



City of New Bedford

IN COMMITTEE

February 23, 2023

The Honorable City Council
133 William Street
New Bedford, MA 02740

Dear Honorable Members of the City Council:

The Committee on City Property at a Meeting held on Wednesday, February 15, 2023, considered a COMMUNICATION, Mayor Mitchell, to City Council, submitting AN ORDER authorizing the Mayor to enter into and execute a twenty-five-year Intermunicipal Agreement for waterfront improvements at Lake Street between the Town of Acushnet and the City of New Bedford, and related ORDER and INTERMUNICIPAL AGREEMENT. (Ref'd 11/10/2022)

On motion by Councillor Morad and seconded by Councillor Burgo, the Committee VOTED: To recommend to the City Council ADOPTION of the ORDER, authorizing the Mayor to enter into and execute a twenty-five-year Intermunicipal Agreement for waterfront improvements at Lake Street between the Town of Acushnet and the City of New Bedford and APPROVAL of the twenty-five-year INTERMUNICIPAL AGREEMENT. This motion passed on a Roll Call Vote of Yeas 8, Nays 0.

IN COMMITTEE ON CITY PROPERTY

A handwritten signature in cursive script that reads "Maria E. Giesta".

Councillor Maria E. Giesta, Chairperson

MEG: smh



CITY OF NEW BEDFORD

CITY COUNCIL

November 10, 2022

ORDERED, that the Mayor is authorized to enter into and execute a twenty-five year Intermunicipal Agreement for waterfront improvements at Lake Street between the Town of Acushnet and the City of New Bedford; a copy of which is attached hereto.

**INTERMUNICIPAL AGREEMENT
FOR WATERFRONT IMPROVEMENTS AT LAKE STREET PROPERTY
BETWEEN THE TOWN OF ACUSHNET
AND THE CITY OF NEW BEDFORD**

THIS AGREEMENT, made on this ____ day of _____, 2022, between the Town of Acushnet, a municipal corporation in Bristol County, Massachusetts, by its Board of Selectmen ("Town") and the City of New Bedford, a municipal corporation in Bristol County, Massachusetts, by its Mayor ("City"), witnesseth that:

WHEREAS, the City is the owner of the property known as Lake Street, which includes a beach area abutting a portion of the lake (the "Property"); and

WHEREAS, the Town desires to make certain improvements (the "Improvements") to portions of the Property, as described herein in order to utilize said portions of the Property for purposes of waterfront recreation (said portions hereafter referred to as the "Recreation Area"); and

WHEREAS, the City is willing to permit the Town to make the Improvements and to utilize the Recreation Area for the purposes and on the terms described herein; and

WHEREAS, the City and the Town are authorized, pursuant to Massachusetts General Laws Chapter 40, Section 4A, by vote of their executives, to enter into an inter-municipal agreement for the purposes of the project described herein; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City and the Town agree as follows:

Section 1. The Property and the Improvements

1. The Property is described in a deed(s) dated April 9, 1870 and recorded with the Bristol County Registry of Deeds in Book 66, Page 482.
2. The Improvements consist of the following activities at or within the Recreation Area: re-grading the parking lots and beach; clearing brush, establishing walking trails, outfitting the lakes with fishing docks; creating a playground area enclosed with a fence; establishing a gathering area equipped with in-place hibachi-type grills and picnic tables.

Section 2. Authority to Perform and Utilize Improvements

1. The City hereby authorizes the Town to perform the work of installing and carrying out the Improvements and to utilize the Improvements on the terms and conditions stated

herein. Prior to commencement of the work, representative of the Town and the City shall meet for the purpose of establishing work area limits and construction hours and protocols.

2. In the performance and utilization of the Improvements, the Town shall comply with applicable laws and regulations of the Commonwealth of Massachusetts and applicable ordinances and regulations of the City. The Town shall be responsible for obtaining any permits or approvals required for performance of the Improvements prior to commencement.

