



## Town of West Newbury Board of Selectmen

Monday, November 26, 2018 @ 6:00pm  
381 Main Street, Town Office Building  
[www.wnewbury.org](http://www.wnewbury.org)

### AGENDA

#### Executive Session: 6:00pm in the Town Manager/Selectmen Office

- MGL Chapter 30A §21(a) 2: To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;
- MGL Chapter 30A §21(a) 3: To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;
- MGL Chapter 30A §21(a) 6: To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body.

#### Open Session: 7pm in the First Floor Hearing Room

Announcements: This meeting is being broadcast on local cable TV and recorded for rebroadcast on the local cable channels and on the internet.

- Marine Corp. Toys for Tots: New, unused, unwrapped toys may be dropped off at the Public Safety Complex at 401 Main Street starting November 1<sup>st</sup> through December 3<sup>rd</sup>
- Holiday Tree Lighting, Thursday, November 29<sup>th</sup> starting at 6:30 on the Training Field
- Council on Aging and Board of Assessors hosting an information session on December 5<sup>th</sup> at 5:30pm at the Council on Aging
- Winter parking ban starts December 1<sup>st</sup> and is in effect through April 30<sup>th</sup>, 2019

#### Regular Business

- A. Joint meeting with Planning Board: Appointment of Interim Board member due to vacancy on the Planning Board
- B. 2019 Liquor License Renewals: West Newbury Food Mart; and Gn Enterprises, Inc. d/b/a West Newbury Pizza Company
- C. Request for waiver of insurance certificate for rental of Town Annex for birthday party on Dec. 7, 2018
- D. Request for waiver of insurance certificate for rental of Town Hall for birthday party on Dec. 16, 2018
- E. Discussion with representative(s) of Bicentennial Committee regarding budget, sponsors and fundraising
- F. Review of draft updates to Open Space & Recreation Plan – *request of Open Space Committee*
- G. Review of Town Manager draft calendar for FY20 Budget process
- H. Discussion of Board of Selectmen Budget Message for FY20 Budget
- I. Update on MA Division of Fish & Wildlife determination that Trail Corridor Maintenance Plan is exempt from review under MA Endangered Species Act

#### Town Manager Updates

- J. Update on Middle Street/Plummer Spring Bridge and review of draft municipal boundary survey
- K. Update on new Cyber Liability Insurance Policy added to Town MIIA insurance for 2019
- L. Follow up meeting assignments
- M. Placing items for future agendas



A

**TOWN OF WEST NEWBURY  
OFFICE OF THE PLANNING BOARD  
381 MAIN STREET  
WEST NEWBURY MA 01985  
978-363-1100 X125 Fax: 978-363-1119**

November 7, 2018

Board of Selectmen  
West Newbury Town Offices  
381 Main Street  
West Newbury, MA 01922

Re: Planning Board Vacancy

Dear Honorable Board:

On November 6, 2018 the Planning Board received written notice from Planning Board Member John Sarkis of his resignation. Pursuant to Mass General Law Ch. 41, S. 11, please accept this correspondence as written notice that there is a vacancy on the Planning Board.

Pursuant to said section, an interim appointment shall be voted upon by majority vote of the Board of Selectmen and the remaining members of the Planning Board. The Planning Board requests that a meeting be scheduled for this purpose.

The person appointed would serve until the next scheduled Annual Town Election, which is Monday, May 6, 2019. The position shall then be filled, by election, for the remainder of the term, which expires on June 30, 2020.

Additionally, Associate Planning Board Member Kim Monahan expressed willingness to fill the vacancy until the next election. The Planning Board finds that Ms. Monahan is well qualified for the role and is supportive of her appointment.

Sincerely,

Leah Zambenardi, Town Planner  
On behalf of the West Newbury Planning Board

Cc: Town Clerk  
file



# TOWN OF WEST NEWBURY

Michael P. McCarron  
Town Clerk

381 Main Street  
West Newbury, MA 01985  
978-363-1100 ext. 110  
978-363-1117 (Fax)  
mmccarron@wnewbury.org

November 6, 2018

West Newbury Planning Board  
381 Main Street  
West Newbury, MA 01985

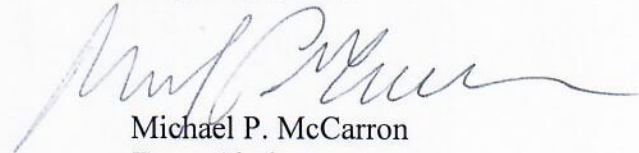
Dear Board Members:

The Office of Town Clerk received on November 6, 2018, a letter of resignation from John T. Sarkis from his elected position as a Member of the Planning Board which resignation is effective immediately.

Pursuant to M.G.L. c. 41, section 11, within thirty days of receiving this letter, the remaining members of the Planning Board must formally notify the Board of Selectmen of this vacancy and request a meeting. The Board of Selectmen shall then schedule a meeting jointly with the Planning Board upon a minimum of one week's notice. At such joint meeting of the Boards, an interim appointment shall be voted upon. A majority vote by the Board of Selectman and the remaining Planning Board in attendance shall be needed to decide the appointment. The person appointed would then serve the remainder of the term until the date of the next scheduled Annual Town Election after the date of appointment.

The person appointed must be a registered voter of the Town of West Newbury.

Very truly yours,



Michael P. McCarron  
Town Clerk

Cc: Board of Selectmen



Jean M. Lorizio, Esq.  
Commission Chairman

Commonwealth Of Massachusetts  
Department Of The State Treasurer  
Alcoholic Beverages Control Commission  
239 Causeway Street, 1st Floor  
Boston, Massachusetts 02114

RECEIVED

NOV 15 2018

B

BOARD OF SELECTMEN  
TOWN OF WEST NEWBURY

2019  
Retail License Renewal

License Number: 00003-PK-1406

Municipality: WEST NEWBURY

License Name : W Newbury Food Mart Inc

License Class: Annual

DBA : Unknown

License Type: Package Store

Premises Address: 275 Main Street West Newbury, MA  
01985

License Category: All Alcoholic Beverages

Manager: Elaine Fowler

I hereby certify and swear under penalties of perjury that:

1. I am authorized to sign this renewal pursuant to M.G.L. Chapter 138;
2. The renewed license is of the same class, type, category as listed above;
3. The licensee has complied with all laws of the Commonwealth relating to taxes; and
4. The premises are now open for business (if not, explain below).

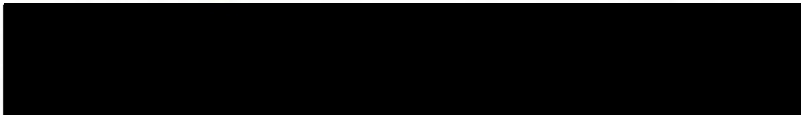
*Elaine M Fowler*

Signature

*11-15-18*

Date

Additional Information:





**VERMONT MUTUAL GROUP**

89 State Street, PO Box 188  
Montpelier, VT 05601-0188

**BUSINESSOWNERS POLICY DECLARATION**

To report a claim call your Agent  
or the Company at 800-435-0390

Policy Number: BP21051100 - NEW POLICY

Type of Billing: DIRECT BILL TO INSURED

Named Insured / Address



**Agency / Address**

WEST NEWBURY INS. AGCY, INC.  
322 MAIN ST  
PO BOX 150  
WEST NEWBURY, MA 01985-0150

(978) 363-5285

To 07/01/2019 at 12:01 A.M.\*

**POLICY PERIOD** From 07/01/2018

\*Standard Time at your mailing address shown above.

**INSURANCE PROVIDED BY:** NORTHERN SECURITY INS CO.

**TOTAL POLICY PREMIUM at inception is:** \$12,241 and

at each anniversary.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE INSURANCE AS STATED IN THIS POLICY.

**BUSINESS DESCRIPTION**

Form of Business: CORPORATION

**DESCRIBED PREMISES**

Prem. No.	Bldg. No.	Location/Occupancy	Mortgageholder Name and Address (See Schedule of Mortgageholder(s) BPDEC5 - If Applicable)
001	001	GROCERY STORE 275 MAIN ST WEST NEWBURY, MA 01985	

**PROPERTY - Limits of Insurance for**

**BUILDINGS**

- Actual Cash Value - Buildings Option (Y/N)
- Automatic Increase - Building Limit (pct.)

\$ 945,000

N

4%

**BUSINESS PERSONAL PROPERTY**

\$ 800,000

**EARTHQUAKE DEDUCTIBLE (pct)**

%

**DEDUCTIBLE \$ 2,500 OPTIONAL COVERAGE/EXTERIOR BUILDING GLASS DEDUCTIBLE \$ 250**

**OPTIONAL COVERAGES - Applicable only if an "X" is shown in the boxes below:**

- Outdoor Signs
- Tenant's Exterior Building Glass
- Interior Glass  Basement/ground floor level  All Floors
- Employee Dishonesty
- Money & Securities (Special Form Only)

**Limits of Insurance**

\$ 25,000 per occurrence

\$ included

\$ 10,000 per occurrence

\$ 10,000 Inside the Premises

\$ 5,000 Outside the Premises

\$ 250,000

\$ 10,000

\$ 10,000

**COVERAGE EXTENSIONS**

- Optional Higher Limits - Accounts Receivable
- Optional Higher Limits - Valuable Papers

**ADDITIONAL COVERAGES** Optional Higher Limits - Forgery and Alteration

**LIABILITY AND MEDICAL PAYMENTS**

Except for Fire Legal Liability, each paid claim for the following coverages reduces the amount of insurance we provide during the applicable annual period. Please refer to Paragraph D.4. of the Businessowners Liability Coverage Form.

Liability and Medical Expenses	Limits of Insurance
Liability and Medical Expenses	\$ 2,000,000
Medical Expenses	\$ 5,000
Fire Legal Liability	\$ 50,000

Per person

Any one fire or explosion

**FORMS / ENDORSEMENTS ATTACHED TO THIS POLICY: (See Schedule of Forms and Endorsements - BPDEC4)**

COUNTERSIGNED \_\_\_\_\_

(DATE)

BY \_\_\_\_\_

(AUTHORIZED REPRESENTATIVE)

THESE DECLARATIONS TOGETHER WITH THE COVERAGE FORM(S), COMMON POLICY CONDITIONS, FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREFORE, COMPLETE THE ABOVE NUMBERED POLICY.

Includes copyrighted material of the Insurance Services Office, Inc.  
Copyright, Insurance Services Office, Inc., 1997

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## LIQUOR LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM

### SCHEDULE

**A. Liquor Liability Aggregate Limit:**

\$ 2,000,000

**B. Each Common Cause Limit:**

\$ 1,000,000

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A.** The insurance provided under Paragraph **A.1. Business Liability** also applies to all "bodily injury" or "property damage" arising out of the selling, serving or furnishing of alcoholic beverages.
- B.** For the insurance provided by this endorsement only, Paragraph **B. Exclusions** is amended as follows:
1. Paragraph 1. **Applicable To Business Liability Coverages**, other than Exclusions **a. Expected Or Intended Injury**, **d. Workers' Compensation And Similar Laws** and **e. Employer's Liability**, does not apply.
  2. The following exclusions are added:  
This insurance does not apply to:
    - a. "Bodily injury" or "property damage" arising out of any alcoholic beverage sold, served or furnished while any required license is not in effect.
    - b. "Bodily injury" or "property damage" arising out of "your product". This exclusion does not apply to "bodily injury" or "property damage" for which the insured or the insured's indemnities may be held liable by reason of:
      - (1) Causing or contributing to the intoxication of any person;
      - (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
      - (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.
    - c. Any "bodily injury" or "property damage" with respect to which other insurance is afforded, or would be afforded but for the exhaustion of the Limits of Insurance.  
This exclusion does not apply if the other insurance responds to liability for "bodily injury" or "property damage" imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage.
- C.** The following are added to Paragraph **D. Liability And Medical Expenses Limits Of Insurance**:
- D. Liability And Medical Expenses Limits Of Insurance**
5. The Liquor Liability Aggregate Limit shown in the Schedule of this endorsement is the most we will pay for all "bodily injury" and "property damage" as the result of the selling, serving or furnishing of alcoholic beverages.



FP-007C  
(Rev. 1.2018)

*The Commonwealth of Massachusetts*

*City/Town of* \_\_\_\_\_



**CERTIFICATE OF COMPLIANCE**  
**M.G.L. CHAPTER 148, SECTIONS 26F, 26F1/2**

City or Town: West Newbury Date: November 14, 2018

This certifies that the property located at 275 Main Street, West Newbury Food Mart

\_\_\_\_\_

has been equipped with approved smoke detectors, and carbon monoxide alarms\* and was found to be in compliance with Massachusetts General Law, Chapter 148 Sections 26F, 26F1/2 and 527 CMR 1.00 Section 13.7.

Inspection/Testing completed on: November 14, 2018 By: Chief Michael D. Dwyer  
(Inspector)

Fee Paid: \$25.00 Head of Fire Department: Chief Michael D. Dwyer

**Note:** This certificate expires sixty (60) days after date of issue.

# TOWN OF WEST NEWBURY

## Schedule of Departmental Payments to the Treasurer

Dept                      Selectmen                      Number                      Date                      **11/16/2018**  
 Acct #                      Acct Description                      **Liquor Licensing**

From/Check #	Source	Amount
#61431	WN Food Mart Annual Liquor License	\$500.00
<b>TOTAL</b>		<b>\$500.00</b>

The above is a detailed list of monies collected by me, amounting in the aggregate amount of  
Five Hundred ----- 00/100 Dollars  
 for the week ending 11/16/2018 which I have paid to the Treasurer,  
 whose receipt I hold therefore:

Mary Winglass  
 Signature

Exec Admin  
 Title

Received of Selectmen the sum of Five hundred 00/100 Dollars

filed in my office on:  
 NOV 15 2018  
 Stamp

Susan Yeames  
 Assistant Treasurer Collector





Jean M. Lorizio, Esq.  
Commission Chairman

**Commonwealth Of Massachusetts**  
**Department Of The State Treasurer**  
**Alcoholic Beverages Control Commission**  
**239 Causeway Street, 1st Floor**  
**Boston, Massachusetts 02114**

RECEIVED

NOV 21 2018

BOARD OF SELECTMEN  
TOWN OF WEST NEWBURY

**2019**  
**Retail License Renewal**

License Number: 00001-RS-1406

Municipality: WEST NEWBURY

License Name : Gn Enterprises Inc

License Class: Annual

DBA : West Newbury Pizza Company

License Type: Restaurant

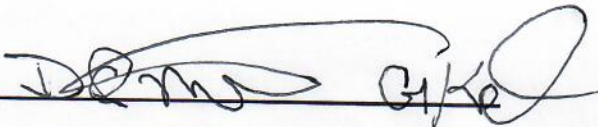
Premises Address: 282 Main Street West Newbury, MA  
01985

License Category: Wines and Malt

Manager: Dennis Gikas

I hereby certify and swear under penalties of perjury that:

1. I am authorized to sign this renewal pursuant to M.G.L. Chapter 138;
2. The renewed license is of the same class, type, category as listed above;
3. The licensee has complied with all laws of the Commonwealth relating to taxes; and
4. The premises are now open for business (if not, explain below).

  
Signature

11-21-2018  
Date

Additional Information:  
mggikas@comcast.net







Inspection #: 18-6-IS  
Inspection Type: BUSINESS INSP

Entered: 11/19/2018

By: Assistant Chief Benjamin D Jennell

Status: Completed

Completed: 11/19/2018 Start: 1430 End: 1500 By:

Assistant Chief Benjamin D Jennell

Disposition: Passed

Paid: No

**Location**

WEST NEWBURY PIZZA CO  
282 MAIN ST  
WEST NEWBURY MA 01985

**Contact Type**

Work Phone

**Info**

978-363-2920

**Comments**

Contact created from site:  
WN-MA282B2

**Schedule**

Type: Date

Date: 11/19/2018 @ 1430

**Remarks**

Hood last clean date 10-28-2018 Next Service date 3-28-2019  
Ansual System last date 11-30-18  
Fire Extinguisher last date 11-30-18

**Company Name**

Company Name: West Newbury Pizza Company

RECEIVED

NOV 21 2018

BOARD OF SELECTMEN  
TOWN OF WEST NEWBURY

Inspection #: 18-6-IS  
Inspection Type: BUSINESS INSP

Phone(s)

Phone: 978-363-2920

General

Outside Rubbish: OK  
Dumpster Location: OK  
Inside Rubbish: OK  
Hallways, Stairs, Aisles Clear: Ok  
Exits, Clear & Good Order: Ok  
Exit Lights: N/A  
Emergency Lights: OK

Fire Protection

Fire Alarm: Ok  
Fire Alarm Standby Power:  
Sprinkler System: N/A  
Standpipe & Hose Stations: N/A  
Fire Extinguisher: Ok  
Fire Door Blocked: Ok  
Date of Last Fire Extinguisher Inspection: 11/30/2017

Heating

Fuel: Ok  
Heater Serviced: Ok  
Proper Clearances: Ok  
Automatic Shutoffs: Ok  
Chimneys, Flues: OK

Electrical

Defective Equipment: Ok  
Extension Cords: Ok  
Proper Fuses: Ok  
Generator Standby Power: N/A

Inspection #: 18-6-IS  
Inspection Type: BUSINESS INSP

Cooking

Cooking Appliances:  
Range Hood Clean: Ok  
Fixed Extinguishing System:  
Motors & Fan Clean: Ok  
Date of Last Hood Clean: 10-28-2018  
Date of Next Clean:

Sprinkler System

Sprinkler System: NO  
Dry: No  
Wet: No

Date Inspected

Date: 11/19/2018

Recommendations

Description: Lamp cord running freezer  
Location: Basement  
Solution: Change cord to heavy duty and remove from power strip

Description: Fire extinguisher missing tag for inspection  
Location: Walk in refrigerator  
Solution: have inspected next time company is in for fire extinguisher testing.



# REQUEST FOR USE OF FACILITIES

C

Organization or Group Antonopoulos Family

Person Making Reservation Erin Antonopoulos

Mailing Address [Redacted]

Phone [Redacted] e-mail [Redacted]

Event Date: 12-7-18 Start Time 6:00 pm End Time 9:00 pm

Summary of Event Birthday Party

Number of Attendees 20

Event Details: *Please be specific i.e. alcohol\*, music, food* - music, food, games, dancing

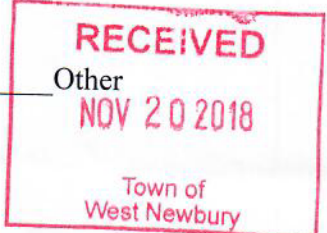
If alcohol is being served, a Liquor Liability Policy must be provided (\$1,000,000), see page 2.

### Check Appropriate Block:

Fund Raising Group       Commercial In-Town       Resident  
 Non-Profit                       Commercial Out-of-Town       Other

### Facility Requested:

1910 Bldg Hearing Room (1)       Pipestave Equest. Area\*\*  
 1910 Bldg Hearing Room (2)       Athletic Playing Fields\*  
 Town Hall- (across from Library)       Mill Pond Rec Bldg\*\*  
 Annex                                       Bandstand



Fee Paid by Check/Cash \_\_\_\_\_

Fee Waived \_\_\_\_\_

### TERMS AND CONDITIONS OF USE:

1. Must leave the facility as you found it, place tables and chairs in the storage area and remove all trash and recycling. The town does not have a custodian on staff and other events may be scheduled to use the facility after you. Please contact Dispatch at 978-363-1213, if the town offices are closed, with any problems.
2. No open flames, i.e. candles, torches, etc. (Chafing trays with sternos **are** allowed.)
3. Exits and entrances must be kept clear. Tables must be a minimum of 6' from exits and entrances.
4. All decorations must be fire resistant.
5. No live trees or shrubs allowed, including Christmas trees.
6. No smoking inside buildings; smokers must be outside of the building, 20' from all entrances and exits.
7. If deemed necessary to maintain the safety of the public, a Fire Watch (Fire Dept. representative.) may be required, at the then-current hourly fee.
8. No fog machines or fake smoke machines allowed. No helium balloons allowed in the Annex.
10. Permits are required for temporary signs. No signs are allowed on public property without prior approval by the Board of Selectmen

**PLEASE NOTE: IF YOU ARE APPLYING TO OFFER ANY KIND OF CAMP FOR CHILDREN, YOU MUST GET PRIOR APPROVAL FROM THE BOARD OF HEALTH.**  
 978-363-1100, x. 118



Name: Antonopoulos

Event: Party

**Insurance:** The organization's representative or the individual requesting the space will be required to sign an indemnification agreement (below) with the Town of West Newbury for a scheduled event. A general liability policy (\$1,000,000 per occurrence/\$3,000,000 aggregate) is required as part of the rental agreement, and a certificate of insurance naming the Town as an additional insured must be provided before the date of the event as proof of said policy. If alcohol is being served, a Liquor Liability Policy must be provided (\$1,000,000) in addition to the general liability coverage.

\* **ATHLETIC PLAYING FIELDS RENTAL:** Must have prior approval by the Parks and Rec Commissioners. Payment by check (to: Town of West Newbury) or cash must be received in the Town Manager's Office, and a Certificate of Insurance must be received prior to the date requested to use the fields. (See above for details.)

\*\***MILL POND RECREATION BUILDING AND PIPESTAVE EQUESTRIAN AREA:** Must have prior approval by the Mill Pond Committee.

**Indemnification Agreement:** I/We, Antonopoulos Family (group), agree to pay for any damage to the facility incurred during the term of rental by our organization. I/We understand that I/we must leave the area in the same condition that it was found. Furthermore, I/we hereby agree to save and hold harmless and/or indemnify the said Town of West Newbury against any and all claims or liabilities for personal injury or property damage arising out of use of said property.

[Signature]  
Individually/Authorized Signature for Group

11/19/18  
Date

**Parks & Rec Committee or Mill Pond Committee**

Signature (if applicable): \_\_\_\_\_

Date: \_\_\_\_\_

Requests and comments:

**Chief of Police**  
Signature:

[Signature: Reed]

Date: 11/20/18

Requests and comments: NO ISSUES

**Fire Chief**  
Signature:

N/A

Date: \_\_\_\_\_

Requests and comments:

**Approval granted if signed here by Town Manager:**

\_\_\_\_\_

Date: \_\_\_\_\_

Requests and comments:

# REQUEST FOR USE OF FACILITIES

D

Organization or Group \_\_\_\_\_

Person Making Reservation David Parrott

Mailing Address \_\_\_\_\_

Phone \_\_\_\_\_ e-mail \_\_\_\_\_

Event Date: 12-16-2018 Start Time 11:00 End Time 19:00

Summary of Event Birthday Party

Number of Attendees 20

Event Details: *Please be specific i.e. alcohol\*, music, food* - 5-year old bday, cake

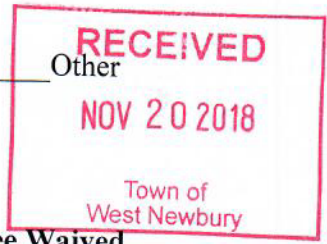
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### Check Appropriate Block:

Fund Raising Group       Commercial In-Town       Resident  
 Non-Profit                       Commercial Out-of-Town       Other

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 Town Hall- (across from Library)       Mill Pond Rec Bldg\*\*  
 Annex                                       Bandstand



Fee Paid by Check/Cash \_\_\_\_\_

Fee Waived \_\_\_\_\_

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3. Exits and entrances must be kept clear. Tables must be a minimum of 6' from exits and entrances.
4. All decorations must be fire resistant.
5. No live trees or shrubs allowed, including Christmas trees.
6. No smoking inside buildings; smokers must be outside of the building, 20' from all entrances and exits.
7. If deemed necessary to maintain the safety of the public, a Fire Watch (Fire Dept. representative.) may be required, at the then-current hourly fee.
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 978-363-1100, x. 118

Name: \_\_\_\_\_

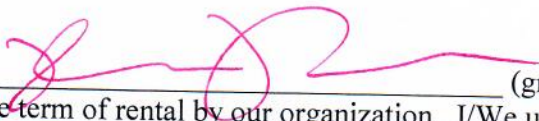
Event: \_\_\_\_\_

**Insurance:** The organization's representative or the individual requesting the space will be required to sign an indemnification agreement (below) with the Town of West Newbury for a scheduled event. A general liability policy (\$1,000,000 per occurrence/\$3,000,000 aggregate) is required as part of the rental agreement, and a certificate of insurance naming the Town as an additional insured must be provided before the date of the event as proof of said policy. If alcohol is being served, a Liquor Liability Policy must be provided (\$1,000,000) in addition to the general liability coverage.

