

AGREEMENT

between

SELECT BOARD OF THE TOWN OF WELLFLEET, MASSACHUSETTS

and

CHEQUESSETT YACHT & COUNTRY CLUB, INC.

and

**GARY CARTER, JOHN WHALEN AND JOHN A. KETCHUM, TRUSTEES OF THE
CHEQUESSETT YACHT & COUNTRY CLUB TRUST**

CONCERNING THE HERRING RIVER RESTORATION PROJECT

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AGREEMENT

This Agreement (the "Agreement") is entered into by and between the SELECT BOARD OF THE TOWN OF WELFLEET, MASSACHUSETTS, a municipal corporation, with its primary address of 300 Main Street, Wellfleet, Massachusetts, 02667 (the "Town"), and the CHEQUESSETT YACHT & COUNTRY CLUB, INC., a Massachusetts for profit organization, with its primary place of business at 680 Chequessett Neck Road Wellfleet, Massachusetts, 02667 (the "Corporation"), and the CHEQUESSETT YACHT & COUNTRY CLUB TRUST, under Declaration of Trust dated October 7, 1978 and filed with the Barnstable County Registry District of the Land Court as Document No. 252530, with its primary place of business at 680 Chequessett Neck Rd, Wellfleet, Massachusetts 02667 (the "Trust"), and together with the Corporation hereinafter collectively referred to as "CYCC"), on this ____ day of _____, 2021.

RECITALS

WHEREAS, the Herring River is a tidal river located in Wellfleet, Massachusetts that, through a large tidal estuary system, connects to the Cape Cod Bay;

WHEREAS, the Town owns the Chequessett Neck Road ("CNR") Dike, which currently controls tidal flow to the Herring River system, and the CNR Dike has included since approximately 1909 tidal gates that artificially restrict tidal flow in and out of the Herring River;

WHEREAS, the artificial restriction of tidal flow has impaired the waters of the Herring River and the proper functioning of the tidal estuary system, including tidal wetland habitat and salt marsh;

WHEREAS, to prevent ongoing degradation of the estuary, reclaim its ecological and environmental benefits, and replace an over- 40-year old waterfront structure with resilient infrastructure, the Town wishes to remove part of the existing CNR Dike and its tide gates and replace them with a bridge with water control structures and systems that can incrementally restore the natural tidal flow over time, and to take other appropriate steps to rebuild infrastructure and provide mitigation as necessary to facilitate this goal (the "Herring River Restoration Project" or the "Project");

WHEREAS, the Parties agree that this Agreement and the Project are in their mutual best interests;

WHEREAS, the Project has completed review under National Environmental Policy Act ("NEPA") and Massachusetts Environmental Policy Act ("MEPA") for the work that is described as Alternative D in the Final EIS/EIR and further described in the Development of Regional Impact Decision issued by the Cape Cod Commission (June 17, 2020), and the Project continues to be refined by further modeling and analysis, and includes work on the following water control structures and mitigation efforts:

(A) replacement of part of the existing CNR Dike with a new bridge and water control structure system;

- (B) new construction or alteration of other water control structures at the entrances to the Mill Creek and Upper Pole Dike Creek sub-basins;
- (C) removal of a portion of High Toss Road where it crosses the Herring River marsh;
- (D) mitigation work on the CYCC golf course, described in further detail below; and
- (E) restoring tidal flow to portions of the Herring River system, including partial tidal flow to the Mill Creek sub-basin, along with associated other activities such as work in roads, flood proofing and vegetation management;

WHEREAS, to accomplish the Town's goal, it has worked with the Cape Cod National Seashore ("CCNS"), coordinated with Project Partner Agencies (hereinafter defined), and received input from the Herring River Technical Team ("HRTT"), on permitting and coordination for the Project;

WHEREAS, the HRTT is an informal staff technical working group that provides technical input for Project-related decisions as necessary, and the HRTT consists of government staff from the Town, NOAA Restoration Center, the U.S. Fish and Wildlife Service, CCNS, the U.S. Department of Agriculture Natural Resources Conservation Service, and the Massachusetts Division of Ecological Restoration (collectively, the "Project Partner Agencies");

WHEREAS, the Project Partner Agencies represented on the HRTT have provided much of the planning and design funding for the Project to date;

WHEREAS, the Town is distinct from the Project Partner Agencies, and can only agree to perform tasks or take on responsibilities within the scope of its authority as a municipality;

WHEREAS, the Town and Project Partner Agencies propose to restore (and monitor restoration of) the approximately 570 acres associated with Phase 1 (described below) by opening water control structures on the new CNR bridge to a configuration (*i.e.*, number of gates opened and size of potential gate openings) at which mean high water will be increased to a modeled maximum mean high tide in Lower Herring River of 3.6 feet NAVD88 or a 2.5 feet NAVD88 during Mean High Water Spring (MHWS) in the Mill Creek subbasin, and this translates to restoring approximately 21 acres within the Mill Creek subbasin;

WHEREAS, Phase 1 shall include partial restoration of tides in the Mill Creek sub-basin, among other Project elements, and Phase 1 shall consist of two classes of project elements, as described below:

- Class 1 actions shall encompass all proposed infrastructure and flood prevention work that is, at the time of permit submittals, known to be necessary to complete Phase 1, including: construction of dikes with water control structures at Chequessett Neck Road, the mouth of Mill Creek, removal of part of High Toss Road that crosses the floodplain, elevation of certain low road sections to prevent flooding of roadways from maximum Phase 1 water levels, and low property mitigation work necessary to achieve Phase 1 tidal restoration, including elevation of the CYCC golf course to allow partial tidal restoration in the Mill Creek sub-basin or the contingent installation of pumps on the CYCC

property. All Phase 1 flood mitigation work on the CYCC Property is designed to mitigate against potential impacts on the CYCC Property (hereinafter defined) that are attributable to the Project and anticipated for the full scope of tidal restoration beyond Phase 1; and,

- Class 2 actions shall include marsh channel drainage improvements, vegetation management, sediment supplementation to increase marsh elevation, and other potential secondary management actions on the marsh plain to enhance ecosystem function in concert with tidal restoration which are currently unknown but will be resolved as tidal restoration progresses and the response of the system is evaluated under the project-wide adaptive management program;

WHEREAS, following completion of Phase 1 work and subject to permitting, the Project could include future work to increase water levels above the maximum water level approved in Phase 1;

WHEREAS, CYCC represents to the Town that the sole beneficiary of the Trust is the Corporation, which is a Massachusetts for-profit corporation in good standing, and it shall furnish to the Town such documentation as the Town from time to time may reasonably request confirming and maintaining that status;

WHEREAS, CYCC represents to the Town that the Trust is the owner of the real estate, and the Corporation is the owner of the personal property and operator of the business entities that constitute and comprise the public golf, tennis and sailing club (all of which are open to the public on a daily use basis) known as the Chequessett Yacht & Country Club and located within with Mill Creek sub-basin of the Herring River, with authority to enter into this Agreement, and it shall furnish to the Town such documentation as the Town from time to time may reasonably request confirming that ownership and entities, including but not limited to a trustees' certificate, a certificate of organization, organization bylaws, and names of officers, directors, and managers;

WHEREAS, without the mitigation efforts set forth in this Agreement, the Project may affect real property owned by CYCC located at 0 and 680 Chequessett Neck Road in Wellfleet, Massachusetts, shown as Lot 85 on Land Court Plan 10669-20, and more particularly described in Certificate of Title No. 78460 filed with the Barnstable County Registry District of the Land Court (the "CYCC Property");

WHEREAS, currently, portions of the CYCC golf course experience occasional flooding by groundwater and surface water in the area of Mill Creek, and because of the golf course's location, restoration of tidal flow to the Mill Creek sub-basin of the Herring River may cause tidal flooding of the lower fairways of the golf course, unless flood prevention measures are taken;

WHEREAS, the partial restoration of tidal flow to the Mill Creek sub-basin under Phase 1 will result in more acres of restoration than otherwise would be possible if tides were excluded from said sub-basin, resulting in a public benefit;

WHEREAS, Project representatives and the CYCC have engaged in a series of detailed discussions to address how the Project can perform mitigation work on the CYCC Property in a way that recognizes the public benefit conferred through the Project, and the potential benefits and risks to CYCC to perform the mitigation work;

WHEREAS, the Town recognizes and acknowledges that in order to achieve the public benefit of 21 restored acres in Mill Creek conferred through the Project, CYCC is both offering benefits such as the use of fill on site to reduce flood mitigation costs, decrease road and traffic risks and reduce air emissions, as well as taking on a risk to its operations to advance the public interest, and CYCC recognizes and acknowledges that the Flood Mitigation Work and Compatibility Work (hereinafter defined) poses substantial long-term benefits to CYCC;

WHEREAS, the Town and CYCC enter into this Agreement to set forth the nature of the understanding between the Town and CYCC concerning each other's Project responsibilities;

WHEREAS, at this early stage of the Project, details concerning Phase 1 Project funding and permitting are not yet final, and the Town and CYCC agree that further amendments and refinements to this Agreement may be necessary as the Project progresses;

WHEREAS, after Project funding and permitting are final, the Town and CYCC agree that a construction agreement and associated arrangements and protocols will be necessary, which the CYCC and Town mutually and reasonably agree are necessary or appropriate, for CYCC to supervise the completion of the work herein on the CYCC Property (hereinafter collectively the "CYCC Management");

WHEREAS, the Town enters into this Agreement on its own behalf as Project applicant, and making no promises in this Agreement on behalf of the Project Partner Agencies, or the Herring River Executive Council, which consists of members from the Town of Wellfleet and CCNS and was formed by the Final Memorandum of Understanding (MOU III) for the Herring River Restoration Project dated September 1, 2016 and amended in MOU IV (June 25, 2019) (the "Herring River Executive Council"), and;

WHEREAS, the Town and CYCC intend this Agreement to achieve the following goals:

- a. To implement the Project in a way that furthers the public interest, and is consistent with permit conditions and any grant or funding requirements of any public or private sector entities;
- b. To avoid and mitigate potential harm to CYCC that could be caused by increased flooding on the golf course now or in the future due to the Project, or by loss of revenue to CYCC due to construction and mitigation on CYCC Property;
- c. Address costs that will include design, permitting and construction of work described herein on the CYCC Property, to the extent now known; and
- d. Implement the obligations set forth herein as efficient as possible, minimizing the risks and costs for the environmental and other public benefits achieved.

