



Finance Committee Agenda

City of Newton In City Council

Monday, April 12, 2021

The Finance Committee will hold this meeting as a virtual meeting on Monday, April 12, 2021 at 7:00 pm. To view this meeting using Zoom use this link:

<https://us02web.zoom.us/j/88696332048> or call 1-646-558-8656 and use the following Meeting ID: 886 9633 2048

Item scheduled for discussions:

#98-21 **Resolution in Support of HD.144 which authorizes 5% charge for streaming providers**
PRESIDENT ALBRIGHT AND VICE PRESIDENT LIPOF requesting Council support for a resolution to the Massachusetts legislature for HD 1440 which will help cable providers survive through the trending movement away from cable providers to streaming video providers. The streaming video providers use the same public way as cable providers but do not pay for it. This act will authorize a 5% charge for the use of the public way. Through HD.1440 the Commonwealth will join a majority of states which now authorize such payments.

Referred to the Public Facilities and Finance Committees

#121-21 **Transfer \$146,257 from the Cabot Elementary School Owner's Contingency budget**
HER HONOR THE MAYOR requesting the authorization to transfer the sum of one hundred forty-six thousand two hundred and fifty-seven dollars (\$146,257) from the Cabot Elementary School Owner's Contingency budget to the Architect & Consultants budget so that the additional design services costs can be reviewed for eligibility by the MSBA.
Public Facilities Approved 8-0 on 04/07/21

Referred to Public Safety & Transportation and Finance Committees

#119-21 **Acceptance of grants funds from MassDOT's Shared Winter Streets and Spaces**
HER HONOR THE MAYOR requesting authorization to accept and expend the sum of one hundred ninety-nine thousand, nine hundred and nineteen dollars and ninety-two cents (\$199,919.92) in grant funding from MassDOT's Shared Winter Streets and Spaces grant to purchase and install four Blue Bikes Stations with bicycles.
Public Safety & Transportation Approved 8-0 on 04/07/21

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

Referred to Zoning & Planning and Finance Committees

- #458-20** **CPC Recommendation to appropriate \$1,433,000 in CPA funding for Grace Church**
COMMUNITY PRESERVATION COMMITTEE recommending the appropriation of one million four hundred and thirty-three thousand dollars (\$1,433,000) in Community Preservation Act historic resource funding to the Grace Episcopal Church Tower Restoration project for the stabilization and preservation of the historically significant ca. 1872 conical stone spire, tower and belfry.
City Council Approved on 03/01/2021 17 Yeas 5 Nays (Councilors Crossley, Humphrey, Noel, Ryan and Albright), 2 Vacancies
Mayor Veto Council Order #458-20 on 03/08/21
City Council recommitted item #458-20 to the Finance Committee on 04/05/21
- #117-21** **Request for Ordinance Amendments to Chapter 2 relating to paid leave time**
HER HONOR THE MAYOR requesting the authorization to grant new employees paid leave time in excess of the provisions currently set forth in Article 2, Sections 2-41, 2-65, and 2-67 of the Revised City of Newton Ordinances 2017.
- #115-21** **Acceptance of grant funds from COVID-19 pandemic response grant program**
HER HONOR THE MAYOR requesting authorization to accept and expend federal COVID-19 pandemic response grant program funds, including from the CARES Act and American Rescue Plan Act (ARPA).
- #395-20** **Request for updates on budget and possible reimbursements at Newton Public Schools**
The President of the Council, on behalf of the City Council, requesting updates to the Finance Committee from the Chief Financial Officer regarding budget expenditures and possible reimbursements related to school reopening at each meeting this fall.
Finance Held on 03/22/21
- #114-21** **Discussion on Covid-19 expenditures**
FINANCE COMMITTEE requesting updates from the Chief Financial Officer on the expenditure of funds for Covid-19.

Respectfully submitted,

Rebecca Walker Grossman, Chair

**Resolution in support of HD.1440 An Act Relative to
Streaming Entertainment Operator's Use of the Public Rights
of Way"**

Whereas,

Cable television operators (Comcast, Verizon, RCN) doing business in Newton require City permission to use the public roadways in order to install coaxial and/or fiber cables to homes and businesses, and

Whereas,

Permission is secured via a 5 or 10 year Local Franchise Agreement between the cable operator and the City and the agreement stipulates that funding is to be provided for Public, Education, and Government programming services of which a percentage is allocated to NewTV, our local PEG provider to support their operation, and a percentage to the City of Newton and

Whereas,

NewTV is a multiple Emmy Award winning nonprofit community media center located in Newton Highlands that has helped provide transparency in government by televising School Committee, City Council and Committee meetings as well as a weekly Newton News program, intern programs and coverage of citywide local events and happenings and

Whereas

Since 1992 NewTV's professionally equipped production studio has provided an array of additional services resulting in quality training opportunities as well as local and regional cable television programming which help to keep residents informed of local government meetings, events and happenings, and

Whereas,

Newton homeowners have stopped cable television, utilizing instead internet based streaming services which has resulted in a 23% reduction of cable subscribers in recent years. Since 2015 cable services have decreased by 6,571 cable subscribers -causing NewTV to lose approximately \$347,000.00 each year from its operating budget while the City of Newton loses approximately \$87,000.00 each year for its PEG Enterprise Fund, and

Whereas,

There has been a national movement to allow cities and towns to assess streaming services along with cable provider for use of the public way and many have already instituted this surcharge and

**Whereas,
The City Council would like to see NewTV provide excellent services for 30
more years, now**

**Therefor be it resolved
That the City Council strongly supports HD1440 and urges the legislature and
our sister cities and towns to support this bill and encourages our Mayor to
ensure NewTV has the necessary funding to survive while this Bill is being
considered.**

HOUSE No.**The Commonwealth of Massachusetts**

PRESENTED BY:

Joan Meschino and Paul F. Tucker

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to a streaming entertainment operator's use of the public rights-of-way.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Joan Meschino</i>	<i>3rd Plymouth</i>	<i>2/5/2021</i>
<i>Paul F. Tucker</i>	<i>7th Essex</i>	<i>2/5/2021</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>2/9/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/9/2021</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>2/9/2021</i>
<i>Daniel R. Carey</i>	<i>2nd Hampshire</i>	<i>2/9/2021</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>2/10/2021</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>2/10/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/10/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/13/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/15/2021</i>
<i>Adam J. Scanlon</i>	<i>14th Bristol</i>	<i>2/16/2021</i>
<i>Steven G. Xiarhos</i>	<i>5th Barnstable</i>	<i>2/16/2021</i>
<i>Kathleen R. LaNatra</i>	<i>12th Plymouth</i>	<i>2/16/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/16/2021</i>
<i>Michael P. Kushmerek</i>	<i>3rd Worcester</i>	<i>2/17/2021</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>2/18/2021</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/18/2021</i>

<i>Alyson M. Sullivan</i>	<i>7th Plymouth</i>	<i>2/18/2021</i>
<i>David F. DeCoste</i>	<i>5th Plymouth</i>	<i>2/19/2021</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>2/19/2021</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/19/2021</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>2/19/2021</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>2/20/2021</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>2/21/2021</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>2/22/2021</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>2/22/2021</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>2/22/2021</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>2/22/2021</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>2/23/2021</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>	<i>2/23/2021</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>2/23/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/23/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>2/24/2021</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>2/24/2021</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/24/2021</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>2/25/2021</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/26/2021</i>
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>	<i>2/26/2021</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>2/26/2021</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>2/26/2021</i>
<i>Thomas P. Walsh</i>	<i>12th Essex</i>	<i>2/26/2021</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>3/4/2021</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>	<i>3/2/2021</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>3/2/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/3/2021</i>
<i>Smitty Pignatelli</i>	<i>4th Berkshire</i>	<i>3/8/2021</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>3/9/2021</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>3/9/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>3/17/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>3/21/2021</i>

HOUSE No.

[Pin Slip]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court (2021-2022)

An Act relative to a streaming entertainment operator’s use of the public rights-of-way.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws of 2018 are hereby amended by inserting after Chapter
2 166A the following chapter:-

3 Chapter 166B.

4 Section 1. The purposes of this chapter are to --

5 (a) establish a comprehensive statewide policy concerning compensation for the use of
6 digital infrastructure in the public rights-of-way;

7 (b) establish legislative findings that digital infrastructure in the public rights-of-way is of
8 valuable economic and public interest;

9 (c) establish standards which encourage a competitive environment for growth and
10 development of streaming entertainment services and which assure that streaming entertainment
11 services are responsive to the needs and interests of the local community;

12 (d) establish guidelines for the exercise of Commonwealth and local authority with
13 respect to the regulation of the commercial use of the public rights-of-way by entities that
14 provide and deliver streaming entertainment services;

15 (e) assure that streaming entertainment operators are encouraged to provide the widest
16 possible diversity of information sources and services to the public;

17 (f) establish an orderly process for the Department of Revenue to assess and recover
18 payments from streaming entertainment operators;

19 (g) establish an orderly process to collect unpaid assessments and monetary fines from
20 non-compliant streaming entertainment operators operating in the Commonwealth;

21 (h) protect the substantial interest of the Commonwealth in preventing false and
22 deceptive business practices; and,

23 (i) promote competition among streaming entertainment service operators and minimize
24 regulation that would impose an undue economic burden on streaming entertainment operators.

25 Section 2. Definitions.

26 For the purposes of this Act, the following words shall have the following meanings:

27 “Commonwealth”, the Commonwealth of Massachusetts;

28 “cable operator”, any entity that is providing cable services under a franchise agreement
29 with a city, town or district and remitting a franchise fee to such city, town or district as
30 permitted by the Cable Communications Policy Act of 1984, 47 U.S.C. § 522, et seq.;

31 “gross revenues”, all revenue received directly or indirectly by a streaming entertainment
32 operator arising from, attributable to, or in any way derived from the sale of streaming
33 entertainment services in the Commonwealth. The term “gross revenues” shall not include bad
34 debts, investment income, refunded deposits, or any taxes on services furnished by streaming
35 entertainment providers and imposed directly upon any user by the local, state, federal or other
36 governmental unit;

37 “person”, an individual, partnership, association, joint stock company, trust, corporation,
38 or governmental entity;

39 “public, educational, or governmental access facilities”, facilities and equipment for the
40 use of channel capacity designated for public, educational, or governmental use;

41 “streaming entertainment services”, any paid service that provides audio, video, or
42 computer-generated or computer-augmented entertainment and delivers such entertainment via
43 digital infrastructure to users and delivers such services through facilities located at least in part
44 in the public rights-of-way without regard to delivery technology, including internet protocol
45 technology or other intelligences. This definition does not include any cable service defined in
46 47 U.S.C. § 522(6) or any video programming provided by a commercial mobile service
47 provider defined in 47 U.S.C § 332(d) or provided solely as part of, and via, a service that
48 enables users to access content, information, electronic mail, or other services offered over the
49 public internet;

50 “streaming entertainment operator”, any company, entity, or organization that

51 (1) provides streaming entertainment services and delivers such entertainment via digital
52 infrastructure provided through facilities located at least in part in the public rights-of-way with
53 regard to delivery technology, including internet technology or other intelligences, and

54 (2) earns more than two-hundred and fifty thousand dollars (USD \$250,000.00) in gross
55 annual revenues from providing such services to users in the Commonwealth;

56 “video programming”, programming provided by, or generally considered comparable to
57 programming provided by, a television broadcast station.

