treatment

DWSRF No. 6635

Change Order No.

\_\_\_\_\_ 3

Contract Amount (As-Bid)

\_\_\_\_\_ \$5,145,889.00

Net Change in Contract Price (this Change Order)

\_\_\_\_\_ -(\$18,391.80)

Total Cost of Change Orders to date (excluding this C.O.)

\_\_\_\_\_ \$53,770.00

Total Adjusted Contract Price (including this change order and all other change orders)

\_\_\_\_\_ \$5,181,267.20

This change order extends the time to complete the work by 67 calendar days (Substantial Completion) and 15 calendar days (Final Completion)

This extended completion date is: June 6, 2022 (Substantial Completion) and September 30, 2022 (Final Completion)

This change order is checked by: \_\_\_\_\_

CDM Smith

This change order is requested by: Town of Ayer

This change order is recommended by: CDM Smith

Consultant Engineer

\_\_\_\_\_ P.E. #

\_\_\_\_\_ Date

The undersigned agree to the terms of the change order.

Winston Builders Corp.

\_\_\_\_\_ Date

Jannice L. Livingston, Chair - Select Board

\_\_\_\_\_ Date

Shaun C. Copeland, Vice-Chair - Select Board

\_\_\_\_\_ Date

Scott A. Houde, Clerk - Select Board

\_\_\_\_\_ Date

Certification of Appropriation under M.G.L. c.44, s.31C: Adequate funding in an amount sufficient to cover the total cost of this change order is available.

\_\_\_\_\_  
Lisa Gabree, Town Accountant

\_\_\_\_\_ Date

Public Entity: Town of Ayer, Massachusetts

Change Order No.: 3

Contract Title: Spectacle Pond WTP PFAS Treatment

Owner's Name: Ayer, Massachusetts – Board of Selectmen

Owner's Address: 1 Main Street, Ayer, MA 01432

Contractor's Name: Winston Builders Corp.

Contractor's Address: PO Box 990, 55 Hopkinton Road, Westboro, MA 01581

### **ITEM 1 – Extension of Substantial Completion Date**

#### **Description of Change:**

The Substantial Completion date is extended from April 1, 2022 to June 6, 2022. The Final Completion date to be extended from September 15, 2022 to September 30, 2022.

#### **Reason for Change:**

The Substantial Completion date is established as June 6, 2022 due to delays in delivery time for several of the major pieces of new equipment and extensive planning, coordination and startup services of the Calgon Granular Activated Carbon System.

**COST: \$0.00**

### **ITEM 2 – RTU Relocation**

#### **Description of Change:**

This change provides compensation for labor, materials and expenses related to the relocation of RTU -3 with startup support for the new well. The additional cost of the work is based on a negotiated lump sum cost.

**Reason for Change:**

This change was required for proper installation and startup for RTU-3 to be connected into SCADA.

**COST: \$1,022.00**

**ITEM 3 – Temporary Connection to Generator**

**Description of Change:**

This change provides compensation for labor, materials and expenses related to the connection of the new system to an existing Generator. The additional cost of the work is based on a negotiated lump sum cost. Supporting cost documentation is attached.

**Reason for Change:**

This change was required due to the extensive shipping delay of the new generator and installation of the new Propane tank (by others).

**COST: \$4,488.00**

**ITEM 4 – Tile Shower**

**Description of Change:**

This change provides compensation for labor, materials and expenses related to the interior tiling of the of the new shower located in the new building.

**Reason for Change:**

This change was required to meet plumbing code for new shower; the specified insert could not be installed due to space consideration.

**COST: \$5,572.00**

**ITEM 5 – Pressure Reducing Valve**

**Description of Change:**

This change provides compensation for labor, materials and expenses related to installation of the new pressure reducing valve (PRV) into protected water line. The additional cost of the work is based on a negotiated lump sum cost.



**Reason for Change:**

This was required to meet plumbing code due to exceedances in pressures.

**COST: \$3,446.00**

**ITEM 6 – Trap Primer and Meter Relocation**

**Description of Change:**

This change provides compensation for labor, materials and expenses related to the installation of conduit and wiring into trap primer / meter. The additional cost of the work is based on a negotiated lump sum cost.

**Reason for Change:**

This change was necessary due to the trap requiring additional power needs that was not anticipated during the design and therefore not shown on drawings. The meter installation was then revised to be inside the building instead of the proposed metering pit in well 1 for easier access – the relocation was requested by the Town.

**COST: \$6,202.00**

**ITEM 7 – Overhead Door Key Switch Opener**

**Description of Change:**

This change provides compensation for labor, materials and expenses related to the key switch exchange 3 button controller with key security controller. The additional cost of the work is based on a negotiated lump sum cost.

**Reason for Change:**

Due to security concerns, this key switch is required to maintain security of the building.