AGREEMENTS

NOW THEREFORE, in consideration of the mutual agreements contained herein, the sufficiency of which are acknowledged, the Town and CYCC hereby agree as follows:

1. Overall Summary and Structure of Agreement Regarding CYCC's Property

Subject to the permitting and funding limitations in this Agreement, and consistent with the more specific terms set forth below, construction on the CYCC Property will occur on all nine holes of the golf course on the CYCC Property to (a) perform the flood mitigation work on lower golf course holes as described in Section 2 and thereby mitigate for potential Project-related impacts (the "Flood Mitigation Work"), and (b) reconstruct upland holes to make them compatible with lower golf course holes (the "Compatibility Work"). The Town will coordinate with Project Partner Agencies to take Best Efforts (defined below) to pursue permits and funding approving both the Flood Mitigation Work and the Compatibility Work (including the funding of the Business Shutdown Costs (*see Appendix C*)) proposed to occur on the CYCC Property. In the event that all permits and funding are made available to CYCC for Flood Mitigation and the Compatibility Work (and not otherwise), CYCC will provide in-kind public benefits as described in Appendix C. If the Flood Mitigation Work and the Compatibility Work cannot be completed due to permitting or funding constraints, then the Contingency Plan described in Section 6 shall be completed instead, unless consistent with the provisions of Section 6.a., CYCC elects to complete the Flood Mitigation Work and the Compatibility Work. As set forth in Sections 4.b.v and 5.b.vii, CYCC agrees that it will not file, fund or facilitate an appeal or any other challenge to any permit or funding application or approval for the Project as contemplated in this Agreement, and shall not oppose directly or indirectly, any such application or approval, provided such permit or funding application or approval is consistent with this Agreement.

"Best Efforts" as applied to the Town, means that the Town will work with Project Partner Agencies, consultants, experts, and other appropriate persons or entities to prepare and submit complete and adequately supported permitting and funding applications to regulators and funding entities that will incorporate the Flood Mitigation Work, the Compatibility Work, and the Business Shutdown Costs contemplated in this Agreement, work to raise funds for, and if funds are successfully raised, implement those plans in a timely manner (recognizing potential construction contingencies); and take in good faith all reasonable steps to achieve the objectives of this Agreement. "Best Efforts" shall not require the Town to (i) appeal any permits or approvals for the reason that they are inconsistent with this Agreement; (ii) pursue any federal, state, or local legislative or executive relief, other than required permits, to achieve the goals of this Agreement; (iii) guarantee the outcome of any votes or approvals from public bodies necessary or appropriate to accomplish the goals of this Agreement (iv) delay implementation of tidal restoration in the main Herring River basin, if adequate funding for that work is secured before securing funds necessary to implement the Flood Mitigation Work and Compatibility Work on CYCC Property; or (v) appropriate or spend any Town funds to fulfill the obligations of this Agreement.

CYCC agrees that it shall take in good faith all reasonable steps to achieve the objectives of this Agreement, including coordinating with Board members, staff, consultants, sharing relevant information and providing updates to the Town and Project Partner Agencies and their

consultants, and providing support for the Project in the permitting and funding process as set forth below.

2. Performance of the Flood Mitigation Work and the Compatibility Work

As set forth in, and pursuant to the terms of, this Agreement, the Project tasks to be performed or structures to be constructed and operated on CYCC's Property include the major elements below.

Flood Mitigation Work:

- Improvements to the CYCC golf course, including raising and renovating portions of the five lower fairways, tees, greens, roughs, sand traps and cart paths (Holes #s 1, 6, 7, 8 & 9), said improvements designed to mitigate against water levels up to the elevation 6.36 feet NAVD 88. This 6.36-foot elevation represents the modeled maximum mean water level that would occur under storm of record conditions with the Mill Creek Dike water control structures open 3 feet high and the CNR Dike water control structures open 10 feet high, and full Project restoration (beyond Phase 1) has occurred;¹
- Excavation and then returning to finished grade of one upland CYCC golf course hole (Hole #2) which will provide a portion of fill needed for the Project (approximately 250,000 cubic yards), to be used in raising the five lower holes of the golf course (approximately 180,000 cubic yards) and also for other Project-related needs outside of the CYCC Property (approximately 70,000 cubic yards);
- Installation of new irrigation on Holes #s 1, 6, 7, 8 & 9 and relocation of the practice area to an upland portion of the CYCC Property; and
- Clearing channels and managing natural vegetation on the course and in the Mill Creek sub basin as may be needed to augment restoration (some channels will be identified and cleared mechanically to improve drainage, and others will be cleared naturally as restoration proceeds).

Compatibility Work:

- Reconstruction of Holes #s 2, 3, 4, and 5 to make them suitable for golf course use and compatible with the Flood Mitigation Work. With respect to Hole 2, after excavation and returning to grade, the remaining work on this hole shall be considered a part of the Compatibility Work.

"Drainage Only" in Mill Creek:

- After the Mill Creek water control structure is built, but before the Flood Mitigation Work and Compatibility Work, or the Contingency Plan, are

¹ This Agreement incorporates several key water-level related measurements. A summary of those measurements is attached as Appendix B.

performed, the Mill Creek water control structure will be set and maintained in a “drainage only” configuration that will prevent tidal flow from entering Mill Creek.

- The details of this Flood Mitigation Work and Compatibility Work are attached as Appendix D.

Business Shutdown Costs:

- Consistent with the terms of this Agreement, Project funding applications shall include payment of the CYCC Business Shutdown Costs as set forth in Appendix C.

CYCC agrees that, consistent with the terms and conditions of this Agreement, it shall perform the CYCC Management and oversee the Flood Mitigation Work and Compatibility Work on the CYCC Property (in a supervisory role), through a mutually agreed-upon process to be further developed by the Parties, and subject to potential restrictions associated with Project permitting and funding, which are acceptable to CYCC and which may limit which entity performs the Flood Mitigation Work and Compatibility Work.

CYCC agrees that CYCC’s undertaking of the Flood Mitigation Work and Compatibility Work shall not be compensated, other than in ways specifically contemplated in this Agreement; it being expressly understood and agreed by the Town that CYCC’s role financially shall be limited to that of a supervisory role for the Flood Mitigation Work and both supervisory and financial contribution role for the Compatibility Work, (as set forth in Appendix C) and the Town agrees that no funds or credit of CYCC shall be requested, required, necessary or utilized therefore, other than as set forth in this Agreement or specifically authorized by CYCC. Additional specifics of the completion of the Flood Mitigation Work and Compatibility Work may be set forth in subsequent agreements between CYCC and the Town, or other entities, as they deem necessary or appropriate.

3. CYCC as Co-Permittee.

The Town shall propose that CYCC be named as a co-permittee for the following permits, plans and approvals for work to occur on the CYCC Property in connection with the Project (the “CYCC Property Permits”): Chapter 91 licenses and dredge permits and Wetlands Protection Act and Wellfleet Wetlands Protection Bylaw Orders of Condition. The scope of CYCC’s rights under such permits shall be limited to the bounds of the CYCC Property. If a permit to which CYCC is a co-permittee is appealed, CYCC shall share the costs of defense of such permits. As set forth in Section 6.a., if CYCC and the Town agree that CYCC may self-fund the Flood Mitigation Work and the Compatibility Work or the Contingency Plan, or other similar work, on CYCC’s Property, then CYCC may complete such work under the scope of existing permits.

4. Commitments Prior to Obtaining All Project Permits and Funding

The Parties agree and understand that, upon mutual agreement of the Parties, the Project design for work on the CYCC Property may change as the Project proceeds through funding and permitting and that the Parties’ respective ability to commit to any agreements or obligations

under this Agreement are limited based on what funding is available and what permit conditions are imposed. To account for these uncertainties, the Parties have categorized their commitments in this Agreement into those that apply *before* all Project permits and funding are obtained, set forth in this Section 4 below, and those that apply *after* all Project permits and funding are obtained, set forth in Section 5.

