

TOWN OF FALMOUTH
SELECT BOARD
AGENDA
MONDAY, APRIL 10, 2023 – 6:30 P.M.

LAWRENCE SCHOOL
113 LAKEVIEW AVENUE
FALMOUTH, MA 02540

ROOM 105

The Select Board may discuss and vote appropriate action on any item listed on this Agenda unless a different disposition is noted. At the discretion of the Chair, agenda items may be taken out of order.

6:30 p.m. OPEN SESSION

1. Call to Order
2. Pledge of Allegiance

BUSINESS

1. Discuss/Vote Motions and Reports to Special Town Meeting and Annual Town Meeting as Needed
2. Discuss, Consider and Vote Date for November 2023 Town Meeting
3. Acting as Trustees of the Falmouth Affordable Housing Fund, discussion and vote to reduce previously approved funding amount, and change legal entity receiving funding, for affordable, age-restricted housing project at 24 Scranton Avenue & 763 Main Street
4. Other Business As Needed
5. Adjourn

Nancy R. Taylor, Chair
Select Board



TOWN OF FALMOUTH
Office of the Town Manager & Select Board
59 Town Hall Square, Falmouth, Massachusetts 02540

TO: Select Board
FROM: Peter Johnson-Staub, Interim Town Manager
SUBJECT: Preliminary Report for April 10, 2023
DATE: April 7, 2023

6:30pm Meeting

Business:

1. Discuss/Vote Motions and Reports to Special Town Meeting & Annual Town Meeting:

- a. Article 4 Operating Budget: The Select Board support for including the Sustainability Coordinator and Assistant Parks Superintendent in the FY24 budget is clear. I suggest the Board take a vote to authorize the Chair to move the following amendments on Town Meeting floor.
 - i. I move to amend Line 9 under Select Board/Town Manager to \$696,246.
 - ii. I move to amend Line 175 under DPW Parks to \$1,118,027.
- b. Article 4 Operating Budget: I was recently made aware that some of the transfer amounts listed on p. 36 of the Town Meeting Warrant book need to be updated to be consistent with corresponding debt service amounts. The changes are listed in the attached sheet which has 'Page 36' at the top of the page. I request the Board take a vote to authorize the Chair to move the following amendments to Article 4 on Town Meeting floor.
 - i. I move to amend the following Budget Revenue Transfers listed on p. 36 of your Town Meeting warrant book:
 - Line D. \$15,000
 - Line E. \$300,125
 - Line F. \$109,456
 - Line G. \$613,682
 - Line J. \$117,913
 - Line K. \$139,191
- c. Article 28 Fund Evaluation of Ashumet Well & Fresh Pond Well Treatment Locations: We will be asking the Finance Committee to indefinitely postpone this article. The Water Department has been engaged in a dialog with US Air Force representatives regarding this next phase of a lengthy project to treat water from these two wells. The Air Force remains committed to funding most of the costs associated with bringing these wells back online following contamination caused by the Base. However, it appears unlikely the Air Force will fund this particular site evaluation which is a relatively small portion of the multi-million initiative. The article was submitted based on the premise the Air Force would execute an agreement to pay for these costs. Staff will continue the dialog and, if necessary, prepare an alternate funding plan for submission to the November 2023 Town Meeting.

- d. Article 32 – Amend Flow Neutral Bylaw: Amy Lowell has been engaged in a dialog with Massachusetts DEP officials regarding the wording of this bylaw amendment since early January. The purpose of this article is to qualify for zero interest loans from the state for the next two wastewater projects. Late this week she was advised that the DEP wants to see a change to this bylaw amendment. The revised motion and an explanation are included in your packet. I recommend the Board vote to approve the Article 32 revision as submitted and authorize the Chair to make this revised article the main motion at Town Meeting.

2. Vote Date for November 2023 Town Meeting:

Monday, November 13, 2023 seems to be a good date for the fall Town Meeting. David Vieira confirmed his availability. Veterans Day is recognized on the Friday before so there is no conflict there.

3. Amend subsidy for Scranton-Main Affordable Housing project:

Falmouth Housing Corp has asked for a reduction in its subsidy and they need for the subsidy to be awarded to an LLC which had to be set up for this project in order to be eligible to receive Low Income Housing Tax Credits which are necessary for financing this project. We have prepared two motions for the Board to vote which are included in your packet.

