

CITY OF FRANKLIN  
CITY COUNCIL MEETING  
December 7, 2020  
6:00 P.M.





## CITY COUNCIL MEETING

**Monday December 7, 2020 - 6:00 p.m.**

**Webmeeting by computer:** <https://us02web.zoom.us/j/85299617728>

**or by phone: 1-312-626-6799, Meeting ID# 852 9961 7728**

### Compliant Statement

#### The Right-to-Know Law During the State of Emergency

As Mayor of the **City of Franklin**, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are:

a) Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means:

We are utilizing **Zoom Webmeeting via the Internet** for this electronic meeting.<sup>1</sup> All members of the **Franklin City Council** have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following phone # **1-312-626-6799, Meeting ID # 852 9961 7728, or by clicking on the following website address:**  
<https://us02web.zoom.us/j/85299617728>, Meeting ID # 852 9961 7728

b) Providing public notice of the necessary information for accessing the meeting:

We previously gave notice to the public of the necessary information for accessing the meeting, including how to access the meeting using Zoom or telephonically. Instructions have also been provided on the website of the **City of Franklin** at: [www.FranklinNH.Org](http://www.FranklinNH.Org).



c) Providing a mechanism for the public to alert the public body during the meeting if there are problems with access:

If anybody has a problem, please call **603-934-3900 ext. 10** or email at:  
**CityMgr@FranklinNH.Org**.

d) Adjourning the meeting if the public is unable to access the meeting:

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled.

Please note that **all votes** that are taken during this meeting shall be done by **roll call vote**.

Let's start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law.

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#### **SALUTE TO THE FLAG**

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#### **PUBLIC HEARINGS**

##### **Community Development Technical Assistance Block Grant.**

**Resolution #09-21**, a Resolution to accept and appropriate \$720,613 of adequacy revenue, grant revenue, and prior year fund balance to the Franklin School District.

**Resolution #10-21**, a Resolution to accept and appropriate \$10,132 from the Raymond and Betty Turcotte Expendable Trust Fund for the purchase of a new Pentheon Combination Extrication Tool.

**Resolution #11-21**, a Resolution to accept and appropriate \$62,904 of grant funds from the NH Department of Safety for improvements to the Franklin's Emergency Operations Center at the Franklin Fire Station.

**Ordinance #04-21**, an update to the Franklin Municipal Code Chapter 21, Article 1, Fire Hydrants, Sections 21-1 and 21-2.

### **COMMENTS FROM THE PUBLIC**

Persons wishing to address the Council may speak for a maximum of three minutes. No more than thirty minutes will be devoted to public commentary.

### **CITY COUNCIL ACKNOWLEDGEMENT**

The Mayor will recognize any Councilor who wishes to express their appreciation of behalf of the City.

### **MAYOR'S UPDATE**

#### **Agenda Item I.**

Council to consider the minutes of the November 2, 2020 City Council Meeting.

#### **Agenda Item II.**

School Board update

#### **Agenda Item III.**

Council to consider authorizing the City Manager to apply for a Community Development Block Technical Assistance Grant, a proposed grant up to \$25K and review of the Residential Antidisplacement and Relocation Assistance Plan.



#### **Agenda Item IV.**

Council to consider approval of Resolution #09-21, a Resolution to accept and appropriate \$720,613 of additional adequacy revenue, grant revenue, and prior year fund balance to the Franklin School District FY21 Budget.

#### **Agenda Item V.**

Council to consider approval of Resolution #10-21, a Resolution to accept and appropriate \$10,132 from the Raymond and Betty Turcotte Expendable Trust Fund for the purchase of a new Pentheon Combination Extrication Tool for the Fire Department.

#### **Agenda Item VI.**

Council to consider approval of Resolution #11-21, a Resolution to accept and appropriate \$62,904 of grant funds from the NH Department of Safety, Division of Homeland Security and Emergency Management to improve Franklin's Emergency Operations Center at the Franklin Fire Station.

#### **Agenda Item VII.**

Council to consider approval of Ordinance #04-21, an update to the Franklin Municipal Code Chapter 21, Article I "Fire Hydrants", sections 21-1 and 21-2.

#### **Agenda Item VIII.**

Council to consider setting a public hearing on Resolution #12-21, a Resolution to accept and appropriate \$185,200 in federal CARES Act funding titled GOFERR (Governor's Office for Emergency Relief and Recovery) funds, for the purpose of funding costs associated with the COVID 19 pandemic for the Franklin School District.

#### **Agenda Item IX.**

Council to consider approval of the Police Union Contract 7/1/2020-6/30/2023

#### **Agenda Item X.**

Council to consider approval of the Cumberland Farms Lease.

### **Agenda Item XI.**

Council to consider approval to purchase 202 Central Street.

### **Agenda Item XII.**

City Council to discuss the Ward 2 Election Location.

### **Agenda Item XIII.**

#### **Other Business**

1. Mayor Appointments
2. Committee Reports
3. City Manager's Update
4. Late Items.

#### **Adjournment**

*The City Council of the City of Franklin reserves the right to enter into non-public session when necessary according to the provisions of RSA 91-A.*

*This location is accessible to the disabled by stairwell elevator. Those wishing to attend who are hearing or vision impaired may make their needs known by calling 934-3900 (voice), or through "Relay New Hampshire" 1-800-735-2964 (T.D./TRY)*



**CITY COUNCIL MEETING**  
**AGENDA ITEM I**



**CITY OF FRANKLIN  
COUNCIL AGENDA REPORT**

*City Council Meeting of December 7, 2020*

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**Subject: Approval of Minutes**

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**Motion:** “I move that the Franklin City Council City Council approve the minutes of the November 2<sup>nd</sup>, 2020 City Council Meeting.”

Mayor calls for a second, discussion and the vote.





**City Council Meeting Minutes**  
**Monday, November 2, 2020 – 6:00 p.m.**  
**Webmeeting via Zoom**

**City Council attendance:**

	<b>Location/others present</b>
Mayor Giunta	GAR Hall/no others present in the room
Councilor Jo Brown	Home/no others present in the room
Councilor Scott Clarenbach	Home/no others present in the room
Councilor Bob Desrochers	Home/no others present in the room
Councilors George Dzujna	Home/wife Christine is present
Councilor April Bunker	Home/no others present in the room
Councilor Ted Starkweather	Home/no others present in the room
Councilor Olivia Zink	Home/no others present in the room
Councilor Paul Trudel	Home/no others present in the room
Councilor Karen Testerman	Home/no others present in the room

Others attending remotely: City Manager Judie Milner, City Department Heads, Superintendent LeGallo, School Board Chair Tim Dow, and members of the public.

Mayor Giunta called the meeting to order at 6:02 p.m. via Zoom. He then read the Compliant Right to Know Statement.

Salute to the Flag was led by Councilor Testerman.

Councilor Desrochers gave recognition to the recent passing of veteran Reginald LaPlante who served in the Army National Guard and Roger Ralphs who served in the US Army. Desrochers also asked for remembrance for all our Veterans from past to present and requested a moment of silence in honor of them all.

**PUBLIC HEARINGS**

**Resolution #07-21**, a resolution to accept and appropriate \$45,000 of New Hampshire Land and Water Conservation Funds for Daniell Park Improvements.

Public hearing opened at 6:09 p.m.

Mayor Giunta asked if anyone wanted to address the Council. There was none at this time.

The public hearing on Resolution #07-21 closed at 6:10 p.m.

**Resolution #08-21**, a resolution to accept and appropriate the Governor's Office for Emergency Relief and Recovery (GOFERR) monies for COVID-19 Expenses.

Public hearing opened at 6:10 p.m.

Mayor Giunta asked if anyone wanted to address the Council. There was none.

The public hearing on Resolution #08-21 closed at 6:11 p.m.

### **COMMENTS FROM THE PUBLIC**

Persons wishing to address the Council may speak for a maximum of three minutes. No more than thirty minutes will be devoted to public commentary.

Resident Tamara Feener, Ward 2 resident asked what the funds for Daniell Park will be used for in reference to Resolution #07-21.

Parks and Recreation Director Krystal Alpers responded to the question and stated that the grant and matching funds raised will be used to demolish the current bathroom building and rebuild a new bathroom building and small concession stand which will include larger storage areas inside the building. The material will be mainly concrete block. The funds will also be used to purchase security cameras.

Alpers further explained that she has reached out to the Franklin School system and the softball team seeking fundraising opportunities. If further funds are needed to meet the match requirement, she will reach out to Franklin Savings Bank and other resources.

Janet Desrochers Ward 1 resident thanked the City Clerks for their hard work during this extremely busy election year. The amount of work was extreme this year. She also thanked all the election workers and volunteers for keeping up with all the absentee ballots coming in. Janet asked the Council to consider increasing next year's budget for the Clerk's Office.

Janet Desrochers stated that she is an election worker herself and the election workers in no way have imposed on the rights of voters by asking everyone to wear masks while voting in a separate area. She made reference to an election official who made a few negative comments to election workers. Desrochers requested that everyone coming to the polls tomorrow, treat the election workers with respect.

Janet Desrochers also stated that the City Website was out of date and she hasn't been receiving City Website alerts for a while so she wondered why her email dropped off somehow. She also asked how many City owned inhabitable buildings there are and what the plans are to address them.



Mayor Giunta agreed that the amount of work the City Clerk's office is doing is nothing short of herculean and thanked Janet Desrochers for her comments. He replied to Desrochers comment on courtesy stating that he would love to write a book called "The Death of Common Courtesy" because it seems as it has gone right out the window. Mayor Giunta also asked City Manager Milner to look into the City Website issues and to speak to the status of the uninhabitable City Buildings.

Milner replied that many News and Announcements have been going out so if someone had previously subscribed and no longer is receiving them, please reach out to the City Manager's secretary Audrey Lanzillo.

Milner stated that the City currently only has one tax deeded property that needs to be taken down and it is currently third on the demolition list. One is coming down per RSA 155-B court ordered, another is the City owned building on Elkins, and then the tax deeded property on West Bow Street will come down.

Tamara Feener Ward 2 resident and Election Moderator described several issues to the Mayor and City Council. The first was that due to COVID, the Ward 2 Election had to move to Bessie Rowell mainly for accessibility reasons and also to allow more space for the voting process. Feener added that the election workers have not felt as though they were welcome to be there. She stated that the election workers were not allowed to set up in the Gym until very late the evening prior to the Election which was inconvenient for the Election workers.

Feener also expressed concern over the amount of pay that the brand-new election workers receive which is the same amount as the seasoned election workers. She is very happy that new workers stepped forward but just want it to be known that the pay needs to be looked at.

Feener further stated that she likes to walk for exercise and is unhappy that some sidewalks continue to have holes and cracks in them. She also requested that the City should resume the Fall Leaves Pick-up by the municipal department. Possibly offer it to residents as a paid service and collect some revenue from just as Concord does.

Feener continued to express her opinion that a few new Councilors over the recent years have said they could do a better job but she felt that they were not doing a better job. The majority are doing a good job but others are not. She further added that the Council that her husband was on had done a good job.

Lastly, Feener stated that the notion of Ward 2 voters not being wanted at Bessie Rowell during the elections and having to continue to move it to different locations can be construed as voter suppression.

Milner replied to Feener stating that she agreed that during this challenging time, everyone needs to compromise as well as consider the COVID Safety Guidelines at a daycare facility which happens to be located at the Bessie Rowell Community Center. Parents need to go to

work and so they rely on this facility to be open. The Council agreed that this would be a temporary location. If it wasn't due to COVID, the children could have gone on a field trip during election season. Milner explained that the City is working hard to accommodate the elections as well as keeping the facility safe for the After School Programs.

Election worker pay isn't something City Clerk Gargano or the City Manager can decide upon Milner explained, however a potential fifth stipend can be discussed during the next budget cycle.

Feener continued to inform the Council that she was born and raised in Franklin, she has worked as a moderator for many years, and has asked for raises for all election workers for many years. She stated that she is a true native of New Hampshire. Her family had businesses here in Franklin for years. She would like it to be known that she has long roots here and is not just a resident passing through.

Desrochers stated that the Municipal Services Department has been patching sidewalks around the City and to let them know where repairs are needed. They can't fix it if they don't know about it.

There were no further comments from the public.

#### **City Council Acknowledgement**

Councilor April Bunker acknowledged the great work that Councilor Brown and Superintendent Dan LeGallo have been doing on the Manufacturing initiatives for the schools. She stated that as a parent herself, she knows that this will have a significant pay out for the many hours of invested time it took to work on this initiative.

Councilor Dzujna acknowledged Sergeant Guerriero and K-9 Falco for their amazing work locating illegal drugs whether on people directly or in their car. Dzujna further stated that Sergeant Guerriero told him that this isn't the good guys versus the bad guys. It also provides an opportunity to get someone help that they need and get them away from what may have happened in their lives which brought them to the unfortunate incident. Dzujna further added that the Franklin Police are guardians of the residents and that they are getting it right. He would like to see an article written in the Franklin Newsletter.

Councilor Testerman thanked Officer Tracy and Sergeant Guerriero in their fundraising efforts. She also thanked Chief Goldstein and Officer Tracy for doing the radio interview which focused on the efforts of our Comfort Dog Miller and how it fits into the community.

Councilor Zink acknowledged the City Clerk's Office and all three Election Moderators, Ward Clerks, Ballot workers, Supervisors of the checklist, and those who helped out during this election season. She is grateful for all the time they spent training and staying on top of important information by reading hundreds of pages of memos from the Secretary of State's

Office during this difficult year.

### Mayor's Update

Mayor Giunta virtually presented the following Mayoral Proclamation to Mary “Meg” Miller proclaiming Monday, November 2<sup>nd</sup>, 2020 as Mary “Meg” Miller Day.

#### **A Mayoral Proclamation in Honor of Mary “Meg” Miller**

**WHEREAS**, in an effort to bring light to the emerging need for healthcare workers, the New Hampshire Sector Partnership Initiative for Healthcare developed and launched a Healthcare Heroes campaign; AND

**WHEREAS**, Healthcare Heroes are those individuals who every hour of every day are on the job ensuring everyone is healthy, safe, and well cared for; AND

**WHEREAS**, the New Hampshire Sector Partnership Initiative through their Healthcare Heroes program has conducted an exhaustive process of identifying, nominating, and naming twelve individuals in the New Hampshire healthcare profession who stand out among their peers for the loving care they give to others; AND

**WHEREAS**, these individuals exemplify the care and commitment we see across our state as healthcare workers play such a critical role as caregivers during a pandemic that has significantly challenged us in many unprecedented ways; AND

**WHEREAS**, for her exemplary service as Executive Director of our very own Peabody Home, the New Hampshire Sector Partnership Initiative has chosen Mary “Meg” Miller as their Lakes Region Healthcare Hero;

**NOW, THEREFORE, BE IT RESOLVED** that I, Tony Giunta, Mayor of the City of Franklin, New Hampshire, do hereby proclaim Monday, November 2<sup>nd</sup> as:

#### **“Meg” Miller Day**

in the City of Franklin and urge all citizens to join with family and friends in celebrating this very special day by extending our congratulations and best wishes to Meg and all her very proud and loving Family and Friends.

*Given by my hand with the authority of the People of Franklin and under the Great Seal of Their City in the year of Our Lord two thousand and twenty, and the Independence of the United States, two hundred and forty-four.*

Proclaimed By:



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Tony Giunta, Mayor, City of Franklin

City Manager Judie Milner announced that through the continued fundraising efforts of Officer Tracy and Sergeant Guerriero, they created The Franklin Police K-9 Association, a non-profit 501-c3, which can be found at [www.franklinpdk9.com](http://www.franklinpdk9.com). Officer Tracy was present at her home with Comfort Dog Miller and explained the history of Franklin's K-9 program which dates back a number of years. Due to his dedication and never-ending support of the K-9 program, Police Chief Goldstein was surprised with a this very special Honorary Award presented by Officer Tracy. Goldstein was the first of five to receive the award. Additional Honorary Awards were presented to: Councilor Jo Brown for her instrumental dedication in the current Comfort Dog Program. Former K-9 handler Sgt. Jim Curran, who handled K-9 Erko from 1981-1985 and K-9

Bear from 1985-1987. The next recipient was Glenn Laramie for handling K-9 Bear for the next two years. The next honorary recipient was Norman “Sonny” Ashburn, who handled K-9 Karone from 1996-2000.

Mayor Giunta commended on Chief Goldstein for seeing the incredible talent between Tracy and Guerriero and that it isn’t by luck that all of this came together.

Officer Tracy commended the entire City Council for their fundraising support and belief in this program. She stated that she was very grateful for all they do.

**Agenda Item I.**

City Council to consider the minutes of the October 5<sup>th</sup>, 2020 City Council Meeting and the minutes of the October 13<sup>th</sup>, 2020 City Council Special Meeting.

**Motion – Councilor Dzujna moved that the Franklin City Council approve the minutes of the October 5<sup>th</sup>, 2020 City Council Meeting and the minutes of the October 13<sup>th</sup>, 2020 City Council Special Meeting.**

**Seconded by Councilor Desrochers.**

Councilor Trudel requested a change on page 3; add Chamber of Commerce to the end of the reference to Lakes Region Chamber.

Councilor Zink requested clarification on page 11 under The City Manager’s Update item “h”. She stated there is a large space in between the two topics there and wondered if it belongs there or should be noted as i. and then renumber the items. City Manager Milner stated that it did belong there and was part of her update under item h.

Councilor Trudel stated that he was not present at the October 5<sup>th</sup> meeting and would abstain from the vote.

There were no further edits requested to the meeting minutes.

Roll call to approve the minutes:

Councilor Brown	Yes	Councilor Dzujna	Yes	Councilor Zink	Yes
Councilor Clarenbach	Yes (10/5) Abstain (10/13)	Councilor Bunker	Yes	Councilor Testerman	Yes
Councilor Desrochers	Yes	Councilor Starkweather	Yes	Councilor Trudel	Abstain (10/5) Yes (10/13)

**All in favor. Motion PASSED.**

**Agenda Item II.**

Superintendent Dan LeGallo provided an update to the City Council.

LeGallo stated that the schools continue to operate under the hybrid model. There was one COVID positive case last week at the Middle School and moved to all remote for one day until the tracing was done and then deemed safe for students to return the day after the remote only day.

LeGallo shared that the Robotics Team held a virtual Governor's Cup Competition and Franklin won the Judge's Award for Community Service Outreach and Mental Awareness. Two Franklin High School senior students received \$2K scholarships each which was only given to six students out of the 26 teams in total.

The schools will be receiving \$185,200 in GOFERR Funds which equates to \$200 per student to help cover COVID expenses from March 1, 2020 through December 30, 2020.

The Manufacturing program will run for 9 weeks allowing the manufacturing math and the blueprint class to run back to back in the same school year. Funding to pay for these special classes will be state funded so students will not need to pay for them.

The Franklin School system just launched a new mobile application and can be found in the app store under Franklin Schools NH. This app will include news and updates from the administrators and is available to everyone.

Councilor Testerman stated that she downloaded the app and it works great and looks fantastic.

Councilor Dzujna asked if the middle school's furnace was working. LeGallo stated that it is working fine but they are having issues with the gymnasium.

Councilor Zink thanked Superintendent LeGallo for the great work this year throughout the pandemic. She stated that she received feedback from a few parents who struggle with the alternating classroom schedules and asked if there are any plans to adjust this for working parents. LeGallo replied that he speaks with the School Board every month on these topics. The school can adjust and allow certain students to go into the schools 4 days a week if necessary. He asked that parents reach out to him to discuss their needs and work through any special situations.

### **Agenda Item III.**

Council to consider approval of Resolution #07-21, a resolution to accept and appropriate \$45,000 of New Hampshire Land and Water Conservation Funds for Daniell Park Improvements.

**Motion – Councilor Desrochers moved that the Franklin City Council accepts \$45,000 from the State of New Hampshire Land and Water Conservation Fund for the renovation of the Daniell**

**Park Bath House and adopt Resolution #07-21 by a roll call vote.  
Seconded by Councilor Dzujna.**

Mayor Giunta asked if there was any discussion. There was none.

**RESOLUTION #07-21**

**A Resolution Relating to a supplemental appropriation for Fiscal Year 2021.**

**In the year of our Lord, Two Thousand Twenty,**

**WHEREAS**, the City Council of the City of Franklin, New Hampshire adopted a budget for Fiscal Year 2021 beginning July 1, 2020, **and**;

**WHEREAS**, the City Council recognizes the repairs and improvements needed to the Daniell Park Bath House, **and**;

**WHEREAS**, the city has been awarded a federal grant from the New Hampshire Land and Water Conservation Fund in the amount of \$45,000 for the Daniell Park Bath House which must be matched in full by the City, **and**;

**WHEREAS**, the City Parks and Recreation Department has raised the match funding through other smaller nonfederal grants, fundraising, donations, in-kind services and through the Parks and Recreation Revolving Fund, **and**;

**WHEREAS**, the City Council wishes to accept and appropriate the federal grant, **now**,

**THEREFORE, BE IT RESOLVED**, that at their regularly scheduled meeting of the City Council on Monday, November 2<sup>nd</sup>, 2020, the City Council of Franklin, New Hampshire does hereby adopt resolution #07-21 to authorize the City Manager to accept and appropriate the grant funds of \$45,000 (Forty-Five Thousand Dollars), execute all grant documents and hereby authorizes the following non-lapsing appropriations,

**An Increase in Revenue:**

Acct# 01-5-000-33110-451 Federal Capital Grant – Land & Water Conservation Fund (Daniell Park Bath House) – Forty-Five Thousand Dollars (\$45,000)

Acct# 01-5-000-35085-451 Donations-Daniell Park Bath House- Forty-Five Thousand Dollars (\$45,000)

**An Increase in Expenditures:**

Acct# 01-9-012-40720-451 Buildings CO- Daniell Park Bath House – Ninety Thousand dollars (\$90,000)

**By a roll call vote.**

Councilor Brown	Yes	Councilor Dzujna	Yes	Councilor Zink	Yes
Councilor Clarenbach	Yes	Councilor Bunker	Yes	Councilor Testerman	Yes
Councilor Desrochers	Yes	Councilor Starkweather	Yes	Councilor Trudel	Yes

**All in favor. Motion PASSED.**

**Agenda Item IV.**

Council to consider approval of Resolution #08-21, a resolution to accept and appropriate

Governor's Office for Emergency Relief and Recovery monies through the CARES Act of COVID-19 expenses.

**Motion – Councilor Bunker moved that the Franklin City Council adopts resolution #08-21 appropriating up to amount received of federal grant money under the CARES act allocated to Franklin through the Governor's Office of Emergency Relief & Recovery.**

**Seconded by Councilor Desrochers.**

Councilor Zink asked if the City is receiving the full \$206,402 or is this based on a state formula. Milner replied that the amount shown is the maximum allocation allowed based on a state formula.

Mayor Giunta asked if there was any further discussion. There was none.

**RESOLUTION #08-21**

**A Resolution Relating to a supplemental appropriation for Fiscal Year 2021.**

**In the year of our Lord, Two Thousand Twenty,**

**WHEREAS**, the City Council of the City of Franklin, New Hampshire adopted a budget for Fiscal Year 2021 beginning July 1, 2020, and;

**WHEREAS**, the City Council recognizes the State of Emergency due to Covid-19 pandemic, and;

**WHEREAS**, the City of Franklin will be awarded \$206,402 in federal CARES Act grant monies through the State of NH through the Governor's Office for Emergency Relief and Recovery (GOFERR) to offset expenses incurred due to the Covid 19 pandemic, and;

**WHEREAS**, the City Council wishes to appropriate the GOFERR funds, now,

**THEREFORE, BE IT RESOLVED**, that at their regularly scheduled meeting of the City Council on Monday, November 2, 2020, the City Council of Franklin, New Hampshire does hereby adopt resolution #08-21 to authorize the City Manager to accept and appropriate the grant funds

**An Increase in Revenue:**

Federal Grants Operating- Covid 19 Acct. No. 01-0-000-33111-123, *amount received from the GOFERR fund.*

**An Increase in Expenditure:**

Federal Government Operating Supplies- Covid 19 Expense Acct. No 01-1-991-40610-123, *amount received form the GOFERR fund.*

**By a roll call vote:**

Councilor Brown	Yes	Councilor Dzujna	Yes	Councilor Zink	Yes
Councilor Clarenbach	Yes	Councilor Bunker	Yes	Councilor Testerman	Yes
Councilor Desrochers	Yes	Councilor Starkweather	Yes	Councilor Trudel	Yes

**All in favor. Motion PASSED.**



**Agenda Item V.**

Council to consider the authorization of the Fire Department to sell their gas kitchen range and use the proceeds to purchase a new kitchen range.

**Motion – Councilor Testerman moved that the Franklin City Council authorize the Fire Department Administration to sell the fire station’s natural gas kitchen range. It is the goal that the proceeds from this sale will be used to offset the cost of the new fire station kitchen range.**

**Seconded by Councilor Dzujna.**

Mayor Giunta asked if there was any discussion. There was none.

**Roll call:**

Councilor Brown	Yes	Councilor Dzujna	Yes	Councilor Zink	Yes
Councilor Clarenbach	Yes	Councilor Bunker	Yes	Councilor Testerman	Yes
Councilor Desrochers	Yes	Councilor Starkweather	Yes	Councilor Trudel	Yes

**All in favor. Motion PASSED.**

**Agenda Item VI.**

Council to consider setting a public hearing on Resolution #09-21, a resolution to accept and appropriate \$720,613 of additional adequacy revenue, grant revenue, and prior year fund balance to the Franklin School District FY21 budget.

**Motion – Councilor Desrochers moved that the Franklin City Council set a public hearing for 6 p.m. on December 7, 2020 regarding Resolution #09-21 appropriating \$453,018 to the Franklin School District Fiscal Year 2021 Budget and appropriating \$267,595 to the Franklin School District for the Department of Justice Programs – STOP School Violence Federal Grant Award. To be read in title in only.**

**Seconded by Councilor Brown.**

Councilor Zink asked what the acronym NABITA stands for. Councilor Bunker replied that it stands for the National Behavioral Intervention Team Association.

**Roll call:**

Councilor Brown	Yes	Councilor Dzujna	Yes	Councilor Zink	Yes
Councilor Clarenbach	Yes	Councilor Bunker	Yes	Councilor Testerman	Yes
Councilor Desrochers	Yes	Councilor Starkweather	Yes	Councilor Trudel	Yes

**All in favor. Motion PASSED.**

Mayor Giunta read Resolution #09-21 in title only.

**A Resolution Granting Authority to Accept and Appropriate \$720,613 of additional funding for the Franklin School District for Fiscal Year 2021.**

**Agenda Item VII.**

Council to consider setting a public hearing on Resolution #10-21, approving the expenditure of \$10,132 from the Raymond and Betty Turcotte Expendable Trust Fund for the purchase of a new Pentheon Combination Extrication Tool.

**Motion – Councilor Bunker moved that the Franklin City Council set a public hearing date for 6:00 p.m. on December 7, 2020 for Resolution #10-21, approving an expenditure of \$10,132 from the Raymond and Betty Turcotte Expendable Trust Fund. This expenditure will be utilized for the purchase of a new Pentheon Combination Extrication Tool. To be read in title only.**

**Seconded by Councilor Desrochers.**

**Mayor Giunta asked if there was any discussion. There was none.**

**Roll call:**

Councilor Brown	Yes	Councilor Dzujna	Yes	Councilor Zink	Yes
Councilor Clarenbach	Yes	Councilor Bunker	Yes	Councilor Testerman	Yes
Councilor Desrochers	Yes	Councilor Starkweather	Yes	Councilor Trudel	Yes

**All in favor. Motion PASSED.**

Mayor Giunta read Resolution #10-21 in title only.

**A Resolution Relating to a supplemental Appropriation for Fiscal Year 2021.**

**Agenda Item VIII.**

Council to consider setting a public hearing on Ordinance #04-21, an update to the Franklin Municipal Code Chapter 21, Article I “Fire Hydrants”, sections 21-1 and 21-2.

**Motion – Councilor Desrochers moved that the Franklin City Council set a public hearing date for 6:00 p.m. at the December 7, 2020 meeting of the City Council for Ordinance #04-21. Adoption of Ordinance #04-21 will result in the update to the City Municipal Code Chapter 21, Article 1, Fire Hydrants, Sections 21-1 and section 21-2.**

**Seconded by Councilor Starkweather.**

Mayor Giunta asked if there was any discussion. There was none.

**Roll call:**

Councilor Brown	Yes	Councilor Dzujna	Yes	Councilor Zink	Yes
Councilor Clarenbach	Yes	Councilor Bunker	Yes	Councilor Testerman	Yes
Councilor Desrochers	Yes	Councilor Starkweather	Yes	Councilor Trudel	Yes

**All in favor. Motion PASSED.**

**Agenda Item IX.**

Council to consider approval of an order pursuant to RSA 155B for 90 Pleasant Street.

**Motion – Councilor Zink moved that the Franklin City Council move forward with an order pursuant to RSA 155B for 90 Pleasant Street in the interest of public safety and health and authorize the Mayor to execute the order on behalf of the City.**

**Seconded by Councilor Dzujna.**

Mayor Giunta asked if there was any discussion. There was none.

**Roll call:**

Councilor Brown	Yes	Councilor Dzujna	Yes	Councilor Zink	Yes
Councilor Clarenbach	Yes	Councilor Bunker	Yes	Councilor Testerman	Yes
Councilor Desrochers	Yes	Councilor Starkweather	Yes	Councilor Trudel	Yes

**All in favor. Motion PASSED.**

**Agenda Item X.**

Council to consider the City Manager to apply for a Land and Water \$400K Grant for Mill City Park.

**Motion – Councilor Desrochers moved that the Franklin City Council authorize the City Manager to apply for a \$400,000 grant through Land & Water Conservation Fund for the construction of water features in the river at Mill City Park.**

**Seconded by Councilor Starkweather.**

Mayor Giunta asked if there was any discussion. There was none.

**Roll Call:**

Councilor Brown	Yes	Councilor Dzujna	Yes	Councilor Zink	Yes
Councilor Clarenbach	Yes	Councilor Bunker	Yes	Councilor Testerman	Yes
Councilor Desrochers	Yes	Councilor Starkweather	Yes	Councilor Trudel	Yes

**All in favor. Motion PASSED.**

**Agenda Item XI**

**Other Business**

**1. Mayoral appointments:**

- a. Mayor Giunta appointed Eric Lessard to the Mayor's Drug and Alcohol Task Force. Term of service is two years to January 2022.
- b. Mayor Giunta appointed John Neff to the Mayor's Drug and Alcohol Task Force. Term of service is two years to January 2022.

- c. Mayor Giunta welcomed Eric and John and stated that they will make a difference by joining the Mayor's Drug and Alcohol Task Force.
- 2. Committee Reports:
  - a. Councilor Bunker provided an update on the School Liaison meeting which was held last week. She stated that most of the items that they discussed were topics that were discussed in tonight's Council meeting. She stated that the meeting went very well and believes it was a great start to collaborating with the schools. During the meeting, they discussed the school's new "app" for anyone to download. Bunker stated that Superintendent LeGallo offered the City to reach out to the school's IT professional if the City is interested in creating a similar app. They also discussed the desire for more transparency from the school. Manufacturing, apprenticeship programs, shared priorities, Running Start with LLRC, and Portrait of a Graduate were also discussed. There was also an update from the Mayor's Drug Task Force.

Mayor Giunta stated that he is very excited to do his upcoming interview for the Portrait of a Graduate.

There were no further committee reports.

- 3. City Manager's Update
  - a. Contingent Grant Line Activity remained at \$0 for the month.
  - b. Trust fund for school funding has \$141.22.
  - c. The Broken Spoon is making progress and should be opening very soon.
  - d. The Candidates Forum was not a Choose Franklin Event. It was a Democratic Party Event which was organized outside of City support.
  - e. The Elkins Street property is scheduled for demolition and should be next after two other court orders are demoted. It should be down by the end of the year.
  - f. The City Clerk's Office will be closed tomorrow (11/3) for the General Election. Milner gave a shout out to the many volunteers and the City Clerk for their lion share of hours spent on all the elections this year. They handled approximately 900 absentee ballots thus far. Milner confirmed all three voting locations to the public.
  - g. Milner gave a shout out to Mike Mullavey for receiving the 2020 Community Hero Award from the Lakes Region Chamber of Commerce.
  - h. Drug Take Back Day was held on October 24<sup>th</sup> and 50 lbs. of prescription drugs were dropped off. Lock box training/education was also provided. There are many grandparents raising their grandchildren these days and they came forward asking for lock boxes. The BBQ fundraiser portion earned approximately \$600. There was also a special guest appearance from Sergeant Guerriero and K-9 Falco.
  - i. Milner stated that she attended the statewide American Legion Law Enforcement Officer of the Year Award presentation to Chief Goldstein on

October 16<sup>th</sup>. It was very well planned and great to see police chiefs from other communities attend and congratulate Chief Goldstein.

- j. The Law Enforcement Accountability Community and Transparency Commission (LEACT) made some recommendations to the Governor who issued Executive Order 2020-19 which implement the recommendations. They relate to training and training hours.
  - k. Trash program update – the MSD Committee is meeting this week to review the trash ordinance which hasn't been reviewed or updated for approximately 10 years.
  - l. The Army Core of Engineers will be removing about 10 acres of Red Pine in the Flood Control Area. The reason is to get ahead of a Red Pine Scale disease that is rampant in Massachusetts and working is way north.
  - m. Milner attended the recent Downtown Business Group Meeting. They discussed Christmas décor for Downtown, local business hours of operation, signage, and a matching Christmas wreath holiday fundraiser to support Mill City Park. Milner gave a shout out to Jasmine, Valerie and George.
  - n. The Tie Braker winner for the School Board Ward 2 seat was Glen Carter.
  - o. Milner thanked Finance Director Gaudette for her work on the 2019 Financial Statements which were given the highest opinion/rating from the auditor.
  - p. Milner also thanked Justin Hanscom, Deputy Directory of our Municipal Services Department who was featured in the NH DES Fall Newsletter. Well done.
  - q. A Public Listening session regarding the Trestle View Bridge Project will be held on November 17<sup>th</sup>. The City has received a \$640K TAP Grant (Transportation Alternative Program) Grant to rehab and connect points from Mill City Park to the Winnepesaukee River Trail. The engineering work will begin first and questions and answer session will take place during the November 17<sup>th</sup> Listening Session.
  - r. The New Hampton Road project is complete and Milner gave a shout out to the MSD Department's Director Brian Sullivan. Sullivan obtained a paving company agreement to pave the base/winter layer onto New Hampton before this winter with final coat in the spring. This was made possible by a portion of the water fund (areas where water lines were replaced/dug up) and an encumbrance from the General Fund.
  - s. The 2020 tax rate has been set at \$22.84 per thousand (.37 increase from 2019 tax rate). Tax bills will be mailed next Friday.
  - t. City Hall will be closed on November 11<sup>th</sup> in honor of Veterans Day. Milner gave thanks to all our veterans. City Hall will also be closed for Thanksgiving on November 26<sup>th</sup> and 27<sup>th</sup>. Milner wished everyone a Happy Thanksgiving.
- There were no further updates from City Manager Milner.

Councilor Clarenbach asked City Manager Milner for an update on Cumberland Farms. Milner replied that they have sent the lease agreement back to us with one item still under negotiations. It is a timing issue on the City being reimbursed for the purchase of the Birke's

property. Our City Attorney is working on this and an update should be available for the December meeting.

Councilor Bunker stated that she is very happy that a Franklin resident is leading the Trestle View Engineering project.

Councilor Brown asked Milner to send all the Councilors more information on the Christmas Wreath Fundraiser for the local businesses.

Councilor Zink requested an update on the regional homeless group. Milner replied that Laconia Police Officer Eric Adams is leading the initiative and still working on pulling together a team for the initial meeting. Milner was happy to say there are three volunteers from Franklin who are dedicating to being part of this new group and she will provide more information to the Council when she receives it.

Mayor Giunta asked if there was any further discussion. There was none.

**Motion to adjourn was made by Councilor Clarenbach and seconded by Councilor Bunker.**

Roll call:

Councilor Brown	Yes	Councilor Dzujna	Yes	Councilor Testerman	Yes
Councilor Clarenbach	Yes	Councilor Starkweather	Yes	Councilor Bunker	Yes
Councilor Desrochers	Yes	Councilor Zink	Yes	Councilor Trudel	Yes

**All in favor. Motion PASSED.**

**Meeting adjourned at 7:46 p.m.**

**Respectfully submitted,**

**Audrey Lanzillo**

**CITY COUNCIL MEETING**  
**AGENDA ITEM II**





**CITY OF FRANKLIN  
COUNCIL AGENDA REPORT**

*City Council Meeting of December 7, 2020*

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**Subject: School Board Update**

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**Superintendent Dan LeGallo will provide a monthly update to the Mayor and City Council.**

**CITY COUNCIL MEETING**  
**AGENDA ITEM III**



**CITY OF FRANKLIN  
COUNCIL AGENDA REPORT**

December 7, 2020

**From:** Judie Milner, City Manager

**Subject:** Council to consider authorizing the City Manager to apply for a \$25,000 Community Development Block Grant Planning Grant to fund a Hotel Feasibility Study

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**Suggested Motions:**

**Motion 1**

Councilor moves, "I move that the Franklin City Council authorize the City Manager to sign and submit a community development block grant planning grant application in the amount not to exceed \$25,000 to fund a hotel feasibility study, and upon approval of the CDBG application, authorize the City Manager to execute any documents which may be necessary to effectuate the CDBG contract."

