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**TOWN OF UXBRIDGE**  
**21 S. MAIN STREET, UXBRIDGE, MA 01569 – PHONE 508-278-8600**  
**BOARD OF SELECTMEN'S MEETING**  
**BOARD OF SELECTMEN'S MEETING ROOM**  
**MONDAY, NOVEMBER 22, 2010 – 7:00PM**

Present: Chair Beth Pitman, Vice Chair Bruce Desilets, Clerk Jay Cahill, Selectman Cari Kay Robertson and Selectman Peter Baghdasarian. Also present Town Manager Michael Szlosek and Administrative Assistant Tracey Ante.

*NOTE: Some matters may have been taken out of agenda order but are presented below based on agenda order for ease of location information.*

**I. CALL TO ORDER**

- A. Announcements – Mr. Desilets announced the Annual Candle Light Vigil for the Angel of Hope is 12/6. Several Selectmen will be attending. It was the consensus of the Board to move the 12/6 meeting to 12/7. The Town Manager announced the computer server at Town Hall will be shut down 11/24 at 1PM due to an upgrade. It is anticipated the system will be back up Monday.
- B. Citizen's Forum – Mr. Howard Fortner discussed the new High School project and inquired as to the cost savings for turning off the street lights. Ms. Deirdra Cahill, Chair Cultural Council announced the First Holiday Night Parade is 12/4 and the Cultural Council is sponsoring the tree for the Town Common. Ms. Tara Corcoran advised Cassie Lane was accepted at Town Meeting. She addressed concerns with the timeline of recording the documents and snow plowing services. The Town Manager advised documents will be recorded and the road per Town Meeting acceptance is a public way. Discussion included current policies/procedures, recording timeline, and at what point is a street deemed accepted. The weather forecast was discussed and snow is anticipated. MOTION by Mr. Desilets that the Board provide winter maintenance services. The motion was not seconded. Following additional discussion, the Town Manager will direct DPW to provide winter maintenance services, for the streets accepted at Town Meeting, while the documents are being recorded. Atty. Henry Lane addressed concerns with Wildlife Drive and Deerview Lane as they were not accepted at Town Meeting. He asked the Board to consider winter maintenance. The Board will continue this discussion to their next meeting. The residents will sign the waiver of liability and return to the office. Mr. Peter DiBatista was present and updated the Board as to the status of the streets (Anthony's Way and Giacomo Way). It was noted that this is on the agenda under New Business (D). See below for commentary and motion.

**II. MEETING MINUTES**

- 11/15/10 Meeting Minutes – MOTION by Ms. Robertson to approve the 11/15/10 Meeting Minutes. Seconded by Mr. Desilets, the motion carried unanimously.
- 11/15/10 Executive Session Meeting Minutes – MOTION by Mr. Baghdasarian to



approve the 11/15/10 Executive Session Meeting Minutes. Seconded by Mr. Desilets, the motion carried unanimously.

11/16/10 Meeting Minutes – **MOTION** by Mr. Desilets to approve the 11/16/10 Meeting Minutes. Seconded by Ms. Robertson, the motion carried unanimously.

### **III. OLD BUSINESS**

A. Board goals – The Board will continue discussion on 11/29.

B. New High School Project – reconsider vote Amendment No. 5 – It was discussed new information has been provided. Following discussion, **MOTION** by Mr. Desilets that the Board amend the amount approved for Amendment No. 5 be increased by \$1,070 from \$10,700 to \$11,770 and further that any restrictions placed on use of these funds which would prevent the payment of Raymond Design’s 10% surcharge be removed. Seconded by Mr. Baghdasarian, the motion carried unanimously.

### **IV. NEW BUSINESS**

A. Board Re-organization – Ms Robertson explained why she has requested the Board Re-organization be added to the agenda. She expressed concerns with the Board following policies/procedures and felt it was hard to move forward with the Board goals due to the lack of leadership of the Board. She expressed concerns with the recent BOS meetings and Town Meeting. She discussed the role of the Chair. **MOTION** by Ms. Robertson that the Board re-organize. The motion was not seconded. Mr. Baghdasarian felt it was not appropriate at this time to address the issue due to the volume of people who wished to be heard under Citizen’s Forum. He suggested moving the discussion to the end of the meeting. Ms. Robertson requested to table the motion. There was no objection.

B. New High School Project – J&L presentation – Mr. Jeff Luxenberg and Mr. David Krawitz with J&L and Mr. John Higgins and Mr. Dan Deveau with the SBC were present.

1. Change Order Procedures - They discussed the list of protocols designed to help control the cost of the new High School project and coordination efforts. Mr. Jeff Luxenberg discussed the Standard Change Order Process, Immediate Resolution Change Order Process, Contingency Authorization Process (Additional Buyout) and the Contract Amendment Process (attached to the minutes). Additional discussion included monthly reporting, change order log , risk analysis log and CHPS. Dan Deveau, Bruce Desilets and John Higgins are on the SBC call list. They will inform the Boards/Committees when issues arise. He requested the Board reconsider their vote on Amendment No 5 as the architect was working on behalf of the Town and timing was of the essence. See Old Business (B).

2. Approve/sign Project Funding Agreement – Following discussion, **MOTION** by Mr. Desilets to approve the Project Funding Agreement and authorize the Chair to execute the document for the new High School Project with the Town of Uxbridge and the MSBA with a cover letter dated 11/8/10 and made part of the meeting minutes. Seconded by Mr. Cahill, the motion carried unanimously.

3. Approve/sign \$20M school bond and notes – Mr. David Genereux was present and discussed the Bond Sale Results. The Town held a note sale on 11/16/10 for



\$20M dollar notes for the new High School. Following discussion, MOTION by Ms. Robertson that the Board approve the sale of the \$20,000,000 General Obligation School Construction Bonds of the Town dated November 15, 2010 (the "Bonds"), to Robert W. Baird & Co., Inc. at the price of \$20,757,879.55 and accrued interest is hereby approved and confirmed. The Bonds shall be payable on August 15 of the years and in the principal amounts and bear interest at the respective rates, as follows:

<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>
2011	\$625,000	3.00%	2020	\$ 955,000	4.00%
2012	795,000	2.50	2021	985,000	4.00
2013	810,000	3.00	2022	1,015,000	5.00
2014	825,000	3.00	2023	1,050,000	5.00
2015	840,000	4.00	2024	1,085,000	5.00
2016	860,000	4.00	2025	1,125,000	5.00
2017	880,000	4.00	2026	1,170,000	5.00
2018	900,000	4.00	2028	2,475,000	4.25
2019	925,000	4.00	2030	2,680,000	4.50

And further that the Bonds maturing on August 15, 2028 and August 15, 2030 (each a "Term Bond") shall be subject to mandatory redemption or mature as follows:

Term Bond due August 15, 2028

<u>Year</u>	<u>Amount</u>
2027	\$1,215,000
2028*	1,260,000

\*Final Maturity

Term Bond due August 15, 2030

<u>Year</u>	<u>Amount</u>
2029	\$1,315,000
2030*	1,365,000

\*Final Maturity

And further moves that in connection with the marketing and sale of the Bonds, the preparation and distribution of a Notice of Sale and Preliminary Official Statement dated November 9, 2010, and a final Official Statement dated November 16, 2010 (the "Official Statement"), each in such form as may be approved by the Town Treasurer, be and hereby are ratified, confirmed, approved and adopted and further that the Bonds shall be subject to redemption, at the option of the Town, upon such terms and conditions as are set forth in the Official Statement and further that the consent to the financial advisor bidding for the Bonds, as executed prior to the bidding for the Bonds, is hereby confirmed. The Board further moves that the Town Treasurer and the Board of Selectmen be, and hereby are, authorized to execute and deliver a



continuing disclosure undertaking in compliance with SEC Rule 15c2-12 in such form as may be approved by bond counsel to the Town, which undertaking shall be incorporated by reference in the Bonds, as applicable, for the benefit of the holders of the Bonds from time to time. The Board further moves that each member of the Board of Selectmen, the Town Clerk and the Town Treasurer be and hereby are, authorized to take any and all such actions, and execute and deliver such certificates, receipts or other documents as may be determined by them, or any of them, to be necessary or convenient to carry into effect the provisions of the foregoing votes. Seconded by Mr. Desilets, the motion carried unanimously.

- C. Application – gravel permit renewal #32, 155 Laurel Street, map 43, parcel 3535 – **MOTION by Mr. Baghdasarian to renew the gravel permit for 155 Laurel Street effective 1/1/2011 with the condition that the Board review the gravel permit fees at their next scheduled meeting. Seconded by Mr. Cahill, the motion carried unanimously.**
- D. Cedar Woods subdivision – resident update – vote/consider eminent/winter maintenance – Mr. Peter DiBatista was present and updated the Board as to the current status of the street. The road work has been completed. There is concern with the bid not including the detention pond, but has been addressed. He addressed concerns with inspection timelines and requested the Board consider eminent domain. Atty. Knapik will be present on 12/7 to discuss with the Board. **MOTION Ms. Robertson that the Board provide winter maintenance services for Giacomo Way and Anthony’s Way for the 2010/2011 season, subject to receipt of all executed waivers by 12/9/10. Seconded Mr. Desilets, the motion carried unanimously. Ms. Robertson stressed the need for residents to act on the Board’s policies/procedures.**

## V. MEMBER ISSUES

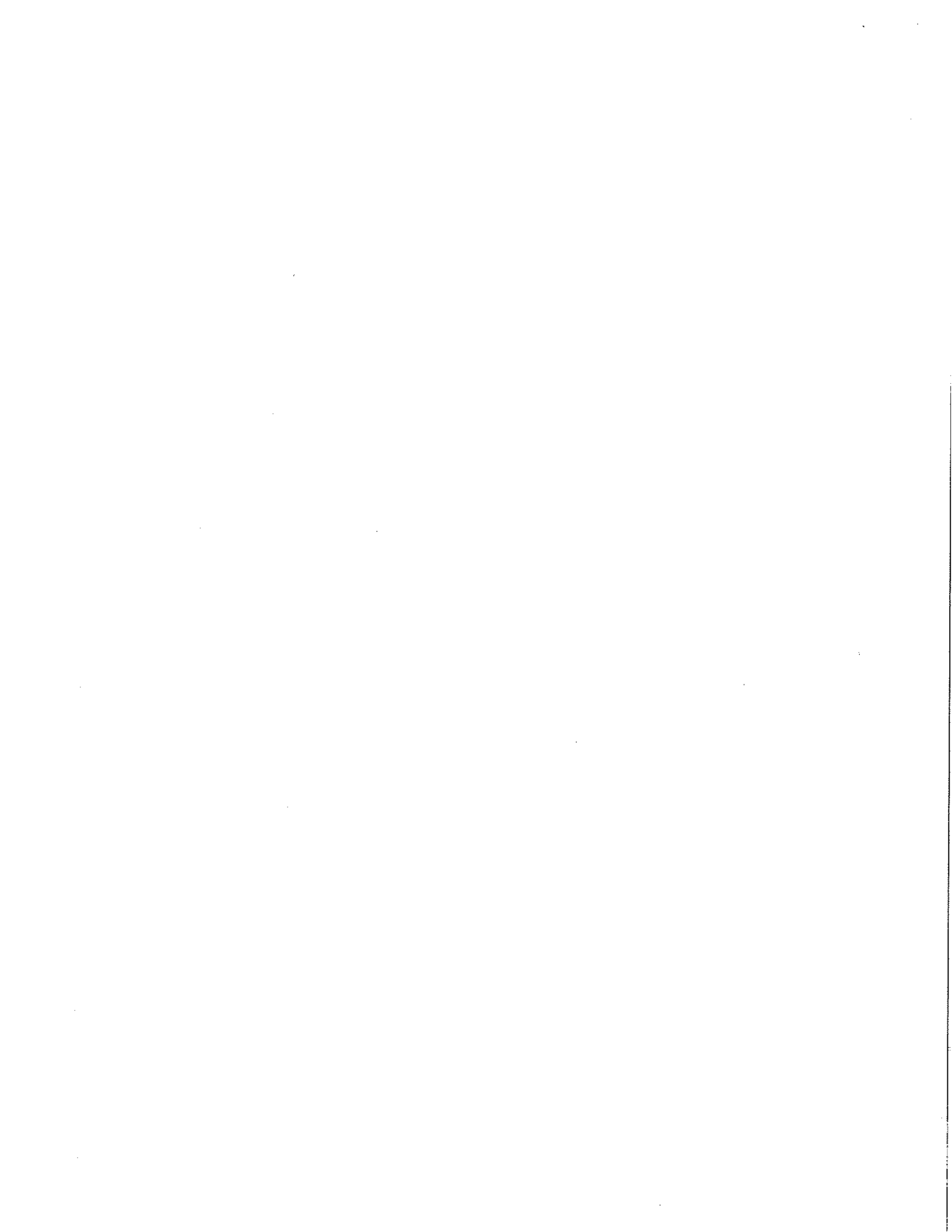
Mr. Baghdasarian wants to let the Town Manager leave long meetings.

## VI. TOWN MANAGER

The Cnossen tax levy will be sent to the Board. There has been no update from DPW.

## VII. EXECUTIVE SESSION (MGL c.39, §23B)

Update PD Union Negotiations, DPW Settlement discussion



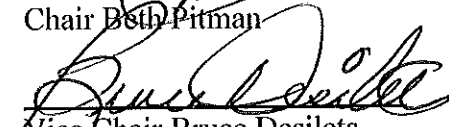


**VIII. ADJOURNMENT: Next BOS Meeting 12/7/10 7:00PM**

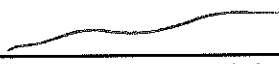
**At 10:56PM, MOTION by Ms. Robertson to adjourn the meeting and enter executive session to discuss Police union contract negotiations and DPW Settlement Agreement with no further business to follow. Seconded by Mr. Baghdasarian, the motion carried unanimously on a role call vote (Pitman – aye, Desilets – aye, Cahill – aye, Baghdasarian – aye).**


*Minutes respectfully submitted by, Tracey Ante*  
Minutes approved by Board of Selectmen:

  
\_\_\_\_\_  
Chair Beth Pitman

  
\_\_\_\_\_  
Vice Chair Bruce Desilets

  
\_\_\_\_\_  
Clerk Jay Cahill

  
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Selectman Peter Baghdasarian

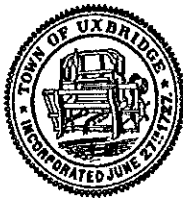
  
\_\_\_\_\_  
Selectman Cari Kay Robertson

11/29/10  
\_\_\_\_\_  
Date Approved









**TOWN OF UXBRIDGE**  
**21 S. MAIN STREET, UXBRIDGE, MA 01569 – PHONE 508-278-8600**  
**BOARD OF SELECTMEN'S MEETING**  
**BOARD OF SELECTMEN'S MEETING ROOM**  
**MONDAY, NOVEMBER 15, 2010 – 7:00PM**

**I. CALL TO ORDER AT 7:00PM**

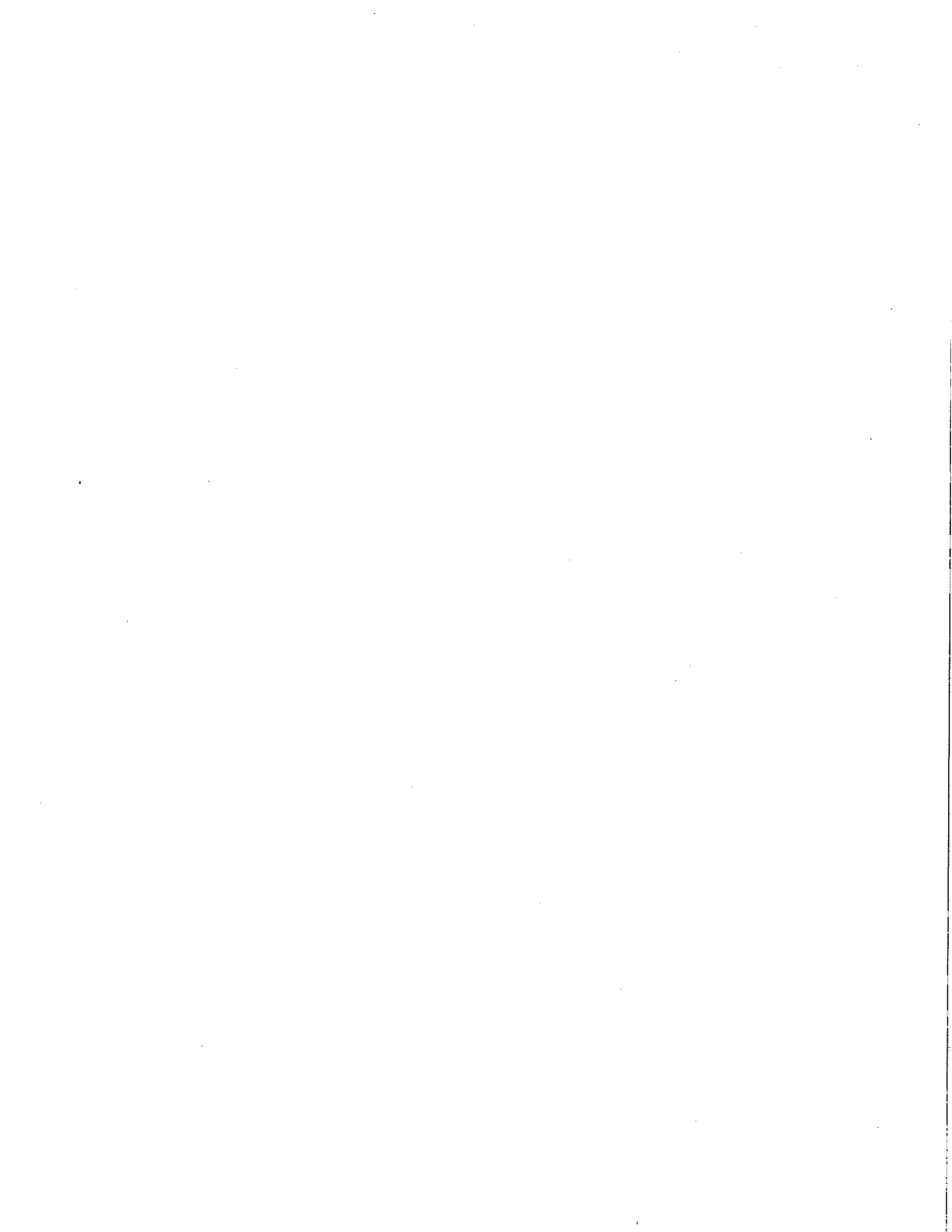
- A. Announcements – Mr. Cahill announced Sunday, 11/21 is the Town Loop Challenge. Registration is at 10AM and the race starts at 11AM. The cost is \$10 for individuals under 18 years of age, \$15 for 18 years or older and \$30 per family. Donations go toward the Uxbridge Public Schools. The Town Manager announced that Moody's has improved the Town's bond rating. Ms. Pitman announced the Fall Annual Town Meeting is Tuesday 11/16 at 7:00PM.
- B. Citizen's Forum – Mr. Michael Potaski was present and addressed concerns with the Board pursuing the purchase of the Clossen well. He advised Tata and Howard was not successful in obtaining the grant. He advised it was not a good idea. Mr. Mark Stacy discussed concerns with the warrant article whereas the Town is looking to hire a full time accountant to manage the High School project. It was noted the warrant now reflects Staffing in the Accountant's Office. Mr. Harry Romasco was present and discussed the charge of the Charter Review Committee. He advised the Board of Selectmen do not set the charge of the Charter Review Committee. Mr. Baghdasarian commented on the things he would like the Charter Review Committee to consider. Mr. Romasco will contact the other Committee members and arrange for a meeting.

**II. APPROVE MEETING MINUTES**

- 10/25/10 Approve Regular Session Meeting Minutes – **MOTION** by Ms. Robertson to approve the 10/25/10 Meeting Minutes, as amended. **Seconded** by Mr. Desilets, the motion carried unanimously.
- 11/8/10 Approve Regular Session Meeting Minutes – **MOTION** by Mr. Cahill to approve the 11/8/10 Meeting Minutes, as amended. **Seconded** by Mr. Baghdasarian, the motion carried unanimously.

**III. OLD BUSINESS**

- A. David Hts. Subdivision – Residents inquiry for Town to provide maintenance, winter maintenance for the 2010/2011 season – Mr. David Hogue was present to discuss the street status and street acceptance status. He discussed concerns with the road contractor and developer. He provided the Waivers of Liability to the Board. Mr. Benn Sherman was present and discussed the personnel and financial impact to DPW if they were to plow the private way. He advised it is the responsibility of the owner of the road to provide winter maintenance services. He advised all issues have been resolved and the road work is complete. The Planning Board has deemed the project complete. The bond money cannot be used for winter maintenance. Following discussion, **MOTION** by Mr. Baghdasarian to deny winter maintenance services.



**Seconded by Ms. Robertson, the motion carried 3-2 (Ms. Pitman and Mr. Cahill opposed).**

- B. Update Cnossen wellfield - Mr. Benn Sherman was present and updated the Board as to the status of the Cnossen well. He advised the Town has received an offer to purchase the property. An appraisal is anticipated soon. Grants have been applied for and the results are anticipated in December. Discussion included pumping/sale of water to power companies, prior Town Meeting approval contingent on receiving the grant, additional Town Meeting approval, value of the land from taxes and potential manganese issues. The Board will continue discussions at a future meeting. Mr. Sherman will review the potential manganese issues.

#### **IV. NEW BUSINESS**

- A. CAC survey results – Mr. Mark Stacy was present and updated the Board as to the cable survey results. Discussion included the use of Peg Access funds, covering surrounding towns, existing facility, new facility, equipment upgrade and educational/additional programming. The Supt. requested a meeting 11/17 with the Cable Advisory Committee, Program Coordinator, School Dept., Town Manager and BOS Rep. to the Cable Advisory to discuss the preferred location of the facility in the new High School. Barry Giles will provide a future needs plan for cable facilities and staff. by 11/30. The Board will continue discussions at a future meeting.
- B. Cable – part time staff – There was discussion that this should be handled by the Town Manager. The Town Manager commented on the job posting as Production Assistant and was opposed to that position. The Program Access Coordinator discussed the need for the position. The Board will continue discussions at a future meeting.
- C. Request for Street name approval – Davis Circle, 3 lot subdivision, Harford Avenue West - Remmi Lee Way – **MOTION by Mr. Baghdasarian to approve the street name of Remmi Lee Way subject to the approval of the Public Safety Committee. Seconded by Ms. Robertson, the motion carried unanimously.**
- D. Vote meeting schedule – Following discussion, the Board will meet on 11/22, 12/6 and 12/28. **MOTION by Ms. Robertson to approve the meeting schedule. Seconded by Mr. Desilets, the motion carried unanimously.**
- E. Town Manager Report – The Board requested substantive material updates only as needed. The Town Manager agreed to the report.
- F. Update National Grid – Yearly Operational Plan – Integrated Vegetation Management Program – The Board reviewed the Operational Plan. Mr. Benn Sherman was present and advised the Board he had no concerns. Ms. Pitman will respond accordingly.
- G. Sutton Street Lease Agreement – Following discussion, the Town Manager will modify the lease agreement based on several things raised by abutters. **MOTION by Mr. Cahill that the Town Manager handle negotiation of the renewal of the 100 acre lot based on the Boards feedback. Seconded by Ms. Robertson, the motion carried unanimously.**





- H. Charter Review Committee – define BOS charge for Charter Review Committee & Appointments – Harry Romasco and Jim Smith – Mr. Baghdasarian discussed a list of things to keep in mind for the Charter Review Committee. Ms. Pitman announced the Town Moderator has appointed Ken Redding and Jim Legg. He is working on a third appointment. The Finance Committee has appointed Barbara Hall and Peter Emerick. The School Committee has appointed MaryPat Wickstrom and Arthur DuBois. **MOTION by Mr. Desilets to appoint Harry Romasco and Jim Smith to the Charter Review Committee. Seconded by Ms. Robertson, the motion carried unanimously.**
- I. Murphy’s Way – Resident inquiry for the Town to provide winter maintenance for the 2010/2011 season – Mr. Rick Bedore was present on behalf of the residents and updated the Board as to the street status and street acceptance. The project was completed by the bond company. Following discussion, **MOTION by Ms. Robertson to deny winter maintenance services for Murphy’s Way. Seconded by Mr. Desilets, the motion carried 3-2 (Mr. Cahill and Ms. Pitman opposed).**

## V. MEMBER ISSUES

Mr. Baghdasarian advised gravel application fees need to be revisited. He advised the ABCC has still not issued the License for the store at the Hannaford plaza. The ABCC is very unhelpful. He inquired if the Conservation Commission needed 8 set of plans. The Town Manager will discuss with the Commission.