9:00pm Meeting

The Board will meet during a Town Meeting recess to vote to place a proposition 2 ½ override on the May 16, 2023 election ballot. Below is a draft motion based on the assumption that Town Meeting approves the appropriation of \$950,000 subject to approval of an override.

"I move that the Select Board vote to place the following proposition 2 ½ override question on the election ballot of May 16, 2023:

Shall the Town of Falmouth be allowed to assess an additional \$950,000 in real estate and personal property taxes for the purposes of funding wages, benefits and expenses associated with hiring fourteen (14) firefighters for the fiscal year beginning July first, 2023?

Yes _____ No _____"

OPEN SESSION

BUSINESS

1. Discuss/vote motions and reports to Special Town Meeting and Annual Town Meeting as needed

ARTICLE 4: To see if the Town will vote to appropriate such sums of money as may be deemed necessary to defray the Town's expenses for Fiscal Year 2024 and to determine how the same shall be raised and by whom expended. Or do or take any other action on the matter. On request of the Select Board.

RECOMMENDATION (Finance Committee): That the Town vote Article 4 as printed. The Fiscal 2024 operating budget is found in the center section of the Warrant Book.

EXPLANATION: Please see Town Manager's budget message in the back in the back of the Warrant Book. The Finance Committee did not include in its recommended budget the Assistant Parks Superintendent position and the Sustainability Coordinator position which were included in the Town Manager's Proposed FY 2024 balanced budget but not in the Town Classification Plan. Subject to approval of Article 1 of the Special Town Meeting, the Select Board intends to move to amend the budget to add these two positions to the budget.

AMENDMENTS:

Under Selectmen /Town Manager (page 30):

Hold: line 9. I move to amend line 9 to \$696,246. This brings the subtotal on line 17 to \$808,676.

Explanation: The Select Board seeks to add the salary for the Sustainability Coordinator into the budget as originally proposed by the Town Manager.

Under DPW Parks (page 33)

Hold: line 175. I move to amend line 175 to \$1,118,027.

Explanation: The Select Board seeks to add the salary for the Assistant Superintendent of Parks, Forestry and School Grounds into the budget as originally proposed by the Town Manager.

On Page 36 Modify Allocations from Available Funds as Follows:

I move to amend the following Budget Transfer lines found on page 36 of your warrant book:

Line		
D.	Transfer from Title V Program for Debt Service	15,000
E.	Transfer from Energy Receipts Reserved for Appropriation Account for Debt Service	300,125
F.	Transfer from Road Betterment Account for Debt Service	109,456
G.	Transfer from Golf Special Revenue Fund for Debt Service	613,682
J.	Transfer from Waterways Receipt Reserved for Appropriation Fund for Debt Service	117,913
K.	Transfer from Receipts Reserved - Sewer	139,191

**ARTICLE 4
FISCAL YEAR 2024 OPERATING BUDGET REVENUE TRANSFERS**

Line Description	Current Revenue Amount	Proposed Revenue Amount
A. Transfer from the Parking Meter Fund for Police Expenses	\$ 203,500	203,500
B. Transfer from Embarkation Fees for Police and Fire Expenses	350,500	350,500
C. Transfer from Wetlands Fund for Conservation Expenses	50,000	50,000
D. Transfer from Title V Program for Debt Service	20,000	15,000
E. Transfer from Energy Receipts Reserved for Appropriation Account for Debt Service	314,269	300,125
F. Transfer from Road Betterment Account for Debt Service	112,757	109,456
G. Transfer from Golf Special Revenue Fund for Debt Service	670,000	613,682
H. Transfer from Community Preservation Open Space Reserve for Debt Service	370,419	370,419
I. Transfer from Bond Premiums Special Revenue Fund for Debt Service	14,808	14,808
J. Transfer from Waterways Receipt Reserved for Appropriation Fund for Debt Service	128,341	117,913
K. Transfer from Receipts Reserved - Sewer	50,000	139,191
L. Raise and Appropriate from the Fiscal 2024 Levy Limit, State Aid and Estimated Receipts	151,360,914	151,360,914
Total Operating Budget	\$ 153,645,508	\$ 153,645,508

