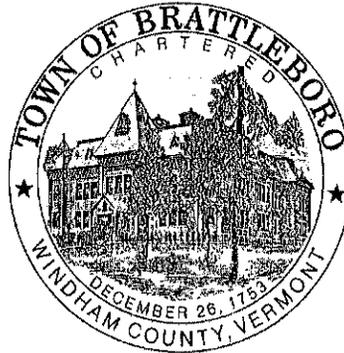


MEMORANDUM

To: Selectboard
From: Peter B. Elwell, Town Manager
Re: Police-Fire Facilities Project Update
Date: October 27, 2016



This memorandum provides updates on the following:

- Progress of construction at the West Brattleboro Fire Station and Central Fire Station.
- Pre-construction activities related to the Police Station.
- Lease for the Reformer to occupy 2,200 square feet at 62 Black Mountain Road.
- Owner's expenses which I have authorized administratively.
(Note that there are no new authorizations since my last report.)
- Public meetings at which project elements will be discussed and acted upon between now and the end of 2016.

West Brattleboro Fire Station

Construction continues on schedule. No new issues have arisen that will require any authorizing action by the Selectboard.

The full scale and many of the details of the station are now visible. In addition to that above-ground activity, much of the recent work has been preparing for the upcoming pour of the thick concrete slab for the apparatus bay.

Here is a summary of work that is expected to be completed during the next two weeks:

- Pouring of apparatus bay slab, exterior pads, and front apron
- Interior rough-in of plumbing, electrical, and mechanical systems
- Installation of underground propane tank and related piping

Central Fire Station

DEW Construction Corp. has mobilized at the site. LaRock & Sons also is mobilizing and is expected to begin site work on Monday, October 31. The first phase of work will be behind the existing fire station to prepare for and construct the addition.

Police Station

Project Update

DEW is completing the competitive bidding for subcontracted services. This work will continue for the next few weeks, after which DEW will propose a guaranteed maximum price for this project component to be reviewed at the Police-Fire Facilities Building Committee (PFFBC) meeting on November 30 and the Selectboard meeting on December 6.

Purchase of 62 Black Mountain Road

The Phase 2 Environmental Site Assessment for this property has been approved. Due to a regulatory requirement regarding timeframes, a minor update of the Phase 1 Environmental Site Assessment also has been completed and approved. The Town is now fully approved to have this site enrolled in the BRELLA program (to limit the Town's future liability for any environmental issues that might emerge at the site) as soon as we have formally acquired the property. The attorneys are working on the documents and timing for the upcoming closing, which is expected to occur during the first half of November.

Reformer Lease

We have worked collaboratively with the leadership of New England Newspapers, Inc. (who owns the Brattleboro Reformer and several other regional newspapers) to finalize the terms of the lease. Fred Rutberg, President of New England Newspapers, has signed the lease and it is ready for Selectboard approval. A complete copy of the proposed lease is attached to this memorandum. Highlights include:

- The lease will commence on the date of the closing, effective immediately upon the Town's assuming ownership of the property.
- The initial term will be 4+ years, expiring on December 31, 2020.
- After that, New England Newspapers will have options for two 3-year extensions.
- New England Newspapers will pay the Town \$12 per square foot (to lease 2,200 square feet at the southeast corner of the building). Rent will be payable monthly in a total amount of \$26,400 for the first year. It will automatically increase by 2% every year on the anniversary date of the commencement of the lease.
- The Town will separate and upfit the leased space as the first phase of the upcoming renovation (beginning in December 2016). After the Reformer moves into the leased space (in January or February 2017), the Town will proceed with the rest of the renovation to convert the building into a police station.
- The estimated cost of the upfit is \$60,000 and New England Newspapers will reimburse the Town for 50% of the actual upfit costs, to be paid in 48 monthly installments. This is explicitly in addition to the monthly rent described in the fourth bullet above.

Town Attorney Bob Fisher drafted the lease, participated in the editing, and has approved it in its current form. I recommend that the Selectboard approve the lease and authorize me to sign it on behalf of the Town.

