



Town of Monterey
Annual Town Administrator Performance Evaluation
period of February 2022 through January 2023

Select Board Member's Name:

Each member of the Select Board should complete this evaluation form, sign it in the space below, and return it to the Select Board Chair. Evaluations will be summarized and included on a future Select Board meeting.

Select Board Member's Signature:

Date Submitted:

INSTRUCTIONS

This evaluation form contains ten categories of evaluation criteria. Each category contains a statement to describe a behavior standard in that category. For each statement, use the following scale to indicate your rating of the Town Administrator's performance.

5 = Excellent (almost always exceeds the performance standard)

4 = Above average (generally exceeds the performance standard)

3 = Average (generally meets the performance standard)

2 = Below average (usually does not meet the performance standard)

1 = Poor (rarely meets the performance standard)

Any item left blank will be interpreted as a score of "3 = Average"

This evaluation form also contains a provision for entering narrative comments, including an opportunity to enter responses to specific questions and an opportunity to list any comments you believe appropriate and pertinent to the rating period. Please type or write legibly.

Leave all pages of this evaluation form attached. Initial each page. Sign and date the cover page. On the date space of the cover page, enter the date the evaluation form was submitted. All evaluations page will be summarized into a performance evaluation to be presented by the Select Board to the Town Administrator.

PERFORMANCE CATEGORY SCORING

1. INDIVIDUAL CHARACTERISTICS

Diligent and thorough in the discharge of duties, "self-starter"

Exercises good judgment

Displays enthusiasm, cooperation, and will to adapt

Mental and physical stamina appropriate for the position

Exhibits composure, appearance and attitude appropriate for executive position

Add the values from above and enter the subtotal ÷ 5 = score for this category

2. PROFESSIONAL SKILLS AND STATUS

Maintains knowledge of current developments affecting the practice of local government management

Demonstrates a capacity for innovation and creativity

Anticipates and analyzes problems to develop effective approaches for solving them

Willing to try new ideas proposed by Select Board members and/or staff

Sets a professional example by handling affairs of the public office in a fair and impartial manner

Add the values from above and enter the subtotal ÷ 5 = score for this category

3. RELATIONS WITH ELECTED MEMBERS OF THE SELECT BOARD

Carries out directives of the body as a whole as opposed to those of any one member

Sets meeting agendas that reflect the guidance of the Select Board

Disseminates complete and accurate information equally to all members in a timely manner

Assists by facilitating decision making without usurping authority

Responds well to requests, advice, and constructive criticism

Add the values from above and enter the subtotal ÷ 5 = score for this category

4. POLICY EXECUTION

Implements actions in accordance with the intent of the Select Board

Supports the actions of the Select Board after a decision has been reached, both inside and outside the organization

Understands, supports, and enforces local government's laws, policies, and ordinances

Reviews ordinance and policy procedures periodically to suggest improvements to their effectiveness

Offers workable alternatives to the Select Board for changes in law or policy when an existing policy or ordinance is no longer practical

Add the values from above and enter the subtotal ÷ 5 = score for this category

5. REPORTING

Provides regular information and reports to the Select Board concerning matters of importance to the local government

Responds in a timely manner to requests from the Select Board for special reports

Takes the initiative to provide information, advice, and recommendations to the Select Board on matters that are non-routine and not administrative in nature

Reports produced by the Administrator are accurate, comprehensive, concise and written to their intended audience

Produces and handles reports in a way to convey the message that affairs of the organization are open to public scrutiny

Add the values from above and enter the subtotal $\div 5 =$ score for this category

6. CITIZEN RELATIONS

Responsive to requests from citizens

Demonstrates a dedication to service to the community and its citizens

Maintains a nonpartisan approach in dealing with the news media

Meets with and listens to members of the community to discuss their concerns and strives to understand their interests

Gives an appropriate effort to maintain citizen satisfaction with Town services

Add the values from above and enter the subtotal $\div 5 =$ score for this category

7. STAFFING

Recruits and retains competent personnel for staff positions

Applies an appropriate level of supervision to improve any areas of substandard performance

Stays accurately informed and appropriately concerned about employee relations

Professionally manages the compensation and benefits plan

Promotes training and development opportunities for employees at all levels of the organization

Add the values from above and enter the subtotal $\div 5 =$ score for this category

8. SUPERVISION

Encourages heads of departments to make decisions within their jurisdictions with minimal Town Administrator involvement, yet maintains general control of operations by providing the right amount of communication to the staff

Instills confidence and promotes initiative in subordinates through supportive rather than restrictive controls for their programs while still monitoring operations at the department level

Develops and maintains a friendly and informal relationship with the staff and work force in general, yet maintains the professional dignity of the Town Administrator's office

Sustains or improves staff performance by evaluating the performance of staff members at least annually, setting goals and objectives for them, periodically assessing their progress, and providing appropriate feedback

Encourages teamwork, innovation, and effective problem-solving among the staff members

Add the values from above and enter the subtotal $\div 5 =$ score for this category

9. FISCAL MANAGEMENT

Prepares a balanced budget to provide services at a level directed by the Select Board

