

**SELECT BOARD MEETING MINUTES
MONDAY, OCTOBER 16, 2023
APPROVED**

SB Members Present: Peter Cunningham, Chair; John Reilly, Vice Chair; Alison Manugian, Clerk; Matt Pisani

SB Members Absent: Becky Pine

Also Present: Mark Haddad, Town Manager; Kara Cruikshank, Executive Assistant to the Town Manager; Tom Orcutt, Groton Water Superintendent; Bob Rafferty and Tyler Schmidt, Environmental Partners; Megan Foster, Principal Assessor; Hannah Moller, Treasurer/Collector; Dawn Dunbar, Town Clerk; Melisa Doig, Human Resource Director; Patricia Dufresne, Assistant Finance Director/Town Accountant; Bud Robertson, Finance Committee Chair; Tom Delaney, DPW Director; Takashi Tada, Town Planner/Land Use Director; Greg Sheldon and Jeff Gordon, Destination Groton Committee Members

Mr. Cunningham called the meeting to order at 6:00 PM.

ANNOUNCEMENTS

Jane Cloutier, Vice President of the Women's Club, was in attendance to present their first inaugural calendar to the Board. Photos in the calendar were taken by members of the Women's Club. Ms. Cloutier said they would be available to purchase at Facets and Lavender.

The Town Clerk, Dawn Dunbar, announced the last day to register to vote is Wednesday, October 18th, by 5:00 p.m. Ms. Dunbar said the last day to request a ballot by mail is Tuesday, October 31st, by 5:00 p.m., and all mail-in ballots must be submitted by 7:00 p.m. on Election Day.

REVIEW, FINALIZE, AND CONSIDER APPROVING AN INTERMUNICIPAL AGREEMENT WITH THE TOWN OF DUNSTABLE TO PROVIDE CLEAN POTABLE DRINKING WATER TO THE GROTON DUNSTABLE REGIONAL HIGH SCHOOL AND SURROUNDING PROPERTIES

Mr. Cunningham explained that the Groton Select Board and the Dunstable Board of Selectmen had a joint session scheduled for that evening. However, it was postponed due to some issues they would like to discuss further with their Financial Advisory Board. Mr. Haddad and Dunstable's Town Administrator, Jason Silva, had three sessions with Town Counsel to review the terms of the IMA. Mr. Haddad provided the Board with a draft of the IMA. The IMA outlines the estimated total cost of \$12.8 million for Phase One. The Town of Groton would be responsible for 77.6% of the cost (\$331,093), the Town of Dunstable would pay 14.6% (\$62,293), and the Groton Water Department would pay 7.8% (\$33,280). Mr. Haddad said Phase One has been finalized with no changes.

Mr. Haddad explained Phase Two was more complicated. The IMA was negotiated for the Towns of Groton and Dunstable to enter into an IMA for Phase Two with the Town of Pepperell. Under the agreement, the Town of Pepperell would pay \$10.4M, and the towns of Groton and Dunstable would contribute \$3.1M. The Towns of Groton and Dunstable must enter into an IMA with Pepperell by January 31, 2024. Mr. Haddad has been working hard on finding ways to offset the cost of the \$3.1M. Department of Environmental Protection's Regional Director, Mary Jude Pigsley, said the state has set aside \$30M for PFAS mitigation. Mr. Orcutt, Groton Water Superintendent, submitted a letter of interest for this funding. Ms. Pigsley believes that the towns have the opportunity for funding since they are moving forward with a regional approach to resolve the PFAS issue. Earlier that day, Mr. Haddad and his Executive Assistant, Kara Cruikshank, had a meeting with Senator Cronin, Senator Kennedy, Representative Sena, Representative Scarsdale, Mr. Orcutt, the DPW Business Manager from

