



Town of Amherst, NH
BOARD OF SELECTMEN AGENDA
Barbara Landry Meeting Room
2 Main Street
MONDAY, SEPTEMBER 26, 2022 6:30 PM

1. Call to Order

2. Pledge of Allegiance

3. Public Hearing

- 3.1. Public Hearing: Pursuant to RSA 31:95-b: III (a), the Amherst Board of Selectmen shall hold a public hearing in conjunction with its scheduled meeting for the purpose of accepting unanticipated money in the amount of \$25,786.75 from NH Interlocal Trust for Return of Surplus from FY2014, 2015 and 2016.

4. Citizens' Forum

5. Board Discussion

- 5.1. HDC Board member application, Nicole Crawford

6. Scheduled Appointments

- 6.1. SLRD Update, Bruce Bowler, Dan Veilleux, Eric Slosek

7. Strategic Plan Presentations

- 7.1. Recreation Department Strategic Plan
7.2. Library Strategic Plan Presentation
7.3. FY24 Bicycle & Pedestrian Advisory Committee Strategic Plan

8. Administration

- 8.1. Janssen NH State-Wide Settlement Agreement

9. Staff Reports

- 9.1. Acceptance of Highway Safety Grant Funding

- 9.2. PMEC Coordinator Resignation
- 9.3. Contribution Assurance Program (CAP) Agreement for WC and PL
- 9.4. Investment Policy FY23 - DRAFT
- 9.5. Town Hall ERV Bid
- 9.6. DPW Winter Sand Bids
- 9.7. Nuisance Trees

10. Approvals

- 10.1. Use of Town Common Request- Annual Boy Scout Troop 613 Halloween chili and hot dog sale, Monday October 31, 2022
- 10.2. Use of Town Common Request- Amherst Junior Women's Club for their Annual Trot Off Your Turkey 5K and Fun Run, Saturday November 26, 2022
- 10.3. AP, Payroll and Minutes

11. Action Items

12. Old/New Business

Adjournment

Next Meeting: October 11, 2022

You are invited to a Zoom webinar.

When: Sep 26, 2022 06:30 PM Eastern Time (US and Canada)

Topic: Amherst NH Board of Selectmen meeting 09/26/2022

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/81141600180>

Or Telephone: 1 301 715 8592

Webinar ID: 811 4160 0180

**Town of Amherst, NH
BOARD OF SELECTMEN**

NOTICE OF PUBLIC HEARING

**Barbara Landry Meeting Room, Town Hall – 2 Main Street
Monday September 26, 2022 6:30 PM**

Pursuant to RSA 31:95-b: III (a), the Amherst Board of Selectmen shall hold a public hearing in conjunction with its scheduled meeting for the purpose of accepting unanticipated money in the amount of \$25,786.75 from NH Interlocal Trust for Return of Surplus from FY2014, 2015 and 2016.

All interested citizens are invited to attend the meeting.

From: [Nicole Crawford](#)
To: [Jennifer Stover](#)
Subject: Volunteer Application HDC
Date: Friday, September 16, 2022 1:19:20 PM
Attachments: [NCrawford Volunteer App.pdf](#)

[External Sender]:

Good Afternoon Jennifer,

I would like to submit my application as a volunteer with the Historic District Commission. The website lists an opening for an alternate, but I am willing to help in any capacity I can.

The historic character of Amherst and The Village is a unique part of our town and I am very interested in helping preserve it. I am also interested in working with the residents who live in the district to address their needs in regard to their projects, home maintenance, and the regulations.

I only have an interest in historic architecture and preservation with no professional or educational background on the subject, but I am a civil engineer and my background reading plans and specifications could be helpful. I also have experience with permit or project applications so I am familiar with reading and applying municipal regulations, and I understand the expectations of timely reviews as well as the importance of communication with the public.

Please find my application attached, and let me know if there is any more information you might need.

Thank you very much,
Nicole Crawford



Town of Amherst, NH
Volunteer Application

Board/Committee/Commission you wish to serve on: Historic District Commission

Applicant Name: Nicole Crawford

Residence Address: 68A Baboosic Lake Road, Amherst, NH 03031

Mailing Address: Same as above

Telephone: _____
(Home) (Work) (Cell)

E-mail Address: ncrawford@outlook.com

Time Available - Hours per month (Circle One): 2 5 10 20 30

Other Boards/Committee/Commission Served On (may include other cities/towns):

Please submit a brief statement describing your interest in the position you are applying for and what qualities/experience you will bring to the board to help with its goals and mission.

Nicole Crawford
Signature

9/16/2022
Date

Please return this form and requested statements to:

**Jennifer Stover
Town of Amherst
2 Main Street
Amherst, NH 03031**

or e-mail: jstover@amherstnh.gov

9-26-22 SRLD Update to BOS

Recycling –

It is imperative that we continue to do whatever we can to increase recycling among residents in town. Inflation, tipping fees, labor shortages, and fuel prices have heavily impacted the solid waste industry. Recycling revenue/ton is generally going down and, in some cases, we pay to recycle. For example, we pay to dispose of glass at \$45/ton because it is still cheaper than going in the trash (trash tipping fees are \$77/ton and increasing to \$90/ton in January). A few significant recycling rate increases include:

	<u>August 2021</u>	<u>August 2022</u>	<u>% Reduction in Revenue (per ton)</u>
Mixed Paper	\$75/ton	(\$30/ton)	140%
Cardboard	\$200/ton	\$95/ton	52.5%
Clear Plastic	\$240/ton	\$0/ton	100%

In addition to reducing the number of trips (hauling fees), the best way to offset our disposal expenses is to recycle more. With the per/ton prices for recycling dropping, if our tonnage remains the same our total revenue will drop. Increasing recycling participation among residents is critical.

We are thinking of ways to reduce our tonnage of trash. Some initiatives we have begun working on are planning to build a kiosk to place at the transfer station where residents can review information about our operation. We are planning to put out monthly information to inform residents about the impact recycling has on reducing their taxes. We will be making regular posts on our social media platform to educate residents as well.

We are also looking into opportunities to start composting food scraps that we are paying to dispose of (more information below).

SRLD Equipment/Budget

The SRLD has purchased a new compactor to reduce the amount of time that we would have been running with only one trash compactor. The district will remove the old unit and replace it with the new unit which should only take 2-3 days. Once the old unit has been removed, we will have that unit refurbished so that we can continue down the line.

The SRLD is also in our budget season, and we have been doing all we can to keep our budget on target, which, with the increases that no one saw, has been difficult. This has caused us to hold off on some projects. We have been hit hard with fuel surcharges as well as having to haul trash to Fitchburg a few times when the incinerator was closed due to fires.

We do anticipate an increase in our budget for next year, but we will be mindful of the increase to the town. As mentioned above, increasing recycling helps offset the trash tipping fees. Some of the

recyclables can generate good returns. We have several pieces of equipment that need work. We need to budget for that. We are also hoping to get a second trailer for Mont Vernon so that we can reduce the number of trips that are needed to haul their trash. They currently only have one trailer. This will enable them to increase the weights in their trailers, in turn reducing trips/hauling fees.

Composting Opportunity

The transfer station has an opportunity to begin a pilot program to test the feasibility of and the community's interest in composting food waste. Agri-Cycle, a company based in Exeter, Maine, provides compost collection services throughout New England. They are building collection routes in our area, but unfortunately, they currently have limited capacity and can only commit to providing service in Amherst, as it is along an existing route.

Agri-Cycle will provide as many 64-gallon totes with plastic liners as needed and provide service up to two times per week. After the food waste is collected, it is transported to Exeter, Maine where it is processed to remove any packaging or contaminants, then it is turned into a slurry and transferred into an anaerobic digester. During this process, the waste generates methane gas that is used to generate electricity. Once the digestion process has completed, the remains are then processed again to remove any remaining contaminants and dried to be used for fertilizer or bedding for dairy cows.

The SRLD, like many municipalities, has been exploring the idea of composting for several years. Processing compost internally would require a state permit, staff training, acquiring specialized equipment, dedicating a significant amount of land, and dealing with the potential odor and vector issues that could arise. Using a service such as Agri-Cycle, allows the transfer station a low-risk opportunity to offer the residents an environmentally responsible alternative for food waste.

Annual Cost of Compost Service					
No. of Totes	Waste Diverted	Pounds of		Net Variance	Add'l Cost During Trial Period
		Compost	MSW		
2	500	\$ 225.12	\$ 121.93	\$ 103.20	\$ 619.17
3	750	\$ 287.53	\$ 182.89	\$ 104.64	\$ 627.83
4	1000	\$ 349.93	\$ 243.85	\$ 106.08	\$ 636.49
5	1250	\$ 412.34	\$ 304.82	\$ 107.52	\$ 645.15
6	1500	\$ 474.75	\$ 365.78	\$ 108.97	\$ 653.81
7	1750	\$ 537.15	\$ 426.74	\$ 110.41	\$ 662.47
8	2000	\$ 599.56	\$ 487.71	\$ 111.85	\$ 671.13
9	2250	\$ 661.97	\$ 548.67	\$ 113.30	\$ 679.79
10	2500	\$ 724.37	\$ 609.63	\$ 114.74	\$ 688.45
11	2750	\$ 786.78	\$ 670.60	\$ 116.18	\$ 697.10
12	3000	\$ 849.19	\$ 731.56	\$ 117.63	\$ 705.76
13	3250	\$ 911.59	\$ 792.52	\$ 119.07	\$ 714.42
14	3500	\$ 974.00	\$ 853.49	\$ 120.51	\$ 723.08
15	3750	\$ 1,036.41	\$ 914.45	\$ 121.96	\$ 731.74
16	4000	\$ 1,098.81	\$ 975.41	\$ 123.40	\$ 740.40
17	4250	\$ 1,161.22	\$ 1,036.38	\$ 124.84	\$ 749.06
18	4500	\$ 1,223.63	\$ 1,097.34	\$ 126.29	\$ 757.72
19	4750	\$ 1,286.03	\$ 1,158.30	\$ 127.73	\$ 766.38
20	5000	\$ 1,348.44	\$ 1,219.27	\$ 129.17	\$ 775.04
21	5250	\$ 1,410.84	\$ 1,280.23	\$ 130.62	\$ 783.70
22	5500	\$ 1,473.25	\$ 1,341.19	\$ 132.06	\$ 792.35
23	5750	\$ 1,535.66	\$ 1,402.16	\$ 133.50	\$ 801.01
24	6000	\$ 1,598.06	\$ 1,463.12	\$ 134.95	\$ 809.67
25	6250	\$ 1,660.47	\$ 1,524.08	\$ 136.39	\$ 818.33

Currently, the fees for the service are similar to, or slightly more than, sending MSW to the incinerator, depending on how much food waste we collect. Because part of the fee structure involves fixed costs, the more food waste we divert, the more competitive the price. Moreover, as our rates for disposal at the incinerator are increasing dramatically and commodity prices for recyclable materials are extremely volatile, it is more and more important that we explore alternative ways to divert waste.

<https://www.agricycleenergy.com/helping-brunswick-maine-with-residential-drop-off-of-food-waste/>

<https://www.mainepublic.org/business-and-economy/2022-07-21/this-maine-farm-converts-truckloads-of-food-waste-to-electricity-it-still-could-be-taking-more>

<https://www.newscentermaine.com/article/news/local/city-of-portland-expands-free-community-composting-program-after-overwhelming-popularity-earth-day-maine-drop-off-environment/97-d11fbaee-4d80-4126-be0b-0822af5d161b>



Amherst NH Town Government



Amherst Parks & Recreation FY24 and beyond Strategic Plan

September 26, 2022



Mission

To enhance the quality of life for all Amherst residents with high-quality programming in health, leisure, fitness, and outdoor education through a series of well-maintained park(s) and recreational facilities.





Vision

By expanding recreation programs, parks, and facilities, we will take an active role in creating community that invigorates the active senior, reduces the stress and isolation of working adults, and inspires and teaches youth to become productive community members.





Department Vision

- Develop & Manage Park and Recreation infrastructure available to citizens.
- Diversify program offerings to serve citizens of all ages.
- Maximize staffing efficiency to alleviate the need for staff with specific skill sets in a competitive job market.



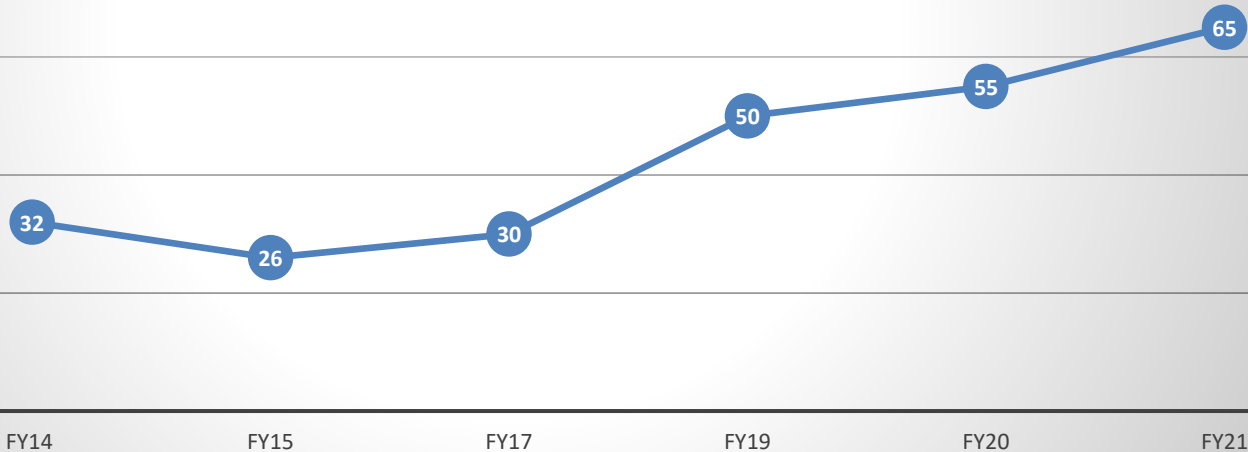


Develop and Manage a Parks and Recreation Infrastructure System

Acres of parkland managed by ARD

National Average - 10.4 acres of parkland per 1000 residents

114

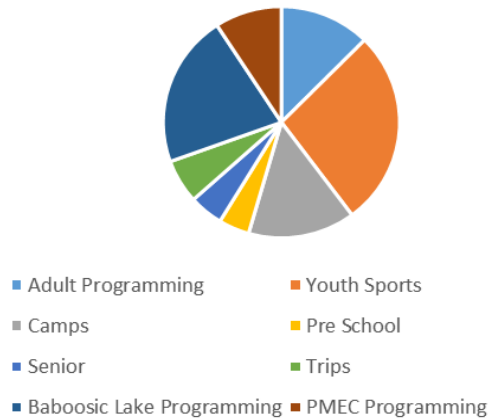


ACRES OF MANAGED
RECREATIONAL SPACE

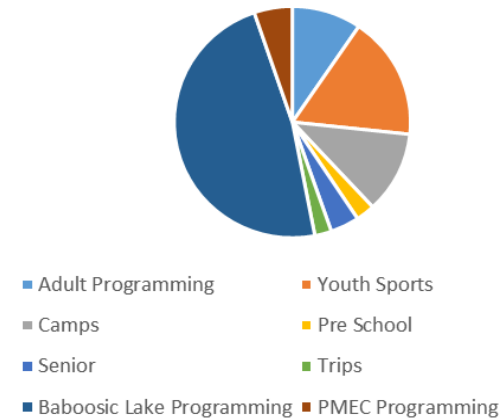


Diversify program offerings to serve citizens of all ages.

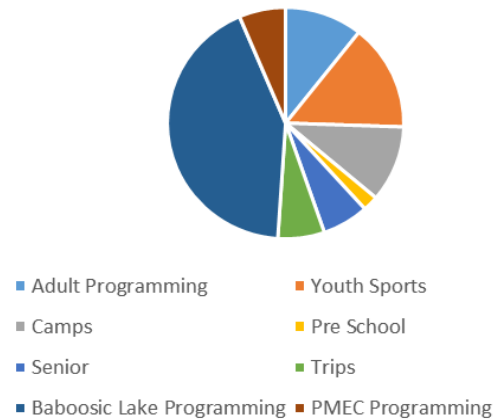
FY16



FY22



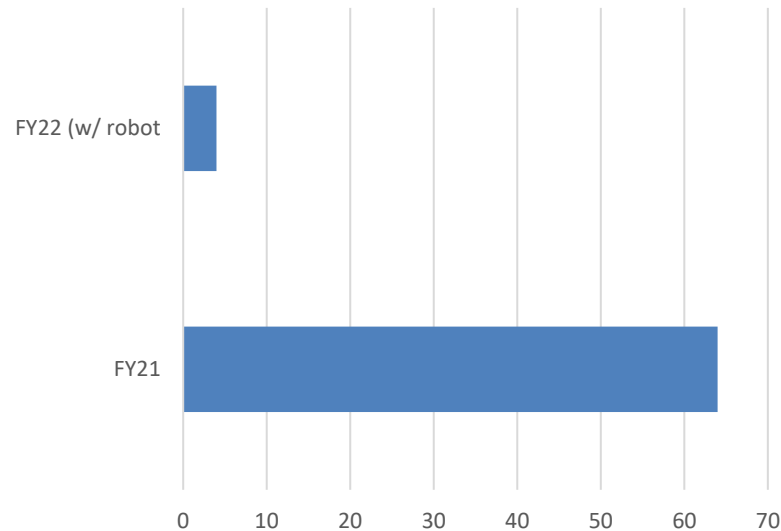
FY24



Maximize staffing efficiency to alleviate the need for staff with specific skill sets in a competitive job market.

With the new robot...Staff hours to complete line painting set up for athletic fields for fall sports.

***This includes staff who are trained in field layout.



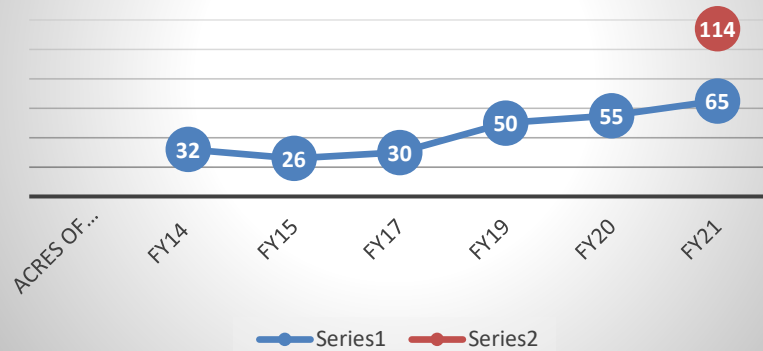
According to the National Recreation & Park Association, the average Full Time Employee (FTE) count for departments is 8.9 FTE's (or equivalent per 10,000 residents



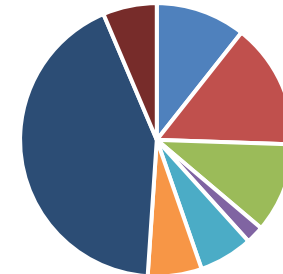
Amherst Parks & Recreation has 5 FTE's.

Vision Dashboard

Acres of parkland managed by ARD

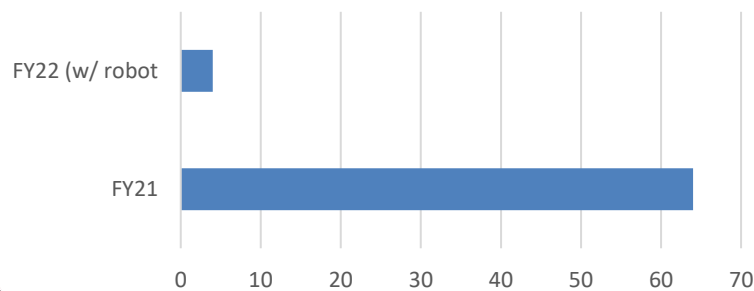


FY24



- Adult Programming
- Camps
- Senior
- Baboosic Lake Programming
- Youth Sports
- Pre School
- Trips
- PMEC Programming

Field Layout time Human vs. Robot





Vision 1: SWOT for Recreation Infrastructure

Strengths

- Parks are in great condition.
- Added inside space allows for small indoor programming.
- Parks look clean and tidy and well kept.
- Updated Buck Meadow Building.

Weakness

- Lack of facilities for prominent programs (basketball gym space, baseball fields).
- Low budget for building improvements.
- PMEC building needs preventative maintenance.
- No pickleball or outdoor b-ball courts.

Opportunities

- Buck Meadow masterplan.
- Update buildings to create more indoor space for winter programs.
- New school on the horizon.

Threats

- Lack of water for proper field irrigation.
- Lack of access to school facilities with new rules.
- Town Budgets
- Water quality at Baboosic Lake Town Beach.



-
- Site plan for the Amherst Recreation Department. The plan shows a large green area with two soccer fields (214' x 300' and 210' x 300') and a practice field (150' x 215'). To the right is a playground and a picnic grove. In the foreground, there is a gravel parking area (75' x 56') and a landscape screen. A red building is visible on the left. The plan includes various annotations like 'Overfl', 'Septic', and '2-98'.





Goal 1 Infrastructure – Buck Meadow

- Ask for \$50,000 from taxpayers for third installment for matching grant in Field CRF.
- Apply for LWCF grant in next grant round for Buck Meadow field/park design. Spring/Fall FY23-24.
- Use ARPA funds and impact fees to assist with infrastructure needs.





Goal 2 Infrastructure – AMS Courts

- Replace AMS tennis courts with updated basketball/tennis courts.
- Use Revolving Fund money to complete project.
- \$85,000





Vision 2: SWOT for diversifying programming

Strengths

- Reaching the needs of community with camps & youth sport programs.
- Free community events.
- PMEC as a facility for programming.
- Ability to provide transportation.

Weakness

- More exercise programming.
- Lack of senior and adult programs.
- Staff/instructor availability.
- Lack of available indoor space to offer programs at opportune times.
- Marketing of programs – No Amherst Citizen.

Opportunities

- Contract out more programming
- Re-adjusting responsibilities amongst ARD staff to offer more programming
- Utilize Buck Meadow Clubhouse for Adult/Senior programming.
- Diversifying programming allows for better revenue generating opportunities

Threats

- Location of PMEC
- “More competitive” sport leagues
- Nashua YMCA and Boys & Girls Clubs
- COVID or a different pandemic
- Lack of volunteerism
- More specialized needs among participants





Vision 2 - Diversifying programming

- Create an active seniors group as an ad hoc to the Recreation Commission to work on creating more program offerings to the older adults of Amherst.
- Create a once-a-year mailer that goes out to the senior population of Amherst. Work with retirement communities on getting the word out about programs.
- Continue to evaluate ongoing programs to make sure they are meeting the needs of the residents of Amherst.





Vision 3: SWOT for Maximize Staffing Efficiency

Strengths

- Current year-round staff is well trained/knowledgeable.
- Continually having enough strong seasonal staff.
- Staff culture.

Weakness

- Hard to recruit new staff who have the knowledge/skills/desire for the position (i.e., lifeguards, parks staff, PMEC educators).
- Year-round staff are at capacity for what we as a staff can do.
- Seasonal pay rates.

Opportunities

- Training potential summer staff through the Junior Counselor/Junior Lifeguard programs.
- Increased staff training with seasonal staff.

Threats

- Similar facilities offering better wages.
- Staff turnover at the beach
- FTE's who are retiring in the next three years/ lack of succession plan.
- Lack of NH Retirement system for FTE's.





Vision 3: SWOT for Maximize Staffing Efficiency

FY20 - Now...

- Lifeguard recruitment program/in-house lifeguard training program in conjunction with Milford Recreation Department.
- Purchase of Turf Tank field painting machine.
- CIT/Junior Counselor program.





Vision 3: SWOT for Maximize Staffing Efficiency

FY24-FY25

- Staying on top of cutting-edge equipment that further helps with staffing needs.
- Continue to create a continuum between summer camp programs and summer staffing needs.
- Work with colleges/universities to offer internships for future professionals in the field of Parks & Recreation.





Amherst Town Library

Professional service with a personal touch

Strategic Plan 2022



Mission

The Amherst Town Library enhances quality of life for Amherst residents.

We are an accessible resource for people of all ages and backgrounds, and are committed to caring, innovation, quality, and professionalism.

Vision

By connecting people, stories and ideas, we enrich people's lives. We support informational, educational and recreational needs by providing a diverse collection in a variety of formats, as well as various types of programs for all ages. Our facility and technology infrastructure support both individual and collective use. We engage with the community to ensure that our services are responsive to their changing needs.



Our Priorities



Fostering early literacy and a lifelong love of reading.



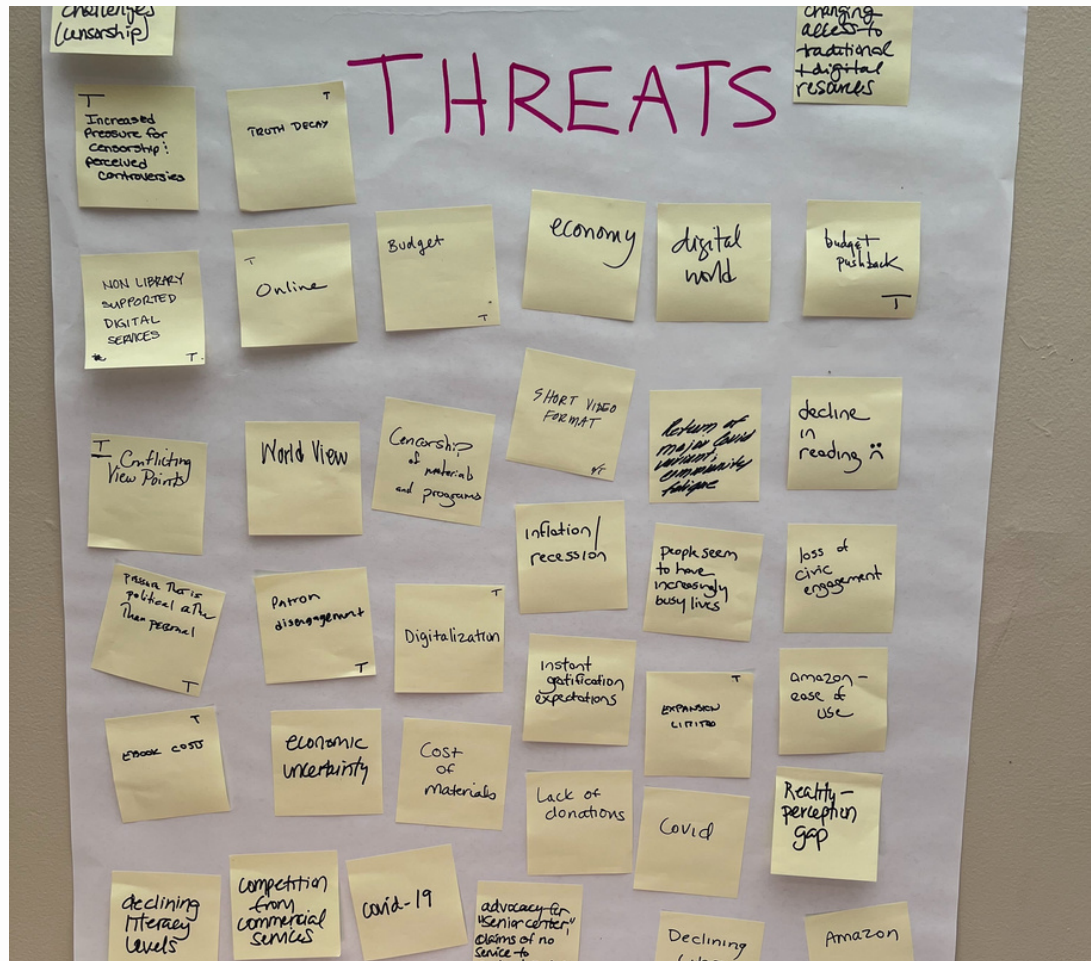
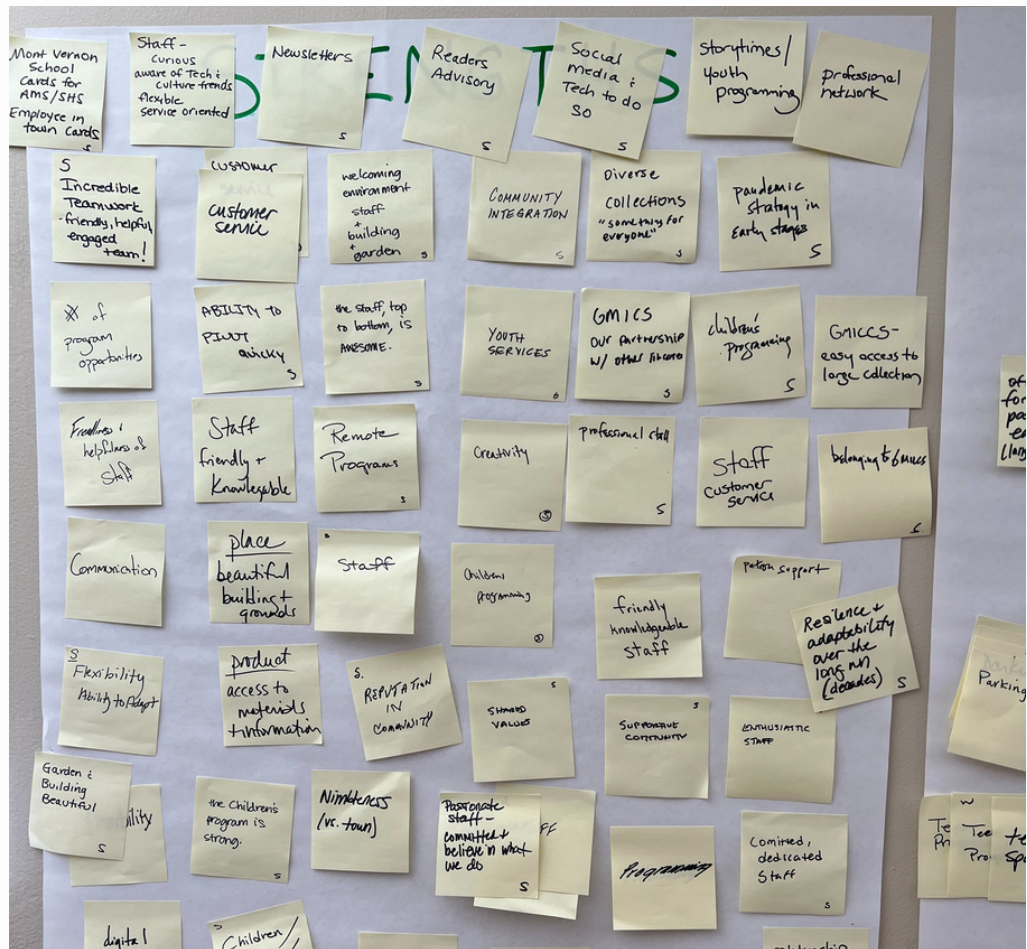
Providing engaging, interesting, and entertaining opportunities to learn and recreate.



Enhancing and affirming a sense of community.

Overview

- open to the public 61 hours/ week
- physical collection of 55k items + eMaterials, museum passes, ILL, GMILCS
- 21 staff (7 f/t, 8 p/t, 6 pages)
- research services, bookclub assistance, local history, article retrieval
- computers, printers, wifi, copier, fax, microfilm, notary
- educational and recreational programs and events for children, teens, and adults
- public meeting room space



SWOT Analysis

Strengths

staff
services
collection
GMILCS

Weaknesses

parking
signage
hiring/ recruiting
website & catalog

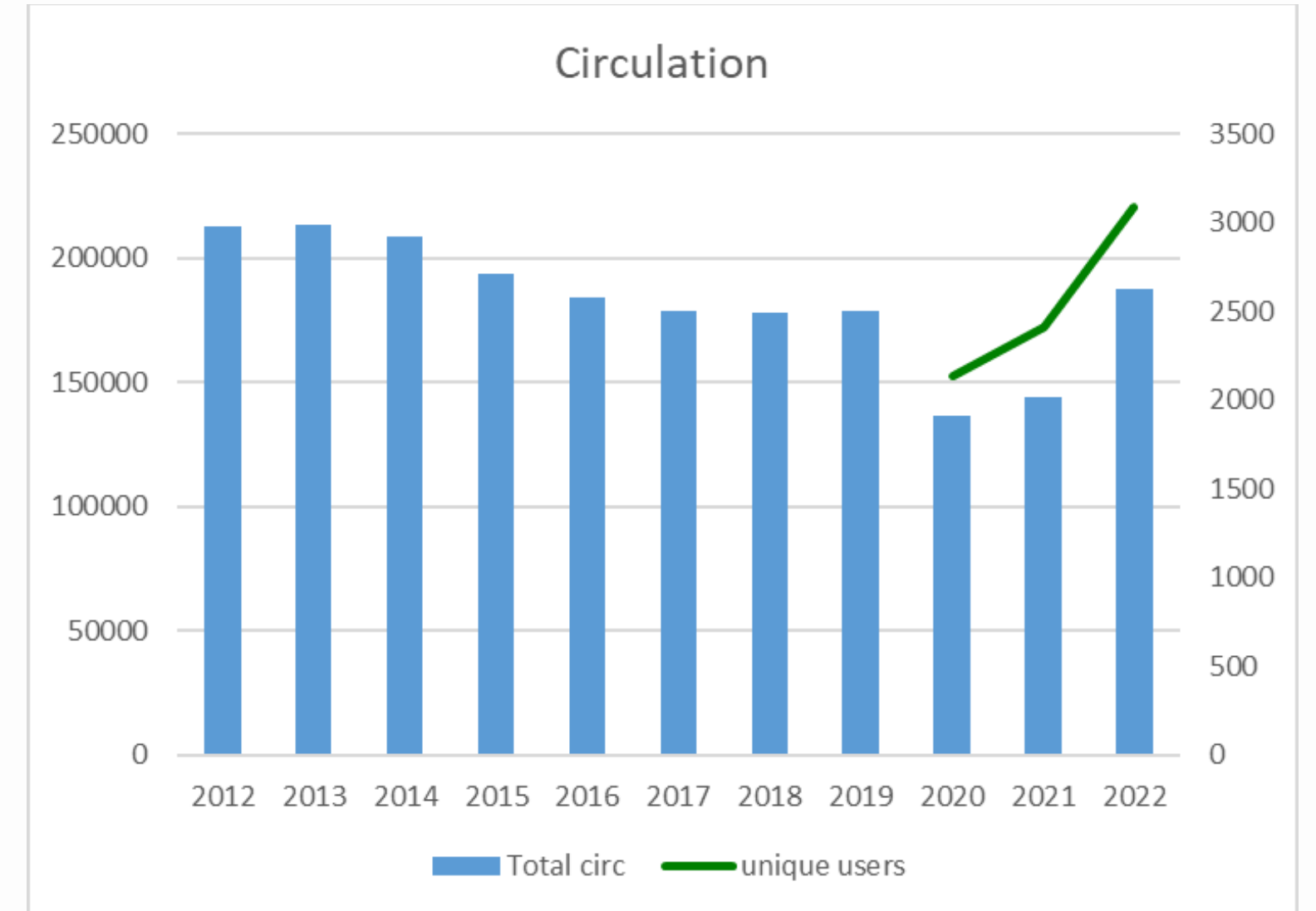
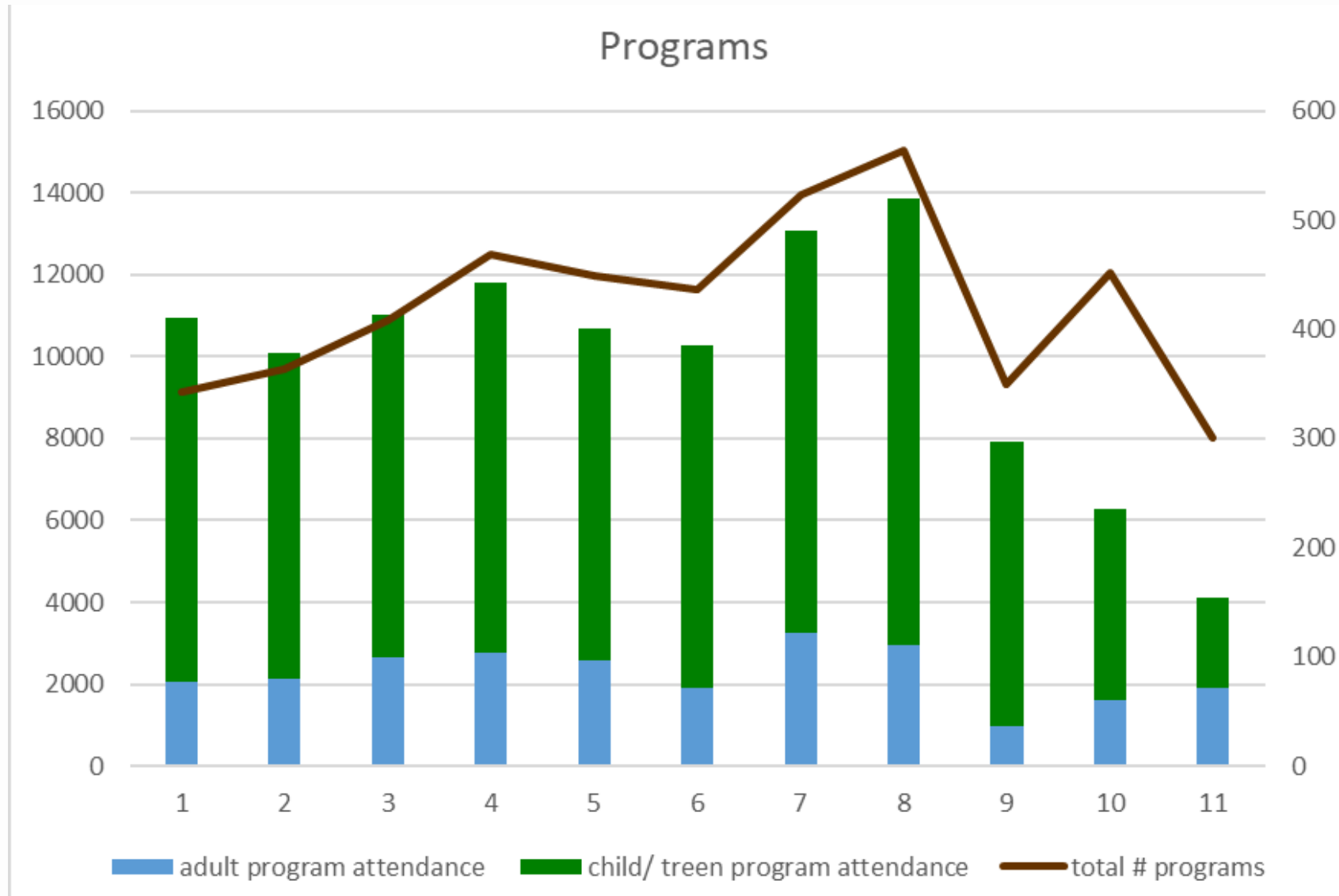
Opportunities

collaboration
technology
communication
programs

Threats

economy
digital world
politics
changing society

Dashboard Statistics



But what about a qualitative measure?