Town Manager's Authorization of Owner's Expenses

Attached is the list of all project related expenses I have authorized in accordance with the Selectboard's approved "Policy for Use of Owner's Contingency and/or Reduction in Project Scope." The expenses are categorized by project element (with a "General" category for those expenses that apply to the project as a whole) and they are listed in reverse chronological order. Since my last report, I have not approved any additional expenditures.

Schedule of Upcoming Public Meetings Related to This Project

November 30 PFFBC re: Guaranteed Maximum Price for Police Station

December 6 Selectboard re: Guaranteed Maximum Price for Police Station

If you have any questions or require any additional information prior to our discussion of these matters on November 1, please contact me at your convenience.

PBE:

Attachments

c: Steve Horton, Owner's Project Manager
 Members of the Police-Fire Facilities Building Committee
 Patrick Moreland, Assistant Town Manager
 Mike Fitzgerald, Police Chief
 Mike Bucossi, Fire Chief
 John O'Connor, Finance Director
 Rod Francis, Planning Services Director
 Russell Rice, Town Assessor
 Bob Fisher, Town Attorney

LEASE AGREEMENT

THIS AGREEMENT made and entered into this 2nd day of November, 2016, by and between the Town of Brattleboro, a municipal corporation within the County of Windham and State of Vermont, hereinafter called "Lessor," and New England Newspapers, Inc., a Delaware corporation with a principal place of business in Pittsfield, in the County of Berkshire and State of Massachusetts, hereinafter called "Lessee."

1. Premises

Lessor, for and in consideration of the rents hereinafter received, and the covenants and conditions hereinafter contained, hereby lets, leases, and demises unto the Lessee the following described premises situate in the Town of Brattleboro, County of Windham and State of Vermont, viz:

Being the area designated on the Attached Exhibit "A" and being an office space consisting of an area of 2,200 square feet on the first floor within the premises known as 62 Black Mountain Road, Brattleboro, Vermont (the "Premises"). Said premises also shall include the right to park in the parking lot in common with other occupants of the building.

2. Term

The term of this Lease shall be for Four (4) years commencing upon the closing date of the Town's purchase of the premises at 62 Black Mountain Road, and terminating on the 31st day of December, 2020. So long as the Lessee is not in default of any term herein at the end of the four year term, Lessee shall be entitled to two renewal terms each of three (3) years upon notice to the Lessor at least 120 days prior to the termination date. Lessee shall return the premises at the end of the term in the same condition as at the commencement of the lease term, unless otherwise agreed.

3. Rent

The Lessee hereby covenants and agrees to pay Lessor for the use of said Premises the sum of Two Thousand, Two Hundred Dollars (\$2,200.00) per month. The annual rent shall increase by two (2%) Percent per year on the anniversary date of the commencement of this lease. Utilities, including electric, sewer, and water shall be included within the rent and paid by the Lessor. Other expenses, such as telephone, cable, internet, and associated services necessary for the running of the Lessee's business shall be paid for by the Lessee.

4. Up Fit Costs

The Lessor shall plan the upfit of the premises in consultation with the Lessee. Lessor shall perform the upfit of the leased premises. Lessee shall pay to Lessor fifty (50%) percent of the upfit costs in forty-eight (48) equal monthly installments over the first four years of the lease. Said upfit payments shall be in addition to the monthly rent.

5. Use of Premises

A. The premises are to be used by the Lessee for the operation of a daily newspaper and other non-manufacturing uses related to the foregoing with the exception that there shall be no printing of the newspaper at the leased premises. The leased premises shall be primarily for office space in the operation of the daily newspaper.

B. Lessor and Lessee shall each comply with all laws, rules, ordinances or regulation of any governmental authority having jurisdiction over the Premises and Leased Property, respectively. Lessee and Lessor shall comply with any environmental laws or ordinances regarding the Leased Property and the Premises, respectively. Lessee agrees not to store any Hazardous Materials on the Leased Property.

C. Lessee's use of the Leased Property as an office for a daily newspaper shall not adversely affect the Lessor's services within the Premises (namely the operation of a municipal police department and police station) or of any others on the Premises. Lessee agrees to repair and restore the services and utilities to pre-lease conditions in the event that Lessee's use of the Leased Property disrupts or damages Lessor's services within the Premises, such as electric, phone, heat, etc.