ARTICLE 28: To see if the Town will vote to appropriate a sum of money for the purpose of evaluating locations for treatment of the raw water from the Ashumet Well and the Fresh Pond Well, pursuing the reactivation of the Ashumet Well, and evaluating the treatment alternatives for combined production from the Ashumet Well and Fresh Pond Well, including permitting and pilot treatment studies and any other costs incidental or related thereto, and to determine how the same shall be raised and by whom expended. Provided however, that the funds appropriated hereunder shall not be expended until the Town and the United States Air Force execute an agreement for reimbursement for all costs of the permitting and pilot treatment studies related to the wells being located within the PFAS plume. Or do or take any action on the matter. On request of the Select Board.

*Will change to indefinite postponement.

RECOMMENDATION (Finance Committee): That the Town transfer the sum of \$300,000 from certified free cash for the purposes of this article. Said funds to be expended under the jurisdiction of the Town Manager.

EXPLANATION: This article provides funding for the purpose of evaluating locations for treatment of the raw water from the Ashumet Well and the Fresh Pond well, pursuing the reactivation of the Ashumet Well, and evaluating the treatment alternatives for combined production from the Ashumet Well and Fresh Pond Well, including permitting and pilot treatment studies. An agreement with the Air Force Center for Engineering Excellence to reimburse the Town for all costs of such evaluations, studies, and permitting that are directly related to the wells being located within the PFAS plume will be required prior to utilizing this appropriation.

Article 32, April 2023 Town Meeting

Explanation: The Town has been in discussions since January of 2023 with the state's Department of Environmental Protection (DEP) about the Flow Neutral Bylaw wording update required to qualify for a 0% interest loan for the Wastewater Treatment Facility Improvements Project. On April 4, 2023, the DEP confirmed that the revised wording below will meet the state's "land use control" requirement for a 0% interest loan for the project. The revised wording references the Town's approved Great Pond Final Targeted Watershed Management Plan and exactly matches the flow allocations the way they are listed in that document. Pending a vote by the Select Board prior to Town Meeting, the motion printed below will be the "main motion" for Article 32, instead of Article 32 as printed in the warrant book.

MAIN MOTION FOR ARTICLE 32: I move that the Town vote to amend the Code of Falmouth Sections 180-53(B) and (C), Determination of wastewater flow in sewer service areas, as follows: in Section (B) by deleting the words "as of January 1, 2014" and inserting in their place "for treatment at the Blacksmith Shop Road Wastewater Treatment Plant are as listed in Table 2.4 of the approved Great Pond Final Targeted Watershed Management Plan (TWMP) dated December 1, 2022"; by deleting Sections (B)(1) and (B)(2) in their entirety and replacing them with the following Section (B)(1): "Existing Permitted Flow: 710,000 gallons per day, which is the sum of: Areas Sewered prior to the Town's 2013 Comprehensive Wastewater Management Plan: 450,000 gallons per day, and Little Pond Sewer Service Area: 260,000 gallons per day."; by adding the following new Section (B)(2): " (2) Existing Sewer Area Redevelopment Allocation (ESRA): 140,000 gallons per day" and by adding the following new Section (B)(3): "Teaticket-Acapesket Service Area: 360,000 gallons per day."; in Section (C) by deleting the letter "s" from the second word of the section; further in Section (C) by deleting the words "environmental impact reports for the 2001 West Falmouth Harbor Facilities, or" and inserting in their place "a comprehensive wastewater management plan and." The proposed amended bylaw Sections 180-53(B) and (C) shall read as follows, with the new language in **bold**:

B. The flow allocations for present and future sewer service areas for treatment at the Blacksmith Shop Road Wastewater Treatment Plant are as listed in Table 2.4 of the approved Great Pond Final Targeted Watershed Management Plan (TWMP) dated December 1, 2022:

(1) Existing Permitted Flow: 710,000 gallons per day, which is the sum of:

- **Areas sewered prior to the Town's 2013 Comprehensive Wastewater Management Plan: 450,000 gallons per day, and**
- **Little Pond Sewer Service Area: 260,000 gallons per day.**

(2) Existing Sewer Area Redevelopment Allocation (ESRA): 140,000 gallons per day

(3) Teaticket-Acapesket Service Area (TASA): 360,000 gallons per day.