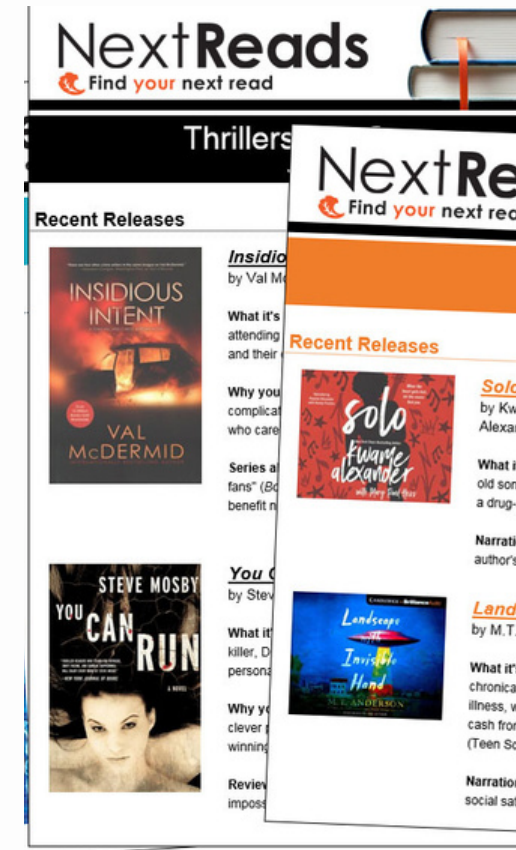
Goals



Restore programming and activities to pre-Covid levels



Collection management & analysis



Marketing & engagement



Strengthen community partnerships



Questions?
alapointe@amherstlibrary.org





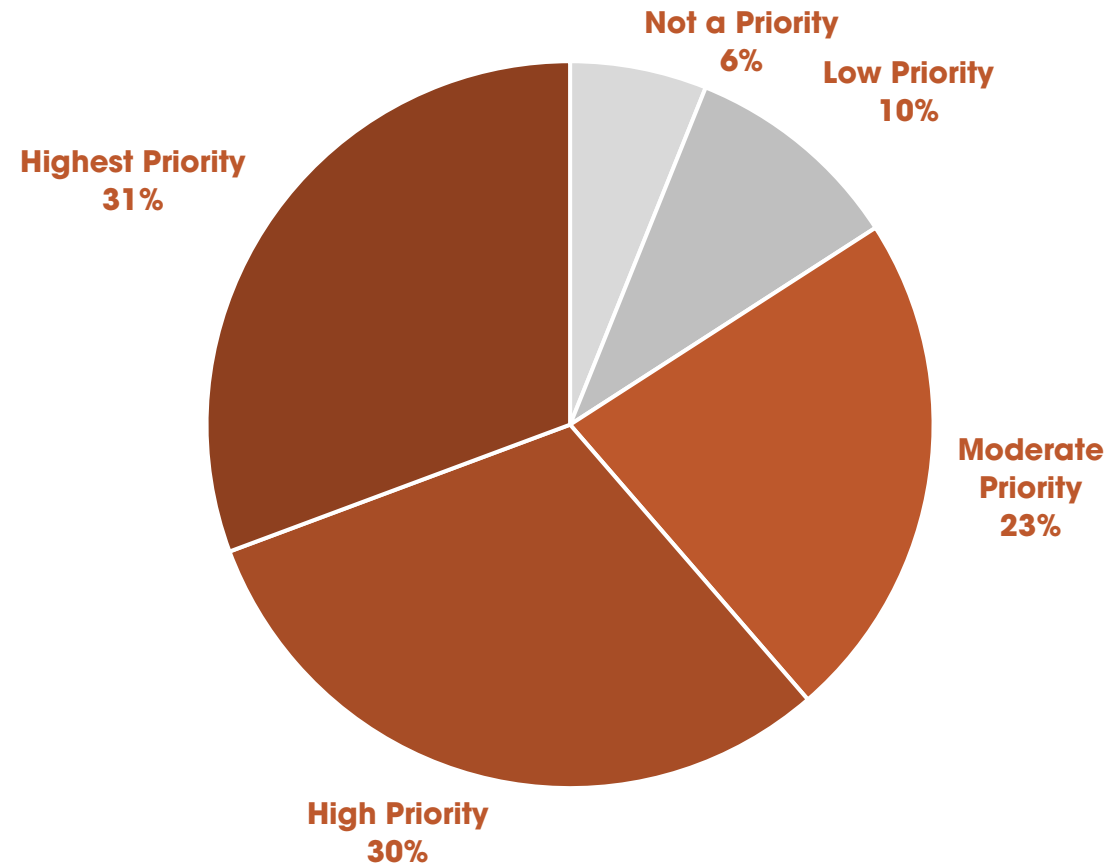
Strategic Plan FY 2024

Amherst Bicycle & Pedestrian Advisory Committee

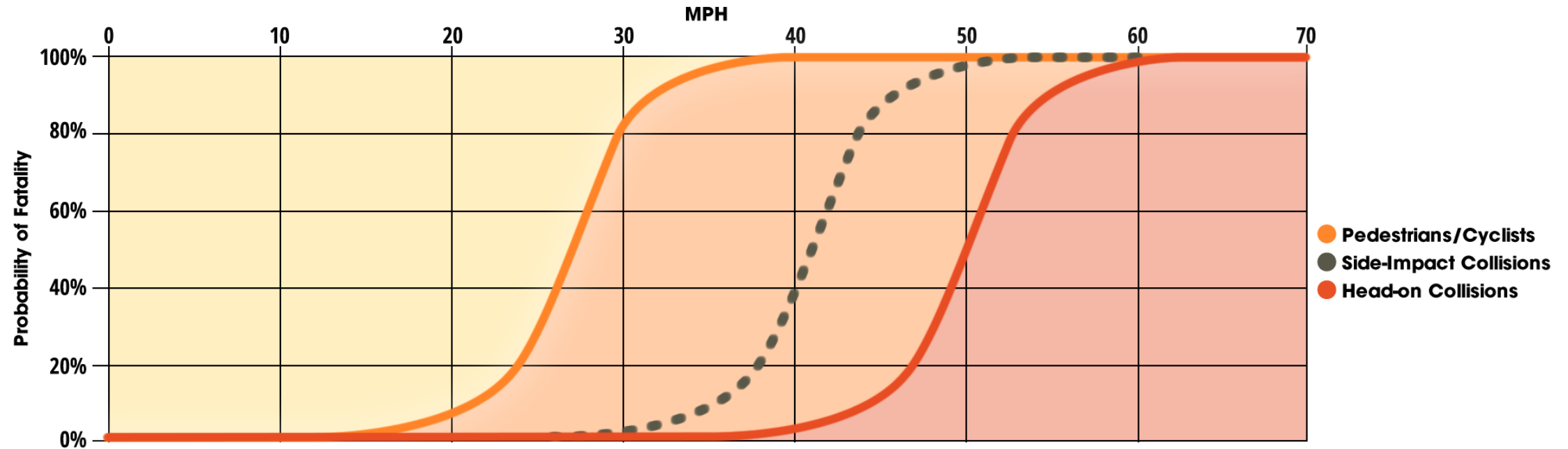
Town Master Plan Survey Results

“How much of a priority are safe pedestrian and biking paths?”

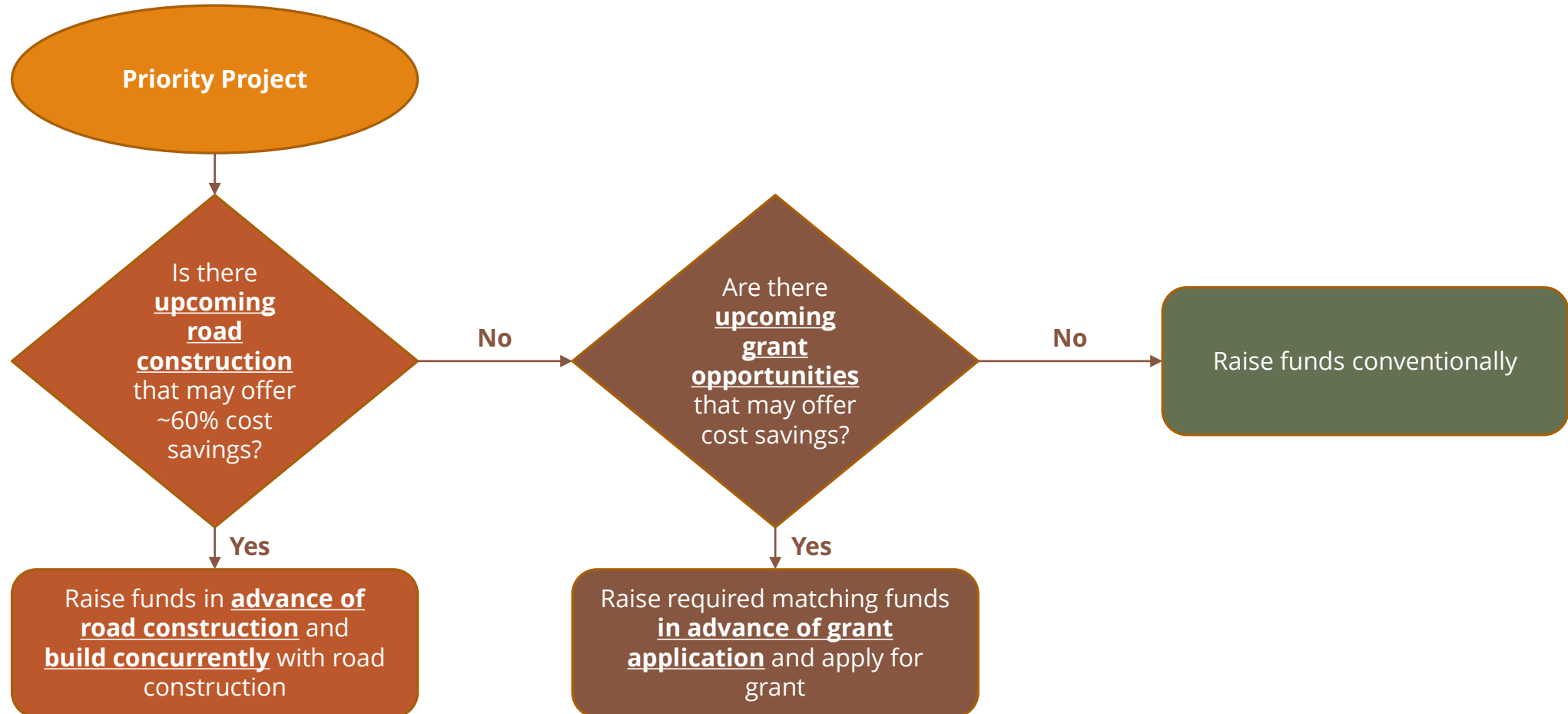
84% consider a safe, livable, walkable, community to be a priority for Amherst



Naturally-Occurring Road Categories: The Physics of Fatal Potential



Our cost-effective approach to pursuing projects



Year in Review

- Construction of Amherst Street Sidepath (part of Baboosic Greenway)
- Installation of privately-donated benches
- Voters approved village engineering study
- Awarded \$10,480 for multimodal counters by Bean Foundation
- Submitted 7 projects to NH DOT Ten Year Plan
- Applied for \$1,698,000 in federal infrastructure funds
- Advocated for and secured \$15,997,428 in safety improvements for NH 101



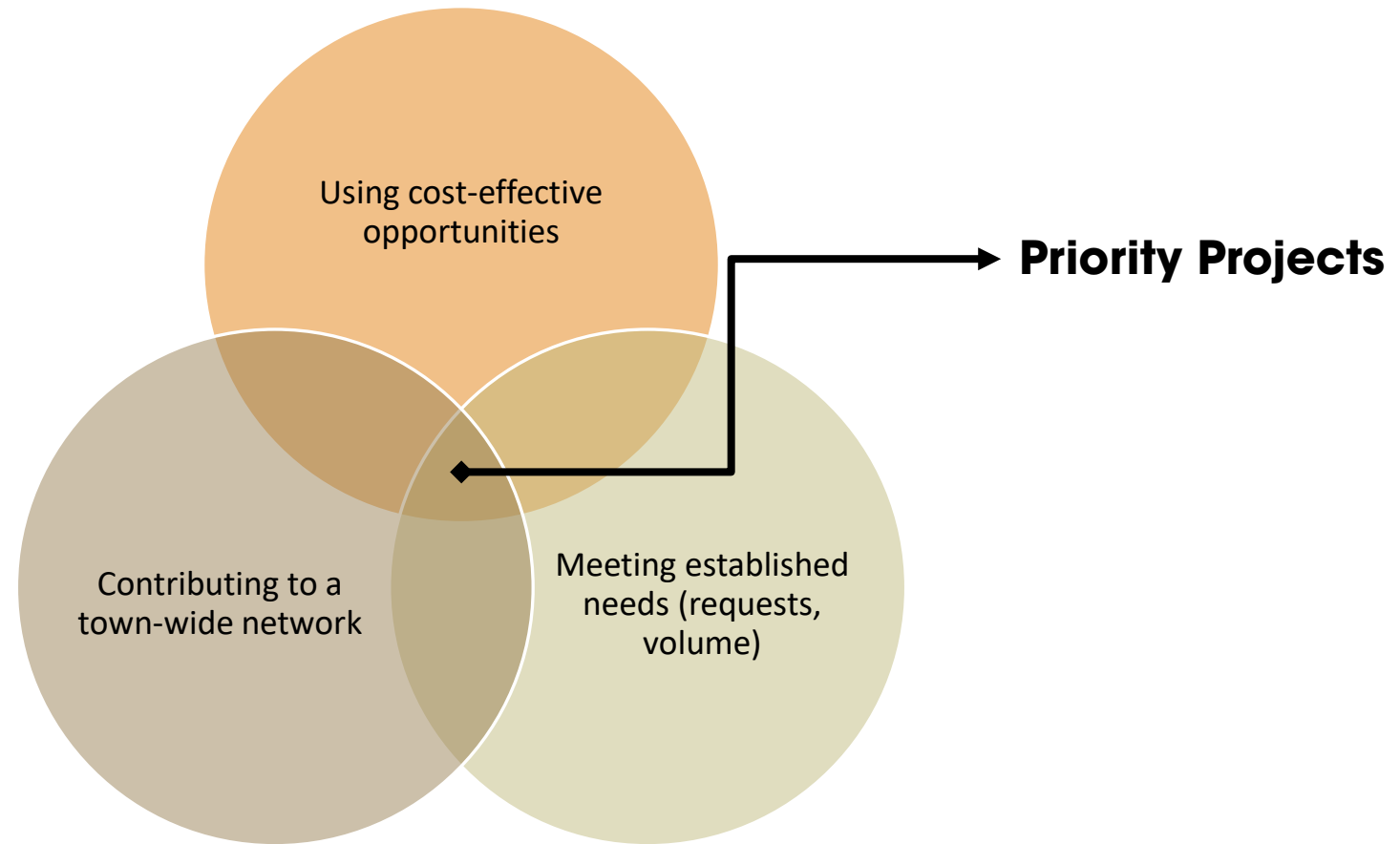
Sidepath Opening Ceremony, 2022

BPAC Infrastructure Grants

Grant	Project	Applied	Status	Budget	Local Match
Transportation Alternatives Program (TAP)	AMS/SHS School Campus Project	Mar 2021	Non-select	\$960,000	\$192,000
RAISE	AMS/SHS School Campus Project & Village Special District	Jul 2021	Non-select	\$7,600,000	\$1,520,000
Bean Foundation	Multimodal Counters	Nov 2021	Awarded	\$10,480	\$0
ARPA Travel, Tourism, and Outdoor Recreation	Sidepath (Milford) & Village Special District	Jan 2022	Funding depleted before application		
FY23 Congressional Designated Spending	AMS/SHS School Campus Project	Apr 2022	Non-select	\$1,698,000	\$0
Safe Streets and Roads for All (SS4A)	Village Special District	Sep 2022	Did not apply	\$7,591,000	\$1,518,200
ARPA Travel, Tourism, and Outdoor Recreation		Jan 2023			
Transportation Alternatives Program (TAP)		Mar 2023			
FY24 Congressional Designated Spending		Apr 2023			
RAISE		Apr 2023			
Safe Streets and Roads for All (SS4A)		Sep 2023			

Project Updates

How are projects prioritized?



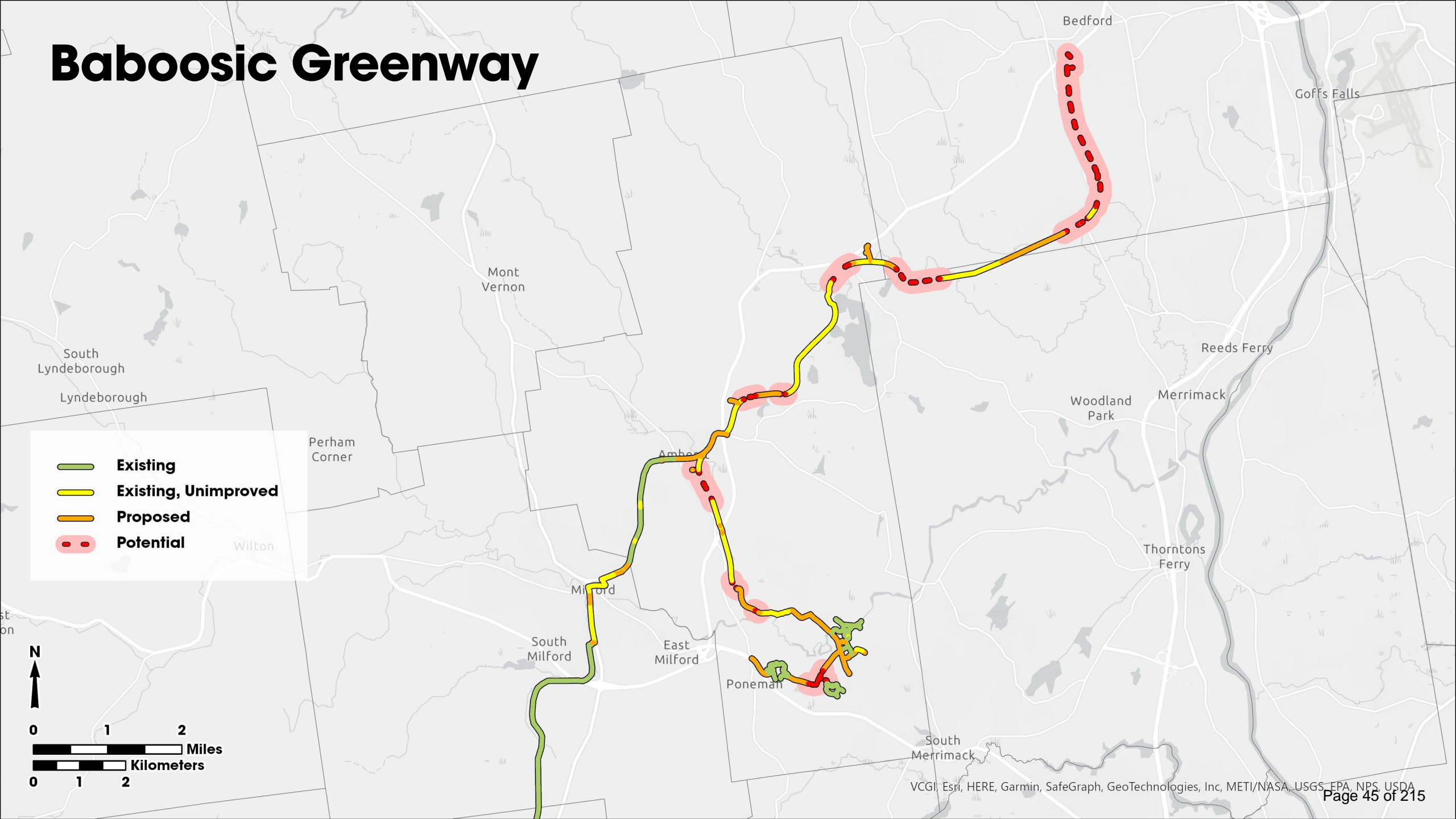
Existing Open Projects

1. Zero or low-cost initiatives
2. Baboosic Greenway
3. NH 122 (Courthouse Rd to Birch Park)
4. Multijurisdictional Project: Amherst St (BPR to Courthouse; Milford)
5. Village Engineering Project
6. Priority Project:
AMS/SHS School Campus Project

Zero or low-cost initiatives

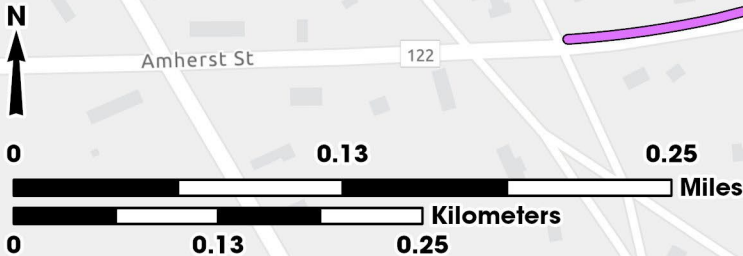
- Completing “Public Trails on Private Land” document to aide Amherst landowners in the consideration of donating easements to the town
- Pursuing these easement donations as a low-cost method of forming contiguous multimodal trail routes
- *Friends of the Souhegan Valley Rail Trail* raised \$15,000 through private donation for an engineering feasibility study
- Successfully amended NH Recreational Use Statutes in order to advance the use of railroad and utility corridors, such as the *Souhegan Valley Rail Trail*
- Old Manchester Rd “edge lane road” treatment
- Path between AMS/SHS and Buck Meadow

Baboosic Greenway



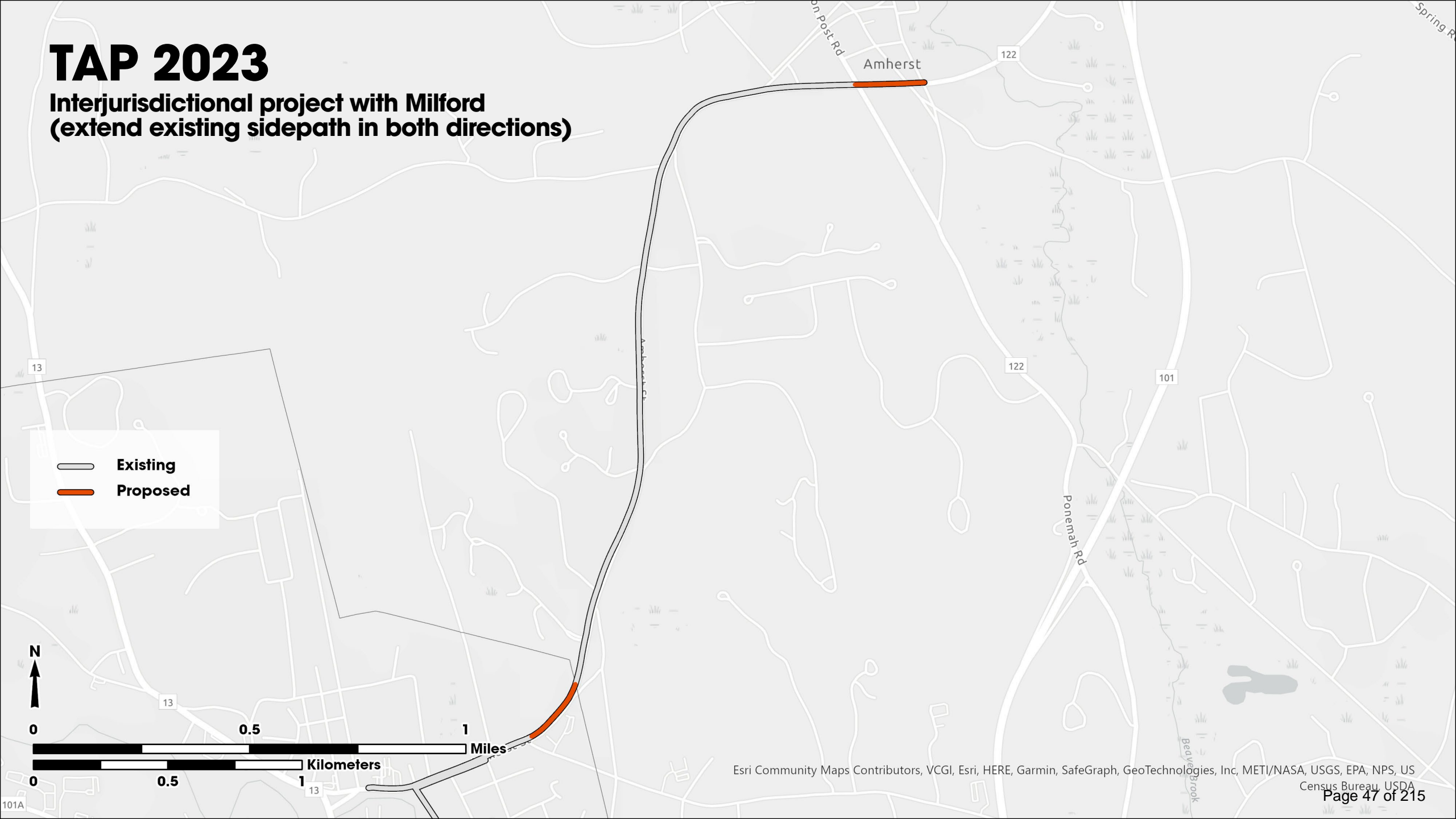
NH 122

(Courthouse Rd to Birch Park)




TAP 2023

Interjurisdictional project with Milford
(extend existing sidepath in both directions)

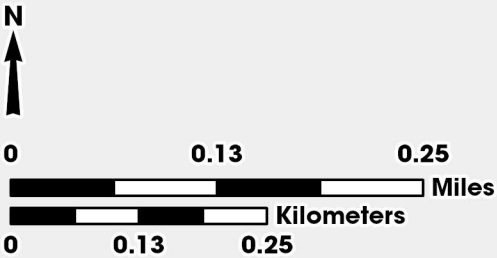


Village Engineering Project

(in progress)

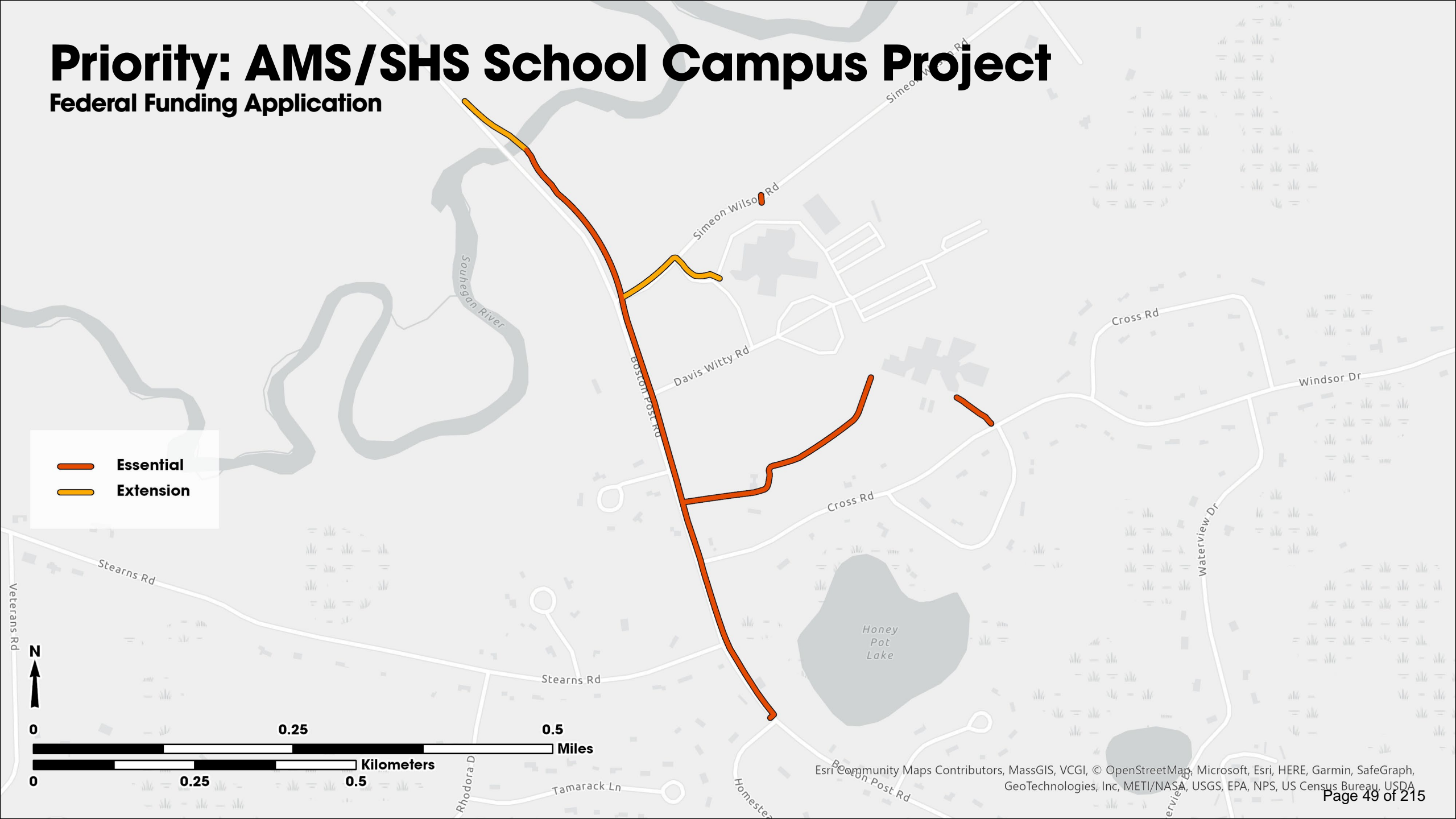


Scheduled Road Work



Priority: AMS/SHS School Campus Project

Federal Funding Application



FY2024 Budget Discussion

Key Points

- Our committee continues to advocate for a cost-effective strategy to form a town-wide multimodal network with projects that are carefully selected to:
 - seize opportunities which offer cost efficiencies;
 - appeal to external funding sources, such as federal grants; and
 - maximize the impact of funding.
- The projects we seek to advance are based on objectively improving safety by reducing the probability of fatality through design

What one needs to secure grant funding

- **Multimodal Master Plan**
 - Adopt a *"Safety Action Plan"*; *"Complete Streets Policy"*
 - Municipal master plan should indicate this type of infrastructure is a priority
- **Engineering**
- **Local Matching Funds**

Feedback from FY2023 Federal CDS Funding Application

1. Submitted project is a **strong application** and made it through many rounds of competition to the final stage
2. It is uncommon for transportation projects to be selected without some **local match**, goal is 20%
3. Projects with **completed engineering** (or as close to it as possible) are deemed more feasible and less risky
4. Projects in the state ***Ten Year Plan*** and ***Short-Term Infrastructure Plan*** (NRPC) perform better
5. Consider a **multijurisdictional application** for a regional project with Milford's (Amherst St) submission

FY2024 Budget Suggestions

- **DPW Budget: \$100,000**

- Recommendation was made in 2021
- Feedback from BoS and Ways & Means was positive
- Initial use was intended for village engineering project
 - ✓ Decision was made to get voter consent for village project specifically.
 - ✓ Article passed 2022

- **Multimodal Facilities Capital Reserve Fund: \$150,000**

- Amount is explicitly based on congressional funding request (AMS/SHS School Campus)
- Strong recommendation to muster local match for project and reapply in April 2023

What can a regular budget accomplish?

- **Project engineering for funding applications (crucial)**
- **Fund or contribute to local matching funds for grants (crucial)**
- List an established funding mechanism on funding applications
- Augment annual road work with multimodal safety improvements
- Reduce cost of major CRF projects by up to \$100k in year of construction (eases burden of CRF articles or accelerates improvements)
- Project preparatory work, such as surveying
- Rail trail easement assistance or acquisition; trailhead parking
- Administrative costs already born by DPW
- Smaller infrastructure improvements: street crossing safety improvements, counters, relocating utility poles, etc.

Proposed Warrant Article

Article XX: Multimodal Facilities Capital Reserve Fund.

Shall the Town vote to raise and appropriate the sum of one hundred fifty thousand dollars (\$150,000) to be added to the Amherst Multimodal Facilities Capital Reserve Fund, previously established, for the purpose of design and construction of multimodal infrastructure and to provide matching funds for state, federal and private grant programs.



Town of Amherst, NH BOARD OF SELECTMEN STAFF REPORT

Title: Janssen NH State-Wide Settlement Agreement **Department:** Administration

Meeting Date: September 26, 2022 **Staff Contact:**

BACKGROUND INFORMATION:

At the December 20, 2021 BOS meeting, a motion to participate in the State of New H's National Opioid Settlement was supported unanimously.

BUDGET IMPACT:

(Include general ledger account numbers)

POLICY IMPLICATIONS:

DEPARTMENT HEAD RECOMMENDATION:

SUGGESTED MOTION:

TOWN ADMINISTRATOR RECOMMENDATION:

ATTACHMENTS:

1. Amherst - Notice of Settlement
2. 00 Settlement Agreement
3. 00 Settlement Participation Form

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

September 1, 2022

Dean Shankle, Town Administrator
Town of Amherst
2 Main Street
Amherst, NH 3031
dshankle@amherstnh.gov

**Re: STATE'S SETTLEMENT WITH JANSSEN
PHARMACEUTICALS/JOHNSON & JOHNSON**

Dear Town Administrator Shankle:

The New Hampshire Department of Justice has negotiated a settlement of all the State's opioid claims against Janssen Pharmaceuticals and Johnson & Johnson, which had been scheduled to go to trial in Merrimack County Superior Court in early September. The settlement requires the defendants to pay \$39.605 million; \$31.5 million of that amount will be dedicated exclusively to abate the opioid epidemic in this state. The settlement we negotiated represents millions more dollars than the State would have received under the national settlement we opted not to join. More importantly, we negotiated terms requiring the defendants to pay the full settlement up-front rather than spread over a period of nine years as the national settlement would have allowed.

The settlement also contains injunctive terms that ban Johnson & Johnson from selling and manufacturing opioids, promoting opioids or opioid products and conducting prescription savings programs. It also restricts Johnson & Johnson's lobbying activities and includes stringent enforcement provision to ensure compliance. We believe that New Hampshire's best interests are served by settling this case on the terms we negotiated.

You will remember from an earlier settlement with opioid distributors McKesson, Cardinal Health, and Amerisource Bergen that your jurisdiction was designated by those defendants as a "primary non-litigating subdivision." That characterization was based upon your population (i.e., 10,000 or greater) and the fact that you had not filed a lawsuit against them by the time the settlement was negotiated. All primary non-litigating subdivisions in that case were asked to

release any claims they might have against the distributors in order to settle the earlier litigation. You joined all the other primary non-litigating subdivisions in doing so.

Johnson & Johnson seeks the same type of release from primary non-litigating subdivisions in its case as the distributors received in the earlier case. Its reason is simple: it wants “global peace” for all opioid claims by the state and its subdivisions in exchange for the \$39.605 million settlement. In other words, the settlement would resolve the claims that are currently pending against Johnson & Johnson (by the litigating governmental subdivisions) and those that could have been brought (by non-litigating subdivisions) but were not.

The negotiated settlement will not be final, and the \$39.605 million will not be paid, until we receive signed releases from all the primary non-litigating subdivisions.

New Hampshire has enacted legislation that governs the disposition of any funds received as part of a consumer protection opioid settlement, such as this one with Johnson & Johnson. Under state law, 15% of those funds are distributed to the 23 political subdivisions that filed opioid lawsuits prior to September 1, 2019.¹ The balance of the \$31.5 million will be deposited into the dedicated Opioid Abatement Trust Fund. (See RSA 126-A: 63-86). Your jurisdiction is eligible to apply for grants from that trust fund.

As you likely know, the Opioid Abatement Commission is currently accepting grant applications for the first distribution of opioid settlement funds obtained from previous settlements, which total approximately \$6.6 million. I encourage you to consider an application or applications for grants relevant to abating the opioid scourge in your community. Application materials can be found at <https://www.dhhs.nh.gov/about-dhhs/advisory-organizations/nh-opioid-abatement-trust-fund-advisory-commission>.

I write today to ask you and the other non-litigating subdivisions to execute and return the enclosed release form so that the State can finalize the negotiated settlement with Janssen Pharmaceuticals and Johnson & Johnson and replenish the Opioid Abatement Trust Fund with millions more in remedial funds. The \$39.05 million settlement offer will not be paid until and unless each of the primary non-litigating subdivisions join us in releasing any claims you could have but have not brought against them.

Also enclosed is a copy of the settlement agreement judgment that has been filed with the Merrimack County Superior Court. This settlement represents significant progress in our efforts against opioid manufacturers and distributors to hold them responsible for contributing to the opioid crisis. It provides substantial financial relief that can be delivered soon to New Hampshire communities to help abate this crisis. While no amount of money would be enough, this settlement is a significant improvement over the national settlement; combined with other settlements against other defendants, it will make a meaningful difference in the lives of those dealing with opioid use disorder.

¹ The 23 subdivisions include all 10 counties plus Belmont, Berlin, Claremont, Concord, Derry, Dover, Franklin, Keene, Laconia, Londonderry, Manchester, Nashua and Rochester.

We hope that you will join us in this settlement. Time is of the essence in finalizing this settlement. We need to return signed releases to the defendants by the end of September.

I am available at your convenience to answer any of your question.

Sincerely,

A handwritten signature in black ink, appearing to read "James T. Boffetti". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James T. Boffetti
Deputy Attorney General
(603) 271-0302 / (603) 724-0174
james.t.boffetti@doj.nh.gov

JTB/cbw
Enclosures

JANSSEN NEW HAMPSHIRE STATE-WIDE OPIOID SETTLEMENT AGREEMENT

I. Overview

In accordance with the Term Sheet executed by Janssen and the State of New Hampshire on August 29, 2022, this settlement agreement (the “*Agreement*”) sets forth the terms and conditions of a settlement agreement between and among Janssen, the State of New Hampshire, and Participating Subdivisions (as those terms are defined below). Janssen has agreed to the below terms for the sole purpose of settlement, and nothing herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Janssen expressly denies. No part of this Agreement, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Janssen. Unless the contrary is expressly stated, this Agreement is not intended for use by any third party for any purpose, including submission to any court for any purpose.

II. Definitions

Unless otherwise specified, the following definitions apply:

1. “*Agreement*” means this agreement as set forth above, inclusive of all exhibits.
2. “*Alleged Harms*” means the alleged past, present, and future financial, societal, and related expenditures arising out of the alleged misuse and abuse of opioid products, that have allegedly been caused by Janssen.
3. “*Attorney*” means any of the following retained through a legal contract: a solo practitioner, multi-attorney law firm, or other legal representative of a Participating Subdivision.
4. “*Claim*” means any past, present or future cause of action, claim for relief, cross-claim or counterclaim, theory of liability, demand, derivative claim, request, assessment, charge, covenant, damage, debt, lien, loss, penalty, judgment, right, obligation, dispute, suit, contract, controversy, agreement, *parens patriae* claim, promise, performance, warranty, omission, or grievance of any nature whatsoever, whether legal, equitable, statutory, regulatory or administrative, whether arising under federal, state or local common law, statute, regulation, guidance, ordinance or principles of equity, whether filed or unfiled, whether asserted or unasserted, whether known or unknown, whether accrued or unaccrued, whether foreseen, unforeseen or unforeseeable, whether discovered or undiscovered, whether suspected or unsuspected, whether fixed or contingent, and whether existing or hereafter arising, in all such cases, including but not limited to any request for declaratory, injunctive, or equitable relief, compensatory, punitive, or statutory damages, absolute liability, strict liability, restitution, subrogation, contribution, indemnity, apportionment, disgorgement, reimbursement, attorney fees, expert fees, consultant fees, fines, penalties, expenses, costs or any other legal, equitable, civil, administrative, or regulatory remedy whatsoever.

5. “*Claim Over*” means a Claim asserted by a Non-Released Entity against a Released Entity on the basis of contribution, indemnity, or other claim-over on any theory relating to a Non-Party Covered Conduct Claim asserted by a Releasor.
6. “*Compensatory Restitution Amount*” means the aggregate amount of payments by Janssen hereunder other than amounts used for attorneys’ fees and costs.
7. “*Consent Judgment*” means a consent judgment in the form attached as Exhibit E.
8. “*Court*” means the court to which the Agreement and the Consent Judgment are presented for approval and/or entry.
9. “*Covered Conduct*” means any actual or alleged act, failure to act, negligence, statement, error, omission, breach of any duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity of any kind whatsoever from the beginning of time through the Effective Date (and any past, present, or future consequence of any such act, failure to act, negligence, statement, error, omission, breach of duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity) relating in any way to (a) the discovery, development, manufacture, packaging, repackaging, marketing, promotion, advertising, labeling, recall, withdrawal, distribution, delivery, monitoring, reporting, supply, sale, prescribing, dispensing, physical security, warehousing, use or abuse of, or operating procedures relating to any Product, or any system, plan, policy, or advocacy relating to any Product or class of Products, including but not limited to any unbranded promotion, marketing, programs, or campaigns relating to any Product or class of Products; (b) the characteristics, properties, risks, or benefits of any Product; (c) the reporting, disclosure, non-reporting or non-disclosure to federal, state or other regulators of orders for any Product placed with any Released Entity; (d) the selective breeding, harvesting, extracting, purifying, exporting, importing, applying for quota for, procuring quota for, handling, promoting, manufacturing, processing, packaging, supplying, distributing, converting, or selling of, or otherwise engaging in any activity relating to, precursor or component Products, including but not limited to natural, synthetic, semi-synthetic or chemical raw materials, starting materials, finished active pharmaceutical ingredients, drug substances, or any related intermediate Products; or (e) diversion control programs or suspicious order monitoring related to any Product.
10. “*Effective Date*” means the date on which this Agreement is executed by the State and Janssen.
11. “*Janssen*” means Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.
12. “*Janssen National Settlement Agreement*” means the J&J Master Settlement Agreement, including exhibits, a copy of which is attached as Exhibit H hereto.