**COST: \$355.00**

**ITEM 8 – Propane Tank Credit**

**Description of Change:**

This credit provides compensation for labor, materials and expenses related to the installation of the new propane tank. The additional cost of the work is based on a negotiated lump sum cost.

**Reason for Change:**

Due to inability to obtain an adequately sized American Iron and Steel certified tank, the Town

requested to remove this work from the contract; the Town will install these tanks.

**COST: -(\$37,907.00)**

### **ITEM 9 – Water Testing Credit**

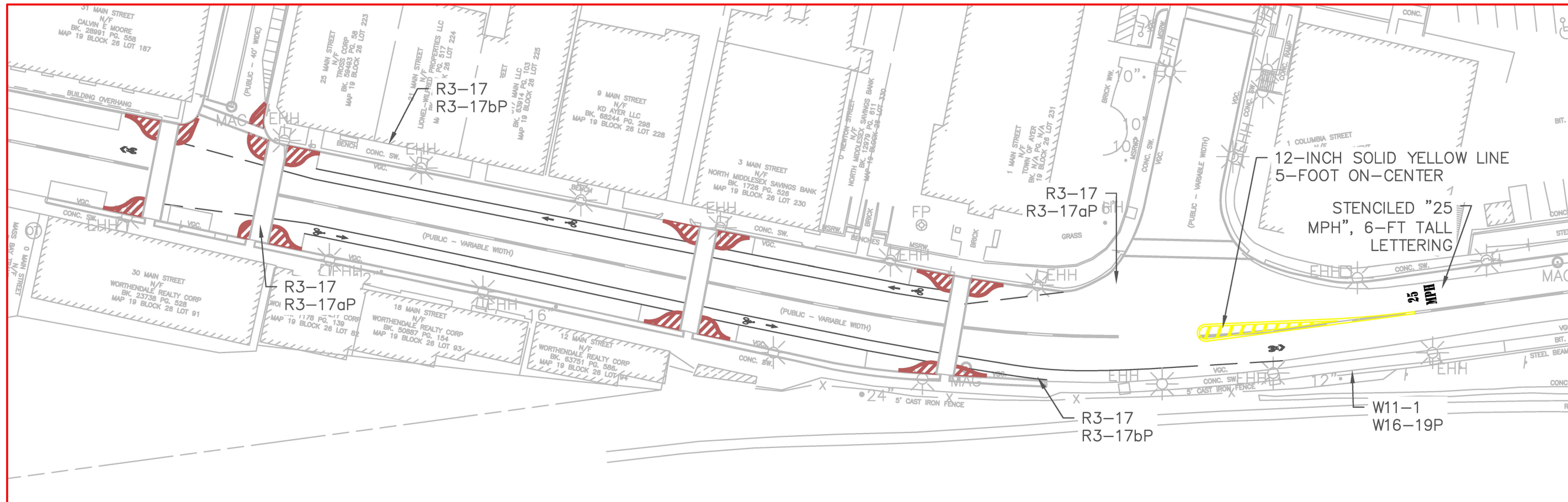
**Description of Change:**

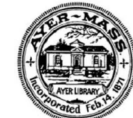
This credit provides compensation for reduced testing requirements for the GAC system startup. The cost of the work is based on the balance remaining from original testing quote.

**Reason for Change:**

Due to amount of flow available from the plant and concern of overflow on the small site, the testing/sampling scope was reduced.

**COST: -(\$10,323.80)**



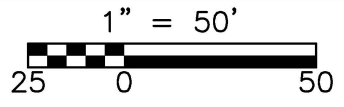
ENGINEER:  
  
 Ayer DPW  
 25 Brook Street  
 Ayer, Massachusetts

REVISIONS:






MARK	DATE	DESCRIPTION

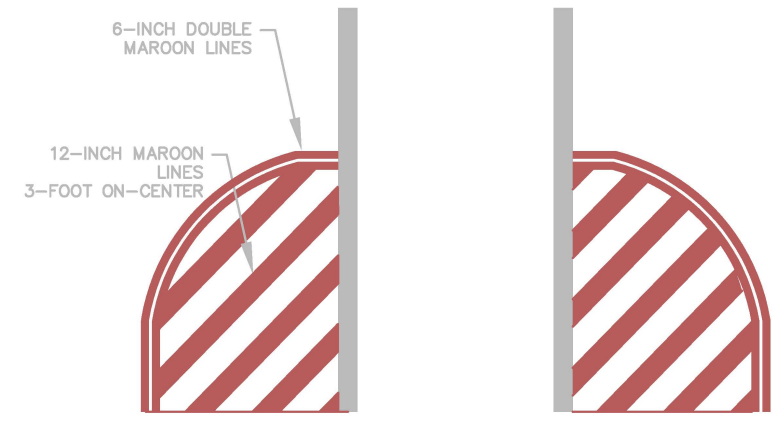
PROJECT:

INTERIM TRAFFIC CALMING – MAIN STREET  
 AYER, MASSACHUSETTS



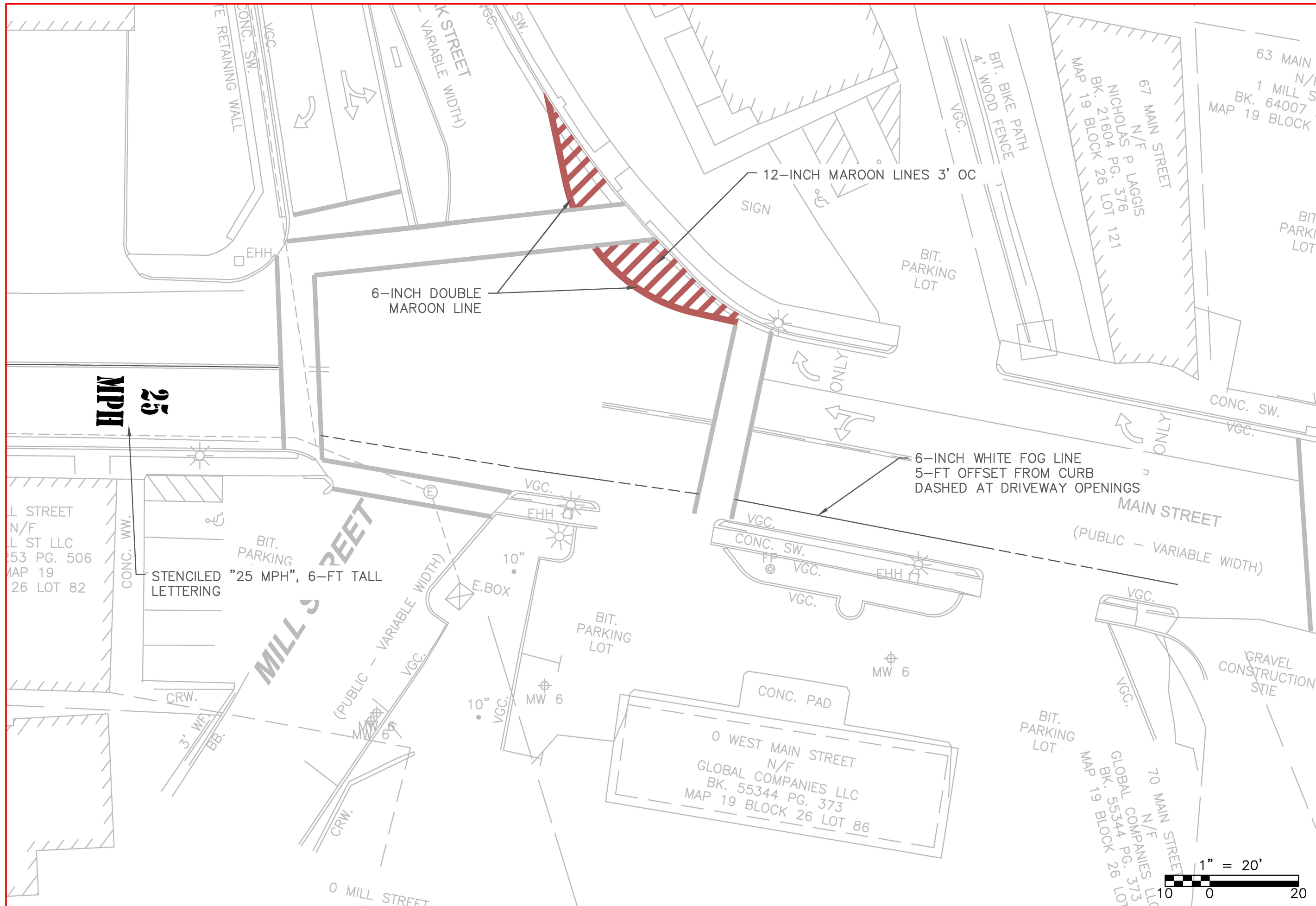
- NOTES:
- (1) SEE MUTCD 2009 EDITION AND THE 2012 SUPPLEMENT TO THE STANDARD HIGHWAY SIGN 2004 EDITION
  - (2) SEE MASSDOT STANDARD SIGNS
  - (3) BIKE LANES SHALL BE 5-FEET WIDE.