the Town of Pepperell, as well as the Town Administrators of Dunstable and Pepperell. During the meeting with the state delegation, Mr. Haddad stressed the regional project's significance and hoped it would serve as an example of successful regionalization. The legislators committed to speaking with their Ways and Means Committees to see the possibility of securing any funding. Mr. Haddad will have a follow-up meeting with the State delegation next Friday, October 27th. Mr. Haddad said if the \$3.1M cannot be paid for, he believes the cost should be split equally between Dunstable and Groton. The Town of Pepperell is going to apply for SRF Funding under Phase Two, with a chance of receiving 20 percent loan forgiveness. He said that they have to plan for the worst-case scenario. Town Counsel sent the draft of the IMA to the Towns of Groton and Dunstable last Thursday. The Town of Dunstable did not believe they had enough time to review the draft IMA's wording prior to meeting in a joint session with the Groton Select Board this evening. The Dunstable Board of Selectmen scheduled a meeting for Thursday to review the terms of the IMA with their Financial Advisory Committee. Mr. Haddad said two public forums will be held on Wednesday, October 18th at The Groton Center to present the PowerPoint that explains the project to the residents and taxpayers of Groton. Mr. Haddad said he negotiated the IMA in good faith and believed the project would resolve the PFAS problem at the Groton Dunstable Regional High School. He is also doing everything possible to get \$3.1M paid for Phase Two. Please refer to the attached draft Inter-Municipal Agreement for Water System Expansion.

Questions/Comments from the Board

Ms. Manugian expressed she was incredibly frustrated with the current situation.

Mr. Reilly said Phase One would fix the PFAS problem at the High School. He asked how Phase Two would help the high school. Mr. Haddad said Phase Two would address the PFAS problem; they would be better equipped if the plume moved.

Mr. Pisani expressed frustration and said that a solution satisfying the needs of the DEP was Phase One, and all parties agreed to it.

Mr. Haddad said the way the IMA was drafted, Groton and Dunstable must commit to both phases.

Ms. Manugian asked, in terms of communicating about the project with the public, what would be the deadline?

Mr. Haddad said Mr. Silva stated everything should be finalized after the Dunstable Selectmen meet on Thursday, where they will review the terms of the IMA. Mr. Haddad doesn't like going to the public without having information finalized.

Mr. Haddad asked the Board to give him direction, but he thought it would help to move Dunstable along if the Board voted to support the IMA. Ms. Manugian said she was concerned that Dunstable would extend the negotiation longer.

Ms. Manugian made a motion to approve and sign the Inter-Municipal Agreement, as amended by Water Superintendent Tom Orcutt, with support to be held in place until October 20th. Mr. Pisani seconded the motion. The motion carried unanimously.

PUBLIC COMMENTS

None

TOWN REPORT

1. Update from the Town Manager on the 2023 Fall Town Meeting/Review Motions.

Mr. Haddad said the Warrant has been posted for the 2023 Fall Town Meeting. He provided the Board with the Motions for Town Meeting and their assignments.

For Articles 13 and 14, an RFP was advertised. Mr. Haddad mentioned that the town had received one proposal from the Groton Conservation and Management LLC for a permanent restriction on the Hoyts Warf and Cow Pond Brook parcels. The proposal amount was a single bid in the amount of \$200,000. If Town Meeting grants permission, the town would have to negotiate with the developer.

Mr. Haddad said later that evening, there was a continuation of the public hearing regarding the acceptance of new public ways, specifically related to Article 15.

Mr. Haddad expressed confidence that the town was in good shape for Town Meeting.

2. Update from the Town Manager on the Town Manager's Tri-Comm Working Group- Preparation for Joint Meeting with Groton Finance Committee and Groton Dunstable Regional High School Committee on October 25, 2023.

The Town Manager's Tri-Comm Working Group met prior to the Select Board Meeting to finalize their presentation that will be made at the joint session meeting scheduled for October 25th between the Select Board, the Finance Committee, and the Groton Dunstable Regional School District Committee. A formal report will be released, and various options will be discussed on October 30th when the Select Board and Finance Committee meet in a joint session to provide guidance to the Town Manager based on the report. Mr. Haddad thanked the members of the Working Group. Several meetings took place, and many hours went into completing the Report. Mr. Haddad said it is the most comprehensive review of the budget that has ever been done. He hopes the Finance Committee and Select Board will be happy with the Report.