- a. Town Commitments Prior to Obtaining All Project Permits and Funding.
 - i. Inclusion of CYCC in Project Permits. All permit applications which include the Flood Mitigation Work and Compatibility Work or Contingency Plan, on the CYCC Property, shall be submitted to the CYCC for their review and approval prior to submittal to permitting authorities, and such approval shall not be unreasonably delayed or withheld. The Town will include the Flood Mitigation Work and Compatibility Work on the CYCC Property in all Phase 1 design, permitting, and funding requests for which the Town is an applicant and that concern the Flood Mitigation Work and Compatibility Work. The Town will not seek to impose, propose or otherwise support or cause, directly or indirectly, any conservation restriction or flood easement or other recorded instrument that would require the CYCC Property to be publicly accessible beyond the flowed Commonwealth tidelands that may currently exist on the CYCC Property or that would prevent the CYCC Property from continuing to be used as it is currently operated, including, without limitation, the golf course. If CYCC voluntarily elects to pursue conservation of its land, then the Town will provide information as necessary to CYCC.
 - ii. Pursuit of Funding and Permits. The Town will exercise Best Efforts and coordinate with Project Partner Agencies as necessary, to obtain funding for the Flood Mitigation Work and Compatibility Work (including the Business Shutdown Costs) from the Effective Date of this Agreement up to and until two (2) years after the last major permit concerning work on the CYCC Property is issued. The Parties agree that during this two-year period, the CNR and Mill Creek water control structures may be constructed and mitigation on other private properties may be completed, provided that such construction and mitigation, and the operation of such water-control structures, will not have any impact on the CYCC Property. The Parties agree that the precise amounts of funding will need to be updated before specific funding requests are made, and that later updates and refinements to this estimate may result in the Town seeking funding that reflects more accurate cost estimates. Reimbursement for Business Shutdown Costs is dependent on funding for the Project.
 - iii. Project Funding. The Parties recognize and agree that nothing in this Agreement shall be construed to require the Town to obtain permits or funding, except as specified in this Agreement; provided, however, the Town shall take Best Efforts to pursue funding as set forth below, and to

coordinate with Project Partner Agencies and funding agencies as set forth in this Agreement.

1. The Flood Mitigation Work and Compatibility Work.

The Town will take Best Efforts to pursue funding for the Flood Mitigation Work and Compatibility Work on the CYCC Property.

2. Business Shutdown Costs.

The Town will take Best Efforts to pursue funding for Business Shutdown Costs for the Project.

3. Encumbrances as Appropriate.

The Town will pursue funding for preparation of any necessary encumbrances concerning wetlands filling as described in Section 5.b.vi.

b. CYCC Commitments Prior to Obtaining All Project Permits and Funding.

- i. CYCC Support of the Project. CYCC shall support the Project as a whole, provided (1) the Flood Mitigation Work and Compatibility Work or (2) the Contingency Plan on CYCC's Property as described in Section 6 is included and approved in the federal, state, regional and local permitting processes for which the Town or NPS is an applicant, as well as in pursuit of grants and other fundraising, and the Business Shutdown Costs are included in Project funding applications. Applications that include (1) the Flood Mitigation Work and Compatibility Work or (2) the Contingency Plan on CYCC's Property will be contingent on CYCC's prior review and approval of such applications (insofar as they pertain to work on CYCC's Property) to ensure consistency with this Agreement, and approval shall be reasonable and without delay. CYCC's support, contingent on the Project being in compliance with this Agreement, may include but not be limited to submission of supporting comment letters, public testimony, and supplemental information to public entities, interviews, and participation in public hearings, during the Project permitting or funding process.
- ii. Access to Property and Information. CYCC shall grant to the Town or its designee(s) access to the CYCC Property at reasonable times and upon reasonable notice, which access shall not unreasonably interfere with the operation of the CYCC Property, and shall make financial and operational information available to the Town or such designee(s) (provided such designee signs a reasonable confidentiality agreement that is mutually agreeable to the Parties) as reasonably necessary or appropriate to prepare, file, present and complete Project permit and funding applications. Under no such circumstance shall the Town or any agent of the Town be allowed

to make any sort of alteration to the CYCC Property during their access unless authorized by CYCC in writing.

- iii. CYCC Estimate of Business Shutdown Costs. CYCC has provided, and shall continue to provide to the Town or its designee, a written estimate of business shut down costs (to be expressed as a range), to be verified by a third party accounting/business services professional at the Town's sole cost and expense, before submittal of any funding applications, and as the Town may request thereafter for continued verification (provided, however, in the event the Town requests verification more than once quarterly, such additional verification shall be at the Town's sole cost and expense).
- iv. CYCC Preparation of Best Management Practices Documentation. CYCC shall document its current best management practices to reduce nutrient loading, minimize pesticide, herbicide, rodenticide, fungicide, and fertilizer use, and protect and enhance wildlife and shellfish habitat, and shall provide to the Town information regarding the best management practices it plans to implement after completion of the Project to achieve the same goals. If permitting agencies or potential Project funding entities require or request, CYCC shall provide information regarding these practices as part of permit or funding applications and any subsequent compliance required in any permit or funding grant.
- v. Signature on Permit Applications; Agreement Not to Appeal; Releases. CYCC shall expeditiously review and execute all permit applications which strictly involve the CYCC Property, and are necessary or appropriate for the Project (including the Flood Mitigation Work and Compatibility Work, or Contingency Plan): (A) as the consenting owner of the CYCC Property; and, (B) as a co-permittee with respect to any permit applications which relate to Project work which will occur on the CYCC Property only. Such permit applications shall be executed as hereinabove provided within fourteen (14) days after receipt of said applications from the Town, contingent on CYCC's review and approval of permit applications as provided in Section 4.b.i above.

CYCC agrees that it shall not object to or file, fund, or facilitate an appeal or any other form of challenge to any permit or funding application or approval and shall not oppose directly or indirectly, any such application or approval, issued or obtained for the Project that includes the (1) Flood Mitigation Work and Compatibility Work or (2) the Contingency Plan. Except for any willful misconduct, negligence or breach of this Agreement by the Town, CYCC shall release the Town for any and all claims related to the effects of the Project resulting from tidal restoration up to a water level elevation a modeled maximum mean of 6.36 feet NAVD 88 on the CYCC Property.

5. Post-Permitting and Post-Funding Obligations if the Flood Mitigation Work and Compatibility Work Proceeds. If the Project obtains permits, funding, and binding, mutually acceptable agreements with all necessary or appropriate third parties to perform the full scope of Phase 1 of the Project, including the Flood Mitigation Work and Compatibility Work, then the Town and CYCC agree to undertake the tasks identified in this Section 5. If the Project does not obtain permits and funding that include the full scope of the Flood Mitigation Work and Compatibility Work, then the Parties shall follow the procedures set forth in Section 6 and follow contingency approach and Contingency Plan described in Section 6. The Parties agree that the post-permitting and post-funding obligations set forth in this Agreement may be amended, by mutual agreement of the Parties in writing, as the Project progresses and more information becomes available.

a. Town Post-Permitting and Post-Funding Obligations.

- i. Flow of Project Funding. The Town will coordinate with Project Partner Agencies to manage the timing and release of funding for the Flood Mitigation Work and Compatibility Work to CYCC to perform the Flood Mitigation Work and Compatibility Work in a way that reasonably minimizes construction delays and associated Business Shutdown Costs. However, the Parties agree that the Town's ability to organize and coordinate funds in such a manner may be constrained by funding and permitting restrictions or other regulatory requirements that affect the administration of the funds received.
- ii. Business Shutdown Costs. Following receipt of Project permits and approvals for funding, including, without limitation, the Business Shutdown Costs, but prior to commencement of the Flood Mitigation Work and Compatibility Work, the Town and CYCC will agree to a mutually acceptable schedule and process for submittal, documentation, verification and payment of Business Shutdown Costs to CYCC. It is expressly acknowledged by the Town that CYCC will be relying on the Project to timely manage cash flow to minimize further negative impact on CYCC through Business Shutdown Costs.

b. CYCC Post-Permitting and Post-Funding Obligations

i. Undertaking Flood Mitigation Work and Compatibility Work

Subject to potential restrictions on Project funding that may limit which entity performs the Flood Mitigation Work and Compatibility Work, CYCC shall perform the CYCC Management and oversee the Flood Mitigation Work and Compatibility Work (in a general contractor role) on CYCC's Property or, alternatively, the Contingency Plan.

ii. Business Shutdown Costs

CYCC shall submit updated and revised documentation of its business shutdown costs not less than nine (9) months before the Flood Mitigation Work and Compatibility Work is undertaken. CYCC shall support its updated and revised business shutdown costs with quarterly financial information prepared by the CYCC's Certified Public Accountant and approved and signed by the CYCC's Board Treasurer and verified by a third party accounting/business services professional. CYCC shall be responsible for the costs of services of CYCC's Certified Public Accountant.

iii. Construction Agreement and Other Later Agreements.

CYCC shall cooperate with the Town to develop, finalize and execute a formal, mutually acceptable construction agreement (including, without limitation, with respect to the administration of funds that may be disbursed to CYCC for the Flood Mitigation Work and Compatibility Work) and associated arrangements and protocols, consistent with this Agreement, as the Parties deem necessary or appropriate for the Flood Mitigation Work and Compatibility Work. After funds for the Flood Mitigation Work and Compatibility Work are approved, but before such work begins and before any such funds are disbursed to CYCC, the Parties shall cooperate with each other to develop, finalize, and execute a formal Financial Agreement and associated arrangements and protocols as the Parties deem necessary or appropriate for the administration of funds that may be disbursed to CYCC for the Flood Mitigation Work and Compatibility Work.

iv. Fill For Flood Mitigation Work.

If the funding for the Flood Mitigation Work and Compatibility Work is obtained, and not otherwise, CYCC shall source the expected cubic yards of fill set forth in Appendix C from upland portions of the CYCC Property as identified in permit-level designs. Such fill will be used to perform the Flood Mitigation Work on CYCC Property and other off-property Project-related work. CYCC shall provide such fill in accordance with Appendix C. Excavation, hauling and use of such fill shall be at no cost to CYCC.

v. Compensation to the Project for the Compatibility Work.

CYCC shall provide the materials and services set forth in Appendix C, at the values set forth therein.

vi. Land Encumbrance.