Makes the best possible use of available funds, conscious of the need to operate the local government efficiently and effectively

Prepares a budget and budgetary recommendations in an intelligent and accessible format

Ensures actions and decisions reflect an appropriate level of responsibility for financial planning and accountability

Appropriately monitors and manages fiscal activities of the organization

Add the values from above and enter the subtotal $\div 5 =$ score for this category

10. COMMUNITY

Shares responsibility for addressing the difficult issues facing the Town

Avoids unnecessary controversy

Cooperates with neighboring communities and the county

Helps the Select Board address future needs and develop adequate plans to address long term trends

Cooperates with other regional, state and federal government agencies

Add the values from above and enter the subtotal $\div 5 =$ score for this category

NARRATIVE EVALUATION

1. What would you identify as the Administrator's strength(s), expressed in terms of the principle results achieved during the rating period?
2. What performance area(s) would you identify as most critical for improvement?
3. What constructive suggestions or assistance can you offer the Administrator to enhance performance?
4. What other comments do you have for the Administrator; e.g., priorities, expectations, goals or objectives for the new rating period?

360 Feedback Form for Melissa Noe, Town Administrator

It helps to have a balance of quantifiable data for performance insight, and qualitative responses for additional context.

For gathering quantifiable data, closed-ended questions work best. Please circle what you feel best applies to the following statements.

1. This ~~employee~~ ~~person~~ prioritizes their workload effectively.
a. *strongly disagree* b. *disagree* c. *agree* d. *strongly agree*
2. This ~~person~~ ~~employee~~ takes direction and helps others meet priorities.
a. *strongly disagree* b. *disagree* c. *agree* d. *strongly agree*
3. This ~~person~~ ~~employee~~ communicates clearly and effectively with me and other colleagues.
a. *strongly disagree* b. *disagree* c. *agree* d. *strongly agree*
4. This ~~employee~~ ~~person~~ has strong interpersonal skills and helps everyone feel welcome; staff, volunteers, community.
a. *strongly disagree* b. *disagree* c. *agree* d. *strongly agree*
5. This ~~employee~~ ~~person~~ is always timely and efficient at providing feedback.
a. *strongly disagree* b. *disagree* c. *agree* d. *strongly agree*
6. This ~~employee~~ ~~person~~ always finds creative solutions and takes initiative when problem-solving.
a. *strongly disagree* b. *disagree* c. *agree* d. *strongly agree*
7. This employee is always open to receiving both negative and positive feedback.
a. *strongly disagree* b. *disagree* c. *agree* d. *strongly agree*
8. This ~~employee~~ ~~person~~ values diverse perspectives, even if they are different from their own.
a. *strongly disagree* b. *disagree* c. *agree* d. *strongly agree*

Open ended questions:

1. What ~~would you say~~ are this employee's demonstrated strengths?
2. What is one thing this employee should start doing?
3. What is one thing this employee should continue doing?
4. What is one thing this employee should stop doing?
5. ~~What are three or four words you would use to describe this employee?~~
5. What are ~~an~~ an area you'd like to see this ~~person~~ ~~employee~~'s areas for improvement?

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6. What are your suggestions for this employee on how to improve, based on your feedback?

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Dear Southern Berkshire Ambulance Service,

We are in receipt of your January 10th request for funding in the amount of \$51,669.36 from the Town of Monterey in order to support your organization and cover its FY24 operating expenses. Thank you for reaching out to us.

We appreciate your long-standing service to our Town and its residents, and we value the high level of emergency care that you provide. Your 24/7 staffed paramedic service is immensely beneficial to our Town residents' health and peace of mind. We hope that we can come to a financial agreement that benefits both our Town and your Ambulance service, and continue this successful community partnership in a sustainable way.

In your letter, you assessed the six towns that you primarily serve based on the four-year average property tax valuation of each municipality. While we understand the desire to assess Towns based on their valuation, we think that it would be more fair to all communities involved to assess each of the Towns, at least in part, based on call volume.

The assessment we suggest is based solely on last year's call volume, and proposes that each Town pay \$196.19 per 2022 call to achieve SBAS's total FY24 request for \$350,000. We are using numbers provided to us by SBAS for both calls by Town and the total assessment need.

Town	2022 calls by Town	2022 pct. of calls by Town	Assessment based on 2022 call volume
Alford	24	1.35%	\$ 4,708.52
Egremont	79	4.43%	\$ 15,498.88
Great Barrington	1339	75.06%	\$ 262,696.19
Monterey	76	4.26%	\$ 14,910.31
Sheffield	259	14.52%	\$ 50,812.78
Mount Washington	7	0.39%	\$ 1,373.32
Totals	1784	100.00%	\$ 350,000.00

We look forward to continuing this conversation and negotiating an agreement that is beneficial to all involved parties. We hope that you can attend a future meeting of the Monterey Select Board should further discussions be required.