3. Update on Select Board Meeting Schedule Through the End of the Year

Wednesday, October 25, 2023	Joint Session with Finance Committee and Groton Dunstable Regional School District Committee-FY 25 Budget Report from Tri-Comm
Saturday, October 28, 2023	2023 Fall Town Meeting
Monday, October 30, 2023	Joint Session with Finance Committee to Set FY 2025 Budget Guidance
Monday, November 6, 2023	Regularly Scheduled Meeting
Monday, November 13, 2023	No Meeting
Monday, November 20, 2023	Regularly Scheduled Meeting
Monday, November 27, 2023	No Meeting
Monday, December 4, 2023	Regularly Scheduled Meeting
Monday, December 11, 2023	Regularly Scheduled Meeting
Monday, December 18, 2023	Regularly Scheduled Meeting
Monday, December 25, 2023	No Meeting (Christmas Day)
Monday, January 1, 2023	No Meeting (New Year's Day)
Monday, January 8, 2023	Regularly Scheduled Meeting

ITEMS FOR SELECT BOARD CONSIDERATION AND ACTION

1. Update from Destination Groton Committee

Greg Sheldon, Chair of the Destination Groton Committee, and Jeff Gordon, Vice Chair, were present to update the Board on their work. Mr. Sheldon said there will be a check presentation ceremony with Senator Cronin and Representatives Scarsdale and Sena on Friday, October 20th, at 1:00 p.m. at the General Field. Members of the Select Board and Trails Committee were invited as well. Mr. Sheldon explained that Senator John Cronin, State Representative Margaret Scarsdale, and State Representative Danillo Sena successfully secured a \$15,000 State appropriation in the FY24 State Budget to fund improvements to the Town's extensive trails network. On November 1st, 7:30 a.m. – 10:00 a.m., the Regional Tourism Conference will be held at The Groton Inn with Guest Speakers. The Conference theme is to discuss and prepare for an increase in tourism.

Mr. Sheldon stated that the Destination Groton Committee would like to work with various town boards and committees to explore ways of celebrating the 250th anniversary of the United States in 2026.

Mr. Cunningham wanted to applaud the Destination Groton Committee's efforts and accomplishments.

Mr. Sheldon said the Groton Destination Committee received and interviewed five applicants who submitted Committee Interest Forms for the vacancy. Mr. Brian Bolton was the chosen candidate, and The Destination Groton Committee recommended Mr. Bolton to the Select Board to be appointed.

Mr. Pisani made a motion to appoint Brian Bolton as a member of the Destination Groton Committee, with a term to expire on June 30, 2024. Ms. Manugian seconded the motion. The motion carried unanimously.

7:15 P.M. CONTINUATION OF PUBLIC HEARING- ROAD LAYOUT ACCEPTANCE- CHERRY TREE LANE, FIELDSTONE DRIVE, AND ARBOR WAY

Mr. Cunningham entertained a motion to reopen the public hearing for the road layout acceptance of Cherry Tree Lane, Fieldstone Drive, and Arbor Way.

Mr. Reilly made a motion to reopen the public hearing for the road layout acceptance. Ms. Manugian seconded the motion. The motion carried unanimously.

Takashi Tada, Town Planner/Land Use Director; Tom Delaney, the DPW Director; and Brian Callahan, the DPW Director in Training, were in attendance for the public hearing continuation. Kathy Netburn also attended, representing Bruce Wheeler, Trustee of Academy Hill Realty Trust.

Mr. Cunningham said they learned during the October 2nd public hearing a few issues needed to be addressed. He asked Mr. Delaney for an update. Mr. Delaney said one item that needed to be taken care of was mowing the inside of retention basins. Every other item was addressed: the fence on top of the guard rail, the rebar was cut, and the utility boxes were fixed. He said the punch list from the resident was taken care of. Mr. Delaney said the bond is still held if any other outstanding items need to be addressed before it is released by the Planning Board. Mr. Cunningham asked Mr. Tada when the bond would be released. Mr. Tada said the Planning Board would release the Bond once any outstanding items are taken care of. Mr. Delaney said the mowing would be taken care of inside the retention basin before Town Meeting.

Mr. Cunningham entertained a motion to close the public hearing.

Ms. Manugian made a motion to close the public hearing. Mr. Pisani seconded the motion. The motion carried unanimously.

Mr. Cunningham entertained a motion to accept Cherry Tree Fieldstone Drive and Arbor Way layouts for presentation at Town Meeting.

Mr. Pisani made a motion to accept Cherry Tree Lane, Fieldstone Drive, And Arbor Way layout. Ms. Manugian seconded. The motion carried unanimously.

OTHER BUSINESS

ON-GOING ISSUES

- B. PFAS Issue- Mr. Haddad, Mr. Orcutt, and Ms. Cruikshank met with the attorney handling the PFAS litigation for the Dupont and 3M Settlements for the Town of Groton to discuss the potential compensation. Mr. Haddad is working hard on behalf of the taxpayers to get as much financial help as possible.
- C. Florence Roche Elementary School Construction Project- The Building Committee met last week. The committee is contemplating a name change for the Florence Roche Elementary School. More information will become available regarding what is in process.