CYCC shall agree to encumber areas of filled wetlands within the area of Flood Mitigation Work after such work occurs, and such encumbrance

shall be written so as to allow active recreation, including, but not limited to, golf course use and related golf course improvements (including, without limitation, minor accessory structures) within encumbered areas.. The Town agrees not to seek in Project permits any encumbrance that requires public access on the CYCC Property.

vii. Ongoing Agreement Not to Appeal

CYCC agrees, on its own behalf, that after permits and funding are issued, it shall continue to not object to or file, fund, or facilitate any appeal or any other form of challenge to any permit or funding application or approval and shall not oppose directly or indirectly, any such application or approval, issued or obtained for the Project that include (1) the Flood Mitigation Work and Compatibility Work or (2) the Contingency Plan in compliance with this Agreement; provided the Town or any of the other Project Partner Agencies, are not in breach of this Agreement. Nothing shall prohibit CYCC from seeking any legal or equitable remedies to ensure validly issued permits and approvals for aspects of the Project which affect or protect the interests of CYCC are complied with, including, without limitation, enforcement of such permits and approvals that are issued for the Project. However, it is expressly understood and agreed that the Town's compliance with validly issued permits and approvals is not an express term and condition of this Agreement.

viii. Inspection of Financial Records.

CYCC agrees that it shall provide documentation showing that it has administered Project-related funds consistent with grant requirements, and shall provide such reasonably requested information to the Town, Project Partner Agencies, or their designees periodically throughout completion of construction of the Flood Mitigation Work and Compatibility Work, or the Contingency Plan.

CYCC shall furnish its financial records and documents concerning the Flood Mitigation Work and Compatibility Work, or the Contingency Plan (including, but not limited to, construction-related documents) as reasonably appropriate to ensure that CYCC expends and administers the funding it receives to perform the Flood Mitigation Work and Compatibility Work and the Contingency Plan in a manner consistent with grant funding requirements and Generally Accepted Accounting Principles.

ix. Inspection of CYCC Property

CYCC agrees that the Town, with adequate notice to CYCC and without unreasonable interference to the CYCC business operations, may visually inspect the CYCC Property to ensure that CYCC completes the Flood

Mitigation Work and Compatibility Work or Contingency Plan as described in Project permits and this Agreement. Under no such circumstance shall the Town or any agent of the Town be allowed to make any sort of alteration to the CYCC Property during their access, unless previously authorized in writing from the Club.

x. Insurance

At least sixty (60) days before the Flood Mitigation Work and Compatibility Work on CYCC's Property begin, CYCC shall submit to the Town information sufficient to demonstrate to the satisfaction of the Town that contractors hired by CYCC to complete the Work hold adequate insurance and bonding. CYCC shall provide suitable insurance, bonding, and/or other financial security and assurances in commercially reasonable amounts for a similar construction project.

xi. Indemnification.

By receiving funds to complete all or some of the Flood Mitigation Work and Compatibility Work, or the Contingency Plan, CYCC agrees that it will release, indemnify and hold harmless the Town and Project Partner Agencies against all claims arising out of, concerning, or in any way related to (1) CYCC's completion of the Flood Mitigation Work and Compatibility Work or the Contingency Plan and (2) CYCC's operation of any Project related elements on the CYCC Property; provided, however, the foregoing indemnification shall not apply to any claims arising out of, concerning, or in any way related to a breach of this Agreement.

6. Contingency If the Flood Mitigation Work and Compatibility Work Do Not Receive Full Permitting and/or Funding.

The Parties acknowledge that the regulatory approvals and funding for implementation of various Project elements depend on the actions of many others outside the Town and CYCC. Thus, despite the Town and Project Partner Agency's Best Efforts to secure permits and raise funds for Flood Mitigation Work and Compatibility Work concurrently with other Project Phase 1 activities, the Parties agree that a scenario may occur in which permits or funding do not fully authorize or fully fund the Flood Mitigation Work and Compatibility Work, but do authorize or fund other Project elements including the construction of the CNR bridge and water control structures and Mill Creek Dike. Thus, in this scenario, tidal restoration in the main Herring River basin could commence before the Flood Mitigation Work and Compatibility Work on the CYCC Property are completed. The Parties agree that if this scenario occurs, they will undertake the following contingent approach:

a. Determination of Whether Contingency Plan Will Govern.

The Town shall exercise Best Efforts and coordinate with Project Partner Agencies as necessary, to obtain funding for the Flood Mitigation Work and Compatibility Work (including the Business Shutdown Costs, *see* Appendix C)

from the Effective Date of this Agreement up to and until two (2) years after the last major permit concerning work on the CYCC Property is issued, consistent with Section 4.a.ii. If, after that period, the Flood Mitigation Work and Compatibility Work (including the Business Shutdown Costs) is not completely funded from third-party grants, then the Parties shall confer in good faith for sixty (60) days as follows: if the Flood Mitigation Work, Compatibility Work and Business Shutdown Costs have received partial, but not complete funding, but the construction of the Project's water control structures have received funding (see Section 4.a.ii. allowing such structures to be built), then the Parties may agree that either (A) CYCC may self-fund the remaining portion of the Flood Mitigation Work and Compatibility Work, if such self-funding can be obtained within one (1) year (provided, however, in the event CYCC elects to self-fund the remaining portion of the Flood Mitigation Work, CYCC may, at CYCC's election and in CYCC's sole discretion, and if allowed by permits, delay the Compatibility Work up to one (1) year after the Flood Mitigation Work is complete), or (B) propose a revised scope of mitigation consistent with available funding. If the Parties agree that neither (A) nor (B) is feasible, then the Contingency Plan and pump mitigation set forth in Appendix A shall govern.

b. Construction of Permitted and Funded Work

In this Contingency Plan scenario, the Town or Project Partner Agencies may construct and operate (consistent with Appendix A) all aspects of the Project (including the CNR and Mill Creek water control structures) authorized by permits and funding, other than the Flood Mitigation Work and Compatibility Work (which in this scenario lacks permits or funding).

7. Working Relationships and Ongoing Consultation

To ensure ongoing and effective communication, the Town and CYCC will communicate to periodically provide updates concerning Project permit applications and conditions, Project funding and related applications, Project design and mitigation on the CYCC Property, Project monitoring and monitoring plans, and any of the other topics addressed in this Agreement, including, without limitation, as least monthly meetings of key Project staff and periodic meetings of Project principals with CYCC staff in the first year following the Effective Date of this Agreement, and quarterly thereafter. In addition, the Town and Project Partner Agencies, as needed, will provide CYCC updates on funding status any restrictions on grants sought or funds secured, and provide CYCC data generated from the ongoing monitoring program.

8. Term

a. Effective Date

This Agreement shall be effective on the last date on which this Agreement is signed and delivered by the parties (the "Effective Date").

b. Expiration Date

This Agreement shall expire seven (7) years from its Effective Date, unless extended in writing by the Parties. The Parties acknowledge that any subsequent agreements concerning funding or construction may supersede certain provisions of this Agreement.

c. Extensions

The Parties may extend the Expiration Date of this Agreement in writing. The Town and CYCC agree to negotiate in good faith an extension of this Agreement. If any party seeks to extend the Expiration Date, it shall provide notice to the other party ninety (90) calendar days in advance of the Expiration Date, unless waived.

9. Termination and Remedies.

a. Termination Before Project Permitting and Funding Are Complete

i. Termination by the Town

At any time before all Project permits and funds are obtained, the Town may, in its sole discretion, elect not to pursue permitting or funding for the Project and instead to discontinue its role in the Project. In such case, the Town will not pursue the Flood Mitigation Work and Compatibility Work on the CYCC Property, and will provide prompt notice to CYCC of a decision not to pursue the Flood Mitigation Work and Compatibility Work in accordance with the notice provisions of this Agreement. In this circumstance, provided the Town is not thereafter involved with the permitting or funding for the Project, CYCC shall not have any remedy against the Town or the Project Partner Agencies, in equity or at law, for the Town's decision not to move forward with the Project.

ii. Termination by CYCC

If, before all Project permits and funding are obtained (a) CYCC or the CYCC Property, or any portions thereof, are sold or subject to any bankruptcy proceedings; or (b) CYCC determines that it no longer wishes to have the Flood Mitigation Work and Compatibility Work included as part of the Project; then CYCC will provide prompt notice to the Town in accordance with the notice provisions of this Agreement. In such circumstances, the Town and the Project Partner Agencies shall not seek funding or permits to construct the Flood Mitigation Work and Compatibility Work on the CYCC Property, this Agreement shall be null and void, and CYCC shall return any funds that have not been spent or committed to the original funding entity immediately. In this circumstance, CYCC shall not have any rights or remedies against the Town or the Project Partner Agencies.

b. Termination After Project Permitting and Funding Are Complete

The Parties agree that if either the Town or CYCC seeks to terminate this Agreement after Project permits and funding are obtained, that the particular facts of what permits or amounts of funding have been obtained, and which obligations of this Agreement have been satisfied, are currently unknown. The Parties agree that in these currently unknown circumstances, after appropriate notice to the other party, CYCC shall cease the Flood Mitigation Work and Compatibility Work on CYCC Property immediately, take any necessary and reasonable efforts to stabilize the Flood Mitigation Work and Compatibility Work during construction, and return funds that have not been spent or committed immediately. The Parties would seek to resolve their disputes consistent with Section 14 of this Agreement (Dispute Resolution).

10. Municipal Authority.

As used in this Agreement, the “Town” shall mean the Town of Wellfleet as a municipal corporation, including its Board members, employees, agents, and consultants. Project Partner Agencies, other governmental entities, non-profit groups affiliated with the Project and their employees, agents, and consultants shall not be deemed to represent the Town and the Town makes no representation or warranty that it possesses any authority to bind such entities to any of the obligations set forth in this Agreement.