Mr. Cahill requested the Board revisit the warrant article relating to the fire truck. He inquired if there was information relating to the school van. No information has been received. The Board will revisit the fire truck and school van at their next meeting.

The Board had general discussion as relates to the FATM Warrant. Mr. Baghdasarian will speak to Article 20 and Article 22 at Town Meeting. Mr. Cahill will speak to the Farnum House. Meeting Minutes should be distributed as soon as possible. Agendas should be emailed/prepared similar to the school committee. The Town Manager will discuss with Tracey.

## VI. TOWN MANAGER

The Town Manager discussed the Town’s bond rating. He discussed the break-in at the Town Clerk’s Office.

## VII. EXECUTIVE SESSION (MGL c.39, §23B)

Update Union Negotiations



**VIII. ADJOURNMENT: Next BOS Meeting November 16, 2010 @ 6:30PM**

**At 10:30 MOTION by Mr. Baghdasarian to adjourn the meeting and enter into executive session with no further business to follow. Seconded by Desilets, the motion carried unanimously by role call vote (Pitman – aye, Desilets – aye, Robertson – aye, Baghdasarian – aye).**

*Minutes respectfully submitted by, Tracey Ante*

Minutes approved by Board of Selectmen:

\_\_\_\_\_  
Chair Beth Pitman

\_\_\_\_\_  
Selectman Peter Baghdasarian

\_\_\_\_\_  
Vice Chair Bruce Desilets

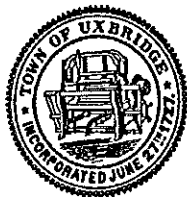
\_\_\_\_\_  
Selectman Cari Kay Robertson

\_\_\_\_\_  
Clerk Jay Cahill

\_\_\_\_\_  
Date Approved

Attachments/DVD





**TOWN OF UXBRIDGE**  
**PHONE 508-278-8600**  
**BOARD OF SELECTMEN'S MEETING**  
**UXBRIDGE HIGH SCHOOL AUDITORIUM**  
**CAPRON STREET, UXBRIDGE, MA**  
**TUESDAY, NOVEMBER 16, 2010 – 6:30PM**

Present: Chair Beth Pitman, Vice-Chair Bruce Desilets, Clerk Jay Cahill and Selectman Cari Kay Robertson. Selectman Peter Baghdasarian arrived at 6:45PM. Also present Town Manager Michael Szlosek, Administrative Assistant Tracey Ante, DPW Director Benn Sherman and Finance Director David Genereux.

*NOTE: Some matters may have been taken out of agenda order but are presented below based on agenda order for ease of location information.*

**I. CALL TO ORDER AT 6:30PM**

- A. Announcements – There were no announcements.
- B. Citizen's Forum – No one was present.

**II. OLD BUSINESS**

- A. FATM Warrant – Vote/review recommendations

Article 6B2 Inter/Intra Departmental Transfers (Fire Dept SUV) – Following discussion, **MOTION by Mr. Desilets to reconsider the Board's prior motion. Seconded by Ms. Robertson, the motion carried unanimously.** MOTION by Mr. Desilets that the Board recommend favorable action. Seconded by Ms. Robertson, the motion was 2-3 (Mr. Cahill, Mr. Baghdasarian and Ms. Robertson opposed). **MOTION FAILED.** MOTION by Ms. Robertson that the Board recommend unfavorable action. **Seconded by Mr. Cahill, the motion carried 3-2 (Ms. Pitman and Mr. Desilets opposed).**

Article 6A5 Inter/Intra Departmental Transfers (Town Acct.) – **MOTION by Mr. Cahill that the Board recommend favorable action. Seconded by Ms. Robertson, the motion carried unanimously 4-0 (Mr. Baghdasarian was not present for this vote).**

Article 6B3 Inter/Intra Departmental Transfers (school van) – **MOTION by Mr. Cahill that the Board recommend favorable action. Seconded by Ms. Robertson, the motion carried unanimously.**

Article 11 Street Acceptance Rose Lane – **MOTION by Ms. Robertson that the Board recommend favorable action. Seconded by Mr. Desilets, the motion carried unanimously.**

Article 16 Street Acceptance Stanphyl Road – **MOTION by Ms. Robertson that the Board recommend favorable action. Seconded by Mr. Desilets, the motion carried unanimously.**



Article 12 Street Acceptance Jodie Circle – MOTION by Mr. Cahill to extend the timeline for street acceptance material by 28 days to 12/14/10. Seconded by Mr. Desilets, the motion carried 4-1 (Ms. Robertson opposed).

Article 13 Street Acceptance Long Meadow Road - MOTION by Mr. Cahill to extend the timeline for street acceptance material by 28 days to 12/14/10. Seconded by Mr. Desilets, the motion carried 4-1 (Ms. Robertson opposed).

Article 15 Street Acceptance Julia Drive - MOTION by Mr. Cahill to extend the timeline for street acceptance material by 28 days to 12/14/10. Seconded by Mr. Desilets, the motion carried 4-1 (Ms. Robertson opposed).

Article 17 Street Acceptance Cassie Lane - MOTION by Mr. Cahill to extend the timeline for street acceptance material by 28 days to 12/14/10. Seconded by Mr. Desilets, the motion carried 4-1 (Ms. Robertson opposed).

Article 18 Street Acceptance Buttermilk Way - MOTION by Mr. Cahill to extend the timeline for street acceptance material by 28 days to 12/14/10. Seconded by Mr. Desilets, the motion carried 4-1 (Ms. Robertson opposed).

Article 14 Street Acceptance Foxwood Lane, Deerview Lane and Wildlife Drive – MOTION by Mr. Desilets that the Board recommend unfavorable action for Deerview and Wildlife Drive. The Board recommends favorable action for Foxwood Lane. Seconded by Ms. Robertson, the motion carried 4-1 (Mr. Cahill opposed).

III. TOWN MANAGER UPDATE

There was no update.

IV. MEMBER ISSUES

There was no comments.

V. ADJOURNMENT: Next BOS Meeting November 22, 2010 @ 7:00PM

At 7:05PM MOTION by Mr. Cahill to adjourn the meeting. Seconded by Mr. Desilets, the motion carried unanimously.

*Minutes respectfully submitted by, Tracey Ante*

Minutes approved by Board of Selectmen:

\_\_\_\_\_  
Chair Beth Pitman

\_\_\_\_\_  
Selectman Peter Baghdasarian

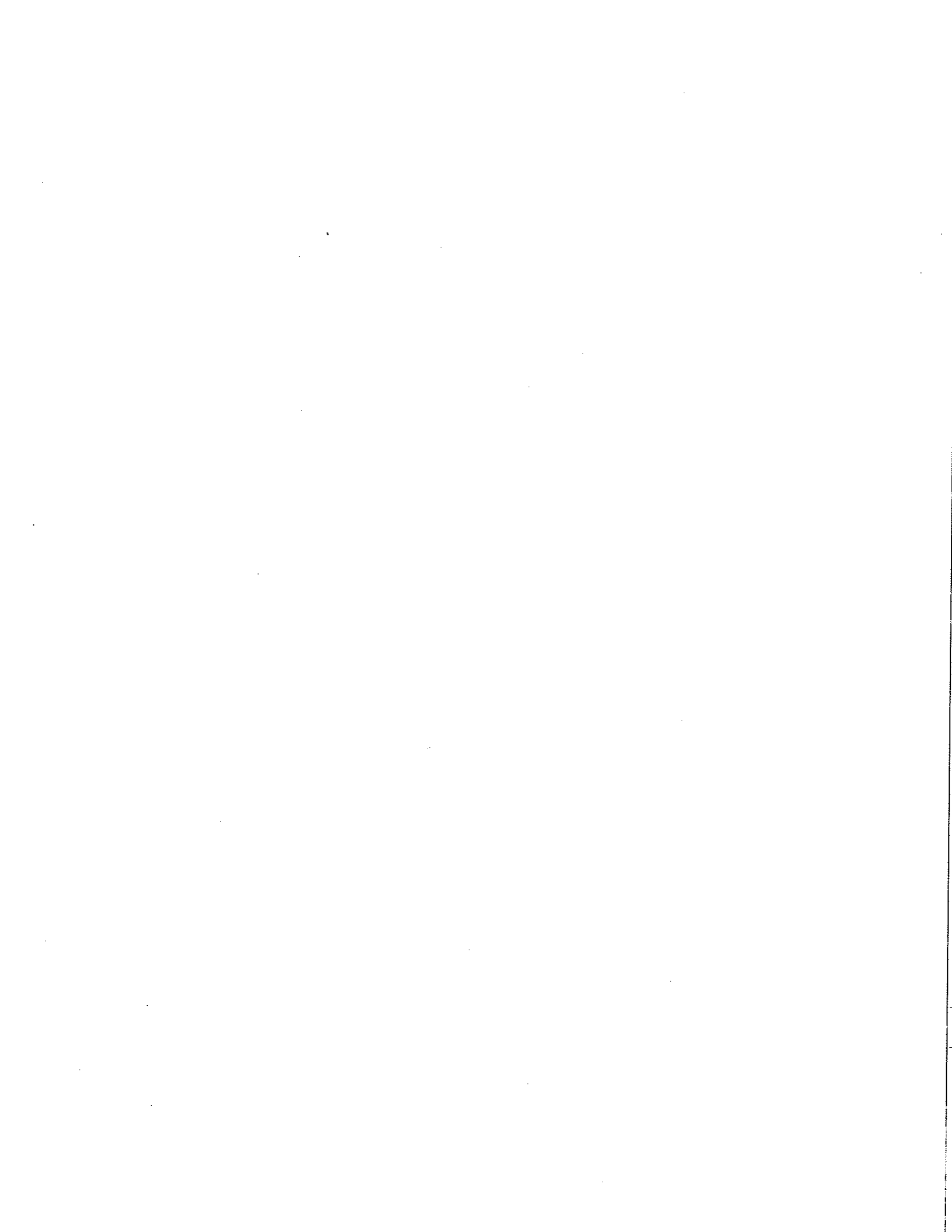
\_\_\_\_\_  
Vice Chair Bruce Desilets

\_\_\_\_\_  
Selectman Cari Kay Robertson

\_\_\_\_\_  
Clerk Jay Cahill

\_\_\_\_\_  
Date Approved

Attachments





## **BOARD GOALS FY 2011**

### **GOAL #1 Enhance/Improve Employee and Union Relation**

- Settle contracts in a manner that improves the short and long-term financial liability of the Town.

### **GOAL #2 Improve Town Communications and Involvement**

- Fill vacancies in boards and committees through increased citizen participation and awareness.
- Propose a communication plan to discuss Board goals and share progress towards those goals with other boards, departments, and residents on a regular basis.

### **GOAL #3 Support Planning and Economic Development**

- Work with Selectmen-appointed committee to improve Zoning Bylaws and place on Spring Town Meeting warrant.

### **GOAL #4 New High School Project**

- Establish a regular communication schedule between SBC and the Municipal office to stay abreast of developments with the New School project in order to minimize unexpected changes to plans.



## BOARD GOALS FY 2011

### **GOAL #1 Enhance/Improve Employee and Union Relation**

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### **GOAL #2 Improve Town Communications and Involvement**

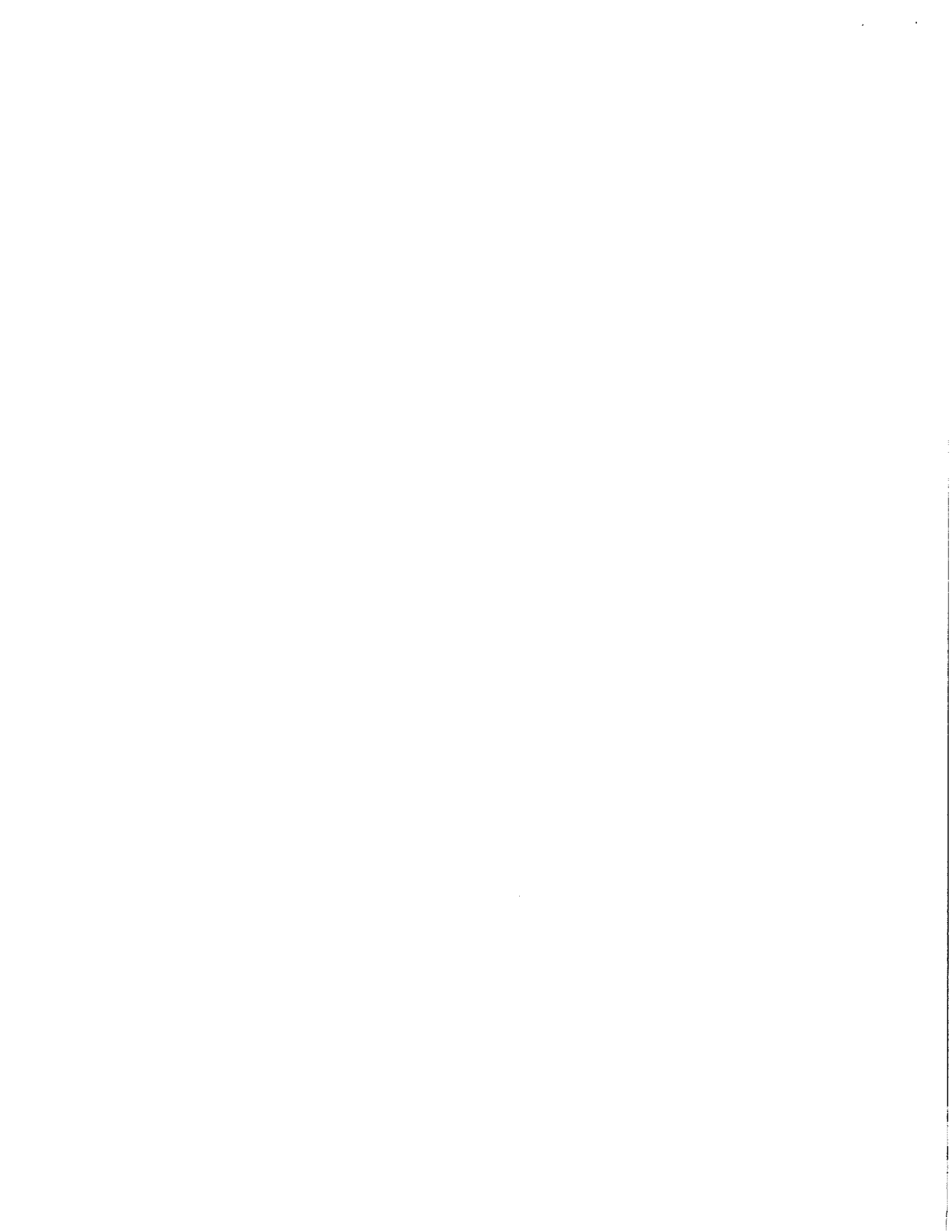
- Fill vacancies in boards and committees through increased citizen participation and awareness.
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### **GOAL #3 Support Planning and Economic Development**

- Work with Selectmen-appointed committee to improve Zoning Bylaws and place on Spring Town Meeting warrant.

### **GOAL #4 New High School Project**

- Establish a regular communication schedule between SBC and the Municipal office to stay abreast of developments with the New School project in order to minimize unexpected changes to plans.



JOSLIN, LESSER + ASSOCIATES, INC.

**MEMORANDUM**

To: Uxbridge High School Building Committee  
 From: David Krawitz - Joslin, Lesser + Associates, Inc.  
 Date: October 12, 2010  
 Re: Uxbridge High School  
 Cc: Jeffery A. Luxenberg (JLA)

Enclosed for processing is RDA Amendment No 5 to be considered at the October 14<sup>th</sup>, 2010 SBC Meeting. Amendment No 5 includes commitments for additional site survey services for which the scope could not be estimated at the project outset and the need for which could not be anticipated when Amendment No 4 was presented. This work is necessary to locate the new sewer line and to precisely locate specimen trees that can be saved. The Not to Exceed amount is within the Line Item on the approved MSBA project budget. JLA has reviewed the proposed Amendment No 5 including supporting materials, the RFS for Design Services, and the Design Services Contract, and recommends approval.

COMMITMENTS (Fee Proposals)			
ProPay Code	Budget Category	Description of Services	Contract \$
RDA Design Services Amendment #5			
0204-0400	A&E: Site Survey	Site Survey: Instrument survey for location of specimen trees and designing of sewer pipe layout (Andrews Survey)	NTE \$11,770

Enclosed for processing are the following invoices to be considered at the October 14<sup>th</sup>, 2010 SBC Meeting. The two invoices are for Architecture and Engineering Services in the Design Development and Construction Documents phase of the project. Please note that RDA has completed their Design Development drawings and specifications which will now be used to develop a detailed cost estimate. To meet the aggressive project schedule RDA has begun work on Construction Documents and will continue that work while the Design Development estimates are being generated. Attached please find a copy of RDA invoices #2010-10-10 dated October 1, 2010 and #2010-10-02 dated October 12, 2010.

INVOICES (Payments)					
ProPay Code	Vendor	Invoice #	Budget Category	Description of Services	Invoice \$
0201-0400	RDA	2010-10-01	A&E Design Development	Design Development	\$140,800
0201-0500	RDA	2010-10-02	A&E Construction Contract Documents	Construction Documents	\$223,000

The invoices listed above are consistent with the Total Project Budget and to the best of our knowledge are eligible for reimbursement from the Massachusetts School Building Authority. Joslin Lesser + Associates recommends that the Uxbridge High School Building Committee approve these invoices.



# ATTACHMENT F

## CONTRACT FOR DESIGNER SERVICES

### AMENDMENT NO. 5

WHEREAS, the Town of Uxbridge ("Owner") and Raymond Design Associates, Inc., (the "Designer") (collectively, the "Parties") entered into a Contract for Designer Services for the Uxbridge High School Project on August 10, 2009 (the "Contract"); and

WHEREAS, Amendment No.1 was approved by the SBC on October 28, 2009, and Amendment No. 2 was approved by the SBC on April 29,2010, and Amendment No. 3 was approved by the SBC on August 5, 2010; and Amendment No 4. was approved by the SBC on August 18, 2010; and

WHEREAS, the parties wish to amend the Contract with Amendment No 5 to be effective on October 25, 2010.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Amendment, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

- The Owner hereby authorizes the Designer to perform additional services pursuant to Article 8 of the Contract and as specified in Section 4.11 to complete site surveys.

Proposed Additional Fee:           NTE \$11,770

- For the performance of services required under the Contract, as amended, the Designer shall be compensated by the Owner in accordance with the following Fee for Basic Services:

Fee for Basic Services	Original Contract	Previous Amendments	Amount of This Amendment	After This Amendment
Feasibility Study Phase	\$120,000	\$34,650		\$154,650
Schematic Design Phase	\$180,000	\$26,510		\$206,510
Design Development Phase	-	\$640,000		\$640,000
Construction Doc Phase	-	\$1,115,000		\$1,115,000
Bidding Phase	-	\$80,000		\$80,000
Construction Phase	-	\$895,000		\$895,000
Completion Phase	-	\$94,200		\$94,200
GeoTech&GeoEnv	-	\$40,775		\$40,775
Site Survey	-	NTE \$9,460	NTE \$11,770	NTE \$21,230
Site Survey	-	\$20,020		\$20,020
Wetlands	-	\$58,300		\$58,300
Traffic Studies	-	NTE \$68,200		NTE \$68,200
<b>Total Fee</b>	<b>\$300,000</b>	<b>\$ 3,082,115</b>	<b>NTE \$11,770</b>	<b>\$3,393,885</b>

3. The Construction Budget shall be as follows:

Original Budget: \$0  
Amended Budget \$34,469,807

4. The Project Schedule shall be as follows:

Original Schedule:  
Amended Schedule Design Development Complete 10/07/10  
Construction Documents Complete 01/26/11  
Substantial Completion 07/03/12

5. This Amendment contains all of the terms and conditions agreed upon by the Parties as amendments to the original Contract. No other understandings or representations, oral or otherwise, regarding amendments to the original Contract shall be deemed to exist or bind the Parties, and all other terms and conditions of the Contract remain in full force and effect.

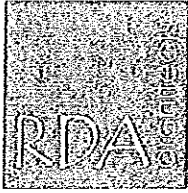
IN WITNESS WHEREOF, the Owner, with the prior approval of the Authority, and the Designer have caused this Amendment to be executed by their respective authorized officers.

OWNER

\_\_\_\_\_  
(print name)  
\_\_\_\_\_  
(print title)  
By \_\_\_\_\_  
(signature)  
Date \_\_\_\_\_

DESIGNER

\_\_\_\_\_  
(print name)  
\_\_\_\_\_  
(print title)  
By \_\_\_\_\_  
(signature)  
Date \_\_\_\_\_



**Raymond Design Associates, Inc.**  
222 North Street, Hingham, Massachusetts 02043  
Telephone 781-749-5530

October 5, 2010

Uxbridge School Building Committee  
c/o Joslin, Lesser + Associates, Inc.  
44 Pleasant Street  
Watertown, Massachusetts 02472  
Attn: Jeffrey Luxenberg

Re: Contract Amendment #5 – Additional Services  
Uxbridge High School

Jeff:

We are pleased to submit our proposal for Additional Services for the Design Development thru Completion Phases of Designer Services for the new Uxbridge High School.

This proposal is based on the Request for Designer Services (RFS), dated May 6, 2009, the Contract for Designer Services, signed by the Owner August 10, 2009, the Schematic Design submission, dated June 11, 2010, and the Form 3011 approved by the MSBA Board at their meeting held on July 28, 2010.

#### SCOPE OF SERVICES

Additional Services, as defined in the contract for Designer Services, for the following professional services, to be completed during the Design Development through Completion Phases:

- Survey: Instrument survey by Andrews Survey for locating specimen trees on the site, items of particular interest within the Quaker Highway right-of-way, five acres of instrument survey for sewer connection near Millville Road, DTM files adjusted to NGVD88 for Mass DOT, and additional staking for geotechnical borings.

This work is in addition to site survey work previously authorized.

- A site walk by Leslie Fanger of BSC subsequent to the previous survey authorization identified the potential opportunity to integrate several mature specimen trees into the site plan. The existing 'flown' survey does not provide detailed location and/or elevation details that will allow BSC to determine the viability of integrating these trees into the site design as a feature.



- Also subsequent to the previous survey authorization, it was determined that the 'flown' survey does not provide sufficient detailed site information in the remaining areas referenced above. As part of Amendment #5, we are requesting an instrument survey for detailed design features within the Quaker Highway right-of-way and in the area of the site through which the proposed sewer line is set to travel. Additional features within the path of the proposed sewer line need to be detailed in order to assure all environmental permitting issues are taken into account and that the sewer is installed with the proper pitch.
- And finally, subsequent to the previous survey authorization, we determined that the geotechnical engineer could provide us with some borings in the areas of the potential field/court lighting poles (within his previously authorized geotechnical fee). To take advantage of this opportunity, we asked the surveyor to provide us with a fee proposal to field locate where these borings should take place.

**COMPENSATION**

Compensation is being requested for Additional Services from Design Development through the Completion Phase. These amounts are in addition to our authorization to date on the project for Basic Services from the Feasibility Study through the Project Completion Phases and in addition to previous authorizations to date for additional sub-consultant services not included in the scope of the Basic Services, all of which were authorized in Amendments #1, #2, #3 and #4.