SIGN ID NUMBER	SIZE		MESSAGE	DIMENSIONS (IN)			NUMBER REQUIRED	COLOR			POST SIZE AND NUMBER REQUIRED	UNIT AREA (S.F.)	TOTAL AREA (S.F.)
	WIDTH (IN)	HEIGHT (IN)		LETTER HEIGHT	VERTICAL SPACING	ARROW RTE. MKR.		BACKGROUND	LEGEND	BORDER			
R3-17	24	18		SEE NOTE 1	SEE NOTE 1	SEE NOTE 1	4	BLACK/WHITE	WHITE/BLACK	WHITE/BLACK	P5 (4)	3.00	6.00
R3-17aP	24	8		SEE NOTE 1	SEE NOTE 1	SEE NOTE 1	2	WHITE	BLACK	BLACK	MOUNT WITH R3-17	1.33	2.66
R3-17bP	24	8		SEE NOTE 1	SEE NOTE 1	SEE NOTE 1	2	WHITE	BLACK	BLACK	MOUNT WITH R3-17	1.33	2.66
W11-1	30	30		SEE NOTE 1	SEE NOTE 1	SEE NOTE 1	2	YELLOW	BLACK	BLACK	P5 (2)	6.25	12.50
MA-W16-19P	24	18		SEE NOTE 2	SEE NOTE 2	SEE NOTE 2	2	YELLOW	BLACK	BLACK	MOUNT WITH W11-1	3.00	6.00

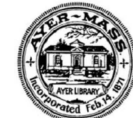


1 TYPICAL PAINTED CURB EXTENSION  
 TYPICAL DETAIL  
 NOT TO SCALE


FILE NAME:  
 AUTHOR: DELANEY YORK  
 DRAFTER: DELANEY YORK  
 CHECKED BY: DAN VAN SCHALKWYK  
 DATE: JULY 2022  
 SHEET TITLE:  
 BIKE LANE AND CURB EXTENSION PILOT  
 SHEET:



ENGINEER:



Ayer DPW  
25 Brook Street  
Ayer, Massachusetts



REVISIONS:

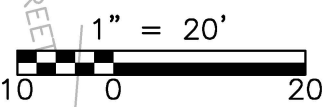
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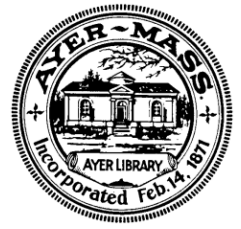
INTERIM TRAFFIC CALMING – MAIN STREET  
AYER, MASSACHUSETTS

FILE NAME:

AUTHOR: DELANEY YORK  
DRAFTER: DELANEY YORK  
CHECKED BY: DAN VAN SCHALKWYK  
DATE: JULY 2022  
SHEET TITLE:  
PARK AND MAIN STREET INTERSECTION



Office of the Select Board  
Office of the Town Manager



Town of Ayer | Ayer Town Hall | 1 Main Street | Ayer, MA 01432 | 978-772-8220 | www.ayer.ma.us

**MEMORANDUM**

**DATE:** August 12, 2022

**TO:** Ayer Select Board

**FROM:** Robert A. Pontbriand  
Town Manager

**SUBJECT: Town Manager's Report for the August 16, 2022 Select Board Meeting**

Dear Honorable Members of the Select Board,

I am pleased to transmit to you the following Town Manager's Report for the August 16, 2022 Select Board Meeting. If you have any questions prior to the meeting, please do not hesitate to contact me directly. Thank you.

**Administrative Update/Review of Town Warrant(s):**

- At the meeting I will provide a brief Administrative Update on the various activities, initiatives, and projects of the Town since the Select Board last met on July 13, 2022.
- I have reviewed, approved, and signed the following Town Warrants since the Select Board last met on July 13, 2022:

Payroll Warrant #23-01 in the amount of \$426,740.55 was reviewed, approved, and signed on July 13, 2022.

Accounts Payable Warrant #22-27 in the amount of \$696,406.87 was reviewed, approved, and signed on July 18, 2022.

Accounts Payable Warrant #23-01 in the amount of \$4,261,266.86 was reviewed, approved, and signed on July 20, 2022.

Payroll Warrant #23-02 in the amount of \$414,227.98 was reviewed, approved, and signed on July 26, 2022.

Accounts Payable Warrant #23-02 in the amount of \$216,703.19 was reviewed, approved, and signed on July 28, 2022.

Payroll Warrant #23-02 in the amount of \$397,051.00 was reviewed, approved, and signed on August 10, 2022.

**Acceptance of Donation – COA:**

- The Select Board is respectfully requested to vote to accept the \$100 donation from Compassus Home Health & Hospice to the Ayer Council on Aging/Senior Center to be placed in the COA Donation Account. Please see the attached letter from the Director of the Council on Aging/Senior Center (See attached).

**September Select Board Meeting Schedule:**

- The Select Board is normally scheduled to meet the first and third Tuesdays of September which this year would be September 6 and September 20 respectively. There is no issue with September 20. The issue with September 6 is that is the day of the State Primary Election which will be taking place at Town Hall that day. Per recommendation of the Secretary of State's Office there should be no public meetings taking place at a polling place during an election. Therefore, the Select Board is respectfully requested to select a different date for your first meeting in September.