C. These flow allocations will be adjusted if additional flow or modifications to sewer service areas are made through (1) approved comprehensive wastewater management plans, (2) approved notice of project change to a **comprehensive wastewater management plan, and (3) approval from MA Department of Environmental Protection.**

For reference, the following represents the deletions and insertions of the proposed amended bylaw:

§ 180-53 Determination of wastewater flow in sewer service areas

B. The flow allocations for present and future sewer service areas as of January 1, 2014, are as follows for treatment at the Blacksmith Shop Road Wastewater Treatment Plant are as listed in Table 2.4 of the approved Great Pond Final Targeted Watershed Management Plan (TWMP) dated December 1, 2022:

(1) Existing Permitted Flow: 710,000 gallons per day, which is the sum of:

Blacksmith Shop Road Wastewater Treatment Plant: 570,000 gallons per day (excluding Little Pond Sewer Service Area).

- Areas sewered prior to the Town's 2013 Comprehensive Wastewater Management Plan: 450,000 gallons per day, and
- (2) Little Pond Sewer Service Area: 260,000 gallons per day (subject to approved CWMP).

(2) Existing Sewer Area Redevelopment Allocation (ESRA): 140,000 gallons per day.

(3) Teaticket-Acapesket Service Area (TASA): 360,000 gallons per day.

C. These flows allocations will be adjusted if additional flow or modifications to sewer service areas are made through (1) approved comprehensive wastewater management plans, (2) approved notice of project change to environmental impact reports for the 2001 West Falmouth Harbor Facilities or a comprehensive wastewater management plan, and (3) approval from MA Department of Environmental Protection.

OPEN SESSION

BUSINESS

2. Discuss, consider and vote date for November 2023 Town Meeting

November 2023

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5 <i>Daylight Savings Time ends</i>	6 <i>Select Board Meeting</i>	7 <i>Election Day</i>	8	9	10 <i>Veteran's Day</i>	11
12	13 <i>Town Meeting? TBD</i>	14 <i>Town Meeting?</i>	15	16	17	18
19	20 <i>Select Board Meeting</i>	21	22	23 <i>Thanksgiving</i>	24 <i>Day after Thanksgiv- ing</i>	25
26	27	28	29	30		

OPEN SESSION

BUSINESS

3. Acting as Trustees of the Falmouth Affordable Housing Fund, discussion and vote to reduce previously approved funding amount, and change legal entity receiving funding, for affordable, age-restricted housing project at 24 Scranton Avenue & 763 Main Street

Recommended Motion:

"The Board, acting as Trustees of the Falmouth Affordable Housing Fund, previously voted to grant \$4,800,000 to the Falmouth Housing Corporation for the Scranton and Main Project. Falmouth Housing Corporation has advised they will only need \$3,785,000 of said award. I move we now award the requested decreased amount of \$3,785,000 to the Falmouth Housing Corporation."

Recommended Motion:

"The Board, acting as Trustees of the Falmouth Affordable Housing Fund, previously granted an award to the Falmouth Housing Corporation. Since then, Falmouth Housing Corporation has created a limited liability company for the Scranton and Main Project, Scranton Main LLC. I move, we now grant the award in the amount of \$3,785,000 to the newly created entity, Scranton Main LLC."



TOWN OF FALMOUTH

HOUSING COORDINATOR

59 Town Hall Square, Falmouth, Massachusetts 02540
Telephone (508) 495-7344
kim.fish@falmouthma.gov

TO: Peter Johnson-Staub, Interim Town Manager
FROM: Kimberly Fish, Housing Coordinator *KF*
DATE: March 20, 2023
SUBJECT: Falmouth Affordable Housing Fund - Scranton and Main Affordable Housing Project
CC:

The Select Board, as Trustees of the Falmouth Affordable Housing Fund voted to grant Falmouth Housing Corporation (FHC) a total subsidy of \$4.8 million for 48 units of affordable age restricted rental housing located on Scranton and Main.

By letter dated March 7, 2023, Linda Clark, Director of FHC advised they will not need the full \$4.8 million in subsidy, they will only need \$3,785,000 (letter attached hereto).