58 Section 3. Authority of the Commonwealth to regulate streaming entertainment services
59 and collect compensation for the use of the public rights-of-way.

60 (a) Pursuant to the authority of the Commonwealth to regulate trade under Section 1 of
61 Chapter 93 and to promote economic competition under Section 4 of Chapter 93, and to regulate
62 business practices for consumer protection under Section 1 of Chapter 93A, the Commonwealth
63 shall regulate the commercial sale of streaming entertainment services to individuals and
64 businesses in the Commonwealth;

65 (b) pursuant to the authority of the Commonwealth to collect payments from commercial
66 operators doing business with individuals and businesses physically located in the
67 Commonwealth and to levy assessments under Section 1 of Chapter 58, the Commonwealth shall
68 collect payments from the private sector use of the public rights-of-way by imposing an
69 assessment upon streaming entertainment providers;

70 (c) nothing in this Act shall limit or affect the authority of the Commonwealth or local
71 government or instrumentality thereof regarding ownership and control of public property and
72 public rights-of-way;

73 (d) no agency of the Commonwealth or local government shall have any authority to
74 regulate the rates charged by any streaming entertainment operator.

75 Section 4. Imposition and collection of an assessment for the use of the public rights-of-
76 way.

77 (a) A streaming entertainment operator shall pay an assessment equal to five percent
78 (5%) of such streaming entertainment operator's gross annual revenues derived in from the sale
79 or provision of streaming entertainment services to individuals and businesses in the
80 Commonwealth.

81 (b) The assessment authorized in this section shall be for each year, or part of each year,
82 that such streaming entertainment operator is engaged in the sale of streaming entertainment
83 services to individuals and businesses in the Commonwealth.

84 (c) A streaming entertainment operator shall file bi-annual financial statements reporting
85 its gross revenues derived in such period from the sale of streaming entertainment services to
86 individuals and businesses in the Commonwealth.

87 (1) Financial statements shall be filed with the Department of Revenue and shall not be
88 classified as a public record pursuant to Section 1 of Chapter 66;

89 (2) financial statements shall contain a complete accounting and itemization of gross
90 revenues derived from, or pertaining to, the sale or provision of streaming entertainment services
91 to individuals and businesses in the Commonwealth;

92 (3) financial statements shall conform to Generally-Accepted Accounting Principles
93 (GAAP) and shall be submitted in writing;

94 (4) for the period inclusive of January 1 through June 30, a streaming entertainment
95 operator shall submit a financial statement on or before August 15. For the period inclusive of
96 July 1 through December 31, a streaming entertainment operator shall submit a financial
97 statement on or before February 15 of the following year;

98 (5) streaming entertainment operators that fail to submit financial statements within thirty
99 (30) days of the afore stated deadlines shall be assessed a monetary penalty amount equal to one
100 percent (1%) of the gross revenues derived from, or pertaining to, the sale or provision of
101 streaming entertainment services to individuals and businesses residing in the Commonwealth
102 during the applicable time period;

103 (6) streaming entertainment operators that fail to submit financial statements within sixty
104 (60) days of the afore stated deadlines shall be assessed a monetary penalty amount equal to two
105 percent (2%) of the gross revenues derived from, or pertaining to, the sale or provision of
106 streaming entertainment services to individuals and businesses residing in the Commonwealth
107 during the applicable time period;

108 (7) any monetary penalty assessed upon a streaming entertainment operator for failure to
109 submit financial statements before the deadline shall be cumulative to the assessment of five
110 percent (5%) of gross revenues.

111 (d) Subject to audit and revision pursuant to the Department of Revenue's authority in
112 Section 5, the Department of Revenue shall utilize the financial statement of a streaming
113 entertainment operator to assess an amount equal to five percent (5%) of such streaming
114 entertainment operator's gross revenues derived in such period from the sale or provision of
115 streaming entertainment service to individuals and businesses in the Commonwealth.

116 (e) Upon assessment by written notice of the Department of Revenue, a streaming
117 entertainment operator must submit payment to the Commonwealth within thirty (30) days of
118 such notice.

119 (1) Streaming entertainment operators that fail to submit payment within thirty (30) days
120 of the afore stated deadline shall be assessed a monetary penalty amount equal to two percent
121 (2%) of the gross revenues derived from, or pertaining to, the sale or provision of streaming
122 entertainment services to individuals and businesses in the Commonwealth during the applicable
123 time period;

124 (2) streaming entertainment operators that fail to submit remuneration of the assessment
125 within sixty (60) days of the afore stated deadline shall be assessed a penalty equal to three
126 percent (3%) of the gross revenues derived from, or pertaining to, the sale or provision of
127 streaming entertainment service to individuals and businesses in the Commonwealth during the
128 applicable time period;

129 (3) any monetary penalty assessed upon a streaming entertainment operator for failure to
130 submit payment before the deadline shall be in addition to the assessment of five percent (5%) of
131 gross revenues.

132 (f) In accordance with Section 7 of this Act, the Commonwealth, local governments, or
133 instrumentalities thereof, may levy additional monetary and legal penalties upon any streaming
134 entertainment operator that fails to timely provide written financial statements or remuneration of
135 assessments.

136 Section 5. Right to audit financial records pertaining to assessable gross revenues.

137 (a) The Commonwealth shall have the right to conduct an audit or review of the records
138 reasonably related to the sources, amounts and computation of assessable gross revenues derived
139 from, or pertaining to, the sale or provision of streaming entertainment service to individuals and
140 businesses residing in the Commonwealth within the previous three (3) years.

141 (b) Within thirty (30) days of a written request, a streaming entertainment operator shall
142 provide the Department of Revenue with copies of financial records related to the review or audit
143 of assessable gross revenues derived from, or pertaining to, the sale or provision of streaming
144 entertainment services to individuals and businesses residing in the Commonwealth.

145 (c) In the event of an alleged underpayment, the Department of Revenue shall provide the
146 streaming entertainment operator with a written statement indicating the basis for the alleged
147 underpayment. The streaming entertainment operator shall have thirty (30) days from the receipt
148 of a statement regarding an alleged underpayment to provide the Department of Revenue any
149 written objection to the results of any assessable gross revenue review or audit, including any
150 substantiating documentation. Based on this exchange of information, the Department of
151 Revenue shall make a final determination of the underpayment(s), if any, within thirty (30) days
152 of the streaming entertainment operator's objection and shall provide the operator with written
153 notice of the determination.

154 (d) Any additional assessments due to the Commonwealth as a result of the assessable
155 gross revenue review or audit shall be paid to the Department of Revenue by the streaming
156 entertainment operator within forty-five (45) days from the date of written notification of the
157 final decision. If the assessable gross revenue review or audit shows that amounts have been
158 underpaid, then the streaming entertainment operator shall pay the underpaid amount plus
159 monetary fines equal to ten percent (10%) of the underpayment.

160 (e) A streaming entertainment operator adversely affected by any final action, or failure
161 to act, of the Department of Revenue that is inconsistent with this section may, within thirty (30)
162 days after such action or failure to act, commence an action in any court of competent
163 jurisdiction within the Commonwealth. The court shall hear and decide such action on an
164 expedited basis.

165 Section 6. Streaming Entertainment Fund

166 (a) There shall be a Streaming Entertainment Fund which shall consist of amounts
167 credited to the fund in accordance with this section. The fund shall be administered by the state
168 treasurer and held in trust exclusively for the purposes of this section. The state treasurer shall be
169 treasurer-custodian of the fund and shall have the custody of its monies and securities.

170 (b) The Streaming Entertainment Fund shall consist of: (i) revenues collected from the
171 assessment imposed by this Act; (ii) revenue from appropriations or other money specifically
172 designated to be credited to the fund; (iii) interest earned on money in the fund; and (iv) funds
173 from private sources including, but not limited to, gifts, grants and donations received by the
174 Commonwealth that are specifically designated to be credited to the fund. Amounts credited to
175 the fund shall not be subject to further appropriation and any money remaining in the fund at the

176 end of a fiscal year shall not revert to the General Fund. The secretary of the Commonwealth
177 shall annually, not later than December 31, report on the activity of the fund to the clerks of the
178 Senate and House of Representatives and the Senate and House Committees on Ways and
179 Means.

180 (c) The Streaming Entertainment Fund shall make bi-annual distributions on March 1 and
181 September 1 of each year. On those dates, the Streaming Entertainment Fund shall distribute,
182 with no remainder left, all monies then held in the Fund according to the following formula:

183 (1) One-fifth ($1/5$) of the monies in the Streaming Entertainment Fund shall be distributed
184 to the Commonwealth General Fund;

185 (2) Two-fifths ($2/5$) of the monies in the Streaming Entertainment Fund shall be
186 distributed to municipalities and local governments in the Commonwealth and further allocated
187 proportionally based upon population;

188 (3) Two-fifths ($2/5$) of the monies in the Streaming Entertainment Fund shall be
189 distributed to community media centers in the Commonwealth and further allocated
190 proportionally based upon population.

191 (d) The Department of Revenue shall use the most recent city and town population
192 estimates of the United States Bureau of the Census in calculating distributions pursuant to(c)(2)
193 and (c)(3) of this section.

194 (e) Distributions pursuant to (c)(2) of this section shall be listed upon each municipality's
195 cherry sheet for the upcoming fiscal year.

196 (f) The Commissioner of Revenue or any official responsible, shall, without further
197 appropriation and upon certification of the Commissioner, distribute all sums allocated under (c)
198 under this section.

199 (g) All sums distributed under (c)(1) of this section shall be deposited in the
200 Commonwealth General Fund. All sums distributed under (c)(2) of this section shall be
201 deposited in the general fund of the respective municipality. All sums distributed under (c)(3) of
202 this section shall be deposited in accordance with Section 53F³/₄ of Chapter 44, as amended by
203 Section 8 of this act.

204 (h) No expenditures from the Streaming Entertainment Fund shall be made except to
205 provide funding for: (i) the operating expenses of the fund; (ii) legal and administrative expenses
206 incurred in enforcing the provisions of this Act; and (iii) legal and administrative expenses
207 incurred in collecting any assessment due under this act.

208 (i) All sums appropriated under this Act shall be expended in a manner reflecting and
209 encouraging a policy of nondiscrimination and equal opportunity.