Mr. Cunningham announced there was a washout on the Rail Trail, but it was being repaired. He said the trail would reopen at some point that day.

Approval of Minutes from October 2nd and October 10, 2023

Ms. Manugian made a motion to approve the minutes of the regularly scheduled meeting from October 2, 2023, as presented. Mr. Pisani seconded the motion. The motion carried unanimously.

Mr. Reilly made a motion to approve the minutes of the special virtual meeting from October 10, 2023, as presented. Ms. Manugian seconded the motion. The motion carried unanimously.

The meeting was adjourned at 7:30 p.m.

Respectively submitted by Kara Cruikshank, Executive Assistant to the Town Manager.

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**INTERMUNICIPAL AGREEMENT FOR
WATER SYSTEM EXPANSION**

THIS AGREEMENT (this "Agreement") entered into this ____ day of _____, 2023 (the "Effective Date") is by and between the **Town of Groton**, a Massachusetts municipality acting by and through its Select Board, with a mailing address of 173 Main Street, Groton, Massachusetts 01450 ("Groton"), and the **Town of Dunstable**, a Massachusetts municipality acting by and through its Board of Selectmen, with a mailing address of 511 Main Street, Massachusetts 01827 ("Dunstable"). Groton and Dunstable are together as the "Parties" and individually a "Party."

WHEREAS, Groton and Dunstable are parties to a regional agreement creating the Groton-Dunstable Regional School District (the "GDRSD") and share the operational and capital costs of the GDRSD in accordance with that regional agreement;

WHEREAS, the potable water supply for the GDRSD High School property in Groton and several neighboring properties in Groton and Dunstable is contaminated with per- and polyfluoroalkyl substances (PFAS);

WHEREAS, the Parties seek a collective solution to supply potable water to the GDRSD High School property in Groton and neighboring properties in Groton and Dunstable affected by PFAS contamination;

WHEREAS, the Parties are authorized by M.G.L. c. 40, § 4A, to enter into intermunicipal agreements for the purpose of obtaining the services of one municipality, which the other municipality is authorized by law to perform;

WHEREAS, the Parties are each empowered by law to incur costs to supply potable water to the GDRSD High School property;

WHEREAS, the Parties are each empowered by law to supply potable water to residential, commercial, and institutional customers, which is a proper governmental function and service;

WHEREAS, Groton's potable water supply system, operated by the Groton Water Department, has capacity to supply potable water to the GDRSD High School property and neighboring properties in Groton and Dunstable affected by PFAS contamination;

WHEREAS, Groton is willing to assume the obligation to construct, operate, and maintain an expansion of its potable water supply system to serve the GDRSD High School property and neighboring properties in Groton and Dunstable affected by PFAS contamination, in accordance with the terms and conditions of the Groton Town Code and the Rules and Regulations of the Groton Water Department, as may be amended from time to time (collectively, the "Groton Regulations");

WHEREAS, Dunstable is willing to assume certain costs associated with an expansion of Groton's potable water supply system to serve the GDRSD High School property and

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neighboring properties in Groton and Dunstable affected by PFAS contamination, and to allow Groton to expand its potable water supply system within a defined area of Dunstable, in accordance with the terms of this Agreement.

NOW THEREFORE, pursuant to the provisions of M.G.L. c. 40, § 4A, and in consideration of the mutual promises, payments, covenants, and agreements set forth in this Agreement, the Parties agree as follows:

1. Groton Water System Expansion (Phase 1).

1.1. Phase 1 Defined. Groton shall expand its potable water supply system by installing new water mains from the intersection of Common Street and Chicopee Row in Groton along Chicopee Row to the GDRSD High School property in Groton, then along Chicopee Row to the Groton/Dunstable municipal boundary, then further along Groton Street in Dunstable to Kemp Street, then further along Kemp Street in Dunstable to the Groton/Dunstable municipal boundary, and then further along North Street in Groton to the intersection with Wyman Road, as shown on the plan entitled "Regional Water System Plan – Phase 1", attached as "Exhibit A" ("Phase 1"). The portion of Phase 1 located in Dunstable shall be known as the "Dunstable Phase 1 Service Area.")