**Basic Services**

• Basic Services for Feasibility Study & Schematic Design:	\$300,000
• Design Development (Amendment #3)	\$640,000
• Contract Documents (Amendment #3)	\$1,115,000
• Bidding (Amendment #3)	\$80,000
• Contract Administration (Amendment #3)	\$895,000
• Closeout (Amendment #3)	<u>\$94,200</u>
<b>Total Basic Services</b>	<b>\$3,124,200</b>

**Previously Approved Additional Services**

• Additional Services to Date (Amendments #1 & 2):	\$61,160
--	----------

**Additional Services -- Amendment #4**

• Andrews Engineering - Survey:	
○ Not to Exceed \$8,600 x 1.1 Markup =	\$9,460
• BSC Group - Survey:	
○ \$18,200 x 1.1 Markup =	\$20,020
• BSC Group -- Wetlands Permitting:	
○ \$53,000 x 1.1 Markup =	\$58,300
• BSC Group -- Traffic:	
○ Not to Exceed \$62,000.00 x 1.1 markup =	\$68,200
• PEER Consultants - Geotechnical:	
○ \$37,050 x 1.1 Markup =	<u>\$40,775</u>
<b>Total Additional Services -- Amendment #4</b>	<b>\$196,755</b>

**Additional Services – Amendment #5**

- Andrews Engineering - Survey:
  - Not to Exceed \$10,700 x 1.1 Markup = **\$11,770**

**Total Services – Basic Services + Amendments #1 - 5:           \$3,393,885**

**ASSUMPTIONS**

Please find Andrews Survey proposal dated September 23, 2010, attached.

All provisions of our Agreement remain in effect except as specifically modified by this amendment.

Sincerely Yours,  
Raymond Design Associates, Inc.



Gene S. Raymond Jr., AIA  
President

**Andrews Survey & Engineering, Inc.**

104 Mendon Street | P.O. Box 312 | Uxbridge, MA 01569

Tel. (508) 278-3897 Fax (508) 278-2289

*Land Surveying • Civil Engineering • Site Planning*

September 23, 2010

Gene S. Raymond, Jr. AIA, LEED AP  
Raymond Design Associates  
222 North Street  
Hingham, MA 02043

*Re: Professional Land Surveying Services  
Quaker Highway (Rt. 146A) – Uxbridge, MA  
ASE Project #2010-091.3*

Dear Mr. Raymond:

Andrews Survey & Engineering, Inc. ("ASE") is pleased to provide a fee proposal for the professional land surveying services required to complete the Scope of Services specified below for the above referenced project located along the Quaker Highway (Rt. 146A) in Uxbridge, MA. The following proposal is based on a review of the scope of work provided in recent email correspondences from BSC Group; a review of work performed in the vicinity by our office; and from similar projects. The fee for our professional services required to complete the Scope of Services for this project shall not exceed \$10,700. The detailed Scope is as follows:

Scope of Professional Services

Base Plan Revisions, Topographic Survey, Miscellaneous staking and locations.....\$10,700

For the purposes of this fee proposal the limit of work shall defined as the area within the right-of-way of the Quaker Highway (Rt. 146A) and the right-of-way of Millville Road (Rt. 122) directly adjacent to the location of the proposed Uxbridge High School facilities

- ASE shall perform an instrument survey in accordance with Massachusetts Department of Transportation (MassDOT) standards to locate certain physical features of particular interest in design procedures including a selection of pre-marked trees in the proposed Quad area with adjacent topographic elevations.
- ASE shall perform an instrument survey to determine topography in an area of approximately five acres to the southwest of Millville Road for the purposes of designing the sewer connection to Millville Road including the location of any significant watercourses in the area.
- ASE shall prepare and deliver a preliminary DTM file of the site on NGVD29 based on existing information as of September 1, 2010.
- ASE shall revise DTM and existing conditions base plan of Quaker Highway area and site contracted on August 18, 2010 adjusted to NGVD88 as per Massachusetts DOT standards.
- ASE shall stake proposed location of light pole bases as requested by BSC on September 17, 2010.
- ASE shall revise base plan to include above mentioned features.

**Reimbursable Expenses (reprographics, postage, etc.)**

Our reimbursable expenses are not included in the fee and are charged at our actual costs plus a ten percent (10%) handling charge. *We anticipate that reimbursable expenses for this project shall not exceed five percent (5%) of the fee, or approximately \$275.*

**Schedule of Professional Fees – Hourly Rates:**

The fees provided herein are based on our current charge rates, our understanding of the project, and of the current needs. Billing for our professional services is based on actual time accrued. Our current hourly charge rates are as follows. These rates are subject to change. We will make every effort possible to inform you of any future rate changes.

<u>Associate Level</u>	<u>Hourly Rate</u>
Registered Professional Engineer	\$120.00
Senior Project Engineer	\$ 90.00
Project Engineer/AutoCAD Technician	\$ 80.00
Registered Professional Land Surveyor	\$110.00
Senior Project Surveyor	\$ 80.00
Survey Field Crew – 2 person field crew	\$125.00
Administrative	\$ 45.00

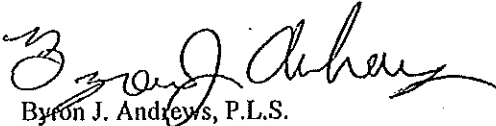
**Project Status:**

Your authorization to proceed will consist of receipt by this office of a copy of this proposal letter endorsed by you. This retainer will be applied to the final billing for the work described herein. After initiation of work, we will update you regularly on the progress of the project, the status of the budget, and any cost, scope or scheduling changes required. Please note that payment in full is expected upon receipt of invoice and is required no later than thirty (30) days following receipt of invoice. Our General Terms and Conditions are attached.

**Limitation of Liability:**

Andrews Survey & Engineering, Inc.'s liability under this contract is limited to the value of the contract for engineering services on the project. Professional liability insurance certificates shall be furnished upon request. By executing this contract, the client acknowledges receiving, reading, understanding and agreeing to the terms set forth in the General Terms and Conditions. We are committed to working with you for the successful completion of this project. Should you have any questions or require additional information, please contact this office. Thank you for your consideration of the services of Andrews Survey & Engineering, Inc.

Very truly yours,  
ANDREWS SURVEY & ENGINEERING, INC.

  
Byron J. Andrews, P.L.S.

Vice President

Attachment(s)

**APPROVED AND ACCEPTED:**

For: Raymond Design Associates

Signature: \_\_\_\_\_

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

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

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

Tel #: \_\_\_\_\_

## GENERAL TERMS AND CONDITIONS

1. **Right of Entry:** The signing of the agreement gives authorization for Andrews Survey and Engineering, Inc. ("ASE") personnel to enter upon the property to conduct site examinations, surveys, soil tests, and other services as described in the Scope of Professional Services. It is understood by the client that these surveys and tests may require the cutting of trees and brush. If the client is not the record owner of the property at the time of the agreement, obtaining the right of entry from the owner of record shall be the client's responsibility.
2. **Change in Scope of Professional Services:** If, subsequent to the agreement, there is a change in the scope of professional services, either as ordered by the client or as necessitated by circumstances or authorities, a written authorization will be required before any services outside of the original Scope of Services shall proceed. In the event of such a change in the scope of services, this office will supply a written notification to the client. Services outside of the original scope and within the revised scope as described on the notification will commence upon receipt by this office of the client's authorization. If the scope of professional services is changed, the amount of compensation shall be equitably adjusted.
3. **Unanticipated Circumstances:** If, subsequent to the agreement, unanticipated circumstances require additional work to fulfill the scope of services therein, then in such event written authorization by the client will be required before proceeding. Said authorization will be in the form of a revised contract forwarded to the client depicting thereon an equitable adjustment in the originally quoted fee. Work will recommence upon receipt by this office of the client's signature on the revised contract.
4. **Client's Responsibility to Notify of Hazards:** It is the client's responsibility to advise this office of any known hazards or hazardous substances or any known conditions on or near the site that may present a potential danger to human health or to the environment. Failure to notify this office of any known hazards shall relieve ASE, its agents and its employees from all damages arising from said hazard(s).
5. **Termination Provision:** The agreement may be terminated by either party upon five (5) days written notice. ASE shall be paid for services completed and reimbursable expenses incurred up to the time of termination.
6. **Billing Procedure:** Invoices shall be rendered monthly or upon completion of project phases. Payment is required upon receipt of invoice. Invoices more than thirty (30) days overdue shall accrue interest at a rate of 1½ % per month (18% per year). We reserve the right to discontinue professional service on all accounts more than sixty (60) days overdue. Should any account become more than ninety (90) days overdue, we reserve the right to require payment in full for all services provided and reimbursable expenses incurred to date prior to the release of information, plans or other project-related data.
7. **Responsible Party:** The client, as the responsible party, agrees to compensate ASE at the standard or agreed rate for providing the professional services, as described in the Scope of Services. No payments shall be contingent upon financing or receipt of payment from any third party.
8. **Electronic Documents:** Andrews Survey & Engineering, Inc. agrees to provide materials to the Client stored electronically. In accepting and utilizing such documents, the Client recognizes that data, plans, specifications, reports, documents, or other information recorded on or transmitted as electronic media ("CADD Documents") are subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the CADD Documents are provided to the Client for information only and not as an end product. Differences may exist between the electronic documents and the signed and/or sealed hard copy drawings and other data. In the event of a conflict between the signed drawings and the electronic documents, the signed and/or sealed hard copy documents shall govern.

- 9. Ownership of Documents, including CADD Documents:** ASE shall retain sole and exclusive ownership of all engineering drawings, plans, estimates, reports, original field notes, field data, soil boring logs, calculations and other documents, including CADD documents prepared by this office as instruments of service. ASE agrees that such documents will not be made available to any individual or organization without the written approval of the client. The client may obtain copies of any such documents for information and reference only upon payment in full of all services hereunder and of the cost of reprinting, providing that the client agrees not to make any extensions, amendments or modifications of any documents or copies provided by this office. The client shall not use the instruments of service for future alterations to this project or for other projects, unless the client obtains the written consent of ASE. The client shall defend, indemnify and hold ASE harmless from and against any claims, losses, liabilities and damages arising out of or resulting from the unauthorized use of the documents, including CADD documents.
- 10. Use of Stakes:** Neither the client nor any contractor hired by the client, nor any third party will use stakes or other markers set at the site by ASE for the purpose of construction or installation of any facility or structure before obtaining verification from this office that the stakes or markers were set for the intended purpose and are in place to accuracy appropriate for the intended use.
- 11. Delays:** ASE will not be responsible for delays in the performance of the agreement due to inclement weather, illness, failure of equipment, unanticipated degree of difficulty encountered in performing said services, or delay created within or by approving agencies. In addition, ASE will not be responsible for delays due to changes in conditions on the site or on property adjacent to the site that would adversely impact working conditions requiring delays or additional work.
- 12. Testimony:** Client agrees to pay in accordance with the schedule of fees set forth above for the participation in court by ASE personnel; including time spent preparing affidavits and other documents, research and meetings with the client and with the client's attorney(s). Issuance of a summons shall not relieve the client's financial obligation.
- 13. Professional Services:** All professional services provided by ASE will be performed with that degree of skill and care ordinarily exercised by practicing surveyors performing similar services in the same locality, under the same or similar circumstances and conditions. ASE does not guarantee acceptance or approval of the project by municipal, state or federal agencies.
- 14. Time Limitation:** The agreement is null and void unless executed by the client and returned to this office within thirty (30) days.
- 15. Exclusions:** The scope of services under this contract does not include any services not explicitly listed, including, but not limited to, application and/or municipal fees, meetings or presentations not listed, architectural plans, police detail, off-site roadway improvement plans, off-site utility services or designs not listed, construction layout services, construction equipment charges, laboratory testing, traffic impact and analysis study; or any additional construction related services not listed.
- 16. Dispute Resolution:** Any claim, dispute, or other matter in question relating to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.
- 17. Entire Agreement:** The signed proposal and the General Terms and Conditions represents the entire and integrated agreement between the client and ASE and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both client and ASE.



**Raymond Design Associates, Inc.**

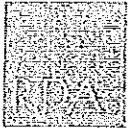
222 North Street, Hingham, Massachusetts 02043  
Telephone 781-749-5530  
Facsimile 781-749-5531

October 1, 2010

Uxbridge School Building Committee  
c/o Joslin Lesser Associates, Inc.  
44 Pleasant Street  
Watertown, Massachusetts 02472

**INVOICE #2010-10-01: Uxbridge High School**  
Uxbridge, Massachusetts

<u>Fee Schedule:</u>	<u>Fee</u>	<u>% Comp</u>	<u>Amt. Earned</u>	<u>Prev Billed</u>	<u>Due This Invoice</u>
<b>Base Contract</b>					
Feasibility Study	\$120,000.00	100%	\$120,000.00	\$120,000.00	\$0.00
Schematic Design	\$180,000.00	100%	\$180,000.00	\$180,000.00	\$0.00
<b>Amendment #1</b>	\$42,130.00	100%	\$42,130.00	\$42,130.00	\$0.00
<b>Amendment #2</b>	\$19,030.00	100%	\$19,030.00	\$19,030.00	\$0.00
<b>Amendment #3 – Control #8892JC135</b>					
Design Development	\$640,000.00	92.0%	\$588,800.00	\$448,000.00	\$140,800.00
Construction Documents	\$1,115,000.00	0.0%	0.00	0.00	\$0.00
Bidding Phase	\$80,000.00	0.0%	0.00	0.00	\$0.00
Construction Phase	\$895,000.00	0.0%	0.00	0.00	\$0.00
Completion Phase	\$94,200.00	0.0%	0.00	0.00	\$0.00
<b>Amendment #4 – Control #( TBD )</b>					
Survey – Site	\$9,460.00	0.0%	0.00	0.00	\$0.00
Survey – Permitting Support	\$20,020.00	0.0%	0.00	0.00	\$0.00
Wetlands – MEPA-BNF, Etc	\$58,300.00	0.0%	0.00	0.00	\$0.00
Traffic	\$68,200.00	0.0%	0.00	0.00	\$0.00
Geotechnical/Geoenviron'l	\$40,775.00	0.0%	0.00	0.00	\$0.00
<b>Total:</b>	<b>\$3,382,115.00</b>		<b>\$949,960.00</b>	<b>\$809,160.00</b>	<b>\$140,800.00</b>
<b>Due This Invoice:</b>					<b>\$140,800.00</b>



**Raymond Design Associates, Inc.**

222 North Street, Hingham, Massachusetts 02043  
Telephone 781-749-5530  
Facsimile 781-749-5531

October 12, 2010

Uxbridge School Building Committee  
c/o Joslin Lesser Associates, Inc.  
44 Pleasant Street  
Watertown, Massachusetts 02472

**INVOICE #2010-10-02: Uxbridge High School**  
Uxbridge, Massachusetts

<u>Fee Schedule:</u>	<u>Fee</u>	<u>% Comp</u>	<u>Amt. Earned</u>	<u>Prev Billed</u>	<u>Due This Invoice</u>
<b>Base Contract</b>					
Feasibility Study	\$120,000.00	100%	\$120,000.00	\$120,000.00	\$0.00
Schematic Design	\$180,000.00	100%	\$180,000.00	\$180,000.00	\$0.00
Amendment #1	\$42,130.00	100%	\$42,130.00	\$42,130.00	\$0.00
Amendment #2	\$19,030.00	100%	\$19,030.00	\$19,030.00	\$0.00
<b>Amendment #3 – Control #8892JC135</b>					
Design Development	\$640,000.00	92.0%	\$588,800.00	\$588,800.00	\$0.00
Construction Documents	\$1,115,000.00	20.0%	\$223,000.00	\$0.00	\$223,000.00
Bidding Phase	\$80,000.00	0.0%	0.00	0.00	\$0.00
Construction Phase	\$895,000.00	0.0%	0.00	0.00	\$0.00
Completion Phase	\$94,200.00	0.0%	0.00	0.00	\$0.00
<b>Amendment #4 – Control #( TBD )</b>					
Survey – Site	\$9,460.00	0.0%	0.00	0.00	\$0.00
Survey – Permitting Support	\$20,020.00	0.0%	0.00	0.00	\$0.00
Wetlands – MBPA-ENF, Etc	\$58,300.00	0.0%	0.00	0.00	\$0.00
Traffic	\$68,200.00	0.0%	0.00	0.00	\$0.00
Geotechnical/Geoenviron'l	\$40,775.00	0.0%	0.00	0.00	\$0.00
<b>Total:</b>	<b>\$3,382,115.00</b>		<b>\$1,172,960.00</b>	<b>\$949,960.00</b>	<b>\$223,000.00</b>

**Due This Invoice: \$223,000.00**



# Massachusetts School Building Authority

Timothy P. Cahill  
Chairman, State Treasurer

Katherine P. Craven  
Executive Director

TPTC  
11/10/10

no enclosures

November 8, 2010

BY EMAIL (with Attachments) to: beth.pitman@uxbridge-ma.gov

BY U.S. MAIL (without Attachments) to:

Ms. Beth Pitman, Chair  
Uxbridge Board of Selectmen  
Town Hall  
21 South Main Street  
Uxbridge, MA 01569

RECEIVED

NOV 9 2010

BOARD OF SELECTMEN  
UXBRIDGE, MA

Re: Uxbridge High School, Project Funding Agreement

Dear Ms. Pitman:

Please find enclosed three original copies of the Project Funding Agreement (the "PFA") and one copy of PFA Exhibits A-I for the Uxbridge High School project in the Town of Uxbridge (the "Town"). The Town must submit three (3) original signed copies of the PFA, one of which will be returned to the Town after it has been signed by the Massachusetts School Building Authority's Executive Director. Please return the three signed copies within 30 calendar days of the date of this letter, so that the MSBA can execute the Agreement and begin reimbursing the Town for eligible project costs that it has incurred. The Town should keep the copy of Exhibits A-I for the its records.

Please confirm that the contact person for the Notice provision in Section 17 of the PFA is correct. **Also, please do not date the Agreement on pages 1 and 28.** The PFA will be dated by the MSBA when the MSBA's Executive Director signs the Agreement.

The Town must also submit two (2) original copies of the Certification of Legal Counsel, which also is being sent via e-mail as a word document to enable the Town's legal counsel to put the certification on his/her letterhead. The Legal Counsel Certification requires the Town's legal counsel to certify which local public official or governmental body (the "Local Governing Body") has the full legal authority to execute the PFA on behalf of the Town and to bind the Town to its terms. The Town should keep a separate copy of the certification for the Town's records.

In addition, the Town will need to provide a certified copy of the vote of the Local Governing Body authorizing the Town to enter into and be bound by the PFA, where required by local charters, ordinances or by-laws.

The required documents, which include: (1) three original signed copies of the PFA (please keep the copy of Exhibits A-I for the Town's records); (2) two original signed copies of the certification of legal counsel (please keep one copy for the Town's records); and (3) a certified copy of the vote authorizing the Town to enter into and be bound by the PFA, where required by local charters, ordinances or by-laws, should be mailed to:

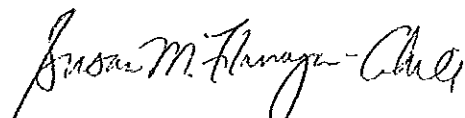
Susan M. Flanagan-Cahill  
Massachusetts School Building Authority  
40 Broad Street, Suite 500  
Boston, MA 02109

**This documentation must be completed and returned to the MSBA within 30 calendar days.** After this documentation has been properly completed and submitted to the MSBA, and the PFA has been executed, the Town can begin submitting requests for reimbursement to the MSBA for project costs beyond the Feasibility Study. **The MSBA will not process reimbursement requests or reimburse for any costs beyond those associated with the Feasibility Study phase of the project until these requirements have been satisfied and the PFA has been fully executed.**

Please note, the MSBA generally makes reimbursement payments through electronic fund transfers and has banking information on file for most communities that was supplied for previous school projects. Please notify the MSBA if the Town's banking information has changed or if the Town would like to use a different account at this time.

Feel free to contact me if you have any questions.

Regards,



Susan M. Flanagan-Cahill  
General Counsel

cc: Senator Richard T. Moore  
Representative Jennifer Callahan  
Representative Paul Kujawski  
Michael Szlosek, Uxbridge Town Manager  
George Zini, Superintendent of Schools  
Ernest Esposito, Chair, Uxbridge School Committee  
Don Sawyer, Uxbridge School Department Business Manager  
John Higgins, Co-Chair, Uxbridge School Building Committee

Dan Deveau, Co-Chair, Uxbridge School Building Committee  
David Krawitz, Joslin, Lesser & Associates, Inc.  
Gene Raymond, Raymond Design Associates, Inc.

PROJECT FUNDING AGREEMENT

This PROJECT FUNDING AGREEMENT, (the "Project Funding Agreement"), dated as of \_\_\_\_\_, 2010 (the "Effective Date") is entered into by and between the Massachusetts School Building Authority, an independent public authority of the Commonwealth of Massachusetts (the "Authority"), and the TOWN OF UXBRIDGE, MASSACHUSETTS, together with its successors and assigns (the "District" or "Owner") (Authority and District or Owner collectively referred to herein as the "Parties").

**RECITALS**

WHEREAS, the provisions of General Laws Chapter 70B, as amended ("Chapter 70B"), Chapters 208 and 210 of the Acts of 2004, and 963 CMR 2.00 *et seq.* authorize the Authority to provide a Total Facilities Grant (as defined in Section 1 below) to Eligible Applicants for approved school building construction, renovation and repair projects; and

WHEREAS, the District has applied for and desires to receive a Total Facilities Grant from the Authority pursuant to the provisions of Chapter 70B, Chapters 208 and 210 of the Acts of 2004, and 963 CMR 2.00 *et seq.* for a Project (as defined in Section 1 below) consisting of the construction of a new, 123,000 square-foot Uxbridge High School at 246-270 Quaker Highway in the Town of Uxbridge, to accommodate an enrollment of 600 students and replace the existing Uxbridge High School at 62 Capron Street; and

WHEREAS, the Authority has determined that the District's Project is eligible for the receipt of a Total Facilities Grant, and the District has agreed to receive a Total Facilities Grant, pursuant to a payment schedule determined by the Authority and subject to all of the terms and conditions of this Project Funding Agreement; and

WHEREAS, the Project is in the best interests of the Commonwealth and the District with respect to its site, type of construction, sufficiency of accommodations, open space preservation, urban development, urban sprawl, and energy efficiency;

WHEREAS, the District has confirmed that the Project is necessary to meet educational standards of the curriculum frameworks established by the board of education pursuant to M.G.L. c. 69, § 1E for anticipated enrollment levels;

WHEREAS, the Project has a value over its useful life commensurate with the lifecycle cost of building, operating, and maintaining the school facility;

WHEREAS, the Project is not at a school that has been the site of an approved school project pursuant to Chapter 70B or Chapter 645 of the Acts of 1948, as amended, within the 10 years prior to the Project Application date, or the Project is unrelated to such previously approved project in the same school;

WHEREAS, the Project is within the capacity of the Authority to finance within revenues projected to be available to the Authority;

WHEREAS, the District has confirmed that the commissioner of education has certified that adequate provisions have been made in the Project for children with disabilities, as defined in M.G.L. c. 71B, § 1;

WHEREAS, the District has procured an Owner's Project Manager, as defined in Section 1 of this Agreement, using a qualifications-based selection process and such Owner's Project Manager has been approved by the Authority;

WHEREAS, the District has procured a Designer for the Project in accordance with the provisions of M.G.L. c. 7, s. 38A ½ through 38O, 963 CMR 2.10(8), 963 CMR 2.12 and any other applicable laws and regulations and said Designer has been approved by the Authority's Designer Selection Panel;

WHEREAS, the Board of the Authority has voted to authorize the Executive Director to enter into a Project Funding Agreement with the District for the Project; and

WHEREAS, the District has taken all necessary votes authorizing the Project and has authorized and appropriated the Total Project Budget, in formats acceptable to the Authority; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Project Funding Agreement, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Authority and the District, intending to be legally bound, hereby agree as follows:

The Authority agrees to provide a Total Facilities Grant to the District, subject to all of the following terms and conditions:

## SECTION 1 DEFINITIONS

Capitalized terms that are not defined in this Section 1 shall have the meanings ascribed to them in Chapter 70B or 963 CMR 2.00 *et seq.* For purposes of this Project Funding Agreement, the following words shall have the following meanings:

"Assisted Facility" means the school facility that is eligible for and will receive either a Total Facilities Grant or partial payment of a Total Facilities Grant pursuant to this Project Funding Agreement.