13. *“Litigating Subdivision”* means a Subdivision (or Subdivision official asserting the right of or for the Subdivision or the State to recover for alleged harms to the Subdivision, the State, and/or the people thereof) that brought any Released Claims against any Released Entity on or before the Effective Date that were not separately resolved prior to that date. A list of all Litigating Subdivisions known to the Parties is included in Exhibit F hereto.
14. *“Non-Litigating Subdivision”* means a Subdivision that is not a Litigating Subdivision.
15. *“Non-Party Covered Conduct Claim”* means a Claim against any Non-Released Entity involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity).
16. *“Non-Party Settlement”* means a settlement by any Releasor that settles any Non-Party Covered Conduct Claim and includes a release of any Non-Released Entity.
17. *“Non-Released Entity”* means an entity that is not a Released Entity.
18. *“Participating Subdivision”* means a Subdivision that meets the requirements for becoming a Participating Subdivision under Section VII.
19. *“Parties”* means Janssen and the State of New Hampshire (each, a *“Party”*).
20. *“Product”* means any chemical substance, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical product made from or with such substance, that is an opioid or opiate, as well as any product containing any such substance. It also includes: 1) the following when used in combination with opioids or opiates: benzodiazepine, carisoprodol, zolpidem, or gabapentin; and 2) a combination or “cocktail” of any stimulant or other chemical substance prescribed, sold, bought, or dispensed to be used together that includes opioids or opiates. For the avoidance of doubt, “Product” does not include benzodiazepine, carisoprodol, zolpidem, or gabapentin when not used in combination with opioids or opiates. “Product” includes but is not limited to any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, naloxone, naltrexone, oxycodone, oxymorphone, tapentadol, tramadol, opium, heroin, carfentanil, any variant of these substances, or any similar substance. “Product” also includes any natural, synthetic, semi-synthetic or chemical raw materials, starting materials, finished active pharmaceutical ingredients, drug substances, and any related intermediate products used or created in the manufacturing process for any of the substances described in the preceding sentence.
21. *“Released Claims”* means any and all Claims that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct occurring prior to the Effective Date. Without limiting the foregoing, “Released Claims” include any Claims that have been asserted against the Released Entities by the State or any of its

Litigating Subdivisions in any federal, state or local action or proceeding (whether judicial, arbitral, or administrative) based on, arising out of or relating to, in whole or in part, the Covered Conduct, or any such Claims that could be or could have been asserted now or in the future in those actions or in any comparable action or proceeding brought by the State, any of its Subdivisions, or any Releasors (whether or not such State, Subdivision, or Releasor has brought such action or proceeding), provided the Covered Conduct occurs prior to the Effective Date. Released Claims also include all Claims asserted in any proceeding to be dismissed pursuant to the Agreement, whether or not such claims relate to Covered Conduct, provided the Covered Conduct occurs prior to the Effective Date. The Parties intend that "Released Claims" be interpreted broadly. This Agreement does not release Claims by private individuals. It is the intent of the Parties that Claims by private individuals be treated in accordance with applicable law. Released Claims is also used herein to describe Claims brought by a Subdivision or other non-party Subdivision after the Effective Date that would have been Released Claims if they had been brought by a Releasor against a Released Entity.

22. "*Released Entities*" means Janssen and (1) all of Janssen's past and present direct or indirect parents, subsidiaries, divisions, predecessors, successors, assigns, including Noramco, Inc. and Tasmanian Alkaloids PTY. LTD.; (2) the past and present direct or indirect subsidiaries, divisions, and joint ventures, of any of the foregoing; (3) all of Janssen's insurers (solely in their role as insurers with respect to the Released Claims); (4) all of Janssen's, or of any entity described in subsection (1), past and present joint ventures; and (5) the respective past and present officers, directors, members, shareholders (solely in their capacity as shareholders of the foregoing entities), partners, trustees, agents, and employees of any of the foregoing (for actions that occurred during and related to their work for, or employment with, Janssen). Any person or entity described in subsections (3)-(5) shall be a Released Entity solely in the capacity described in such clause and shall not be a Released Entity with respect to its conduct in any other capacity. For the avoidance of doubt, the entities listed in Exhibit D are not Released Entities; and provided further that any joint venture partner of Janssen or Janssen's subsidiary is not a Released Entity unless it falls within subsections (1)-(5) above. A list of Janssen's present subsidiaries and affiliates is attached as Exhibit G. Janssen's predecessor entities include but are not limited to those entities listed on Exhibit A. For the avoidance of doubt, any entity acquired, or joint venture entered into, by Janssen after the Effective Date is not a Released Entity.
23. "*Releasors*" means (1) the State; (2) each Participating Subdivision; and (3) without limitation and to the maximum extent of the power of the State's Attorney General and/or Participating Subdivision to release the Claims, (a) the State's and Participating Subdivision's departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, including its Attorney General, and any person in their official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public

instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, water districts, law enforcement districts, emergency services districts, school districts, hospital districts and other Subdivisions in the State, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State or Subdivision in the State, whether or not any of them participate in the Agreement. The inclusion of a specific reference to a type of entity in this definition shall not be construed as meaning that the entity is not a Subdivision. In addition to being a Releasor as provided herein, a Participating Subdivision shall also provide the Settlement Participation Form referenced in Section VII providing for a release to the fullest extent of the Participating Subdivision's authority, which shall be attached as an exhibit to the Agreement. The State's Attorney General represents that he or she has or has obtained the authority set forth in the Representation and Warranty subsection of Section IV.

24. "*Special District*" means a formal and legally recognized sub-entity of the State that is authorized by State law to provide one or a limited number of designated functions, including but not limited to school districts, fire districts, healthcare & hospital districts, and emergency services districts.
25. "*State*" means the State of New Hampshire.
26. "*Subdivision*" means a formal and legally recognized sub-entity of the State that provides general governance for a defined area, including a county, city, town, village, or similar entity. Unless otherwise specified, "*Subdivision*" includes all functional counties and other functional levels of sub-entities of the State that provide general governance for a defined area. Historic, non-functioning sub-entities of the State are not Subdivisions, unless the entity has filed a lawsuit that includes a Released Claim against a Released Entity in a direct, *parens patriae*, or any other capacity. For purposes of this Agreement, the term Subdivision also includes Special Districts.
27. "*Settlement Participation Form*" means the form attached as Exhibit B that Participating Subdivisions must execute and return to Janssen and the State of New Hampshire, and which shall (1) make such Participating Subdivisions signatories to this Agreement, (2) include a full and complete release of any and of such Subdivision's claims, and (3) require the prompt dismissal with prejudice of any Released Claims that have been filed by any such Participating Subdivision.

III. Injunctive Relief

As part of the Consent Judgment, the Parties agree to the injunctive relief terms attached as Exhibit C.

IV. Release

A. *Scope.* As of the Effective Date, the Released Entities will be released and forever discharged from all of the Releasors' Released Claims. The State of New Hampshire (for itself and its Releasors) and each Participating Subdivision (for itself and its Releasors) will, on or before the Effective Date, absolutely, unconditionally, and irrevocably covenant not to bring, file, or claim, or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Agreement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the State and its Attorney General to release claims. The Release shall be a complete bar to any Released Claim.

B. *Claim Over and Non-Party Settlement.*

1. *Statement of Intent.* It is the intent of the Parties that:

- a. Released Entities should not seek contribution or indemnification (other than pursuant to an insurance contract) from other parties for their payment obligations under this Agreement;
- b. the payments made under this Agreement shall be the sole payments made by the Released Entities to the Releasors involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity);
- c. Claims by Releasors against non-Parties should not result in additional payments by Released Entities, whether through contribution, indemnification or any other means; and
- d. the Agreement meets the requirements of the Uniform Contribution Among Joint Tortfeasors Act and any similar state law or doctrine that reduces or discharges a released party's liability to any other parties.
- e. The provisions of this subsection IV.B are intended to be implemented consistent with these principles. This Agreement and the releases and dismissals provided for herein are made in good faith.

2. *Contribution/Indemnity Prohibited.* No Released Entity shall seek to recover for amounts paid under this Agreement based on indemnification, contribution, or any other theory from a manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, third-party vendor, trade association, distributor, or health care

practitioner, provided that a Released Entity shall be relieved of this prohibition with respect to any entity that asserts a Claim-Over against it. For the avoidance of doubt, nothing herein shall prohibit a Released Entity from recovering amounts owed pursuant to insurance contracts.

3. *Non-Party Settlement.* To the extent that, on or after the Effective Date, any Releasor enters into a Non-Party Settlement, including in any bankruptcy case or through any plan of reorganization (whether individually or as a class of creditors), the Releasor will include (or in the case of a Non-Party Settlement made in connection with a bankruptcy case, will cause the debtor to include), unless prohibited from doing so under applicable law, in the Non-Party Settlement a prohibition on contribution or indemnity of any kind substantially equivalent to that required from Janssen in subsection IV.B.2, or a release from such Non-Released Entity in favor of the Released Entities (in a form equivalent to the releases contained in this Agreement) of any Claim-Over. The obligation to obtain the prohibition and/or release required by this subsection is a material term of this Agreement.
4. *Claim-Over.* In the event that any Releasor obtains a judgment with respect to Non-Party Covered Conduct against a Non-Released Entity that does not contain a prohibition like that in subsection IV.B.3, or any Releasor files a Non-Party Covered Conduct Claim against a Non-Released Entity in bankruptcy or a Releasor is prevented for any reason from obtaining a prohibition/release in a Non-Party Settlement as provided in subsection IV.B.3, and such Non-Released Entity asserts a Claim-Over against a Released Entity, that Releasor and Janssen shall take the following actions to ensure that the Released Entities do not pay more with respect to Covered Conduct to Releasors or to Non-Released Entities than the amounts owed under this Agreement by Janssen:
 - a. Janssen shall notify that Releasor of the Claim-Over within thirty (30) days of the assertion of the Claim-Over or thirty (30) days of the Effective Date of this Agreement, whichever is later;
 - b. Janssen and that Releasor shall meet and confer concerning the means to hold Released Entities harmless and ensure that it is not required to pay more with respect to Covered Conduct than the amounts owed by Janssen under this Agreement;
 - c. That Releasor and Janssen shall take steps sufficient and permissible under the law of the State of the Releasor to hold Released Entities harmless from the Claim-Over and ensure Released Entities are not required to pay more with respect to Covered Conduct than the amounts owed by Janssen under this Settlement Agreement. Such steps may include, where permissible:
 - (1) Filing of motions to dismiss or such other appropriate motion by Janssen or Released Entities, and supported by Releasors, in response to any claim filed in litigation or arbitration;

- (2) Reduction of that Releasor's Claim and any judgment it has obtained or may obtain against such Non-Released Entity by whatever amount or percentage is necessary to extinguish such Claim-Over under applicable law, up to the amount that Releasor has obtained, may obtain, or has authority to control from such Non-Released Entity;
 - (3) Placement into escrow of funds paid by the Non-Released Entities such that those funds are available to satisfy the Claim-Over;
 - (4) Return of monies paid by Janssen to that Releasor under this Settlement Agreement to permit satisfaction of a judgment against or settlement with the Non-Released Entity to satisfy the Claim-Over;
 - (5) Payment of monies to Janssen by that Releasor to ensure it is held harmless from such Claim-Over, up to the amount that Releasor has obtained, may obtain, or has authority to control from such Non-Released Entity;
 - (6) Credit to Janssen under this Settlement Agreement to reduce the overall amounts to be paid under the Settlement Agreement such that it is held harmless from the Claim-Over; and
 - (7) Such other actions as that Releasor and Janssen may devise to hold Janssen harmless from the Claim Over.
- d. The actions of that Releasor and Janssen taken pursuant to paragraph (c) must, in combination, ensure Janssen is not required to pay more with respect to Covered Conduct than the amounts owed by Janssen under this Settlement Agreement.
 - e. In the event of any dispute over the sufficiency of the actions taken pursuant to paragraph (c), that Releasor and Janssen may seek review by the court that enters the Consent Judgment pursuant to Section X.
5. To the extent that the Claim-Over is based on a contractual indemnity, the obligations under subsection IV.B.4 shall extend solely to a Non-Party Covered Conduct Claim against a pharmacy, clinic, hospital or other purchaser or dispenser of Products, a manufacturer that sold Products, a consultant, and/or a pharmacy benefit manager or other third-party payor. Janssen shall notify the State, to the extent permitted by applicable law, in the event that any of these types of Non-Released Entities asserts a Claim-Over arising out of contractual indemnity against it.
- C. *General Release.* In connection with the releases provided for in the Agreement, the State (for itself and its Releasors) and each Participating Subdivision (for itself and its Releasors) will expressly waive, release, and forever discharge any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other

jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may thereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State (for itself and its Releasors) and each Participating Subdivision (for itself and its Releasors) will expressly waive and fully, finally, and forever settle, release and discharge, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the State's decision to enter into the Agreement or the Participating Subdivisions' decision to participate in the Agreement.

- D. *Res Judicata.* Nothing in the Agreement shall be deemed to reduce the scope of the res judicata or claim preclusive effect that the settlement memorialized in the Agreement, and/or any Consent Judgment or other judgment entered on the Agreement, gives rise to under applicable law.
- E. *Representation and Warranty.* The signatories hereto on behalf of the State expressly represent and warrant that they will obtain on or before the Effective Date (or have obtained) the authority to settle and release, to the maximum extent of the State's power, all Released Claims of (1) the State; (2) all past and present executive departments, state agencies, divisions, boards, commissions and instrumentalities with the regulatory authority to enforce state and federal controlled substances acts; (3) any of the State's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or revocation of a pharmaceutical distribution license; and (4) any Participating Subdivisions. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor. Also, for the purposes of clause (3), a release from the State's Governor is sufficient to demonstrate that the appropriate releases have been obtained.
- F. *Effectiveness.* The releases set forth in the Agreement shall not be impacted in any way by any dispute that exists, has existed, or may later exist between or among the Releasors. Nor shall such releases be impacted in any way by any current or future law, regulation, ordinance, or court or agency order limiting, seizing, or controlling the distribution or use of the settlement funds or any portion thereof, or by the enactment of future laws, or by any seizure of the settlement funds or any portion thereof.

- G. *Cooperation.* Releasors (i) will not encourage any person or entity to bring or maintain any Released Claim against any Released Entity and (ii) will reasonably cooperate with and not oppose any effort by a Released Entity to secure the prompt dismissal of any and all Released Claims.
- H. *Non-Released Claims.* Notwithstanding the foregoing or anything in the definition of Released Claims, the Agreement does not waive, release or limit any criminal liability, Claims for any outstanding liability under any tax or securities law, Claims against parties who are not Released Entities, Claims by private individuals and any claims arising under the Agreement for enforcement of the Agreement.

V. Monetary Relief and Payments

- A. As consideration for the releases from the State and Participating Subdivisions provided in Section IV above and the Settlement Participation Forms specified in Section VII and Exhibit B below, Janssen shall pay the State a lump sum of \$39,605,617.59 within 15 days after the entry of the Consent Judgment to be filed under Section VIII after delivery to Janssen of Settlement Participation Forms executed by all Subdivisions listed on Exhibit F.
- B. Within 15 days after the entry of the Consent Judgment to be filed under Section VIII after delivery to Janssen of Settlement Participation Forms executed by all Subdivisions listed on Exhibit F, Janssen shall pay into an escrow account designated by Joseph Tann, Esq. a lump sum equal to the amount that attorneys for Participating Subdivisions would have received from the Contingency Fee Fund established under the Janssen National Settlement Agreement, had the Participating Subdivisions joined that settlement. That amount is presently estimated to be \$919,617.30, but the final amount due shall be determined by Mr. Tann, applying the methodology specified in Exhibit R to the Janssen National Settlement Agreement. Mr. Tann shall direct the escrow agent to disburse the escrowed funds to attorneys for the Participating Subdivisions in accordance with his determination of the amount that would have been received by each attorney.

VI. Intra-State Allocation

Janssen's payments shall be allocated as determined by the State and its Subdivisions and pursuant to the State's Opioids Abatement Trust Fund legislation.

VII. Participation by Subdivisions

A Subdivision may become a Participating Subdivision by returning an executed Settlement Participation Form to Janssen and the State and upon prompt dismissal of its legal action pursuant to the terms of this Agreement and the Settlement Participation Form.

VIII. Filing of Consent Judgment and Dismissals with Prejudice

No later than 15 days from delivery to Janssen of Settlement Participation Forms for all Subdivisions listed on Exhibit F, the State and Janssen will proceed to file the Consent Judgment. No later than 30 days after receipt of Janssen's payments under Section V, the State and the

Participating Subdivisions shall dismiss all actions asserting Released claims with prejudice.

IX. Attorney Fee and Cost Payments

- A. Janssen shall not be responsible for making payments for State's or any Participating Subdivision's attorneys' fees and costs beyond the amounts paid under Section V.
- B. An Attorney may not receive any payment for attorney fees unless the Attorney represents that s/he has no present intent to represent or participate in the representation of any Subdivision or any Releasor with respect to Released Claims against Released Entities brought after the Effective Date.

X. Enforcement and Dispute Resolution

- A. The terms of the Agreement and Consent Judgment applicable to the State will be enforceable solely by the State and Janssen.
- B. Janssen consents to the jurisdiction of the Court in which the Consent Judgment is filed, limited to resolution of disputes identified in subsection X.D for resolution in the Court in which the Consent Judgment is filed.
- C. The parties to a dispute shall promptly meet and confer in good faith to resolve any dispute. If the parties cannot resolve the dispute informally, and unless otherwise agreed in writing, they shall follow the remaining provisions of this section to resolve the dispute.
- D. Disputes not resolved informally shall be resolved in the Court that entered the Consent Judgment.

XI. Miscellaneous

- A. *No Admission.* Janssen does not admit liability or wrongdoing. Neither this Agreement nor the Consent Judgment shall be considered, construed, or represented to be (1) an admission, concession, or evidence of liability or wrongdoing or (2) a waiver or any limitation of any defense otherwise available to Janssen.
- B. *Nature of Payment.* Janssen, the State, and the Participating Subdivisions acknowledge and agree that notwithstanding anything to the contrary in this Agreement, including, but not limited to, the scope of the Released Claims:
 - 1. Janssen has entered into this Agreement to avoid the delay, expense, inconvenience, and uncertainty of further litigation;
 - 2. The State and the Participating Subdivisions sought compensatory restitution (within the meaning of 26 U.S.C. § 162(f)(2)(A)) for the Alleged Harms allegedly suffered by the State and Participating Subdivisions;
 - 3. By executing this Agreement the State and the Participating Subdivisions certify that: (a) the Compensatory Restitution Amount is no greater than the amount, in the

aggregate, of the Alleged Harms allegedly suffered by the State and Participating Subdivisions; and (b) the portion of the Compensatory Restitution Amount received by the State or Participating Subdivision is no greater than the amount of the Alleged Harms allegedly suffered by the State or Participating Subdivision;

4. The payment of the Compensatory Restitution Amount by Janssen constitutes, and is paid for, compensatory restitution (within the meaning of 26 U.S.C. § 162(f)(2)(A)) for Alleged Harms allegedly caused by Janssen;
5. The Compensatory Restitution Amount is being paid as compensatory restitution (within the meaning of 26 U.S.C. § 162(f)(2)(A)) in order to restore, in whole or in part, the State and Participating Subdivisions to the same position or condition that they would be in had the State and Participating Subdivisions not suffered the Alleged Harms;
6. For the avoidance of doubt: (a) no portion of the Compensatory Restitution Amount represents reimbursement to the State, any Participating Subdivision, or other person or entity for the costs of any investigation or litigation, (b) the entire Compensatory Restitution Amount is properly characterized as described in this subsection XI.B, and (c) no portion of the Compensatory Restitution Amount constitutes disgorgement or is properly characterized as the payment of statutory or other fines, penalties, punitive damages, other punitive assessments, or attorneys' fees; and
7. The State, on behalf of all itself and Participating Subdivisions (the "Form 1098-F Filer") shall complete and file Form 1098-F with the Internal Revenue Service on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the order entering this Agreement becomes binding. On the Form 1098-F, the Form 1098-F Filer shall identify the entire Compensatory Restitution Amount received by the Form 1098-F Filer as remediation/restitution. The Form 1098-F Filer shall also, on or before January 31 of the year following the calendar year in which the order entering this Agreement becomes binding, furnish Copy B of such Form 1098-F (or an acceptable substitute statement) to Janssen.

C. *Tax Reporting and Cooperation.*

1. Upon request by Janssen, the State and Participating Subdivisions agree to perform such further acts and to execute and deliver such further documents as may be reasonably necessary for Janssen to establish the statements set forth in subsection XI.B to the satisfaction of their tax advisors, their independent financial auditors, the Internal Revenue Service, or any other governmental authority, including as contemplated by Treasury Regulations Section 1.162-21(b)(3)(ii) and any subsequently proposed or finalized relevant regulations or administrative guidance.
2. Without limiting the generality of this subsection XI.C, the State and each Participating Subdivision shall cooperate in good faith with Janssen with respect to any tax claim, dispute, investigation, audit, examination, contest, litigation, or other proceeding relating to this Agreement.

3. The State, on behalf of itself and Participating Subdivisions, shall designate one of its officers or employees to act as the "appropriate official" within the meaning of Treasury Regulations Section 1.6050X-1(f)(1)(ii)(B) (the "Appropriate Official").
 4. For the avoidance of doubt, neither Janssen nor the State and Participating Subdivisions make any warranty or representation to any Settling jurisdiction or Releasor as to the tax consequences of the payment of the Compensatory Restitution Amount (or any portion thereof).
- D. *No Third-Party Beneficiaries.* Except as expressly provided in this Agreement, no portion of this Agreement shall provide any rights to, or be enforceable by, any person or entity that is not the State or a Released Entity. The State may not assign or otherwise convey any right to enforce any provision of this Agreement.
- E. *Calculation.* Any figure or percentage referred to in this Agreement shall be carried to seven decimal places.
- F. *Construction.* None of the Parties and no Participating Subdivision shall be considered to be the drafter of this Agreement or of any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement. The headings of the provisions of this Agreement are not binding and are for reference only and do not limit, expand, or otherwise affect the contents or meaning of this Agreement.
- G. *Cooperation.* Each Party and each Participating Subdivision agrees to use its best efforts and to cooperate with the other Parties and Participating Subdivisions to cause this Agreement and the Consent Judgment to become effective, to obtain all necessary approvals, consents and authorizations, if any, and to execute all documents and to take such other action as may be appropriate in connection herewith. Consistent with the foregoing, each Party and each Participating Subdivision agrees that it will not directly or indirectly assist or encourage any challenge to this Agreement or the Consent Judgment by any other person, and will support the integrity and enforcement of the terms of this Agreement and the Consent Judgment.
- H. *Entire Agreement.* This Agreement, its exhibits and any other attachments embodies the entire agreement and understanding between and among the Parties and Participating Subdivisions relating to the subject matter hereof and supersedes (1) all prior agreements and understandings relating to such subject matter, whether written or oral and (2) all purportedly contemporaneous oral agreements and understandings relating to such subject matter.
- I. *Execution.* This Agreement may be executed in counterparts and by different signatories on separate counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Agreement. One or more counterparts of this Agreement may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof. One or more counterparts of this Agreement may be signed by electronic signature.

- J. *Good Faith and Voluntary Entry.* Each Party warrants and represents that it negotiated the terms of this Agreement in good faith. Each of the Parties and signatories to this Agreement warrants and represents that it freely and voluntarily entered into this Agreement without any degree of duress or compulsion. The Parties state that no promise of any kind or nature whatsoever (other than the written terms of this Agreement) was made to them to induce them to enter into this Agreement.
- K. *No Prevailing Party.* The Parties each agree that they are not the prevailing party in this action, for purposes of any claim for fees, costs, or expenses as prevailing parties arising under common law or under the terms of any statute, because the Parties have reached a good faith settlement. The Parties each further waive any right to challenge or contest the validity of this Agreement on any ground, including, without limitation, that any term is unconstitutional or is preempted by, or in conflict with, any current or future law.
- L. *Non-Admissibility.* The settlement negotiations resulting in this Agreement have been undertaken by the Parties and by certain representatives of the Participating Subdivisions in good faith and for settlement purposes only, and no evidence of negotiations or discussions underlying this Agreement shall be offered or received in evidence in any action or proceeding for any purpose. This Agreement shall not be offered or received in evidence in any action or proceeding for any purpose other than in an action or proceeding arising under or relating to this Agreement.
- M. *Severability.* If any provision of this Agreement—excepting Section IV (Release), Section V (Monetary Relief and Payments), Section VII (Participation by Local Governments), Section IX (Attorney Fee and Cost Payments), Section XI.B (Nature of Payment), and Section XI.C (Tax Reporting and Cooperation)—were for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.
- N. *Notices.* All notices or other communications under this Agreement shall be in writing (including but not limited to electronic communications) and shall be given to the recipients indicated below:

For Janssen:

Charles C. Lifland
Daniel R. Suvor
400 South Hope Street, 18th Floor Los Angeles, CA 90071
Phone: (213) 430-6000
clifland@omm.com
dsuvor@omm.com

For the Attorney General:

James T. Boffetti
Deputy Attorney General

New Hampshire Department of Justice
33 Capitol Street, Concord, NH 03301
Phone: (603) 271-0302
James.T.Boffetti@doj.nh.gov

Any Party may change or add the contact information of the persons designated to receive notice on its behalf by notice given (effective upon the giving of such notice) as provided in this subsection.

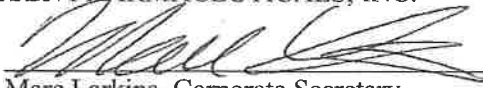
- O. *No Waiver.* The waiver of any rights conferred hereunder shall be effective only if made by written instrument executed by the waiving Party or Parties. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, nor shall such waiver be deemed to be or construed as a waiver by any other Party.
- P. *Preservation of Privilege.* Nothing contained in this Agreement or any Consent Judgment, and no act required to be performed pursuant to this Agreement or any Consent Judgment, is intended to constitute, cause, or effect any waiver (in whole or in part) of any attorney-client privilege, work product protection, or common interest/joint defense privilege, and each Party agrees that it shall not make or cause to be made in any forum any assertion to the contrary.
- Q. *Successors.* This Agreement shall be binding upon, and inure to the benefit of, Janssen and its respective successors and assigns. Janssen shall not sell the majority of its voting stock or substantially all its assets without obtaining the acquiror's agreement that it will constitute a successor with respect to Janssen's obligations under this Agreement.
- R. *Modification, Amendment, Alteration.* This Agreement may be modified, amended, or altered by a written agreement of the Parties or, in the case of the Consent Judgment, by court proceedings resulting in a modified judgment of the Court. For purposes of modifying this Agreement or the Consent Judgment, Janssen may contact the New Hampshire Attorney General to coordinate this process.
- S. *Termination.*
 - 1. Unless otherwise agreed to by Janssen and the State, this Agreement and all of its terms (except subsection XI.L and any other non-admissibility provisions, which shall continue in full force and effect) shall be canceled and terminated with respect to the State, and the Agreement and all orders issued by the Court pursuant to the Agreement shall become null and void and of no effect if one or more of the following conditions applies:
 - a. A Consent Judgment approving this Agreement without modification of any of the Agreement's terms has not been entered as to the State by a court of competent jurisdiction on or before one hundred eighty (180) days after Janssen's payment under Section V; or

- b. This Agreement or the Consent Judgment has been disapproved by a court of competent jurisdiction to which it was presented for approval and/or entry (or, in the event of an appeal from or review of a decision of such a court to approve this Agreement and the Consent Judgment, by the court hearing such appeal or conducting such review), and the time to appeal from such disapproval has expired, or, in the event of an appeal from such disapproval, the appeal has been dismissed or the disapproval has been affirmed by the court of last resort to which such appeal has been taken and such dismissal or disapproval has become no longer subject to further appeal (including, without limitation, review by the United States Supreme Court).
- 2. If this Agreement is terminated with respect to the State and its Participating Subdivisions for whatever reason pursuant to subsection XI.S.1, then:
 - a. An applicable statute of limitation or any similar time requirement (excluding any statute of repose) shall be tolled from the date the State signed this Agreement until the later of the time permitted by applicable law or for one year from the date of such termination, with the effect that Janssen and the State in question shall be in the same position with respect to the statute of limitation as they were at the time the State filed its action; and
 - b. Janssen and the State and its Participating Subdivisions shall jointly move the relevant court of competent jurisdiction for an order reinstating the actions and claims dismissed pursuant to the terms of this Agreement governing dismissal, with the effect that Janssen and the State and its Participating Subdivisions shall be in the same position with respect to those actions and claims as they were at the time the action or claim was stayed or dismissed.
- T. *Governing Law.* Except as otherwise provided in the Agreement, this Agreement shall be governed by and interpreted in accordance with the laws of New Hampshire, without regard to the conflict of law rules of New Hampshire.

Approved:

Dated: August 31, 2022

JOHNSON & JOHNSON, JANSSEN
PHARMACEUTICALS, INC., ORTHO-MCNEIL-
JANSSEN PHARMACEUTICALS, INC. N/K/A
JANSSEN PHARMACEUTICALS, INC., AND
JANSSEN PHARMACEUTICA INC. N/K/A
JANSSEN PHARMACEUTICALS, INC.

By: 
Marc Larkins, Corporate Secretary

Dated: August 31, 2022

THE STATE OF NEW HAMPSHIRE

By:

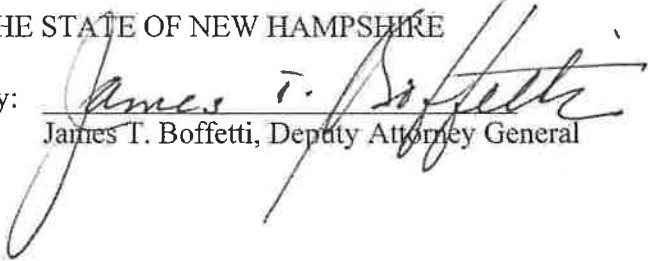

James T. Boffetti, Deputy Attorney General

EXHIBIT B

Settlement Participation Form

Governmental Entity:	State:
Authorized Official:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above ("Governmental Entity"), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated August 31, 2022 ("Janssen Settlement"), and acting through the undersigned authorized official, hereby elects to participate in the Janssen Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Janssen Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Janssen Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall, within 30 days of the filing of the Consent Judgment, secure the dismissal with prejudice of any Released Claims that it has filed.
3. The Governmental Entity agrees to the terms of the Janssen Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Janssen Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Janssen Settlement solely for the purposes provided therein.
6. The Governmental Entity submits to the jurisdiction of the court where the Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Janssen Settlement.
7. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Janssen Settlement, including but not limited to all provisions of Section IV (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition

of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Janssen Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Janssen Settlement shall be a complete bar to any Released Claim.

8. In connection with the releases provided for in the Janssen Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Janssen Settlement.

9. This Settlement Participation Form shall be deemed effective as of the Effective Date of the Janssen Settlement.
10. Nothing herein is intended to modify in any way the terms of the Janssen Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Janssen Settlement in any respect, the Janssen Settlement controls.

I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: _____

Name: _____

Title: _____

Date: _____



Town of Amherst, NH BOARD OF SELECTMEN STAFF REPORT

Title: Acceptance of Highway Safety Grant **Department:** Police Department
Funding

Meeting Date: September 26, 2022

Staff Contact: Mark Reams

BACKGROUND INFORMATION:

Acceptance of up to \$5,000 state grant funding reimbursement for municipal traffic enforcement patrols/equipment.

BUDGET IMPACT:

(Include general ledger account numbers)

POLICY IMPLICATIONS:

DEPARTMENT HEAD RECOMMENDATION:

Move to Accept

SUGGESTED MOTION:

Move to accept \$5,000 in NH state grant funding for municipal traffic enforcement patrols and equipment.

TOWN ADMINISTRATOR RECOMMENDATION:

ATTACHMENTS:

1. Amherst FY23 FINAL Local & Equipment Grant Agreement Fillable UPDATED 091622
COMBINED

OFFICE OF HIGHWAY SAFETY GRANT AGREEMENT

The State of New Hampshire and the Subrecipient hereby mutually agree as follows:

GENERAL PROVISIONS

Grant Agreement Title: Amherst Highway Safety Grant **Grant Agreement #:** 23-005

1. Identification and Definitions.

1.1. State Agency Name New Hampshire Department of Safety Office of Highway Safety		1.2. State Agency Address 33 Hazen Drive, Room 208 Concord, NH 03305	
1.3. Subrecipient Name Amherst Police Department		1.4. Subrecipient Address 175 Amherst St, Amherst, NH 03031	
Chief of Police Name: Mark O. Reams Grant Contact Name: Chad Blake Dean Shankle		Chief of Police email: mreams@amherstnh.gov Grant Contact's email: cblake@amherstnh.gov dshankle@amherst.gov	
1.4.1 Subrecipient Type (State Govt, City/Town Govt, County Govt, College/University, Other (Specify)) Town Government		1.4.2 UEI # NHHLWHTB7ND3 Exp Date: 08/18/2023	
1.5. Subrecipient Phone # (603) 673-4900	1.6. Effective Date 10/01/2022	1.7. Completion Date 09/30/2023	1.8. Grant Limitation \$ 5,000.00 <small>(Total amount of Federal funds obligated to the Subrecipient (2 CFR § 200.331(a)(1)(vii))</small>
1.9. Grant Officer for State Agency James Gilbert/Stephen Fisher		1.10. State Agency Telephone Number 603-271-2021/603-271-6708	
"By signing this form we certify that we have complied with any public meeting requirement for acceptance of this grant, including if applicable RSA 31:95-b." & "RSA Chapter 37 - Chairman of Selectmen, Town/City Manager, Mayor, County Commissioners."			
1.11. Subrecipient Signature 1		1.12. Name & Title of Subrecipient Signor 1	
Subrecipient Signature 2		Name & Title of Subrecipient Signor 2	
Subrecipient Signature 3		Name & Title of Subrecipient Signor 3	
1.13. Acknowledgment: State of New Hampshire, County of _____, on ____ / ____ / ____, before the undersigned officer, personally appeared the person(s) identified in block 1.12., known to me (or satisfactorily proven) to be the person(s) whose name is signed in block 1.11., and acknowledged that he/she executed this document in the capacity indicated in block 1.12.			
1.13.1. Signature of Notary Public or Justice of the Peace (Seal)		1.13.2 Name & Title of Notary Public or Justice of the Peace	
1.14 State Agency Signature 1 X _____ Date: _____		1.15 Name & Title of State Agency Signor 1 Robert L. Quinn, Commissioner - or Designee NH Department of Safety	
1.16. Approval by Attorney General (Form, Substance and Execution) (if G & C approval required) By: _____ Assistant Attorney General, On: ____ / ____ / ____			
1.17. Approval by Governor and Council (if applicable) By: _____ On: ____ / ____ / ____			

2. SCOPE OF WORK In exchange for grant funds provided by the State of New Hampshire, acting through the Agency identified in block 1.1 (hereinafter referred to as "the State"), pursuant to RSA 21-P:55-63, the Subrecipient identified in block 1.3 (hereinafter referred to as "the Subrecipient"), shall perform that work identified and more particularly described in the scope of work attached hereto as EXHIBIT B (the scope of work being hereinafter referred to as "the Project").

3. AREA COVERED Except as otherwise specifically provided for herein, the Subrecipient shall perform the Project in, and with respect to, the State of New Hampshire. 4. EFFECTIVE DATE: COMPLETION OF PROJECT

4.1. This Agreement, and all obligations of the parties hereunder, shall become effective on the date of approval of this Agreement by the Governor and Council of the State of New Hampshire if required (block 1.17), or upon signature by the State Agency as shown in block 1.15.

4.2 Except as otherwise specifically provided herein, the Project, including all reports required by this Agreement, shall be completed in ITS entirety prior to the date in block 1.7 (hereinafter referred to as "the Completion Date").

5. GRANT AMOUNT: LIMITATION ON AMOUNT: VOUCHERS: PAYMENT

5.1. The Grant Amount is identified and more particularly described in EXHIBIT A, attached hereto.

5.2. The manner of, and schedule of payment shall be as set forth in EXHIBIT A.

5.3. In accordance with the provisions set forth in EXHIBIT A, and in consideration of the satisfactory performance of the Project, as determined by the State, and as limited by subparagraph 5.5 of these general provisions, the State shall pay the Subrecipient the Grant Amount. The State shall withhold from the amount otherwise payable to the Subrecipient under this subparagraph 5.3 those sums required, or permitted, to be withheld pursuant to N.H. RSA 80:7 through 7-c.

5.4. The payment by the State of the Grant amount shall be the only, and the complete payment to the Subrecipient for all expenses, of whatever nature, incurred by the Subrecipient in the performance hereof, and shall be the only, and the complete, compensation to the Subrecipient for the Project. The State shall have no liabilities to the Subrecipient other than the Grant Amount.

5.5. Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Grant limitation set forth in block 1.8 of these general provisions.

6. COMPLIANCE BY SUBRECIPIENT WITH LAWS AND REGULATIONS In connection with the performance of the Project, the Subrecipient shall comply with all statutes, laws regulations, and orders of federal, state, county, or municipal authorities which shall impose any obligations or duty upon the Subrecipient, including the acquisition of any and all necessary permits.

7. RECORDS and ACCOUNTS

7.1. Between the Effective Date and the date three (3) years after the Completion Date the Subrecipient shall keep detailed accounts of all expenses incurred in connection with the Project, including, but not limited to, costs of administration, transportation, insurance, telephone calls, and clerical materials and services. Such accounts shall be supported by receipts, invoices, bills and other similar documents.

7.2. Between the Effective Date and the date three (3) years after the Completion Date, at any time during the Subrecipient's normal business hours, and as often as the State shall demand, the Subrecipient shall make available to the State all records pertaining to matters covered by this Agreement. The Subrecipient shall permit the State to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, data (as that term is hereinafter defined), and other information relating to all matters covered by this Agreement. As used in this paragraph, "Subrecipient" includes all persons, natural or fictional, affiliated with, controlled by, or under common ownership with, the entity identified as the Subrecipient in block 1.3 of these provisions.

8. PERSONNEL

8.1. The Subrecipient shall, at its own expense, provide all personnel necessary to perform the Project. The Subrecipient warrants that all personnel engaged in the project shall be qualified to perform such Project, and shall be properly licensed and authorized to perform such Project under all applicable laws.

8.2. The Subrecipient shall not hire, and it shall not permit any subcontractor, sub grantee, or other person, firm or corporation with whom it is engaged in a combined effort to perform the Project, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

8.3. The Grant Officer shall be the representative of the State hereunder. In the event of any dispute hereunder, the interpretation of this Agreement by the Grant Officer, and his/her decision on any dispute, shall be final.

9. DATA: RETENTION OF DATA: ACCESS

9.1. As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, performed, who exercises any functions or responsibilities in the review or computer programs, computer printouts, notes, letters, memoranda, paper, and documents, all whether finished or unfinished.

9.2. Between the Effective Date and the Completion Date the Subrecipient shall grant to the State, or any person designated by it, unrestricted access to all data for examination, duplication, publication, translation, sale, disposal, or for any other purpose whatsoever.

9.3. No data shall be subject to copyright in the United States or any other country by anyone other than the State.

9.4. On and after the Effective Date all data, and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason, whichever shall first occur.

9.5. The State, and anyone it shall designate, shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, all data.

10. CONDITIONAL NATURE OR AGREEMENT Notwithstanding anything in this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Subrecipient notice of such termination.