210 (j) All officials and employees of an agency, board, department, commission or division
211 receiving monies under this Act shall take affirmative steps to ensure equality of opportunity and
212 nondiscrimination in the internal affairs of state government, as well as in their relations with the
213 public, including those persons and organizations doing business with the Commonwealth. Each
214 agency, board, department, commission or division, in spending appropriated sums and
215 discharging its statutory responsibilities, shall adopt measures to ensure equal opportunity and
216 nondiscrimination in the areas of hiring, promotion, demotion or transfer, recruitment, layoff or

217 termination, rates of compensation, in-service or apprenticeship training programs and all terms
218 and conditions of employment.

219 Section 7. Judicial remedy.

220 (a) In accordance with Section 1 of Chapter 12, the Attorney General is authorized to
221 enforce this Act. The Attorney General may, within seven (7) years, bring an action to recover
222 any unpaid assessments and monetary penalties, or enjoin the operations of any non-compliant
223 entity, in any court of competent jurisdiction.

224 (b) Any local government, or class thereof, or community media center adversely
225 impacted by the action, or failure to act, of any streaming entertainment operator under this Act,
226 may, within seven (7) years, bring an action to recover any unpaid assessments and monetary
227 penalties, or enjoin the operations of any non-compliant entity, in any court of competent
228 jurisdiction.

229 SECTION 2. Municipal streaming fund.

230 Section 53 F3/4 of Chapter 44 of the General Laws shall be amended by adding at the
231 end thereof the following new section: -

232 “Notwithstanding section 53 or any other general or special law to the contrary, a
233 municipality that accepts this section may establish in the treasury a separate revenue account to
234 be known as the PEG Access and Streaming Entertainment Funds, into which may be deposited
235 funds received in connection with assessments derived from streaming entertainment providers.
236 Monies in the fund shall only be appropriated to support public, educational or governmental
237 access media centers.”

238 SECTION 3. Effective date.

239 This act shall take effect on January 1, 2022.



RUTHANNE FULLER
MAYOR

City of Newton, Massachusetts
Office of the Mayor

121-21

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rfuller@newtonma.gov

March 29, 2020

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

Councilors:

I respectfully submit a docket item to your Honorable Council requesting authorization to transfer the sum of \$146,257 from the Cabot Elementary School Owner's Contingency budget to the Architect & Consultants budget so that the additional design services costs can be reviewed for eligibility by the MSBA.

The details for the budget distribution are shown on the attached Budget Revision. Note that the total expenditure for the project will remain unchanged by this transfer. However, given the City of Newton's reimbursement rate for the Cabot Elementary School project is 40.22%, this transfer could yield up to \$60,000 of additional state funding depending on the MSBA's final review of the added costs.

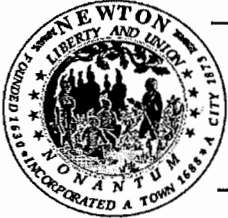
In accordance with the City's approved funding, transfers from the Owners Contingency may be made upon recommendation of the Mayor and approval of the City Council. Further details are provided in the attached letter from Commissioner Josh Morse.

Thank you for your consideration of this matter.

Sincerely,

Ruthanne Fuller
Mayor

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 2021 MAR 29 PM 4:31
 CITY CLERK
 NEWTON, MA. 02459



CITY OF NEWTON, MASSACHUSETTS
PUBLIC BUILDINGS DEPARTMENT
 52 ELLIOT STREET, NEWTON HIGHLANDS, MA 02461

Ruthanne Fuller, Mayor
 Josh Morse
 Building Commissioner

Telephone (617) 796-1600
 Facsimile (617) 796-1601
 TDD/tty # (617) 796-1608

January 28, 2021

Ruthanne Fuller, Mayor
 Newton City Hall
 1000 Commonwealth Avenue
 Newton Centre, MA 02459

RE: Cabot School Project – Budget Re-allocation Recommendation

Dear Mayor Fuller:

The Public Buildings Department and the Project OPM, NV5, are in the process of finalizing the closeout of the Cabot School Project with the Massachusetts School Building Authority, MSBA. As part of this process any budget re-allocations must be included with the final closeout documents.

Over the course of the project additional designer services were necessary to address unforeseen conditions and scope not anticipated at the time of the designer contract amendment. These additional services were primarily for geotechnical engineering and traffic consulting services. The additional services were authorized by the project team since they were necessary to keep the project moving forward and were funded from the Construction Contingency budget.

The MSBA Cabot School Project Scope and Budget agreement approved in January 2017 allocated funds for specific design scopes. In addition, an Owner's Contingency was established at \$360,000 for unexpected costs in excess of the established budgets or outside of the funded budget categories. Per the MSBA requirements, costs exceeding the budget categories for designer and administration fees, soft costs, must be funded with the Owner's Contingency in order to be eligible for reimbursement consideration.

Public Buildings and NV5 recommend that a transfer of \$146,257 from the Owner's Contingency budget to the Architect & Consultants budget be authorized so that the additional design services costs can be reviewed for eligibility by the MSBA. The details for the budget distribution are shown on the attached Budget Revision. Note that the total expenditure for the project will remain unchanged by this transfer, however, given the City of Newton's reimbursement rate for the Cabot Elementary School project is 40.22%, this could yield up to \$60,000 of additional state funding depending on the MSBA's final review of the added costs.

In accordance with the City's approved funding, transfers from the Owners Contingency may be made upon recommendation of the Mayor and approval of the City Council.

Sincerely,

Josh Morse
 Public Buildings Commissioner

cc: Maureen Lemieux, Chief Financial Officer
 Alex Valcarce, Deputy Buildings Commissioner

CITY OF NEWTON, MASSACHUSETTS
CABOT SCHOOL PROJECT

	ORIGINAL BUDGET BO 421-13	REVISIONS BO 66-16	REVISIONS BO 213-16	REVISIONS BO 358-16	PREVIOUS BUDGET APPROVED	PENDING	AMENDED BUDGET
TRANSFER- GENERAL FUND	10,000.00				10,000.00		10,000.00
BOND SALE PROCEEDS *	990,000.00	1,010,000.00	400,000.00	46,589,776.00	48,989,776.00		48,989,776.00
Total Financing Budget	\$ 1,000,000.00	\$ 1,010,000.00	\$ 400,000.00	\$ 46,589,776.00	\$ 48,999,776.00		\$ 48,999,776.00

Category

OPM (includes Pre-Construction & Construction Services)	\$ 225,000	\$ -	\$ 100,000	\$ 1,279,000	\$ 1,604,000	\$ -	\$ 1,604,000
Architect & Consultants (includes Pre-Construction Services)	\$ 525,000	\$ -	\$ 200,000	\$ 3,580,000	\$ 4,305,000	\$ 146,257	\$ 4,451,257
CM-At-Risk (includes Pre-Construction & Construction)	\$ -	\$ -	\$ -	\$ 36,370,776.00	\$ 36,370,776	\$ -	\$ 36,370,776
Change Orders	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 224,195	\$ 224,195
Environment & Site	\$ 200,000	\$ -	\$ 50,000	\$ (35,000)	\$ 215,000	\$ -	\$ 215,000
Other	\$ 50,000	\$ -	\$ 50,000	\$ 45,000	\$ 145,000	\$ -	\$ 145,000
Consultants	\$ -	\$ -	\$ -	\$ 75,000	\$ 75,000	\$ -	\$ 75,000
Furniture, Fixtures & Equipment	\$ -	\$ -	\$ -	\$ 810,000	\$ 810,000	\$ -	\$ 810,000
Computer & Related Equipment	\$ -	\$ -	\$ -	\$ 660,000	\$ 660,000	\$ -	\$ 660,000
Off Site Improvements	\$ -	\$ -	\$ -	\$ 1,545,000	\$ 1,545,000	\$ -	\$ 1,545,000
Moving	\$ -	\$ -	\$ -	\$ 55,000	\$ 55,000	\$ -	\$ 55,000
Utility Back Charges	\$ -	\$ -	\$ -	\$ 25,000	\$ 25,000	\$ -	\$ 25,000
Printing and Advertising Services	\$ -	\$ -	\$ -	\$ 20,000	\$ 20,000	\$ -	\$ 20,000
Construction Contingency **	\$ -	\$ -	\$ -	\$ 1,800,000	\$ 1,800,224	\$ (224,195)	\$ 1,576,029
Owners Contingency***	\$ -	\$ -	\$ -	\$ 360,000	\$ 360,000	\$ (146,257)	\$ 213,743
Land (acquisitions)	\$ -	\$ 1,010,000	\$ -	\$ -	\$ 1,010,000	\$ -	\$ 1,010,000
Total Expenditure Budget	\$ 1,000,000.00	\$ 1,010,000.00	\$ 400,000.00	\$ 46,589,776.00	\$ 49,000,000.00	\$ -	\$ 49,000,000.00

Maximum MSBA Total Facilities Grant	\$ 14,276,915
Estimated City Share	\$ 34,723,085

- * To be reduced by MSBA grant reimbursements
- ** Transfers for the construction contingency may be made with the prior approval of the Mayor
- *** Transfers from the owners contingency may be made upon the recommendation of the Mayor and approval of the City Council

Requested transfer from Owners Contingency to maximize MSBA grant reimbursement.

33.95	MSBA Base Reimbursement Rate (before incentives)
1.86	(0-2) Maintenance
1.00	(0-1) CM @ Risk
0.00	(0-6) Newly Formed Regional School District
1.65	(0-5) Major Reconstruction or Reno/Reuse type in rounded to 2 decimal places
0.00	(0-1) Overlay Zoning 40R and 40S
0.00	(0-0.5) Overlay Zoning 100 units or 50% of units 1,2, or 3 family structures
2.00	(0-2) Energy Efficiency - "Green Schools"
0.00	(5) Model Schools
6.51	Total Incentive Points
40.46	MSBA Reimbursement Rate