\* **ATHLETIC PLAYING FIELDS RENTAL:** Must have prior approval by the Parks and Rec Commissioners. Payment by check (to: Town of West Newbury) or cash must be received in the Town Manager's Office, and a Certificate of Insurance must be received prior to the date requested to use the fields. (See above for details.)

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\_\_\_\_\_  
Individually/Authorized Signature for Group

11/20/18  
\_\_\_\_\_  
Date

**Parks & Rec Committee or Mill Pond Committee**  
Signature (if applicable): \_\_\_\_\_

Date: \_\_\_\_\_

Requests and comments:

**Chief of Police**  
Signature:  \_\_\_\_\_

Date: 11/20/18 \_\_\_\_\_

Requests and comments: NO ISSUES.

**Fire Chief**  
Signature: N/A \_\_\_\_\_

Date: \_\_\_\_\_

Requests and comments:

**Approval granted if signed here by Town Manager:**

\_\_\_\_\_  
Date: \_\_\_\_\_

Requests and comments:

November 20, 2018

From: The West Newbury Bicentennial Committee (WNBC)

To the West Newbury Board of Selectmen (WNBOS): Questions with regard to monies from Sponsors and the State of Massachusetts.

Preamble:

The WNBC presented a budget to the WNBOS at the Selectman's meeting prior to the Annual West Newbury Town Meeting, April, 2018. A budget of in excess of \$350,000 provided by a professional event planner that had planned The Town of Westin's 300<sup>th</sup> anniversary celebration in 2013 was paired down to \$164,870 by the lay persons of the WNBC. It is unclear to members of WNBC at this point what monies can be used for the celebration of West Newbury's 200<sup>th</sup> Birthday and what cannot be at a most critical time. The agreement, which was not reflected in the Article to appropriate \$140,000, was to return all monies raised from sponsors to the town to be deducted from the appropriation. The majority of the committee understood that the monies not used by a fiscally responsible committee would be returned. This discrepancy in thinking has raised critical questions for which the WNBC needs the town's guidance.

- Why was the WNBC not required to include "give back" policy in the article?
- If a sponsor volunteers their land, goods, services etc., does the donation need to be valued and deducted from the appropriation?
- If a Sponsor sponsor's a specific event does that get deducted from the appropriation? If not, does the sponsorship money need to go directly to vendors (which would probably effect its tax qualification) or can it go through the town?
- With the huge amount of work and responsibility that WNBC has, what is the incentive to seek sponsors? Sponsors would have to know that they are not contributing to a bigger celebration but decreasing the cost to the town.
- WNBC is going to take orders for numbered prints of the amazing painting Trisha Mansfield gifted to the Town of West Newbury. Do fund raisers such as this go against the appropriation.
- The Commonwealth of Massachusetts has appropriated \$25,000 for our celebration. Does this amount count in addition to appropriated monies or not?

The Bicentennial Celebration is upon us. The WNBC is making deposits and commitments with vendors. The last monies will be the difference between okay and great. We feel we were chosen for this committee for our ability to understand value and to make a seriously good celebration that will last and pay off for one hundred years. It is the opinion of the Town Counsel that State appropriated monies and monies "in kind" or designated to a specific event from Sponsors would be in addition to the appropriated money. He will discuss this with the Town Manager. WNBC needs to know that the Board of Selectmen supports all clarifications before we can proceed.

## Town Manager

---

**From:** Town Manager  
**Sent:** Thursday, November 8, 2018 5:59 PM  
**To:** Stephen Swallow ([REDACTED])  
**Cc:** Judith Doble Gregg ([REDACTED]); Krystelle Griskiewicz ([REDACTED]); Laurie Zywiak; Susan Yeames  
**Subject:** Bicentennial Committee, accounting vehicle

Steve,

As we discussed by phone, the statutory reference included in the Town Meeting vote negates the need to create a Gift Account, so this item was removed from the 11/13 BoS agenda.

Per Mike McCarron, the vote of Town Meeting 2018 was as follows:

K.C. Swallow, Chairperson of the Bicentennial Committee, moved to transfer from FREE CASH the sum of \$140,000 to add to the special fund established in accordance with the provisions of MGL Chapter 44, Section 53I for a celebration of West Newbury's Bicentennial in 2019. Any remaining funds will be closed out to the undesignated fund balance at the close of Fiscal Year 2020.

The Moderator, pro tempore, declared the Motion passed by majority vote.

K.C. Swallow resumed the office of Town Moderator.

MGL c. 44 sec 53 I states:

Section 53I. A city or town, for the celebration of the two hundredth, two hundred and fiftieth, three hundredth and three hundred and fiftieth anniversary of its settlement or incorporation, and for the celebration of any semicentennial anniversary occurring thereafter, or for other special celebrations or events sponsored by the city or town for the benefit, enjoyment and edification of its residents and visitors, may appropriate money annually during the 5 years preceding such anniversary or special event. Notwithstanding the provisions of section 53 or any other general or special law to the contrary, such city or town may establish in its treasury a special fund in which shall be deposited such sums as may be appropriated by it under this section, and any and all sums received from the sale of commemorative items, admission charges or other monies received in connection with the anniversary or special event. Any and all such sums received by the treasurer shall be kept separate from other moneys, funds or property of such city or town and the principal and interest thereof may, from time to time upon the authorization of the mayor or city manager, as the case may be, the board of selectmen or the majority of any special committee established to plan such celebration or special event, be expended for the purposes of said celebration or special event in the year of such celebration or special event and in the year preceding or succeeding the same. Any surplus remaining in said special fund after such celebration or special event is concluded, shall be transferred by such treasurer into the treasury of such city or town.

The account is part of the Motion and the Statute, and I verified with the Treasurer that this statutory vehicle was the basis for the account that has been set up.

Following your Committee's discussion at its own meeting on 11/13, re the fundraising/sponsorship questions we discussed, let's circle back by phone next Wednesday re how best to proceed.

Thanks,  
Angus

**Town Manager**

---

**From:** Marlene Switzer <[REDACTED]>  
**Sent:** Wednesday, November 21, 2018 12:22 PM  
**To:** Town Manager  
**Subject:** Re: OSRP update on BOS agenda

By next Friday (10 days) would be ideal.

\*\*\*\*\*  
Marlene Switzer  
"The Write To Know"  
[REDACTED]

On Wed, Nov 21, 2018 at 12:15 PM Town Manager <[townmanager@wnewbury.org](mailto:townmanager@wnewbury.org)> wrote:

Thanks, I have a call w Glenn K. shortly to review and finalize Monday's agenda.

What is the deadline for BoS to provide comments on the draft?

*Angus Jennings, Town Manager*

Town of West Newbury

Town Office Building

381 Main Street

West Newbury, MA 01985

(978) 363-1100 x111

[townmanager@wnewbury.org](mailto:townmanager@wnewbury.org)

**From:** Marlene Switzer <[REDACTED]>  
**Sent:** Wednesday, November 21, 2018 12:06 PM  
**To:** Town Manager <[townmanager@wnewbury.org](mailto:townmanager@wnewbury.org)>  
**Subject:** OSRP update on BOS agenda

I just spoke with Patricia, Angus, and she said there is much reveler and feasting going on at Town Hall. She also said I have to send you a copy of the OSRP update so it can be placed on the posted BOS agenda for Monday night's meeting. I've attached it here. Any questions, please call or e-mail.

Marley

*Too big to send in one document. Sending 3 parts.*

\*\*\*\*\*

*Marlene Switzer*

*"The Write To Know"*

[REDACTED]

[REDACTED]



# Town of West Newbury

381 Main Street

West Newbury, Massachusetts 01985

Angus Jennings, Town Manager

978-363-1100, Ext. 111 Fax 978-363-1826

[townmanager@wnewbury.org](mailto:townmanager@wnewbury.org)

TO: Board of Selectmen  
 FROM: Angus Jennings, Town Manager  
 DATE: November 24, 2018  
 RE: FY20 budget calendar

I propose the following dates in the FY20 budget calendar for your review and comment:

Budget Milestone	Proposed Date
Establish FY20 budget/capital priorities	12/3/18
Board of Selectmen FY20 budget message	12/3/18
Expense and revenue Budgets for all Dept. Heads or Town Officers due to Town Manager and Town Accountant	1/4/19
Expense and revenue Budgets for all Boards/Commissions/Committees due to Town Manager and Town Accountant	1/18/19
FinComm and Town Manager budget working sessions	Jan, Feb [SCHEDULE TO BE POSTED IN EARLY JANUARY]
Town Meeting Warrant closes – Article requests due to Board of Selectmen	2/13/19 ( <i>Note: was 2/8 in BoS calendar</i> )
Town Manager proposed FY20 budget, with Town Manager budget message, due to Finance Committee and Board of Selectmen	TBD (for discussion)
Town Manager proposed FY20 Capital Improvements Program due to Capital Improvements Committee and Board of Selectmen	[SAME AS BUDGET]
Town Manager proposed FY20 departmental and organizational structure due to Board of Selectmen	[SAME AS BUDGET]
Receive PSRD Voted Assessment	3/15/19
CIC report due to Board of Selectmen	3/18/19
Selectmen's Endorsement of Proposed FY20 Budget	3/18/19
Joint meeting with BoS, TM, FinComm, Moderator, TC	3/25/19
Post Warrant	4/12/19
Vote Draft Motions	4/12/19
Annual Town Meeting	4/29/19
<b>Approve Employee Wage Schedule</b>	TBD (for discussion)



Once approved, as may be modified, these dates will be updated in the Board of Selectmen's FY19 Calendar stored on the shared server, and an updated calendar will be circulated to all parties with responsibility for any aspect of budget preparation, along with budget guidance my office may provide.



# Town of West Newbury

## Board of Selectmen FY '20 Budget Message

*November 26, 2018 - JA DRAFT*

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To insure the growing and continued financial health of the Town of West Newbury, provide the public with confidence that Town officials respect their responsibility for fiscal stewardship and demonstrate to bond rating agencies that the Town has thoughtfully prepared for its future, the Board of Selectmen present to our employees, boards and committees the following guidance in preparing the FY '20 budget.

### **Revenue and Expenditure Forecast**

The Government Financial Officers Association (GFOA) notes a true structurally balanced budget is one that supports financial sustainability for multiple years into the future. A critical step in maintaining a sound financial plan is the preparation of a multi-year revenue/expenditure forecast.

The Town Manager, in consultation with department heads, shall prepare and maintain a three-year financial forecast of revenues, general and enterprise fund operations based on current service levels and current funding sources, to also include funding of the capital plan.

### **FY '20 Budget Message:**

- Target an average single-family tax increase of no more than 2% (budget + new growth), not including any Pentucket capital project impact.
- Reduce FY '19-year end certified free cash to a maximum of 5% of the operating budget.
  - In FY '19 \$300,000 was appropriated into the stabilization fund. Target a minimum increase of \$50,000 each fiscal year, until it's fully funded a minimum of five years into the future.
  - Fund the school stabilization fund based on retiring debt.
  - Fund the pension stabilization fund @ \$50,000.
- Build revenue & expenditures projections a minimum of 3 years forward, current year and 3 years of history.
- A better understanding of actual police/dispatch expenditures, to target a maximum of level funding with the FY '19 appropriation, exclusive to the new police & dispatch union contract impacts.
- Bring the DLS financial policy review to a conclusion.

### **Future Priorities - To complete during FY'20:**

- Implement DLS forecast tool. Invite Marcia Bohinc to come in and talk with us about this after we finalize the policies. Where the policies are generally oversite, this is more of an operating tool. This discussion should include the Town Manager, the FinCom, the finance staff and the Selectmen.
- Formalize Operations & Maintenance plans.
- Investigate employee health insurance plan costs and options.



# Town of West Newbury

381 Main Street

West Newbury, Massachusetts 01985

Angus Jennings, Town Manager

978-363-1100, Ext. 111 Fax 978-363-1826

[townmanager@wnewbury.org](mailto:townmanager@wnewbury.org)

TO: Board of Selectmen  
FROM: Angus Jennings, Town Manager  
DATE: November 24, 2018  
RE: FY20 budget message

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Reference is made to the following sample budget messages in other communities:

Town of Westford, MA FY19 Budget Message: online [here](#)

Town of Hampden, ME FY18 Budget Message: online [here](#)

In my experience, there have been two distinct events in the delivery of a budget message: the first is a statement of budget policy direction for the upcoming fiscal year; and the second is a detailed narrative/presentation with exhibits to accompany the presentation of the proposed budget. The initial statement is adopted by the chief elected body, with the second message prepared by the chief operating official.

I suggest that the present objective is to formally kick off the FY20 budget process, and to make known the Board of Selectmen's goals for the budget. The initial budget message should establish any numerical objectives you may have for the budget, and would be a good opportunity to communicate any changes in service levels the Board of Selectmen may wish to see in the proposed budget.

Drawing from prior discussions and other policy guidance, I offer the following suggested FY20 budget goals and objectives for your consideration:

- Taking into account reasonable estimates of future new growth and changes to assessed values, propose a FY20 budget that will limit property taxpayers' change to +/- \_\_%. The proposed budget [SHOULD/SHOULD NOT] rely on an appropriation from Free Cash in order to meet this budgetary goal. If, in order to meet this budgetary goal, the proposed budget includes any changes in proposed organizational structure, employee head count, hours of operation and/or budgeted level of service, these changes should be specified.
- Proposed updates and revisions to the Capital Improvement Program should be presented by the Town Manager concurrently with the proposed FY20 budget, understanding that capital planning and budgeting will continue concurrently with the overall budgeting process, and taking into account the process requirements of the Capital Improvements Committee Bylaw.
- Propose a FY20 budget with an updated chart of accounts, to facilitate the transition to a new accounting software during the FY20 budget year.
- Proposed budget to include, for both expenses and revenues, FY18 budgeted and actual, FY19 budgeted and year-to-date, FY20 proposed (Dept/B/C/C) and FY20 proposed (Town

Mgr). Modifications to account structure due to changes in chart of accounts should be specified.

- Enact a clear, transparent public process for finance committee and public review of the proposed FY20 budget, upon its presentation by the Town Manager on or before [DATE], taking into account information from taxpayers, town officials, department heads, boards/commissions/ committees, and residents.
- Proposed FY20 budget should take into account the anticipated adoption, prior to FY20, of the policies recommended in the June 2018 Community Compact Financial Policy Manual.
- Proposed FY20 budget should take into account the estimated impacts, if any, of any newly effective requirements imposed by statute, regulation or policy, and should specify the estimated impact of any such newly effective requirements.
- For each section of the proposed budget, specify the individual(s) or the board/commission/ committee that will have authority to expend the budgeted funds.

You may find elements of the Town of Westford Budget Policy Direction that would also make sense to include here; it is online at:

<https://www.westfordma.gov/DocumentCenter/View/5587/Board-of-Selectmen-Budget-Policy-Direction-for-FY19-Budget>

At the time that my office presents the FY20 budget, it will include more detailed narrative/exhibits such as those reflected in the budget message documents linked above.

## Town Manager

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**From:** Wendy Reed <wndreed@gmail.com>  
**Sent:** Tuesday, November 6, 2018 9:45 AM  
**To:** Town Manager  
**Subject:** Wetlands Trail Maintenance Plan  
**Attachments:** Approved Wetland Trail Corridor Maintenance Plan.docx; MESA approval.pdf; RDA Scan.pdf

Hi Angus,

Here is the wetland trails maintenance plan I spoke of last night. A draft version was approved by the BOS and an RDA submitted to the Conservation Commission last spring (RDA also attached). After inclusion of some clarifications requested by Con Comm, the final version was given a negative determination. It covers all town owned properties with trails in wetland areas, including Mill Pond. During the drafting process, I reached out to Dave Rimmer to see if ECGA wanted to be included in the filing with Con Comm for their trail properties in WN, but they opted not to. I did provide him a copy of a draft version of the document; I don't think it occurred to either one of us at the time that it should be incorporated into the Mill Pond Management Plan somehow.

Given that the Mill Pond area has two NHESP habitat areas, the BOS asked me to apply for a MESA determination for the plan as well. They approved the plan and determined that the activities described were exempt. That letter is also attached. This may be something to think about with any revisions of the overall Management Plan; I don't know if NHESP was involved in approval of either of the prior plan versions - or if the habitat areas were even defined at that point. It may be that if there are no other activities than the trail maintenance covered under the approved plan and that plan is incorporated into the Management Plan, then the current approval is adequate. I can follow up on this once there's a draft Management Plan if you'd like.

Let me know if you have any questions about the history of this or need additional information.

Wendy



MASSWILDLIFE

## DIVISION OF FISHERIES & WILDLIFE

1 Rabbit Hill Road, Westborough, MA 01581

p: (508) 389-6300 | f: (508) 389-7890

MASS.GOV/MASSWILDLIFE

July 13, 2018

West Newbury Board of Selectmen  
381 Main St.  
West Newbury MA 01985

RE: Project Location: Town of West Newbury  
Project Description: Trail Maintenance  
NHESP Tracking No.: 09-26385

RECEIVED  
NOV 06 2018  
TOWN MANAGER  
TOWN OF WEST NEWBURY

Dear Applicant:

Thank you for submitting the "WETLAND TRAIL CORRIDOR MAINTENANCE PLAN" (dated April 2018) and supporting documentation to the Natural Heritage and Endangered Species Program of the MA Division of Fisheries & Wildlife (the "Division") for review pursuant to the Massachusetts Endangered Species Act (MESA) (MGL c.131A) and its implementing regulations (321 CMR 10.00).

The Division hereby approves the submitted management plan.

Therefore, the proposed activities are **exempt from MESA review** pursuant to 321 CMR 10.14 which states: "[t]he following Projects and Activities shall be exempt from the requirements of 321 CMR 10.18 through 10.23...".

(15) The active management of State-listed Species habitat, including but not limited to mowing, cutting, burning, or pruning of vegetation, or removing exotic or invasive species, for the purpose of maintaining or enhancing the habitat for the benefit of rare species, provided that the management is carried out in accordance with a habitat management plan approved in writing by the Division"

Any changes to the proposed project or any additional work beyond that provided may require a filing with the Division pursuant to the MESA regulations. If you have any questions about this letter, please contact Melany Cheeseman, Endangered Species Review Assistant, at (508) 389-6357.

Sincerely,

A handwritten signature in black ink that reads "Thomas W. French".

Thomas W. French, Ph.D.  
Assistant Director

cc: Wendy Reed

MASSWILDLIFE

# Wetland Trail Corridor Maintenance Plan

---

West Newbury Open Space Committee  
West Newbury Mill Pond Committee  
West Newbury Riding and Driving Club

April 2018

This plan covers the activities necessary to maintain the trail corridor of existing trails in wetland areas in the town of West Newbury. It does not include

- creation of new trails
- modifications to existing trail surfaces
- installation or modification of drainage structures
- installation or modifications to stream or wet area crossings

Additionally, this plan assumes that the trail work described is to be completed by the West Newbury Open Space Committee, Mill Pond Committee and West Newbury Riding and Driving Club and/or volunteers under their supervision. These groups will not be responsible for trail work completed without their authorization. This plan also does not assume any right to perform trail maintenance on property owned by entities other than the town of West Newbury, other than as granted through existing trail easements and/or owner permission.

Before engaging in any trail maintenance, all individuals will be provided with a map of the area in which they will be working and a copy of the practices to be followed in performing the maintenance.

### **Wetlands Identification**

Figure 1 shows properties in West Newbury that have existing trail networks. While some of these trails may cross through wetland resource and buffer zone areas, delineation to establish wetland and buffer zone areas for all these properties would be labor and cost prohibitive. Given that the activities proposed in this plan would have minimal impact on the public interests the wetland regulations are designed to protect, this plan uses digital maps to estimate the extent of wetland areas.

Maps from the Merrimac Valley Planning Commission show estimated wetland boundaries as well as existing trail systems for West Newbury. The location and extent of these wetland areas was confirmed by reviewing corresponding maps from the Ma DEP Wetlands and Wetlands Change website. This website also provides the locations of NHESP Estimated Habitats of Rare Wildlife. The information provided from these websites was combined to develop maps for the West Newbury properties this plan covers and are included as Appendix A to this plan. Rather than establishing a protective 100 foot buffer zone from these digitally represented lines, this plan provides best management practices that would be appropriate even in wetland areas for existing trails.

### **Regulatory Compliance**

Although many of the trail properties have wetlands located within them, only a small percentage of existing trails cross through wetland areas. Because these trails are already being used, and the maintenance activities proposed in this plan will have a negligible impact on these wetland areas, a Request for Determination for these activities is being submitted to the Conservation Commission to comply with wetlands regulations. This filing will streamline completion of trail maintenance activities and allow committee members and volunteers to be in compliance with wetlands regulations



This plan does not apply to any work other than the routine trail corridor maintenance described in the plan. Approval for any work other than routine trail corridor maintenance as described in this plan must be sought by the individual group proposing the work under a separate filing. The following limitations to the use of this plan also apply:

1. Any trail corridor work proposed for areas shown as NHESP Estimated Habitats of Rare Wildlife on the maps will require authorization by the Conservation Commission or its Agent prior to work being completed.
2. For trail systems with pre-existing Orders of Conditions from the Conservation Commission, those conditions must be adhered to in addition to the requirements of this plan.