11. EVENT OF DEFAULT: REMEDIES

11.1. Any one or more of the following acts or omissions of the Subrecipient shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):

11.1.1 Failure to perform the Project satisfactorily or on schedule; or

11.1.2 Failure to submit any report required hereunder; or

11.1.3 Failure to maintain, or permit access to, the records required hereunder; or

11.1.4 Failure to perform any of the other covenants and conditions of this Agreement.

11.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

11.2.1 Give the Subrecipient a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Subrecipient notice of termination; and

11.2.2 Give the Subrecipient a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Grant Amount which would otherwise accrue to the Subrecipient during the period from the date of such notice until such time as the State determines that the Subrecipient has cured the Event of Default shall never be paid to the Subrecipient; and

11.2.3 Set off against any other obligation the State may owe to the Subrecipient any damages the State suffers by reason of any Event of Default; and

11.2.4 Treat the agreement as breached and pursue any of its remedies at law or in equity, or both.

12. TERMINATION

12.1. In the event of any early termination of this Agreement for any reason other than the completion of the Project, the Subrecipient shall deliver to the Grant Officer, not later than fifteen (15) days after the date of termination, a report (hereinafter referred to as the "Termination Report") describing in detail all Project Work performed, and the Grant Amount earned, to and including the date of termination.

12.2. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall entitle the Subrecipient to receive that portion of the Grant amount earned to and including the date of termination.

12.3. In the event of Termination under paragraphs 10 or 12.4 of these general provisions, the approval of such a Termination Report by the State shall in no event relieve the Subrecipient from any and all liability for damages sustained or incurred by the State as a result of the Subrecipient's breach of its obligations hereunder.

12.4. Notwithstanding anything in this Agreement to the contrary, either the State or, except where notice default has been given to the Subrecipient hereunder, the Subrecipient, may terminate this Agreement without cause upon thirty (30) days written notice.

13. CONFLICT OF INTEREST No officer, member or employee of the Subrecipient, and no representative, officer or employee of the State of New Hampshire or of the governing body of the locality or localities in which the Project is to be performed, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such Project, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, nor shall he or she have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

14. SUBRECIPIENT'S RELATION TO THE STATE In the performance of this Agreement the Subrecipient, its employees, and any subcontractor or subgrantee of the Subrecipient are in all respects independent contractors, and are neither agents nor employees of the State. Neither the Subrecipient nor any of its officers, employees, agents, members, subcontractors or subgrantees, shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.

15. ASSIGNMENT AND SUBCONTRACTS The Subrecipient shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Project Work shall be subcontracted or subgranted by the Subrecipient other than as set forth in EXHIBIT B without the prior written consent of the State.

16. INDEMNIFICATION The Subrecipient shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Subrecipient or subcontractor, or subgrantee or other agent of the Subrecipient. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

17. INSURANCE AND BOND

17.1. The Subrecipient shall, at its own expense, obtain and maintain in force, or shall require any subcontractor, subgrantee or assignee performing Project work to obtain and maintain in force, both for the benefit of the State, the following insurance:

17.1.1 Statutory workmen's compensation and employees liability insurance for all employees engaged in the performance of the Project, and

17.1.2 Comprehensive public liability insurance against all claims of bodily injuries, death or property damage, in amounts not less than \$1,000,000 per occurrence and

\$2,000,000 aggregate for bodily injury or death any one incident, and \$500,000 for property damage in any one incident; and

17.2. The policies described in subparagraph 17.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice thereof has been received by the State.

18. WAIVER OF BREACH No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that event, or any subsequent Event. No express waiver of any Event of Default shall be deemed a waiver of any provisions hereof. No such failure of waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Subrecipient.

19. NOTICE Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses first above given.

20. AMENDMENT This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire, if required or by the signing State Agency.

21. CONSTRUCTION OF AGREEMENT AND TERMS This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assignees. The captions and contents of the "subject" blank are used only as a matter of convenience, and are not to be considered a part of this Agreement or to be used in determining the intent of the parties hereto.

22. THIRD PARTIES The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

23. ENTIRE AGREEMENT This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

SPECIAL PROVISIONS

U.S. Department of Transportation/NHTSA Grant Conditions:

As a result of participating in Federal highway safety grant programs administered by National Highway Traffic Safety Administration (NHTSA) and the US Department of Transportation (USDOT), highway safety subrecipients are required to comply with the following documents:

- Subrecipients agree to comply with all applicable elements of NHTSA's Memorandum: Use of NHTSA Highway Safety Grant Funds for Certain Purchases May 18, 2016 and found at the following Web link.: <https://www.nhtsa.gov/highway-safety-grants-program/resources-guide>. Subrecipients should pay particular attention to the sections on (1) allowable costs for equipment, travel, training, and consultant services; and (2) unallowable costs for equipment, facilities and construction, training and program administration.
- Subrecipients agree to comply with all applicable elements of 2 CFR 200 - the **Uniform Administrative Requirement for Grants, Cost Principles, and Audit Requirements** as promulgated by the U.S. Department of Transportation. This document is found at the following Web link <https://www.nhtsa.gov/highway-safety-grants-program/resources-guide>.
- Subrecipients agree to comply with all applicable Federal basic and incentive grant program requirements as outlined in the **Highway Safety Grant Management** Manual found at the following Web link: <https://www.nhtsa.gov/highway-safety-grants-program>. This document provides information on each of the grant programs.

The following additional provisions apply to highway safety subrecipients as a result of certifications and assurances provided to NHTSA by State Highway Safety Offices in their Highway Safety Plan:

GENERAL REQUIREMENTS

The State will comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4 Highway Safety Act of 1966, as amended
- Sec. 1906, Pub. L. 109-59, as amended by Sec. 4011, Pub. L. 114-94
- 23 CFR part 1300 Uniform Procedures for State Highway Safety Grant Programs
- 2 CFR part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR part 1201 Department of Transportation, Uniform Administrative Requirements,
- Cost Principles, and Audit Requirements for Federal Awards

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

The State has submitted appropriate documentation for review to the single point of contact designated by the Governor to review Federal programs, as required by Executive Order 12372 (Intergovernmental Review of Federal Programs).

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The State will comply with FFATA guidance, OMB Guidance on FFATA Subaward and Executive Compensation Reporting, August 27, 2010, (https://www.fsrcs.gov/documents/OMB_Guidance_on_FFATA_Subaward_and_Executive_Compensation_Reporting_08272010.pdf) by reporting to [FSRS.gov](https://www.fsrcs.gov) for each sub- grant awarded:

- Name of the entity receiving the award;
- Amount of the award;

- Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source;
- Location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country; and an award title descriptive of the purpose of each funding action;
- A Unique Entity identifier;
- The names and total compensation of the five most highly compensated officers of the entity if:
 - (i) the entity in the preceding fiscal year received —
 - (I) 80 percent or more of its annual gross revenues in Federal awards;
 - (II) \$25,000,000 or more in annual gross revenues from Federal awards; and
 - (ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;
- Other relevant information specified by OMB guidance.

NONDISCRIMINATION

(applies to subrecipients as well as States)

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- **Federal-Aid Highway Act of 1973**, (23 U.S.C. 324 *et seq.*), **and Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- **Section 504 of the Rehabilitation Act of 1973**, (29 U.S.C. 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- **The Age Discrimination Act of 1975**, as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
- **The Civil Rights Restoration Act of 1987**, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- **Titles II and III of the Americans with Disabilities Act** (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;
- **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/ discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087-74100).

The State highway safety agency—

- Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted;

- Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;
- Agrees to comply (and require its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;
- Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;
- Agrees to insert in all contracts and funding agreements with other State or private entities the following clause:

"During the performance of this contract/funding agreement, the contractor/funding recipient agrees—

- To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;
- Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 21 and herein;
- To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;
- That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
- To insert this clause, including paragraphs (a) through (e), in every subcontract and sub agreement and in every solicitation for a subcontract or sub-agreement that receives Federal funds under this program.

THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The State will provide a drug-free workplace by:

- Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- Establishing a drug-free awareness program to inform employees about:
 - The dangers of drug abuse in the workplace;
 - The grantee's policy of maintaining a drug-free workplace;
 - Any available drug counseling, rehabilitation, and employee assistance programs;
 - The penalties that may be imposed upon employees for drug violations occurring in the workplace;
 - Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-
 - Abide by the terms of the statement;
 - Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- Notifying the agency within ten days after receiving notice under subparagraph (c)(2) from an employee or otherwise receiving actual notice of such conviction;
- Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.
 - Taking appropriate personnel action against such an employee, up to and including termination;
 - Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

POLITICAL ACTIVITY (HATCH ACT)

(applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

(applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, sub grants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

RESTRICTION ON STATE LOBBYING

(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

(applies to subrecipients as well as States)

Instructions for Primary Tier Participant Certification (States)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Tier Covered Transactions

- (1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

- (2) Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT

(applies to subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE

(applies to subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEAT BELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information and resources on traffic safety programs and policies for employers, please contact the Network of Employers for Traffic Safety (NETS), a public-private partnership dedicated to improving the traffic safety practices of employers and employees. You can download information on seat belt programs, costs of motor vehicle crashes to employers, and other traffic safety initiatives at www.trafficsafety.org. The NHTSA website (www.nhtsa.gov) also provides information on statistics, campaigns, and program evaluations and references.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

SECTION 402 REQUIREMENTS

1. To the best of my personal knowledge, the information submitted in the Highway Safety Plan in support of the State's application for a grant under 23 U.S.C. 402 is accurate and complete.
2. The Governor is the responsible official for the administration of the State highway safety program, by appointing a Governor's Representative for Highway Safety who shall be responsible for a State highway safety agency that has adequate powers and is suitably equipped and organized (as evidenced by appropriate oversight procedures governing such areas as procurement, financial administration, and the use, management, and disposition of equipment) to carry out the program. (23 U.S.C. 402(b)(1)(A))
3. The political subdivisions of this State are authorized, as part of the State highway safety program, to carry out within their jurisdictions local highway safety programs which have been approved by the Governor and are in accordance with the uniform guidelines promulgated by the Secretary of Transportation. (23 U.S.C. 402(b)(1)(B))
4. At least 40 percent of all Federal funds apportioned to this State under 23 U.S.C. 402 for this fiscal year will be expended by or for the benefit of political subdivisions of the State in carrying out local highway safety programs (23 U.S.C. 402(b)(1)(C)) or 95 percent by and for the benefit of Indian tribes (23 U.S.C. 402(h)(2)), unless this requirement is waived in writing. (This provision is not applicable to the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.)
5. The State's highway safety program provides adequate and reasonable access for the safe and convenient movement of physically handicapped persons, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks. (23 U.S.C. 402(b)(1)(D))
6. The State will provide for an evidenced-based traffic safety enforcement program to prevent traffic violations, crashes, and crash fatalities and injuries in areas most at risk for such incidents. (23 U.S.C. 402(b)(1)(E))
7. The State will implement activities in support of national highway safety goals to reduce motor vehicle related fatalities that also reflect the primary data-related crash factors within the State, as identified by the State highway safety planning process, including:
 - Participation in the National high-visibility law enforcement mobilizations as identified annually in the NHTSA Communications Calendar, including not less than 3 mobilization campaigns in each fiscal year to –
 - Reduce alcohol-impaired or drug-impaired operation of motor vehicles; and
 - Increase use of seat belts by occupants of motor vehicles;
 - Sustained enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits;
 - An annual Statewide seat belt use survey in accordance with 23 CFR part 1340 for the measurement of State seat belt use rates, except for the Secretary of Interior on behalf of Indian tribes;
 - Development of Statewide data systems to provide timely and effective data analysis to support allocation of highway safety resources;
 - Coordination of Highway Safety Plan, data collection, and information systems with the State strategic highway safety plan, as defined in 23 U.S.C. 148(a). (23 U.S.C. 402(b)(1)(F))
8. The State will actively encourage all relevant law enforcement agencies in the State to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police that are currently in effect. (23 U.S.C. 402(j))
9. The State will not expend Section 402 funds to carry out a program to purchase, operate, or maintain an automated traffic enforcement system. (23 U.S.C. 402(c)(4))

§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also § 200.471.

§ 200.317 Procurements by states.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

§ 200.318 General procurement standards.

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)

(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)

(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§ 200.319 Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

- (5) Organizational conflicts of interest;
 - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - (7) Any arbitrary action in the procurement process.
- (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
 - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.
- (f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award. This content is from the eCFR and is authoritative but unofficial.

- (a) *Informal procurement methods.* When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include: (1) *Micro-purchases* –
- (i) *Distribution.* The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
 - (ii) *Micro-purchase awards.* Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
 - (iii) *Micro-purchase thresholds.* The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.
 - (iv) *Non-Federal entity increase to the micro-purchase threshold up to \$50,000.* Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with §

200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

- (A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;
- (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
- (C) For public institutions, a higher threshold consistent with State law.

(v) *Non-Federal entity increase to the micro-purchase threshold over \$50,000.* Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) *Small purchases –*

(i) *Small purchase procedures.* The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) *Simplified acquisition thresholds.* The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) *Formal procurement methods.* When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) *Sealed bids.* A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

- (A) A complete, adequate, and realistic specification or purchase description is available;
- (B) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

- (A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
- (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- (D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (E) Any or all bids may be rejected if there is a sound documented reason.

(2) *Proposals*. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

- (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
- (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
- (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) *Noncompetitive procurement*. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
- (2) The item is available only from a single source;
- (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
- (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
- (5) After solicitation of a number of sources, competition is determined inadequate.

§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

§ 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

§ 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 200.340 Termination

(a) The Federal award may be terminated in whole or in part as follows:

- (1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
- (2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
- (3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- (4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or passthrough entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or
- (5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.

(b) A Federal awarding agency should clearly and unambiguously specify termination provisions applicable to each Federal award, in applicable regulations or in the award, consistent with this section.

(c) When a Federal awarding agency terminates a Federal award prior to the end of the period of performance due to the non-Federal entity's material failure to comply with the Federal award terms and conditions, the Federal awarding agency must report the termination to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS).

(1) The information required under paragraph (c) of this section is not to be reported to designated integrity and performance system until the non-Federal entity either –

- (i) Has exhausted its opportunities to object or challenge the decision, see § 200.342; or
- (ii) Has not, within 30 calendar days after being notified of the termination, informed the Federal awarding agency that it intends to appeal the Federal awarding agency's decision to terminate.

(2) If a Federal awarding agency, after entering information into the designated integrity and performance system about a termination, subsequently:

- (i) Learns that any of that information is erroneous, the Federal awarding agency must correct the information in the system within three business days;
- (ii) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(3) Federal awarding agencies, must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the non-Federal entity asserts within seven calendar days to the Federal awarding agency who posted the information, that some of the information made publicly available is covered by a

disclosure exemption under the Freedom of Information Act, the Federal awarding agency who posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

(d) When a Federal award is terminated or partially terminated, both the Federal awarding agency or passthrough entity and the non-Federal entity remain responsible for compliance with the requirements in §§ 200.344 and 200.345.

§ 200.414 Indirect (F&A) costs.

(a) *Facilities and administration classification.* For major Institutions of Higher Education (IHE) and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the "Administration" category; for IHEs, they are included in the "Facilities" category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in appendix III to this part, and Rate Determination for Institutions of Higher Education paragraph C. 11. Major nonprofit organizations are those which receive more than \$10 million dollars in direct Federal funding.

(b) *Diversity of nonprofit organizations.* Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations. Identification with a Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. However, typical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See also § 200.306.)

(1) The negotiated rates must be accepted by all Federal awarding agencies. A Federal awarding agency may use a rate different from the negotiated rate for a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented justification as described in paragraph (c)(3) of this section.

(2) The Federal awarding agency head or delegate must notify OMB of any approved deviations.

(3) The Federal awarding agency must implement, and make publicly available, the policies, procedures and general decision-making criteria that their programs will follow to seek and justify deviations from negotiated rates. 2 CFR 200.414 (up to date as of 6/08/2022) Indirect (F&A) costs.

(4) As required under § 200.204, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, the Federal agency should incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

(d) Pass-through entities are subject to the requirements in § 200.332(a)(4).

(e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III-VII and Appendix IX as follows:

(1) Appendix III to Part 200 - Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

(2) Appendix IV to Part 200 - Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;

(3) Appendix V to Part 200 - State/Local Governmentwide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 200 - Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 200 - States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 200 - Hospital Cost Principles.

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that does not have a current negotiated (including provisional) rate, except for those non-Federal entities described in appendix

VII to this part, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. No documentation is required to justify the 10% de minimis indirect cost rate. As described in § 200.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(g) Any non-Federal entity that has a current federally-negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

(h) The federally negotiated indirect rate, distribution base, and rate type for a non-Federal entity (except for the Indian tribes or tribal organizations, as defined in the Indian Self Determination, Education and Assistance Act, 25 U.S.C. 450b(1)) must be available publicly on an OMB-designated Federal website.

Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

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

D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis

of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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

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

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

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

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

I understand that failure to comply with applicable Federal statutes and regulations may subject State officials to civil or criminal penalties and/or place the State in a high risk grantee status in accordance with 2 CFR 200.

I sign these Certifications and Assurances based on personal knowledge, after appropriate inquiry, and I understand that the Government will rely on these representations in awarding grant funds.

Authorized Contract Signatory: _____ **Date:** _____

Signors Printed Name: _____ **Signors Title:** _____

EXHIBIT A

OHS Grant Award		
Project Titles	Federal Budget	Minimum Match Required
SPEED ENFORCEMENT PATROLS	\$ 5,000.00	\$ 1,250.00
DUI ENFORCEMENT	\$ 0.00	\$ 0.00
DISTRACTED DRIVING	\$ 0.00	\$ 0.00
PEDESTRIAN BICYCLE	\$ 0.00	\$ 0.00
JOIN THE NH CLIQUE	\$ 0.00	\$ 0.00
DRIVE SOBER OR GET PULLED OVER	\$ 0.00	\$ 0.00
U DRIVE, U TEXT, U PAY	\$ 0.00	\$ 0.00
E-CRASH EQUIPMENT (MDT)	\$ 0.00	\$ 0.00
E-CRASH EQUIPMENT (Printers/Scanners/Receivers)	\$ 0.00	\$ 0.00
SPEED EQUIPMENT	\$ 0.00	\$ 0.00
C.A.R EQUIPMENT	\$ 0.00	\$ 0.00
C.A.R TRAINING	\$ 0.00	\$ 0.00
Community Outreach & Betterment (COB) Grant	\$ 0.00	\$ 0.00
Total Total amount Federal funds obligated to the subrecipient, (2 CFR § 200.331(a)(1)(vii)) Project Costs: 80% Federal Funds, 20% Applicant Share (Minimum Match Required).	\$ 5,000.00	\$ 1,250.00

Awarding Agency: Office of Highway Safety (OHS)
Federal Awarding Agency: National Highway Traffic Safety Administration (NHTSA), US DOT NHTSA Region 1 55 Broadway, RTV-8E Cambridge, MA 02142
Budget period (new) – 10/01/2022 to 09/30/2023
Is This a Research and Development Project: NO

EXHIBIT B
GRANT REQUIREMENTS AND INFORMATION

- Officers funded during these overtime enforcement grants shall be dedicated in total to traffic law enforcement, except in the case of a criminal offense committed in the officer's presence, in the case of response to an officer in distress, or in the case of a riot where all available personnel must divert their attention.
- Officers may pull over drivers for any driving offense during patrols. This includes, but is not limited to, suspected drunk driving, speeding, school bus violations, CPS violations, traffic light/stop sign running, and distracted driving.
- Nothing in this grant shall be interpreted as a requirement, formal or informal that a law enforcement officer issue a specified or predetermined number of summons in pursuance of the department's obligation associated with the grant.
- If an officer makes an arrest during the patrol shift, but does not complete the arrest before the shift is scheduled to end, the officer can continue working under the grant to complete that arrest even if the time exceeds the scheduled patrol shift; however, the total request for reimbursement must not exceed the approved budget in the Grant Agreement.
- An officer who stops working a Highway Safety grant to assist with a Non-Highway Safety Grant related issue (i.e. crash, domestic dispute, criminal complaint, etc.), must not count such hours as hours worked on a Highway Safety Grant.
- Full-time officers will be reimbursed at an overtime rate of pay as established by the department and/or municipality for hours worked during the enforcement patrols. Part-time officers will be reimbursed at their normal hourly rate of pay.
- The Patrol Activity Report (HS-200) must be signed and dated by an authorized signatory (Police Chief or designee). Individuals working the enforcement patrol may not sign off on the Patrol Activity Report for themselves and if the Chief Law Enforcement Officer (CLEO) works an overtime enforcement patrol, they must comply with 29 CFR Part 541 as it relates to "exempt employees". This will require that the CLEO provide a waiver of 29 CFR, Part 541 from their governing body with any reimbursement requests in which the CLEO has worked. Additionally, the CLEO may not sign off on their own HS200 or that of a spouse, child or sibling who may work an enforcement patrol.
- If weather impedes a particular enforcement detail, this should be noted on the Patrol Activity Report (HS-200).
- Command staff may participate in and be compensated for enforcement details if acting in a traffic enforcement role rather than acting exclusively in a supervisory role overseeing officers engaged in traffic enforcement.
- Failure to comply with reporting requirements may result in non-reimbursement of funds or suspension of grant award.
- Non-participation or non-compliance with the performance measures may result in grant agreement suspension, termination and/non-reimbursement of expenses.

Reimbursement Schedule and Required Paperwork

- Reimbursements are due no later than 15 days after the close of the quarter. Due dates are as follows:
 1. **January 15th** for October-December (Quarter 1)
 2. **April 15th** for January-March (Quarter 2)
 3. **July 15th** for April-June (Quarter 3)
 4. **October 15th** for July-September (Quarter 4)
- See link for all the required forms - <https://www.nh.gov/hsafety/publications/index.htm>
- Over-Time enforcement patrol reimbursements shall include the following:
 1. Reimbursement Request Cover Letter (HS-1);
 2. Overtime Payroll Reimbursement Form (HS-20) for each project;
 3. Match Tracking Form (HS-22) for each project;
 4. Quarterly Summary Report (HS-100 QSR) for each project;
 5. Patrol Activity Reports (HS-200) for each project; and
 6. Updated Grant Application/Performance Tracking Tool (App/PTT)
- Equipment reimbursements shall include the following:
 1. Reimbursement Request Cover Letter (HS-1). **Note:** if submitting equipment reimbursement along with overtime enforcement patrol reimbursements only one (1) Reimbursement Request Cover Letter (HS-1) shall be submitted.
 2. Copy of the detailed equipment invoice (with all Serial #'s);
 3. Match Tracking Form (HS-22);
 4. Copy of Cancelled Check; and
 5. Final Equipment Report (HS-8E) (with all Serial #'s)

- If no enforcement patrols took place during the quarter you are required to submit the Reimbursement Cover Letter (HS-1) indicating that you are not seeking reimbursement by placing \$0 in the projects where you were awarded funding.
- Failure to file required reports by the submission due dates can result in grant termination or denial of future grants.
- All publications, public information, or publicity released in conjunction with this project shall state "This project is being supported in part through a grant from the NH Office of Highway Safety, with Federal funds provided by the National Highway Traffic Safety Administration" or related social media tag provided by our office.
- Grant agreements shall terminate in the event funds are exhausted and/or not made available by the federal government for this program. If the grantee makes obligations in anticipation of receiving funds under this grant, the grantee does so at their peril and the State of New Hampshire will be under no obligation to make payments for such performance.

SPECIAL PROVISION-NH OFFICE OF HIGHWAY SAFETY

- (A) In the event of any conflict or ambiguity between the provisions of the Subrecipient's application and the provisions of the Office of Highway Safety Grant Agreement, including applicable EXHIBITS A and B, the provisions of the Grant Agreement shall govern.
- (B) The New Hampshire Office of Highway Safety (OHS) will review all reports and certifications received to ensure compliance. If findings specific to Highway Safety Programs are detected within an agency's Single Audit, appropriate action shall be taken to ensure that identified sub recipient risks are being timely and appropriately corrected.

CASH MANAGEMENT

Cash draw-downs will be initiated only when actually needed for disbursement (i.e., as close as possible to the time of making disbursements). Cash disbursements and balances will be reported in a timely manner as required by NHTSA. 2 CFR Part 200.305.

For subrecipients, recipients must establish reasonable procedures to ensure the receipt of reports on subrecipients' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. Recipients must monitor cash draw-downs by their subrecipients to assure that they conform substantially to the same standards of timing and amount as apply to advances to the recipients. 2 CFR 200.305.

Failure to adhere to these provisions may result in the termination of draw-down privileges.

OFFICE OF MANAGEMENT AND BUDGET GRANT CONDITIONS

The following documents issued by the Office of Management and Budget (OMB) apply to all Federal grants regardless of the Federal Department making them available:

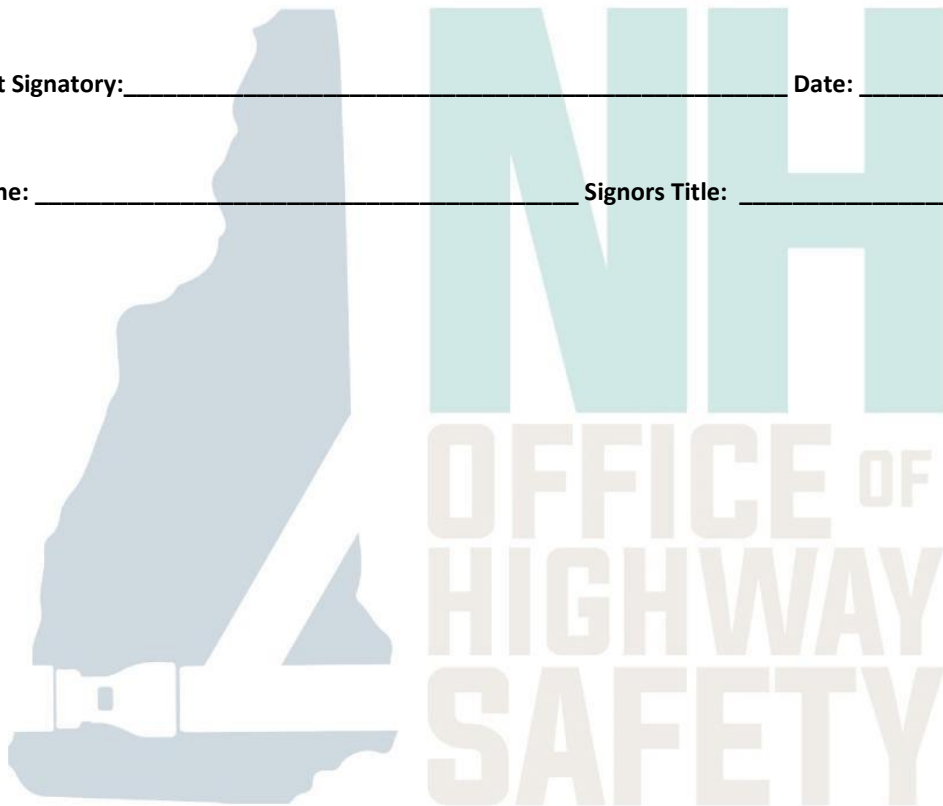
- **Audit Requirement of Federal Funds:** (2 CFR § 200.332(a)(5)) 2 CFR part 200, subpart F (formerly known as OMB Circular A-133) – These requirements apply to each non-profit organization, each institution of higher education, and local governments as a whole when they or one of their departments receives federal funds. Any non-profit organization, institution of higher education, or local government spending more than \$750,000 in federal funds from all sources within a 12-month period must have an audit performed on the use of the funds. OGR defines the 12-month period as July 1 to June 30. The following link provides the full text of this basic federal grant requirement: <https://www.nhtsa.gov/highway-safety-grants-program/resources-guide>.
- **Cost Principles for Federal Grants to State and Local Governments**
 - 2 CFR 200 subpart E – These requirements apply only to state and local government subrecipients. These regulations list and define general categories of costs that are both allowable and unallowable. Examples include the following:
 - The cost of alcoholic beverages is unallowable.
 - Costs incurred by advisory councils are allowable.
 - Audit costs are allowable.
 - Compensation costs are allowable so long as they are consistent with that paid for similar work in other activities of the local government.
 - Entertainment costs are unallowable.
 - Equipment costs are allowable with the prior approval of the HSO. Equipment having a useful life of more than one year or a current per-unit fair market value of \$5,000 or more must be tracked. When replacing equipment purchased with federal funds, the equipment to be replaced may be used as a trade-in or can be sold with the proceeds used to offset the cost of the replacement equipment. In addition, during the period of the contract with HSO, insurance on the equipment is allowable.

- Travel costs are allowable if pre-approved by the HSO and so long as they are consistent with those normally allowed in like circumstances for non-federally funded activities.
- **Cost Principles for Federal Grants to *Non-Profit Organizations and Institutions of Higher Education*** - These requirements apply to only the non-profit and higher education sub recipients. These document list and define general categories of costs that are allowable and unallowable. The link below provides the full text of these two basic federal grant requirements.
 - [eCFR :: 2 CFR Part 200 Subpart E -- Cost Principles](#)

I sign these Grant Requirements based on personal knowledge, after appropriate inquiry, and I understand that the Government will rely on these representations in reimbursing grant funds.

Authorized Contract Signatory: _____ **Date:** _____

Signors Printed Name: _____ **Signors Title:** _____



Project Titles, PSP & Task, CFDA and FAIN Numbers
SPEED ENFORCEMENT PATROLS PSP & Task 23-02-04 FAST Act 402/Bil/Sup CFDA: 20.600 FAIN Number (Subaward): 69A37521300004020NH0, 69A37522300004020NH0, 69A37523300004020NH0, 69A3752230SUP4020NH0, 69A3752330SUP4020NH0
SPEED EQUIPMENT PSP & Task 23-02-04 FAST Act 402/Bil/Sup CFDA: 20.600 FAIN Number (Subaward): 69A37521300004020NH0, 69A37522300004020NH0, 69A37523300004020NH0, 69A3752230SUP4020NH0, 69A3752330SUP4020NH0
DUI ENFORCEMENT PSP & Task 23-07-04 FAST Act 402/Bil/Sup CFDA: 20.600 FAIN Number (Subaward): 69A37521300004020NH0, 69A37522300004020NH0, 69A37523300004020NH0, 69A3752230SUP4020NH0, 69A3752330SUP4020NH0
DISTRACTED DRIVING PSP & Task 23-04-04 FAST Act 402/Bil/Sup CFDA: 20.600 FAIN Number (Subaward): 69A37521300004020NH0, 69A37522300004020NH0, 69A37523300004020NH0, 69A3752230SUP4020NH0, 69A3752330SUP4020NH0
PEDESTRIAN BICYCLE PSP & Task 23-06-04 FAST Act 402/Bil/Sup CFDA: 20.600 FAIN Number (Subaward): 69A37521300004020NH0, 69A37522300004020NH0, 69A37523300004020NH0, 69A3752230SUP4020NH0, 69A3752330SUP4020NH0
JOIN THE NH CLIQUE PSP & Task 23-01-04 FAST Act 402/Bil/Sup CFDA: 20.600 FAIN Number (Subaward): 69A37521300004020NH0, 69A37522300004020NH0, 69A37523300004020NH0, 69A3752230SUP4020NH0, 69A3752330SUP4020NH0
DRIVE SOBER OR GET PULLED OVER PSP & Task 23-07-11 FAST Act 402/Bil/Sup CFDA: 20.600 FAIN Number (Subaward): 69A37521300004020NH0, 69A37522300004020NH0, 69A37523300004020NH0, 69A3752230SUP4020NH0, 69A3752330SUP4020NH0
U DRIVE, U TEXT, U PAY PSP & Task 23-04-11 FAST Act 402/Bil/Sup CFDA: 20.600 FAIN Number (Subaward): 69A37521300004020NH0, 69A37522300004020NH0, 69A37523300004020NH0, 69A3752230SUP4020NH0, 69A3752330SUP4020NH0
E-CRASH EQUIPMENT (MDT) PSP & Task 23-03-06 FAST Act 402/Bil/Sup CFDA: 20.600 FAIN Number (Subaward): 69A37521300004020NH0, 69A37522300004020NH0, 69A37523300004020NH0, 69A3752230SUP4020NH0, 69A3752330SUP4020NH0
E-CRASH EQUIPMENT (Printers/Scanners/Receivers/C.A.R. Equipment/C.A.R. Training) PSP & Task 23-03-06 FAST Act 402/Bil/Sup CFDA: 20.600 FAIN Number (Subaward): 69A37521300004020NH0, 69A37522300004020NH0, 69A37523300004020NH0, 69A3752230SUP4020NH0, 69A3752330SUP4020NH0
COMMUNITY OUTREACH & BETTERMENT (COB) GRANT PSP & Task 23-09-03 FAST Act 402/Bil/Sup CFDA: 20.600 FAIN Number (Subaward): 69A37521300004020NH0, 69A37522300004020NH0, 69A37523300004020NH0, 69A3752230SUP4020NH0, 69A3752330SUP4020NH0

Scope of Work

SPEED ENFORCEMENT

For additional grant requirements please familiarize yourself with the section of the grant agreement titled, "Grant Requirements and Information".

- The locations as well as time and days of the Speed overtime enforcement patrols should support the problem statement identified in your grant application.
- Speed enforcement patrols should be no more than **4-hours** in duration. These hours shall be run consecutively without interruption.
- If the last stop of a grant-funded patrol results in an arrest that requires the patrol to exceed 4-hours, OHS will consider payment, after review of the dispatch log and Patrol Activity Report (HS-200). The dispatch log must show the arrest as the last stop of the patrol as well as showing the time the arrest was cleared.
- The OHS has an expectation that Departments will have a minimum of three documented stops/contacts per hour. Documented stops/contacts are defined as any grant-funded patrol officer contact with motorists, pedestrians, and/or bicyclists, during the grant-funded patrol periods. Contacts are required to be supported by written or electronic records maintained at the police department. These records must be maintained in a manner that guarantees their accountability during a monitoring review. If fewer than three stops/contacts per hour are made during a grant-funded patrol, an explanation must be provided on note section of the HS-200/Patrol Activity Report.
- To maximize grant funding, patrols must consist of **one grant-funded officer per cruiser**; however, multiple cruisers may be out at one time.
- All vehicles stopped should be visually checked for violations of the Child Passenger Restraint law. The total number of visual checks and any action taken should be noted on the HS-200 Patrol Activity Report.
- The NHOHS Highway Safety Commander may, and in their prolonged absence, the NHOHS program manager may, in consultation and conjunction with the Chief of Police, at their discretion, authorize adjustments in the duration of patrols and focus efforts in both location and area of enforcement, to help maximize the potential for success in meeting objectives and achieving overall goals.

Grantee Initials: _____
Date: _____

Grantee Initials: _____
Date: _____

Grantee Initials: _____
Date: _____



Town of Amherst, NH BOARD OF SELECTMEN STAFF REPORT

Title: PMEC Coordinator Resignation

Department: Parks & Recreation
Department

Meeting Date: September 26, 2022

Staff Contact: Craig Fraley

BACKGROUND INFORMATION:

PMEC Coordinator Amy Hull has submitted her letter of resignation effective 10/28/2022

BUDGET IMPACT:

(Include general ledger account numbers)

N/A

POLICY IMPLICATIONS:

DEPARTMENT HEAD RECOMMENDATION:

I recommend we regretfully accept Hull's resignation. We will miss Amy and all of the great work she has done for the Parks and Recreation Department.

SUGGESTED MOTION:

I motion we regretfully accept Amy Hull's resignation from the PMEC Coordinator Position.

TOWN ADMINISTRATOR RECOMMENDATION:

ATTACHMENTS:

1. Hull Resignation Letter

September 19, 2022

Craig Fraley

Recreation Director

Amherst Recreation Department

4 Cross Rd Amherst, NH 03031

Dear Craig,

Please accept this letter as formal notification that I am leaving my position as the PMEC Program Coordinator. My last day of work will be Friday, October 28, 2022.

Thank you for the opportunities you have provided me during my time with the Amherst Recreation Department. I am more than grateful to have had the opportunity of working with the team here.

If I can be of any assistance during this transition, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Amy R Hull', with a stylized flourish at the end.

Amy R Hull



Town of Amherst, NH BOARD OF SELECTMEN STAFF REPORT

Title: Contribution Assurance Program
(CAP) Agreement for WC and PL

Department: Finance Department

Meeting Date: September 26, 2022

Staff Contact: Debbie Bender

BACKGROUND INFORMATION:

Primex routinely offers CAP agreements to their members which give us some idea of budgetary amounts for the next three fiscal years. In order to qualify, we agree to stay with Primex during that time period. This is an opportunity for you to take a look at these agreements and ask questions. The request is to allow Dean to sign on behalf of the Board.

BUDGET IMPACT:

(Include general ledger account numbers)

This gives us some assurance of a maximum increase for both of these insurance policies for budget purposes.

POLICY IMPLICATIONS:

N/A

DEPARTMENT HEAD RECOMMENDATION:

Approve

SUGGESTED MOTION:

I move to request that Dean Shankle, Town Administrator, be authorized to sign the PRIMEX CAP agreements on behalf of the Selectmen.

TOWN ADMINISTRATOR RECOMMENDATION:

ATTACHMENTS:

1. CAP-Agreement-FY2022-WC-106-1
2. CAP-Agreement-FY2022-PL-106-1

September 19, 2022

Jennifer Stover, Human Resources
Town of Amherst
2 Main Street
Amherst, NH 03031

RE: Contribution Assurance Program (CAP) for FY 2024 – FY 2026 for the Workers' Compensation Program

Dear Jennifer:

Primex³ is pleased to offer the **Town of Amherst** the option of participating in the **Contribution Assurance Program (CAP)** for the next three coverage period years. **For members who have demonstrated commitment to the Primex³ pool, CAP provides stability by creating a limit on your Workers' Compensation contributions for future renewals.**


We are pleased to offer you a **CAP** Agreement that provides you budgetary assurance through **June 30, 2026**. (See enclosed **CAP** Agreement and Resolution.) **Please return your executed CAP Agreement and Resolution on or before September 30, 2022, to ensure your participation in CAP for the upcoming October 15, 2022 Renewal.**

The percentage listed is a maximum increase; actual increases will not exceed that percentage and may be lower, based on each member's performance. Performance still impacts contribution amounts, so it remains important for both Primex³ and our members to leverage our partnership to effectively manage risks and any claims that occur.

Our goal has always been to provide members with the best programs at the best value. **CAP** provides predictable contributions in the Workers' Compensation Program that you and your taxpayers can count on for budgetary stability.

Please contact me or your Member Services Consultant with questions at 800-698-2364.

Sincerely,



Carl Weber
Director of Member Services

Trust. Excellence. Service.

**Workers' Compensation
Contribution Assurance Program (CAP) Agreement
THIS AGREEMENT AMENDS AND EXTENDS YOUR MEMBERSHIP AGREEMENT
PLEASE READ CAREFULLY**

Primex³ is offering members in our **Workers' Compensation Program** an opportunity to stabilize their annual contributions through participation in our Contribution Assurance Program (**CAP**). **CAP** is offered to members who qualify, providing them predictability by limiting the annual contribution increase during a defined period of years (**CAP Period**). By signing this Agreement, you agree to extend your Membership Agreement for **three (3) years** and Primex³ agrees, with limited exception¹, that your annual contribution increase will not exceed ten percent (10%) of the prior year's contribution. Because performance matters with Primex³, you may realize an annual increase that is less than the **CAP** through sound risk management and stable underwriting exposures.

We are offering this opportunity so that our members can extend their commitment to pooling through the Primex³ programs. Participation in **CAP** for each year of the **CAP Period** is conditioned upon a three-year commitment to participation in the Primex³ Workers' Compensation Program.

The following **CAP Period** years qualify for the Contribution Assurance Program (**CAP**):

FY 2024 July 1, 2023 through June 30, 2024

(maximum 10% increase over July 1, 2022 through June 30, 2023 contribution)

FY 2025 July 1, 2024 through June 30, 2025

(maximum 10% increase over July 1, 2023 through June 30, 2024 contribution)

FY 2026 July 1, 2025 through June 30, 2026

(maximum 10% increase over July 1, 2024 through June 30, 2025 contribution)

By signing this Agreement, the **Town of Amherst** agrees to extend its risk pool membership and participation in the Primex³ **Workers' Compensation Program** for three coverage period years, through **June 30, 2026**. The **Town of Amherst** agrees and understands it remains bound by and subject to the terms and conditions of the Membership Agreement, Public Entity Coverage Documents and Trust Agreement, and all Trust by-laws, policies and procedures.

