

Regular Meeting

The regular meeting of the City Council of the City of Fitchburg was held over the Zoom meeting platform and live streamed at FATV Studios, Fitchburg, on June 2, 2020. The meeting was called to order by President Michael Kushmerek at 7:02 P.M. The Clerk stated the names of the Councillors who have logged in and ten (10) Councillors were present. Councillor Beauchemin was unable to log into the Zoom platform and was absent. The meeting opened with a salute to the Flag led by Councillor Kushmerek.

Noted for the record:

For the Record

FATV was recording the audio and video of the meeting.

Public Forum

PUBLIC FORUM

The following statement was issued for anyone wishing to participate the Public Forum:

The public is invited to participate in the Zoom webinar of June 2, 2020 07:00 PM Eastern Time

Topic: Fitchburg City Council Meeting - June 2, 2020

Register in advance for the Public Comment/Hearing portion of the Agenda by going to:

https://us02web.zoom.us/webinar/register/WN_clgSQipLSyKnpQE64WYstg

After registering, you will receive a confirmation email containing information about logging in to join the webinar.

Alternatively, comments of not more than two (2) minutes may be sent to the City Clerk's Office by NOON on May 19, 2020 by calling 978-829-1820 or via email at: cityclerk@fitchburma.gov.

There were no Public Comments.

Congratulations

President Kushmerek extended his congratulations to the Fire Fighters that were sworn in on June 1st:

Chad M. Coutemanche, Permanent Deputy Fire Chief
Anthony S. Castelli, Permanent Fire Captain
Kristoper J. Maillet, Permanent Fire Lieutenant

Moment of Silence

President Kushmerek then called for a moment of silence to commemorate the passing of George Floyd.

President Kushmerek then noted that the Council had unanimously passed Resolution 117-20, just a month ago, which condemned hate, racism, and bigotry. He reiterated that the Council reaffirmed and re-emphasized that vote.

Records

REPORT OF COMMITTEE ON RECORDS

The Committee on records reported the minutes of the Regular Meeting of May 19, 2020, were correctly recorded. Report accepted and minutes adopted.

Communication
His Honor the
Mayor
Appointment
Letter

COMMUNICATION
His Honor the Mayor
Appointment Letter

1. Thomas A. Dateo, Jr., to the position of Chief Engineer/Fire Chief, due to the retirement of Fire Chief Kevin D. Roy.



The City of Fitchburg

FITCHBURG CITY CLERK

Massachusetts

2020 MAY 28 AM 11:58

OFFICE OF THE MAYOR

STEPHEN L. DINATALE
MAYOR
166 BOULDER DRIVE
FITCHBURG, MA 01420
TEL. (978) 829-1801

AARON TOURIGNY
CHIEF OF STAFF
ATOURIGNY@FITCHBURGMA.GOV

JOAN DAVID
ADMINISTRATIVE AIDE
JDAVID@FITCHBURGMA.GOV

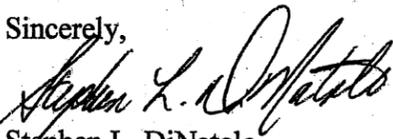
May 28, 2020

The Honorable City Council
Fitchburg Municipal Offices
166 Boulder Drive, Suite 108
Fitchburg, MA 01420

Dear Honorable Councilors,

Pursuant to Chapter 23, §25 of the Fitchburg City Code and in accordance with the provisions of MGL, Ch. 31, I am writing to request confirmation of my appointment of Thomas A. Dateo Jr., of 706 Scott Road, Fitchburg Massachusetts, to the position of Chief Engineer/Fire Chief. As you are aware, this vacancy is due to the retirement of Fire Chief Kevin D. Roy, after forty-three years of dedicated service to our City.

Sincerely,


Stephen L. DiNatale
Mayor

Motion to Suspend the Rules to Send Appointment of Chief Engineer/Fire Chief to Council as a Whole failed, 2/8 (Roll Call Vote: Kushmerek, Couture, DiNatale, Fleming, Green, Van Hazinga, Walsh, Zarrella)
Appointment referred to the Appointments Committee as required.

Reports of
Committees

Appointments
Committee
Oral Report

REPORTS OF COMMITTEES

Appointments Committee Oral Report
Meeting of June 2, 2020

The Appointments Committee recommended the following Appointment be confirmed:

New Appointment
Special Police Officer
Fitchburg Police Department
Detective Paul McNamara

Report read and accepted. Appointment confirmed by unanimous consent 10/0. 10 members present. Board consists of 11 members.

City Property Committee Report Oral Report
Meeting of May 26, 2020

The City Property Committee recommended the following Orders be adopted:

041-20. ORDERED THAT: The Mayor is authorized to execute the Lease relative to AKS Recycling, Inc.

ORDERED:- That

WHEREAS, in 2001 and 2004 the City entered into two separate leases with AKS Recycling, Inc. ("AKS") for the use of certain premises located within the Airport; and

WHEREAS, the CITY and FAA have since determined that the fee owner of these certain premises is the Fitchburg Municipal Airport; and

WHEREAS, the AKS has expanded its operation upon both Airport land and other land belonging to the City of Fitchburg beyond the premises described in the 2001 and 2004 AKS leases; and

WHEREAS, there is a dispute between the City and the AKS as to amounts owed under the prior Leases and the parties wish to resolve those disputes in a manner that will allow the Company to operate within the City and for the City to maintain a prospective relationship with the Company; and

WHEREAS, the CITY requires AKS to occupy a sufficient leased area to continue its current business operations and propose to modify the 2001 and 2004 AKS leases to include the area described by plan attached hereto as Exhibit A (known as "Parcel Y"); and

WHEREAS, applicable federal law requires that the CITY to lease the premises from the Fitchburg Municipal Airport in order to sublease the premises to AKS; and

WHEREAS, the AKS has, executed leases which contain certain provisions relative to hosting the business in the City on or about 2001 and 2004 and it is the parties' intention to amend Lease; and

WHEREAS, it is the parties' intention to amend the underlying leases to incorporate the lease form approved by the FAA and incorporate key provision of the prior Leases with the same and extend the term; and

WHEREAS, certain provisions of the prior leases include community benefits that are the subject of a host agreement.

NOW THEREFORE, IT IS ORDERED that the Honorable Mayor Stephen L. DiNatale be hereby authorized for and on behalf of said City to execute and deliver any and all documents and take any and all acts necessary, convenient and helpful to facilitate and execute the Lease (to be supplied) as attached or in form substantially similar thereto, and to site the facility as set forth above.

City Property
Oral Report

FITCHBURG MUNICIPAL
GROUND LEASE

This instrument is an indenture of lease, by and between the FITCHBURG MUNICIPAL (hereinafter "City") by and through the Mayor Stephen L. DiNatale, pursuant to an order of City Council, and having its usual place of business at the Fitchburg Municipal Offices, 166 Boulder Dr., Fitchburg, Massachusetts ("Landlord") and A.K.S. RECYCLING, INC., a corporation with a usual place of business of 15 COBBLER DR. Fitchburg MA 01420, (hereinafter "Tenant" or "AKS").

WHEREAS the LANDLORD wants to lease to the TENANT, and allow the TENANT and the TENANT wants to rent from the LANDLORD, in compliance with current and future federal requirements as administered by the FAA;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the LANDLORD hereby agrees to lease to TENANT as set forth herein:

ARTICLE I SUMMARY OF BASIC LEASE PROVISIONS

1.1 INTRODUCTION

This document is a Ground Lease. As further supplemented in the balance of this instrument and its Exhibits, the following sets forth the basic terms of this Ground Lease, and, where appropriate, constitutes definitions of certain terms used in this Ground Lease. If any inconsistency exists between this summary and the balance of this instrument the summary shall control.

1.2 BASIC DATA

Commencement Date:	January 1, 2020
Landlord:	The City of Fitchburg ("the City")
Present Mailing Address of Landlord:	166 Boulder Dr. Fitchburg, MA 01420
Payment Address:	166 Boulder Dr. Fitchburg, MA 01420
Managing Agent:	Stephen Curry, Director of the Health Department
Tenant:	A.K.S. RECYCLING, INC
Tenant Mailing Address	15 COBBLER DR. Fitchburg MA 01420
Premises:	A certain area of land consisting of approximately 17.13 acres or 746,182.8 square feet of land, as more particularly

Reports of
Committees
City Property
Committee
Oral Report

described in Exhibit A attached hereto and incorporated herein, but not including the buildings thereon.

The Landlord reserves the right to install, use, maintain, repair and replace in the Premises (but in such manner as not unreasonably to interfere with Tenant's use of the Premises) utility lines, shafts, pipes, and the like, in, over, under and upon the Premises. Such utility lines, shafts, pipes and the like shall not be deemed part of the Premises under this Lease.

Lease Term: Ten (10) years beginning January 1, 2020 unless earlier terminated pursuant to the terms of this agreement or extended pursuant to Paragraph 3.3 below.

Base Rent: Starting on January 1, 2020, the Commencement Date, and ending on December 31, 2029, at the rate of \$14,400.00 per annum (\$1,200.00 per month), subject to annual increases as stated in Paragraph 4.1(b) below (by an amount equal to the annual difference calculated as a percentage of the Consumer Price Index for Urban Consumers seasonally adjusted ("CPI-U"), with the Base Rent adjusted by fair market value appraisal every ten (10) years. Starting on the Commencement Date and ending when paid in full AKS shall pay to the City an additional \$600.00 per month for arrears as part of a Settlement Agreement entered into on June 4, 2018.

Due Date: Equal monthly installments are due on the 1st day of each calendar month.

Guarantor of Tennant: Whereas Tenant is a longstanding Tenant of the Landlord; none.

Permitted Use: For the non-aviation purpose of operation of a transfer station consistent with the site assignment issued by the board of health so long as the same does not interfere with the use of the Airport for general aviation purposes, and such other uses and activities as shall be permitted by the FAA subject to such limitations thereon as shall be proscribed from time by the FAA, and for no other purpose or purposes (the "Permitted Use").

Pursuant to this Lease, AKS shall have the right to non-

exclusive use of the Leased Premises solely for the purposes expressly set forth below, and only to the extent that such uses are consistent with and facilitate its transfer station operations as authorized by the Site Assignment.

Specifically, AKS may use the Leased Premises for the following purposes:

- a. The queuing of trucks waiting to be weighed at an AKS scale shall not cause a nuisance (as determined by the director of the Board of Health);
- b. Adequate space, as determined by the Fitchburg Fire and Police Chiefs, shall be provided so that emergency vehicles may pass without hindrance, including without the trucks having to move;
- c. The trucks shall be allowed to enter and exit on the Leased Premises Monday through Friday, from 5:00 AM to 5:00 PM, and Saturday from 5:00 AM to 12:00 PM, excluding all Massachusetts state holidays;
- d. The trucks shall contain only municipal solid waste, recyclable materials, and construction and demolition materials as defined by 310 CMR 19.006; no pollutants, contaminants or other materials shall be permitted, except as provided for on hazardous waste days for the City; and
- e. No motor vehicle on said Leased Premises shall leave the premises if it exceeds the maximum weight permitted by applicable law.

1.3 ENUMERATION OF EXHIBITS

EXHIBIT A: PLAN SHOWING THE PREMISES

EXHIBIT B: None.

Reports of
Committees
City Property
Committee
Oral Report

ARTICLE II DESCRIPTION OF PREMISES AND APPURTENANT RIGHTS

2.1 LOCATION OF PREMISES The Landlord hereby leases to Tenant, and Tenant hereby accepts from Landlord, the property identified on Exhibit A on Landlord's property (the "Premises"), a certain area of land consisting of 76,182.8 square feet of land as more particularly described in Exhibit A attached hereto and incorporated herein and also known as Plan of Land titled New Lease From City of Fitchburg but not including the buildings thereon, located in Fitchburg, Massachusetts.

2.2 APPURTENANT RIGHTS AND RESERVATIONS As a non-aviation lessee Tenant shall not have, as appurtenant to the Premises, any rights to use, in common with others entitled thereto, the common facilities located on the land which constitutes the Airport. Tenant's right to use the Premises for the Permitted Use shall always be subject to reasonable rules and regulations from time to time established by Landlord by suitable notice, and to the right of Landlord to designate and to change from time to time the areas and facilities so to be used, provided that such changes do not unreasonably interfere with the use of the (i) Premises for the Permitted Use and (ii) the remainder of the Airport for general aviation purposes.

2.3 EXCLUSIONS AND RESERVATIONS

- (a) Not included in the Premises are any buildings located on the land identified in Exhibit A. The Landlord reserves the right to install, use, maintain, repair and replace in the Premises (but in such manner as not unreasonably to interfere with permitted use of the Premises) utility lines, shafts, pipes, and the like, in, over and upon the Premises. Landlord agrees to repair any damage to the Premises caused by the installation, maintenance, repair or replacement of any such items. Such utility lines, shafts, pipes and the like shall not be deemed part of the Premises under this Lease.
- (b) The Tenant shall ensure the Premises is used in a manner so as not to unreasonably annoy, disturb, or be offensive to others at the Airport or abutting properties consistent with the terms of Article V below.

ARTICLE III TERM OF LEASE; CONDITION OF PREMISES

3.1 TERM OF LEASE The term of this Lease shall be the period specified in Section 1.2 hereof as the "Lease Term" commencing upon the Lease Term Commencement Date specified in Section 1.2. The parties agree that on the request of either party each will execute, acknowledge, and deliver a Notice of Lease in recordable form but excluding explicit financial provisions.

2020.04.17 CITY to AKS Execution Copy

3.2 CONDITION OF PREMISES Tenant acknowledges that it has inspected the Premises and agrees to accept same in its "as is" condition, and further Tenant agrees that Landlord has no obligation to perform any work whatsoever in order to prepare the Premises for Tenant's occupancy hereunder.

3.3 EXTENSION OPTIONS The parties agree that they may not extend the Term of this Lease beyond the Lease Term in accordance with current federal law. At the expiration of the Lease Term the parties may enter into a new Lease Agreement or, if permitted by federal law at that time, may extend this Lease Agreement for two (2) terms of five (5) years. The Tenant shall provide no less than 6 months' notice of his option to renew said lease.

Any such extension shall be upon the same terms, covenants, and conditions contained in this Lease except that the Base Rent for any extension term to which the annual increase shall apply shall be at the rental rate payable per annum at the expiration of the previous Term as provided in Section 4.1(b).

3.4 REMOVAL OF PROPERTY, IMPROVEMENTS AT LEASE TERMINATION Upon termination of this Lease under whatever circumstances, the Tenant shall immediately remove all personal property, trash and debris and leave the Premises in a clean and neat condition, subject to reasonable wear and tear. All buildings, structures, fixtures and other improvements existing on the Premises six (6) months or less before the end of this Lease shall become the property of the Airport.

3.5 TERMINATION FOR AIRPORT PURPOSES. If at any point in time during the Lease Term the Premises are needed by the Airport for aviation purposes or the use of the Premises interferes with aviation activities at the Airport, this Lease may be terminated by the Landlord upon ninety (90) days written notice to the Tenant.

ARTICLE IV RENT

4.1 RENT PAYMENTS The Base Rent (at the rates specified in Section 1.2 hereof) and the additional rent or other charges payable pursuant to this Lease (collectively the "Rent") shall be payable by Tenant to Landlord at the Payment Address or such other place as Landlord may from time to time designate by notice to Tenant without any demand whatsoever except as otherwise specifically provided in this Lease and without any counterclaim, offset or deduction whatsoever. Rent shall be made payable to the order of the Landlord. The Parties acknowledge that they have entered into a Community Host Agreement dated this same day. If for any reason the Community Host Agreement is held invalid, then the fees paid pursuant to the Community Host Agreement

shall be automatically merged and incorporated into this Agreement and shall be payable to the City as rent.

- (a) Beginning on the Rent Commencement Date, monthly installments of Base Rent and of Tenant's charges and fees, if any, shall be payable in advance on the first day of each and every calendar month during the term of this Lease. If the Rent Commencement Date falls on a day other than the first day of a calendar month, the first payment which Tenant shall make shall be made on the Rent Commencement Date and shall be equal to a proportionate part of such monthly Rent for the partial month from the Rent Commencement Date to the first day of the succeeding calendar month, and the monthly Rent for such succeeding calendar month. As used in this Lease, the term "lease year" shall mean any calendar year or part thereof falling within the Lease Term.
- (b) Increases in Base Rent: The Base Rent shall be increased annually as of January 1 for each lease year beginning with the first increase on January 1, 2020, by an amount equal to the annual difference calculated as a percentage in the Consumer Price Index for Urban Consumers for the Boston-Brockton-Nashua Area (or successor index published by the Bureau of Labor Statistics) ("CPI-U") over the same CPI-U in effect as of the commencement of the immediately prior lease year. The Tenant may seek to have this provision waived by demonstrating there has been no increase in the fair market rental value of the leased premises.
- (c) Fair Market Value Adjustment: The parties agree that the Tenant must pay the Landlord fair market value rent for the leased Premises pursuant to federal law. On or within six months before the tenth anniversary of the Rent Commencement Date, and on or before the commencement of any 5 year extension, the Tenant shall, at Tenant's expense, obtain an appraisal of the fair market rental value of the Premises. The Base Rent shall be adjusted as of each tenth anniversary of the Rent Commencement Date to such appraised fair market rental value, and the annual increases set forth in Paragraph 4.1(b) above shall thereafter be applied to the adjusted Base Rent.
- (d) Rent, charges and fees not paid within ten (10) days of the date due shall bear interest at a rate (the "Lease Interest Rate") equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum legally permissible rate, from the due date until paid, plus a reimbursement of any and all attorneys' fees and costs incurred by the Landlord incurred in connection with the collection of the foregoing.

4.2 TAXES AND ASSESSMENTS

- (a) Nothing in this Agreement shall relieve Tenant or its sublessees of any lawful obligation to pay taxes (including without limitation, assessments for public improvements or benefits and water and sewer use charges), assessed against them during any tax year (i.e., July 1 through June 30, as the same may change from time to time) or part thereof during the Lease Term.

(b) Tenant shall pay or ensure any sublessees pay, prior to delinquency, any and all taxes and assessments levied upon all real estate, structures, improvements, trade fixtures, inventories and other real or personal property placed in and upon the Premises by Tenant or its sublessees.

ARTICLE V USE

5.1 PERMITTED USE Tenant agrees that the Premises shall be used and occupied by Tenant only for the purposes specified as the Permitted Use thereof in Section 1.2 of this Lease, and for no other purpose or purposes. The Tenant shall comply and shall cause its sublessees, employees, agents, and invitees to comply with all requirements of the FAA for the use of the Premises and such reasonable rules and regulations, as Landlord shall from time to time establish for the proper regulation of the Premises and the Airport. The Landlord makes no guarantee, warranty or representation that the Premises are fit for the uses to which they may be put by the Tenant, or for any other uses or purposes whatsoever. It shall be the sole duty of the Tenant to determine that the Premises are appropriate for its uses and purposes.