CITY OF NEWTON, MASSACHUSETTS
CABOT SCHOOL PROJECT

	ORIGINAL BUDGET BO 421-13	REVISIONS BO 66-16	REVISIONS BO 213-16	REVISIONS BO 358-16	PREVIOUS BUDGET APPROVED	CURRENT BUDGET	PENDING	AMENDED BUDGET
TRANSFER - GENERAL FUND	10,000.00				10,000.00	10,000.00		10,000.00
BOND SALE PROCEEDS *	990,000.00	1,010,000.00	400,000.00	46,589,776.00	48,989,776.00	48,989,776.00		48,989,776.00
Total Financing Budget	\$ 1,000,000.00	\$ 1,010,000.00	\$ 400,000.00	\$ 46,589,776.00	\$ 48,999,776.00	\$ 48,999,776.00		\$ 48,999,776.00
Category								
OPM (includes Pre-Construction & Construction Services)	\$ 225,000	\$ -	\$ 100,000	\$ 1,279,000	\$ 1,604,000	\$ 1,715,000		\$ 1,715,000
Architect & Consultants (includes Pre-Construction Services)	\$ 525,000	\$ -	\$ 200,000	\$ 3,580,000	\$ 4,305,000	\$ 4,403,395	\$ 146,257 \$ (146,247) \$ 146,247	\$ 4,549,642
CM-At-Risk (includes Pre-Construction & Construction)	\$ -	\$ -	\$ -	\$ 36,370,776.00	\$ 36,370,776	\$ 36,370,776		\$ 36,370,776
Change Orders	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 272,408	\$ 224,195	\$ 496,603
Environment & Site	\$ 200,000	\$ -	\$ 50,000	\$ (35,000)	\$ 215,000	\$ 215,000		\$ 215,000
Other	\$ 50,000	\$ -	\$ 50,000	\$ 45,000	\$ 145,000	\$ 152,995		\$ 152,995
Consultants	\$ -	\$ -	\$ -	\$ 75,000	\$ 75,000	\$ 75,000		\$ 75,000
Furniture, Fixtures & Equipment	\$ -	\$ -	\$ -	\$ 810,000	\$ 810,000	\$ 810,000		\$ 810,000
Computer & Related Equipment	\$ -	\$ -	\$ -	\$ 660,000	\$ 660,000	\$ 660,000		\$ 660,000
Off Site Improvements	\$ -	\$ -	\$ -	\$ 1,545,000	\$ 1,545,000	\$ 1,880,000		\$ 1,880,000
Moving	\$ -	\$ -	\$ -	\$ 55,000	\$ 55,000	\$ 55,000		\$ 55,000
Utility Back Charges	\$ -	\$ -	\$ -	\$ 25,000	\$ 25,000	\$ 25,000		\$ 25,000
Printing and Advertising Services	\$ -	\$ -	\$ -	\$ 20,000	\$ 20,000	\$ 20,000		\$ 20,000
Construction Contingency **	\$ -	\$ -	\$ -	\$ 1,800,000	\$ 1,800,224	\$ 829,189	\$ (224,195) \$ 146,247	\$ 751,241
Owners Contingency***	\$ -	\$ -	\$ -	\$ 360,000	\$ 360,000	\$ 506,237	\$ (146,257) \$ (146,247)	\$ 213,743
Land (acquisitions)	\$ -	\$ 1,010,000	\$ -	\$ -	\$ 1,010,000	\$ 1,010,000		\$ 1,010,000
Total Expenditure Budget	\$ 1,000,000.00	\$ 1,010,000.00	\$ 400,000.00	\$ 46,589,776.00	\$ 49,000,000.00	\$ 49,000,000.00	\$ -	\$ 49,000,000.00

Maximum MSBA Total Facilities Grant	\$	14,276,915
Estimated City Share	\$	34,723,085

- * To be reduced by MSBA grant reimbursements
- ** Transfers for the construction contingency may be made with the prior approval of the Mayor
- *** Transfers from the owners contingency may be made upon the recommendation of the Mayor and approval of the City Council

Requested transfer from Owners Contingency to maximize MSBA grant reimbursements

33.95	MSBA Base Reimbursement Rate (before incentives)
1.86	(0-2) Maintenance
1.00	(0-1) CM @ Risk
0.00	(0-6) Newly Formed Regional School District
1.65	(0-5) Major Reconstruction or Reno/Reuse type in rounded to 2 decimal places
0.00	(0-1) Overlay Zoning 40R and 40S
0.00	(0-0.5) Overlay Zoning 100 units or 50% of units 1,2, or 3 family structures
2.00	(0-2) Energy Efficiency - "Green Schools"
0.00	(5) Model Schools
6.51	Total Incentive Points
40.46	MSBA Reimbursement Rate

CITY OF NEWTON, MASSACHUSETTS
CABOT SCHOOL PROJECT

	ORIGINAL BUDGET BO 421-13	REVISIONS BO 66-16	REVISIONS BO 213-16	REVISIONS BO 358-16	PREVIOUS BUDGET APPROVED	CURRENT BUDGET	PENDING REQUEST (PER DOCKET LETTER TO MEET MSBA GUIDELINES)	INTERNAL ADJUSTMENTS TO EXISTING ACCOUNTS	AMENDED BUDGET
TRANSFER- GENERAL FUND	10,000.00				10,000.00	10,000.00			10,000.00
BOND SALE PROCEEDS *	990,000.00	1,010,000.00	400,000.00	46,589,776.00	48,989,776.00	48,989,776.00			48,989,776.00
Total Financing Budget	\$ 1,000,000.00	\$ 1,010,000.00	\$ 400,000.00	\$ 46,589,776.00	\$ 48,999,776.00	\$ 48,999,776.00			\$ 48,999,776.00
Category									
OPM (includes Pre-Construction & Construction Services)	\$ 225,000	\$ -	\$ 100,000	\$ 1,279,000	\$ 1,604,000	\$ 1,719,740			\$ 1,719,740
Architect & Consultants (includes Pre-Construction Services)	\$ 525,000	\$ -	\$ 200,000	\$ 3,580,000	\$ 4,305,000	\$ 4,403,385	\$ 146,257	\$ (146,257)	\$ 4,403,385
CM-At-Risk (includes Pre-Construction & Construction)	\$ -	\$ -	\$ -	\$ 36,370,776.00	\$ 36,370,776	\$ 36,370,776			\$ 36,370,776
Change Orders	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 484,826			\$ 484,826
Environment & Site	\$ 200,000	\$ -	\$ 50,000	\$ (35,000)	\$ 215,000	\$ 215,000			\$ 215,000
Other	\$ 50,000	\$ -	\$ 50,000	\$ 45,000	\$ 145,000	\$ 152,995			\$ 152,995
Consultants	\$ -	\$ -	\$ -	\$ 75,000	\$ 75,000	\$ 76,092			\$ 76,092
Furniture, Fixtures & Equipment	\$ -	\$ -	\$ -	\$ 810,000	\$ 810,000	\$ 810,000			\$ 810,000
Computer & Related Equipment	\$ -	\$ -	\$ -	\$ 660,000	\$ 660,000	\$ 660,000			\$ 660,000
Off Site Improvements	\$ -	\$ -	\$ -	\$ 1,545,000	\$ 1,545,000	\$ 1,880,000			\$ 1,880,000
Moving	\$ -	\$ -	\$ -	\$ 55,000	\$ 55,000	\$ 60,945			\$ 60,945
Utility Back Charges	\$ -	\$ -	\$ -	\$ 25,000	\$ 25,000	\$ 25,000			\$ 25,000
Printing and Advertising Services	\$ -	\$ -	\$ -	\$ 20,000	\$ 20,000	\$ 20,000			\$ 20,000
Construction Contingency **	\$ -	\$ -	\$ -	\$ 1,800,000	\$ 1,800,224	\$ 751,241		\$ 146,257	\$ 897,498
Owners Contingency***	\$ -	\$ -	\$ -	\$ 360,000	\$ 360,000	\$ 360,000	\$ (146,257)		\$ 213,743
Land (acquisitions)	\$ -	\$ 1,010,000	\$ -	\$ -	\$ 1,010,000	\$ 1,010,000			\$ 1,010,000
Total Expenditure Budget	\$ 1,000,000.00	\$ 1,010,000.00	\$ 400,000.00	\$ 46,589,776.00	\$ 49,000,000.00	\$ 49,000,000.00	\$ -	\$ -	\$ 49,000,000.00

Maximum MSBA Total Facilities Grant	\$	14,276,915
Estimated City Share	\$	34,723,085

* \$224,195 is the total of the MSBA BRR document

* To be reduced by MSBA grant reimbursements

** Transfers for the construction contingency may be made with the prior approval of the Mayor

*** Transfers from the owners contingency may be made upon the recommendation of the Mayor and approval of the City Council

Requested transfer from Owners Contingency to maximize MSBA grant reimbursements

	MSBA Base Reimbursement Rate (before incentives)
33.95	(0-2) Maintenance
1.86	(0-1) CM @ Risk
1.00	(0-6) Newly Formed Regional School District
0.00	(0-5) Major Reconstruction or Reno/Reuse type in rounded to 2 decimal places
1.65	(0-1) Overlay Zoning 40R and 40S
0.00	(0-0.5) Overlay Zoning 100 units or 50% of units 1,2, or 3 family structures
0.00	(0-2) Energy Efficiency - "Green Schools"
2.00	(5) Model Schools
0.00	
6.51	Total Incentive Points
40.46	MSBA Reimbursement Rate

CITY OF NEWTON

IN CITY COUNCIL

DRAFT

ORDERED:

That, in accordance with the recommendation of the Public Facilities Committee through its Chair Alison M. Leary and the Finance Committee through its Chair Rebecca Walker Grossman, a transfer of funds in the amount of one hundred forty-six thousand two hundred and fifty-seven dollars (\$146,257) from the Cabot Elementary School Owner’s Contingency budget to the Architect & Consultants budget so that the additional design services costs can be reviewed for eligibility by the MSBA be and is hereby approved as follows:

FROM:	Cabot Owners Contingency (7367S009-58SB40).....	\$146,257
TO:	Cabot Consultants (7367S009-530100).....	\$146,257

Under Suspension of Rules
Readings Waived and Approved
DRAFT

(SGD) NADIA H KHAN

Acting City Clerk

(SGD) RUTHANNE FULLER

Mayor

Date: _____



REC
2021 MAR 22 PM 5:02
Ruthanne Fuller
Mayor
CITY CLERK
NEWTON, MA. 02459

City of Newton, Massachusetts

Office of the Mayor

119-21

Telephone
(617) 796-1100

Fax
(617) 796-1113
TDD/TTY

(617) 796-1089

Email
rfuller@newtonma.gov

March 22, 2021

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Honorable City Councilors:

I respectfully submit this docket item to this Honorable Council requesting the authorization to accept and expend \$199,919.92 in grant funding from MassDOT's Shared Winter Streets and Spaces grant to purchase and install four Blue Bikes Stations with bicycles.

This is the second of two Shared Streets grants we have received from MassDOT. We have fully completed the first project, which installed two Blue Bikes stations by the deadline of October 9, 2020. The City will not be responsible for the operating costs for the project.

The grant requires quick implementation of the four additional stations with a deadline of May 31, 2021. We are contracted with Motivate as our operations partner and they have assured us they have the inventory and staffing to complete this project with us.

The City used state grants in 2020 to put BlueBikes stations at several locations:

- 2 in Newton Centre
- 2 in Newton Corner
- Nonantum at former library
- Washington St. & Crafts St. (near Whole Foods)
- West Newton Square
- West Newton – Armory Building (this will be moved to Watertown/Albemarle intersection for better usage)

In 2021 we will use be using state grant programs and private funding for additional locations near these areas:

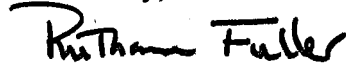
- Newton Highlands
- Needham Street
- Eliot T Station
- Beacon St. & Walnut St.
- California/Bridge/Chapel St. Area
- Auburndale
- Boston College T Station
- Newtonville – Washington St. & Walnut St.