**Update on Restoration of the Town Hall Cannon (Howitzer):**

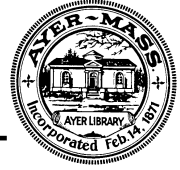
- At the meeting I will provide a brief update on the restoration of the Town Hall Cannon (Howitzer).

Thank you.

Attachment: Memo from Director of COA/Senior Center Re: Donation (July 25, 2022)

# Town of Ayer

## Council on Aging/Senior Center



18 Pond Street Rear – Ayer, Massachusetts - 01432  
*Katie Petrossi, Ph.D., Director*

Tel: 978-772-8260  
kpetrossi@ayer.ma.us

July 25, 2022

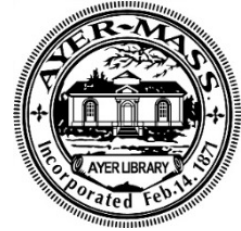
Dear Select Board –

Please accept a donation from Compassus Home Health & Hospice in the amount of \$100.00 to the Ayer Council on Aging/Senior Center. The COA was honored to assist one of their clients, a longtime Ayer resident, with his final wish to go fishing. This donation will be placed in the COA donation account.

Thanks,

*Katie Petrossi, Ph.D.*  
Director  
Ayer Council on Aging  
18 Pond Street  
Ayer, MA 01432  
(978) 772-8260  
[kpetrossi@ayer.ma.us](mailto:kpetrossi@ayer.ma.us)

**Town of Ayer  
Ayer Select Board  
Ayer Town Hall – 1<sup>st</sup> Floor Meeting Room  
Ayer, MA 01432**



*Broadcast and Recorded by APAC*

**Wednesday July 13, 2022**  
**Open Session Meeting Minutes**

**SB Present:** Jannice L. Livingston, Chair; Shaun C. Copeland, Vice-Chair; Scott A. Houde, Clerk

**Also Present:** Robert A. Pontbriand, Town Manager  
Carly M. Antonellis, Assistant Town Manager (Via Zoom)

**Call to Order:** J. Livingston called the meeting to order at 6:00 PM.

**Pledge of Allegiance:** Select Board members and meeting attendees stood and recited the Pledge of Allegiance.

**Approval of Meeting Agenda:**

**Motion:** A motion was made by S. Houde and seconded by S. Copeland to approve the meeting agenda. **Motion passed 3-0.**

**Moment of Silence:** The Select Board observed a moment of silence in observation of Clark W. Paige, who recently passed away. He was both a member of the Ayer Fire Department and an elected Constable.

**Public Input:** None

**Petition for Street Acceptance – Crabtree Development, LLC – Portions of Pingry Hill Subdivision:** Mika Lassila was in attendance on behalf of Crabtree Development. Crabtree Development is petitioning for street acceptance for the October 2022 Fall Special Town Meeting for Woodland Way and the cul-de-sac of Hemlock Drive. The next process is for the DPW and the Planning Board to review and it will come back to the Select Board for approval to be placed on the Warrant.

**Motion:** A motion was made by S. Houde and seconded by S. Copeland to approve the intent to layout street acceptance for portions of Pingry Hill subdivision. **Motion passed 3-0.**

**Chief Brian P. Gill, Ayer Police Department - Letter of Recognition for Ayer Public Safety Personnel:** Chief Gill and Deputy Chief Bigelow were in attendance to recognize members of the Ayer Police Department, Ayer Fire Department, Ayer/Shirley Regional Dispatch, and the Department of Public Works. Members of the Town's public safety personnel were instrumental in a missing person's case on Friday July 1, 2022. The elderly gentleman was later found safe. Chief Gill, the Select Board, and Town Manager Pontbriand thanked all those involved.

*Ayer PD Awarded Accreditation Status* - Chief Gill announced that the Ayer Police Department has officially attained Accreditation Status. The Accreditation Status demonstrates that the Ayer Police Department has attained the highest level of professional police standards and best practices and policies. A lot of work went into this process and a special thanks to the Accreditation Team and former Chief Murray for all their work. The Accreditation is good for three years.

**Katie Petrossi, Director, Ayer Council on Aging - Update on Senior Center Site Selection Process:** R. Pontbriand introduced Katie Petrossi, COA Director and Dennis Curran from the COA for an update on the Senior Center Site Select Process. He also recognized and thanked all the members of the Senior Center Site Selection Working Group for their ongoing efforts.

A power point presentation was made highlighting the Senior Center Site Selection Working Group's work. The biggest challenge has been finding a viable site of approximately 1.5 acres in size to locate and construct the new Senior



Center. The Town of Ayer is only 9.5 square miles and land is at a premium. Unfortunately, the Town does not have any viable municipal land or former municipal buildings that could accommodate this project. Many potential sites are privately owned and not necessarily for sale. Other potential sites such as the West Main Street site proposed at the Fall 2020 Town Meeting have environmental issues/challenges. Some potential sites have logistical or conservation challenges. The Working Group has also approached MassDevelopment and has been open to looking at a site that is on Devens but that is adjacent and near Ayer. The Working Group also issued a formal Request for Proposals (RFP) for potential land sites or buildings and received only one formal response for a building on Devens which was deemed not to be suitable for this project. We have the project and the program, we do not have the site yet.