Mayor calls for a second, discussion and roll call vote.

**Motion 2**

Councilor moves, "I move that the Franklin City Council adopt the Residential Anti-Displacement and Relocation Assistance Plan."

Mayor asks for a second, discussion, roll call vote.

**Discussion:**

The downtown economic steering committee has been discussing the possibility of a boutique hotel within the downtown corridor for years but the timing was not right. Now that the whitewater park is fully permitted and scheduled for construction in summer of 2021, the Chinburg project at Stevens Mill has planning board approval and scheduled for construction in 2021, and the opportunity zone website outlining potential investment properties and best uses is imminent, it is time to concentrate on the feasibility of a small, limited number of rooms, boutique hotel in the downtown corridor. This grant will allow us to hire professional technical assistance to complete the feasibility study and determine the best location(s).

The grant application is due prior to 12/31/20. Although a planning grant feasibility study will not displace any residents, grant rules require us to re-adopt the plan in order to apply for the grant. The plan has not changed since it's last adoption on 7/20/20 for the CDBG application for the parking lot improvements.

**Fiscal Impact:**

This is no matching requirement for this CDBG grant.

**Alternatives:**

Do not apply.

**Attachments/Exhibits:**

Residential Anti-Displacement and Relocation Assistance Plan

## **City of Franklin**

### **Residential Anti-displacement and Relocation Assistance Plan**

Every effort will be made to minimize temporary or permanent displacement of persons due to a CDBG project undertaken by the municipality.

However, in the event of displacement as a result of a federally funded award, Franklin will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, to any household, regardless of income which is involuntarily and permanently displaced.

If the property is acquired, but will not be used for low/moderate income housing under 104(d) of the Housing and Community Development Act of 1974, as amended, the displacement and relocation plan shall provide that before obligating and spending funds that will directly result in such demolition or conversion the municipality will make public and submit to CDFA the following information:

- a. Comparable replacement housing in the community within three (3) years of the commencement date of the demolition or rehabilitation;
- b. A description of the proposed activity;
- c. The general location on a map and appropriate number of dwelling units by number of bedrooms that will be demolished or converted to a use other than as low and moderate income dwelling units as a direct result of the assisted activity;
- d. A time schedule for the commencement and completion date of the demolition or conversion;
- e. The general location on a map and appropriate number of dwelling units by number of bedrooms that will be provided as replacement dwelling units;
- f. The source of funding and a time schedule for the provision of replacement dwelling units;
- g. The basis for concluding that each replacement dwelling unit will remain a low and moderate income dwelling unit for at least ten (10) years from the date of initial occupancy;
- h. Relocation benefits for all low or moderate income persons shall be provided, including reimbursement for moving expenses, security deposits, credit checks, temporary housing, and other related expenses and either:

- 1. Sufficient compensation to ensure that, at least for five (5) years after being

relocated, any displaced low/moderate income household shall not bear a ratio of shelter costs to income that exceeds thirty (30) percent, or:

2. If elected by a family, a lump-sum payment equal to the capitalized value of the compensation available under subparagraph 1. above to permit the household to secure participation in a housing cooperative or mutual housing association, or a Section 8 certificate of voucher for rental assistance provided through New Hampshire Housing Finance Authority.

- i. Persons displaced shall be relocated into comparable replacement housing that is decent, safe, and sanitary, adequate in size to accommodate the occupants, functionally equivalent, and in an area not subject to unreasonably adverse environmental conditions;
- j. Provide that persons displaced have the right to elect, as an alternative to the benefits in subparagraph 2. above, to received benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 if such persons determine that it is in their best interest to do so; and
- k. The right of appeal to the executive director of CDFA where a claim for assistance under subparagraph 2. above, is denied by the grantee. The executive director's decision shall be final unless a court determines the decision was arbitrary and capricious.
- l. Paragraphs a. through k. above shall not apply where the HUD Field Office objectively finds that there is an adequate supply of decent, affordable low/moderate income housing in the area.

#### CERTIFICATION OF COMPLIANCE

Franklin anticipates no displacement or relocation activities will be necessitated by this project. Should some unforeseen need arise the City certifies that it will comply with the Uniform Relocation Act and Section 104 (d) of the Housing and Community Development Act of 1974, as amended.

Printed Municipal Official Name: Judie Milner

Title: City Manager

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

Date of Adoption: December 7, 2020

**City of Franklin, New Hampshire  
Virtual Public Hearings Notice  
Community Development Block Grant Project**

The Franklin City Council will hold two consecutive Public Hearings on Monday, December 7, 2020 beginning at 6:00pm. Due to the COVID-19 crisis, members of the public and other interested parties can attend a Virtual Public Hearing Meeting in accordance with Governor Sununu's Emergency Order #12 and Executive Order 2020-04. This Virtual Public Hearing will be held on the Zoom platform at: <https://us02web.zoom.us/j/85299617728> or by phone at 1-312 626 6799, Webinar ID: 852 9961 7728.

Community Development Block Grant funds are available to municipalities through the NH Community Development Finance Authority. Up to \$500,000 annually is available for economic development projects, up to \$500,000 for public facility, up to \$500,000 for housing projects, up to \$500,000 for emergency activities, and up to \$25,000 is available per planning study grant. All CDBG projects must primarily benefit low and moderate income persons. The public hearings will hear public comment on the following:

1. A proposed application to the Community Development Finance Authority for up to \$25,000 in Community Development Block Grant Planning Grant funds to conduct a hotel feasibility study and identify potential sites. The majority of Franklin residents are of low and moderate income.
2. And the Residential Antidisplacement and Relocation Assistance Plan.

Provisions for persons with special needs can be made by contacting the City Manager's Office via telephone or mail at least 5 days prior to the public hearing. An Informational document on these public hearings will be available on the City's website [www.franklinnh.org](http://www.franklinnh.org) prior to the public hearings.



**CITY COUNCIL MEETING**  
**AGENDA ITEM IV**



**CITY OF FRANKLIN  
COUNCIL AGENDA REPORT**

October 7, 2020

**From:** Dan LeGallo, Superintendent

**Subject:** 2020-2021 Appropriations Fund Balance and New Revenue and DOJ  
STOP School Violence Federal Award

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**Recommendation:**

To allow the Franklin School District to appropriate additional funding from increased adequacy aid, NH Charitable Foundation support of Project Aware program and additional fund balance. The total amount of additional funding is \$453,018. **Also,**

To allow the Franklin School District to appropriate a Department of Justice Office of Justice Programs federal award entitled STOP School Violence: Threat Assessment/Intervention Teams. The total amount of federal funding is \$267,595(to be spent between Oct 1, 2020-Sept 30, 2023).

**Suggested Motions:**

**November 2, 2020**

Councilor moves, "I move that the Franklin City Council sets a public hearing for 6pm on December 7, 2020 regarding Resolution 09-21 appropriating \$453,018 to the Franklin School District fiscal year 2021 budget and appropriating \$267,595 to the Franklin School District for the DOJ Office of Justice Programs – STOP School Violence federal grant award."

Mayor calls for a second, discussion and roll call vote.

**December 7, 2020**

Councilor moves, "I move that the Franklin City Council adopts Resolution 09-21 appropriating \$453,018 to the Franklin School District fiscal year 2021 budget and appropriating \$267,595 to the Franklin School District for the DOJ Office of Justice Programs – STOP School Violence federal grant award."

Mayor calls for a second, discussion and roll call vote.

**Discussion:**

Due to the final estimate of the adequacy aid formula based on final ADM numbers the amount increased to 8,700,712. This caused a net increase of \$261,600 from original budget projection. Also the district received \$75,000 from the NH Charitable Foundation for

*Franklin - The Three Rivers City*

continued support of the Project Aware program. Finally, due to final year end calculations there was an additional \$116,418 of FY2020 fund balance. The total amount of additional funding for the school district is \$453,018.

Franklin School District also was awarded a STOP School Violence federal grant in collaboration with the Franklin Police Department. Funds will be used to establish, train, and support a team of school and community partners to prevent and respond to behavioral risks that impact the school. The Behavioral Threat Assessment Team (BTAT) will use a structured decision making process (NaBit) that aligns with the NH Department of Education model, in order to leverage state resources and supports beyond the period of the grant. Total new grant funding is \$267,595.

**Fiscal Impact:**

This amount will have no effect on the taxes raised by the City of Franklin as this is excess funds to be received by the district from other sources.

**Alternatives:**

Do not appropriate at this time or use the funds for another purpose.

**Attachments/Exhibits:**

Resolution 09-21

Franklin School District Revenue Estimate Updated FY21



**CITY OF FRANKLIN, NEW HAMPSHIRE**  
*"The Three Rivers City"*

---

316 Central Street  
Franklin, NH 03235

Phone: (603) 934-3900  
Fax: (603) 934-7413

**RESOLUTION # 09-21**

**A Resolution Granting Authority to Accept and Appropriate \$720,613 of Additional Funding for the Franklin School District for Fiscal Year 2021.**

**In the year of our Lord, Two Thousand Twenty,**

**WHEREAS**, the City Council of the City of Franklin, New Hampshire recognizes that the school district will receive additional adequacy aid of \$261,600 from the final updated calculation of ADM; and,

**WHEREAS**, the City Council of the City of Franklin, New Hampshire recognizes that the school district will receive additional \$75,000 from the NH Charitable Foundation to support the Project Aware program; and,

**WHEREAS**, the City Council of the City of Franklin, New Hampshire recognizes that the school district has identified additional year end fund balance of \$116,418; and,

**WHEREAS**, the City Council of the City of Franklin, New Hampshire recognizes that the school district will receive a federal grant award of \$267,595 entitled STOP School Violence: Threat Assessment/Intervention Teams from the DOJ Office of Justice Programs; and,

**WHEREAS**, the City Council of the City of Franklin would like to appropriate an additional \$453,018 in order to cover the unanticipated costs related to the ongoing pandemic crisis and preserve potential fund balance from the 2021 year to be carried over to the 2022 fiscal year. The current adequacy aid formula has \$896,847 based on current year numbers that will expire unless renewed in the next state biennium budget. These funds could help offset that loss for the next budget cycle. And City Council of the City of Franklin would like to appropriate \$267,595 of the DOJ Office of Justice Programs – STOP School Violence: Threat Assessment/Intervention Teams; **Now,**

**THEREFORE, BE IT RESOLVED**, *that at a regularly scheduled meeting of the City Council on December 7, 2020, the City Council of Franklin New Hampshire does hereby vote to adopt resolution #09-21 to formally accept and appropriate \$720,613 of additional revenues for the Franklin School District as follows:*

**An Increase in Revenues:**

Adequacy Education Aid – Two Hundred Sixty-One Thousand Six Hundred Dollars (\$261,600),

NH Charitable Foundation – Seventy Five Thousand Dollars (\$75,000),

Use of Fund Balance – One Hundred Sixteen Thousand, Four Hundred Eighteen Dollars (\$116,418),

Federal Grant Revenue - STOP School Violence – Two Hundred Sixty-Seven Thousand Five Hundred Ninety-Five Dollars (\$267,595),

**An Increase in Expenditures:**

School District Expenditures – Four Hundred Fifty Three Thousand Eighteen Dollars (\$453,018)

Federal Grant Expenditure – STOP School Violence - Two Hundred Sixty-Seven Thousand Five Hundred Ninety-Five Dollars (\$267,595)

**By a roll call vote.**

**Roll Call:**

Councilor Brown \_\_\_\_\_ Councilor Desrochers \_\_\_\_\_ Councilor Testerman \_\_\_\_\_

Councilor Bunker \_\_\_\_\_ Councilor Dzujna \_\_\_\_\_ Councilor Trudel \_\_\_\_\_

Councilor Clarenbach \_\_\_\_\_ Councilor Starkweather \_\_\_\_\_ Councilor Zink \_\_\_\_\_

Approved: \_\_\_\_\_  
Mayor

Passed: \_\_\_\_\_

I certify that said vote has not been amended or repealed and remains in full force and effect as of the date of this Certification and that Katie A. Gargano is the City Clerk for the City of Franklin, Franklin, New Hampshire.

A true copy, attested: \_\_\_\_\_  
City Clerk

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

Franklin School District  
Revenue Projection  
Fiscal Year 2020/2021

Source	18-19 Actuals	19-20 MS-24 Revised	20-21 Estimates	Difference
<b>General Fund:</b>				
Revenue from State Sources				
Special Education Aid	52,652	126,937	100,000	c (26,937)
Kindergarten Aid	66,448	0	0	0
Charter School Aid	25,804	25,000	30,000	5,000
Vocational Transportation Aid	8,914	7,000	7,000	0
Adequate Education Grant	7,080,826	7,687,744	8,700,712	1,012,968
Building Aid	181,944	181,944	81,944	(100,000)
Indirect Costs	68,399	69,000	69,000	0
Revenue from Federal Sources				
Medicaid Reimbursement	301,681	175,000	175,000	0
E-Rate Funding	83,800	47,173	47,173	0
Local Revenue Other than Taxes				
Tuition	33,831	11,000	16,000	5,000
Earnings on Investments	20,266	2,000	7,000	5,000
Other Local Revenue	3,087	2,000	2,000	0
Insurance Premium Holidays	0	0	97,560	97,560
Athletic Receipts	3,839	7,500	3,500	(4,000)
Energy Rebates	195,292	0	0	0
NH Charitable Foundation (Aware)	0	75,000	75,000	0
Technology Trust	43,000	0	0	0
Fund Balance Reserve	100,000	0	0	0
Unreserved Fund Balance	619,085	1,066,031	402,418	(663,613)
<b>Total Revenues and Credits</b>	<b>8,888,868</b>	<b>9,483,329</b>	<b>9,814,306</b>	<b>330,977</b>
District Appropriation	4,257,639	4,359,548	4,467,354	107,806
Education Tax	1,178,555	1,158,237	1,201,740	43,503
Additional Voted By City Council	313,301	0	0	0
<b>Total General Fund</b>	<b>14,638,363</b>	<b>15,001,114</b>	<b>15,483,400</b>	<b>482,286</b>
Food Service Transfer	545,800	535,718	535,718	0
<b>Total General Fund and Food Service Revenues</b>	<b>15,184,163</b>	<b>15,536,832</b>	<b>16,019,118</b>	<b>482,286</b>
Grant Funds	2,559,262	1,247,000	1,806,095	559,095
<b>Grand Total Revenues</b>	<b>17,743,425</b>	<b>16,783,832</b>	<b>17,825,213</b>	<b>1,041,381</b>

**CITY OF FRANKLIN  
NOTICE OF PUBLIC HEARING & MEETING**

**In accordance with the provision of Chapter 31, Division 2 of the Franklin Municipal Code, notice is hereby given that the City of Franklin will hold a Public Hearing on Monday, December 7, 2020 at 6:00 p.m. regarding Resolution #09-21, a Resolution to Accept and Appropriate \$720,613 of additional adequacy revenue, grant revenue and prior year fund balance to the Franklin School District FY21 budget, by remote Webmeeting at:  
<https://us02web.zoom.us/j/85299617728> or by phone at 1-312-626-6799, Webinar ID: 852 9961 7728.  
Provisions for persons with special needs can be made by contacting the City Manager's office, via telephone or mail at least five days prior to the public hearing.**

**City of Franklin  
316 Central Street  
Franklin, NH 03235  
(603) 934-3900**



**CITY COUNCIL MEETING**

**AGENDA ITEM V**



**CITY OF FRANKLIN  
COUNCIL AGENDA REPORT**

*City Council Meeting of November 2<sup>nd</sup>, 2020*

**From:** Michael Foss, Fire Chief/EMD

**Subject:** For the Franklin City Council to consider allowing the purchase of a Pentheon Combination Extrication Tool for use during Fire Department rescue incidents. Funds will be expended from the Raymond and Betty Turcotte Expendable Trust Fund.

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**Recommended Motions:**

**November 2<sup>nd</sup>, 2020**

*"I move that the Franklin City Council set a public hearing date for 6:00 p.m. on December 7<sup>th</sup>, 2020, for Resolution #10-21, approving an expenditure of \$10,132 from the Raymond and Betty Turcotte Expendable Trust Fund. This expenditure will be utilized for the purchase of a new Pentheon Combination Extrication Tool."*

**Mayor calls for a second, discussion and vote.**

**December 7<sup>th</sup>, 2020**

*"I move that the Franklin City Council adopt Resolution #10-21, approving an expenditure of \$10,132 from the Raymond and Betty Turcotte Expendable Trust Fund, for the purchase of a new Pentheon Combination Extrication Tool."*

**Mayor calls for a second, discussion and roll call vote.**

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**Background:**

As a result of a changing response model over the past few years, the Franklin Fire Department has adapted to the way in which we provide extrication services during motor vehicle collisions (MVC's). In the past, when a MVC occurred, the Franklin Fire Department would respond with two pieces of apparatus. This response included an ambulance and the rescue truck. Over the past year, approximately 24% of all incidents overlap or occur while crews are already operating at another emergency incident. As a result of this finding, it has become clear that the fire department's rescue truck may not respond to help provide extrication services within an optimum time frame. Since extrication services are often needed during MVA's, and because an ambulance is most consistently available to respond to these incidents, the Franklin Fire Department is looking to purchase a PCT50 Pentheon Combination Extrication Tool to place on our ambulance.

Currently the Franklin Fire Department does have a PCT50 Pentheon Combination Extrication Tool on one ambulance. The goal in obtaining a second tool, is to have both ambulances mirror each other. Often times when extrication of a patient is required, multiple extrication tools are

utilized simultaneously as removing the individual(s) quickly can be the difference between life and death. Having an additional tool would contribute to successful patient outcomes and reducing the risk of delayed tool use. The Raymond and Betty Turcotte Expendable Trust Fund was established to help fund and meet these challenges.

**Alternatives:**

The alternative is to not approve Resolution #10-21, and thus sometimes wait for extrication equipment to respond with the help of off duty personnel, or with the assistance of mutual aid fire departments.

**Attachments and Exhibits:**

Resolution #10-21

**Photo of PCT50 Pentheon Combination Extrication Tool:**





**CITY OF FRANKLIN, NEW HAMPSHIRE**  
*"The Three Rivers City"*

316 Central Street  
Franklin, NH 03235

(603) 934-3900  
fax: (603) 934-7413

**RESOLUTION #10-21**

**A Resolution Relating to a Supplemental Appropriation for Fiscal Year 2021.**

**In the year of our Lord, Two Thousand Twenty,**

**WHEREAS, the City Council of the City of Franklin has adopted a budget for Fiscal Year 2021 which began July 1, 2020, and;**

**WHEREAS, the City Council of the City of Franklin, New Hampshire recognizes the Fire Department has had to change the way in which it responds to Motor Vehicle accidents due to overlapping incidents, and;**

**WHEREAS, the City Council of the City of Franklin, New Hampshire recognizes the Raymond & Betty Turcotte expendable trust fund was established for and has traditionally supported these kinds of equipment purchases for the Fire Department, and;**

**WHEREAS, the City Council of the City of Franklin, New Hampshire understands that the Turcotte trust fund has a current balance of approximately \$93,795.89, and;**

**WHEREAS, the City Council of the City of Franklin wishes to appropriate from the Turcotte trust fund an amount of \$10,132 for the purpose of purchasing a Pentheon Combination Extrication Tool for the use during Fire Department rescue incident,**

**THEREFORE BE IT RESOLVED that at the scheduled meeting of the City Council on Monday, December 7, 2020 the City Council of the City of Franklin, New Hampshire does hereby adopt resolution #10-21 allowing the withdrawal of Ten Thousand One Hundred Thirty-Two Dollars (\$10,132) and authorizing an increase in FY21 revenues:**

**Transfer In – Trust Funds Acct No. 01-0-000-39160-000 – Ten Thousand One Hundred Thirty-Two Dollars (\$10,132),**

**And an increase in expenditure account,**

**EMS/Rescue CO - Mach & Equip Acct No. 01-2-207-40740-000 – Ten Thousand One Hundred Thirty-Two Dollars (\$10,132),**

**By a roll call vote.**

**Resolution #10-21**  
**Page 2 of 2**

**Roll Call:**

**Councilor Brown** \_\_\_\_\_ **Councilor Dzujna** \_\_\_\_\_ **Councilor Zink** \_\_\_\_\_

**Councilor Clarenbach** \_\_\_\_\_ **Councilor Bunker** \_\_\_\_\_ **Councilor Testerman** \_\_\_\_\_

**Councilor Desrochers** \_\_\_\_\_ **Councilor Starkweather** \_\_\_\_\_ **Councilor Trudel** \_\_\_\_\_

**Approved:** \_\_\_\_\_  
**Mayor**

**Passed:** \_\_\_\_\_

**I certify that said vote has not been amended or repealed and remains in full force and effect as of the date of this Certification and that Katie A. Gargano is the City Clerk for the City of Franklin, Franklin, New Hampshire.**

**A true copy, attested:** \_\_\_\_\_  
**City Clerk**

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

**CITY OF FRANKLIN  
NOTICE OF PUBLIC HEARING & MEETING**

**In accordance with the provision of Chapter 31, Division 2 of the Franklin Municipal Code, notice is hereby given that the City of Franklin will hold a Public Hearing on Monday, December 7, 2020 at 6:00 p.m. regarding Resolution #10-21, Appropriating \$10,132 from the Raymond and Betty Turcotte Expendable Trust Fund for the purchase of a new Pentheon Combination Extrication Tool, by remote Webmeeting at: <https://us02web.zoom.us/j/85299617728> or by phone at 1-312-626-6799, Webinar ID: 852 9961 7728.**

**Provisions for persons with special needs can be made by contacting the City Manager's office, via telephone or mail at least five days prior to the public hearing.**

**City of Franklin  
316 Central Street  
Franklin, NH 03235  
(603) 934-3900**

**CITY COUNCIL MEETING**  
**AGENDA ITEM VI**



## CITY OF FRANKLIN COUNCIL AGENDA REPORT

*City Council Meetings of December 7<sup>th</sup>, 2020*

**From:** Michael Foss, Fire Chief/EMD

**Subject:** City Council to consider adoption of Resolution #11-21 at the December 7th, 2020 Meeting of the Franklin City Council. Adoption of Resolution #11-21 will result in the acceptance of grant funds in the amount of \$62,904 from the NH Department of Safety, Division of Homeland Security and Emergency Management. These funds will be used for upgrades to the City's Emergency Operations Center.

---

**Recommended Motion for the December 7<sup>th</sup>, 2020 Meeting of the City Council:**

*"I move that the Franklin City Council adopt Resolution #11-21, to accept grant funds, in the amount of \$62,904 from the NH Department of Safety, Division of Homeland Security and Emergency Management. The \$62,904 will be utilized to improve and update the City of Franklin's Emergency Operations Center located at the Franklin Fire Station."*

---

**Background:** As a result of COVID-19 and other declared emergencies, the State of NH has provided access to funds for local communities to update and improve their Local Emergency Operations Centers (EOC). Currently, the City of Franklin's EOC is located at the Franklin Fire Station.

After a review with the NH Dept. of Homeland Security and the City's Emergency Management Director, areas were identified that need improvement within the building. With the grant funds being obtained, the following areas within the fire station will be improved upon:

- New exterior door locking mechanism that assist in the security and accountability tracking.
- New, limited interior door locking mechanism that assist in additional station security.
- A "smart board" audio visual system for use by the emergency management team
- Additional furniture to include desks, tables, and chairs.
- A radio system upgrade with multiple radio "heads" located within the building.
- New A/C unit to assist with climate control within the EOC space.
- Security cameras located on the exterior of the Fire Station.

Once all work is completed, grant fund reimbursement will be used to offset expenses incurred to the City of Franklin's account number 01-2-208-40740-000, *Emergency Management CO- Machine and Equipment*. It is estimated that work will be completed by the end of April 2021.

**Fiscal Impact:** No foreseen financial impact will result during EOC upgrade. All matching funds have already been made by the City of Franklin employees' time in their response to COVID-19 (soft match funding).

**Alternatives:** The alternative is to forego the acceptance of the grant funding and upgrade at a later time with unguaranteed sources of revenue. At this time, it is unclear if Homeland Security and Emergency Management grant funds will be available in the future.

**Attachments:** Emergency Operations Center Diagram







**CITY OF FRANKLIN, NEW HAMPSHIRE**  
*"The Three Rivers City"*

---

316 Central Street  
Franklin, NH 03235

(603) 934-3900  
fax: (603) 934-7413

**RESOLUTION #11-21**

**A Resolution Granting Authority to Accept Grant Funds from the NH Department of Safety,  
Division of Homeland Security and Emergency Management**

**In the year of our Lord, Two Thousand Twenty,**

**WHEREAS**, the City Council of the City of Franklin, New Hampshire adopted a budget for Fiscal Year 2021 beginning July 1, 2020, **and**;

**WHEREAS**, the City Council understands that the City's Local Emergency Operation (L.E.O.P) and Continuity of Operations Plans (C.O.O.P) needed to be updated, **and**;

**WHEREAS**, the City of Franklin's Emergency Operations Center is located at the Franklin Fire Station, **and**,

**WHEREAS**, after a review with the NH Dept. of Homeland Security and the City's Emergency Management Director, areas were identified that need improvement within the building. With the grant funds being obtained, the following areas within the fire station will be improved upon:

- New exterior door locking mechanism that assist in the security and accountability tracking.
- New, limited interior door locking mechanism that assist in additional station security.
- A "smart board" audio visual system for use by the emergency management team
- Additional furniture to include desks, tables, and chairs.
- A radio system upgrade with multiple radio "heads" located within the building.
- New A/C unit to assist with climate control within the EOC space.
- Security cameras located on the exterior of the Fire Station.

**WHEREAS**, the City has been awarded a grant of \$62,904 from the NH Department of Safety, Division of Homeland Security and Emergency Management, to help offset the costs of these improvements **and**;

**WHEREAS**, the matching funds requirement has already been satisfied, **now**;

***THEREFORE, BE IT RESOLVED***, that at a regularly scheduled meeting of the City Council on Monday, December 7, 2020, the City Council of Franklin New Hampshire does hereby vote to adopt resolution #11-21 to accept \$62,904 in grant funds from the NH Department of Safety,

*Division of Homeland Security and Emergency Management, to update and improve Emergency Operations Center (EOC). and;*

***THEREFORE, BE IT FURTHER RESOLVED, that the City Council does hereby authorize City Manager, Judie Milner, to sign all relevant documents pertaining to the acceptance and administration of this grant award and hereby authorizes the following non-lapsing appropriations,***

**An Increase in Revenues:**

State Grants Revenue Acct. No. 01-0-000-33591-000 – Sixty-two Thousand Nine Hundred Four Dollars (\$62,904),

**An Increase in Expenditures:**

Emergency Management Mach & Equipment Expense Acct. No. 01-2-208-40740-000 – Sixty-two Thousand Nine Hundred Four Dollars (\$62,904).

**By a roll call vote.**

**Roll Call:**

Councilor Brown \_\_\_\_\_ Councilor Dzujna \_\_\_\_\_ Councilor Zink \_\_\_\_\_

Councilor Clarenbach \_\_\_\_\_ Councilor Bunker \_\_\_\_\_ Councilor Testerman \_\_\_\_\_

Councilor Desrochers \_\_\_\_\_ Councilor Starkweather \_\_\_\_\_ Councilor Trudel \_\_\_\_\_

**Approved:** \_\_\_\_\_  
Mayor

**Passed:** \_\_\_\_\_

**I certify that said vote has not been amended or repealed and remains in full force and effect as of the date of this Certification and that Katie A. Gargano is the City Clerk for the City of Franklin, Franklin, New Hampshire.**

**A true copy, attested:** \_\_\_\_\_  
City Clerk

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

**CITY OF FRANKLIN  
NOTICE OF PUBLIC HEARING & MEETING**

**In accordance with the provision of Chapter 31, Division 2 of the Franklin Municipal Code, notice is hereby given that the City of Franklin will hold a Public Hearing on Monday, December 7, 2020 at 6:00 p.m. regarding Resolution #11-21, to Accept and Appropriate \$62,904 of Grant Funds from the NH Department of Safety, Division of Homeland Security and Emergency Management to improve the City of Franklin's Emergency Operations Center located at the Franklin Fire Station, by remote Webmeeting at:  
<https://us02web.zoom.us/j/85299617728> or by phone at 1-312-626-6799, Webinar ID: 852 9961 7728.**

**Provisions for persons with special needs can be made by contacting the City Manager's office, via telephone or mail at least five days prior to the public hearing.**

**City of Franklin  
316 Central Street  
Franklin, NH 03235  
(603) 934-3900**

**CITY COUNCIL MEETING**  
**AGENDA ITEM VII**



**CITY OF FRANKLIN  
COUNCIL AGENDA REPORT**

*City Council Meetings of November 2<sup>nd</sup>, 2020 and December 7<sup>th</sup>, 2020*

**From:** Michael Foss, Fire Chief/EMD

**Subject:** City Council to consider the approval of Ordinance #04-21, to revise existing Chapter 21, Article I Fire Hydrants, Sections 21-1 and 21-2.

---

**Recommended Motion for the November 2nd, 2020 Meeting of the City Council:**

*"I move that the Franklin City Council set a public hearing date for 6:00 pm, at the December 7th, 2020 meeting of the City Council, for Ordinance #04-21. Adoption of Ordinance #04-21 will result in the update to the City Municipal Code Chapter 21, Article I 'Fire Hydrants', Sections 21-1 and 21-2."*

*Mayor calls for a second, discussion and vote.*

**Recommended Motion for the December 7th, 2020 Meeting of the City Council:**

*"I move that the Franklin City Council adopt Ordinance #04-21, which will update the City Municipal Chapter 21, Article I 'Fire Hydrants', Sections 21-1 and 21-2."*

*Mayor calls for a second, discussion and vote.*

---

**Background:** The City of Franklin currently has a Fire Hydrant Fee used to offset the costs associated with the testing of Private Hydrants in the city. Currently, there are 30 Private Hydrants within the city. As a result of not having a testing and planning program in place, the current status of these Private Hydrants is unknown.

The Municipal Services Department currently conducts annual testing of all Public Fire Hydrants in the City of Franklin. Since a program already exists for Public Hydrant testing, and as a result of recognizing the need for the testing of Private Hydrants, an update to the current ordinance is being proposed to ensure the proper working condition of all hydrants that may need to be utilized in the event of an emergency. The update to the current hydrant ordinance will allow for the Municipal Services Department to ensure that all hydrants, public or private, are in proper working order.

**Fiscal Impact:** No fiscal impact is anticipated since the Franklin City Council had previously adopted a Private Hydrant fee in FY18.

**Alternatives:** The alternative is to forego the update of Chapter 21 of the City of Franklin General Legislation, and instead have uncertainty as to the reliability of Private Hydrants within the city.

**Attachments:**

*Proposed Ordinance #04-21  
Private Hydrant Compliance Confirmation Form*



## CITY OF FRANKLIN, NEW HAMPSHIRE

*"The Three Rivers City"*

316 Central Street  
Franklin, NH 03235

(603) 934-3900  
fax: (603) 934-7413  
citymgr@franklinnh.org

### ORDINANCE #04-21

#### AN AMENDMENT TO THE FRANKLIN MUNICIPAL CODE:

In the Year of our Lord, Two Thousand Twenty;

Be it ordained by the City Council of the City of Franklin to amend the Franklin Municipal Code, Chapter 21, Fire Department, Article I, Fire Hydrants sections 21-1, 21-2 and adding 21-3 as follows (strike throughs for deleted language, **bold for added language**):

#### Article I Fire Hydrants

##### § 21-1 Testing and flushing.

A.

It shall be the duty of the ~~Fire Department~~ **Municipal Services Department**, in cooperation with the ~~Municipal Services~~ **Fire Department**, to test all **Public** fire hydrants. **The City shall ensure that all Private hydrants are maintained in accordance with this ordinance.** The City shall ensure that all hydrants are in proper working condition at least once annually. Fire hydrants will also be flushed at least once annually during this time.

B.

Such tests shall be ~~made~~ **completed** by an employee of the ~~Fire Department and the Director of the Municipal Services Department.~~ **or his or her designee.**

**Public Hydrants are hydrants that are adjacent to a public way, Planning Board approved subdivisions and the City's public hydrant inventory list. Public hydrants may be located on a City right of way or easement.**

**Private Hydrants are hydrants that are located on private property, and intended for fire protection for the property and buildings.**

**The testing, maintenance and repair of public hydrants will be the responsibility of the Municipal Services Department.**

**It will be the responsibility of the property owner of the private hydrants to test, maintain and repair if necessary. This will be in accordance with NFPA 25 *Standard for the Inspection,***

**Testing, and Maintenance of Water-Based Fire Protection Systems.** Testing is to be completed in conjunction with the *Hydrant Compliance Confirmation* form, provided by the Municipal Services Department.

§ 21-2 Improperly operating hydrants.

All **privately owned hydrants** found to be operating improperly shall be repaired and placed in proper working condition **as soon as possible**. **Public hydrant repairs will be the responsibility of the City of Franklin. Private hydrant repairs will be the responsibility of the property owners.**

**21-3 Record Keeping and Reporting.**

1. The private hydrant owner will provide the annual records of testing, maintenance and repair (if needed) to the Municipal Services Director. Testing, maintenance and repair must be conducted by a qualified professional.

or

2. The private hydrant owner will pay the associated fee found in Chapter 160 of the General Legislation labeled under "Fire Hydrant" to the City of Franklin. This fee will ensure the required testing is conducted annually in conjunction with public hydrants as performed by the Municipal Services Department. It will be the responsibility of the private hydrant owner to repair any worn or broken components of the hydrant. Fees will be assessed for each hydrant located on a property.

Roll Call:

Councilor Brown \_\_\_\_\_ Councilor Dzujna \_\_\_\_\_ Councilor Starkweather \_\_\_\_\_

Councilor Clarenbach \_\_\_\_\_ Councilor Bunker \_\_\_\_\_ Councilor Testerman \_\_\_\_\_

Councilor Desrochers \_\_\_\_\_ Councilor Zink \_\_\_\_\_ Councilor Trudel \_\_\_\_\_

Approved: \_\_\_\_\_  
Mayor

Passed: \_\_\_\_\_

I certify that said vote has not been amended or repealed and remain in full force and effect as of the date of this Certification and that Katie Gargano is the City Clerk for the City of Franklin, Franklin, New Hampshire.

A true copy, attested: \_\_\_\_\_  
City Clerk

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



**CITY OF FRANKLIN  
NOTICE OF PUBLIC HEARING & MEETING**

**In accordance with the provision of Chapter 31, Division 2 of the Franklin Municipal Code, notice is hereby given that the City of Franklin will hold a Public Hearing on Monday, December 7, 2020 at 6:00 p.m. regarding Ordinance #04-21, an update to the Franklin Municipal Code Chapter 21, Article 1, Sections 21-1 and 21-2, Fire Hydrants, by remote Webmeeting at:  
<https://us02web.zoom.us/j/85299617728> or by phone at 1-312-626-6799, Webinar ID: 852 9961 7728.**

**Provisions for persons with special needs can be made by contacting the City Manager's office, via telephone or mail at least five days prior to the public hearing.**

**City of Franklin  
316 Central Street  
Franklin, NH 03235  
(603) 934-3900**

**CITY COUNCIL MEETING**  
**AGENDA ITEM VIII**



**CITY OF FRANKLIN**  
**COUNCIL AGENDA REPORT**  
*City Council Meeting December 7th, 2020*

**From:** Dan LeGallo, Superintendent

**Subject:** GOFERR (Governor's Office for Emergency Relief and Recovery) fund (CARES Act)

---

**Recommended**

**Suggested Motion for the December 7th, 2020 Meeting of the City Council:**

*Councilor moves, "I move that the Franklin City Council set a public hearing for January 4th, 2021 at 6pm regarding Resolution #12-21, to accept and appropriate \$185,200 in federal CARES Act funding titled GOFERR (Governor's Office for Emergency Relief and Recovery) grant, for the purpose of funding costs associated with COVID 19 pandemic for the Franklin School District."*

*Mayor calls for a second, discussion and vote.*

**Suggested Motion for the January 4th, 2021 Meeting of the City Council:**

*Councilor moves, "I move that the Franklin City Council vote to adopt Resolution #12-21, to accept and appropriate \$185,200 in federal CARES Act funding titled GOFERR (Governor's Office for Emergency Relief and Recovery) grant, for the purpose of funding costs associated with COVID 19 pandemic for the Franklin School District."*

*Mayor calls for a second, discussion and vote.*

---

**Background:** Due to the passing of the federal CARES (Coronavirus Aid, Relief, and Economic Security) Act the Franklin School District through the New Hampshire Department of Education was awarded \$185,200 in federal grant monies for costs related to the COVID 19 pandemic. The funds have been titled GOFERR (Governor's Office for Emergency Relief and Recovery) Fund. The funds are intended for the purpose of funding for pandemic costs (i.e. chromebooks/computers/software), compensatory special education services, personal protection equipment, food service distribution costs, sanitizing equipment, continued contract costs, personnel costs, other instructional tools, etc.)

**Fiscal Impact:** This amount will have no effect on the taxes raised by the City of Franklin as this is a federal grant distributed through the New Hampshire Department of Education to districts throughout the State of New Hampshire.