D. Lessor shall afford Lessee access for ingress and egress to the Leased Property on the Premises, seven (7) days a week, twenty-four (24) hours a day, for the purpose of conducting its business. Lessor shall provide to Lessee a separate exterior entrance to the Leased Premises. Lessor shall also be responsible for maintaining the parking lot, including snow removal, for the benefit of the Lessee.

E. Lessor covenants that Lessee, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Leased Property. Lessor represents and warrants to Lessee as of the commencement date of this Lease, and covenants during the term hereof, that Lessor is seized of good and sufficient authority to enter into and execute this Lease. Lessor further covenants during the term of this Lease that there are no liens, judgments or impediments of title on the Leased Property, or affecting Lessor's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect Lessee's use or occupancy of the Leased Property as set forth above.

F. Lessee shall be entitled, subject to the Town sign regulations, to place a sign at the end of the driveway near Black Mountain Road and one upon the wall of the building above the entrance to the Leased Property.

6. Sublease or Assignment

Lessee shall not assign this Lease or sublease the leased premises, or any part thereof, or any right or privilege connected therewith, or allow any other person, except agents, and employees, of the Lessee, to occupy the premises or any part thereof, unless otherwise agreed in writing by Lessor and Lessee. Lessor shall act with reasonable promptness, considering that the Lessor is a municipality and subject to certain notice requirements for meetings, to consider any request for a sublease or an assignment of the lease. Lessor shall not unreasonably withhold consent for such sublease or assignment; however, Lessor's consent to any sublease or assignment shall take into consideration that the remainder of the building is intended for use as a police department and police station, thus reasonable consent to a sublease or assignment shall be made only after considering public safety and other police department concerns.

7. Insurance

A. Lessee shall provide and keep in force at its sole expense and for the mutual benefit of Lessor and Lessee general liability policies in the form and with the standard limits of liability as set by the Property and Casualty Intermunicipal Fund (PACIF) of Vermont. Within thirty (30) days after the execution of this Lease, Lessee shall provide Lessor with a certificate containing evidence of such coverage, and shall thereafter provide Lessor with appropriate evidence of payment of premiums for said coverage upon each anniversary date of said policy. Lessor shall be notified by the Town's insurance carrier at least thirty (30) days in advance of any insurance cancellation or coverage termination.

B. The Lessee shall not, without the prior consent of Lessor or as otherwise set forth in this Agreement, permit the Leased Property to be used, nor do or permit anything to be done on the Leased property, in a manner which will (i) violate or make void or voidable any insurance then in force with respect thereto, (ii) will make it impossible to obtain fire insurance or the insurance requirements set forth in Section 6(A) above, (iii) cause or be likely to cause material damage to the Leased Property thereof, (iv) cause or constitute a material public nuisance, (v) violate any applicable laws or regulations of any government authority.

8. Repairs & Leasehold Improvements

A. The Lessor shall be responsible for any and all necessary repairs to the premises or any improvements to be constructed thereon, excluding repairs necessitated by Lessee's actions or use of the property. To the extent that any real estate taxes shall be levied against the Lessor, the Lessor agrees to pay the same.

B. The Lessee, at its expense, shall be entitled to make further improvements to the property in addition to those identified as part of the fit up of the premises in good and workmanlike manner, subject to agreement by the Lessor. Any improvements so constructed shall become the property of the Lessor upon termination of this Lease at no cost to the Lessor.

9. **Events of Default**

This Lease shall terminate if, at any time prior to or during the term, any one or more of the following events (herein called an "event of default") shall occur:

A. If Lessee fails to perform or observe any requirement of this Lease and such failure continues for thirty (30) days (provided Lessee shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Lessee commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion) after receipt of written notice of default thereof from Lessor to Lessee; then upon the happening of any event of default, and the expiration of the period of time prescribed above, Lessor, in addition to the other rights and remedies it may have, shall have the right to declare this Lease terminated, the term ended and all of the right, title and interest of Lessee hereunder shall wholly cease and expire upon receipt by Lessee of a Notice of Termination. If Lessee fails to maintain insurance coverage on the Leased Property as required under this lease, then Lessee shall have only seven (7) days to cure said defect.