5.2 COMPLIANCE WITH LAWS Tenant agrees that no trade or occupation shall be conducted in the Premises or use made thereof which will be unlawful, improper or contrary to any law, ordinance, by-law, code, rule, regulation or order applicable in the municipality in which the Premises are located or which will disturb the quiet enjoyment of the other tenants of the Airport. Tenant shall obtain any and all approvals, permits, licenses, variances and the like from governmental or quasigovernmental authorities, including without limitation any Architectural Access Board and Board of Fire Underwriters (collectively, "Approvals") which are required for Tenant's use of the Premises, including, without limitation, any which may be required for any construction work and installations, alterations or additions made by Tenant to, in, on or about the Premises; provided, however, that Tenant shall give Landlord a reasonable opportunity to review any applications for Approvals and all materials and plans to be submitted in connection therewith. Tenant shall be responsible for all costs, expenses, and fees in connection with obtaining all Approvals. Without limiting the general application of the foregoing, Tenant shall be responsible for compliance of the Premises, including, without limitation, any alterations it may make to the Premises with the requirements of the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto, as the same may be amended from time to time (collectively, the "ADA"). Tenant's inability to obtain or delay in obtaining any such Approval shall in no event reduce, delay, or terminate Tenant's rental, payment, and performance obligations hereunder. Tenant shall, at its own cost and expense, (i) make all installations, repairs, alterations, additions, or improvements to the Premises required by any law, ordinance, by-law, code, rule, regulation or order of any governmental or quasi-governmental authority, except waste committed by Landlord; (ii) keep the Premises equipped with all required safety equipment and appliances; and (iii) comply

Reports of
Committees
City Property
Committee
Oral Report

with all laws, ordinances, codes, rules, regulations and orders and the requirements of Landlord's and Tenant's insurers applicable to the Premises and Airport, if any. Tenant's duly authorized representative(s) shall execute such documentation as the Landlord may reasonably require to accept the duties and obligations set forth in this Lease.

5.3 INSURANCE RISKS Tenant shall not permit any use of the Premises which will make voidable or, unless Tenant pays the extra insurance premium attributable thereto as provided below, increase the premiums for any insurance on the Airport's common areas, which are contrary to any law or regulation from time to time established by the New England Fire Insurance Rating Association (or any successor organization), or which shall require any alteration or addition to the Airport's common areas. Tenant shall, within thirty (30) days after written demand therefor, reimburse Landlord and all other tenants for the costs of all extra insurance premiums caused by Tenant's use of the Premises. Any such amounts shall be deemed to be additional rent hereunder.

5.4 TENANT'S OPERATIONAL COVENANTS (a) Affirmative Covenants: In regard to the use and occupancy of the Premises, Tenant will at its expense: either (1) maintain the Premises in a clean, orderly and sanitary condition so far as the same standard is applied to a recycling facility and Transfer Station; (2) keep any garbage, trash, rubbish or other refuse in accordance with all applicable ordinances, regulations, statutes or standards for the operation of a recycling facility and transfer station; (3) keep all mechanical apparatus free of vibration and loud noise above that contemplated by the Permitted Use of the Premises and which may be transmitted beyond the Premises; and (4) comply with and observe all rules and regulations reasonably established by Landlord from time to time. (b) Negative Covenants: In regard to the use and occupancy of the Premises and common areas, Tenant will not permit: (5) the placement or maintenance of any trash, refuse or other articles on the Premises which obstruct any sidewalk or common area; (6) permit undue accumulations of or burn garbage, trash, rubbish or other refuse which interfere with the use of the Airport; (7) cause or permit objectionable odors to emanate exceeding those contemplated by the Permitted Use to be dispelled from the Premises; (8) permit, commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant or occupant of the Fitchburg Municipal Airport, or use or permit the use of any portion of the Premises for any unlawful purpose; or (9) the erection or maintenance of any structure or object which affects navigable airspace surfaces except in accordance with Federal Aviation Title 14, Part 77, as the same may be amended from time to time. All laws, regulations and ordinances, and all amendments in existence now or made in the future thereto, including but not limited to the Airport Regulations and the Minimum Standards for Commercial Operations, are hereby incorporated and made part of this Lease. The Tenant, its officers, employees, tenants, subtenants, contractors, subcontractors, agents, and invitees shall comply with said laws, regulations and ordinances, and upon enactment, any

2020.04.17 CITY to AKS Execution Copy

amended provisions thereof. The Parties anticipate that during the Term of this Lease, applicable laws, ordinances, regulations (including but not limited to the Airport Regulations and Minimum Standards for Commercial Operations) may be amended from time to time. Tenant shall comply with any and all such future laws, ordinances and regulations as they are enacted.

5.5 SIGNS Subject to Tenant obtaining all necessary approvals and permits therefor, Tenant or its subtenant may erect one (or more with permission of the Airport Manager) exterior sign in a location designated by Landlord. Plans and specifications, including, without limitation, artwork, for such sign must be submitted to Landlord for its written approval before installation, which approval shall not be unreasonably withheld. The costs of all signs and the installation thereof, including the costs of any required permits or approvals, shall be the responsibility of Tenant. The Tenant shall comply at its own expense with the requirements of all laws and regulations affecting the maintenance of Tenant's signs, including but not limited to the protection of navigable airspace as set forth in Federal Aviation Title 14, Part 77. Tenant shall remove all signs upon termination of this Lease and shall return the Premises to their condition prior to the placement or erection of said signs. Notwithstanding the foregoing, Landlord agrees to allow Tenant to maintain its current signage.

5.6 HAZARDOUS MATERIALS The Tenant shall not use, handle, store or dispose of any oil, hazardous or toxic substances, materials or wastes (collectively "Hazardous Materials") in, under, on or about the Property except for (i) the storage and use of such materials, in accordance with applicable law and regulation in such reasonable amounts as shall customarily in connection with or the Permitted Use, and (ii), the storage and use of other Hazardous Materials consented to by Landlord in advance which consent may be withheld in Landlord's sole and absolute discretion. Any Hazardous Materials in the Premises, and all containers therefor, shall be used, kept, stored and disposed of in conformity with all applicable laws, ordinances, codes, rules, regulations and orders of governmental authorities. If the transportation, storage, use or disposal of Hazardous Materials anywhere on the Property in connection with Tenant's use of the Premises results in (1) contamination of the soil or surface or ground water or (2) loss or damage to person(s) or property, then Tenant agrees (i) to notify Landlord immediately of any contamination, claim of contamination, loss in full compliance with all applicable statutes, regulations and standards, and (ii) to indemnify, defend and hold Landlord harmless from and against any claims, suits, causes of action, costs and fees, including, without limitation, attorneys' fees, arising from or connected with any such contamination, claim of contamination, loss or damage. This provision shall survive the termination of this Lease. No consent or approval of Landlord shall in any way be construed as imposing upon Landlord any liability for the means, methods, or manner of removal, containment or other compliance with applicable law for and with respect to the foregoing. The terms of this Section 5.6 shall apply to any transportation, storage, use or disposal of Hazardous Materials irrespective of whether Tenant has obtained

Reports of
Committees
City Property
Committee
Oral Report

Landlord's consent therefor but nothing in this Lease shall limit or otherwise modify the requirement of obtaining Landlord's prior consent as set forth in the first sentence of this Section 5.6.

5.7 STORAGE OF ROLL OFF CONTAINERS

- a. AKS may store roll off containers on the Leased Premises within the area on the Plan identified as "Container Area", incorporated into this Lease as Exhibit A;
- b. The sole material permissible in said containers is sorted recyclables; no hazardous materials shall be stored in said containers at any time, except during the hazardous waste collection days for the City and in this instance the materials shall be removed within 72 hours;
- c. All recycling containers must be emptied as frequently as possible, and in no event shall they be emptied less than every 30 days;
- d. The contents of the containers shall not be permitted to become a nuisance, either due to odor, dust, litter, or attractions for insects, birds, rodents or other animals or any other condition determined to be a nuisance by the Board of Health;
- e. If the Board of Health Director determines that the contents of the containers has become a nuisance, or the number of containers has become a nuisance it may order appropriate remedial measures including but not limited to a requirement that they be emptied more frequently, covered more securely, or that the allowable contents be further limited;

5.8 AKS shall provide oversight, expertise, supervision, equipment, and manpower required to satisfy each and every term and condition required by this Lease.

5.9 AKS hereby assumes the risk for changes in law, regulation and policies that affect this Lease.

5.10 It is agreed and understood that neither AKS, nor its officers, employees or agents is an agent or an employee of the City for any purpose.

5.11 AKS, its respective subcontractors, consultants, subsidiaries, assignees, and their respective officers, employees and agents shall at no time use the Leased Premises in a manner to unreasonably annoy, disturb or be offensive to abutting or nearby properties.

5.12 No fuel or other combustible liquids or compounds shall be stored on the Leased Premises, except such reasonable and ordinary quantities of fuel in the properly maintained fuels tanks of

2020.04.17 CITY to AKS Execution Copy

trucks and other motor vehicles.

5.13 AKS shall not install or allow to be installed advertising signs on the Leased Premises.

5.14 AKS shall be responsible for security of the Leased Premises, and to ensure that its respective subcontractors, consultants, vendors, truckers, invitees and their respective officers, agents, and employees abide by applicable federal, state and local laws.

5.15 Notwithstanding any approval, disapproval, activity, or inactivity by the City, AKS shall be solely responsible for any and all activities on the Leased Premises, including but not limited to the nature and type of operations, compliance with the. Site Assignment, the use of materials, the safety of workers, tenants, subtenants, agents and invitees, and AKS shall indemnify the City as set forth herein.

5.16 AKS shall not conduct or permit any activity which is unlawful, improper, offensive or contrary to any laws or regulations of the United States, the Commonwealth of Massachusetts or the City of Fitchburg.

5.17 AKS shall neither commit nor allow or suffer to be committed any waste or nuisance upon the Leased Premises.

**ARTICLE VI
INSTALLATIONS, ALTERATIONS AND ADDITIONS**

6.1 INSTALLATIONS, ALTERATIONS, AND ADDITIONS Tenant may make installations, alterations, additions or demolitions to the Premises provided that Landlord consents thereto in advance and in writing, which consent shall not be unreasonably withheld, delayed or conditioned. In no event shall Landlord's approval of any proposed installations, alterations, or additions to the Premises, whether in connection with Tenant's initial leasehold improvements or otherwise, constitute a representation by Landlord that such work complies with the requirements of any applicable law or regulation, including without limitation the requirements of the ADA. Any installations, alterations, or additions made by Tenant shall be at Tenant's sole cost and expense and shall be done in a good and workmanlike manner using materials of a quality at least equivalent to that of the existing improvements and in compliance with the requirements of Section 5.2; and prior to Tenant's use of the Premises, after the performance of any such work, Tenant shall procure certificates of occupancy and any other required certificates. Tenant shall not suffer or permit any mechanics' or similar liens to be placed upon the Premises for labor or materials furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed at the direction of Tenant, and shall cause any such lien to be released of record forthwith without cost to Landlord. At all times when any installation, alteration, or addition by Tenant is in progress, there shall be maintained, at Tenant's cost and

2020.04.17 CITY to AKS Execution Copy

Reports of
Committees
City Property
Committee
Oral Report

expense, insurance meeting the requirements of Article XI below and certificates of insurance evidencing such coverage shall be furnished to Landlord prior to the commencement of any such work. Any installations, alterations or additions made by Tenant to the Premises, shall become the property of Landlord at the termination or expiration of this Lease as set forth in Section 3.4 above.

6.2 EXISTING STRUCTURES. Landlord acknowledges and agrees that the buildings presently located on the Premises, if any, have been approved by the Landlord and conform to the requirements of this Lease

6.3 CONSTRUCTION. Tenant shall not under any circumstances construct any closed building, or any building requiring a foundation or requiring any excavation of any soil or ground materials without Landlord's consent. Any structure placed on the site shall be appropriately ventilated and designated in a manner consistent with standards, directives, rules and regulations of the Federal Aviation Administration, the Department of Environmental Protection and the City of Fitchburg.

ARTICLE VII TRANSFERS

7.1 PROHIBITION: Except as specified in Section 7.3 below, Tenant shall not, directly or indirectly, assign, mortgage, pledge or otherwise transfer, voluntarily or involuntarily, this Lease or any interest herein or sublet (which term, without limitation, shall include granting of concessions, licenses, and the like) or allow any other person or entity to occupy the whole or any part of the Premises, without, in each instance, having first received the express written consent of Landlord, which consent shall not be unreasonably withheld. Any assignment of this Lease or subletting of the whole or any part of the Premises (other than as permitted to a subsidiary or a controlling corporation as set forth below) by Tenant without Landlord's express written consent shall be invalid, void and of no force or effect. This prohibition includes, without limitation, any assignment, subletting, or other transfer which would occur by operation of law, merger, consolidation, reorganization, acquisition, transfer or other change of Tenant's corporate or proprietary structure, including a change in the partners of any partnership, and the sale, pledge, or other transfer of any of the issued or outstanding capital stock of any corporate Tenant (unless such stock is publicly traded on a recognized security exchange or over-the-counter market). Any request for consent under this Section 7.1 shall set forth, in detail reasonably satisfactory to Landlord, the identification of the proposed assignee or sub-Tenant, its financial condition and the terms on which the proposed assignment or subletting is to be made, including, without limitation, the rent or any other consideration to be paid in respect thereto and such request shall be treated as Tenant's warranty in respect of the information submitted therewith.

2020.04.17 CITY to AKS Execution Copy

In any case where Landlord shall consent to any assignment or subletting, Tenant originally named herein shall remain fully liable for Tenant obligations hereunder, including, without limitation, the obligation to pay the rent and other amounts provided under this Lease and such liability shall not be affected in any way by any future amendment, modification, or extension of this Lease or any further assignment, other transfer, or subleasing and Tenant hereby irrevocably consents to any and all such transactions. Tenant agrees to pay to Landlord, within fifteen (15) days of billing therefor, all reasonable legal and other out-of-pocket expenses incurred by Landlord in connection with any request to assign or sublet. It shall be a condition of the validity of any permitted assignment or subletting that the assignee or sublessee agree directly with Landlord, in form satisfactory to Landlord, to be bound by all Tenant obligations hereunder, including, without limitation, the obligation to pay all Rent and other amounts provided for under this Lease and the covenant against further assignment or other transfer or subletting.

Without limiting Landlord's discretion to grant or withhold its consent to any proposed assignment or subletting, if Tenant requests Landlord's consent to assign this Lease or sublet all or any portion of the Premises, Landlord shall have the option, exercisable by notice to Tenant given within thirty (30) days after Landlord's receipt of such request, to terminate this Lease as of the date specified in such notice which shall be not less than thirty (30) nor more than sixty (60) days after the date of such notice for the entire Premises, in the case of an assignment or subletting of the whole, and for the portion of the Premises, in the case of a subletting of a portion. In the event of termination in respect of a portion of the Premises, the portion so eliminated shall be delivered to Landlord on the date specified in good order and condition in the manner provided in Section 8.1 at the end of the Lease Term and thereafter, may have access to and may make modification to the Premises so as to make such portion a self-contained rental area.

Rent shall be adjusted according to the extent of the Premises for which this Lease is terminated.

7.2 ACCEPTANCE OF RENT FROM TRANSFEREE The acceptance by Landlord of the payment of Rent, additional rent, or other charges following assignment, subletting, or other transfer prohibited by this Article VII shall not be deemed to be a consent by Landlord to any such assignment, subletting, or other transfer, nor shall the same constitute a waiver of any right or remedy of Landlord.

7.3 MORTGAGE BY TENANT It is anticipated by the parties to this Lease that Tenant or its subtenants, successors or assigns may construct further improvements on the Premises and may seek Landlord's written permission as in Section 7.1 to place a mortgage or mortgages on the Premises or various mortgages on parts of the Premises to finance such improvements. Tenant shall make all such requests in writing and shall inform Landlord in writing of all such mortgages, pledges or hypothecations of this Lease.

Reports of
Committees
City Property
Committee
Oral Report

ARTICLE VIII REPAIRS AND MAINTENANCE

8.1 TENANT OBLIGATIONS

From and after the date that possession of the Premises is delivered to Tenant and until the end of the Lease Term, Tenant shall keep the Premises and every part thereof in good order, condition, and repair, reasonable wear and tear and damage by casualty, as a result of condemnation, or as a result of the failure of Landlord to provide services required to be provided hereunder only excepted; and shall return the Premises to Landlord at the expiration or earlier termination of the Lease Term in such condition as set forth in Section 3.4 above. Notwithstanding any other provision in this Lease to the contrary, Tenant shall not be liable for any damage whatsoever to the Premises caused solely by any party other than the Tenant or its authorized agents, employees or invitees. If the tenant is partially responsible for any damage, then the tenant shall be held liable in an amount proportionate to its responsibility.

- a. AKS shall make any and all improvements to the Leased Premises, at its sole cost, including paving, drainage, dust control, protection of and supplementing the surface material, as may be required by the DEP or the Board of Health and in compliance with the Lease terms herein;
- b. AKS shall repair any damage to Cobbler Drive or Blueberry Lane caused by the truck traffic entering and exiting 15-35 Cobbler Drive, Fitchburg and/or on the Leased Premises; all such repairs shall be made to the satisfaction of the Superintendent of the Department of Public Works;
- c. Without limiting its obligations as set forth in this Lease, AKS may, at its sole expense, make such improvements to portions of the Leased Premises, or provide utilities to the same, as it deems necessary or appropriate to safely conduct the activities permitted pursuant to this Lease, subject to the prior written approval of the Director of the Board of Health. AKS shall provide such detail and information regarding its proposed improvements as the Director may request. Such improvements shall in no event be inconsistent with the Post Closure Permit of the Landfill, with Fitchburg Municipal Airport Regulations, with FAA or MAC regulations, or with any other federal, state or local law or regulation. Further, such improvements shall not entail the construction of any structures but are anticipated to involve improvements to the portion of the Leased Premises upon which truck queuing is permitted and construction of appropriate graded surfaces and/or concrete slabs for storage of roll off containers.
- d. AKS shall maintain the Leased Premises, at its own expense in good repair and in a neat, clean and sanitary condition. AKS shall arrange for removal of rubbish and trash and snow removal at its own expense.