**Alternatives:** Do not appropriate at this time.

**Attachments/Exhibits:** Resolution



# CITY OF FRANKLIN, NEW HAMPSHIRE

*"The Three Rivers City"*

316 Central Street  
Franklin, NH 03235

Phone: (603) 934-3900  
Fax: (603) 934-7413

## RESOLUTION # 12-21

**A Resolution Granting Authority to Accept and Appropriate \$185,200 of CARES Act funding under the GOFERR (Governor's Office for Emergency Relief and Recovery) Fund for the Franklin School District.**

**In the year of our Lord, Two Thousand Twenty,**

**WHEREAS**, the City Council of the City of Franklin, New Hampshire recognizes that the school district will receive \$185,200 in CARES Act funding through the New Hampshire Department of Education titled the GOFERR Fund;

**WHEREAS**, the City Council of the City of Franklin would like to appropriate \$185,200 of the above mentioned funds in order to expend for costs associated with the COVID-19 pandemic for such things as technology costs for remote learning (chromebooks, computers, software), compensatory special education services, personal protection equipment, food service distributions costs, sanitizing equipment, continued contract costs, personnel costs, other instructional tools, etc., **Now**,

**THEREFORE, BE IT RESOLVED**, *that at a regularly scheduled meeting of the City Council on January 4, 2021, the City Council of Franklin New Hampshire does hereby vote to adopt resolution #12-21 to formally accept and appropriate \$185,200 of federal funding from the passage of the CARES Act by the federal government in response to the COVID-19 pandemic through the New Hampshire Department of Education under the GOFERR Fund for the Franklin School District.*

### **An Increase in Revenues:**

GOFERR Fund (CARES Act) – One Hundred Eighty-Five Thousand, Two Hundred Dollars  
(185,200)

### **An Increase in Expenditures:**

Federal Grant Expenditure – GOFERR - One Hundred Eighty-Five Thousand, Two Hundred Dollars (185,200)

**By a roll call vote.**

**Roll Call:**

Councilor Brown \_\_\_\_\_ Councilor Desrochers \_\_\_\_\_ Councilor Testerman \_\_\_\_\_

Councilor Bunker \_\_\_\_\_ Councilor Dzujna \_\_\_\_\_ Councilor Trudel \_\_\_\_\_

Councilor Clarenbach \_\_\_\_\_ Councilor Starkweather \_\_\_\_\_ Councilor Zink \_\_\_\_\_

Approved: \_\_\_\_\_  
Mayor

Passed: \_\_\_\_\_

I certify that said vote has not been amended or repealed and remains in full force and effect as of the date of this Certification and that Katie A. Gargano is the City Clerk for the City of Franklin, Franklin, New Hampshire.

A true copy, attested: \_\_\_\_\_  
City Clerk

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

**CITY COUNCIL MEETING**  
**AGENDA ITEM IX**



## CITY OF FRANKLIN COUNCIL AGENDA REPORT

*City Council Meeting December 7, 2020*

**From:** Judie Milner, City Manager

**Subject:** City Council to consider approval of a three-year Employee Labor Contract with the New England Police Benevolent Association (NEPBA) (Franklin Police Patrolman's Association).

---

### Recommended Motion:

Councilor moves, "I move that the Franklin City Council approve a three-year agreement as presented from July 1, 2020 to June 30, 2023 between the City of Franklin and the New England Police Benevolent Association (NEPBA) (Franklin Police Patrolman's Association).".

Mayor calls for second, discussion, and roll call vote.

### Discussion:

My focus during the FY21 budget process was to adjust the police union employees to more closely mirror the wage scales as recommended by the independent contractor in the City's FY14 pay & class study. The Chief and I believe it is necessary to attract & retain certified police officers. The Council supported this strategy.

As the Council is aware, the City has been implementing the pay & class study over several years beginning with the positions with the furthest differences between the current wage scale and the wage scale proposed by the study. The patrol officers are the furthest off (\$4.00/hour) at this point. Knowing the police union contract is open for negotiations this fiscal year, I addressed the wage discrepancies in the budget so that everything proposed in this contract *is currently funded within the FY21 budget* with the exception of dispatch shift differentials (see #6 below) which the Chief will find within current police department appropriations.

Specifically, one-time wage scale adjustments were made to the police union covered employees as follows:

<b>Police Secretary</b>	\$1.14/hr	mirrors nonunion secretary wage scale
<b>Communications Specialist</b>	\$.50/hr	along with shift differential (see #6 below),
addresses hiring issues for this position		
<b>Patrol Officer/Detective</b>	\$3.00/hr	brings the position closer to the <b>FY14</b> pay &
class study		

The proposed contract language changes include:

- 1) Article IV, Section 4.2, added any police officer hired who is certified shall serve a probationary period of 6mos. This is consistent with nonunion practice. The one-year probation for uncertified officers will remain. Current section 4.2 addressing communications specialists probationary period remains unchanged but renumbered to section 4.3
- 2) Article XXI Section 21.1.2.C removed as it refers to wage changes of the previous contract Sections 21.1.2.D-F renumbered to 21.1.2C-E.
- 3) Article XXI Section 21.1.2.C changed the wording “commencing July 1, 2014” to “commencing July 26, 2020” - this keeps the pay matrix changes effective the same day as the nonunion pay matrix changes took effect for FY21 (1<sup>st</sup> Sunday after passage of budget as is City practice). Reminder, wage changes as recommended in this proposal were included and funded in the FY21 budget. As noted above, changes in the wage matrix include the same 1.5% COLA as afforded to the nonunion employees for FY21 as well as one-time scale adjustments to more closely mirror the recommended rates in the City’s independent FY14 pay & class study.
- 4) Article XXI Section 21.1.5.B, Private detail pay is currently \$42/hr. Changes to \$45/hour from contract ratification through 2020, \$47/hour calendar 2021, \$49/hour calendar 2022. These changes have no effect on the general fund or taxpayer as they are reimbursed through the fee charged directly to the contractor. Fees will need to be adjusted in the FY22 budget process to accommodate changes in salary and retirement system increases as well.
- 5) Article XXI Section 21.1.6, municipal details change from a 3-hour minimum to a 4-hour minimum. Negligible effect on the budget, most municipal details have been over 3 hours in our immediate 3-year history.
- 6) Article XXI, added Section 21.1.11, dispatch shift differential \$.50 per hour for second shift (3pm-11pm) and \$.75 per hour for third shift (11pm-7am) for hours worked only (does not include vacation pay, sick pay, or any other compensation). Chief Goldstein agrees this would greatly assist with filling positions in the dispatch department and will find the funding, approximately \$4,000, within his current FY21 appropriations.
- 7) Article XXVIII, changed effective dates of contract to 7/1/20-6/30/23.

**Concurrences:**

The union has voted affirmatively on these changes.

**Attachment:**

Proposed NEPBA contract

*Franklin - The Three Rivers City*



**AGREEMENT BETWEEN**  
**THE CITY OF FRANKLIN, NEW HAMPSHIRE**  
**AND**  
**NEW ENGLAND POLICE BENEVOLENT ASSOCIATION (NEPBA) LOCAL 214**  
**(FRANKLIN POLICE PATROLMAN'S ASSOCIATION)**  
**(Effective Dates: July 1, 2020 to June 30, 2023)**

**SIGNATURE DRAFT**  
**December 2, 2020**

**Prepared by:**  
**WESCOTT LAW, PA**  
**28 Bowman Street**  
**Laconia, NH 03246**  
**(603) 524-2166 Telephone**

## FRANKLIN POLICE DEPARTMENT CONTRACT

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## **ARTICLE I**

### **RECOGNITION**

- 1.1. The City of Franklin (hereinafter referred to as the "Employer") and the New England Police Benevolent Association (NEPBA) Local 214 (Franklin Police Patrolman's Association) (hereinafter referred to as the "Union") hereby agree as follows:
- 1.2. The employer hereby recognizes the Union as the exclusive bargaining representative pursuant to the provisions of New Hampshire RSA 273-A for all Regular Full Time Patrol Officers, Detective Patrol Officer, Youth Services Officer, Regular (Full Time) Communications Specialists (formerly "Dispatchers") and Secretaries. Excluded from recognition or coverage under this agreement are the Chief of Police, Detective Lieutenant/Prosecutor, Patrol Lieutenant, Patrol Sergeants, Detective Sergeants, Communications Supervisor, Secretary to the Chief of Police, Special Police Officers, On-call Communications Specialists and all other supervisors, professional and confidential employees, persons in a probationary or temporary status, persons employed seasonally, irregularly or on-call and all other employees of the Franklin Police Department. The parties agree that they shall jointly file a unit modification petition to the New Hampshire Public Employee Labor Relations Board excluding the positions of Master Patrol Officer and Clerk/Typists from the bargaining unit.
- 1.3. It is specifically agreed by the parties hereto that any rights, duties or authority existing by virtue of the New Hampshire Revised Statutes Annotated or other law shall in no way be abridged or limited by any of the provisions of this Agreement and to the extent that any provision of this Agreement is inconsistent with any such law, the provision(s) of law shall prevail.

## **ARTICLE II**

### **MANAGEMENT RIGHTS**

- 2.1. It is agreed that except as specifically delegated, abridged, granted or modified by this agreement or required by statutory law, all of the rights, powers, and authority the City possessed prior to the signing of this agreement are retained by the City and remain the exclusive right of management without limitation. Furthermore, these retained rights are not subject to the grievance or arbitration procedures contained herein.
- 2.2. Management of the City, its operation, direction of the work force and the authority to execute all the various duties, functions, and responsibilities in connection therewith are vested in the City. The exercise of such duties, functions and responsibilities shall not conflict with this agreement.
- 2.3. It is understood and agreed that the City has all the customary and usual rights, powers, functions and authority of management. Any of the rights, powers, functions or authority which the City had prior to the signing of this agreement, including those in respect of

rates of pay, hours of employment, or conditions of work, are retained by the City except as those rights, powers, functions or authority are specifically abridged or modified by this agreement.

- 2.4. Without limitation, but by way of illustration, the exclusive prerogatives, functions, and rights of the City shall include the following:
  - 2.4.1. To plan, direct, supervise and control all operations, functions and policies of the City in which the employees in the bargaining unit are employed.
  - 2.4.2. To determine the need for and the qualifications of new employees, transfers and promotions.
  - 2.4.3. To establish, revise and implement standards for hiring, classification, evaluation, promotion, quality of work, safety, materials, uniforms, appearance, physical condition, equipment, methods, policies and procedures, work rules and regulations.
  - 2.4.4. To assign shifts, workdays, hours of work and work locations subject to the terms of this contract.
  - 2.4.5. To close or eliminate an office, operation, service or facility, or combination of facilities, or to relocate, reorganize or combine the work of divisions, offices, operations or facilities for budgetary or other reasons.
  - 2.4.6. To implement new, and to revise or discharge, wholly or in part, old methods, procedures, materials, equipment, facilities and standards.
  - 2.4.7. To determine the need for a reduction or an increase in the work force and the implementation of any decision with regard thereto.
  - 2.4.8. To discipline, suspend, demote or discharge an employee for cause.
  - 2.4.9. To assign and distribute work.
  - 2.4.10. To determine the need for additional educational courses, training programs, on-the-job training and cross-training.
  - 2.4.11. To contract out any work it deems necessary in the interests of efficiency, economy, improved work product, equipment or emergency.
  - 2.4.12. To determine the mission, policies, and standards of service offered to the public.
  - 2.4.13. The City may prepare, issue, enforce rules and safety regulations necessary for safe, orderly, efficient operations.

**ARTICLE III**  
**INTERFERENCE WITH OPERATIONS**  
**AND LOCKOUTS PROHIBITED**

- 3.1. Under no circumstances will the Union cause, encourage, sponsor or participate in any strike, work slowdown, sick out, sanctions, multiple resignations, any form of job action, withholding of any services or any curtailment or work or any restriction or interference with the operations of the Franklin Police Department or the City of Franklin government during the term of this Agreement. In the event of any such activity set forth above, the Employer shall not be required to negotiate on the merits of the dispute which gave rise to any such activity until any and all such activity has ceased. The Employer will not lock out any employees during the term of this Agreement.
- 3.2. Should any employee or group of employees covered by this Agreement engage in any activity prohibited by Section 1, above, the Union shall forthwith disavow any activity and shall use all means to induce such employee or group of employees to terminate such activity forthwith.

**ARTICLE IV**  
**PROBATIONARY EMPLOYEES**

- 4.1. All newly hired or appointed Police Officers must serve a probationary period twelve (12) continuous months from the date of appointment to a regular (full-time) position and such probationary employees shall not be entitled to representation by the Union or be covered by any terms of this agreement.
- 4.2. **Any police officer hired who is certified by the New Hampshire Police Standards and Training Council shall serve a probationary period of six (6) months active employment status from their date of hire.**
- 4.3. All newly hired or appointed Communications Specialists and clerical personnel must serve a probationary period of six continuous months from the date of appointment to a regular full-time position and such probationary employees shall not be entitled to representation by the Union or covered by any terms of this agreement.

**ARTICLE V**  
**DUES CHECK OFF**

- 5.1. Upon an individually written authorization card signed by the employee and approved by the Union, the City agrees to deduct from each employee's wages, a sum for the Union dues to be collected each pay period. The Union agrees to hold the Police Department and the City harmless from any claim or liability arising out of its deduction of dues and

payment to the Union under this Section. The Union dues, along with a statement of which employees have paid dues, shall be sent on a monthly basis to: Treasurer, New England Police Benevolent Association, 7 Technology Drive, Suite 102, Chelmsford, MA 01863.

- 5.2. Non-members who request that the Union provide grievance representation shall be charged the full fair costs of the processing of grievances and/or representation services, said charge set at \$40.00 per hour for time incurred by the local and National Union officials. The Union will charge the costs, up to \$200.00 per hour, for time incurred by attorneys retained by the Union. The Union will send an invoice for costs and expenses so incurred periodically and such payment will be due within thirty (30) days.

## **ARTICLE VI**

### **SHOP STEWARD/UNION BUSINESS**

- 6.1. The officers and representatives of the NEBPA Local 214 are as follows: President, Vice President, Secretary/Treasurer and two (2) Stewards. If either the Chief of Police or the President or designee requests a meeting with the other to discuss a matter pertaining to this agreement, the Chief shall retain the right to schedule such a meeting so as not to disrupt the workplace, work schedule or departmental coverage. If a settlement cannot be reached, the President or designee shall reduce any resulting grievance to writing and submit it in accordance with the grievance procedure.
- 6.2. Time spent in grievance processing or investigating which is done by a Union Steward or member, will be done either before or after working a regular shift and will not be compensated for.
- 6.3. Joint Meeting. An official Union representative shall be granted reasonable time at no loss of pay for attendance at grievances or other joint meetings which have been scheduled by mutual agreement of the parties.
- 6.4. Contract Negotiations. Up to three Bargaining Unit members may attend negotiation sessions without loss of pay. Of the three Bargaining Unit members there shall be no more two representing patrol and no more than two representing communications.
- 6.5. The City agrees that any employee named as President shall be granted a single day off upon so being named, with pay, to attend Union training. An employee may utilize this benefit only once during his/her time of employment with the City.
  - 6.5.1. Representatives of the Union may meet with the Chief of Police or his/her designee once a month to discuss matters of mutual concern, including those matters of mutual concern necessary by the implementation of this agreement. A written agenda shall be submitted by the Union to the Chief of Police no less than five (5) days before the scheduled meeting. At the discretion of the Chief of



- Police, or designee, additional matters may be placed on the agenda.
- 6.5.2. Nothing contained herein shall prevent the Chief of Police or designee and the Union from meeting on a less frequent basis upon mutual agreement.
- 6.5.3. Nothing contained herein shall prevent the Union from consulting with the Chief of Police or designee at any time if matters of mutual concern arise of an urgent or emergency nature.
- 6.5.4. Grievances must be submitted in accordance with the procedure contained in this agreement.
- 6.6. The Union shall be permitted to meet at the Franklin Police Department to conduct business matters so long as the meetings are scheduled at a convenient time so as to minimize any inconvenience to the Department.

## **ARTICLE VII**

### **BULLETIN BOARD**

- 7.1. The Chief of Police shall designate a space within the Franklin Police Station for the location of a Union bulletin board which shall be used by the Union to notify the membership of Union affairs. In his discretion, the Chief may designate a portion of a departmental bulletin board for Union use. No material which could be construed to be offensive, derogatory or inflammatory shall be posted upon the bulletin board. The Chief of Police, in his sole discretion, may remove any notice or posting which he deems inappropriate. Any material so removed will be delivered to the Union president.

## **ARTICLE VIII**

### **JOB POSTING**

- 8.1. When a vacancy occurs as a result of the establishment of a new position or retirement or termination of a current employee, the Chief shall post a notice for five (5) days indicating the position, its pay grade, the qualifications required and the normal working hours for the position, which shall be subject to change at the discretion of the Chief.
- 8.1.1. Shift assignments shall be bid four (4) times per year based upon seniority. The bids and assignments shall occur in January, April, July and October of each year.
- 8.1.2. Changes in assignments may be made for the following reasons:
- 8.1.2.A. Personal conflict of interest, (i.e., working with relatives, spouse/girlfriend etc.)

- 8.1.2.B. Temporary coverage for vacations, attendance at training schools, or coverage required on a shift due to prolonged absence of a shift member due to injury, suspension or illness.
- 8.1.3. Employees shall be given a minimum of one week notice when their shift assignment is to be changed, except in emergency situations as determined by the Chief of Police.
- 8.1.4. The Chief of Police or his/her designee may override the work schedule at any time or make specific schedule assignments based upon the needs of the Department and/or the City. In such instances, the decision of the Chief shall be non-grievable. Additionally, special assignments which may arise from time to time shall not be subject to shift bidding or shift assignments as stated herein and such assignments shall similarly be non-grievable. Any employee assigned to a temporary duty assignment of more than thirty (30) days which alters the employee's shift schedule as designated under the terms of this agreement shall be allowed to participate in the next shift schedule bid available to that employee in keeping with Section 8.1.1. Nothing in this section shall be considered an abrogation of management rights, privileges or authority generally or specifically an abrogation of those rights as delineated in Section 2.4.1., 2.4.4., and 2.4.9. of this contract to assign personnel as required in the discretion of the employer.
- 8.1.5. Shift trades may be requested by one employee to another employee. Shift trades shall not be granted unless there is a mutual agreement between the two (2) parties. Shift trades shall be subject to the approval of Chief of Police or his/her designee. There shall be no additional cost to the City resulting from a shift trade. Payment from the City shall be made to the bargaining unit member actually working the traded shift.
- 8.2. The job posting shall be left on the bulletin board for five (5) days and all employees in the bargaining unit who deem themselves qualified in the posted positions' prerequisite experience, knowledge, skills and abilities shall be eligible to sign up to indicate their interest in filling the position. Nothing in this posting procedure shall be deemed to limit the Department's right to seek applicants for the position from outside the Bargaining Unit or the Department. The job posting will contain, at a minimum, the formal job title, applicable starting pay range and the components of the application process such as an oral interview, medical/psychological testing, required certifications and other significant components of the screening process.



**ARTICLE IX**  
**HOLIDAYS**

- 9.1. The following holidays are recognized by the parties to this Agreement in accordance with the current practice of the Department:

New Year's Day	Columbus Day
Martin Luther King Day	Veterans' Day
President's Day	Thanksgiving Day
Memorial Day	Friday after Thanksgiving
Independence Day (July 4th)	Christmas Day
Labor Day	

- 9.2. If a member of the Bargaining Unit is scheduled to work on a holiday and actually works, that employee shall be eligible to receive holiday pay as is the current practice, provided however, that to be entitled to such pay the employee must work the scheduled day preceding and the scheduled day following the holiday unless that employee's failure to work on either day results from an excused absence. An "excused absence" shall be defined as vacation leave, sick leave, military leave or compensatory leave, provided that any leave taken by the employee is authorized in accordance with the General Orders or Standard Operating Procedures of the Department or with this Agreement. When sick leave is taken on the scheduled work day immediately preceding or following a holiday, the Chief of Police or his designee may take such action as they deem necessary to verify illness on the part of the employee including, but not limited to a telephone interview, personal visit or a requirement for a physician's note before holiday pay will be paid.

**ARTICLE X**  
**VACATIONS**

- 10.1. Vacation leave is approved by the Chief of Police or a designee. It accrues on a weekly basis to all regular employees (full-time) who are members of the Patrol Unit on the following schedule:

<u>Hire Date</u> <u>Anniversary</u>	<u>Accrual Rate</u>	<u>Annual Vacation</u>
1 - 4	1.53 hours per week	80 hours (10 days)
5 - 14	2.30 hours per week	120 hours (15 days)
15 or more	3.07 hours per week	160 hours (20 days)

- 10.2. Regular employees shall accrue no vacation leave during their first year of employment, and they may take no vacation leave. On the first Hire Date Anniversary, 10 vacation leave days (80 hours) shall be awarded in a lump sum, and employees will simultaneously begin accruing vacation leave on a weekly basis at 1.53 hours per week. On the fifth Hire Date Anniversary, the accrual rate shall change to 2.30 hours per week,

and on the fifteenth Hire Date Anniversary, the accrual rate shall become 3.07 hours per week. Notwithstanding the above, the regulation of vacation of secretaries and Communications Specialists is governed by the city's Personnel Plan.

- 10.3. Vacation leave shall be used within one anniversary year after its award or accrual. That is, on employees' Hire Date Anniversaries, they may have up to one year's accrued vacation leave "carried over" into the next year. Any unused vacation leave in excess of the previous year's total annual accrual shall be immediately forfeited on the Hire Date Anniversary unless the City Manager has approved an exception to policy based upon unusual circumstances. Example: an employee reaching the fourth Hire Date Anniversary with 12 vacation days accrued but not used will forfeit two vacation days, as only 10 days (the annual accrual) may be carried over into the next anniversary year.
- 10.4. The Chief of Police or a designee shall schedule (determine the time and order of) all vacations in the department, and all requests for vacation leave must be submitted to the Chief in writing at least four (4) weeks in advance. The Department shall provide notification to an employee within 10 days of his or her request as to whether the request is granted or denied. Vacations shall not interrupt nor interfere with the normal operations of the Police Department, and the Chief shall have the right to change the vacation schedule so as to prevent any such interruption or interference. The Chief of Police may designate reasonable "no vacation" time periods based on known seasonal peak demand work periods. Unless the Chief or designee specifically authorizes an exception, no employee shall take vacation leave in excess of 10 days at one time, regardless of the annual entitlement. No more than two (2) employees shall take vacation leave at any one time unless the Chief of Police has ruled that such leave will not seriously reduce the operational effectiveness of the department.
  - 10.4.1. Requests for vacation leave of one week or more must be submitted at least four (4) weeks in advance unless waived by mutual agreement. Vacation leave may be taken in one or half day increments and requests must be submitted at least two weeks in advance unless waived by mutual agreement.
- 10.5. Vacation leave shall be paid at the regular straight-time rate for the number of regular hours normally scheduled for the employee. Employees desiring advance vacation pay prior to taking the leave must make such request through the department payroll clerk at least 15 days before the pay day that the pay is to be received. Under no circumstances will advance vacation pay be paid in an amount exceeding the actual number of accrued vacation leave days (and any paid holidays) being taken. The City shall not grant payment in lieu of vacation leave, except upon termination of employment.
- 10.6. Any regular (full-time) employee whose employment is terminated, voluntarily or involuntarily, after the first Hire Date Anniversary shall be compensated for all vacation time accrued up to the date of termination.

- 10.7. When a paid holiday falls within a vacation leave taken by an employee who would normally take the holiday off with pay, the employee shall not be charged with having used a vacation day for that date. Employees who would normally work the holiday and receive additional holiday pay shall be charged a vacation day but shall also receive the holiday pay.
- 10.8. Vacation Leave (Part-Time Employees). Members of the bargaining unit who are regular part-time employees are defined as those working regularly scheduled shifts of at least twenty hours per week. On-Call employees are not regulars. Regular part-time employees accrue no vacation during the first year of their employment. On the first Hire Date Anniversary, they shall begin to accrue vacation leave at the rate of .096 days per week (five days per year). All other provisions of vacation leave are the same as for regular full-time employees (see above).
- 10.9. Implementation. Accrual of vacation time pursuant to this system commenced with the pay period beginning January 7, 1996.

## **ARTICLE XI**

### **BEREAVEMENT LEAVE**

- 11.1. Any regular full-time employee shall be excused from work for not more than three (3) consecutive work days, provided that such excused work days can be taken in four consecutive calendar days, because of death in the immediate family and shall be paid the normal rate of pay for the scheduled working hours excused.
- 11.2. "Immediate family" shall mean spouse, domestic partner, parents, step-parents, parents-in-law, grandparents, children, stepchildren, brothers/sisters, a blood relative residing in the same household or a ward residing in the same household.

"Domestic partner" shall mean "unmarried adults living in a committed relationship who share a permanent residence, are both over eighteen (18) years of age and are not blood relatives of any degree that would prohibit legal marriage."

## **ARTICLE XII**

### **SICK LEAVE**

12.1. All full-time regular employees shall be entitled to sick leave in accordance with the following:

A. Amount; accumulation of unused time.

- (1) Each full-time regular employee shall have the equivalent of 96 hours' sick time made available the first day of each fiscal year. Unused sick time may be accumulated to a maximum of 480 hours.

- B. Paid sick leave shall be granted for absence from duty for the following reasons:
- (1) Illness.
  - (2) Noncompensable bodily injury or disease.
  - (3) Exposure to contagious disease; quarantine.
  - (4) Attendance upon a member of the immediate family whose condition requires the care of the employee, with prior approval by the department head and the City Manager or their designee.
  - (5) Dental and doctor appointments, with prior notice and approval by the supervisor.
  - (6) Up to three days for adoption or birth of a child.
- C. If absence is caused by accident compensable under workers' compensation, then the City shall pay the difference between workers' compensation and the employee's regular pay during the employee's sick leave eligibility. This shall be accomplished in the following manner:
- (1) The employee shall endorse the workers' compensation check to be payable to the City of Franklin. Upon receipt of the endorsed check, the City shall issue a check for the week in the amount of the employee's normal weekly wage or salary.
  - (2) Normally, a delay of some weeks occurs between the illness/injury and receipt of the first workers' compensation check. During this period, employees must use accrued sick leave (and vacation leave, if desired) to receive a paycheck from the City. Upon receiving the endorsed retroactive workers' compensation checks (which the employee is required to submit), the Finance Office will restore the appropriate amount (equivalent to the amount of the checks) or sick and/or vacation leave to the employee's accrued balances. New Hampshire Retirement deductions will also be refunded in the following paycheck as worker's compensation is not considered earnable compensation.
  - (3) When employees have reduced their accrued leave balances to zero yet remain absent from work and covered by workers' compensation, the City will provide no further payments or subsidies, and employees may cash their workers' compensation checks directly.
- D. Upon termination of employment, any unused accumulated sick leave balances are forfeited.

- E. If absence is caused by injury covered by workers' compensation, the employee may use sick time for a maximum of 40% of his or her usual workweek.
- F. Employees absent for any reason shall report to their department head or their designee immediately, giving the reason for their absence. The City Manager and/or department head may require, as a condition precedent to the payment of sick leave, the certification of a qualified physician certifying the employee is fit for duty. Whenever sick leave is requested to be used in conjunction with vacation leave, a physician's statement shall be required in each instance. In all cases, a physician's certificate shall be required if the absence is three days or more.
- G. If the department head has reason to believe that an employee is misusing sick leave in any way, including but not limited to calling out sick falsely or calling out sick in a regular pattern, the department head may require certification of a qualified physician certifying the employee is fit for duty. Any abuse may be subject to disciplinary action up to and including termination.
- H. Sick leave may be used in fifteen-minute increments.
- I. Sick days will be given to all part-time regular employees on a prorated basis. All other provisions of sick leave in the personnel rules and regulations shall apply.
- J. Upon approval of the City Manager, in an extreme emergency, employees may request, in writing, a donation of accumulated, unused sick time to another employee.
- K. After completing 30 days' service, full-time regular employees will be covered by the City's current short/long-term disability plan on the first day of the following month. Coverage is at the City's expense for full-time regular employees, subject to the availability of approved funding. Because of delays in receiving disability checks from the insurance company, employees may use available sick and vacation time to continue receiving weekly paychecks. Insurance checks will be signed over to the City, and the employee's leave balances up to the amount of the disability check will be restored. At no time will paid accrued leave balances and paid disability total more than the employee's weekly pay based on the employee's regularly scheduled weekly hours.

12.2. Family Medical Leave Act of 1993 (FMLA)

12.2.1. In addition to the other provisions herein, eligible employees shall be granted up to 12 weeks of unpaid leave during any 12 month period for:

12.2.1.A. Birth and first year care of a child;

12.2.1.B. Adoption or foster placement of a child in the employee's home;



- 12.2.1.C. Serious medical condition of the employee's spouse or partner, child, or parent, or;
- 12.2.1.D. Employee's own serious medical condition which renders the employee unable to perform the functions of the job.
- 12.2.2. The City shall maintain group health benefits under the existing conditions during the period of FMLA leave, and shall restore the employee to the same or equivalent position and to all other benefits upon conclusion of the FMLA leave. Vacation and sick leave shall not accrue during the unpaid leave.
- 12.2.3. Eligible employees are defined as those who have worked for the City of Franklin for at least 12 months (not necessarily consecutive) and worked for at least 1,250 hours during the 12 months preceding the start date of the requested leave.
- 12.2.4. Implementation.
  - 12.2.4.A. Requests for unpaid FMLA leave shall be submitted in writing 30 days in advance through the Chief of Police to the City Manager, who is the approving authority. Requests not within this time frame must contain justification for shorter notice.
  - 12.2.4.B. The City shall have the right to require medical certification of the illness or of the employee's need to care for the ill person prior to approving unpaid FMLA leave, and shall have the right to require reasonable periodic medical re-certifications during the unpaid leave. The City further has the right to require additional medical certification at any time by a physician of the City's choosing and at the City's expense.
  - 12.2.4.C. Employees shall be required to exhaust all vacation balances prior to taking unpaid leave and in those instances in which the employee is personally ill, all sick leave balances shall be exhausted also prior to the approval of unpaid leave.
  - 12.2.4.D. Twelve weeks in "any 12 month period" shall be measured backward from the date that the requested leave is to begin. Example: An employee requests one week of unpaid leave under the FMLA to begin July 15. The Police Chief shall review the amount of FMLA unpaid leave taken during the preceding 12 months back to the previous July 15, and shall recommend denial of the leave if 12 weeks have already been taken during that time. Any FMLA leave taken during that time which was charged against an accrued leave balance shall not be counted as part of the "12 weeks in twelve months."

12.2.4.E. FMLA leave may be taken intermittently as needed, in increments as small as one hour. (Example: An employee requests one unpaid hour three days per week for chemotherapy sessions). The City retains the right to assign employees to an alternative position at equivalent pay and benefits if the alternative position is better suited for intermittent leave. (NOTE: The FMLA provides that payroll deductions for unpaid intermittent leave may be applied to salaried, exempt employees without jeopardizing their FLSA exempt status).

12.2.4.F. The City retains the right to require periodic statements of intent to return to work from employees absent on unpaid FMLA leave.

### **ARTICLE XIII** **MILITARY LEAVE**

- 13.1. Whenever employees must be absent from work due to their participation on active duty as a member of the Reserve Component of the United States Armed Forces, the City guarantees all rights and privileges accorded such employees by the Soldiers' and Sailors' Relief Act and the Veterans' Readjustment Act.
- 13.2. Employees called to active duty for training or during national emergencies, shall be guaranteed restoration to employment at the same level of benefits and compensation that would have pertained if employment had not been interrupted by military service.

### **ARTICLE XIV** **RESIDENCY**

- 14.1. All members of the Bargaining Unit serving in the patrol and dispatch functions shall live within forty-five (45) minutes response time to the Franklin Police Station at normal driving speeds. The Chief of Police, or his designee, shall make a final determination as to whether any residence meets the criteria of this article. Such determination shall not be subject to the grievance procedure. The Chief of Police may allow for minor deviations from the policy established herein. All bargaining unit members employed by the City within the Police Department as of May 10, 1995 shall have their current residences exempted from the above policy. In the event that any member so exempted desires to relocate their residence, such relocation shall be to a residence that is no less conforming to this policy than the present residence. For additional future relocations, such relocations shall either be more conforming to this policy or, at least not less conforming than the residence which is being vacated.

**ARTICLE XV**  
**MILEAGE**

- 15.1. Personal vehicles shall not be used for official business unless no City vehicle suitable for the task is available. Use of a personal vehicle must be for the City's convenience, not the employees. In the event that the use of a personal vehicle is necessary and authorized as such by the Chief of Police, employees shall be reimbursed at the same rate per mile as is established by the City Council for all employees, provided that the appropriate voucher forms have been filed. Employees shall also be reimbursed for necessary toll and parking fees incidental to duties performed in the employee's personal vehicle, police cruiser or other City vehicle.

**ARTICLE XVI**  
**UNIFORM ALLOWANCE**

- 16.1. The Chief of Police or his designee shall establish the uniform of the Department which shall not be altered or changed by the bargaining unit employees. The City shall supply each employee with a reasonable quantity of uniform items, including footwear and winter boots, and shall replace same on an as needed basis, subject to the qualifications contained in Section 2, below.
- 16.2. Uniform items that are damaged, destroyed, are made unserviceable or are unpresentable will not be replaced by the Police Department, if in the opinion of the Chief, the damage resulted from the carelessness, negligence or improper use by the employee.
- 16.3. Items to be returned. Employees, at the time of termination of employment, are required to return all articles of uniforms and equipment which were provided by the employer.
- 16.4. Cleaning of uniforms. The City shall provide cleaning for two sets of uniforms per week per uniformed employee, except during leave periods. In the event that the City's contracted cleaner is unavailable or closed for a period in excess of one (1) week, the City agrees to reimburse employees for one (1) uniform cleaning at a non-contracted service.
- 16.5. Each employee who is employed in the position of detective or juvenile officer as of July 1<sup>st</sup> of any year of this contract shall, during the first pay period of the fiscal year, receive an annual clothing allowance in the amount of \$500.00.

**ARTICLE XVII**  
**SENIORITY**

- 17.1. Seniority shall be measured from the last date of hire of an employee. Seniority shall terminate upon the occurrence of one of the following events:



Retirement  
Discharge  
Layoff for one (1) year; or  
Absence due to illness or accident in excess of twelve (12) months.  
Failure to return from lay off within fourteen (14) calendar days or  
notification that a permanent full time job is available.

- 17.2. This definition of seniority and parts thereof shall have force and effect only with respect to provisions of this Agreement specifically requiring the Department to make personnel decisions in whole or in part on the basis of seniority.

## **ARTICLE XVIII**

### **DISCIPLINE AND DISCHARGE**

- 18.1. The City and the Police Department agree that it may only discipline or discharge members of the bargaining unit for just cause, which is unsatisfactory performance or misconduct as defined in the City's Administrative Code, Personnel Policy, Rules, and Regulations, violation of department rules or regulations; provided however, that the term "discharge" shall not include termination of employment directly caused by departmental reduction or restructuring for bonafide financial, regulatory, or law enforcement reasons.

18.1.1. Discipline shall include any of the following: reprimand, written reprimand, suspension, reduction in rank or discharge.

- 18.2. Disciplinary Procedures.

Prior to the institution of any discipline other than a verbal warning, the affected employee shall have the opportunity to meet with the Chief of Police. The employee may be accompanied by the Union President, Vice President, Secretary, Treasurer or other professional representative of NEPBA.

- 18.3. Any employee who will be interviewed or ordered to write a report concerning any act which if proven could reasonably result in any type of discipline shall be afforded the following safeguards:

The employee will be informed prior to any interview or ordered written memo if the City believes the employee is a suspect in any investigation regarding a criminal offense or misconduct which could lead to any discipline.

The City will comply in good faith with the requirements of this section but the Union recognizes that the City may not always be able to identify whether the referenced employee is a suspect in the early stages of an investigation or interview.

- 18.4. The employee will be informed of the nature of the investigation and the allegations against them. The employee will be afforded the opportunity to consult with the representative of their choosing prior to any interview or ordered written memo. The employee shall be afforded the right to have the representative of their choosing at any interview. The employee shall have the right to review Police reports on file to refresh their memory prior to being interviewed. The Union and the City agree that in all cases the principles of "Weingarten" and "Garrity" and other applicable case law shall be observed. The rights afforded the Bargaining Unit members in this paragraph apply to disciplinary investigations and procedures only and do not apply in criminal investigations or disciplinary investigations that later become criminal investigations.
- 18.5. If the City records the interview in any manner, a copy of the complete interview shall be furnished upon request and at the same cost the City is required to pay for the copy, if applicable.
- 18.5.1. Interviews with any employees shall be conducted absent circumstances of intentional intimidation, abuse, coercion or threats. The employee shall be entitled to reasonable intermissions as requested for personal necessities and/or to consult with their representative.
- 18.6. Interviews and investigations shall be completed without unreasonable delays. Upon request, the employee shall be provided notification of the status of the investigation within three (3) working days. Except in unusual circumstances, such request by the employee shall be made not more frequently than once every ten (10) days.
- 18.7. If the investigation results in any discipline against the employee, a complete copy of the investigation will be furnished upon request, said copy shall include all reports, recordings and transcripts. The copy shall be furnished at the same cost the City is required to pay for the copy. Whenever possible, should the information not be in the complete report, the employee shall be furnished with the names, addresses and telephone numbers of all complainants and witnesses who were interviewed in the investigation. It is understood that the report may be redacted for purposes appropriate in the discretion of the City.
- 18.8. Any form of disciplinary action against the employee shall be for just cause and will be subject to the grievance procedure except as specifically stated herein.
- 18.9. The City agrees to counsel and/or reprimand employees privately with the understanding that immediate spot corrections are sometimes appropriate in the workplace but will occur in a format designed not to subject the employee to undue significant embarrassment.
- 18.10. An employee may request that a disciplinary record be removed after a three (3) year period of good conduct if disciplined with a verbal or written warning or reprimand and after four (4) years of good conduct if disciplined with a more stringent disciplinary

action. If the employee's request is denied, it shall not be resubmitted for a period of two (2) years from the denial decision.