Please be advised FHC has created a Limited Liability Company for the purpose of the Scranton and Main affordable housing project. The new entity is Scranton Main LLC (see attached Business Entity Summary from the Secretary of the Commonwealth of Massachusetts).

Because of these changes, it is necessary to have a new vote by the Select Board for the new subsidy amount in the sum of \$3,785,000 being granted to the new entity, Scranton Main LLC.

Kindly add to the Select Board's earliest available agenda. Thank you, I appreciate it.

704 Main Street
Falmouth, MA 02540



Falmouth
Housing
Corporation

www.falmouthhousingcorp.org

508-540-4009 TEL
508-548-6329 FAX

March 7, 2023

Kimberly Fish, Housing Coordinator
Falmouth Affordable Housing Fund
Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540

RE: Scranton Main LLC

Dear Kim,

We are of course so thankful for the Town's support of our housing projects including Scranton Main.

We are pleased to be in the position to ask you to reduce your funding award for this project to \$3,785,000. We were able to get an award of funds from the Cape Light Initiative which allowed us to reduce the funds needed from the Town of Falmouth.

We believe that we should be able to complete the project with the funds we have committed now.

We are happy to be able to reduce the request, refilling the FAHF's funding buckets so that we can hopefully request funding for our next project!

Please let us know if you have any questions. We look forward to closing this month and beginning construction.

Sincerely,

A handwritten signature in blue ink, appearing to read "Linda J. Clark".

Linda J. Clark
President

704 FHC, LLC • FHC Edgerton Drive, Inc. • 704 Main, LLC • Falmouth Community, LLC
Woods Hole FHC, LLC • Little Pond Place, LLC • Gifford Workforce, LLC • Gifford Workforce II, LLC • Scranton Main, LLC



Equal Opportunity Housing and Employment



Secretary of the Commonwealth of Massachusetts
William Francis Galvin

Business Entity Summary

ID Number: 001544844

[Request certificate](#)

[New search](#)

Summary for: SCRANTON MAIN LLC

The exact name of the Domestic Limited Liability Company (LLC): SCRANTON MAIN LLC		
Entity type: Domestic Limited Liability Company (LLC)		
Identification Number: 001544844		
Date of Organization in Massachusetts: 11-17-2021		
Last date certain:		
The location or address where the records are maintained (A PO box is not a valid location or address): Address: 33 UNION ST. City or town, State, Zip code, BOSTON, MA 02108 USA Country:		
The name and address of the Resident Agent: Name: TARA M. MIZRAHI Address: 33 UNION ST. City or town, State, Zip code, BOSTON, MA 02108 USA Country:		
The name and business address of each Manager:		
Title	Individual name	Address
In addition to the manager(s), the name and business address of the person(s) authorized to execute documents to be filed with the Corporations Division:		
Title	Individual name	Address
SOC SIGNATORY	SCRANTON MAIN MANAGER LLC	33 UNION ST. BOSTON, MA 02108 USA
SOC SIGNATORY	LINDA CLARK	33 UNION ST. BOSTON, MA 02108 USA
SOC SIGNATORY	TARA M. MIZRAHI	33 UNION ST. BOSTON, MA 02108 USA

The name and business address of the person(s) authorized to execute, acknowledge, deliver, and record any recordable instrument purporting to affect an interest in real property:

Title	Individual name	Address
REAL PROPERTY	LINDA CLARK	33 UNION ST. BOSTON, MA 02108 USA
REAL PROPERTY	SCRANTON MAIN MANAGER LLC	33 UNION ST. BOSTON, MA 02108 USA
REAL PROPERTY	TARA M. MIZRAHI	33 UNION ST. BOSTON, MA 02108 USA

Consent

Confidential
Data

Merger
Allowed

Manufacturing

View filings for this business entity:

ALL FILINGS
Annual Report
Annual Report - Professional
Articles of Entity Conversion
Certificate of Amendment

[View filings](#)

Comments or notes associated with this business entity:

[New search](#)

FALMOUTH AFFORDABLE HOUSING FUND
FALMOUTH, MASSACHUSETTS

HOUSING FUNDING AGREEMENT

This Housing Funding Agreement (the "Agreement") is entered into on this _____ day of _____ 2023 by and between the Falmouth Select Board acting as Trustees of the Falmouth Affordable Housing Fund (the "FAHF") having its usual place of business at Falmouth Town Hall, 59 Town Hall Square, Falmouth, MA 02540 and the Scranton Main LLC ("SMLLC"), a Massachusetts limited liability company having a usual place of business at 33 Union Street, Boston, MA 02108, collectively the "Parties."