1.2. Phase 1 Construction.

- a. Groton shall be responsible for the planning, designing, bidding, permitting, and construction of Phase 1, which shall comply with all applicable federal, state, and local laws, rules, and regulations.
- b. Dunstable shall provide Groton with its full cooperation in the planning, designing, bidding, permitting, and construction of Phase 1, including but not limited to granting any easements and licenses, executing applications, and providing letters of support necessary for Phase 1.
- c. Dunstable shall have the right to review and approve, not to be unreasonably withheld, all specifications and plans prepared for Phase 1 prior to the commencement of construction.
- d. Groton and its contractors and agents are hereby granted a non-exclusive right to enter and open the public ways in the Dunstable Phase 1 Service Area as necessary for the construction of Phase 1.
- e. Dunstable shall waive various permitting fees with respect to the initial construction of Phase 1 within the Dunstable Phase 1 Service Area.
- f. Upon completion of construction, Groton shall provide Dunstable with as-built plans of Phase 1.

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- 1.3. Phase 1 Cost Estimate. The planning, designing, bidding, permitting, and construction costs for Phase 1 are estimated at \$12,800,000.
- 1.4. Phase 1 Cost Division.
- a. The Parties shall divide the costs of Phase 1 as follows:
 - i. Groton: 77.6% (estimated at \$9,937,000);
 - ii. Groton Water Department: 7.8% (estimated at \$1,000,000);
 - iii. Dunstable: 14.6% (estimated at \$1,863,000).
 - b. The Parties acknowledge that the total cost of Phase 1 may differ from the estimate set forth in Section 1.3, and that the Parties are obligated under this Agreement to share the total cost of Phase 1 based upon the percentages set forth in this Section 1.4, provided however, that if the total estimated cost of Phase 1 will exceed \$13,056,000 (a 2% increase over the estimate set forth in Section 1.3), the Parties shall reopen this Agreement and negotiate amended terms or terminate this Agreement.
 - c. The total cost of Phase 1 may be reduced by grants or other payments by third parties, which shall reduce the Parties' payments for Phase 1 but not the percentages set forth in this Section 1.4.
- 1.5. Phase 1 Funding. The Parties shall separately seek appropriations to fund their respective shares of the costs of Phase 1, and each Party shall notify the other Party upon obtaining the necessary appropriation to fund its respective share of the costs of Phase 1.
- 1.6. Phase 1 Payments. Groton shall invoice Dunstable for its share of the Phase 1 costs as set forth in a side letter to be negotiated by the Groton Town Manager and the Dunstable Town Administrator and executed by the Parties prior to Groton incurring any costs for Phase 1, said side letter to be attached to this Agreement as Exhibit C.
- 1.7. Pre-Construction Termination: This Agreement may be terminated prior to the construction of Phase 1 as follows:
- a. If Groton fails to notify Dunstable that it has obtained the necessary appropriation for Phase 1 costs by June 30, 2024, then Dunstable may terminate this Agreement upon providing written notice of such termination to Groton, unless the deadline for such appropriation is extended by mutual, written agreement of the Parties.
 - b. If Dunstable fails to notify Groton that it has obtained the necessary appropriation for Phase 1 costs by June 30, 2024, then Groton may terminate this Agreement upon providing written notice of such termination to Dunstable, unless the deadline for such appropriation is extended by mutual, written agreement of the Parties.
 - c. If Groton fails to obtain all permits and approvals required for Phase 1, including but not limited to approvals for any interbasin transfers, by December 1, 2024, then either

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Party may terminate this Agreement upon providing written notice of such termination to the other Party, unless the deadline for such permits and approvals is extended by mutual, written agreement of the Parties. Upon a termination under this Section 1.7(c), Groton shall provide Dunstable with a final invoice for costs incurred pursuant to this Agreement for Phase 1, and Dunstable shall remit payment to Groton for the costs set forth in said invoice within thirty (30) days. This provision shall survive the termination of this Agreement.

2. Service, Operation, and Maintenance of the Dunstable Phase 1 Service Area.

2.1. Water Service Connections. Within the Dunstable Phase 1 Service Area, water connections shall be available to residential, commercial, and institutional properties with frontage along streets containing water mains or with legal access to such frontage, subject to available capacity and pursuant to the applicable terms of the Groton Regulations. Groton shall be responsible for approving any water service connection within the Dunstable Phase 1 Service Area, subject to applicable permitting by Dunstable. Properties within the Dunstable Phase 1 Service Area shall be subject to in-town connection charges and other fees applicable to properties located in Groton under the Groton Regulations.