- 18.11. All employees shall be allowed access to their personnel files and records during normal working hours for inspection and/or copies of documents which will be provided by the City. Said inspection shall be made subject to prior arrangement with the City.
- 18.12. Employees shall be provided a copy of all City and Police Department policies and procedures. Employees shall be issued all policies and procedures and subsequent modifications or updated in writing.

## **ARTICLE XIX**

### **EMPLOYEE INDEMNIFICATION**

- 19.1. The City shall defend members of the bargaining unit against any claims made against them arising out of an act or omission by the employee while acting in good faith within the scope of his/her employment. The City shall indemnify members of the bargaining unit for any judgments entered against them arising out of any act or omission by the employee acting in good faith within the scope of his/her employment, to the extent that the claim is within the scope of coverage of an insurance policy maintained by the City.
- 19.2. The obligation of the City to defend and indemnify shall not: (a) extend to act to alleged criminal conduct by members of the bargaining unit; or (b) preclude discipline or discharge of the members of the bargaining unit for the conduct which gave rise to the claim.

## **ARTICLE XX**

### **CALL BACK**

- 20.1. **Callback Pay:** Regular (full time) employees who are members of the bargaining unit and subject to the FLSA (non-exempt employees) who have left their normal places of work at the end of their regularly scheduled shifts, but who are called back to duty with no advance notice prior to the start of their next regularly scheduled shift, shall be paid a minimum of four (4) hours of pay at the rate of 1.5 times their normal hourly rates. Callback work in excess of four (4) hours shall be paid at the rate of 1.5 X normal hourly rate X actual hours worked (to the nearest tenth of an hour). Employees called back twice or more within the initial four (4) hours will be paid only one four (4) hour minimum. This policy applies only to unscheduled, regular overtime. Regular overtime scheduled before employees have left their place of duty shall be paid as regular overtime, even if the employees left their place of duty before returning to perform the overtime. An early call-in to report for work at an earlier than normally scheduled time does not qualify for callback pay.

Callbacks shall not be used for routine duties which may be as efficiently accomplished through the use of an early call in or an extended shift, except in unusual circumstances where it is deemed necessary to use a callback for such duties for the appropriate discharge of the Department's mission. When the purpose of the callback has been completed, an employee's supervisor may, but shall not be compelled to, release the employee from further duty before the conclusion of the four (4) hour minimum time span.

**ARTICLE XXI**  
**WAGES, LONGEVITY, OVERTIME, PRIVATE DETAILS,**  
**PROFESSIONAL MEMBERSHIP, EDUCATION**

21.1. Wages.

21.1.1. Appointment Rates:

- 21.1.1.A. The classes of jobs within the bargaining unit and their assignment to pay grades are shown at Appendix A. The minimum rate of pay for a class shall normally be paid upon appointment to a position within the class. Appointment rates above the minimum rate may be paid with the approval of the City Manager. Justification for approval will include recognition of exceptional qualifications of the appointee, previous related experience or the lack of qualified persons available at the minimum rate.
- 21.1.1.B. Police Officers who have not been certified by the New Hampshire Police Standards and Training Academy as full time Officers, but who are employed full time as such shall receive wages no less than entry level (Step One) for a Franklin Police Officer until such certification has been received.

21.1.2. Wage Increases:

- 21.1.2.A. Salary adjustments (step increases) within established ranges in the approved budget shall not be automatic, but shall be based upon the merit system as recommended by the Chief of Police and approved by the City Manager. Subject to approved fiscal year funding in an approved budget, all regular full time employees and regularly scheduled part time employees may be awarded merit pay raises in the form of steps (normally one) within the appropriate labor grade, which shall primarily be based upon successful goal achievement as evidenced by the performance appraisal for the preceding anniversary year. Rarely, and upon the Chief's recommendation, the City Manager may award one

additional step to employees demonstrating truly exceptional merit above their peers. Merit increases shall be effective on the first Sunday following the Hire Date Anniversary of employees. For employees who are promoted to a position on a higher labor grade, the Promotion Anniversary date shall be used for pay purposes rather than the Hire Date Anniversary. Promoted employees shall be subject to a six-month "performance probation" period, during which time unsatisfactory performance may be grounds for demotion or termination of employees. Employee Performance Appraisals shall be completed annually in the month immediately prior to the Hire Date (or Promotion Date) Anniversary for every employee. Any employee receiving an unfavorable evaluation that leads to the denial of a merit increase shall be entitled to a meeting with appropriate supervisory personnel. Step increases shall not automatically continue upon the expiration of this agreement or any subsequent agreement unless specifically so stated.

21.1.2.B. Any employee that has not received their completed performance appraisal by the end of the pay period immediately following their anniversary date shall be allowed to meet with the Chief of Police. If the employee still has not received their completed performance appraisal within seven (7) days after the meeting with the Chief of Police, the employee shall be allowed to meet with the City Manager.

21.1.2.C. **Commencing July 26, 2020 the pay table attached hereto as Appendix A shall become effective.**

21.1.2.C.1. **For the second and third year of this Agreement, all bargaining unit employees shall receive the same cost-of-living adjustments as all non-unionized employees of the City are granted.**

21.1.2.D. The City will provide a paycheck stub breakdown in the following categories: regular pay, overtime pay, court pay, detail pay, vacation pay and sick pay. The City will also show accumulated individual leave accruals.

21.1.2.E. Payment of Wages. Employees shall be provided at least two (2) weeks notice in advance of any change in the frequency of pay periods.

21.1.3. Longevity Pay. On the appropriate Hire Date Anniversary, Regular (full time) employees shall be moved to the corresponding Longevity Pay Table. Employees



moved to a Longevity Pay Table will occupy the same labor grade and step as on the previous table. The Longevity Pay Tables (attached) award longevity payments on an hourly basis which equate to annual payments as shown below:

<u>Anniversary</u>	<u>Annual Longevity Pay</u>
New Hire	Table A (Regular Pay Table)
10th Anniversary	Table B (\$500 Annual Increase)
20th Anniversary	Table C (Additional \$500 Annual Increase)

21.1.4. Overtime Payment:

- 21.1.4.A. All employees not exempt from the Fair Labor Standards Act (FLSA) shall be paid at 1.5 times their normal hourly rates for each hour or portion thereof actually worked in excess of 40 hours worked in a work week. The City's work week is defined as from 12:01 am Sunday morning to 12:00 pm (midnight) Saturday. A work day is defined as from 12:01 am until 12:00 pm (midnight). For purposes of overtime pay calculations, all paid holidays, bereavement leave, and all absences charged against an employee's accrued leave balances shall be treated pursuant to the City Personnel Plan as in effect as of the effective date of this contract (July 1, 2014). Paid absences not charged to accrued leave balances, such as administrative leave or leave without pay, shall not count as hours worked in a week.
- 21.1.4.B. Overtime is not authorized unless approved in advance by the employee's immediate supervisor. Any overtime worked without such advance approval shall not be paid. The Chief of Police may, at his/her discretion, issue blanket advance approval for certain specific frequently reoccurring situations.
- 21.1.4.C. Compensatory Time. The City's normal practice is to pay monetary overtime. At the employee's request, the Chief of Police may authorize compensatory time off in lieu of monetary payment for overtime. Compensatory time for non-exempt employees shall be paid at the same rate as cash overtime; each hour of overtime worked is compensated by one and one-half hours of paid absence from work. Compensatory time may be accrued up to forty hours; any overtime thereafter worked shall be paid in cash until the compensatory time balance has been reduced below forty hours. With the Chief's permission, compensatory time may be used in conjunction with other paid absences.

- 21.1.4.C.i. Overtime shall be assigned to qualified full-time employees on a rotating basis, according to seniority. No part-time employee shall be assigned to cover overtime or regular shifts when there are full-time employees available and willing to take the shifts. Overtime for which there is less than four (4) hours notice may be filled at the City's discretion.
- 21.1.4.C.ii. For the purposes of contacting the employee regarding available overtime, a telephone call to the phone numbers (not to exceed two (2)) provided by the employee shall be placed and a message left if possible. This process shall not apply if the employee is available in person or working at the time. If the City is unable to reach an employee promptly, it may move to the next individual on the rotation list.
- 21.1.4.C.iii. Swapping of an overtime assignment shall not be permitted. Any overtime assignment that cannot be filled by the original employee who took the assignment must be filled by reassigning it from the rotating list.
- 21.1.4.C.iv. Employees may elect not to be placed on the rotation list by notifying the Chief of Police or his/her designee. It is understood that the Chief may, in his/her sole discretion, require overtime of any employee to meet the requirements of the City or Department.
- 21.1.4.C.v. The City shall post a detail information sheet for one (1) week after of the filling of overtime shifts.

21.1.5. Private Details.

- 21.1.5.A. Section 1: Private details are those details which are supported by a funding source other than the salary or overtime accounts of the Franklin Police Department.
- 21.1.5.B. **Section 2: All private details shall be paid at a rate of time and one-half or \$45.00 per hour, whichever is higher for the specific officer assigned to the detail, from the date of ratification in 2020 forward, \$47.00 per hour in the calendar year 2021 and \$49.00 per hour in calendar year 2022. The City may charge an additional administrative fee in connection with**

**private details, said fee remaining the property of the City. The above rate shall apply to all members of the bargaining unit as of the date of ratification of this contract.**

**An employee shall be paid a minimum of four (4) hours pay pursuant to this section for any private detail assigned.**

- 21.1.5.C. Section 3: Private details are not subject to the overtime provisions of this agreement. However, in the event that no eligible officer volunteers for a private detail, the Chief of Police or his designee may in their discretion make a mandatory assignment of a private detail. In such case, such assignments shall be in order of inverse seniority on a rotational system established by the Chief.
- 21.1.5.D. Section 4: Private details shall be offered to all qualified police officer employees of the Department and distributed on an equitable rotational basis. A rotational list shall be established to ensure that private details are so distributed. The list shall be established in order of seniority with the Chief of Police having the discretion to place current part-time or special officers within the rotational list at any location. Future full time officers shall be placed on the list so they shall be the last to receive private detail assignments as of the date which they are placed. The Chief shall retain full discretion to place future part-time and/or special officers within the rotation. In the event that an individual either refuses to accept a private detail or is unable to accept same for any reason, including lack of availability for notice purposes, that detail shall then be offered to the next employee on the rotational list. For each detail, the Department shall commence offering to employees on the list at the point in the list immediately after the name of the employee who received the last private detail assignment. For purposes of contacting an employee regarding an available detail, a telephone call shall be placed to the numbers (not to exceed two (2)) provided and a message left if possible. This procedure shall not apply if the employee is available in person or on duty at the time.
- 21.1.5.E. The swapping of details shall not be permitted. A detail that cannot be filled by the original officer who accepted the officer must be filled by reassigning it from the call list.

**21.1.6. Municipal Details. A municipal detail shall be defined as a detail worked by a bargaining unit member, which would normally qualify for overtime pay**



which is a scheduled event such as a parade, municipal ceremony or other similar occurrence for which payment is drawn from the municipal police budget as opposed to a private detail or other overtime assignment as described above. Municipal details, to the extent that they occur in hours that would otherwise qualify for overtime pay, will be paid at a minimum of four (4) hours at the employee's overtime rate.

**21.1.7. Witness Fees.** Any off-duty police officer/dispatcher who must physically appear in court for matters arising out of his or her official duties, including conferences with prosecution officials, hearings and complaints, signing of complaints, civil court, involuntary hospitalization hearings, depositions, parole or probation hearings, and motor vehicle hearings or any other approved meeting location directed or approved by supervising officers shall be compensated by a minimum of four (4) consecutive hours of the employee's overtime rate. In the event that a bargaining unit member is required to appear separately in both a morning and afternoon session of the court, the employee shall be compensated by a minimum of four (4) consecutive hours at the employee's overtime rate for the second appearance. Should an officer be required to make an appearance outside of the guaranteed minimum stated above, said appearance being contiguous in time, then the officer shall receive overtime pay for actual time worked. Such payment shall not apply to civil cases privately brought or similar matters where the Franklin Police Department is not an active party to the matter. In such cases, officers shall be compensated in accordance with State law, the rules of court or other applicable regulation by the outside party requesting their presence and/or participation.

**21.1.8. Field Training Officer.** Any bargaining unit member who serves as a Field Training Officer shall receive a \$1.00 per hour pay differential for time when that employee is actually serving as a Field Training Officer involved in the direct supervision of a junior employee.

**21.1.9. Educational Incentive.** Any employee who, while a full-time employee of the Department, earns a degree listed in this Section shall be entitled to one time payment for achieving the following educational degrees:

Associate's Degree: \$250.00  
Bachelor's Degree: \$500.00  
Master's Degree: \$750.00

To receive this one-time bonus, the employee will need to receive their degree after the conclusion of any probationary status and the degree will need to be in a recognized law enforcement related field. The decision of the Chief of Police or his/her designee on whether a degree has been earned in a "recognized law

enforcement related field” will be final and not subject to the grievance procedure.

21.1.10. O.I.C. Any Bargaining Unit member who serves as an Officer-in-Charge shall receive a \$1.50 per hour pay differential for time when that employee is actually serving as the Officer-in-Charge.

21.1.11. **Dispatch Shift Differential.** Any bargaining unit member assigned to dispatch duty for either of the following shifts shall receive the listed increases in their hourly rate of pay: second shift – \$0.50, third shift – \$0.75. This benefit shall apply only to hours actually worked by the employee and not to any form of leave or other form of compensation. For purposes of this section, work performed primarily between 3:00 – 11:00 p.m. shall be considered second shift and work performed primarily between 11:00 p.m. – 7:00 a.m. shall be considered third shift.

## **ARTICLE XXII**

### **INSURANCE AND RETIREMENT**

- 22.1. The City will provide to members of the Bargaining Unit health and life insurance on the same terms and conditions (level of benefits, deductibles, premium co-payments) as provided to non-union employees of the City.
- 22.2. The City shall continue the present practice of allowing the members of the bargaining unit to participate in the New Hampshire State Retirement System.

## **ARTICLE XXIII**

### **PHYSICAL READINESS**

- 23.1. All newly sworn police officers, full or part-time, shall be required to pass such physical readiness and other examinations as required for certification by the State of New Hampshire.
- 23.2. It shall be a continuing condition of employment for all sworn police officers who are members of the Bargaining Unit to continue to meet the standard applied in Section 23.1., above. Any officer exempt from this requirement as of the effective date of this contract shall continue to have the benefit of that exemption subject to amendment by the State of New Hampshire.

23.3. Any employee returning to work after a work interruption of at least one calendar week (7 consecutive days) due to illness or injury may be required to present to the City a certificate of physical fitness for performance of his proposed duties. Such certificate shall be signed by the employee's physician and shall duly identify the employee and shall also state that the employee is qualified to resume his employment. In the event that an employee is required to obtain such a certificate from a physician chosen by the City, that will be accomplished without cost to the employee. If the City's physician does not agree with the conclusion reached by the employee's physician, the employee shall submit to an examination by an impartial physician agreed upon by both the employee's physician and City's physician. The cost of the examination by the impartial physician shall be born by the employer.

23.4. Physical Examinations and Drug Testing.

23.4.1. The City of Franklin shall require a physical examination, including drug tests, as a condition for employment, and may require other medical or psychological testing to be performed by a qualified physician to be selected by the City. The City will assume the cost for the physical and laboratory tests and any other medical or psychological testing required.

23.4.2. Drug Testing Program. The City shall implement and operate a drug testing program in accordance with the following.

I. PURPOSE:

This Administrative Regulation describes the City of Franklin's drug and alcohol testing program for all staff of the Franklin Police Department. Within this policy are the procedures for testing, record keeping and enforcement that will be used by the City to monitor and ensure compliance.

The policy will comply with Federal Department of Transportation and Federal Motor Carrier Safety Administration (FMCSA) mandates found in 49 CFR-Part 40 (Procedure for Transportation Workplace Drug and Alcohol Testing Programs) and 49-CFR Part 382 (Controlled Substances and Alcohol Use and Testing).

II. POLICY STATEMENT:

The City of Franklin has a strong commitment to the health, safety and welfare of its employees, their families and the public at large. Therefore, the City seeks to hire and employ workers who are free of illegal drugs and alcohol. The Franklin Police Department will conduct pre-employment, random, reasonable suspicion, post-vehicle accident and return-to-duty (following a confirmed positive test) drug and alcohol testing.

III. RESPONSIBILITIES:

A. All Franklin Police Department personnel shall comply with the following:

- 1.) Submit to and cooperate with drug and alcohol testing as required.
- 2.) Not report for duty within four (4) hours of using alcohol or remain on duty while under the influence of alcohol or controlled substances. An alcohol concentration of 0.02 to 0.039 will preclude assignment to duties for a period of twenty-four hours. An alcohol concentration of .04 or greater shall be actionable under Section IX of this policy.
- 3.) Not use alcohol or controlled substances while on duty.
- 4.) Not consume alcohol after an accident that requires alcohol testing for eight hours or until tested, whichever occurs first.
- 5.) Properly participate and successfully complete any rehabilitation program prescribed by a substance abuse professional (SAP).

B. The City of Franklin shall:

- 1.) Pay all costs for testing, training and record keeping. The City may contract for testing and other services related to this policy and will ensure that procedures used for testing meet and exceed the requirements of 49 CFR-Part 40. The City will closely monitor the vendor who provides testing services to protect the employees, ensure the integrity of the testing processes, and safeguard the validity and attributability of the test results.
- 2.) Provide training for all covered employees on the content of the policy and governing directive. Additional training will be provided when changes in the policy or those directives occur. (Material to be provided to employees is outlined in 49 CFR 382.601).
- 3.) Pay all costs for testing associated with any employee's first positive test results. This includes subsequent required testing. This is for the first offense only. If any employee fails required testing after the first positive result he or she will pay all costs associated with the second test.

IV. TESTING:

A. Requirements for controlled substance testing:

- 1.) Random Testing – A periodic, unannounced, scientifically random selection of covered employees will determine the participants required to meet the annual number of random controlled substance tests designated by FMCSA. The random testing selection process shall comply with 49 CFR Part 382.305 (i)(1) and (i)(2).



- 2.) Post Accident Testing – Any on-duty employee involved in a motor vehicle accident will be tested as soon as practicable after the accident, but no later than 32 hours. Employees must not consume alcohol or drugs after an accident that requires testing for eight hours or until tested, whichever occurs first.
- 3.) Reasonable Suspicion Testing – Testing will be required whenever the Police Chief, or their designee, observes specific, contemporaneous articulable conditions of appearance, behavior, speech or body odors and including chronic or withdrawal symptoms indicating the use of a controlled substance by a covered employee.
- 4.) Pre-employment Testing – Prior to any final offer of employment, any Police Department applicant must be tested for controlled substances with a negative result. The hiring offer will be conditional upon test results.
  - a.) The applicant shall be given a copy of this policy and will be informed of the test appointment.
  - b.) The Medical Review Officer will notify the applicant of positive test results. The MRO will give the applicant an opportunity to discuss the results prior to release of the information to the City of Franklin.
  - c.) After the City Manager has received the test results, eligibility for employment will be determined. The test results shall be kept confidential.
- 5.) Return to Duty Testing – A directly observed controlled substance test with verified negative results must be completed for any employee who has previously tested positive before the employee may return to duty.
- 6.) Follow-up Testing – Following return to duty after removal for controlled substance use, an employee who has completed a prescribed rehabilitation program will be tested (directly observed) at least six times, not to exceed twelve times in the first twelve months after return. Further follow-up testing may be conducted for up to sixty months. Costs for all follow-up testing will be borne by the City for the first positive test result only. If any employee tests positive after the first positive test he/she will pay for all costs associated with the second positive test.

B. Requirements for alcohol testing:

- 1.) Random Testing – A periodic, unannounced, scientifically random selection of covered employees will determine the participants required to meet the annual number of random alcohol tests. The percentage of covered employees tested will be at least 10%, except that in no case will the percentage tested exceed that in effect for Commercial Motor Vehicle drivers as prescribed by the FMCSA. The random testing selection process shall comply with 49 CFR Part 382.305 (i)(1) and (i)(2).
- 2.) Post Accident Testing – Any on-duty employee involved in a motor vehicle accident will be tested as soon as practicable after the accident, but no later than 8 hours. Employees must not consume alcohol or drugs after an accident that requires testing for 8 hours or until tested, whichever occurs first.
- 3.) Reasonable Suspicion Testing – Testing will be required within 2 hours whenever the Police Chief, or their designee, observes specific, contemporaneous articulable conditions of appearance, behavior, speech or body odors indicating prohibited use of alcohol by an on-duty covered employee.
- 4.) Return-to-Duty Testing – An employee who has engaged in conduct prohibited by this policy involving alcohol must have an alcohol test with a result indicating alcohol concentration of 0.00 before being returned to duty.
- 5.) Follow-up Testing – Following return-to-duty after removal for alcohol misuse, an employee who has completed a prescribed rehabilitation program will be tested at least six times, (not to exceed twelve), unannounced, in the first twelve months after return. Further follow-up testing may be conducted for up to sixty months.
- 6.) Confirmation Testing – Any test resulting in indication of alcohol concentration greater than 0.02 will be followed as soon as practicable by a second test to confirm the quantitative data of alcohol concentration.

V. NOTICE:

All recruitment announcements for any Police Department position will disclose that a drug-screening test will be required for the applicant.

## VI. TESTING TECHNIQUES:

### A. Drug Testing:

- 1.) Drug testing is accomplished by analyzing the employee's urine specimen (urinalysis). Specimens will be collected at a location selected by the City of Franklin. The testing facility must assure that specimen collection be done in a dignified, professional and confidential manner. Once the employee provides a urine specimen, it is sealed and labeled by a certified/authorized agent of the testing facility. A chain of custody document is completed in the presence of the employee, and the specimen is shipped to a US Dept. of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory.
- 2.) All urinalysis procedures are required to include split specimen techniques. Each urine sample is subdivided into two containers and labeled as primary and split specimens. Both specimens are forwarded to the laboratory. Only the primary specimen is used in the urinalysis. In the event of a confirmed positive test result, the split specimen may be used for a second confirmation test. This test will be done at a SAMHSA certified laboratory if requested in writing by the employee within 72 hours. If the second confirmation test is positive the employee will be charged for this test. In the event the second test is negative, the City will pay for the second test.
- 3.) During testing, an initial screening test is performed. If the test is positive for one or more drugs, a confirmation test will be performed.
- 4.) All test results are reviewed by a Medical Review Officer (MRO) prior to results being reported to the City of Franklin. In the event of a positive test result, the MRO will first contact the employee and conduct an interview to determine if there are any alternative legitimate reasons for the positive result (such as over the counter or prescription medications). If the MRO determines there is a legitimate medical explanation for presence of drugs, the results will be reported as negative.

### B. Alcohol Testing:

Alcohol testing will be conducted using either an evidential breath testing (EBT) device or a saliva screening device listed as approved by FMCSA. A certified Breath Alcohol Technician (BAT), trained in the use of the EBT and alcohol testing procedures, must perform the breath test. Under certain circumstances, post-accident tests conducted by law enforcement personnel will be acceptable. In the event of a confirmed positive test

result for alcohol, the employee, at their option and cost, may request an immediate blood test to be evaluated at a SAMHSA/NIDA certified laboratory of their choice.

VII. CONSEQUENCES:

If an employee or applicant violates this policy, the City of Franklin may consider, but is not limited to the following:

- A. Job applicants – Job applicants will be denied employment with the City if a positive test result has been confirmed or the applicant does not request a confirmation test. Applicants shall be informed in writing if they are rejected on the basis of a confirmed positive test result.
- B. Refusal to Submit – Any employee who has been notified of the requirement for testing, who fails to provide adequate breath for alcohol testing, fails to provide adequate urine for controlled substance testing or engages in conduct that clearly obstructs the testing process will be considered to have refused to submit to testing.
  - 1.) Refusal to submit will result in termination.
  - 2.) A job applicant who refuses to submit to a drug and alcohol screening test will be denied employment with the City of Franklin.
- C. Rehabilitation – When the evaluation of a Substance Abuse Professional (SAP) determines that a rehabilitation program, if any, is required by an employee to resolve problems associated with alcohol misuse or controlled substance abuse, the employee will properly follow the prescribed program as a condition of continued employment with the City. If any employee fails to follow the prescribed program established by the SAP he/she will be terminated.

VIII. DISCIPLINE:

- A. Alcohol
  - 1.) First positive test results: 0.04 or greater – Suspension of thirty calendar days without pay. Completion of treatment plan as determined by SAP. Failure to participate shall result in termination of employment.
  - 2.) Second positive test results: 0.04 or greater – Termination.



B. Controlled Substance

- 1.) First positive test results for controlled substance: Suspension of thirty calendar days without pay. Completion of treatment plan as determined by SAP. Failure to participate shall result in immediate termination. Reinstatement shall be conditioned upon negative results for controlled substances upon retesting. Failure to receive a favorable result upon retesting shall result in termination.
- 2.) Second offense shall result in termination.

C. Any infraction with loss of license shall be handled in accordance with the City License Suspension/Revocation Administrative Regulation No. 11.

D. Any employee who willfully refuses to comply with the aforementioned testing and EAP requirements shall be terminated immediately. See section VIII, paragraph; A, B and C.

IX. CONFIDENTIALITY OF TEST RESULTS:

- A. All information from an employee or applicant drug and alcohol test is strictly confidential. Disclosure of test results to any other person; agency or organization is prohibited unless written authorization is obtained from the employee or applicant. The results of a positive drug test shall not be released by the MRO to the City until confirmed. The records of unconfirmed positive test results and negative test results will be maintained by the MRO, and reported to the City where they will be kept on file.
- B. Exceptions to these confidentiality provisions are limited to a decision maker in arbitration, litigation or administrative proceedings arising out of a positive drug or alcohol test or other violation of these rules, or as required by law.
- C. Any unauthorized or improper disclosure of confidential information associated with the application of this policy shall subject an employee to termination.

X. MISCELLANEOUS:

- A. If applicable, the City of Franklin will provide employees being tested with transportation to and from the testing site.
- B. Upon employee request, a union representative will be notified of an employee's reasonable suspicion or post-accident testing.
- C. Designated union representatives (i.e. Stewards) will be included in all

supplementary and supervisory training held in relation to the performance of this policy.

- D. Specimens may only be tested for the covered drugs and the specimens may not be used to conduct any other analysis or test.
- E. The person who makes the determination of reasonable suspicion shall not conduct the test.
- F. If employees test positive for drug or alcohol consumption, as herein defined, the City will pay for all costs of the initial testing. If the employee tests positive as herein defined a second time he/she will pay for all costs associated with compliance with this policy.
- G. The name, address and contact information of all testing facilities and/or laboratories utilized by the City to conduct drug or alcohol testing shall be provided to the Union.
- H. The name and address of the medical review officer shall be provided to the Union.
- I. Except in emergency circumstances, or other circumstances which would otherwise reasonably render testing to be ineffective, all testing pursuant to this policy shall be conducted outside of the City of Franklin.

#### **ARTICLE XXIV** **GRIEVANCE PROCEDURE**

- 24.1. For the purpose of this contract, a grievance is defined as a written dispute, claim or complaint which is filed and signed by an employee in the Bargaining Unit who alleges an actual instance of aggrievement and which arises under and during the term of this Agreement. Grievances are limited to matters of interpretation or application of specific provisions of this Agreement and must specify the specific Article and Section of this Agreement which has allegedly been violated, the date of the alleged violation, all witnesses to same and the relief requested.
- 24.2. Whenever an employee in the Bargaining Unit has a grievance as defined in Section 1, above, the following procedure shall be utilized or such grievance shall be deemed waived. The phrase "working days" as contained herein shall mean Monday through Friday, exclusive of legal holidays.

- 24.2.1. The employee involved shall file the grievance in writing as specified above with the employee's immediate supervisor and the Union within ten (10) working days from the date of the event which gives rise to the alleged grievance.
- 24.2.2. If the grievant is not satisfied with the disposition of the grievance by their immediate supervisor or if no decision has been reached within five (5) working days after filing with their immediate supervisor, the grievant, together with the Union, may file the grievance with the Police Chief within ten (10) work days.
- 24.2.3. If the grievant is not satisfied with the disposition of the grievance by the Police Chief or if no decision has been reached within five (5) working days after filing with the Chief of Police, grievant, together with the Union, may appeal the decision of the Chief of Police to the City Manager within ten (10) working days. The decision of the City Manager shall be final and binding upon the parties and shall not be subject to any further appeal or redetermination. However, the Union or the employee may request an advisory opinion of the Personnel Advisory Board pursuant to Section D, below. It is understood that this step shall be advisory only and shall not alter the binding authority of the Manager in these matters.
- 24.2.4. If the grievant or Union is not satisfied with the disposition of the grievance by the City Manager or if no decision has been rendered within ten (10) working days after the meeting at which the City Manager originally considered said grievance, the Union may request that the City Manager submit the matter to the Franklin Personnel Advisory Board pursuant to Section 25 of the Franklin City Charter. Said request of the City Manager to submit the matter to the Personnel Advisory Board shall be in writing. It is understood that the decision of the Personnel Advisory Board is advisory only and does not alter the binding authority of the Manager in these matters.
- 24.2.5. Any of the time requirements stated in this article may be extended by mutual written consent.
- 24.3. Excluded from this grievance procedure are grievances which question the exercise of rights set forth in Article II of this Agreement, entitled Management Clause, or which question the use or application of any right over which the Employer or its designated agents have discretion.
- 24.4. Nothing contained herein shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with an appropriate member of the staff of the Franklin Police Department and having the grievance adjusted without the intervention of the Union provided the adjustment is not inconsistent with the terms of this Agreement.

**ARTICLE XXV**  
**SEPARABILITY**

- 25.1. If any Article of this agreement or any application of any portion of any Article of any Article of this Agreement to any employee is held to be contrary to law, then such Article shall not be deemed valid, but all other Articles shall continue in full force and effect. Upon such invalidation the Union and the Employer agree to meet and negotiate concerning the Article affected.

**ARTICLE XXVI**  
**EXPENDITURE OF PUBLIC FUNDS**

- 26.1. Any agreement reached which requires the expenditure of public funds for its implementation shall not be binding upon the Employer, unless, and until, the necessary specific appropriations have been made by the Franklin City Council. If such funds are not forthcoming, the Employer and the Union shall resume negotiations regarding matters affected.

**ARTICLE XXVII**  
**EFFECT OF AGREEMENT**

- 27.1. This instrument constitutes the entire Agreement and final resolution of all matters in dispute between the Employer and the Union arrived at as a result of collective bargaining negotiations, except such amendments hereto as shall have been negotiated by mutual agreement and reduced to writing and signed by the parties.
- 27.2. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity make demands with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and that opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees the other shall not be obligated, to bargaining collectively with respect to any subject or matter referred to, or covered by this Agreement, or with respect to any subject or matter referred to, or covered by this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

**ARTICLE XXVIII**  
**DURATION**

- 28.1. The provisions of this Agreement shall be effective on July 1, 2020 unless specifically stated otherwise. This contract shall expire on June 30, 2023. Upon the expiration

of this agreement or any subsequent agreement hereto, all rights and benefits accorded to the Bargaining Unit Members shall remain at their then current levels until the execution of a subsequent agreement or unless altered by the operation of law.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals by their duly authorized officers and representatives, this \_\_\_\_ day of \_\_\_\_\_, 2020.

**CITY OF FRANKLIN**

**New England Police Benevolent Association  
(NEPBA) Local 214**

By: \_\_\_\_\_  
Tony Giunta, Mayor

By: \_\_\_\_\_  
Ron Scaccia

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

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

By: \_\_\_\_\_  
Judie Milner, City Manager

By: \_\_\_\_\_  
Jon Francis

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

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

**CITY COUNCIL MEETING**  
**AGENDA ITEM X**





**CITY OF FRANKLIN  
COUNCIL AGENDA REPORT**  
December 7, 2020

**From:** Judie Milner, City Manager

**Subject:** Council to consider approval of lease with Cumberland Farms for 196 & 202 Central Street.

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**Suggested Motion:**

Councilor moves, "I move that the Franklin City Council approve the 10-year lease with Cumberland Farms for 196 & 202 Central Street and authorize the City Manager to execute the lease document on behalf of the City."

Mayor calls for a second, discussion and roll call vote.

**Discussion:**

Cumberland Farms is looking to build a new superstore location and move current operations to the 3 parcels located at the intersection of West Bow & Central: former Elks property, former Ciao Pasta property (now City property), and the Birke's property (former Lucky Lenny's location).

However, Cumberland Farms backed out of the purchase and sales agreements for all three properties due to unresolved contamination issues on the Birke's parcel and the City's parcel.

The City is entering into a long-term lease agreement with Cumberland on the 2 properties that are environmentally contaminated (City & Birke's) so the City may apply for and utilize federal Brownsfield program funding for any further remediation required, if applicable, while Cumberland Farms builds their project and after the project is built.

The City hired an environmental attorney to verify that this approach was legal and the attorney stated "this scenario is exactly what the Brownsfield program is for".

Cumberland Farms will pay the City for the purchase price of the City & Birke's parcels up front and be responsible for all taxes, water, sewer, electric, etc. on the improvements on the parcels over the life of the lease (10 years).

When remediation is complete or Cumberland Farms is comfortable with the contaminants, Cumberland Farms will purchase the land (both parcels).

The lease has been reviewed and approved by legal council for Cumberland Farms and by the City Solicitor.

**Fiscal Impact:**

Cumberland Farms will pay the City for the purchase price of the City & Birke's parcels up front and be responsible for all taxes, water, sewer, electric, etc. on the improvements on the parcels over the life of the lease (10 years).

**Alternatives:**

Do not approve and project will not continue leaving all three parcels on the market.

**Attachments:**

Lease



**GROUND LEASE**

**between**

**THE CITY OF FRANKLIN, NEW HAMPSHIRE**  
**a New Hampshire municipal corporation**

**as Landlord,**

**and**

**CUMBERLAND FARMS, INC.,**  
**a Delaware corporation**

**as Tenant**

**Dated: October \_\_\_\_, 2020**

**for premises located at**

**196 and 202 Central Street**  
**Franklin, New Hampshire**

**The preparation, revision or delivery of this Lease for examination and discussion shall in no event be deemed to be an offer to lease the Premises but shall be merely a part of the negotiations between Landlord and Tenant. Neither party hereto shall have any obligation or liability to the other whatsoever at law or in equity (including any claims for detrimental reliance or promissory estoppel) unless and until such time as both parties shall have executed and delivered this Lease.**

## GROUND LEASE

**THIS GROUND LEASE** (this "Lease") is made and entered into as of October \_\_\_\_\_, 2020 by and between **THE CITY OF FRANKLIN, NEW HAMPSHIRE**, a New Hampshire municipal corporation ("Landlord") and **CUMBERLAND FARMS, INC.**, a Delaware corporation ("Tenant").

### *Article I. Basic Data*

Each reference in this Lease to any of the terms contained in this Article or otherwise defined herein shall be construed to incorporate the definitions or data stated under that term.

Premises: Approximately 1.03+/- acres of land, consisting of: (i) 0.17 +/- acres of land situated on the northerly side of Central Street (Rte. 3) and known as 196 Central Street; and (ii) 0.86+/- acres of land situated adjacent thereto on the northerly side of Central Street (Rte. 3) and known as 202 Central Street (the "202 Parcel"), all in the city of Franklin, Merrimack County, New Hampshire, as more particularly described in *Section 2.1*.

Term: Initial Term: ten (10) Lease Years from the Lease Commencement Date.

Extended Term: one (1) option for five (5) additional Lease Years

<u>Base Rent:</u>	<u>Year</u>	<u>Annually</u>
	1-10	\$100.00
	Extended Term	\$100.00

Effective Date of Lease: The later of (i) the date that Tenant receives a fully executed original of this Lease, or (ii) the Diligence Delivery Date.

### Outside Dates:

Feasibility Period Expiration: Thirty (30) days from the Effective Date of this Lease, subject to extension as hereinafter set forth.

Permitting Period Expiration: One hundred eighty (180) days after the expiration of the Feasibility Period, subject to an extension as hereinafter set forth.