¹ CAP protects the member from most contribution increases during the CAP period; i.e., those resulting from account underwriting, or directly caused by changes in the member's loss history, property and payroll exposures. For the protection of all members, CAP does not prevent Primex³ from raising contributions across the pool/program to meet the actuary's reserve funding recommendations in response to catastrophic events, investment losses, severe adverse claim development, reinsurance failure, legislative enactments, judicial opinions and administrative orders. In the rare and unlikely event CAP maximum increase limits must be exceeded to adequately fund reserves, Primex³ in fairness will provide members advance notice and the option of terminating the CAP Agreement.

The **Town of Amherst** agrees that the ten percent (10%) maximum increase currently available for this **CAP Period** does not apply to any other year or period of years, and upon expiration of the **CAP Period** in this Agreement, any subsequent participation in a Primex³ **CAP** will be subject to underwriting review, membership criteria, **CAP** criteria, determination of contribution and the maximum increase in place for the subsequent **CAP Period**.

The **Town of Amherst** further acknowledges that by extending its Membership Agreement for three (3) coverage period years, the Public Entity Coverage Documents, General Conditions Section (L) ("Terminating Participation in Our Program(s)") is suspended during year one (1) and year two (2) of the three (3) year term, as there is no right to cancel or terminate during year one (1) and year two (2) but shall be reinstated for the end of year three (3).

The **Town of Amherst** agrees that failure to provide notice in strict accordance with the Public Entity Coverage Documents, General Conditions Section (L) shall result in automatic renewal of risk management pool membership and continuation in the Primex³ Workers' Compensation Program, but not continuation of **CAP** which must be separately offered and accepted.

Primex³ acknowledges that the **Town of Amherst** is a NH public entity which receives budgetary authorization for appropriations from an annual meeting of its legislative body and pertains to a fiscal year which commences on the following January 1 or July 1, of any given year. The **Town of Amherst** also acknowledges that it is legally required to carry insurance coverage. As such, if the legislative body, at such annual meeting for any years that are within the anticipated term of the contract, fails to approve such appropriation, and there are no other lawful means of funding the coverage, this contract may be terminated by the **Town of Amherst** by notice to Primex³ made within 30 days of the legislative action at which such funding initiative was defeated and such cancellation shall be effective as of the commencement on the following fiscal year or on the anniversary of the policy, whichever first occurs.

The **Town of Amherst**, however, agrees that it shall seek the requisite appropriations in good faith and that the availability of lower cost or otherwise preferable coverage alternatives during the term of this Agreement shall not constitute a good faith and permissible basis on which to fail to pursue the appropriations or assert that appropriations are unavailable. In the event of an early termination, the **Town of Amherst** agrees to return the difference between the **CAP** increase and the uncapped contribution.

By affixing my signature below, I am attesting, representing and warranting that I am a duly authorized representative of the governing body of the **Town of Amherst** with legal authority to contractually bind the **Town of Amherst** to the terms of this Agreement, and that I understand the commitment being made to membership in the Primex³ risk management pool and participation in the Workers' Compensation Program.

Authorized Representative of the
Governing Body

Title

Date

Print Name

RESOLUTION TO ENTER PRIMEX³
Workers' Compensation Contribution Assurance Program (CAP)

RESOLVED: To hereby accept the offer of the New Hampshire Public Risk Management Exchange (Primex³) to enter into its **Workers' Compensation Contribution Assurance Program (CAP)** as of the date of the adoption of this resolution, and to be contractually bound to all of the terms and conditions of Primex³ risk management pool membership during the term of the **Workers' Compensation Contribution Assurance Program (CAP)**. The coverage provided by Primex³ in each year of membership shall be as then set forth in the Coverage Documents of Primex³.

I attest that the foregoing is a true copy of the Resolution of the Governing Board of the **Town of Amherst** adopted on _____.

Board: _____
Title of Board

Signature: _____

Name: _____

Title: _____ duly authorized

Date: _____



September 19, 2022

Jennifer Stover, Human Resources
Town of Amherst
2 Main Street
Amherst, NH 03031

RE: Contribution Assurance Program (CAP) for FY 2024 – FY 2026 for the Property & Liability Program

Dear Jennifer:

Primex³ is pleased to offer the **Town of Amherst** the option of participating in the **Contribution Assurance Program (CAP)** for the next three coverage period years. **For members who have demonstrated commitment to the Primex³ pool, CAP provides stability by creating a limit on your Property & Liability contributions for future renewals.**

We are pleased to offer you a **CAP** Agreement that provides you budgetary assurance through **June 30, 2026**. (See enclosed **CAP** Agreement and Resolution.) **Please return your executed CAP Agreement and Resolution on or before September 30, 2022, to ensure your participation in CAP for the upcoming October 15, 2022 Renewal.**

The percentage listed is a maximum increase; actual increases will not exceed that percentage and may be lower, based on each member's performance. Performance still impacts contribution amounts, so it remains important for both Primex³ and our members to leverage our partnership to effectively manage risks and any claims that occur.

Our goal has always been to provide members with the best programs at the best value. **CAP** provides predictable contributions in the Property & Liability Program that you and your taxpayers can count on for budgetary stability.

Please contact me or your Member Services Consultant with questions at 800-698-2364.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Weber", written over a horizontal line.

Carl Weber
Director of Member Services

Trust. Excellence. Service.

Bow Brook Place, 46 Donovan Street ■ Concord, NH 03301-2624
(603) 225-2841 ■ (800) 698-2364 ■ nhprimex.org

**Property & Liability
Contribution Assurance Program (CAP) Agreement
THIS AGREEMENT AMENDS AND EXTENDS YOUR MEMBERSHIP AGREEMENT
PLEASE READ CAREFULLY**

Primex³ is offering members in our **Property & Liability Program** an opportunity to stabilize their annual contributions through participation in our Contribution Assurance Program (**CAP**). **CAP** is offered to members who qualify, providing them predictability by limiting the annual contribution increase during a defined period of years (**CAP Period**). By signing this Agreement, you agree to extend your Membership Agreement for **three (3) years** and Primex³ agrees, with limited exception¹, that your annual contribution increase will not exceed seven percent (7%) of the prior year's contribution. Because performance matters with Primex³, you may realize an annual increase that is less than the **CAP** through sound risk management and stable underwriting exposures.

We are offering this opportunity so that our members can extend their commitment to pooling through the Primex³ programs. Participation in **CAP** for each year of the **CAP Period** is conditioned upon a three-year commitment to participation in the Primex³ Property & Liability Program.

The following **CAP Period** years qualify for the Contribution Assurance Program (**CAP**):

FY 2024 July 1, 2023 through June 30, 2024

(maximum 7% increase over July 1, 2022 through June 30, 2023 contribution)

FY 2025 July 1, 2024 through June 30, 2025

(maximum 7% increase over July 1, 2023 through June 30, 2024 contribution)

FY 2026 July 1, 2025 through June 30, 2026

(maximum 7% increase over July 1, 2024 through June 30, 2025 contribution)

By signing this Agreement, the **Town of Amherst** agrees to extend its risk pool membership and participation in the Primex³ **Property & Liability Program** for three coverage period years, through **June 30, 2026**. The **Town of Amherst** agrees and understands it remains bound by and subject to the terms and conditions of the Membership Agreement, Public Entity Coverage Documents and Trust Agreement, and all Trust by-laws, policies and procedures.

¹ CAP protects the member from most contribution increases during the CAP period; i.e., those resulting from account underwriting, or directly caused by changes in the member's loss history, property and payroll exposures. For the protection of all members, CAP does not prevent Primex³ from raising contributions across the pool/program to meet the actuary's reserve funding recommendations in response to catastrophic events, investment losses, severe adverse claim development, reinsurance failure, legislative enactments, judicial opinions and administrative orders. In the rare and unlikely event CAP maximum increase limits must be exceeded to adequately fund reserves, Primex³ in fairness will provide members advance notice and the option of terminating the CAP Agreement.

The **Town of Amherst** agrees that the seven percent (7%) maximum increase currently available for this **CAP Period** does not apply to any other year or period of years, and upon expiration of the **CAP Period** in this Agreement, any subsequent participation in a Primex³ **CAP** will be subject to underwriting review, membership criteria, **CAP** criteria, determination of contribution and the maximum increase in place for the subsequent **CAP Period**.

The **Town of Amherst** further acknowledges that by extending its Membership Agreement for three (3) coverage period years, the Public Entity Coverage Documents, General Conditions Section (L) ("Terminating Participation in Our Program(s)") is suspended during year one (1) and year two (2) of the three (3) year term, as there is no right to cancel or terminate during year one (1) and year two (2) but shall be reinstated for the end of year three (3).

The **Town of Amherst** agrees that failure to provide notice in strict accordance with the Public Entity Coverage Documents, General Conditions Section (L) shall result in automatic renewal of risk management pool membership and continuation in the Primex³ Property & Liability Program, but not continuation of **CAP** which must be separately offered and accepted.

Primex³ acknowledges that the **Town of Amherst** is a NH public entity which receives budgetary authorization for appropriations from an annual meeting of its legislative body and pertains to a fiscal year which commences on the following January 1 or July 1, of any given year. The **Town of Amherst** also acknowledges that it is legally required to carry insurance coverage. As such, if the legislative body, at such annual meeting for any years that are within the anticipated term of the contract, fails to approve such appropriation, and there are no other lawful means of funding the coverage, this contract may be terminated by the **Town of Amherst** by notice to Primex³ made within 30 days of the legislative action at which such funding initiative was defeated and such cancellation shall be effective as of the commencement on the following fiscal year or on the anniversary of the policy, whichever first occurs.

The **Town of Amherst**, however, agrees that it shall seek the requisite appropriations in good faith and that the availability of lower cost or otherwise preferable coverage alternatives during the term of this Agreement shall not constitute a good faith and permissible basis on which to fail to pursue the appropriations or assert that appropriations are unavailable. In the event of an early termination, the **Town of Amherst** agrees to return the difference between the **CAP** increase and the uncapped contribution.

By affixing my signature below, I am attesting, representing and warranting that I am a duly authorized representative of the governing body of the **Town of Amherst** with legal authority to contractually bind the **Town of Amherst** to the terms of this Agreement, and that I understand the commitment being made to membership in the Primex³ risk management pool and participation in the Property & Liability Program.

Authorized Representative of the
Governing Body

Title

Date

Print Name

RESOLUTION TO ENTER PRIMEX³
Property & Liability Contribution Assurance Program (CAP)

RESOLVED: To hereby accept the offer of the New Hampshire Public Risk Management Exchange (Primex³) to enter into its **Property & Liability Contribution Assurance Program (CAP)** as of the date of the adoption of this resolution, and to be contractually bound to all of the terms and conditions of Primex³ risk management pool membership during the term of the **Property & Liability Contribution Assurance Program (CAP)**. The coverage provided by Primex³ in each year of membership shall be as then set forth in the Coverage Documents of Primex³.

I attest that the foregoing is a true copy of the Resolution of the Governing Board of the **Town of Amherst** adopted on _____.

Board: _____
Title of Board

Signature: _____

Name: _____

Title: _____ duly authorized

Date: _____



Town of Amherst, NH BOARD OF SELECTMEN STAFF REPORT

Title: Investment Policy FY23 - DRAFT
Meeting Date: September 26, 2022

Department: Finance Department
Staff Contact: Debbie Bender

BACKGROUND INFORMATION:

Liz and I both worked on this Investment Policy for accuracy, information and readability. The result is an investment policy with the appropriate appendices for reference, that is easy to read and use. The Board of Selectmen should review the investment policy annually. In Section 8, under reporting, the Treasurer is supposed to report to the Board at least annually on any investment activity for that year. This is something that has been done in the past and should probably be continued on a more regular basis.

BUDGET IMPACT:

(Include general ledger account numbers)

N/A

POLICY IMPLICATIONS:

Will be up to date with the Investment Policy for this year.

DEPARTMENT HEAD RECOMMENDATION:

Approve

SUGGESTED MOTION:

I move to approve the Town of Amherst Investment Policy as submitted for FY23.

TOWN ADMINISTRATOR RECOMMENDATION:

ATTACHMENTS:

1. Investment Policy - FY23 DRAFT with Appendices

TOWN OF AMHERST INVESTMENT POLICY

(Adopted on)

1. PURPOSE

The purpose of this policy is to comply with RSA 41:9 VII (Appendix A), which requires the Board of Selectmen to annually review and adopt an investment policy for the investment of public funds, and to provide a framework for the Town Treasurer to carry out the policy objectives.

2. AUTHORITY

This policy has been enacted pursuant to the statutory authority granted to the Board of Selectmen by RSA 41:9 VII and to the Town Treasurer by RSA 41:29 IV (Appendix B). These RSAs are incorporated by reference and made part of this policy.

3. POLICY STATEMENT

The primary objective of the Town of Amherst's investment policy is to set forth appropriate investment activities that provide for, first and foremost, the safety of principle, as well as sufficient liquidity to support operations while generating a reasonable investment yield.

The specific policy objectives are stated below:

- To ensure the preservation of capital and protection of investment principle by investing in instruments authorized by State Law, as outlined in Section 8 of this policy.
- To maintain sufficient liquidity to meet operating requirements for both the Town and School District.
- To satisfy all legal requirements.
- To attain market-average rate of return on investments accounting for risk, legal constraints and cash flow considerations.

4. DEFINITIONS

- *Board* - Means the Board of Selectmen for the Town of Amherst
- *Collateral* - Underlying securities that are pledged to secure deposit of public funds.
- *Market-average Rate of Return* - The amount of income received from an investment, expressed as a percentage (also referred to as investment yield), that an investor can expect to receive in the current interest-rate environment.
- *Repurchase Agreement* - A transaction in which a holder of securities sells those securities to an investor with an agreement to repurchase those securities for a fixed price at an agreed-upon date.
- *Safekeeping* - A procedure where securities are held by a third party acting as custodian.
- *School District* - Amherst, Souhegan School District

- *State Law* - Refers to various Revised Statutes Annotated (RSA's) of the State of New Hampshire, as amended, as referenced throughout the policy.
- *Town* - Town of Amherst, New Hampshire

5. SCOPE

The investment policy applies to all public funds held in the custody of the Town Treasurer. This does not include funds held by the School District, Library Trustees or Trustees of the Trust Funds. The funds held by the Treasurer are accounted for in the Town's annual audited financial reports and include the following:

- General Fund
- Special Revenue Funds – which include funds overseen by the Conservation Commission
- Agency Funds – which include escrow fee funds
- Capital Projects Funds
- Any new funds created by the Town, unless specifically exempted by the governing body, in accordance with law.

Furthermore, the investment policy applies to all transactions involving financial assets and related activity of all foregoing funds.

This policy does not apply to funds held in escrow for performance bonds, which are held in an interest-bearing deposit account at an approved banking institution.

6. DELEGATION OF AUTHORITY

The investment policy delegation of authority is stated below:

- In accordance with RSA 41:29 VI, the responsibility for conducting investment transactions resides with the Town Treasurer, with the approval of the Board of Selectmen. However, the Treasurer may delegate investment functions to other town officials or employees provided such delegation is in writing and includes written procedures acceptable to the Board and is agreeable to all parties involved. Any such delegation shall only be made to a town official or employee bonded in accordance with RSA 41:6 (Appendix C) and rules adopted by the commissioner of revenue administration. Such delegation shall not eliminate the responsibility of the Treasurer to comply with all statutory duties required by law.
- No person may engage in an investment transaction except as provided under the terms of this policy and the internal procedures and controls hereby established.

7. PRUDENCE AND ETHICAL STANDARDS

The investment policy will be conducted in accordance with the “prudent person” standard which requires that:

Investments shall be made with judgement and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their capital as well as the probable income to be derived.

Elected officials and employees involved in the investment process shall refrain from personal business activity that could conflict (or appear to conflict) with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Such individuals shall disclose to the Board any material financial interest in financial institutions that conduct business with the Town, and they shall further disclose any large personal financial/investment positions that could be related to the performance of the Town’s portfolio.

8. INVESTMENT ACTIVITIES

INTERNAL CONTROLS

The internal controls for the Town of Amherst shall be designed to prevent losses of public funds arising from fraud, employee error, misrepresentation by third parties, unanticipated changes in financial markets, imprudent actions by elected officials and employees of the Town.

- Indemnification: In accordance with RSA 41:6 (Surety Bond Required), Town Treasurers, shall be bonded by position under a blanket bond from a surety company authorized to do business in this state. The bond shall indemnify against losses through:
 - a. The failure of officers covered to faithfully perform their duties or to account properly for all moneys or property received by virtue of their positions, or
 - b. Fraudulent or dishonest acts committed by the covered officers.
- The Treasurer conducts investment transactions via written instructions and reviews the bank statements to ensure that the appropriate transactions were made per the instructions. The Finance Director, on a monthly basis, reviews and reconciles all bank account activity and records the investment transactions in the general ledger.

INVESTMENT INSTRUMENTS

In accordance with RSA 41:29 II and IV, funds of the Town of Amherst may be invested in any of the following:

- Deposits, including money market accounts or certificates of deposit, of federally insured banks chartered under the laws of New Hampshire or the federal government with a branch within the state or funds may be deposited in federally insured banks outside the state if such banks pledge and deliver to a third-party custodial bank or federal reserve bank collateral security for such deposits of the following types:
 - a. United State government obligations.
 - b. United States government agency obligations; or
 - c. Obligations of the state of New Hampshire in value at least equal to the amount of the deposit in each case.
- New Hampshire Public Deposit Investment Pool (NHPDIP) established pursuant to RSA 383:22 (Appendix D)
- Obligations fully guaranteed as to principal and interest by the United States government. The obligations may be held directly or in the form of securities or other interests in any open-end or closed-end management-type investment company or investment trust registered under 15 U. S.C. section 80a-1 et seq. if the portfolio investment company or investment trust is limited to such obligations.
- Other instruments as may be specifically authorized by amendments to the State Law.

Whenever possible, maturities of investments purchased shall be scheduled to coincide with projected cash flow needs, accounting for large routine expenditures (school district remittances, payroll and accounts payable) as well as anticipated revenue inflows.

QUALIFIED INSTITUTIONS

The Town Treasurer shall determine the primary banking institution to be used by the Town, in conjunction with the Board, who is responsible for establishing budgetary parameters under which the Town Treasurer may operate.

The Board, in conjunction with the Town Treasurer, shall periodically review the banking relationship and determine if there is a need to undertake a competitive bidding process for the selection of banking, investment and/ or cash management provider(s). If a competitive bid is sought, the investment of the Town funds, in accordance with this policy, will be a key consideration in assessing and rewarding such a bid. Once awarded, it is the responsibility of the provider to maintain investments within the parameters of this policy, with the understanding

that each individual investment will not necessarily be competitively bid by the provider but will meet the investment criteria as proposed and agreed.

SAFEKEEPING AND COLLATERALIZATION

In accordance with RSA 41:29 V, the Treasurer shall ensure that prior to acceptance of any moneys for deposit or investment, including repurchase agreements, the federally insured bank shall have such funds, at the time of deposit of investment, secured by collateral having a market value of at least equal to 102% of the amount deposited or invested. Such collateral shall be held by a third-party custodian and segregated for the exclusive benefit of the town. The banking institution shall provide the Town Treasurer with monthly reports of the Town's collateral position.

REPORTING

At least annually, and in periods of significant investment activity, on a monthly basis, the Town Treasurer shall include a summary of investment activity in the Treasurer's Report submitted to the Board. The report shall summarize the investment strategies employed, and describe the portfolio in terms of investment securities, maturities, risk characteristics and other features. The report shall explain the transaction detail, expected total investment return and actual results.

PERFORMANCE EVALUATION

The Town shall require, from any institution in which investing activity is conducted, sufficient routine reports/documentation to enable an accurate evaluation to be made as to the results of the Town's investment program as it relates to the Town's stated objectives, guidelines and policies, and to assist in the revealing areas for potential improvement.

9. AMENDMENTS

This Policy may, from time to time, be amended by a majority vote of the Board, at a regularly scheduled Board meeting. It will, at a minimum be reviewed and adopted annually by the Board of Selectmen.

10. EFFECTIVE DATE

This policy, and any amendments made shall take effect immediately following a majority vote of the Board at a regularly scheduled Board meeting and being recorded with the Town Clerk.

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 41

CHOICE AND DUTIES OF TOWN OFFICERS

Selectmen

Section 41:9

41:9 Financial Duties. –

- I. The selectmen shall pay all sums of money received by them in behalf of the town to the town treasurer immediately after receipt, and state to him from whom and for what received.
- II. They shall draw orders upon the treasurer for the payment of all accounts and claims against the town allowed by them, and take proper vouchers therefor.
- III. They shall keep a fair and correct account of all moneys received, all accounts and claims settled and all orders drawn by them, and of all their other financial transactions in behalf of the town.
- IV. They shall publish in the next annual report, or post at the annual meeting, the general fund balance sheet from the most recently completed audited financial statements or from the financial report filed pursuant to RSA 21-J:34, V.
- V. In the case of an accumulated general fund deficit, the selectmen shall insert an article in the warrant recommending such action as they deem appropriate, which may include, but is not limited to, raising a sum of money for the purpose of reducing that deficit.
- VI. The selectmen shall be responsible for establishing and maintaining appropriate internal control procedures to ensure the safeguarding of all town assets and properties.
- VII. The selectmen shall annually review and adopt an investment policy for the investment of public funds in conformance with applicable statutes and shall advise the treasurer of such policies.
- VIII. The selectmen shall be responsible for establishing procedures to ensure that all funds paid to the town from any department shall be remitted to the treasurer at least on a weekly basis or daily whenever such funds total \$500 or more. Remittances to the treasurer from the tax collector shall be in accordance with RSA 41:35 and remittances from the town clerk shall be in accordance with RSA 261:165.

Source. 1869, 26:3. 1874, 85:1. GL 40:9. PS 43:7. PL 47:14. RL 59:13. RSA 41:9. 1993, 181:1. 1994, 147:2. 2007, 246:2, eff. Aug. 27, 2007.

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 41

CHOICE AND DUTIES OF TOWN OFFICERS

Town Treasurer

Section 41:29

41:29 Duties of Elected and Appointed Town Treasurers. –

I. The town treasurer shall have custody of all moneys belonging to the town, and shall pay out the same only as follows:

- (a) Upon orders of the selectmen in a public meeting or by a noncontemporaneously signed manifest signed by a majority of the board; or,
- (b) In the case of a conservation fund established pursuant to RSA 36-A:5, upon the order of the conservation commission; or
- (c) In the case of a heritage fund established pursuant to RSA 674:44-d upon the order of the heritage commission; or
- (d) In the case of fees held pursuant to RSA 673:16, II, upon the order of the local land use board or its designated agent; or
- (e) In the case of a recreation revolving fund established pursuant to RSA 35-B:2, upon the order of the recreation or park commission; or
- (f) In the case of fees deposited by the town clerk pursuant to RSA 41:25, upon the invoice of the town clerk, or other board or body designated by the town to expend such a fund.

II. The treasurer shall deposit all such moneys in participation units in the public deposit investment pool established pursuant to RSA 383:22 or in federally insured banks chartered under the laws of New Hampshire or the federal government with a branch within the state, except that funds may be deposited in federally insured banks outside the state if such banks pledge and deliver to a third party custodial bank or the federal reserve bank collateral security for such deposits of the following types:

- (a) United States government obligations;
- (b) United States government agency obligations; or
- (c) Obligations of the state of New Hampshire in value at least equal to the amount of the deposit in each case.

III. The town treasurer shall keep in suitable books provided for the purpose a fair and correct account of all sums received into and paid from town treasury, and of all notes given by the town, with the particulars thereof. At the close of each fiscal year, the treasurer shall make a report to the town and to the department of revenue administration, giving a particular account of all his or her financial transactions during the year and account balances at year end. The treasurer shall furnish to the selectmen statements from the treasurer's books, and submit the books and vouchers to them and to the town auditors for examination, whenever so requested.

IV. Whenever the town treasurer has in custody an excess of funds which are not immediately needed for the purpose of expenditure, the town treasurer shall invest the same in accordance with the investment policy adopted by the selectmen under RSA 41:9, VII. The treasurer may invest in the public deposit investment pool established pursuant to RSA 383:22, or in deposits, including money market accounts, or certificates of deposit, or repurchase agreements, and all other types of interest bearing accounts, of federally insured banks authorized to accept deposits under RSA 6:8, I and I-a, or in obligations fully guaranteed as to principal and interest by the United States government. The obligations may be held directly or in the form of securities of or other interests in any open-end or closed-end management-type investment company or investment trust registered under 15

U.S.C. section 80a-1 et seq., if the portfolio of the investment company or investment trust is limited to such obligations and repurchase agreements fully collateralized by such obligations.

V. (a) The treasurer shall insure that prior to acceptance of any moneys for deposit or investment, including repurchase agreements, the federally insured bank shall make available at the time of such deposit or investment an option to have such funds secured by collateral having a value at least equal to the amount of such funds. Such collateral shall be segregated for the exclusive benefit of the town. Only securities defined by the bank commissioner as provided by rules adopted pursuant to RSA 383-B:3-301(e) shall be eligible to be pledged as collateral.

(b) As an alternative to the option of collateralization for excess funds provided in subparagraph (a), the town treasurer may also invest public funds in interest-bearing deposits which meet all of the following conditions:

(1) The funds are initially invested through a federally insured bank authorized to accept deposits under RSA 6:8, I and I-a, selected by the treasurer.

(2) The selected bank arranges for the redeposit of funds which exceed the federal deposit insurance limitation of the selected bank in deposits in one or more federally insured financial institutions located in the United States, for the account of the treasurer.

(3) The full amount of principal and any accrued interest of each such deposit is covered by federal deposit insurance.

(4) The selected bank acts as custodian with respect to each such deposit for the account of the treasurer.

(5) On the same date that the funds are redeposited by the selected bank, the selected bank receives an amount of deposits from customers of other federally insured financial institutions equal to or greater than the amount of the funds initially invested through the selected bank by the treasurer.

VI. The treasurer may delegate deposit, investment, recordkeeping, or reconciliation functions to other town officials or employees provided such delegation is in writing and includes written procedures acceptable to the selectmen, or in the case of a town operating under RSA 37, to the town manager, and is agreeable to all parties involved. However any such delegation shall only be made to a town official or employee bonded in accordance with RSA 41:6 and rules adopted by the commissioner of revenue administration under RSA 541-A. Such delegation shall not eliminate the responsibility of the treasurer to comply with all statutory duties required by law.

VII. The treasurer shall ensure that all moneys remitted shall be deposited at least on a weekly basis, or daily whenever funds remitted from all departments collectively totals \$1,500 or more. Such deposit function may be delegated pursuant to paragraph VI. However, failure to ensure that funds are being deposited on a timely basis as required by this paragraph shall be cause for immediate removal from office pursuant to RSA 41:26-d. In any municipality where there is either no bank or other depository institution within the municipality the treasurer shall make deposits consisting of funds remitted from all departments and collectively totaling \$1,500 or more on a weekly basis or more frequently as directed by the board of selectpersons in the investment policy adopted pursuant to RSA 41:9, VII.

Source. 1869, 26:2-4. GL 40:8. 1883, 111:1. PS 43:20. PL 47:24. 1931, 177:3. 1939, 170:2. RL 59:24. RSA 41:29. 1959, 197:3. 1971, 158:1. 1973, 490:1. 1977, 139:1. 1987, 318:3. 1991, 268:8; 377:6; 383:9. 1992, 64:3. 1993, 161:2. 1996, 209:10. 1997, 208:8. 1998, 40:2. 2003, 100:2. 2007, 35:6; 246:3, 4. 2008, 120:25; 174:5. 2009, 14:1. 2010, 7:3, eff. July 3, 2010. 2013, 97:3, eff. Aug. 19, 2013; 124:1, eff. Aug. 24, 2013. 2015, 272:43, eff. Oct. 1, 2015. 2021, 65:14-16, eff. Aug. 3, 2021.

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 41

CHOICE AND DUTIES OF TOWN OFFICERS

Bonds

Section 41:6

41:6 Surety Bond Required. –

I. Town treasurers, trustees as provided in RSA 31:22 and 23, trustees as provided in RSA 53-B:8-a, I, library trustees including alternate library trustees, if any, town clerks, tax collectors and their deputies, agents authorized to collect the boat fee, and persons delegated treasury functions under RSA 41:29, VI shall be bonded by position under a blanket bond from a surety company authorized to do business in this state. The bond shall indemnify against losses through:

(a) The failure of the officers covered to faithfully perform their duties or to account properly for all moneys or property received by virtue of their positions; or

(b) Fraudulent or dishonest acts committed by the covered officers.

II. A blanket bond may exclude the town treasurer if a separate fidelity bond for the faithful performance of his duties is furnished by the surety writing the blanket bond.

III. Premiums shall be paid by the town.

IV. The required bonds shall provide for at least a 2-year discovery period from the date their coverage terminates.

V. The commissioner of revenue administration shall adopt rules under RSA 541-A, concerning the amount and form of the surety bonds required under this section.

Source. 1931, 111:1. RL 59:42. 1945, 7:1. RSA 41:6. 1969, 135:1. 1973, 544:8. 1975, 68:1. 1979, 376:7. 1981, 323:8. 1983, 264:6. 1988, 198:9. 1994, 367:16. 2000, 9:1. 2007, 246:1, eff. Aug. 27, 2007.

TITLE XXXV

BANKS AND BANKING; LOAN ASSOCIATIONS; CREDIT UNIONS

CHAPTER 383

BANK COMMISSIONER

Public Deposit Investment Pool

Section 383:22

383:22 Public Deposit Investment Pool. –

- I. The commissioner shall, with the assistance of the advisory committee created under RSA 383:24, establish and operate, beginning on January 1, 1992, a public deposit investment pool, for the purpose of investing funds of the state, and funds under the custody of governmental units, pooled risk management programs established pursuant to RSA 5-B, agencies, authorities, commissions, boards, political subdivisions and all other public units within or instrumentalities of the state.
- II. The public deposit investment pool shall be operated under contract with a private investment advisor, approved by the bank commissioner and advisory committee. The commissioner and advisory committee shall choose an investment advisor by requesting proposals from advisors and reviewing such proposals based on criteria adopted by rule under RSA 383:23.
- III. The commissioner shall make available to prospective depositors detailed information on the public deposit investment pool, similar to that information generally contained in a securities prospectus. The commissioner shall also ensure that periodic statements of accounts and reports on holdings are provided to pool participants relative to their proportionate share of the pool.
- IV. The commissioner shall cause an independent audit of the pool to be conducted on an annual basis. The auditor shall be selected by the advisory committee.
- V. The commissioner shall charge the public deposit investment pool any actual costs incurred by the department for the operation of the pool as well as any expenses of department personnel assisting in the operation of the pool. The cost for personnel assisting in the operation of the pool shall be determined in accordance with the per diem examination charge established in RSA 383:11, I, provided that the requirement that no entity shall be charged or pay less than one full day shall not apply. The private investment advisor retained under paragraph II shall be responsible for processing any invoice submitted for the actual costs incurred by the department and the expenses of department personnel under this paragraph.

Source. 1991, 268:1, eff. Aug. 9, 1991. 2021, 91:294, eff. July 1, 2021.



Town of Amherst, NH BOARD OF SELECTMEN STAFF REPORT

Title: Town Hall ERV Bid

Department: Public Works

Meeting Date: September 26, 2022

Staff Contact: Eric Slosek

BACKGROUND INFORMATION:

We received bids for the town hall ERV project. This is the second time we have put this project out to bid. Northeast Climate, LLC, the sole company to bid on this project after our first invitation, was the only company to respond to our second invitation. We recommend awarding this work to Northeast Climate, LLC, for the amount of \$49,800.00.

BUDGET IMPACT:

(Include general ledger account numbers)

\$49,800.00 from 01-4194-40-2430 (Building repair & Maintenance).

POLICY IMPLICATIONS:

DEPARTMENT HEAD RECOMMENDATION:

Recommend to award work to Northeast Climate, LLC

SUGGESTED MOTION:

I move to award bid number 02-23, Town Hall ERV, to Northeast Climate, LLC for \$49,800.00.

TOWN ADMINISTRATOR RECOMMENDATION:

ATTACHMENTS:

1. Northeast Climate LLC proposal
2. 2-23 ERV Award Sheet
3. ERV Bid

Person signing proposal must be a person in your company authorized to sign a Contract with the Town of Amherst, NH.

Bid Submission Form

Name of Bidder: Northeast Climate LLC

Street Address: 8 millbrook RD

Town/City: Brookline State: NH Zip: 03033

Business Phone Number: 603-554-2452

Business Contact Name: Drew Dion

Email: northeastclimatenh@gmail.com

Town Hall ERV System Furnishment & Installation:

Lump Sum Price for time and materials: \$ 49,800.00

Forty nine thousand eight hundred dollars
(Written Words)

List applicable warranties, including any additional costs for same:

Warranty Type (if applicable):

1 yr Labor warranty, equipment warranties listed
in proposal

Warranty Cost (if applicable): \$ _____

(Written Words)

Bids should be mailed to the following address clearly labeled with the firm's name, and project name "Amherst Shared Street Planning Services":

**Town Administrator's Office
2 Main Street
Amherst, NH 03031**

Bids must be submitted no later than 2 PM on Wednesday September 14, 2022.

All Proposals shall be valid for a period of thirty (30) days from the bid opening date.



Proposal

Submitted to: Town of Amherst

Bid Date: 9/12/2022

Site: 2 Main St Amherst NH

Bid Number: #02-23

Northeast Climate, LLC hereby submits specifications and estimates for furnishment and installation of new ERV system to supply fresh outside air exchange to the Town Hall:

Installation of **(1)** Daikin 470 Series Energy Recovery Ventilator:

- VAM470GVJU (Basement/Floor Floor)
10 YR Compressor/Parts Warranty

Installation of **(1)** Daikin 600 Series Energy Recovery Ventilator:

- VAM600GVJU (Second Floor)
10 YR Compressor/Parts Warranty

Installation of **(1)** Panasonic Intelli-Balance 100 Energy Recovery Ventilator:

- FV-10VEC2 (Stairwell)
6 YR DC Motor/3 YR Parts Warranty



Installation includes:

- Pulling applicable Mechanical Permits with Town of Amherst
- Ductwork outlined in M101 per engineering design
- 3.5 kW Attic Duct Coil Heater (Supply Side)
- 3 kW Basement Duct Coil Heater (Supply Side)
- All Duct Penetrations to Exterior and thru Fire Rated walls per M101 requirements
- All Control wiring to thermostats and power wiring to new ERV and Duct Coil Heater Units
- Final walkthrough and explanation of all safety and future preventative maintenance requirements with owner's representative

Upon completion of work Northeast Climate LLC includes a 1-year labor warranty for equipment installed above provided preventative service completed. Recommended maintenance schedule is outlined in product manuals. Warranty may be voided if another contractor or homeowner attempts to fix/alter the units. This project will be scheduled for (8-10) 8-hour workdays.

Total Investment of **49,800.00** upon completion, with a 50% down payment **24,900.00** to schedule project. Down payment requirements subject to agreement and terms of Town contract. This proposal may be withdrawn if not accepted within **30** days.

Acceptance of Proposal

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

Signature: _____

Date of Acceptance: _____



Recent ERV Projects

Submitted to: Town of Amherst

Bid Date: 7/15/2022

Site: 2 Main St Amherst NH

Bid Number: #02-23

The recent following projects have featured ERV systems alongside additional equipment outlined in the projects mechanical schedule:

2022 Sheraton Hotel Nashua:

Remodel of existing ductwork and installation of Mitsubishi and Renewaire Systems:

- Renewaire Premium L Series ERV
- Project Value: 138,500.00

2022 Plains RD Hollis:

installation of Mitsubishi and Zehnder Systems in High Performance (Passive) Home:

- Zehnder Q350 Series ERV
- Project Value: 35,000.00

2022 South Merrimack Rd Hollis:

installation of Mitsubishi and Renewaire Systems in High Performance (Passive) Home:

- (2) Renewaire Premium L Series ERV
- Project Value: 44,000.00

TOWN OF AMHERST

Town Department: DPW

Date: September 16, 2022

Line Item: 01-4194-40-2430

Budget Amount:

Bid #: 02-23 Item: Town Hall ERV

Date Bid To Be Awarded: September 26, 2022

<u>Vendor</u>	<u>Price</u>	<u>Other Considerations</u>
1. Northeast Climate, LLC	\$49,800.00	
2. AAA Energy Service	NO BID	
3. Absolute Mechanical	NO BID	
4. Denommee Plumbing, Heating & Cooling, Inc.	NO BID	
5. Georges Heating & Cooling	NO BID	
6. HVAC Unlimited LLC	NO BID	
7. Winchester Mechanical	NO BID	
8. Merrimack Valley Plumbing LLC	NO BID	

Recommend bid be awarded to: The DPW recommends this bid be awarded to
Northeast Climate, LLC

Signature of Town Administrator / Date

This bid was post on the Town of Amherst website, Construction Summary of NH, ME, and VT, Dodge Data & Analytics and NH Municipal Association.



DEPARTMENT OF PUBLIC WORKS

22 Dodge Road

Amherst, NH 03031

Tel. (603) 673-2317 Fax (603) 249-8857

eslosek@amherstnh.gov

BID NUMBER #02-23

Town Hall ERV System Furnishment & Installation

INVITATION TO BID

The Town of Amherst NH is inviting proposals for contract at the Town Administrator's Office, 2 Main Street, Amherst, New Hampshire for furnishment and installation of a new ERV system to supply fresh outside air exchange to our Town Hall. The work is more specifically described on page 2 and in the engineered plans found in Attachment C.

Bidding Documents may be obtained, at no charge, from the Public Works Office at 22 Dodge Road in Amherst, NH, between the hours of 8AM and 3PM, Monday through Friday.

Review of the Town Hall facility can be by appointment with the Director of Public Works or his designee, 603-673-2317.

Bids will be received at the Town Administrator's Office, 2 Main Street Amherst, NH, until 2:00 PM, Wednesday September 14, 2022. Shortly thereafter, bids will be publicly opened and read aloud at any available Town Hall office, 2 Main Street, Amherst NH. Award will be by the Board of Selectmen at a regular board meeting sometime there after.

Town of Amherst NH
Department of Public Works
22 Dodge Road
Amherst, NH 03031

BID NUMBER #02-23

Town Hall ERV System Furnishment & Installation

CONTRACTOR'S PROPOSAL

To: Town of Amherst, NH:

The undersigned, as a lawfully authorized agent for the below named Bidder/Contractor, has carefully examined the Proposal form of this Bid, to be known as Bid Number 02-23, Town Hall ERV Installation, with the General Provisions, Specifications and other bid documents and binds himself/herself and his/her company on award to them by the Board of Selectmen to execute a contract agreement under this Proposal in accordance with such award, on such form and in such manner as is prescribed by the Town and to provide all necessary equipment, labor, materials and other items or services needed to perform all the requirements for the project, in Amherst, NH. The scope of work is as follows:

Furnishment and installation of a NEW ERV system at the Amherst Town Hall to introduce outside fresh air into our existing HVAC system. This includes but is not limited to installation and furnishment of three ERV units with all necessary duct work and electrical components/installations necessary for them to function properly and according to the plans. Specific technical information is provided in the engineered plans from Team Engineering, dated May 16, 2022, included in Attachment C.

Procurement Process

Proposals are due to be received at the office of the Town Administrator, at Town Hall, 2 Main Street, Amherst, NH 03031, no later than 2:00 PM on Wednesday September 14, 2022.

Proposals will be opened by the Town and will be a matter of public record. ***Included Bid Submission Form must be completed. Submitted proposals shall be valid for thirty (30) days from the bid opening date. Contract documents included in Attachments A, B, & C will follow award.***

The Town of Amherst reserves the right to accept or reject any or all proposals, to waive any informalities, and to select a firm or firms at the Town's sole discretion. There is no assurance of any given quantity of work that will be assigned to a firm or firms selected through this procurement.

Person signing proposal must be a person in your company authorized to sign a Contract with the Town of Amherst, NH.