"Construction Contract Documents" means all agreements, contracts, and other documents, including but not limited to, the Owner-Construction Manager Contract and attachments thereto, Advertisements, Instructions to Bidders, Bidding Documents, Contract Forms, Conditions of the Contracts, Specifications, Drawings, all addenda issued prior to execution of the Contracts, and other documents listed in the Owner-Construction Manager contracts and any amendments or modifications issued after execution of said contracts, executed by and between the District and the Construction Manager or any other parties that set forth the terms, conditions, requirements, and specifications for the design and construction of the Project. For purposes of this Project Funding Agreement, the Construction Contract Documents shall also at all times include a current construction schedule, a current Total Project Budget, and a current cash flow projection.

"Construction Manager" or "Construction Manager at Risk" means a sole proprietorship, partnership, corporation, or other legal entity that provides construction management at risk services as defined in G.L. c. 149A, § 2 and is the person or entity procured as such by the District in accordance with G.L. c. 149A, *et seq.*, and who is primarily responsible for the performance and execution of the construction work on the Project.

"Contractor" is the person or entity that has a direct contract with the Construction Manager to perform a portion of the work on the Project pursuant to G.L. c. 149A § 8, including trade contractors and subcontractors, and is identified as such throughout the Construction Contract Documents and who is primarily responsible for the performance and execution of the construction work on the Project.

"Designer" shall mean the individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of architecture, landscape architecture, or engineering that meets the requirements of M.G.L. c. 7, § 38A 1/2 (b) and has been procured and contracted by the District to perform professional design services.

"Educational Program" means a numerical and verbal description of a specific educational program for a specified number of students over a specified period of time, together with spaces needed to support the program, complete to the degree that a Designer may use it as the basic document from which to create the design of the Assisted Facility. A copy of the Educational Program for the Project is attached hereto as Exhibit "H" and is incorporated by reference herein.

"Effective Date" means the date stated in the first paragraph of this Project Funding Agreement which shall be the date on which this Project Funding Agreement shall take effect.

"Excusable Delay" means a delay of the Project that either (a) is solely because of a natural event, such as flood, storms, or lightning, that is not preventable by any human agency, or (b) is reasonably determined by the Authority to be excusable.

"Final Request and Certificate for Reimbursement" means the certificate, submitted by the District to the Authority upon final completion of the Project, that is (1) signed by the Owner's Project Manager stating that, to the best of the Owner's Project Manager's knowledge and belief, the Project has been completed and constructed in accordance with all Construction Contract Documents; (2) signed by the Designer stating that, to the best of the Designer's knowledge and belief, the Project has been completed and constructed in accordance with the Construction Contract Documents; and all applicable building and safety codes in effect at the time of construction; and (3) signed by a duly authorized representative of the District stating, to the best of his/her knowledge and belief, that all of the terms and conditions of this Project Funding Agreement, all other agreements between the District and the Authority and all applicable regulations and guidelines of the Authority have been satisfied.

"Furnishings and Equipment Schedule" means, where applicable, the complete listing of furniture, fixtures and equipment, as attached hereto as Exhibit "F".

"Monthly" means once each calendar month.

"Notice to Proceed" means the written communication issued by the District to the Construction Manager authorizing him to proceed.

"Owner's Project Manager" shall mean the individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity under contract with, designated by, or assigned by the District and approved by the Authority, to fully and completely manage and coordinate administration of the Project to completion. The Owner's Project Manager must meet the qualifications set forth in M.G.L. c. 149, § 44A ½, 963 CMR 2.00 *et seq.*, and all applicable policies and guidelines of the Authority.

"Project" refers to the construction of a new, 123,000 square-foot Uxbridge High School at 246-270 Quaker Highway in the Town of Uxbridge, to accommodate an enrollment of 600 students and replace the existing Uxbridge High School at 62 Capron Street which is a (1) Capital Construction Project, (2) Major Reconstruction Project, or (3) School Project, each as defined in Chapter 70B, §2.

"Project Cash Flow" means a detailed accounting of the projected amount of funding being received and expended by the District during the course of the Project on a monthly basis, which is attached hereto as Exhibit "D".

"Project Permits" means all permits, approvals, consents and licenses issued or granted by governmental authorities, necessary or appropriate to the construction, completion and occupancy of the Project.

"Project Schedule" means the schedule for the Project, including a detailed estimated timeline as described in 963 CMR 2.10(10), which is attached hereto as Exhibit "C".

"Project Scope" means the scope of the Proposed Project that has been mutually agreed to by the Authority and the District and as is attached hereto as Exhibit "B".

"Project Scope and Budget Agreement" means the agreement described in 963 CMR 2.00, *et seq.* that has been executed by the Parties and is incorporated by reference herein.

"Project Scope and Budget Conference" means the conference described in 963 CMR 2.10(9).

"Project Site" means the specific location of the Project as more fully described in Exhibit "E" attached hereto.

"Schematic Drawings and Plans" means, where applicable to the Project, preliminary floor plans identifying programmatic and other spaces, elevations, site plans, plot plans, topographical plans, plans showing the location of the Project in relationship to other schools in the district, engineering studies, and any other plans deemed necessary by the Authority.

"Total Facilities Grant" means the Authority's total financial contribution to an Approved Project, which is calculated by the Authority pursuant to the provisions of Chapter 70B, Chapter 208 of the Acts of 2004, and 963 CMR 2.00 *et seq.*, and paid to the District pursuant to a Progress Payment schedule established by the Authority and subject to the terms and conditions of this Project Funding Agreement.

"Total Project Budget" means a complete and full enumeration of all costs, including both hard costs and soft costs, so-called, that the District reasonably estimates, to the best of its knowledge and belief, has been or will be incurred in connection with the planning, design, construction, development, the mobilization of the operation, and the completion of the Project, approved by the Authority, which may be updated from time to time by mutual agreement of the Parties and which is attached hereto as Exhibit "A".

"Vendor" means any person, entity, business, or service provider under contract or agreement with the District to provide goods or services to the District in connection with the Project.

## SECTION 2 THE PROJECT AND THE TOTAL FACILITIES GRANT

2.1 As of the Effective Date and subject to the satisfaction of or compliance with, as reasonably determined by the Authority, (a) all of the terms and conditions of this Project Funding Agreement, (b) the applicable provisions of Chapter 70B, Chapters 208 and 210 of the Acts of 2004, and 963 CMR 2.00 *et seq.*, and (c) any other rule, regulation, policy, guideline, approval or directive of the Authority, the Authority hereby approves the following Total Facilities Grant for the Project: an amount that shall under no circumstances exceed the lesser of (i) fifty-seven and fifty-three one hundredths per cent (57.53%) of the final approved, total eligible Project costs, as determined by the Authority, ("Reimbursement Rate") or (ii) \$22,362,327. The Parties hereby acknowledge and agree that this Total Facilities Grant is the maximum amount of funding that the District may receive from the Authority for the Project, and that the final amount of the Total Facilities Grant may equal an amount less than \$22,362,327, as determined by an audit conducted by the Authority. Any costs and expenditures that are determined by the Authority to be either in excess of the above-stated Total Facilities Grant or ineligible for payment by the Authority shall be the sole responsibility of the District. The Reimbursement Rate set forth above, and as more fully described in the reimbursement rate summary, attached hereto as Exhibit "I", includes a total of four (4) incentive reimbursement points which includes two (2) points for green / energy efficiency, one (1) point for maintenance, and one (1) point for CM-at-Risk construction delivery method pursuant to G.L. c. 70B, § 10(a)(C) that have been provisionally assigned subject to a final determination by the Authority as to the District's eligibility to receive such incentive reimbursement points. The Reimbursement Rate set forth above and the Total Facilities Grant shall be subject to a decrease, as provided in Section 2.4 of this Agreement, if the Authority determines, in its sole discretion, that the District is ineligible to receive any portion of the incentive reimbursement points that have been provisionally assigned for green / energy efficiency, maintenance, and/or CM-at-Risk construction delivery method, or such other incentive reimbursement points that may be assigned by the Authority.

2.2 In the event that the Authority reasonably determines that the Project is not in accordance or compliance with the Project Scope, the Project Schedule, the Total Project Budget, Furnishings and Equipment Schedule, the Construction Contract Documents, the Schematic Drawings and Plans, all of the covenants in Section 3 of this Project Funding Agreement, all other terms and conditions of this Project Funding Agreement, the provisions of Chapter 70B, Chapters 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq.*, and any other applicable rule, regulation, policy, guideline, approval or directive of the Authority, or is delayed (other than an Excusable Delay), then the Authority may temporarily and/or permanently withhold payments to the District for the Project, provided that the Authority shall not unreasonably withhold any such payments. In the event that the Authority either temporarily or permanently withholds payment for the Project, the District



hereby agrees and acknowledges that the Authority shall have no liability for any such withholding of payment or any loss that may occur as a result of any such withholding of payment.

2.3 The Parties hereby acknowledge and agree that, in the event that the Guaranteed Maximum Price for construction of the Project negotiated between the District and the CM is lower than the corresponding amount set forth in the Total Project Budget, the Authority shall reduce the Total Facilities Grant amount set forth in Section 2.1 of this Agreement accordingly. The Parties hereby further acknowledge and agree that, in the event that the Guaranteed Maximum Price for construction of the Project negotiated between the District and the CM exceeds the corresponding amount set forth in the Total Project Budget, the Authority shall not make any adjustments to its Total Facilities Grant on account of the Guaranteed Maximum Price, and the increased costs shall be the sole responsibility of the District.

2.4 The Reimbursement Rate for the Project is calculated as set forth in the reimbursement rate summary, attached hereto as Exhibit "I", and shall be subject to the provisions of M.G.L. c. 70B, 963 CMR 2.00 *et seq.*, and the policies and guidelines of the Authority. Any incentive reimbursement points that may be included in the calculation of the Reimbursement Rate, as it may be amended from time to time by the written agreement of the Authority, must be earned, as determined by the Authority in its sole discretion, and shall be subject to audit by the Authority. If the Authority determines, in its sole discretion, that the District is ineligible to receive any portion of the incentive reimbursement points that may be included in the calculation of the Reimbursement Rate, as it may be amended from time to time by the written agreement of the Authority, the Authority may, in its sole discretion, decrease the Reimbursement Rate and the Total Facilities Grant accordingly. Any such decrease in the Reimbursement Rate, and corresponding decrease in the Total Facilities Grant, shall be applied retroactively to all payments made to the District by the Authority under the terms of this Agreement and to all requests for reimbursement of eligible Project costs made by the District to the Authority under the terms of this Agreement. If the Authority determines that, as a result of a decrease in the Reimbursement Rate, or a corresponding decrease in the Total Facilities Grant, it has made overpayments to the District, the Authority may recover the amount of such overpayments from the District by whatever remedies are available to it under this Agreement or under applicable law, including, but not limited to, set off against any future payments owed to the District for reimbursement of eligible Project costs, as determined by the Authority. Upon written demand by the Authority, the District shall promptly return to the Authority the amount of any such overpayments unless otherwise agreed to in writing by the Authority.

2.5 The Basis of Total Facilities Grant set forth in Exhibit A to this Agreement includes all budgeted costs for the Feasibility Study authorized by the Authority for the Project ("Feasibility Study Budget") and supersedes and replaces any other Feasibility Study budget that may have been authorized by the Authority and set forth in any Feasibility Study Agreement between the Authority and the District. The Feasibility Study Budget included in this Agreement does not take into account any payments that may already have been made to the District by the Authority for the costs of any Feasibility Study under any Feasibility Study Agreement between the Authority and the District. The Total Facilities Grant set forth in Section 2.1 of this Agreement is calculated by applying the Reimbursement Rate set forth in Exhibit I of this Agreement to the Basis of Total Facilities Grant, which includes the Feasibility Study Budget for the Project. Notwithstanding the provisions of any Feasibility Study

Agreement between the Authority and the District, the approved, eligible costs of a Feasibility Study authorized by the Authority for the Project will be reimbursed, retroactively and prospectively, based upon the Reimbursement Rate set forth in Section 2.1 and Exhibit I to this Agreement. The Authority shall deduct from the Total Facilities Grant set forth in this Agreement the amount of any payments already made to the District by the Authority for the costs of a Feasibility Study pursuant to the provisions of any Feasibility Study Agreement. Nothing stated in this section of this Agreement shall impair the right of the Authority to make adjustments to the Reimbursement Rate and the Total Facilities Grant or to audit and determine ineligible costs as provided elsewhere in this Agreement and in the Authority's statutes, regulations, policies, guidelines and standards.

### SECTION 3 COVENANTS

The District covenants and agrees that as long as this Project Funding Agreement is in effect, the District shall and shall cause its employees, agents, and representatives to perform and comply with the following covenants:

3.1 The District acknowledges and agrees that the Authority's grant program, established pursuant to Chapter 70B, Chapters 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq.*, and any other applicable rule, regulation, policy or guideline of the Authority, is a non-entitlement, discretionary program based on need and the District shall not be entitled to any funds from the Authority except as provided in this Project Funding Agreement.

3.2 The District shall and shall cause its employees to comply with all provisions of this Project Funding Agreement; all other agreements related to the Project that have been referenced herein or otherwise approved in writing by the Authority; and all provisions of law that are applicable to the Project and this Project Funding Agreement and the District shall take all action necessary to fulfill its obligations under this Project Funding Agreement and under all other agreements related to the Project that have been referenced herein or otherwise approved by the Authority.

3.3 The District hereby agrees that it shall submit all Project information, including but not limited to, Total Project Budget information, plans, specifications, Project Schedules, and Project progress reports, and any additional information that may be requested by the Authority, to the Authority in a timely manner in a form satisfactory to the Authority.

3.4 The District hereby agrees that it shall use its best efforts and resources to diligently satisfy and complete each of the terms and conditions of this Project Funding Agreement as promptly as possible.

3.5 The District hereby acknowledges and agrees that all costs related to the Project, including the costs identified in the Total Project Budget and costs of the items appearing in the Project Scope, shall be subject to review and audit by the Authority, and the Authority shall determine, in its sole discretion, whether such costs are eligible for reimbursement pursuant to the Authority's regulations, policies and guidelines. There may be Project costs, in addition to the items specifically identified as ineligible in the Project Scope and Budget Agreement, the Total Project Budget, the Project Scope and/or the Furnishings and Equipment Schedule that are

ineligible for reimbursement according to such regulations, policies and guidelines. The District hereby further acknowledges and agrees that certain costs incurred by the District in connection with the Project shall not be eligible for reimbursement by the Authority, pursuant to 963 CMR 2.10 & 2.16(5) and any other rules, regulations, policies and guidelines of the Authority, including, but not limited to, the following:

(a) Financing and Interest Costs. The District hereby acknowledges and agrees that any financing costs incurred by the District, including, but not limited to, interest, principal, costs of issuance and any other cost related to short or long term bonds, notes or other certificates of indebtedness, refunding notes or bonds, temporary loans, or any other form of indebtedness issued by the District in relation to an Approved Project and all costs associated with credit rating services, legal services related to the issuance of any indebtedness and financial consulting services shall not be eligible for reimbursement by the Authority.

(b) Legal Fees and Costs. The District hereby acknowledges and agrees that the cost of legal services, including, but not limited to, bond counsel fees, attorney's fees, arbitration or mediation fees, filing fees, and any other legal fees, costs or expenses incurred by the District in connection with the Project shall not be eligible for reimbursement by the Authority.

(c) All other costs identified in 963 CMR 2.16(5).

All project costs and Project Scope items are subject to review and audit by the Authority, and whether a project cost is eligible for reimbursement shall be determined by the Authority, in its sole discretion, during the Authority's audit of the Project.

3.6 The District hereby acknowledges and agrees that the Authority's Total Facilities Grant is subject to the District's adherence to and maintenance of the Project Scope, Project Schedule, Total Project Budget, and, where applicable, the Furnishings and Equipment Schedule, and the District shall not make any changes, additions, or reductions to the Project Scope, Project Schedule, Total Project Budget, or the Furnishings and Equipment Schedule without the prior written approval of the Authority. Any increases to the Total Project Budget as set forth in Exhibit A as of the Effective Date, shall not result in any changes to the amount of the Total Facilities Grant set forth in Section 2.1 of this Project Funding Agreement.

3.7 The District hereby acknowledges and agrees that the Authority shall not provide any funding for the Project in excess of the amount of the Total Facilities Grant set forth in Section 2 of this Agreement.

3.8 The District hereby acknowledges and agrees that the Authority shall not be required or obligated to make any payment of the Total Facilities Grant for eligible Project costs while an Event of Default, as defined in Section 22, shall have occurred.

3.9 The District hereby acknowledges and agrees that it shall provide the Authority with an updated Total Project Budget on a Monthly basis that shall include, but not necessarily be limited to, the following: (a) the projected total Project costs, (b) actual expenditures to date, (c) estimated remaining expenditures for the Project, (d) a detailed explanation of all variances from Total Project

Budgets previously submitted to the Authority, (e) all sources and amounts of funding, and (f) an updated Project Schedule.

3.10 The District hereby agrees that, in order to demonstrate that adequate funding for the Project is available, it shall provide the Authority with financial statements, details relating to the financial condition of the District, an updated Project Cash Flow projection on a Monthly basis, in a suitable format acceptable to the Authority, to demonstrate that adequate funding for the Project is available.

3.11 The District shall use a Contract for Owner's Project Management Services, a Contract for Design Services, and a Contract for Construction Management Services that are acceptable to the Authority.

3.12 During the course of the Project, the District shall investigate and review, and shall require the Owner's Project Manager, if required for the Project, and the Designer to investigate and review the progress and quality and construction of the Project. The District shall undertake all reasonable efforts designed to ensure that the Construction Manager, Contractors, and all Vendors expeditiously and diligently construct, equip and complete the Project in a good and workmanlike manner.

3.13 The District hereby acknowledges and agrees that it shall keep all records related to the Project including, but not limited to, those records described in 963 CMR 2.16(4), for as long as the Assisted Facility is in service as a public school or remains under the ownership or control of the District. The District shall and shall cause its employees, agents, representatives, and its Owner's Project Manager, Designer, Construction Manager, Contractors and Vendors to keep adequate records of the Project and shall make all Project records and the Project site available to the Authority, representatives of the Authority, and the Authority's Commissioning Consultant.

3.14 The District shall neither change nor permit a change of the Designer or any of its key personnel or sub-consultants without the prior written approval of the Authority in accordance with the provisions of 963 CMR 2.12. If there is any change or proposed change in the Designer or any of its key personnel or subconsultants, the District shall give a written notice to the Authority that shall include a statement of reasons for the change or proposed change and an explanation of the impact of the change or proposed change on the Project. The District shall not contract with a new Designer without first obtaining the Authority's written approval of the new Designer. The District shall comply with all applicable provisions of law in the procurement of a new Designer.

3.15 The District shall not change the Construction Manager without first giving prior written notice to the Authority of the District's intent to make such a change. As part of its written notice to the Authority, the District shall provide a statement of reasons for the proposed change and an explanation of the impact of the change on the Project. The District shall comply with all applicable provisions of law in selecting or otherwise allowing a new Construction Manager to take over the Project and the District shall provide written notice to the Authority identifying the new Construction Manager and describing the process by which the new Construction Manager was selected for or otherwise took over the Project.

3.16 By no later than ten (10) days after the Effective Date, the District shall certify to the Authority in writing that it has delivered this Project Funding Agreement to any Designer, Owner's Project Manager, and Construction Manager hired, or otherwise assigned to the Project, by the

District and shall provide the Authority with copies of the transmittal letters and any documents evidencing such delivery. In the event that the Owner's Project Manager, Designer, or Construction Manager is hired or assigned by the District after the Effective Date, the District shall deliver this Project Funding Agreement to said Owner's Project Manager, Designer, or Construction Manager within ten (10) days after the effective date of hire or assignment.

3.17 With respect to all actions taken in relation to the Project, the District and all of its officers, agents and employees shall observe and obey, and shall include language in all of its contracts with the Owner's Project Manager, Designer, Contractor or Construction Manager, and all Vendors requiring them to observe and obey all federal, state and local laws, regulations, ordinances, codes, statutes, orders and directives and any other applicable provisions of law.

3.18 The District shall require the Construction Manager to indemnify the Authority and comply with the indemnification requirements set forth in Section 16 of this Project Funding Agreement. Within sixty (60) days after the Effective Date, the District shall provide the Authority with written documentation evidencing such indemnification of the Authority, unless otherwise agreed in writing by the Authority. In the event that the Construction Manager is hired or assigned by the District after the Effective Date, the District shall provide such written documentation evidencing such indemnification within ten (10) days after the effective date of hire or assignment. In the event that the District does not obtain indemnification of the Authority from the Construction Manager within these deadlines, the Authority may terminate this Project Funding Agreement.

3.19 The District shall furnish to the Authority such further affidavits, certificates, opinions of counsel, surveys and other documents and instruments as may be required by the Authority to ensure that the terms of this Project Funding Agreement are being observed and performed in all respects, and that the Project is progressing satisfactorily as planned in strict compliance with all applicable federal, state and local laws, regulations, ordinances, codes, statutes, orders and directives and any other applicable provisions of law.

3.20 During the course of the Project, the District shall submit to the Authority a list of all proposed changes (in the form of a Potential Change Order log, so-called) and all actual changes, amendments, addenda to the Construction Contract Documents, and to the Owner-Designer contract. The District shall submit all executed change orders, extra work orders, or modifications to the Project to the Authority for the Authority to consider whether the costs associated with such change orders, extra work orders, or modifications are eligible for reimbursement by the Authority pursuant to this Project Funding Agreement.

3.21 The District shall undertake all reasonable efforts to ensure that the Construction Manager and Contractors obtain all Project Permits and shall certify to the Authority in writing that the Construction Manager and Contractors have obtained such Project Permits within fifteen (15) days after the Project Permits have been obtained. With respect to any of the Project Permits that are required by law to be recorded or filed with any government office, the same shall be duly recorded and filed in accordance with all applicable requirements. The Authority shall have the right to request copies of Project Permits at any time, and the District shall make available any Project Permits requested by the Authority.

3.22 Prior to receiving final payment from the Authority, the District shall have obtained all required inspections and approvals of the Project that are required by law or otherwise required by the Authority.

3.23 The District hereby acknowledges and agrees that the Authority shall engage an independent party, not affiliated or associated with the Owner's Project Manager, Designer, Construction Manager, or Contractors to provide commissioning services with the intent of achieving, verifying and documenting the performance of building systems in accordance with the design intent and the functional and operational needs of the District (hereinafter "Commissioning Consultant"). The District agrees that it shall fully cooperate with and accommodate the commissioning efforts undertaken by the Authority and the Commissioning Consultant and shall require the Owner's Project Manager, Designer and the Construction Manager to provide the same level of cooperation and accommodation. The District further agrees to allow adequate time within its Project Schedule to allow the Authority's Commissioning Consultant to perform its work, and the Authority shall not be responsible for any delays that may result from the Commissioning Consultant's work.

3.24 Within ninety (90) days after the District approves final payment to the Construction Manager for the Project, or provides such other appropriate documentation, as reasonably determined by the Authority, indicating that the construction of the Project is one hundred percent (100%) complete, the District shall submit to the Authority a Final Request and Certificate for Reimbursement and an accounting of the total final Project costs in a form prescribed by or otherwise acceptable to the Authority.

3.25 The District hereby agrees that, upon completion of the Project, the Assisted Facility shall have an anticipated useful life of at least 50 years as a public school or that the Project will materially extend the useful life of the School and preserve an asset that otherwise is capable of supporting the required Educational Program.

3.26 The District hereby acknowledges and agrees that neither the District nor any of its employees, officials or agents shall submit any false or intentionally misleading information or documentation to the Authority in connection with this Project Funding Agreement, and further acknowledges and agrees that the submission of any such information or documentation shall be a material breach of this Project Funding Agreement and shall be cause for the Authority to revoke any and all payments otherwise due to the District, to recover any previous payments made to the District, and/or make the District ineligible for any further funding from the Authority. The District hereby further agrees that it shall have a continuing obligation to update and notify the Authority in writing when it knows or has any reason to know that any information or documentation submitted to the Authority contains false, misleading or incorrect information.

3.27 The District hereby acknowledges and agrees that the Authority shall bear no responsibility, cost or liability for the results of any study, environmental assessment, geotechnical site testing, including but not limited to, site remediation, clean-up, or other site remediation services.