Sincerely,

Justin Makuc, Chair

Susan Cooper

Scott Jenssen

The Monterey Select Board



Steven A. Mack, P.E.*
Marc S. Volk
Marc A. LeVasseur

January 10, 2023

James Hunt
Director of Operations
P.O. Box 308
Monterey, MA 01245
Email: dpwl@montereyma.gov

Re: Proposed Scope of Services for Engineering Services
Beartown Mountain Road Improvements
Monterey, MA

Dear James,

We are pleased to provide you with our proposal for performing engineering services for Beartown Mountain Road in Monterey, MA. Project includes approximately 2 miles of unpaved roadway base improvement with associated waterways. Note: There are several culverts that will be replaced and new culverts will be installed. This scope includes evaluation of the culverts and wetlands delineation to determine Wetlands Protection Act Jurisdiction. If there are culverts to be replaced/installed, that are subject to the Mass Stream Crossing Standards, we will provide the Town with an updated estimate to design and permit that work. Culverts that are not subject to the Mass Stream Crossing Standards will be shown to be replaced or installed within the bid documents. Our scope of services is as follows:

Item 1. Technical Work Summary

We will do a field reconnaissance of the project. We will review the existing site conditions and record measurements for use in determining quantities for the cost estimates. We will prepare a summary narrative of work required for Beartown Mountain Road. (No field survey work is proposed, all measurements will be done with tape measure, wheel, etc...). Note, it is assumed that the Town can provide a backhoe and operator for the performance of test pits to determine subsurface conditions (for roadbase design).

Cost Item 1: \$5,900

Item 2. Quantity Estimate

We will prepare an estimate of quantities; including an overall summary of work quantities for use in bidding. Estimates will include a unit price for each item of work. We will also provide an estimated total construction cost for the entire project.

Cost Item 2: \$2,000

Item 3. Technical Specifications and Bid Documents

Prepare a bid package including the construction plans with notes, applicable construction details, special provisions, proposal bid sheet, technical specifications, and traffic management details. Also included will be requested wage rates and the invitation to bidders (legal ad). The Central Register notice and the MassDOT Prequalification Form with attachments will be submitted. An updated opinion of probable cost will be completed for bid purposes.

Cost Item 3: \$3,000

Item 4. Bid Phase Services

Under this item Foresight will provide bid assistance including administering the bid, lead the pre-bid site visit, answer bidder's questions, prepare addenda as necessary, attend the bid opening, and prepare a bid summary and contractor recommendation.

Cost Item 4: 2,500

Item 5. Limited Construction Support

Item includes construction phase services including, attendance at a pre-construction conference, shop drawing approval, engineering modifications, pay estimate approval, change order preparation, progress reports, punch lists, etc. During the construction period, limited on-site construction observation will be performed by our construction site representative. The representative will prepare construction observations logs, review quantity and pay requisitions, review adherence to the specifications, plans and details, etc. Following the construction period, construction close-out services will be performed which will include preparation of the final punch list and preparation of a Certificate of Completion.

This item is based on 10 hours per week for approximately 1 month. This is proposed to be billed hourly – not to exceed the fee shown unless hours are required (and agreed upon by client) beyond those noted.

Cost Item 5: \$11,250

Item 6. Wetland Delineation and Culvert Evaluation

Under this item we will perform a site visit to delineate wetlands, and perform flagging of wetland resource areas and perform onsite culvert evaluation of the existing culverts with the Town DPW. The purpose of the review of culverts is to determine the size, condition and adequacy of the culverts and make recommendations as to the repair, and/ or replacement of deficient culverts. Although no hydrologic or hydraulic analysis is included with this scope, indications of insufficient capacities will be noted (i.e. scour/undermining, excessive velocity/stream bed material transport, overtopping, blockage, etc.). A fee estimate can be provided if additional culvert analyses are recommended and agreed upon.

We would recommend the following items as first steps in completing the necessary culvert and drainage repairs:

6a. Wetland delineation and flagging of wetland resource areas

Item 6a. Estimated Fee: \$1,250

6b. Field observation and documentation of existing culverts with the DPW. This item will include photo documentation, measurement of culvert diameter, length and depth and filling out a field observation check list for preparation of a comprehensive listing of existing culverts, conditions, size, type, etc...

Item 6b. Estimated Fee: \$3,000

6c. Preparation of a list of recommended repairs and improvements to the drainage/culverts noted above. Note: We will include, in this summary the impacts of the wetlands delineation and applicability of the Mass Stream Crossing Standards if applicable.

Item 6c. Estimated Fee: \$1,000

6d. Meet with the Town Officials to review the findings and determine the drainage improvements to include with the MassWorks project scope.