**Clearing Frequency/Extent**

Routine trail corridor maintenance is limited to trimming of vegetation, cutting of tree limbs and branches and the cutting of felled trees to maintain the required height and width of the trail corridor. The frequency and extent of clearing will be dependent on the intended use of the trail. Potential trail uses in West Newbury include the following:

- Pedestrian – including Walking, Hiking, Snowshoeing, Cross Country Skiing
- Mountain Biking
- Equestrian

In its Trails Guidelines and Best Practices Manual, updated March 2012, The Ma Department of Conservation and Recreation categorizes trails into 5 classes based on the extent of trail development and provides recommended operation and maintenance practices for these classes. This document was used to evaluate the types of trails present in West Newbury and determine the following frequency and extent of corridor maintenance for each use. For trails with multiple uses, the use with the most rigorous maintenance guidelines will be followed as set forth below:

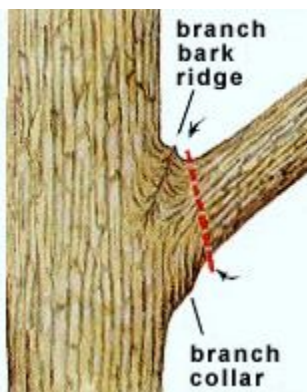
Intended Use	Corridor Width	Corridor Height	Maintenance Frequency
Pedestrian	12 – 18 inches outside tread edge	8 feet	Every 3 to 5 years or as needed to respond to trail obstacles
Mountain Biking	12 – 18 inches outside tread edge	8 feet	Every 1 to 3 years or as needed to respond to trail obstacles
Equestrian	18 – 24 inches outside tread edge	10 ft	Every 1 to 3 years or as needed to respond to trail obstacles

Source: <http://www.mass.gov/eea/docs/dcr/stewardship/greenway/docs/dcrguidelines.pdf>

## Clearing Practices

Trail clearing of vegetation outside the tread edge and within the trail corridor will be completed in accordance with the following practices to insure the minimum disturbance to vegetation in or near wetland areas.

1. Herbaceous vegetation less than one foot in height will be left uncut to maintain vegetative cover to the soils.
2. Herbaceous vegetation higher than one foot will be cut to a height no lower than one foot and left in the corridor area.
3. Woody vegetation such as shrubs and vines will be cut at ground surface using loppers where possible, and a pruning saw where necessary. Invasive species may be cut to the ground in an area extending no more than five feet outside the trail corridor.
4. Saplings in the corridor two inches or less in diameter at ground level will be removed by cutting close to the ground surface with a pruning saw. Cuts will be flat so they do not create a safety hazard.
5. When possible, tree branches intruding into the corridor will be cut back to the tree trunk, to the outside of the bark collar as shown in the illustration at the end of this section, rather than cutting off at the corridor edge. Large branches will be undercut to avoid stripping the bark.
6. Fallen trees or limbs will be cleared by cutting out the section that intrudes into the trail corridor with a pruning saw or chain saw if necessary.
7. Woody materials removed from the corridor may be disposed of where cut as long as they do not block the trail, destroy remaining vegetation (for example, by completely blocking light to the remaining vegetation), or obstruct drainage or the flow of water within a wetland area. Any material that will destroy remaining vegetation or obstruct drainage or the flow of water within a wetland area will be disposed of at least fifty feet upland of the edge of the wetland area. Where materials are left where they are cut they will, if possible, be placed perpendicular to the trail corridor with the butt end facing away from the trail.



Branch bark collar

A proper pruning cut should almost always be taken back to just outside the branch bark collar. This is often a slightly raised ring at the base of the branch.

On the upper side of the branch is the branch bark ridge, which begins in the crotch of the two branches and runs along the main stem near parallel to the angle of the branch. A good pruning cut should run from just outside the branch bark ridge and angle down and away from the main stem, remaining outside the branch bark collar. You should not cut into the collar or ridge.

Source: <http://www.tree-care.info/advice/pruning/cut>

## **Access/Equipment**

Trail clearing will be completed in accordance with the following practices for access and equipment.

1. Access will be by established trails and on foot. No motorized equipment will be used to access clearing areas or transport cut materials, other than to the trail head.
2. Foot traffic in the corridor areas outside the trail tread will be minimized as much as possible during trail work by working from within the trail tread where possible.
3. Manual cutting equipment will be used to the maximum extent practical. When motorized saws are necessary, fuel for these saws will be transported in DOT approved containers and stored at least 50 feet from wetland areas shown on the maps. Fueling and refueling will be completed at the fuel storage location rather than the cutting location.

## **Notification**

Each group completing trail corridor maintenance activity under this plan will be responsible for notifying the Conservation Commission Agent before or within 24 hours following completion of the work. The notification may be via email ([jsmith@westnewbury.org](mailto:jsmith@westnewbury.org)) or phone (978) 363-1100, ext 126.

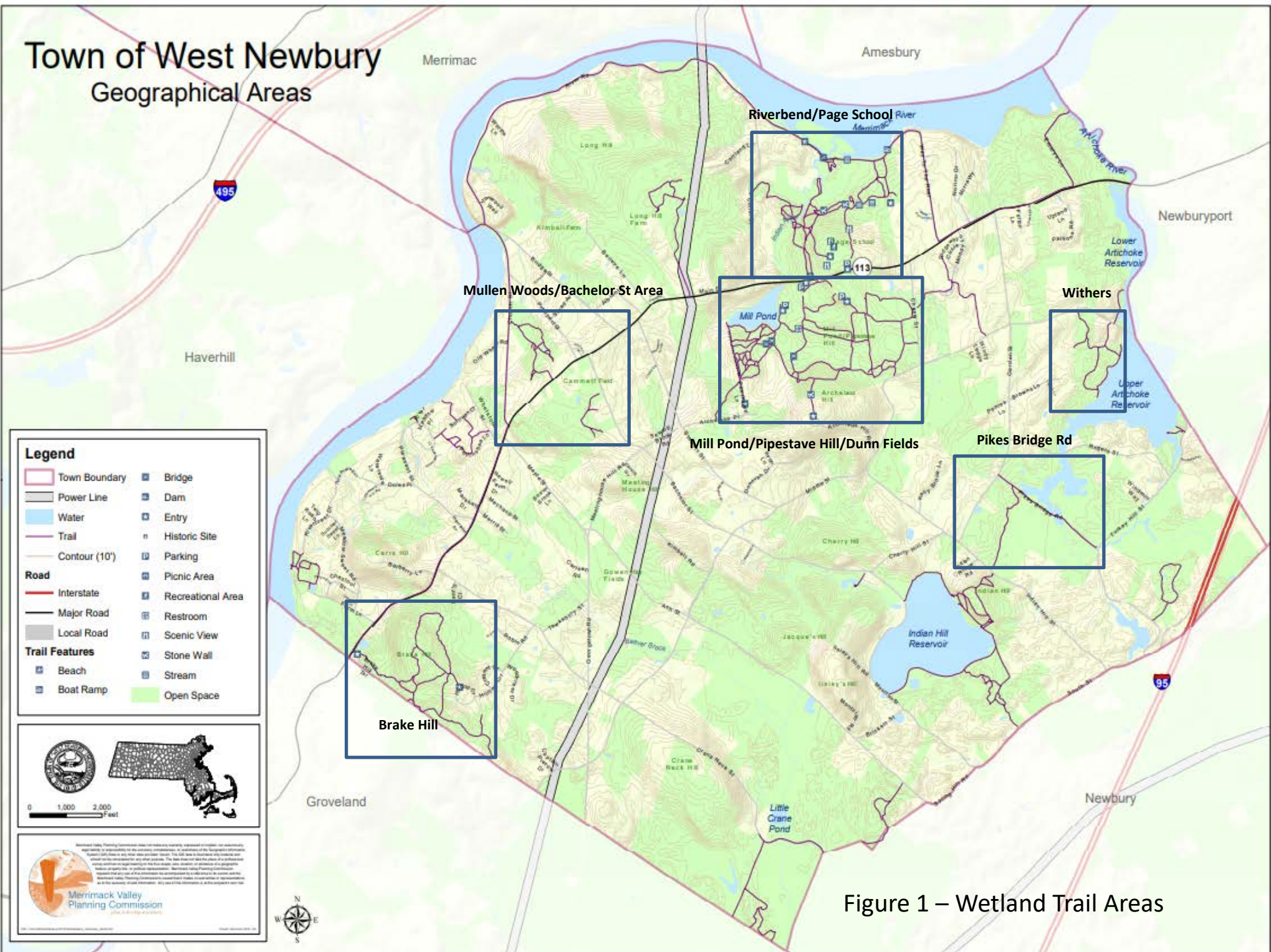
This notification will include:

1. The group responsible for the work
2. The person supervising the work and their contact information, as well as the names of other workers.
3. The location of the trail and area where the work is to be, or has been done, and a description of that work.

Any questions about the requirements of this plan or proposed trail work may also be communicated to the Conservation Agent.

# Town of West Newbury

## Geographical Areas



- Legend**
- Town Boundary
  - Power Line
  - Water
  - Trail
  - Contour (10')
  - Road**
  - Interstate
  - Major Road
  - Local Road
  - Trail Features**
  - Beach
  - Boat Ramp
  - Bridge
  - Dam
  - Entry
  - Historic Site
  - Parking
  - Picnic Area
  - Recreational Area
  - Restroom
  - Scenic View
  - Stone Wall
  - Stream
  - Open Space

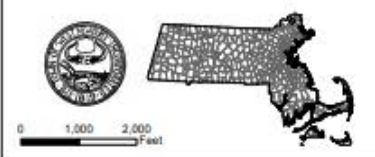


Figure 1 – Wetland Trail Areas

## Appendix A

### Trails/Wetlands Maps

Mill Pond, Pipestave Hill and Dunn Field Area

Riverbend and Page School

Withers Conservation Area

Pikes Bridge Rd

Brake Hill

Mullen Woods and Bachelor Street Area

# Mill Pond, Pipestave Hill and Dunn Fields Area



Wetlands



Trails



NHESP Habitat



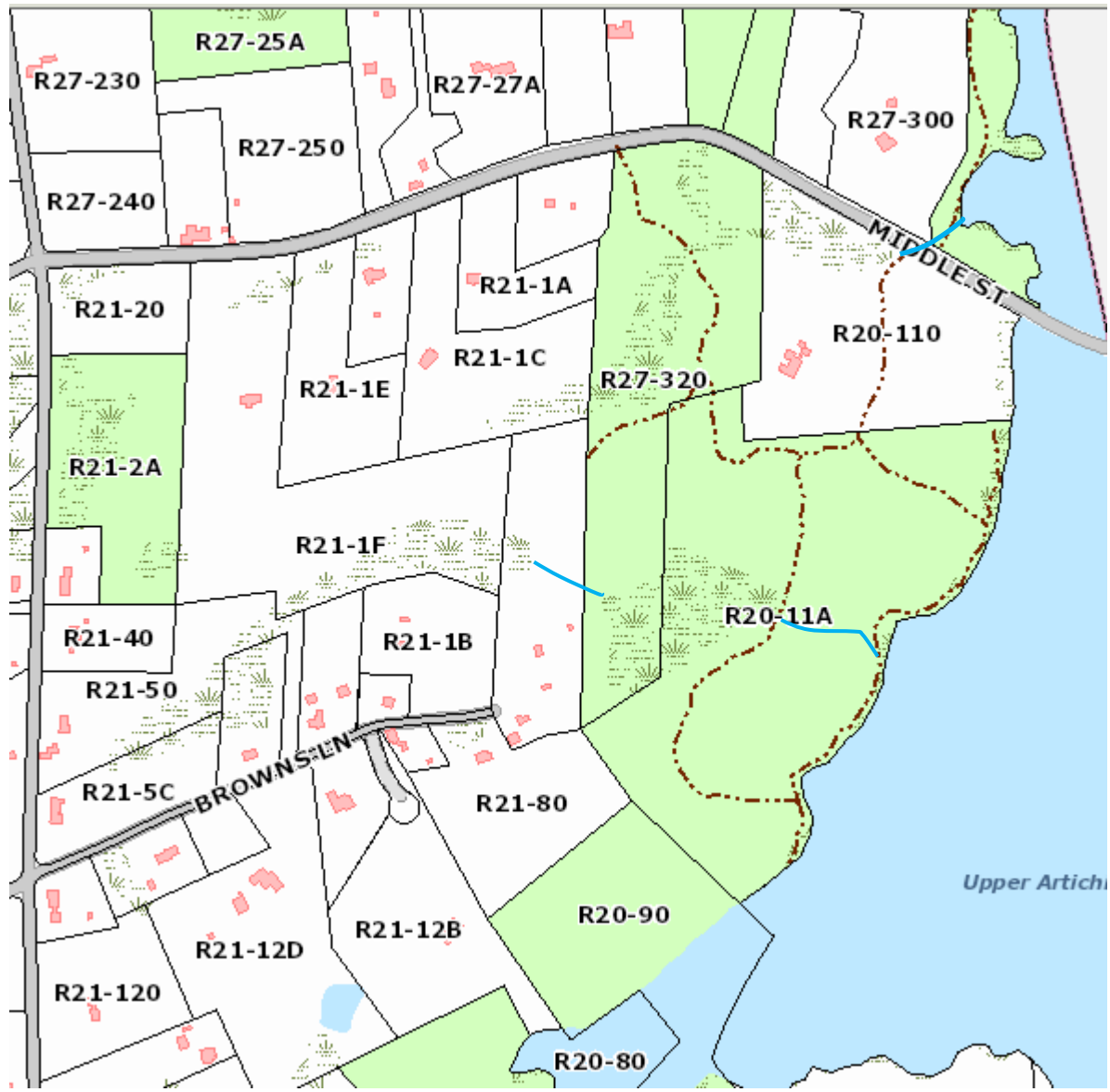
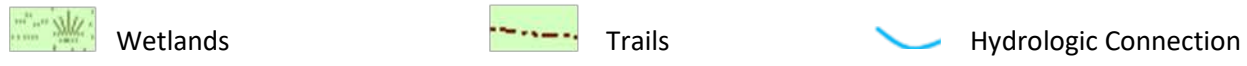
Hydrologic Connection

Wetland Trail Corridor Maintenance Plan - Appendix A: Trails/Wetlands Maps





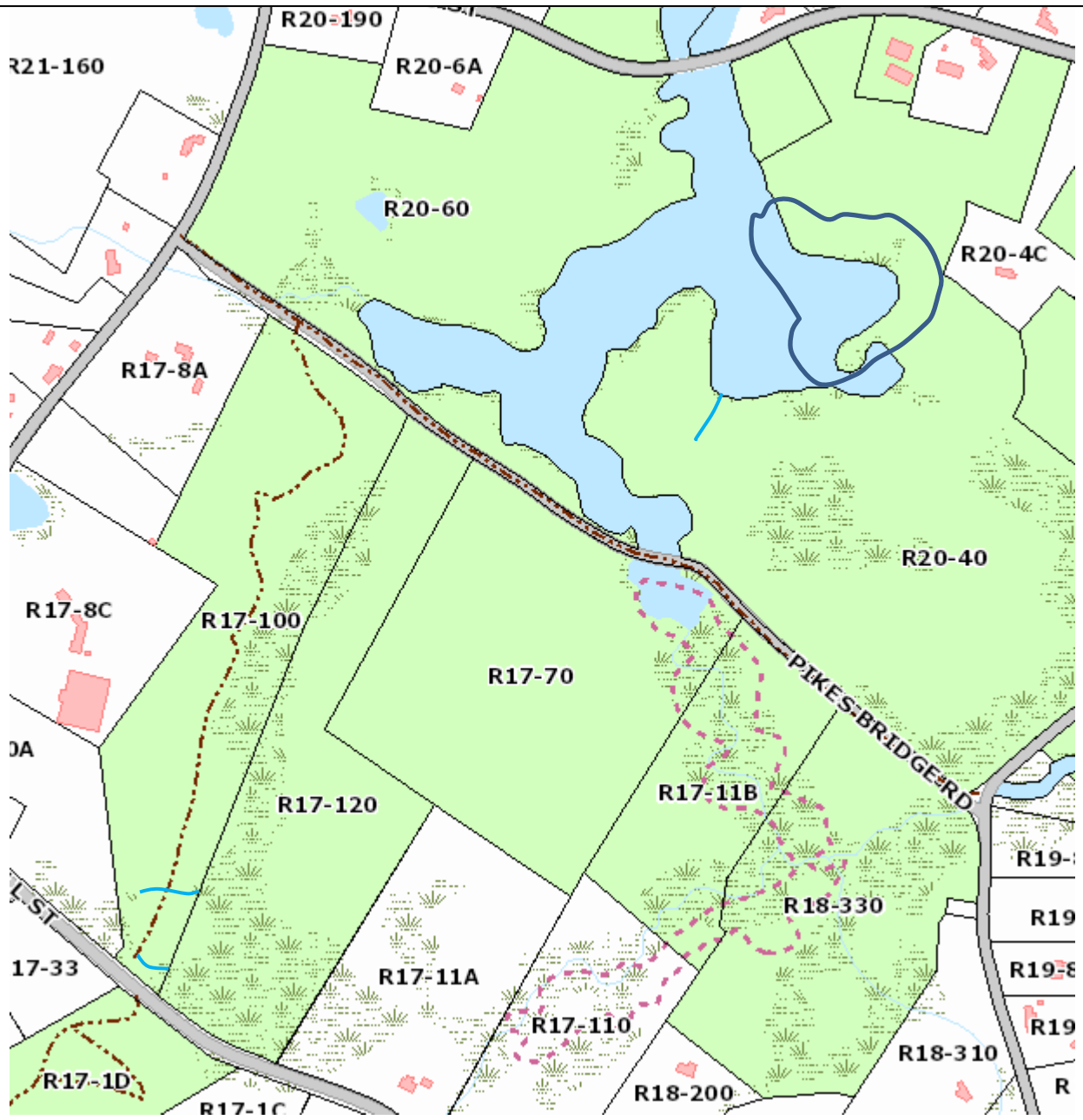
# Withers Conservation Area





# Pikes Bridge Road

- Existing Order
- Wetlands
- Trails
- NHESP Habitat
- Hydrologic Connection
- Easement



Wetland Trail Corridor Maintenance Plan - Appendix A: Trails/Wetlands Maps

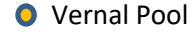
# Brake Hill



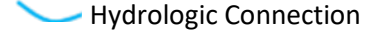
Wetlands



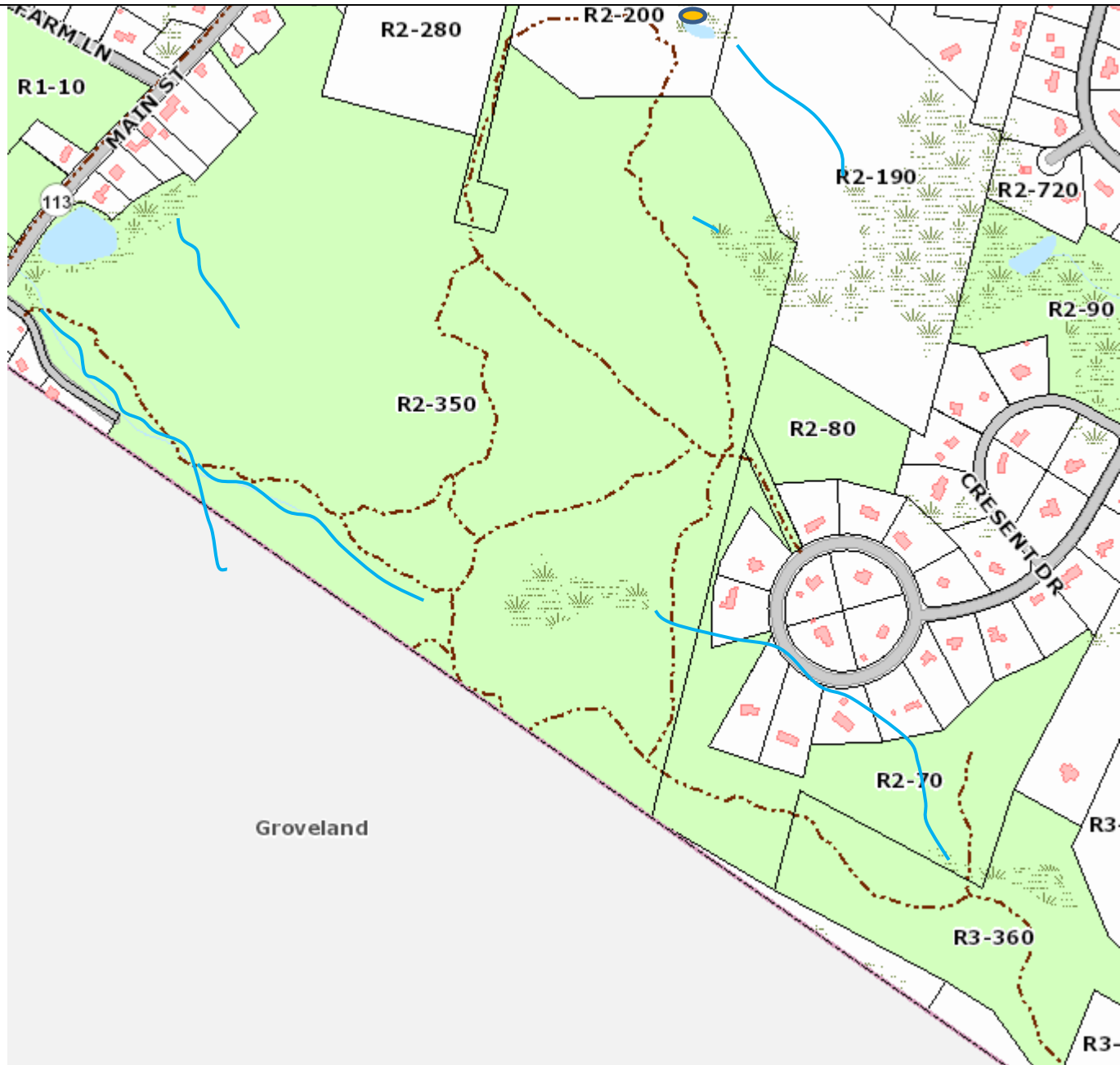
Trails



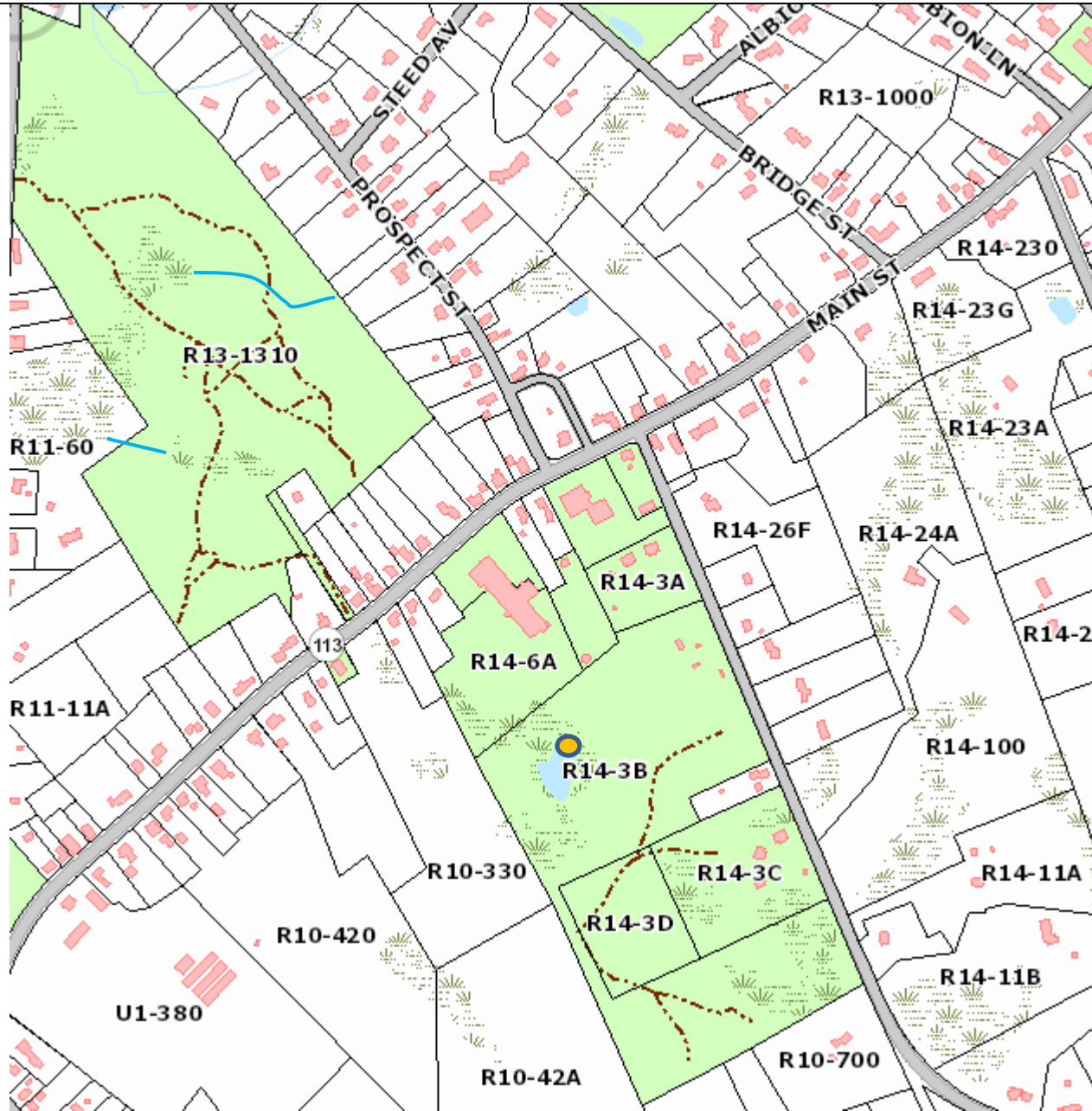
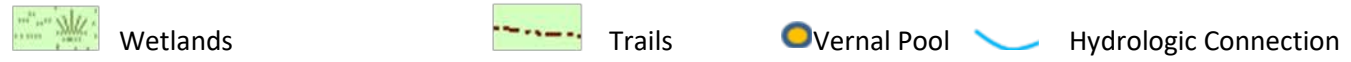
Vernal Pool



Hydrologic Connection



# Mullen Woods and Bachelor Street Area



**From:** Town Manager  
**Sent:** Wednesday, November 14, 2018 5:41 PM  
**To:** Glenn Kemper; David Archibald; Joe Anderson  
**Cc:** Mary Winglass; Michael McCarron  
**Subject:** Brief updates (excerpt)

Middle Street Bridge

- Notes from this morning's conference call attached, along with the draft municipal boundary survey. I'll request the Chairman to add discussion of the survey to the 11/26 agenda.
- The change to design parameters being requested by N'port to take into account potential climate change impacts (incl. potential increase in dam elevation) is out-of-scope and, as noted, could be a cost driver. We're looking into this more closely, and will include an update with the 11/26 agenda item.