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2021 MAR 22 PM 5:02
CITY CLERK
NEWTON, MA. 02459

The guiding principles in placing stations include maximizing ridership by choosing the most promising anchor locations based on Lime Bike data and addressing BlueBikes operations and rebalancing issues. Stations with continued low ridership will be moved to better locations if needed.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Ruthanne Fuller". The signature is written in a cursive style with a large initial "R".

Mayor Ruthanne Fuller



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

MEMORANDUM

Date: March 2, 2021
To: Mauren Lemiux, Chief Financial Officer
From: Nicole Freedman, Director of Transportation Planning
Cc: Jonathan Yeo, Chief Financial Officer Barney Heath, Director of Planning
Subject: Request to Docket Item to Accept MassDOT Shared Streets and Spaces Grant

We request approval to accept and expend \$199,919.92 in grant funding from MassDOT's Shared Winter Streets and Spaces grant for the following project: Purchase and installation of 4 Blue Bikes Stations with bicycles. (Please note, this is the second of two Shared Streets grants we have received from MassDOT. We have fully completed the first project, which installed 2 Bluebikes stations by the deadline of October 9, 2020). The City will not be responsible for operating costs for the project

The grant requires quick implementation, with a deadline of May 31, 2020 unless in extenuating circumstances. We are already contracted with Motivate as our operations partner and they have assured us they have the inventory and staffing to complete this project with us.

Attached:

- Award Letter
- Motivate Contract



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Stephanie Pollack, MassDOT Secretary & CEO



March 1, 2021

Nicole Freedman
Planning Department
1000 Commonwealth Avenue
Newton, MA 02459
nfreedman@newtonma.gov

Dear Nicole Freedman:

Thank you for submitting a project application to the MassDOT Shared Winter Streets and Spaces Program. Your project application has been reviewed, and we are pleased to notify you that your "Shared Mobility" project has been approved for funding. We received many applications and had a competitive applicant pool from which to select, and your application stood out. Newton's Shared Mobility project will be funded at \$199,919.92 under Chapter 90 Contract Number/ MMARS #50910. Ongoing maintenance, operational, and enforcement costs associated with a project are not eligible uses of this funding.

The Shared Winter Streets and Spaces Program is intended to support projects that promote public health, safe mobility, and renewed commerce by quickly providing new or repurposed space for socially-distanced walking, bicycling, dining, retail, and bus travel. Because of the urgency of this effort, the Newton project will need to be fully implemented by Monday, May 31, 2021. Please note that any pavement markings or signage included in your project that are not compliant with the Manual on Uniform Traffic Control Devices should be used with caution, and only on a temporary basis. Please feel free to contact the Shared Streets Team to discuss this issue in more detail, if needed.

By June 30, 2021, a report detailing lessons learned from the project must be submitted to MassDOT. We also ask that you document the project's progress by taking before, during and after photos of your Shared Winter Streets & Spaces installation. Grant recipients may also be invited to participate in a learning exchange with other municipalities to share experiences. MassDOT will work directly with you to determine the best evaluation process for your particular project.

We are excited to work with you and the full Newton team as this project advances.

Sincerely,

Jamey Tesler

Acting Secretary and CEO

BIKE SHARE AGREEMENT

This agreement (“**Agreement**”), effective as of the Effective Date (as defined below), is entered by and between Motivate Massachusetts, LLC, a Delaware limited liability company with a principal place of business at 185 Berry Street, Suite 5000, San Francisco, CA 94107 (“**Motivate**”) and the City of Newton acting by and through its Director of Planning and Development or his designee, but without personal liability to him, with a principal place of business at 1000 Commonwealth Avenue, Newton, MA 02459 (the “**City**”). The City and Motivate may be referred to herein individually as a “**Party**” or jointly as the “**Parties**.”

RECITALS

WHEREAS, the City endeavors to create a reliable, sustainable, accessible bicycle transportation system and believes a robust bicycling culture is related to the long-term health and economic success of its residents and businesses; and

WHEREAS, on or about August 15, 2016, the Metropolitan Area Planning Council (“**MAPC**”) an independent public body of the Commonwealth, on behalf of the City of Boston, the City of Cambridge, the City of Somerville, and the Town of Brookline, and pursuant to G.L. c. 7, § 22A, issued a Request for Proposals to operate a regional bicycle sharing system (“**RFP**”) and Motivate was selected on October 19, 2016 as offering the most advantageous proposal; and

WHEREAS, the City, as an MAPC region municipality, is eligible to contract with Motivate, as the successful respondent to the RFP, to join the System (as defined below);

NOW THEREFORE, in consideration of the respective covenants and promises contained herein, the Parties agree as follows:

1. DEFINITIONS

Defined Terms. As used herein, the terms below have the following meanings. Any of such terms, unless the context otherwise requires, may be used in the singular or plural, depending upon the reference.

“**Bicycle**” means a bicycle that is part of the Newton System.

“**Bike Share System**” means the System and any other program offering a fleet of ten (10) or more bicycles to users on a self-service basis for point-to-point rentals which involves use of property under jurisdiction or ownership of the City.

“**Boston Area Regional Bike Share Governance Council**” or “**Council**” means the assembly of Participating Municipalities to govern and coordinate the activities of the Regional Bike Share System and make decisions regarding its overall operation.

“**Dock**” means each locking mechanism contained on each Station designed to receive a Bicycle for locked storage.

“**Effective Date**” means the date this Agreement is signed by the Mayor of the City of Newton which shall occur only after this Agreement has been signed by Motivate’s authorized representative.

“**Intellectual Property**” means (a) trade dress, trademarks, trade names, service marks, copyrights, logos, taglines, patents, slogans, color schemes, designs or other valuable marks, whether common law or registered, state or federal or other jurisdiction, (b) patents, patent rights or applications, trade secrets, all forms of protection applicable to inventions, conceptions, methods, procedures, processes, designs, works

of authorship, derivative works, algorithms, and utility models or (c) other forms of intellectual or industrial property under the laws of any jurisdiction.

“Participating Municipalities” or “PMs” means the municipalities participating in the System.

“Station” means a designated area in which users of the Newton System may end a ride, and which may include equipment to which bicycles are able to be locked.

2. SERVICES

2.1. **Services.** Motivate agrees to perform the services set forth in Exhibit A attached hereto, (collectively, the **“Work”**) for the City’s portion of the System (as defined below) (the **“Newton System”**), subject to the terms and conditions of this Agreement. Except as otherwise set forth herein, including in Section ERROR! REFERENCE SOURCE NOT FOUND., Motivate shall be responsible for all costs of performing the Work.

2.2. **Regional Nature of System.** The metro-Boston bike share system (**“System”**), also known as the “Bluebikes System,” is a pre-existing system that operates in municipalities outside the jurisdiction of the City of Newton, namely in the municipalities of Boston, Brookline, Cambridge, Everett and Somerville (the **“Existing Municipalities”**). The operation of the Newton System will be subject to the terms of a Memorandum of Agreement among Motivate and the Existing Municipalities, among others, when fully executed. Nothing contained in this Agreement shall alter the rights or obligations of Motivate or the Existing Municipalities under any of the city-specific Program Agreements with each Existing Municipality.

2.3. **Exclusivity.** City hereby grants to Motivate an exclusive license to operate a Bike Share System within the boundaries of the City of Newton during the Term (**“License”**). City covenants and agrees that in furtherance of the License, it will not license, authorize or permit another entity to operate a Bike Share System during the Term, and further covenants and agrees to take all reasonable steps, including enforcing any applicable laws, to protect the exclusivity of Motivate’s License.

3. FEES; EQUIPMENT; REVENUES

3.1. **Start-Up Fee.** On the Effective Date, Motivate will invoice City for a start-up fee of one hundred thousand dollars (\$100,000) (the **“Start-Up Fee”**). Invoices shall be paid by the City within forty-five (45) days of the date on which the system becomes available for customer usage.

3.2. **Equipment Deployment.** As part of this Agreement the City hereby enters into a no-cost lease with Motivate for the use of and operational responsibility for six (6) Stations with eleven (11) Docks each and thirty-eight (38) Bicycles (**“Start-Up Equipment”**), valued at two hundred twenty-four thousand two hundred fifty-seven dollars and sixty cents (\$224,257.60), owned by the City for the exclusive use of the City’s bikeshare system. Consideration for the no-cost lease of the Start-Up Equipment with a purchase option shall be the value to Motivate to operate an exclusive bikeshare system within the City, and the value to the City for Motivate’s operational responsibilities for the exclusive bikeshare system. Nothing in this Agreement shall limit Motivate’s right to upgrade the Start-Up Equipment with additional equipment of the same type offered under this Agreement throughout the Term. Upon the expiration or termination of this Agreement, the lease between Motivate and the City shall be automatically terminated. Upon such expiration or termination, Motivate shall have the option to purchase the Start-Up Equipment so owned by the City for the purchase price of \$1.00 per Station and Bicycle. City may fund the deployment of additional Stations and Bicycles for the costs set forth in the Pricing Schedule to the Boston Program Agreement, a current copy of which is attached hereto as Exhibit C, subject to Section 4.1 below.

3.3. **System Revenues.** Motivate will collect and retain all revenues generated by the Newton System, including user revenue and sponsorship revenue.

3.4. **Sponsorship.** The City hereby grants Motivate the exclusive right throughout the Term to (i) sell and place sponsorships and advertising, including title sponsorship, on all physical and digital assets of the Newton System, including Bicycles, Stations, vehicles, uniforms, website, mobile app, and subscriber communications; and (ii) collect all revenues generated by such sponsorship and advertising. All advertising will comply with the requirements of MassDOT Office of Outdoor Advertising and all local ordinances and regulations.

4. OWNERSHIP; INTELLECTUAL PROPERTY

4.1. **Ownership.** Subject to Section 3.2, the City is the sole owner of, and holds title to, the Start-Up Equipment. Motivate is the sole owner of, and holds title to, any additional components of the Newton System, including any bicycle share equipment, spare parts, tools and other materials, except that any such components shall be owned by the City if purchased with the City's funds.

4.2. **Intellectual Property Rights.** All right, title, and interest in and to any Intellectual Property developed under this Agreement by Motivate will be the exclusive property of Motivate. Motivate does not convey to City, nor does City obtain, any right to any Intellectual Property owned by Motivate.

5. TERM AND TERMINATION; DEFAULT

5.1. **Term.** The Work hereunder will commence on the date on which the system becomes available for customer usage (the "**Start Date**") and shall remain in effect, unless extended or earlier terminated in accordance with the terms of this Agreement, until the earlier of (i) the second anniversary of the Start Date and (ii) the expiration or earlier termination of the agreement (the "**Boston Program Agreement**") between Motivate and the City of Boston for operation of Boston's share of the System ("**Term**").