Item 6d. Estimated Fee: \$750

Total Cost Item 6: \$6,000

Total Cost Including Construction Phase (Items 1-6): \$30,650

Possible Additional Services & Expenses Not Included in the Basic Scope of Services:

- Property Line Survey
- Topographic Survey
- Wetlands Permitting or Culvert design conforming to the Mass Stream Crossing Standards
- As-Built Location of New Construction
- Baseline Control
- Archeological and/or Historical Coordination
- Army Corps Permitting
- Endangered Species Permitting or Review and Massachusetts Endangered Species Act (MESA) Permitting or Review Floodplain Permit
- 401 Water Quality Certification
- NPDES Stormwater Construction General Permit for Disturbances Over One Acre and Accompanying Storm Water Pollution Prevention Plan (SWPPP)
- Soils Evaluation and Test Borings for Design of culvert replacements subject to Mass Stream Crossing Standards
- Storm Drainage Analysis
- Wetlands Protection Act Notice of Intent
- Wildlife Habitat Analysis
- Special Permits or other Zoning/City Permits
- Backhoe or Excavator Fees
- MassDOT Review Process
- Traffic Study
- Utility Research
- Filing Fees of any kind

January 10, 2023

FORESIGHT LAND SERVICES, INC.

- Meetings and Correspondence
- Reimbursable Expenses, Mileage, Postage, Printing, Binding, etc...
- Traffic Control of any kind

If this is acceptable, this letter will serve as our agreement for professional services. Please sign and date this letter below and return a signed copy as our authorization to proceed.

We look forward to working with you on this project. Please call if you have any questions.

Sincerely,
Foresight Land Services, Inc.



Steven A. Mack, P.E.
President and Principal Engineer

ACCEPTANCE AND NOTICE TO PROCEED:

I hereby accept the terms and conditions contained in this letter agreement and the attached General Provisions for Limited Professional Services, authorize commencement of the work, and grant permission to enter on the land.

Client's Name (Typed or Printed): _____

Authorized Signature: _____

Date: _____

Billing Address: _____

I. CONDITIONS OF AGREEMENT: These General Provisions together with the attached proposal constitute the terms of the Agreement between FORESIGHT LAND SERVICES, INC. a corporation duly organized under the laws of the Commonwealth of Massachusetts ("FORESIGHT"), and the "CLIENT" with respect to the performance of the Services described in the attached proposal. The General Provisions also apply equally to the Basic Services as well as any Additional Services authorized subsequently, whether referred to explicitly or not. The proposal with Scope of Basic Services, any Additional Services authorized subsequently, any attachments, and these General Provisions contain all of the terms and conditions of this Agreement, and no oral representations made by either party prior to execution of this Agreement are a part hereof.

II. SCOPE OF SERVICES; STANDARD OF PRACTICE: FORESIGHT will act as an independent consultant representing the CLIENT (but will not be an "Agent" or employee of CLIENT). FORESIGHT agrees to perform the services described in the attached proposal. The Basic Scope of Services and the resultant fee are based on our current understanding of the Project and the assumptions in the proposal. FORESIGHT will carry out its services consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in Western Massachusetts under similar conditions. FORESIGHT makes no other representations concerning its services, express or implied; and offers no warranty or guarantee as part of this Agreement, or any report, opinion, or document generated as a result thereof.

III. ADDITIONAL SERVICES: Services not explicitly agreed to as detailed in this Agreement will be considered Additional Services and subject to increased project fees. Any Additional Services will be provided subject to the CLIENT's authorization.

IV. CERTIFICATIONS, GUARANTEES AND WARRANTIES: Foresight shall not be required to sign any documents, no matter by whom requested, that would result in Foresight having to certify, guarantee or warrant the existence of conditions whose existence Foresight cannot ascertain within the Basic Scope of Services and Standard of Practice. Foresight shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in Foresight's sole judgment, increase Foresight's risk or the availability or cost of its professional or general liability insurance. The Client also agrees not to make resolution of any dispute with Foresight or payment of any amount due to Foresight in any way contingent upon Foresight's signing any such certification. Notwithstanding, as applied to any services under this agreement, the words "certify" and "certification" shall be construed to mean an expression of the Consultant's professional opinion to the best of its information, knowledge and belief, and under no circumstances shall such a statement constitute a warranty or guarantee by the Consultant.

V. ACCESS TO SITE: Unless otherwise stated, FORESIGHT will have access to the Project Site for activities necessary for the performance of the services, and such access will be arranged by the CLIENT. The CLIENT understands that use of testing or other equipment may unavoidably cause some damage. FORESIGHT will take precautions to minimize damage due to these activities, but shall not be held responsible for the restoration of any resulting damage.

VI. LEGAL REPRESENTATION: CLIENT is responsible for obtaining any and all legal advice and representation necessary for this Project, and when applicable, making its attorney available to FORESIGHT whenever necessary relative to the Project. Any opinions, conclusions or recommendations which FORESIGHT may express, or any assistance it may render to CLIENT on applications or processing of permits or approvals for the Project pursuant to this Agreement do not constitute legal advice. Consult your attorney about these matters.

VII. CAVEAT ABOUT SERVICES RELATED TO PERMITS AND APPROVALS: Granting of permits and approvals by municipal or other regulatory agencies often includes discretionary and subjective judgments. Such approvals depend upon many factors over which FORESIGHT has no control. FORESIGHT can therefore give no assurance that approvals will be granted or that any conditions imposed by the permit-granting authority will be acceptable to the CLIENT, or that permits will not be appealed. In consideration of CLIENT's assumption of the potential risks and rewards of the Project, CLIENT hereby waives any claim against FORESIGHT relative to any damages, direct or indirect, which may result from an unfavorable decision, appeal, or denial of any applications for permits or approvals. FORESIGHT shall be liable only for any proven damages resulting solely from FORESIGHT's negligent acts, errors or omissions, subject to the provisions of the Limitation of Professional Liability contained herein.