2020.04.17 CITY to AKS Execution Copy

- e. Tenant, at its own cost and expense, shall maintain 18" to 24" of materials over the site, said materials to be pre-approved, in writing, by the Director of Public Health. The materials used, the area to be covered and the manner of covering shall be as determined by the landlord's Director of Public Health. The materials shall not be removed when the tenant vacates the premises. If any of the cover wears down or is eroded or removed during the tenant's occupancy of the premises, tenant will, at its own expense, replace the surface material and restore it so as to maintain at least 18" – 24" of cover at all times.
- f. Tenant shall maintain a post-closure permit from the Massachusetts Department of Environmental Protection (DEP) pursuant to 310 CMR Section 19.016 or such similar permit or license as may be required by the DEP or any successor agency as they be required by regulations relating to the use of the Leased Premises.
- g. Tenant will, at its own expense, grade the premises and maintain the premises so that water will follow the contour of the surface material presently in place.

8.2 As required by the Fitchburg Director of Public Health or any agency of the State or Federal Government, the tenant will do all things necessary to maintain the existing the surface material so as to control and properly vent or burn any methane released from or at the site if necessary or reasonable, to continue operations on the site.

- a. Tenant shall not dig, excavate or otherwise disturb the existing surface material covering the former landfill. In the event that the surface material is disturbed by any action or inaction of the tenant, tenant's employees, agents, invitees or independent contractors, tenant shall repair it and shall hold the landlord harmless and indemnify landlord from any lawsuits sustained thereby.
- b. Tenant is fully aware that the premises formerly constituted the landfill for the City of Fitchburg and takes the premises having had a full and complete opportunity to inspect them.
- c. Tenant leases the premises "as is" condition.
- d. Tenant shall not by action or inaction cause any release or threat of release of any hazardous materials or oil on or at the premises as these terms are defined in M.G.L. c. 21E.

8.3 LANDLORD OBLIGATIONS AND WAIVERS The parties agree that there are no common areas for which Landlord is responsible. Tenant shall reimburse Landlord, as additional

Reports of
Committees
City Property
Committee
Oral Report

rent hereunder, for the costs of maintaining, repairing, or otherwise correcting any condition caused by an act, omission, neglect or default under this Lease of Tenant or any employee, agent, or contractor of Tenant or any other party for whose conduct Tenant is responsible. Any repairs made by the tenant shall be done in accordance with any public construction statutes, rules and regulations to the extent the same are applicable to the tenant and project, and must be completed under the supervision and direction of the Airport Manager. If Landlord chooses to make improvements to the Airport which benefit the Leased Premises, in its sole discretion, Landlord may assess an additional fee to Tenant for the costs incurred for such improvements. Landlord shall notify the Tenant in writing no less than six months before the assessment of such a fee, which shall be treated as Additional Rent hereunder. The assessment of such an additional fee shall not constitute a "Force Majeure" under Article 24.

8.4 The City of Fitchburg makes no guarantee or warranty or representation that the Leased Premises is fit for the uses to which it may be put by AKS, or for any other uses or purposes whatsoever. It shall be the sole duty of AKS to determine that the Leased Premises is appropriate for the uses and purposes anticipated by this Lease.

ARTICLE IX SERVICES TO BE FURNISHED BY LANDLORD; UTILITIES

9.1 LANDLORD'S SERVICES The Landlord shall provide no services to the Tenant. The Tenant acknowledges that this is a fully net lease and agrees to contract separately for all utilities and building and other services required for Tenant's use and occupancy of the Premises hereunder. Upon the request of Tenant from time to time, Landlord shall use reasonable efforts to provide services at hours other than the times set forth above and Tenant shall reimburse Landlord as additional rent for the cost of such services within thirty (30) days after invoice therefor.

9.2 CAUSES BEYOND CONTROL OF THE LANDLORD The Landlord shall in no event be liable for failure to perform any of its obligations under this Lease when prevented from doing so by causes beyond its reasonable control, including without limitation labor dispute, breakdown, accident, order or regulation of or by any governmental authority, or failure of supply, or inability by the exercise of reasonable diligence to obtain supplies, parts, or employees necessary to furnish services required under this Lease, or because of war or other emergency, or for any cause due to any act, neglect, or default of Tenant or Tenant's servants, contractors, agents, employees, licensees or any person claiming by, through or under Tenant, and in no event shall Landlord ever be liable to Tenant for any indirect, special or consequential damages under the provisions of this Section 9.2 or any other provision of this Lease.

9.3 SEPARATELY METERED UTILITIES Tenant shall pay directly to the utility, as they become due, all bills for electricity, gas, water and sewer, and other utilities (whether they are used for furnishing heat or for other purposes) that are furnished to the Premises and now or hereafter

2020.04.17 CITY to AKS Execution Copy

separately metered or billed by the utility to the Premises including but not limited to water, gas, electric, heat, and telephone, whether now existing or installed in the future.. If any utilities used or consumed by Tenant are not separately metered, Tenant shall pay its allocable share of such utilities, based on use, as reasonably determined by Landlord, which shall be considered additional Rent. Barring unusual circumstances, an allocation of utilities which are not separately metered based on Tenant's proportional square footage of the structures which lie upon the Premises shall be considered a reasonable allocation of such utility charges. Any utility services existing at the time of the commencement of this Lease on the Leased Premises shall be repaired and maintained by AKS during the terms of the Lease so that such services are in at least as good condition at the end of this Lease as at the beginning Lease term.

ARTICLE X INDEMNITY

10.1 THE LANDLORD'S INDEMNITY So long as the Tenant has complied with the terms of this lease and their previous lease with the City/Landlord then:

- a. The Landlord shall indemnify and hold harmless Tenant from all Adverse Consequences arising out of the presence of hazardous substances, hazardous wastes or hazardous materials, as those terms are defined by applicable federal and state laws and regulations provided the same was on the Leased Premises prior to the Tenant's and assignees' occupancy, unless caused by Tenant's breach.
- b. The Landlord shall indemnify and hold harmless Tenant from all Adverse Consequences arising out of the presence of petroleum products or byproducts, radioactive materials, asbestos, polychlorinated biphenyls, perfluorooctanoic acid or perfluorooctyl sulfonate, provided the same was on the property prior to the Tenant's and assignees' occupancy, unless caused by Tenant's breach.
- c. For purposes of this Article IX, "Adverse Consequences" is defined as any liability which would otherwise be incurred by the City Fitchburg pursuant to or resulting from the application of M.G.L. c. 21 E and its the Federal counterpart.

10.2 THE TENANT'S INDEMNITY The Tenant shall indemnify and save harmless Landlord, the directors, officers, agents, and employees of Landlord, against and from all claims, expenses, or liabilities of whatever nature (a) arising directly or indirectly from any default or breach by Tenant or Tenant's contractors, licensees, agents, servants, or employees under any of the terms or covenants of this Lease (including without limitation any violation of Landlord's Rules and Regulations and any failure to maintain or repair equipment or installations to be maintained or repaired by Tenant hereunder) or the failure of Tenant or such persons to comply with any rule, order, regulation, or lawful direction now or hereafter in force of any public authority, in each case to the extent the same are related, directly or indirectly, to the Premises, or Tenant's use thereof; or (b) arising directly or indirectly from any accident, injury, or damage, however caused, to any person or property, on or about the Premises; or (c) arising directly or indirectly

Reports of
Committees
City Property
Committee
Oral Report

from any accident, injury, or damage to any person or property occurring outside the Premises, where such accident, injury, or damage results, or is claimed to have resulted, from any act, omission, or negligence on the part of Tenant, or Tenant's contractors, licensees, agents, servants, employees or customers, or anyone claiming by or through Tenant: provided, however, that in no event shall Tenant be obligated under this clause (c) to indemnify Landlord, the directors, officers, agents, or employees of Landlord, to the extent such claim, expense, or liability results from any omission, fault, negligence, or other misconduct of Landlord or the officers, agents, or employees of Landlord on or about the Premises.

This indemnity and hold harmless agreement shall include, without limitation, indemnity against all expenses, attorney's fees and liabilities incurred in connection with any such claim or proceeding brought thereon and the defense thereof with counsel reasonably acceptable to Landlord. At the request of Landlord, Tenant shall defend any such claim or proceeding directly on behalf and for the benefit of Landlord.

10.3 THE TENANT'S RISK The Tenant agrees to use and occupy the Premises as Tenant is herein given the right to use at Tenant's sole risk; and Landlord shall have no responsibility or liability for any loss or damage, however caused, to furnishings, fixtures, equipment, or other personal property of Tenant or of any persons claiming by, through, or under Tenant except to the extent caused by Landlord or its contractors, licensees, agents, servants, employees or customers, or anyone claiming by, through or under Landlord.

10.4 INJURY CAUSED BY THIRD PARTIES The Tenant agrees that Landlord shall not be responsible or liable to Tenant, or to those claiming by, through, or under Tenant, for any loss or damage resulting to Tenant or those claiming by, through, or under Tenant, or its or their property, that may be occasioned by or through the acts or omissions of others using the Airport or the leased property, or for any loss or damage from the breaking, bursting, crossing, stopping, or leaking of electric cables and wires, and water, gas, sewer, or steam pipes, or like matters, except as such injury may be caused in whole or in part by the negligent acts or omissions of the Landlord, its employees, agents or assigns. If the Landlord is partially responsible for any damage then the Landlord shall be held liable in an amount proportionate to its responsibility.

10.5 Any resident of the City, or anyone on the premises in connection with a pass issued by the City who is using the services of the Tenant shall be considered to be using said property and/or facility as a customer of the Tenant and not as a customer or anyone claiming by, through or under the Landlord.

10.6 Neither the City of Fitchburg nor its respective officers, employees, tenants, subtenants, contractors, subcontractors, agents, customers or invitees, shall be liable to AKS in any way for any injury to persons or damage to property resulting from sinking or settling of the land or from any change in the physical condition of the land whatsoever.

2020.04.17 CITY to AKS Execution Copy

10.7 **SECURITY** Tenant agrees that, in all events, Tenant is responsible for providing security to the Premises and its own personnel. The Tenant shall maintain the existing fence and berm around the perimeter of the premises with locked gates so as to assure that children, trespassers or uninvited persons shall not have access to the premises.

ARTICLE XI INSURANCE

11.1 **PUBLIC LIABILITY INSURANCE** The Tenant agrees to maintain in full force from the date upon which Tenant first enters the Premises for any reason, throughout the Lease Term, and thereafter so long as Tenant is in occupancy of any part of the Premises, (a) a policy of commercial general liability insurance, written on an occurrence basis and including contractual liability coverage to cover any liabilities assumed under this Lease, insuring against all claims for injury to or death of persons or damage to property on or about the Premises or arising out of the use of the Premises, including products liability, and completed operations liability, and (b) automobile liability insurance covering all owned vehicles, hired vehicles and all other non-owned vehicles. Each such policy shall designate Tenant as a named insured, shall be reasonably satisfactory to Landlord, including, without limitation, the amount of any deductible thereunder, and Landlord, its managing agent, if any, and any mortgagees (as may be set forth in a notice given from time to time by Landlord) shall be named as additional insureds, as their interests appear. Comprehensive Commercial General Liability: General Liability Policies shall not contain a deductible and this shall be clearly evidenced on the certificate of insurance. A waiver of subrogation shall not be included in the policy.

Each such policy shall expressly provide that it shall not expire or be amended or canceled without at least thirty (30) days' prior written notice to Landlord in each instance and that the interests of Landlord thereunder or therein shall not be affected by any breach by Tenant of any policy provision, and a duplicate original or certificate thereof shall be delivered to Landlord. The minimum limits of liability of such insurance shall be:

- a. Bodily injury and property damage combined single limit of \$1,000,000 per occurrence with a \$3,000,000.00 aggregate.;
- b. AKS shall provide Umbrella liability of at least \$3,000,000 per occurrence, \$5,000,000 aggregate.
- c. AKS shall provide property coverage for materials and supplies being transported by said AKS, whether individually, by contractors, customers, vendors, invitees, agents or otherwise. The in transit limit shall be \$1,000,000.
- d. Automobile Liability Insurance: AKS shall provide and maintain a minimum of \$1,000,000 Bodily Injury and Property Damage per occurrence, with an annual aggregate of \$3,000,000. Coverage shall be provided for all owned, hired and non-owned vehicles. The

Reports of
Committees
City Property
Committee
Oral Report

maximum allowable automotive deductible is \$300.00. The deductible amount shall be clearly evidenced on the certificate of insurance.

The Landlord shall have the right from time to time to increase such minimum limits upon notice to Tenant, provided that any such increase shall provide for coverage in amounts similar to like coverage being carried on like property in the greater Worcester County.

11.2 HAZARD INSURANCE The Tenant agrees to maintain in full force from the date upon which Tenant first enters the Premises for any reason, throughout the Lease Term, and thereafter so long as Tenant is in occupancy of any part of the Premises, a policy, reasonably satisfactory to Landlord, including, without limitation, the amount of any deductible thereunder, insuring any leasehold improvements paid for by Tenant and all fixtures, equipment, and other personal property of Tenant against damage or destruction by fire or other casualty in an amount equal to the full replacement cost of such property. Tenant shall also maintain insurance against such other hazards as may from time to time reasonably be required by Landlord or the holder of any mortgage on the Premises, provided that such insurance is customarily carried in the area in which the Premises are located on similar property and that Tenant receives written notice specifying all such additional insurance as may be required. At Landlord's request, any such policies of insurance shall name any such mortgagee as loss payee under a standard mortgagee's clause. Notwithstanding any other provision to the contrary, the amount of such insurance, if any, for Tenant's Personal property is and shall be at Tenant's sole discretion.

11.3 Worker's Compensation Insurance: AKS shall provide and maintain Worker's Compensation Insurance at the Statutory Limits established by the Commonwealth of Massachusetts.

11.4 Employer's Liability Insurance: AKS shall provide and maintain Employer's Liability Insurance in the amount of \$500,000 per occurrence, with an annual aggregate of \$500,000.

11.5 Environmental Liability Insurance: AKS shall provide and maintain Environmental Liability Insurance in the amount of \$5,000,000 per occurrence with an annual aggregate of \$5,000,000 covering any and all occurrences on or after the date on which this Lease commences. The minimum allowable deductible shall be \$1,000. The amount of the deductible shall be clearly evidenced on the certificate of insurance.

11.6 The City of Fitchburg shall be named as additional insured and this shall be clearly evidenced on the certificate of insurance. The description of AKS's operations for which coverage is provided shall be clearly evidenced in the description of operations.

11.7 Minimum levels of insurance coverage, as provided for in this Lease, shall be subject to

2020.04.17 CITY to AKS Execution Copy

review and adjustment by the City, as it deems reasonably necessary. AKS shall immediately comply, at its sole cost and expense, with any requirement that the types of insurance coverage or the minimum amounts increase, whether because of a requirement set forth by law or because in the judgment of the City, such an increase is necessary to protect the interests of the City of Fitchburg.

11.8 Insurance Certificates: AKS shall furnish Certificates of Insurance, acceptable to the Director of the Board of Health, within five days of request by said Director. Six insurance certificates, in original form shall be provided to the Director and at least one shall contain an original signature in blue ink.

11.9 The Insurance Certificate(s) shall require that the certificate holder be notified in writing at least 30 days before any reduction or cancellation of the polic(ies).

11.10 The City of Fitchburg shall be named an additional insured to the insurance policy and shall be so identified on the Insurance Certificate. The Certificate Holder shall be the Director of the Board of Health, 166 Boulder Street, Fitchburg, MA 01420.

11.11 AKS shall annually, at the conclusion of each policy and/or on the anniversary renewal date of the Lease, provide to the Director of the Board of Health, evidence of renewed or new coverage of the types and in the amounts as stated above.

11.12 AKS shall provide the City with a Performance Bond in the amount of \$500,000 to guarantee its performance of the provisions of this Lease. The Parties agree that the City may, but is not required to, waive this provision if the Board of Health is satisfied that the Performance Bond required by the Site Assignment conditions and financial assurances required by the DEP are sufficient to guarantee AKS' performance pursuant to this Lease.

ARTICLE XII CASUALTY

12.1 DEFINITION OF "SUBSTANTIAL DAMAGE" AND "PARTIAL DAMAGE" The term "substantial damage," as used herein, shall refer to damage which is of such a character that in Landlord's reasonable, good faith estimate the same cannot, in ordinary course, be expected to be repaired within 60 calendar days from the time that such repair work would commence. Any damage which is not "substantial damage" is "partial damage."

12.2 SUBSTANTIAL DAMAGE TO THE PREMISES If during the Lease Term there shall be substantial damage to the Premises by fire or other casualty and if such damage shall materially interfere with Tenant's use of the Premises as contemplated by this Lease, Landlord may, within ninety (90) days after the occurrence of such damage, shall give notice to Tenant of

Reports of
Committees
City Property
Committee
Oral Report

Landlord's election to terminate this Lease. If Landlord shall give such notice, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof. Upon such termination, damages shall be calculated in accordance with Article XXV.

12.3 TENANT'S TERMINATION. In no event shall Landlord have any obligation to make any repairs or perform any restoration work under this Article XII. Further, Landlord shall not be obligated in any event to make any repairs or perform any restoration work to any alterations, additions, or improvements to the Premises performed by or for the benefit of Tenant (all of which Tenant shall repair and restore) or to any fixtures in or portions of the Premises which were constructed or installed by or for some party other than Landlord or which are not the property of Landlord. Upon substantial damage to the Premises which materially interferes with Tenant's use of the Premises as contemplated under this Lease, the Tenant may elect to terminate this Lease rather than repair or restore the Premises, but would have the right to clean the Premises and remove debris. In such case, no damages for the remaining term of the Lease would be payable.

ARTICLE XIII EMINENT DOMAIN

13.1 RIGHTS OF TERMINATION FOR TAKING If the Premises, or such portion thereof as to render the balance (if reconstructed to the maximum extent practicable in the circumstances) physically unsuitable for Tenant's purposes, shall be taken (including a temporary taking in excess of 180 days) by condemnation or right of eminent domain or sold in lieu of condemnation, Landlord or Tenant may elect to terminate this Lease by giving notice to the other of such election not later than thirty (30) days after Tenant has been deprived of possession.

Further, if so much of the Premises shall be so taken, condemned or sold or shall receive any direct or consequential damage by reason of anything done pursuant to public or quasi-public authority such that continuation of this Lease would, in Landlord's opinion, be uneconomical for Landlord, Landlord may elect to terminate this Lease by giving notice to Tenant of such election not later than thirty (30) days after the effective date of such taking.

13.2 PAYMENT OF AWARD Nothing contained herein shall be construed to prevent Tenant from prosecuting in any condemnation proceedings a claim for the value of any of Tenant's improvements on the Premises by Tenant at Tenant's expense and for relocation expenses.