5.2. **Extension of Term.** If average monthly trips in Newton over the Term, as measured sixty (60) days before the second anniversary of the Start Date, is at least 1,750 trips, then the Term shall, upon approval of the City's authorized governing body, extend until the earlier of (i) the fourth anniversary of the Start Date and (ii) the expiration or earlier termination of the Boston Program Agreement. For the purposes of this section, the number of trips in Newton shall be calculated as one half of the sum of the number of trips starting at stations in Newton and the number of trips ending at stations in Newton.

5.3. **Termination.**

5.3.1. **Material Breach.** If either Party materially breaches this Agreement, then the non-breaching Party will give the breaching Party written notice of such breach and 90 days to cure such breach. If the breaching Party fails to cure such breach by the expiration of such 90-day period, then the non-breaching Party will have the right to give the breaching Party a written notice of termination, including the date when the termination will be effective, which date shall be at least 30 days after the date of such notice.

5.3.2. **Sole Remedies.** Notwithstanding anything to the contrary herein, the sole remedy of the City against Motivate for breach of this Agreement, excluding a breach of Article VIII, or for failure to provide the Services satisfactorily, is to terminate this Agreement in accordance with Section 5.3.1. In no

event will Motivate be liable for damages of any kind for breach of this Agreement, other than a breach of Article VIII, or for failure to provide the Services satisfactorily.

5.3.3. Equipment Removal. Motivate shall remove all components of the Newton System owned by Motivate within 90 days after expiration or termination of this Agreement.

6. REPRESENTATIONS AND WARRANTIES

6.1. **The City's Representations and Warranties.** The City hereby warrants and represents to Motivate as of the Effective Date:

6.1.1. The City has the legal power, right, and authority to enter into this Agreement, and the persons executing this Agreement on the City's behalf have the legal power, right, and authority to bind the City to the terms and conditions of this Agreement.

6.1.2. This Agreement is a valid, legally binding obligation of and enforceable against the City in accordance with its terms and execution of this Agreement by the City will not cause a breach of any other agreement to which the City is a party.

6.1.3. The City is self-insured for all of its liability and employee injury losses, and is self-insured for all of its property losses, subject to any limitation of the City's liability pursuant to Mass. G.L. ch. 258 s. 1 et. Seq. The City has sufficient financial reserves to cover its self-insured costs, including its obligations and liabilities in connection with this Agreement.

6.2. **Motivate's Representations and Warranties.** Motivate hereby warrants and represents to the City as of the Effective Date:

6.2.1. Motivate has the legal power, right, and authority to enter into this Agreement, and the persons executing this Agreement on Motivate's behalf have the legal power, right, and authority to bind Motivate to the terms and conditions of this Agreement.

6.2.2. This Agreement is a valid, legally binding obligation of and enforceable against Motivate in accordance with its terms and execution of this Agreement by Motivate will not cause a breach of any other agreement to which Motivate is a party.

6.2.3. Motivate shall perform its obligations hereunder in a good and workmanlike manner, in conformance with this Agreement, and in accordance with customary professional and/or industry standards.

6.2.4. Motivate warrants that each of Motivate's employees assigned to perform the Work have the proper skill, training, and background to be able to perform the Work in a competent, timely, and professional manner and that all Work shall be so performed.

7. INSURANCE

7.1. **Insurance Coverage.** Motivate will, at its own expense, obtain and maintain in effect at all times during the Term at least the following insurance coverages:

7.1.1. Worker's Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 for each accident, and any and all other coverage of Motivate's employees as may be required by applicable law.

7.1.2. Commercial General Liability, including but not limited to, product and completed

operations, personal and advertising injury and contractual liability coverage with minimum limits of \$1,000,000 each occurrence; \$2,000,000 general aggregate.

7.1.3. Commercial Automobile Liability Insurance with limits of \$1,000,000 for each accident for third party bodily injury and property damage, including Uninsured/Underinsured motorist coverage with limits in accordance with local regulations.

7.2. **Certificates of Insurance.** On the Effective Date, Motivate will deliver to the City certificates of insurance verifying the aforementioned coverages.

8. INDEMNIFICATION AND LIMITATION OF LIABILITY

8.1. **Hold Harmless and Indemnification.** Motivate agrees to defend, indemnify and hold harmless the City, its officers, agencies, departments, agents, and employees (each, an “**Indemnified Party**”; and collectively, “**Indemnified Parties**”) from and against any and all claims, demands, causes of action, or suits brought by third parties (“**Claims**”), and all losses, liabilities, penalties, fines, forfeitures, costs and expenses arising from or incidental to any Claims (including cost of defense and attorneys’ fees) (collectively, with Claims, “**Liabilities**”), resulting from or arising out of the negligence or willful misconduct of Motivate, Motivate’s officers, employees, agents, servants, subcontractors, or any other person acting for or on behalf of Motivate in performance of this Agreement.

8.2. **Exclusions.** Notwithstanding the foregoing, the following shall be excluded from Motivate’s indemnification and defense obligations contained in the preceding paragraph: any Liabilities to the exact extent resulting from, or arising out of, (i) the negligence or willful misconduct of any Indemnified Party; (ii) Motivate’s complying with the written directives or written requirements of the City or the Council, if Motivate has previously objected to such written directives or requirements; or (iii) the condition of any public property outside of the perimeter of a Station and not otherwise controlled by Motivate. If any Claim against Motivate includes claims that are covered by clauses (ii) or (iii) of the preceding sentence or claims contesting the City’s authority to issue a permit for a Station, then each Party shall be responsible for its own defense against such claims. To whatever extent that any liability results or arises out of the condition of any public property outside of the perimeter of a Station, any liability attributable to the City shall be governed by the provisions of Massachusetts General Laws ch. 84 s. 15 and/or Massachusetts G.L. ch. 21 s. 17C as applicable.

8.3. **Indemnification Procedure.** The indemnification obligation under this section shall not be limited by the existence of any insurance policy and shall survive the termination of this Agreement. The City agrees to give Motivate written notice of any claim of indemnity under this section. Additionally, Motivate shall have the right and sole authority to control the defense or settlement of such claim, provided that no contribution or action by the City is required in connection with the settlement. Monies due or to become due to Motivate under this Agreement may be retained by the City as necessary to satisfy any outstanding claim which the City may have against Motivate.

8.4. **Limitation of Liability.** To the maximum extent permitted by any applicable law, in no event will any Party be liable to the other Party in any manner whatsoever for any special, indirect, incidental, exemplary, punitive, aggravated or consequential damages, losses or liabilities (including without limitation lost profits or savings or goodwill) howsoever caused arising out of the obligations hereunder or otherwise relating to or in connection with this Agreement, whether in contract, tort (including negligence) or any other statutory or common law basis, notwithstanding that such Party has, or its directors, officers, employees, subcontractors, suppliers or agents have, been advised of the possibility of such damages, losses or liabilities.

9. MISCELLANEOUS

9.1. **Confidentiality.** Subject to the terms and conditions herein and all laws, each Party (a "Receiving Party") agrees that it shall not, directly or indirectly, use, make available, sell, disclose, disseminate, or otherwise communicate to any person, in whole or in part, other than in the course of such Party's performance of its obligations hereunder, either during the Term or any time thereafter, any Confidential Information. The foregoing shall not apply to any information that: (i) was known to the public prior to its disclosure by the Receiving Party; or (ii) the Receiving Party is required to disclose by law, regulation or legal process. As used herein, "Confidential Information" means with respect to each Party, the finances, agreements, business operations, trade secrets, plans, proceedings, market strategies, media and promotional activities or other non-public information of the Party disclosing such information (the "Disclosing Party"), whether disclosed orally, in writing, or through another medium, by the Disclosing Party's officers, employees, agents or other persons. Where the City is of the understanding that release of Confidential Information is required by law, the City shall give Motivate notice of its intent to release such Confidential Information and at least ten (10) business days to seek appropriate relief, including but not limited to seeking and obtaining an order issued by a Court of competent jurisdiction to prevent or restrain such release. If legal action is filed against the City for failing, delaying, or refusing to turn over Confidential Information requested by a third party under the Massachusetts Public Records Law (G.L. ch. 66, s. 10), Motivate agrees to defend, indemnify and hold harmless the City, its officers, agencies, department, agents, and employees from and against any and all claims, demands, causes of action, or suits brought by third parties, including all losses, liabilities, penalties, fines, forfeitures, costs, expenses and attorneys' fees resulting from said legal action, provided that City has first consulted Motivate and allowed Motivate the opportunity to direct the City to act in such a way as to avoid any such liability.

9.2. **Governing Law.** This Agreement shall be governed exclusively by the internal laws of the United States and of the Commonwealth of Massachusetts applicable to contracts made, accepted and performed wholly within said Commonwealth, without regard to application of principles of conflict of laws.

9.3. **Survival.** In addition to any payment obligation hereunder, all provisions of this Agreement that by their terms survive the expiration or any termination of this Agreement, together with all other provisions of this Agreement that may be reasonably construed as surviving the expiration or any termination of this Agreement, shall survive the expiration or any termination of this Agreement.

9.4. **Notices.** Except as otherwise provided herein, all notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to:

If to Motivate: Motivate Massachusetts, LLC
c/o Lyft, Inc.
185 Berry Street, Suite 5000
San Francisco, CA 94107
Attn: LBS Legal

If to the City: City of Newton
1000 Commonwealth Avenue
NEWTON, MA 024590
Attn: Director of Planning and Development

Copy to: City Solicitor

or to such other place and with such other copies as any Party may designate as to itself by written notice to the others.

9.5. **Entire Agreement; Amendments and Waivers.** This Agreement, together with the exhibits hereto, constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. Any information set forth herein or in any exhibit hereto shall be considered set forth on each other exhibit for purposes of this Agreement. No waiver of the provisions of this Agreement, or any breach thereof, shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, or shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

9.6. **Counterparts; Severability.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument and the remaining provisions shall remain in full force and effect. To the extent permitted by applicable law, any such provision will be restricted in applicability or reformed to the minimum extent required for such provision to be enforceable. This provision will be interpreted and enforced to give effect to the original written intent of the Parties prior to the determination of such invalidity or unenforceability.

9.7. **Construction; Incorporation.** The headings of the articles, sections, and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof. All sections and article references are to this Agreement, unless otherwise expressly provided. As used in this Agreement, (a) "hereof", "hereunder", "herein" and words of like import shall be deemed to refer to this Agreement in its entirety and not just a particular section of this Agreement, and (b) unless the context otherwise requires, words in the singular number or in the plural number shall each include the singular number or the plural number, words of the masculine gender shall include the feminine and neuter, and, when the sense so indicates, words of the neuter gender shall refer to any gender. The Parties acknowledge and agree that: (i) this Agreement is the result of negotiations between the Parties and shall not be deemed or construed as having been drafted by any one Party, (ii) each Party and its counsel have reviewed and negotiated the terms and provisions of this Agreement (including, without limitation, any exhibits attached hereto) and have contributed to its revision, (iii) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and (iv) the terms and provisions of this Agreement shall be construed fairly as to all Parties and not in favor of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement.