VIII. OPINION OF PROBABLE COSTS: Any opinions of the probable costs (not to be confused with "estimates") to construct the work recommended, designed, or specified by FORESIGHT are based on our experience and judgment as design professionals familiar with construction. The opinion may be based on a number of assumptions which FORESIGHT cannot control, such as hidden or changed site conditions, the means and methods of construction selected by the Contractor, the cost and extent of labor, equipment, and materials the contractor may employ, contractor's techniques in determining prices, market conditions at the time of bidding, and many other factors. Given the assumptions which must be made, FORESIGHT does not represent that its opinions of probable costs will be accurate. CLIENT therefore waives any claim against FORESIGHT relative to the accuracy of any opinion of probable construction costs prepared by FORESIGHT. If more accurate construction "estimates" is needed, CLIENT should hire a professional estimator.

IX. SERVICES DURING CONSTRUCTION: If FORESIGHT's services include the performance of any services during the construction phase of the Project, it is agreed that the purpose of any such services (including any visits to the site) will be to enable FORESIGHT to better perform the duties and responsibilities assigned to and undertaken by it as an experienced and qualified design professional, and to provide the CLIENT with a greater degree of confidence that the completed work of the construction contractor or contractors (hereinafter "Contractor") will conform generally to the Contract Documents, and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the Contractor. Any Construction Observation Site Visits will be conducted at intervals appropriate to the stage of construction to allow FORESIGHT to observe the general progress and quality of the Contractor's work, and to enable FORESIGHT to give the CLIENT a greater degree of confidence that the work is being performed in a manner consistent with the construction documents. These Construction Observations shall not be construed as being equivalent to "Inspections" or full-time On-Site Project Representation, and are not represented as being complete or comprehensive. During Construction Observation Site Visits, FORESIGHT shall not be responsible for any of the Construction Activities on the jobsite. FORESIGHT shall have no responsibility for supervising, directing or controlling in any way the Contractor's work. FORESIGHT shall have no authority over nor responsibility for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, nor jobsite safety precautions and programs incidental to the work of Contractor, nor for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes, permit conditions, or orders applicable to Contractor furnishing and performing its work. FORESIGHT does not guarantee the performance of the construction contract by the

Contractor, and is not responsible if Contractor fails to furnish and perform its work in accordance with the Contract Documents, nor for any Change Orders that are issued during construction.

X. WORK SCHEDULE: FORESIGHT will endeavor to complete its services within the estimated schedule in the Agreement. If FORESIGHT is obstructed or delayed by any act of the CLIENT or the CLIENT's Contractor or agents, or by any act beyond the control of FORESIGHT including, but not limited to, inclement weather, illness, strikes, unanticipated degree of difficulty encountered in performing said services, or delay created within or by approving agencies, then the scheduled date for completion of the services will be extended an equivalent number of days. Compensation for any resulting additional services may also be required.

XI. PAYMENT TERMS; SUSPENSION OF SERVICES: The CLIENT agrees to pay FORESIGHT for the services rendered under this Agreement according to the amounts and payment methods specified in the Agreement. FORESIGHT will send you periodic invoices. Payment is due when you receive the bill. If you do not pay the balance due within thirty calendar days after the invoice date, FORESIGHT will add a FINANCE CHARGE OF 1½% PER MONTH (18% PER YEAR) to the amount due. In addition, FORESIGHT, at its sole discretion, may give you seven (7) days written notice, and suspend services under this Agreement unless you remit full payment within seven days. FORESIGHT is not liable for any delay or consequential damages which result from such suspension of services. The CLIENT agrees to pay all costs of collection, including reasonable attorneys' fees.

XII. DELIVERY AND REUSE OF ELECTRONIC FILES
In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by the Consultant, the Client agrees that all such electronic files are instruments of service of the Consultant, who shall be deemed the author, and shall retain all common law, statutory law and other rights, without limitation, including copyrights.

CLIENT agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The Client agrees not to transfer these electronic files to others without the prior written consent of the Consultant.

The Client further agrees to waive all claims against the Consultant resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than the Consultant.

FORESIGHT makes no representation about the electronic files transmitted to CLIENT being compatible with Client's programs and computer systems. If FORESIGHT is required to expend additional effort to reformat electronic files into other formats for CLIENT's use, these efforts shall be compensated for as Additional Services.

Electronic files furnished by either party shall be subject to an acceptance period of ten (10) working days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic files shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy work product documents. In the event of a conflict between the final issued work product documents prepared by the Consultant and electronic files, the final hard-copy documents shall govern.