B. In the event of a termination pursuant to this Section 9, Lessee shall then quit and surrender the Leased Property to Lessor, but Lessee shall have sixty (60) days to remove, at its discretion and expense, any structure(s) or improvements erected on the Leased Property so long as Lessee pays rent for said sixty (60) days. Lessee shall cause the Leased Property to be returned in the same up fit condition as at the commencement of the Lease term, excepting reasonable wear and tear.

10. **Remedies**

A. If this Lease shall be terminated as provided in Section 9, Lessor may reenter the Leased Property sixty-one (61) days after Lessee's receipt of Notice of Termination (so long as Lessee has paid rent for the 60 days), or immediately upon termination in the event that the Lessee has not paid rent for the 60 day period during which Lessee may remove certain improvements, and remove all persons and all fixtures and property therefrom, either by summary dispossession proceedings or by any suitable action or proceedings at law, or otherwise, and may repossess and enjoy said Leased Property, together with all alterations, additions and improvements thereto. Lessor, in the event of reentry and repossession, may store Lessee's property in a public warehouse or elsewhere at the cost of and for the account of Lessee.

B. In case of any termination pursuant to Section 9, reentry or dispossession by summary proceedings or otherwise, the rents and other charges required to be paid up to the time of such termination, reentry, or dispossession, shall be paid by Lessee, and Lessee shall also pay to Lessor all expenses which Lessor may incur for brokerage commissions and all other costs (except for attorneys fees and related legal expenses) for restoring the Leased Property to the same condition as at the commencement of the Lease term, excepting reasonable wear and tear. In the event of a termination in accordance with Section 9, Lessor, sixty-one (61) days following Lessee's receipt of a Notice of Termination, may relet the premises, in whole or in part, for any rental then obtainable, for a term or terms which, at Lessor's option, may be for the remainder of the then current term of this Lease or for any longer or shorter period.

C. Notwithstanding any entry or reentry by Lessor, in accordance with this Agreement, Lessee agrees to pay and be liable for amounts equal to rent and other charges as they would become due if this Lease had not been terminated, Lessor had not entered or reentered as aforesaid. In the event the premises are relet by Lessor, Lessee shall be entitled to a credit (but not in excess of the rent or other charges as they would become due if this Lease had not been terminated, Lessor has not entered or reentered as aforesaid, or the premises been relet) in the net amount of rent received by Lessor in re-letting the premises after deduction of all expenses and costs incurred or paid as aforesaid in reletting the premises and in collecting the rent in connection therewith. Suit or suits for the recovery of the deficiency or damages referred to in this Subsection for any additional rent hereunder, or for a sum equal to any such rent, may be brought by Lessor at once or from time to time at Lessor's election, and nothing in this Lease contained shall be deemed to require Lessor to await the date whereon this Lease or the term hereof would have expired by limitation had there been no such default by Lessee or no such cancellation or termination.

D. Lessee shall receive written notice of any intention by Lessor to re-enter or repossess the aforesaid leased premises. In case Lessee shall be dispossessed by a judgment or by warrant of any court or judge or in case of reentry or repossession by Lessor or in case of any expiration or termination of this Lease, Lessor and Lessee, so far as permitted by law, waive and will waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Lessor and Lessee, Lessee's use or occupancy of the premises, or any claim for injury or damage. The terms "enter", "reenter", "entry" or "reentry" as used in this Lease is not restricted to their technical legal meaning. In the event Lessor commences any proceedings for non-payment of rent, Lessee shall not interpose any non-compulsory counterclaim in any such proceeding. This may not, however, be construed as a waiver of Lessee's rights to assert such claim in any separate action or actions initiated by Lessee.

E. No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance by Lessor of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Lease, but each covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

F. In the event of any breach by either party of any of the covenants, agreements, terms or conditions contained in this Lease, the non-breaching party shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity, by statute or otherwise and Lessor shall be entitled to reimbursement of its costs, except that the parties agree that in such event each party shall bear its own attorney's fees and related legal expenses.

G. Each right and remedy of Lessor provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity, by statute or otherwise.