11. Municipal Governance, Finance and Approvals.

No terms in this Agreement shall be construed to obligate the Town to: (i) take any actions or approve any actions that would violate the requirements of the Massachusetts General Laws or municipal charter, bylaw, regulation, or contractual obligation with respect to municipal governance; (ii) appropriate any funds from the Town to fulfill the obligations of this Agreement or fund the Flood Mitigation Work and Compatibility Work without appropriate Town approval or vote; or (iii) approve any permit or approval applications submitted to Town departments or boards in furtherance of the Project. Nothing in this Agreement shall be construed as requiring the Town to appropriate any specific funds to fulfill its obligations; instead, the Town will use staff administrative time and the time of Town Board members to fulfill the obligations described herein.

12. Indemnification.

Unless this Agreement specifically states otherwise, no terms in this Agreement shall be construed to obligate either party to indemnify the other or any Project Partner Agencies with respect to the terms of this Agreement.

13. Reservation of Rights.

The Town and CYCC each reserve the right, either in law or equity, by suit, and complaint in the nature of specific performance, or other proceeding, to enforce or compel performance of any or all covenants in this Agreement. The Town and CYCC each further reserve all of their respective rights and defenses available at law concerning claims brought based on the design,

permitting, funding, or implementation of the Flood Mitigation Work and Compatibility Work or operation of the Project. Nothing in this Agreement shall deprive the Town or CYCC of any remedy, power, or authority which it has at law.

14. Dispute Resolution.

The Parties will use good faith efforts to resolve any disputes that may arise concerning this Agreement. If they so choose, the Parties may employ the use of a mediator or facilitator to seek to resolve differences. The Town or CYCC may bypass mediation and seek all available remedies if either party believes potential harm to be imminent, therefore warranting court intervention.

15. Governing Law.

Any litigation concerning the terms or performance of this Agreement shall take place in federal or state courts in the Commonwealth of Massachusetts. This Agreement shall be governed, construed and enforced under Massachusetts law, without respect to its choice of law rules.

16. Limitation on Money Damages and Recourse.

Except as provided explicitly in this Agreement, neither party shall be liable to the other for any ordinary, extraordinary, special, direct, indirect, exemplary, incidental, consequential, or punitive damages, lost profits, or business interruption damages of any character, resulting from, arising out of, in connection with, or in any way incident to, any act or omission of either party related to the provisions of this Agreement, irrespective of whether claims or actions for such damages are based upon contract, warranty, negligence, strict liability or any other theory at law or in equity. Any recourse of any party is limited to the recourses specified herein.

17. Compensation Adequate for CYCC.

CYCC agrees for itself and its successors and assigns that this Agreement represents full and complete compensation for the work described herein, and that it has no further claim of any kind on account thereof, except as expressly set forth in this Agreement.

18. No Third Party Beneficiaries

The Parties are the sole and exclusive beneficiaries of the Agreement, subject to its terms and to all applicable law.

19. No Interest in Land.

This Agreement does not constitute an interest in land and is not intended to run with the land or grant any property rights or exclusive privileges.

20. Survival

The terms of Sections 14, 15, 16 and 17 of this Agreement shall survive for six (6) years after termination of the Agreement.

21. Miscellaneous Provisions.

a. Voluntariness

The Parties have entered into this Agreement on the advice of counsel, voluntarily, and not as a result of any promise or representation except as set forth expressly herein, and not as a result of any duress or coercion by any person or entity.

b. Amendment

This Agreement may be amended only by written agreement signed by authorized representatives of both Parties.

c. Assignment; Non-Transferrable.

This Agreement, the rights and interests set forth in this Agreement, and any permits associated with this Agreement (i) shall not be sold, conveyed, assigned or transferred to any successor owner or interest holder of the CYCC Property or successor operator of CYCC, unless specifically approved by the Town in writing and with appropriate municipal authorizations; and (ii) shall not serve as collateral for any financing or borrowing interests. This Agreement, the rights and interests set forth in this Agreement, and any permits associated with work on the CYCC Property as described in this Agreement shall not be assigned by the Town without the prior written consent of CYCC.

d. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

e. Binding

The Agreement shall be binding on and inures to the benefit of the Parties and their respective boards, board members, employees, directors, officers, agents, administrators, and personal representatives, as well as the Parties' successors and permitted assigns.

f. Merger

This Agreement constitutes the Parties' entire agreement and understanding with respect to its subject matter. There are no written or oral representations or understandings that are not fully expressed in this Agreement or the attached documents. This Agreement supersedes all prior negotiations and agreements.

g. Severability

If any provision of this Agreement or its application to any circumstances is declared invalid or unenforceable by the final ruling of a court of competent jurisdiction, the remaining provisions and their application to other circumstances shall not be affected. In place of such invalid or unenforceable provision, there shall be substituted a valid and enforceable provision that most nearly accomplishes the Parties' original intention.

h. Notices

All notices to be given pursuant to this Agreement shall be provided by certified U.S. mail, return receipt requested, with confirmatory copies sent by email the same day. Notice shall be deemed to have been received at the time of actual receipt of any email, three (3) business days after the date of any properly addressed notice sent by mail, as set forth below:

If to the Town: Maria Broadbent
Town Administrator
Town of Wellfleet
300 Main Street
Wellfleet, MA 02667
(508) 349-0300

With a copy to: Gregor I. McGregor, Esq.
Nathaniel Stevens, Esq.
McGregor & Legere, P.C.
15 Court Square, Suite 500
Boston, MA 02108
gimcg@mcgregorlaw.com
nstevens@McGregorLaw.com

If to CYCC: Barbara Boone Scalcione
General Manager
Chequessett Yacht & Country Club
680 Chequessett Neck Road
Wellfleet, MA 02667
gm@cycc.net

With a copy to: Eliza Cox, Esq.
Nutter McClennan & Fish LLP
1471 Iyannough Road
P.O. Box 1630
Hyannis, MA 02601
ECox@nutter.com

The Parties shall, at any time and from time to time, have the right to specify as their proper recipients and addresses for purposes of this Agreement any other address or addresses by giving five (5) days' written notice thereof to the other party in accordance with the provisions herein.

i. Headings

Headings in this Agreement are for reference purposes only and are not intended to interpret or limit this Agreement or any provision of it.

j. Authority

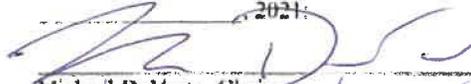
The signatories below represent that they are duly authorized to sign on behalf of and bind their respective parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date written below.

[Signatures on following page]

As authorized and voted at a duly convened meeting of the Selectboard on

As authorized and voted at a duly convened meeting of the Board of Governors

2021:


Michael DeVasto, Chair

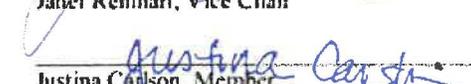
By: _____

President

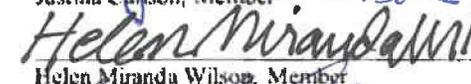


Janet Reinhart, Vice Chair

Vice President



Justina Carlson, Member



Helen Miranda Wilson, Member

Secretary



Ryan Curloy, Clerk

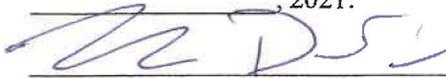

Treasurer **Gerald Cohen**

Chair of the Board of Governors

Dated: 2/14/2021

**SELECTBOARD OF THE
TOWN OF WELLFLEET**

As authorized and voted at a duly convened
meeting of the Selectboard on
_____, 2021:



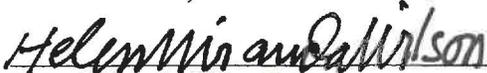
Michael DeVasto, Chair



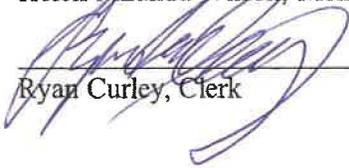
Janet Reinhart, Vice Chair



Justina Carlson, Member



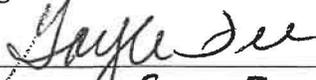
Helen Miranda Wilson, Member

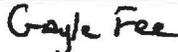


Ryan Curley, Clerk

**CHEQUESSETT YACHT
& COUNTRY CLUB, INC.**

As authorized and voted at a duly convened
meeting of the Board of Governors

By: 

President 

Vice President

Secretary

Treasurer

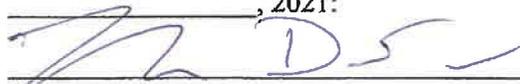


Chair of the Board of Governors

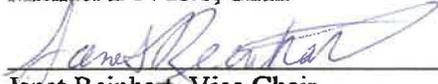
Dated: 2/12/2021

**SELECTBOARD OF THE
TOWN OF WELLFLEET**

As authorized and voted at a duly convened
meeting of the Selectboard on
_____, 2021:



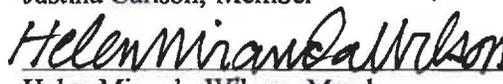
Michael DeVasto, Chair



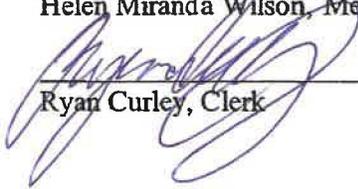
Janet Reinhart, Vice Chair



Justina Carlson, Member



Helen Miranda Wilson, Member



Ryan Curley, Clerk

**CHEQUESSETT YACHT
& COUNTRY CLUB, INC.**

As authorized and voted at a duly convened
meeting of the Board of Governors

By: _____
President

Vice President

Secretary



Treasurer

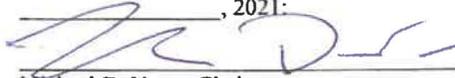
Chair of the Board of Governors

Dated: 1/27/2021

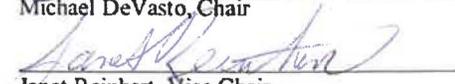
**SELECTBOARD OF THE
TOWN OF WELLFLEET**

