



RECEIVED  
CITY CLERK

2021 NOV 16 P 4:05

CITY OF AMESBURY  
IN THE YEAR TWO THOUSAND TWENTY-ONE

---

CITY OF AMESBURY, MA

SPONSORED BY: Kassandra Fore **BILL No. 2021-152**

**An Order** to authorize the Mayor to enter into a Memorandum of Agreement with the Town of West Newbury to administer COVID-19 vaccine clinics.

**Summary:** The City of Amesbury is acting as the fiduciary agent for the Lower Merrimack Valley Regional Collaboration (LMVRC), which is operating COVID-19 vaccine clinics in Amesbury and surrounding communities. The Town of West Newbury, which is also operating clinics, asked for a Memorandum of Agreement with the City of Amesbury to define the nature and scope of reimbursement to the LMVRC communities. M.G.L. c. 40 s. 4A requires City Council approval of such agreements.

**Be it Ordered by the City Council of the City of Amesbury assembled, and by the authority of the same as follows:** That the City Council of the City of Amesbury hereby authorizes the Mayor, on behalf of the City, to enter into a Memorandum of Understanding with the Town of West Newbury to administer COVID-19 vaccine clinics.

**MEMORANDUM OF AGREEMENT  
BY AND BETWEEN  
CITY OF AMESBURY  
AND  
TOWN OF WEST NEWBURY  
COVID-19 VACCINE CLINIC**

This Memorandum of Agreement (hereinafter the “Agreement”) is entered into by and between the Town of West Newbury (the “TOWN”) and the City of Amesbury (the “CITY”) (hereinafter referred to collectively as the “Parties”) this \_\_\_\_ day November 2021, as follows:

WHEREAS, Governor Baker recently authorized the Lower Merrimac Valley Regional Collaborative (“LMVRC”) to operate a health clinic (the “Clinic”) for the purpose of administering the COVID-19 vaccine to area residents during the ongoing COVID-19 pandemic; and

WHEREAS, the CITY and the TOWN are members of the LMVRC; and

WHEREAS, the CITY seeks to host, and procure supplies in relation to, the COVID-19 vaccination clinic in collaboration with neighboring communities within the LMVRC, including, but not limited to, the TOWN; and

WHEREAS, the TOWN seeks to contribute to the operating costs associated with the Clinic, including, but not limited to, the provision of labor, supplies and materials; and

WHEREAS, the CITY intends to obtain reimbursement for the administrative and operating costs incurred in relation to the Clinic from insurance providers to the extent permitted by law; and

WHEREAS, the CITY has agreed to apply such insurance reimbursements to costs incurred by the Parties proportionally based on costs incurred and the populations of the CITY, the TOWN, and any other municipalities within the LMVRC that agree to contribute to the costs of the Clinic on terms consistent with this Agreement (“Third-Party Communities”); and.

WHEREAS, in accordance with the provisions of G.L. c. 40, §4A, the TOWN authorized this Agreement by vote of its Select Board on \_\_\_\_\_ and the CITY authorized this Agreement by vote of its City Council on \_\_\_\_\_.

NOW THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. Clinic Operation: The CITY shall, subject to availability of funds and adequate resources, operate a regional COVID-19 vaccination clinic for the benefit of the LMVRC.
2. Reimbursement of Incurred Expenses: The TOWN hereby agrees to contribute available staff, materials, and supplies required to operate the Clinic, the cost for which the CITY shall reimburse the TOWN consistent with the terms of this Agreement. The TOWN shall not incur any costs in relation to the Clinic without the prior written approval of the CITY or an authorized agent thereof. A written request of the CITY's Mayor, Mayor's Chief of Staff, Fire Chief, or Public Health Director that the TOWN provide certain labor, materials or supplies shall constitute such written approval.

The TOWN shall not be obligated to provide any labor, materials, or supplies to the CLINIC. The provision of labor, supplies, and materials shall be subject to the availability of TOWN resources and adequate appropriation therefor.