*Angus Jennings, Town Manager*  
Town of West Newbury

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**From:** Town Manager  
**Sent:** Thursday, November 15, 2018 10:25 AM  
**To:** 'Jon-Eric White'; Morrison, Micah  
**Cc:** Reed, Peter V.  
**Subject:** RE: 20181031 Progress Meeting Minutes

Jon-Eric,

I have no suggested edits to the meeting notes, and appreciate the add'l clarification you offered.

I would however like to better understand the background of the potential to take into account future potential dam elevation increase. I understand (I think) that this is related to Newburyport's climate resiliency planning, but would like to take a look at whatever background materials are available so I can adequately explain this to the WN BoS. I'll provide them another update at their 11/26 mtg (memo from prior mtg is attached FYI) and I know they'll want to understand (as I do) the potential cost implications for both design and construction – at least, to the extent practical at this early stage of design.

Thanks,  
Angus

*Angus Jennings, Town Manager*  
Town of West Newbury

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**From:** Jon-Eric White  
**Sent:** Thursday, November 15, 2018 11:27 AM  
**To:** Town Manager  
**Cc:** Reed, Peter V.; Ted Angelakis; Diane Gagnon; Anthony Furnari; Morrison, Micah  
**Subject:** RE: 20181031 Progress Meeting Minutes

Angus,

Perfect timing. Diane and I just sat down with our Water Plant Operator, Ted Angelakis. I copied him on this email as this topic will start getting some traction from both municipalities. We are now in action-mode on resiliency issues.

First, DPS has three capital improvement projects (CIPs) proposed for this FY and into future FY's. A Resiliency Plan for our water supply and treatment facility, an inspection of our Lower Artichoke Dam and our Indian Hill dam, and an update to our Water Supply Protection Plan, which was first prepared for us back in 2009 or so.

We need to do the dam inspection asap. That project will do a hydrologic/hydraulic analysis to see if the dam can handle certain storm events, like the 50-year and 100-year. It also requires that we update our topography around both reservoir.

We understand that West Newbury (WN) just put out to bid upgrades to their water supply well and treatment. Their well is, generally, near the shore of our Lower Artichoke Reservoir, near the concrete spillway/dam next to Rt 113/Storey Ave.

Question for Angus: Has your engineering firm, Tata & Howard, performed any study, or evaluation of, or taken into consideration a higher reservoir elevation due to future changes that we need to make to protect ourselves from climate change impacts? I suspect not. But it would be helpful if you ask them. Depending on what they say, we may want to sit down with them. We also hired them for work Ted needs, so we could ask them as well, but if you find out sooner, all the better. And, you may want to ask them if the reservoir elevation rises, will it impact their project or your property. Slight changes may be helpful to your project, even though these changes are further down the road.

**Also, did they perform any survey of the land around your well?** Our dam inspection has field survey scoped out and if we could use whatever survey you have performed so we can merge it with ours, it'll save us a few bucks. Teamwork!

I'm seeing if anyone has performed a flood study/hydrologic analysis of the Merrimack River watershed, projecting out into the future in order to analyze impacts from climate change (CC) and sea level rise (SLR). If any of you know of any firm doing this, please let us know.

Next, we need to start our Resiliency Plan, starting with the need for a thorough scope of work. We are short on money as we have only funded one of the 3 CIPs I mentioned above, and it'll have to be transferred to fund the dam inspection. So this project won't be started anytime soon.

We have no future model for which to give BSC elevations. We need a Merrimack River flood study. Or we use Woods Hole flood model coming out in early 2019, a couple months from now. Or our Resiliency Plan performs some level of analysis. Can the hydrologic analysis that needs to be performed on our dams be revised in scope to look at future, more-intense storms and SLR? We'll ask AECOM.

We're hoping to meet with AECOM on many of these topics but most importantly – what are the likely improvements that will have to be made to the dam in order to prevent the dirty Merrimack from backing into our reservoirs and what will the logical changes be to our water elevations of all the reservoirs, due to future CC impacts? Do we raise all dams and flood more land or simply keep water levels the same and control the elevations via outlet control devices in the dams?

These last few questions I hope to get answered over the next couple of weeks. In the meantime if anyone has answers to the others, please reply-all. Thank you.

Stay tuned.  
Jon-Eric

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**From:** Town Manager  
**Sent:** Thursday, November 15, 2018 5:02 PM  
**To:** 'Jon-Eric White'  
**Cc:** Reed, Peter V.; Ted Angelakis; Diane Gagnon; Anthony Furnari; Morrison, Micah; Gary Bill ; Mike Gootee  
**Subject:** RE: 20181031 Progress Meeting Minutes

Jon-Eric,

I met w Water Superintendent Mike Gootée to review this afternoon. He has a mtg w Tata & Howard scheduled Monday on another matter, so will review himself and with them early next week. His initial review definitely suggests the need for coordination and communication, so I'm glad we're focused on the details of this. I've added both Gary and Mike to this distribution. Will let you know what we learn!

Thanks,  
Angus

*Angus Jennings, Town Manager*  
Town of West Newbury

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**From:** Mike Gootee  
**Sent:** Tuesday, November 20, 2018 10:16 AM  
**To:** Town Manager  
**Subject:** Raising dam level

Good morning Angus,  
Response from me to Jon-Eric White's question to you in the e-mail he sent you on 11/15/18.

I met with Paul Howard of Tata and Howard yesterday. Paul suggests that if Newburyport is proposing to raise the level of the dam, a significant study would need to be performed to see what the impacts would be on our existing wellfield and existing land owners in West Newbury and Newburyport. There may be many questions that would need to be answered but two major ones that we have are; what impacts would it have on the wellfield during high and low water levels in the reservoir?

If the water level is low in the reservoir, would more water be collected in the reservoir that would normally be influencing our water levels in the wells?

If the dam was raised, would higher water levels possibly create a situation where break-through (cross-connection) from the surface water would contaminate our wellfield water conditions? If that happened the wellfield would no longer be able to be used as water source for the Town of West Newbury.

When we installed the wellfield in the early 1990's, one major condition to get approval from MassDEP was to perform a study to make sure there weren't any cross-connections to the surface water in the reservoir.

Also, in past years Newburyport was looking to dredge the reservoir to make it deeper mainly to store more volume of water and to help with algae bloom conditions. Maybe that's another option rather than raising the dam level.

Michael E. Gootée

Water Manager/ Superintendent

Town of West Newbury, MA

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**From:** Jon-Eric White

**Sent:** Tuesday, November 20, 2018 2:01 PM

**To:** Town Manager

**Subject:** RE: Raising dam level

Thanks Angus. These are good questions and you'll certainly have more to follow. It seems that both sets of engineers need to carefully review all of this to make sure the other isn't adversely impacting their system.

We have a Feasibility Plan that we need to get started and we just sat down with our engineer AECOM to get us a fee proposal. That Plan will, hopefully, identify the best options available and when to build them. That Plan won't be done for many months but Part I of that Plan (topo survey and hydrology/hydraulic study) is due sooner and could help us all make decisions. If you could share your topo survey of your wellfield, that would help. You can email it to me.

We may, in fact, end up raising the water level of the Lower Artichoke and Upper. To be determined. If so, then yes, someone needs to look at your wellfield design and see what the impacts will be. Again, we're weeks away from getting any info on this. We have other projects in town that are also waiting on future flooding projections. Eventually we'll just have to pick a number.

If you can send me their wellhead design Plans then we can get a better idea of what the impacts could be. When do you want or when do you have to get it built? Let's touch base early next week. I'll forward your email below to AECOM and between them and Tata & Howard, we'll make it work.

Thanks again and have a great Thanksgiving! As always, it came much too fast.

Jon-Eric

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**From:** Town Manager

**Sent:** Wednesday, November 21, 2018 12:01 PM

**To:** 'Jon-Eric White'

**Subject:** RE: Raising dam level

Jon-Eric,

I've forwarded your note to Mike G. with the requests for further info that his office will provide if available.

It seems to me that there are enough issues/questions here to warrant scheduling a separate meeting (or conf. call). If you'd prefer to incorporate into an upcoming biweekly conference call on the bridge project, that's ok too, but regardless I want to get (and keep) our Water Dept fully engaged as we go forward with bridge design, in light of potential changes to dam elevation and related effects.

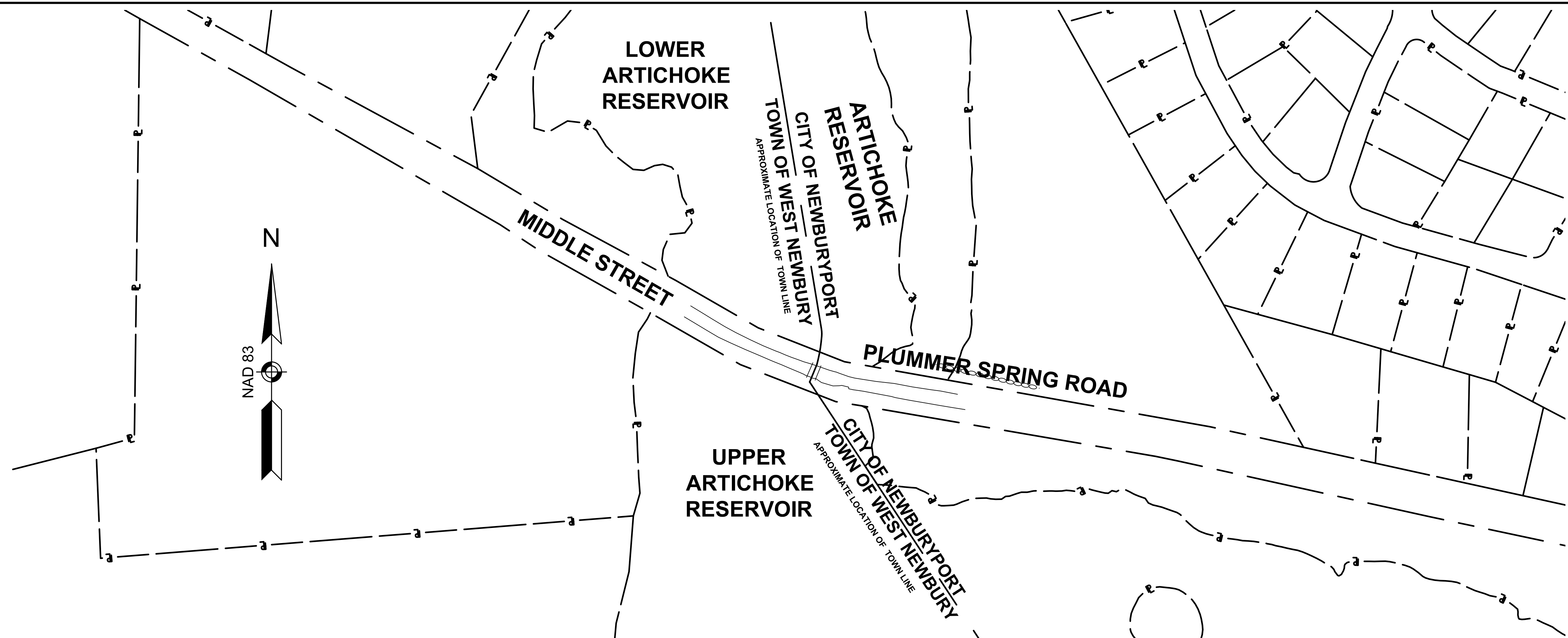
Thanks, and have a great Thanksgiving –  
Angus

*Angus Jennings, Town Manager*  
Town of West Newbury



NEWBURYPORT / WEST NEWBURY			
STATE	FED. AID PROJ. NO.	SHEET NO.	TOTAL SHEETS
MA	-	1	2
PROJECT FILE NO.			

**TITLE SHEET, LEGEND & ABBREVIATIONS**



**ABBREVIATIONS**

AUX	AUXILIARY	GMH	GAS MANHOLE	SHLD	SHOULDER
BD	BOUND	GRAN	GRANITE	SHLO	STATE HIGHWAY LAYOUT
BIT	BITUMINOUS	GRV	GRAVEL	SK	SKEW
BLDG	BUILDING	GRD	GUARD	SL	STOP LINE
BM	BENCHMARK	GRL	GUARDRAIL	SMH	SEWER MANHOLE
BR	BRIDGE	HDW	HEADWALL	SPK	SPIKE
BRK	BRICK	HYD	HYDRANT	STA	STATION
BWL	BROKEN WHITE LINE	INV	INVERT	STN	STONE
BYL	BROKEN YELLOW LINE	IP	IRON PIPE	SW	SIDEWALK
CAB	CABINET	JB	JERSEY BARRIER	SWL	SOLID WHITE LINE
CB	CATCH BASIN	L	LENGTH OF CURVE	SYL	SOLID YELLOW LINE
CC	CEMENT CONCRETE	LB	LEACHING BASIN	T	TANGENT DISTANCE
CCB	CAPE COD BERM	LC	LAND COURT	TAN	TANGENT
CEN	CENTER	LCB	LAND COURT BOUND	TEMP	TEMPORARY
CI	CURB INLET	LCD	LAND COURT DISK	TMH	TELEPHONE MANHOLE
CIP	CAST IRON PIPE	LO	LAYOUT	TR	TOP OF RAIL
CL	CENTER LINE	LP	LIGHT POLE	TSC	TRAFFIC SIGNAL CONDUIT
CLF	CHAIN LINK FENCE	LPD	LIGHT POLE DOUBLE LIGHT	TYP	TYPICAL
CMH	CABLE MANHOLE	LSA	LANDSCAPED AREA	VAR	VARIABLE
CMP	CORRUGATED METAL PIPE	MAG	MAG NAIL	VCP	VITRIFIED CLAY PIPE
CO	COUNTY	MBE	MIDDLE BACK EDGE	VGC	VERTICAL GRANITE CURB
CO BD	COUNTY BOUND	MED	MEDIAN	VL	VAULT
CON	CONIFEROUS	MH	MANHOLE	WB	WESTBOUND
CONC	CONCRETE	MP	MILE POST	WCR	WHEELCHAIR RAMP
CPP	CORRUGATED PLASTIC PIPE	MTL	METAL	WD	WOOD
CSP	CORRUGATED STEEL PIPE	N/F	NOW OR FORMERLY	WIP	WROUGHT IRON PIPE
CULV	CULVERT	NB	NORTHBOUND		
CW	CROSSWALK	OH	OVERHANG		
DBWL	DOUBLE WHITE LINE	OHV	OVERHEAD WIRE		
DBYL	DOUBLE YELLOW LINE	PC	POINT OF CURVATURE		
DEC	DECIDUOUS	PCC	POINT OF COMPOUND CURVATURE		
DI	DROP INLET	PED	PEDESTRIAN		
DIA	DIAMETER	PI	POINT OF INTERSECTION		
DIP	DUCTILE IRON PIPE	PK	PK NAIL		
DMH	DRAIN MANHOLE	PL	PROPERTY LINE		
DSK	DISK	PP	PRICK PUNCH		
DWL	DOTTED WHITE LINE	PRC	POINT OF REVERSE CURVATURE		
DYL	DOTTED YELLOW LINE	PT	POINT OF TANGENCY		
EB	EASTBOUND	PVC	POLYVINYL CHLORIDE PIPE		
EL	ELEVATION	PVMT	PAVEMENT		
EMH	ELECTRIC MANHOLE	PWW	PAVED WATERWAY		
EP	EDGE OF PAVEMENT	PZ	PIEZOMETER		
EPLP	ESCUTCHEON PIN IN LEAD PLUG	R	RADIUS OF CURVATURE		
ETW	EDGE OF TRAVELED WAY	RB	REBAR		
EX	EXISTING	RC	REINFORCED CONCRETE		
FF	FINISH FLOOR	RCP	REINFORCED CONCRETE PIPE		
FGS	FLAGSTONE	RET	RETAINING		
FL	FLOWLINE	ROW	RIGHT OF WAY		
FLDSTN	FIELDSTONE	RR	RAILROAD		
GAR	GARAGE	RRS	RAILROAD SPIKE		
GD	GROUND	S BD	SOUTHBOUND		
GIP	GALVANIZED IRON PIPE	SB	STONE BOUND		
		SD	SUBDRAIN		
		SGE	SLOPED GRANITE EDGING		

**LEGEND**

● BF #	BANK FLAG	○ MAG	MAG NAIL	○ TS	TRAFFIC SIGNAL
○ BHL #	BORE HOLE	□ MB	MAIL BOX	○ TS	TRAFFIC SIGNAL MAST ARM/SPAN WIRE POLE
○ BUSH	BUSH	■ MHB	MASSACHUSETTS HIGHWAY BOUND	○ UFB #	SIGN - DOUBLE POST
◆ BM #	BENCHMARK	⊕ MW	MONITORING WELL	○ ULT #	UTILITY POLE W/ LIGHT
□ BOUND	BOUND (CONC, STONE, LAND COURT, ETC.)	○ OIL	OIL FILL	○ UPDL #	UTILITY POLE W/ DOUBLE LIGHT
○ CB	CABLE MANHOLE	○ OTHER	OTHER MANHOLE	○ UPL #	UTILITY POLE
□ CB	CATCH BASIN - SQUARE	○ PED	PEDESTRIAN SIGNAL	○ VP	VENT PIPE
□ CB	CATCH BASIN - D-FRAME	○ PHO	PHOTO CONTROL - H & V	○ WM	WATER MANHOLE
○ CB	CATCH BASIN - ROUND	○ PHO	PHOTO CONTROL - V ONLY	○ WG	WATER GATE
● DSK	DISK (CA/T, USC&GS, LAND COURT, ETC.)	○ PK	PK NAIL	○ WSO	WATER METER
● DH	DRILL HOLE	○ PM	PARKING METER	○ WSH	WATER SHUTOFF
○ EHH	DRAIN MANHOLE	○ POST	CIRCULAR POST	⊕ WELL	WELL (POTABLE)
○ EM	ELECTRIC MANHOLE	○ RB	SQUARE POST	● WF #	WETLAND FLAG
○ EM	ELECTRIC METER	○ RRS	RAILROAD SPIKE	✕ X-CUT	X-CUT
● EPLP	ESCUTCHEON PIN IN LEAD PLUG	⊠ RRS	RAILROAD SIGNAL		
⊠ FB	FLASHING BEACON	⊠ RRSW	RAILROAD SWITCH		
△ FES	FLAG END SECTION	⊠ SN	STAKE AND NAIL		
⊕ FP	FLAG POLE	○ SP	STAND PIPE		
○ GF	GAS FILL	○ SMH	SEWER MANHOLE		
○ GC	GAS GATE	○ STMH	STEAM MANHOLE		
⊕ GM	GAS METER	■ TB	TOWN LINE BOUND (CORNER)		
⊕ GP	GAS PUMP	⊠ TCB	TRAFFIC SIGNAL CONTROL CABINET		
○ GPL	GAS MANHOLE	○ TFMR	TRANSFORMER		
○ GUY	GUY POLE	□ TLR	TOWN LINE ROAD STONE		
○ H	HANDICAP SYMBOL	⊠ TPIT #	TEST PIT		
○ HTP	HIGH TENSION POWER POLE	○ TPL	TROLLEY POLE		
○ IP	IRON PIPE	△	TRAVERSE POINT		
○ L	LIGHT POLE	● 22" M	TREE		
○ LD	LIGHT POLE DOUBLE LIGHT				

**NOTES**

- FIELD WORK WAS COMPLETED BY BSC GROUP, INC. BETWEEN OCTOBER 1, 2018 AND OCTOBER 17, 2018.
- HORIZONTAL DATUM IS NAD83 (2011), EPOCH 2010.00 MASSACHUSETTS STATE PLANE, MAINLAND ZONE, US SURVEY FOOT (MA83F). VERTICAL DATUM IS NAVD88 GEOID 12A. SURVEY DATUM DERIVED FROM MACORS SURVEY NETWORK VIA GPS OBSERVATIONS BY BSC GROUP INC. AT THE TIME OF SURVEY.
- PROPERTY LINES SHOWN HEREON ARE NOT BASED ON A DEFINITIVE PROPERTY LINE SURVEY AND ARE APPROXIMATE.
- THE GEOGRAPHIC POSITIONS OF THE TOWN CORNERS OF THE NEWBURYPORT - WEST NEWBURY TOWN LINE ARE BASED ON THE DATA AND THE DESCRIPTIONS TAKEN FROM THE HARBOR AND LAND COMMISSION ATLAS OF BOUNDARIES OF THE CITY OF NEWBURYPORT AND THE TOWN OF WEST NEWBURY (AND OTHERS TOWNS) ESSEX COUNTY DATED 1905. COORDINATE VALUES OF THE TOWN CORNERS WERE ALSO OBTAINED FROM MASSDOT GEODETIC SURVEY. DETAIL SKETCH OF THE NEWBURY-WEST NEWBURY 1 TOWN LINE FROM THE 1905 COMMISSION ATLAS WAS USED TO ESTABLISH THE HISTORIC FORMER LOCATION OF THE MIDDLE OF THE ARTICHOKE RIVER.