13.3 ABATEMENT OF RENT In the event of any such taking of the Premises, the Base Rent or a fair and just proportion thereof, according to the nature and extent of the damage sustained, shall be suspended or abated, as appropriate and equitable in the circumstances.

ARTICLE XIV DEFAULT

2020.04.17 CITY to AKS Execution Copy

14.1 TENANT'S DEFAULT

(a) The Tenant shall be in default if at any time any one or more of the following events (herein referred to as a "Default of Tenant") shall occur:

(i) The Tenant shall fail to make payment of rent or any other monetary amount due under this lease within five (5) days after Landlord has sent to Tenant notice of such default. However, if: (A) Landlord shall have sent to Tenant a notice of such default, even though the same shall have been cured and this Lease not terminated; and (B) during the lease year in which said notice of default has been sent by Landlord to Tenant, Tenant thereafter shall default in any monetary payment, the same shall be deemed to be a Default of Tenant upon Landlord giving Tenant written notice thereof, within the five (5) day grace period set forth above; or

(ii) Tenant shall fail to perform or observe any other covenant or provision herein contained on Tenant's part to be performed or observed and Tenant shall fail to remedy the same within thirty (30) days after notice to Tenant specifying such neglect or failure, or, if such failure is of such a nature that Tenant cannot reasonably remedy the same within such thirty (30) day period, Tenant shall fail to commence promptly to remedy the same and to prosecute such remedy to completion with diligence and continuity;. However, if (A) Landlord shall have sent to Tenant two notices of such default, even though the same shall have been cured and this Lease is not terminated; and (B) during the lease year in which said notices of default have been sent by Landlord to Tenant, and the Tenant thereafter shall default in any nonmonetary matter, the same shall be deemed to be a Default of Tenant upon Landlord giving Tenant written notice thereof, and Tenant shall have a ten (10) day grace period within which to cure the same; or

(iii) Except as otherwise provided by applicable law, if the estate hereby created shall be taken on execution or by other process of law, or if Tenant shall be judicially declared bankrupt or insolvent according to law, or if any assignment shall be made of the property of Tenant for the benefit of creditors, or if a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of Tenant's property by a court of competent jurisdiction, or if a petition shall be filed for the reorganization of Tenant under any provisions of law now or hereafter enacted, and such proceeding is not dismissed within sixty (60) days after it is begun, or if Tenant shall file a petition for such reorganization, or for arrangements under any provisions of such laws providing a plan for a debtor to settle, satisfy or extend the time for the payment of debts; or

(iv) Tenant shall vacate or abandon the Premises, then, in any such case, Landlord may, in addition to any remedies otherwise available to Landlord, immediately or at any time thereafter, and without demand or notice, enter into and upon the Premises or any part thereof in the name of the whole and repossess the same as of Landlord's former estate, and expel Tenant and those

Reports of
Committees
City Property
Committee
Oral Report

claiming by, through or under it and remove its or their effects (forcibly if necessary) without being deemed guilty of any manner of trespass, and without prejudice to any remedies that might otherwise be used for arrears of rent or preceding breach of covenant and/or Landlord may terminate this Lease by notice to Tenant and this Lease shall come to an end on the date of such notice as fully and completely as if such date were on the date herein originally fixed for the expiration of all terms of this Lease (Tenant hereby waiving any rights of redemption, if any, under G.L. c. 186, § 11 to extent that such rights may be lawfully waived), and Tenant will then quit and surrender the Premises to Landlord, but Tenant shall remain liable as herein provided. To the extent permitted by law, Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed, or in the event of Landlord obtaining possession of the Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease. In the event of any such termination, entry or re-entry, Landlord shall have the right to remove and store Tenant's property and that of persons claiming by, through or under Tenant at the sole risk and expense of Tenant and, if Landlord so elects, to sell such property at public auction or private sale and apply the net proceeds to the payment of all sums due to Landlord from Tenant and pay the balance, if any, to Tenant, or to dispose of such property in any manner in which Landlord shall elect, Tenant hereby agreeing to the fullest extent permitted by law that it shall have no right, title or interest in any property remaining in the Premises after such termination, entry or reentry.

(b) Tenant covenants and agrees, notwithstanding any termination of this Lease as aforesaid or any entry or reentry by Landlord, whether by summary proceedings, termination or otherwise, to pay and be liable for on the days originally fixed herein for the payment thereof, amounts equal to the several installments of Rent and other charges reserved as they would become due under the terms of this Lease if this Lease had not been terminated or if Landlord had not entered or re-entered, as aforesaid, and whether the Premises be re-let or remain vacant, in whole or in part, or for a period less than the remainder of the Term, or for the whole thereof; but in the event the Premises be re-let by Landlord, Tenant shall be entitled to a credit in the net amount of rent received by Landlord in re-letting, after deduction of all expenses incurred in re-letting the Premises (including, without limitation, remodeling costs, brokerage fees, attorney fees and the like), and in collecting the rent in connection therewith. As an alternative, at the election of Landlord, Tenant will upon such termination pay to Landlord, as damages, such a sum as at the time of such termination represents the amount of the excess, if any, of the then value of the total Rent and other benefits that would have accrued to Landlord under this Lease for the remainder of the Lease Term if the lease terms had been fully complied with by Tenant over and above the then cash rental value (in advance) of the Premises for what would be the then unexpired Lease Term if the same remained in effect.

(c) In case of any Default of Tenant, reentry, entry, expiration and dispossession by summary proceedings or otherwise, Landlord may (i) re-let the Premises or any part or parts thereof, either in

2020.04.17 CITY to AKS Execution Copy

the name of Landlord or otherwise, for a term or terms that may at Landlord's option be equal to or less than or exceed the period that would otherwise have constituted the balance of the Lease Term and may grant concessions or free rent to the extent that Landlord considers advisable or necessary to re-let the Premises and (ii) make such alterations, repairs and decorations in the Premises as Landlord, in its sole judgment, considers advisable or necessary for the purpose of re-letting the Premises; and no action by Landlord in accordance with the foregoing shall operate or be construed to release Tenant from liability hereunder as aforesaid. It is specifically understood and agreed that Landlord shall be entitled to take into account in connection with any re-letting of the Premises all relevant factors that would be taken into account by a sophisticated developer in securing a replacement tenant for the Premises. Landlord shall in no event be liable in any way whatsoever for failure to re-let the Premises, or, in the event that the Premises are re-let, for failure to collect the rent under such re-letting, and Tenant hereby waives, to the extent permitted by applicable law, any obligation Landlord may have to mitigate Tenant's damages. The Landlord agrees to list the Premises with a broker in the event of a termination, entry or reentry under this Article XIV, provided that Landlord's obligation to list the Premises as provided herein is independent of Tenant's obligations under this Article XIV and shall not be construed to entitle Tenant to set-off against any amounts payable by Tenant hereunder in the event of a breach or alleged breach by Landlord of such obligation. In no event shall Landlord be obligated to give priority to the re-letting of the Premises over any other premises owned by Landlord.

(d) If there is at any time a guarantor or assignee of this Lease or any interest of Tenant herein or any sublessee, franchisee, concessionee or licensee of all or any portion of the Premises, the happening of any of the events described in paragraph (a)(iii) of this Section with respect to such guarantor, assignee, sublessee, franchisee, concessionee or licensee shall constitute a Default of Tenant hereunder.

(e) The specified remedies to which Landlord may resort hereunder are not intended to be exclusive of any remedies or means of redress to which Landlord may, at any time, be entitled lawfully and Landlord may invoke any remedy (including the remedy of specific performance) allowed at law or in equity as if specific remedies were not herein provided for.

(f) All costs and expenses incurred by or on behalf of Landlord (including, without limitation, attorney fees and expenses) in enforcing its rights hereunder or occasioned by any Default of Tenant shall be paid by Tenant.

(g) Upon any Default of Tenant, or the expiration or termination of this Lease, Landlord shall have the right of summary process under G.L. c. 239, or other applicable statutes, and such other rights to recover possession as permitted by law. Tenant and Landlord each hereby waives any and all rights under the laws of any state to the right, if any, to trial by jury. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy, insolvency or like proceedings by reason of the termination of this Lease, an amount

Reports of
Committees
City Property
Committee
Oral Report

equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater than, equal to or less than the amount of the loss or damages referred to above.

(h) Notwithstanding any provision herein, LANDLORD shall have a duty to mitigate any losses or damages.

14.2 LANDLORD'S DEFAULT Landlord shall in no event be in default in the performance of any of Landlord's obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after notice by Tenant to Landlord specifying wherein Landlord has failed to perform any such obligation.

ARTICLE XV LANDLORD'S ACCESS TO PREMISES

15.1 THE LANDLORD'S RIGHT OF ACCESS The Landlord and its agents, contractors and employees shall have the right to enter the Premises at all reasonable hours upon reasonable advance notice, except in exigent circumstances, or any time in case of emergency, for the purpose of inspecting or of making repairs or alterations, to the Premises, and Landlord shall also have the right to make access available at all reasonable hours to prospective or existing mortgagees or purchasers of any part of the Premises.

15.2 The Director of the Board of Health, any members of said Board or a designee is and shall hereby be authorized to access the Leased Premises, inspect the activities and operations thereon, including books and records of AKS regarding the same, provided that no such designee is authorized to revoke, alter, enlarge, waive, relax, or release any requirements of AKS or the City under this Lease, or to issue any instructions to any person that may be contrary to the terms and conditions herein.

15.3 The City's inspections, if any, shall in no way relieve AKS of its obligations as set forth in this Lease.

15.4 AKS shall make any and all documents collected, created or used directly or indirectly related to this Lease, including but not limited to records relating to truckers of recyclables and municipal solid waste (MSW), available to the Board of Health, its Director, or a designee, upon request.

For a period commencing twelve (12) months prior to the expiration of the Lease Term, Landlord may have reasonable access to the Premises at all reasonable hours for the purpose of exhibiting the same to prospective tenants.

ARTICLE XVI

2020.04.17 CITY to AKS Execution Copy

RIGHTS OF MORTGAGEES**16.1 SUBORDINATION AND ATTORNMENT**

- a. Forthwith upon the request of Landlord or the holder of any mortgage or deed of trust affecting the Premises, Tenant shall execute and deliver to such party an attornment agreement providing that Tenant shall attorn to such holder or lessor in the event of a foreclosure of such mortgage or deed of trust or transfer in lieu thereof or a termination of such ground lease and incorporating such other terms and conditions as such party may reasonably require, provided that such agreement includes an agreement by such other party to recognize the rights of Tenant under this Lease. Irrespective of whether any such attornment agreement has been executed, Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage or deed of trust made by Landlord, its successors or assigns, encumbering the Premises, or any part thereof or upon any grant of a deed in lieu of foreclosure and recognize such purchaser as Landlord under this Lease.
- b. Tenant agrees on request of Landlord to execute and deliver from time to time any instrument that Landlord may reasonably deem necessary to implement the provisions of this Section 16.1.

16.2 NOTICE TO MORTGAGEE; OPPORTUNITY TO CURE After receiving notice from any person, firm or other entity (or from Landlord on behalf of any such person, etc.) that it holds a mortgage that includes the Premises as part of the mortgaged premises, no notice from Tenant to Landlord shall be effective unless and until a copy of the same is given to such holder, and the curing of any of Landlord's defaults by such holder shall be treated as performance by Landlord. Accordingly, no act or failure to act on the part of Landlord that would entitle Tenant under the terms of this Lease, or by law, to be relieved of Tenant's obligations hereunder shall have such an effect unless and until:

- a. Tenant shall have first given written notice to such holder, if any, specifying the act or failure to act on the part of Landlord that could or would give basis to Tenant's rights; and
- b. Such holder, after receipt of such notice, has failed or refused to correct or cure the condition complained of within a reasonable time thereafter, but nothing contained in this Section 16.2 or elsewhere in this Lease shall be deemed to impose any obligation on any such holder to correct or cure any such condition.

16.3 ASSIGNMENT OF RENTS With reference to any assignment by Landlord of Landlord's interest in this Lease, or the rents payable hereunder, conditional in nature or otherwise, which assignment is made to the holder of a mortgage on property that includes the Premises, Tenant agrees:

Reports of
Committees
City Property
Committee
Oral Report

- a. That the execution thereof by Landlord, and the acceptance thereof by the holder of such mortgage, shall never be treated as an assumption by such holder of any of the obligations of Landlord hereunder, unless such holder shall, by notice sent to Tenant, specifically otherwise elect; and
- b. Except as aforesaid, such holder shall be treated as having assumed Landlord's obligations hereunder only upon foreclosure of such holder's mortgage and the taking of possession of the Premises.

**ARTICLE XVII
EMERGENCY TERMINATION OR SUSPENSION BY LANDLORD**

17.1 EMERGENCY TERMINATION Notwithstanding any provision to the contrary, if, in the Landlord's sole discretion, there is an emergency situation, including but not limited to a danger to public health or safety, a danger to public or private property, a danger to public air travel, a failure to comply with any federal, state or local law, or FAA or Massachusetts DOT Aeronautics Division regulation such that the Fitchburg Municipal Airport could be ordered closed, whether temporarily or permanently, or could be fined or otherwise penalized, the Landlord may, without waiving any other right or remedy it may have, terminate or suspend this Lease, in whole or in part, and shall be required to give only such notice as was actually given. In such event, Rent and other payments shall be suspended or abated in proportion to the diminution of rights of the Tenant. By such action, neither the Landlord nor the City of Fitchburg shall be liable to the Tenant, or to any of its officers, employees, tenants, subtenants, contractors, subcontractors, agents, invitees, or any other individual or entity related thereto. In the event of such termination or suspension, the Landlord and its designee may take over all or any portion of the services being provided under this Lease by the Tenant unless Landlord's action is determined by a court of competent jurisdiction to have been arbitrary or capricious and not supported by fact.

17.2 PRECLUSION OF DAMAGES The Landlord's suspension or termination of this Lease, in whole or in part, in accordance with this Section shall preclude the Tenant's recovery of damages against the Landlord or their respective officers, attorneys, employees or agents, relating to or arising from said suspension or termination, including but not limited to any and all costs of relocation, lost profits, lost opportunity, or any other direct, indirect, consequential, or incidental loss.

**ARTICLE XVIII
FEDERAL AVIATION ADMINISTRATION REQUIREMENTS**

18.1 NONEXCLUSIVE USE Nothing herein contained shall be construed to grant to Tenant any exclusive right to the use of the Fitchburg Municipal Airport or any of its facilities within the meaning of Section 308 of the Federal Aviation Act of 1958, nor shall anything contained herein be construed to prevent Landlord from entering into a similar lease with any other person, firm or corporation.

2020.04.17 CITY to AKS Execution Copy

18.2 **SUBORDINATION** This Lease shall be subordinate to the provision of any existing or future agreements and grant assurances between Landlord and the United States of America and/or the Commonwealth of Massachusetts relative to the Airport. Tenant acknowledges that it is aware of all such agreements and grant assurances or has the ability to request the same from Landlord. This shall specifically include, but shall not be limited to, Executive Order 13513 and DOT Order 3902.10 on Text Messaging While Driving, under which Tenant is encouraged to:

- a. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Tenant.
- b. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - i. Establishment of new rules and programs or re-evaluation of existing program to prohibit text messaging while driving; and
 - ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

18.3 **NATIONAL EMERGENCY** During the time of war or other national emergency declared by the President of the United States, Landlord shall have the right to lease the landing area and other facilities of the Fitchburg Municipal Airport or any part thereof to the United States for military or normal use for the duration of such national emergency. The term of the Lease, insofar as it is inconsistent with the terms of any such lease entered into with the United States or the Commonwealth of Massachusetts, shall be suspended during the period of such national emergency.

Tenant shall have the option, at any time during such period of national emergency, of terminating the Lease by giving Landlord ninety (90) days advance notice of its intention to terminate by certified mail.

ARTICLE XIX FEDERALLY REQUIRED NON-DISCRIMINATION PROVISION

19.1 **NONDISCRIMINATION** The Tenant for itself, its personal representatives, successor in interest and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the Premises, that, (1) no person on the grounds of race, color, gender, religion, national origin or other protected class shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such Premises and the furnishings of services thereon, no person on the grounds of race, color, gender, religion, national origin or other protected class shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department

Reports of
Committees
City Property
Committee
Oral Report

of Transportation, Subtitle A Office of the Secretary of State, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

19.2 NONDISCRIMINATION COVENANTS. This Lease and any sublease entered into regarding the Premises shall be subject to the following provisions:

- (a) This Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Tenant agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
- (b) The Tenant agrees to include the above statements in any subsequent agreement or contract covered by 49 CFR Part 23 that it enters and shall cause those businesses to similarly include the statements in further agreements.

19.3 SERVICES AND CHARGES. Tenant agrees that in the exercise of the rights and privileges herein granted for the furnishing of aeronautical services to the public that it shall:

- a. Furnish said services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and
- b. Charge a fair, reasonable, and not unjustly discriminatory price for each unit or service; provided, that the Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

19.4 REMEDY In the event of a breach of any of the above non-discrimination covenants, after forty-five (45) days' written notice remaining uncured, Landlord shall have the right to terminate the Lease, and to reenter and repossess the said Premises and all facilities and improvements thereon, and hold the same as if the Lease had never been made or issued.

ARTICLE XX TENANT'S USE OF AIRPORT

20.1 AIRPORT USE Tenant agrees that Tenant shall comply with the laws, rules and regulations and contractual provision of the Federal Aviation Administration (FAA) and the MassDOT Aeronautics Division as the same may be applicable to the Tenant's use of the Premises as described in this Lease.

ARTICLE XXI

2020.04.17 CITY to AKS Execution Copy

INGRESS AND EGRESS

21.1 ACCESS Tenant shall have at all times the full and free right of ingress and egress to the Premises and the improvements and facilities referred to herein, for the Tenant and its subtenants, employees, guests, and other invitees, including persons supplying materials or furnishing services to Tenant and also, including the use of vehicles, machinery and equipment reasonably required for such supply or service.

**ARTICLE XXII
AGENCY**

22.1 NO AGENCY Tenant shall not at any time during the period of this Lease or any extension thereof act as agent, servant, or employee of the Landlord, unless requested and duly authorized by the Fitchburg Airport Commission or the City.

ARTICLE XXIII MISCELLANEOUS PROVISIONS

23.1 CAPTIONS The captions throughout this Lease are for convenience or reference only and shall in no way be held or deemed to define, limit, explain, describe, modify, or add to the interpretation, construction, or meaning of any provision of this Lease.