R. Pontbriand stated at the conclusion of the presentation that the next steps are for the Working Group to continue to work with the consultant to find a viable site for this project. This may require some additional funding for consultant services and due diligence costs. The next step would then be to acquire the site which would require authorization from Town Meeting. Timing is an issue here so it would be ideal if the Select Board would potentially consider calling a Special Town Meeting for the purposes of acquisition rather than be confined to either the Fall or Annual Town Meeting. The final step after acquisition will be to fund, procure, and construct the project.

J. Livingston thanked everyone for the presentation and stated that she and the Select Board are fully supportive of this important project. She stated that she would be open to calling a Special Town Meeting if needed for the purposes of this project. S. Houde and S. Copeland concurred with their support for the project and the potential for a Special Town Meeting if needed.

S. Houde stated that in terms of additional funding for consultant services and due diligence costs, perhaps the Fall Town Meeting this October would be an opportunity assuming that free cash is certified. He stated that he is supportive of the project. R. Pontbriand also referenced a letter from the Council on Aging in the meeting packet which expresses their support for the project.

*Acceptance of Anonymous Donation* - K. Petrossi presented an Anonymous Donation in the amount of \$1,500 that was made to the Senior Center/COA and requested that the Select Board vote to accept the donation. The donation will be deposited into the COA Donation Account.

**Motion:** A motion was made by S. Houde and seconded by S. Copeland to accept the Anonymous Donation in the amount of \$1500 to the Ayer COA/Senior Center. **Motion passed 3-0.**

**Dan Van Schalkwyk, Director, Dept. Of Public Works - Agreement for Wastewater Treatment and Disposal Services – MassDevelopment:** D. Van Schalkwyk advised that the Town just got back the agreement from MassDevelopment and that Town Counsel needs to do a final review before it is ready for approval. As such he presented another amendment to extend the existing agreement through September. He stated that this should be the last extension amendment and that he hopes to have the final agreement before the Board in August for approval.

**Motion:** A motion was made by S. Houde and seconded by S. Copeland to approve the amendment for extension of the current agreement for wastewater treatment and Disposal Services as presented by the DPW Director. **Motion passed 3-0.**

*Drought Status* - D. Van Schalkwyk provided the Select Board with an update on the current Drought Status. Ayer is currently at a Level 2 – Significant Drought Status. He made a brief power point presentation to the Select Board. He is recommending that all residents and business practice voluntary water conservation measures during this time. The DPW is closely monitoring the water supply and water system during this time, and he will continue to keep the Select Board and Town updated.

*Converting the Town's Vehicle Fleet to Electric* - D. Van Schalkwyk advised that the Town recently participate in the National Grid Massachusetts Fleet Advisory Services Program. The program provided a final report with recommendations to convert a vehicle fleet to electric. The DPW, Fire, Police, and Parks Department participated, and a final report is available. D. Van Schalkwyk made a brief power point presentation on the findings and recommendations of the report which included replacing vehicles with electric when possible and practical; look to

installing the appropriate electric charging infrastructure when possible and subject to funding (ideally grant funding); and continue to update the fleet report.

J. Livingston stated that though she is not opposed to electric vehicles, we need to be aware that in many instances electric vehicles use just as much if not more energy to produce and use.

*DPW Project Status Update* - D. Van Schalkwyk provided a brief update to the Select Board on various ongoing DPW projects which included the Spectacle Pond Water Treatment Plant PFAS Treatment System which is operations; various Wastewater Treatment Plant Improvements; the ongoing MassWorks West Main Street Infrastructure project; and the new hours of operation at the Transfer Station.

**Peter Lowitt, Devens Enterprise Commission - Legislation to Eliminate the Devens Commercial Development Cap:** Peter Lowitt and Neil Angus of the Devens Enterprise Commission appeared before the Select Board along with DEC Representatives, Bill Marshall, Judge Bob Gardiner and Marty Poultry to request the Select Board's support in requesting the State Legislature to raise the development cap at Devens by the end of the current Legislative Session on July 31, 2022. P. Lowitt provided a detailed power point presentation on approaching the development cap at Devens and why it should be lifted. Every five years the Devens Enterprise Commission conducts a progress review of the development cap. Recent analysis showed Devens approaching 6 million sq. ft of commercial development. The 2021 Annual Report of the DEC showed an additional 1 million sq.ft. during that calendar year. Devens is currently approaching 7.7 million square feet of commercial development and we expect to reach the 8.5 million square feet commercial development cap sometime in late 2022 or early 2023 based on projects in the development pipeline.