**PRELIMINARY**  
**NOVEMBER 14, 2018**

PREPARED BY:  
**BSC GROUP**  
803 SUMMER STREET  
Boston, Massachusetts  
02127  
617 896 4300

REVISIONS		
REV.	COMMENTS	DATE

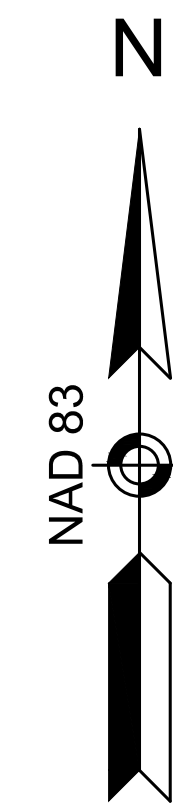
SCALE: 20 FEET TO THE INCH OR AS NOTED

FILE NAME: 2839500EC	
FIELD BOOK NO:	
DRAWN BY: SAW	CHECKED BY: SME
FIELD CHIEF: DS/PM	PARS. NO:

PLAN OF TOPOGRAPHIC SURVEY OF  
**PLUMMER SPRING ROAD**  
IN THE CITY OF  
**NEWBURYPORT**  
AND  
**MIDDLE STREET**  
IN THE TOWN OF  
**WEST NEWBURY**

STATE	FED. AID PROJ. NO.	SHEET NO.	TOTAL SHEETS
MA	-	2	2
PROJECT FILE NO.			

**SURVEY BASEPLAN**



**CITY OF NEWBURYPORT  
TOWN OF WEST NEWBURY**  
APPROXIMATE LOCATION OF TOWN LINE

**ARTICHOKE  
RESERVOIR**

N/F  
CITY OF NEWBURYPORT  
WATER DEPARTMENT  
NO BK PG AVAILABLE

N/F  
CITY OF NEWBURYPORT  
WATER DEPARTMENT  
NO BK PG AVAILABLE

PLUMMER SPRING ROAD  
PARCEL ID 92-1  
N/F  
CITY OF NEWBURYPORT  
WATER DEPARTMENT  
NO BK PG AVAILABLE

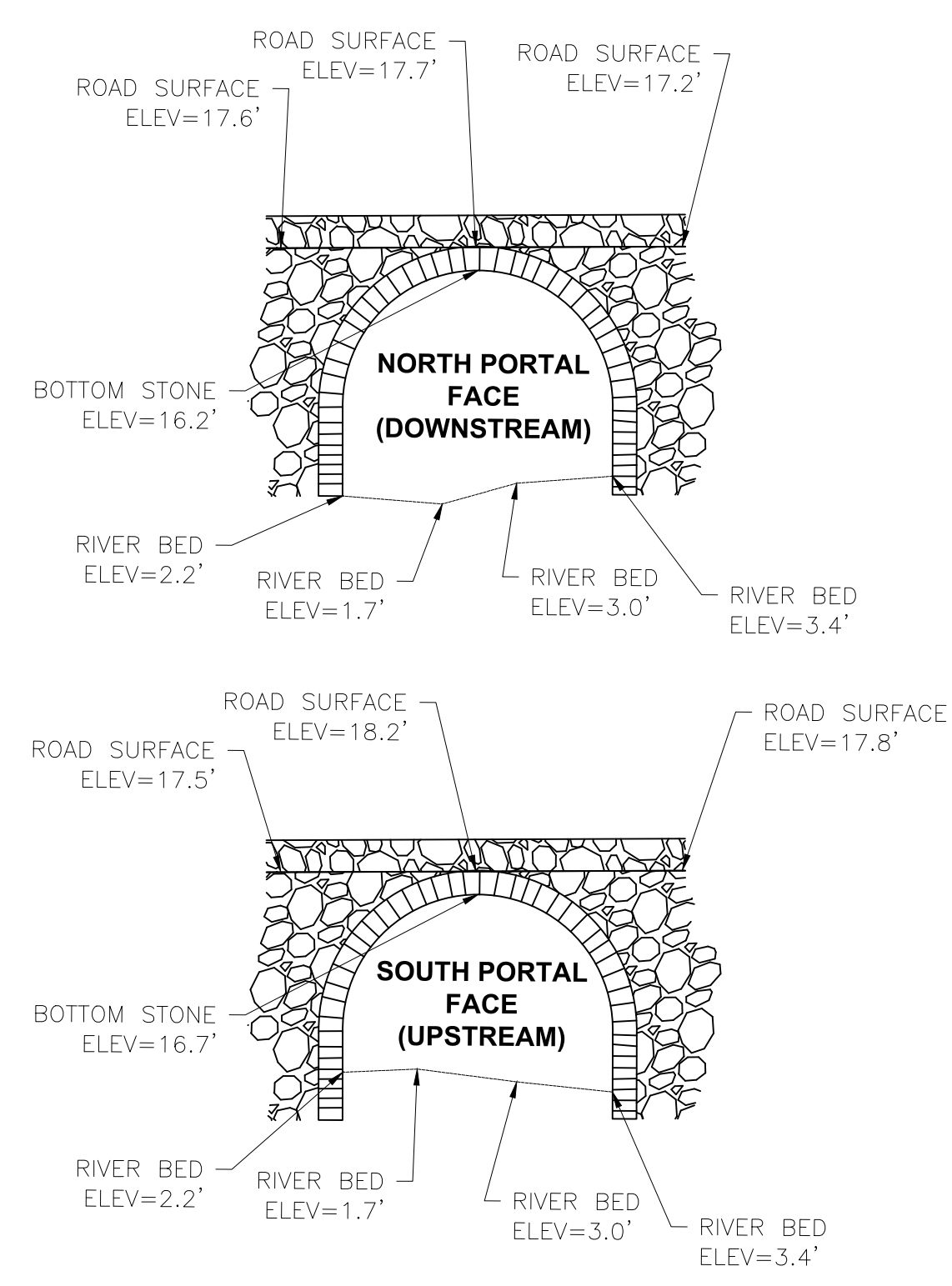
PLUMMER SPRING ROAD  
PARCEL ID 92-2  
N/F  
CITY OF NEWBURYPORT  
WATER DEPARTMENT  
NO BK PG AVAILABLE

N/F  
CITY OF NEWBURYPORT  
WATER DEPARTMENT  
NO BK PG AVAILABLE

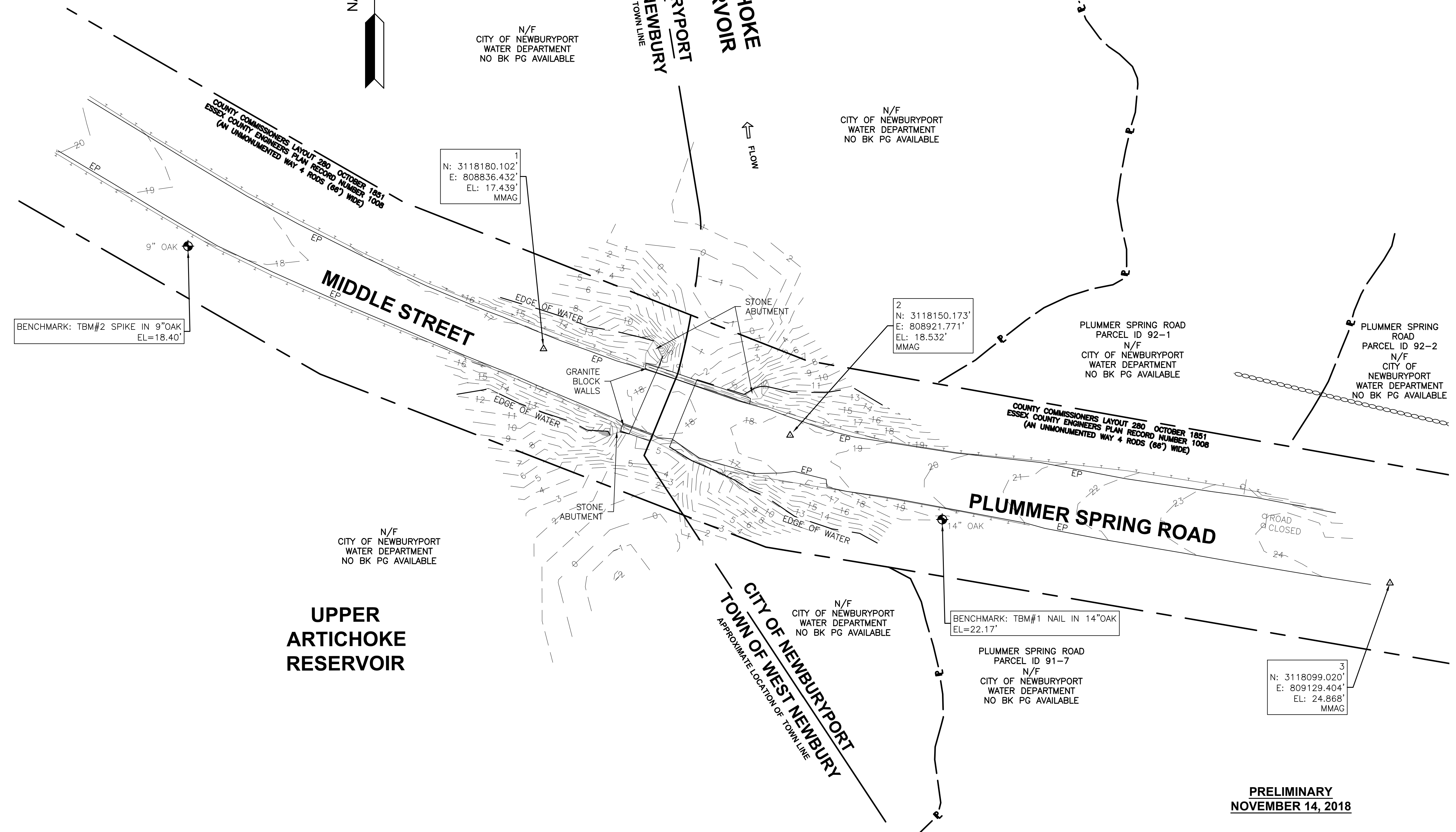
N/F  
CITY OF NEWBURYPORT  
WATER DEPARTMENT  
NO BK PG AVAILABLE

PLUMMER SPRING ROAD  
PARCEL ID 91-7  
N/F  
CITY OF NEWBURYPORT  
WATER DEPARTMENT  
NO BK PG AVAILABLE

**PRELIMINARY  
NOVEMBER 14, 2018**



RIVER BED ELEVATIONS



**UPPER  
ARTICHOKE  
RESERVOIR**

PREPARED BY:  
**BSC GROUP**  
803 SUMMER STREET  
Boston, Massachusetts  
02127  
617 896 4300

PLAN OF TOPOGRAPHIC SURVEY OF  
**PLUMMER SPRING ROAD**  
IN THE CITY OF  
**NEWBURYPORT**  
AND  
**MIDDLE STREET**  
IN THE TOWN OF  
**WEST NEWBURY**

REVISIONS		
REV.	COMMENTS	DATE

SCALE: 20 FEET TO THE INCH  
OR AS NOTED

FILE NAME: 2839500EC  
FIELD BOOK NO.:  
DRAWN BY: SAW CHECKED BY: SME  
FIELD CHIEF: DS/PM PARS. NO.:

**To:** Jon-Eric White, Angus Jennings, Diane Gagnon **Date:** November 14, 2018  
**From:** Micah Morrison, Mark Magowan **Proj. No.** 28395.00  
**Re:** Progress Meeting 11/14/2018  
**Date of Meeting:** November 14, 2018 **Time:** 8:00 am  
**Place of Meeting:** Conference Call  
**Purpose:** Progress of Plummer Spring Bridge project  
**List of Attendees:** Jon-Eric White, Angus Jennings, Diane Gagnon, Micah Morrison, Mark Magowan

Item	Discussion	Action
Municipality Line Survey	BSC discussed that based on the available information the municipal line is located at midspan of the existing bridge (middle of historic former location of the middle of the Artichoke River now the Artichoke Reservoir). BSC will be sending both municipalities a draft of the survey plans for their review. Jon-Eric asked if temporary bench marks have been set. Mark said that they had been set and they will be depicted on the draft survey plan.	BSC to send both Municipalities a draft survey plan for their review.
Potential Dam Elevation Increase	BSC inquired about the potential elevation increase to the downstream dam that Jon-Eric mentioned during the 10/31/2018 progress meeting. The future dam elevation increase has substantial ramifications for the proposed Plummer Spring Bridge project to both design and construction costs. Based on the available FEMA data an increase in dam elevation would directly increase the water elevations used for bridge design. Jon-Eric proposed a meeting to discuss the dam's potential elevation change.	BSC to provide Jon-Eric dates & times we are available. Jon-Eric to arrange the meeting for this week or early next week.

**cc:**

ACCURACY NOTICE  
 We have sought to record accurately the minutes of this meeting. If any of the above items do not agree with your understanding, please contact us within seven (7) days from the date of this document.

MIIA Property And Casualty Group, Inc  
 One Winthrop Square  
 Boston, MA 02110

**CYBER  
 COVERAGE**

**DECLARATIONS**

**CONTRACT # WES00054-03-18**

#1 MEMBER NAME AND ADDRESS:

**Town of West Newbury  
 381 Main Street  
 West Newbury, MA 01985**

#2 CONTRACT PERIOD: **FROM 07/01/2018 TO 07/01/2019**  
 AT 12:01 AM STANDARD TIME  
 AT THE ADDRESS SHOWN ABOVE

#3	<u>SCHEDULE OF CYBER COVERAGES:</u>	<u>Limits of Insurance</u>	<u>Retentions, Waiting Periods, Period of Indemnity &amp; Period of Restoration</u>
	Multimedia Liability	\$1,000,000	\$10,000
	Security and Privacy Liability	\$1,000,000	\$10,000
	Privacy Regulation Defense and Penalties	\$1,000,000	\$10,000
	PCI DSS Liability	\$1,000,000	\$10,000
	Breach Event Costs	\$1,000,000	\$10,000
	Proactive Privacy Breach Response Costs	\$50,000	\$10,000
	Voluntary Notification Expenses	\$1,000,000	\$10,000
	BrandGuard	\$1,000,000	2 Week Waiting Period 6 Month Period of Indemnity
	Network Asset Protection	\$1,000,000	
	Data Recovery		\$10,000
	Non-Physical Business Interruption		8 Hour Waiting Period 6 Month Period of Restoration
	Cyber Extortion	\$1,000,000	\$10,000
	Cyber Crime	\$100,000	\$2,500 per claim
	Dependent System Failure	\$50,000	12 Hour Waiting Period 4 Month Period of Indemnity
	Aggregate Limit of Liability	\$1,000,000	Not Applicable
	Defense Costs Aggregate Limit	\$1,000,000	Not Applicable

#4 RETROACTIVE DATE: Full Unknown Prior Acts Coverage

#5 FORMS AND ENDORSEMENTS ATTACHED TO THIS CONTRACT:  
 DEC 3b(0718), MGP 055 (0718)

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## CYBER COVERAGE FORM

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### Important Notice

Coverage Agreements A-D of this Coverage Form provide claims-made and reported coverage. Coverage Agreements E-J provide first party coverage on an event-discovered and reported basis. The Cyber Coverage Limits of Insurance are shown in Item #3 of the Cyber Coverage Declarations. Such Limits of Insurance are in addition to, and will not reduce, the Limits of Insurance provided elsewhere in **your** contract. Defense costs paid under this Coverage Form will reduce, and may completely exhaust, the Cyber Coverage Limits of Insurance.

The terms, conditions, exclusions, and Limits of Insurance set forth in this Coverage Form and the Cyber Coverage Declarations apply only to Cyber Coverage. Read the entire Coverage Form carefully to determine **your** rights and duties and what is and is not covered.

Throughout this Coverage Form, the words **we**, **us**, and **our** refer to the Company providing this insurance. Other words and phrases that appear in bold face type have special meaning as described in **SECTION XII. Definitions** of this Coverage Form. To the extent any words or phrases used in this Coverage Form are also defined elsewhere in **your** Contract, such definitions do not apply to the words or phrases used in this Coverage Form.

### CYBER COVERAGE TERMS AND CONDITIONS

#### SECTION I – Cyber Coverage Agreements

The Company agrees with the **named insured** to provide coverage as follows:

##### Coverage A. Multimedia Liability

The Company will pay on behalf of an **insured** the sums within the applicable Limits of Insurance that such **insured** becomes legally obligated to pay as **damages**, including liability **assumed under contract**, and related **defense costs** resulting from a **claim** for an actual or alleged **multimedia wrongful act**, but only if: 1) the **claim** is first made against the **insured** during the **contract period**, 2) the **claim** is reported to the Company in writing in accordance with **SECTION VI. Notice Provisions** of this Coverage Form, and 3) the **multimedia wrongful act** takes place on or after the **retroactive date**.

##### Coverage B. Security and Privacy Liability

The Company will pay on behalf of an **insured** the sums within the applicable Limits of Insurance that such **insured** becomes legally obligated to pay as **damages**, including liability **assumed under contract**, and related **defense costs** resulting from a **claim** for an actual or alleged **security and privacy wrongful act**, but only if: 1) the **claim** is first made against the **insured** during the **contract period**, 2) the **claim** is reported to the Company in writing in accordance with **SECTION VI. Notice Provisions** of this Coverage Form, and 3) the **security and privacy wrongful act** takes place on or after the **retroactive date**.

##### Coverage C. Privacy Regulatory Defense and Penalties

The Company will pay on behalf of an **insured** the sums within the applicable Limits of Insurance that such **insured** becomes legally obligated to pay as a **regulatory compensatory award** or **regulatory fines and penalties** (to the extent insurable by law) and related **defense costs** resulting from a **privacy regulatory proceeding** instituted against the **insured** because of a **security breach** or **privacy breach**, but only if: 1) the **privacy regulatory proceeding** is instituted against the **insured** during the **contract period**, 2) the **privacy regulatory proceeding** is reported to the Company in writing in accordance with **SECTION VI. Notice**

Provisions of this Coverage Form, and 3) the **security breach** or **privacy breach** giving rise to the **privacy regulatory proceeding** occurs on or after the **retroactive date**.

#### Coverage D. PCI DSS Liability

The Company will pay on behalf of an **insured** the sums within the applicable Limits of Insurance that such **insured** becomes legally obligated to pay as **PCI DSS fines and assessments** and related **defense costs** because of a **claim** resulting from a **security breach** or **privacy breach**, but only if: 1) the **claim** is first made against the **insured** during the **contract period**, 2) the **claim** is reported to the Company in writing in accordance with **SECTION VI. Notice Provisions** of this Coverage Form, and 3) the **security breach** or **privacy breach** giving rise to the **claim** takes place on or after the **retroactive date**.

#### Coverage E. Breach Event Costs

Subject to the Limits of Insurance, the Company will pay on **your** behalf the **privacy breach response costs**, **notification expenses**, and **breach support and credit monitoring expenses** that **you** incur because of an **adverse media report**, **security breach** or **privacy breach**, but only if: 1) the **adverse media report**, **security breach** or **privacy breach** occurs on or after the **retroactive date**, 2) the **adverse media report**, **security breach** or **privacy breach** is first discovered by **you** or **your executive** during the **contract period**, and 3) the **adverse media report**, **security breach** or **privacy breach** is reported to the Company in writing in accordance with **SECTION VI. Notice Provisions** of this Coverage Form.

#### Coverage F. BRANDGUARD®

Subject to the applicable **waiting period** and Limits of Insurance, the Company will indemnify **you** for provable and ascertainable **brand loss** that **you** sustain during the **period of indemnity** as a direct result of an **adverse media report** or **notification**, but only if: 1) the **adverse media report** is first discovered by **you** or **your executive**, or the **notification** first occurs, during the **contract period**, 2) the **adverse media report** or **notification** results from a **security breach** or **privacy breach** that occurs on or after the **retroactive date**, 3) the **brand loss** is reported to the Company in writing during the **period of indemnity**, and 4) **you** provide clear evidence that the **brand loss** is directly attributable to the **adverse media report** or **notification**.

#### Coverage G. Network Asset Protection

##### 1. Data Recovery

Subject to the Limits of Insurance, the Company will indemnify **you** for **digital assets loss** and **special expenses** that **you** incur because of damage, alteration, corruption, distortion, theft, misuse, or destruction of **digital assets** which results from a **covered cause of loss**, but only if: 1) the **covered cause of loss** occurs on or after the **retroactive date**; 2) the **covered cause of loss** is first discovered by **you** or **your executive** during the **contract period**, and 3) the **covered cause of loss** is reported to the Company in writing in accordance with **SECTION VI. Notice Provisions** of this Coverage Form.

**Digital assets loss** and **special expenses** will be reimbursed for a period of up to 12 months following the discovery of the damage, alteration, corruption, distortion, theft, misuse, or destruction of **digital assets**.

##### 2. Non-Physical Business Interruption and Extra Expense

Subject to the applicable **waiting period** and Limits of Insurance, the Company will indemnify **you** for **income loss**, **interruption expenses**, and **special expenses** that **you** incur during the **period of restoration** because of a total or partial interruption, degradation in service, or failure of an **insured computer system** which results from a **covered cause of loss**, but only if: 1) the **covered cause of loss** occurs on or after the **retroactive date**; 2) the **covered cause of loss** is first discovered by **you**

or **your executive** during the **contract period**, and 3) the **covered cause of loss** is reported to the Company in writing in accordance with **SECTION VI. Notice Provisions** of this Coverage Form.

#### **Coverage H. Cyber Extortion**

Subject to the Limits of Insurance, the Company will indemnify **you** for **cyber extortion expenses** and **cyber extortion monies** that **you** pay as a direct result of a **cyber extortion threat**, but only if: 1) the **cyber extortion threat** is made against **you** during the **contract period**, and 2) the **cyber extortion threat** is reported to the Company in writing in accordance with **SECTION VI. Notice Provisions** of this Coverage Form.

The Company will not be obligated to pay **cyber extortion expenses** or **cyber extortion monies** unless the Company has given prior written consent for the payment of **cyber extortion monies** in response to a **cyber extortion threat**. The **insured** must make every reasonable effort to notify local law enforcement authorities and the Federal Bureau of Investigation or similar equivalent foreign agency before surrendering any **cyber extortion monies** in response to a **cyber extortion threat**.