In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless FORESIGHT, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than the Consultant or from any reuse of the electronic files without the prior

written consent of the Consultant. Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Consultant be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

XIII. OWNERSHIP AND USE OF DOCUMENTS: FORESIGHT will retain ownership of all documents it prepares or furnishes for this Project. This includes but is not limited to plans, drawings, reports, opinions of probable construction cost, specifications, field notes, computations, test data, computer files, and other such data, whether produced by hand or electronically, in hard copy or on electronic media. These documents are instruments of service prepared by FORESIGHT, and FORESIGHT shall retain all common law, statutory and other reserved rights, including without limitation, the copyrights thereto. FORESIGHT agrees to provide CLIENT with a limited license to use the "Work Products" listed in the Agreement for the intended purposes of the Project, and for information and record reference purposes in connection with the completed Project. Such limited license of the "Work Products" to the CLIENT, however, does not convey to the CLIENT any ownership rights, copyrights, or rights to reuse the Work Products for any other project.. In consideration of full payment for its services, FORESIGHT agrees that it will not release any confidential or proprietary "Work Products" specified in the agreement to any other party without CLIENT's prior consent. CLIENT may use the Work Products for reference information for the specified Project but for no other projects. CLIENT agrees not to re-use (or allow other parties to use) the "Work Products" or information (a) to complete the Project if FORESIGHT's agreement has been terminated or FORESIGHT is no longer involved in the Project; (b) extensions or revisions of the Project without FORESIGHT's involvement; or (c) any other project. If CLIENT wants to re-use or adapt FORESIGHT's previous work, the CLIENT is obligated as a condition precedent to negotiate with FORESIGHT appropriate additional compensation, indemnification clause, and other terms for such re-use or adaptation. If CLIENT re-uses or adapts the work without FORESIGHT's written authorization, consent or involvement, CLIENT assumes all associated responsibilities and risks, and agrees to defend, indemnify and hold harmless FORESIGHT and its sub-consultants, agents, officers and employees, from all direct or indirect claims, damages, losses and expenses, including reasonable attorney's fees and expert witness fees, arising out of or resulting therefrom such unauthorized reuse. Unless specifically stated in this Agreement, FORESIGHT will not provide CLIENT with any "Work Products" on electronic media. If such transfer of data is later agreed to, Special Terms and Conditions for Use of Electronic Data Files will apply in addition to these General Provisions and there may be additional compensation.

XIV. HIDDEN CONDITIONS & HAZARDOUS MATERIALS: FORESIGHT's services do not include studies or investigations regarding Hidden Conditions or Hazardous Materials. A condition is hidden if it cannot be investigated by reasonable visual observation or records reviewed as customary in the performance of the services being rendered. This includes without limitation underground utilities. Hazardous Materials may include, but are not limited to, asbestos, or spills of oil or other pollutants. If CLIENT is aware of or has reason to believe that such Hidden Conditions or Hazardous Materials exist on the site, CLIENT shall notify FORESIGHT. If FORESIGHT has reason to believe that Hidden Conditions or Hazardous Materials may exist on the Project Site, FORESIGHT shall notify the CLIENT. In either case, CLIENT shall authorize and pay for costs associated with the investigation of such a condition and, if necessary, costs necessary to correct said condition. If (1) the CLIENT fails to notify FORESIGHT, or (2) CLIENT fails to authorize such investigation or correction after due notification by FORESIGHT of such a condition, or (3) FORESIGHT has no reason to believe that such a condition exists, the CLIENT is responsible for

all risks associated with this condition, and FORESIGHT shall not be responsible for the existing condition nor any resulting damages to persons or property. Unless specifically agreed upon prior to the commencement of service, FORESIGHT shall have no responsibility for the discovery, presence, handling, removal, disposal, or exposure of persons to hazardous materials of any form. In addition, it is agreed that FORESIGHT's liability insurance may not cover costs from claims involving hazardous materials. Therefore, the CLIENT agrees, to the fullest extent permitted by law, to release, defend, indemnify and hold harmless FORESIGHT and its sub-consultants, agents, officers and employees, from and against all claims, damages, losses and expenses, direct and indirect, including but not limited to attorneys' fees and defense costs, arising out of or resulting from the performance, or non-performance, of any services by FORESIGHT or claims against FORESIGHT involving Hidden Conditions or Hazardous Materials.

XV. CHANGED CONDITIONS; PROJECT CHANGES: During the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to FORESIGHT may be revealed, or may arise during the preparation of construction documents or during the construction phase. Changed Conditions may include but are not limited to redesign for owner-requested changes or permit-imposed conditions, changes in design scope during the CD phases resulting from coordination with other disciplines or 'value engineering', issuance of Change Orders during construction, or other unforeseen conditions. To the extent that such Changed Conditions affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, FORESIGHT may call for renegotiation of appropriate portions of this Agreement. FORESIGHT shall notify CLIENT of the changed conditions necessitating renegotiation, and FORESIGHT and CLIENT shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement in accordance with the Termination provision hereof.

XVI. INDEMNIFICATIONS: FORESIGHT and CLIENT mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damage, liability or cost (including reasonable attorneys' fees and defense costs) to the extent caused by their own negligent acts, errors or omissions and those of anyone for whom they are legally liable, and arising from the project that is the subject of this agreement. Neither party is obligated to indemnify the other in any manner whatsoever for the other's own negligence.