P. Lowitt further advised that the possible impacts of leaving the commercial development cap in place would be that Salerno Circle, Shirley Village Growth, and the North Post's future redevelopment would be in jeopardy. Some properties have existing master plans showing additional development over 1.28 million square feet of which would be put at risk by the cap. MassDevelopment has calculated that there is another 2 million plus square feet of development potential within the Devens Regional Enterprise Zone. Devens role as an economic development destination for the Commonwealth would be at risk.

P. Lowitt concluded the presentation by stating that Devens success is equal to local, regional, and state success. The request to lift the development cap will correct a change that should have been made in 2008; it is consistent with the Final Environmental Impact Report; consistent with the Devens Sustainable Redevelopment goal in the Devens Reuse Plan; will continue economic, social, and environmental successes of Devens for the region and Commonwealth; and is consistent with Devens continues leading by example as a National and International model of successful and sustainable military base and community redevelopment.

P. Lowitt thanked the Select Board and requested that they support lifting the commercial cap as presented.

J. Livingston thanked Peter Lowitt and the DEC for their excellent work. She appreciated Mr. Dan Rivera, CEO of MassDevelopment for being at the meeting via Zoom. She had asked that he be here. The DEC has done an excellent job in making the case and request to lift the commercial cap and their efforts are on behalf of MassDevelopment. The issue, Mr. Rivera is that MassDevelopment has been silent for months on the Devens Framework Committee. This is the first time we have heard your voice and I thank you for being here.

D. Rivera (via Zoom) thanked J. Livingston and apologized that he could not be at the meeting in person. The DEC is the honest broker, and we take their guidance on the development cap. The question before you is to raise the development cap so that Devens can continue to do great work. MassDevelopment supports this and stands behind the request.

J. Livingston stated that as pointed out the DEC needs Ayer, Harvard, and Shirley and MassDevelopment. Speaking for Ayer, we would like a relationship with MassDevelopment. I would like to invite you to attend our next meeting on August 16. We have met all the other heads of MassDevelopment through the years, but we have yet to meet directly with you. D. Rivera stated that short of a force majeure, I will attend your next meeting on August 16, 2022.

S. Houde asked what the total potential development build out of Devens is? P. Lowitt stated that it is estimated to be 12 million square feet.

N. Angus stated that the 12 million is an estimate and that there are various variables that can impact that number in terms of types of development, etc.

R. Pontbriand through the Chair thanked P. Lowitt and the DEC for all their work on this and their presentation this evening. He addressed D. Rivera directly that the Town of Ayer is concerned that there is not a true relationship at this time with MassDevelopment. The fundamental concern is that up until a few months ago, MassDevelopment was an active partner on the Devens Framework Committee and then abruptly left the Committee with no explanation. Numerous letters have been sent directly to MassDevelopment from the Towns and others involved on the Framework Committee and there has been no response. Now, tonight, there is suddenly an urgency for the Town's to support lifting the development cap at Devens and the Town's are being asked to act immediately but on the issues of disposition of Devens, MassDevelopment has not only not been at the table but has yet to explain their reasons why and respond. I look forward to discussing this further with you at the August 16 meeting, and I hope that you actually come.

D. Rivera stated that we have some work to do to focus on the right things at Devens. We have to fix a bridge, build a new public safety building, fund education. It is not that disposition and jurisdiction are less important.

R. Pontbriand stated that the most important question facing Devens, MassDevelopment, the DEC, Ayer, Harvard, and Shirley is the question of future disposition. We have developed a framework committee consisting of the Towns, the DEC, MassDevelopment, and Devens residents and were working through a pandemic and making progress and then your agency (MassDevelopment) just walked away with no explanation and no explanation to date after numerous formal inquiries. I deal with bridges and municipal issues everyday, but I am at the table, we don't know where you are and why MassDevelopment has left this important collaborative effort dealing with the issue of disposition.

D. Rivera stated that he understands the frustration and we have until 2030 or so and I don't want to be cavalier.

J. Livingston stated that the letter you sent explaining why MassDevelopment was stepping away is not good. It covers some of the basic facts from your perspective, but you have received numerous requests for further explanation and to meet and to return to the table and it appears you have filed that in "cabinet 13". It comes across that you are not a good neighbor. I feel someone got offended and decided to leave. I am a straight shooter. This is very important. We have been ignored and it only take five minutes to acknowledge and respond. This is what has upset many not only in Ayer but in Harvard, Shirley, on Devens, and on the Framework Committee. I hope you will come to our meeting on August 16.

S. Houde asked if the 12 million square feet for the estimated development cap build out considers housing. P. Lowitt stated that is a good point and that the DEC only looked at the commercial development cap. This recommendation and analysis have to do with the commercial development cap and does not factor in housing.

S. Houde clarified that the DEC is seeking a vote of support and has Shirley and Harvard weighed in. P. Lowitt stated that they are looking for a vote of support. Shirley voted to support, and we meet with Harvard next week.