Landlord Address: 316 Franklin Street  
Franklin, NH 03235

Email: [citymgr@franklinnh.com](mailto:citymgr@franklinnh.com)

Tenant Address: 165 Flanders Road  
Westborough, MA 01581  
Attention: Real Estate Department  
Reference: Franklin, NH

## ***Article II. Lease of Premises***

*Section 2.1. Premises.* In consideration of Ten (\$10.00) dollars and the mutual covenants and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged by the parties, Landlord hereby leases to Tenant that certain parcel of land, situated at 196 Central Street and 202 Central Street, Franklin, Merrimack County, New Hampshire, being shown as “Premises” on the proposed site plan attached hereto as **Exhibit C** (as same may be amended from time to time by Tenant in its sole discretion, subject to any approvals that may otherwise normally be required from applicable boards and/or agencies of the City of Franklin, the “Site Plan”), and more particularly described in the legal description set forth in **Exhibit A** attached hereto, together with any and all appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto and existing improvements (collectively, the “Premises”), but specifically excluding from Tenant’s lease of the Premises any underground storage tanks and any Hazardous Materials (as hereinafter defined) which were released into, became a part of, or were located upon the Premises prior to the Lease Commencement Date.

*Section 2.2. Leases.* Landlord represents and warrants to Tenant that there are no leases in effect with respect to all or any part of the Premises and there are no other parties in possession of any portion of the Premises. Landlord shall not (i) enter into any new leases or occupancy agreements, or (ii) allow occupancy or use of any portion of the Premises under any license, easement, or other agreement, without the prior written consent of Tenant, which consent may be withheld in Tenant’s sole and absolute discretion. Landlord will deliver exclusive possession of the Premises to Tenant on the date of Delivery of Possession, free and clear of any tenants, leases or other occupancy rights.

*Section 2.3 [Intentionally Omitted]*

*Section 2.4. Feasibility Period*

*Section 2.4.1. Landlord Delivery of Due Diligence Information.* Within fifteen (15) days following the date hereof, Landlord shall deliver to Tenant all Due Diligence Information. As used herein, “Due Diligence Information” shall be defined as all information relating to the Premises (including, without limitation, title information, surveys, environmental reports, engineering studies, appraisals, tax bills, legal notices, permits and approvals, and leases and occupancy agreements), which information is in Landlord’s possession or under Landlord’s control. The Due Diligence Information shall include, but shall not be limited to, reliance letters in favor of Tenant with regard to any and all environmental, due care, and remediation reports

pertaining to the Premises, if any. The date on which Landlord delivers the Diligence Information shall hereinafter be referred to as the “Diligence Delivery Date”. In the event the Landlord does not deliver the Due Diligence Information within such fifteen (15) day period then the Feasibility Period, as defined herein, shall be extended by one (1) day for each day after the expiration of such five (5) day period until Tenant has received all such Due Diligence Information from Landlord.

*Section 2.4.2. Feasibility Period Expiration/Investigations.* The “Feasibility Period” shall mean the period of time commencing on the Effective Date of this Lease, and ending on the date that is thirty (30) days after the Effective Date of this Lease, subject to extension as hereinafter provided. Notwithstanding anything herein to the contrary, if any environmental testing, building materials survey or testing, geotechnical testing or soil or groundwater testing or other reports reveal the presence or potential presence of any contaminants, Hazardous Materials (as defined below), fill, unsuitable soil for development, soil or groundwater requiring special handling or disposal, or non-natural soils on the Premises, or if Tenant otherwise determines in Tenant’s sole discretion that further investigation or budgetary review is required, Tenant shall have the right to extend the Feasibility Period for a period of sixty (60) days to further investigate, delineate, test, and/or monitor such matters as desired in Tenant’s sole discretion.

During the Feasibility Period, Tenant may enter upon the Premises and conduct tests, inspections, surveys and studies (including, without limitation, soil, environmental, physical, mechanical and structural) which Tenant may deem appropriate to determine the suitability of the Premises for Tenant’s intended use of the Premises; conduct any and all environmental due diligence and testing deemed necessary by Tenant, including, without limitation, a Phase II Environmental Site Assessment and a building materials test and survey; conduct a title search and order a title commitment with respect to the Premises; determine the need to re-zone the property or for special land use permits; determine the availability and adequacy of all utilities; review applicable zoning and land use laws; review and approve all other matters as Tenant shall deem necessary for its intended use of the Premises. In the event Tenant terminates this Lease on or prior to the expiration of the Feasibility Period, which Tenant shall have the right to do, for any reason or for no reason, Tenant and/or Tenant’s agents shall restore any portion of the Premises disturbed by Tenant’s investigation thereof to substantially the same condition as existed prior to Tenant’s entry; provided, however, that in no event shall Tenant be obligated to restore or remediate any portion of the Premises if Tenant discovers Hazardous Materials (as defined below) on the Premises in conducting Tenant’s investigations. Whether or not this Lease shall be terminated as aforesaid, Tenant shall have no liability with respect to any Hazardous Materials or underground storage tanks existing on the Premises which are discovered as a result of any tests, inspections or studies performed by Tenant hereunder.

*Section 2.4.3 Hazardous Materials Remediation.*

(i) The parties acknowledge that Hazardous Materials have been identified on the Premises (the “Identified Contamination”), as more particularly described and identified in those certain reports and documents listed in **Exhibit B** attached hereto (the “Existing Environmental Reports”). Landlord shall be solely responsible, at its sole cost and expense, for remediation of the Identified Contamination and any associated Hazardous Materials (including any necessary soil and groundwater treatment) to the extent required by law for Tenant’s

Permitted Use, all in compliance with Laws, and for obtaining regulatory closure for the remediation from the applicable governmental agencies with authority over such work (collectively, "Landlord Remediation Activities"). Prior to, and as a condition of, the Delivery Date, Landlord shall perform and complete all so-called "active" remediation on the Premises, including, without limitation, removal and off-site disposal of any underground storage tanks, drums, storage vessels, and any and all other sources of generation, storage or release of Hazardous Materials in or on the Premises, soil borings, groundwater sampling, and other actions for delineation of the contamination, excavation of soil containing Hazardous Materials, and off-site disposal of same in accordance with environmental Laws, installation of groundwater monitoring wells, and any related soil and groundwater treatment (collectively, "Pre-Delivery Remediation"). Notwithstanding the foregoing, if Landlord Remediation Activities result in the imposition of any institutional or engineering control, including without limitation any activity and use limitation, deed restriction or environmental covenant, ("Environmental Restriction"), such Environmental Restriction shall be subject to Tenant's prior written approval and must not affect or prohibit Tenant's intended use of the Premises, and Landlord must assume at its sole cost and expense, any and all obligations established by the Environmental Restriction, including without limitation, any maintenance, reporting, monitoring or testing obligations. The date that Landlord completes the Landlord Remediation Activities, including, without limitation, obtaining an unconditional no-further remediation letter, or equivalent unconditional closure letter, from the New Hampshire Department of Environmental Services and any other governmental agency or authority having jurisdiction over the Identified Contamination and/or Landlord's Remediation Activities shall be referred to herein as the "Closure Date".

(ii) In the event Landlord fails to perform the Pre-Delivery Remediation required by this *Section 2.4* prior to the Lease Commencement Date, Tenant may elect to take on the Pre-Delivery Remediation required of Landlord and shall be entitled to seek reimbursement from Landlord of its costs and expenses incurred in connection with such remediation. If Landlord fails to so reimburse Tenant within thirty (30) days of receipt of an invoice therefor from Tenant (together with back-up documentation evidencing the payment of such expenses), then Tenant may (without limitation of any other rights or remedies) offset the amount owed against (a deduct such amounts from) the Delivery Donation and/or future payments of Base Rent. The parties acknowledge that the Pre-Delivery Remediation is intended to include completion of all active remediation on the Premises, including, without limitation, removal of all sources of release of Hazardous Materials and excavation, removal and off-site disposal of soil containing Hazardous Materials in accordance with all Laws, in order to enable Tenant to proceed with its intended redevelopment of the Premises (including, without limitation, excavation of the Premises for installation of the Building foundation and trenching for drainage and stormwater management facilities and utility lines to service the Premises and the Building) immediately following the Delivery Date, and that the Post-Delivery Remediation (defined below) will be ongoing during the Tenant's redevelopment work and shall be performed by Landlord in such manner to avoid (or limit to the maximum extent possible) any interference with Tenant's site work or Tenant's intended redevelopment or use of the Premises.

(iii) In addition, after Delivery of Possession within any timeframes specified, Landlord shall continue diligently and continuously to perform the Landlord Remediation Activities until completed in accordance with Laws and in accordance with this Lease (the "Post-

Delivery Remediation”), including, without limitation: (a) conduct any Landlord Remediation Activities for any Hazardous Materials discovered by Tenant during Tenant’s construction work, which is more specifically defined in *Section 2.7* below; (b) remove any underground storage tanks, subsurface lines, subsurface drainage structures or any other subsurface structures or equipment (e.g., leaching fields, septic tanks, drywells) discovered by Tenant during Tenant’s construction work, which is more specifically defined in *Section 2.7* below, and any such removal work must be completed within thirty days after Delivery of Possession; and (c) reimburse Tenant for any costs incurred by Tenant for the handling, treatment, transport and/or disposal of any soil or groundwater or contaminated construction or demolition debris encountered in conjunction with the construction and development of the Premises, which soil or groundwater or debris requires special handling, treatment, transport and/or disposal due to the presence of contaminants, Hazardous Materials, fill, unsuitable soil for development, non-natural soils, or other materials on the Premises. If Landlord fails to so reimburse Tenant within thirty (30) days of receipt of an invoice therefor from Tenant (together with back-up documentation evidencing the payment of such expenses), then Tenant may (without limitation of any other rights or remedies) offset the amount owed against future payments of Base Rent.

(iv) Landlord must complete the Landlord Remediation Activities in a good and workmanlike manner, with due diligence and expeditiously, subject to any deadlines set forth in this Lease.

*Section 2.4.4. Title Policy; Survey; Objections.*

(a) Tenant may obtain at its sole cost and expense from First American Title Insurance Company, or other national title insurance company selected by Tenant (the “Title Company”) the following: (i) a most recent standard form leasehold title insurance commitment covering the Premises, and setting forth the current status of title, showing all requirements, conditions, liens, claims, and encumbrances, and other matters affecting the Premises (the “Title Binder”); and (ii) copies of all documents and instruments referred to therein (the “Exception Documents”). The Title Binder shall provide that the Title Company agrees to issue a leasehold policy of title insurance for the Premises, in the name of Tenant, together with any extended coverage or endorsements, as may be required by Tenant and to the extent available (the “Title Policy”). Tenant shall have until the expiration of the Feasibility Period (the “Title Objection Period”) within which to object to any requirements, conditions, exceptions, or exclusions contained therein, or to any other survey or other matters affecting the title to the Premises that are unacceptable to Tenant, which objections shall be made in writing and delivered to Landlord (the “Title Objection(s)”).

(b) Tenant, at Tenant’s expense, may obtain a current topographic, boundary, or “as built” survey of the Premises, prepared in accordance with the applicable minimum technical standards for the jurisdiction in which the Premises is located, and certified to Tenant, the Title Company, and any other party reasonably designated by Tenant (the “Survey”). In the event that the Survey reflects or indicates the existence of any encroachments, overlaps, right-of-way, easements or other matters that may adversely affect the title, use or operation of the Premises and which are not acceptable to Tenant, such matters shall constitute and be treated as Title Objections provided that written notice of such matters is delivered by Tenant to Landlord during the Title Objection Period. If Tenant makes any Title Objections based on matters shown

or reflected on the Survey, Tenant also agrees to provide Landlord with a copy of the Survey upon Landlord's written request.

(c) For any Title Objection, Landlord, at its sole option, shall have ten (10) days from the date of Tenant's notification to Landlord within which to cure the Title Objection. Landlord's "cure" of the Title Objection shall include addressing the matter in such manner that is satisfactory to Tenant and the Title Company (including removal of such matter as an exception under the Title Binder Title Policy, and from the Survey, as the case may be) and otherwise as necessary to render title marketable and insurable for Tenant's intended development and use of the Premises. If Landlord fails to cure all Title Objections within the specified time, then Tenant will have the option, by delivery of written notice to Landlord following the expiration of such specified time, to elect to (i) terminate the Lease; or (ii) take the Premises as it then is notwithstanding such exceptions or title defects. In the event that Tenant accepts possession of the Premises without any Title Objection not being cured by Landlord, the Title Objection will be deemed to be accepted by Tenant and shall be Permitted Exceptions hereunder.

(d) Any Title Binder or Survey matters to which Tenant does not timely object under *Section 2.4.4(a)* or *Section 2.4.4(b)*, and those to which Tenant has accepted or is deemed to have accepted under *Section 2.4.4(c)*, shall be deemed "Permitted Exceptions" hereunder. Landlord shall cooperate with Tenant by executing and delivering customary form owners, gap, and non-foreign affidavit(s) and other reasonable documentation required by the Title Company in order to delete the standard printed exceptions and exclusions from coverage on the Title Policy.

Notwithstanding the foregoing or anything to the contrary in this Lease, Tenant hereby objects to (whether or not specifically identified in any Title Objection notice) any and all of the following matters (the "Automatic Cure Items"):

- (i) deeds of trust and/or mortgages and any ancillary encumbrances, including but not limited to, assignments of leases and rents and UCC-1 financing statements (which may be addressed by an acceptable SNDA, pursuant to *Section 13.3*);
- (ii) covenants, conditions or restrictions prohibiting or restricting use of the Premises as or for: a convenience store with self-service gas station and fast food facility, and/or any restrictions on hours of operation (but the foregoing shall not be deemed to include use restrictions or limitations contained in any local zoning or planning regulations that exist independently of title matters);
- (iii) judgment liens, tax liens, mechanics liens, notices of lis pendens, attachments and any other liens or other matters evidencing monetary encumbrances (other than liens for non-delinquent property taxes);
- (iv) options, rights of first refusal, rights of first offer, or any other rights of purchase or lease of the Premises or any portion thereon;
- (v) notices or memoranda of leases, licenses, tenancies or possessory rights, or any other occupancy rights to the Premises, in whole or in part; and
- (vi) any other restrictive easement agreements, conditions, covenants, restrictions and easements, site development agreements, and or other similar agreements

that would prohibit or restrict Tenant's intended development and/or use of the Premises.

(e) If after the date of Tenant's Title Binder or Survey, any new title or survey matters arise, or appear on any update of the Title Binder or the Survey, Tenant shall have a right of review and objection to the same. If for any such new matter Tenant delivers a written objection to Landlord, then Landlord shall address the objection in accordance with the procedure and time frames referenced in *Section 2.5.4(c)* above, and any performance dates under this Lease shall be automatically extended by a corresponding number of days. Notwithstanding anything to the contrary in this Lease, Landlord shall, on and as a condition to the occurrence of, the Lease Commencement Date, be the full (100%) owner of good, clear record and marketable fee simple title to the entire Premises.

### *Section 2.5 Permitting and Possession Conditions*

*Section 2.5.1. Permits Defined.* In no event shall Tenant be obligated to accept delivery of possession of the Premises until all Permits have been issued to Tenant. "Permits" shall mean Tenant's building permit and any and all other licenses, permits or approvals issued by any governmental or quasi-governmental authority necessary or appropriate to enable Tenant to perform its initial construction of the Building (as defined herein) and related improvements on the Development Tract (as defined herein) as shown on the Site Plan, including, without limitation, Tenant's signage and the installation on the Development Tract or in any part thereof such underground storage tanks, Fuel Product (as defined in *Section 5.1* below) pumps and islands and related Fuel Product dispensing equipment. In addition, "Permits" shall include approval of the Site Plan, any zoning variance, special use permit, street or alley abandonment, or the like necessary for Tenant to operate its initial business at the Development Tract, including, without limitation, licenses for the banking operations, sale of tobacco, lottery tickets and, the sale of beer, wine or other alcoholic beverages.

*Section 2.5.2. Permitting Period.* In the event that Tenant has not terminated this Lease as provided in *Section 2.4* above, the "Permitting Period" shall commence on the day the Feasibility Period shall expire and end on that day that is one hundred eighty (180) days thereafter. Unless, on or before the expiration of the Permitting Period, Tenant shall have obtained all Permits, including, without limitation, Tenant's building permit, and all appeal periods with respect thereto have expired with no appeals having been taken (or any such appeals have been dismissed with prejudice), at any time thereafter (but prior to the acquisition by Tenant of said Permits and the expiration of all appeal periods with respect thereto, with no appeals having been taken or with any such appeals dismissed with prejudice), Tenant may terminate this Lease following the expiration of the Permitting Period by providing thirty (30) days' written notice to the Landlord of such termination, and this Lease will so terminate upon the expiration of such 30 day period. In the event any such Permit is issued, or approved for issuance, with any restrictions or any condition requiring capital improvements to public roads or utility systems or other contributions for off-site improvements, including, but not limited to, participation for the cost of any traffic signals, which Tenant, in its sole discretion, shall deem to be burdensome, Tenant shall not be required to pay such contribution, and any such Permit shall be deemed in that event to have been refused by the applicable governmental agency.



Notwithstanding anything herein to the contrary, Tenant shall also have the right to terminate this Lease for any or no reason at any time prior to the expiration of the Permitting Period. Tenant shall also have the right to terminate this Lease by giving notice thereof to Landlord, if at any time prior to the expiration of the Permitting Period (as such may have been extended), Tenant determines or is otherwise advised by any governmental agency that any of the Permits have been or shall be denied or the issuance thereof conditioned on changes to Tenant's Site Plan or proposed Building design which are unacceptable to Tenant, and Tenant is unwilling to revise its Site Plan or proposed Building design to satisfy the condition of such governmental agency.

*Section 2.5.3. Tenant's Permits and Licenses.* In no event shall Tenant be obligated to accept Delivery of Possession unless and until Tenant shall have received all Permits issued, without appeal being taken beyond any applicable appeal period (or without any such appeal being dismissed with prejudice), by any governmental or quasi-governmental authority necessary to enable Tenant to operate the Premises for its intended use. Landlord agrees to cooperate with Tenant in providing any required consents in connection with Tenant's applications for utility easements relative to Tenant's intended use of the Premises.

*Section 2.5.4. Landlord Acquisition of 202 Parcel.* Notwithstanding anything contained herein, the parties acknowledge that the Landlord does not currently own the portion of the Premises consisting of the 202 Parcel, but rather has entered into a purchase and sale agreement dated July 10, 2019 with the owner of the 202 Parcel, M. Lenard Birke, as Trustee of The M. Lenard Birke Trust, to purchase the 202 Parcel (the "Purchase Contract") a true, correct and complete copy of which (inclusive of all amendments and modifications thereto) has been provided to Tenant. Landlord agrees that it shall use its best efforts to facilitate and permit Tenant's (and its consultants) access to the 202 Parcel to perform its investigations and due diligence in accordance with *Section 2.4.2* hereof. Landlord agrees that it shall comply with the terms of, and not commit any default under, the Purchase Contract and shall not terminate, modify or amend the Purchase Contract without the Tenant's prior written consent. The "Outside Landlord Acquisition Date" shall mean the Outside Delivery Date. Landlord agrees that it shall use its best efforts to acquire the 202 Parcel prior to the Outside Landlord Acquisition Date and shall provide Tenant notice of such acquisition, together with a copy of the deed to the 202 Parcel, contemporaneously with Landlord's acquisition of the 202 Parcel ("Landlord's Acquisition Notice"). Prior to, and as a condition to, the Delivery Date, Tenant shall have the opportunity following Tenant's receipt of Landlord's Acquisition Notice to perform such additional due diligence as Tenant deems necessary to confirm title to the 202 Parcel was acquired by Landlord in fee simple free from all encumbrances not acceptable to Tenant in its sole discretion and to otherwise perform such investigations as Tenant deems necessary to confirm the suitability of the 202 Parcel for Tenant's intended use. If, on or before the Outside Landlord Acquisition Date, Landlord shall not have acquired good and clear record and marketable fee simple title to the 202 Parcel without any encumbrances or exceptions to title other than those which have been approved by Tenant during the Feasibility Period, then at any time thereafter (but prior to the acquisition by Landlord of such title to the 202 Parcel), Tenant may, at Tenant's election in its sole discretion, (i) terminate this Lease upon thirty (30) days' notice to Landlord, and this Lease will so terminate unless, prior to the expiration of said thirty (30) days, Landlord shall acquire such title to the 202 Parcel, or (ii) take an assignment of the Purchase Contract and acquire the 202 Parcel in Landlord's place. If this Lease shall be

terminated pursuant to subsection (i) above, then Landlord shall pay to Tenant all of Tenant's third party costs and expenses (including but not limited to reasonable attorneys' fees) incurred by Tenant related to this transaction, including but not limited to its costs related to the negotiation of this Agreement, Tenant's due diligence, inspections and investigations of the Development Tract, and Tenant's costs incurred in connection with seeking and obtaining any Permits, within thirty (30) days after receipt of Tenant's bill with supporting documentation.

*Section 2.5.5 Tenant Acquisition of Adjacent Property.* Landlord and Tenant acknowledge that Tenant intends to develop the Premises together with that certain parcel of real property situated adjacent to the west of the Premises, at the northeast corner of Central Street (Rte. 3) and West Bow Street (Rte. 127) and known as 192 Central Street in Franklin, Merrimack County, New Hampshire, legally described in **Exhibit A-1** attached hereto and containing approximately 0.695 acres of land, according to said description (the "Adjacent Property") as an integrated store site development for Tenant's use (the Premises and the Adjacent Property are referred to in this Lease together as the "Development Tract"). Tenant intends to purchase the Adjacent Property pursuant to a separate agreement with the owner of the Adjacent Property (the "Adjacent Property Purchase Agreement"). Landlord acknowledges that the Adjacent Property is integral to Tenant's intended development and use of the Development Tract and that, but for the acquisition of fee simple title to the Adjacent Property, Tenant would not otherwise lease the Premises from Landlord. Notwithstanding anything to the contrary in this Lease, Tenant's obligations under this Lease and occurrence of the Lease Commencement Date shall be subject to, and conditioned upon, Tenant's closing under the Adjacent Property Purchase Agreement and acquiring fee simple title to the Adjacent Property.

## *Section 2.6. Possession*

*Section 2.6.1. Delivery of Possession.* Upon receipt of all Permits, with all appeal periods with respect thereto having expired with no appeals having been taken (or with any such appeals having being dismissed with prejudice), Tenant shall give notice of such receipt to Landlord ("Tenant's Permit Notice") and Landlord will deliver to Tenant complete and exclusive actual possession of the Premises in the condition and on the terms set forth herein ("Delivery of Possession") on that date that is no later than thirty (30) days after the receipt of Tenant's Permit Notice (the "Outside Delivery Date"). Landlord shall deliver the Premises to Tenant, on or before the Outside Delivery Date, free of all tenants and occupants (at Landlord's sole cost and expense) and in the condition the Premises were in at the expiration of the Feasibility Period and with all buildings (if any) in broom clean condition with any Hazardous Material remediation and underground storage tank removal required of Landlord completed in accordance with all applicable laws and regulations. The date that Landlord shall deliver (with all delivery conditions under this Lease fully satisfied), and Tenant shall accept, possession of the Premises in accordance with the terms of this Lease, shall be referred to herein as the "Delivery Date." In the event that Landlord has not delivered possession of the Premises to Tenant as required herein, on or before the Outside Delivery Date, then Tenant may either (i) terminate this Lease upon thirty (30) days' notice to Landlord, and this Lease will so terminate unless, prior to the expiration of said thirty (30) days, Landlord shall deliver possession of the Premises to Tenant (and otherwise satisfy all outstanding delivery conditions) in accordance with the terms hereof; or (ii) not terminate this Lease, in which instance Tenant shall receive a credit against Base Rent under this

Lease equal to the amount of two (2) days of Base Rent and additional rent due hereunder for each day past the Outside Delivery Date that Landlord has not delivered possession of the Premises to Tenant on the terms and conditions set forth herein, plus all costs and expenses incurred by Tenant as the result of such delay. Tenant shall not be obligated to accept delivery of the Premises if, at the time of such delivery, there is any moratorium in effect with respect to any utilities reasonably needed for Tenant's purposes. Additionally, in no event shall Tenant be obligated to accept possession of the Premises until Tenant shall have received from a national title insurance company a leasehold policy of title insurance satisfactory to Tenant in its sole discretion.

*Section 2.7. Tenant's Construction.*

*Section 2.7.1. Building.* As used in this Lease, the term "Building" shall mean that building that may be constructed on the Development Tract by Tenant. The ground floor of the Building (as currently planned) is outlined on the Site Plan attached hereto.

*Section 2.7.2. Tenant's Construction.* Upon acceptance of delivery of possession of the Premises:

(a) Tenant shall have the right, at its own cost and expense, to demolish any existing buildings or improvements on the Premises, and to construct on any part or all of the Premises, at any time and from time to time, the Building and other improvements, including, without limitation, parking areas, fences, driveways, walks and other similar and dissimilar improvements as Tenant shall from time to time determine, including, without limiting the generality of the foregoing, a convenience store with Fuel Product dispensing and fast food facilities and other uses ancillary to Tenant's intended use; provided that the same shall be in compliance with all then applicable building codes and ordinances.

(b) Without limiting the generality of Tenant's rights under subparagraph (a) above, Tenant also shall have the right to install, maintain and replace in, on or over or in front of the Premises or in any part thereof such signs and advertising matter as may be consistent with any applicable requirements of governmental authorities having jurisdiction, and shall obtain any necessary permits for such purposes. As used in this *Section 2.7.2*, the word "sign" shall be construed to include any placard, light or other advertising symbol or object, irrespective of whether the same are temporary or permanent.

(c) Without limiting the generality of Tenant's rights under subparagraph (a) above, Tenant also shall have the right to install, maintain and replace in, on or over or in front of the Premises or in any part thereof such underground storage tanks, Fuel Product pumps and islands and related Fuel Product dispensing equipment as may be consistent with any applicable requirements of governmental authorities having jurisdiction, and the Permits obtained by Tenant.

***Article III. Term***

*Section 3.1. Lease Commencement Date; Term.* The Term shall begin (the "Lease Commencement Date") on the date that the Premises are delivered to Tenant in the condition required by the terms of the Lease and Tenant accepts delivery. However, in no event shall

Landlord be deemed to have delivered, nor shall Tenant be required to accept delivery, of possession of the Premises, nor shall the Lease Commencement Date be deemed to occur, unless and until the following conditions (collectively, the "Delivery Conditions") have been met:

(a) Tenant has obtained all of Tenant's Permits, including, without limitation, those required to enable Tenant's proposed development, signage, hours of operation, single or double drive-thru lanes and use of the Development Tract, including to the extent applicable, all required utility service in capacities adequate for Tenant's proposed use;

(b) Tenant's receipt of all SNDAs as required under *Section 13.3*, and all other non-disturbance or other third-party agreements deemed necessary by Tenant's legal counsel and in the form reasonably approved by Landlord's Lender's counsel;

(c) Tenant's receipt of a fully executed Memorandum of Lease in accordance with the terms in this Lease, in recordable form and otherwise in a form acceptable to Tenant and the Title Company;

(d) Landlord's completion of Landlord's Work as described in *Section 6.7* hereof;

(e) Landlord's cure of all Title Objections and any other title matters which Landlord agreed to cure on or before the Delivery Date;

(f) Tenant, at its election, shall have acquired, or will concurrently with the Delivery Date acquire, fee simple title to the Adjacent Property in accordance with the terms of the Adjacent Property Purchase Agreement; and

(g) all other conditions to delivery of possession of the Premises, to Tenant's acceptance thereof, or to the occurrence of the Lease Commencement Date set forth elsewhere in this Lease have been fully satisfied.

Landlord shall cause the disconnection of utilities prior to the Lease Commencement Date or other time specified by Tenant to enable Tenant to begin any of its demolition or other work desired to be performed promptly following Lease Commencement Date. Landlord agrees to cooperate with Tenant in the transfer of any utility accounts at Tenant's election and to cooperate in providing any required consents prior to Delivery Date in connection with Tenant's applications for utility easements relative to Tenant's intended use of the Premises.

The Term shall end on the last day of the Initial Term, unless the Term is extended or earlier terminated.

*Section 3.2. Options.* Provided this Lease is in full force and effect, Tenant may extend the Term for the Extended Term by giving Landlord notice of its election to do so no less than six (6) months prior to the beginning of such Extended Term. If Tenant fails to give notice by such date, Tenant's time to give notice of its election shall continue until the date which is sixty (60) days after Landlord notifies Tenant that Tenant has failed to make such election. If Landlord does not give such notice to Tenant, on or before the ninetieth (90<sup>th</sup>) day before the

then effective expiration date of the Term, at Tenant's option, the Term will extend automatically past such expiration date to the date ninety (90) days after the earlier of (i) Landlord's notice to Tenant of Tenant's failure to exercise its option (subject to Tenant's right within such sixty (60) day period to extend the Term), or (ii) Tenant's notice to Landlord that it will not exercise its option to extend the Term. In the event the Term automatically extends as aforesaid, the Base Rent shall be adjusted to the amount applicable to the next Extended Term.

*Section 3.3. Lease Years.* The first "Lease Year" shall be the period of time between the Lease Commencement Date and the date which is the last day of the calendar month in which the first anniversary of the Rent Commencement Date occurs. Subsequent "Lease Year(s)" shall be periods of twelve (12) months each.

#### ***Article IV. Rent and Additional Charges***

*Section 4.1. Base Rent.* Commencing on the Rent Commencement Date, Tenant shall pay Base Rent for the remainder of the Term in accordance with the Base Rent schedule set forth in *Article I* and such Base Rent shall be paid without, except as otherwise set forth in this Lease, setoff, deduction, or demand in equal annual installments, in advance, on or before the fifth (5<sup>th</sup>) day of the month immediately following the Rent Commencement Date (as to the annual Base Rent for the first Lease Year), and thereafter on or before the fifth (5<sup>th</sup>) day following each anniversary of the Rent Commencement Date during the Term. Base Rent shall be pro rated for any Lease Year that is not twelve (12) months long based on the number of actual days elapsed and a 365 day year.

*Section 4.1.1. Additional Rent.* In addition to the foregoing Base Rent commencing on the Rent Commencement Date, all other charges and payments to be made by Tenant pursuant to this *Article IV* shall be deemed to be and shall become additional rent hereunder whether or not the same shall be designated as such and, subject to *Section 12.3* hereof, Landlord shall have the same remedies for failure to pay the same as for a non-payment of Base Rent.

*Section 4.1.2.* The term "Rent Commencement Date" shall mean the date that is one hundred eighty (180) days after the Lease Commencement Date. Upon commencement of the Term, the parties will execute a Rent Commencement Date Agreement in substantially the form of **Schedule "1"**.

#### *Section 4.2. Taxes; Utilities.*

(a) Commencing on the Rent Commencement Date, Tenant shall and thereafter during the Term of this Lease, as additional rent, pay and discharge punctually, as and when the same shall become due and payable, all taxes, special and general assessments, water rents, rates and charges and sewer rents (hereinafter referred to as "Taxes") and each and every installment thereof which shall or may become due and payable after the Rent Commencement Date, or liens upon or for or with respect to the Premises or any part thereof, or any buildings, appurtenances or equipment owned by Tenant thereon or therein or any part thereof, together with

all interest and penalties thereon (all of which shall also be included in the term "Taxes" as heretofore defined) and all sewer rents and charges for water, steam, heat, gas, hot water, electricity, light and power, and other service or services, furnished to the Premises or the occupants thereof during the Term of this Lease (hereinafter referred to as "Utility Expenses"). If at any time during the term of this Lease, as the same may be extended, the methods of taxation prevailing at the commencement of the term hereof shall be altered (provided if Landlord's consent shall be needed in order to alter the same, Landlord will not consent thereto without the express written consent of Tenant which may be withheld in Tenant's sole discretion) so that in lieu of, or as an addition to or as a substitute for the whole or any part of Taxes, there shall be levied, assessed or imposed (i) a tax, assessment, levy or otherwise on the rents received therefrom, or (ii) a license fee measured by the rent payable by Tenant to Landlord, or (iii) any other such additional or substitute tax, assessments, levy, imposition or charge, then all such taxes, assessments, levies, impositions or charges or the part thereof so measured or based shall be deemed to be included within the term "Taxes" for the purpose hereof.

Tenant shall be deemed to have complied with the covenants of this paragraph (a) if payment of such Taxes shall have been made either within any period allowed by law or by the governmental authority imposing the same during which payment is permitted without penalty or interest, and Tenant shall produce and exhibit to Landlord satisfactory evidence of such payment, if Landlord shall demand the same in writing. For the first partial tax fiscal year of the Term, to the extent that Landlord has paid Taxes, which would otherwise be Tenant's obligation hereunder, then Tenant shall reimburse such amount of Tenant's obligation to Landlord, within thirty (30) days after demand therefor by Landlord, accompanied by copies of receipted bills showing the payment of such Taxes. Tenant's share of the Taxes for any such partial tax fiscal year shall be the total taxes for the entire tax fiscal year multiplied by a fraction, the numerator of which shall be the number of days in the tax fiscal year subsequent to the Rent Commencement Date and the denominator of which shall be 365.

(b) Tenant or its designees shall have the right to contest or review all Taxes by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant or its designees shall conduct promptly at its own cost and expense, and free of any expense to Landlord, and, if necessary, in the name of and with the cooperation of Landlord, and Landlord shall execute all documents necessary to accomplish the foregoing). Notwithstanding the foregoing, Tenant shall promptly pay all Taxes if at any time the Premises or any part thereof shall then be immediately subject to forfeiture, or if Landlord shall be subject to any criminal liability, arising out of the nonpayment thereof. The legal proceedings referred to in this subparagraph (b) shall include appropriate proceedings and appeals from orders therein and appeals from any judgments, decrees or orders. In the event of any reduction, cancellation or discharge, Tenant shall pay the amount finally levied or assessed against the Premises or adjudicated to be due and payable on any such contested Taxes.

(c) Landlord covenants and agrees that if there shall be any refunds or rebates on account of the Taxes paid by Tenant under the provisions of this Lease, such refund or rebate shall belong to Tenant. Any refunds received by Landlord shall be deemed trust funds and as such are to be received by Landlord in trust and paid to Tenant forthwith. Landlord shall, upon the request of Tenant, sign any receipts which may be necessary to secure the payment of any such refund or rebate, and will pay over to Tenant such refund or rebate as received by Landlord.

*Section 4.3 Late Fees.* If Tenant shall fail to pay when due any Base Rent within ten (10) days of the date of receipt of notice from Landlord that the same was due and unpaid, then Tenant shall pay to Landlord a late charge equal to three percent (3%) of the amount of Base Rent due.

*Section 4.4 Delivery Donation.* Within thirty (30) days following the Lease Commencement Date, Tenant shall make a one-time donation to Landlord in the amount of \$361,250.00 (the “Delivery Donation”), which shall be payable in such manner as Landlord shall prescribe and instruct Tenant in writing.

## *Article V. Use*

*Section 5.1. Permitted Use.* The Premises may be used for: (i) the operation of a convenience store with Fuel Product dispensing and fast food facilities, for on- or off- premises consumption, brewed coffee, espresso, coffee-based drinks, espresso-based drinks, tea or tea-based drinks, and/or blended beverages processed with ice in a blender or processor, including, without limitation, those containing coffee, espresso, tea, soda, juice and/or fruit and for uses ancillary thereto, including, without limitation, ATM, banking and financing operations, video rentals, sale of beer and wine, sale of tobacco, sale of lottery tickets, marketing of competitive energy supply; (ii) any other purposes allowed by law; and/or (iii) no use or purpose. (For purposes of this Lease, the term “Fuel Product” shall mean gasoline and any other energy product, including, without limitation, electricity, natural gas, CNG, LNG, hydrogen, biofuels and ethanol.)

*Section 5.2. Exclusive, Uses.* No part of any land or real property immediately adjacent to, or in the same intersection as, the Premises that is now owned, or is hereafter acquired, or controlled by Landlord or by an entity under common control (as to final management and leasing decisions) with Landlord (“Landlord’s Restricted Land”) shall be used or operated (and Landlord shall not lease or use, nor permit the lease or use of, the whole or any part of the Landlord’s Restricted Land) operation of a retail convenience store, a Fuel Product dispensing facility, any operation marketing competitive energy supply, a bank or financial institution, a video rental operation, any operating selling beer, wine, lottery tickets or tobacco products, or any food service facility preparing and selling, for on- or off- premises consumption, food or beverages including, without limitation, brewed coffee, espresso, coffee-based drinks, espresso-based drinks, tea or tea-based drinks, and/or blended beverages processed with ice in a blender or processor, and including, without limitation, those containing coffee, espresso, tea, soda, juice and/or fruit (collectively, the “Exclusive Goods and Services”). Current examples of such food service facility (without limiting such food service facilities only to those listed) are food service facilities such as Dunkin’ Donuts, Starbucks or Tim Horton’s. Notwithstanding anything in the foregoing to the contrary, in the case of any successor in interest to the original Landlord hereunder and/or as to any retail space outside of the Premises purchased by Landlord after the date hereof, such restriction shall not apply to leases then existing as of the date successor Landlord acquires the Premises or as of the date Landlord acquires such other retail space (as the case may be), but shall apply to any leases subsequently entered into. Landlord further warrants that it will not lease or allow any of Landlord’s Restricted Land to be used for the following purposes: (i) massage parlor, tattoo parlor, adult bookstore, adult entertainment facility, a so-

called "head" shop, off-track betting, gambling, gaming or check cashing facility; (ii) tire store, automobile body shop, automobile, motorcycle, boat, trailer or truck leasing, rental or sales, or Laundromat; (iii) tavern or bar, banquet facility, dance hall, disco, nightclub, video game, pool hall, arcade, indoor children's recreational facility or other amusement or entertainment facility; (iv) any manufacturing, warehouse or office use (except incidental to a retail operation); (v) drilling for and/or removal of subsurface substances, dumping, disposal, in-cineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes; (vi) any use which constitutes a public or private nuisance or produces objectionable noise or vibration, or (viii) a restaurant.