2.2. Water Rates, Charges, Billing, and Collection.

- a. Metering. Groton shall install and maintain water meters for water uses in the Dunstable Phase 1 Service Area. Pursuant to water meter readings, Groton shall apply Groton's in-town rates for water service, as set forth in the Groton Regulations.
- b. Billing. Groton shall bill water users in the Dunstable Phase 1 Service Area in accordance with the in the Groton Regulations.
- c. Collections. If a water user in the Dunstable Phase 1 Service Area fails to pay a properly payable fee, rate, or charge, then Groton shall send notice of the delinquent account(s) to Dunstable's Board of Assessors. Dunstable shall pursue the necessary measures to collect the unpaid fees, rates, or charges, including the steps necessary to secure a municipal lien in accordance with M.G.L. c. 40, § 42A and for the benefit of payment to Groton. Groton may pursue a contract claim for unpaid fees, rates, or charges or terminate water service to a customer located in the Dunstable Phase 1 Service Area, in accordance with M.G.L. c. 40, § 42B. Subject to pre-approval by Groton of an estimated budget received from Dunstable, Groton shall reimburse Dunstable for its costs, including reasonable attorney's fees and costs, in pursuing and collecting any unpaid fees, rates, or charges, including actions necessary to secure municipal liens on the real property of delinquent customers located in the Dunstable Phase 1 Service Area.

2.3. Operations and Maintenance.

- a. Costs. Groton shall be responsible for the operation, maintenance, and repair of its potable water supply infrastructure in the Dunstable Phase 1 Service Area. All costs in connection with the operation, maintenance, and repair of the Dunstable Phase 1

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Service Area shall be borne by Groton, it being the intent of this Agreement that there shall be no cost whatsoever to Dunstable for the Dunstable Phase 1 Service Area following the initial construction of Phase 1.

- b. Access. Groton is hereby granted a non-exclusive right to enter and open the public ways in the Dunstable Phase 1 Service Area for purposes of inspecting, repairing, replacing, maintaining, and monitoring the potable water supply infrastructure in the Dunstable Phase 1 Service Area. For non-emergency work on potable water supply infrastructure in the Dunstable Phase 1 Service Area, Groton shall give written notice to Dunstable and shall apply for a street opening permit at least fourteen (14) days prior to the commencement of work. Groton shall perform any inspections, repairs, replacements, maintenance, and monitoring in a prompt and continuous manner and shall take all necessary steps to minimize disruption to the public ways in Dunstable, including hiring police details when deemed necessary by Dunstable.
- c. Emergency Shut-Off. In the case of an emergency creating a threat to the public health or safety as determined by Groton, Groton may suspend or terminate water service in the Dunstable Phase 1 Service Area immediately and without prior written notice. Written notice shall be provided as soon as practicable thereafter.
- d. Emergency Conditions. Groton shall be responsible for responding to emergency calls regarding water sewer service in the Dunstable Phase 1 Service Area. Each Party shall immediately, within not more than twenty-four hours or as soon as practicable, notify the other of any emergency or condition which may affect the water system of the other Party.

3. Pepperell and Dunstable Water System Expansion (Phase 2).

- 3.1. Agreement with Pepperell. The Parties shall jointly enter into an intermunicipal agreement with the Town of Pepperell ("Pepperell") to install new water mains from a connection point in Pepperell along Jersey Street in Pepperell to the Pepperell/Groton municipal boundary, then along North Street in Groton to connect with Phase 1, and from Phase 1 at the intersection of Kemp Street and Groton Street in Dunstable along Groton Street in Dunstable to the intersection of Groton Street and Pleasant Street in Dunstable to connect with existing potable water supply infrastructure in Dunstable, as shown on the plan entitled "Regional Water System Plan – Phase 2", attached as "Exhibit B" ("Phase 2").
- 3.2. Phase 2 Cost Estimate. The planning, designing, permitting, and construction costs for Phase 2 attributable to Groton and Dunstable are estimated at \$3,100,000.
- 3.3. Phase 2 Cost Division.
 - a. The Parties shall divide the costs of Phase 2 as follows:
 - i. Groton: 50% (estimated at \$1,550,000);
 - ii. Dunstable: 50% (estimated at \$1,550,000);