#### **Coverage I. Cyber Crime**

##### **1. Financial Fraud**

Subject to the Limits of Insurance, the Company will indemnify **you** for **financial fraud loss** that **you** sustain because of **financial fraud**, but only if: 1) the **financial fraud** occurs on or after the **retroactive date**, 2) the **financial fraud** is first discovered by **you** or **your executive** during the **contract period**, 3) the **financial fraud** is reported to the Company in writing in accordance with **SECTION VI. Cyber Coverage Notice Provisions** of this Coverage Form, and 4) **your** bank or credit card company has refused to reverse or prevent a payment transaction, or to indemnify or reimburse **you** for the **financial fraud loss**, and **you** provide written confirmation to the Company of such refusal.

##### **2. Telecommunications Fraud**

Subject to the Limits of Insurance, the Company will indemnify **you** for **telecommunications fraud loss** that **you** sustain because of **telecommunications fraud**, but only if: 1) the **telecommunications fraud** occurs on or after the **retroactive date**, 2) the **telecommunications fraud** is first discovered by **you** or **your executive** during the **contract period**, and 3) the **telecommunications fraud** is reported to the Company in writing in accordance with **SECTION VI. Notice Provisions** of this Coverage Form.

##### **3. Phishing Attack**

Subject to the Limits of Insurance, the Company will indemnify **you** for **phishing attack loss** that **you** sustain because of a **phishing attack**, but only if: 1) the **phishing attack** occurs on or after the **retroactive date**, 2) the **phishing attack** is first discovered by **you** or **your executive** during the **contract period**, and 3) the **phishing attack** is reported to the Company in writing in accordance with **SECTION VI. Notice Provisions** of this Coverage Form.

#### **Coverage J. Dependent System Failure**

Subject to the applicable **waiting period** and Limits of Insurance, the Company will indemnify **you** for **dependent business interruption loss** that **you** sustain during the **period of indemnity** because of an actual interruption or suspension of **your** business which is directly caused by a **dependent system failure**, but only if: 1) the **dependent system failure** occurs on or after the **retroactive date**; 2) the **dependent system failure** is first discovered by **you** or **your executive** during the **contract period**, 3) the **dependent system failure** is reported to the Company in writing in accordance with **SECTION VI. Notice Provisions** of this Coverage Form, and 4) **you** provide clear evidence that the **dependent business interruption loss** directly results from a **dependent system failure**.

## SECTION II – Exclusions

The following exclusions will apply only to the coverage provided under this Coverage Form. The exclusions that appear elsewhere in **your** Contract will not apply to this Coverage Form.

The Company will not be liable for any **claim**:

1. Based upon, arising from, or in any way involving any actual or alleged **wrongful act** or **first party insured event** which took place, in whole or in part, prior to the **retroactive date**.
2. Based upon, arising from, or in any way involving any actual or alleged **wrongful act** or **first party insured event** of which any **insured** had knowledge prior to the **contract period** or prior to the inception date of any Cyber Coverage Form issued by the Company for which this Coverage Form is a direct and continuous renewal.
3. Based upon, arising from, or in any way involving any **wrongful act** or **first party insured event** which was disclosed or reported to a previous insurer prior to the **contract period**.
4. Made by or on behalf of an **insured** against another **insured**. This exclusion does not apply to an otherwise covered **claim** under Coverage B for a **security and privacy wrongful act** which is made against an **insured** by any past, present or future **employee** or by an independent contractor, volunteer, member of a board, member of a committee, member of a commission, or public official who qualifies as an **insured**.
5. Based upon, arising from, or in any way involving any of the following committed by an **insured**, whether acting alone or in collusion with other persons:
  - a. A willful, intentional, deliberate, malicious, fraudulent, dishonest, or criminal act or omission;
  - b. Any intentional violation of law;
  - c. Any intentional violation of **your privacy contract**; or
  - d. The gaining of any profit or advantage to which an **insured** is not legally entitled.

This exclusion does not apply to **defense costs** or the Company's duty to defend any such **claim** under Coverage A, B, C, or D until the conduct described in this exclusion has been established by a final adjudication in a judicial, administrative or alternative dispute proceeding, or by an **insured's** own admission in a proceeding or otherwise. The Company will have the right to recover **defense costs** incurred in defending any such **claim** from those parties found to have committed the conduct described in this exclusion.

This exclusion does not apply to any **insured** that did not commit, participate in, or have knowledge of any conduct described in this exclusion.

6. Based upon, arising from, or in any way involving activities of an **insured** as a trustee, partner, officer, director, or employee of any trust, organization, corporation, company or business other than **your** trust, organization, corporation, company or business.
7. Based upon, arising from, or in any way involving the insolvency or bankruptcy of any person or entity, or the failure, inability, or unwillingness of any person or entity to make payments, perform obligations or conduct business because of insolvency, liquidation, or bankruptcy.
8. Based upon, arising from, or in any way involving **bodily injury** or **property damage**.
9. Based upon or arising from:
  - a. Satellite failures;
  - b. Electrical or mechanical failures or interruption, including electrical disturbance, spike, brownout, or blackout; or
  - c. Outages to gas, water, telephone, cable, telecommunication or other infrastructure, unless such infrastructure is under **your** direct operational control and unless such **claim** forms a part of an otherwise covered **first party insured event** under Coverage G.



10. Based upon, arising from, or in any way involving the wear and tear, drop in performance, progressive deterioration, or aging of electronic equipment or **computer hardware** or tangible property used by **you**.
11. Based upon, arising from, or in any way involving the failure of overhead transmission and distribution lines.
12. Based upon, arising from, or in any way involving the gradual deterioration of subterranean insulation.
13. Based upon, arising from, or in any way involving fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, force majeure, or any other physical event, however caused.
14. Based upon, arising from, or in any way involving coupons, prize discounts, prizes, awards, or any valuable consideration given that exceeds the total contracted or expected amount.
15. Based upon, arising from, or in any way involving the actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products or services.
16. Based upon, arising from, or in any way involving any cost guarantee, cost representation, contract price, or cost estimate being exceeded.
17. Based upon, arising from, or in any way involving the violation of any economic or trade sanctions by the United States government including, but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control (OFAC). This exclusion does not apply to a **security breach** originating from any country where the United States of America has imposed economic or trade sanctions.
18. Based upon, arising from, or in any way involving any breach of any express, implied, actual or constructive contract, warranty, guarantee or promise. This exclusion does not apply to:
  - a. A liability or obligation an **insured** would have had in the absence of such contract, warranty, guarantee or promise and which would have been insured by this Coverage Form; or
  - b. A breach of **your privacy contract**.
19. Based upon, arising from, or in any way involving any liability assumed by any **insured** under a contract or agreement. This exclusion does not apply to:
  - a. With respect to Coverage A and Coverage B only, liability **assumed under contract**;
  - b. A liability an **insured** would have had in the absence of such contract or agreement and which would have been insured by this Coverage Form; or
  - c. With respect to Coverage D only, liability for **PCI DSS fines and assessments** assumed under a **merchant services agreement**.
20. Based upon, arising from, or in any way involving:
  - a. Any actual, alleged or threatened presence of pollutants or contamination of any kind, including, but not limited to, asbestos, smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste (waste includes materials to be recycled, reconditioned, or reclaimed), whether such presence results from an **insured's** activities or the activities of others, or such presence or contamination happened suddenly or gradually, accidentally or intentionally, or expectedly or unexpectedly; or
  - b. Any directive or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants, or in any way respond to, or assess the effects of, pollutants or contamination of any kind.
21. Based upon, arising from, or in any way involving **income loss** caused by, or resulting from, unauthorized trading. For purposes of this exclusion, unauthorized trading means trading, which at the time of the trade exceeds permitted financial limits or outside of permitted product lines.

22. Based upon, arising from, or in any way involving:
- a. The actual or alleged loss of value of any **securities**;
  - b. The actual or alleged purchase or sale of **securities**;
  - c. The offer of, or solicitation of an offer, to purchase or sell **securities**; or
  - d. The violation of any securities law including, but not limited to, the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, or the Sarbanes-Oxley Act of 2002, or any regulation promulgated under the foregoing statutes, or any similar federal, state, local, or foreign law, including **Blue Sky** laws, whether such law is statutory, regulatory, or common law.
23. Based upon, arising from, or in any way involving the actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as **Racketeer Influenced and Corrupt Organizations Act, or RICO**), as amended, or any regulation promulgated under the foregoing statute, or any similar federal, state, local or foreign law, whether such law is statutory, regulatory or common law.
24. Based upon, arising from, or in any way involving the actual or alleged government enforcement of any state or federal regulation including, but not limited to, regulations promulgated by the United States Federal Trade Commission, Federal Communications Commission, or the Securities and Exchange Commission. This exclusion does not apply to an otherwise covered **claim** under Coverage C.
25. Based upon, arising from, or in any way involving:
- a. Any employer-**employee** relations, policies, practices, acts, or omissions;
  - b. Any actual or alleged refusal to employ any person; or
  - c. Any misconduct with respect to **employees**.
- This exclusion does not apply to a **claim** resulting from a **privacy breach** that is otherwise covered under Coverage B, Coverage C, or Coverage E.
26. Based upon, arising from, or in any way involving any workers' compensation or similar laws such as the Federal Employers Liability Act.
27. For any actual or alleged harassment or discrimination of any kind including, but not limited to, age, color, race, gender, creed, national origin, marital status, sexual preferences, disability, or pregnancy.
28. Based upon, arising from, or in any way involving:
- a. The violation of any pension, healthcare, welfare, profit sharing, mutual, or investment plans, funds, or trusts; or
  - b. Any violation of any provision of the Employee Retirement Income Security Act of 1974 and its amendments, or the Pension Protection Act of 2006 and its amendments, or any regulation, ruling, or order issued pursuant to the foregoing statutes.
29. For loss, damage, cost, or expense of whatsoever nature directly or indirectly caused by, resulting from, or in connection with war, invasion, acts of foreign enemies, hostilities or warlike operations (whether declared or not), civil war or mutiny, civil commotion assuming the proportions of, or amounting to, a riot, popular uprising, military uprising, insurrection, rebellion, revolution, or usurped power or act of terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss; or for loss, damage, cost, or expense of whatsoever nature directly or indirectly caused by, resulting from, or in connection with any action taken by a government authority to hinder, control, prevent, suppress, or defend against any of the aforementioned actions; or the confiscation, nationalization, requisition, or destruction of, or damage to, property by, or under the order of, any government authority. This exclusion does not apply to an **act of cyber terrorism**.

30. Based upon, arising from, or in any way involving any commercial decision by any **insured** to cease providing a product or service, but only if the **insured** is contractually obligated to continue providing such products or services.
31. For gambling or pornography; or for the sale or provision of prohibited, restricted or regulated items, including, but not limited to, alcoholic beverages, tobacco or drugs.
32. Based upon, arising from, or in any way involving:
- a. Any **insured's** failure to comply with or follow the **PCI Data Security Standard** or any payment card company rules; or
  - b. The implementation or maintenance of, or compliance with, any security measures or standards related to any payment card **data** including, but not limited to, any fine or penalty imposed by a payment card company on a merchant bank or payment processor that an **insured** has paid or agreed to reimburse or indemnify.

This exclusion does not apply to an otherwise covered **PCI DSS demand** under Coverage D.

33. Based upon, arising from, or in any way involving:
- a. Any actual or alleged unfair competition, price fixing, deceptive trade practices or restraint of trade; or
  - b. The violation of any antitrust statute, legislation or regulation.

This exclusion does not apply to allegations of unfair competition that form a part of an otherwise covered **claim** under Coverage A. This exclusion does not apply to allegations of deceptive trade practices that form a part of an otherwise covered **claim** under Coverage B.

34. Based upon, arising from, or in any way involving any actual or alleged infringement of any patent.
35. Based upon, arising from, or in any way involving the misappropriation, theft, copying, display or publication of any trade secret. This exclusion does not apply to an otherwise covered **claim** under Coverage B alleging failure to prevent the misappropriation of a trade secret which results from a **security and privacy wrongful act**.
36. Based upon, arising from, or in any way involving the manufacturing, mining, use, sale, installation, removal or distribution of, or exposure to, asbestos, materials or products containing asbestos, or asbestos fibers or dust.
37. Based upon, arising from, or in any way involving the confiscation, commandeering, requisition, destruction of, or damage to, **computer hardware** by order of a government de jure or de facto, or by any public authority for whatever reason.
38. Based upon, arising from, or in any way involving:
- a. Any actual, alleged or threatened presence, of mold, mildew, spores, mycotoxins, fungi, organic pathogens, or other micro-organisms of any type, nature or description; or
  - b. Any cost, expense, or charge, fine or penalty incurred or sustained, or imposed by order, direction, request, or agreement of any court, governmental agency, or any civil, public, or military authority, to test for, monitor, clean up, remediate, remove, contain, treat, detoxify, neutralize, rehabilitate, or in any way respond to, or assess, the effects of mold, mildew, spores, mycotoxins, fungi, organic pathogens, or other microorganisms of any type, nature, or description.
- For purposes of this exclusion, organic pathogens mean any organic irritant or contaminant including, but not limited to, mold, fungus, bacteria, virus, or their byproducts such as mycotoxins, mildew, or biogenic aerosol. Organic pathogens includes, but is not limited to, Aspergillus, Penicillium, Stachybotrys Chartarum, Stachybotrys Atra, Trichoderma, Fusarium, and Memnoniella.
39. Based upon, arising from, or in any way involving the existence, emission, or discharge of any electromagnetic field, electromagnetic radiation, or electromagnetism, which actually or allegedly

affects the health, safety, or condition of any person or the environment, or that affects the value, marketability, condition or use of any property.

40. Based upon, arising from, or in any way involving:
- a. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
  - b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
41. Based upon, arising from, or in any way involving any actual or alleged violation of the Telephone Consumer Protection Act (47 U.S.C. §227), the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. §§ 6101-6108), or the CAN-SPAM Act (15 U.S.C. §§ 7701-7713), each as amended, or any regulations promulgated under the foregoing statutes, or any similar federal, state, local or foreign laws, whether such laws are statutory, regulatory or common law, including any anti-spam law or other law concerning the use of telephonic or electronic communications for solicitation purposes, or any allegations of invasion or violation of any rights to privacy derived therefrom. This exclusion does not apply to an otherwise covered **claim** under Coverage B or Coverage C alleging a violation of the CAN-SPAM Act, as amended, or any regulations promulgated thereunder, or any similar federal, state, local or foreign law, whether such law is statutory, regulatory or common law, but only if such violation arises out of a **security breach**.
42. With respect to Coverage F (BrandGuard®), for:
- a. Any loss, cost, liability or expense that **you** incur to re-establish **your reputation**, including **public relations expenses**;
  - b. Any loss, cost, liability or expense incurred in any **claim** that is insured by any other insurance, except excess insurance;
  - c. Any loss, cost, liability or expense incurred because of an **adverse media report** that also affects or refers in similar terms to a general security issue, an industry, or **your** specific competitors without any specific allegations regarding a **security breach** or a **privacy breach** committed by an **insured**, or by others acting on **your** behalf, for whom **you** are legally responsible, including **BPO service providers** or **outsourced IT service providers**;
  - d. Any liability to **third parties** for whatever reason, including, but not limited to, legal costs and expenses of any type;
  - e. Contractual penalties or consequential **damages**;
  - f. **Notification expenses, breach support and credit monitoring expenses** or **privacy breach response costs** paid or payable under Coverage E; or
  - g. Fines or penalties imposed by law or regulation.
43. With respect to Coverage I (Cyber Crime):
- a. Based upon, arising from, or in any way involving any actual or alleged unauthorized acquisition, access, use or disclosure of **private information** that is held or transmitted in any form. This exclusion does not apply to **financial fraud** which directly results from the use of **private information**.
  - b. Based upon, arising from, or in any way involving the seizure, confiscation, nationalization, requisition, or destruction of an **insured telecommunications system** by, or under the order of, any government or public authority.
  - c. For amounts that have been wholly or partially reversed by a credit card company or financial institution.
  - d. Based upon, arising from, or in any way involving any fraudulent instruction, if the sender, or any person or organization acting in collusion with the sender, ever had authorized access to **your**

password, PIN or other security code. This exclusion does not apply to **financial fraud** which directly results from a fraudulent instruction transmitted by an **employee** or **executive**, if the fraudulent instruction was transmitted because that **employee** or **executive** received intentionally misleading or deceptive telephonic or electronic communications from a **third party** falsely purporting to be **you**, an **employee** or **executive**, or **your** client, customer, vendor, or financial institution.

- e. Based upon, arising from, or in any way involving the giving or surrendering of **money**, **securities**, or **other property** in any exchange for or purchase of goods, products or services:
    - (1) That are not yet delivered, whether or not fraudulent;
    - (2) That fail to conform to advertised quality or performance; or
    - (3) That fail to conform to the quality or performance expected from the standpoint of the **insured**.
  - f. Based upon, arising from, or in any way involving potential income, including interest and dividends, not realized by **you** or **your** clients or customers.
44. With respect to Coverage J (Dependent System Failure), for, based upon, arising from, or in any way involving the cost to upgrade, improve, repair, redesign, reconfigure, or maintain a **service provider computer system**.

### SECTION III –Defense and Settlement Provisions

The following defense and settlement provisions will apply only to the coverage provided under this Coverage Form and will supersede any other defense and settlement provisions contained elsewhere in **your** contract.

- 1. We have the right and duty to defend an **insured** against any **claim** covered under Coverage A, B, C, or D, even if the allegations are groundless, false or fraudulent. We have the right to appoint an attorney to defend any such **claim**. However, the Company will have no duty to defend any **insured** against any **claim** seeking amounts or relief to which this insurance does not apply.
- 2. The Limits of Insurance available to pay **damages** will be reduced, and may be completely exhausted, by payment of **defense costs** or any other amounts covered under this Coverage Form.
- 3. The **insured** shall not pay any **damages**, **defense costs**, or other amounts covered under this Coverage Form, or settle or offer to settle any **claim**, assume any contractual obligation, admit liability, voluntarily make any payment, or confess or otherwise consent to any **damages** or judgments without our prior written consent, which consent will not be unreasonably withheld. We will not be liable for any **damages**, **defense costs**, settlement, judgment, assumed obligation, admitted liability, voluntary payment or confessed **damages** to which we have not consented.
- 4. We have the right to make any investigation we deem necessary, including, without limitation, any investigation with respect to coverage.
- 5. With respect to Coverages A, B, C, and D only, we will not settle any **claim** or pay any **damages**, **regulatory compensatory award**, **regulatory fines and penalties**, or **PCI DSS fines and assessments**, whichever applies, without the **insured's** consent. If an **insured** refuses to consent to any settlement or compromise recommended by us or our representatives that is acceptable to the claimant, and the **insured** elects to contest the **claim** or continue any legal proceedings in connection with such **claim**, then our liability for **damages**, **defense costs**, **regulatory compensatory award**, **regulatory fines and penalties**, or **PCI DSS fines and assessments**, whichever applies, will not exceed the following amount, subject to the Limits of Insurance:
  - a. The amount for which the **claim** could have been settled and **defense costs** incurred as of the date the **insured** withheld consent to such settlement, plus

- b. Fifty percent (50%) of any **damages, defense costs, regulatory compensatory award, regulatory fines and penalties** or **PCI DSS fines and assessments** incurred after the date the **insured** withheld consent to such settlement or compromise. The remaining fifty percent (50%) of such **damages, defense costs, regulatory compensatory award, regulatory fines and penalties**, or **PCI DSS fines and assessments**, whichever applies, and any amounts that exceed the applicable Limit of Insurance, will be borne by the **insured** at the **insured's** own risk and will be uninsured under this Coverage Form.
6. We have no duty to pay any **damages, defense costs**, or other amounts covered under this Coverage Form, or to undertake or continue the defense of any **claim**, after the Limit of Insurance is exhausted. Once the Limit of Insurance is exhausted, the Company has the right to withdraw from the further defense or payment of any **claim** by transferring control of said **claim** to the **insured** in accordance with **SECTION IX. Transfer of Duties when the Limits Of Insurance are Exhausted** of this Coverage Form.

#### SECTION IV – Limits of Insurance

1. The Limits of Insurance shown in Item #3 of Cyber Coverage Declarations for each Cyber Coverage Agreement represent the most we will pay under each Cyber Coverage Agreement for each **claim** first made during the **contract period** and in the aggregate for all **claims** first made during the **contract period**, including **defense costs** where applicable, regardless of the number of **claims**, claimants or **insureds**. If the Limit of Insurance for any Coverage Agreement is exhausted, all of our obligations under that Coverage Agreement will be deemed completely fulfilled and extinguished.
2. The Aggregate Limit of Liability shown in Item #3 of the Cyber Coverage Declarations is the most we will pay under this Coverage Form for all **claims** first made during the **contract period**, including **defense costs** where applicable, regardless of the number of **claims**, claimants or **insureds**, or the number of Coverage Agreements that apply. All amounts we pay under this Coverage Form will reduce, and may completely exhaust, the Aggregate Limit of Liability.
3. All **claims** which arise out of the same, related, or continuing incidents, acts, facts or circumstances will be considered a single **claim**, regardless of the number of **claims** made, **insureds** affected, or claimants involved. All **claims** which arise out of the same, related, or continuing incidents, acts, facts or circumstances will be deemed first made on the date the earliest of such **claims** is first made and will be deemed first reported to us on the date the earliest of such **claim** is reported to us.
4. If coverage for any **claim** exists under multiple Coverage Agreements of this Coverage Form, the Company will allocate payments under this Coverage Form to that portion of the **claim** covered under each applicable Coverage Agreement; provided, however, that a) the Company will never pay more under any one Coverage Agreement than the Limit of Insurance shown in Item #3 of the Cyber Coverage Declarations for that Coverage Agreement; and b) the Company's total aggregate Limit of Insurance for such **claim** will not exceed the single largest Limit of Insurance that applies. The Company has the sole discretion to allocate **claims** paid, if any, against the appropriate Limit of Insurance.
5. The existence of a **cyber liability extended reporting period** will not increase or reinstate the Limits of Insurance shown in Item #3 of the Cyber Coverage Declarations.

#### SECTION V – Additional Defense Costs Limit

**Defense costs** payable under Coverage A, B, C, or D will first be applied to the separate **defense costs** Aggregate Limit shown in Item #3 of the Cyber Coverage Declarations. Any covered **defense costs** that exceed the **defense costs** Aggregate Limit will then be applied to, and may completely exhaust, the limit of insurance for Coverage A, B, C, or D (whichever applies) and the Aggregate Limit of Liability, as shown in Item #3 of the Cyber Coverage Declarations; provided, however, that if the Aggregate Limit of Liability is exhausted, the **defense costs**

Aggregate Limit shall also be deemed exhausted, no further **defense costs** will be paid, and our obligations under this Coverage Form shall be deemed completely fulfilled and extinguished.

### SECTION VI – Notice Provisions

The following Notice Provisions will apply only to the coverage provided under this Coverage Form and will supersede any other notice provisions contained elsewhere in **your** Contract.