3.28 The District hereby acknowledges and agrees that the requirements set forth in the Agreement are intended solely for the benefit and protection of the Authority as the grantor of Project funding. Nothing herein shall be construed as advice to, nor create a duty to provide advice to, the District regarding legal or contractual requirements or best practices for the Project. It is solely the obligation of the District to determine and comply with all legal requirements applicable to the Project and to determine and enforce any necessary contractual requirements and obligations of its Designer, Owner's Project Manager, and Contractor or Construction Manager.

3.29 The District shall not issue the Notice to Proceed with construction services on the Project to the Construction Manager prior to the Effective Date unless otherwise agreed to in writing by the Authority.

3.30 The District shall use its best efforts to monitor the performance of the Owner's Project Manager, Designer, Contractor or Construction Manager, and Vendors and shall use its best efforts to enforce the provisions of the District's contracts with each of them.

3.31 The District shall not combine, consolidate, or conjoin in any way the procurement, pre-qualification or selection of an Owner's Project Manager, Designer, Contractor, Construction Manager at Risk, Subcontractor, consultant or vendor for the Project with the procurement, pre-qualification or selection of an Owner's Project Manager, Designer, Contractor, Construction Manager at Risk, Subcontractor, consultant or vendor for any other construction, repair or renovation project without the express prior written approval of a duly authorized representative of the Authority. Any costs incurred by the District that relate to, or arise out of, the use of a combined, consolidated or conjoined procurement, pre-qualification or selection process as proscribed above, including, but not limited to, the preparation of bid documents, requests for services, and requests for qualifications, without the express prior written approval of a duly authorized representative of the Authority shall not be eligible for reimbursement.

3.32 The District hereby acknowledges and agrees that Section 1601 of the American Recovery and Reinvestment Act of 2009 ("ARRA") provides that Davis Bacon labor standards apply to all projects financed with the proceeds of certain tax-favored bonds, including qualified school construction bonds. Accordingly, the District shall, and shall require all Construction Managers, Contractors and subcontractors to, comply with the requirements set forth in 29 CFR Parts 1, 3 and 5, including without limitation, the requirement that all laborers and mechanics employed by Construction Managers, Contractors and/or Subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code. In order to comply with the requirements set forth in 29 CFR 5.5, the District shall include the language set forth in Exhibit "J" hereto in each bid solicitation and construction contract financed by the Total Facilities Grant provided pursuant to this Project Funding Agreement.

#### SECTION 4 REPRESENTATIONS AND WARRANTIES

The District and the undersigned, for themselves and for the District, hereby warrant and represent that each of the following statements is true, correct and complete:

4.1 The District is validly organized and existing under and by virtue of the laws of the Commonwealth, has full power and authority to own its properties and carry on its business as now

conducted, and has full power and authority to execute, deliver and perform its obligations under this Project Funding Agreement.

4.2 The District is duly authorized and has taken all necessary steps to authorize the execution and delivery of this Project Funding Agreement and to perform and consummate all transactions contemplated by this Project Funding Agreement. The undersigned have been duly authorized in accordance with law to execute and deliver this Project Funding Agreement on behalf of the District. This Project Funding Agreement and its execution by the undersigned does not and will not, to any material extent, conflict with or result in the violation of any charter, by-law, ordinance, order, rule, regulation, statute or any other applicable provision of law or any order, rule, regulation or judgment of any court or other agency of government.

4.3 The District has all requisite legal power and authority to own, or to control in accordance with the provisions of 963 CMR 2.05(1), and to operate the Assisted Facility and Project Site for the useful life of the Assisted Facility.

4.4 The District holds fee simple title, or, in the alternative, a lease in accordance with the provisions of 963 CMR 2.05(1), to the Assisted Facility and the Project Site and any easements and rights-of-way, necessary to ensure the undisturbed use and possession of the Assisted Facility and Project Site.

4.5 No information furnished by or on behalf of the District to the Authority in this Project Funding Agreement, including all Exhibits attached hereto, the Project Scope and Budget Agreement, the Feasibility Study Agreement, the Initial Compliance Certification, or any other document, certificate or written statement furnished to the Authority in connection with the Statement of Interest or Project contains any untrue statement of a material fact or omits any material fact necessary to make the statements contained in this Agreement or in the aforementioned documents not misleading in light of the circumstances in which the same were made.

4.6 The District has duly obtained all necessary votes, resolutions, appropriations, and local approvals for the Project, in accordance with formats prescribed by or otherwise acceptable to the Authority, and has taken all actions necessary or required by law to enable it to enter into this Project Funding Agreement and to fund and perform its obligations hereunder in accordance with the Authority's policies and standards. This Project Funding Agreement constitutes a valid and binding obligation of the District, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other laws heretofore or hereafter enacted and general equity principles.

4.7 The District has read and fully understands, and shall remain in compliance with Chapter 70B; Chapter 208 and 210 of the Acts of 2004; 963 CMR 2.00 *et seq.*, and all other applicable rules, regulations, policies, guidelines approvals, directives, and procedures of the Authority.

4.9 The District has read and fully understands the provisions of 963 CMR 2.04 and warrants and represents that the Project has been designed and constructed in accordance with the requirements and standards set forth in 963 CMR 2.04.

4.10 The District has read and fully understands the provisions of 963 CMR 2.16 and understands that certain costs and expenses incurred by the District in connection with the Project



shall not be eligible for reimbursement by the Authority, including, but not limited to, those items listed in 963 CMR 2.16.

4.11 The District has read and fully understands the provisions of 963 CMR 2.16(4) and has a record keeping system in place to file, track, and retain all records related to the Project for as long as the Assisted Facility is in service as a public school or remains under the ownership of the District.

4.12 The Project has successfully undergone review, or shall have successfully undergone review prior to the solicitation of construction bids, by any departments or agencies of the Commonwealth required by law to review such projects, including, but not limited to, the Massachusetts Historical Commission, the Massachusetts Commission Against Discrimination, the Secretary of Environmental Affairs, and the Architectural Access Board in accordance with all applicable laws and regulations and the District has provided, or shall have provided prior to the solicitation of construction bids, any written documentation evidencing such reviews to the Authority.

4.13 No litigation before or by any court, public board or body is pending against either the District or the Authority seeking to restrain or enjoin the execution and delivery of this Project Funding Agreement or the construction or operation of the Project, or contesting or affecting the validity of this Project Funding Agreement or the power of the District to pay its share of the Project.

4.14 The District has read and fully understands the provisions of the Massachusetts Conflict of Interest law, M.G.L. c. 268A, and has implemented policies and procedures to ensure that all District employees, agents, consultants and representatives and the Owner's Project Manager, Designer, Construction Manager, Contractor and Vendors working on or for the Project are in compliance with M.G.L. c. 268A to the extent that it is applicable.

4.15 The District meets all of the applicable requirements of M.G.L. c. 7, § 38A ½; c. 30 (sections 39F, 39J, 39K, 39N, 39O, 39P and 39R); c. 70B; c. 149; c. 149A; chapter 193 of the Acts of 2004; 963 CMR 2.00 *et seq.*; and all other applicable provisions of federal, state and local law, and has implemented policies and procedures to ensure that all District employees, agents, consultants and representatives and the Owner's Project Manager, Designer, Construction Manager, Contractor and Vendors working on or for the Project are in compliance with the applicable requirements of M.G.L. c. 7, § 38A ½; c. 30 (sections 39F, 39J, 39K, 39N, 39O, 39P and 39R); c. 70B; c. 149; c. 149A; chapter 193 of the Acts of 2004; 963 CMR 2.00 *et seq.*; and all other applicable provisions of federal, state and local law.

4.16 The District has implemented policies and procedures to prevent and eliminate fraud, waste and abuse of public funds in connection with the Project.

4.17 The District has submitted all audit materials requested by the Authority in connection with any project for which the District has received or anticipates receiving funding from the Authority.

4.18 The District has submitted to the Authority a completed electronic payments form, as prescribed by the Authority, in accordance with the instructions stated on the form.

4.19 In each fiscal year since fiscal year 1999, the District has spent at least 50% of the sum of the District's calculated foundation budget amounts for the purposes of foundation utility and

ordinary maintenance expenses and extraordinary maintenance allotment as defined in M.G.L. c. 70 for those purposes.

## SECTION 5 DISBURSEMENT OF TOTAL FACILITIES GRANT

Subject to the terms and conditions of this Project Funding Agreement, the Authority shall disburse Total Facilities Grant funds to the District in accordance with and subject to the following:

5.1 (a.) Using the Authority's Pro-Pay system, the District shall submit requests for reimbursement to the Authority on a Monthly basis in a format and manner prescribed by the Authority. Each Monthly request for reimbursement shall be approved locally by a duly authorized representative of the District, shall be in a form prescribed by or otherwise acceptable to the Authority, and shall include, in reasonable detail: (1) the amount of reimbursement requested, (2) the nature of the materials, property, or services received, (3) the total value of the work performed and materials furnished by each of the Designer, Construction Manager, Contractor, Owner's Project Manager, and each Vendor to date, (4) the value of the work completed during the reimbursement period, and (5) the percentage of completion to date for each line item of work.

(b.) Each request for reimbursement submitted by the District shall be accompanied by (1) the invoices for each of the amounts requisitioned, (2) proof of payment by the District, and (3) any other supporting documentation and information substantiating the District's request for reimbursement, as the Authority may request, in a form satisfactory to the Authority.

(c.) Each request for reimbursement shall include a written certification signed by a duly authorized representative of the District stating that: (1) such request for reimbursement is solely for costs incurred by the District in connection with the Project, (2) the obligations itemized in the request for reimbursement have not been the basis for a prior request for reimbursement submitted by the District that has been paid or rejected by the Authority, unless otherwise directed by the Authority, (3) the request for reimbursement is for work actually and properly performed or for materials or property properly identified in the request for reimbursement as not incorporated in the work but delivered and suitably stored at the Project Site, (4) the request for reimbursement properly identifies materials or property approved for payment by the District as stored off the Project Site, with all costs of storage, insurance, perpetual inventory, monthly inspection and any maintenance requirement borne by the Construction Manager, and that the District has received the necessary proof of insurance and titles to the materials or property prior to payment to the Construction Manager, (5) the District has not received and is not expecting to receive any rebates, monetary settlements, grants, monetary donations, surety bond payments, insurance proceeds, or any other funding from a third party, other than the Authority, in connection with the Project that is the subject of the request for reimbursement, (6) the request for reimbursement is for costs that already have been duly paid by the District, and (7) the request for reimbursement is within the Total Project Budget approved by the Authority.

(d.) After receipt from the District of a timely and properly submitted request for reimbursement, the Authority shall make a reasonable effort to reimburse the District for the Authority's share of eligible Project costs, subject to the terms and conditions of this Project Funding Agreement within 15 days of receiving such request for reimbursement. The District hereby acknowledges and agrees that the amount of eligible Project costs reimbursed by the

Authority may be subject to change depending on the results of an audit conducted by the Authority pursuant to Sections 5 and 6 of this Project Funding Agreement.

5.2 The Authority may review and perform a preliminary audit on each request for reimbursement submitted pursuant to this Section 5 to ensure that only eligible, approved costs of the Project are reimbursed by the Authority. In the event that the Authority determines that an item contained in a request for reimbursement submitted by the District is not eligible for reimbursement by the Authority, the Authority shall adjust a pending or a subsequent reimbursement to the District to account for the ineligible costs. The District hereby acknowledges and agrees that each audit conducted pursuant to this Section 5 is preliminary, and the Authority may further adjust and alter the results of a preliminary audit after conducting subsequent audits or the final project cost audit of the Project pursuant to Section 6 of this Project Funding Agreement.

5.3 Notwithstanding any other provisions of this Project Funding Agreement to the contrary, in no event shall disbursements of the Total Facilities Grant by the Authority exceed, in the aggregate, ninety-five percent (95%) of the Total Facilities Grant described in Section 2 of this Project Funding Agreement, unless the District has filed a Final Request and Certificate for Reimbursement and the Authority has completed a final project cost audit of the Project pursuant to Section 6 of this Project Funding Agreement.

## SECTION 6 FINAL PROJECT COST AUDIT

6.1 Upon the filing of a Final Request and Certificate for Reimbursement with the Authority or at a time determined by the Authority, the Authority shall conduct a final, close-out project cost audit of the Project, including a review of all requests for reimbursement and other documentation submitted to the Authority during the course of the Project, any other documents or materials that the Authority may request an inspection of the Project, to determine the final Total Facilities Grant. The District hereby agrees and acknowledges that the Construction Manager's, Owner's Project Manager's and Designer's records shall be subject to audit by the Authority and such records shall include, but not be limited to, to the extent applicable, accounting records, written policies and procedures, Construction Manager files (including proposals of successful and unsuccessful bidders, bid tabulations, etc.), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), backcharge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, and any other records which may have a bearing on matters of interest to the Authority in connection with the Construction Manager's work for the District. All of the foregoing shall be open to inspection and subject to audit and/or reproduction by the Authority and/or its agent and/or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Contractor compliance with all requirements of the Construction Contract Documents, and (b) compliance with provisions for pricing change orders, invoices or claims submitted by the Construction Manager or any of his payees.

6.2 Other specific records subject to audit by the Authority shall include all information, materials and data of every kind and character such as documents, subscriptions, recordings, computerized information, agreements, purchase orders, leases, contracts, commitments, arrangements, correspondence, electronic mail, invoices, notes, daily diaries, photographs, videos, meeting minutes, field reports, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information that may in the Authority's

judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any District documents, Designer documents, Owner's Project Manager documents, Vendor documents or Construction Contract Documents. Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with the Project. In those situations where said records have been generated from computerized data (whether mainframe, mini-computer, PC based or other computer systems), the District agrees to provide the Authority with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange formats.

6.3 Upon satisfactory completion of the final project cost audit, as reasonably determined by the Authority, the Authority shall send an audit report and acceptance form and release to the District and, subject to the execution of the acceptance form and release by the District, make a final payment of the Total Facilities Grant to the District, less all adjustments for ineligible Project costs and any other adjustments that the Authority reasonably determines as necessary.

6.4 Notwithstanding any provisions in this Project Funding Agreement to the contrary, the ninetieth (90<sup>th</sup>) day after the District approves final payment to the Construction Manager for the Project or the ninetieth (90<sup>th</sup>) day after the District provides sufficient documentation, as reasonably determined by the Authority, indicating that the construction of the Project is approximately one-hundred percent (100%) complete or such other time, as the Authority may determine in its sole discretion, shall be the final cut-off date for incurring Project costs that may be eligible for reimbursement by the Authority.

## SECTION 7 OWNER'S PROJECT MANAGER

7.1 The District shall neither change nor permit a change of the Owner's Project Manager or any of its key personnel or subconsultants without the prior written approval of the Authority. If there is any change or proposed change in the Owner's Project Manager or any of its key personnel or subconsultants, the District shall give a written notice to the Authority that shall include a statement of reasons for the change or proposed change and an explanation of the impact of the change or proposed change on the Project. The District shall not contract with or otherwise assign a new Owner's Project Manager without first obtaining the Authority's written approval of the new Owner's Project Manager. The District shall comply with all applicable provisions of law in the procurement or assignment of a new Owner's Project Manager.

7.2 The District shall make all reasonable efforts to ensure that the Owner's Project Manager complies with all provisions of any contract between the District and the Owner's Project Manager and shall use its best efforts to enforce its rights thereunder. If the Owner's Project Manager is an existing employee of the District, the District shall exercise such supervision, control and direction over its employee-Owner's Project Manager as is necessary to enforce and perform its obligations under any agreement with the Authority, any certification filed with the Authority, or any terms and conditions imposed by the Authority. The District shall also ensure that any consultant who is directly hired by the District to perform any portion of the project management services for the Project shall comply with the provisions of any contract between the District and said consultant.

7.3 If the Authority determines (1) that the Owner's Project Manager is not performing its obligations in accordance with the provisions of the Owner-Owner's Project Manager contract, Chapter 70B, Chapters 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq* and any policies, approvals, directives and guidelines of the Authority, or (2) that the District, knowing or having reason to know that the Owner's Project Manager is not performing its obligations in accordance with the provisions of the Owner-Owner's Project Manager contract, Chapter 70B, Chapters 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq.*, and any policies, approvals, directives and guidelines of the Authority, has failed to use its best efforts to enforce its rights under the Owner-Owner's Project Manager Contract, or (3) if the District fails to perform its obligations under any provisions of this Project Funding Agreement that relate to services of the Owner's Project Manager, the Authority reserves the right to withhold payments to the District, to recoup payments already made to the District, and/or to set off against payments due to the District, any otherwise eligible costs, as determined by the Authority, that relate to reimbursement to the District for Owner's Project Manager services

7.4 The District hereby agrees that the Authority shall have free access to, and open communication with, any Owner's Project Manager hired by and/or assigned to the Project by the District and that the Authority shall have full and complete access to all information and documentation relating to the Project to the same extent that the District has such access. The District agrees that it shall require any such Owner's Project Manager to fully cooperate with the Authority in all matters related to the Project; to promptly communicate, transmit, and/or make available for inspection and copying any and all information and documentation requested by the Authority; to fully, accurately and promptly complete all forms and writings requested by the Authority; and to give complete, accurate, and prompt responses to any and all questions, inquiries and requests for information posed by the Authority. The District agrees that it shall not in any way, directly or indirectly, limit, obstruct, censor, hinder or otherwise interfere with the free flow of communication and information between the Owner's Project Manager and the Authority in all matters related to the Project and as provided herein; that it shall not suffer the same to occur by the act or omission of any other person or entity; and that it shall not retaliate against the Owner's Project Manager for communicating information to the Authority as provided herein. The District agrees to execute, deliver and/or communicate to the Owner's Project Manager any and all authorizations, approvals, waivers, agreements, directives, and actions that are necessary to fulfill its obligations under this paragraph. The District further agrees that the Authority shall bear no liability whatsoever arising out of the Authority's knowledge or receipt of information communicated to the Authority by the Owner's Project Manager and that the District shall remain responsible for the management and completion of the Project.

## SECTION 8 DUTY TO BUILD, MAINTAIN AND OPERATE

8.1 The District hereby acknowledges and agrees that, in the event that the District does not complete the Project or otherwise fails to operate and maintain the Assisted Facility as a public school in substantial compliance with the Educational Program filed with the Authority as part of its Application and in accordance with the provisions of this Project Funding Agreement, Chapter 70B, Chapter 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq.* and any rules, regulations, policies and guidelines of the Authority, the District shall reimburse the Authority the full amount of any and all funds received from the Authority in connection with the Project.

8.2 The District shall maintain the Assisted Facility as a public school in substantial compliance with the Educational Program and in accordance with the provisions of this Project Funding Agreement, Chapter 70B, and 963 CMR 2.00 *et seq.*, Chapter 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq.* and any rules, regulations, policies and guidelines of the Authority, unless otherwise agreed to in writing by the Authority. In the event that the District knows or has reason to know that the Assisted Facility is no longer operated and maintained as a public school in substantial compliance with the Educational Program and in accordance with the provisions of this Project Funding Agreement, Chapter 70B, and 963 CMR 2.00 *et seq.*, Chapter 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq.* and any rules, regulations, policies and guidelines of the Authority,, the District shall give written notice thereof to the Authority.

8.3 The District shall maintain the Assisted Facility in a good, safe and habitable condition in all respects and in full compliance with all applicable laws, by-laws, ordinances, codes, covenants and rules and regulations set forth by any government authority with jurisdiction over matters concerning the condition and the use of the Assisted Facility.

## SECTION 9 INSURANCE

9.1 The District shall obtain and maintain all insurance required by law and such other insurance in such types and in such amounts as the Authority may require from time to time.

9.1.1 During the course of the Project, the District shall purchase and maintain, or shall cause the Construction Manager to purchase and maintain, at their own expense, coverage against loss or damage to the Project in an amount equivalent to the Total Project Budget at the sole expense of the District or Construction Manager, as the case may be. Such coverage shall be written on an "all risks" basis or equivalent form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and theft, vandalism, malicious mischief, terrorism, collapse, earthquake, flood (if the Project is not in an "A" or "V" flood zone), windstorm, falsework, testing and startup, and debris removal including demolition occasioned by enforcement of any applicable legal requirements. The limits for earthquake and flood shall be the lesser of the Total Project Budget or \$10,000,000. The policy shall include transportation and coverage for delivered and/or stored materials designated to be incorporated into the Project. The policy shall include the Authority as a loss payee as its interests may appear. Coverage shall be maintained until final acceptance of the Project by the District and final payment has been made. The District (or Construction Manager, if coverage is purchased by the Construction Manager) is responsible for the payment of any and all deductibles, self-insured retentions or any portion thereof under the policy.

9.1.2 Following completion of the Project, the District shall, at its sole expense, purchase and maintain coverage against loss or damage to the Assisted Facility in an amount equivalent to the estimated full replacement cost of the Assisted Facility. Such coverage shall be written on an "all risks" basis or equivalent form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and theft, vandalism, malicious mischief, terrorism, collapse, earthquake, flood (if the Project is not in an "A" or "V" flood zone), windstorm, falsework, mechanical and electrical breakdown, and boiler and machinery accidents, and

debris removal including demolition occasioned by enforcement of any applicable legal requirements. The limits for earthquake and flood shall be the lesser of the estimated full replacement cost of the Assisted Facility or \$10,000,000. The policy shall include the Authority as a loss payee as its interests may appear. The District is responsible for the payment of any and all deductibles, self-insured retentions or any portion thereof under the policy.

- 9.1.3 The District shall include the Authority as an additional insured in any commercial general liability policy held by the District for liability arising out of the Project.
- 9.1.4 The Authority shall not be responsible for the payment of deductibles, self-insured retentions, or any portion thereof.
- 9.1.5 Upon request by the Authority, the District shall obtain and provide to the Authority originals of certificates of insurance evidencing the insurance coverage required by this section of the Project Funding Agreement.

9.2 The District shall require by contractual obligation, and shall also ensure by the exercise of due diligence, that each of any Owner's Project Manager, Designer, Construction Manager, or Vendor hired by the District in connection with the Project obtain and maintain all insurance coverage required by law and such other insurance coverage in such types and amounts as the Authority may require from time to time, including the insurance coverage required by this Project Funding Agreement and by any standard contracts that are prescribed by the Authority and executed by the District, including, but not limited to, the Authority's standard contract for Owner's Project Manager services and standard contract for designer services. The insurance required by this Section shall be provided at the sole expense of the Owner's Project Manager, Designer, Construction Manager, and Vendors, as the case may be, and shall be in full force and effect for the full term of any contract between the District and said Owner's Project Manager, Designer, Construction Manager, and Vendors or for such longer period as the Authority may require, including any such longer period that may be required by this Project Funding Agreement or the standard contracts prescribed by the Authority and executed by the District.

9.3 The District shall include in the contract between the Owner and the Construction Manager at Risk, the standard language contained in Exhibit G regarding minimum insurance requirements for Contractors or Construction Managers at Risk. The District may impose additional insurance requirements for either construction delivery method provided that any such additional requirements shall not be inconsistent with the requirements imposed by the standard language set forth herein and further provided that the District shall give the Authority a written notice that clearly describes any such additional requirements. It shall be the sole responsibility of the District to determine whether additional insurance requirements are desirable or necessary and should be included in the contract between the Owner and the Construction Manager at Risk.

9.4 The District shall obtain originals of certificates of insurance evidencing the insurance coverage that may be required by the Authority from time to time, including the insurance coverage required by this Project Funding Agreement, any standard contracts that are prescribed by the Authority and executed by the District, including, but not limited to, the Authority's standard contract for Owner's Project Manager services and standard contract for Designer services, and any other contract between the District and the Owner's Project Manager, Designer, Construction Manager, or Vendors, simultaneously with the execution of said contracts or, in the event that said contracts have been executed prior to the date of this Project Funding Agreement, as soon as

possible thereafter. Upon request of the Authority, the District shall submit such certificates of insurance to the Authority, showing each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. The District shall require each of the Owner's Project Manager, Designer, Construction Manager, and Vendors to submit updated insurance certificates to the District prior to the expiration of any of the insurance policies or coverage referenced in this Section so that the District shall at all times possess certificates indicating current coverage.