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- b. The Parties acknowledge that the total cost of Phase 2 may differ from the estimate set forth in Section 3.2, and that the Parties are obligated to share the total cost of Phase 1 based upon the percentages set forth in Section 3.3, provided however, that if the total estimated cost of Phase 2 will exceed \$3,162,000 (a 2% increase over the estimate set forth in Section 3.2), the Parties shall reopen this Agreement and the intermunicipal agreement with Pepperell and negotiate amended terms or terminate one or both agreements.
- c. The total cost of Phase 2 may be reduced by grants or other payments by third parties, which shall reduce the Parties' payments for Phase 2 but not the percentages set forth in Section 3.3.

3.4. Phase 2 Funding. The Parties shall separately seek debt authorizations and appropriations to fund their respective shares of the costs of Phase 2.

3.5. Phase 2 Construction, Payments, and Operations. The Parties shall determine their obligations for construction, payments, and operations for Phase 2 in the intermunicipal agreement with Pepperell.

3.6. Phase 1 Contingent Upon Phase 2 Agreement. The Parties agree that if the Parties do not enter the intermunicipal agreement with Pepperell contemplated in this Section 3 for Phase 2 by January 31, 2024,, then Parties shall reopen this Agreement and negotiate amended terms or terminate this Agreement, unless the deadline for the intermunicipal agreement with Pepperell is extended by mutual, written agreement of the Parties. Groton expressly acknowledges that funds expended by Groton for Phase 1 may not be subject to cost sharing from Dunstable in the event that the Parties do not enter the intermunicipal agreement with Pepperell contemplated in this Section 3 for Phase 2 by January 31, 2024.

4. MISCELLANEOUS PROVISIONS

4.1. Term. This Agreement shall commence on the Effective Date and shall continue for twenty-five (25) years, unless earlier terminated, provided that in no event shall the term of this Agreement exceed the maximum term for an intermunicipal agreement set forth in M.G.L. c. 40, § 4A.

4.2. Insurance. Groton shall obtain and maintain at all times during the term of this Agreement the following insurance coverages:

- i. General Liability with minimum limits of \$1,000,000 per occurrence/\$2,000,000 aggregate written on an occurrence basis, with Dunstable named as additional insured.
- ii. Comprehensive Automobile Liability with coverage for bodily injury of \$500,000 each person and \$1,000,000 each accident and coverage for property damage of \$1,000,000 each accident, with Dunstable named as additional insured.

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- iii. Excess Liability with \$2,000,000 minimum limits in excess of underlying limits, with Dunstable named as additional insured. The umbrella shall be no more restrictive than underlying coverage.
- iv. Worker's Compensation and Employer's Liability per Commonwealth of Massachusetts statutory limit.

Groton shall provide Dunstable with suitable evidence of the required insurance coverage. This insurance shall be written by a company licensed to do business in the state of Massachusetts with a minimum A.M. Best rating of A- VII. Each policy shall provide for written notification to Dunstable at least thirty (30) days prior to termination, material change or restrictive amendments. The coverages and limits are to be considered minimum requirements under this contract and in no way limit the liability of the Contractor. Failure to provide or to continue in force such insurance shall be deemed a material breach of this Agreement and may result in termination of this Agreement.

- 4.3. Liability. Pursuant to M.G.L. c. 40, § 4A, each Party shall be liable for the acts and omissions of its own employees and not for the employees of the other in the performance of this Agreement, and to the extent provided by M.G.L. c. 258. By entering into this Agreement, none of the Parties has waived any governmental immunity or limitation of damages which may be extended to them by operation of law.
- 4.4. Maximum Financial Liability. Pursuant to M.G.L. c. 40, § 4A, this Agreement sets forth the maximum extent of each Party's financial liability, which is each Party's share of the costs set forth herein.
- 4.5. Financial Safeguards.
 - a. Pursuant to M.G.L. c. 40, § 4A, starting on the first day of each month following the Effective Date and continuing until the completion of construction of Phase 1, Groton shall provide Dunstable with monthly reports regarding the construction progress and costs associated with the construction of Phase 1.
 - b. Pursuant to M.G.L. c. 40, § 4A, upon the connection of one or more properties in Dunstable to the Dunstable Phase 1 Service Area and continuing until the termination of this Agreement, Groton shall provide Dunstable with quarterly reports concerning the status, operation, revenues, and costs of the Dunstable Phase 1 Service Area.
 - c. Groton shall provide Dunstable with access to all records concerning (i) the Dunstable Phase 1 Service Area, and (ii) the setting of water rates paid by customers in the Dunstable Phase 1 Service Area.
- 4.6. Dispute Resolution. If any dispute arises out of the scope, interpretation, operation, or alleged or actual breach of this Agreement, the Parties shall negotiate in good faith and attempt to resolve such dispute within thirty (30) days after the date that a Party gives written notice of such dispute to the other Party. If the Parties are unable to reach agreement within such thirty (30) day period (or such longer period as the Parties may agree), the Parties agree that the aggrieved party may submit the dispute to a court of