WHEREAS, SMLLC's Managing Members are Falmouth Housing Corporation ("FHC") and Affirmative Investments ("AI").

WHEREAS, SMLLC intends to construct 48 rental units on property located at 24 Scranton Avenue and 763 Main Street, Falmouth, Barnstable County, Massachusetts (the "Project"). All units will be affordable to households at or below 60% of the area medium income ("AMI"). All units will be subject to affordable housing deed restrictions for individuals aged 62 and older;

WHEREAS, on September 27, 2021, the FAHF voted to appropriate funds in the amount of \$2,300,000 (Two Million Three Hundred Thousand Dollars) as a grant for the purpose of constructing a 48 unit, age restricted, affordable housing apartment complex in connection with the Project;

WHEREAS, on December 19, 2022, the FAHF voted to appropriate additional funds in the amount of \$2,500,000 as a grant for the purpose of constructing a 48 unit, age restricted, affordable housing apartment complex in connection with the Project, the collective total of all appropriations to equal \$4,800,000 (Four Million Eight Hundred Thousand Dollars) (the "Grant Funds");

WHEREAS, by correspondence dated March 7, 2023, SMLLC advised the FAHF they can reduce the funding amount by \$1,015,000, making the final Grant Funds total amount to equal \$3,785,000 (Three Million Seven Hundred Eighty-Five Thousand Dollars).

WHEREAS, the Town seeks to secure a Department of Housing and Community Development ("DHCD") Regulatory Agreement and Restrictive Covenants to ensure that 32 of the rental units remain affordable to households at or below 60% AMI and 16 units affordable at 30% AMI in perpetuity with their inclusion on the Subsidized Housing Inventory ("SHI") for the Town of Falmouth in perpetuity;

WHEREAS, the Town participates in DHCD's MassDocs program to document this transaction and provide additional security to the Town for its investments. The FAHC funds are structured as loans to the SMLLC.

WHEREAS, the Town also desires its own document to memorialize items that may not be captured in said MassDocs documents.

NOW THEREFORE, the Parties hereby mutually agree to the following terms and conditions:

AGREEMENT

1. Subject Matter: This Agreement sets forth the terms and conditions by which SMLLC shall receive the Housing Funds for the Project in the amount of \$3,785,000 for purposes of constructing and developing perpetually restricted affordable housing in connection with the Project.
2. Disbursements of Housing Funds: Disbursements shall be made by the FAHF in accordance with the Description of Work and Disbursement Schedule, attached hereto as Exhibit A. To receive a disbursement, the SMLLC must submit any documents required by Exhibit A, along with a requisition request in a form substantially similar to the Requisition Certificate, attached hereto as Exhibit B. Requisition requests and required documents shall be submitted to the FAHF for approval. Once the documents and the requisition request have been reviewed and approved by the FAHF, payments will be issued as directed.
3. Documents: Prior to the release of the final disbursement of Housing Funds, SMLLC shall deliver to the FAHF proof of the recording of a Department of Housing and Community Development ("DHCD") Regulatory Agreement and Restrictive Covenants to ensure that 32 of the rental units remain affordable to households at or below 60% AMI, and 16 units at 30% AMI in perpetuity or for the longest period allowed by law.
4. Monitoring: SMLLC agrees to monitor, on behalf of the FAHF, the installation of all roadways, driveways, utilities, and other infrastructure performed by SMLLC to ensure that said installation is undertaken and completed in accordance with this Agreement. Such monitoring shall not be deemed to relieve SMLLC from compliance with the review and approval requirements included in the Special Permit and by any other permits issued by the Town of Falmouth or other permitting agency.
5. Recordkeeping: SMLLC shall keep such records with respect to the utilization of the Housing Funds as are kept in the normal course of business and such additional records as may be required by the FAHF. These records shall be made available to the FAHF upon request.
6. Binding Agreement: This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Nothing in this Agreement shall change any of the requirements or provisions as written in the MassDocs documents related to these Housing Funds.
7. Termination: In the event that SMLLC fails to fulfill its obligations under the terms of this Agreement as determined by the FAHF and has provided SMLLC sufficient time to cure, the FAHF shall have the right, in its sole discretion, to terminate this Agreement upon written notice

to SMLLC. Upon receipt of such notices, SMLLC shall refund all undisbursed Housing Funds to the FAHF.