As authorized and voted at a duly convened
meeting of the Selectboard on

_____, 2021:



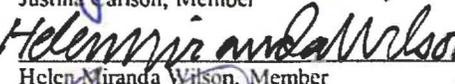
Michael DeVasto, Chair



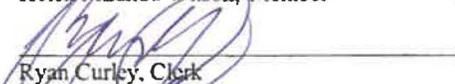
Janet Reinhart, Vice Chair



Justina Carlson, Member



Helen Miranda Wilson, Member



Ryan Curley, Clerk

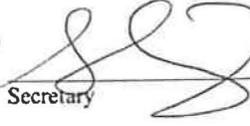
**CHEQUESSETT YACHT
& COUNTRY CLUB, INC.**

As authorized and voted at a duly convened
meeting of the Board of Governors

By: _____

President

Vice President


Secretary

Shea S. Kinney

Treasurer

Chair of the Board of Governors

Dated: _____

**SELECTBOARD OF THE
TOWN OF WELLFLEET**

As authorized and voted at a duly convened
meeting of the Selectboard on
_____, 2021:



Michael DeVasto, Chair



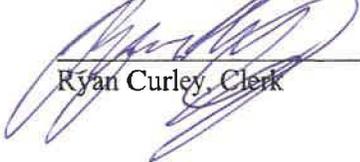
Janet Reinhart, Vice Chair



Justina Carlson, Member



Helen Miranda Wilson, Member



Ryan Curley, Clerk

**CHEQUESSETT YACHT
& COUNTRY CLUB, INC.**

As authorized and voted at a duly convened
meeting of the Board of Governors

By: _____
President



Vice President **Anthony Papantonis**

Secretary

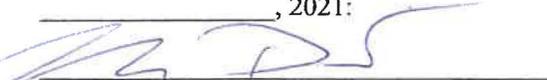
Treasurer

Chair of the Board of Governors

Dated: _____

**SELECTBOARD OF THE
TOWN OF WELLFLEET**

As authorized and voted at a duly convened
meeting of the Selectboard on _____,
2021:



Michael DeVasto, Chair



Janet Reinhart, Vice Chair



Justina Carlson, Member



Helen Miranda Wilson, Member



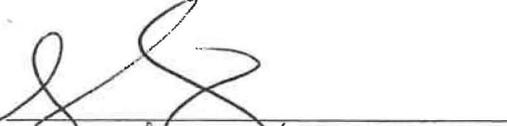
Ryan Curley, Clerk

**CHEQUESSETT YACHT
& COUNTRY CLUB, INC.**

As authorized and voted at a duly convened
meeting of the Board of Governors

By: _____
President

Vice President



Secretary Shea S. Kinney

Treasurer

Chair of the Board of Governors

Dated: _____

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

TOWN OF WELFLEET
By Its Selectboard

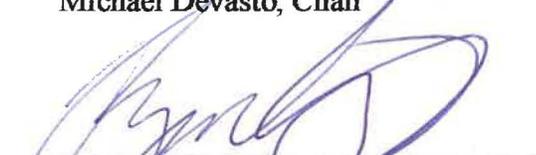
GRANTEE
Wellfleet Historical Society
and Museum, Inc.



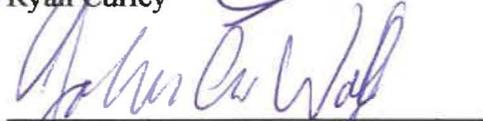
Michael Devasto, Chair

By: 

Name JOHN CONNORS
PRESIDENT



Ryan Curley



John Wolf



Janet Reinhart



Helen Miranda Wilson

ARTICLE 31: Community Preservation – Ephemeral Historical Artifacts \$12,000. To see if the Town will vote; pursuant to MGL c.44B, to appropriate from the Community Preservation Fund Fiscal Year 2022 historical reserve, the sum of \$12,000.00 to the Wellfleet Historical Society & Museum for the purpose of the preservation and storage of museum artifacts and to authorize the Selectboard to enter into a grant agreement to set forth the terms and conditions thereof or do or act anything thereon.

(Requested by the Community Preservation Committee) Majority Vote Required

**CHEQUESSETT YACHT^{SEP} &
COUNTRY CLUB TRUST**

As authorized and voted at a duly convened
meeting of the Trustees

By: Mary M. Carter
Trustee: Gary Carter

Dated: 6/8/21

Eleanor Livingston
Trustee: Eleanor Livingston

Dated: 6/9/21

Steve Roehm
Trustee: Steve Roehm

Dated: 6/8/2021

APPENDIX A: CYCC Contingency Plan (“Contingency Plan”)²

This Appendix A memorializes key understandings and expectations between the Town and CYCC concerning the construction and operation of the Project and describes in detail the protocols that would apply to the Project if the Project does not receive necessary permits or funding to complete the Flood Mitigation Work and Compatibility Work on CYCC’s Property before commencing tidal restoration in the main Herring River basin (as set forth in Agreement Section 6). The Town and CYCC agree to pursue the steps below to the extent permissible under Project governance documents, but recognize that other entities (including but not limited to the Cape Cod National Seashore) may exercise control over structures or decisions discussed below.

1. Importance of Adaptive Management and the CYCC Contingency Plan

An adaptive management process is a keystone of the Project and is described in depth in Appendix C of the FEIS/FEIR and prospectively in permit applications to the Cape Cod Commission and other agencies. Appendix C of the FEIS/FEIR states that one of the fundamental objectives of the Project is the elimination and minimization of potential adverse impacts to private property, including the CYCC Property. This Contingency Plan is intended to protect CYCC from potential adverse impacts under a scenario where the Flood Mitigation Work and Compatibility Work cannot be undertaken.

2. Key Elements of the Contingency Plan and Operation of the Project

CYCC acknowledges that the Project is still developing a detailed framework and protocol for the adaptive management process, including its application to the CYCC Property. The Town and CYCC agree that the following measures are foundational, establishing a baseline for the Project, and will be operative as the Project is implemented:

- a. Tide Gate Management Protocols. The Herring River Executive Council is responsible for “modifying or altering Project infrastructure water control structure openings.” As a member of the HREC, the Town will advocate for the adoption of tide gate management policies that are consistent with the terms of this Contingency Plan.
- b. Timing. The Contingency Plan measures described in this Contingency Plan shall be in place prior to any potential impact from Phase 1 tidal restoration on the CYCC Property (i.e. based on project monitoring and/or project modeling of surface and/or groundwater indicating that the portions of the CYCC Property for which mitigation is proposed would potentially experience project-caused impacts from Phase 1).
- c. Mill Creek. The Mill Creek water control structure tide gates will only be opened to initiate tidal restoration in that sub-basin after all necessary mitigation

² This Contingency Plan Appendix A incorporates by reference all defined terms in the Agreement.

measures, including the golf course flood prevention work, have been implemented to prevent adverse impacts to CYCC. Under the contingency scenario, the Mill Creek water control structure tide gates will be constructed and managed to allow drainage only and to prevent any tidal flow into the Mill Creek sub-basin. In addition, Class 1 actions include clearing of channels on property owned by CYCC and Cape Cod National Seashore to improve drainage in Mill Creek.

- d. Monitoring. The Town, will develop a robust monitoring program, in cooperation with Project Partner Agencies as necessary, before any changes to tide range in the Herring River are implemented, capable of determining changes to tide range in the Herring River and seasonal variations in groundwater on the CYCC Property that are attributable to the Project. Project Partner Agencies have already initiated multi-year groundwater monitoring with U.S. Geological Survey to establish the range of baseline groundwater levels prior to initiation of restoration.
- e. Operation. Once restoration of tidal flow in the Herring River basin has begun, if the monitoring program indicates that increasing tide range in the Herring River would result in groundwater increases on CYCC Property approaching predetermined baseline groundwater levels, the Town will coordinate with Project Partner Agencies to proactively evaluate and employ measures intended to prevent Project-related changes to groundwater from exceeding the baseline range. Monitoring data would be examined to determine actions that could allow increases to Herring River tide range while preventing adverse effects on the CYCC Property related to the Project. These actions, if necessary, could include adjusting the CNR and/or Mill Creek tide control structures to reduce Herring River mean water levels and maintain Mill Creek groundwater to within the baseline range, cleaning out trapped sediment from the sub-basin channel network to increase drainage, or improving drainage in Mill Creek.

The Town will, in coordination with Project Partner Agencies as necessary, ensure that (1) pre-construction activities (e.g., groundwater monitoring) will be undertaken with CYCC's cooperation, input and agreement, and (2) copies of all relevant reports (e.g., those describing measurements of groundwater and surface water elevations) will be provided to CYCC within fourteen (14) days.

- f. Pump on CYCC Property to Manage Surface Water Levels in Mill Creek Sub-basin. If the Parties agree that completion of the Flood Mitigation Work and Compatibility Work is infeasible due to a lack of financing or permitting constraints, the Town will work with Project Partner Agencies to design, permit, fund and install a pump system designed to (1) augment drainage during major precipitation events, (2) prevent any project-caused damage to CYCC's golf course, and (3) maintain appropriate wetland hydrology. The pump will only be installed in this instance; it is not a part of the Flood Mitigation Work and Compatibility Work. If ultimately needed, the design of the pump system will be developed with input from CYCC and in compliance with permit conditions. The

following parameters reflect a pump system capable of removing water in severe storm/rain conditions when high tides could temporarily limit freshwater drainage through the tide gates:

- i. Two pumps, including intake and discharge culverts, will be located on CYCC property near the Old Mill dike west of Hole 6. Water will discharge downstream from the new Mill Creek structure at the CYCC/NPS property line.
- ii. CYCC will have full access and control of the pumps with responsibility for operation and maintenance. The pumps will be designed to maintain water level in Mill Creek at 1.0ft NAVD88. Restrictions on seasonal use or frequency of pump operations will not be proposed by the Project.
- iii. The two pumps will be capable of removing a combined 9,000 gallons per minute, which exceeds the drainage capacity that would be needed for any previously recorded storm event.

g. Regulatory Approvals.