9.5 The failure of the District to ensure that each of the Owner's Project Manager, Designer, Construction Manager, and Vendors obtain and maintain the insurance required by the Authority, this Project Funding Agreement, any standard contract prescribed by the Authority and executed by the District or any other contract between the District and the Owner's Project Manager, Designer, Construction Manager, or Vendors, or to provide the insurance certificates required by this Project Funding Agreement shall constitute a material breach of this Project Funding Agreement and shall be just cause for termination of this Project Funding Agreement.

9.6 The District shall, and shall require, as the case may be, its insurers and each of the Owner's Project Manager, Designer, Construction Manager, Vendors and their insurers to, give written notice to the Authority at least thirty days prior to the effective date of any termination, cancellation, or material modification of any insurance required by this Project Funding Agreement, any standard contracts that are prescribed by the Authority and executed by the District, including, but not limited to, the Authority's standard contract for Owner's Project Manager services and standard contract for Designer services, and any other contract between the District and the Owner's Project Manager, Designer, Construction Manager, or Vendors.

9.7 With respect to all policies of insurance required of the Owner's Project Manager, Designer, Construction Manager, and Vendors by this Project Funding Agreement, any standard contracts that are prescribed by the Authority and executed by the District, including, but not limited to, the Authority's standard contract for Owner's Project Manager and standard design contract, and any other contract between the District and the Owner's Project Manager, Designer, Construction Manager, and Vendors, the District shall ensure that neither the District nor the Authority shall be responsible for the payment of deductibles, self-insured retentions or any portion thereof.

9.8 Insufficient insurance shall not release the Owner's Project Manager, Designer, Construction Manager, or Vendors from any liability for breach of their obligations under an agreement between the District and any of them.

9.9 All insurance policies required by this Project Funding Agreement, any standard contract prescribed by the Authority and executed by the District and any other contract between the District and the Owner's Project Manager, Designer, Construction Manager, or Vendors shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of "A-" or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the District and the Authority.

9.10 The District shall take all reasonable steps designed to ensure that the Owner's Project Manager, Construction Manager, Designer, and Vendors each agree that they and their subcontractors shall do no act, nor suffer any act to be done, which will vacate, void or impair the



coverage of any insurance policies required under this Project Funding Agreement, any standard contract prescribed by the Authority and executed by the District or any other contract between the District and the Owner's Project Manager, Designer, Construction Manager, or Vendors.

9.11 The District shall, upon request by the Authority, produce copies of all policies of insurance maintained by the District, its Construction Manager, Owner's Project Manager, Designer and Vendors related to the Project, to the Authority.

#### **SECTION 10 COMPLIANCE WITH CONSTRUCTION CONTRACT DOCUMENTS, PROJECT PERMITS and OTHER APPLICABLE LAW**

10.1 The District shall be solely responsible to the Authority for the implementation and completion of the Project in accordance with the Construction Contract Documents and Project Permits, and for the economical and efficient operation and administration of the Project. In addition, notwithstanding any right of approval, review, or inspection held by the Authority in connection with this Project Funding Agreement, the District shall be fully and solely responsible for taking all reasonable actions designed to ensure that the Project complies with all applicable building codes, laws, rules and regulations.

10.2 The District shall be responsible for enforcing the provisions of the Construction Contract Documents and shall use its best efforts to ensure that the Contractor or Construction Manager performs all of its contractual obligations thereunder in a satisfactory manner.

#### **SECTION 11 DEFECTS**

11.1 The District shall use its best efforts to require the Contractor or the Construction Manager, at the Contractor's or Construction Manager's own cost and expense, to repair any defect in materials or workmanship in the Project or any portion of the Project that may develop during the applicable warranty period and the District shall, to the extent permitted by law, indemnify, defend and hold the Authority harmless from and against any loss, cost, liability or expense paid or incurred by the Authority (including all attorney's fees and other costs incurred by the Authority in the defense of any such action) with respect to any claim asserted against the Authority by any party with respect to any such defect, actual or alleged.

#### **SECTION 12 ACCESS**

12.1 The District shall permit the Authority to have unrestricted access to the Project Site and the Assisted Facility at all reasonable times and shall allow the Authority to examine, inspect and copy all agreements, Construction Contract Documents, books, records, communications, and all other documents, materials and information related to the Project, for the purposes of, without limitation, determining compliance with this Project Funding Agreement, compliance with all other agreements related to the Project, and for assessing the progress of the Project.

12.2 The District shall promptly make available to the Authority any other documents or materials related to the Project, as the Authority may request from time to time.

**SECTION 13**  
**PRESENCE ON THE PREMISES OF THE ASSISTED FACILITY**

13.1 The District shall require each of the Owner's Project Manager, Designer, Contractor or Construction Manager and Vendors, as the case may be, to agree that that all persons whose duties bring them upon the Project Site shall comply with the reasonable directions of the authorized officers and/or representatives of the District and the Owner's Project Manager.

13.2 In the event of a material accident of any kind related to the Project, the District shall immediately notify the Authority in writing. For purposes of this section, material accident shall mean an accident resulting in death, serious injury or a serious breach in the physical plant.

**SECTION 14**  
**RESTRICTION ON SALE, LEASE, or REMOVAL FROM SERVICE**

14.1 As a condition of the Authority providing a Total Facilities Grant to the District, the District agrees to maintain and operate the Assisted Facility as a public school facility consistent with its Educational Program and in accordance with the provisions of this Project Funding Agreement, Chapter 70B, Chapter 208 and 210 of the Acts of 2004, 963 CMR 2.00 *et seq.*, and any rules, regulations, policies and guidelines of the Authority. In the event that the District wishes to sell, rent, lease, license, mortgage, donate, transfer control of, declare as surplus or otherwise dispose of an Assisted Facility, or any portion of an Assisted Facility, or convey or terminate any interest therein, other than renting, licensing, leasing or otherwise allowing for a temporary or periodic community use of the Assisted Facility that does not interfere with or result in changes to the Educational Program, the District shall provide the Authority with a written notice of its intent to sell, rent, lease, license, mortgage, donate, transfer control of, declare as surplus, or otherwise dispose of the Assisted Facility, or any portion of an Assisted Facility, or convey or terminate any interest therein, at least sixty (60) days prior to the effective date of any such proposed action, in accordance with the notice provisions of Section 17 of this Project Funding Agreement. The notice of intent to take any of the aforementioned actions shall include the current appraised value of the Assisted Facility and the maximum resale price on the basis of highest and best use of the facility. If the Authority disagrees with the current appraised value of the Assisted Facility, the Authority may obtain a second appraisal at its own expense, and the current appraised value shall be equal to the greater of the two appraisal amounts on the basis of highest and best use of the facility.

14.2 The provisions of Chapter 70B, § 15(a)-(c) shall apply to any sale, rental, lease or removal from service of the Assisted Facility, except for a rental or lease that is for a temporary or periodic community use. In the event that the District sells, rents, or leases the Assisted Facility, other than renting or leasing the Facility for a temporary or periodic community use, the Authority shall receive no less than its share, in proportion to its investment in the total Project cost, of the fair market value of the Assisted Facility, as determined by an appraisal conducted pursuant to Section 14.1 above.

**SECTION 15**  
**NOTICE OF CLAIMS**

15.1 The District shall notify the Authority promptly in writing at the address and in the manner required by Section 17 of this Project Funding Agreement of any material claim or action brought

against the District, Designer, Owner's Project Manager, Construction Manager, Vendors and/or any and all Contractors arising out of this Project Funding Agreement or the Project.

15.2 Neither the District nor any person or entity claiming by through or under it, shall file a civil action arising out of the provisions of this Project Funding Agreement against the Authority without first serving the Authority with a written notice stating the factual basis of its claims, the applicable provisions of the Project Funding Agreement that the claim is based upon, and the remedy that the District is seeking. No civil action arising out of the provisions of this Project Funding Agreement shall be filed by the District against the Authority until the expiration of sixty (60) days after the Authority has received the notice of claim required by this section.

## SECTION 16 INDEMNIFICATION

16.1 To the fullest extent permitted by law, the District shall indemnify, defend, and hold harmless the Authority and its officers, agents and employees from and against any and all claims, actions, damages, awards, judgments, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorneys fees and costs of investigation and litigation whatsoever which may be incurred by or for which liability may be asserted against the Authority, its officers, agents or employees arising out of any activities undertaken by, for, or on behalf of the District in the implementation of this Project Funding Agreement or any activities, acts or omissions in relation to the Project, including, but not limited to, the performance of any contract or obligation directly or indirectly related to the Project. This Section shall not be construed to negate or abridge any other obligation of indemnification running to the Authority which would otherwise exist.

16.2 To the fullest extent permitted by law, and unless otherwise agreed to in writing by the Authority, the District shall require the Construction Manager to indemnify, defend, and hold harmless the Authority and its officers and employees as set forth below:

To the fullest extent permitted by law, the Construction Manager hereby agrees to indemnify, defend and hold harmless the Authority and its officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Authority arising out of or resulting from the performance or non-performance of the work performed by the Construction Manager and Contractors, provided that such claims, damages, liabilities, injuries, costs, fees, expenses, or losses are alleged to be caused in whole, or in part, by an act or omission of any of the Construction Manager, any Contractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

## SECTION 17 NOTICE

17.1 Any notices required or permitted to be given by either of the Parties hereunder shall be given in writing and shall be delivered to the addressee (a) in-hand (b) by certified mail, postage

prepaid, return receipt requested; (c) by facsimile; or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

If to the Authority:

Massachusetts School Building Authority  
40 Broad Street, Suite 500  
Boston, MA 02109  
Attention: Director of Capital Planning  
Facsimile: (617) 720-5260

If to the District:

Town of Uxbridge  
Board of Selectmen, Chairperson  
Town Hall  
21 South Main Street  
Uxbridge, MA 01569

or to such other address or addressee as the District and the Authority may from time to time specify in writing. Any notice shall be effective only upon receipt, which for any notice given by facsimile shall mean notice that has been received by the party to whom it is sent as evidenced by a confirmation slip that bears the time and date of receipt.

#### SECTION 18 AMENDMENTS

18.1 This Project Funding Agreement may be amended only through a written amendment signed by duly authorized representatives of the District and the Authority.

#### SECTION 19 ADDITIONAL PROVISIONS

19.1 All certifications, filings, and submissions to the Authority required by this Project Funding Agreement shall contain a statement, signed by a duly authorized representative of the District, that such certification, filing, or submission is true, complete and accurate, to the best of the District's knowledge.

19.2 No member or employee of the Authority shall be held personally or contractually liable by or to the District under any provision of this Project Funding Agreement, because of any breach of this Project Funding Agreement, or because of its execution or attempted execution.

19.3 The District shall neither assign any interest, in whole or in part, in this Project Funding Agreement, nor transfer any interest in same, whether by assignment or novation, without the prior written approval of the Authority.

19.4 Nothing in this Project Funding Agreement shall be construed as creating a duty or obligation on the part of the Authority to oversee or monitor the performance of the Designer, Construction Manager, Owner's Project Manager or other Project participants. The Authority shall

not be responsible for, among other things, the design of the Project, architectural plans, construction means, methods, techniques, sequences or procedures, quality control or construction safety, or compliance with the Construction Contract Documents, Project Permits or any applicable provisions of law, which shall be and remain the sole responsibility of the District and its Designer, Construction Manager, Owner's Project Manager and Vendors, as the case may be.

## SECTION 20 GOVERNING LAW, VENUE, AMENDMENT and SEVERABILITY

20.1 This Project Funding Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. In case any provision(s) hereof shall be determined invalid or unenforceable under the applicable law, such provision(s) shall, insofar as possible, be construed or applied in such manner as will permit the enforcement of this Project Funding Agreement; otherwise, this Project Funding Agreement shall be construed as though such provision(s) had never been made a part hereof.

20.2 Any civil action brought against the Authority by the District, or any person or entity claiming by through or under it, that arises out of the provisions of this Project Funding Agreement, shall only be brought in the Superior Court for Suffolk County, Massachusetts. The District, for itself and for any person or entity claiming by through or under it, hereby waives any defenses that it may have as to the venue to which it has agreed herein, including, but not limited to, any claim that this venue is improper or that the forum is inconvenient. The District for itself and for any person or entity claiming by through or under it, hereby waives all rights, if any, to a jury trial in any civil action against the Authority that may arise out of the provisions of this Project Funding Agreement.

20.3 This Project Funding Agreement and any amendments hereto shall be deemed null and void and of no further force or effect unless it is executed by a duly authorized representative of the District and a duly authorized representative of the Authority. The undersigned, who are signing on behalf of the District, hereby warrant and represent that they possess the full legal authority to execute this Project Funding Agreement on behalf of the District and to bind the District to its terms and conditions. In the event that the Authority determines that the undersigned are not duly authorized to execute this Project Funding Agreement and to bind the District, the Authority may, in its sole discretion, take whatever action it deems necessary to terminate this Project Funding Agreement, to suspend or terminate payments to the District and to recover any funds disbursed to the District. Any rights and remedies available to the Authority under the provisions of this Project Funding Agreement shall be in addition to any other rights and remedies provided by law.

## SECTION 21 WAIVERS

21.1 The terms, conditions, covenants, duties and obligations contained in this Project Funding Agreement may be waived only by written agreement executed by duly authorized representatives of the District and the Authority. No waiver by either party of any term, condition, covenant, duty or obligation shall be construed as a waiver of any other term, condition, covenant, duty or obligation nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or a different section, subsection, paragraph, clause, phrase, or other provision of this Project Funding Agreement. Forbearance or indulgence in any form or manner by

either Party to this Project Funding Agreement shall not be construed as a waiver, nor in any way limit the remedies available to that party.

21.2 The Authority's payment(s) to the District under this Project Funding Agreement or its review, approval or acceptance of any actions by the District under this Project Funding Agreement shall not operate as a waiver of any rights or remedies available to the Authority under this Project Funding Agreement or as otherwise provided by law and the District shall remain liable to the Authority for all damages incurred by the Authority arising out of the District's failure to perform in accordance with the terms and conditions of this Project Funding Agreement.

## SECTION 22 DEFAULTS AND REMEDIES

22.1 The occurrence of any of the following events shall constitute, and is herein defined to be, an Event of Default under this Project Funding Agreement:

(a.) If the District shall fail to perform or observe any covenant, agreement, term or condition on its part provided in this Project Funding Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof shall be given to the District by the Authority; provided that, if such failure cannot be remedied within such thirty (30) day period, it shall not constitute an Event of Default hereunder if corrective action satisfactory to the Authority, as determined by the Authority, in writing, is instituted by the District within such period and diligently pursued until the failure is remedied;

(b.) If any representation or warranty made by the District in this Project Funding Agreement shall prove to have been incorrect, false, or to be misleading in any material respect;

22.2 If any Event of Default hereunder shall occur and be continuing, the Authority may proceed to protect its rights under this Project Funding Agreement, and may: (a) terminate this Project Funding Agreement, (b) permanently withhold or temporarily suspend payment of the Total Facilities Grant to the District, (c) recover any payments of the Total Facilities Grant previously made to the District, and/or (d) may exercise any other right or remedy upon such default as may be granted to the Authority under this Project Funding Agreement or under any other applicable provision of law.

22.3 No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient.

22.4 The rights and remedies conferred upon or reserved to the Authority under this Project Funding Agreement are not intended to be exclusive and every such right or remedy shall be cumulative and shall be in addition to any other rights or remedies provided by law. The Authority may assert a right to recover damages by any appropriate means, including, but not limited to, set-off, suit, withholding, recoupment, or counterclaim either during or after performance of this Project Funding Agreement.

**SECTION 23  
TERMINATION**

23.1 This Project Funding Agreement may be terminated by the Authority if an Event of Default shall have occurred as provided in Section 22. Notice of such termination shall be in writing and shall be effective immediately upon service of the notice in the manner provided in Section 17. Upon five (5) days written notice, this Project Funding Agreement may be terminated by the Authority in the event of any action constituting fraud, malfeasance, or illegal activity committed in connection with the Project by the District or any of the District's employees, or, where the District knew or should have known, by the Architect, Owner's Project Manager, Construction Manager, Contractors or Vendors.

23.2 This Agreement may be terminated by mutual written agreement of the Parties.

**SECTION 24  
PUBLIC RECOGNITION OF THE AUTHORITY'S PARTICIPATION**

24.1 If the District utilizes a plaque, sign, or other medium to temporarily or permanently inscribe or otherwise display the names of persons or entities participating in the Project, either during the Project or after the Project is completed, the District shall provide suitable space and a suitable inscription or display recognizing the participation of the Authority to the same extent that other Project participants are recognized therein. Said inscription or display shall include the full name of the Massachusetts School Building Authority, each member of the Authority's Board, and the Authority's Executive Director.

IN WITNESS WHEREOF, the Authority and the District have caused this Project Funding Agreement to be executed by their duly authorized representatives this \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_

**THE MASSACHUSETTS SCHOOL BUILDING AUTHORITY**  
BY:

\_\_\_\_\_  
Katherine P. Craven  
Executive Director

**THE DISTRICT**  
BY:

\_\_\_\_\_  
Name (Type/Print)

\_\_\_\_\_  
Title/Office (Type/Print)



NOV 13 2013

BOARD OF SUPERVISORS  
LYNNBURGH, VA

CC: BOS  
File

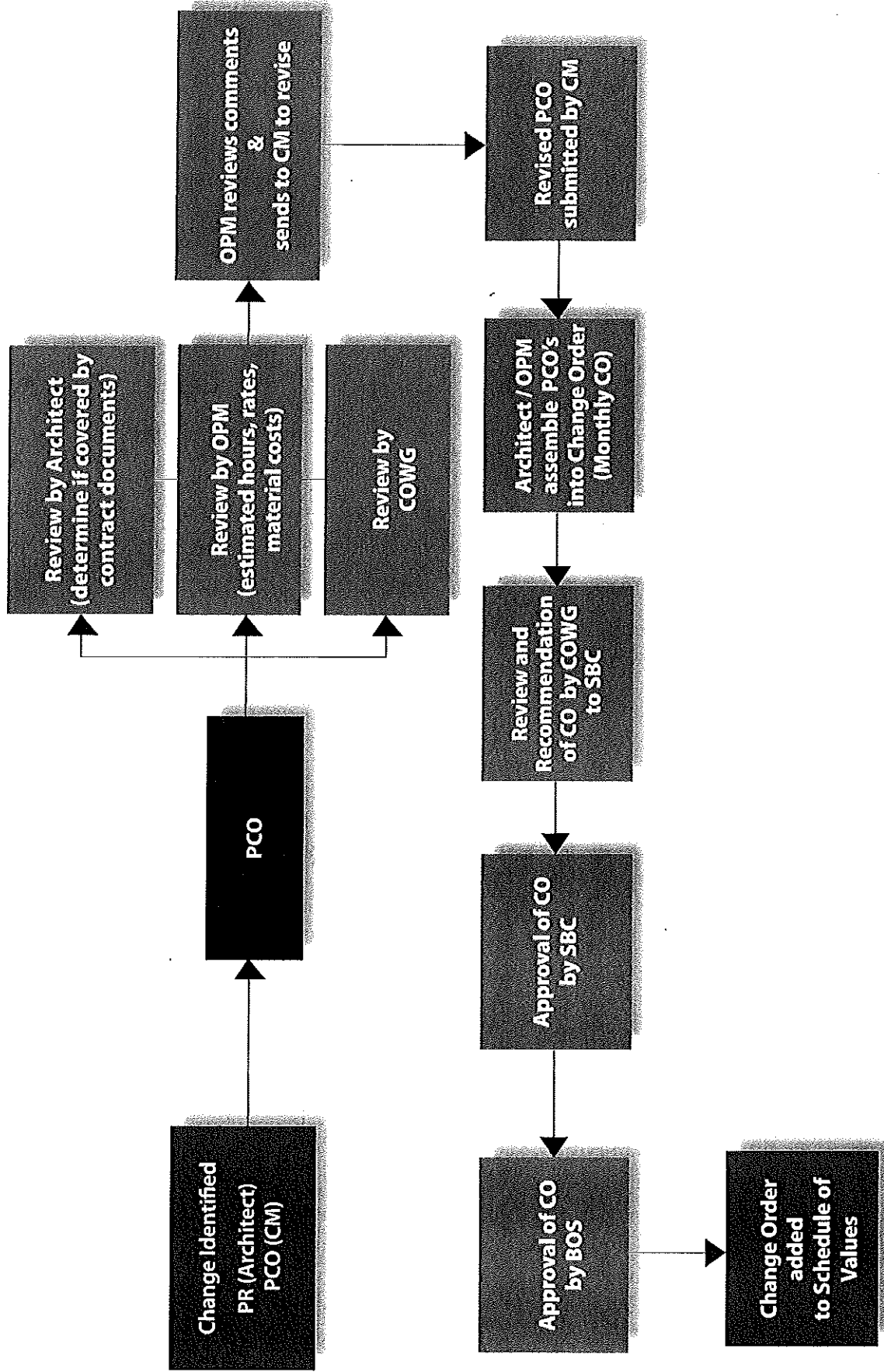
## Change Orders: Terminology

- Owner** The Town of Uxbridge
- OPM** Owner's Project Manager (Joslin Lesser + Associates): The agent for the Owner
- CM** Construction Manager (Shawmut Design and Construction)
- AE** Architect Engineering Team (Raymond Design Associates and their team of consultants)
- COWG** Change Order Working Group: A committee of 3 Town Members who represent the BOS and SBC and are available to review potential change orders in a very timely manner
- CD's** Construction Documents: The Drawings and Specifications produced by the AE which form the basis for the contract between the Owner and the CM
- GMP** Guaranteed Maximum Price: The form of contract between the Owner and Construction Manager which includes the cost of all the bids plus a modest contingency to cover costs that could not reasonably be anticipated; the CM must absorb any cost which exceed the GMP but which are necessary to build the building according to the CD's
- AB** Additional Buyout: The cost of labor or materials necessary to complete the work within the GMP, funded by the GMP Contingency.
- The CM cannot forecast the extent of Winter Conditions (special measures to allow work to proceed in cold weather) so they provide an allowance (estimate) in the General Conditions to purchase those services on an as needed basis
  - If the amount budgeted for Winter Conditions was less than the actual required amount, then the CM would use Contingency to "additionally buyout" the balance required
  - Even though an AB does not result in a change to the value of the GMP (Contract) it does need to be approved by the SBC because at the end of the project any unused GMP Contingency would revert to the Town

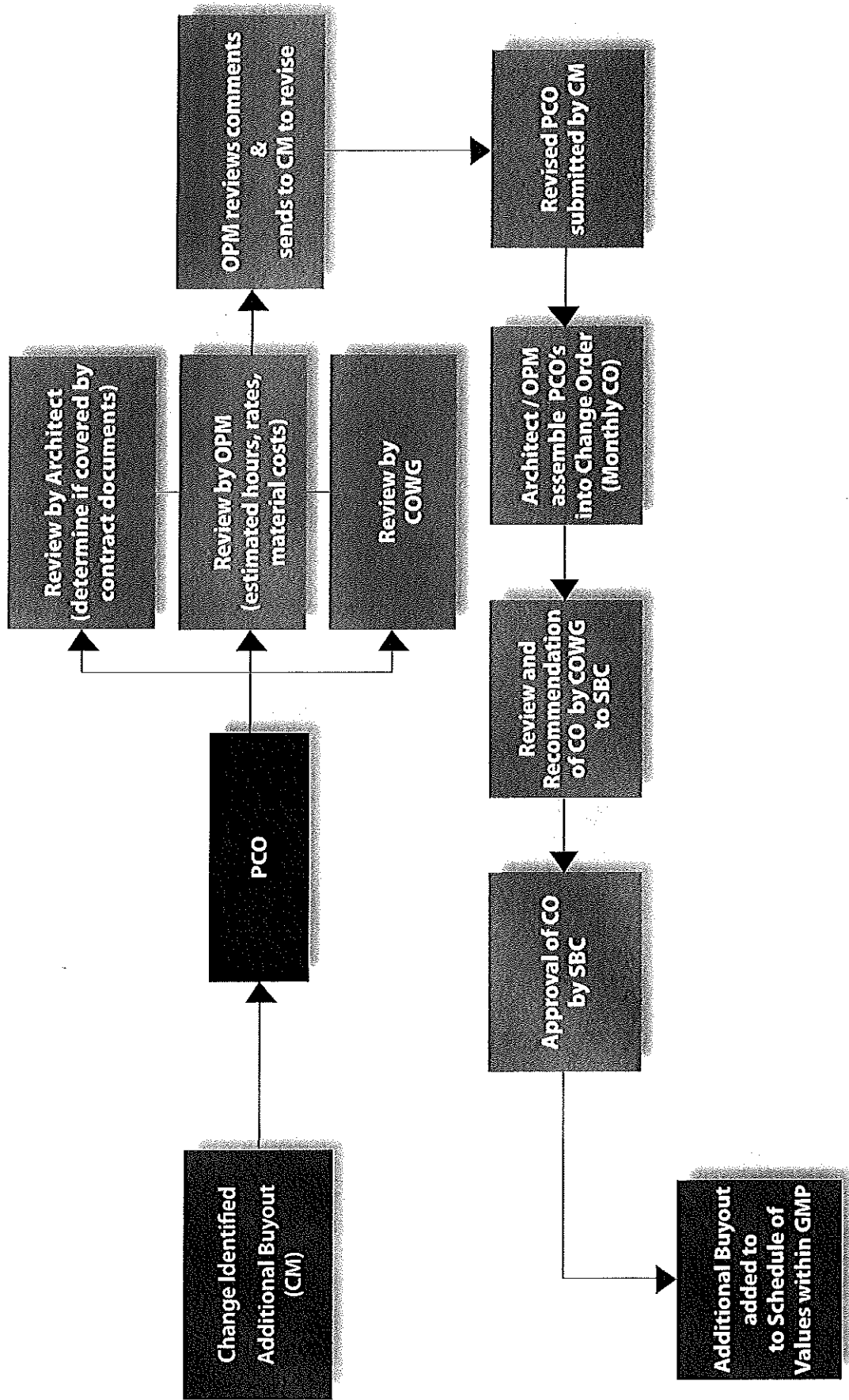


JOSLIN, LESSER + ASSOCIATES, INC.