23.2 BIND AND INURE Except as herein otherwise expressly provided, the obligations of this Lease shall run with the land, and this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The reference herein to successors and assigns of Tenant is not intended to constitute a consent to assignment by Tenant, but has reference only to those instances in which Landlord may later give consent to a particular assignment as required by the provisions of Article VII. Neither the assignment by Landlord of its interest in this Lease as security to a lender holding a mortgage, nor the acceptance thereof by such lender, nor the exercise by such lender of any of its rights pursuant to said assignment shall be deemed in any way an assumption by such lender of any of the obligations of Landlord hereunder unless such lender shall specifically otherwise elect in writing or unless such lender shall have completed foreclosure proceedings under said mortgage. Whenever the Premises are owned by a trustee or trustees, the obligations of Landlord shall be binding upon Landlord's trust estate, but not upon any trustee, beneficiary or shareholder of the trust individually.

23.3 NO WAIVER The failure of Landlord or of Tenant to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Lease shall not be deemed to be a waiver of such violation or to prevent a subsequent act, which would originally have constituted a violation, from having all the force and effect of an original violation. The receipt by

Reports of
Committees
City Property
Committee
Oral Report

Landlord of Rent or additional rent with knowledge of the breach of any covenant of this Lease shall not be deemed to be a waiver of such breach by Landlord unless such waiver be in writing signed by Landlord. No consent or waiver, express or implied, by Landlord or Tenant to or of any breach of any agreement or duty shall be construed as a waiver or consent to or of any other breach of the same or any other agreement or duty.

23.4 NO ACCORD AND SATISFACTION No acceptance by Landlord of a lesser sum than the minimum and additional rent then due shall be deemed to be other than on account of the earliest installment of such rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed to be an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy in this Lease or at law or in equity provided.

23.5 CUMULATIVE REMEDIES The specific remedies to which Landlord may resort under the terms of this Lease are cumulative and not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any breach or threatened breach by Tenant of any provisions of this Lease. In addition to the other remedies provided in this Lease, Landlord shall be entitled to the restraint by injunction of the violation or attempted or threatened violation of any of the covenants, conditions or provisions of this Lease or to a decree compelling specific performance of any such covenants, conditions or provisions. Except as otherwise set forth herein, any obligations of Tenant as set forth herein (including, without limitation, rental and other monetary obligations, repair obligations and obligations to indemnify Landlord) shall survive the expiration or earlier termination of this Lease, and Tenant shall immediately reimburse Landlord for any expense incurred by Landlord in curing Tenant's failure to satisfy any such obligation (notwithstanding the fact that such cure might be effected by Landlord following the expiration or earlier termination of this Lease).

23.6 PARTIAL INVALIDITY If any term or provision of this Lease or any portion thereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Lease and of such term or provision and the those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

23.7 LANDLORD'S RIGHT TO CURE If Tenant shall at any time default in the performance of any obligation under this Lease, Landlord shall have the right, but not the obligation, to enter upon the Premises and/or to perform such obligation, notwithstanding the fact that no specific provision for such substituted performance by Landlord is made in this Lease with respect to such default. In performing any such obligations, Landlord may make any payment of money or perform any other act. All sums so paid by Landlord (together with interest at the

2020.04.17 CITY to AKS Execution Copy

Lease Interest Rate) and all necessary incidental costs and expenses in connection with the performance of any such act by Landlord, shall be deemed to be additional rent under this Lease and shall be payable to Landlord immediately on demand. Landlord may exercise the foregoing rights without waiving any other of its rights or releasing Tenant from any of its obligations under this Lease.

23.8 ESTOPPEL CERTIFICATES

(a) Tenant agrees on the Term Commencement Date and from time to time thereafter, upon not less than fifteen (15) days' prior written request by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing, certifying that this Lease is unmodified and in full force and effect, that Tenant has no defenses, offsets or counterclaims against its obligations to pay rent and other charges required under this Lease and to perform its other covenants under this Lease and that to the best of Tenant's knowledge having made reasonable inquiry, there are no uncured defaults of Landlord or Tenant under this Lease (or, if there have been any modifications, that this Lease is in full force and effect, as modified, and stating the modifications, and, if there are any defenses, offsets, counterclaims or defaults, setting them forth in reasonable detail), and the dates to which the Rent and other charges have been paid. Any such statement delivered pursuant to this Section 23.8(a) may be relied upon by any prospective purchaser or mortgagee of the property which includes the Premises or any prospective assignee of any such mortgagee.

(b) Landlord agrees, upon not less than fifteen (15) days' prior written request by Tenant or any subtenant, to execute, acknowledge and deliver to the requesting party, a statement in writing, certifying that this Lease is unmodified and in full force and effect, and that to the best of Landlord's knowledge having made reasonable inquiry, there are no uncured defaults of the Tenant or the subtenant, or if there are any uncured defaults, setting them forth in reasonable detail. Any such statement delivered pursuant to this Section 23.8(b) may be relied upon by any prospective purchaser or mortgagee.

23.9 BROKERAGE Each party hereto warrants and represents that it has dealt with no real estate broker or agent in connection with this transaction and agrees to defend, indemnify and save the other party harmless from and against any and all claims for commissions or fees arising out of this Lease which, as to the respective parties, are inconsistent with such party's warranties and representations. Landlord shall be responsible for any commissions or fees owed to any Broker in connection with this transaction in accordance with a separate agreement between Broker and Landlord.

23.10 ENTIRE AGREEMENT All negotiations, considerations, representations, and understandings between Landlord and Tenant are incorporated herein and this Lease expressly supersedes any proposals or other written documents relating hereto, except that the Parties

Reports of
Committees
City Property
Committee
Oral Report

acknowledge that a Community Host Agreement has been executed contemporaneously with regarding Impact Fees which was executed independent of this Agreement. This Lease may be modified or altered only by written agreement between Landlord and Tenant, and no act or omission of any employee or agent of Landlord shall alter, change, or modify any of the provisions hereof.

23.11 HOLDOVER. If Tenant remains in the Premises after the termination of this Lease, by its own terms or for any other reason, such holding over shall not be deemed to create any tenancy, but Tenant shall be a tenant at sufferance only, at a daily rate equal to one hundred ten percent (110%) of the Rent applicable immediately prior to such termination plus the then applicable additional rent and other charges under this Lease for the first year of holdover, and thereafter at a daily rate equal to one hundred and fifty percent (150%) of the Rent applicable immediately prior to such termination plus the then applicable additional rent and other charges under this Lease. Tenant shall also pay to Landlord all damages, direct or indirect, sustained by Landlord by reason of any such holding over. Otherwise, such holding over shall be on the terms and conditions set forth in this Lease as far as applicable.

23.12 COUNTERPARTS. This Lease is executed in any number of counterparts, each copy of which is identical, and any one of which shall be deemed to be complete in itself and may be introduced in evidence or used for any purpose without the production of the other copies.

23.13 CONSTRUCTION AND GRAMMATICAL USAGE This Lease shall be governed, construed and interpreted in accordance with the laws of The Commonwealth of Massachusetts, and Tenant agrees to submit to the personal jurisdiction of any court (federal or state) in said Commonwealth for any dispute, claim or proceeding arising out of or relating to this Lease. In construing this Lease, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so admits or requires. If there be more than one party tenant, the covenants of Tenant shall be the joint and several obligations of each such party and, if Tenant is a partnership, the covenants of Tenant shall be the joint and several obligations of each of the partners and the obligations of the firm.

Each of the parties acknowledges that it has been advised by counsel, or had the opportunity to be advised by counsel, in the drafting, negotiation, execution and delivery of this Agreement, and has actively participated in the drafting, negotiation, execution and delivery of this Agreement. In no event will any provision of this Agreement be construed for or against either party as a result of such party having drafted all or any portion hereof.

23.14 WHEN LEASE BECOMES BINDING Employees or agents of Landlord have no authority

2020.04.17 CITY to AKS Execution Copy

to make or agree to make a lease or any other agreement or undertaking in connection herewith. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises, and this document shall become effective and binding only upon the execution and delivery hereof by both Landlord and Tenant.

23.15 SECURITY DEPOSIT If, in this lease, a security deposit is specified, Tenant agrees that the same will be paid upon execution and delivery of this Lease, and that Landlord shall hold the same, throughout the term of this Lease, as security for the performance by Tenant of all obligations on the part of Tenant to be kept and performed. In no event shall said security deposit be deemed to be a prepayment of rent nor shall it be considered a measure of liquidated damages. Landlord shall have the right from time to time without prejudice to any to cure a default by Tenant hereunder or Landlord's damages arising from any default on the part of Tenant. If any amount of such deposit is so applied, Tenant shall pay the amount so applied to Landlord upon demand therefor. Tenant not then being in default, Landlord shall return the deposit, or so much thereof as shall not have theretofore been applied in accordance with the terms of this Section 23.15 to Tenant on the expiration or earlier termination of the Lease Term and surrender of possession of the Premises by Tenant to Landlord. While Landlord holds such deposit, Landlord shall have no obligation to pay interest on the same and shall have the right to commingle the same with Landlord's other funds. If Landlord conveys Landlord's interest under this Lease, the deposit or any part thereof not previously applied may be turned over by Landlord to Landlord's grantee, and if so turned over, Tenant agrees to look solely to such grantee for proper application of the deposit in accordance with the terms of this Section 23.15 and the return thereof in accordance herewith.

Neither a successor landlord nor the holder of a mortgage which includes the Premises shall ever be responsible to Tenant for the return or application of any such deposit, whether or not it succeeds to the position of Landlord hereunder, unless such deposit shall have been received in hand by such successor or holder.

23.16 ENFORCEMENT EXPENSES Each party shall bear their own costs fees and expenses (including, without limitation, attorneys' fees and costs) incurred arising out of or resulting from any act or omission by either party with respect to this Lease or the Premises, including without limitation, any breach by either party of its obligations hereunder, irrespective of whether party resorts to litigation as a result thereof.

23.17 NO SURRENDER The delivery of keys to any employee of Landlord or to Landlord's agents or employees shall not operate as a termination of this Lease or a surrender of the Premises.

23.18 COVENANT OF QUIET ENJOYMENT Subject to the terms and provisions of this Lease and on payment of the Rent, additional rent, and other sums due hereunder and compliance with all of the terms and provisions of this Lease, Tenant shall lawfully, peaceably and quietly have,

2020.04.17 CITY to AKS Execution Copy

hold, occupy, and enjoy the Premises during the term hereof, without hindrance or ejection by Landlord or by any persons claiming under Landlord, subject to the emergency exceptions provided for previously in this Agreement; the foregoing covenant of quiet enjoyment is in lieu of any other covenant, express or implied.

23.19 NO PERSONAL LIABILITY

(a) The Tenant agrees to look solely to Landlord's then equity interest in the Premises at the time owned, or in which Landlord holds an interest as ground lessee, for recovery of any judgment from Landlord; it being specifically agreed that neither Landlord (whether Landlord be an individual, partnership, firm, corporation, trustee, or other fiduciary) nor any partner, policyholder, officer, manager, member, shareholder or director of Landlord, nor any trust of which any person holding Landlord's interest is trustee nor any successor in interest to any of the foregoing shall ever be personally liable for any such judgment, or for the payment of any monetary obligation to Tenant. The covenants of Landlord contained in this Lease shall be binding upon Landlord and Landlord's successors only with respect to breaches occurring during Landlord's and Landlord's successors' respective periods of ownership of Landlord's interest hereunder.

(b) The Landlord agrees, without limitation, to look solely to the assets of Tenant for the recovery of any judgment of Landlord from the Tenant, it being agreed that no Trustee shall ever be personally liable for any such judgment or for the payment to Landlord of any monetary obligation of the Tenant.

23.20 LIMITATION. Nothing herein shall abrogate the application of Massachusetts General Laws Chapter 258, as the same may be amended from time to time.

23.21 REASONABLENESS. Throughout this Agreement, whenever either Tenant or Landlord is given the right to seek recovery of costs, expenses or attorney's fees, recovery of such costs, expenses and attorney's fees shall be limited to those which are reasonable in nature.

23.22 NOTICES Any and all notices, or other communications required or permitted under this Agreement shall be in writing and delivered by hand or mailed, postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at their addresses of record or at such other addresses as the parties shall designate from time to time by written notice.

ARTICLE XXIV FORCE MAJEURE

24.1 Neither party shall be liable to the other or deemed to be in breach under this Lease for any failure to perform, including, without limitation, a delay in rendering performance due to causes beyond its reasonable control such as an order, injunction, judgment, or determination of any Court of the United States or the Commonwealth of Massachusetts, an Act of God, war, civil

disobedience, extraordinary weather conditions, labor disputes, or shortages, or fluctuation in electric power, heat, light, or air conditioning. Dates or time of performance will be extended automatically to the extent of such delays, provided that the party whose performance is affected promptly notifies the other of the existence and nature of such delay.

24.2 It is agreed, however, that since the rights and obligations set forth in this Lease are important, continued failure to perform for periods aggregating ninety (90) days or more, even for causes beyond the control of party failing to perform, shall be deemed to render performance impossible and the other party shall thereafter have the right to terminate this Lease in accordance with the provisions set forth herein.

24.3 If the Tenant is the terminating party under this provision, it shall give Landlord thirty (30) days advanced notice of its intention to terminate by certified mail and shall remove its personal property and such improvements as the Landlord determines it does not wish to retain, within said thirty (30) days of notice to do so. Tenant shall be removed from all liability for future rent, upon vacating the Premises on the date specified in such notice and paying all Rent and any other monies due, and shall remove its personal property and such improvements as the Landlord determines it does not wish to retain, within thirty (30) days of notice to do so.

24.4 If the Landlord is the terminating party under this provision, it shall give the Tenant as much advance notice, in writing, as practicable under the circumstances. The Landlord's termination of this Lease in accordance with this Section shall preclude the Tenant's recovery of damages against the Landlord or the City of Fitchburg or their respective officers, attorneys, employees or agents, relating to or arising from said termination or the underlying Force Majeure circumstance or event, including but not limited to any and all costs of relocation, lost profits, lost opportunity, or any other direct, indirect, consequential, incidental loss. In the event of damages hereunder the parties shall attempt, in good faith, to negotiate a resolution of the damages issue.

ARTICLE XXV TERMINATION FOR CONVENIENCE

25.1 TERMINATION FOR CONVENIENCE. Notwithstanding any other provision of this Lease, the Landlord reserves the right at any time in its absolute discretion to suspend or terminate this Lease in whole or in part for its convenience upon written notice to the Landlord. If any portion of this Lease so suspended is not recommended by written notice of the Landlord within the time period specified in the written notice of suspension, the suspended portion of this Lease shall thereupon be deemed terminated as to that portion for the convenience of the Landlord in accordance with this provision. Neither the Landlord nor the City of Fitchburg shall incur liability by reason of such termination for convenience. The Tenant shall have no right to recover damages against the Landlord or the City of Fitchburg or their respective officers, attorneys,

Reports of
Committees
City Property
Committee
Oral Report

employees or agents, relating to or arising from said termination or suspension under this provision, including but not limited to any and all costs of relocation, lost profits, lost opportunity, or any other direct, indirect, consequential, or incidental loss. The Landlord expressly agrees that it shall not exercise its right as set forth in this section to terminate for its convenience for twenty (20) years from the date of this Lease.

ARTICLE XXVI EXECUTION

26.1 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same Agreement. This Agreement may be subject to City Council approval or authorization of the City's Mayor to execute the same, and if so, shall not be binding on the Landlord until said approvals and authorizations are obtained.

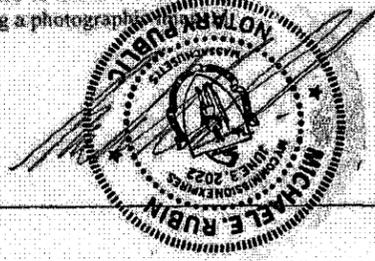
THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK

Reports of
Committees
City Property
Committee
Oral Report

State of Massachusetts
County of _____

On this 8 day of May, ~~2020~~²⁰²⁰, before me, the undersigned notary public
personally appeared - Christopher Karras, President of
AKS Recycling, Inc and proved to me through satisfactory evidence of identification being
a Driver's license of other state or federal government document bearing a photograph.

Execution Copy 2020.04.17
AFDOCS/22023699.2



IN WITNESS WHEREOF, the City of Fitchburg, has caused its corporate seal to be affixed
hereto and these presents to be signed in its name on its behalf by its Mayor, Stephen L.
DiNatale, by _____, the Chairperson of the Fitchburg Airport
Commission, thereto duly authorized, and by the Fitchburg Airport Manager under their hands
and seals as of the _____ day of _____, 2020.

TENANT:

AKS Recycling, Inc
By: [Signature]
Christopher Karras, President

Approved as to form:

By: _____
Vincent P. Pusateri, II, City Solicitor

LANDLORD:

City of Fitchburg:

Reports of
Committees
City Property
Committee
Oral Report

Stephen L. DiNatale, Mayor

Stephen D. Curry, Health Department Director

EXHIBIT A: PLAN SHOWING THE PREMISES

EXHIBIT B: NONE

2020.04.17 CITY to AKS Execution Copy

Reports of
Committees
City Property
Committee
Oral Report

(To Be Inserted)

EXHIBIT A

to the informal drawing at Exhibit C attached hereto, and Tenant may submit a response to the Request for Proposals to enter into such Lease.

4. **Full Remedy.** The Parties agree that this Agreement shall be treated as the full remedy for Tenant's past encroachment onto Landlord's real property beyond the Leased Premises, and shall seek no other remedy.
5. **Attorneys' Fees.** Each party shall bear his or its own costs and attorneys' fees in connection with this Agreement.
6. **Opportunity to Consult With An Attorney.** Both Parties acknowledge that they have had an opportunity to consult with an attorney of their choosing prior to signing the Agreement and waiving any rights under statutes or any other law.
7. **Jurisdiction and Choice of Law.** Parties expressly stipulate that this Agreement is made and entered into in the Commonwealth of Massachusetts. This agreement shall in all respects be interpreted, enforced, and governed pursuant to the laws of the Commonwealth of Massachusetts, without giving effect to the conflict of laws principles of said Commonwealth. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.
8. **Litigation and Enforcement.** Parties expressly agree that any action brought pursuant to this Agreement, including actions to compel its enforcement, shall be brought only in the Fitchburg District Court or the Worcester Superior Court.
9. **Non-Admission.** Parties agree and acknowledge that the consideration for this Agreement is provided solely to purchase peace and avoid the risks and expenses of litigation. The Parties agree that this Agreement shall not be construed as an admission of any liability.
10. **Modification of Agreement.** This Agreement may be amended, revoked, changed or modified only upon a written agreement executed by both parties. No waiver of any provision of this Agreement will be valid unless it is in writing and signed by the party against whom such waiver is charged.
11. **Severability.** Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be part of this Agreement.
12. **Binding Nature of Agreement.** This Agreement shall be binding upon each of the parties and upon their heirs, administrators, representatives, executors, successors, and

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between the City of Fitchburg ("Landlord") and AKS Recycling, a Massachusetts corporation with a usual place of business at 15 Cobbler Drive, Fitchburg, Massachusetts ("Tenant"). This Agreement shall become effective on the date that it is signed by both Parties.