XVII. TERMINATION: In the event of termination of this Agreement by either party, the Client shall within fifteen (15) calendar days of termination pay FORESIGHT for all services rendered and all reimbursable costs incurred by FORESIGHT up to the date of termination, in accordance with the payment provisions of this Agreement. Client may terminate this Agreement for the Client's convenience and without cause upon giving FORESIGHT not less than seven (7) calendar days' written notice. Either party may terminate this Agreement for cause upon giving other party not less than seven (7) calendar days' written notice for any of the following reasons: Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party; Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party; Suspension of the Project or the Consultant's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate; Material changes in the conditions under which this Agreement was entered into including a significant change in the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such

changes. In the event of any termination that is not the fault of FORESIGHT, the Client shall pay FORESIGHT, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by FORESIGHT in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

XVIII. ALLOCATION OF RISKS; LIMITATION OF PROFESSIONAL LIABILITY: CLIENT and FORESIGHT have discussed the respective risks, rewards, and benefits of the Project while developing the objectives and Scope of Services. This Agreement represents an equitable allocation of those risks and rewards. In consideration of FORESIGHT's risks, and in order to persuade FORESIGHT to enter into this agreement, CLIENT agrees to limit FORESIGHT's total liability to the CLIENT for or on account of all claims and/or damages of any nature whatsoever caused by or arising out of FORESIGHT's performance of its services on this Project, including but not limited to FORESIGHT's negligent acts, errors or omissions, such that the total aggregate liability of FORESIGHT shall not exceed Fifty Thousand Dollars (\$50,000) or FORESIGHT's total fee, invoiced and paid, for services rendered on this Project, whichever is greater. FORESIGHT agrees to maintain Professional Liability Insurance in effect throughout the term of this Agreement. An Insurance Certificate will be sent to CLIENT upon request. In consideration of FORESIGHT procuring and maintaining said insurance, CLIENT agrees to hold personally harmless and hereby releases any and all claims against any director, officer, employee, or agent of FORESIGHT arising from any negligent act, error, or omission now existing or hereinafter arising in connection with the Project. CLIENT agrees that for any and all claims for damages that it may have arising from any negligent act, error, or omission by FORESIGHT, CLIENT shall assert said claim against FORESIGHT directly and not against any of FORESIGHT's directors, officers, employees, or agents.

XIX. CONSEQUENTIAL DAMAGES: Notwithstanding any other provision of the Agreement, CLIENT and FORESIGHT agree that neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the CLIENT or FORESIGHT, their respective employees, directors, officers, agents, consultants, or contractors. Consequential damages may include but are not limited to loss of use, loss of profit, damages due to delays, and/or effect on financing.

XX. DISPUTE RESOLUTION: CLIENT and FORESIGHT agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation, unless the parties mutually agree otherwise in writing. CLIENT and FORESIGHT further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

XXI. APPLICABLE LAW: The offer to perform services under this Agreement has been signed in the Commonwealth of Massachusetts and all terms and conditions of the Agreement shall be interpreted according to Massachusetts laws.

XXII. ACCEPTANCE PERIOD: This Agreement is open for acceptance for a period of thirty (30) days after the offering date on the Agreement, after which time it becomes null and void.

PLEASE INITIAL EACH PAGE IN THIS SPACE _____

FIRST AMENDMENT

Agreement By and Between

Berkshire Regional Planning Commission

and

the Town of Monterey

Re: Monterey MVP Action Grant for Main St. Culvert Replacement

This Agreement (the "Amendment") is the First Amendment to the AGREEMENT made as of 21st of September, 2022 by and between the Berkshire Regional Planning Commission (the "COMMISSION"), and the Town of Monterey. The COMMISSION and the Town desire to amend the Agreement as hereinafter set forth.

Now, therefore, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as set forth herein.

- 1. Paragraph 6. COMPENSATION is hereby amended as follows:
 - a. The TOWN will pay the COMMISSION a total fee in the amount not to exceed \$46,770.50 based on mutually agreed upon invoice procedure

Except as specifically amended hereby, the Agreement is hereby ratified and confirmed and shall remain in full force and effect. From and after the date hereof, all references to the Agreement shall be construed as references to the Agreement, as affected and amended by this Amendment.

IN WITNESS thereof, the COMMISSION and the Town of Monterey have executed this Amendment to the Agreement dated October 7, 2022.

BERKSHIRE REGIONAL PLANNING COMMISSION:

By: _____
Thomas Matuszko
Executive Director

Date: _____

Town of Monterey:

By: _____
Signatory Name:
Signatory Title:

Date: _____

For BRPC Use Only

Agreement Reviewed by Office Manager _____ Finance _____ Dpt# _____

**Financial Reserve
Policies and Procedures -
DRAFT**

**Approved by:
Select Board &
Finance
Committee
Effective: 9/4/19**

PURPOSE:

To formalize policies for the level of reserves and appropriate uses of the reserves in order to reduce risk in managing the town's short and long-term needs, to improve financial planning, and to help preserve the town's financial position and credit rating.