11. Condemnation

If the Leased Property, or such portion thereof as will make the Leased Property unsuitable for the purposes therein leased, is condemned for any public use or purpose by any legally constituted authority, then in either of such events this Lease shall cease from the time when possession is taken by such public authority and rental shall be accounted for between the Lessor and Lessee as of the date of the surrender of possession. Such termination shall be without prejudice to the rights of either the Lessor or the Lessee to recover compensation from the condemning authority for any loss or damages caused by such condemnation.

12. Indemnification

A. Lessee shall hold Lessor harmless and indemnify Lessor from and assume all duties, responsibility and liability at Lessee's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding arising out of the: a) negligence or willful misconduct of the Lessee, its employees, contractors or agents, or b) failure by Lessee to comply with any applicable law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards or liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such compliance results from condition caused by Lessor, or c) which

arises from the Lessee's use of the premises, or the Lessee's improvements to the Premises.

B. Notwithstanding the foregoing, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

13. **Notices**

Any notice, statement certificate, request or demand required or permitted to be given or delivered in this Lease shall be in writing sent by first class, addressed as the case may be to Lessor at:

Town of Brattleboro
230 Main Street
Brattleboro, VT 05301
Attn: Peter B. Elwell, Town Manager

and to Lessee at:

New England Newspapers, Inc.
75 South Church Street
Pittsfield, MA 01201
Attn: Fredric D. Rutberg, President

or to such other addresses as Lessor or Lessee shall designate in the manner herein provided. Such notice, statement, request or demand shall be deemed to have been given on the date mailed as previously mentioned, except for notice of change of address or revocation or a prior notice, which shall only be effective upon receipt.

14. **Law Governing and Effect**

This Lease shall be construed in accordance with the laws of Vermont and shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns except as expressly provided otherwise.

15. **Invalidity of Particular Provisions**

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable,

shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

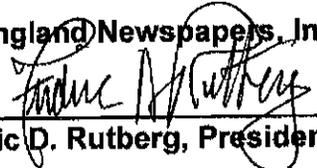
16. **Modification**

This agreement is the entire understanding of the parties and may not be changed, altered, varied, modified, discharged or terminated orally. This agreement may only be modified in writing signed by both parties. In the event that the plans approved by the Lessor are modified, expanded or re-designed, then Lessee shall obtain Lessor's approval of all said modifications.

IN WITNESS WHEREOF, the Lessor and Lessee herein have caused their names to be hereunto subscribed on the dates set forth below.

New England Newspapers, Inc.

By:



Frederic D. Rutberg, President
Lessee

STATE OF VERMONT)
COUNTY OF WINDHAM) SS.

At Brattleboro in said County this ____ day of October, 2016, Frederic D. Rutberg, President and duly authorized agent of the New England Newspapers, Inc., personally appeared before me and he acknowledged this instrument sealed and signed by him, to be his free act and deed and the free act and deed of the New England Newspapers, Inc.

Before me, _____
Notary Public
My Commission Expires:

Town of Brattleboro

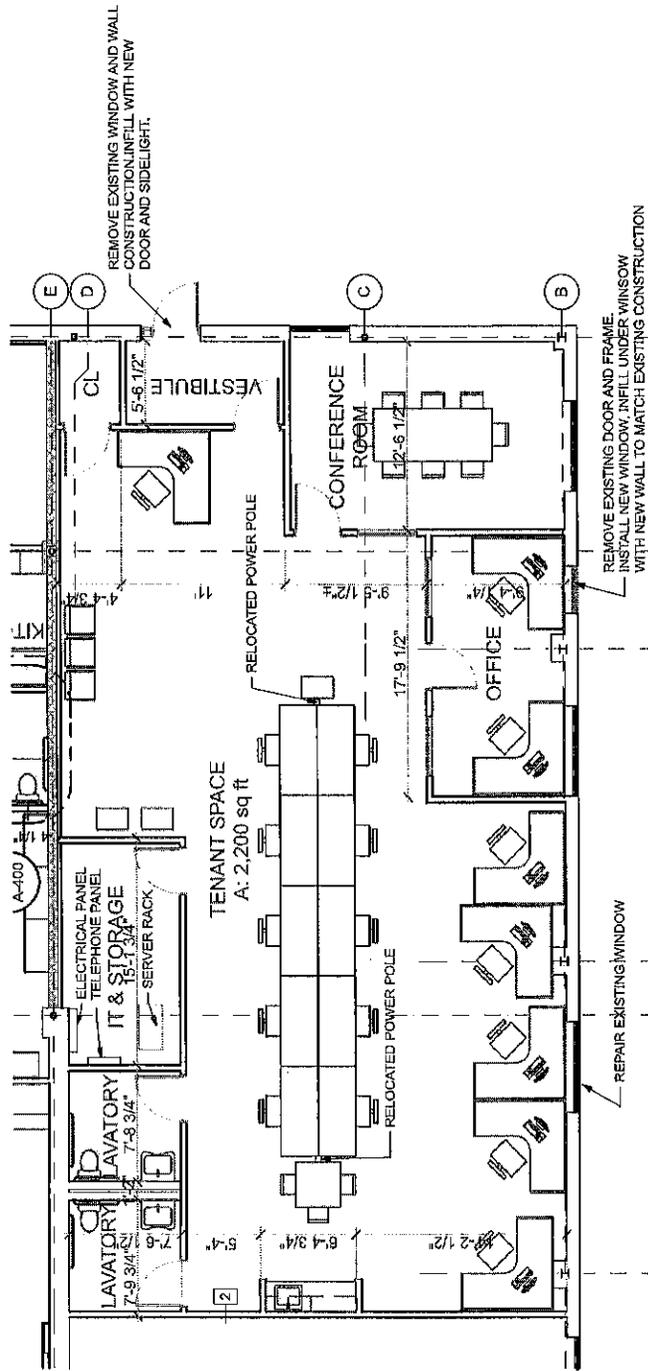
By:

Peter B. Elwell, Town Manager
Lessor

STATE OF VERMONT)
COUNTY OF WINDHAM) SS.

At Brattleboro in said County this 2nd day of November, 2016, Peter B. Elwell, Town Manager and duly authorized agent of the Town of Brattleboro, personally appeared before me and he acknowledged this instrument sealed and subscribed by him, to be his free act and deed and the free act and deed of the Town of Brattleboro.

Before me, _____
Notary Public
My Commission Expires:



1
A-1
FLOOR PLAN
SCALE: 1/8" = 1'-0"

TENANT SPACE
62 BLACK MOUNTAIN RD
BRATTLEBORO VT 05301

POLICE/FIRE FACILITIES PROJECT
OWNER EXPENSES AUTHORIZED BY THE TOWN MANAGER
(August 1, 2016 – October 27, 2016)

(Boldface items have been approved since the Town Manager's last update to the Selectboard.)

GENERAL

08/09/16	Primmer, Piper, et al.	\$ 4,000.00	Bond Counsel Fees
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WEST BRATTLEBORO FIRE STATION

10/12/16	The Richards Group	\$ 4,211.00	Builder's Risk Insurance
10/12/16	Green Mountain Power	\$ 320.54	Electricity at Construction Site
09/29/16	DEW Construction	\$ 4,448.33	Upgrade Window Panels in Cupola
09/29/16	DEW Construction	\$ 1,374.41	Add 3 Windows Above Apparatus Bay
09/29/16	DEW Construction	\$ 1,153.82	LED Lighting in Cupola
09/29/16	DEW Construction	\$ 5,446.73	Removal of Excessive Roots in Soil
08/03/16	M+W Soils	\$ 5,000.00	Testing Services

CENTRAL FIRE STATION

10/12/16	The Richards Group	\$ 17,730.00	Builder's Risk Insurance
10/12/16	Catamount Environmental	\$ 707.50	Lead Testing
10/12/16	Lotus Graphics	\$ 1,224.58	Copies of Construction Plans (large)
08/05/16	Lotus Graphics	\$ 369.00	Copies of Construction Plans (small)

POLICE STATION

10/07/16	Lotus Graphics	\$ 598.55	Copies of Construction Plans (large)
10/07/16	Lotus Graphics	\$ 23.95	Copies of Construction Plans (small)
10/03/16	Sovernet	\$ 950.00	Data Cabling
08/08/16	DiBernardo Associates LLC	\$ 4,500.00	Survey Work
08/05/16	Lotus Graphics	\$ 13.00	Copies of Floor Plans + Site Plans