8. General Provisions: SMLLC agrees to the following general provisions:

- a. Contact: The contacts responsible for administration of the Project for SMLLC shall be Tara M. Mizrahi and Linda Clark, or such other person designated in writing to FAHF by SMLLC. The contact person for review of SMLLC's submissions to the FAHF shall be Kimberly Fish, Housing Coordinator, Town of Falmouth.
- b. Independent Status: SMLLC acknowledges and agrees that it is acting in the capacity of an independent contractor and shall not be considered an employee or agent of the FAHF for any purpose.
- c. Mechanics Lien: SMLLC shall not permit any mechanics liens, to remain upon the Property for labor and material furnished to SMLLC or claimed to have been furnished to SMLLC in connection with any work of any character performed or claimed to have been performed at the direction of SMLLC and SMLLC shall cause any such lien to be released of record forthwith without cost to SMLLC and/or the FAHF. The Project shall require payment, performance and lien bonds from the general contractor and list the Town of Falmouth as multiple obligee.
- d. Notice: Any and all notices, or other communications required or permitted under this Agreement shall be in writing and delivered electronically, by hand or mailed postage prepaid with return receipt requested, by registered or certified mail or by other reputable delivery service. Any such notice or correspondence shall be deemed given when delivered by hand, sent electronically, deposited with the U.S. Postal Service, or deposited with the private overnight or other delivery service. Notices shall be sent to the following addresses:

i. To the SMLLC:

Tara M. Mizrahi
Scranton Main LLC
33 Union Street
Boston, MA 02108
TMizrahi@affirmativeinvestments.com

Linda Clark
Scranton Main LLC
704 Main Street
Falmouth MA 02540
lclark@falmouthhousingcorp.org

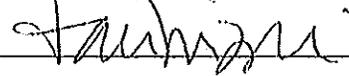
ii. To the FAHF

Kimberly Fish
Housing Coordinator
59 Town Hall Square
Falmouth MA 02540
kim.fish@falmouthma.gov

- e. Severability: If any term or condition of this Agreement or any applications thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both Parties would be substantially or materially prejudiced.
- f. Governing Law: This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, and SMLLC submits to the jurisdiction of the appropriate court in Barnstable County for the adjudication of disputes arising out this Agreement.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement effective on the day written above:

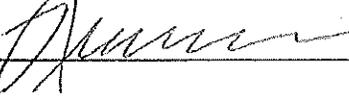
Scranton Main LLC

By: 

Name: Tara M. Mizrahi

Title: F.V.P.

Scranton Main LLC

By: 

Name: Linda Clark

Title: PRESIDENT

Falmouth Affordable Housing Fund

By: _____

Name: _____

Title: Select Board Chair, duly authorized

Approved as to form:

By: _____

Name: Maura E. O'Keefe, Town Counsel

Approved as to funding availability:

By: _____

Name: Victoria Rose, Town Accountant

EXHIBIT A

DESCRIPTION OF WORK AND DISBURSEMENT SCHEDULE

\$3,785,000

<u>First Disbursement:</u>	\$1,200,000	Execution of all construction financing documents <ul style="list-style-type: none">• <i>Proof of fully executed financing documents shall be provided.</i>
<u>Second Disbursement:</u>	\$1,425,000	50% Completion – Work under the written contract is 50% complete. <ul style="list-style-type: none">• <i>Written certification from the architect certifying 50% of the Work is complete.</i>
<u>Third Disbursement:</u>	\$760,000	Landscaping Complete <ul style="list-style-type: none">• <i>Written certification from the landscape architect that all work is complete in accordance with the landscape plan as approved by the Zoning Board of Appeals shall be provided.</i>
<u>Fourth Disbursement</u>	\$250,000	Substantial Completion - Work under the written contract is sufficiently complete so that it can be occupied or utilized for its intended use. <ul style="list-style-type: none">• <i>Punch list for any remaining construction work to be finalized shall be provided.</i>
<u>Fifth Disbursement:</u>	\$150,000	Upon issuance of Certificates of Occupancy as well as affordable housing documentation. The following documents shall be provided: <ul style="list-style-type: none">• <i>Copies of Certificates of Occupancy;</i>• <i>A certificate affirming all households are income certified;</i>• <i>and</i>• <i>Copy of the recorded Regulatory Agreement in a form approved by the Massachusetts Housing and Community Development.</i>