**Motion:** A motion was made by S. Houde and seconded by S. Copeland to support lifting the Devens commercial development cap as presented and requested by the Devens Enterprise Commission. **Motion passed 3-0.**

**Town Manager's Report - Administrative Update/Review of Town Warrant(s):** R. Pontbriand provided a brief Administrative Update to the Select Board on the various activities, initiatives, and projects of the Town since the Select Board last met and referenced the Town Warrants that are in the Select Board's packet that were approved since the Select Board last met. In the interest of time, he asked if there were any specific questions from the Select Board in terms of the Administrative Update before he moved onto the action items under his report. There were no questions from the Select Board.

*Appointments: Cemetery Commission and Cable Contract Committee* - R. Pontbriand reviewed the appointment process for the Cemetery Commission as approved by the Select Board on June 7, 2022 and accordingly the Town advertised the positions from June 8 to June 24 2022 on the Town's website; social media and on the exterior Town Hall posting board. The Town originally received four applicants for three positions: Betsy Diskin; Sam Goodwin; Ed Orr; and Susan Tordella-Williams. Their letters of intent are in the Select Board's meeting packet and all candidates were invited to appear tonight before the Select Board to be interviewed.

R. Pontbriand further advised that he received an email that Ed Orr was withdrawing from consideration. Additionally, Betsy Diskin contacted him that she could not be here tonight due to an unforeseen matter out of Town and would be happy to meet with the Select Board at a future meeting. Susan Tordella-Williams is currently out of the country. Sam Goodwin is in attendance this evening. The process was followed, there are three interested candidates for three positions, Sam Goodwin is here tonight, what is the will of the Select Board?

S. Houde stated that we have three candidates who are willing to serve, and I have no issue with appointing them. He asked about the candidates' preferences for the length of each term.

R. Pontbriand stated that Susan Tordella-Williams expressed interest in the one-year term. The other candidates did not express a preference.

S. Houde asked Sam Goodwin his preference and he responded the three-year term.

**Motion:** A motion was made by S. Copeland and seconded by S. Houde to appoint the following three individuals to the Ayer Cemetery Commission as follows: Sam Goodwin to a three-year term; Betsy Diskin to a two-year term; and Susan Tordella William to a one-year term. **Motion passed 3-0.**

R. Pontbriand presented the candidates for appointment to the Cable Advisory Committee which is charged with negotiating the Town's cable license with Comcast and bringing the license before the Select Board for review and final approval. The Committee consists of five members which serve a three-year term of which one is a Select Board representative which the Select Board should decide this evening.

The candidates for approval are Janet Providakes; Scott Kurland; Julie Murray; and Police Chief Brian Gill. J. Livingston volunteered to be the Select Board representative to the Committee.

**Motion:** A motion was made by S. Copeland and seconded by S. Houde to appoint Janet Providakes; Scott Kurland; Julie Murray; Chief Gill; and Select Board Member Livingston to the Cable Advisory Committee for three-year terms. **Motion passed 3-0.**

*Continued Discussion of FY 2023 Goals and Objectives* - R. Pontbriand suggested that in the interest of time, that the continued discussion of the FY 2023 Goals and Objectives be deferred to the next meeting. The Select Board concurred.

R. Pontbriand was joined by Alan Manoian, Director of Community and Economic Development to provide a brief update on the Town's plans to restore the cannon (howitzer) on the grounds of Town Hall. The three major components of this project will be to move the historic marker for the howitzer from the back of Town Hall to be placed by the howitzer as it was historically located; historically restore and repair the howitzer; and build the appropriate base for the howitzer to be placed on. Additionally, the Community Preservation Committee Chair has expressed support for an application for funding for the historic restoration component of the project.

Alan Manoian provided the Select Board with an overview of the history of the howitzer and stressed the importance of restoring and preserving it. He also stated that there should be a rededication ceremony when the project is complete.

R. Pontbriand stated that this project will be a collaboration between the Facilities Department, Community and Economic Development Department, DPW, and in coordination with the Veterans Agent and Historic Commission with

potential funding support from the Community Preservation Committee. He wanted the Select Board to be aware of this project and that there will be future updates at future Select Board meetings on the project.

**New Business/Select Board Member Questions:** None

**Approval of Meeting Minutes:**

**Motion:** A motion was made by S. Houde and seconded by S. Copeland to approve the meeting minutes from June 21, 2022. **Motion passed 3-0.**

**Adjournment:** A motion was made by S. Copeland and seconded by S. Houde to adjourn at 8:26 PM. **Motion passed 3-0.**

Minutes Recorded and Submitted by Carly M. Antonellis, Assistant Town Manager & Robert A. Pontbriand, Town Manager

**Date Minutes Approved by SB:** \_\_\_\_\_

**Signature Indicating Approval:** \_\_\_\_\_

DRAFT