To ensure that impact prevention measures are effective and enforceable, for permit applications for which the Town is an applicant or co-applicant for work concerning CYCC, the Town will propose that the Adaptive Management Plan incorporate detailed conditions concerning hydrological monitoring and management in the Mill Creek sub-basin.

h. Initial Tide Gate Setting of CNR and Mill Creek Water Control Structures.

Consistent with the description set forth in Section 2, the Mill Creek water control structure will be completed and operational before tidal restoration begins, i.e., before tide gates at the Chequessett Neck Road bridge are configured to allow more tidal flow in and out of the Herring River system than occurs under current conditions. In the event that the Contingency Plan is not completed when tidal restoration begins, the tide gates on the Mill Creek water control structure will be closed to incoming tides. Freshwater will be able to drain out of Mill Creek through the tide gates. The Parties agree that the tide gates, in combination with the removal of vegetation and clearing of channels in Mill Creek and on CYCC property, will protect CYCC from inflowing tidal water and also improve Mill Creek drainage over current conditions experienced by CYCC.

Water control structures at the CNR bridge will be set initially in a position such that maximum water surface elevations in the main Herring River basin do not exceed pre-restoration conditions. The CNR bridge water control structures will be maintained at this initial setting for a minimum of one month, after which the Town and Project Partner Agencies may change the water control structure settings to increase water levels above pre-restoration conditions.

The Town agrees to provide CYCC with regular monitoring data so that CYCC can confirm that operation of the CNR Dike Tide Gates is proceeding in the manner anticipated by the Project Partner Agencies, including, but not limited to, with respect to groundwater. If CYCC determines from its own review of that monitoring data that the Project may be creating unanticipated impacts on the CYCC Property with respect to groundwater, it will notify the Town as soon as possible to discuss relevant data and conclusions, and proceed as appropriate.

i. CYCC Cooperation Regarding Monitoring Data and Access.

CYCC shall provide the Town and its designees access to the CYCC Property as required by and in accordance with this Agreement to administer the Project in accordance with the Contingency Plan, at reasonable times and upon reasonable notice, which access shall not unreasonably interfere with the operation of the CYCC Property. Under no such circumstance shall the Town or any agent of the Town be allowed to make any sort of alteration to the CYCC Property during their access.

j. CYCC Potential Objections, Challenges and Appeals.

If the contingent approach and Contingency Plan set forth in Section 6 and Appendix A are necessary, CYCC agrees that it will not object to permits or approvals that include the Contingency Plan. However, CYCC reserves all of its rights to object to, challenge, or appeal permits that: (a) differ from the Contingency Plan in ways that allegedly harm CYCC; or (b) or conditions that conflict with this Agreement or the Contingency Plan that allegedly harm CYCC.

k. Other Adaptive Management Measures and Further Refinement.

The Town will, coordinate with Project Partner Agencies as necessary to identify adaptive management actions that, if necessary, may be taken to prevent adverse effects to the CYCC Property related to changes in hydrologic conditions caused by the Project after the measures in this Contingency Plan are completed. Post-Contingency Plan adaptive management actions could include one or more of a variety of measures, such as:

- i. Reducing mean water levels in the main Herring River basin by modifying water control structure settings at the CNR Dike and/or the Mill Creek water control structure;
- ii. Improving drainage and lowering water levels in the Mill Creek sub-basin by increasing flow capacity of drainage channels; and
- iii. Improving drainage and lowering water levels in the Mill Creek sub-basin through the removal of phragmites and the use of additional pump(s).

The Town will, in coordination with Project Partner Agencies as necessary, develop further adaptive management strategies as necessary and appropriate to

mitigate impacts to the CYCC Property. The above-cited adaptive management elements in Section 2(k)(i-iii) require further definition both as to substance and process.

Procedurally, in clarification of and in addition to the measures described in Section 2 above, the Town and CYCC agree:

- a. Pre-construction activities, e.g., groundwater monitoring and modeling, will be undertaken by the Town and Project Partner Agencies with CYCC's input and agreement.
- b. Copies of all relevant reports, e.g., those describing measurements of groundwater and surface water elevations, will be provided to CYCC within fourteen (14) days.
- c. Mitigation thresholds and any modifications thereto will be developed through a consultative process involving the Town, Project Partner Agencies, and CYCC, and established only with the agreement of all parties.
- d. This adaptive management plan will be included in the permitting documents submitted to various regulatory agencies.

3. Notice to CYCC.

The Town agrees to coordinate with the Herring River Executive Council to provide written notice (by email, with confirmation of delivery) to CYCC's general manager not later than thirty (30) days before any action is taken to increase the opening of the Chequessett Neck water control structures. In the case of an emergency situation, the Town shall coordinate with the Herring River Executive Council to provide notice as soon as possible.

APPENDIX B: Summary of Water Level References³

Water Level Term	Measurement	Significance
Extent of Phase 1 Restoration	Mean high tide level in the Lower Herring River Basin of 3.6 feet.	This water level represents the highest allocable annual mean high tide level in the Lower Herring River basin with full implementation of tidal restoration for Phase 1 of the Project.
Mitigation Level of Protection for CYCC Property	Water level of 6.36 feet NAVD 88 on the CYCC Property.	This 6.36-foot water level, based on a 100 year storm event, represents the modeled maximum mean water level associated with a storm of record event on the CYCC Property with the Mill Creek water control structures open 3 feet, and the CNR Dike water control structures open 10 feet high, under full Project restoration (beyond Phase 1). The Work on the CYCC Property has been designed to protect the CYCC Property up to this water level.

³ This Appendix B incorporates by reference all defined terms in the Agreement.

APPENDIX C: Cost Sharing for Flood Mitigation Work and Compatibility Work

The Project Partner Agencies have funded the engineering, design and permitting costs associated with golf course mitigation work as part of overall required mitigation planning for the Project. To date, design and permitting costs related to the golf course mitigation work exceed \$450,000. This work has generated permit level design plans to elevate the low golf course holes, and provide compatible renovation of the upland golf course holes and related features (as set forth in Cape Cod Commission DRI Application Appendix 8.H, attached hereto as Appendix D).

Under this agreement, the costs of constructing the golf course in accordance with Flood Mitigation Work and Compatibility Work will be shared among the parties as follows. These costs do not apply if the Contingency Plan must be implemented.

1. Flood Mitigation and Compatibility Work Cost.

Based on the above referenced golf course design plans, the design and engineering team of ESS and Maurer Associates estimates the total cost of constructing the proposed golf course renovation is \$5.1 million (2019 dollars). Costs are detailed on the spreadsheet incorporated into this Appendix titled, *CYCC Golf Course Construction Budget and Cost Allocation – 040820*. Assuming a 2022 construction start, 2019 costs are escalated at 4% per year for an adjusted cost of \$5.7 million. This assumes that the work would be bid as a private project.

2. Business Shutdown Costs.

Project funding will reimburse CYCC for any documented net operating loss incurred during golf course construction activity (the “Business Shutdown Costs”). The Business Shutdown Costs are estimated to be \$975,000 based on a financial model prepared by an independent third party expert, and to be updated with 2019 financial data to be provided by CYCC within thirty (30) days of the Effective Date of this Agreement and the results validated by both parties within thirty (30) days thereafter. The obligation to reimburse CYCC for Business Shutdown Costs is dependent on the ability of Project Partner Agencies to obtain grant funding for this purpose and on the ability of CYCC to provide documentation on costs as specified under this agreement.

3. Total Cost.

The total cost of the Flood Mitigation and Compatibility Work, plus Business Shutdown Costs, is estimated at \$6.7 million. (\$ 5.7 million + \$975,000 = \$6.7 million). This represents the total amount of funding the Town will seek for CYCC in this scenario. The Project bears 71% of total construction costs, or \$3.6 million (2019 dollars) adjusted to \$4 million (2022 dollars). CYCC assumes 29% of total construction costs, or \$1.4 million (2019 dollars) adjusted to \$1.6 million (2022 dollars), as set forth in *CYCC Golf Course Construction Budget and Cost Allocation – 040820*.

4. Flood Mitigation Cost.

Subject to the availability of grant funding, the Town will seek \$4 million (2022) of the construction costs related to the golf course renovation work, as set forth in *CYCC Golf Course Construction Budget and Cost Allocation – 040820*.

5. Compatibility Cost and Cost of Fill.

The Parties will share the cost of the Mitigation and Compatibility Work as set forth in *CYCC Golf Course Construction Budget and Cost Allocation – 040820*. CYCC will contribute fill excavated from its property on the terms set forth in Section 5(b)(iv) of this Agreement. The fill excavated from CYCC property will be credited against the Club's cost obligation, as set forth in paragraph 3, as follows:

- **Fill for Offsite Work.** The Project requires up to 70,000 cyds for fill to elevate low roads outside of the CYCC Property. If not provided by CYCC, this fill would need to be purchased from another offsite source. The Project bears the cost of excavating and transporting the fill. The Project assigns a credit equal to 100% of the material value for 70,000 cyd of fill needed for offsite work. The material value of the fill in 2020 is \$10 per cyd, or \$11 per cyd in 2022, for a total of \$770,000 in 2022 dollars.
- **Fill for Onsite Work.** An estimated 180,000 cyds are needed to raise the low holes to a minimum of two feet above the fully restored MHWS elevation of 4.7 feet NAVD88. The Parties have agreed to this design elevation with input from the course design team, and this elevation is higher than the storm of record maximum tides. Approximated half of that amount (90,000 cyds) would elevate those holes so that they would now longer have a flooding problem under current conditions. The additional fill (another 90,000 cyds) needed to raise those holes above new tidal water levels is connected to the restoration. Therefore, the Project assigns a credit equal to 50% of the material value of the 180,000 cyds of fill at \$11 cyd or \$990,000 in 2022 dollars.

