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TO: SELECT BOARD
CC: THOMAS CALTER, TOWN MANGER
FM: BRIAN WINNER, ESQ.
RE: SMAC ACCESS AGREEMENT RENEWAL FY24 –
PROPOSED NEW/REVISED TERMS
DA: JUNE 14, 2023, REVISED JULY 19, 2023, AUGUST 10, 2023

In consultation with representatives of the Town regarding the proposed, renewed "Access Corporation Agreement," (the "Agreement"), we proposed the below terms to representatives of SMAC as new and/or revised provisions to the draft September 13, 2022 Agreement. Chair Roberts and Vice Chair Cavey, along with Town Manager Calter and me, held meetings with SMAC's representatives, and its counsel, on June 1, 2023, June 15, 2023 and June 29, 2023. Ultimately, SMAC agreed to each of the terms we proposed, or substantially similar terms, with very few exceptions. Each of the original proposed terms are noted below followed by the final disposition on that item in italics. The new/revised terms as negotiated are incorporated in the "track-changes" and final versions of the new Access Agreement. Of course, these terms and the Access Agreement in its entirety are subject to the Select Board's review and approval and the Board has the ultimate and final authority as to whether or not to enter into a new agreement and, if so, upon which terms. Accordingly, we will defer to the Board's judgment as to each and every one of these matters and as to whether the revised Access Agreement is acceptable.

1. **ARTICLE V/XI** - The Agreement shall provide that there shall be an independent, three (3) member oversight committee consisting of two (2) Selectboard members and the Town Manager which is authorized and required to liaison with SMAC to facilitate communication, transparency and compliance with the Agreement and SMAC's bylaws and that SMAC shall cooperate and not unreasonably interfere with same.

New language is incorporated into Article V, paragraph 5, page 5. It requires the president of the SMAC Board of Directors to appear quarterly before the Select Board and provide a report on operations and capital. It also authorizes the Select Board to designate a liaison or liaisons to attend Directors meetings.

2. **ARTICLE V, Section 11/Article XI, Section 4** -The Agreement shall provide that, within forty-five (45) days of the Agreement being fully executed, SMAC's Bylaws shall be amended so that its provisions are consistent with the new Agreement.

This requirement has been incorporated into Article XI, Section 4, page 13.

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3. **ARTICLE IX** - The Agreement shall provide that all SMAC funds shall be deposited and maintained in a banking/financial institution located in Stoughton.

This requirement has been incorporated into Article IX, page 12.

4. **ARTICLE V, Section 9** - The Agreement shall provide that SMAC shall annually submit to a financial audit by an appropriate CPA firm mutually agreed upon by SMAC and the Town and that the results of such audit be made available to SMAC and the Town.

This requirement has been incorporated into Article V, Section 9, page 8.

5. **ARTICLE V, Section 12** - The Agreement shall provide that SMAC prepare and approve annually a revolving three (3) year capital budget that targets old equipment that is failing, that is likely to fail, or that has or will reached the expiration of its anticipated useful life during that three (3) year term.

This requirement has been incorporated into Article V, Section 11, pages 8 and 9.

6. **ARTICLE XI, (New) Section 5** - The Agreement shall provide that SMAC shall comply with the Massachusetts Open Meeting Law, unless applicable Massachusetts law governing nonprofit corporations specifically allow otherwise in which case, in each instance, SMAC shall comply with the Massachusetts Open Meeting Law to the maximum extent practicable and shall provide public notice that applicable Massachusetts law governing nonprofit corporations provides or requires a deviation from said Open Meeting Law together with citation to such authority. This provision shall not apply to internal employment matters. Upon request, the Town shall cooperate with SMAC if it wishes to post such meetings in the same manner as the Town.

This requirement has been incorporated into Article V, Section 16, page 9. SMAC is not subject to the Open Meeting Law, however, by the Access Agreement it has agreed to comply with the basic tenants of the Open Meeting Law.

7. **ARTICLE XI, (New) Section 5** - The Agreement shall provide that all SMAC meetings, unless exempted under Paragraph 6 above, shall be audio/video recorded and livestreamed and/or made available on SMAC.

This requirement has been incorporated into Article V, Section 15, page 9.

8. **ARTICLE IV** - The Agreement shall provide for a one (1) year initial term with a single, five (5) year extension option, exercisable by the Town at its sole uncontestable discretion.

SMAC could not agree to this limitation out of concern that a potential one-year term would immediately and significantly compromise employee retention.

9. **ARTICLE V/XI** - The Agreement shall provide that SMAC shall make a presentation and report to the Selectboard on a quarterly basis which shall, at a minimum, include the status of operations, capital planning.

New language is incorporated into Article V, paragraph 5, page 5. It requires the president of the SMAC Board of Directors to appear quarterly before the Select Board and provide a report on operations and capital. It also authorizes the Select Board to designate a liaison or liaisons to attend Directors' meetings.

10. **ARTICLE V, Section 11** – The Agreement shall provide that SMAC shall strictly comply with its Bylaws and that its Bylaws are subject to the review and approval of the Selectboard, such approval not to be unreasonably withheld and provided further that the Selectboard provide written notice of its approval or disapproval as the case may be within thirty (30) days or such approval shall be deemed waived.

This requirement has been incorporated into Article XI, Section 4, page 13.

11. **Prior Article V, Section 11** – The *prior* Access Agreement provided the Select Board shall be presented with proposed SMAC bylaw amendments. This language has been stricken as the Select Board does not play a role in the internal governance of non-profit corporations. Notwithstanding, certain substantive provisions of the existing SMAC Bylaws have been explicitly incorporated into the new Access Agreement such that they are codified and enforceable directly by the Select Board. There is new language in *Article XI, Section 1, page 12* which mandates that there will be five (5) Directors, two of which will be appointed by the Select Board and one (1) of which will be appointed by the School Committee.