Bid Submission Form

Name of Bidder: _____

Street Address: _____

Town/City: _____ State: _____ Zip: _____

Business Phone Number: _____

Business Contact Name: _____

Email: _____

Town Hall ERV System Furnishment & Installation:

Lump Sum Price for time and materials: \$ _____

(Written Words)

List applicable warranties, including any additional costs for same:

Warranty Type (if applicable):

Warranty Cost (if applicable): \$ _____

(Written Words)

Bids should be mailed to the following address clearly labeled with the firm's name, and project name "Amherst Shared Street Planning Services":

**Town Administrator's Office
2 Main Street
Amherst, NH 03031**

Bids must be submitted no later than 2 PM on Wednesday September 14, 2022.

All Proposals shall be valid for a period of thirty (30) days from the bid opening date.

Town of Amherst NH
Department of Public Works
22 Dodge Road
Amherst, NH 03031

Attachment A
August 15, 2022

AGREEMENT

This AGREEMENT is made on September ___, 2022, BETWEEN the Owner: Town of Amherst and the Contractor: _____
for the following Project:

Town Hall ERV System Furnishment & Installation

The Owner and Contractor agree as follows:

ARTICLE I
THE CONTRACT DOCUMENTS

The contractor shall complete the Work described in the Contract Documents for the project.
The Contract documents consist of:

- 1) Invitation to Bid.
- 2) Contractor's Proposal.
- 3) Agreement, Attachment A, dated August 15, 2022.
- 4) General Provisions, Attachment B, dated August 15, 2022.
- 5) Engineered Plans, Attachment C, dated May 16, 2022.
- 6) Any issued addenda.
- 7) This agreement signed by the Owner and the Contractor.

Town of Amherst NH
Department of Public Works
22 Dodge Road
Amherst, NH 03031

ARTICLE II
DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION DATE

The date of commencement shall be the date of award by the Board of Selectmen. The Contractor shall substantially complete the work no later than December 30, 2022, subject to adjustments by change order.

ARTICLE III
CONTRACT SUM

Subject to additions and deductions by Change Order, the Contract Sum for Town Hall ERV System Furnishment & Installation is:

Lump Sum Price: \$ _____

(Written Words)

List applicable warranties, including any additional costs for same:

Warranty Type (if applicable):

Warranty Cost (if applicable): \$ _____

(Written Words)

ARTICLE IV
PAYMENT

Based on the Contractor's Application for Payment for complete work, certified by the Owner or the Owner's Agent, the Owner shall pay the Contractor as follows:

1. Submittals shall be for completed work only.
2. Work shall be certified, and payment made, within 20 working days.
3. Performance-Payment Security is included and will be required if total bid exceeds \$25,000.

This Agreement entered into as of the day and year first written above.

OWNER, by its Selectmen

CONTRACTOR

Peter Lyon, Chairman

(Signature)

Thomas Grella, Vice Chair

Printed name, title, and address

Danielle Pray, Clerk

John D'Angelo

William Stoughton

Or,

Dean E. Shankle, Jr., Ph. D, Town Administrator

Town of Amherst NH
Department of Public Works
22 Dodge Road
Amherst, NH 03031

Attachment B
August 15, 2022

General Provisions

1. Each bid shall be submitted in a sealed envelope clearly identified with the Bidder's name and marked "Town of Amherst Bid # 02-23, Town Hall ERV System Furnishment & Installation" and will be received at the Administrator's Office, Town Offices, 2 Main Street, Amherst, NH, until 2:00 PM, Wednesday September 14, 2022.
2. Shortly thereafter, bids will be publicly opened and read aloud from any available office or conference room, Town Hall, 2 Main Street, Amherst, NH. Bids when opened shall be irrevocable for a period of thirty (30) calendar days following bid-opening date. Following a review of the bids by staff, the Board of Selectmen will award the bid at a regular public meeting.
3. The Town expressly reserves the right to reject any or all bids as the Board of Selectmen may determine and to waive defects in form of minor irregularities where the best interest of the Town would be served.
4. The bid price shall not include Federal or State taxes. If such are applicable, the successful Bidder shall furnish the Town with the necessary tax-exempt forms in triplicate upon submission of the invoice.
5. The Bidder shall not, either directly or indirectly, enter into any agreement, participate in any collusion, or otherwise take any action in restraint of free competitive bidding in connection with this bid.
6. The successful Bidder shall not use the name of the Town in any advertising without first obtaining written permission from the Board of Selectmen.
7. Any change to the provisions or specifications of this Bid shall be made by written addendum issued no later than four (4) working days prior to the bid opening date. Prospective Bidders shall have complete responsibility for being aware of any and all addenda.
8. The bidder's attention is drawn to the fact that they shall observe and comply with all applicable Federal and State Laws and Regulations, Town Ordinances and the Rules and Regulations of all authorities having jurisdiction over the project, and these shall apply to the contract the same as though written out herein in full, and the Contractor shall indemnify the Town and its representatives against any claim or liability arising from or based on any such

law, ordinance, rules and regulation by themselves or by their employees. The successful Bidder shall notify the Town immediately if these bid documents are at variance with any laws or regulations.

9. The Town may make such investigations as it may deem necessary to determine the ability of the bidder to perform the services, and the bidder shall furnish the Town all such information for this purpose that the Town may request. The Town reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Town that such bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.
10. The Contractor shall secure and pay for all permits and licenses for this work in accordance with the bid documents, contract and specifications required for a complete and finished job.
11. The Contractor shall be responsible for all damage to property, or injury to persons, arising out of their actions or failure to act. They shall indemnify and hold harmless the Town from any and all demands, suits or judgments arising in conjunction with or as a result of the Contractor's performance of this contract.
12. The bidder shall, in the employment of labor, comply with the laws of the State of New Hampshire, including but not limited to Chapter 275, RSA, as amended, "Hours of Labor", Chapter 279, RSA, as amended, "Minimum Wage Law".
13. The bidder shall take out and maintain at their own expense insurance against damages arising from injury to their employees in accordance with Chapter 281, RSA, as amended, "Worker's Compensation Acts" and from claims for damages because of bodily injury including death and for all property damages, including without limitations, damage to buildings, which might arise from and during operations under this contract, whether such operations be by themselves or by any subcontractor or anyone directly or indirectly employed by either of them. The Contractor shall insure the activities of their subcontractors in their own policy, for subcontractors Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the types and amounts as herein specified. Approval of insurance by the Town shall not relieve the Liability of the Contractor there under. Certificates from the insurance companies as to the amount and type of coverage, terms of the policy, etc. shall be filed with the Selectmen's Office in single copy.
 - A. COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE. The Contractor shall take out and maintain during the life of this Contract the statutory Worker's Compensation and Employer's Liability Insurance for all of their employees to be engaged in work on the project under this Contract and, in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all work of the latter's employees to be engaged in such work.
 - B. BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY. The Contractor shall take out and maintain during the life of this Contract such Bodily Injury Liability and Property Damage Liability Insurance and Automobile Bodily Injury Liability and Property Damage Liability Insurance as shall protect them and any subcontractors performing work covered by the Contract from claims for

damages for personal injury, including accidental death, as well as claims for Property Damage which may arise from operations under this Contract, whether such operations be by themselves or by the subcontractor or by anyone directly and/or indirectly employed by either of them, and the amount of insurance shall not be less than:

(1) Bodily Injury Liability Insurance, in an amount not less than Five Hundred Thousand Dollars (\$500,000) for injuries, including wrongful death to any one person and subject to the same limits for each person in an amount not less than Five Hundred Thousand Dollars (\$500,000) on account of one accident.

(2) Property Damage Insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) for damages on account of one accident or all accidents.

C. TOWN OF AMHERST'S PROTECTIVE LIABILITY INSURANCE. The Contractor shall name the Town of Amherst as one of the insured on all policies required, except Worker's Compensation.

D. All policies and certificates of insurance shall carry a ten (10) day notice of cancellation or change in expiration and notice of such cancellation or change in expiration shall be sent to the Board of Selectmen.

14. The bidder is to submit Proposal on the attached Bid Form of Unit Prices.
15. The successful bidder shall execute and deliver the contract within ten (10) calendar days to the Town.
16. Work on this project shall commence after award by the Board of Selectmen at a regular Board meeting, and after signing of the contract, and shall be completed in its entirety prior to **December 30, 2022.**
17. The successful bidder, upon their failure or refusal to execute and deliver the Contract and security, if required, within ten (10) calendar days after they have received notice of the acceptance of their bid, shall forfeit to the Town, as liquidated damages for such failure or refusal, the security deposited with their bid.
18. The bidder will guarantee the work and materials and the work and the materials of all subcontractors for a period of one (1) year from the date of acceptance of the work by the Town and agree to leave the work in perfect order at completion. Neither the final certificate of payment nor any provision in the Contract documents shall relieve them of responsibility for negligence, or faulty materials, or workmanship within the extent and period provided by law, and upon written notice they shall remedy any defaults due thereto and pay all expenses for any damage to work resulting there from. It is hereby specifically agreed and understood that this guarantee shall not include any cause or causes other than defective work or materials. It is further understood that the Board of Selectmen shall be the final judge as to whether or not any defect is a defect in workmanship and/or materials, which is the bidder's responsibility.

19. The Contract Documents shall include the "Invitation to Bid", "General Provisions", "Specifications", "Proposal", and any issued addenda, and the final executed "Contract Agreement".

The intent of these documents is to include all labor, materials, appliances and services of every kind necessary for the proper execution of the work and the terms and conditions of payment thereof.

The documents are to be considered as one, and whatever is called for by any one of the documents shall be as binding as if called for by all.

20. A complete understanding of the conditions as they exist is required by a careful personal examination of the work at the site. The Contractor also shall examine carefully the specifications and the Contract forms of the work contemplated. The Contractor shall not, at any time after the execution of the Contract, set up any claims whatsoever based upon insufficient data or incorrectly assumed conditions, nor shall it claim any misunderstanding in regard to the nature, conditions, or character of the work to be performed under this contract, and it shall assume all risks resulting from any change in the conditions which may occur during the progress of the work.
21. The Town shall make payment on account of the Contract as follows: The Contractor shall invoice the Town for the work completed. After receipt of the Contractor's invoice by the Town, the Town's agent shall inspect the premises and if the work has been completed in accordance with the Contract Documents, the Town will make payment on or within twenty (20) days of the approved amount of the invoice. Before final payment is made to the Contractor, it shall submit evidence satisfactory to the Board of Selectmen that all payrolls, material bills, and other indebtedness connected with the work have been paid.
22. After execution of the Contract, there shall be no changes in the Bid Documents except by a written amendment executed in the same manner as the Contract or by Change Order as described below:

CHANGE ORDERS:

- A. The Town, without invalidating the Contract, may order changes in the work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract sum and the Contract time being adjusted accordingly. All such changes in the work shall be executed under the applicable conditions of the Contract Documents.
- B. A change order is a written order to the Contractor signed by the Board of Selectmen and the Contractor, after execution of the Contract, authorizing a change in the work and/or an adjustment in the Contract sum and/or in the Contract time.
- C. The terms of any change order shall be mutually agreed to by the Contractor and the Board of Selectmen.

23. The entire work contemplated by the Contract shall be under the supervision of the Board of Selectmen, or their agents so designated, and all questions concerning the prosecution of the work shall be referred to and decided by them.

24. DETERMINATION AND EXTENSION OF CONTRACT TIME. It is an essential part of the Contract that the Contractor shall perform fully, entirely and in an acceptable manner, the work under Contract within the time stated in the Contract. If the Contractor finds it impossible for reasons beyond its control to complete the work within the Contract time, it shall make a written request to the Public Works Director for an extension of time setting forth the reasons which it believes will justify the granting of its request. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Board of Selectmen finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, including but not limited to acts of God, utility relocations, strikes, delays in the delivery of critical materials, and work requiring specialists for whose starting time a reasonable latitude must be allowed, the Board of Selectmen may extend the time for completion in such amount as conditions justify. When extension of the Contract time is required due to delays in the delivery of critical materials, sufficient evidence must be furnished to the Town at the time the delay occurs showing that such delay results from the materials being unavailable by reason of unusual market conditions such as an industry-wide strike, natural disaster or an area-wide shortage which arises after bids are taken and which prevents the procurement of materials within the allowable time of limitations. Delays due to slow delivery from a source of supply when the required material is available elsewhere will not be considered as justification for an extension of time.

FAILURE TO COMPLETE ON TIME. For each day that any work shall remain uncompleted after the Contract time specified for completion of the work, including extensions, the fixed daily charge specified below will be deducted from any money due the Contractor, not as a penalty, but as liquidated damages. Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the Town of any of its rights under the Contract. The Board of Selectmen may waive such portions of the liquidated damages as may occur after the work is in condition for safe and convenient use. The fixed, agreed liquidated damages shall be \$500.00 per day.

The Town may withhold any amount of money otherwise due the Contractor to offset such liquidated damage and the Contractor and its SURETY shall be liable to the Town for all additional liquidated damages as provided herein.

25. ASSIGNMENT. The contractor shall not assign, sublet, or transfer its interests in this agreement without written consent of the Town of Amherst.

26. In determining the successful bidder, in addition to price, the following shall be considered:

- a. The ability and skill of the bidder to perform the contract;
- b. Whether the bidder can perform the contract promptly without delay or interference;

- c. The character, integrity, reputation, judgment, experience, and efficiency of the bidder; and
- d. The quality of performance of previous contracts for services. Please provide a reference list of recently completed ERV installations including project value.

Payment Bond

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal
(Corporation, Partnership, or Individual)

and _____
(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto:

**Town of Amherst
2 Main Street
Amherst, NH 03031**

hereinafter called the Owner and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns, in the total aggregate penal sum of _____ dollars,

(\$ _____) in lawful money of the United States, for the payment of which sum and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain Agreement with the **OWNER**, dated the _____ day of _____, 2022, a

copy of which is hereto attached and made a part hereof for the **Town Hall ERV System
Furnishment & Installation**

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the **WORK** provided for in such Agreement, and any authorized extension or modifications thereof, including all amounts due for materials, lubricants, oil, gasoline, coal, coke, repairs on machinery, equipment and tools, consumed or used in connection with the execution of such **WORK**, and for all labor cost incurred in such Work including subcontractors, and to any mechanic or materialman lien holder whether it acquires its lien by operation of State or Federal Law; then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the subcontractors, and persons, firms, and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS.

PROVIDED FURTHER, that the said Surety for value received hereby stipulates and agrees that no charge, extension of time, alteration or addition to the terms of the contract or to the **WORK** to be performed there under or the **SPECIFICATIONS** accompanying the same shall in any way affect its obligation on this **BOND** and it does hereby waive notice of any such change, extension of time, alterations or additions to the term of the contract or to the **WORK** or to the **SPECIFICATIONS**.

PROVIDED, FURTHER that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contact with the Principal shall have given written notice to any two of the following: The PRINCIPAL, the OWNER, or the SURETY above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, starting with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the PRINCIPAL, OWNER, or SURETY, at any place where an office is regularly maintained for the transaction business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) After the expiration of one (1) year following the date on which PRINCIPAL ceased work on said CONTRACT, it being understood, however that if any limitation embodied in the BOND is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

PROVIDED, FURTHER that it is expressly agreed that this BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, or the Contract Documents shall include any alteration, addition, extension or modifications of any character whatsoever.

PROVIDED, FURTHER that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WHITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this _____ day of _____ 2022.

ATTEST:

(Principal)

By: _____
(Principal) Secretary

(SEAL)

BY: _____

(Address)

By: _____
Witness as to Principal

(Address)

(Surety)

ATTEST:

BY: _____
Attorney-in-Fact

By _____
Witness to Surety

(Address)

(Address)

NOTE: Date of **BOND** must not be prior to date of Contract.
If **CONTRACTOR** is partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing **BONDS** must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of New Hampshire.

Performance Bond

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal
(Corporation, Partnership, or Individual)

and _____
(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

**Town of Amherst
2 Main Street
Amherst, NH 03031**

Hereinafter called **OWNER**, in the total aggregate penal sum of _____
Dollars, \$ (_____)

In lawful money of the United States, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators' successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain Agreement with the **OWNER**, dated the _____ day of _____ 2022, a copy

of which is hereto attached and made a part hereof for the **Town Hall ERV System
Furnishment & Installation**

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extension thereof which may be granted by the **OWNER** with or without notice to the Surety and during the one year guaranty period, and if the Principal shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the **OWNER** from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the **OWNER** all outlay and expense which the **OWNER** may incur in

making good any default, then this obligation shall be void: otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alterations or additions to the terms of the contract or to **WORK** to be performed thereunder of the specifications accompanying same shall in any way affect its obligation on this **BOND**, and it does hereby waive notice of any such change, extension of time alteration or addition to the terms of the contract or to the **WORK** or to the specifications.

PROVIDED, FURTHER, that it is expressly agreed that this **BOND** shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the **PRINCIPAL** and the **SURETY** to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this **BOND** and whether referring to this **BOND DOCUMENT**, or the **CONTRACT** shall include any alteration, addition, extension or modification of any character whatsoever.

PROVIDED, FURTHER, this instrument is executed in _____ counterparts, each one of
(number)

which shall be deemed an original, this _____ day of _____ 2022.

ATTEST:

(Principal)

By: _____
(Principal) Secretary

(SEAL)

BY: _____

(Address)

By: _____
Witness as to Principal

(Address)

(Surety)

ATTEST:

BY: _____
Attorney-in-Fact

By _____
Witness to Surety

(Address)

(Address)

NOTE: Date of BOND must not be prior to date of Contract

If CONTRACTOR is Partnership, all partners should execute BOND

IMPORTANT: surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of New Hampshire.

Town of Amherst NH
Department of Public Works
22 Dodge Road
Amherst, NH 03031

Attachment C
August 15, 2022

Scope of Work

- *Reference plans from Team Engineering stamped and dated May 16, 2022.*

GENERAL

1. THE GENERAL DOCUMENTS APPLY TO WORK SPECIFIED IN THIS SECTION. CONSULT THEM IN DETAIL FOR APPLICABLE INSTRUCTIONS.
2. WORK SHALL BE EXECUTED BY AN EXPERIENCED CONTRACTOR WHO IS LICENSED IN THE JURISDICTION WHERE THE PROJECT IS LOCATED. ALL WORKMAN SHALL BE EXPERIENCED IN THE NECESSARY CRAFTS AND FULLY FAMILIAR WITH THE SPECIFIED REQUIREMENTS FOR THE PROPER PERFORMANCE OF ALL WORK SPECIFIED.
3. THE MECHANICAL PLANS ARE TO BE CONSIDERED ONLY AND INDICATE THE GENERAL ARRANGEMENT AND LOCATIONS OF THE MECHANICAL WORK. DATA PRESENTED ON THESE DRAWINGS ARE AS ACCURATE AS PLANNING CAN DETERMINE, BUT FIELD VERIFICATION OF ALL DIMENSIONS, LOCATIONS, LEVELS, ETC., TO FULLY DEVELOP CONDITIONS IS REQUIRED. ADVISE ALL ARCHITECTURAL, STRUCTURAL, ELECTRICAL AND PLUMBING DRAWINGS AND SHALL ALL WORK TO MEET THE REQUIREMENTS OF CONDITIONS SHOWN.
4. CONTRACTOR SHALL BE RESPONSIBLE TO FIELD MEASURE AND CONFIRM LOCATION OF MECHANICAL EQUIPMENT WITH RESPECT TO BUILDING ELEVATIONS. DO NOT SCALE DIMENSIONS OFF THE MECHANICAL DRAWINGS. USE ACTUAL BUILDING DIMENSIONS.
5. ALL SUPPLY AND RETURN AIRWAYS MUST BE ACCESSIBLE IF LOCATED ABOVE DRYWALL CEILING OR BEHIND FINISHED WALLS. PROVIDE ACCESS DOOR, COORDINATE ALL ACCESS DOOR LOCATIONS WITH ARCHITECT.

MATERIALS

1. READ AND FOLLOW DESIGN CONDITIONS (NOMINAL, MIN, MAX).
2. MATERIALS SHALL BE NEW, OF QUALITY AS SPECIFIED ON THE PLANS OR SPECIFICATIONS AND MUST HAVE THE APPROVAL FOR THE PURPOSES FOR WHICH THEY ARE USED. IN ADDITION TO MEETING ALL REQUIREMENTS OF THE CURRENT APPLICABLE CODES AND REGULATIONS.

CONSTRUCTION

1. THE CONTRACTOR IS RESPONSIBLE FOR ALL WORK NECESSARY TO INSTALL A COMPLETELY OPERATIONAL MECHANICAL SYSTEM AS SHOWN ON THE DRAWINGS AND SPECIFIED HEREIN.
2. THE CONTRACTOR SHALL COMPLY WITH THE FOLLOWING:
 - a. AUTHORITY HAVING JURISDICTION
 - b. APPLICABLE LOCAL AND STATE CODES AND ORDINANCES
 - c. THE INTERNATIONAL MECHANICAL CODE 2015 EDITION
 - d. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - e. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - f. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - g. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - h. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - i. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - j. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - k. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - l. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - m. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - n. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - o. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - p. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - q. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - r. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - s. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - t. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - u. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - v. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - w. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - x. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - y. THE NATIONAL MECHANICAL CODE 2015 EDITION
 - z. THE NATIONAL MECHANICAL CODE 2015 EDITION

MATERIALS

1. ALL MATERIALS SHALL BE NEW AND OF QUALITY AS SPECIFIED ON THE PLANS OR SPECIFICATIONS AND MUST HAVE THE APPROVAL FOR THE PURPOSES FOR WHICH THEY ARE USED. IN ADDITION TO MEETING ALL REQUIREMENTS OF THE CURRENT APPLICABLE CODES AND REGULATIONS.

FLEXIBLE DUCT

1. SHALL BE OF TWO SPIRAL CONSTRUCTION COMPOSED OF A CORROSION RESISTANT METAL SUPPORTING SPIRAL AND COVERED WITH A MINERAL BASE. FLEXIBLE DUCT CONNECTIONS SHALL BE IN ACCORDANCE WITH THE FOLLOWING:
 - a. DUCTS SHALL HAVE A FLARE SPREAD RATIO NOT EXCEEDING 2:1 AND A SMOKE DEVELOPMENT RATIO NOT EXCEEDING 0.10.
 - b. FLEXIBLE DUCT NOT TO EXCEED 10 FEET PER RUN.

DUCTS

1. DUCTWORK SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE "SMOAK" APPLICATIONS MANUAL. ALL VOLUME SHALL BE LOW-VOLUME TYPE UNLESS OTHERWISE SPECIFIED.
2. CONTRACTOR SHALL PROVIDE DAMPERS AND ACCESS PANELS IN ALL DUCTWORK WHICH PENETRATES AND HORIZONTAL OR VERTICAL RISE PARTITION.
3. ALL DUCT JOINTS TO BE SEALED IN ACCORDANCE WITH "SMOAK".
4. ALL DUCT DIMENSIONS SHOWN ARE FACE VALUES. CONTRACTOR MAY CHANGE DUCT SIZE SO LONG AS NET FACE AREA IS MAINTAINED.
5. DUCT INSULATION SHALL BE 1/2" IF R-2.0 POLYURETHANE INSULATION WITH ALUMINUM FOL FACINGS AND PROVIDED WHERE INDICATED ON PLANS.
6. ALL SUPPLY AND RETURN DUCTWORK WITHIN 10 FT OF THE FACE OF THE HVAC UNIT SHALL BE LINED WITH A 1" ACOUSTICAL DUCT LINER.

HVAC CONTROLS

1. CONTRACTOR TO INSTALL ALL CONTROL WIRING, THERMOSTATS, AND OTHER DEVICES AS REQUIRED.
2. LOCATE ALL TEMPERATURE, PRESSURE, AND FLOW MEASURING DEVICES IN ACCESSIBLE LOCATIONS WITH STRAIGHT SECTION OF PIPE OR DUCT UP AND DOWNSTREAM AS RECOMMENDED BY THE MANUFACTURER FOR GOOD ACCURACY.

PENETRATIONS

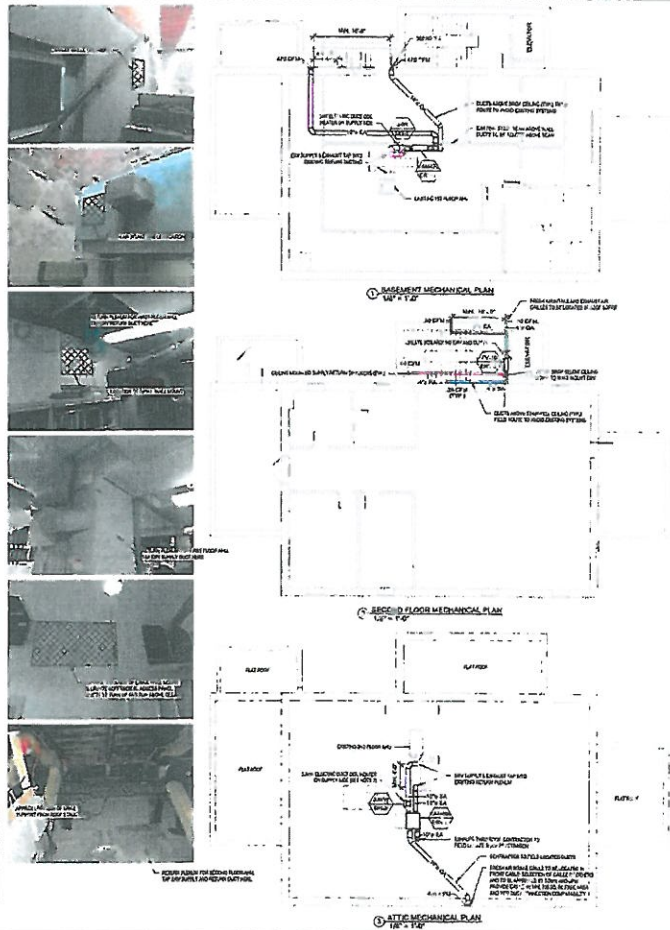
1. ALL PIPE AND DUCT PENETRATIONS THRU FIRE-RATED WALLS OR FLOOR ASSEMBLIES SHALL BE IN ACCORDANCE WITH AN APPROVED UL AND LISTED SYSTEM FOR THE CONDITIONS ENCOUNTERED AS DEFINED IN THE UL BUILDING MATERIAL DIRECTORY.
2. ALL FIRESTOPPING SHALL BE PERFORMED BY THE CONTRACTOR PERSONNEL. THE WORKING REQUIRE THE PENETRATIONS REFER TO THE DETAILS PERTAINING TO TYPE AND METHOD REQUIRED.
3. MAINTAIN INTEGRITY OF THE FIRE-RATED CONSTRUCTION WHERE SUITS. PIPES OR OTHER EQUIPMENT PASSES THROUGH WALLS AND FLOORS.

INSTALLATION

1. ALL EQUIPMENT CONNECTIONS WITH MANUFACTURER'S CERTIFIED DIMENSIONS. COORDINATE AND PROVIDE ALL DUCT AND PIPING TRANSITIONS REQUIRED FOR FINAL EQUIPMENT CONNECTIONS.
2. PROVIDE FLEXIBLE CONNECTIONS IN ALL DUCTWORK SYSTEMS CONNECTED TO AIR HANDLING UNITS, FANS, AND OTHER EQUIPMENT WHICH REQUIRE VIBRATION ISOLATION.
3. PROVIDE ALL MATERIALS AND LABOR REQUIRED TO ADEQUATELY SUPPORT AND BRACE ALL MECHANICAL EQUIPMENT AND MATERIALS. ALL DUCTS, PIPES, ETC., SHALL BE SUPPORTED DIRECTLY FROM THE BUILDING STRUCTURE. BRACING OF PIPES SUPPORT SHALL NOT EXCEED 4 FEET.
4. PROVIDE VIBRATION ISOLATION FOR ALL MECHANICAL EQUIPMENT TO PREVENT TRANSMISSION OF VIBRATION TO BUILDING STRUCTURE.

TESTING

1. THE HVAC SYSTEM SHALL BE BALANCED BY AN INDEPENDENT AGENCY. UPON THE SUPERVISION OF A LICENSED PROFESSIONAL ENGINEER, A SEALED REPORT SHALL BE SUBMITTED TO THE ENGINEER FOR REVIEW AND APPROVAL.
2. DEMONSTRATE PROPER OPERATION TO OWNER'S REPRESENTATIVE. NO EQUIPMENT SHALL BE TESTED OR OPERATED FOR ANY PURPOSE UNTIL IT HAS BEEN FULLY PREPARED FOR OPERATION IN ACCORDANCE WITH MANUFACTURER'S INSTRUCTIONS.



TEAM ENGINEERING

TEAM ENGINEERING
4250 Highway 101
Suite 200
Basking Ridge, NJ 07005
Phone: (908) 451-1107
www.teameng.com

REVISION

NO.	DATE	DESCRIPTION
1	01/15/2018	ISSUED FOR PERMIT
2	02/15/2018	ISSUED FOR CONSTRUCTION

PROJECT

TOWN HALL VENTILATION
VENTILATION IMPROVEMENT
PLANS

M101

Scale: 1/4" = 1'-0"



Town of Amherst, NH BOARD OF SELECTMEN STAFF REPORT

Title: DPW Winter Sand Bids

Department: Public Works

Meeting Date: September 26, 2022

Staff Contact: Eric Slosek

BACKGROUND INFORMATION:

The DPW received bids for the purchase and delivery of winter sand. We recommend awarding bid number 05-23, winter sand, to Leighton A. White, Inc., the lowest bidder, at \$12.75/ton, for a total of \$12,750 for 1,000 tons.

BUDGET IMPACT:

(Include general ledger account numbers)

\$12,750 from 01-4312-60-2663 (Sand).

POLICY IMPLICATIONS:

DEPARTMENT HEAD RECOMMENDATION:

Award 05-23, winter sand, to Leighton A. White, Inc.

SUGGESTED MOTION:

I move to award bid number 05-23, winter sand, to Leighton A. White, Inc, for the amount of \$12,750.00.

TOWN ADMINISTRATOR RECOMMENDATION:

ATTACHMENTS:

1. Bid Winter Sand 05-23
2. 05-23 Award Sheet
3. Granite State Concrete bid
4. Northeast Sand-gravel bid
5. Leighton A White Inc



DEPARTMENT OF PUBLIC WORKS

22 Dodge Road
Amherst, NH 03031
Tel. (603) 673-2317
eslosek@amherstnh.gov

BID NUMBER #05-23

INVITATION FOR BIDS

WINTER SAND

Proposals for the purchase of “Winter Sand” by the Amherst Department of Public Works will be received at the Town Administrator’s Office, Town Hall, Amherst, NH, until 1:00 PM, Friday, August 26, 2022. Bids submitted after this time will not be accepted.

Bidding Documents may be obtained, at no charge, at the Public Works Office at 22 Dodge Road in Amherst, NH or on the Amherst town website:
<https://www.amherstnh.gov/public-works/news/bid-opportunities>.

Bids must be submitted in a sealed envelope marked “**WINTER SAND**”. Shortly thereafter, bids will be publicly opened and read aloud at any available office or conference room at any available conference room at Amherst Town Hall, 2 Main Street. Award will be by the Board of Selectmen at a regular board meeting.

Bids shall be submitted on the bid form furnished herewith and shall exclude state and federal tax not applicable to municipalities.

The initial contract is to cover a one (1) year period, which coincides with the Town’s fiscal year 2023 (July 2022-June 2023). Thereafter, the contract may be renewed by mutual agreement for a period not to exceed one (1) additional fiscal year.

The Town of Amherst reserves the right to reject any or all proposals, waive irregularities, to advertise for new proposals, and to make awards as may be deemed to be in the best interest of the town overall.

Eric Slosek
Public Works Director

WINTER SAND
SPECIFICATIONS

The vendor shall supply and deliver to the Town of Amherst, Public Works Garage, 22 Dodge Road, approximately 1,000 tons (approximately 740 cubic yards) of screened sand. During the winter season 2022-2023 additional cubic yards could be ordered. The unit price stated on Page 4 of this proposal shall be held for any additional quantities.

Screened sand should meet the following gradation range (however the Town of Amherst reserves the right to consider gradation outside these requirements if it is in the best interests of the town):

Sieve Size	Percentage (by weight) Passing
1/2"	100%
3/8"	90 - 100%
#4	75 – 100%
#40	18 – 40%
#100	4 – 15%
#200	0 – 6%

Preference will be given to a sand meeting the Unified Soil Classification group symbol of SW rating.

Sand is defined as soil particles smaller than gravel but retained on a No. 200 sieve.

Moisture content of sand tested and delivered shall not exceed 2.5%

For consideration, vendors must submit an independent material gradation report with the bid sheet representative of the materials available at their site.

A five (5) gallon representative sample shall be delivered to the Public Works Garage by the time and date referenced in this proposal. Failure to deliver said sample will be grounds for bid rejection.

The location of the material supply (pit) shall be identified and made available for the Town to visit the site as applicable and furthermore, the Town may remove appropriate grab samples for gradation verification by an independent laboratory. Public Works staff may at the town's expense randomly sample and test (by independent laboratory) the delivered product.

Town of Amherst
Department of Public Works
22 Dodge Road
Amherst, NH 03031

The initial delivery of approximately 1,000 tons screened sand (740 cubic yards) shall be completed at the Public Works Garage Monday through Friday between 6:30 am and 3 p.m. by Friday, December 2nd, 2022. Availability is expected throughout the winter for material being ordered and delivered as directed by the Director of Public Works. The Director of Public Works or his designated representative will notify the vendor a minimum of 72 hours prior to expected delivery of additional material.

The Town of Amherst reserves the right to cancel any unfilled portion of the contract providing that in the opinions of the Town Administrator and the Director of Public Works the services of material provided by the contractor are unsatisfactory or not consistent with the terms of the contract.

Award will be made to the lowest bidder meeting all specifications, delivery requirements, and otherwise meeting requirements set forth by the procurement policy adopted by the Board of Selectmen of the Town of Amherst.

BID NUMBER #05-23
CONTRACTOR'S PROPOSAL

To: Town of Amherst, NH:

The undersigned, as a lawfully authorized agent for the below named Bidder/Contractor, has carefully examined the Proposal form of this Bid, to be known as Bid Number 05-23 Winter Sand with the General Provisions, Specifications and other bid documents and binds himself/herself and his/her company on award to them by the Board of Selectmen.

The Bidder herein agrees to supply the materials, equipment, and labor necessary to complete the items as stated below in accordance with the Town of Amherst's accepted standards and procedures to the satisfaction of the Director of Public Works for "Winter Sand" as described on the Specification Sheet.

No security bonds will be required however payment will not be made unless signed load slips are included with the statement. No frozen material will be accepted at the Public Works Garage. Payment will be made within 30 days after receipt of invoice.

The determination of responsible low bidder will not be made by the low unit price only, unless material proposed to be supplied meets the range of gradation as specified on page 2 of this bid.

Additionally, the availability of material is a critical part of vendor consideration and selection. Should the lowest responsible bidder selected not be capable of meeting the delivery dates as established by the Amherst Public Works Department, then the Director of Public Works may select the next lowest responsible bidder for providing the material requested.

For the purposes of calculating and awarding this bid specification, a comparative formula of one cubic yard of sand equals 1.35 ton.

Winter Sand Delivered:

Lump Sum Price (\$):

_____ (\$): _____
(Written) (Figure)

Town of Amherst
Department of Public Works
22 Dodge Road
Amherst, NH 03031

Print Bidder/Contractor's Name

Print Representative's Name and Title

Representative's Signature

Street

City, State and Zip Code

Telephone and FAX Number

Date

Person signing proposal must be a person in your company authorized to sign a Contract with the Town of Amherst, NH.

Town of Amherst
Department of Public Works
22 Dodge Road
Amherst, NH 03031

AGREEMENT

This AGREEMENT is made August _____, 2022, BETWEEN the Owner: Town of Amherst

and the Contractor: _____ for the

following Project: **“Town of Amherst Bid #05-23 Winter Sand”**.

The Owner and Contractor agree as follows:

**ARTICLE I
THE CONTRACT DOCUMENTS**

The contractor shall complete the Work described in the Contract Documents for the project. The Contract documents consist of:

- 1) Invitation to Bid.
- 2) Specifications, dated August 5, 2022.
- 3) Contractor’s Proposal.
- 4) Any issued addenda.
- 5) This agreement signed by the Owner and the Contractor.
- 6) Written change orders or orders for minor changes in the Work issued after execution of this Agreement.

**ARTICLE II
DATE OF COMMENCEMENT AND FINAL COMPLETION DATE**

The date of commencement shall be the date of this Agreement. The Contractor will complete delivery of the initial 1000 Tons (740 Cubic Yards) of winter sand no later than Friday, December 2, 2022.

**ARTICLE III
CONTRACT SUM**

Subject to additions and deductions by Change Order, the Contract Lump Sum for winter sand delivered is:

_____ (\$): _____
(Written) (Figure)

**ARTICLE IV
PAYMENT**

Based on the Contractor's Application for Payment for completed work, certified by the Owner or the Owner's Agent, the Owner shall pay the Contractor as follows:

1. Submittal shall be for delivered winter sand only.
2. All invoices must be accompanied by a signed load slip.
3. Work shall be certified, and payment made, on or within 15 days of the approved amount of the invoice.
4. Performance-Payment Security shall not be required.

**ARTICLE V
INSURANCE**

The Contractor shall provide satisfactory evidence of both Contractor's Liability and Workers Compensation Insurance.

OWNER, by its Selectmen

Peter Lyon, Chair

Thomas Grella, Vice Chair

Danielle Pray, clerk

Will Stoughton, Member

John D'Angelo, Member

CONTRACTOR

(Signature of Company Executive)

Printed name, title, and address

Telephone Number

Fax line number

-OR-

Dean E. Shankle, Jr., Ph. D, Town Administrator

TOWN OF AMHERST

Town Department: DPW

Date: September, 2022

Line Item: 01-4312-60-2663 (Sand)

Budget Amount: \$7,500.00

Bid #: 05-23 Item: Sand

Date Bid To Be Awarded: September 26, 2022

<u>Vendor</u>	<u>Price</u>	<u>Total</u>	<u>Other Considerations</u>
1. Northeast Sand & Gravel	15.35 per ton	\$15,350.00	
2. Granite State Concrete	15.10 per ton	\$15,100.00	
3. A Rodd Industries	Bid Incomplete		
4. Leighton A. White, Inc.	\$12.75	\$12,750.00	
5. F.L. Merrill	No Bid		
6. Dugout Gravel, LLC	No Bid		
7. Continental Paving, Inc.	No Bid		

Recommend bid be awarded to: ***Leighton A. White, Inc.***

Signature of Town Administrator / Date

Please attach to this request a copy of the specifications and proposal from the lowest qualified bidder.
Please forward, for review purposes, a copy of bids in excess of \$10,000.00 to the Board of Selectmen at least one week prior to a vote of the Board of Selectmen.

This bid was post on the Town of Amherst website, Construction Summary of NH, ME, and VT, and Dodge Data & Analytics.

Town of Amherst
Department of Public Works
22 Dodge Road
Amherst, NH 03031

BID NUMBER #05-23
CONTRACTOR'S PROPOSAL

To: Town of Amherst, NH:

The undersigned, as a lawfully authorized agent for the below named Bidder/Contractor, has carefully examined the Proposal form of this Bid, to be known as Bid Number 05-23 Winter Sand with the General Provisions, Specifications and other bid documents and binds himself/herself and his/her company on award to them by the Board of Selectmen.

The Bidder herein agrees to supply the materials, equipment, and labor necessary to complete the items as stated below in accordance with the Town of Amherst's accepted standards and procedures to the satisfaction of the Director of Public Works for "Winter Sand" as described on the Specification Sheet.

No security bonds will be required however payment will not be made unless signed load slips are included with the statement. No frozen material will be accepted at the Public Works Garage. Payment will be made within 30 days after receipt of invoice.

The determination of responsible low bidder will not be made by the low unit price only, unless material proposed to be supplied meets the range of gradation as specified on page 2 of this bid.

Additionally, the availability of material is a critical part of vendor consideration and selection. Should the lowest responsible bidder selected not be capable of meeting the delivery dates as established by the Amherst Public Works Department, then the Director of Public Works may select the next lowest responsible bidder for providing the material requested.