WHEREAS, the Parties have executed a lease agreement ("Lease") for the use of ten acres, more or less, off Airport Road, Fitchburg, Massachusetts, described more fully by Exhibit A attached hereto ("Leased Premises"); and

WHEREAS, the Landlord claims that the Tenant has encroached upon other real property of the Landlord totaling in area approximately twice the square footage of the leased premises, as depicted by Exhibit B attached hereto; and

WHEREAS, the Tenant claims that it used the Leased Premises according to the terms of the Lease as it understood the same to be in use, or that its encroachment was unintentional; and

WHEREAS, the Landlord claims that additional rent or damages are owed by the Tenant due to its encroachment beyond the Leased Premises; and

WHEREAS, the Landlord and the Tenant both desire to settle fully and finally all differences between them regarding Tenant's encroachment beyond the Leased premises;

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1. **Damages.** The Tenant shall pay to the Landlord the sum of Thirty Thousand and no/100 (\$30,000.00) Dollars as damages, rent and use and occupancy for its past encroachment onto Landlord's real property beyond the Leased Premises. Tenant shall pay this sum to Landlord in sixty equal installments of Five Hundred and no/100 (\$500.00) Dollars each, due on the first day of each month beginning February 1, 2018 and continuing until this sum has been paid in full. Landlord agrees that it shall seek no further damages or other reimbursement for an encroachment occurring prior to the date of this Agreement.
2. **Removal of Encroachment.** The Tenant agrees that it shall, within thirty days, remove any and all encroachments onto lands of the Landlord subject to a conservation restriction.
3. **Revision of Lease Agreement.** Landlord and Tenant agree that, subject to Landlord's requirements as a municipality under the law for leasing real property, including local, state or federal statutes and regulations, and including the necessity of publishing a Request for Proposals to the public, Landlord shall structure a new Lease of the Leased Premises which encompasses a description of the Leased Premises generally conforming

CK
6/4/18

Reports of
Committees
City Property
Committee
Oral Report

assigns of each of them, and shall inure to the benefit of each party and to the heirs, administrators, representatives, executors, successors, and assigns of each of them.

13. Entire Agreement. This Agreement sets forth the entire agreement between Landlord and Tenant as to Tenant's past encroachment.

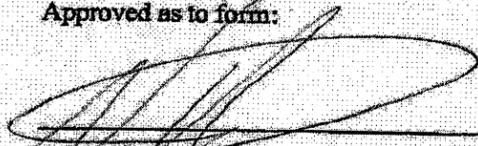
IN WITNESS WHEREOF, the parties have executed the foregoing Agreement on the dates listed after their signatures.

For the Landlord:

Stephen L. DiNatale, Mayor

Date

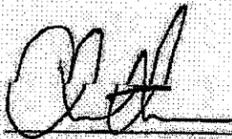
Approved as to form:



Vincent P. Pusateri, II, Esq.

City Solicitor

Tenant



6/4/18

Date

Reports of
Committees
City Property
Committee
Oral Report

042-20. ORDERED THAT: The Mayor is authorized to execute the Host Agreement relative to AKS Recycling, Inc.

City of Fitchburg

FITCHBURG CITY CLERK

2020 JAN 30 AM 10:21

In City Council,

ORDERED:- That

WHEREAS, in 2001 and 2004 the City entered into two separate leases with AKS Recycling, Inc. ("AKS") for the use of certain premises located within the Airport; and

WHEREAS, the CITY and FAA have since determined that the fee owner of these certain premises is the Fitchburg Municipal Airport; and

WHEREAS, the AKS has expanded its operation upon both Airport land and other land belonging to the City of Fitchburg beyond the premises described in the 2001 and 2004 AKS leases; and

WHEREAS, there is a dispute between the City and the AKS as to amounts owed under the prior Leases and the parties wish to resolve those disputes in a manner that will allow the Company to operate within the City and for the City to maintain a prospective relationship with the Company; and

WHEREAS, the CITY requires AKS to occupy a sufficient leased area to continue its current business operations and propose to modify the 2001 and 2004 AKS leases to include the area described by plan attached hereto as Exhibit A (known as "Parcel Y"); and

WHEREAS, applicable federal law requires that the CITY to lease the premises from the Fitchburg Municipal Airport in order to sublease the premises to AKS; and

WHEREAS, the AKS has, executed leases which contain certain provisions relative to hosting the business in the City on or about 2001 and 2004 and it is the parties' intention to amend Lease; and

WHEREAS, it is the parties' intention to amend the underlying leases to incorporate the lease form approved by the FAA and incorporate key provision of the prior Leases with the same and extend the term; and

WHEREAS, certain provisions of the prior leases include community benefits that are the subject of a host agreement.

NOW THEREFORE, IT IS ORDERED that the Honorable Mayor Stephen L. DiNatale be hereby authorized for and on behalf of said City to execute and deliver any and all documents and take any and all acts necessary, convenient and helpful to facilitate and execute the Host Agreement (to be supplied) as attached or in form substantially similar thereto, and to site the facility as set forth above.

Reports of
Committees
City Property
Committee
Oral Report

CITY OF FITCHBURG AND A.K.S. RECYCLING, INC.
FIRST AMENDED COMMUNITY HOST BENEFIT AGREEMENT FOR
RECYCLING FACILITY

This Community Host Benefit Agreement (the "Agreement") is entered into this _____ day of _____, 2019, by and between the City of Fitchburg, a Massachusetts municipal corporation, located at 166 Boulder Drive, Fitchburg, MA 01420 (the "City") and A.K.S RECYCLING, Inc with an address of record of 15 COBBLER ROAD FITCHBURG MA 01420.

WHEREAS, in 2001 and 2004 the City entered into two separate leases with AKS Recycling, Inc. ("AKS") for the use of certain premises located within the Airport; and

WHEREAS, the CITY and FAA have since determined that the fee owner of this premises is the Fitchburg Municipal Airport; and

WHEREAS, the AKS has expanded its operation upon both Airport land and other land belonging to the City of Fitchburg beyond the premises described in the 2001 and 2004 AKS leases; and

WHEREAS, there is a dispute between the City and the AKS as to amounts owed under the prior Leases and the parties wish to resolve those disputes in a manner that will allow the Company to operate within the City and for the City to maintain a prospective relationship with the Company; and

WHEREAS, the CITY requires AKS to occupy a sufficient leased area to continue its current business operations and propose to modify the 2001 and 2004 AKS leases to include the area described by plan attached hereto as Exhibit A (known as "Parcel Y"); and

WHEREAS, applicable federal law requires that the CITY to lease the premises from the Fitchburg Municipal Airport in order to sublease the premises to AKS; and

WHEREAS, the AKS has, executed leases which contain certain provisions relative to hosting the business in the City on or about 2001 and 2004 and it is the parties' intention to amend Lease; and

WHEREAS, it is the parties' intention to amend the underlying leases to incorporate the lease form approved by the FAA and incorporate key provision of the prior Leases with the same and extend the term; and

WHEREAS, certain provisions of the prior leases include community benefits that are the subject of this Host Agreement.

Execution Copy 2020.04.21
AFDOCS/22023699.2

WHEREAS, when permitted to do so by law, the Company wishes to operate and use the Facility for the Purpose as authorized by Massachusetts Law if such operation is authorized and permitted by the City, and the City does not oppose such operation if lawful, authorized and permitted; and

WHEREAS, the proposed transfer station and recycling facility (Facility) is located in a zoning district that allows such use by right or by local permitting; and

WHEREAS, the Company promises to provide certain benefits to the City as provided for herein in the event that it is licensed to operate a Facility for such Purpose and receives all required local approvals; and

WHEREAS, the Company's representations are intended to induce reliance on the part of the City to whom the representation is made and in fact the Company has made a promise which the Company should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the City, including but not limited to the negotiation of this Agreement but excluding any zoning or permitting relief; and

WHEREAS, the acts or omissions by the City are in reasonable reliance on the representations and said promises and said representations and promises have induced such action or forbearance on the part of the City; and

WHEREAS, the detriment to the City as a consequence of the act or omission is fairly and adequately remediated by the enclosed provisions and only compliance or enforcement of the same can avoid an injustice and therefore enforcement would be necessary; and

WHEREAS, the promises laid out in this document are indeed a true measure of the remedy needed to compensate the City for the detriment incurred and the impact cost as a result of the City's acts and omissions in reliance on the promises contemplated by the parties; and

WHEREAS, the Company and the City understand that the promises contained herein are intended to commit the Company and the City to the same.

NOW THEREFORE, in consideration of the foregoing, the Company offers the following and the City accepts this Agreement:

1. The Company agrees to pay an Impact fee to the City, in the amounts and under the terms provided herein ("Impact Fee").
 - a. The purpose of the Impact Fee is to alleviate the impacts from the siting of the Facility within the City. The Parties have reviewed the various costs and impacts to the City of the siting and operation of the Facility. After review, the Parties agree that the Impact Fee listed herein is directly proportional and reasonably related to the costs and other impacts imposed upon the City by the siting and operation of the Facility; and the Company agrees to waive any claim that the Impact Fee specified in this Agreement is

Reports of
Committees
City Property
Committee
Oral Report

not a true measure of the costs and other impacts experienced by the City. The parties agree that siting this and similar facilities can have costs and impacts including, but not limited to, a) the need to promote a positive perception and to provided maintenance and keep up the appearance of the City to other residents, visitors and businesses, b) an increased impact on the health and security of its Citizens, c) an increased impact on the roads and public services of the City, d) increased administrative and compliance costs, e) increased regulatory, police and inspectional services and f) to mitigate against any exposure to liability including but not limited to the cost of site cleanup.

- b. Therefore, the parties agree that it is appropriate to use any Impact Fee or other funds paid hereunder to combat blight and other economic issues facing the City of Fitchburg; to repair or improve the City's infrastructure and utility services; to increase public health, police and safety services; administrative, regulatory, inspectional and compliance services; legal fees and costs incurred in connection with the Company (except as otherwise provided for herein); and all other costs incurred in connection with the recited impacts. This Impact Fee has been calculated without reference to legal fees associated with the negotiation, drafting and execution of this Agreement. Notwithstanding the foregoing, the City may in its sole discretion expend the Impact Fee as it deems appropriate for alleviating the impacts of siting the Facility within the City, as it deems the impacts to be in its sole discretion.
- c. The Company shall cooperate in supplying any documentation reasonably requested by the City as to itemization of any impact of siting the Facility within the City, upon the City's request.

2. Term: The term of this Agreement shall begin retroactively on January 1, 2018 (the "Commencement Date"), and shall terminate on:

- a. Any date in which any Commonwealth of Massachusetts or local license, site assignment or permit is revoked, rescinded or expires without having been renewed; or
- b. Upon an Event of Default including any period set forth herein to cure, as hereinafter defined in this Agreement, and termination by the City; or
- c. Upon termination by the Company pursuant to Paragraph 15 hereof provided all payments due hereunder have been made.
- d. Regardless of the reason for termination, upon termination the next Impact Payment (as defined within this Agreement), abated pro rata to the date of termination, shall be paid to the City by the Company (the "Final Impact Payment"). The Company shall pay the Final Impact Payment to the City within thirty (30) days after the date of termination.
- e. The Agreement shall continue until termination even if payment of the Impact Payment ceases pursuant to requirement of law.

Execution Copy 2020.04.21
AFDOCS/22023699.2

3. INTENTIONALLY LEFT BLANK

4. The Company shall forward to the City the following amounts as the Impact Payment:
 - a. The Company shall pay of the City a “tipping” fee in an amount equal to Three (\$3.00) Dollars per truckload of materials brought to the site for recycling as previously required under the so called “landfill” lease of 2001 under section 2 of Article II provided the company is still renting property located at the site of the existing ‘Landfill Lease. Outstanding amounts due and payable from February 1, 2020 to date are hereby preserved; and
 - b. The Company shall pay to the City Three (\$3.00) Dollars per ton for any and all Waste Material brought on to the Site Assigned Property. Such “Waste Material” shall include any and all materials allowed to be brought on to the Site Assigned Property pursuant to the Site Assignment including but not limited to shingles, asphalt, plastic, brick, concrete and other recyclables, construction and demolition debris and municipal solid waste (Waste Materials). Outstanding amounts due and payable from February 1, 2020 to date are hereby preserved.
 - c. Impact Payment shall be due in the First of each month commencing March 1, 2020. Any late payment will accrue interest compounded monthly in the amount of 6% per month.
 - d. Increases in Impact Fees: Provided other transfer Facilities are paying at least \$3.00 per ton and \$3.00 per truckload, the Impact Fees base amounts shall be increased annually as of January 1 for each year beginning with the first increase on January 1, 2021, by an amount equal to the annual difference calculated as a percentage in the Consumer Price Index for Urban Consumers for the Boston-Brockton-Nashua Area (or successor index published by the Bureau of Labor Statistics) (“CPI-U”) over the same CPI-U in effect as of the commencement of the immediately prior lease year. However, in no event shall the Impact Fees exceed the amounts charged to other transfer facilities sited in the City.
 - e. In the City’s sole discretion, it may direct the Company to provide some services or materials on account of the amounts specified herein (the “Services”). In this event the Company shall provide independent verification of the value of said service or materials to the City upon request and in form satisfactory to the City (provided that any reasonable cost related solely to obtaining said independent verification shall be credited to the Impact Payments required hereunder), and the City shall credit the Impact Payment in said amounts.

Reports of
Committees
City Property
Committee
Oral Report

f. To the extent that the Impact Payment is limited by the law of the Commonwealth of Massachusetts at the time the Impact Payment is due to an amount less than that specified in this Agreement, the Impact Payment shall be decreased to the maximum amount permissible.

5. The Company, in addition to any Services or Funds specified herein, agrees to the following;

a. The City's municipal Departments shall have the right to bring recyclables materials including tires, construction and demolition material to the site at a reduced rate of 75% of the Company's scale price (a 25% discount).

b. The City's municipal Departments shall have the right to bring all asphalt and concrete for no charge.

c. AKS shall for 10 years:

a) Provide Fitchburg residents with access to 2 Hazardous Waste Days annually. Said days to be scheduled on a Saturday three months from the hazardous waste days at the Fitchburg Sanitary Landfill (which are currently held annually in June and November) so that the residents shall have hazardous waste days every three months in accordance with the Fitchburg Sanitary Landfill and AKS schedule.

b) Clean and maintain Airport Rd and Blueberry lane free of litter and debris (from Benson St to Crawford St-end of Airport Rd).

c) Provide and establish a disposal program in collaboration with the Director of Public Health and the Fitchburg Board of Health, for Fitchburg Residents to access, by permit if necessary, to the Transfer Station Drop-Off areas (herein referred to as the AKS-FRWDP- Fitchburg Resident Waste Disposal Program) according to 310 CMR 19.00, for a period of 10 years for the disposal of MSW, Recycling and permitted materials according to all applicable permits and conditions and regulations as established by the EPA, DEP and the Fitchburg BOH.

d) Provide to the City of Fitchburg Health Department, on an as needed basis, a price list at reduced rates of those items which require additional fees to dispose including but not limited to Waste Ban items as established by 310 CMR 19.017 or any hard to dispose of item which have excess fees associated with disposal.

e) Provide to the Residents a price list at reduced rates of those items which require additional fees to dispose including but not limited to Waste Ban items as established by 310 CMR 19.017 or any hard to dispose of item which have excess fees associated with disposal. Said reduced rate not to exceed the rate charged to the City of Leominster residents.

Execution Copy 2020.04.21
AFDOCS/22023699.2

Ⓣ The City shall provide permits for Residents to use so that they are identified as Residents when entering the AKS facility/property.

6. This Agreement and promises are contingent on the Company obtaining approval from the City, and the Company's receipt of any and all local approvals to locate, occupy and operate.

7. INTENTIONALLY LEFT BLANK

8. If the Company at any time operates as a non-profit organization, the Company agrees that it will pay all personal property taxes that would otherwise be assessed if the Company was a for-profit non-manufacturing business organization for the property owned or used by the Company (hereinafter known as the "Full Personal Property Tax") unless the Company supplies sufficient identifying information on the owners of all personal property used by the Company and the City collects the Full Personal Property Taxes from that entity. In no event shall the Company apply for a reduction or elimination of property taxes due to the Company's not-for-profit or other status.

9. If at any time it operates as a non-profit organization, the Company agrees that it will pay all real property taxes for the property owned or used by the Company to site the Facility that would otherwise be assessed if the Company was a for-profit, nonagricultural business organization owning the real-estate in which the Facility is sited (hereinafter known as the "Full Real Estate Tax"). However, the Company will not be responsible if the Company supplies sufficient identifying information on the owners of all real property used by the Company and the City collects the Full Real Estate Tax from that entity or is otherwise capable of placing a lien in an amount equal to the Full Real-Estate Tax plus interest and penalties on the real estate for the nonpayment of the real estate taxes. In no event shall the Company apply for a reduction or elimination of property taxes due to the Company's not-for-profit or other status.

10. The Company agrees that jobs created at the Facility will be made available to City of Fitchburg residents. City residency will be a positive factor in hiring decisions at the Facility, but this does not prevent the Company from hiring the most qualified candidates and complying with all employment laws and other legal requirements.

11. This Agreement nor any Lease does not affect, limit, or control the authority of any City department, including boards and commissions, to carry out their respective duties in deciding whether to issue or deny any necessary local permits or licenses, required under the laws of the Commonwealth, the Fitchburg Zoning Ordinance, the Board of Health or any other applicable

Reports of
Committees
City Property
Committee
Oral Report

laws and regulations. By entering into this Agreement, the City is not required to issue such permits or licenses.

12. The terms of this Agreement nor any Lease will not constitute a waiver of the City's regulatory authority or of the Company's responsibilities not otherwise addressed by this Agreement. This Agreement does not affect, limit, or control the authority of any City departments, including boards and commissions, to issue fees, fines and penalties. This Agreement does not affect, limit, or control the authority of the City to levy taxes, whether authorized by any current or future regulation, act or statute or any amendment which may be enacted thereto, and any amounts specified above as Impact Payments, including but not limited to Paragraph 4, shall not constitute taxes or be creditable thereto.