3. Nature and Scope of Reimbursement.
  - (a) The CITY shall make good faith efforts to obtain any and all payments available for the provision of COVID-19 vaccines from the health insurance providers of individual patients who receive the COVID-19 vaccine at the Clinic. The CITY shall retain ten percent (10%) of such insurance payments as payment for the administrative costs associated with billing insurance providers. Thereafter, the remaining ninety percent (90%) of payments received from insurance providers for Clinic services shall be allocated for reimbursements of costs incurred in relation to the Clinic by the CITY, the TOWN and other Third-Party Communities, if any.
  - (b) If insurance proceeds received by the CITY are sufficient to cover one-hundred percent (100%) of the operating expenses incurred by the CITY, the TOWN, and Third-Party Communities contributing to operating the Clinic, if any, each party shall be reimbursed for one hundred percent (100%) of its properly-documented costs incurred, as set forth in Section 4 of this Agreement. If the CITY is in possession of excess insurance proceeds when the Clinic ceases operation, any excess funds remaining will be allocated amongst the CITY, the TOWN, and Third-Party Communities contributing to the operation of the Clinic, if any, based on relative population, as established by the preliminary 2020 Census results or, if available at the time of such distribution, the final 2020 Census results.
  - (c) If insurance proceeds received by the CITY are not sufficient to cover one hundred percent (100%) of the operating expenses incurred by the CITY, the TOWN, and Third-Party Communities contributing to the costs of operating the Clinic, if any, each party shall receive reimbursement for its costs incurred based on the percentage of overall Clinic costs covered by insurance payments and actual costs incurred by each Party.

By way of example, if the CITY incurs \$20,000 in Clinic expenses, the TOWN incurs \$10,000 in Clinic expenses, and the CITY receives \$20,000 from patients' health insurance providers, the following reimbursements would be made.

CITY: \$2,000 administrative fee (10%) + \$12,000 (60%\* of \$20,000)  
TOWN: \$6,000 (60% of \$10,000)

\*Percentage of overall costs reimbursable after deduction of administrative fee:  
 $\$20,000 - \$2,000 = \$18,000$   
 $\$18,000 \text{ (insurance proceeds)} / \$30,000 \text{ (overall costs)} = 0.60 \text{ or } 60\%$

If a Third-Party Community were to contribute \$5,000 to the costs of the operation of the Clinic, the following allocation of \$20,000 would occur:

CITY: \$2,000 administrative fee (10%) + \$10,280 (51.4%\* of \$20,000)  
TOWN: \$5,140 (51.4% of \$10,000)  
TPC: \$2,570 (51.4% of \$5,000)

\*Percentage of overall costs reimbursable after deduction of administrative fee:  
 $\$20,000 - \$2,000 = \$18,000$   
 $\$18,000 \text{ (insurance proceeds)} / \$35,000 \text{ (overall costs)} = 0.514 \text{ or } 51.4\%$

If insurance payments are received after the CITY's distribution of any reimbursements covering less than one-hundred percent (100%) of costs incurred by the CITY, the TOWN and any Third-Party Community, and such funds exceed the then-outstanding Clinic operating costs incurred, the CITY shall reimburse itself, the TOWN and any Third-Party Community for costs incurred that were not previously reimbursed. Such reimbursements will be provided to all Parties as an equal percentage of all previously uncompensated costs incurred, as reflected and intended by the formula set forth above for initial reimbursement of costs incurred.

If the CITY is in possession of excess insurance payments when the Clinic ceases operation, and has fully reimbursed itself, the TOWN and any Third-Party Community for previously-uncompensated costs, as set forth in the previous Paragraph, such excess funds shall be allocated amongst the CITY, the TOWN, and Third-Party Communities contributing to the operation of the Clinic, if any, based on relative population, as established by the preliminary 2020 Census results or, if available at the time of such distribution, the final 2020 Census results.