*Section 5.3. Covenants in General.* The covenants set forth in *Article V* shall run with the land comprising the Premises for the Term of this Lease. If Landlord shall violate any of the provisions of this Article and shall not cure such violation within sixty (60) days after receipt of Tenant's notice thereof, Tenant, at any time thereafter, upon ten (10) days prior written notice to Landlord, may: (i) terminate this Lease; or (ii) pay to Landlord Base Rent reduced to a level equal to fifty percent (50%) of Base Rent due under this Lease. Tenant's Base Rent shall be so reduced until such time as such violation is permanently cured.

## ***Article VI. Alterations; Sign; Landlord's Works***

*Section 6.1. Tenant's Alterations.* Tenant shall have the right, at its own cost and expense, to construct, modify, alter, expand, demolish and/or reconstruct, on any part or all of the Premises, at any time and from time to time, such buildings and other similar and dissimilar improvements as Tenant shall from time to time determine. All improvements by Tenant shall be done in a good and workmanlike manner and in compliance with all applicable laws.

*Section 6.2. Tenant's Permits.* Landlord agrees, at Tenant's expense (so long as Tenant approves in advance any expenditures by Landlord on account thereof), to cooperate fully with Tenant in obtaining any permits, operational licenses, applications or licenses which may be necessary in connection with any construction, alterations, improvements, repairs, signage, utilities or other work permitted under this Lease to be performed by Tenant. Landlord hereby authorizes Tenant as Landlord's lawful and true attorney in fact, for the term of this Lease, to apply for and sign applications for any Permits and shall execute the authorization letter attached hereto as Schedule 4 simultaneously with the execution of this Lease.

*Section 6.3. Liens.* Tenant shall keep the Premises and Building free from any mechanics' or materialmen's liens for labor or materials furnished Tenant; provided that Tenant shall have thirty (30) days after notice of any such lien to remove and discharge such lien by bonding or other manner or to otherwise provide Landlord adequate security (as determined by Landlord's first mortgage held by an institutional lender) against such lien. In the event Tenant is named in any claim or action related to a mechanic's or materialmen's lien for labor or materials furnished to Landlord, Landlord shall either discharge the same or indemnify, defend and hold Tenant harmless from and against all costs, claims and liabilities (including reasonable attorney's fees, or at Tenant's option, a reasonable fee for Tenant's in-house counsel) incurred by Tenant on account thereof.



*Section 6.4. Trade Fixtures.* Except for underground storage tanks, which are addressed in *Section 7.4.3* below, any trade fixtures, equipment, signs or other personal property however attached to or incorporated in the Premises installed by Tenant shall remain its property, and Tenant shall have the right, but not the obligation, to remove such property at any time before the expiration of the Term or within fifteen (15) days following the earlier termination of this Lease, provided Tenant shall repair any damage caused by such removal.

*Section 6.5. Compactors and Dumpsters.* Tenant shall have the right to place compactors and dumpsters at the Premises, subject to applicable law.

*Section 6.6. Signage.* Tenant shall have the right to install and utilize throughout the Term such building, pylon, monument, temporary or any other signage as may be allowed by law or variance, and Landlord hereby consents to all such signs. Without limiting the foregoing, Tenant shall be entitled to install building directional and road signage at the maximum allowance permissible under applicable government codes. Tenant shall also be entitled to construct its own pylon sign structure on the Premises.

*Section 6.7. Landlord's Work.* As a condition to Tenant's acceptance of Delivery of Possession, Landlord shall perform the following items of work ("Landlord's Work"):

1. Complete any Pre-Delivery Remediation to the extent required by *Section 2.4.3* hereof; and
2. Deliver the Premises free and clear of any tenants or occupants.

## ***Article VII. Insurance***

### *Section 7.1. Landlord's Insurance.*

*Section 7.1.1. Liability Insurance.* Landlord shall at all times during the Term, maintain insurance with limits of not less than \$1,000,000 per occurrence combined single limit, bodily injury/property damage, with a general aggregate limit of \$3,000,000. Landlord shall also maintain umbrella coverage in the amount of at least \$5,000,000. As a municipal governmental entity, Landlord may satisfy the foregoing insurance requirements through participation in shared risk pool funds, trusts and similar programs that are alternatives to conventional insurance policies, provided that Landlord's participation in such alternative programs results in Landlord effectively having the same coverage over the risk types, and same amounts of coverages, as it would otherwise have had under conventional insurance policies required hereunder.

### *Section 7.2. Tenant's Insurance.*

*Section 7.2.1. Liability Insurance.* During the Term, Tenant shall maintain insurance covering (i) Tenant's liability with respect to any construction that Tenant may perform in connection with the Premises; and (ii) Tenant's liability for occupation, maintenance and use of the Premises. Such insurance shall provide limits of not less than \$1,000,000 per occurrence combined single limit, bodily injury/property damage, with a general aggregate limit of \$3,000,000. Tenant shall also maintain umbrella coverage in the amount of at least \$5,000,000.

*Section 7.2.2. Tenant's Property Insurance/Self-Insurance.* Tenant shall maintain "all-risk" property insurance covering the Premises thereon against loss or damage resulting from fire and other insurable loss. Such insurance shall be on a 100% replacement cost basis, adjusted at least annually to account for increases in the replacement cost (the "Property Policy"). The Property Policy shall not be required to include insurance coverage for acts of terrorism, earthquakes, windstorm or flood. Notwithstanding anything to the contrary contained in this Lease, Landlord acknowledges and agrees that the Property Policy shall contain a "loss payable" clause which provides for payment of all proceeds under the Property Policy to Tenant. As an alternative to maintaining the insurance required herein, Tenant may elect to self-insure for all or any portion of the required coverage pursuant to a commercially reasonable self-insurance program.

### *Section 7.3. General Requirements.*

*Section 7.3.1. Provisions of Policies.* Landlord and Tenant shall use reasonable efforts to maintain insurance policies (i) on an occurrence basis, (ii) providing primary coverage and not calling upon any other insurance procured by other parties for defense, payment or contribution, and (iii) written by responsible insurance companies licensed to do business in the state in which the Premises are located and having a rating by A.M. Best of no less than A-/VII. Any such policy may be a so-called blanket policy covering additional locations, provided that all required coverages are obtained. Prior to Delivery of Possession of the Premises, and at least fifteen (15) days prior to the expiration of any existing policy, Landlord and Tenant will provide the other with certificates of required insurance. All policies which affect the Premises shall name Tenant and Landlord, in the case of property policies, as insured parties as their interest may appear, or in the case of liability policies, as additional insureds. In the event of any insurable property loss, all property insurance proceeds shall be made available for restoration purposes to the extent restoration is required pursuant to *Article X* hereof.

*Section 7.3.2. Release; Waiver of Subrogation.* Landlord and Tenant each hereby release each other from liability for damage to the property of the other to the extent of insurance maintained or required to be maintained hereunder. Landlord and Tenant shall use reasonable efforts to obtain waivers of subrogation rights by the insurer against Landlord or Tenant, as the case may be, in all property insurance policies affecting the Premises.

*Section 7.3.3. Increases in Insurance.* No more often than once every 5 years during the Term, Landlord and Tenant may require the other to raise its insurance limits to reasonable levels that are customarily carried by landlords and tenants operating comparable properties in the state in which the Premises is located.

#### *Section 7.4. Indemnity.*

*Section 7.4.1. Landlord's Indemnity.* Except as provided in *Section 7.3.2*, and in addition to and without limiting Landlord's Environmental Indemnity (as defined below in *Section 7.4.3*), Landlord shall defend, indemnify and save harmless Tenant, its affiliates, directors, officers, shareholders, members, managers, representatives, agents, employees and contractors (individually and collectively, the "Tenant Parties"), against all actual, out of pocket costs (including, without limitation, reasonable attorneys' fees and technical consultants' fees and expenses), liabilities, obligations, judgments, losses, demands, causes of action, costs, damages or claims of any kind or nature (excluding punitive, indirect, incidental, special, speculative, exemplary and/or consequential damages or claims for lost profits, lost rent, or other economic damages), as they come due and amounts paid in judgment or settlement incurred or sustained by or asserted against the Tenant Parties (i) occurring on the Premises prior to Delivery of Possession (except to the extent caused by the negligent or willful act or omission of Tenant, its agents, employees or contractors), (ii) occurring on the Premises after Delivery of Possession or during the Term to the extent caused by the negligent or willful act or omission of Landlord, its agents, employees or contractors; or (iii) to the extent arising out of any default by Landlord hereunder. Landlord shall, at its own expense, defend all actions brought against the Tenant Parties, its agents, employees or contractors for which Landlord is responsible for indemnification hereunder, and if Landlord fails to do so, Tenant (at its option, but without being obligated to do so) may, at the reasonable expense of Landlord and upon prior written notice to Landlord, defend such actions, and Landlord shall pay and discharge any and all judgments that arise therefrom. The provisions of this *Section 7.4.1* shall survive the expiration or earlier termination of this Lease for two (2) years.

*Section 7.4.2. Tenant's Indemnity.* Except as provided in *Section 7.3.2* and in addition to and without limiting Tenant's Environmental Indemnity (as defined below in *Section 7.4.3*), Tenant shall defend, indemnify and save harmless its Landlord affiliates, directors, officers, shareholders, members, managers, representatives, agents, employees and contractors, against all actual, out of pocket costs (including, without limitation, reasonable attorneys' fees and technical consultants' fees and expenses), liabilities, obligations, judgments, losses, demands, causes of action, costs, damages or claims of any kind or nature (excluding punitive, indirect, incidental, special, speculative, exemplary and/or consequential damages or claims for lost profits, lost rent, or other economic damages), as they come due and amounts paid in judgment or settlement incurred or sustained by or asserted against Landlord, occurring on the Premises after Delivery of Possession or during the Term (except to the extent caused by the negligent or willful act or omission of Landlord, its agents, employees or contractors, and except any matter to which Landlord's Environmental Indemnity applies) provided that Tenant receives prompt written notice and an opportunity to cure or defend any such claim. Tenant shall, at its own expense, defend all actions brought against Landlord, its agents, employees or contractors for which Tenant is responsible for indemnification hereunder, and if Tenant fails to do so, Landlord (at its option, but without being obligated to do so) may, at the reasonable expense of Tenant and upon prior written notice to Tenant, defend such actions and Tenant shall pay and discharge any and all judgments that arise therefrom. The provisions of this *Section 7.4.2* shall survive the expiration or earlier termination of this Lease for two (2) years.

*Section 7.4.3. Environmental Indemnities and Underground Storage Tanks.* Landlord shall defend, indemnify and save harmless Tenant and its agents and employees against all loss, liability or expense (including, without limitation, reasonable attorneys' fees) relating to personal, property or economic injury (including any costs, fines or penalties incurred by Tenant in Landlord's or Tenant's name or any third party in connection with violation of or the correction of any violation of, or any liability under Environmental Laws) arising from the presence or release of Hazardous Materials at the Premises (other than any such Hazardous Materials introduced by Tenant), including, without limitation, any environmental contamination that has migrated to the Premises from off the Premises and was not caused by Tenant or Tenant's operations (the "Landlord's Environmental Indemnity"). Tenant shall defend, indemnify and save harmless Landlord and its agents and employees against all loss, liability or expense (including, without limitation, reasonable attorneys' fees) relating to personal injury or property injury (including any costs, fines or penalties incurred by Landlord in connection with the correction of any violation of Environmental Laws if Landlord is required by law to perform such correction, but excluding punitive, indirect, incidental, special, speculative, exemplary and/or consequential damages or claims for lost profits, lost rent, or other economic damages) arising from the presence or release of Hazardous Materials located within the Premises, only to the extent such Hazardous Materials were introduced by Tenant (the "Tenant's Environmental Indemnity"). The provisions of this *Section 7.4.3* shall survive the expiration or earlier termination of this Lease. For the purposes of this Lease, the term "Environmental Laws" shall be defined to include all present or future laws or regulations regarding the protection of the environment, wildlife, human health and safety, including without limitation the use, storage, generation, release, removal or abatement of hazardous and/or toxic materials that are regulated materials. As used herein, "Hazardous Materials" shall mean all hazardous or toxic materials, substances, chemicals or wastes that are regulated under any Environmental Laws, including, without limitation, asbestos, asbestos-containing materials, and PCBs.

*Section 7.4.3.1.* If, prior to the Rent Commencement Date, any Hazardous Materials are found in or on the Premises, or if Landlord is completing its Landlord Remediation Activities, and, as a result thereof, Tenant is interfered with in doing its work in the Premises or from opening for business, then notwithstanding anything to the contrary herein, the Rent Commencement Date will be delayed for a number of days equal to the number of days that Tenant is interfered with from opening for business in the Premises, subject to the other provisions of this Lease. If the Rent Commencement Date shall be so delayed for six (6) months, then at any time thereafter until such delay shall cease, Tenant may terminate this Lease upon fifteen (15) days' notice to Landlord.

*Section 7.4.3.2.* If, on or after the Rent Commencement Date, Tenant is interfered with from operating its business as a result of the existence of Hazardous Materials not caused by Tenant or the result of Landlord's Remediation Activities, then Tenant's rent and all other charges due hereunder shall abate until Tenant is able to resume the operation of its business without such interference, subject to the other provisions of this Lease. If Tenant's rent and other charges shall be so abated for six (6) months, then at any time thereafter until such abatement shall cease, Tenant may terminate this Lease upon fifteen (15) days' notice to Landlord.

*Section 7.4.3.3.* Upon the expiration of the Term or earlier termination of the Lease, Tenant shall test for tightness any underground storage tanks and associated lines

however attached to or incorporated in the Premises installed by Tenant (the “USTs”). If the USTs pass the tightness test, then Tenant may (subject to Landlord’s consent), but shall not have the obligation to, leave such USTs at the Premises and Tenant shall deliver to Landlord a Bill of Sale in which Landlord holds harmless and indemnifies Tenant regarding the USTs and any operations thereof. If the USTs do not pass the tightness test or if Tenant otherwise chooses to remove the USTs from the Premises, Tenant shall remove the USTs within sixty (60) days following the Term or any earlier termination of the Lease. Such removal shall be conducted in accordance with Environmental Laws and shall include an assessment to determine whether there has been a discharge, leak, spill or release (“Release”) of any Fuel Product from the USTs. If a Release of Fuel Product is discovered that (1) exceeds applicable commercial standards that trigger remediation requirements under the applicable Environmental Laws and (2) was from the USTs, then Tenant shall assess, investigate and remediate the Release at its sole cost and expense to the commercial remediation standards required under the applicable Environmental Laws (“Tenant UST Remediation”). Tenant UST Remediation may include, at Tenant’s sole discretion, the imposition of any engineering or institutional control allowed by Environmental Laws, including without limitation and by way of example only, the imposition of any environmental covenant, deed restriction or activity and use limitation. Landlord shall allow the imposition of an environmental covenant, deed restriction or activity and use limitation to be recorded against the title of the Premises and shall cooperate with the Tenant on Landlord’s execution of, recording of and compliance with such covenant, restriction or limitation. Such covenant, restriction or limitation shall allow for industrial/commercial use of the Premises, but prohibit single family residential use.

*Section 7.4.3.4.* If Tenant is unable to complete such Tenant UST Remediation within the sixty-day period described above, Landlord shall grant to Tenant access to the Premises to continue the Tenant UST Remediation by execution of an Access Agreement in the form attached hereto as **Exhibit D**, which Access Agreement, or notice thereof, may be recorded by Tenant at its election. This right of access shall survive the expiration of the Term, or earlier termination of this Lease.

*Section 7.4.3.5.* The existence of any USTs at the Premises or any Tenant UST Remediation within the sixty-day period or the period covered by the Access Agreement shall not make Tenant liable for storage charges or rent and shall not constitute a hold-over tenancy; notwithstanding the foregoing, if (i) any Active Tenant UST Remediation (as used herein meaning active, invasive, subsurface Tenant UST Remediation including, without limitation, soils or tank removal) extends beyond the sixty (60) day period described above and (ii) such Active Tenant UST Remediation materially interferes with Landlord’s use of the Premises by preventing Landlord, despite good-faith, commercially reasonable efforts, from any re-letting of the Premises to a commercial or industrial tenant, then Tenant shall pay to Landlord on a monthly basis an amount equal to the monthly Base Rent until the completion of such Active Tenant UST Remediation. In no instance shall, by way of example only, the installation of monitoring wells, sampling, periodic monitoring activity, or measures taken in compliance with an environmental land use restriction be deemed Active Tenant UST Remediation or make Tenant liable for storage charges or rent.

## ***Article VIII. Maintenance and Repairs***

*Section 8.1. Tenant's Obligations.* Tenant shall be responsible for Maintenance (as defined below), at its own cost, of the Premises, including the Building, in accordance with all applicable Laws and otherwise in a good, clean and sanitary order, free from infestation from insects, rodents, vermin and other pests and otherwise in a condition comparable to other similar commercial/retail properties located in Franklin, New Hampshire.

*Section 8.2. Maintenance Defined.* “Maintenance” includes (but is not limited to) regular sweeping, washing and removal of trash, litter and refuse, removal of snow and ice, as needed, from pavement, parking areas and walkways, painting and striping of parking areas, repair and replacement of paving as necessary, repair and replacement of utilities and storm water drainage exclusively serving the Premises, maintenance of landscaped areas (including replacement and replanting, as needed), maintenance of Building systems and the Building roof and structure and maintenance and repair of lighting, fixtures, signage, directional signs, lines and markers. Garbage, trash, rubbish and other refuse, will be stored in covered containers or compactors and removed at regular intervals.

## ***Article IX. Assignment***

*Section 9.1. Permitted Assignment.* Subject to *Section 5.1* herein, Tenant may assign this Lease or sublet the whole or any portion of the Premises, and may grant licenses and concessions, without Landlord's consent; provided that if Tenant proposes to assign this Lease or sublease the Premises to any unrelated party who intends to use the Premises for the operation of any business that is not consistent with the operation of a gas station and/or convenience store, such assignment or sublease shall be subject to Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed. Each assignee, however, shall execute an assignment of this Lease in writing, a copy of which shall be provided to Landlord. After any assignment of this Lease by the original Tenant, Landlord shall provide the original Tenant a copy of any default notice given under this Lease, and the original Tenant shall have the right (i) to cure the default (or in the case of a non-monetary default to commence such cure provided the cure is thereafter diligently completed) within fifteen (15) days of such notice or the applicable grace period under this Lease, whichever is longer, and (ii) provided such default has been cured, to agree to a reassignment of this Lease to the original Tenant (or if this Lease has been terminated, to enter into a new Lease with the Landlord on the same terms so long as Tenant does so within 30 days of Landlord offering to so enter into such new lease).

Tenant's right to assign, transfer, license and sublease shall be a continuing right and shall not be exhausted by a single exercise. Upon any such license or sublease, Tenant shall not be relieved of its obligations hereunder. Upon any such assignment of Tenant's rights under this Lease (other than in connection with assignment to a Leasehold Mortgagee) Tenant shall be relieved of all of its obligations hereunder: provided, however, Tenant shall remain responsible for all obligations of Tenant relating to periods prior to such assignment, including, without

limitation, Tenant's indemnities set forth in *Sections 7.4.2* and *7.4.3* insofar as they pertain to events occurring prior to such assignment.

#### ***Article X. Casualty; Restoration***

*Section 10.1. Restoration.* If, at any time during the Term, any material Building constructed on the Premises shall be damaged in whole or in part by fire, the elements or other casualty, Tenant may elect by notice to Landlord to either restore or not restore the Building. During any restoration, Tenant may operate its business out of a temporary structure such as a trailer, subject to compliance with laws.

In the event Tenant shall elect not to restore said Building, Tenant shall have no obligation to rebuild the Building and shall retain all insurance proceeds relating to the Building and Tenant's personal property, fixtures and inventory and this Lease shall continue in full force and effect, provided that, in the event Tenant shall retain the insurance proceeds as aforesaid, Tenant shall return the Premises to a safe and sanitary condition, which shall include demolition of any partially destroyed structures (the "Casualty Work") and this Lease shall be deemed to continue in full force and effect. In the event the damage shall occur within the last two years of the Term of the Lease, Tenant shall have the right to terminate this Lease, in which event it shall have no further obligation hereunder.

#### ***Article XI. Eminent Domain***

*Section 11.1. Total Taking.* If the entire Premises is taken under the power of eminent domain, this Lease shall terminate on the date Tenant is deprived of possession pursuant to such taking. For the purpose of this *Article XI*, a taking under the power of eminent domain shall include conveyances or dedications made in settlement of or in lieu of condemnation proceedings.

*Section 11.2. Partial Taking.* If under the power of eminent domain, by one or more takings which takings will last more than one hundred twenty (120) consecutive days, or as a result of any other action by a governmental or quasi-governmental entity:

- (a) any material part of the Premises is taken; or
- (b) any part of that portion of the service areas, including loading areas and facilities, designed for use with the Building and used by Tenant for loading and unloading is taken and resulting in a material interference in Tenant's use and enjoyment of the Premises and the same is not replaced to Tenant's reasonable satisfaction within sixty (60) days of the taking; or
- (c) any part of the Tenant's parking area is taken and not replaced to Tenant's reasonable satisfaction within sixty (60) days of the taking; or

(d) any of the following is materially impaired as a result of a taking and not replaced to Tenant's reasonable satisfaction within sixty (60) days of the taking: (i) Tenant's use of the Premises, (ii) the visibility of the Premises or any of Tenant's signage, or (iii) the ingress or egress to or from the Premises;

then, in the event any of items (a), (b), (c), or (d) shall occur (singly and collectively, a "partial taking"), Tenant may exercise the remedies set forth in *Section 11.3* below.

*Section 11.3. Rent Abatement.* In the event of any partial taking, then, after the expiration of any cure period set forth above, Tenant may, upon thirty (30) days' notice to Landlord (i) terminate this Lease; or (ii) pay Base Rent to Landlord reduced to a level equal to fifty percent (50%) of Base Rent due under this Lease. If Tenant does not elect to terminate this Lease within one year after the taking, Tenant will restore the remainder of the Premises within a commercially reasonable time to its prior condition, or with such other design or features as Tenant elects in its sole discretion; provided that Landlord shall, in such instance, assign to Tenant its share of any Condemnation Award (defined below) allocated to Landlord pursuant to *Section 11.4* below.

*Section 11.4. Award.* If the use, occupancy, or title of the Premises or any part thereof is taken, requisitioned or sold in, by or on account of any actual or threatened eminent domain proceeding or other action by any person having the power of eminent domain (a "Condemnation"), Landlord and Tenant agree that any award or compensation on account thereof (a "Condemnation Award") will be allocated as follows:

(i) Tenant receives that portion of the award or compensation allocable to its leasehold estate, all awards for any improvements located on the Premises, and any award for relocation expenses; and

(ii) Landlord shall be entitled to receive that portion of the award or compensation allocable to its reversionary estate, as encumbered by this Lease and subject to Tenant's right to receive that portion of the award as provided in clause (i).

## ***Article XII. Defaults; Remedies***

*Section 12.1. Tenant's Defaults.* If Tenant (i) fails to pay Base Rent, additional rent or make any other payment hereunder for more than ten (10) days after Tenant receives notice of such failure from Landlord, or (ii) fails to perform or observe any other agreement or condition contained herein and such failure is not corrected within thirty (30) days after Tenant receives notice from Landlord of such failure (or such longer period as may be reasonably required to correct such failure if within such thirty (30) day period Tenant shall commence to correct the same and thereafter diligently pursue the correction thereof), then, in addition to all other remedies available at law or in equity, Tenant shall be deemed to be in "default" under this Lease. No action or proceeding to enforce Landlord's rights, or Tenant's obligations, under this Lease shall be taken by Landlord unless the notices herein specified are first given and the times to cure defaults specified have expired without cure.



*Section 12.2. Mitigation of Damages.* Landlord agrees to use its reasonable and good faith efforts to mitigate its damages, and any damages or awards otherwise owing to Landlord hereunder shall be reduced to the extent of Landlord's failure to have utilized reasonable and good faith efforts to mitigate its damages.

*Section 12.3. Disputes.* Notwithstanding any of the foregoing provisions to the contrary, and except in connection with the non-payment of Base Rent by Tenant without a claim of set-off or abatement provided for herein, in the event of an unresolved dispute between Landlord and Tenant regarding the performance by either party of an obligation or condition of this Lease, the non-performance of which constitutes a default under this Lease, as a condition precedent to the filing of litigation or arbitration, authorized representatives of Landlord and Tenant shall use good faith and commercially reasonable efforts to resolve said dispute within 30 days after receipt of a default notice (except where a shorter period is reasonably required, including emergencies). In addition, it is agreed that if at any time a dispute shall arise as to any sum of money to be paid by one party to the other under the provisions hereof or as to any work to be performed by either of them under the provisions hereof, the party against whom the obligation is asserted shall have the right, in addition to any other rights provided under this Lease, to make payment or perform such work "under protest", such payment or performance not being regarded as voluntary payment or performance, and there shall survive the right on the part of said party to institute suit for the recovery of such sum or the cost of such work. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof or perform such work or any part thereof, as the case may be, said party shall be entitled to recover such sum or the cost of such work or so much thereof as it was not legally required to pay or perform under the provisions of this Lease.

*Section 12.4. Self Help.* If Landlord or Tenant fails to perform any of its agreements contained in this Lease and such failure continues for thirty (30) days after notice thereof (except (i) in the case of insurance premiums due, (ii) where a shorter period is reasonably required, including emergencies, or (iii) where a longer period is reasonably required to complete such cure), Tenant or Landlord, as appropriate, may cure such failure on behalf of and at the expense of the defaulting party and do all necessary work, make all necessary payments, or otherwise take such other action at law or in equity as such party deems necessary, notwithstanding any other remedy herein provided. The parties agree to pay to each other any amount so paid by the other within thirty (30) days after proof of payment together with Interest. If Landlord fails to pay any such amount to Tenant within thirty (30) days of Tenant billing Landlord therefor, Tenant shall have the right to set off the amount due against the Delivery Donation and/or future payments of Base Rent (and if Tenant cannot so reimburse itself in full prior to the expiration of the Term hereof (including Extended Terms), the end of the Term shall not be deemed to have occurred until all outstanding payments due under this *Section 12.4* have been made (but all Base Rent and additional charges due hereunder and all obligations of Tenant hereunder shall fully abate from the original effective end of the Term until such payments are received by Tenant and Tenant is fully reimbursed).

*Section 12.5. Landlord's Defaults.* Except to the extent remedies are expressly set forth in a particular section of this Lease and without limiting same (and not intending to increase any cure periods otherwise set forth in this Lease), Landlord shall not be deemed to be in default hereunder unless Landlord fails to perform or observe any agreement or condition contained herein and such failure is not corrected within thirty (30) days after Landlord receives notice from Tenant of such failure (or such longer period as may be reasonably required to correct such failure if within such thirty (30) day period Landlord shall commence to correct the same and thereafter diligently pursue the correction thereof).

*Section 12.6. Waiver/Remedies.* No waiver of any provision of this Lease shall be valid unless in writing signed by the party to be charged. No waiver with respect to any provision on one occasion shall be deemed a waiver of such provision on any other occasion. Notwithstanding any remedies expressly set forth herein (except as expressly provided herein), all rights and remedies provided for herein or otherwise existing at law or in equity are cumulative, and a party's exercise of any right or remedy under this Lease or under applicable law is not exclusive and shall not preclude such party from exercising any other right or remedy that may be available to it.

### ***Article XIII. Representations and Warranties; Quiet Enjoyment***

*Section 13.1. Landlord's Representations and Warranties.* Landlord represents and warrants that:

(a) Landlord has good record and marketable title to the Premises (except for the 202 Parcel as to which Landlord will have such title on or before the Outside Landlord Acquisition Date) in fee simple absolute, subject only to Permitted Liens (as herein defined), it has full right and authority to enter into this Lease and to perform as required under this Lease, and this Lease does not conflict with any other agreement to which Landlord is bound. Landlord will furnish to Tenant upon request evidence reasonably satisfactory to Tenant of its title and authorization. "Permitted Liens" means only (i) current taxes not past due, (ii) utility easements, leases and other agreements of record not conflicting with Tenant's rights under this Lease, and (iii) those priority mortgages, deeds of trust, prime leases or ground leases for which Tenant has received a satisfactory non-disturbance agreement as contemplated by *Section 13.3*; and

(b) To the best of Landlord's knowledge and belief, (i) there are no agreements which would be binding upon Tenant in connection with any construction or operations within the Premises, (ii) there are no claims, causes of action or other proceedings pending or threatened in respect to the ownership, operation or environmental condition of the Premises (including disputes with mortgagees, governmental authorities, utilities, contractors, adjoining land owners or suppliers of goods), except for claims which are fully insured and as to which the insurer has accepted defense without reservation, and (iii) there is no existing, pending or contemplated, threatened or anticipated (A) condemnation of any part of the Premises, (B) repaving, widening, change of grade or limitation on use of streets, roads, or highways abutting the Premises, (C) special tax or assessment to be levied against the Premises, (D) change in the

zoning classification of the Premises, or (E) change in the manner of tax assessment of the Premises.

(c) As of the Lease Commencement Date, Landlord shall have completed the Pre-Delivery Remediation in accordance with the terms of *Section 2.4.3(i)*. Landlord shall be responsible for any remediation removal or other environmental cleanup required by law in order to meet cleanup standards for unrestricted use of the Premises as well as the removal of any and all underground and above ground storage tanks, pumps, lines and any other components of fuel and/or oil delivery in storage systems located on the Premises.

*Section 13.2. Quiet Enjoyment.* If Tenant shall not be in default beyond any applicable notice and grace period, Tenant shall peaceably and quietly occupy and enjoy the full possession and use of the Premises as herein provided without interference from Landlord or those claiming by through or under Landlord, or those claiming superior title to Landlord. If at any time there is a breach or default of any of Landlord's representations, warranties or agreements under this *Article XIII*, or if for any other reason (excluding any matter covered by *Articles X* and *XI*) Tenant shall be materially deprived of or materially impaired in the use and enjoyment of the Premises as herein provided by Landlord or those claiming by through or under Landlord, or those claiming superior title to Landlord, for more than two (2) consecutive business days of Tenant, (i) the Base Rents and additional charges to be paid by Tenant shall be equitably abated during any such period, and (ii) the running of the Term shall be suspended during such period, and the expiration date of the Term (and Extended Terms as applicable) shall be extended for an amount of time equal to such period. If such period continues for more than sixty (60) days after notice from Tenant, Tenant may at its option terminate this Lease upon thirty (30) days prior notice to Landlord (and subject to Landlord's right to cure during such thirty (30) day period) while reserving all rights which Tenant may have for Landlord's default under this Lease.

*Section 13.3. Subordination; Non-Disturbance.* If the Premises is, as of the date hereof, subject to any mortgage, trust deed or ground lease, Landlord shall provide Tenant with an agreement executed by such lien holder which shall assure Tenant's right to possession of the Premises and other rights granted under this Lease in accordance with this Lease's terms and conditions (an "SNDA"). Such agreement shall be substantially in the form of **Schedule 2** attached hereto, and shall be recordable with the applicable registry or office. Tenant agrees to subordinate this Lease to any future mortgage, trust deed or ground lease, provided such lien holder shall assure Tenant's right to possession of the Premises and other rights granted under this Lease in accordance with this Lease's terms and conditions. Such assurance shall be substantially in the form of **Schedule 2** attached hereto, and shall be recordable with the applicable registry or office. Landlord hereby represents and warrants that, as of the Effective Date of this Lease and until recording of the Memorandum of Lease, there is and shall be no mortgage, trust deed, prime lease, ground lease, other lease, easement or license impacting the Premises, or as approved in writing by Tenant.

*Section 13.4. Memorandum of Lease.* The parties have executed, or at the request of either party hereafter will execute, a notice or memorandum of this Lease in substantially the form of **Schedule 3** attached hereto (the "Memorandum of Lease") and Tenant shall have the

right to record same with the applicable title registry office. The SNDA and the Memorandum of Lease shall be delivered to Tenant on the Delivery Date for recording with the applicable title registry office, and receipt of such documents shall be a condition to acceptance by Tenant of Delivery of Possession.

*Section 13.5. Landlord Waiver.* Landlord hereby waives any and all rights it may have to a landlord's lien on Tenant's personal property, including without limitation, Tenant's inventory, trade fixtures, and removable equipment and fixtures located within the Premises. Landlord agrees to execute, upon request, a confirmation of such waiver in form reasonably satisfactory to Landlord, Tenant and its lenders.

#### ***Article XIV. Leasehold Mortgage or Encumbrance of Leasehold Interest***

*Section 14.1 Rights of Tenant.* Tenant may, at any time and from time to time, without Landlord's consent, mortgage, pledge, assign, hypothecate, convey a security interest in, or otherwise encumber the leasehold estate hereby created, and all of Tenant's right, title and interest under this Lease to any Leasehold Mortgagee. No such mortgage or other encumbrance shall relieve Tenant of its obligations hereunder.

*Section 14.2 Rights of Leasehold Mortgagee.* The following provisions shall apply with respect to any mortgage, deed of trust, trust indenture or other financing or collateral security document conveying, pledging, mortgaging, assigning or otherwise hypothecating Tenant's interest in this Lease to secure any obligation of Tenant to the grantee of such mortgage, deed of trust or other document (in each instance, a "Leasehold Mortgage") involving Tenant's interest in the Lease or in the Premises:

*Section 14.2.1. Execution of Leasehold Mortgage.* This Article XIV is for the benefit of any bank, national association, savings bank, credit union, trust company, life insurance company pension fund or other institutional lender or financial institution, as well as any other financially responsible grantee of a Leasehold Mortgage (singly and collectively, a "Leasehold Mortgage"). Tenant may at any time execute and deliver one or more Leasehold Mortgages, without the consent of the Landlord. If either Tenant or the Leasehold Mortgagee, grantee, corporate trustee or other holder under any such Leasehold Mortgage shall send Landlord a notice advising Landlord of the existence of such Leasehold Mortgage and the address of the mortgagee, grantee, corporate trustee or other holder thereunder for the service of notices, such Leasehold Mortgagee, grantee or corporate trustee, shall be deemed to be a Leasehold Mortgagee for the purposes of this Article. Once such notice shall have been given, Landlord shall be entitled to consider the person identified in such notice as the holder of such Leasehold Mortgage until such time as Landlord shall receive a certified copy of the discharge or assignment thereof.

*Section 14.2.2. Notices to Leasehold Mortgagee.* If Tenant shall be in default under this Lease, written notice to that effect shall be sent by Landlord to each Leasehold Mortgagee of which Landlord has received notice, and Landlord shall take no action (including, without limitation, no action to terminate this Lease) with respect to such default of Tenant (other than the exercise of self-help pursuant to Section 12.4) provided that:

(i) If such default of Tenant shall be a default in the payment of any Base Rent or additional rent, such Leasehold Mortgagee shall remedy such default not later than thirty (30) days after the receipt of such notice; or

(ii) If such default of Tenant shall be a default in observing or performing any other covenant or condition to be observed or performed by Tenant hereunder, such Leasehold Mortgagee shall remedy (or cause the Tenant to remedy) such default of Tenant not later than sixty (60) days after the receipt of such notice, provided that in the case of a default of Tenant which cannot with due diligence be remedied by the Leasehold Mortgagee, or the remedy of which cannot be commenced, within such period of sixty (60) days by the Leasehold Mortgagee, such Leasehold Mortgagee shall have such additional period as may be necessary to remedy such default of Tenant with diligence and continuity; or

(iii) If such default of Tenant shall be a default which can only be remedied by such Leasehold Mortgagee upon obtaining possession of the Premises, (and payment of rent or any other sum of money due from Tenant under this Lease shall not fall into this category of defaults of Tenant), such Leasehold Mortgagee shall seek to obtain such possession with diligence and continuity, through a receiver or otherwise, and shall remedy such default within forty-five (45) days after obtaining such possession, provided that in the case of a default by Tenant which cannot with diligence be remedied by the Leasehold Mortgagee, or the remedy of which cannot be commenced by the Leasehold Mortgagee, within such period of forty-five (45) days, such Leasehold Mortgagee shall have such additional period as may be necessary to remedy such default of Tenant with diligence and continuity; or

(iv) If a default of Tenant is of such a nature that it is impossible for the Leasehold Mortgagee to remedy it even with diligence and continuity and regardless of the amount of time provided for such purpose, any such default of Tenant shall be deemed waived by the Landlord as regards the Leasehold Mortgagee.