13. Events of Default: The Company shall be deemed to have committed an event of default if any of the following occur:

- a. the Company relocates the Facility outside of the City, without prior approval from the City or upon at least Ninety (90) day notice;
- b. the Company fails to obtain, and maintain in good standing, all necessary local licenses assignments and permits, and such failure remains uncured for thirty (30) days following written notice from the City;
- c. the Company ceases to operate a Facility in the City;
- d. the Company fails to make payments to the City as required under this Agreement, and such failure remains uncured for Thirty (30) days following written notice from the City;
- e. INTENTIONALLY LEFT BLANK;
- f. Commonwealth of Massachusetts revokes the Company's license or permit or denies the Company's application for renewal of its license or permit (as provided in the Commonwealth of Massachusetts Regulations), provided that the Company is able to exercise all available remedies to re-establish good standing with the Commonwealth of Massachusetts.

14. Termination for Cause: The City may terminate this Agreement Thirty (30) days after the occurrence of any Event of Default. In addition, the City may terminate this Agreement for cause at any time by giving at least Ninety (90) days' notice, in writing, to the Company. Cause is defined as the Company's purposeful or negligent violation of any applicable laws of the Commonwealth,

Execution Copy 2020.04.21
AFDOCS/22023699.2

or local ordinances and regulations, with respect to the operation of a Facility. If the City terminates this Agreement the Final Impact Payment (as defined within this Agreement) shall be paid to the City by the Company. The Company shall pay the Final Impact Payment to the City within thirty (30) days following the date of termination.

15. Termination by the Company: The Company may terminate this Agreement Ninety (90) days after cessation of operations of any Facility within the City. The Company shall provide notice to the City that it is ceasing to operate a Facility in the City and/or it is relocating to another facility outside of the City at least ninety (90) days prior to the cessation or relocation of operations. If the Company terminates this Agreement the Final Impact Payment (as defined within this Agreement) shall be paid to the City by the Company. The Company shall pay the Final Impact Payment to the City within thirty (30) days following the date of termination.

16. If this Agreement is terminated the Company shall:

- a. Not be relieved of liability due under this contract until the Company discontinues operation of the Facility in Fitchburg; provided that, once the Company does discontinue operation of the Facility in any event, it shall have no further obligations under Paragraphs 4 and 5 of this Agreement except for the Final Impact Payment as set forth above;
- b. Not be relieved of liability to the City for damages sustained by the City for personal injury or property damage, or any environmental impact caused by the operation of the Facility but not caused by the City's prior use of the site as a landfill;
- c. Secure the real estate and personal property owned or used at the time of Default or Termination whichever is earlier, at its sole expense in such a manner so as not to permit waste to occur to the property;
- d. Pay all amounts due and reasonably anticipated to be due under this agreement through and until Company discontinues operation of the Facility in Fitchburg;
- e. Provide the City with adequate security for any uninsured amounts due and reasonably anticipated to be due under this agreement, including but not limited to security for any reasonable damages sustained by the City due to personal injury, property damage or environmental impact caused by the operation of the Facility but not caused by the City's prior use of the site as a landfill (Insurable amounts will be established, at first, by an insurance coverage letter which will be delivered to either party upon request but may be adjusted by judgment or order of the court.); and

Reports of
Committees
City Property
Committee
Oral Report

f. Cease and desist operations immediately after the expiration of the Ninety (90) Day notice for cause provided for in paragraph 14, unless otherwise ordered by the Mayor.

g. Unless the Company ceases all operations within the City, enter into a new Community Host Agreement which is consistent with the then existing law.

17. Anything contained herein to the contrary notwithstanding, in the event the Company is required by the City to relocate the Facility this agreement shall become null and void without further recourse of either party in the event that the Company is not able to relocate a Facility of similar size within the City. However, in no event shall the agreement become null and void until after the Company pays to the City's fees incurred in connection with the meetings, the negotiation and execution of this Agreement as required in Paragraph 27 below. All checks shall be made payable to the City of Fitchburg.

18. In the event that the Company desires to relocate the Facility within the City of Fitchburg it must obtain approval of the new location by the City's Board of Health.

19. INTENTIONALLY LEFT BLANK

20. The Company, its successors, and assigns hereby agrees that it shall not engage on the operation of the Facility for the purposes defined herein within the City unless and until the Company is permitted therefore by law and by the City through any reasonable and typical procedure the City may require. Said approval not to be withheld in an arbitrary and capricious manner.

21. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Massachusetts, and the Company submits to the jurisdiction of the Worcester Superior Court for the adjudication of disputes arising out of this Agreement. Furthermore, in the event of litigation between the City and the Company, neither party shall contest the validity of this agreement, and will stipulate that this agreement shall be enforced as a valid legally binding contract requiring the Company to pay an Impact Fee and that this obligation is supported by valuable consideration, or, at the City's option, that the City is also entitled to enforcement under a theory known as detrimental reliance which is also identified commonly as promissory estoppel.

22. Any and all notices, or other communications required or permitted under this Agreement shall be in writing and delivered by hand or mailed, postage prepaid, return receipt requested, by

Execution Copy 2020.04.21
AFDOCS/22023699.2

registered or certified mail or by other reputable delivery service, to the parties at the following addresses:

The City:

Vincent Pusateri
City Solicitor
166 Boulder Dr.
Fitchburg, MA 01420

with a copy to:

A.J. Tourigny
Mayor's Chief of Staff
166 Boulder Dr.
Fitchburg, MA 01420

Company:

Christopher Karras
A.K.S. Recycling, Inc.
15 Cobbler Road
Fitchburg, MA 01420

with a copy to:

Michael E. Rubin, Esquire
Arent Fox LLP
800 Boylston Street
Boston, MA 02199

23. Subject to the final sentence of this Paragraph, the Company shall not assign, sublet, or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the City, and shall not assign any of the moneys payable under this Agreement, except by and with the written consent of the City. In the event that the Company sells all or substantially all of its assets then the Company will also assign the obligations under this Agreement to the purchasing entity. The City shall not unreasonably delay, condition or withhold assent to such an assignment, and in the case of a merger or acquisition of the Company or a sale of all or substantially all of the Company's assets, the City shall limit its objections to such merger, sale or acquisition to financial

Reports of
Committees
City Property
Committee
Oral Report

stability or moral character of the resulting entity or purchaser, based on independent or objectively verifiable evidence.

24. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives.

25. The Company shall file with the City copies of the financial as otherwise requested by the City. The Company shall provide audited financial statements for the Facility by a CPA firm qualified to do business in the Commonwealth of Massachusetts in the event that in the City's discretion the same is required as a result of a legitimate material question or controversy relative to the Company's financial disclosure. Within ninety (90) days following one year after the Commencement Date and on an annual basis thereafter, the Company agrees to provide the City with complete and accurate State Tax Form 2, "Form of List" and such other documentation as is reasonably requested by the Assessors.

26. In the event that the Company defaults on its obligations under this Agreement, the financial condition of the Company is in question, or there exists the likelihood that the Company is intending to leave the City, the Company shall convey a security interest in the assets of the Company to the City, to the extent allowed by law, in an amount sufficient to secure the outstanding balance and amounts which are reasonably anticipated to become due.

27. The Company shall contribute one thousand seven hundred fifty (\$1,750.00) Dollars to the City Legal Department for the meetings, the negotiation and execution of this Agreement upon complete execution of the Agreement by all parties and approval by City Council. Payment shall be made by check payable to the City of Fitchburg. The Parties agree that this fee is for legal services associated with the drafting of this Agreement and is not part of the impacts experienced by the City due to the siting of the Facility and does not compromise any portion of the Impact Payment referred to above. Said fee is due and payable upon execution of the Agreement.

28. If a suit, action, arbitration or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this Agreement, or to interpret or enforce any rights under this Agreement or the Laws of the Commonwealth of Massachusetts, the City shall be entitled to an award of attorney's fees in the event it prevails.

29. INTENTIONALLY LEFT BLANK

Execution Copy 2020.04.21
AFDOCS/22023699.2

30. The Company shall comply with all laws, rules, regulations, and orders applicable to the Facility; such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits and approvals required for the performance of such work.

31. If any term or condition of this Agreement, or any application thereof, shall to any extent be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the offending provision shall be amended only so much as necessary to comply with the law and the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

32. In the event that any Court of competent jurisdiction, department or agency of the Commonwealth of Massachusetts or other Regulatory Authority determines that the Impact Fee or Services received under this Agreement cannot be received pursuant to any provision of law, this agreement shall not become null and void, but shall remain in full force and effect and the monies tendered to the City shall be received as rent under the then existing lease.

33. INTENTIONALLY LEFT BLANK

34. This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated Agreement between the Company and the City with respect to the matters described.

35. This Agreement supersedes all prior Agreements, negotiations, and representations, either written or oral between the parties, except for the lease executed contemporaneously with this agreement and this Agreement shall not be modified or amended except by a written document executed by the parties hereto.

36. Each of the parties acknowledges that it has been advised by counsel, or had the opportunity to be advised by counsel, in the drafting, negotiation, execution, and delivery of this Agreement, and has actively participated in the drafting, negotiation, execution and delivery of this Agreement. In no event will any provision of this Agreement be construed for or against either party as a result of such party having drafted all or any portion hereof.

37. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one in the same Agreement.

Reports of
Committees
City Property
Committee
Oral Report

[The remainder of this page is intentionally left blank, signature pages to follow]

Execution Copy 2020.04.21
AFDOCS/22023699.2

In WITNESS WHEREOF, the parties have executed this Agreement on the day and year first
written above.

CITY OF FITCHBURG

Mayor

Stephen L. Disanto, Mayor, City of Fitchburg

Director Stephen D. Curry, Health Department Director

Vincent P. Pizzuti, II, Esq. Approved as a legal form

City Solicitor

COMPANY

By: 
Title Manager

Report accepted. Orders adopted by unanimous consent 10/0. 10
members present. Board consists of 11 members.
Orders signed by the Mayor June 4, 2020.

Reports of Committees
City Property Committee
Oral Report

The City Property Committee recommended the following Petition be held in Committee:

046-20. Councillors Marisa Fleming and Marcus DiNatale, to Declare Ethier Street a Public Way.

Report accepted; Petition held in Committee by unanimous consent 10/0. 10 members present. Board consists of 11 members.

Economic Development Committee Oral Report
Meeting of May 12, 2020

Economic Dev. Committee
Oral Report

The Economic Development Committee recommended the following Petition be given leave to withdraw:

127-20. Glenn Fossa, to include local business owners with the following criteria in the Corona Economic Recovery Task Force as outlined in the enclosed Petition.

REPORT

The Committee on
Economic Development Committee

to which was referred this petition recommended that the petition be granted, be given leave to withdraw.

In City Council

Report Read and Accepted

Clerk

PETITION

of

Glenn Fossa

To include local business owners with the following criteria in the Corona Economic Recovery Task Force as outlined in the enclosed Petition.

In City Council

May 19, 2020

Referred to Committee on

Economic Development Committee

Mary de Alderete Clerk

TO THE HONORABLE CITY COUNCIL OF THE CITY OF FITCHBURG

Ladies and Gentlemen:

The undersigned Petition your Honorable Body to

include local business owners with the following criteria in the Corona Economic Recovery Task Force.

The local task force's consortium should include at least three local business owners:

1 Service/Tradesman/restaurant owner 0-10 employees;

1 Service/Tradesman/Food service owner 10-50 workers/employees;

A Small business/manufacturer/franchise owner/designee with 50-500 employees.

Each of these can easily advise how Federal, State, & Local government impacts them and how the Covid-19 dynamic will/has changed their business model. Most importantly is how government locally can use this information to make the most of their reopening/recovery.

Glenn Fossa

2020 MAY -6 PM 1:58
CITY CLERK

Mary de Alderete

PTO/CLERK CITY CLERK

2020 MAY -6 AM 8:21

From: Walsh, Elizabeth
Sent: Tuesday, May 5, 2020 8:22 PM
To: Mary de Alderete
Cc: Kushmerek, Michael; glennfossa@hotmail.com
Subject: Fw: REVISED-COMMUNICATION Corona Economic Task Force

Dear Madam Clerk,

It is my understanding from the letter (see below) from Glenn Fossa that Mr. Fossa would like to submit the following as a petition to the City Council to be placed on the agenda a the next City Council meeting, said petition to read as follows:

"A petition by Glenn Fossa to include local business owners with the following criteria in a/the Corona Economic Recovery Task Force.

The local task force consortium should include at least three local business owners:

1 Service/Tradesman/restaurant owner 0-10 employees;

1 Service/Tradesman/Food service owner 10-50 workers/employees;

A Small business/manufacturer/franchise owner/designee with 50-500 employees.

Each of these can easily advise how Federal, State, & Local government impacts them and how the Covid-19 dynamic will/has changed their business model. Most importantly is how government locally can use this information to make the most of their reopening/recovery.

Glenn Fossa"

I ask Mr. Fossa at this time to send to you, Madam Clerk, any additional documents, such as the FEE materials that he mentioned, that he would like included with his petition.

Beth

Beth Walsh
Ward 6 City Councilor
ewalsh@fitchburgma.gov

Reports of
Committees
Economic Dev.
Committee
Oral Report

978-345-4526

From: Glenn Fossa <glennfossa@hotmail.com>
Sent: Saturday, May 2, 2020 4:59 PM
To: Glenn Fossa
Cc: Walsh, Elizabeth; DiNatale, Marcus; Green, Amy; Van Hazinga, Andrew; Andrew Couture
Subject: REVISED COMMUNICATION Corona Economic Task Force

NEW REVISED EMAIL

Greeting everyone,

Please forgive the reference to "Agenda Item" on the email sent yesterday. I am actually referencing the "Mayors Bulletin" viewed on Facebook and the NCMCC partnership/symposium ahead.

Councillor Walsh A.S. we previously spoke on this topic; please petition/present at the next available Council Meeting my petition to include members of the business community articulated below.

I wish to petition the city to include local business owners with the following criteria in a/the Corona Economic Recovery Task Force.

As resource material the FEE document is sent under separate transmission.

Please add my concern the local task force consortium should include at least three local business owners.

1 Service/Tradesman/restaurant owner 0-10 employees;

1 Service/Tradesman/Food service owner 10-50 workers/employees;

A Small business/manufacturer/franchise owner/designee with 50-500 employees.

Each of these can easily advise how Federal, State, & Local government impacts them and how the Covid-19 dynamic will/has changed their business model. Most importantly is how government locally can use this information to make the most of their reopening/recovery.

I have already delivered excerpts from the FEE webinar scheduled for May 7, for a future resource document.

Sincerely,

Glenn Fossa

Report accepted. Petition given leave to withdraw by unanimous consent 10/0. 10 members present. Board consists of 11 members.

ORDERS-FINANCE

The following Orders were referred to the Finance Committee by Unanimous consent 10/0:

- 131-20. ORDERED THAT: there be and hereby is appropriated the sum of FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (\$400,000.00) same to be charged against AVAILABLE FUNDS and credited to DPW ADMIN. EXPENSES, STORMWATER CONTRACT SERVICES.
- 132-20. ORDERED THAT: there be and hereby is appropriated the sum of TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$25,000.00) same to be charged against AVAILABLE FUNDS and credited to BUILDING-CONTRACTED SERVICES for the purpose of digitizing Building Department paper documents.
- 133-20. ORDERED THAT: there be and hereby is appropriated the sum of TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) same to be charged against AVAILABLE FUNDS and credited to LAW OTHER EXPENSES, LABOR NEGOTIATOR.
- 134-20. ORDERED THAT: there be and hereby is appropriated the sum of THIRTY-ONE THOUSAND, FIVE HUNDRED AND 00/100 DOLLARS (\$31,500.00) same to be charged against AVAILABLE FUNDS and credited to the following RUBBISH REMOVAL EXPENSE accounts:
CLEAN UP FUNDS \$10,600.00
AIRPORT RENT \$14,400.00
CONTRACTED SERVICES \$ 6,500.00
- 135-20. ORDERED THAT: the City of Fitchburg hereby approves the expenditure of funds from the Massachusetts Executive Office of Public Safety and Security grant in the approximate amount of \$5,508.80 (FIVE THOUSAND, FIVE HUNDRED EIGHT AND 80/100 DOLLARS) for the purpose of said grant, which is to enhance effective pedestrian, bicycle, and moped-type enforcement.
- 136-20. ORDERED THAT: the City of Fitchburg hereby approves the expenditure of funds from the Department of Justice, Office of Justice Programs grant in the approximate amount of \$86,062.00 (EIGHTY-SIX THOUSAND, SIXTY-TWO AND 00/100 DOLLARS) for the purpose of said grant, which is to support a broad range of activities including preventing, preparing for, and responding to the coronavirus.
- 137-20. ORDERED THAT: the City of Fitchburg hereby approves the expenditure of funds from the Commonwealth of Massachusetts earmark grant in the approximate amount of \$100,000.00 (ONE HUNDRED THOUSAND AND 00/100 DOLLARS) for the purpose of said grant, which is to prepare and repaint the exterior windows of the library building.

Orders-Finance

138-20. ORDERED THAT: the City of Fitchburg hereby approves the expenditure of funds from the Secretary of the Commonwealth, Cities Complete Count Grant Program in the approximate amount of \$20,000.00 (TWENTY THOUSAND AND 00/100 DOLLARS) for the purpose of said grant, which is to support outreach efforts in getting a complete and accurate count in the 2020 Census.

139-20. ORDERED THAT: the City of Fitchburg hereby approves the expenditure of funds from the Massachusetts Department of Transportation, Aeronautics Division grant in the approximate amount of \$69,000.00 (SIXTY-NINE THOUSAND AND 00/100 DOLLARS) for the purpose of said grant, which is to cover airport expenses, including fuel purchases and additional work on the runway project.

ORDERS-OTHER

Orders-Other

140-20. ORDERED THAT: The Mayor is authorized to execute a deed of conveyance of the 122 Harvard Street parcel to abutter Perry Pappas as outlined in the enclosed order. (Reference Petition #139-19)

City of Fitchburg

FITCHBURG CITY CLERK

2020 MAY 28 AM 9:19

In City Council, _____

ORDERED: That

WHEREAS, in the opinion of the City Council of Fitchburg, the City is the owner of a certain parcel of land and any buildings thereon located at 122 Harvard St. Street, Assessor's Map 83 Block 67, Lot 0, after foreclosure of the City's tax lien, and

WHEREAS, the City of Fitchburg no longer has any use for the aforesaid parcel and the Purchaser, Perry Pappas of 126 Harvard Street, Fitchburg, Massachusetts, owner of 126 Harvard Street, Fitchburg, Worcester County, Massachusetts, has a particular use for the same, and

WHEREAS, the City Treasurer, Anne Cervantes, petitioned the Fitchburg City Council to declare this parcel as excess by Petition 139-2019, which petition was approved as amended by the Council on June 4, 2019, and referred for sale under the City's Side Yard Sales program, and

WHEREAS, the Side Yard Sales Committee voted to recommend the, sale of said parcel, to abutter Perry Pappas of 126 Harvard Street, Fitchburg, Massachusetts, owner of 126 Harvard Street, Fitchburg, Worcester County, Massachusetts, at its January 23, 2020 meeting,

NOW THEREFORE IT IS ORDERED that, in consideration of the payment of Three Hundred (\$300.00) Dollars, to be paid to the City Treasurer inclusive of the cost of recording and a pro forma tax as required by Chapter 44, Section 63A, the City of Fitchburg sell the above described parcel of land to said purchaser through the City's Side Yard Sales Program, subject to the following restrictions, which shall run with the parcel and be enforceable by the City, that said parcel:

1. The premises shall be kept free of garbage and debris.
2. The premises shall be combined for the purposes of future conveyances with the abutting property owned by the Grantees, located at 126 Harvard Street, Fitchburg, Massachusetts and described in a Quitclaim Deed from James Pappas to Perry Pappas dated September 5, 1989 and recorded September 6, 1989 in Worcester Northern District Registry of Deeds Book 1872, Page 003 such that the premises shall henceforth be conveyed in conjunction with the abutting lot and into the same record ownership establishing a merger of title.