1. As a condition precedent to coverage for any **claim**, an **executive** must provide written notice to the Company of such **claim** as soon as practicable, but no later than 60 days after expiration of the **contract period** (or during the **cyber liability extended reporting period**, if applicable).
2. If, during the **contract period**, an **executive** becomes aware of any incidents, acts, facts or circumstances that could reasonably be a basis for a **claim**, the **executive** must give written notice of the following information to the Company during the **contract period**:
  - a. Specific details of the incidents, acts, facts or circumstances that could reasonably be the basis for a **claim**;
  - b. Possible **damages**, penalties, or other amounts potentially covered under this Coverage Form that may result or has resulted from the facts or circumstances;
  - c. Details regarding how the **executive** first became aware of the incidents, acts, facts or circumstances; and
  - d. The **computer system** security and event logs, if applicable.

Any **claim** arising out of such reported incidents, acts, facts or circumstances will be deemed to be a **claim** first made on the date that Company first received written notice complying with the above requirements.

### SECTION VII – Extended Reporting Provisions

1. In the event of cancellation or non-renewal of this Coverage Form either by the **named insured** or the Company, the **named insured** will have the option to purchase a **cyber liability extended reporting period** effective from the date of cancellation or non-renewal. The additional premium for the **cyber liability extended reporting period** will be a percentage of the full Cyber Coverage annual premium in effect on the date this Coverage Form was issued or last renewed, as set forth below:

Term	Percent of Cyber Annual Premium
One year (12 months)	100%
Two years (24 months)	150%
Three years (36 months)	200%

2. If purchased by the **named insured**, the **cyber liability extended reporting period** will apply to any **claim** first made during the **cyber liability extended reporting period**, but only if the actual or alleged **wrongful acts** or **first party insured events** giving rise to such **claim** occur on or after the **retroactive date** and prior to the end of the **contract period**. As a further condition precedent to coverage, the **claim** must be reported to the Company in accordance with **SECTION VI. Notice Provisions** and will be subject to all other Coverage Form terms, conditions and exclusions.
3. To purchase the **cyber liability extended reporting period**, the **named insured's** written request for the **cyber liability extended reporting period**, together with full payment of the additional

premium for the **cyber liability extended reporting period**, must be received by the Company within 30 days of the effective date of cancellation or non-renewal of this Coverage Form.

4. The Limits of Insurance for the **cyber liability extended reporting period** are part of, and not in addition to, the Limits of Insurance shown in Item #3 of the Cyber Coverage Declarations.
5. The right to purchase a **cyber liability extended reporting period** will not be available to the **named insured** where cancellation or non-renewal of this Coverage Form by the Company is because of non-payment of premium.
6. At the commencement of a **cyber liability extended reporting period**, the entire premium will be deemed fully earned, and in the event the **named insured** terminates a **cyber liability extended reporting period** for any reason prior to its natural expiration, the Company will not be liable to return any premium paid for the **cyber liability extended reporting period**.

#### SECTION VIII – Loss Determination

1. **Brand Loss.** The **brand loss** payable under Coverage F will be calculated by considering:
  - a. The prior experience of **your** business preceding the date of the **adverse media report** or **notification**, whichever applies, and **your** likely net profit, had no **adverse media report** been published or **notification** occurred;
  - b. Income derived from substitute methods, facilities, or personnel **you** use to maintain **your** revenue stream;
  - c. **Your** documentation of the trends in **your** business and variations in, or other circumstances affecting, **your** business before or after the **adverse media report** or **notification**, which would have affected **your** business had no **adverse media report** been published or **notification** occurred; and
  - d. **Your** fixed operating expenses (including ordinary payroll), but only to the extent that such fixed operating expenses must continue during the **period of indemnity**.

For purposes of calculating **brand loss**, net profit will include the amount paid or payable to **you** for goods, products, or services sold, delivered, or rendered in the normal course of **your** business.

2. **Digital Assets Loss.** The **digital assets loss** payable under Coverage G.1. will be determined as follows:
  - a. If the impacted **digital asset** was purchased from a **third party**, we will pay only the lesser of the original purchase price of the **digital asset** or the reasonable and necessary **digital assets loss**.
  - b. If it is determined that the **digital assets** cannot be replaced, restored or recreated, we will only reimburse the actual and necessary **digital assets loss** incurred up to such determination.
3. **Income Loss.** The **income loss** payable under Coverage G.2. or Coverage J (whichever applies) will be calculated as follows:
  - a. **Your** net profit, as could have been reasonably projected, but which has been lost as a direct result of a **covered cause of loss** or **dependent system failure** (whichever applies); plus
  - b. **Your** fixed operating expenses (including ordinary payroll) incurred, but only to the extent that such operating expenses must continue during the **period of restoration** or **period of indemnity** (whichever applies).
4. **Income Loss** will be calculated by considering:
  - a. The prior experience of **your** business preceding the date of the **covered cause of loss** or **dependent system failure** (whichever applies), and **your** likely net profit, had no **covered cause of loss** or **dependent system failure** (whichever applies) occurred;
  - b. Income derived from substitute methods, facilities, or personnel **you** use to maintain **your** revenue stream; and



- c. **Your** documentation of the trends in **your** business and variations in, or other circumstances affecting, **your** business before or after the **covered cause of loss** or **dependent system failure** (whichever applies), which would have affected **your** business had no **covered cause of loss** or **dependent system failure** (whichever applies) occurred.

For purposes of calculating **income loss**, net profit will include the amount paid or payable to **you** for goods, products, or services sold, delivered, or rendered in the normal course of **your** business.

## **SECTION IX – Transfer of Duties when the Limits of Insurance are Exhausted**

The following Transfer of Duties When the Limits of Insurance Are Exhausted provisions will apply only to the coverage provided under this Coverage Form and will supersede any similar provisions contained elsewhere in **your** Contract.

1. If the Company concludes that, based on **claims** which have been reported, the Limits of Insurance shown in Item #3 of the Cyber Coverage Declarations are likely to be used up in payment of covered amounts, the Company will notify the **insured** to that effect.
2. When the Limits of Insurance have been exhausted:
  - a. The Company will notify the **insured** in writing as soon as practicable that: (a) such Limits of Insurance have been exhausted; and (b) the Company's obligation to defend any **claim** or pay any amounts has ended.
  - b. The Company will initiate and cooperate in the transfer of control to the appropriate **insured** all **claims** which are subject to the Limits of Insurance and were reported to the Company before the Limits of Insurance were exhausted. **You**, and any other **insured**, must cooperate in the transfer of control of said **claims**. **You**, and any other **insured** involved in a **claim**, must arrange for the defense and payment of such **claim** within the period agreed to by the appropriate **insured** and the Company. Absent any such agreement, arrangements for defense and payment of the **claim** must be made as soon as practicable. The Company will take such steps as deemed appropriate to avoid default in, or continue the defense or handling of, such **claim** until transfer of control is completed, provided the **insured** is cooperating in completing such transfer.
  - c. The **insured** will reimburse the Company for costs it incurs in transferring control of a **claim**. The Company will take no action whatsoever with respect to any **claim** that would have been subject to the Limits of Insurance had they not been exhausted, if the **claim** is reported to the Company after the Limits of Insurance have been exhausted.
  - d. The **insured** will also be responsible for providing **notification** and customer support, including credit monitoring services and identity theft education or assistance, to affected individuals. The **insured** may continue to utilize vendors recommended by the Company to provide such services.
  - e. The exhaustion of the Limits of Insurance and the resulting end of the Company's obligation to defend any **claim** or pay any amount will not be affected by the Company's failure to comply with any of the provisions of this section.

## **SECTION X – Other Insurance**

The coverage provided by this Coverage Form will be excess insurance over any other valid and collectible insurance available, whether such insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such insurance specifically applies as excess insurance over the insurance provided under this Coverage Form.

## SECTION XI – Arbitration

Notwithstanding any other provision of this Coverage Form or **your** Contract, any irreconcilable dispute between the Company and an **insured** concerning this Coverage Form or coverage for any **claim** is to be resolved by arbitration in accordance with the then current rules of the American Arbitration Association, except that the arbitration panel shall consist of one arbitrator selected by the **insured**, one arbitrator selected by the Company, and a third independent arbitrator selected by the first two arbitrators. Judgment upon the award may be entered in any court having jurisdiction. The arbitrator has the power to decide any dispute between the Company and the **insured** concerning the application or interpretation of this Coverage Form. However, the arbitrator shall have no power to change or add to the provisions of this Coverage Form. The **insured** and the Company will share equally in the cost of arbitration.

## SECTION XII – Definitions

With respect to the coverage provided by this Coverage Form, certain words are shown in bold and are defined as follows. If a term is defined below and in **your** Contract, the definition below applies only to the coverage provided by this Coverage Form.

**Act of cyber terrorism** means the premeditated use of information technology to organize and execute attacks, or the threat thereof, against computers, **computer system**, networks or the **internet** by any person or group, whether acting alone or on behalf of, or in connection with, any organization or government, which is committed for political, religious, or ideological purposes, with the intention to influence any government, put the public in fear, or cause destruction or harm to critical infrastructure or **data**.

**Acquiring bank** means a bank or financial institution that accepts credit or debit card payments (including stored value cards and pre-paid cards) for products or services on behalf of a merchant, including processing and crediting those payments to a merchant's account.

**Adverse media report** means a report or communication of an actual or potential **security breach** or **privacy breach** which has been publicized through any media channel, including, but not limited to, television, **print media**, radio or electronic networks, the **internet**, or electronic mail, and threatens material damage to **your reputation** or brand.

**Assumed under contract** means liability for **damages** resulting from a **multimedia wrongful act**, **security breach**, or **privacy breach**, where such liability has been assumed by an **insured** in the form of a written hold harmless or indemnity agreement, but only if such agreement was executed before the **multimedia wrongful act**, **security breach** or **privacy breach** occurred.

**Bodily injury** means physical injury, sickness, disease, or death sustained by any person and, where resulting from such physical injury only, mental anguish, mental injury, shock, humiliation, or emotional distress.

**BPO service provider** means any **third party** that provides business process outsourcing services for **your** benefit under a written contract with **you**, including, but not limited to, call center services, fulfillment services, and logistical support. **BPO Service Provider** also includes any financial services provider that is storing, processing, handling, or accessing **private information** on **your** behalf, pursuant to a written contract with **you** to provide such services.

**Brand loss** means **your** net profit, as could have reasonably been projected immediately prior to **notification**, or in the event of an **adverse media report**, immediately prior to the publication of an **adverse media report**, but which has been lost during the **period of indemnity** as a direct result of such **adverse media report** or **notification**. **Brand loss** will be determined in accordance with the provisions of **SECTION VIII. Loss Determination** of this Coverage Form.

**Breach support and credit monitoring expenses** means those reasonable and necessary expenses that **you** incur on **your** own behalf, or on behalf of a party for whom **you** are **vicariously liable**, to provide support activity to affected individuals in the event of a **privacy breach**. **Breach support and credit monitoring expenses** includes the cost to set up a call center and to provide a maximum of 12 months of credit monitoring services,

identity theft assistance services, or credit repair and restoration services. **Breach support and credit monitoring expenses** must be incurred with the Company's prior written consent.

**Card association** means Visa International, MasterCard, Discover, JCB, American Express and any similar credit or debit card association that is a participating organization of the Payment Card Industry Security Standards Council.

**Claim** means:

1. With respect to Coverage A and Coverage B only:
  - a. A written demand made against an **insured** for **damages** or non-monetary relief;
  - b. A written request received by an **insured** to toll or waive a statute of limitations relating to a potential **claim** against an **insured**; or
  - c. The service of a civil lawsuit or the institution of arbitration or other alternative dispute resolution proceedings against an **insured** seeking **damages**, a temporary restraining order, or a preliminary or permanent injunction.

A **claim** under Coverage A or Coverage B does not include a **PCI DSS demand**.

2. With respect to Coverage C only, a **privacy regulatory proceeding**. A **claim** under Coverage C does not include a **PCI DSS demand**.
3. With respect to Coverage D only, a **PCI DSS demand**.
4. With respect to Coverage E only, **your** written notice to the Company of an **adverse media report, security breach or privacy breach**.
5. With respect to Coverage F only, **your** written notice to the Company of an **adverse media report or notification** that has resulted or may result in **brand loss**.
6. With respect to Coverage G only, **your** written notice to the Company of a **covered cause of loss**.
7. With respect to Coverage H only, **your** written notice to the Company of a **cyber extortion threat**.
8. With respect to Coverage I only, **your** written notice to the Company of **financial fraud, telecommunications fraud or a phishing attack**.
9. With respect to Coverage J only, **your** written notice to the Company of a **dependent system failure**.

A **claim** under Coverage A, B, C or D will be deemed to be first made when it is received by an **insured**. A **claim** under Coverage Agreement E, F, G, H, I or J will be deemed to be first made when **your** written notice of the **first party insured event** giving rise to the **claim** is received by the Company.

**Computer hardware** means the physical components of any **computer system**, including CPUs, memory, storage devices, storage media, and input/output devices and other peripheral devices and components, including, but not limited to, cables, connectors, fiber optics, wires, power supply units, keyboards, display monitors and audio speakers.

**Computer program** means an organized set of instructions that, when executed, causes a computer to behave in a predetermined manner. A **computer program** includes, but is not limited to, the communications, networking, operating systems and related processes used to create, maintain, process, retrieve, store, or transmit **data**.

**Computer system** means an interconnected electronic, wireless, web, or similar system (including all **computer hardware** and software) used to process and store **data** or information in an analogue, digital, electronic or wireless format, including, but not limited to, **computer programs, data**, operating systems, **firmware**, servers, media libraries, associated input and output devices, mobile devices, networking equipment, websites, extranets, off-line storage facilities (to the extent that they hold **data**), and electronic backup equipment.

**Computer virus** means a program that possesses the ability to create replicas of itself (commonly known as an **auto-reproduction** program) within other programs or operating system areas, or which can spread copies of itself wholly or partly to other **computer system**.

**Contract period** means the period between the Effective Date and Expiration Date of this Coverage Form, as specified in Item #2 of the Cyber Coverage Declarations. Coverage may be canceled or otherwise terminated before the **contract period** termination date.

**Covered cause of loss** means and is limited to the following:

1. Accidental Damage or Destruction
  - a. Accidental damage to, or destruction of, **electronic media** so that stored **digital assets** are no longer machine-readable;
  - b. Accidental damage to, or destruction of, **computer hardware** so that stored **data** is no longer machine-readable;
  - c. Failure in power supply or under/over voltage, but only if such power supply, including back-up generators, is under **your** direct operational control;
  - d. **Programming error of delivered programs**; or
  - e. Electrostatic build-up and static electricity.
2. Administrative or Operational Mistakes

An accidental, unintentional, or negligent act, error or omission by an **insured**, a **BPO service provider** or an **outsourced IT service provider** in:

- a. The entry or modification of **data** on an **insured computer system**, which causes damage to such **data**;
  - b. The creation, handling, development, modification, or maintenance of **digital assets**; or
  - c. The ongoing operation or maintenance of an **insured computer system**, excluding the design, architecture, or configuration of an **insured computer system**.
3. Computer Crime and Computer Attacks

Any of the following attacks on an **insured computer system**:

- a. A **denial of service attack**;
- b. **Malicious code**;
- c. **Unauthorized access**;
- d. **Unauthorized use**; or
- e. An **act of cyber terrorism**.

**Covered cause of loss** does not include any **dependent system failure**.

**Cyber extortion expenses** means all reasonable and necessary costs and expenses, other than **cyber extortion monies**, that **you** incur with the Company's prior written consent as a direct result of a **cyber extortion threat**.

**Cyber extortion monies** means any **money** or **other property you** pay, with the Company's prior written consent, to a person(s) or entity(ies) reasonably believed to be responsible for a **cyber extortion threat**, to terminate such **cyber extortion threat**.

**Cyber extortion threat** means a credible threat or series of related credible threats, including a demand for **cyber extortion monies**, which is directed at **you** to:

1. Release, divulge, disseminate, destroy or use **private information** taken from an **insured** as a result of **unauthorized access** to, or **unauthorized use** of, an **insured computer system**;
2. Introduce **malicious code** into an **insured computer system**;
3. Corrupt, damage or destroy an **insured computer system**;
4. Restrict or hinder access to an **insured computer system**, including the threat of a **denial of service attack**; or

5. Electronically communicate with **your** customers and falsely claim to be **you**, or to be acting under **your** direction, to falsely obtain **private information** (also known as **pharming, phishing**, or other types of false communications).

A series of continuing **cyber extortion threats**, related or repeated **cyber extortion threats**, or multiple **cyber extortion threats** resulting from the same event or incident will be considered a single **cyber extortion threat** and will be deemed to have occurred at the time the first of such **cyber extortion threats** occurred.

**Cyber liability extended reporting period** means the period after the end of the **contract period** for reporting **claims**, as provided in **SECTION VII. Extended Reporting Provisions** and specifically excludes the **contract period**.

**Damages** means a monetary judgment, award, or settlement, including prejudgment and post-judgment interest awarded against an **insured** on that part of any judgment paid or to be paid by the Company; and punitive, exemplary or multiplied **damages** to the extent insurable under the law pursuant to which this Coverage Form is construed. With respect to the insurability of punitive, exemplary or multiplied **damages**, the applicable law will be the law of the state most favorable to the **insured**, provided that the state whose law is most favorable to the **insured** has a reasonable relationship to the **claim**. A state's law will be deemed to have a reasonable relationship to the **claim** if it is the state where:

1. The **named insured** is incorporated or has a place of business;
2. The **claim** is pending; or
3. Any **multimedia wrongful act** or **security and privacy wrongful act** (whichever applies) was committed or allegedly committed by an **insured**.

**Damages** does not include:

1. Any **insured's** future profits or royalties, restitution, or disgorgement of any **insured's** profits;
2. The costs to comply with orders granting injunctive or non-monetary relief, including specific performance, or any agreement to provide such relief;
3. Loss of any **insured's** fees or profits, the return or offset of any **insured's** fees or charges, or any **insured's** commissions or royalties provided or contracted to be provided;
4. Taxes, fines or penalties, or sanctions;
5. Contractual liquidated **damages**, to the extent such **damages** exceed the amount for which the **insured** would have been liable in the absence of the liquidated **damages** agreement;
6. Any amount which an **insured** is not financially or legally obligated to pay;
7. Disgorgement of any remuneration or financial advantage to which an **insured** was not legally entitled;
8. Settlements negotiated without the Company's consent;
9. Monetary judgments, awards, settlements or any other amounts which are uninsurable under the law pursuant to which this Coverage Form is construed or any legal fees and costs awarded pursuant to such judgments, awards or settlements; or
10. **PCI DSS fines and assessments**.

**Data** means any machine-readable information, including, but not limited to, ready-for-use programs, applications, account information, customer information, health and medical information, or other electronic information that is subject to back-up procedures, irrespective of the way it is used and rendered.

**Defense costs** means:

1. Reasonable and necessary fees incurred with the Company's consent and charged by an attorney(s) designated by the Company to defend against a **claim** under Coverage A, B, C, or D; and

2. All other reasonable and necessary fees, costs, and expenses resulting from the defense and appeal of a **claim** under Coverage A, B, C, or D, if incurred by the Company or by an **insured** with our prior written consent.

**Defense costs** does not include any wages or salaries of an **insured**, or fees, overhead or other charges incurred by, or paid to, any **insured** for any time spent in cooperating in the investigation or defense of a **claim** or a potential **claim**.

**Delivered programs** means **computer programs** where the development stage has been finalized, having passed all test-runs and been proven successful in a live environment.

**Denial of service attack** means an event caused by unauthorized or unexpected interference or a malicious attack, which is intended by the perpetrator to overwhelm the capacity of a **computer system** by sending an excessive volume of **data** to such **computer system** to prevent access to such **computer system**.

**Dependent business interruption loss** means **income loss** and **interruption expenses** that **you** incur during the **period of indemnity** as a direct result of a **dependent system failure**.

**Dependent system failure** means an unplanned outage, interruption, failure, suspension, or degradation of service of a **service provider computer system** caused directly by:

1. **Unauthorized access** to, or **unauthorized use** of, a **service provider computer system**, including any such **unauthorized access** or **unauthorized use** resulting from the theft of a password;
2. A **denial of service attack** against a **service provider computer system**;
3. Infection of a **service provider computer system** by **malicious code**;
4. An **act of cyber terrorism**;
5. Accidental damage to, or destruction of, **electronic media** or **computer hardware**; or
6. Administrative or operational mistakes by an **outsourced IT service provider** in the ongoing operation or maintenance of its **service provider computer system**.

**Digital assets** means **data** and **computer programs** that exist in an **insured computer system**. **Digital assets** do not include **computer hardware**.

**Digital assets loss** means reasonable and necessary expenses and costs that **you** incur to replace, recreate or restore **digital assets** to the same state and with the same contents immediately before the **digital assets** were damaged, destroyed, altered, misused, or stolen, including expenses for materials and machine time. **Digital assets loss** also includes amounts representing **employee** work time to replace, recreate or restore **digital assets**, which will be determined on a predefined billable hour or per-hour basis as based upon **your** schedule of **employee** billable hours. **Digital assets loss** will be determined in accordance with the provisions of **SECTION VIII. Loss Determination** of this Coverage Form. **Digital assets loss** does not include:

1. The cost(s) of restoring, updating, or replacing **digital assets** to a level beyond that which existed prior to a **covered cause of loss**;
2. Physical damage to the **computer hardware** or **data** center other than accidental damage to, or destruction of, **electronic media** so that stored **digital assets** are no longer machine-readable;
3. Contractual penalties or consequential **damages**;
4. Any liability to **third parties** for whatever reason, including, but not limited to, legal costs and expenses of any type;
5. Fines or penalties imposed by law;
6. The economic or market value of **digital assets**;
7. Costs or expenses incurred to identify, patch, or remediate software program errors or **computer system** vulnerabilities;
8. Costs to upgrade, redesign, reconfigure, or maintain an **insured computer system** to a level of functionality beyond that which existed prior to the **covered cause of loss**;

9. Any loss paid or payable under Coverage G.2.;
10. The cost(s) of restoring, replacing or repairing **electronic media**; or
11. Any loss arising out of a physical cause or natural peril, including, but not limited to, fire, wind, water, flood, subsidence, or earthquake.

**Electronic media** means floppy disks, CD ROMs, hard drives, magnetic tapes, magnetic discs, or any other media on which **data** is recorded or stored.

**Employee** means any individual whose labor or service is engaged by and directed by **you**, including volunteers and part-time, seasonal, temporary or leased workers. **Employee** does not include any **executive** or independent contractor.

**Executive** means any of **your** directors or officers, including **your** chief executive officer, chief financial officer, chief operations officer, chief technology officer, chief information officer, chief privacy officer, general counsel or other in-house lawyer, and risk manager. **Executive** also includes any of **your** public officials, whether elected, appointed, or employed, but only while acting on **your** behalf.

**Financial fraud** means:

1. An intentional, unauthorized and fraudulent written, electronic or telephonic instruction transmitted to a financial institution, directing such institution to debit **your** account and to transfer, pay or deliver **money** or **securities** from **your** account, which instruction purports to have been transmitted by **you** or an **executive** or **employee**, but was in fact fraudulently transmitted by a **third party** without **your** knowledge or consent;
2. A written, electronic or telephonic instruction transmitted to a financial institution by an **executive** or **employee** as a result of that **executive** or **employee** receiving intentional, misleading or deceptive telephonic or electronic communications from a **third party** falsely purporting to be **you**, **your** client, customer, vendor, or financial institution, or an **executive** or **employee**, and which directs the financial institution to debit **your** account and to transfer, pay or deliver **money** or **securities** from **your** account; or
3. The theft of **money** or **securities** from **your** bank account or corporate credit cards by electronic means.