EXHIBIT B

REQUISITION CERTIFICATE

TO:

FROM:

RE:

DATE: As of _____

1. The undersigned has requested Advance No. ____ in the amount of \$ _____ and does hereby certify to the Palmouth Affordable Housing Fund (FAHF) as set forth below. All terms used herein, but not defined herein, shall have the meanings set forth in the Loan Agreement executed by the Borrower, as hereinafter defined.
2. The Borrower has satisfied in full all conditions precedent and other requirements applicable to this advance as set forth in the Loan Agreement dated as of _____ by and between the Borrower and FAHF (the "Loan Agreement") on behalf of the Participating Lenders.
3. No changes have been made in any respect to the construction contract for the Project (the "Construction Contract") or the plans and specifications for the Project, except such as have had the Participating Lenders' prior approval, as may be required under the Loan Agreement, and the prior approval of the holder(s) of the Other Loans, as may be required under the documents relating to the Other Loans.
4. Construction of the Project has been and/or will be in every respect performed in accordance with the Construction Contract and the plans and specifications and any such approved changes and in compliance with all applicable building and zoning codes.
5. The proceeds of the Loan to be advanced hereunder, together with the aggregate outstanding balance, if any, of the Loan, the Other Loans and/or any other funds available for the Project, as set forth in the Project Sources and Uses, remaining to be advanced, will provide sufficient funds for the completion of the Project in accordance with the Construction Contract and the plans and specifications;
6. All monies requisitioned by the Borrower and disbursed by the Participating Lenders and the FAHF under previously approved requisitions (if any) have been expended for the purposes for which they were requisitioned.
7. The representations and warranties made in the Loan Agreement are true, correct and complete as of the date hereof with the same effect as if made on this date.

8. The undersigned represents and warrants that it is not in default of any of its obligations under any of the Loan Documents, the Construction Contract, any of the documents relating to the Other Loan, or any of the Borrower's other organizational documents or any other agreement or instrument in connection with the Project, and no event has occurred, which, with the giving of notice and/or the passing of time, or otherwise, would constitute a default under any one or more of the foregoing documents or other instruments.

BORROWER:

_____ (corporation)

By: _____ (individual signatory)

Its: _____ (title)

Date: _____

TOWN OF FALMOUTH
SELECT BOARD
AGENDA
MONDAY, APRIL 10, 2023 – 9:00 P.M.

LAWRENCE SCHOOL
113 LAKEVIEW AVENUE
FALMOUTH, MA 02540

ROOM 105

The Select Board may discuss and vote appropriate action on any item listed on this Agenda unless a different disposition is noted. At the discretion of the Chair, agenda items may be taken out of order.

9:00 p.m. OPEN SESSION

1. Call to Order

BUSINESS

1. Vote to place proposition 2 ½ override on the May 16, 2023 election ballot
2. Adjourn

Nancy R. Taylor, Chair
Select Board

TOWN OF FALMOUTH
SELECT BOARD
AGENDA
TUESDAY, APRIL 11, 2023 – 6:30 P.M.

LAWRENCE SCHOOL
113 LAKEVIEW AVENUE
FALMOUTH, MA 02540

ROOM 105

The Select Board may discuss and vote appropriate action on any item listed on this Agenda unless a different disposition is noted. At the discretion of the Chair, agenda items may be taken out of order.

6:30 p.m. OPEN SESSION

1. Call to Order
2. Pledge of Allegiance

BUSINESS

1. Discuss/Vote Motions and Reports to Special Town Meeting and Annual Town Meeting as Needed
2. Other Business As Needed
3. Adjourn

Nancy R. Taylor, Chair
Select Board