For the purposes of calculating and awarding this bid specification, a comparative formula of one cubic yard of sand equals 1.35 ton.

Winter Sand Delivered:

Lump Sum Price (\$):

Fifteen Dollars and 10/100 per ton (\$):	\$15.10 per ton delivered
(Written)	(Figure)

Town of Amherst
Department of Public Works
22 Dodge Road
Amherst, NH 03031

Granite State Concrete Co., Inc.
Print Bidder/Contractor's Name

William Bieschke
Print Representative's Name and Title


Representative's Signature

408 Elm Street
Street

Milford, NH 03055
City, State and Zip Code

603-673-3327
Telephone and FAX Number Date

September 8, 2022

Person signing proposal must be a person in your company authorized to sign a Contract with the Town of Amherst, NH.

Town of Amherst
Department of Public Works
22 Dodge Road
Amherst, NH 03031

**BID NUMBER #05-23
CONTRACTOR'S PROPOSAL**

To: Town of Amherst, NH:

The undersigned, as a lawfully authorized agent for the below named Bidder/Contractor, has carefully examined the Proposal form of this Bid, to be known as Bid Number 05-23 Winter Sand with the General Provisions, Specifications and other bid documents and binds himself/herself and his/her company on award to them by the Board of Selectmen.

The Bidder herein agrees to supply the materials, equipment, and labor necessary to complete the items as stated below in accordance with the Town of Amherst's accepted standards and procedures to the satisfaction of the Director of Public Works for "Winter Sand" as described on the Specification Sheet.

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Additionally, the availability of material is a critical part of vendor consideration and selection. Should the lowest responsible bidder selected not be capable of meeting the delivery dates as established by the Amherst Public Works Department, then the Director of Public Works may select the next lowest responsible bidder for providing the material requested.

For the purposes of calculating and awarding this bid specification, a comparative formula of one cubic yard of sand equals 1.35 ton.

Winter Sand Delivered:

Lump Sum Price (\$):

One Thousand ton @ \$15.35 TON (\$) \$ 15,350
(Written) (Figure)

Town of Amherst
Department of Public Works
22 Dodge Road
Amherst, NH 03031

Northeast Sand & Gravel

Print Bidder/Contractor's Name

Matthew Brown Head of Sales

Print Representative's Name and Title

Matthew Brown

Representative's Signature

1637 Osgood St.

Street

North Andover, MA 01845

City, State and Zip Code

603-878-0035 / 603-878-0025

Telephone and FAX Number

8/25/22

Date

Person signing proposal must be a person in your company authorized to sign a Contract with the Town of Amherst, NH.

BID NUMBER #05-23
CONTRACTOR'S PROPOSAL

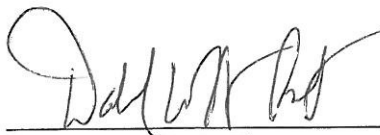
Town of Amherst
Department of Public Works
22 Dodge Road
Amherst, NH 03031

Leighton A White Inc
Print Bidder/Contractor's Name

DALE WHITE President
Print Representative's Name and Title

138 Elm St
Street

603-673-2294 603-672-8320
Telephone and FAX Number


Representative's Signature

Milford NH 03055
City, State and Zip Code

8/25/22
Date

Person signing proposal must be a person in your company authorized to sign a Contract with the Town of Amherst, NH.



Town of Amherst, NH BOARD OF SELECTMEN STAFF REPORT

Title: Nuisance Trees

Department: Public Works

Meeting Date: September 26, 2022

Staff Contact: Eric Slosek

BACKGROUND INFORMATION:

The DPW has identified two trees of concern that, in our opinion, and that of our tree warden, Perry Day, constitute a nuisance to the public and pose an imminent hazard. Our tree warden consulted a local arborist who recommended the trees be taken down. Mike Gagnon, the Hillsborough County forester, also looked at the two trees in question. The forester did not contradict the arborist's recommendation to remove the trees.

The first tree of concern is a red maple located in the ROW at #6 Mack Hill Rd. This tree has extensive rot in the crotch of a large limb overhanging the travel lane. The second tree of concern is a dead ash located in the ROW at #14 Mack Hill Rd. This tree is completely dead with extensive damage from the emerald ash borer. It has large dead limbs overhanging the road. Both trees are located on a scenic road as defined in NH RSA 231:157. As per NH RSA 231:158, par. II, "...a road agent or his designee may, without such hearing, but only with the written permission of the selectmen, remove trees or portions of trees which have been declared a public nuisance pursuant to RSA 231:145 and 231:146, when such trees or portions of such trees pose an imminent threat to safety or property..." The tree warden has spoken with both private property abutters and has their consent for removal of the trees.

We respectfully ask the board to declare said trees a public nuisance and imminent hazard, pursuant to RSA 231:145 & 231:146, and permit the DPW to remove the same as soon as is practicable.

BUDGET IMPACT:

(Include general ledger account numbers)

POLICY IMPLICATIONS:

DEPARTMENT HEAD RECOMMENDATION:

Recommend making a declaration of imminent hazard, and permitting trees to be removed as soon as is practicable without further hearings.

SUGGESTED MOTION:

I move to declare the red maple flagged at #6 Mack Hill Rd., and the flagged dead ash located at #14 Mack Hill Rd., as imminent hazards, and permit the DPW to remove the same as soon as is practicable. We are particularly concerned with these trees due to the frequent pedestrian use of this segment of road. We believe expedience in this matter may prevent injury to persons or property.

TOWN ADMINISTRATOR RECOMMENDATION:

ATTACHMENTS:

1. Letter from Hillsborough County Forester
2. 6 mack hill rd red maple
3. 14 mack hill rd dead ash
4. relevant tree rsas

UNH Cooperative Extension - Hillsborough County
329 Mast Road - Room 101
Goffstown, NH 03045



University of
New Hampshire
Cooperative Extension

Phone: (603)641-6060

Fax: (603)645-5252

Sept 20, 2022

Atn: Mr. Perry Day and Mr. Eric Slosic

Dear Perry and Eric,

Thank you for reaching out to me to visit and discuss the trees on Mack Hill Road. The first tree we looked at was a large red maple at #6 Mack Hill Rd. This tree has several structural issues which will not improve overtime but only worsen, eventually leading to the failure of its structural support. I saw no reason to contradict what the arborist you consulted had already recommended, which was removal of this tree. The landowner also agreed with this decision during the visit.

A few houses up the road at #14 I believe, is a large white ash tree that has completely succumbed to Emerald Ash Borer infestation. This tree should also be removed along with any other ash trees that may pose a hazard on any town lands that have not been treated systemically to protect them from Emerald Ash Borer.

The assessment and advice I have provided is my unbiased opinion based what I have seen regarding this tree and provided through my role as the County Forester for Hillsborough County with UNH Extension. While I have a great deal of experience with trees and forest management, and I am trained and licensed as a professional forester in New Hampshire, I am not certified and trained as an arborist or a hazard tree assessor. If necessary, I encourage you to reach out to additional professionals from the New Hampshire list of Board Certified Arborists for a second opinion: <https://www.nharborists.org/nhaa-list-of-certified-arborists/>

Sincerely,

Michael Gagnon

Extension Forester in Hillsborough County

UNH Cooperative Extension

329 Mast Rd, Goffstown, NH

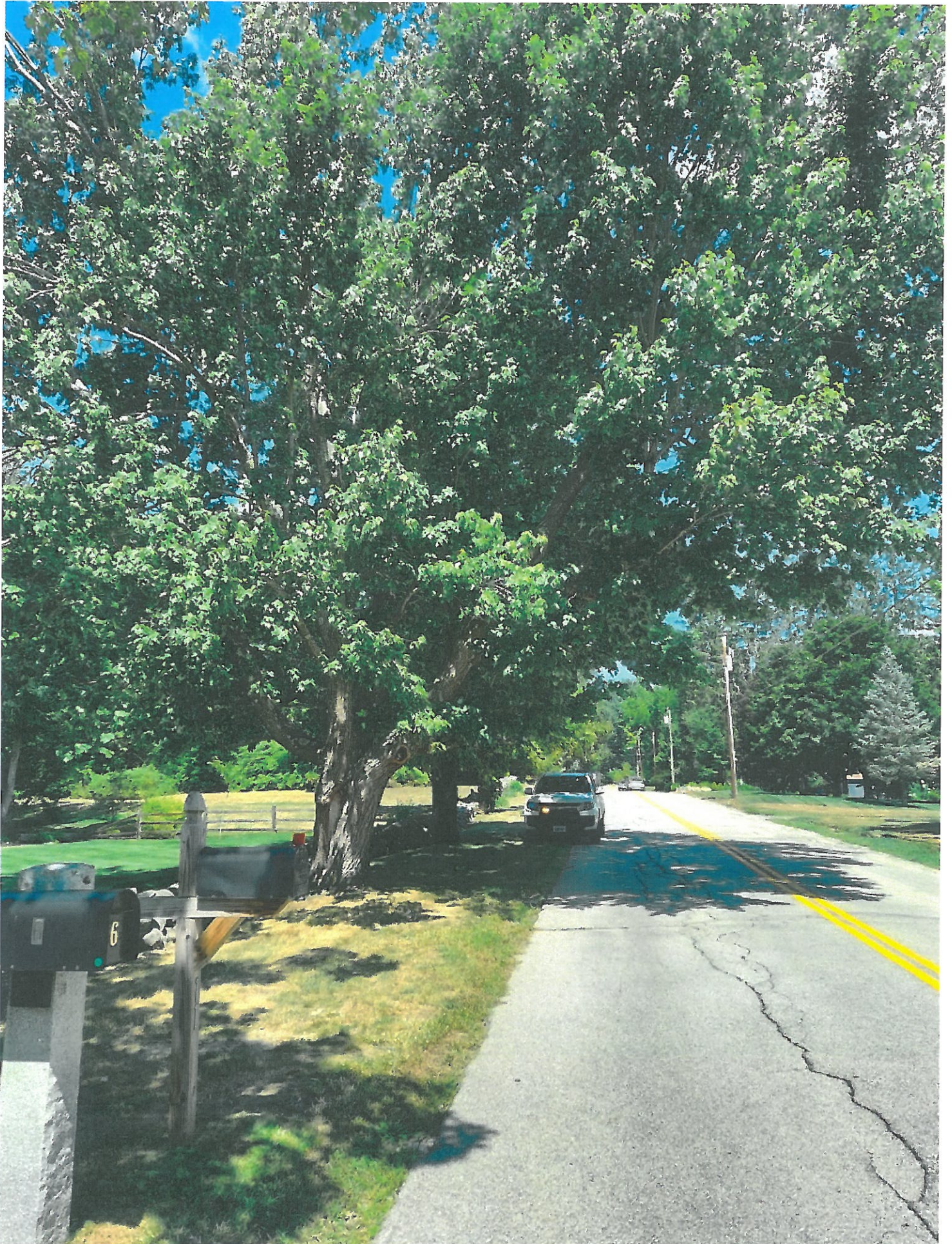
michael.gagnon@unh.edu

www.nhwoods.org

TREE INSPECTIONS

NAME	Ezera Mitchell
ADDRESS	#6 Mackhill Rd.
DATE INSPECTED	9/1/2022
Town Tree Warden	Perry Day <i>Perry Day</i>
TYPE OF TREE	Red Maple
DEFECTS	Rot in crotch of large limb overhanging travel lane.
REMARKS	After meeting with homeowner and county forester it was agreed tree should be removed with minimal delay. Homeowner is in agreement of removal.
RIGHT-OF-WAY	Yes
SCENIC ROAD	Yes





TREE INSPECTIONS

NAME	Scott Blair
ADDRESS	#14 Mackhill Rd.
DATE INSPECTED	9/1/2022
Town Tree Warden	Perry Day <i>Perry Day</i>
TYPE OF TREE	Ash
DEFECTS	Dead
REMARKS	Tree overhangs travel lane. Probable cause of tree failure is Emerald Ash Borer. Homeowner is in agreement of removal.
RIGHT-OF-WAY	Yes
SCENIC ROAD	Yes



TITLE XX

TRANSPORTATION

CHAPTER 231

CITIES, TOWNS AND VILLAGE DISTRICT HIGHWAYS

Trees and Roadside Growth

Section 231:145

231:145 Removal of Certain Hazardous Trees. – Notwithstanding the provisions of other sections of this subdivision and subject to the provisions of RSA 231:157 and RSA 231:158, the commissioner of transportation on class I and III highways, and state maintained portions of class II highways, and the governing bodies of cities and towns and the county commissioners for unorganized places on class IV, V, and VI highways and town maintained portions of class II highways may declare any tree, either alive or dead, situated within the limits of highways, roads, or streets to be a public nuisance by reason of danger to the traveling public, spread of tree disease, or the reliability of equipment installed at or upon utility facilities authorized under RSA 231:160 or RSA 231:160-a. After such declaration by such authority and notice to the abutting landowner on whose property such tree is located the said authority shall within a reasonable time remove the same without compensation or cost to the abutter. However, no such declaration and notice shall be required when the delay entailed by such declaration and notice would pose an imminent threat to safety or property, including electric transmission and distribution lines. Nothing in this subdivision shall be construed to relieve the public utility companies of their accepted responsibility of tree trimming and tree removal for the protection of their lines, or for the construction of new lines, or to alter the provisions of RSA 231:150-182 in any manner. The state and municipal authorities may require of the public utilities owning lines which pass through or near a tree or trees which are condemned for removal as a public nuisance to assist in their removal at their expense by either the temporary removal of their lines or by causing to be removed at their expense the top portion of said tree or trees from a point below their lines.

Source. RSA 253:6-a. 1959, 135:1. 1981, 87:1. 1985, 402:6, I(b)(3). 1991, 134:1, eff. July 19, 1991. 2009, 267:2, eff. Sept. 14, 2009. 2012, 24:5, eff. May 2, 2012. 2015, 89:1, eff. Aug. 4, 2015.

TITLE XX

TRANSPORTATION

CHAPTER 231

CITIES, TOWNS AND VILLAGE DISTRICT HIGHWAYS

Trees and Roadside Growth

Section 231:146

231:146 Notice. – Notice to the abutting landowner of a tree declared a public nuisance shall be given by delivery at his place of residence or by sending by registered mail to his last known address and it shall clearly state the intention of removal of such tree. He may appeal to the superior court as to the validity of such declaration within 30 days of delivery or mailing of said notice, and shall be entitled to a speedy hearing. The final judgment upon every appeal shall be a decree dismissing the appeal, or vacating the declaration complained of in whole or in part, as the case may be; but in case such declaration is wholly or partly vacated the court may also, at its discretion, remand the matter to the said department, city, county, or town for such further proceedings, not inconsistent with the decree, as justice may require. Following expiration of the aforesaid 30-day period of appeal, or following waiver of said right of appeal, the abutting landowner is relieved of any liability or responsibility in connection with the tree or trees declared a public nuisance and similarly is relieved of any liability or responsibility in connection with any stump or stumps left remaining.

Source. RSA 253:6-b. 1959, 135:1. 1981, 87:1, eff. April 20, 1981.

TITLE XX

TRANSPORTATION

CHAPTER 231

CITIES, TOWNS AND VILLAGE DISTRICT HIGHWAYS

Scenic Roads

Section 231:157

231:157 Scenic Roads; Designation. – Any road in a town, other than a class I or class II highway, may be designated as a scenic road in the following manner. Upon petition of 10 persons who are either voters of the town or who own land which abuts a road mentioned in the petition (even though not voters of the town), the voters of such town at any annual or special meeting may designate such road as a scenic road. Such petitioners shall be responsible for providing the town clerk with a list of known property owners whose land abuts any of the roads mentioned in the petition. The town clerk shall notify by regular mail within 10 days of the filing all abutters along the road that lies within the town that a scenic road petition has been filed for and that an article to designate such road as a scenic road will appear in the warrant at the next town meeting. The voters at a regular town meeting may rescind in like manner their designation of a scenic road upon petition as provided above. Notice to the abutting landowners shall also be given as provided above. Each town shall maintain and make available to the public a list of all roads or highways or portions thereof within the town which have been designated as scenic roads. Such list shall be kept current by updating not less than annually and shall contain sufficient information to permit ready identification of the location and extent of each scenic road or portion thereof, by reference to a town map or otherwise.

Source. RSA 253:17. 1971, 455:1. 1973, 586:1. 1981, 87:1. 1992, 160:3, eff. July 5, 1992.

TITLE XX

TRANSPORTATION

CHAPTER 231

CITIES, TOWNS AND VILLAGE DISTRICT HIGHWAYS

Scenic Roads

Section 231:158

231:158 Effect of Designation as Scenic Roads. –

- I. As used in this subdivision, "tree" means any woody plant which has a circumference of 15 inches or more at a point 4 feet from the ground.
- II. Upon a road being designated as a scenic road as provided in RSA 231:157, any repair, maintenance, reconstruction, or paving work done with respect thereto by the state or municipality, or any action taken by any utility or other person acting to erect, install or maintain poles, conduits, cables, wires, pipes or other structures pursuant to RSA 231:159-189 shall not involve the cutting, damage or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, except with the prior written consent of the planning board, or any other official municipal body designated by the meeting to implement the provisions of this subdivision, after a public hearing duly advertised as to time, date, place and purpose, 2 times in a newspaper of general circulation in the area, the last publication to occur at least 7 days prior to such hearing, **provided, however, that a road agent or his designee may, without such hearing, but only with the written permission of the selectmen, remove trees or portions of trees which have been declared a public nuisance pursuant to RSA 231:145 and 231:146, when such trees or portions of such trees pose an imminent threat to safety or property,** and provided, further, that a public utility when involved in the emergency restoration of service, may without such hearing or permission of the selectmen, perform such work as is necessary for the prompt restoration of utility service which has been interrupted by facility damage and when requested, shall thereafter inform the selectmen of the nature of the emergency and the work performed, in such manner as the selectmen may require.
- III. Designation of a road as scenic shall not affect the eligibility of the town to receive construction, maintenance or reconstruction aid pursuant to the provisions of RSA 235 for such road.
- IV. Designation of a road as a scenic road shall not affect the rights of any landowner with respect to work on his own property, except to the extent that trees have been acquired by the municipality as shade or ornamental trees pursuant to RSA 231:139-156, and except that RSA 472:6 limits the removal or alteration of boundary markers including stone walls.
- V. A town may, as part of a scenic road designation under RSA 231:157 or as an amendment to such designation adopted in the same manner, impose provisions with respect to such road which are different from or in addition to those set forth in this section. Such provisions may include, but are not limited to, decisional criteria for the granting of consent by the planning board or other designated municipal body under paragraph II, or protections for trees smaller than those described in paragraph I, designated for the purpose of establishing regenerative growth along the scenic road.
- VI. Any person who violates this section or any local provision adopted under this section shall be guilty of a violation and shall be liable for all damages resulting therefrom.

Source. RSA 253:18. 1971, 455:1. 1973, 586:2. 1981, 87:1. 1983, 122:2. 1991, 134:3, 4. 1992, 160:2, eff. July 5, 1992.



Town of Amherst, NH BOARD OF SELECTMEN STAFF REPORT

Title: Use of Town Common Request-
Annual Boy Scout Troop 613 Halloween
chili and hot dog sale, Monday October 31,
2022

Department: Administration

Meeting Date: September 26, 2022

Staff Contact:

BACKGROUND INFORMATION:

The Boy Scouts are requesting use of the Town Common across from Moulton's in order to sell chili and hot dogs, as they have in years past. A Certificate of Insurance will be secured.

BUDGET IMPACT:

(Include general ledger account numbers)

POLICY IMPLICATIONS:

DEPARTMENT HEAD RECOMMENDATION:

SUGGESTED MOTION:

I move to approve the request from Boy Scout Troop 613 for use of the Town Common for their Annual Halloween Chili and Hot Dog Sale for October 31, 2022 from 12pm - 10 pm.

TOWN ADMINISTRATOR RECOMMENDATION:

ATTACHMENTS:

1. Boy Scouts Halloween chili and hot dog sale,- signed

**TOWN OF AMHERST, NH
USE OF TOWN COMMONS REQUEST**

Completed form must be submitted to the Administration Department four (4) weeks before the event in order to obtain Board of Selectmen approval. This request is for use of any Town Common land.

Organization Name: Boy Scout Troop 613 Contact Name: Gretchen Pyles
Contact Phone Number: (603)801-0660 Contact e-mail: nhpyles1@gmail.com
Date of Event: 10/31/22 Hours (from/ to): 12:00 - 10:00 p.m. (set up, sale, clean up) Number of est. participants: 10 in shifts
Will you need Electricity? yes If so, for what? cook stoves
Wish to bring anything onto the Commons ? IF so, what? tent, tables, a few chairs
Wish to drive anything onto the Commons? no
Wish to place Port-a-potties along on the far-right gravel parking lot to the right of Town Hall? no
Request road closures? (Please identify intersections) no
Will you sell or serve food or drinks? (Certificates of Insurance naming the Town of Amherst will be required) Yes

Brief Description of event.:

Boy Scout Troop 613 would like to hold its Annual Hot Dog and Chili Sale on the green across from Moulton's on Halloween evening during trick-or-treating.

Requirements: By signing this document, I agree to abide by all applicable requirements.

1. NO ALCOHOL SALES OR CONSUMPTION are allowed.
2. The Common must be left in the same or better condition than prior to event. Trash removal is the responsibility of the Event Organizer.
3. If damage occurs to any town property, please notify DPW (603) 673-2317.
4. Groups who are granted permission must abide by all Town of Amherst ordinances pertaining to public property and all related NH RSAs as well as all state fire and safety rules and regulations at all times during use of the property.
5. The Town of Amherst or any of its designees are not responsible for any injuries occurring to participants during the course of activities during use of the property.

Applicant Signature: Gretchen Pyles Date: 9/15/22

This application must be signed off by all Department Heads below before going before the Board of Selectmen for consideration and approval. Events held for the first time require attendance of a representative at the Board meeting.

Chief of Police Approval: Signature Mark O. Reams Date: Sep 19, 2022
Mark O. Reams (Sep 19, 2022 12:40 EDT)

Fire/ Rescue Chief Approval: Signature Matthew Conley Date: Sep 20, 2022
Matthew Conley (Sep 20, 2022 14:16 EDT)

Public Works Director Approval: Signature Eric M. Slosek Date: Sep 20, 2022
Eric M. Slosek (Sep 20, 2022 18:03 EDT)

BOS Approval: Chair's Signature _____ Date: _____












town_common_use_application_fillable_2022__0

Final Audit Report

2022-09-20

Created:	2022-09-19
By:	Jennifer Stover (jstover@amherstnh.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAzToFQHcRhOJINrbEQMA2gC3J8e2bc

"town_common_use_application_fillable_2022__0" History

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-  Document emailed to mreams@amherstnh.gov for signature
2022-09-19 - 4:29:04 PM GMT
-  Document emailed to Matthew Conley (mconley@amherstnh.gov) for signature
2022-09-19 - 4:29:04 PM GMT
-  Document emailed to eslosek@amherstnh.gov for signature
2022-09-19 - 4:29:05 PM GMT
-  Email viewed by mreams@amherstnh.gov
2022-09-19 - 4:40:10 PM GMT
-  Signer mreams@amherstnh.gov entered name at signing as Mark O. Reams
2022-09-19 - 4:40:33 PM GMT
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2022-09-20 - 10:00:30 PM GMT
-  Signer eslosek@amherstnh.gov entered name at signing as Eric M. Slosek
2022-09-20 - 10:03:12 PM GMT



Document e-signed by Eric M. Slosek (eslosek@amherstnh.gov)

Signature Date: 2022-09-20 - 10:03:14 PM GMT - Time Source: server- Signature captured from device with phone number XXXXXX5576



Agreement completed.

2022-09-20 - 10:03:14 PM GMT





Town of Amherst, NH BOARD OF SELECTMEN STAFF REPORT

Title: Use of Town Common Request-
Amherst Junior Women's Club for their
Annual Trot Off Your Turkey 5K and Fun
Run, Saturday November 26, 2022

Department: Administration

Meeting Date: September 26, 2022

Staff Contact:

BACKGROUND INFORMATION:

This race has traditionally been held the Friday after Thanksgiving, but is moving to Saturday this year.

BUDGET IMPACT:

(Include general ledger account numbers)

POLICY IMPLICATIONS:

DEPARTMENT HEAD RECOMMENDATION:

SUGGESTED MOTION:

I move to approve the request from the Amherst Junior Women's Club for use of the Town Common for their Annual Trot Off Your Turkey 5K and Fun Run, Saturday November 26, 2022 from 7am - 11am.

TOWN ADMINISTRATOR RECOMMENDATION:

ATTACHMENTS:

1. TrotOffYourTurkey 2022 Town Application - signed
2. AJWC5KCOI

**TOWN OF AMHERST, NH
USE OF TOWN COMMONS REQUEST**

Completed form must be submitted to the Administration Department four (4) weeks before the event in order to obtain Board of Selectmen approval. This request is for use of any Town Common land.

Organization Name: Amherst Junior Womens Club Contact Name: Colleen Doyle
Contact Phone Number: 858-945-1627 Contact e-mail: cdoyle001@gmail.com
Date of Event: November 26, 2022 Hours (from/ to): 7am to 11am Number of est. participants: 250
Will you need Electricity? yes If so, for what? timing machine
Wish to bring anything onto the Commons? IF so, what? 6 pop up tents, 6 tables,
Wish to drive anything onto the Commons? No
Wish to place Port-a-potties along on the far-right gravel parking lot to the right of Town Hall? yes
Request road closures? (Please identify intersections) space in front of Congregational Church
Will you sell or serve food or drinks? (Certificates of Insurance naming the Town of Amherst will be required) yes
Nothing sold

Brief Description of event.:

Trot off your Turkey 5K and Fun run starting and ending at the congregational church.

The Amherst Junior Womens Club is looking to host our 22nd annual Trot off your Turkey 5K and fun run on Saturday, November 26th. The fun run start time is set for 9:00am and the 5K for 9:30am. Both races would begin and end at the Congregational Church. We would have a table on the green and port-a-potties in the designated gravel parking. We will also have an ambulance present.

We hope to place our directional signs out Wednesday night before the race. There will also be one water stop along the route.

Requirements: By signing this document, I agree to abide by all applicable requirements.

1. NO ALCOHOL SALES OR CONSUMPTION are allowed.
2. The Common must be left in the same or better condition than prior to event. Trash removal is the responsibility of the Event Organizer.
3. If damage occurs to any town property, please notify DPW (603) 673-2317.
4. Groups who are granted permission must abide by all Town of Amherst ordinances pertaining to public property and all related NH RSAs as well as all state fire and safety rules and regulations at all times during use of the property.
5. The Town of Amherst or any of its designees are not responsible for any injuries occurring to participants during the course of activities during use of the property.

Applicant Signature: [Signature]

Date: 9/11/22

This application must be signed off by all Department Heads below before going before the Board of Selectmen for consideration and approval. Events held for the first time require attendance of a representative at the Board meeting.

Chief of Police Approval: Signature Mark O Reams Date: 9/9/22
Mark O Reams (Sep 9, 2022 14:41 EDT)
Fire/ Rescue Chief Approval: Signature Matthew Conley Date: 9/15/2022
Matthew Conley (Sep 15, 2022 10:02 EDT)
Public Works Director Approval: Signature Eric M. Slosek Date: 9/20/22
Eric M. Slosek (Sep 20, 2022 18:06 EDT)

BOS Approval: Chair's Signature _____ Date: _____












TOYT 2022 Town Application

Final Audit Report

2022-09-20

Created:	2022-09-09
By:	Jennifer Stover (jstover@amherstnh.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAENOC5uu9Dk4u4m2l7tJGG7Fe_JzAypr

"TOYT 2022 Town Application" History

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2022-09-09 - 5:56:14 PM GMT
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-  Signer mreams@amherstnh.gov entered name at signing as Mark O Reams
2022-09-09 - 6:41:45 PM GMT
-  Document e-signed by Mark O Reams (mreams@amherstnh.gov)
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2022-09-15 - 2:02:14 PM GMT
-  Email viewed by eslosek@amherstnh.gov
2022-09-20 - 10:04:16 PM GMT
-  Signer eslosek@amherstnh.gov entered name at signing as Eric M. Slosek
2022-09-20 - 10:06:01 PM GMT



Document e-signed by Eric M. Slosek (eslosek@amherstnh.gov)

Signature Date: 2022-09-20 - 10:06:02 PM GMT - Time Source: server- Signature captured from device with phone number XXXXXX5576



Agreement completed.

2022-09-20 - 10:06:02 PM GMT






CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/21/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER  Pete Ackerson PO Box 998 294 Route 101 Amherst NH 03031	CONTACT NAME: Emily Fairbank PHONE (A/C, No, Ext): 603-673-0221 FAX (A/C, No): 603-672-3903 E-MAIL ADDRESS: emily@peteackerson.com
INSURED Amherst Junior Womens Club PO Box 513 2 Middle Street Amherst NH 03031	INSURER(S) AFFORDING COVERAGE INSURER A: State Farm Fire and Casualty Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
	NAIC # 25143

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

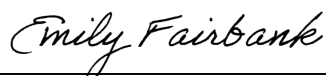
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD INSD	SUB WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<input checked="" type="checkbox"/>	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			94-BD-2385-7	09/13/2022	09/13/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Business Property \$ 5,400
<input type="checkbox"/>	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
<input type="checkbox"/>	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
<input type="checkbox"/>	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Additional Insured:
Town of Amherst
2 Main Street
Amherst, NH 03031

CERTIFICATE HOLDER**CANCELLATION**

Town of Amherst 2 Main Street Amherst NH 03031	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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Town of Amherst, NH BOARD OF SELECTMEN STAFF REPORT

Title: AP, Payroll and Minutes

Department: Administration

Meeting Date: September 26, 2022

Staff Contact:

BACKGROUND INFORMATION:

BUDGET IMPACT:

(Include general ledger account numbers)

POLICY IMPLICATIONS:

DEPARTMENT HEAD RECOMMENDATION:

SUGGESTED MOTION:

Payroll

PR1~ I move to approve one (1) FY23 Payroll Manifest in the amount of \$336.73 dated September 17, 2022, subject to review and audit.

PR2~ I move to approve one (1) FY23 Payroll Manifest in the amount of \$235,711.80 dated September 22, 2022, subject to review and audit.

Accounts Payable

AP3 ~ I move to approve one (1) FY23 Accounts Payable Manifest in the amount of \$33,31.78 dated September 16 2022, subject to review and audit. (NH DMV)

AP4 ~ I move to approve one (1) FY23 Accounts Payable Manifest in the amount of \$463.75 dated August 18, 2022, subject to review and audit. (Vendor)

AP5 ~ I move to approve one (1) FY23 Accounts Payable Manifest in the amount of \$349.009 dated September 9, 2022, subject to review and audit. (Vendors)

AP6 ~ I move to approve one (1) FY23 Accounts Payable Manifest in the amount of \$394,173.99 dated September 13, 2022, subject to review and audit. (Vendors)

Minutes

~ I move to approve the Board of Selectmen meeting minutes of August 19, 2022.

~ I move to approve the Board of Selectmen meeting minutes of August 29, 2022.

~ I move to approve the Board of Selectmen meeting minutes of September 12, 2022.

TOWN ADMINISTRATOR RECOMMENDATION:

ATTACHMENTS:

1. 2022.08.29 BOS Meeting Minutes, DRAFT JS
2. 2022.08.19 BOS Meeting Minutes DRAFT JS dp (003)
3. 2022.09.12 BOS_DRAFT_dp



Town of Amherst, NH

BOARD OF SELECTMEN MEETING MINUTES

Barbara Landry Meeting Room

2 Main Street

Monday, August 29, 2022, 2:00PM

1 **Call to Order**

2 Chairman Peter Lyon called the meeting to order at 2:00 p.m.

3
4 Attendees: Chairman Peter Lyon, Selectman Bill Stoughton, Selectman John D'Angelo,
5 Selectman Tom Grella, and Selectman Danielle Pray

6
7 Other persons present included Town Administrator Dean Shankle and Executive Assistant
8 Jennifer Stover.

9 Chairman Lyon shared that he had spoken with Town Administrator (TA) Shankle regarding
10 an email received from George Lemelin. The Town had supplied water to those households
11 within the Fire station Site Investigation area while they waited for test results. As test results
12 became available, the Town discontinued water to those households that did not exceed the
13 Ambient Groundwater Quality Standards (AGQS). Chairman Lyon explained that the original
14 thinking was that we would take care of everyone, with some parameters.

15 He went on to explain that the Board needed to discuss if water delivery will expand to all
16 who have some percentage of PFAS in their water, rather than just those in exceedance.

17 Chairman Lyon also told the Board that TA Shankle had taken a look at Pennichuck's levels
18 and Pennichuck tests below exceedance of 12, but at 11 PFOA. This is important for residents
19 to consider, as this number is higher than the test results for some of their wells.

20 George Lemelin, 2 Thatcher Drive, shared that in June an EPA health advisory for PFAS was
21 issued that changed the levels of concern. He said that the level has changed for 12 to .004
22 and that with that change he has 780 times the PFOA over the new level. He said but for the
23 Fire Department, he doesn't believe he would have any detectable level. His level is not in
24 exceedance but is over zero and would like water delivery reinstated.

25 A resident commented that Pennichuck should take some action, but Chairman Lyon stated
26 that the Board of Selectmen could not speak for Pennichuck.

27 Chairman Lyon asked the Selectman for their thoughts.

28 Selectman Stoughton said that there were some tough decisions coming up and that we only
29 have the one set of test results, a snapshot. The Focused Site Investigation will determine if
30 the Fire Station is the potential source. We should continue to provide water until we know
31 differently.

32 Selectman Grella asked if PFAS is absorbed through the skin.

33 Mr. Lemelin said that he does not believe it does, but another resident present said that some
34 studies have shown that it might affect the immune system and that she is concerned about
35 protecting herself and her family.

36 Selectman Grella stated that the numbers seem to be changing and that we should wait for the
37 Sanborn Head report.

38 Selectman D'Angelo stated that the Select Board is not a science board, but a political board
39 made up of residents and that we have limits set by the State that are supposed to protect the
40 public. He reminded the Board that they have said that if test results were above the current
41 limit, we would provide water. He stated that he is hesitant to change to any detection at all
42 and asked if we can't use the limits we were given, do we go to zero? He stated that the Town
43 can't make up our own numbers. He noted that it might make more sense to consider filtration
44 systems.

45 Selectman Pray asked to clarify that Mr. Lemelin's well tested under the PFAS limit, and that
46 he is reacting to a loss of water provided by the Town. She clarified that there were five
47 houses on Thatcher that did not exceed limits, and that we were still waiting on results for
48 Thornton's Ferry Road I and Pettingale. It was confirmed that the residents present were
49 requesting water be provided to all residents over non-detectable levels.

50 Chairman Lyon stated that Pettingale is less clear.

51 Selectman Pray said that hopefully there would soon be answers.

52 Selectman Stoughton said that these homes were inside the Focused Site Investigation (FSI).

53 TA Shankle noted that if we move ahead with plans for the water lines, we will have the
54 results of the FSI after the water is put in.

55 Chairman Lyon stated that we need to be careful what we are restricting to the FSI.

56 TA Shankle informed the Board that the State is driving the limits of the FSI.

57 Selectman D'Angelo said that he objects to changing our limit, as we will be opening
58 ourselves up to lawsuits. He said he believes that we should stick with State numbers.

59 TA Shankle reminded the Board that we do not yet know if the Fire Station is the cause of
60 those residents in exceedance, and that here are households all over town with a level over
61 zero and under the limit.

62 Selectman D'Angelo said that we needed to follow some guideline with COVID 19, and we
63 consistently followed state guidelines. He stated that this is another place we have state
64 guidelines and he doesn't think we should not follow state guidelines.

65 *A MOTION was made by Selectman Stoughton and seconded by Selectman Grella to reinstate*
66 *water delivery to households that have detectable levels of PFOA or PFAS within the Focused*
67 *Site Investigation area for the present time, recognizing that we may need to revisit this*
68 *decision when we receive additional information regarding the likely source of*
69 *contamination.*

70 *Voting: 4-1-0; motion carried.*

71 *A MOTION was made by Selectman Stoughton and SECONDED by Selectman Grella to*
72 *adjourn the meeting at 2:37pm.*

73 *Voting: 5-0-0; motion carried unanimously.*

74

75 TA Shankle stated that he is waiting for an email from Pennichuck to request an authorization
76 for contractors. He said the plan is to start the project as soon as materials arrive. He said that
77 were supposed to be here in October and finish in December, but that supply chain issues
78 might complicate that timeline.

79

80 Selectman Grella asked for confirmation that the cost of rebuilding the roads will be the
81 Town's. TA Shankle confirmed that the cost would be the Town's.

82

83 **NEXT MEETING: Monday, September 12, 2022**

84

85

86

87

Selectman Danielle Pray

Date



Town of Amherst, NH

BOARD OF SELECTMEN MEETING MINUTES

Barbara Landry Meeting Room
2 Main Street
Monday, August 19, 2022, 2:00PM

1 **Call to Order**

2 Chairman Peter Lyon called the meeting to order at 2:00 p.m.

3
4 Attendees: Chairman Peter Lyon, Selectman Bill Stoughton, Selectman John D'Angelo,
5 Selectman Tom Grella, and Selectman Danielle Pray

6
7 Other persons present during Workshop: Town Administrator Dean Shankle, Executive
8 Assistant Jennifer Stover, and facilitator Mike Akillian.

9 **Workshop**

10 Chairman Peter Lyon reviewed his cumulative notes from the Monday August 15th workshop
11 meeting with the board and set out the plan for today's process to include reviewing each
12 comment, elicit comments and questions from members and get a sense of those items on
13 which three or more Selectmen agree. It was also discussed that there would be an
14 identification of those priorities for this budget year and those to be included in the plan for
15 the future.

16 17 **Public Safety**

18 19 Concern regarding enforcement of zoning issues:

20
21 Selectmen Pray commented that this issue may not need attention this year, as ordinances
22 need to be rewritten, but be listed as a future need. Selectman Stoughton agreed that this is not
23 an immediate need but should encompass stormwater and sign ordinances also. Selectman
24 Grella noted that there is only one employee managing code enforcement and building
25 inspections and that we are still seeking a Town Planner. Selectman D'Angelo said that code
26 enforcement has been on the "honor system" and that perhaps the Town Planner could be used
27 for this task. Selectman D'Angelo asked if this task could fall under a consulting engineer.
28 Selectman Stoughton informed the members that developers can be required to fund
29 inspections.

30
31 Chairman Lyon summed up the discussion on code enforcement as something needing focus,
32 but as far as staffing, at a future point. Mike Akillian noted that the risk of not addressing code
33 enforcement should be considered.

34 35 Staffing concerns:

36
37 Mike Akillian noted that Department Heads should be asked to share personnel concerns and
38 issues as part of their Strategic Plan.

39
40 Single point of failure:
41

42 Mike Akillian stated that the risk of interrupted services should be assessed by each
43 department. Chairman Lyon stated that Department Heads would be asked to include this in
44 their Strategic Plan.
45

46 **Infrastructure**
47

48 Digitization of records:
49

50 Selectman Pray commented that the digitization of records has been an ongoing concern. The
51 question of funding, legal retention requirements and useable filing systems postpone the
52 process. Chairman Lyon asked Town Administrator (TA) Shankle to speak with the
53 Department Heads to determine what is needed. Mike Akillian suggesting stressing what
54 would improve the quality of service to residents and enhance employee productivity.
55

56 Chairman Lyon summarized that the board is in agreement that this process is important.
57

58 Technology concerns:
59

60 Selectman D'Angelo expressed a desire for an asset report from our IT vendor Microtime.
61 This was added to the Administration's Strategic Plan.
62

63 Water and sewer issues:
64

65 Selectman D'Angelo spoke to a concern about the lack of economic development and the
66 resulting loss of tax revenue. Selectman Stoughton observed that residents don't seem to have
67 an interest in economic development and there has not been any inclusion in strategic
68 planning. Mike Akillian wondered if there was any interest in water and sewer for residents
69 rather than industry and commented that this has not been presented to the public for their
70 consideration. Selectman Stoughton summarized that the focus should be on what the Town
71 will be able to do for residents in the next five years.
72

73 Aging roads and bridges concerns:
74

75 Chairman Lyon said that a plan exists with DPW to address aging and red-listed roads and
76 bridges in Amherst. TA Shankle noted that many bridges in the State of New Hampshire are
77 red-listed, and that in order to receive grant money there is a wait unless a bridge fails. At that
78 point, the bridge is moved to the top of the list. Mike Akillian remembered that there was a
79 detailed chart presented to the board years ago and would work with Eric Slosek to update
80 that information in this year's strategic plan.
81

82 Financial condition:
83

84 Selectman Stoughton commented that while not necessarily a strategic plan piece, awareness
85 of the overall tax rate is important, as managing inflation will drive property taxes and

86 constrain our ability to do what we want to do. Chairman Lyon said the struggle is always
87 between taxes and services. He also said that retirement housing is a concern and should be
88 given a close look when the Master Plan comes out. TA Shankle added that additional help in
89 the Finance office is being requested and should relieve burdens.