**Financial fraud loss** means the loss of **money** or **securities** that **you** sustain as a direct result of **financial fraud**. **Financial fraud loss** does not include any amounts reimbursed to **you** by any financial institution.

**Firmware** means the fixed programs that internally control basic low-level operations in a device.

**First party insured event** means:

1. With respect to Coverage E only, an **adverse media report**, **security breach** or **privacy breach**;
2. With respect to Coverage F only, a **security breach** or **privacy breach**;
3. With respect to Coverage G only, a **covered cause of loss**;
4. With respect to Coverage H only, a **cyber extortion threat**;
5. With respect to Coverage I only, **financial fraud**, **telecommunications fraud**, or a **phishing attack**;
6. With respect to Coverage J only, a **dependent system failure**.

**First party insured event** only pertains to loss sustained by **you** and does not include any **claim** brought against an **insured**.

**Income loss** means:

1. With respect to Coverage G.2. only, the net profit loss **you** sustain during the **period of restoration** as a direct result of a **covered cause of loss**; and
2. With respect to Coverage J only, the net profit loss **you** sustain during the **period of indemnity** as a direct result of a **dependent system failure**.

**Income loss** will be determined in accordance with the provisions of **SECTION VIII. Loss Determination** of this Coverage Form. **Income loss** does not include:

1. Any loss arising out of a physical cause or natural peril, including, but not limited to, fire, wind, water, flood, subsidence, or earthquake;
2. Any loss or expense arising out of updating or replacing **digital assets** to a level beyond that which existed prior to the **covered cause of loss**;
3. Contractual penalties or consequential **damages**;
4. Any liability to **third parties** for whatever reason, including, but not limited to, legal costs and expenses of any type;
5. Fines or penalties imposed by law;
6. Costs or expenses incurred to identify, patch, or remediate software program errors or **computer system** vulnerabilities;
7. Loss of goodwill or reputational harm; or
8. Costs to upgrade, redesign, reconfigure, or maintain an **insured computer system** to a level of functionality beyond that which existed prior to the **covered cause of loss**.

**Insured** means:

1. The **named insured**;
2. Any of the **named insured's** past, present, or future **executives, employees, volunteers, members of boards, members of committees, or members of commissions, whether elected, appointed, or employed, but only while acting on behalf of the named insured**;
3. Any agent or independent contractor of the **named insured**, but only while acting on behalf of, at the direction of, and under the supervision of the **named insured**; and
4. Any person or legal entity the **named insured** is required by written contract to provide such coverage as is afforded by this Coverage Form, but only for the acts of a party described in paragraph **1., 2., or 3.** above, and only if the written contract is executed prior to the date any **wrongful act or first party insured event** occurs.

**Insured computer system** means a **computer system** operated by, and either owned by or leased to, **you**. With respect to Coverage B only, **insured computer system** also includes a **computer system** operated by a **BPO service provider** or an **outsourced IT service provider**, which is used to provide hosted computer application services to **you**, or for processing, maintaining, hosting, or storing **data** for **you**, pursuant to a written contract with **you** to provide such services. With respect to Coverage B, C, E, and H only, **insured computer system** also includes a system operated by an organization providing computing resources to **you** that are delivered as a service over a network or the **internet** (commonly known as **cloud computing**), including Software as a Service, Platform as a Service and Infrastructure as a Service.

**Insured telecommunications system** means any telephone or fax network or system that **you** own, rent, lease, license, or borrow.

**Internet** means the worldwide public network of computers which enables the transmission of **data** between different users, including a private communications network existing within a shared or public network platform.

**Interruption expenses** means those reasonable and necessary expenses, excluding **special expenses**, incurred by **you** to avoid or minimize the suspension of **your** business because of a) a total or partial interruption, degradation in service, or failure of an **insured computer system** caused by a **covered cause of loss**, or b) a **dependent system failure**, which **you** would not have incurred had no **covered cause of loss** or **dependent system failure** (whichever applies) occurred. **Interruption expenses** include, but are not limited to, the use of rented/leased external equipment, substitution of other work or production procedures, use of **third party**



services, or additional staff expenditures or labor costs. **Interruption expenses** does not include:

1. Any loss arising out of a physical cause or natural peril, including, but not limited to, fire, wind, water, flood, subsidence, or earthquake;
2. With respect to Coverage G, any loss expense arising out of updating or replacing **digital assets** to a level beyond that which existed prior to the **covered cause of loss**;
3. Contractual penalties or consequential **damages**;
4. Any liability to **third parties** for whatever reason, including, but not limited to, legal costs and expenses of any type;
5. Fines or penalties imposed by law;
6. Costs or expenses incurred to identify, patch, or remediate software program errors or **computer system** vulnerabilities;
7. Loss of goodwill or reputational harm; or
8. With respect to Coverage G, costs to upgrade, redesign, reconfigure, or maintain an **insured computer system** to a level of functionality beyond that which existed prior to the **covered cause of loss**.

**Malicious code** means software intentionally designed to insert itself by a variety of forms into a **computer system**, without the owner's informed consent, and cause damage to the **computer system**. **Malicious code** includes, but is not limited to, **computer viruses**, worms, Trojan horses, spyware, dishonest adware, and crimeware.

**Media material** means communicative material of any kind or nature for which **you** are responsible, including, but not limited to, words, pictures, sounds, images, graphics, code and **data**, regardless of the method or medium of communication of such material or the purpose for which the communication is intended. **Media material** does not include any tangible goods or products that are manufactured, produced, processed, prepared, assembled, packaged, labeled, sold, handled or distributed by **you** or others trading under **your** name.

**Merchant services agreement** means an agreement between **you** and an **acquiring bank, card association, brand, network, credit or debit card processor, independent sales organization, gateway, or membership service**, which enables **you** to accept payment by credit card, debit card or prepaid card.

**Money** means a medium of exchange in current use and authorized or adopted by a domestic or foreign government, including, but not limited to, currency, coins, bank notes, bullion, travelers' checks, registered checks and money orders held for sale to the public.

**Multimedia wrongful act** means any of the following, whether actual or alleged, but only if directly resulting from the dissemination of **media material** by an **insured**:

1. Any form of defamation or other tort related to the disparagement or harm to the reputation or character of any person or organization, including libel, slander, product disparagement or trade libel, and infliction of emotional distress, mental anguish, outrage or outrageous conduct, if directly resulting from any of the foregoing;
2. Invasion, infringement or interference with an individual's right of privacy or publicity, including the torts of false light, intrusion upon seclusion, commercial misappropriation of name, person, or likeness, and public disclosure of private facts;
3. Plagiarism, piracy or misappropriation of ideas under an implied contract;
4. Infringement of copyright, trademark, trade name, trade dress, title, slogan, service mark or service name;
5. Domain name infringement or improper deep-linking or framing;
6. Negligence in **media material**, including a **claim** alleging harm to any person or entity that acted or failed to act in reliance upon such **media material**;

7. False arrest, detention or imprisonment;
8. Trespass, wrongful entry or eviction, eavesdropping, or other invasion of the right of private occupancy; or
9. Unfair competition, but only when arising out of a peril described in **1.** through **8.** above.

**Named insured** means the Member listed as such in Item #1 of the Cyber Coverage Declarations.

**Notification** means written notice to affected individuals in the event of a **security breach** or **privacy breach**.

**Notification expenses** means those reasonable and necessary legal expenses, forensic and investigation expenses, postage expenses, and related advertising expenses that **you** incur on **your** own behalf, or on behalf of a party for who **you** are **vicariously liable**, to comply with governmental privacy legislation mandating **notification** to affected individuals in the event of a **security breach** or **privacy breach**. **Notification expenses** must be incurred with the Company's prior written consent. **Notification expenses** also includes **voluntary notification expenses**.

**Other property** means any tangible property, other than **money** or **securities**, which has intrinsic value.

**Outsourced IT service provider** means a **third party** that provides information technology services to **you**, including, but not limited to, services such as hosting, security management, co-location, and **data** storage, under a written contract with **you** to provide such services. With respect to Coverage J only, **outsourced IT service provider** does not include any payment processor; security software provider; **internet** service provider; Domain Name System (DNS) hosting service or domain name registrar; or any subcontractor or subconsultant with whom **you** do not have a direct contract for information technology services.

**PCI Data Security Standard** (known as **PCI DSS**) means the Payment Card Industry Security Standards Council Data Security Standard in effect now, or as hereafter amended, which all merchants and processors must follow when storing, processing and transmitting cardholder **data**.

**PCI DSS demand** means a written demand for **PCI DSS fines and assessments** received by an **insured** directly or indirectly from or through an **acquiring bank**, **card association**, or payment card processor due to the **insured's** non-compliance with the **PCI Data Security Standard**.

**PCI DSS fines and assessments** means monetary fines, penalties or assessments (including fraud recoveries, card reissuance costs, operational expenses, or compliance case costs) owed by an **insured** under the terms of a **merchant services agreement**, but only where such monetary fines, penalties or assessments result from a **security breach** or **privacy breach**.

**Period of indemnity** means:

1. With respect to Coverage F (BrandGuard) only, the period beginning on the earlier of the date of **notification** or the first **adverse media report** (whichever applies), and ending on the earlier of:
  - a. The date that gross revenues are restored to the level they had been prior to **notification** or the first **adverse media report** (whichever applies); or
  - b. The last day of the period shown in Item #3 of the Cyber Coverage Declarations as the **period of indemnity** for Coverage F (BrandGuard).
2. With respect to Coverage J (Dependent System Failure) only, the period beginning on the date when an **executive** first discovers the **dependent system failure**, and ending on the earlier of:
  - a. The date that gross revenues are restored to the level they had been prior to the **dependent system failure**; or
  - b. The last day of the period shown in Item #3 of the Cyber Coverage Declarations as the **period of indemnity** for Coverage J (Dependent System Failure).

**Period of restoration** means the period beginning on the date when the interruption, degradation in service, or failure of an **insured computer system** began, and ending on the earlier of:

1. The date when an **insured computer system** is restored or could have been repaired or restored with reasonable speed to the same condition, functionality and level of service that existed prior to the **covered cause of loss**, plus a maximum of 30 additional consecutive days after the restoration of an **insured computer system** to allow for restoration of **your** business; or
2. The last day of the period shown in Item #3 of the Cyber Coverage Declarations as the **period of restoration** for Coverage G (Network Asset Protection).

**Personally identifiable information** means information that can be used to determine, distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

**Phishing attack** means the use of fraudulent electronic communications or malicious websites to impersonate **you**, **your** brand, or **your** products or services to solicit **private information** or **money**.

**Phishing attack loss** means:

1. Expenses that **you** incur, with the Company's prior written consent, to create and issue a specific press release or to establish a specific website to advise **your** customers and prospective customers of a **phishing attack**; and
2. The cost of reimbursing **your** existing customers for their losses arising directly from a **phishing attack**.

**Print media** means newspapers, newsletters, magazines, books and literary works in any form, brochures or other types of publications, and advertising materials including packaging, photographs, and digital images.

**Privacy breach** means any of the following:

1. The unauthorized collection, disclosure, use, access, destruction or modification of **private information**;
2. The inability to access, or failure to provide, **private information**;
3. Theft of **private information**;
4. The surrender of **private information** as a result of false communications or social engineering techniques, including but not limited to phishing, spear-phishing, and pharming;
5. Failure to implement, maintain, or comply with privacy policies and procedures stating **your** obligations regarding **private information**, including but not limited to **your privacy contract**;
6. Failure to develop or administer an identity theft prevention program;
7. Failure to implement specific security practices with respect to **private information** required by any **privacy regulations**;
8. An infringement or violation of any rights to privacy;
9. Breach of a person's right of publicity, false light, intrusion upon a person's seclusion;
10. Failure to comply with **privacy regulations** pertaining to the **insured's** responsibilities with respect to **private information**, but only relating to an act listed in paragraphs 1. through 8. above; or
11. Failure to comply with any federal, state, foreign or other law (including common law), statute or regulation prohibiting unfair or deceptive trade practices or consumer fraud pertaining to the **insured's** responsibilities with respect to **private information**, but only relating to an act listed in paragraphs 1. through 8. above.

A series of continuing **privacy breaches**, related or repeated **privacy breaches**, or multiple **privacy breaches** resulting from the same event or incident will be considered a single **privacy breach** and will be deemed to have occurred at the time the first of such **privacy breaches** occurred.

**Privacy breach response costs** means:

1. Those reasonable and necessary **public relations expenses** that **you** incur, with the Company's prior written consent, for the employment of a public relations consultant, if such action is reasonably necessary to avert or mitigate any material damage to **your reputation** or brands, which results or reasonably could result from an **adverse media report**; and
2. **Proactive privacy breach response costs** incurred with the Company's prior written consent, subject to the **proactive privacy breach response costs sublimit**.

**Privacy regulations** means federal, state or local statutes, rules, regulations and other laws, as they currently exist and as amended, associated with the confidentiality, access, control, and use of **private information**, including, but not limited to:

1. Health Insurance Portability and Accountability Act of 1996 (Public Law 104- 191), known as HIPAA, and related or similar state medical privacy laws;
2. Gramm-Leach-Bliley Act of 1999 (G-L-B), also known as the Financial Services Modernization Act of 1999, including sections concerning security protection and standards for customer records maintained by financial services companies, and the rules and regulations promulgated thereunder;
3. State and Federal statutes and regulations regarding the security and privacy of consumer information;
4. Governmental privacy protection regulations or laws associated with the control and use of personal information, including but not limited to requirements to post or publish **your privacy contract**, adopt specific privacy controls, or inform customers of actual or suspected **privacy breaches**;
5. Privacy provisions of consumer protection laws, including the Federal Fair Credit Reporting Act (FCRA) and similar state laws;
6. Children's Online Privacy Protection Act or similar laws, as they exist now or in the future;
7. The EU Data Protection Act or other similar privacy and security statutes, rules, regulations or other laws worldwide, as they exist now or in the future; and
8. The Health Information Technology for Economic and Clinical Health Act (HITECH ACT), enacted under Title XIII of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111-5), and its implementing regulations, including related or similar state medical privacy laws.

**Privacy regulatory proceeding** means a formal civil administrative proceeding or regulatory action instituted against an **insured** by a federal, state or local governmental body because of a **security breach** or **privacy breach**.

1. **Private information** means: Proprietary or confidential information owned by a **third party** that is in the care, custody or control of an **insured** or is used by an **insured** with the consent of such **third party**;
2. **Personally identifiable information**; and
3. Any information that is linked or linkable to a specific individual and that is subject to any **privacy regulations**.

**Proactive privacy breach response costs** means those reasonable and necessary **public relations expenses** that **you** incur in response to an actual or potential **security breach** or **privacy breach**, but prior to the publication of an **adverse media report**, to avert or mitigate the potential impact of an **adverse media report**. **Proactive privacy breach response costs** must be incurred with the Company's prior written consent and are subject to the **proactive privacy breach response costs sublimit**.

**Proactive privacy breach response costs sublimit** means the maximum amount that the Company will pay for **proactive privacy breach response costs**. The **proactive privacy breach response costs sublimit** is included within, and will erode, the Limits of Insurance for Coverage E.

**Programming error** means an error which occurs during the development or encoding of a **computer program**, software or application and which would, when in operation, result in a malfunction or incorrect operation of a **computer system**.

**Property damage** means physical injury to, or impairment, destruction or corruption of, any tangible property, including the loss of use thereof. **Data** is not considered tangible property.

**Public relations expenses** means expenses that **you** incur to re-establish **your reputation**, which was damaged as a direct result of an **adverse media report**.

**Regulatory compensatory award** means a sum of **money** which an **insured** is legally obligated to pay as an award or fund for affected individuals, including a regulatory agency's monetary award to a **third party**, due to an adverse judgment or settlement arising out of a **privacy regulatory proceeding**. **Regulatory compensatory award** does not include a criminal penalty or fine issued by a regulatory agency of any kind, including federal, state, or local governmental agencies.

**Regulatory fines and penalties** means civil fines or penalties imposed by a federal, state, or local governmental regulatory body against an **insured** in a **privacy regulatory proceeding**. **Regulatory fines and penalties** does not include: 1) any criminal fines or penalties of any nature whatsoever; or 2) **PCI DSS fines and assessments**.

**Retroactive date** means the date specified as such in Item #4 of the Cyber Coverage Declarations, on or after which **wrongful acts** or **first party insured events** must have taken place to be considered for coverage under this Coverage Form.

**Securities** means negotiable or non-negotiable instruments or contracts representing **money** or **other property**, but does not include **money**.

**Security and privacy wrongful act** means any of the following, whether actual or alleged, but only if committed by an **insured**:

1. The failure to prevent or hinder a **security breach**, which in turn results in:
  - a. The alteration, copying, corruption, destruction, deletion, or damage to **data** stored on an **insured computer system**;
  - b. Theft, loss or unauthorized disclosure of electronic or non-electronic **private information** that is in **your** care, custody or control;
  - c. Theft, loss or unauthorized disclosure of electronic or non-electronic **private information** that is in the care, custody or control of a **BPO service provider** or an **outsourced IT service provider** that is holding, processing or transferring such **private information** on **your** behalf; provided, however, that the theft, loss or unauthorized disclosure occurs while **your** written contract with such **BPO service provider** or **outsourced IT service provider** is still in effect;
  - d. **Unauthorized access** to, or **unauthorized use** of, a **computer system** other than an **insured computer system**;
  - e. The inability of an authorized **third party** to gain access to **your** services;
2. The failure to timely disclose a **security breach** affecting **private information**; or the failure to dispose of **private information** within the required period, in violation of **privacy regulations**;
3. The failure to prevent the transmission of a **malicious code** or **computer virus** from an **insured computer system** to the **computer system** of a **third party**;
4. A **privacy breach**;
5. The failure to prevent a **privacy breach**;
6. The failure to prevent or hinder participation by an **insured computer system** in a **denial of service attack** directed against **internet** sites or the **computer system** of a **third party**;
7. Loss of **personally identifiable information** of **employees**; or

8. Infliction of emotional distress or mental anguish, but only if directly resulting from a peril described in 1. through 7. above.

**Security breach** means any of the following, whether a specifically targeted attack or a generally distributed attack:

1. **Unauthorized access** to, or **unauthorized use** of, an **insured computer system**, including **unauthorized access** or **unauthorized use** resulting from the theft of a password from an **insured computer system** or from an **insured**;
2. A **denial of service attack** against an **insured computer system**;
3. Infection of an **insured computer system** by **malicious code** or the transmission of **malicious code** from an **insured computer system**; or
4. An event described in 1. through 3. above resulting from an **act of cyber terrorism**.

A series of continuing **security breaches**, related or repeated **security breaches**, or multiple **security breaches** resulting from a continuing failure of computer security will be considered a single **security breach** and will be deemed to have occurred at the time the first of such **security breaches** occurred.

**Service provider computer system** means a **computer system** that is owned or leased by, and under the direct operational control of, an **outsourced IT service provider**.

**Special expenses** means reasonable and necessary costs and expenses that **you** incur to:

1. Prevent, preserve, minimize, or mitigate any further damage to **digital assets**, including the reasonable and necessary fees and expenses of specialists, outside consultants or forensic experts;
2. Preserve critical evidence of any criminal or malicious wrongdoing;
3. Purchase replacement licenses for **computer programs** because the copy protection system or access control software was damaged or destroyed by a **covered cause of loss**; or
4. Notify affected individuals of a total or partial interruption, degradation in service, or failure of an **insured computer system** resulting from a **covered cause of loss**.

**Special expenses** does not include:

1. The cost(s) of restoring, updating, or replacing **digital assets** to a level beyond that which existed prior to the **covered cause of loss**;
2. Physical damage to the **computer hardware** or **data** center other than accidental physical damage to, or destruction of, **electronic media** so that stored **digital assets** are no longer machine-readable;
3. Contractual penalties or consequential **damages**;
4. Any liability to **third parties** for whatever reason, including, but not limited to, legal costs and expenses of any type;
5. Fines or penalties imposed by law;
6. The economic or market value of **digital assets**;
7. Costs or expenses incurred to identify, patch, or remediate software program errors or **computer system** vulnerabilities;
8. Costs to upgrade, redesign, reconfigure, or maintain an **insured computer system** to a level of functionality beyond that which existed prior to the **covered cause of loss**;
9. Any loss rising out of a physical cause or natural peril, including, but not limited to, fire, wind, water, flood, subsidence, or earthquake; or
10. The cost(s) of restoring, replacing or repairing **electronic media**.

**Telecommunications fraud** means the intentional, unauthorized and fraudulent gaining of access to outgoing telephone service through infiltration and manipulation of an **insured telecommunications system**.

**Telecommunications fraud loss** means the charges that **you** incur for unauthorized calls directly resulting from **telecommunications fraud**.

**Third party**, whether singular or plural, means any entity, company, organization or person who does not qualify as an **insured**.

**Unauthorized access** means the gaining of access to a **computer system** by any unauthorized person or persons.

**Unauthorized use** means the use of a **computer system** by any unauthorized person or persons or by any authorized person or persons in an unauthorized manner.

**Vicariously liable** means **your** legal responsibility for the liability of others, including legal responsibility **you** assume in a contract. The existence of vicarious liability will not create or confer any rights or duties under this Coverage Form to any **third party**, other than as provided in this definition.

**Voluntary notification expenses** means those reasonable and necessary legal expenses, forensic and investigation expenses, postage expenses, and related advertising expenses that **you** incur to notify individuals of a **security breach** or **privacy breach** where there is no specific legal requirement in the applicable jurisdiction mandating such notice. **Voluntary notification expenses** must be incurred with the Company's prior written consent and are subject to the **voluntary notification expenses sublimit**.

**Voluntary notification expenses sublimit** means the maximum amount that the Company will pay for **voluntary notification expenses**. The **voluntary notification expenses sublimit** is included within, and will erode, the Limits of Insurance for Coverage E.

**Waiting period** means:

1. With respect to Coverage F only, the 2-week period which must elapse after **notification**, or in the event of an **adverse media report**, after publication of the first **adverse media report**, before **brand loss** may be payable. The **waiting period** applies to each **period of indemnity**;
2. With respect to Coverage G.2. only, the 8-hour period which must elapse before **income loss**, **interruption expenses** and **special expenses** may be payable. The **waiting period** applies to each **period of restoration**;
3. With respect to Coverage J only, the 12-hour period which must elapse before **dependent business interruption loss** may be payable. The **waiting period** applies to each **period of indemnity**.

**Wrongful act** means:

1. With respect to Coverage A only, a **multimedia wrongful act**;
2. With respect to Coverage B only, a **security and privacy wrongful act**; and
3. With respect to Coverages C and D only, a **security breach** or **privacy breach**.

**You** and **Your** means the **named insured**.

**Your privacy contract** means **your** published policies provided to **employees** or **third parties** in written or electronic form that govern the collection, dissemination, confidentiality, integrity, accuracy or availability of information relating to **private information**.

**Your reputation** means the estimation of trust that customers or clients have in doing business with **you** or in purchasing **your** products or services.