9.8. **Relationship of the Parties.** Motivate is an independent contractor and neither Motivate nor its employees shall, under any circumstances, be considered employees, servants, or agents of the City, nor shall the City or its agents or employees be considered employees, servants, or agents of Motivate. At no time during the performance of the Work or otherwise, shall Motivate, its employees, or agents, represent to any person or entity that Motivate and its employees are acting on behalf of, or as agents of, the City or any of its employees. The City will not withhold payments to Motivate for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Motivate. The City will not provide to Motivate any insurance coverage or other benefits, including Workers' Compensation, normally provided by the City for its employees. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture or grant of a franchise between the Parties.

9.9. **Cooperation.** The Parties agree to execute such further instruments and to take such further action as may reasonably be necessary or helpful to carry out the intent of this Agreement.

9.10. **Failure or Delay in Performance; Force Majeure.** Neither Party shall be held responsible for failure to perform its duties and responsibilities hereunder if such failure is due to a “**Force Majeure Event**,” which means a strike, fire, riot, rebellion, or other force or event beyond the control of such Party, that make performance impossible or illegal, unless otherwise specified in this Agreement; provided, however, that such Party (in order to not be held responsible for failure to perform) notifies the other Party of such event within forty-eight (48) hours of its commencement.

9.11. **Non-Discrimination.** Motivate agrees that in its operations/implementation of the System it will not discriminate against any employee or applicant for employment on the basis of race, color, sex, gender identity or expression, sexual preference, disability, marital status, family status, military status, age, religion, national origin, or source of income.

9.12. **Ethics in Public Contracting.** This Agreement incorporates all local, state, and federal law, regulations and rules related to ethics, conflicts of interest, or bribery. Motivate certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

9.13. **Remedies.** The remedies available to the Parties in various sections of this Agreement shall be deemed to be in addition to, and not in limitation of, any other remedies either Party has or may have under applicable law or in equity arising out of or relating to this Agreement.

9.14. **Assignment.** Motivate may assign this Agreement to an affiliate of Motivate that is registered with the Secretary of State, without the consent of the City.

9.15. **News Releases and Public Announcements.** Subject to the terms hereof, the Parties shall work together (and with the Council, if applicable) to issue press releases, written public statements, and respond in writing to media inquiries regarding this Agreement and the System.

9.16. **Precedence.** The terms and conditions set forth in this Agreement shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, any attachment to this Agreement, or like document.

[Signatures on following page]

IN WITNESS WHEREOF, Motivate and the City have executed this Agreement as of the Effective Date.

MOTIVATE:

MOTIVATE MASSACHUSETTS, LLC

DocuSigned by:
Dor Levi
By: AS6795EDE28541A
Name: Dor Levi
Title: Head of Lyft Bikes & Scooters

Date: 8/3/2020

CITY:

CITY OF NEWTON

Digitally signed by Barney S. Heath
By: Barney S. Heath
Name: Barney Heath
Title: Director of Planning and Development

Date: _____

I certify that funds are available within
Account No. 0111475 527500 in the amount of \$20,000
for this AGREEMENT.

Susan Dzikowski
Comptroller of Accounts

Date: 9/10/20

APPROVED AS TO LEGAL FORM AND CHARACTER:

Digitally signed by Andrew Lee
By: Andrew Lee
Assistant City Solicitor

Date: _____

CONTRACT APPROVED

Digitally signed by Mayor Ruthanne Fuller
Mayor Ruthanne Fuller
Ruthanne Fuller, Mayor

EXHIBIT A: SERVICES

1. Description of Services. Motivate will operate the Newton System according to the description of services set forth in this Exhibit A.
2. Equipment Deployment.
 - 2.1. Motivate will inspect and store all new equipment prior to deployment.
 - 2.2. Motivate will be responsible for deployment of all equipment.
 - 2.3. Motivate shall obtain all necessary permits and approvals prior to undertaking the services set forth herein. The City shall pay all application and permit fees associated with approvals and permits from the City.
 - 2.4. All Bicycles and all Stations shall comply with the applicable requirements of local ordinance.
3. Operations.
 - 3.1. Continuous Operation and Management. Except as otherwise stated herein, and subject to scheduled downtime, the Newton System will commence operating within six (6) months of the Effective Date, but no earlier than June 1st, 2020, and will remain in operation 24 hours per day, 365 days per year.
 - 3.2. Inspection and Maintenance.
 - 3.2.1. Motivate will, at all times, follow and comply with the manufacturer's requirements, warranties, and recommendations for assembly, maintenance (including the provision of spare parts), storage and repair of all Newton System equipment.
 - 3.2.2. Motivate will perform regular maintenance checks for each Bicycle, with deficient elements repaired or replaced as necessary.
 - 3.2.3. Motivate will clean each Station as necessary.
 - 3.2.4. Motivate will remove conspicuous graffiti promptly after notification by the City.
 - 3.2.5. Motivate will remove conspicuous accumulations of litter from Stations promptly after notification by the City.
 - 3.3. Distribution of Bicycles. Motivate will re-distribute Bicycles within the Newton System service area throughout the day during each day of operation. All Bicycles placed in service will be in good operating condition.
 - 3.4. Customer Service. Motivate will provide to all subscribers, and the public at large, contact information for Motivate's customer service center.
 - 3.4.1. Motivate will provide the City a .jpeg image of the Bluebikes program mark, subject to any approvals required by the owner(s) of such mark, for the City's promotion of the Newton System on Newton's 311 Facebook and Twitter Page and the City's website.

3.5. Comments and Complaints. Motivate will establish and maintain during the Term prompt and efficient procedures for handling complaints from the public for which Motivate receives a notification. Such procedures will be consistent with all applicable laws, rules and regulations and the provisions of this section.

3.6. Reporting. Motivate will provide the City access to the same System ridership reporting tools it provides to the city of Boston. The City will also be included in the System GBFS feed.

3.7. Marketing. The City will be included in all System marketing campaign discussions.

3.8. Data Privacy. Motivate will adhere to the same data privacy practices for the Newton System as it does for the Bluebikes system in the city of Boston.

3.9. System Website. Motivate will maintain a System website.

3.10. Motivate Staffing Levels. Motivate, at all times, will provide sufficient staff to efficiently and promptly provide the services set forth in this Agreement.

3.11. Station Siting. Unless Motivate agrees otherwise, the Parties shall ensure that Stations are placed no more than one-third of a mile apart, and no more than one-third of a mile from an existing Bluebikes station. Motivate and the City shall mutually agree on exact Station locations that meet these criteria and serve dense, mixed use areas. The exact locations of the Stations are subject to the written approval of the City's Commissioner of Public Works and Commissioner of Parks and Recreation, which approval will not be unreasonably withheld.

3.12. Relocation, Resizing, and/or Reconfiguration of Stations.

3.12.1. By Motivate. In the event that Motivate wishes to remove, relocate, resize, and/or reconfigure any Station, other than those Stations whose locations are fixed pursuant to the terms of a grant or sponsorship agreement, due to under-utilization or lack of profitability, Motivate may remove, relocate, resize, and/or reconfigure the Station provided, however, that Motivate provides the City with written evidence to support the change and a plan to implement such change, including the time such change will be implemented and the locations involved; the City shall not unreasonably withhold its approval of such relocation plan. Such change as described in this paragraph, if approved, shall be at no cost to the City.

3.12.2. By City. If City requires that a Station or parts thereof be relocated to accommodate unexpected commuting patterns, construction or other reasons, then at the request of City, Motivate will adjust the placement or configuration of a Station. City will compensate Motivate as set forth in Exhibit B to this Agreement.

3.12.3. By Private Property Owner. Private property owners or contractors doing private construction on public or private property may request that a Station or parts thereof be relocated to accommodate such construction or other reasons. At the request of the property owner, Motivate will adjust the placement or configuration of a Station. The property owner will compensate Motivate as set forth in Exhibit B to this Agreement. Motivate will invoice and collect payment from a private property owner prior to any such moves.

3.13. Interruption of Service.

3.13.1. Intentional Interruption of Service. If, at any time, Motivate intends, or is required, to temporarily interrupt all or a portion of the service, for any reason beyond Motivate's reasonable control, including, without limitation, weather, safety, or other event or circumstance where continued service

would be unsafe, unavailable, impractical, or impossible, then Motivate will notify City at least 24 hours before the interruption of service.

3.13.2. Unintentional Interruption of Service. If, at any time, a System malfunction or an event or circumstance occurs where continuous service would be unsafe or unavailable for reasons beyond Motivate's reasonable control, and this causes or will cause a temporary interruption of service, then Motivate will immediately notify City.

3.13.3. Operations in Inclement Weather. In coordination with the City, Motivate may remove Bicycles in anticipation of a Major Snow Event that may result in damage to the Bicycles or other accessory equipment. Motivate will remove Bicycles at the reasonable request of the City and make reasonable efforts to remove bicycles from locations requested by the City, but in no case will Motivate be obligated to remove more than 25% of Bicycles. A "Major Snow Event" means any event that is the subject of a winter storm warning issued by the National Weather Service. The determination to remove bicycles or accessories based on inclement weather will be based on collaboration between the City and Motivate. In addition, in the event of snowfall of more than six (6) inches, Motivate shall remove such snow within seventy-two (72) hours, provided that, in the event that Motivate is unable to meet this timeline, Motivate shall promptly propose an alternative timeline for snow removal.

EXHIBIT B: STATION RELATED FEES

Service	Unit	Price
Station relocation requiring crane and/or flatbed truck	Per Station	\$2000.00
Station relocation not requiring crane or flatbed truck	Per Station	\$500.00
Station reconfiguration	Per Station	\$500.00
New Station installation	Per Station	\$2500.00

EXHIBIT C: PRICING SHEET

If bulk prices are available to the City for its purchases, such prices are indicated below.

1. **Capital Equipment Cost Table.** The City may purchase new Stations or Bicycles at the prices set forth in the table immediately below.