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competent jurisdiction in the Commonwealth of Massachusetts for resolution or court order.

- 4.7. No Third Party Beneficiaries. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the Parties.
- 4.8. Severability. If any clause or provision of this Agreement or application thereof shall be held unlawful or invalid, no other clause or provision of this Agreement or its application shall be affected, and this Agreement shall be construed and enforced as if such unlawful or invalid clause or provision had not been contained in this Agreement.
- 4.9. Amendment. The provisions, terms, and conditions of this Agreement shall be modified only by written amendments executed by both of the Parties.
- 4.10. Waiver. The obligations and conditions set forth in this Agreement may be waived only by a writing signed by the Party waiving such obligation or condition. Forbearance or indulgence by a Party shall not be construed as a waiver, nor limit the remedies that would otherwise be available to that Party under this Agreement or applicable law. No waiver of any breach or default shall constitute or be deemed evidence of a waiver of any subsequent breach or default.
- 4.11. Assignment. No Party shall assign or transfer any of its rights or interests in or to this Agreement, or delegate any of its obligations hereunder, without the prior written consent of the other Parties.
- 4.12. Governing Law. This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts.
- 4.13. Recitals. The Recitals provided in this Agreement are acknowledged by the Parties to be material terms and conditions of this Agreement.
- 4.14. Headings. The article, section, and paragraph headings provided in this Agreement are for convenience only, are not part of this Agreement and shall not affect the interpretation of this Agreement.
- 4.15. Execution / Counterparts. A signed email or facsimile copy of this Agreement, or a signed portable document format (.pdf) copy of this Agreement, shall be binding upon the Parties as fully and to the same extent as an original signed copy. This Agreement may be signed in any number of counterparts all of which taken together, shall constitute one and the same instrument, and any Party may execute this Agreement by signing one or more counterparts.
- 4.16. Notices. With the exception of invoices sent in accordance with Section 1.1 of this Agreement, all notices required or permitted by this Agreement shall be in writing and sent to the Parties as set forth below:

If intended for Groton:

DRAFT

Town Manager
Town of Groton
173 Main Street
Groton, MA 01450
Email: townmanager@grotonma.gov

If intended for Dunstable:

Town Administrator
Town of Dunstable
511 Main Street
Dunstable, MA 01827
Email: townadministrator@dunstable-ma.gov

Notice shall be deemed given: (a) two (2) business days after the date when it is deposited with the U.S. Post Office, if sent by U.S. first-class or certified mail; (b) one (1) business day after the date when it is deposited with an overnight courier, if next business day delivery is required; (c) upon the date personal delivery is made; or (d) upon the date when it is sent by email, if the sender receives a reply email confirming such delivery has been successful and the sender mails a copy of such notice to the other Party by U.S. first-class mail on such date.

[SIGNATURES ON NEXT PAGE]

DRAFT

IN WITNESS WHEREOF, the Parties have set their hands and seals effective on the day and year first above written.

TOWN OF GROTON

TOWN OF DUNSTABLE

Mark Haddad, Town Manager,
Duly authorized by vote of the Groton
Select Board on _____, 2023

Jason Silva, Town Administrator
Duly authorized by vote of the Dunstable
Board of Selectmen on _____, 2023

Acknowledged:

Acknowledged:

Town of Groton Board of Water and Sewer
Commissioners

Town of Dunstable Board of Water
Commissioners

Duly authorized by vote of the
Town of Groton Board of Water and Sewer
Commissioners
on _____, 2023

Duly authorized by vote of the
Town of Dunstable Board of Water
Commissioners
on _____, 2023