AUTHORITY:

MGL Chapter 40 §5B
MGL Chapter 69 of the Acts of 2002 (Special Act – Monterey Stabilization Funds)

APPLICABILITY:

This policy applies to the short-and long-range budget decision-making duties of the Select Board, Town Administrator, and Finance Committee. It also applies to the related job duties of the Board of Assessors. It pertains to free cash, stabilization funds, and overlay surplus.

POLICY:

The Town is committed to building and maintaining its reserves to have budgetary flexibility for unexpected events and to provide a source of available funds for future capital expenditures. The Town will strive to maintain overall general fund reserves in the level of 13 to 27 percent of the annual operating budget. This target refers to free cash and the general stabilization fund combined.

Commented [SC1]: discuss

Free Cash

The Division of Local Services (DLS) defines free cash as "the remaining, unrestricted funds from operations of the previous fiscal year, including unexpended free cash from the previous year." DLS must certify free cash before the Town can appropriate it.

The Town will strive to realize year-to-year free cash certifications equal to five to seven percent of the annual operating budget. To achieve this, the Select Board, Town Administrator, and Finance Committee will propose budgets with conservative revenue projections, and department heads will carefully manage their appropriations to produce excess income and budget turn backs. If the Town generates free cash consistently higher than seven percent of the budget, the Select Board, Town Administrator, and Finance Committee will closely examine future budget proposals to determine if revenue projections should more closely align with historical trends, and make adjustments accordingly.

Commented [SC2]: doesn't this imply poor budgeting to start with?

As much as practicable, the Town will limit its use of free cash to building reserves, funding nonrecurring costs (i.e., one-time expenditures, such as capital projects, unforeseen and extraordinary deficits, and emergencies), and offsetting the Town's unfunded liabilities. The Town will avoid the applying free cash to fund the operating budget. The Town will similarly avoid using free cash to reduce the tax rate on the annual tax recapitalization sheet, since this is essentially using it to fund recurring costs.

Commented [SC3]: This seems worrisomely low, even if monies are moved to a stabilization fund. Given our current budget with so many likely budgetary overruns, including after the tax rate is set preventing further appropriation, this seems decidedly unwise – even if the current FC and SB are unlikely to repeat the current fiscal shortfall.

During the annual budget process, the Town should aim to leave one to two percent of the annual operating budget in free cash in order to maintain a minimum level of funds in free cash, without leaving too much unused money regularly in free cash.

General Stabilization Fund

A stabilization fund is a reserve account allowed by state law to set aside monies to be available for future spending purposes, including emergencies or capital expenditures, although it may be appropriated for any lawful purpose. The Town has established one general stabilization fund.

The Town will endeavor to achieve and maintain a minimum balance of twelve percent of the current operating budget in its general stabilization fund. If the fund falls below the target minimum balance, the Town will annually appropriate to it an amount of at least two percent of the annual operating budget, sourced either directly from the levy or by transfers from excess free cash, in order to build the fund gradually to meet the target minimum balance.

The Town will endeavor to maintain a maximum balance of twenty percent of the current operating budget in its general stabilization fund. If the fund is below the target maximum balance, the Town should consider appropriating to it a discretionary amount during the annual budget process, sourced either directly from the levy or by transfers from excess free cash, in order to build the fund gradually, but not to exceed the target maximum balance.

Withdrawals from the general stabilization fund should be used to fund one-time capital expenditures, mitigate emergencies, or in response to other unanticipated events that cannot be supported by current general fund appropriations. When possible, withdrawals of funds should be limited to the amount available above the twelve percent minimum target. If any necessary withdrawal drives the balance below this minimum, the withdrawal should be limited to one-third of the fund's balance, and the Select Board, Town Administrator, and Finance Committee will develop a detailed plan to replenish the fund to the minimum level within the next two fiscal years.

Commented [SC4]: Rational for moving "overruns" from free cash to stabilization?

PROCEDURES:

- Within 75 days of the close of the Fiscal Year the Accountant shall report the balance in the General Stabilization Fund balance to the Treasurer, Town Administrator, and members of the Select Board and Finance Committee.
- Any votes to increase or to expend from the Stabilization Fund shall require a two-thirds vote of the Town Meeting, consistent with the requirements of state law.

Overlay Surplus

At the conclusion of each fiscal year, the Board of Assessors will submit to the Select Board, Town Administrator, and Finance Committee an update of the overlay reserve with data that includes, but is not limited to: the gross balance, potential abatement liabilities, and any transfers to surplus. If, and only if, the balance exceeds the amount of potential liabilities, the Select Board may request that the Board of Assessors vote to declare those balances surplus and available for use in funding the Town's capital plan or for any other one-time expense. The purpose of the overlay reserve is to offset unrealized revenue resulting from uncollected property taxes, abatements, and exemptions. It can be used for other purposes only after it is determined to have a surplus. Therefore, unlike the other types of reserves, this policy does not set a funding target for the overlay.

Commented [SC5]: I know we do not currently have any enterprise funds, but having it in the policy might still be sensible.

Revolving Funds - ?