*Section 14.2.3. Acceptance of Performance.* In the event that Tenant shall default under any of the provisions of this Lease, the Leasehold Mortgagee, without prejudice to its rights against the Tenant, shall have the right to make good such default within the applicable grace periods provided for in the foregoing provisions of this Article whether the same consists of the failure to pay any sum due under this Lease or the failure to perform any other matter or thing which Tenant is hereby required to do or perform, and Landlord shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by Tenant. For such purpose Landlord and Tenant hereby authorize the Leasehold Mortgagee to enter upon the Premises and to exercise any of the Tenant's rights and powers under this Lease, and, subject to the provisions of this Lease, under its Leasehold Mortgage. Upon compliance with the foregoing, any notice of Landlord advising of any default of Tenant shall be deemed rescinded and this Lease shall continue in full force and effect.

*Section 14.2.4. No Consent of Landlord.* Landlord's consent shall not be required for any Leasehold Mortgagee or any party designated by such Leasehold Mortgagee to become the owner of the interest of Tenant hereunder or as a result of the exercise of any remedy provided for in the Leasehold Mortgage including, without limitation, foreclosure or assignment or "deed" in lieu of foreclosure. If any Leasehold Mortgagee or a person or entity which is

affiliated with such Leasehold Mortgagee (including, without limitation, any parent, subsidiary or affiliated corporation or other affiliated entity or any entity controlled by the Leasehold Mortgagee) and designated by such Leasehold Mortgagee shall either become the owner of the interest of Tenant hereunder upon or as a result of the exercise of any remedy provided for in the Leasehold Mortgage, or shall enter into a new lease with Landlord as provided in *Section 14.2.5* below, such Leasehold Mortgagee or other applicable party shall have the right to assign or sublet or otherwise transfer this Lease subject to and in accordance with the provisions of *Article IX*.

*Section 14.2.5. New Lease.* If this Lease shall terminate as a result of any non-curable default of the Tenant including, but not limited to, as a result of the rejection or disaffirmance by Tenant or any trustee in bankruptcy for or receiver of Tenant or any other creditor representative or lawful representative pursuant to any bankruptcy law or any other law affecting creditors' rights, any Leasehold Mortgagee, or a person affiliated with the Leasehold Mortgagee as provided in *Section 14.2.4* above and designated by such Leasehold Mortgagee, shall have the right, and Landlord the corresponding obligation, exercisable by written notice to Landlord within sixty (60) days after such Leasehold Mortgagee receives notice of the effective date of such termination, to enter into a new lease of the Premises with Landlord. The term of said new lease shall begin on the date of the termination of this Lease and shall continue for the remainder of the Term of this Lease. Such new lease shall otherwise contain the same terms and conditions as those set forth herein, including the options to extend for the Extended Terms, except for requirements that have already expired or been performed, and except for prior obligations of the Tenant which remain unperformed or unsatisfied; provided, however, that it shall be a condition to such new leasing that the Leasehold Mortgagee shall cure or cause to be cured all monetary defaults of the prior Tenant under the Lease and shall cure or cause to be cured to the extent feasible all non-monetary defaults. It is the intention of the parties hereto that such new lease shall have the same priority relative to other rights or interests to or in the fee estate in the land covered by the new lease as this Lease. The provisions of this *Section 14.2.5* shall survive the termination of this Lease as aforesaid and shall continue in full force and effect thereunder to the same extent as if this *Section 14.2.5* were a separate and independent contract among Landlord, Tenant and each Leasehold Mortgagee of which Landlord has received notice (with the Landlord being deemed to have made a continuing offer to enter into such a new lease with the Leasehold Mortgagee or other applicable party). From the date on which any Leasehold Mortgagee or other applicable party shall serve upon the Landlord the aforesaid notice of the exercise of its right to a new lease, a new lease shall be deemed to have been entered into effective as of the date of such termination of this Lease and such Leasehold Mortgagee or other applicable party may use and enjoy the Premises without hindrance by Landlord. At Landlord's request, the Leasehold Mortgagee or the person designated by it shall enter into an additional agreement with Landlord confirmatory of the provisions of this *Section 14.2.5* as a condition to its right to such new lease.

*Section 14.3. No Surrender or Modification.* No surrender (except a surrender upon the expiration of the Term of this Lease) by Tenant to Landlord of this Lease, or of the Premises or any part thereof, or of any interest therein, and no termination of this Lease may occur, except as expressly provided in this Lease, nor may any of the terms hereof be amended, modified, changed or canceled, except as expressly provided in this Lease, without the prior written consent of the Leasehold Mortgagee. In the event the Tenant fails to exercise any option to

extend the Term for any Extended Term, the Landlord agrees to so notify the Leasehold Mortgagee and the Leasehold Mortgagee shall have thirty (30) days from its receipt of such notice to notify the Landlord that the Leasehold Mortgagee is exercising such option to extend the Term. In the event the Leasehold Mortgagee exercises such option to extend the Term and the Tenant does not also exercise its option to extend the Term, the Leasehold Mortgagee will be deemed to have become the tenant hereunder and the original tenant will continue primarily liable hereunder on a joint and several basis with the Leasehold Mortgagee or its aforesaid affiliated entity, as applicable.

*Section 14.4. Limitation of Leasehold Mortgagee Liability.* In the event that the holder of the Leasehold Mortgage succeeds to Tenant's interest in this Lease, such holder shall be responsible for the Tenant's covenants and obligations under this Lease only with respect to the period of time during which such holder is the "Tenant" hereunder, and upon the assignment of this Lease by such holder to a third party pursuant to and in accordance with the provisions of *Article IX* of this Lease and *Section 14.2.4* of this *Article XIV*, such holder shall be deemed relieved of any liabilities and obligations under this Lease thereafter accruing. With respect to any sublease or other transfer of all of the Premises for less than the remainder of the Term of this Lease, the aforesaid holder shall be released of all liabilities and obligations during the period of time that the sublease or other applicable transfer in the nature of a sublease is in effect. Upon the expiration or termination of such sublease instrument, the holder shall be liable only for obligations accruing thereafter subject to a further right of assignment, sublease or other transfer as aforesaid. In addition, such holder shall have the right at any time to surrender the Premises to the Landlord pursuant to a written notice to that effect, and this Lease shall terminate and the aforesaid holder shall be deemed released of all further liabilities and obligations effective as of the date set forth in such surrender notice to the Landlord given within eighteen (18) months after the date when such holder shall have succeeded to the Tenant's interest in the Lease.

*Section 14.5. Priority of Leasehold Mortgages.* Any rights granted under this Lease to Leasehold Mortgagees shall, only insofar as the Landlord is affected by the exercise of such rights, be exercised by them in the order of the priority of their respective mortgages, i.e. a first Leasehold Mortgagee shall have priority over a second Leasehold Mortgagee in the exercise of rights under this Lease.

*Section 14.6. No Mortgage of Landlord's Fee Interest.* The Landlord shall never be required under any provision of this Lease relating to Leasehold Mortgages or otherwise to mortgage its fee interest in the Property.

*Section 14.7. Rejection in Bankruptcy.* Landlord agrees that in the event of the rejection of the Lease by Landlord's trustee in bankruptcy or otherwise pursuant to the Federal Bankruptcy Code or other similar laws, Tenant's right to remain in possession of the Premises pursuant to Section 365 of the Federal Bankruptcy Code (or similar provisions of such other similar laws) shall be fully transferrable to the Leasehold Mortgagee pursuant to the terms of any Leasehold Mortgage.

*Section 14.8. Landlord's Waiver.* The Landlord agrees to execute, from time to time, upon Tenant's request, a Landlord's waiver, so called, for the benefit of any secured party,

equipment lessor or Leasehold Mortgagee pursuant to which the Landlord waives any landlord's lien or other claim which the Landlord may have for nonpayment of rent with respect to any trade fixtures, equipment and other personal property of the Tenant and pursuant to which the Landlord agrees that the aforesaid secured party, equipment lessor and Leasehold Mortgagee shall be entitled to cause all such items to be removed from the Premises at no cost to the Landlord and provided such party agrees to repair any damage to the Premises caused by such removal and further provided that any such removal shall be accomplished no later than forty five (45) days after the end of the Term of this Lease and the removal of any such property shall not relieve the Tenant from its obligations under this Lease. The aforesaid Landlord's waiver shall otherwise be upon such terms and conditions as such secured party, equipment lessor and Leasehold Mortgagee shall reasonably require provided that the same does not impose any additional obligations on the Landlord.

### ***Article XV Tenant's Option to Purchase Premises***

*Section 15.1. Purchase Option.* Subject to Tenant's payment of the Delivery Donation (subject to adjustments and/or offsets set forth in this Lease), Landlord hereby grants to the Purchaser the exclusive right and option to purchase the Property (the "Option"), subject to the terms and conditions set forth herein. The Option may be exercised by Tenant by giving Landlord written notice thereof (the "Option Notice") on or before the expiration of the Term of this Lease (as the same may be extended). Upon Tenant's exercise of the Option, Landlord shall convey title to the Premises to Tenant upon the terms and conditions hereinafter set forth.

*Section 15.2. Terms of Purchase.* In the event that Tenant exercises the Option in accordance with the terms herein, then Landlord and Tenant shall proceed with the purchase and sale of the Premises pursuant to the following terms:

A. Purchase Price. The purchase price for the Premises shall be One Hundred Dollars (\$100.00)(the "Purchase Price");

B. Closing. The closing on the sale of the Premises and delivery of the Deed to Tenant (the "Closing") shall be on a date and time designated by Buyer, such date to be within sixty (60) days following delivery of the Option Notice (the "Closing Date"), and shall be held at the offices of Tenant's counsel or, at Tenant's election, may be conducted in escrow through Tenant's designed title insurance company (as closing "Escrow Agent");

C. Conveyance. The Premises shall be conveyed by a customary New Hampshire general warranty deed, in form reasonably satisfactory to Tenant and Tenant's title insurer (the "Deed") which shall convey good and clear record and marketable fee simple title to the Premises, free from all liens and encumbrances, except:

- (i) Building and zoning ordinances in effect on the Closing Date;
- (ii) Such taxes for the then current tax fiscal year as are not due and payable on the Closing Date;



(iii) Any liens for municipal betterments assessed after the Closing Date;

D. Possession. Full possession of the Premises, free and clear of all tenants, occupants and personal possessions (other than Tenant itself and any personal possessions of Tenant), is to be delivered on the Closing Date, the Premises to be not in violation of any applicable law, ordinance or regulation including, without limitation, zoning, land use, subdivision, environmental, pollution, hazardous waste, building and fire code, drainage, and sewage disposal laws, ordinances and regulations.

E. Closing Adjustments. Landlord shall be responsible for payment of all deed excise stamps, and/or any and all other real estate transfer taxes, all costs and recording fees for any mortgage discharges or other instruments necessary to clear title, and one-half of any closing escrow fees payable to Escrow Agent. All other closing charges and adjustments shall be allocated and charged to the respective parties in accordance with customary practice in the purchase and sale of commercial real estate in Franklin, New Hampshire.

F. Closing Documents. On the Closing Date, Landlord shall deliver to Tenant the Deed and all other all documents that are customary and reasonably required by Tenant or Tenant's title insurer in order to vest title to Tenant, and to enable such title insurer to insure Tenant's fee simple title to the Property, in accordance with the terms of this Agreement, including, without limitation: (i) an owner's affidavit in form satisfactory to Tenant's title insurance company to eliminate standard exceptions in the Tenant's owner's title insurance policy (including, without limitation, parties' in possession, mechanic's and materialmen's liens, and gap indemnities); (ii) a non-foreign seller affidavit; (iii) good standing and legal existence certificates from the Secretary of State of the state in which the Premises are located (and, if different, from the state in which Landlord was formed and legally exists); and (iv) such other votes, resolutions, certificates, entity documents and/or other evidence of authority that the Tenant's title insurance company may require.

## ***Article XVI. General Provisions***

*Section 16.1. Broker.* Landlord shall pay all fees and commissions for bringing about the execution and delivery of this Lease. Each of Tenant and Landlord represent and warrant to each other that it has not dealt with any broker in connection with this Lease.

*Section 16.2. Rent Refund; Reimbursement.* Promptly after the termination of this Lease pursuant to its terms for any reason other than a default by Tenant, Landlord shall (i) refund to Tenant all Base Rents and other charges paid by Tenant to the extent they are allocable to any period of time beyond the effective date of such termination or are applicable to an abatement of Base Rent and other charges, and (ii) if due to Landlord's default, reimburse Tenant for the unamortized value of Tenant's leasehold improvements (to the extent that Tenant is not otherwise reimbursed pursuant to a taking award, casualty proceeds or otherwise).

*Section 16.3. Notices.* Except as otherwise expressly provided in this Agreement, all notices, consents and demands required or permitted to be given hereunder shall be in writing, shall specifically identify the Premises as “Franklin, New Hampshire” (and following establishment of a street address for the Premises, shall also include the street address), and shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered and effective three business days after deposit, postage prepaid in the U.S. Mail, (b) sent by overnight delivery using a nationally recognized overnight courier, in which case it shall be deemed delivered and effective one business day after deposit with such courier, or (c) sent by personal delivery, in which case notice shall be deemed delivered and effective upon delivery. If the last day for giving notice or performing any act hereunder falls on a Saturday, Sunday, or day on which the main post office at Franklin, New Hampshire, is not open for the regular transaction of business, the time shall be extended to the next day that is not a Saturday, Sunday, or post office holiday.

If to Tenant: The Address listed for Tenant in Article I of this Lease.

With copies to: Cumberland Farms, Inc.  
165 Flanders Road  
Westborough, MA 01581  
Attention: Legal Department  
Reference: Franklin, New Hampshire

and

Moriarty Troyer & Malloy LLC  
265 Franklin Street, Suite 1801  
Boston, MA 02110  
Attention: Thomas Bhisitkul, Esq.  
Email: [tbbhisitkul@lawmtm.com](mailto:tbbhisitkul@lawmtm.com)

If to Landlord: The Address listed for Landlord in Article I of this Lease.

With a copy to: Wescott Law, P.A.  
28 Bowman Street  
Laconia, NH 03246  
Attn: Paul T. Fitzgerald, Esq.  
Email: [pfitzgerald@wescottlawnh.com](mailto:pfitzgerald@wescottlawnh.com)

If to Escrow Agent: First American Title Insurance Company  
National Commercial Services  
601 Travis, Suite 1875  
Houston, Texas 77002  
Attn: Lisa G. Aguilar, Senior Commercial Escrow Officer  
Email: [LGAgUILAR@firstam.com](mailto:LGAgUILAR@firstam.com)

The above addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices by Tenant and Landlord may be given by their respective counsel.

*Section 16.4. Holding Over.* Should Tenant hold over in possession of the Premises after the expiration of the Term, as extended, such holding over shall not be deemed to extend the Term or renew this Lease, but this Lease shall continue as a tenancy from month to month upon the terms and conditions herein contained except, as Landlord's sole and exclusive remedy (without limiting Landlord's right to recover possession of the Premises in any manner prescribed by law), at a monthly Base Rent equal to the monthly Base Rent in effect immediately preceding the Term's expiration, plus the additional charges, if any, provided for herein.

*Section 16.5. Confidentiality of Lease.* Except as may be disclosed in the Memorandum of Lease described in *Section 13.4* or as may be required by law, Landlord and Tenant hereby agree to keep the terms of this Lease confidential and not disclose same to any other person or entity, without the prior consent of the other party; provided, however, that the terms hereof may be disclosed without such consent to a party's accountants, attorneys, employees, agents, potential transferees and lenders, and others in privity with such party to the extent reasonably necessary for such party's business purposes, or in connection with a dispute hereunder.

*Section 16.6. Successors; Joint and Several.* All of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, assigns, subtenants and licensees. No third party, other than such heirs, legal representatives, successors, assigns, subtenants and licensees shall be entitled to enforce any or all of the provisions of this Lease or shall have any rights hereunder whatsoever. If two or more parties or persons are named herein as Landlord or Tenant, respectively, then their obligations hereunder shall be joint and several.

*Section 16.7. Interpretation.* This Lease shall be interpreted and construed in accordance with the laws of the state in which the Premises are located. The captions of the Articles and Sections contained herein are for convenience only and do not define, limit, construe or describe the scope or intent of such Articles or Sections. All references herein to Sections refer to Sections of this Lease unless expressly stated to the contrary. This Lease together with any other document or exhibit that the Agreement references as being attached hereto or incorporated herein by reference, sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes any other agreements, discussions, proposals, representations or warranties, whether written or oral, between the parties with respect to the subject matter hereof. Each party acknowledges that this Lease has been the subject of active and complete negotiations, and that this Lease shall not be construed in favor of or against any party based on such party's or its advisors' participation in the preparation of this Lease. Nothing shall be construed to require Tenant to be open for business at the Premises or to operate under any specific trade name, and Landlord explicitly agrees that Tenant shall have the right to

cease or suspend operations at the Premises at any time and from time to time provided Tenant otherwise complies with the provisions of this Lease.

*Section 16.8. Consents and Approvals.* Except as otherwise expressly provided herein, where pursuant to the terms of this Lease or in connection with the administration of this Lease, the consent or approval of one party shall be required, requested or appropriate, such party covenants and agrees that its consent or approval shall not be unreasonably withheld, delayed or conditioned, and that the requesting party shall not be charged for such consent or approval.

*Section 16.9. Force Majeure.* Provided (i) the delayed party has periodically kept the other party hereto fully advised by notice of such delays and the cause thereof, and (ii) the delayed party uses reasonable efforts and all due diligence to effect the required performance, in any case where either party hereto is required to do any act, delays caused by or resulting from an Event of Force Majeure shall not be counted in determining the time when the performance of such act must be completed, whether such time be designated by a fixed time, a fixed period of time or "a reasonable time." The provisions of this *Section 16.9* shall not be applicable with respect to payment of money or, except as expressly set forth therein to the contrary, obligations under *Articles II, X or XI*. For the purposes hereof, an "Event of Force Majeure" shall be defined as the occurrence of any of the following: Act of God, war, civil commotion, fire or other casualty, extreme weather conditions, labor difficulties, general shortages of labor, materials or equipment, government regulations or other causes beyond the reasonable control of such party, its agents, employees, contractors or subcontractors (other than causes related to such party's financial condition).

*Section 16.10. Partial Invalidity.* If any provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each such provision shall be valid and be enforced to the fullest extent permitted by law.

*Section 16.11. Attorney Fees.* In the case of any dispute among the parties, the prevailing party shall be entitled to reimbursement for its reasonable costs, including reasonable attorneys' fees, incurred in any such dispute.

*Section 16.12. Certificates.* During the Term, each party shall, within thirty (30) days of a written request by the other, certify in writing as to the validity of this Lease, the Term, the Base Rent and additional charges owed hereunder, and the existence of any amendments, defaults, off-sets or counterclaims. All requests for certification in excess of one request per twelve (12) consecutive month period shall be accompanied by a payment of \$250.00. Such certifications may be relied upon by the party requesting the certificates and its applicable mortgagees, assignees, transferees and the like.

*Section 16.13. Entire Agreement.* This Lease contains the entire and exclusive agreement between the parties relating to the Premises, and may not be modified except by written instrument signed by the party to be bound thereby.

*Section 16.14. Interest.* For the purposes of this Lease, “Interest” shall mean the lesser of the Prime Rate as then published in The Wall Street Journal plus 3% per annum or the maximum rate allowed by law. In the event Landlord or Tenant fails to pay any amount when due to the other within 10 days after notice that payment is late, the defaulting party shall pay the non-defaulting party such amount plus Interest accruing from the original date such amount was due until such amount is ultimately paid.

*Section 16.15. Waiver of Trial by Jury.* Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other, upon any matters whatsoever arising out of or in any way connected with this Lease, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage.

*Section 16.16. Reserved.*

*Section 16.17. Exculpation.* In the event of any transfer of Landlord's interest in this Lease, the transferor shall cease to be liable and shall be released from all liability for the performance or observance of any agreements or conditions on the part of Landlord to be performed or observed subsequent to the time of said transfer, provided that such transferee assumes in writing all of Landlord's obligations hereunder. In the event of any breach or default by Landlord in any term or provision of this Lease, Tenant agrees to look solely to the equity interest then owned and/or leased by Landlord in the land and improvements which constitute the Premises, any rentals derived therefrom, and the proceeds of any judgment, sale, insurance or eminent domain award resulting from the Premises or any part thereof (subject, however, to prior use of any insurance proceeds or eminent domain award for restoration as provided in *Articles X and XI*). Nothing in this Lease shall be a bar to any injunctive or other equitable remedy available to Tenant or Landlord.

*Section 16.19. Reserved.*

*Section 16.20. Time of the Essence.* Time is of the essence under this Lease and with respect to all of the provisions thereof.

*Section 16.21 No Partnership; Confidentiality.* It is expressly agreed that Landlord is not to be construed a partner of Tenant in the conduct of Tenant's business, and Tenant shall not be obligated to be open for business at any time during the Term. The relationship between the parties to this Lease is and shall at all times remain that of landlord and tenant.

*Section 16.22. Effect of Lease.* The preparation, revision or delivery of this Lease for examination and discussion shall in no event be deemed to be an offer to lease the Premises but shall be merely a part of the negotiations between Landlord and Tenant. Neither party hereto shall have any obligation or liability to the other whatsoever at law or in equity (including any

claims for detrimental reliance or promissory estoppel) unless and until such time as both parties shall have executed and delivered this Lease.

**[SIGNATURE PAGE TO FOLLOW]**

***IN WITNESS WHEREOF***, each party has caused this Lease to be executed under seal by its duly authorized representative.

**LANDLORD:**

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

**THE CITY OF FRANKLIN,**  
a New Hampshire municipal corporation

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

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

**TENANT:**

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

**CUMBERLAND FARMS, INC.,**  
a Delaware corporation

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

List of Exhibits

**Exhibit A** - Legal Description of Premises

**Exhibit A-1** - Legal Description of Adjacent Property

**Exhibit B** - Existing Environmental Reports

**Exhibit C** - Site Plan

**Exhibit D** - Site Access Agreement

**Schedule 1-** Rent Commencement Date Agreement

**Schedule 2-** Subordination, Non-Disturbance and Attornment Agreement (Mortgage) (If applicable)

**Schedule 3-** Memorandum of Lease



## ***EXHIBIT A***

### ***Legal Description of Premises***

#### ***I) Parcel 1 (Tax Map 117, Lot 131)***

Real property in the City of Franklin, County of Merrimack, State of New Hampshire, described as follows:

##### **Parcel A**

Beginning at a stone bound on the northerly side of Central Street at the Southeasterly corner of land now or formerly of the Sulloway Mills; thence running North 25°30' West by said land of Sulloway Mills seventy five (75) to a stone bound at land now or formerly of George E. Clark;

thence North 60°58' East by land of said Clark one hundred four and twenty two 22/100 (104.22) feet to a stone bound at land of said Clark;

thence South 25°30' East by land of said Clark seventy five (75) feet to a stone bound at Central Street; thence South 42°22' West along Central Street seventeen and 72/100 (17.72) feet to a drill hole in Central street; thence 64°07' West along said Central Street eighty seven and 28/100 (87.28) feet to the place of Beginning.

##### **Parcel B**

A Certain triangular parcel of land situated of Franklin, bounded and describe as follows:

Beginning at a stone bound on the northerly side of Central Street, so-called in said Franklin and at the Southwest corner of the land formerly of Socony Vacuum Oil Company, Inc. and now of Mobil Oil Corporation;

thence running northerly along the westerly boundary of land of said Mobil Oil Corporation a distance of twenty two (22) feet to a point marked by an iron pin;

thence southwesterly by land now or formerly of Sulloway Realty Company, Inc., twenty eight and 54/100 (28.54) feet to a point on the northerly side of Central Street marked by an iron pin;

thence easterly along side Central Street eighteen (18) feet to the first mentioned bound and forming an interior angle of 90°23' with the line first above mentioned.

#### ***II) Parcel 2 (Tax Map 117, Lot 135)(the "202 Parcel")***

Real property in the City of Franklin, County of Merrimack, State of New Hampshire, described as follows:

##### **Parcel 1**

A certain tract of land, with the buildings thereon, situated in said Franklin, Merrimack County, State of New Hampshire, bounded and described as follows, to wit:

Commencing at an iron pin at the Southeast corner of land of Rolfe Camp Company, Inc., as purchased from the late George E. Clark and surveyed in 1946;

thence running North 17° 13' West two hundred seventy-two and six-tenths feet (272.6') to line of land deeded to City of Franklin by said George E. Clark;

thence North 76° 57' East nineteen and thirty-five hundredths feet (19.35') along said

line to the Southeast corner of said property deeded to the City of Franklin;  
thence North 13° 03' West thirty-three and seventy-five hundredths feet (33.75') to  
the Northwest corner of the within conveyed premises;  
thence North 76° 57' East forty-six and three tenths feet (46.3') to an iron pipe at  
the Northwest corner of land of the Unitarian Church (see Agreement executed by  
Harry A. Clark and said Unitarian Church, duly recorded, pertaining to the located of  
the common bound);  
thence South 12° 30' East two hundred seventy-eight and two-tenths feet (278.2') to  
an iron pipe at the Southwest corner of said Unitarian Church property on line of  
Central Street; Warranty Deed David M. and Jane C. Hill to M. Lenard Birke Trust  
thence South 45° 22' West fifty and three-tenths feet (50.3') to the point of  
beginning.

Subject to a taking by the State of New Hampshire as recorded with said Deeds in  
Book 1368, Page 563 is so far as the same is still in force and applicable.

Subject to a right of way to Camp and Hill Hardware, Inc. as recorded with said Deed  
in Book 1409, Page 248.

Meaning and intending to described and conveyed the same premises conveyed to David  
M. Hill and Janet C. Hill, dated August 17, 1999, and recorded with the Merrimack  
County Registry of Deeds in Book 2170, Page 1813.

#### Parcel II

Two certain tracts or parcels of land, with any buildings which may be thereon, situate  
in the City of Franklin, County of Merrimack, and State of New Hampshire, more  
particularly bounded and described as follows:

##### Tract 1

Commencing at a stone bound on the North side of Central Street at the Southeast  
corner of land formerly of Standard Oil Company of New York and now of David P.  
Miller and Diane E. Miller;

Thence North twenty-five degrees thirty minutes West (N 25° 30' W) along land of said  
Miller, seventy-five (75') feet to a stone bound;

Thence South sixty degrees fifty-eight minutes East (S 60° 58' E) along land, of said  
Miller one hundred four and twenty-two hundredths (104.22') feet to a stone bound on  
line of property

belonging to the Elks (Franklin Elks Club);

Thence North twenty-five degrees thirty minutes West (N 25° 30' W) along land of the  
Elks forty-one (41') feet to an iron pin;

Thence North sixty-six degrees twenty-one minutes East (N 66° 21' E) along land of  
said Elks a distance of forty-six and nine tenths (46.9') feet to an iron pin;

Thence North twenty-four degrees forty-nine minutes West (N 24° 49' W) along land  
of the Elks

a distance of seventy-eight and four hundredths (78.04') feet to corner of land  
formerly of Wiggin S. Gilman and now of James A. Marchi;

Thence North seventy degrees eighteen minutes East (N 70° 18' E) six and sixty-seven  
hundredths (6.67') feet to a bound;

Thence North twenty-four degrees forty-nine minutes West (N 24° 49' W) one hundred  
seven and twenty-six hundredths (107.26') feet along land conveyed by Ella P. Clark  
to the City of Franklin to an iron pin at other land of the City of Franklin, being the  
North line of the within described property;

Thence North seventy-six degrees fifty-seven minutes East (N 76° 57' E) along land of the City of Franklin one hundred two and ninety-eight hundredths (102.98') feet to an iron pin at corner of land formerly of Harry A. Clark and now of Rolfe W. Camp and Florence B. Camp;

Thence South seventeen degrees thirteen minutes East (S 17° 13' E) two hundred seventy-two and six tenths (272.6') feet to an iron pin on the northerly side of Central Street;

Thence South forty-five degrees twenty-two minutes West (S 45° 22' W) along Central Street five and no hundredths (5.00') feet to the bounded begun at.

## ***EXHIBIT A-1***

### *Legal Description of Adjacent Property*

A certain tract of parcel of land situate on the northerly side of Central Street (also known as Route 3) in the City of Franklin, County of Merrimack, State of New Hampshire, and being more particularly bounded and described as follows:

Beginning at a point along the northerly side of said Central Street at land now or formerly of the City of Franklin;

Thence, along said Central Street S48°59'33"W for a distance of one hundred fifteen and eighty-eight hundredths (115.88) feet to a point at the easterly side of West Bow Street;

Thence, along said West Bow Street and through two bounds N47°42'49"W for a distance of twenty-two and ten hundredths (22.10) feet to a point;

Thence, continuing along said West Bow Street N36°21'35"W for a distance of ninety-six and forty-eight hundredths (96.48) feet to an iron pipe;

Thence, continuing along said West Bow Street N36°21'35"W for a distance of ninety-four and no hundredths (94.00) feet to a point at the southerly side of Douphinett Street;

Thence, along said Douphinett Street and by land now or formerly of the City of Franklin N55°16'34"E for a distance of one hundred seventy-three and twelve hundredths (173.12) feet to a point at land now or formerly of the Lenard M. Birke Trust;

Thence, by said land of the Lenard M. Birke Trust S37°52'43"E for a distance of seventy-eight and four hundredths (78.04) feet to an iron rod found;

Thence, continuing by said land of the Lenard M. Birke Trust S52°44'18"W for a distance of forty-six and ninety hundredths (46.90) feet to a bound found;

Thence, continuing by said land of the Lenard M. Birke Trust for a distance of forty-three and five hundredths (43.05) feet to a bound at aforementioned land of the City of Franklin;

Thence by said land of the City of Franklin S41°07'17"E for a distance of fifty-two and ninety-four hundredths (52.94) feet to a point;

Thence, continuing by said land of the City of Franklin S01°33'10"E for a distance of twenty-eight and forty-nine hundredths (28.49) feet to the point of beginning.

Said tract or parcel of land contains 30,293 square feet or 0.695 acres more or less.

## ***EXHIBIT B***

### ***Existing Environmental Reports***

1. Notification of Groundwater Contamination from Nobis Engineering, Inc. to New Hampshire Department of Environmental Sciences (“NHDES”), dated April 10, 2017 (and enclosing Phase II Environmental Site Assessment prepared by AECOM, dated January 2014).
2. Petroleum Brownfields Eligibility Determination, by NHDES dated April 17, 2017.
3. Field Task Work Plan & Site-Specific Quality Assurance Project Plan, Revision 1, Phase II Environmental Site Assessment, prepared by Nobis Engineering, dated June 22, 2017.
4. Underground Storage Tank Closure Report, prepared by Nobis Engineering, dated January 29, 2018.
5. Underground Storage Tank Closure Report, prepared by Nobis Engineering, dated February 26, 2018.
6. Phase II Environmental Site Assessment, prepared by Nobis Engineering, dated April 24, 2018.
7. Field Task Work Plan & Site-Specific Quality Assurance Project Plan, Revision 0, Supplemental Site Assessment, prepared by Nobis Engineering, dated October 17, 2018.
8. Proposed Work Scope and Budget Supplemental Site Assessment, prepared by Nobis Group, dated November 12, 2018.
9. NHDES Letter approving Work Scope Approval #1A, dated November 21, 2018.
10. Proposed Work Scope and Budget Change Order #2 Supplemental Site Assessment, prepared by Nobis Group, dated February 14, 2019.
11. NHDES Letter approving Work Scope Approval #1B, dated February 25, 2019.
12. Field Task Work Plan & Site-Specific Quality Assurance Project Plan, Amendment No. 1, Supplemental Site Assessment, prepared by Nobis Engineering, dated March 26, 2019.
13. Supplemental Site Assessment Report, prepared by Nobis Engineering, dated June 26, 2019.
14. NHDES Letter in Response to Supplemental Site Assessment Report, dated October 7, 2019.
15. Proposed Construction Soil Management Plan & Limited Additional Investigation, prepared by AECOM Technical Services, dated February 12, 2020.

16. NHDES Letter in Response to Proposed Construction Soil Management Plan & Limited Additional Investigation, dated May 15, 2020
17. Indoor Air Quality Assessment, prepared Nobis Group, dated June 1, 2020.
18. Quality Assurance Project Plan Addendum for Site Assessment, prepared by KGSNE JV, LLC, dated June 19, 2020.
19. Phase I Environmental Site Assessment, prepared by Nobis Group, dated July 15, 2020.

***EXHIBIT C***

*Site Plan*

*[Attached]*

TABLE OF ZONING REGULATIONS PLANKLIN, NJ			
SECTION 100.01		SECTION 100.02	
SECTION 100.01	SECTION 100.02	SECTION 100.03	SECTION 100.04
100.01.01	100.02.01	100.03.01	100.04.01
100.01.02	100.02.02	100.03.02	100.04.02
100.01.03	100.02.03	100.03.03	100.04.03
100.01.04	100.02.04	100.03.04	100.04.04
100.01.05	100.02.05	100.03.05	100.04.05
100.01.06	100.02.06	100.03.06	100.04.06
100.01.07	100.02.07	100.03.07	100.04.07
100.01.08	100.02.08	100.03.08	100.04.08
100.01.09	100.02.09	100.03.09	100.04.09
100.01.10	100.02.10	100.03.10	100.04.10
100.01.11	100.02.11	100.03.11	100.04.11
100.01.12	100.02.12	100.03.12	100.04.12
100.01.13	100.02.13	100.03.13	100.04.13
100.01.14	100.02.14	100.03.14	100.04.14
100.01.15	100.02.15	100.03.15	100.04.15
100.01.16	100.02.16	100.03.16	100.04.16
100.01.17	100.02.17	100.03.17	100.04.17
100.01.18	100.02.18	100.03.18	100.04.18
100.01.19	100.02.19	100.03.19	100.04.19
100.01.20	100.02.20	100.03.20	100.04.20
100.01.21	100.02.21	100.03.21	100.04.21
100.01.22	100.02.22	100.03.22	100.04.22
100.01.23	100.02.23	100.03.23	100.04.23
100.01.24	100.02.24	100.03.24	100.04.24
100.01.25	100.02.25	100.03.25	100.04.25
100.01.26	100.02.26	100.03.26	100.04.26
100.01.27	100.02.27	100.03.27	100.04.27
100.01.28	100.02.28	100.03.28	100.04.28
100.01.29	100.02.29	100.03.29	100.04.29
100.01.30	100.02.30	100.03.30	100.04.30
100.01.31	100.02.31	100.03.31	100.04.31
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100.01.36	100.02.36	100.03.36	100.04.36
100.01.37	100.02.37	100.03.37	100.04.37
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1998	85	15
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2003	75	25
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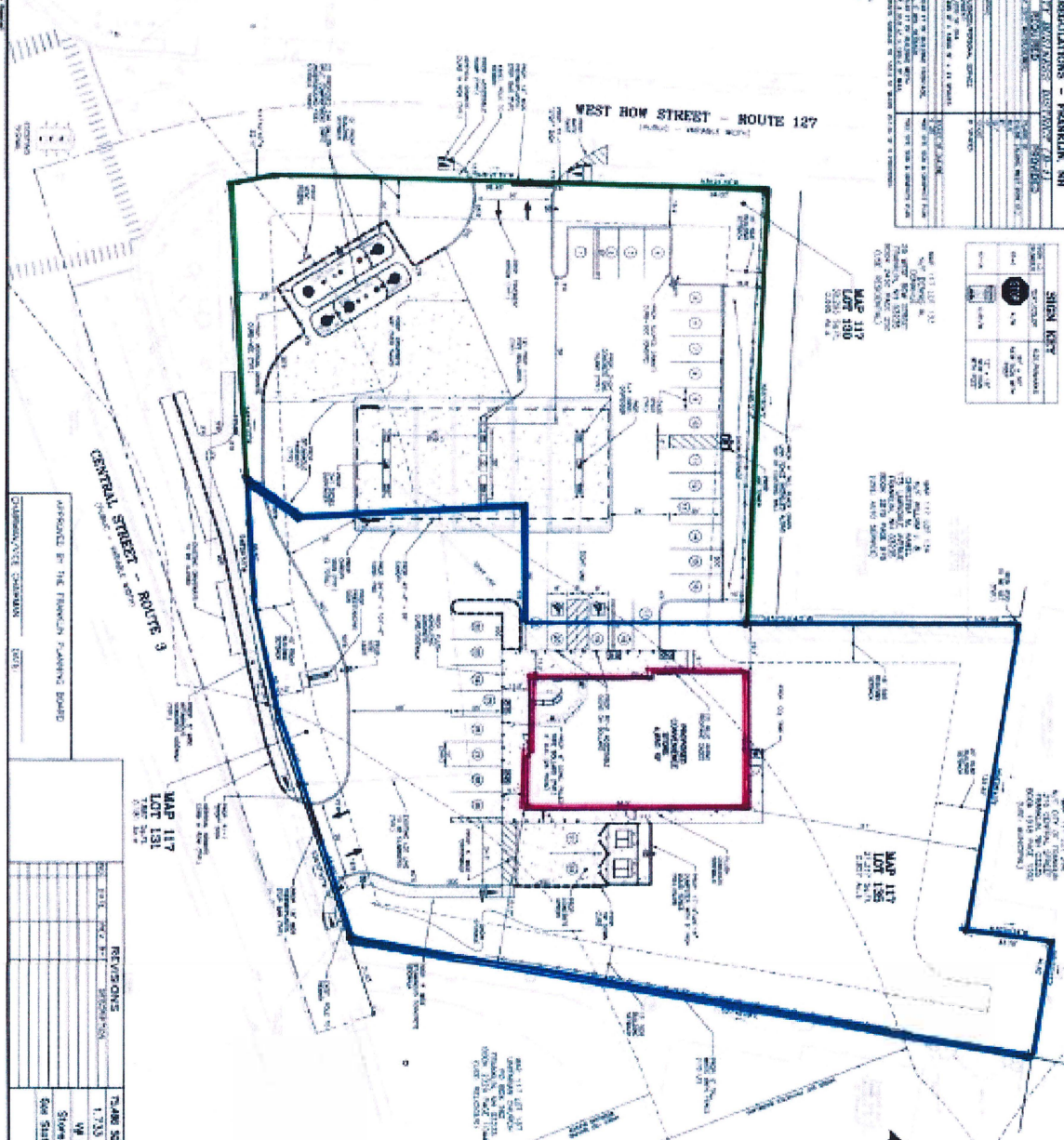
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**Notes:**

## ACTION MAP

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NOTES



APPROVED BY THE FINANCIAL PLANNING BOARD

Chairman/Member	Date
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- Adjacent Property
- CFI Building
- Premises



## ***EXHIBIT D***

### ***Access Agreement***

**CUMBERLAND FARMS # [            ]**

#### **SITE ACCESS AGREEMENT**

WHEREAS, CUMBERLAND FARMS, INC., a Delaware Corporation with offices at 165 Flanders Road, Westborough, MA 01581 ("**CFI**") was the tenant under a Lease dated \_\_\_\_\_ ("**Lease**") of the property described in the attached Exhibit 1 ("**Premises**") which Premises are currently owned by \_\_\_\_\_ ("**Owner**");

WHEREAS, the Lease ended or will end on \_\_\_\_\_, but CFI is conducting Tenant UST Remediation as such term is defined in the Lease and below;

WHEREAS, Owner is willing to grant CFI the right of access to the Premises to conduct the UST Remediation.