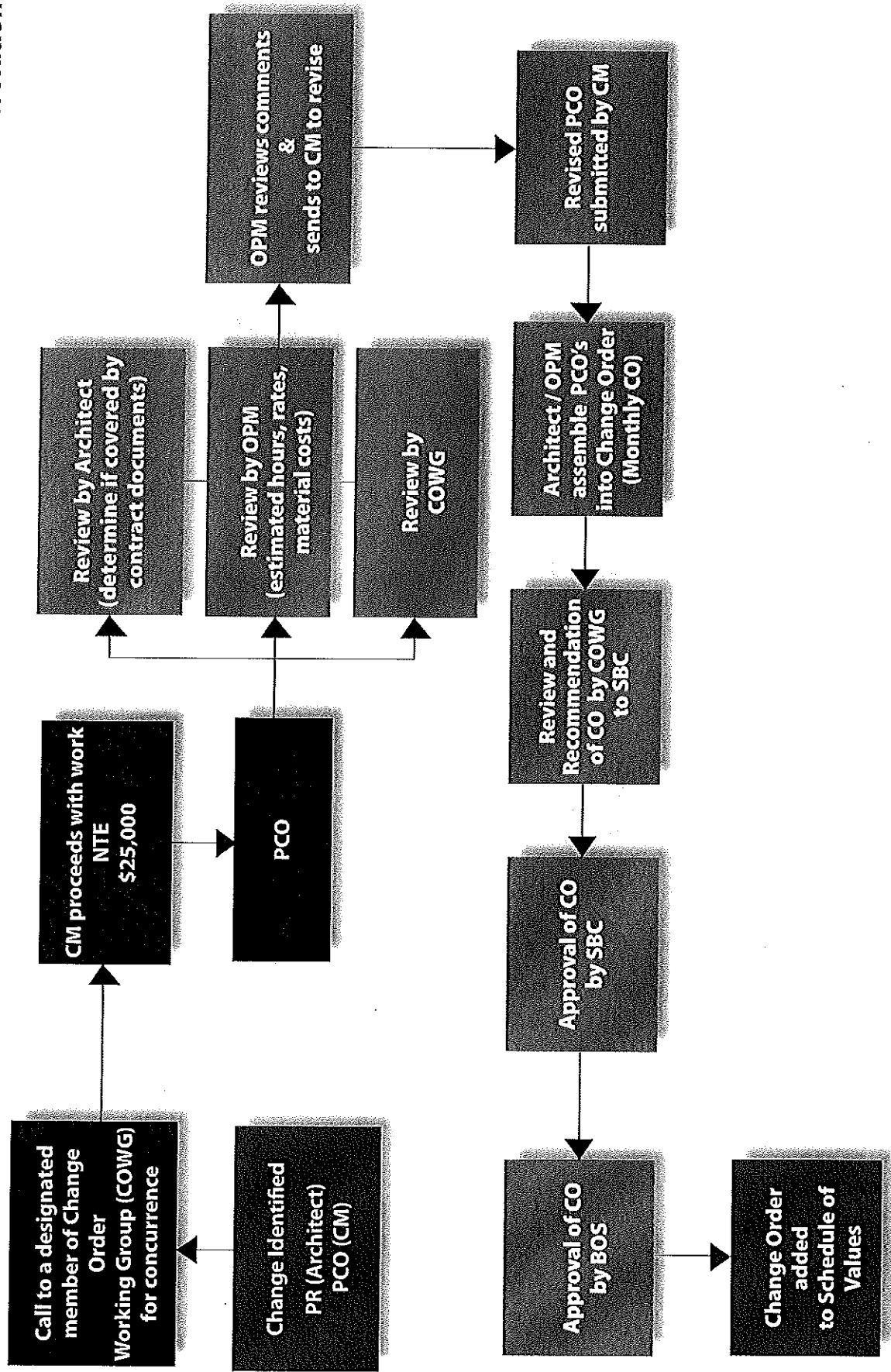
- PR** Proposal Request: A drawing/sketch, a modification to the specifications, or an instruction generated by the Architect/Engineer, submitted to the Construction Manager to initiate a Proposed Change Order, examples:
- Owner requested added scope or Owner requested changes to work already in process
  - Work necessary to remedy a field condition which could not be reasonably anticipated
- PCO** Proposed Change Order: A request for an adjustment to the contract amount generated by the Construction Manager to address a change in scope or a change in design of the project
- The AE will verify whether the work is covered under the contract documents or the degree to which it represents a “material” change; if some or all work in a PCO is already owned under contract then it will be rejected or revised accordingly
  - The OPM will review the proposed cost of labor and materials to ensure conformance with the contract
  - The COWG will review to verify that this proposed change will provide a net benefit to the project
- CO** Change Order: A change to the value of the GMP, typically for scope beyond the CD’s; a single CO may include multiple PCO’s
- All Change Orders must be approved by the SBC and the BOS because they represent a change to the GMP Contract
- IR** Immediate Resolution: Unexpected items discovered during construction which, if not addressed immediately, would result in significantly increased cost to the project and/or schedule delays
- NTE** Not To Exceed: a contractual limit on cost for items where it is most expedient to proceed without first agreeing to a fixed \$ amount
- An immediate remedy is required which precludes the time period necessary to create a detailed cost estimate



Change Order Process  
Additional Buyout



Change Order Process  
Immediate Resolution



Commercial Hardware Distributors  
179 N. Main St.  
Suite 2  
Uxbridge, MA 01569

Uxbridge Building Committee  
Uxbridge, MA

Thank you for choosing Kaba Peaks Preferred for your key control system on your new Uxbridge High School. Peaks Preferred is the most cost-effective patented key control system with a patent through 2024.

Because Kaba Peaks is a proprietary system to be maintained by your existing locksmith, the following policies will be adhered to:

1. All prices on product will be quoted for the same price to each supplier.
2. A 50% deposit will be required from the supplier at the time of order.
3. Keying conference meetings will be quoted at the same price to each supplier and will be conducted with the key records manager of Commercial Hardware Distributors and personnel from the Uxbridge School Department.
4. All cores will be delivered to supplier or contractor. All restricted keys will be delivered and signed by authorized representative of the Uxbridge School Department.
5. All key records and key biting charts will be turned over to the key records manager of Blackstone Valley Lock & Safe Co., Inc. upon completion of the job. Blackstone Valley Lock & Safe Co., Inc. will be responsible for maintaining and updating key record for the Uxbridge School Department.

Thank you for choosing Kaba Peaks Preferred for your restricted control.

Stephen R. Blanding

Key Records Manager

RECEIVED

NOV 13 2010

BOARD OF SELECTMEN  
UXBRIDGE, MA

cc: BOS  
File

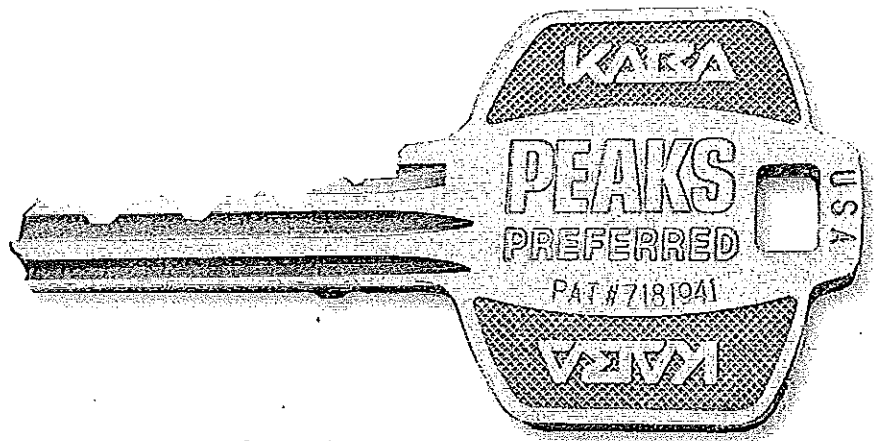


**KEBA®**

**PEAKS® Preferred**  
Patented Key Control System

# PEAKS®

Peaks Preferred  
Patented Key Control



## Peaks Preferred—The Next Generation of Peaks

Peaks Preferred is the next generation of an established industry leader in patented key control—built on Kaba's 145-year history of reliable security solutions.

Peaks Preferred is the most cost-effective and adaptable patented key control system, designed to meet all of your needs. No other patented key control system offers quality, flexibility, and extensive retrofitability, with the convenience of a one key system.

Peaks Preferred is the industry leader in compatibility with all major brands of locking hardware, thus making security system replacements or upgrades much simpler and more economical. With a patent through 2024, Peaks Preferred provides the security of a long patent life.



## Is your facility having difficulty controlling keys?

### Ever found yourself asking:

- How many people have keys to the facility?
- Have there been any unauthorized duplicates made?
- How many master keys have been issued?
- What is the risk if the wrong person obtains one of these keys?

Peaks Preferred one key system provides the best solution to these and many more questions by simplifying the management of a key control system. No other system offers more security and versatility than Peaks Preferred.

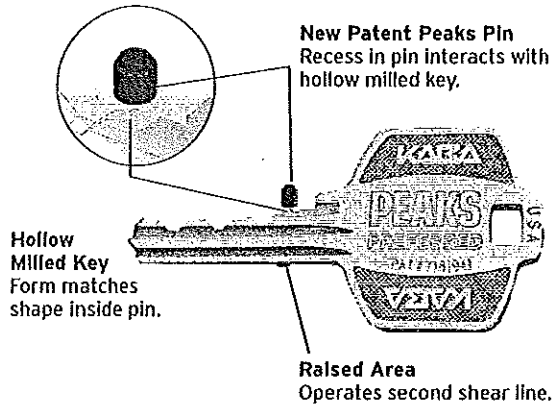
With unique patented security features that protect the keys and cylinders, you can rest assured that only authorized persons with issued keys can gain access to confidential or restricted areas.

In addition to added security, Peaks Preferred eliminates the chaos associated with managing non-patented or uncontrolled keys.

## How Peaks Preferred Works

Peaks Preferred patented key control system provides you with the flexibility of a system that can be master keyed, and gives you complete control over key duplication, including legal protection against unauthorized manufacture or sale of key blanks, cut keys, and pinned cylinders.

Peaks Preferred works by restricting key duplication, allowing only a designated signatory's authorization of key blanks and cylinders through authorized dealers. Peaks Preferred is extremely easy to assemble and service with no dreaded side bars to install, or specialty equipment needed for assembly or to cut keys. Based on an extremely solid Peaks Classic platform, Peaks Preferred is built using reliable pin tumbler technology utilizing a patented "peaks" pin as part of the security. The new "peaks" pin has a recess on the bottom that must match the "peak" found on the Peaks Preferred key. If a key without the "peak" is inserted, there will be no shear-line created in the cylinder. Therefore, the lock will not open.



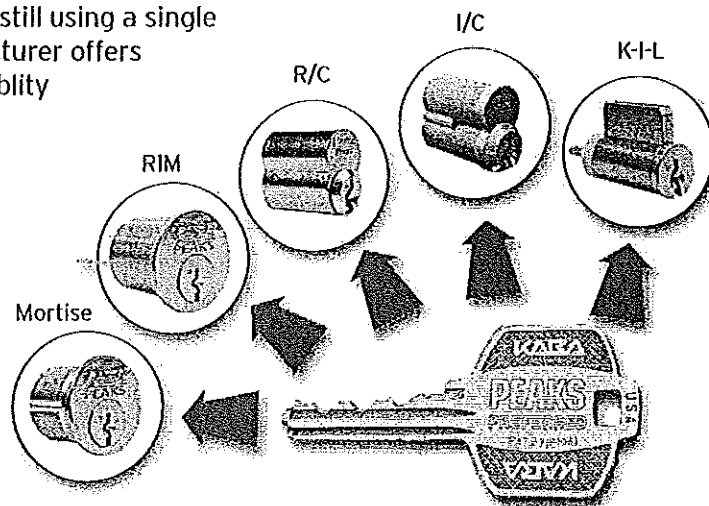
## Replacement Cylinders Fit:

- Adams Rite®
  - Alarm Lock®
  - American Lock®
  - Arrow™
  - Best®
  - Corbin®
  - Detex®
  - Dor-o-matic®
  - Falcon®
  - Hager®
  - Jackson Device®
  - Locknetics®
  - LSDA®
  - Marks®
  - Master Padlock®
  - Medeco®
  - Monarch®
  - Olympus®
  - Omnia®
  - PDQ®
  - Precision®
  - Russwin®
  - S. Parker®
  - Sargent®
  - Schlage®
  - Simplex®
  - Unican®
  - Von Duprin®
  - Yale®
- and many more..

## Retrofitability

Peaks Preferred Patented Key Control System is the industry leader in compatibility with all major hardware brands. With cylinders that fit more manufacturers' locks than any other patented key system, Peaks Preferred allows you to cost-effectively upgrade and convert all existing locking hardware for your entire property, or just certain doors to a patented key system.

Peaks Preferred allows you to integrate all your conventional, key-in-lever, small and large format cylinders while still using a single key. No other manufacturer offers this extensive retrofitability within a system.





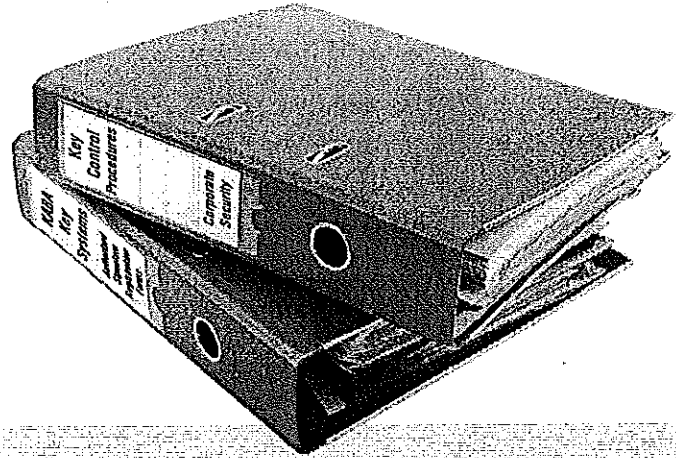
## Important Factors in Developing a Solid Key Control System Include:

- A designated person to develop, implement and enforce all policies and procedures.
- Policies for ordering, securing, issuing and controlling keys, as well as the key cutting process.
- Accurate and up to date record keeping; documenting all key issuance and collection transactions.
- Assuring all personnel are educated and adhere to the key control policies set forth by the system administrator.

## What is Key Control?

Key control is establishing policies and procedures to control the process by which keys to your facility are managed and accounted for, thus limiting access to only authorized personnel. Sound key control policies establish accountability, while maintaining the security of the facility and protecting life and assets.

Key Control requirements vary from facility-to-facility, therefore, establishing a system that works for your respective facility is critical. Peaks Preferred one key systems are unique and customized to meet the needs of the individual customer.



## What is Peaks Preferred?

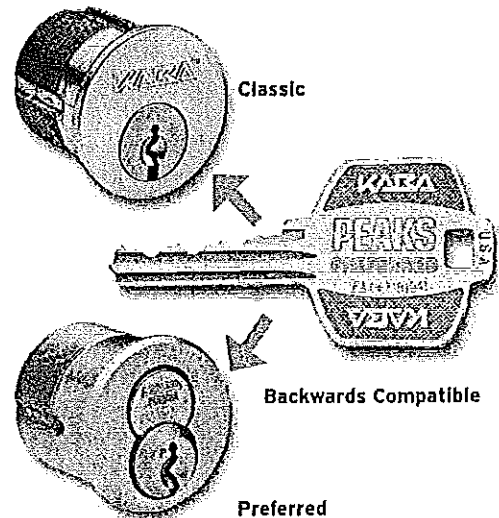
**Most Adaptable Patented Key Control System  
One Source, One Key, One Choice**

Peaks Preferred is the most adaptable patented key control system available—designed to retrofit virtually every manufacturers' grade 1 and grade 2 door hardware. Retrofit cylinders include conventional mortise, rim, deadbolt and padlock, key-in-knob/lever, as well as interchangeable core and removable core designs. Because the patented system can be master keyed, no matter what hardware is used at a facility, you can use one Peaks Preferred key to operate all the locks.

Peaks Preferred keys are also "backwards compatible" with Peaks Classic cylinders—allowing you to easily phase-in upgrades of your facility.

- Retrofits to most manufacturers' door hardware
- Can be master keyed to provide convenience and security
- Cost-effective—replace only the cylinder, not the hardware
- Manufactured to stringent quality standards
- Reliable pin tumbler technology
- Easy to assemble and service
- No special key cutting equipment required
- Backwards compatible with Peaks Classic cylinders

**PATENTED  
THRU 2024**



# Peaks® Preferred

## The Foundation of Facility Security Solutions—Institutional and Commercial

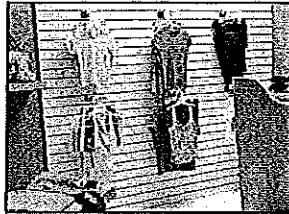
From the transit system to the school system, no other lock cylinder offers the flexibility of Peaks Preferred. Facilities of all sizes can benefit from the quality, extensive retrofitability, and convenience of a one key system.

Peaks Preferred patented key control system puts you ahead of safety and security, with the broadest product offering available. As the most versatile, easy to install and service, and best value in patented key control systems on the market ... the choice is easy—Peaks Preferred.



### Airports

Customs  
Jet Ways  
Air Traffic Towers  
Airfields and Runways  
Shops and Concession  
Operations and Ticketing



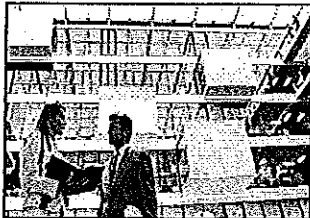
### Retail/Restaurants

Offices  
Kitchens  
Storefronts  
Liquor Control  
Storage Closets



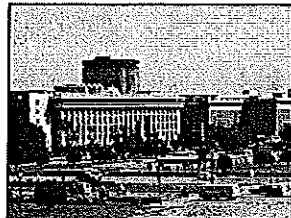
### Medical

Pharmacies  
Laboratories  
Patient Records  
Storage and Supply  
Cafeterias/Kitchens



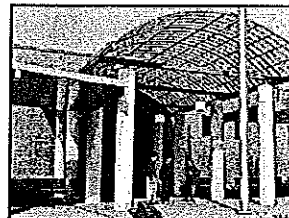
### Banks Professional Offices

Suites  
Offices  
Teller Gates  
Computer Rooms  
Conference Rooms  
Mechanical Spaces



### Government Public Facilities

Military  
Museums  
Court Rooms  
Police Evidence  
Government Chambers  
Communication Centers



### Universities Colleges/Schools

Libraries  
Classrooms  
Auditoriums  
Dormitories  
Gymnasiums  
Laboratories



### Manufacturing

Tool Cribs  
Cafeterias  
R and D Offices  
Controlled Areas  
Engineering Space  
Shipping/Receiving  
Mechanical Control

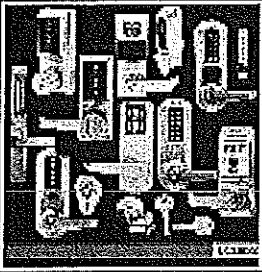
To find out more about KABA Peaks Preferred patented key control, please consult with a Kaba Peaks Dealer, visit our website at [www.kabaaccess.com](http://www.kabaaccess.com) or call us at 800.849.8324 or 336.725.1331.

## Benefits of Choosing Peaks Preferred:

- Patented key blanks eliminate unauthorized key duplication
- Retrofits to most manufacturers' hardware
- Easy to assemble and service
- Backwards compatible with Peaks Classic cylinders
- Secure Control—authorization required to order key blanks, cut keys, and cylinders
- Long patent life—through 2024
- Eliminates the need to replace all your locking hardware
- Reliable pin tumbler technology
- Best value in patented key control systems

Disclaimer: While reasonable efforts were made to ensure the accuracy of this document at the time of printing, Kaba assumes no liability for any errors or omissions. This information is subject to be revised without notice, and changes may be incorporated in future releases.

**KABA®**



*Kaba has provided strong, powerful security solutions since 1862. During its 145-year history, Kaba has grown into a technological global leader in the security industry. Today, the Kaba Group invests substantially in research and development to stay at the forefront of the industry's technological leadership.*

*Kaba Access Control provides security in facilities around the globe. Innovative and comprehensive solutions have made it the preferred product choice for facilities and sites—including commercial buildings, institutions, residential and government applications. Kaba customers appreciate our high quality, sustainable products and reliable service and support. Our global presence can be seen in operations in over 60 countries with a dedicated workforce of 10,000 employees.*

Kaba Access Control  
2941 Indiana Avenue  
Winston-Salem, NC 27105 USA  
Tel: (800) 849-8324 (336) 725-1331  
Fax: (800) 346-9640 (336) 725-3269

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

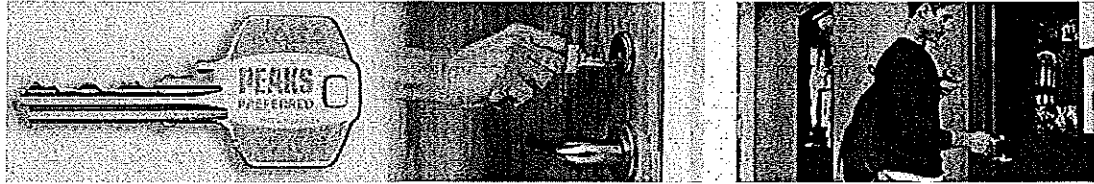
KA1126 0308



ACCESS CONTROL

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Kaba North America  
 Product Solutions  
 Search



Kaba Ilco Corp.  
 2941 Indiana Avenue  
 Winston Salem, NC 27105  
 1-800-849-8324

**Peaks - Patented Key Control**

Peaks, Kaba's patented key control system is the foundation for any secure access control system. With strong utility patents on the key and cylinder, as well as contractual agreements for the controlled issue of key blanks, unauthorized manufacture and duplication of keys is prohibited. In addition, Peaks is an easy system to implement as the cylinders retrofit to all major brands of hardware.