NEW EQUIPMENT			
Item	Unit Price	Annual Quantity Needed for Bulk Price	Bulk Price
<i>Complete Station (not including bicycles)</i>			
Complete Station with 9 docks	\$26,604.72	25	\$24,186.60
Complete Station with 11 docks	\$29,688.12	25	\$26,989.20
Complete Station with 14 docks	\$33,026.40	25	\$30,024.00
Complete Station with 15 docks	\$34,606.44	25	\$31,460.40
Complete Station with 18 docks	\$38,782.26	25	\$35,256.60
Complete Station with 19 docks	\$40,362.30	25	\$36,693.00
Complete Station with 25 docks	\$48,987.18	25	\$44,533.80
Platform for kiosk and cable(s)	\$434.16	50	\$388.80
Dock with associated cable(s)	\$1,215.00	300	\$1,069.20
Map frame (static display)	\$2,268.00	50	\$2,052.00
Map frame (solar-powered lighting, static display)	\$3,240.00	25	\$2,916.00
Solar-powered kiosk (basic)	\$10,038.60	25	\$9,126.00
Solar-powered kiosk with printer	\$10,632.60	25	\$9,666.00
Solar-powered kiosk with customer key dispenser	\$10,839.96	25	\$9,855.00
<i>Bicycle</i>			
Bicycle (Motivate)	\$1,213.92	1,000	\$1,161.00

CITY OF NEWTON

IN CITY COUNCIL

DRAFT

ORDERED:

That, in accordance with the recommendation of the Finance Committee through its Chair Rebecca Walker Grossman, the authorization to accept and expend the sum of one hundred ninety-nine thousand, nine hundred and nineteen dollars and ninety-two cents (\$199,919.92) in grant funding from MassDOT's Shared Winter Streets and Spaces grant to purchase and install four Blue Bikes Stations with bicycles be and is hereby approved.

Under Suspension of Rules
Readings Waived and Approved
DRAFT

(SGD) NADIA H KHAN
Acting City Clerk

(SGD) RUTHANNE FULLER
Mayor

Date _____



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Office of the Mayor

458-20

Telephone
(617) 796-1100
Fax
(617) 796-1113
TDD/TTY
(617) 796-1089
Email
rfuller@newtonma.gov

March 8, 2021

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Honorable City Councilors:

I hereby veto Board Order # 458-20. I do so in accordance with Part I, Article 1, Sec. 3-8 of the Newton City Charter: Adoption of Measures - Mayor's Veto.

I support the Grace Church Steeple historic preservation project and the \$1.433 million in CPA funding being invested in it.

This veto is only related to the wording of the financial aspects of the Council order. The Comptroller has determined that there are insufficient funds in the CPA's historic resources account to fund the full \$1,433,000 currently.

Based on discussions with Planning, Law, and the Council President, the project will need to be broken into two docket items and come back to the City Council for approval. The first docket item would use the available CPA historic resources account funds and the second, in the new fiscal year in July, would use additional FY22 historic resources account funds to cover the remainder of the \$1,433,000 project.

I will approve the revised council orders if they are forthcoming from the City Council to provide this critical match to the Church's fundraising program to complete the preservation of the Grace Church Steeple.

Thank you for your consideration of this matter.

Sincerely,

Mayor Ruthanne Fuller



Ruthanne Fuller
Mayor

City of Newton, Massachusetts

Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

458-20

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(617) 796-1120
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(617) 796-1142
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(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

Date: March 8, 2021
From: Lara Kritzer, Community Preservation Program Manager
To: The Honorable City Council
CC: The Honorable Mayor Ruthanne Fuller
RE: FY22 CPA Funding for the Grace Tower Restoration Project

In the Community Preservation Committee's recommendation for Grace Episcopal Church's Tower Restoration project (originally submitted Oct. 28, 2020 and updated on Jan. 8, 2021), the CPC recommended that the CPC project funding come entirely from the City's existing and future Historic Resource Reserve Accounts. This recommendation was approved by the City Council on March 1, 2021, with \$991,244.71 to come out of the City's existing Historic Reserve accounts, and the remaining \$441,755.30 needed for the project to come from the City's FY22 Historic Reserve Account when the funding was available in July 2021. The amount of the FY22 funding is below the amount anticipated to be set aside in FY22 for specific category reserve accounts, and there is no question at this time that the funding will be available in July for this purpose. The applicants are also not anticipated to be ready to request any CPA funding before Fall 2021 or Spring 2022 at the earliest.

Unfortunately, it has since come to our attention that the City cannot commit future CPA funding in this manner. In reviewing the March 1 City Council Order for this project, the Comptroller raised this issue of committing funding before the fiscal year in question and has stated that she cannot certify this Council Order until the FY22 funds have been removed. The proposed solution to this problem is for the City Council to revise the existing Council Order to remove the FY22 funding, approving only the existing Historic Resource funds (\$991,244.71) at this time. To address the project shortfall, the CPC will submit a separate recommendation requesting approval to use the FY22 Historic Resource Reserves to cover the remaining \$441,755.30 of the originally approved project as soon as these funds are available in July 2021.

www.newtonma.gov/cpa

Lara Kritzer, Community Preservation Program Manager
lkritzer@newtonma.gov 617.796.1144

CITY OF NEWTON

IN CITY COUNCIL

DRAFT

ORDERED:

That, in accordance with the recommendation of the Zoning & Planning Committee through its Chair Deborah J. Crossley and the Finance Committee through its Chair Rebecca Walker Grossman, the appropriation of nine hundred ninety-one thousand two hundred forty-four dollars and seventy-one cents (\$991,244.71) in Community Preservation Act historic resource funding to the Grace Episcopal Church Tower Restoration project for the stabilization and preservation of the historically significant ca. 1872 conical stone spire, tower and belfry be and is hereby approved as follows:

FROM:	CPA Historic Budgeted Reserve (58B10498-57900B)	\$433,863
	CPA Historic Fund Balance (5810-3599).....	\$557,381.71
TO:	Grace Church Tower Restoration Undistributed (58B11413-579500)	\$991,244.71

Under Suspension of Rules
Readings Waived and Approved
DRAFT

(SGD) NADIA H KHAN

Acting City Clerk

(SGD) RUTHANNE FULLER

Mayor



Ruthanne Fuller
Mayor

City of Newton, Massachusetts

Office of the Mayor

117-21

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(617) 796-1100

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rfuller@newtonma.gov

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Honorable City Councilors:

I respectfully submit this docket item to this Honorable Council requesting the authorization for the Mayor to grant new employees paid leave time in excess of the provisions currently set forth in Article 2, Sections 2-41, 2-65, and 2-67 of the City Ordinances.

There are at least three important department director positions in the recruitment stage that require significant municipal experience – Chief of Police, Treasurer/Collector, and City Clerk. Many municipalities in Massachusetts and the Commonwealth offer more competitive paid leave time than Newton and we do not want to lose a fantastic, experienced candidate for one of these critical positions. In particular, the current ordinances set vacation time for some H grade positions at two weeks and others at three weeks, regardless of if a candidate brings years of experience from a prior community and is earning well above those levels. This makes negotiating employment offers to experienced candidates very difficult.

It has been many years since the City Ordinances regarding vacation and special leave time have been comprehensively updated. In a number of areas, practices have strayed from the ordinances over time and there are sections that are clearly outdated and do not reflect the City's commitment to the overall health and well-being of our employees.

The proposed docket item will allow the Mayor and City Council to successfully recruit several critical new hires.

Moving forward, we will provide the City Council this calendar year a comprehensive update to Chapter 2, Article 2 (Sections 2-25 through 2-85) of the City Ordinances. This comprehensive update will reflect an analysis of other municipalities' paid leave time benefits and policies. Our updated ordinance will be sensitive to the interests of current employees as well as address H Grade non-union employees as compared to those covered by collective bargaining agreements.

The authorization to grant paid leave time in excess of the City Ordinances will be effective April 1, 2021. This action will not impact paid leave time provisions of union collective bargaining agreements.

The specific docket request language is "Request for authorization to allow the Mayor to grant to new employees paid leave time in excess of the provisions currently set forth in Article II, Sections 2-41, 2-65 and 2-67 of the City Ordinances."

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MARCH 22 2021
CITY CLERK
NEWTON, MA 02459
PM 5:01

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Ruthanne Fuller". The signature is written in a cursive style with a large initial "R" and "F".

Mayor Ruthanne Fuller



115-21

City of Newton, Massachusetts
Office of the Mayor

Ruthanne Fuller
Mayor

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(617) 796-1100

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Email

rfuller@newtonma.gov

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Honorable City Councilors:

I respectfully submit this docket item to this Honorable Council requesting the authorization to accept and expend federal COVID-19 pandemic response grant program funds, including the CARES Act and American Rescue Plan Act (ARPA).

We recently learned that CARES Act grant funds as well as ARPA funds should formally be accepted by the City Council. Newton is putting the CARES Act funds (which can only be used for specific eligible COVID-19 related expenditures) to good use with pandemic-related responses for food security, improved building ventilation, Personal Protective Equipment (PPE), workspace changes, outdoor dining, and many other uses. As the reimbursements from FEMA and CARES continue to change, the City has not yet finalized the specific expenses that will be applied to either. Maureen Lemieux, the Chief Financial Officer, has updated the City Council Finance Committee every two weeks about the expenditures.

While there is an early ARPA estimate for the City of \$65.2 million, we do not know the precise amount at this time. It will depend, in part, on which census year is applied to determine Newton's population. The U.S. Department of Treasury is writing the specific guidelines and defining the terms in the Plan to explain the allowable uses. The Plan provides the allowable uses as:

- Responding to the public health emergency or its negative economic impacts, including assistance to households, small businesses, or aid to impacted industries such as tourism, travel and hospitality
- Providing premium pay to eligible workers performing essential work to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as determined by the chief executive officer as critical to protect the health and well-being of the residents of the local government (capped at \$13 per hour);
- Replacing revenue reductions due to the pandemic, to the extent that these revenues are used to provide services (the base year to determine revenue losses is fiscal year 2019)
- Making necessary investments in water, sewer or broadband infrastructure.

My goals for these funds are to help us recover, rebound and rebuild as well as to invest strategically to make a lasting difference for Newton's future. We will read the guidance coming

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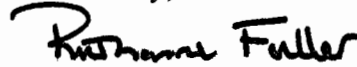
from the U.S. Treasury Department carefully and listen to the City Council's input before making our decisions about the use of the funds.

I am pleased to have these funds to support people, businesses and nonprofits in Newton hurt by COVID-19, and to rebuild our municipal services curtailed by revenue losses during this public health emergency.

CFO Lemieux will continue to brief the Finance Committee regularly about the expenditure of these funds, as she has with the CARES Act funds.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Ruthanne Fuller". The signature is written in a cursive style with a large initial "R".

Mayor Ruthanne Fuller

CITY OF NEWTON

IN CITY COUNCIL

DRAFT

ORDERED:

That, in accordance with the recommendation of the Finance Committee through its Chair Rebecca Walker Grossman, the authorization to accept and expend federal COVID-19 pandemic response grant program funds, including from the CARES Act and American Rescue Plan Act (ARPA) be and is hereby approved.

Under Suspension of Rules
Readings Waived and Approved
DRAFT

(SGD) NADIA KHAN
Acting City Clerk

(SGD) RUTHANNE FULLER
Mayor