Now therefore, in consideration of the mutual benefits to the parties and Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner grants to CFI the right to access the Premises ("**Access Rights**") on the following terms and conditions:

1. Term. CFI shall have Access Rights over the entire Premises for the purposes set forth in this Site Access Agreement until the earlier of:

- (a) completion of the Tenant UST Remediation pursuant to applicable environmental laws and regulations;
- (b) some other time mutually agreed to by the parties; or
- (c) seven (7) years from the effective date of this Site Access Agreement.

When CFI no longer needs Access Rights over the entire Premises and the Premises can be used or leased in a commercially reasonable manner with the remediation units and equipment in place, then the parties agree that CFI shall notify the Owner to this effect, but CFI shall retain Access Rights over the area where the remediation units and equipment are located as well as ingress and egress to the area. Owner agrees that any lease, sublease, conveyance or the like to a third party will specifically recognize the existence of this Agreement. Upon termination of the full Access Rights in accordance with the above provisions, CFI will execute a termination of this Agreement in recordable form if the Owner so requests in writing.

2. Scope of Work. Owner agrees that CFI and its consultants and contractors may carry out any activity deemed appropriate to conduct the Tenant UST Remediation at CFI's sole cost and expense and that CFI may install, maintain and monitor environmental remediation units

(including without limitation, monitoring and recovery wells and groundwater remediation systems) on or under the Premises. Owner agrees to be responsible and reimburse CFI for any damage that Owner, its employees, agents, invitees, lessees, successors assigns or contractors cause to the CFI's environmental investigation or remediation units and associated equipment. Owner agrees to place in any document leasing, transferring or conveying the Premises a provision whereby the assignee, lessee or transferee shall be responsible to CFI for such damage. As defined in the Lease and this Site Access Agreement, Tenant UST Remediation means any assessment, investigation and remediation of any discharge, leak, spill or release ("Release") of any petroleum or fuel product from the underground storage tanks and lines installed and utilized by CFI during the term of the Lease ("USTs"), but only if the Release (a) is required to be investigated and remediated pursuant to applicable environmental laws and regulations, and (b) exceeds applicable commercial standards under the applicable environmental laws and regulations. Tenant UST Remediation may include, at Tenant's sole discretion, the imposition of any engineering or institutional controls allowed by environmental laws and regulations, including without limitation and by way of example only, the imposition of any environmental covenant, deed restriction or activity and use limitation. Landlord shall allow the imposition of an environmental covenant, deed restriction or activity and use limitation to be recorded against the title of the Premises and shall cooperate with the Tenant on Landlord's execution of, recording of and compliance with such covenant, restriction or limitation. Such covenant, restriction or limitation shall allow for industrial/commercial use of the Premises, but prohibit single family residential use.

3. Notice. CFI agrees to notify Owner at least five (5) working days in advance of planned activities on the Property.

4. Documents. CFI will provide Owner with copies of any correspondence, reports or any other documents pertaining to the Tenant UST Remediation and submitted by CFI to the applicable governmental authority, within fourteen (14) days of submission by CFI.

5. Baseline Testing. Owner agrees that CFI may conduct tests on the Premises to establish a baseline condition of the Premises and that the last laboratory tests conducted prior to the termination of CFI's Access Rights shall establish the baseline condition of the Premises.

6. Interference with Operations. CFI and its environmental consultant in exercising the rights granted hereunder shall act reasonably and minimize to the extent possible any interference with Owner's operations and, in any event shall not unreasonably interfere with Owner's access or use of the Property.

7. Quality of Work. The Tenant UST Remediation shall be performed in a workmanlike manner and appurtenances maintained in good condition and repair.

8. Confidentiality. Each party hereby agrees that, except for required submissions to the relevant governmental authorities, it will keep the results of the Tenant UST Remediation confidential, and that neither it nor any of those acting on its behalf or following its instructions, or performing any of the Tenant UST Remediation, will divulge such information to any third party unless required to do so by law or after having obtained the prior written approval of the other party provided that the results of the Tenant UST Remediation may be disclosed by Owner to its lenders to the extent that the lenders require such disclosure.

9. In connection with conducting the Tenant UST Remediation on the Premises, including the disposition of any wastes generated in connection therewith, CFI shall comply at its cost with all laws, ordinances, orders, rules, regulations, and requirements of all federal, state, county, and municipal governments, including all administrative agencies thereof.

10. Prior to the start of the Tenant UST Remediation, CFI shall notify Owner in writing (using the attached "Notification of Consultant for Site Access Agreement" form) of the name, address and contact of CFI's environmental consultant, contractor and subcontractors who will conduct work on the Premises. If CFI changes environmental consultants during the term of this Site Access Agreement, CFI shall provide Owner advance written notice of such change and shall include the name, address and contact of such new environmental consultant.

11. At the conclusion of the Tenant UST Remediation, as soon as is practicable but in no event longer than sixty (60) days after such conclusion of the Tenant UST Remediation, CFI, at its sole cost and expense, will restore the Premises, including Owner's personal property, affected or damaged by the Tenant UST Remediation, to as close to its condition existing at the time such work began as is reasonably possible. This Paragraph shall survive the termination of this Site Access Agreement.

12. In Sections 12 and 13, "Claim(s)" are defined as "claims, demands and causes of action asserted by any person (including Owner's, CFI's, and CFI's environmental consultant's employees or any other third party) for personal injury or death or for loss of or damage to property arising from the Work".

CFI shall indemnify, defend and hold harmless Owner from Claims asserted against Owner, including without limitation, reasonable attorneys' fees, for claims arising out of or in connection with CFI's or CFI's environmental consultant's performance of the Tenant UST Remediation. Where Claims result from the joint negligence or willful misconduct of Owner, CFI's duty of indemnity shall be in proportion to CFI's and its environmental consultant's allocable share of joint negligence or willful misconduct.

13. The foregoing indemnity is subject to Owner providing written notice to CFI within sixty (60) days of the date after Owner receives an initial notice or has actual knowledge of a Claim. The foregoing notice provision shall not cause CFI to suffer material prejudice to its defense. Until such time that Owner provides CFI with said notice, Owner shall take all steps necessary to defend the Claim and to prevent prejudice to the defense and/or CFI. In addition, Owner shall fully cooperate with CFI in the investigation and defense of such Claims. CFI shall have the exclusive right to designate and retain counsel to represent Owner in the defense of any such Claim.

14. CFI and its environmental consultant shall maintain at least the following insurance, with limits of liability no less than those stated below, while performing the Work:

- (a) Comprehensive General Liability: Combined single limit for bodily injury and property damage of not less than \$1,000,000.00 each occurrence and \$2,000,000.00 annual aggregate.

(b) Worker's Compensation Insurance and Employer's Liability Insurance: With limits of liability not less than those required by law.

(c) Alternatively, CFI may provide a program of self-insurance for itself and require that its consultants and contractors maintain the levels of insurance specified in subparagraphs (a)-(b). If CFI opts to self-insure, CFI shall provide Owner with a letter of self-insurance within thirty (30) calendar days of the effective date of this Agreement or prior to any work beginning on the Property, whichever is earlier.

15. The Access Rights granted herein by Owner extend only to the Tenant UST Remediation set forth in this Site Access Agreement. Owner's consent must be obtained for access to the Premises for any other reason.

16. No provision under this Site Access Agreement nor any actions under or by reason of this Site Access Agreement shall in any action, proceeding or litigation operate or be construed as an admission by CFI or Owner or any other party of any violation of law or regulation, any liability, fault, or past or present wrongdoing, or any breach of duty at any time.

17. All notices desired or required to be given hereunder shall be in writing and shall be given: (i) next day express courier, or (ii) by certified mail, return receipt requested, postage prepaid, or by facsimile (with a copy sent by U.S. mail or next day courier), addressed as follows:

If to CFI:

Environmental Department  
165 Flanders Road  
Westborough, MA 01581

If to Owner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

18. If any part of this Site Access Agreement is for any reason found to be unenforceable, all other portions nevertheless remain enforceable.

19. The waiver of any breach or any term or condition of this Site Access Agreement does not waive any other breach of that term or condition or of any other term or condition.

20. This Site Access Agreement must be construed, and its performance enforced, under the law of the state in which the Premises is located.

21. This Site Access Agreement, executed in duplicate originals, shall be effective on the date last written below.

22. The provisions of this Site Access Agreement shall be binding upon and inure to

the benefit of the parties hereto and their respective heirs, legal representatives, successors or assigns.

23. Each person executing this Site Access Agreement represents that the party on whose behalf the person is executing this Site Access Agreement has duly authorized the execution of this Site Access Agreement and that such person is authorized to execute the Site Access Agreement on behalf of such party.

[signatures continue on next page]

**OWNER**

\_\_\_\_\_

\_\_\_\_\_  
Date

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

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_ and on behalf of  
\_\_\_\_\_. He/she is personally known to me or has produced a \_\_\_\_\_  
(state) driver's license as identification.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public (signature)

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title or Rank)

\_\_\_\_\_  
(Serial Number, if any)

**CUMBERLAND FARMS, INC.**

\_\_\_\_\_  
Date

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

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of Cumberland Farms, Inc. and on behalf of  
Cumberland Farms, Inc.. He/she is personally known to me or has produced a \_\_\_\_\_ (state)  
driver's license as identification.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public (signature)

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title or Rank)

\_\_\_\_\_  
(Serial Number, if any)

CUMBERLAND FARMS # [       ]

**NOTIFICATION OF CONSULTANT  
FOR SITE ACCESS AGREEMENT**

Please refer to the Site Access Agreement ("Agreement") executed by Cumberland Farms, Inc. ("CFI") and \_\_\_\_\_ ("                    "). Under the terms of the Agreement for the purposes of conducting an environmental investigation, \_\_\_\_\_ grants CFI and or CFI's environmental consultant access to \_\_\_\_\_ (the "Premises") to perform environmental investigations.

Pursuant to Section 10 of said Agreement, please be advised that, for the period starting on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, CFI's environmental consultant ("Consultant") shall be:

Consultant:

Contact:

By their signatures below, CFI and its Consultant acknowledge that the Consultant has been provided with a copy of the Agreement and agrees to perform the work that is the subject of said Agreement according to the terms specified therein.

**CUMBERLAND FARMS, INC.**

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

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

Name:

Title:

**CONSULTANT**

Date

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

Name:

Title:

Notice Received by:

\_\_\_\_\_

\_\_\_\_\_

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

Name \_\_\_\_\_

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



***SCHEDULE "I"***

**RENT COMMENCEMENT DATE AGREEMENT**

This Agreement is made as of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, a \_\_\_\_\_ corporation ("Landlord") and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Tenant").

WHEREAS, Landlord and Tenant have entered into a Lease dated \_\_\_\_\_, 20\_\_ for Premises designated on **Exhibit A** attached to the Lease;

WHEREAS, the Rent Commencement Date, as defined in *Section 4.1.2* of the Lease, has occurred; and pursuant to the Lease, Landlord and Tenant desire to confirm various dates relating to the Lease.

NOW THEREFORE, Landlord and Tenant agree and acknowledge that the information set forth below is true and accurate.

*Lease Commencement Date:*

*Rent Commencement Date:*

*Initial Term Expiration Date:*

*[First, Second... Extended Term Exercise Date:]*

*[First, Second... Extended Term Commencement Date:]*

*[First, Second... Extended Term Expiration Date:]*

The execution of this Agreement shall not constitute an exercise by Tenant of its option with respect to the Extended Term.

EXECUTED as a sealed instrument on the date first set forth above.

LANDLORD:

TENANT:

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

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

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[ACKNOWLEDGMENTS]

## ***SCHEDULE "2"***

AFTER RECORDING RETURN TO:

Cumberland Farms, Inc.

165 Flanders Road

Westborough, MA 01581

Attention: Real Estate Department

### **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (Mortgage)

**THIS AGREEMENT** is made as of \_\_\_\_\_, 20\_\_, by and among \_\_\_\_\_ ("Mortgagee"), \_\_\_\_\_ ("Landlord"), and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Tenant").

Reference is made to a mortgage ("Mortgage") from Landlord to Mortgagee, dated \_\_\_\_\_ and recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ of the \_\_\_\_\_.

Reference is made to a ground lease ("Lease") dated \_\_\_\_\_, between Landlord and Tenant of certain premises situated within the property covered by said Mortgage.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual promises contained herein, the parties agree as follows:

1. Mortgagee hereby consents to the Lease and all of the provisions thereof.
2. Subject to the terms hereof, the Lease is and shall be subject and subordinate at all times to the lien of the Mortgage and to all renewals, replacements and extensions of the Mortgage and any extensions, modifications, renewals, consolidations and replacements thereof to the full extent of the principal sum secured thereby and interest thereon.
3. Tenant agrees that if the holder of said Mortgage, or any person claiming under said holder (whether by a foreclosure, deed in lieu of foreclosure or otherwise), shall succeed to the interest of Landlord in said Lease, Tenant will recognize, and attorn to, said holder, or such other person, as its landlord under the terms of said Lease.
4. Mortgagee agrees that, in the event of foreclosure or other right asserted under said Mortgage by the holder thereof, said Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated or disturbed (whether by a foreclosure, deed in lieu of foreclosure or otherwise), except for default continuing after notice and beyond any applicable grace period and otherwise in accordance with the provisions of said Lease.

5. In the event Mortgagee succeeds to the interest of landlord under the Lease, Tenant will have the same remedies against Mortgagee for any default under the Lease; provided, however, that Mortgagee shall not be:

- (i) liable for any act or omission of any prior landlord (including Landlord) under the Lease, except for non-monetary defaults of a continuing nature;
- (ii) subject to any off-sets or abatements against Base Rent or other charges which Tenant may have against any prior landlord (including Landlord), except for the exercise of rights expressly set forth in the Lease and to which the mortgagee has prior notice;
- (iii) bound by any Base Rent or other charges which Tenant might have paid for more than the current month to any prior landlord (including Landlord), except as expressly required under the Lease; or
- (iv) bound by any amendment or modification of the Lease made without its consent, which consent shall not be unreasonably withheld or delayed.

Nothing herein contained shall impose any obligations upon Mortgagee to perform any of the obligations of Landlord under the Lease, unless and until Mortgagee shall become owner or mortgagee in possession of the Premises.

6. Tenant agrees to provide Mortgagee with a copy of any notice of default and of any breach by Landlord for which Tenant intends to exercise its rights of self help Tenant may send to Landlord pursuant to the terms of the Lease. Tenant agrees that Mortgagee shall have the same opportunity and the same period of time to cure any default of Landlord as provided Landlord pursuant to the terms of the Lease. Unless changed by written notice to Tenant, Mortgagee's notice address is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All notices between Mortgagee and Tenant shall be sent in the manner set forth under the Lease.

7. Landlord agrees that, except as expressly provided herein, this Agreement does not constitute a waiver by Mortgagee of any of its rights under the Mortgage or related documents, and that the Mortgage and any related documents remain in full force and effect and shall be complied with in all respects by Landlord.

8. No material modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or effective unless in writing and signed by the parties.

9. In the event Mortgagee notifies Tenant of a default under the Mortgage and demands that Tenant pay its Base Rent and all other sums due under this Lease to Mortgagee, Tenant agrees that it will make such payments to Mortgagee, or Mortgagee's designated agent,

until otherwise notified in writing by Mortgagee. Landlord unconditionally authorizes and directs Tenant to make such payments directly to Mortgagee following receipt of such notice and further agrees that Tenant may rely upon such notice without any obligation to further inquire as to whether or not any default exists under the Mortgage, and that Landlord shall have no right or claim against Tenant for or by reason of any such payments made by Tenant to Mortgagee following receipt of such notice.

10. Tenant acknowledges and agrees that it has notice that the Mortgagee has obtained a lien pursuant to the Mortgage on the Lease, the leasehold created by the Lease ("Leasehold") and all rents and other sums due under the Lease (the "Rents"). In the event Mortgagee notifies Tenant of the occurrence of an Event of Default under the Mortgage and demands that Tenant pay Rents due under the Lease directly to Mortgagee, Tenant shall honor such demand and pay such sums due under the Lease directly to Mortgagee or as otherwise directed pursuant to such notice. In complying with these provisions, Tenant shall be entitled to rely solely upon the notices given by Mortgagee, and Landlord agrees to indemnify and hold Tenant harmless from and against any and all loss, claim, damage, or liability arising out of Tenant's compliance with such notice. Tenant shall be entitled to full credit under the Lease for any Rents paid to Mortgagee in accordance with the provisions of this paragraph to the same extent as if such Rents were paid directly to Landlord. Any dispute between Mortgagee and Landlord as to the extent, nature, existence or continuance of such an Event of Default under the Mortgage, or with respect to foreclosure of the Mortgage by Mortgagee, shall be dealt with and adjusted solely between Mortgagee and Landlord and Tenant shall not be made a party thereto except to the extent required by law.

The benefits and burdens of this Agreement shall inure to and bind the successors and assigns of the respective parties hereto.

**IN WITNESS WHEREOF**, each party has caused this instrument to be executed under seal by its duly authorized representative.

MORTGAGEE:

Witnessed By:

\_\_\_\_\_

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

its

LANDLORD:

Witnessed By:

\_\_\_\_\_

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

its

TENANT:

Witnessed By:

\_\_\_\_\_

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

its

[ACKNOWLEDGMENTS]

***SCHEDULE "3"***

AFTER RECORDING RETURN TO:  
Cumberland Farms, Inc.  
165 Flanders Road  
Westborough, MA 01581  
Attention: Real Estate Department

**MEMORANDUM OF LEASE**

NOTICE is hereby given of the following described lease (the "Lease") for the purpose of recording the same and giving notice of the existence of said Lease.

PROPERTY ADDRESS: \_\_\_\_\_

LANDLORD: \_\_\_\_\_

TENANT: \_\_\_\_\_

DATE OF EXECUTION  
OF LEASE: \_\_\_\_\_, 20\_\_

PREMISES: [List Address] consisting of approximately \_\_\_\_\_ square feet of space which is designated as "PREMISES" on **Exhibit A** attached to the Lease (the "Premises"). A legal description of the property of which the Premises is attached hereto as **Schedule I.**

TERM: \_\_\_\_ Lease Years, commencing on the Lease Commencement Date unless the Term shall be earlier terminated or extended as defined in the Lease.

COMMENCEMENT  
DATE: As set forth in [Section 3.1] of the Lease

OPTION(S) TO EXTEND: \_\_\_\_ options to extend the Term for \_\_\_\_ years each

EXCLUSIVE, PROHIBITED  
AND RESTRICTED USES: [As set forth in Sections 5.2 and 5.3]

LANDLORD'S TITLE: Deed recorded with the \_\_\_\_\_, in Book \_\_\_\_\_, Page \_\_\_\_\_.

RIGHT OF FIRST REFUSAL: Tenant has a right of first refusal to purchase the Premises or any portion thereof, as more particularly set forth in *Article XV* of the Lease.

EXECUTED as a sealed instrument on the date first set forth above.

LANDLORD:

TENANT:

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

its

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

its

[ADD STATE APPROPRIATE ACKNOWLEDGMENTS]

**SCHEDULE "4"**

To Whom It May Concern:

\_\_\_\_\_ (the "Owner") is the owner of the property located at \_\_\_\_\_ (the "Property"). The Owner hereby authorizes Cumberland Farms, Inc., and/or their agents and any engineering or architecture firm that the above may designate, to execute, submit and prosecute applications and any applicable materials to the [City/Town] of \_\_\_\_\_ boards, commissions, agencies and the like (including, without limitation, zoning boards, planning boards and the [City/Town] Council) on behalf of the Owner, for the purpose of obtaining municipal permits and approvals and property rezonings for the development of the Property.

[\_\_\_\_\_]

\_\_\_\_\_ By: \_\_\_\_\_  
Date Name: \_\_\_\_\_  
Duly authorized

State of \_\_\_\_\_  
County of \_\_\_\_\_

Personally appeared the above-named \_\_\_\_\_ before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, known to be the person whose name is subscribed to the foregoing instrument and acknowledged that he/she executed the same or his/her capacity as \_\_\_\_\_ of \_\_\_\_\_ for the purposes therein contained.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My Commission Expires: \_\_\_\_\_



**CITY COUNCIL MEETING**  
**AGENDA ITEM XI**



**CITY OF FRANKLIN**  
**COUNCIL AGENDA REPORT**  
December 7, 2020

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**From:** Judie Milner, City Manager

**Subject:** Council to consider approving the purchase and sales agreement with Leonard Birke for 202 Central Street.

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**Suggested Motion:**

Councilor moves, "I move that the Franklin City Council approve the purchase and sales agreement for 202 Central Street conditioned on the successful execution of the City's lease agreement with Cumberland Farms."

Mayor calls for a second, discussion and roll call vote.

**Discussion: Fiscal Impact: Alternatives:**

See discussion for previous agenda item "Approval of Cumberland Farms Lease".

**Attachments:**

Purchase & Sales Agreement



**WESCOTT LAW** P.A. EST. 1927  
**Sound Counsel. Practical Solutions.**

PAUL T. FITZGERALD  
PFITZGERALD@WESCOTTLAWNH.COM

28 BOWMAN STREET  
LACONIA, NEW HAMPSHIRE 03246-3761  
T (603) 524-2166 ~ F (603) 528-2122

October 6, 2020

M. Lenard Birke, Trustee of  
The M. Lenard Birke Trust  
428 North Road  
Franklin, NH 03235

**Re: M. Lenard Birke Trust to City of Franklin**

Dear Lenny:

Enclosed for your records is a copy of the fully executed Purchase and Sale Agreement between you, as Trustee of the M. Lenard Birke Trust, and the City.

Thank you for your attention to this matter.

Sincerely,

Paul T. Fitzgerald

PTF/src  
Enclosure  
cc: Judie Milner, City Manager  
(via e-mail only)

WWW.WESCOTTLAWNH.COM

28 BOWMAN STREET  
LACONIA  
(MAIN OFFICE)

272 DANIEL WEBSTER HWY.  
MERIDITH  
(BY APPOINTMENT)

ONE BRIDGE STREET  
PLYMOUTH  
(BY APPOINTMENT)

THE JONES HOUSE  
STRAWBERRY BANKE  
HANCOCK STREET  
PORTSMOUTH

## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT IS MADE this 10<sup>th</sup> day of July, 2019, by and between **M. LENARD BIRKE, TRUSTEE OF THE M. LENARD BIRKE TRUST**, with an address of 428 North Road, Franklin, 03235, (hereinafter referred to as the "Seller") and **THE CITY OF FRANKLIN, NEW HAMPSHIRE**, having an address of 316 Franklin Street, Franklin, NH 03235, (hereinafter referred to as the "Buyer").

1. **SALE.** In consideration of the covenants and agreements of the Seller and the Buyer as hereinafter set forth, the Seller agrees to sell and the Buyer agrees to buy the property described as follows:

A certain tract or parcel of land, together with any improvements thereon, situated at 202 Central Street, Franklin, Merrimack County New Hampshire.

**PURCHASE PRICE.** The agreed purchase price for said Premises is ~~Forty Thousand~~ Three Hundred Sixteen Two Hundred Dollars (~~\$40,000.00~~). The agreed purchase price is to be paid as follows: 316,250

- Fifty MLO*  
A. A deposit of Five Thousand Dollars (\$5,000.00) shall be paid by the Buyer, said deposit to be held in escrow by Wescott Law, PA and distributed according to the terms of this Agreement. This deposit shall be paid by the Buyer upon the execution of this Agreement by both parties and upon the approval of this Agreement by the Franklin City Council;

- WLB*  
B. The balance of the purchase price of ~~Thirty Five Thousand~~ Three Hundred Eleven Two Hundred Fifty Dollars (~~\$35,000.00~~) shall be paid to the Seller at the time of delivery of the deed by certified or bank check or by wire transfer. 311,250

3. **TITLE/DEED.** Said Premises are to be conveyed by a good and sufficient Warranty Deed running to the Buyer and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

- A. Provisions of existing building and zoning laws, if any;
- B. Such taxes for the current tax year as are not yet due and payable on the date of the delivery of the deed;
- C. Covenants and restrictions of record, if any, affecting the Premises and recorded with the Merrimack County Registry of Deeds.

4. **TIME FOR PERFORMANCE; DELIVERY OF DEED.** Such deed is to be delivered on or before ninety (90) days from the date of this Agreement, time being of the essence.
5. **POSSESSION AND CONDITION OF THE PREMISES.** Full possession of the Premises, free of all tenants and occupants except as herein provided, is to be delivered at the time of delivery of the deed, said Premises to be:
- A. In the same condition as they are now, reasonable use and wear thereof excepted; and
- B. In compliance with the provisions of any instrument referred to in Paragraph 3.

*WLB* During the term of this Purchase and Sale Agreement, Seller shall keep the buildings and all improvements on the Premises insured against fire and damage, with extended coverage. In case of loss, all sums recoverable from said insurance shall be paid or assigned, on delivery of deed, to the Buyer, unless the Premises shall previously have been restored to their former condition by the Seller; or, at the option of the Buyer, this Agreement may be rescinded and the deposit refunded if any such loss exceeds Five Thousand Dollars (\$5,000.00). *N/A*

6. **APPORTIONMENTS.** The following items shall be apportioned between the Seller and the Buyer as of the date of delivery of the deed:

*WLB* A. Real property taxes for the tax year beginning April 1, 2019; and

B. ~~Fuel in storage.~~ *N/A*

7. **REALTOR.** The Buyer represents that no broker or brokers have shown the premises to them or interested them therein. The Buyer agrees to save the Seller harmless from the judicially proven claims of any broker, provided such claims are based upon having shown the premises to the Buyer or upon having interested the Buyer in said premises. The Seller represents to the Buyer that no broker or brokers have any exclusive sale or exclusive agency listing on the Premises. Seller agrees to indemnify and save the Buyer harmless from the judicially proven claims of any broker, provided that it is adjudged by a Court of competent jurisdiction that a commission is due. The provisions of this paragraph shall survive the delivery of the deed hereunder.

- WLB* 8. **DEFAULT.** <sup>*Five*</sup> If the Buyer defaults under this Agreement, this Agreement shall terminate and the sum of ~~One~~ <sup>Five</sup> Thousand Dollars (\$5,000.00) shall be forfeited to the Seller as reasonable liquidated damages and neither Seller nor anyone claiming under Seller shall have any further claim or action against the Buyer under this Agreement. If the Seller defaults under this Agreement, the Buyer shall have the right to bring action for specific performance, or the Buyer shall have the right to terminate this Agreement and to recover any and all amounts paid as consideration for this Agreement.

9. **EXAMINATION OF TITLE.** Buyer shall be responsible for any examination of title they desire. If, upon examination of title by counsel for the Buyer, the title should prove to be defective in any respect that would unreasonably interfere with the intended use of the premises by the Buyer, the Buyer shall notify the Seller of such defect no later than seven (7) days before the date set for the delivery of the deed in Paragraph 4 above. In such event, the Seller shall use reasonable efforts to remove any such defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be. If the Seller shall fail to so remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, then, at the Buyer's option, any payment made under this Agreement shall be forthwith refunded to the Buyer and all other obligations of all parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.

10. **FINANCING.** This Agreement is not contingent upon the Buyer obtaining financing.

11. **ADDITIONAL PROPERTY.** None.

12. **RADON GAS.** Radon gas, the product of decay of radioactive materials in rock, may be found in some areas of New Hampshire. This gas may pass into a structure through the ground or through water from a deep well. Testing can establish its presence and equipment is available to remove it from the air or water.

13. **LEAD PAINT.** Before 1977, paint containing lead may have been used in structures. The presence of flaking lead paint can present a serious health hazard, especially to young children and pregnant women. Tests are available to determine whether lead is present.

14. **SEPTIC SYSTEM CERTIFICATION.** If the property is serviced by a subsurface sewage disposal system, the Seller represents and warrants (indicate the appropriate section and cross out the inapplicable sections) -

( ) the system was constructed and put into operation prior to the time that the design, construction, and operation of such systems were regulated by the State of New Hampshire, and, to the best knowledge and belief of the Seller, there has been no failure of any part of the system, nor has the system been rebuilt in whole or in part since such regulatory authority was enacted; **OR**

( ) the system was designed, constructed, and approved for operation by the appropriate New Hampshire regulatory authority subsequent to August 31, 1991, and, to the best knowledge and belief of the Seller, there has been no failure of any part of the system, nor has the system been rebuilt in whole or in part subsequent to August 31, 1991, without the approval of such regulatory authority.

15. **CONSTRUCTION OF AGREEMENT.** This Agreement is to be construed as a New Hampshire contract and sets forth the entire contract between and among the parties, is binding upon the Seller, his/her successors and assigns, and may be canceled, modified or amended only by a written instrument executed by the Seller and the Buyer. If two or more persons are named herein as Buyer or Seller, their obligations hereunder shall be joint and several. The captions are used only as a matter of convenience and are not to be construed as part of this Agreement or to be used in determining the intent of the parties.
16. **NOTICES.** Any notices required to be made pursuant to this Agreement shall be effective if made in writing and sent by mail to the addresses of the Seller and Buyer set forth in the first paragraph of this Agreement. Either party shall have the right, by notices as aforesaid, to change its designee for the receipt of notices hereunder.
17. **SEVERABILITY.** Should any provision of this Agreement or any portion of any provision of this Agreement be held invalid or unenforceable according to law, the remaining provisions hereof shall not be affected thereby but shall continue in full force and effect.
18. **WAIVER.** The waiver by any party of any breach of any provision of this Agreement shall not operate as, or be construed as, a waiver of any subsequent breach thereof.
19. **COUNCIL APPROVAL.** This Agreement is contingent upon the approval of the Franklin City Council and shall not be considered binding or effective until such approval has been granted. This Agreement shall expire, unless otherwise renewed, if such approval is not received within sixty (60) days of execution.

This Agreement has been executed by the parties hereof as of the date and year set forth in the first paragraph of this Agreement.

**SELLER:**

**THE M. LENARD BIRKE TRUST**



By: M. LENARD BIRKE, TRUSTEE

**BUYER:**


**THE CITY OF FRANKLIN**



By: JOJOIE MILNER

Is: CITY MANAGER

Duly Authorized

  
Witness

  
Witness

**CITY COUNCIL MEETING**

**AGENDA ITEM XII**





**CITY OF FRANKLIN  
COUNCIL AGENDA REPORT**

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*City Council Meeting of December 7, 2020*

**Subject: City Council to discuss the Ward 2 Election Location**

**CITY COUNCIL MEETING**

**AGENDA ITEM XIII**



**CITY OF FRANKLIN  
COUNCIL AGENDA REPORT**

*City Council Meeting of December 7, 2020*

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**Subject: Other Business**

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- 1. Mayoral Appointment**
- 2. Committee Reports**
- 3. City Manager's Update**
- 4. Late Items**

**Non-Public Session Needed:**

**Motion to go into non-public according to RSA 91-A:3 II (a) the dismissal, promotion, or compensation of any public employee or the disciplining of such employee or the investigation of any charges against him or her.**

# MAYOR APPOINTMENTS

## Conservation Commission

### *Resignations:*

"I accept the resignation of Bob Morin from the Conservation Commission (seat CC5) effective November 19, 2020."

### *Appointments:*

"I appoint Christine Sheedy to the Conservation Commission (seat CC3), term of service is 3 years to September 2023."

"I appoint James DeBernardo to the Conservation Commission (seat CC5), term is to fulfill current expiration to September 2022."

"I appoint Sam McLaughlin to the Conservation Commission (seat CC7), term of service is 3 years to September 2023."

## Highway Safety Commission

### *Appointments:*

"I appoint Christi Liolis to the Highway Safety Commission (seat HS6), term of service is 3 years to September 2023."

## Planning Board

### *Appointments:*

"I re-appoint Dave Liberatore to the Planning Board (seat PB6), term of service is 3 years to January 2024."

"I re-appoint Tim Flaherty to the Planning Board (seat PB7), term of service is 3 years to January 2024."

"I re-appoint Dave Testerman to the Planning Board (seat PB9), duration is Term of Office."

"I re-appoint Donna Tully to the Planning Board (seat PB11), term of service is 3 years to January 2024."

"I appoint Christine Sheedy to the Planning Board (seat PB4), term of service is 3 years to January 2024."



**CITY OF FRANKLIN  
COUNCIL AGENDA REPORT**

City Council Meeting December 7, 2020

**Date: December 1, 2020**

**From: Judie Milner, City Manager**

**Subject: City Manager's Update**

- 1) Contingent Grant Line Activity –
- 2) Trust fund for school funding – \$141.22
- 3) Taxes – explained
- 4) 2021 City Council Agenda, Packet & Meeting Schedule
- 5) FY2021 Budget – OT Police & Fire
- 6) Opportunity Zone Marketing Update
- 7) Trestle Bridge Update – public listening session 11/17, preliminary structural analysis
- 8) City Demolition Update
- 9) Non-Public Session Needed:

Motion to go into non-public according to RSA 91-A:3 II (a) the dismissal, promotion, or compensation of any public employee or the disciplining of such employee or the investigation of any charges against him or her.



## CITY OF FRANKLIN, NEW HAMPSHIRE

### OFFICE OF THE MAYOR

316 Central Street  
Franklin, NH 03235  
Telephone (603) 934-3900  
Fax (603) 934-7413

## CITY COUNCIL MEETING SCHEDULE & CLOSING DATES FOR 2021

Council Meeting Date	Manager & Mayor Review Closing Date	Agenda and Supporting Documents Delivered to Councilors By
February 1, 2021	Noon – Friday January 22, 2021	COB Wednesday January 27, 2021
March 1, 2021	Noon – Friday February 19, 2021	COB Wednesday February 24, 2021
April 5, 2021	Noon – Friday March 26, 2021	COB Wednesday March 31, 2021
May 3, 2021	Noon – Friday April 23, 2021	COB Wednesday April 28, 2021
June 7, 2021	Noon – Friday May 28, 2021	COB Wednesday June 2, 2021
*July 5, 2021	Noon – Friday June 25, 2021	COB Wednesday June 30, 2021
August 2, 2021	Noon – Friday July 23, 2021	COB Wednesday July 28, 2021
*September 6, 2021	Noon – Friday August 27, 2021	COB Wednesday September 1, 2021
October 4, 2021	Noon – Friday September 24, 2021	COB Wednesday September 29, 2021
November 1, 2021	Noon – Friday October 22, 2021	COB Wednesday October 27, 2021
December 6, 2021	Noon - Wednesday November 24, 2021	COB Wednesday December 1, 2021
January 3, 2022	Noon – Wednesday December 22, 2021	COB Wednesday December 29, 2021

\*Council meeting date speculative due to holiday observances – changes subject to Council approval.

**Items for consideration by the Franklin City Council must be submitted to the City Manager's office by noon on the Manager & Mayor Review Closing Date.**

Late items may be allowed for Council consideration with the concurrence of the Manager and the Mayor, but will be discussed only under the agenda heading "Late Submissions" at the end of the Council meeting.

Late material submitted for Council consideration will be clearly marked as such, and may be distributed by any reasonable means, but late submissions will in no instance delay the delivery of meeting packets to the Franklin City Council.

The Mayor or Manager may agree to make adjustments to the schedule as required by Council-approved holiday observances or similar circumstances. A new annual schedule will be prepared by the Manager in December of each year.

*This policy adopted by the Franklin City Council on May 5, 2008. Motion by Councilor Sharon, 2<sup>nd</sup> by Councilor Rabinowitz. All in Favor.*