[click on images for additional details]

**Products**

- Product Selector
  - Peaks
  - Pushbutton Locks
  - E-Plex
  - PowerLever
  - Solitaire
- Product Configurator
- Literature and Support
- Product Registration
- Contact Us

**Peaks® Preferred**

- Patented key control
- Patented design prevents unauthorized key duplication
- Available in mortise, rim, key-in-lever/knob, interchangeable, and removable cores
- Retrofits most major brands of Grade 1 & 2 hardware
- Backwards compatible to Peaks Classic

**Peaks® Classic**

- Patented key control
- Patented design prevents unauthorized key duplication
- Available in mortise, rim, key-in-lever/knob, interchangeable, and removable cores
- Retrofits most major brand of Grade 1 & 2 hardware

Print this page

Rick Hathaway

685 Chocolog Road

Uxbridge, MA 01569

November 8, 2010

RECEIVED

NOV 9 2010

BOARD OF SELECTMEN  
UXBRIDGE, MA

Uxbridge Board of Selectman

21 South Main Street

Uxbridge, MA 01569

Dear Members,

Please let this letter serve as a request to extend my gravel removal permit number 32 at 155 Laurel Street for another year. During the past year 184 yards of material was removed. A check for \$1200.00 is enclosed.

Sincerely,



Rick Hathaway

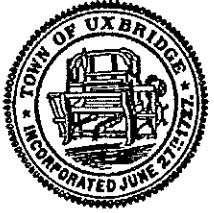


pd 11/9/10 TA  
ck 118 \$1200.00

RECEIVED

NOV 9 2010

BOARD OF SELECTMEN  
UXBRIDGE, MA



TOWN OF UXBRIDGE  
BOARD OF SELECTMEN  
21 South Main Street  
Uxbridge, MA 01569-1851  
508-278-8600 Fax 508-278-8605

**LICENSE APPLICATION: GRAVEL & LOAM PERMIT**

**License**

New Application (See attached additional info)  
 Renewal, Permit Number 32

**License**

Gravel  
 Loam

Map  Map Enclosed

Map 43

Parcel 35 35

**I. PERMITTEE:**

Business/Company Name	Person Name <u>Rick Hathaway</u>
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**II. RESPONSIBLE PARTY BUSINESS, MAILING AND CONTACT INFORMATION:**

Name (primary business address) <u>Rick Hathaway</u>	<input checked="" type="checkbox"/> Operator <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Other	Name (primary mailing address)
Mailing Address <u>685 Chocolate Rd</u>		Mailing Address
City Zip + 4 <u>Uxbridge MA 01569</u>		City Zip + 4
Contact Person Phone # <u>Rick Hathaway 508-278-3353</u>		Contact Person Phone #

**IV. APPLICATION MATERIALS:**

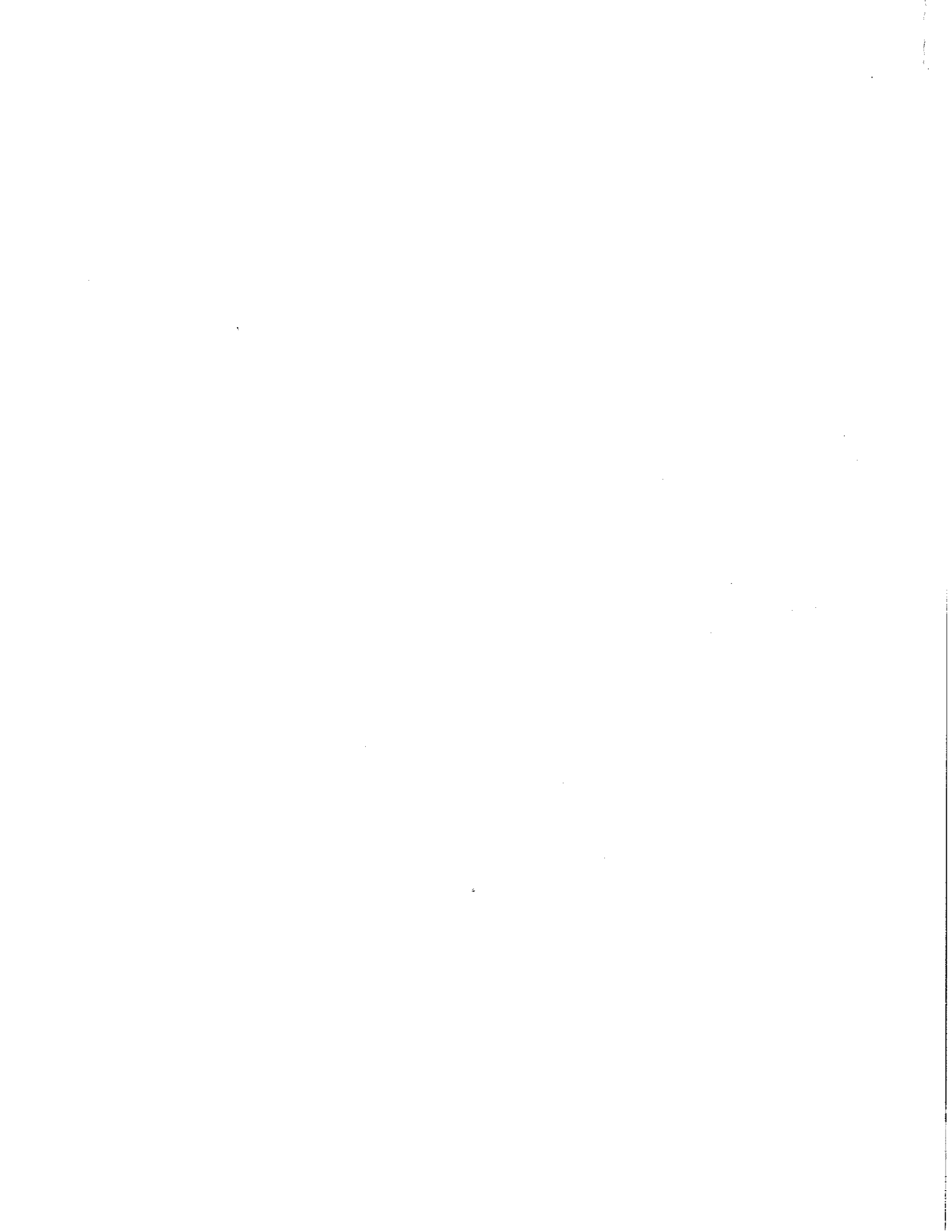
To apply for a new license or a renewal of these license(s), please submit the following:

- Completed Earth Removal Report & supporting information for each license (see attached).
- A site plan of the land prepared by a registered land surveyor or registered professional engineer showing the existing contours & topography of the entire site of the proposed excavation & all abutting land within 100' of the proposed excavation. The site plan shall locate monuments sufficient to delineate the perimeter of the site at intervals of not less than 500'.
- A plan of the land showing the proposed contours & topography of the site when the proposed excavation is completed, showing a typical cross-section of the proposed final cover as well as any drainage or other structures that may be necessary.
- A proposal concerning the provisions of security for the final completion of the excavation project in accordance with the plans submitted & any additional conditions that may be attached to the permit.
- A copy of current/renewed Bonds for each license. Bonds must identify the full address of the gravel operation, map & parcel numbers & the gravel permit #. All original surety bonds & passbooks must be filed with the Town of Uxbridge Treasurer.
- A check in the amount of \$1,200.00 (renewal fee) for each license, made payable to The Town of Uxbridge, with the permit # placed in the memo portion of the check. Please submit **3 sets** of all information to:

Office of the Town Manager  
21 South Main Street  
Uxbridge MA 01569-1851

**Arrange for an annual site inspection:**

The purpose of the inspection is to ensure that all conditions as stipulated under Section X of The Town of Uxbridge Bylaw & as listed on your permit(s), are being adhered to. Please call the Office of the Town Manager to arrange for an inspection once you have forwarded all required new or renewal information. If you have any questions, please contact the Office of the Town Manager at (508) 278-8600, ext 2001.





**EARTH REMOVAL**  
**Annual Report to the Town of Uxbridge**

Per Section X, Subsection F of the Town of Uxbridge Bylaws, all holders of licenses to remove gravel or loam must submit a report for the preceding 12 months of operation. This report must be submitted to the Uxbridge Board of Selectmen on or before the expiration date of your permit.

*Attach additional supporting information as necessary.*

Permit Number: 32

Permit Holder Name: Rick Hathaway

Contact Name: Rick Hathaway Contact Number: 508-278-3353 Cell 508-320-1513

Location of Operation: 155 Laurel Street

Map(s): 43 Parcel(s): 3535

**EXCAVATION**

Amount of Material Removed (cubic yards): 184 yds

Type of Material Removed: gravel, fill, rubble

Area excavated (square feet or acres): —

**RESTORATION\***

Area restored (square feet or acres): 28,122 sq-ft.

Date(s) of restoration: 5/08

Amount of topsoil/loam replaced: 4"-6"

Groundcover/seed mix used: COVER-ALL Seed Mix


\* Per Section X, Subsection D of the Town of Uxbridge Bylaws:


- A) The portions of the licensed premises which have been excavated shall be graded and leveled to conform with the final contour plan at least annually.
- B) After final grading and leveling and *not later than October 15 of each year*, all excavated portions shall be covered with not less than four (4) inches of suitable topsoil, and shall be seeded and planted with suitable groundcover.



# Map 43




**PREPARED BY:**  
**STONE & WEBSTER ENGINEERING CORPORATION**  
 245 SUMMER ST. BOSTON, MASSACHUSETTS

**PLANIMETRIC MAPPING PREPARED BY:**  

**GEOD CORPORATION**  
 73 OAK RIDGE ROAD-OAK RIDGE, N.J. 07438  
 FROM AERIAL PHOTOGRAPHY, DATED DEC. 1986

MAP MATCH LINE ---  
 STATE & TOWN LINE - - -  
 PARCEL NUMBER 2:  
 LOT LINE ---  
 DENOTES COMMON OWNER 3  
 SCALED DIMENSION 10C  
 RECORD DIMENSION 14Z  
 PARCEL AREA 18.  
 CEMETERY 1  
 HOUSE STREET NUMBER 100

JOB NO.	ISSUE	APPROVED BY	DATE		
16463	ORIGINAL	R.F. DONOVAN/W.E. HOLLAND	DEC. 31, 1987		
REVISIONS					
NO.	APPROVED BY	DATE	NO.	APPROVED BY	DATE

**NOTES:**  
 GRID : MASSACHUSETTS STATE PLANE COORDINATE SYSTEM



Re: Cedar  
Woods  
Subdivision

Tracey Ante

From: Patrick Costello [pcostello@lccplaw.com]  
Sent: Thursday, November 18, 2010 1:13 PM  
To: Tracey Ante  
Cc: Beth Pitman  
Subject: RE: Cedar Woods

Tracey:

You are correct. Subdivision security funds cannot be used for land damages resulting from an eminent domain taking; said proceeds may ONLY be utilized to complete subdivision infrastructure work or correct deficiencies in such work, as required by the subdivision approval or the plans relating thereto. The developer or other entity posting these funds has an active legal interest in the funds to the extent that they must be returned to him/her/it if and when all such work is satisfactorily completed. If there is a default in performance of the infrastructure obligations, and the Planning Board so declares, the funds may be accessed by the Town solely for the purpose of, and only up to the amount necessary for, completion of the required work.

The Town has a duty per G.L. c. 79 to appraise the value of any land or interest in land acquired by eminent domain AND to have funds appropriated to pay any damages incurred as a result of a taking before it can vote to approve and record an order of taking.

Also, please note that the Town cannot use these funds to offset any outstanding tax liabilities owed by the Developer in accordance with G.L. c. 60, §93 because these funds are technically still "owned" by the developer, contingent upon its fulfillment of its work obligations; they are not "funds of the Town" payable to the developer. I believe that DOR issued a formal opinion to this effect several years ago.

Let me know if you have any further questions in this regard.

Pat

Patrick J. Costello  
*Louison, Costello, Condon & Pfaff, LLP*  
101 Summer Street  
Boston, MA 02110  
617-439-0305  
(fax) 617-439-0325

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11/18/2010

Fr. Cedar

woods

2nd Division

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**From:** Tracey Ante [mailto:asst2.manager@uxbridge-ma.gov]  
**Sent:** Wednesday, November 17, 2010 4:39 PM  
**To:** Beth Pitman; Patrick Costello  
**Subject:** FW: Cedar Woods  
**Importance:** High

Hi – Attached is Pat's response for CedarWoods. On an additional note, following road completion, which is anticipated to be soon, I hear the resident's are going to request the Town use the remaining bond money for eminent domain.

Pat – I don't believe the bond money (cash) can be used for this purpose. The application for a Definitive Subdivision was filed on 3/25/98 and therefore Section 5.H.1. Maintenance of Streets (Subdivision Rules and Regs) is not applicable. Following project completion, I anticipate the remaining balance on the account to be aprox. \$38K. Does this money have to be turned over to the developer? The Finance Director is checking to see if there are any tax issues. Your thoughts? Thx!

---

**From:** Tracey Ante  
**Sent:** Wednesday, November 10, 2010 3:13 PM  
**To:** Beth Pitman; 'brucedesilets@netscape.net'  
**Cc:** Michael Szlosek  
**Subject:** FW: Cedar Woods  
**Importance:** High

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**From:** Jena Caruso Muñoz [mailto:jmunoz@lccplaw.com]  
**Sent:** Wednesday, November 10, 2010 12:42 PM  
**To:** Tracey Ante  
**Subject:** FW: Cedar Woods  
**Importance:** High

Tracey:

Pat asked me to review this issue and get back to you. I have reviewed the documents sent to the Town by Attorney Robert Knapik on October 6, 2010, and have the following comments. Though I agree with almost everything Attorney Knapik says in his letter to the Town dated October 6, 2010, there is one issue I want to make clear. If the Town were to take these roadways by eminent domain, it would open itself up to litigation on damages unless it obtained releases from everyone with an interest in the property taken. If what Attorney Knapik says is true with regard to ownership of the lots, we would need releases from all of the resident property owners, their mortgage companies, and the former developer, Spruce Ridge. Given my experience in trying to accomplish this in the past, the most difficult entities from which to obtain releases are traditionally mortgage companies. I would imagine this process could be expensive and somewhat time consuming for the Town.

In addition, I would recommend the Town do an independent title examination of the roadways to determine who has an interest in the property being taken through eminent domain (as there may be additional entities and persons not identified in Attorney Knapik's letter) and obtain releases from those individuals as well.

Although the process for an eminent domain taking set forth in Attorney Knapik's letter is accurate, I want to stress the importance of obtaining all the necessary releases prior to such a taking to avoid litigation over damages which may result from the taking.






Please let me know if you have any further questions in this regard.

Thanks.

Jena C. Muñoz, Esq.  
LOUISON, COSTELLO, CONDON & PFAFF, LLP  
101 Summer Street  
Boston, MA 02110  
Tel: (617) 439-0305  
Fax: (617) 439-0325

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 Please consider the environment before printing this e-mail.

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**From:** Patrick Costello  
**Sent:** Tuesday, November 09, 2010 9:18 AM  
**To:** Jena Caruso Muñoz  
**Subject:** FW: Cedar Woods  
**Importance:** High

Could you take a look at this and get back to Tracy?

Patrick J. Costello  
*Louison, Costello, Condon & Pfaff, LLP*  
101 Summer Street  
Boston, MA 02110  
617-439-0305  
(fax) 617-439-0325

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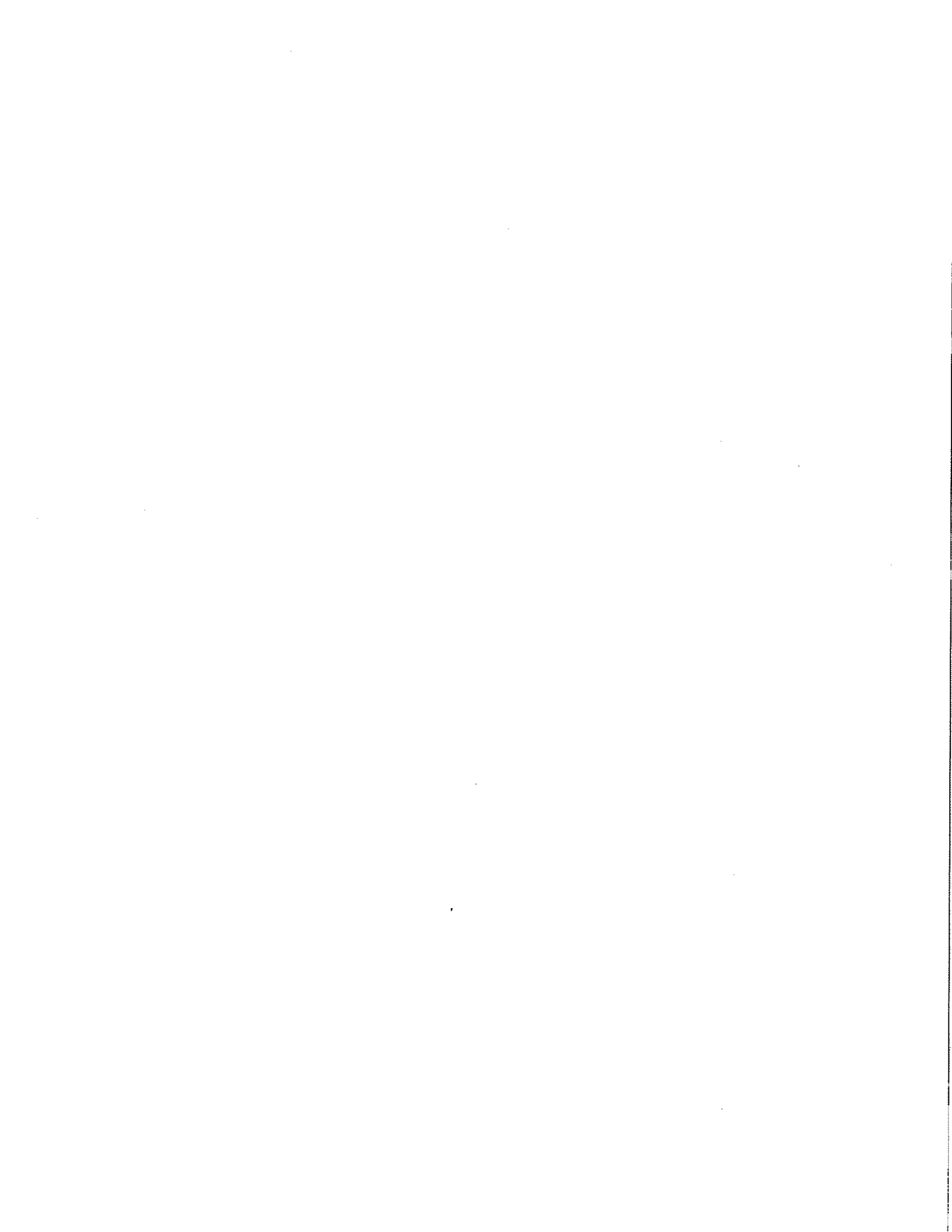
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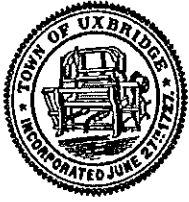
**From:** Tracey Ante [mailto:asst2.manager@uxbridge-ma.gov]  
**Sent:** Tuesday, November 09, 2010 9:04 AM  
**To:** Patrick Costello  
**Subject:** FW: Cedar Woods

Hi Pat – I realize I just sent this over on 11/3. However, the Selectmen would like to know if you will be able to review this material sometime this week? Please advise. Thx!

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11/18/2010





TOWN OF UXBRIDGE  
OFFICE OF THE FINANCE DIRECTOR  
TOWN TREASURER/COLLECTOR  
21 South Main Street  
Uxbridge, MA 01569-1851  
Phone 508-278-8606/8607 Fax 508-278-3751  
[findir@uxbridge-ma.gov](mailto:findir@uxbridge-ma.gov)

David A. Genereux  
Finance Director

DATE: November 22, 2010  
TO: Michael Szlosek, Town Manager  
FROM: David Genereux, Finance Director  
RE: Bond Sale Results

RECEIVED  
NOV 22 2010  
BOARD OF SELECTMEN  
UXBRIDGE, MA

The Town held a note sale on November 16, 2010 for twenty-million dollar notes for the new Uxbridge High School.

There were three bidders.

Bidder	Total Interest Cost
Robert W. Baird & Co. Inc	3.99%
Fidelity Capital Markets	4.15%
Morgan Stanley & Co. Inc	4.19%

Apparently, the attractive rate environment, coupled with the ending Build America Bond program, flooded the market with municipal debt. The Town came in overall around 50 basis points over projection when we first decided to go ahead with the permanent financing, as opposed to the more traditional plan that we presented to Town Meeting, which projected the debt offering in two years at 5.50%

The result of the sale is the Town pays a twenty-year debt of \$30,103,034, to Robert W. Baird & Co., Inc., which represents a total cost of \$5,903.00 over 20 years to the average taxpayer, or \$295.00 per year. You may recall that the original presentation indicated a total cost of \$32,093,075, which was \$6,526.00 over 20 years to the average taxpayer (\$326.00 annually). The difference is a reduction in interest expense of \$1,990,041, or a savings of \$623.00 to the average taxpayer over the life of the loan, which averages a reduction of \$31.00 per year. This will move the repayment schedule up by one year. Repayment of principal and interest will commence in August of 2011, and end in August, 2030.

This does not include the small borrowing for any remaining municipal share of the project that will take place when the work is completed and the project audit is completed.

The Board of Selectmen needs to vote the following motion. Its text is rather long, but must be read and approved as written:



I move that the sale of the \$20,000,000 General Obligation School Construction Bonds of the Town dated November 15, 2010 (the "Bonds"), to Robert W. Baird & Co., Inc. at the price of \$20,757,879.55 and accrued interest is hereby approved and confirmed. The Bonds shall be payable on August 15 of the years and in the principal amounts and bear interest at the respective rates, as follows:

<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>
2011	\$625,000	3.00%	2020	\$ 955,000	4.00%
2012	795,000	2.50	2021	985,000	4.00
2013	810,000	3.00	2022	1,015,000	5.00
2014	825,000	3.00	2023	1,050,000	5.00
2015	840,000	4.00	2024	1,085,000	5.00
2016	860,000	4.00	2025	1,125,000	5.00
2017	880,000	4.00	2026	1,170,000	5.00
2018	900,000	4.00	2028	2,475,000	4.25
2019	925,000	4.00	2030	2,680,000	4.50

I further move that the Bonds maturing on August 15, 2028 and August 15, 2030 (each a "Term Bond") shall be subject to mandatory redemption or mature as follows:

**Term Bond due August 15, 2028**

<u>Year</u>	<u>Amount</u>
2027	\$1,215,000
2028*	1,260,000

\*Final Maturity

**Term Bond due August 15, 2030**

<u>Year</u>	<u>Amount</u>
2029	\$1,315,000
2030*	1,365,000

\*Final Maturity

I further move that in connection with the marketing and sale of the Bonds, the preparation and distribution of a Notice of Sale and Preliminary Official Statement dated November 9, 2010, and a final Official Statement dated November 16, 2010 (the "Official Statement"), each in such form as may be approved by the Town Treasurer, be and hereby are ratified, confirmed, approved and adopted.

I further move that the Bonds shall be subject to redemption, at the option of the Town, upon such terms and conditions as are set forth in the Official Statement.

I further move that the consent to the financial advisor bidding for the Bonds, as executed prior to the bidding for the Bonds, is hereby confirmed.



**I further move that the Town Treasurer and the Board of Selectmen be, and hereby are, authorized to execute and deliver a continuing disclosure undertaking in compliance with SEC Rule 15c2-12 in such form as may be approved by bond counsel to the Town, which undertaking shall be incorporated by reference in the Bonds, as applicable, for the benefit of the holders of the Bonds from time to time.**

**I further move that each member of the Board of Selectmen, the Town Clerk and the Town Treasurer be and hereby are, authorized to take any and all such actions, and execute and deliver such certificates, receipts or other documents as may be determined by them, or any of them, to be necessary or convenient to carry into effect the provisions of the foregoing votes.**

There will be numerous documents to be signed as well.

Please contact me with any questions.