6. Changes to Cost Allocation Spreadsheet.

The Parties agree that the *CYCC Golf Course Construction Budget and Cost Allocation – 040820* spreadsheet may be updated as the Project seeks and obtains Project funds. If after the allocation schedule is finalized, costs increase, the Parties agree that they will each be responsible for any increased costs, consistent with the proportions reflected in *CYCC Golf Course Construction Budget and Cost Allocation – 040820* spreadsheet.

7. Taxes.

The Parties agree that CYCC is solely responsible for any tax liability that may be associated with work on the CYCC Property.

CYCC Golf Course Construction Budget and Cost Allocation - 040820

Acct #	DESCRIPTION	Est. Quan.	Unit	Unit Price - Private	Total Private	HRRP					CYCC								
						Overall HRRP General Expense	Practice Fairway	#6	#7	#8	#9	#1	CYCC General Expense	Practice Fairway	#2	#3	#4	#5	
1630-00	Golf Course Renovation Cost Allocation Split																		
1630-01	Project Management - Construction (Passios/Nash) 55% HRRP/45% CYCC	1.00	LS	62,000	62,000	34,100								27,900					
1630-02	HMGA Construction Support & Expenses (Mauer) 55% HRRP/45% CYCC	1.00	LS	65,000	65,000	35,750								29,250					
1630-03	Irrigation Consulting Field Control, Staking & Expenses Split by hole per CPassios	1.00	LS	25,750	25,750		1,287	2,575	2,575	2,575	2,575	2,575			1,288	2,575	2,575	2,575	2,575
1630-04	Permit Compliance Field Support & Review 55% HRRP/45% CYCC	1.00	LS	15,000	15,000		8,250							6,750					
1630-05	Contractor Performance Bond / Insurance 55% HRRP/45% CYCC	1.00	LS	35,000	35,000									15,750					
1630-06	Ground Control - Haul Road Survey 100% HRRP	1.00	LS	7,500	7,500														
1630-07	Ground Control - Golf Course Survey 55% HRRP/45% CYCC	1.00	LS	17,000	17,000									7,650					
1630-08	Mobilization 55% HRRP/45% CYCC	1.00	LS	60,000	60,000									27,000					
1630-09	Staging Site Development 55% HRRP/45% CYCC	1.00	LS	5,000	5,000									2,500					
1630-10	Erosion Control / Maint. 66% HRRP/34% CYCC	7,500.00	LF	6	45,000	29,700								15,300					
1630-11	Cleaning & Grubbing Haul Road 100% HRRP	3.00	AC	6,200	18,600														
1630-12	Cleaning / Grubbing, Root Raking (woods only) 100% HRRP SS will check	13.50	AC	6,200	83,700														
1630-13	Fill Excavation & Haul 100% HRRP	180,000.00	CY	4	630,000	630,000													
1630-14	Earthwork, Compaction, Rough Shaping 70/30 split	40.00	AC	4,000	160,000	115,000								45,000					
1630-15	Feature and Finish Shaping Split by hole per CPassios	14.00	AC	2,200	30,800		1,540	3,080	3,080	3,080	3,080	3,080			1,540	3,080	3,080	3,080	3,080
1630-16	Drainage Structures & Winter Protection 100% HRRP	1.00	LS	26,000	26,000		26,000												
1630-17	Base Irrigation System (sprinklers, pipe, valves & field control) Split by hole per CPassios	1.00	LS	1,161,500	1,161,500		77,050	115,000	165,600	121,900	121,900	119,600			77,050	69,000	103,500	147,200	43,700
1630-18	New Groundwater Supply 55% HRRP/45% CYCC	1.00	LS	100,000	100,000									45,000					
1630-19	Pond Liner Installed and anchored 55% HRRP/45% CYCC	1.00	LS	60,000	60,000									27,000					
1630-20	New Vertical Turbine pump Station 55% HRRP/45% CYCC	1.00	LS	110,000	110,000									49,500					
1630-21	New Pumphouse, Intake, Wet Well, Power service 55% HRRP/45% CYCC	1.00	LS	50,000	50,000									22,500					
1630-22	3-Phase Main Power 55% HRRP/45% CYCC	1.00	LS	40,000	40,000									18,000					
1630-23	Winter Crop Seeding Split by hole by CPassios	15	AC	300	4,500		225	450	450	450	450	450			225	450	450	450	450
1630-24	Cart Path Development (4" recycled concrete) Split by hole by CPassios	8,500.00	LF	14	119,000		5,950	11,900	11,900	11,900	11,900	11,900			5,950	11,900	11,900	11,900	11,900
1630-25	Fairway Feature Development Split by hole by CPassios	12.5	AC	950	11,875		848	1,696	1,696	1,696	1,696	1,696			848	1,696			
1630-26	Green Construction Split by hole by CPassios	45,801.00	SF	6	274,806		13,740	27,481	27,481	27,481	27,481	27,481			13,740	27,481	27,481	27,481	27,481
1630-27	Tee Construction Split by hole by CPassios	68,298.00	SF	3	187,822		9,391	18,782	18,782	18,782	18,782	18,782			9,391	18,782	18,782	18,782	18,782
1630-28	Bunker Coring & Drainage Split by hole by CPassios	27,500.00	SF	2	41,250		2,063	4,125	4,125	4,125	4,125	4,125			2,063	4,125	4,125	4,125	4,125
1630-29	Bunker Sand Installation Split by hole by CPassios	2,750.00	T	25	68,750		3,438	6,875	6,875	6,875	6,875	6,875			3,438	6,875	6,875	6,875	6,875
1630-30	Feature Drainage Split by hole by CPassios	1.00	LS	75,000	75,000		6,250	12,500	12,500	12,500	12,500	12,500			6,250				
1630-31	Irrigation Activation & Testing Split by hole by CPassios	1.00	LS	2,500	2,500		125	250	250	250	250	250			125	250	250	250	250
1630-32	Soil amendments Split by hole by CPassios	28.06	AC	2,200	61,732		3,087	6,173	6,173	6,173	6,173	6,173			3,087	6,173	6,173	6,173	6,173
1630-33	Seed Bed Preparation Split by hole by CPassios	40.00	AC	850	34,000		2,833	5,667	5,667	5,667	5,667	5,667			2,833				
1630-34	Sod Installation Split by hole by CPassios	70,000.00	SF	1	50,400		2,520	5,040	5,040	5,040	5,040	5,040			2,520	5,040	5,040	5,040	5,040
1630-35	Grassing - Green & Tee Split by hole by CPassios	2.62	AC	2,800	7,336		367	734	734	734	734	734			367	734	734	734	734
1630-36	Grassing - Fairways & Rough Split by hole by CPassios	25.44	AC	3,250	82,680		6,890	13,780	13,780	13,780	13,780	13,780			6,890				
1630-37	Mulching Split by hole by CPassios	28	AC	3,800	106,400		7,600	15,200	15,200	15,200	15,200	15,200			7,600	15,200			
1630-38	Creek Drainage Improvements 100% HRRP	617	CY	40	24,680			6,170	6,170	6,170	6,170	6,170							
1630-39	Timber Bridges (3) 100% HRRP	3	LS	90,000	270,000		67,500	67,500	67,500	67,500	67,500	67,500							
1630-40	Marsh Restoration (Seeding & Management Actions) 100% HRRP	1	LS	20,500	20,500			5,125	5,125	5,125	5,125	5,125							
1630-41	Out of Play Pollinator & Shrub Planting Split by hole by CPassios	9.5	AC	3,650	34,675		3,853	3,853	3,853	3,853	3,853	3,853			3,853				
	Sub Total				4,285,756	1,250,700	216,556	333,955	384,555	273,355	340,855	259,760	339,100	145,204	177,214	190,965	238,517	135,017	135,017
1630-42	Contingency 18%				771,436	225,126	28,152	60,112	69,220	49,204	61,354	46,757	61,038	26,137	31,898	34,374	42,933	24,303	24,303
	Golf Course Renovation Total (2019\$)				5,057,192	1,475,826	244,708	394,067	453,775	322,559	402,209	306,517	400,138	171,341	209,112	225,338	281,451	159,321	159,321
	Escalate 2019\$ to 2022\$*	3 yrs	4%	1,12486	5,688,654	1,660,104	275,264	443,272	510,436	362,836	452,431	344,790	450,101	192,735	235,223	263,475	316,594	179,214	179,214

Notes: (1) 4% inflation per year was used to determine 2022 dollars
 (2) Does not include \$450,000 in design & permitting costs funded by the Project
 (3) Cost estimates may change due to design refinements

	Total Cost	HRRP Cost Share	CYCC Cost Share
2019 \$	5,057,192	3,599,664	1,446,701
2022 \$	5,688,654	4,049,132	1,627,342
		2019 \$ 71%	2019\$ 29%
		2022 \$ 71%	2022\$ 29%

APPENDIX D

Cape Cod Commission DRI Application Appendix 8.H

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