Section 3. General Provisions

1. Term: The term of this Agreement shall be twenty-five years, unless sooner terminated as herein provided. In accordance with applicable law, the term of the Agreement may be extended by written agreement of the parties.
2. Amendments: This Agreement may not be amended, modified or altered or any of its provisions waived except by an amendment, in writing, executed by both parties in the same manner as this Agreement is executed. Neither party may rely on any conduct, statements, action, inaction, or course of conduct of the employees or officers of the other party as having changed, modified or amended this Agreement. Neither party shall be construed as waiving any provision of this Agreement unless the waiver is executed in writing. No waiver, forbearance or indulgence, in any form or manner, of any default or breach by either party shall be construed as a waiver of any subsequent default or breach, nor shall it limit the legal or equitable remedies available on account of such default or breach.
3. Assignment: This Agreement shall not be assigned or transferred by either party without execution of a written agreement for assignment executed by both parties.
4. Record Keeping: All parties to this agreement shall provide sufficient financial safeguards for all participants, including but not limited to: accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received. The parties shall agree on a schedule of regular audits, if applicable, of such records. Periodic financial statements shall be issued to all participants at least annually.
5. Force Majeure: Neither party shall be deemed in breach of this Agreement for failure or delay in rendering performance if such failure or delay arises out of a force majeure. Any dates or times established for performance which cannot be met because of force majeure shall be extended, provided that the party affected notifies the other promptly of the existence and nature of the force majeure. For purposes of this Agreement, force majeure

shall mean: any event of circumstance that prevents a party from performing its obligations under this Agreement, which event or circumstance (i) cannot be reasonably anticipated; (ii) is not within the reasonable control, and is not the result of the fault or negligence, of the Party claiming Force Majeure and (iii) by the exercise of reasonable due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided the force majeure event.

6. Insurance: At all times the Town shall maintain appropriate insurance coverage of the following types and shall provide Proof of Coverage to the City:
- a. General Liability
 - b. Automobile Liability
 - c. Workers Compensation
 - d. Umbrella Liability

In addition to the above, any and all contractors or vendors completing work on the Property shall afford the following coverages:

- a. General Liability – of at least \$1,000,000 Bodily Injury and Property Damage Liability with a \$3,000,000 Annual Aggregate Limit. The Town and City shall both be named as “Additional Insured.”
 - b. Automobile Liability (applicable for any automobile operating exposure) – of at least \$1,000,000 Bodily Injury and Property Damage Combined Single Limit per accident. The Town and City shall both be named as “Additional Insured.”
 - c. Workers Compensation – as required by law.
 - d. Pollution Liability – of at least \$1,000,000 per Occurrence and \$3,000,000 Aggregate. The Town and City shall both be named as “Additional Insured.”
 - e. Umbrella Liability – of at least \$2,000,000 per Occurrence and \$2,000,000 Annual Aggregate. The Town and City shall both be named as “Additional Insured.”
7. Notice: All notices or communications permitted or required by this Agreement must be in writing and shall be delivered or mailed by certified mail, return receipt requested, to the parties at the below addresses:

For the Town:

Board of Selectmen
Acushnet Town Hall
122 Main Street
Acushnet, MA 02743

For the City:

City of New Bedford
Solicitor's Office, City Hall
133 William Street


New Bedford, MA 02740

8. Termination: Either party may terminate this Agreement for failure of the other party to comply with its obligations hereunder, which shall include any material breach of obligations imposed by applicable law on the actions and duties to be performed and met under the Agreement. Where cause for termination exists, the non-defaulting party shall have the right to terminate this Agreement by giving written notice to the defaulting Party of such termination and specifying the effective date thereof, said written notice to be given at least thirty (30) days before the effective date of such termination. The party receiving notice of termination shall have the opportunity to cure the default within the notice period, and if it does so, the termination shall not take effect.
9. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
10. Rights Retained: Nothing contained in this Agreement shall be construed to prevent the parties from entering into such other or additional agreements for joint or cooperative efforts relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the named officials of the Town of Acushnet and the City of New Bedford hereby execute this Agreement, in _____ counterparts.

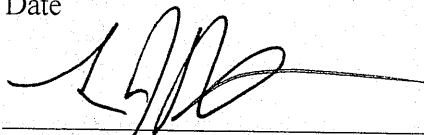
TOWN OF ACUSHNET

Board of Selectmen



David Wojnar, Chairman

Date



Robert Hinkley, Member

Date

CITY OF NEW BEDFORD

By its Mayor:

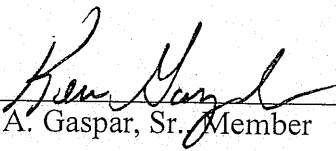
Jon Mitchell

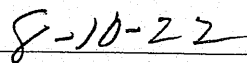
Date

Approved as to form:

City Solicitor

Date


Kevin A. Gaspar, Sr. Member


Date