AND IT IS FURTHER ORDERED AND VOTED: That Stephen L. DiNatale, Mayor of the City of Fitchburg, be and is hereby authorized for and in behalf of said City to execute, acknowledge and deliver said deed of conveyance in form substantially similar to that attached, and to take any other action and execute any other documents necessary, helpful or convenient for conclusion of the sale thereof.

Orders-Other

RELEASE DEED

THE CITY OF FITCHBURG, a Commonwealth of Massachusetts municipality having its usual place of business at 166 Boulder Drive, Fitchburg, Massachusetts 01420.

In consideration of Three Hundred and 00/100 (\$300.00) dollars paid

Grants to Perry Pappas, 126 Harvard Street, Fitchburg, Massachusetts 01420.

All its right, title and interest in and to the following described premises:

A certain tract of land with any buildings thereon located at 122 Harvard Street in Fitchburg, Worcester County, Commonwealth of Massachusetts and being the same property described in a deed from Roland Brousseau and Rita D. Brousseau to Gilberto Rivera and Carmen B. Rivera dated January 6, 1978 and recorded in Worcester Northern District Registry of Deeds Book 1195, Page 280, on January 10, 1978, being all of the Grantor's right, title and interest acquired from the following recorded instruments:

- i. Instrument of Taking by the City of Fitchburg against Gilberto Rivera dated November 4, 2004 and recorded November 4, 2004 in Worcester Northern District Registry of Deeds Book 5481, Page 177.
- ii. Judgment of the Land Court Department of the Massachusetts Trial Court against Gilberto Rivera and Carmen B. Rivera dated October 13, 2016 and recorded in the Worcester Northern District Registry of Deeds Book 8697, Page 49.

This conveyance is made subject to the following provisions and conditions of the City of Fitchburg Side Yard Sales Program:

- 1. The premises are sold "as is", in its present condition.
- 2. The Grantor makes no representations or warranties of any kind as to the suitability of the premises for any particular purpose, or as to the applicability or effect of any local, state or federal law.
- 3. The Grantor makes no representations or warranties as to whether the premises contain any substance which may be classified as a hazardous, toxic, chemical or radioactive substance or a contaminant or pollutant under applicable federal, state or local law, statute, ordinance, rule or regulation, or which may require any cleanup, remediation or other corrective action pursuant to such applicable laws.
- 4. The premises shall be kept free of garbage and debris.
- 5. The premises shall be combined for the purposes of future conveyances with the abutting property owned by the Grantees, located at 126 Harvard Street, Fitchburg,

122 Harvard Street, Fitchburg



Anne M. Cervantes
Treasurer

City of Fitchburg

OFFICE OF THE TREASURER

166 Boulder Drive
Fitchburg, MA 01420

978-829-1830
FAX 978-829-1971

January 24, 2020

Mayor Stephen L. DiNatale and
Members of the City Council
166 Boulder Drive
Fitchburg, MA 01420

Re: Side Yard Sales

Dear Mayor and Councilors:

At its January 23, 2020 meeting, the Side Yard Sales Committee voted to recommend the sale of the 122 Harvard Street parcel to abutter Perry Pappas.

Attached is the order to sell the parcel and to authorize the mayor to execute the deed of conveyance. For your reference, a draft deed is also attached.

On behalf of the Side Yard Sales Committee, I ask for your approval of this order.

Thank you for your consideration.

Sincerely,

Anne M. Cervantes
Treasurer

Orders-Other

141-20. ORDERED THAT: The Mayor is authorized to execute a deed of conveyance of the 60 Albee Street parcel to abutter Samuel Ramos as outlined in the enclosed order. (Reference Petition #139-19)

City of Fitchburg

FITCHBURG CITY CLERK

2020 MAY 28 AM 9:19

In City Council, _____

ORDERED: That

WHEREAS, in the opinion of the City Council of Fitchburg, the City is the owner of a certain parcel of land and any buildings thereon located at 60 Albee Street, Assessor's Map 95 Block 77, Lot 0, after foreclosure of the City's tax lien, and

WHEREAS, the City of Fitchburg no longer has any use for the aforesaid parcel and the Purchaser, Samuel Ramos of 64 Albee Street, Fitchburg, Massachusetts, owner of 64 Albee Street, Fitchburg, Worcester County, Massachusetts, has a particular use for the same, and

WHEREAS, the City Treasurer, Anne Cervantes, petitioned the Fitchburg City Council to declare this parcel as excess by Petition 139-2019, which petition was approved as amended by the Council on June 4, 2019, and referred for sale under the City's Side Yard Sales program, and

WHEREAS, the Side Yard Sales Committee voted to recommend the sale of said parcel, to abutter Samuel Ramos of 64 Albee Street, Fitchburg, Massachusetts, owner of 64 Albee Street, Fitchburg, Worcester County, Massachusetts, at its January 30, 2020 meeting,

NOW THEREFORE IT IS ORDERED that, in consideration of the payment of Three Hundred (\$300.00) Dollars, to be paid to the City Treasurer inclusive of the cost of recording and a pro forma tax as required by Chapter 44, Section 63A, the City of Fitchburg sell the above described parcel of land to said purchaser through the City's Side Yard Sales Program, subject to the following restrictions, which shall run with the parcel and be enforceable by the City, that said parcel:

1. The premises shall be kept free of garbage and debris.
2. The premises shall be combined for the purposes of future conveyances with the abutting property owned by the Grantee, located at 64 Albee Street, Fitchburg, Massachusetts and described in a Quitclaim Deed Israel Lugo to Samuel Ramos dated November 12, 2019 and recorded November 15, 2019 in Worcester Northern District Registry of Deeds Book 9479, Page 211 such that the premises shall henceforth be conveyed in conjunction with the abutting lot and into the same record ownership establishing a merger of title.

AND IT IS FURTHER ORDERED AND VOTED: That Stephen L. DiNatale, Mayor of the City of Fitchburg, be and is hereby authorized for and in behalf of said City to execute, acknowledge and deliver said deed of conveyance in form substantially similar to that attached, and to take any other action and execute any other documents necessary, helpful or convenient for conclusion of the sale thereof.

Orders-Other

RELEASE DEED

THE CITY OF FITCHBURG, a Commonwealth of Massachusetts municipality having its usual place of business at 166 Boulder Drive, Fitchburg, Massachusetts 01420.

In consideration of Three Hundred and 00/100 (\$300.00) dollars paid

Grants to Samuel Ramos, 64 Albee Street, Fitchburg, Massachusetts 01420.

All its right, title and interest in and to the following described premises:

A certain tract of land with any buildings thereon located at 60 Albee Street in Fitchburg, Worcester County, Commonwealth of Massachusetts and being the same property described in a deed from Max Cleland as Administrator of Veterans' Affairs to George E. Withington and Elizabeth M. Withington dated May 14, 1979 and recorded in Worcester Northern District Registry of Deeds Book 1222, Page 565, on May 19, 1979, being all of the Grantor's right, title and interest acquired from the following recorded instruments:

- i. Instrument of Taking by the City of Fitchburg against Elizabeth M. Withington and George E. Withington dated April 17, 2013 and recorded May 9, 2013 in Worcester Northern District Registry of Deeds Book 7904, Page 56.
- ii. Judgment of the Land Court Department of the Massachusetts Trial Court against Elizabeth M. Withington dated December 15, 2016 and recorded in the Worcester Northern District Registry of Deeds Book 8748, Page 122 on January 23, 2017.

This conveyance is made subject to the following provisions and conditions of the City of Fitchburg Side Yard Sales Program:

1. The premises are sold "as is", in its present condition.
2. The Grantor makes no representations or warranties of any kind as to the suitability of the premises for any particular purpose, or as to the applicability or effect of any local, state or federal law.
3. The Grantor makes no representations or warranties as to whether the premises contain any substance which may be classified as a hazardous, toxic, chemical or radioactive substance or a contaminant or pollutant under applicable federal, state or local law, statute, ordinance, rule or regulation, or which may require any cleanup, remediation or other corrective action pursuant to such applicable laws.
4. The premises shall be kept free of garbage and debris.
5. The premises shall be combined for the purposes of future conveyances with the abutting property owned by the Grantee, located at 64 Albee Street, Fitchburg, Massachusetts and described in a Quitclaim Deed from Israel Lugo to Samuel Ramos dated November 12, 2019 and recorded November 15, 2019 in Worcester Northern District Registry of Deeds Book 9479, Page 211 such that the premises shall henceforth be conveyed in

60 Albee Street, Fitchburg



Anne M. Cervantes
Treasurer

City of Fitchburg

OFFICE OF THE TREASURER

166 Boulder Drive
Fitchburg, MA 01420

978-829-1830
FAX 978-829-1971

January 31, 2020

Mayor Stephen L. DiNatale and
Members of the City Council
166 Boulder Drive
Fitchburg, MA 01420

Re: Side Yard Sales

Dear Mayor and Councilors:

At its January 30, 2020 meeting, the Side Yard Sales Committee voted to recommend the sale of the 60 Albee Street parcel to abutter Samuel Ramos.

Attached is the order to sell the parcel and to authorize the mayor to execute the deed of conveyance. For your reference, a draft deed is also attached.

On behalf of the Side Yard Sales Committee, I ask for your approval of this order.

Thank you for your consideration.

Sincerely,

Anne M Cervantes

Anne M. Cervantes
Treasurer

Orders-Other

142-20. ORDERED THAT: The Mayor is authorized to execute a deed of conveyance of the 54 1/2 Hazel Street parcel to abutter Denis Poirier as outlined in the enclosed order.
(Reference Petition #139-19)

City of Fitchburg

FITCHBURG CITY CLERK

2020 MAY 28 AM 9:19

In City Council, _____

ORDERED: That

WHEREAS, in the opinion of the City Council of Fitchburg, the City is the owner of a certain parcel of land and any buildings thereon located at 54 1/2 Hazel St. Street, Assessor's Map 66, Block 30, Lot 0, after foreclosure of the City's tax lien, and

WHEREAS, the City of Fitchburg no longer has any use for the aforesaid parcel and the Purchaser, Denis Poirier of 33 Braman Road, Sterling, Massachusetts, owner of 54 Hazel Street, Fitchburg, Worcester County, Massachusetts, has a particular use for the same, and

WHEREAS, the City Treasurer, Anne Cervantes, petitioned the Fitchburg City Council to declare this parcel as excess by Petition 139-2019, which petition was approved as amended by the Council on June 4, 2019, and referred for sale under the City's Side Yard Sales program, and

WHEREAS, the Side Yard Sales Committee voted to recommend the, sale of said parcel, to abutter Denis Poirier of 33 Braman Road, Sterling, Massachusetts, owner of 54 Hazel Street, Fitchburg, Worcester County, Massachusetts, at its January 27, 2020 meeting,

NOW THEREFORE IT IS ORDERED that, in consideration of the payment of Three Hundred (\$300.00) Dollars, to be paid to the City Treasurer inclusive of the cost of recording and a pro forma tax as required by Chapter 44, Section 63A, the City of Fitchburg sell the above described parcel of land to said purchaser through the City's Side Yard Sales Program, subject to the following restrictions, which shall run with the parcel and be enforceable by the City, that said parcel:

1. The premises shall be kept free of garbage and debris.
2. The premises shall be combined for the purposes of future conveyances with the abutting property owned by the Grantee, located at 54 Hazel Street, Fitchburg, Massachusetts and described in a Quitclaim Deed from Amy L. Souliere and David A. Souliere to Denis Poirier dated November 19, 2003 and recorded November 20, 2003 in Worcester Northern District Registry of Deeds Book 5056, Page 303 such that the premises shall henceforth be conveyed in conjunction with the abutting lot and into the same record ownership establishing a merger of title.

AND IT IS FURTHER ORDERED AND VOTED: That Stephen L. DiNatale, Mayor of the City of Fitchburg, be and is hereby authorized for and in behalf of said City to execute, acknowledge and deliver said deed of conveyance in form substantially similar to that attached, and to take any other action and execute any other documents necessary, helpful or convenient for conclusion of the sale thereof.

Orders-Other

RELEASE DEED

THE CITY OF FITCHBURG, a Commonwealth of Massachusetts municipality having its usual place of business at 166 Boulder Drive, Fitchburg, Massachusetts 01420.

In consideration of Three Hundred and 00/100 (\$300.00) dollars paid

Grants to Denis Poirier of 33 Braman Road, Sterling, Massachusetts, 01564

All its right, title and interest in and to the following described premises:

A certain tract of land with any buildings thereon located at 54 1/2 Hazel Street in Fitchburg, Worcester County, Commonwealth of Massachusetts identified as Parcel 66-30-0 by City of Fitchburg Assessors Office and described as:

A certain tract of land, situated near Hazel Street in Fitchburg, County of Worcester, Massachusetts, and bounded as follows:

BEGINNING at the northwesterly corner thereof at a point sixty (60) feet from Hazel St., and at the land now or formerly of John Nattila;

THENCE running S. 80° 18' E. by land now or formerly of H. Fischer, fifty (50) feet to a bound;

THENCE S. 9° 42' W. fifty (50) feet to a bound;

THENCE N. 80° 18' W. fifty (50) feet to a bound at land now said Nattila;

THENCE N. 9° 42' E. by land of said Natilla, fifty (50) feet to the place of beginning;

being all of the Grantor's right, title and interest acquired from the following recorded instruments:

- i. Instrument of Taking by the City of Fitchburg against James Roland dated January 5, 2006 and recorded in the Worcester Northern District Registry of Deeds Book 5991, Page 84 on January 10, 2006.
- ii. Judgment in Tax Lien Case against Thomas J. Caruso and Sandra L. Caruso recorded in the Worcester Northern District Registry of Deeds Book 8693, Page 262 on November 7, 2006.

This conveyance is made subject to the following provisions and conditions of the City of Fitchburg Side Yard Sales Program:

- 1. The premises are sold "as is", in its present condition.

54 1/2 Hazel Street, Fitchburg

5

2. The Grantor makes no representations or warranties of any kind as to the suitability of the premises for any particular purpose, or as to the applicability or effect of any local, state or federal law.
3. The Grantor makes no representations or warranties as to whether the premises contain any substance which may be classified as a hazardous, toxic, chemical or radioactive substance or a contaminant or pollutant under applicable federal, state or local law, statute, ordinance, rule or regulation, or which may require any cleanup, remediation or other corrective action pursuant to such applicable laws.
4. The premises shall be kept free of garbage and debris.
5. The premises shall be combined for the purposes of future conveyances with the abutting property owned by the Grantees, located at 54 Hazel Street, Fitchburg, Massachusetts and described in a Quitclaim Deed from Amy L. Souliere and David A. Souliere to Denis Poirier dated November 19, 2003 and recorded November 20, 2003 in Worcester Northern District Registry of Deeds Book 5056, Page 303 such that the premises shall henceforth be conveyed in conjunction with the abutting lot and into the same record ownership establishing a merger of title.
6. These provisions, conditions and restrictions shall run with the land and be enforceable against the Grantees, their successors and assigns by the City of Fitchburg.

The Grantor warrants that it has received from the Grantees an affidavit executed pursuant to Massachusetts General Laws, Chapter 60, Section 77B and the statutory payment in lieu of taxes pursuant to Massachusetts General Laws, Chapter 44, Section 63A.

This instrument is executed pursuant to a vote taken by the City of Fitchburg City Council and attached herewith as Exhibit "A".

No title search has been performed in the preparation of this deed.

Executed as a sealed instrument this ___ day of June, 2020.

Stephen L. DiNatale, Mayor
City of Fitchburg

COMMONWEALTH OF MASSACHUSETTS

Worcester, SS

On this ___ day of June, 2020, before me, the undersigned Notary Public, personally appeared Stephen L. DiNatale, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or

Orders-Other

attached document, and acknowledged to me that he signed in voluntarily for its stated purpose as Mayor of the City of Fitchburg.

Notary Public
My Commission Expires:



Anne M. Cervantes
Treasurer

City of Fitchburg

OFFICE OF THE TREASURER

166 Boulder Drive
Fitchburg, MA 01420

978-829-1830
FAX 978-829-1971

January 28, 2020

Mayor Stephen L. DiNatale and
Members of the City Council
166 Boulder Drive
Fitchburg, MA 01420

Re: Side Yard Sales

Dear Mayor and Councilors:

At its January 27, 2020 meeting, the Side Yard Sales Committee voted to recommend the sale of the 54 Hazel Street parcel to abutter Denis Poirier.

Attached is the order to sell the parcel and to authorize the mayor to execute the deed of conveyance. For your reference, a draft deed is also attached.

On behalf of the Side Yard Sales Committee, I ask for your approval of this order.

Thank you for your consideration.

Sincerely,

Anne M. Cervantes
Treasurer

Orders were adopted under Suspension of the Rules by roll call vote of 9 in favor and 0 opposed. Councillor Green lost connection during the vote. 9 members present. Board consists of 11 members.

Orders signed by the Mayor June 4, 2020.

Petitions

PETITIONS

The following Petition was referred to the Treasurer's Office, Economic Development Committee, Community and Planning Department by unanimous consent 10/0:

143-20. Councillors Marisa Fleming and Andrew Van Hazinga, to re-evaluate the overall dynamic of the Day Street Municipal Parking lot. The re-evaluation should include signage, duration of meters and management of patron spaces for increased short term parking to accommodate Commerce in the downtown.

The following Petition was referred to the Public Works Committee by unanimous consent 10/0:

144-20. Councillor Paul Beauchemin, to petition the Unitil repair the sidewalk in front of pole number 27 on Pratt Road. The guidewire has raised the sidewalk in this area.

The meeting adjourned at 7:20 P.M.



Mary de Alderete, City Clerk