91 **Community Services**

93 State mandates, sign ordinances:

95 Selectman Stoughton stated that there were new state mandates that would place a burden on
96 Community Development and that new sign ordinances are being proposed in Zoning
97 currently. Selectman Grella noted that consistency was important.

99 Lack of community center:

101 Selectman D'Angelo commented that it might take five years to get the community center
102 done, but that Recreation should continue to place the project on their strategic plan so that
103 questions may be asked. Mike Akillian noted that dollars need to be attached to all projects.
104 Selectman D'Angelo suggested that a community group might begin to fundraise for this
105 project. Chairman Lyon said that if this is something the Town wants, we should move
106 forward with it, but it is not a priority for this year. Mike Akillian agreed that it might be
107 helpful to lay out what future priorities are publicly.

109 Staffing:

111 Chairman Lyon summarized for the board the request that all departments answer the question
112 "Are we staffed at the level we need?" in their respective strategic plan.

114 Communication:

116 Chairman Lyon noted the loss of a physical paper in town and noted that a lack of staffing is a
117 drawback to a focused communication strategy. Selectman D'Angelo asked who determines
118 what gets posted on a Facebook page and how do we do this without adding staff? It was
119 suggested that a survey be created to ask the public what they want to know. Selectman Pray
120 suggested a physical newsletter could be included in tax notices twice a year and that a sign be
121 used for something "big". She also pointed out that accurate information is a priority. TA
122 Shankle observed that there is information to be found but people need to know where to go to
123 find it. It was agreed that a recap of meetings was a good idea. Chairman Lyon concluded that
124 this is the Selectmen's project to put together.

126 **Town Character/ Heritage**

128 Challenges:

130 Selectman Grella stated that we have lost valuable, knowledge members with the two recent
131 resignations, leaving the Historic District Committee with just four members. Selectman
132 D'Angelo believes we are struggling with outcomes and a common definition is needed.

Supporting volunteers and employees:

Selectman Stoughton stated that we need to support our volunteers and employees. TA Shankle said that we are losing volunteers and referenced the struggle Moderator Coughlan is having finding members for the Ways & Means Committee. He also noted that many are being asked to do more than can be done well. Mike Akillian referenced past strategic plans that did not include a request for additional staffing and noted that if Department Heads do not ask for what they need, they are sure to not receive it. He also stated that employees/jobseekers have many currencies that could be explored including work-from-home, retirement benefits, etc.

TA Shankle noted the lack of offering NH Retirement System as an employee benefit and thinks that a wage comparison would be beneficial.

Chairman Lyon said that Department Heads should ask for what they need. Mike Akillian said there is a high risk with turnover and echoed Chairman Lyon's statement that we should take care of our current staff. Mike Akillian acknowledged that as a resident he has been appreciative of the tight budgets that the Selectmen have put forth to allow the school to request what they needed, and that it is time to consider the services that are running the Town and if they are adequate for fulfilling the Town's needs.

Environment

PFAS issues, Souhegan River testing:

Mike Akillian suggested dividing this into Prevention and Response. Chairman Lyon said that thus far, prevention falls under Community Development and response under Administration. Selectman Stoughton mentioned that there are new proposed ordinances that speak to requirements for testing wells for PFAS for new development. Chairman Lyon asked how we monitor businesses and questioned if this is the Town's responsibility and how this would be managed. Mike Akillian suggested that there might be a group already in existence doing this work. Selectman D'Angelo stated that George May, who managing water testing of the Souhegan River, is getting close to retirement and that more help is needed with that process. He also said there is a lack of publicity and traction on this subject.

Chairman Lyon summarized that environment and water quality is a priority.

Housing

School taxation and affordability:

Selectman D'Angelo stated that this is our problem to solve and that the school continues to take more and more of our tax dollars. He urges the Planning Board to look at the issue of lack of housing for "empty nesters" within the context of a five-year plan. Selectman Stoughton said there is no clear consensus from the public. Selectman Pray noted that there are zoning supports for adding different building types, but that there are no tax incentives, and we could look at that. Selectman Stoughton agreed. Selectman D'Angelo added that mixed residential use is appealing and that this is the Planning Board's job to manage.

Recreation

Chairman Lyon stated that if Recreation is short fields, the Department Head will let us know.

Chairman Lyon asked Mike Akillian how to conclude the meeting. Mike replied that a list of priorities and to which departments would these priorities assigned needed to be created.

Chairman Lyon reviewed his notes and the identified categories, and summarized that while Code Enforcement is important, it is not important for this year and should be included in the SWOT for Community Development. He stated that staffing and personnel needs along with plans for roads and bridges were a priority. He said that digitization of records and records management and solidifying our Finance Department were priorities. He said that there was a clear consensus around communication, and a need for vocal support of volunteers. He agreed that Environmental concerns are a priority, and that the Conservation Commission should spearhead water while Community Development should spearhead PFAS in consideration of prevention, while Administration should continue to manage the response. He directed Selectman Stoughton to share the Board's messages regarding housing to the Planning Board, including affordability, different types of housing, and to answer the question "what does our community actually wants in regard to housing".

Administration will incorporate into its strategic plan IT, staffing and a possible compensation study. This identified the priorities as the Environment, Infrastructure and Administration.

Mike Akillian then asked what the Town could cut in order to divert that funding to the identified needs.

Selectman Pray stated that she needed to see numbers in order to consider this, and all Selectmen agreed.

Mike then asked what outcomes were wanted from these priorities, and that creating action lists or to-do lists with the associated costs should be the next step. He added that the Selectmen should begin to crystalize how we will know this process has been successful.

Chair Peter Lyon thanked Mike for his time and support with this process.

A MOTION was made by Selectman Stoughton and SECONDED by Selectman Pray to adjourn the meeting at 4:58pm.

Voting: 5-0-0; motion carried unanimously.

NEXT MEETING: Monday, August 22, 2022

Selectman Danielle Pray

Date



Town of Amherst, NH

BOARD OF SELECTMEN MEETING MINUTES

Barbara Landry Meeting Room
2 Main Street
Monday, September 12, 2022, 6:30PM

Attendees: Chairman Peter Lyon, Selectman Bill Stoughton, Selectman John D'Angelo, Selectman Tom Grella, and Selectman Danielle Pray

Also present: Town Administrator Dean Shankle, and Recording Secretary Kristan Patenaude (remote)

1. Call to Order

Chairman Peter Lyon called the meeting to order at 6:30 p.m.

2. Pledge of Allegiance – led by Lynn Briggs

3. Citizen's Forum

Lynn Briggs addressed the Board. She explained that the New Hampshire Constitution of 1784 was never amended by the General Court. It was never amended to move from sort and count ballots in an open meeting, to counting by machine. Nowhere in the New Hampshire Constitution is it stated that counting must be completed in one day. RSA 656:40 authorized the Selectman to use this on a trial basis. She asked where the Amherst testing data and documents are. She stated that the Selectmen have sworn an oath to defend the New Hampshire constitution, and she believes the Board's malfeasance and continuing unconstitutional actions make them culpable. She stated that she served a remonstrance and notice of trespass on March 1, 2022, to which she has not received any answer to date. During a February 11, 2022, meeting it was confirmed, without reasonable doubt, that the Selectmen are the sole responsible party, regardless of Town vote, to approve authorized voting machines. She stated that tampering with electronic ballot counting devices is a felony, and a violation of OSHA Regulation 1910.399. Amherst Accuvote machines have not been evaluated or approved by the US Election Assistance Commission Testing and Certification Program. She asked that the Town like immediately return for the upcoming election cycle to sorting and hand counting the ballots. Hand count is the only proven way to protect our sovereignty and our right to vote in a free and fair election. When there is an issue with the temporary Accuvote machines, or a recount is needed, the backup and acceptable procedure is to resort to hand counting of same said ballots. She believes hand counting will restore civility and build community, as all parties will be forced to sit with each other and perform the sacred and civic duty to sort and count ballots. She relayed the following questions:

1. What Amherst selectman has the expertise - will verify what is actually programmed into the counting device EPROMS and memory cards before an election and after?
2. What Amherst selectman can explain and outline the software chain of custody protocols maintained by you and the selectmen/towns that safeguard the memory

- cards and counting devices from source-code malware, during the phase of the election cycle, when these devices are in the exclusive custody of LHS Associates?
3. What selectman is responsible to hire and monitor the contractor that audits LHS Associates to test for compliance with SOS software chain of custody protocols?
 4. Will Amherst selectman request annual financial audits of LHS Associates that safeguard against illegal financial transactions originating from both US-based and foreign-based source?
 5. Will Amherst selectmen require background checks of LHS Associates employees and agents to insure that all their employees are US citizens, and none have police records or prior convictions?
 6. Will Amherst selectmen allow for a more robust and in depth Accuvote machines test with random number of ballots?
 7. Will Amherst selectmen take corrective actions and audit recommendations learned (SB43 Forensic Audit with Andrew Appel - Part #1 June 2, 2021 and Part #2 June 7, 2021)) that have been enacted and implemented to date?

Linda Kaiser, 6 Manchester Rd, stated that the Constitution of the United States gives all citizens the right to speak; it does not give the Board the right to say hurry up. This election violated federal law. She stated that the memory cards associated were destroyed within two months after the election. That is in direct violation of federal law. She noted that one of the machines had twice the number of Democrat ballots than Republican. When she questioned this, she was told this was where all the absentee ballots were being placed, but that is not accurate.

Jessica Leo, whose son Chandler was recently in a fatal car accident in Town, asked the Board to consider placing a stop sign at Cricket Corner Road and Boston Post Road. She stated that she believes a stop sign may have saved her son's life.

Kelly Mullen, 48 Christian Hill Road, echoed the previous comment and asked the Board to please consider something to make that stretch of road safer.

4. Board Appointments

4.1 Martha Chabinsky – Historic District Commission

The Board tabled this item to later in the meeting.

5. Scheduled Appointments

5.1 Chris Gentry, Cable TV Franchise Contract

Chris Gentry explained that one of the items to come out of a revised franchise contract would be a third, HD channel for the Town PEG station. A section could also be added to create a Technology Fund. This could help on the broadcast side of things and also for integration with Zoom. This Technology Fund was negotiated at \$150,000 over the course of 10 years. This is not an exclusive contract because Federal Law as well as the State Laws prohibiting cable companies from having exclusive franchise contracts with any town or other franchisees. In the first year, the Town would receive \$60,000 to improve technology, and then it would receive \$10,000 a year for the next nine years. The benefit of a 10-year plan would be to keep all of the technology up to date and more integrated with the upcoming technologies.

Selectman Grella asked that the Recreation Office and Buck Meadow building be added to this contract.

Mr. Gentry stated that he believes the proposed contract will be a huge benefit to the Town. He noted that there is pending legislation to consider streaming as a cable network.

In response to a question from Selectman Stoughton regarding how this contract compares with others, Mr. Gentry stated that he believes this is a good deal for the Town. Receiving the \$150,000 will actually lower the monthly bill. This should provide a quality upgrade for video and audio by switching to digital.

In response to a question from Selectman D'Angelo, Mr. Gentry stated that some of the benefits of signing a 10-year contract are longevity of the agreement, a reduction in franchise-related costs leading to reductions in monthly bills, the guarantee that Comcast will provide for the Town even if it decides to go completely streaming, the Town will have a baseline contract to use if another company comes into Town, etc.

In response to a question from Selectman D'Angelo regarding retention of the antiquated technology the Town currently uses, Mr. Gentry explained that the upgrade will move the Town's technology into the current decade and provide for higher quality services.

Selectman D'Angelo noted that the Technology Fund is funded via money from the people who pay for the cable service. He questioned if it would be more honest to ask the taxpayers to give the Town the necessary funds to complete the needed technology upgrades, instead of being encumbered by a contract. He stated that he would be more inclined to go with a 5-year deal. Mr. Gentry stated that, with a 5-year deal, the Technology Fund will likely be lost, and the franchise-related cost will rise. The Town will also not receive the HD channel. He does not believe a negotiation with Comcast for a 5-year deal will be successful.

In response to a question from Selectman Pray, Mr. Gentry stated that he could ask Comcast if it would consider adding Buck Meadow and the Recreation Office to the contract. This would not be an immediate change, as Comcast is currently scheduling out approximately 12-18 months.

4.1 Martha Chabinsky – Historic District Commission

The Board retook this item at this time.

The Board interviewed Martha Chabinsky regarding her interest in serving on the Historic District Commission. They thanked her for her willingness to serve.

A MOTION was made by Selectman Grella and SECONDED by Selectman D'Angelo to appoint Martha Chabinsky as a member of the Historic District Commission, term to expire 2023.

Voting: 5-0-0; motion carried unanimously.

Peter Moustakis, Assistant Town Moderator, introduced the Town's Ways & Means Committee members. He explained that the Ways & Means Committee is responsible for

reviewing and reporting on the Town budget. This year's Chair will be Lori Mix, also on the Committee are Wendy Rannenberg, Michael Patterson, Diane Layton, Tom Cook, Tom Silvia, Andrew Pataky, Russ Hodgkins, and Steve Boczenowski.

Wendy Rannenberg requested that the Board move up its discussion on the four way stop at Cricket Corner and Boston Post Road, in the interest of those in attendance. Chair Lyon agreed.

6.7 Four way stop at Cricket Corner and Boston Post Road

The Board took up this item at this time.

Town Administrator Shankle explained that the Board normally takes requests of this nature and forwarded it to the Highway Safety Committee for a recommendation.

A MOTION was made by Selectman Grella and SECONDED by Selectman D'Angelo to forward this item to the Highway Safety Committee for review as soon as possible. Voting: 5-0-0; motion carried unanimously.

4. Strategic Plan Presentations

4.1 Admin & Finance Strategic Plan FY24

Town Administrator Shankle presented the Admin Strategic Plan for FY24. He explained that, over the last few years Administration and Finance have had significant turnovers in personnel. The current plan FY23 was designed to help stabilize these departments and start the process of moving forward. He stated that the strengths of the Administration and Finance Departments are financial and organizational resilience. The weaknesses are positioned turnovers in the next two years and out of date/inconsistent policies. There are a number of opportunities through these Departments for grant funding such as ARPA, PFAS, and other highway grants. He noted that Joe Cummings has done an excellent job working through all of the Zoom and meeting issues for the Town. He stated a concern regarding a successful ransomware attack and its impact on systemic stability. Town Administrator Shankle stated that, by the end of FY 23 a new Finance Administrator will be needed, for FY24 a new Town Administrator will need to be onboarded, and for FY25 he is proposing an addition of a new Special Projects Coordinator. Strategy 1 is for continuous improvement of service delivery, and associated projects include obligating the ARPA funds, with a deadline of December 24, 2024, and to begin municipal records digitization. For Strategy 2, improve communications and engagement, the key project is implementing a Social Media Policy and considering a Town-wide biennial survey for all departments. Strategy 3 is to attract and retain quality employees. The Finance Strategy 1 is for increased accuracy efficiency and transparency. The second strategy deals with developing a sustainable financial system and includes a financial software review. Town Administrator Shankle stated that one of the proposed projects is to enter into the New Hampshire Retirement System, at a cost of approximately \$225,000. A second suggestion of adding an Assistant Finance Director would cost approximately \$100,000.

Selectman D'Angelo stated that he would like to hear more about the proposal for entering into the NH Retirement System. He noted that it might not be the best time to replace the Finance software, when there will be some turnover in the Department.

Selectman Stoughton stated that he is open to hearing more about the NH Retirement System and he is concerned regarding retaining and attracting employees without it. He asked about the chance of a ransomware attack. Town Administrator Shankle stated that he believes the Town is as prepared as it can be.

Chairman Lyon stated that he believes the NH Retirement System requires close consideration at this time.

In response to a question from Lori Mix, Chairman Lyon stated that a best-case scenario would be to hire a new Assistant Finance Director position and have that person eventually move into the Director role, if possible.

4.2 Tax & Assessing Strategic Plan FY24

Gail Stout, Tax Collector, explained that the Tax & Assessing Department has two full-time employees and has a contracted assessing firm of Granite Hill Municipal Services. The 2022 Town net valuation was approximately \$2,362,984,000. For tax year 2021, there were originally 58 properties with tax liens on them; currently this has been reduced down to 37 properties. The New Hampshire Department of Revenue Administration's Coefficient of Dispersion (COD) rating shows each municipality's property sales versus property assessments. Historically Amherst's COD ratings have ranged from 8-12. The 2022 COD as of August 31st, 2022, is projected to be approximately 12, with no signs of decline in residential sales. She noted that some of the weaknesses of her Department are amount of office space, storage space, management restrictions, and Department structure. There are opportunities for expanded public services, employee retention and new hires, reviewing space needs, public input, and self-correcting of the real estate market. Some of the short-term goals for the Department include electronic billing, a space needs review, resident/business surveys, monitoring of the COD rating, and added assistance to the elderly/disabled population. Long term goals to consider include restructuring of the Tax & Assessing Departments and consideration of staffing a certified New Hampshire Assessor. Initializing electronic billing in FY25 would have a projected cost of approximately \$2,000. Initializing a staffing/restructuring of the Department could cost approximately \$100,000 projected in FY27. Town-wide revaluation will occur in FY2026 and FY2027 at an estimated cost of \$75,000 in each year. This is funded through the Capital Reserve Fund and a Warrant Article of \$25,000 for each year.

In response to a question from Selectman Stoughton, Ms. Stout explained that the COD explained how equity throughout the Town is measured.

In response to a question from Selectman Stoughton, Ms. Stout explained that electronic billing would be an added service and not take the place of paper billing, at this time.

Selectman Stoughton suggested that the Board ask Town Administrator Shankle to examine the space needs for each department.

Selectman D'Angelo stated that the Warrant Article for revaluation has not changed from \$25,000 per year for many years. This may need to be reconsidered due to inflation. He also

requested that the Department employees try to consider how long they will continue to be in their positions.

4.3 Police/Communications Strategic Plan FY24

Police Chief Reams stated that the Department has four goals aimed at improving public safety and maintaining the overall level of service to the community: reduce neighborhood property crime, increase traffic safety along Town roads and through residential areas, reduce the use and availability of illicit drugs, and maintain professional policing standards and level of service. Some of the Department strengths include the employee screening/hiring process, neighborhood safety, infrastructure longevity, and accident and criminal investigations. One of the Department's weaknesses is the District Court Prosecutor role succession. There is an opportunity in the Department to enhance transparency and accountability. Threats to the Department include budget funding challenges and staying abreast of the technology curve.

Regarding Goal 1, maintain reduction in neighborhood property crime, five community surveys since 2013 consistently list property crime as one of the top two citizen public safety concerns, alongside traffic offenses. Residential property crime has dropped every year since 2015, with a low amount being seen for 2021. The 2021 business property crime increase was attributed to increased shoplifting reports at Walmart. Residential property crime has decreased a total of 59% from 2015 to 2021. Regarding Goal 2, increase traffic safety along Town roads and through residential areas, a 2021 survey showed an increase from 75% to 80% approval rating for traffic enforcement since the previous 2019 survey. The total annual number of motor vehicle stops for 2021 was 10,962. 89% of stops are warnings versus 11% of citations. A steady officer presence is still required along the two major state roads in Town due to enormous traffic volume. Routes 101 and 101A alone account for roughly 66% of total yearly motor vehicle accidents. They also account for approximately 60% of total DWI and drug-related arrests. Department efforts have increased focus on Town roads since 2014. The agency was unsuccessful in reaching its goal of at least 52% Town road enforcement for 2020, mostly due to the COVID-19 pandemic. A return to more routine operations in 2021 allowed for increased engagement and roadside enforcement presence along Town roads and neighborhoods, exceeding the desired goal with 59% of traffic stops occurring on Town roads and 41% on state roads. Regarding Goal 3, reducing the availability of illicit drugs, the Department regularly carries out drug awareness and education programs and investigates and arrests drug offenders. The Department goal to increase major drug arrests by an average of roughly 15% each year through 2020 has now shifted forward to at least 2022. The County Task Force went unfunded in 2020 and operations were suspended; however, Task Force operations resumed in October 2021 and are currently ongoing. In 2021 there were 33 misdemeanor drug arrests in Town and six felony offenses. Regarding Goal 4 to maintain professional policing standards and level of service, a 2021 community survey found a 96% rating in terms of overall service for the Department. Phase I of building renovations for the renovated Police Station finished in January 2021 and Phase II is currently underway, with project completion slated for the end of next month. The renovated facility is anticipated to meet the needs of the Police Department and community for the next 30 years. Alongside infrastructure improvements, the Department Strategic Plan over the last two years has addressed ongoing Body-worn Camera (BWC) discussions. State grant funding for BWC programs was made available in February 2022. The Town's grant application for up to \$50,000 reimbursement was filed in February and the maximum amount of \$50,000 has been

awarded to the Town. There was a public hearing held on August 22, 2022, to formally accept those funds. The current five-year, all-inclusive BWC contract cost is \$161,010. 40% of that cost will be paid in 2023 and the remaining payment of \$24,151 will be paid through 2024-2027.

Chief Reams explained that New Hampshire statute allows for police officers to act as prosecutors in District Court and Amherst has always utilized police-prosecutors since the agency's inception. In recent years, departments across the State have increasingly shifted away from police-prosecutors and toward attorney-prosecutors. 80% of departments in Hillsborough County and other comparable towns Statewide either have full-time or part-time attorney-prosecutors on staff. The attorney-prosecutor is a part-time, independent contractor position with an anticipated workload of 25-30 hours per week and a salary of \$65,000 to \$80,000, commensurate with training and experience. Chief Reams explained that the Commission on Accreditation for Law Enforcement Agencies (CALEA) is a nationally recognized policing standard for law enforcement. CALEA certification represents the next step in the professional development of the Department and the process of certification takes up to 26 months. Agency certification and continued compliance requires significant new duties which the Department was previously not staffed to manage.

Chief Reams explained that the goals for the Public Safety Communications Center include maintaining a caller satisfaction rating of 90% or better and maintaining communications infrastructure to provide continued quality public safety services to the community. Regarding the first goal, a steady increase and maintenance of caller satisfaction rating was reflected in four biennial surveys beginning in 2013 at 81%, through the most recent 2021 survey at 93%. Regarding goal #2, approximately \$95,000 from the Communications Capital Reserve Fund was expended on major repairs over the last four years. Most recently, \$30,000 was allocated for premature microwave radio equipment failure on the agencies north radio tower in August of 2020. Anticipated upcoming major equipment upgrades and replacements include a radio repeater system grant process which was resumed for 2023 at a cost yet to be determined, a radio tower replacement in 2025 with an approximate grant match of \$60,000, and a radio console replacement in 2026 with an approximate grant match of \$60,000.

In response to a question from Selectman Stoughton regarding needing to change the staffing of uniformed officers over the next several years, Chief Reams stated that he believes the Department is appropriately staffed for approximately the next five years.

In response to a question from Selectman Stoughton regarding preparing for a serious criminal school-related incident, Chief Reams stated that the State is in the process of increasing the minimal amount of training for officers. The Department is very well positioned to respond to a major incident.

The Board noted that it is interested in seeking CALEA certification. The Board agreed that it would like to continue to discuss the proposed prosecutor position.

5. Administrative Update

A *MOTION* was made by Selectman D'Angelo and *SECONDED* by Selectman Grella to allow Halloween to be celebrated on Halloween night of October 31, 2022, with trick-or-treating in the Village to be held between 6pm-8pm, and associated Recreation Department activities as scheduled.

Voting: 5-0-0; motion carried unanimously.

5.1 PFAS discussion requests

Town Administrator Shankle asked about allowing homeowners to connect their wells to existing water bibs in Town for watering their lawns, at the Town's expense. This would have a varying cost depending on the house.

Selectman Grella stated that he believes this should all be done as part of the project.

Selectman D'Angelo stated that he does not believe taxpayers should be asked to pay for these additional costs.

Selectman Pray stated that the Town has already agreed to provide water to these houses, and that water could be used for these purposes. She does not feel this increased cost is one the taxpayer should bear.

Selectman Grella stated that he believes this additional cost would likely be approximately \$100.

Selectman Stoughton stated that he does not object to a homeowner hooking up to the irrigation systems but does not think the Town should pay for that. This should be an individual's decision.

Chairman Lyon stated that the Board is trying to do right by these homeowners but does not believe taxpayer money should be spent on this when it's already being spent to hook these houses up to Pennichuck water.

Tracey Hanlon, 8 Thatcher Drive, stated that she will now need to pay for a water bill and believes it will cost more than this proposed hookup of the well to the irrigation system. She stated that she wants to continue being able to keep her lawn green and her garden watered and does not believe it is her responsibility to pay for that. While she is grateful for the opportunity to hookup to Pennichuck water, the extra \$200 paid by the Town to hookup to the well does not seem excessive.

A *MOTION* was made by Selectman Stoughton and *SECONDED* by Selectman D'Angelo that the Town agree to pay for Pennichuck water to the affected houses, but that connection of existing wells to any other supply be via homeowner expense.

Voting: 5-0-0; motion carried unanimously.

Town Administrator Shankle explained that there is no requirement for wells to be decommissioned. Some people may want to keep their well open for future use. He asked if the Town would pay for people who want to have their wells decommissioned. This question is coming from Pennichuck.

In response to a question from Selectman D'Angelo regarding consequences of not decommissioning a well once hooked up to Pennichuck, Town Administrator Shankle stated that the requirement is to cap the well, but he does not believe there are any other penalties. Selectman D'Angelo stated that he is not keen on having the taxpayers pay for this item either.

Selectman Grella stated that he agrees he does not believe this is a Town responsibility.

A MOTION was made by Selectman D'Angelo and SECONDED by Selectman Stoughton that, while Pennichuck may offer the service of decommissioning the prior well, the Town is not prepared to pay for that service.

Voting: 5-0-0; motion carried unanimously.

Town Administrator Shankle explained that he received questions from Fred Miller regarding the Town covering the cost for blood testing for those residents effected and technology for cleanup of PFAS' in the groundwater table. He noted that the focused site investigation via Sanborn Head should be completed by January.

Chairman Lyon stated that he would like to hear more from Town Counsel regarding the bloodwork testing.

5.2 PFAS Final Application Approval

Town Administrator Shankle stated that he is working with State agencies on this item.

A MOTION was made by Selectman D'Angelo and SECONDED by Selectman Stoughton to enter into a PFAS Fund Grant agreement with the New Hampshire Department of Environmental Services to fund a water system improvement project and further, to authorize the Town Administrator Shankle to execute any documents which may be necessary to effectuate this grant agreement.

Voting: 5-0-0; motion carried unanimously.

5.3 Proposed Social Media Policy

Selectman D'Angelo stated that Department Heads have seen this draft and commented on it. Jennifer Stover stated that one concern the departments have is responding to a comment. Generally, items put out by departments on social media are informational only. She does not see any Department Heads participating in community forums, specifically on Facebook. Selectman D'Angelo stated that there needs to be a forum to get information out, as many people are not visiting the Town website for this. This policy is to create a set of ground rules for everyone involved. A forum for information would be important to create.

Selectman Pray stated that the document speaks to work-related use and personal social media use, but "use" is not defined. She stated that the section regarding logging into and providing personal updates is not defined well enough. She stated that there would likely also need to be a definition of social media included. The document noted that the Department Director is responsible for ensuring that content is not stale; she believes "stale" needs to be defined and asked who will monitor this. Under the Purposes Section, there is language regarding "false or

misleading information,” and she asked who will decide what is misleading or false. The language regarding protected classes may need some more work.

Town Administrator Shankle suggested that comments regarding the draft be sent to Ms. Stover.

Selectman Stoughton stated that he also focused on the protected class language and is not sure that all of the examples given are actually protected classes. The document mentions language that is defamatory in nature, and it is very hard to determine whether something is defamatory or not. He thanked Selectman D’Angelo for his work on this item.

In response to a question from Selectman Pray, Selectman D’Angelo stated that he researched other town’s policies which looked similar to this, but more complex and cumbersome.

Selectman Grella stated that half of what is posted on Facebook is untrue and unfounded.

Chairman Lyon stated that the Town needs to consider the forward-facing piece to release information from the Town. The Mont Vernon Flyer is an emailed, subscribe-only newsletter that releases relevant information from the Town. This could be an option for Amherst. He suggested that the Board send suggestions to Ms. Stover and that this topic be discussed again in the future.

5.4 Town Health Officer Appointment

A MOTION was made by Selectman Stoughton and SECONDED by Selectman D’Angelo to nominate Scott Tenney as Health Officer for the Town of Amherst.

Voting: 5-0-0; motion carried unanimously.

5.5 Discussion and possible acceptance of cable franchise agreement

Selectman Stoughton stated that there appear to be questions regarding adding a couple of Town buildings to the proposed agreement and the length of the proposed contract. Cable TV is a dying service, though still used by some. It is good that Comcast is willing to upgrade the technology for the Town cable TV service and sign a contract for it for 10 years.

The Board discussed which departments in Town use Cable TV. Eric Slosek, DPW Director, stated that the DPW uses the TV to watch the weather in the winter. Ms. Stover stated that the Town receives two monthly bills, one from PMEC and one from the Recreation Department, which are considered residential locations.

The Board agreed to get more information regarding the proposed length of the contract and the possibility of adding Town buildings to the plan.

Mr. Gentry stated that the cable service is simply to provide basic cable to those specific places listed in the plan. This was held over from the previous contract because some of the more recent contracts are trying to get away from providing free basic service. He can ask about adding the extra locations to the plan.

Mr. Gentry noted that the FCC and the Cable Act do state that there has to be a franchise agreement for cable. If there is no franchise contract in place, Comcast could just up and leave.

Town Administrator Shankle asked, regarding a 5 or 10-year plan if the Town really wants to be rehashing this item again within a short amount of time.

Selectman Stoughton stated that the plans show a different cost from a 5 to 10-year agreement and there needs to be an explanation as to why.

Town Administrator Shankle stated that he will work with Mr. Gentry on these items.

5.6 Conservation Commission negotiated trails agreement

Chairman Lyon explained that the Noble property was recently sold and posted No Trespassing, interrupting one of the Conservation Commission (ACC) trails. The ACC asked the new owner for a trail agreement, and that was agreed upon.

A MOTION was made by Selectman Stoughton and SECONDED by Selectman Grella to authorize the Town Administrator to execute the proposed trail agreement.

Voting: 5-0-0; motion carried unanimously.

5.7 Four way stop at Cricket Corner and Boston Post Road

This item was previously discussed.

8. Staff Reports

8.1 New Job Description for approval, Assistant Finance Director

Debbie Bender, Finance Director, presented the job description for a new Assistance Finance Director position. The following are some functions that would be possible with more in-house hours: greater participation in the budget and forecasting process, help with comparison studies such as health insurance options, more involvement in analysis of debt and other options available to manage large expenditures, make use of existing electronic storage capacity in our software to save information that can be quickly and easily accessed as needed, and another person adds cross-training security for the future, to fill in for emergencies, vacations or employee turnover. She noted that the Town spent \$82,000 on part-time help, such as consultants and temporary employees in FY21. This would essentially fund this new position.

In response to a question from Selectman D'Angelo regarding proposing this as an Assistant Director instead of a Deputy Director, as other departments have, Ms. Bender stated that she is open to either, but would like for this person to be able to step into the Director position, when needed.

Selectman Stoughton suggested advertising this position after the Town has decided on joining the NH Retirement System and implementing a new finance software system, as it may encourage different applicants. Ms. Bender stated that the Department may need the extra help in reaching these items.

A MOTION was made by Selectman D'Angelo and SECONDED by Selectman Grella to approve the job description for the new position of either Deputy or Assistance Finance Director, at the Director's discretion .
Voting: 5-0-0; motion carried unanimously.

A MOTION was made by Selectman Stoughton and SECONDED by Selectman Grella to authorize the Town Administrator and Finance Director to begin the search to fill the position as soon as possible.
Voting: 5-0-0; motion carried unanimously.

The Board discussed a potential range of pay for this position. It agreed on a range of up-to Step 6.

8.2 New Finance Software

Ms. Bender explained that the single largest problem with the Springbrook software is that the Town is the only municipality in the State using it. The proposed finance software, BS&A, is gaining broad support and being used in multiple towns. The BS&A representative noted that they are tracking out 14-18 months for implementation of new customers. The initial cost of the software is estimated at \$100,000, and the annual fees would be approximately \$28,000. She noted that the annual costs are about 45% (\$24,000) less than what the Town is currently paying to Springbrook.

Selectman D'Angelo stated that he agrees with the proposal and believes that migrating to a new system will not be as difficult as it was to move to Springbrook.

Selectman Stoughton stated that he is interested in pursuing a system which is used widely by other towns. He noted that he believes ARPA funds could be used for the initial startup costs.

The Board agreed with pursuing this item further.

8.3 DPW Internal promotion

Eric Slosek explained that the DPW is seeking Board approval to promote an internal candidate for the vacant Lead Attendant position at the Transfer Station. Vinny Lupoli has been filling in as Acting Lead Attendant since June. He is currently employed as a driver/laborer in the Highway Department. Mr. Lupoli is doing a fantastic job as acting Lead Attendant and the DPW is very pleased to make this recommendation to the Board.

A MOTION was made by Selectman Stoughton and SECONDED by Selectman Pray to appoint Vincent Lupoli to the position of Lead Transfer Station Attendant, effective September 13, 2022.

Voting: 5-0-0; motion carried unanimously.

Selectman Stoughton AMENDED his MOTION to include that Mr. Lupoli be promoted to Grade 7, Step 3. SECONDED by Selectman Pray.

Voting: 5-0-0; motion carried unanimously.

8.4 DPW CIP update

Eric Slosek explained that the new DPW CIP project calls for engineering (year one), then replacing (year two) the aging Town fuel tanks/pumps at the Public Works facility. These fuel pumps were installed in 1990 and have surpassed their useful service life of 30 years. In December 2021, DPW worked with NH DES to correct some deficiencies discovered during routine inspections. The State informed the DPW at that time that it should plan to replace the fuel tanks ASAP. The estimated cost for replacement is \$25,000 for design engineering, and \$503,000 for construction, construction engineering, fuel tanks (gasoline & diesel), concrete pad, dispensing equipment, alarm system, containment system, and computer management system. The CIP request this year will be for engineering only.

In response to a question from Selectman Pray, Eric Slosek explained that the new tanks could potentially have a 30-year life span. Selectman Pray stated that this item may need to be reoccurring in the CIP into the future.

Selectman D'Angelo suggested that this be handled through a 3-year Capital Reserve Fund. He suggested looking into placing the tanks in a different location at the facility, if needed.

Eric Slosek stated that the Tree Warden has concern regarding two trees at the lower end of Mack Hill Road. He asked for approval to remove the two trees, which are located on a scenic way, out of abundance of caution. These have been addressed with abutters and they are okay with removal. A written report from an arborist has not yet been received. It appears that these trees are within the right of way and are thus the Town's responsibility to remove.

Chairman Lyon noted that the Board can authorize removal if trees are found to be a public nuisance.

The Board agreed to hear this item again at its next meeting, unless Eric Slosek, the Tree Warden, or arborist believe it to be a public nuisance.

Selectman Grella stated that the tree at #16 is one of 13 trees originally planted to represent the 13 colonies.

8.5 Covid 19 Update of Employee Protocols

Ms. Stover stated that the CDC removed all reference to vaccination status and quarantine in its information. People are allowed to continue working as long as they are willing to wear a mask. The Task Force is recommending updating employee protocols to match the CDC guidance.

A MOTION was made by Selectman D'Angelo and SECONDED by Selectman Grella to approve the changes as presented.

Voting: 5-0-0; motion carried unanimously.

8.6 Town of Amherst Employee Policy Handbook update, 201 Employee Categories

Ms. Stover presented the updates to the Employee Policy Handbook, including a seasonal employee to the categories list.

A MOTION was made by Selectman D'Angelo and SECONDED by Selectman Grella to accept the updates to the Town of Amherst Employee Policy Handbook for Section 201 Employment Categories, as proposed.
Voting: 5-0-0; motion carried unanimously.

9. Approvals

9.1 Assessing

MS-1 Summary of Valuation

Item A.

On August 29, 2022, the Town received an amended PA-82 from Energy North/Liberty Utilities. The MS-1 Summary of Valuation was signed on August 22, 2022 and submitted to the Department of Revenue. Scott Bartlett, the Town's contracted Utility Assessor, has adjusted the values and a new MS-1 needs to be submitted. If this change is not made to MS-1, it will result in an abatement of \$25,000 in Energy North/Liberty Utility's favor.

Therefore, A MOTION was made by Selectman Stoughton and SECONDED by Selectman Grella to approve and sign the revised MS-1 Summary of Valuation.

Voting: 5-0-0; motion carried unanimously.

9.2 AP, PR, and Minutes

Payroll

A MOTION was made by Selectman D'Angelo and SECONDED by Selectman Pray to approve one (1) FY23 Payroll Manifest in the amount of \$256,664.98 dated August 25, 2022, subject to review and audit.

Voting: 5-0-0; motion carried unanimously.

A MOTION was made by Selectman D'Angelo and SECONDED by Selectman Pray to approve one (1) FY23 Payroll Manifest in the amount of \$235,926.90 dated September 8, 2022, subject to review and audit.

Voting: 5-0-0; motion carried unanimously.

Accounts Payable

A MOTION was made by Selectman D'Angelo and SECONDED by Selectman Pray to approve one (1) FY23 Accounts Payable Manifest in the amount of \$33,898.30 dated August 31, 2022, subject to review and audit. (NH DMV)

Voting: 5-0-0; motion carried unanimously.

A MOTION was made by Selectman D'Angelo and SECONDED by Selectman Pray to approve one (1) FY23 Accounts Payable Manifest in the amount of \$3,260,150.00 dated September 1, 2022, subject to review and audit. (Schools)

Voting: 5-0-0; motion carried unanimously.

A MOTION was made by Selectman D'Angelo and SECONDED by Selectman Pray to approve one (1) FY23 Accounts Payable Manifest in the amount of \$850.00 dated August 24, 2022, subject to review and audit. (Vendors)

Voting: 5-0-0; motion carried unanimously.

A MOTION was made by Selectman D'Angelo and SECONDED by Selectman Pray to approve one (1) FY23 Accounts Payable Manifest in the amount of \$1,586,784.79 dated August 30, 2022, subject to review and audit. (Vendors)
Voting: 5-0-0; motion carried unanimously.

A MOTION was made by Selectman Pray and SECONDED by Selectman D'Angelo to approve the Board of Selectmen meeting minutes of August 22, 2022, as submitted.
Voting: 5-0-0; motion carried unanimously.

10. Action Items

The Board reviewed its action items.

11. Old/New Business

Selectman Stoughton explained that the Planning Board was scheduled to hear zoning amendments last week, but it was too late by the time that item was reached on the agenda. This item will be taken up at a special Planning Board meeting on Friday at 4pm.

Selectman Grella stated that the Historic District Commission is still seeking two alternate positions.

Selectman D'Angelo noted that voting will take place tomorrow at Souhegan High School. There is also a JFAC meeting at 5pm at the Brick School, and a CIP meeting on Thursday at 4pm.

Selectman Pray requested to be the NHMA delegate to the Town. The Board agreed.

A MOTION was made by Selectman D'Angelo and SECONDED by Selectman Grella to adjourn the meeting at 10:53pm.

Voting: 5-0-0; motion carried unanimously.

NEXT MEETING: Monday, September 26, 2022

Selectman Danielle Pray

Date