4. Reimbursement Requests and Documentation. The Parties shall document all costs incurred in relation to the Clinic and provide such documentation to the satisfaction of the other Party on a monthly basis; such documentation to be provided within seven (7) days of the last day of the month for which reimbursements are being requested and/or provided. Such documentation shall include, but not be limited to, invoices, payroll records, and insurance payment processing forms. The documentation contemplated in

this Paragraph shall form the basis for the reimbursement allocation provided for in Section 3 of this Agreement.

No reimbursements will be provided to the TOWN without documentation satisfactory to the CITY of such costs being incurred. Approval of said documentation shall not be unreasonably withheld. The CITY shall provide the TOWN with documentation reflecting all costs it has incurred and insurance payments it has received in relation to patients served at the Clinic on a monthly basis, such documentation to be due within seven (7) days of the last day of the month for which reimbursements are provided. In the event insurance payments received cover one-hundred percent (100%) of the costs incurred and the CITY agrees to reimburse the TOWN for one hundred percent (100%) of its costs associated with the Clinic, the TOWN may waive the requirement that the CITY provide documentation reflecting the amount of its costs incurred and insurance payments received.

The reimbursement obligations contained herein shall only arise if, and to the extent, the CITY is able to receive payments from patients' health insurance providers. Should the CITY be unable to obtain such insurance payments for any reason, the CITY shall not be liable for reimbursement of the TOWN's or any Third-Party Communities' costs incurred in relation to the Clinic. In the event insurance payments are not available as contemplated by this Agreement, the Parties agree to work together in good faith to secure any available funds to cover the costs of the Clinic, including, but not limited to, applying for FEMA relief funds and/or any other state or federal funding available for the purposes contemplated by this Agreement. The TOWN agrees and acknowledges the CITY's reimbursement obligations hereunder are limited solely to those funds received through insurance carriers.

This scope of reimbursement may be amended by written agreement of the Parties.

5. Retention of Records: The Parties shall maintain records relating to their expenses and reimbursement under this Agreement for a period of seven (7) years from the date of expiration of this Agreement, or if such records become the subject of audit findings, they shall be retained until such findings have been resolved, whichever is later. Each Party shall make all records related to its activities under this Agreement available at all reasonable times for inspection, review, and audit by the other Party.
6. Termination: Unless lawfully extended in writing by the Parties, this Agreement shall terminate on December 30, 2022.
7. Non-Discrimination: The Parties shall not discriminate in the operation of the Clinic against any person because of race, color, religious creed, national origin, gender, age, ancestry, handicap, veteran's status, gender identity, or sexual orientation or any other protected categories under the law.
8. Procurement Standards: The Parties shall comply with all applicable procedures and guidelines with respect to standards governing procurement, and any applicable

provisions of Commonwealth laws and regulations relative thereto, including G.L. c. 30, §39M; G.L. c. 149, §§44A-44J; G.L. c. 30B, *et seq.*; and Chapter 484 of the Acts of 1984. The Parties shall maintain records sufficient to detail the process of procurement.

9. Failure to Secure Reimbursement Funds: All reimbursements provided for by this Agreement are subject to the availability of insurance payments and the CITY's receipt of the same. Should the CITY be unable to secure insurance payments for costs associated with serving Clinic patients, the CITY shall immediately notify the TOWN of the same and the Parties shall commence negotiations of a successor agreement or alternative arrangements for coverage of Clinic costs in good faith, including, but not limited to, pursuit of funding available from the Federal Emergency Management Agency. The Parties shall not be obligated to incur any costs in furtherance of the purposes of this Agreement if the CITY is unable to receive insurance payments for the costs associated with the Clinic.
10. Liability and Responsibility: The CITY and TOWN, and any Third-Party Community acting hereunder, shall each be responsible for the negligent and intentional acts and/or omissions of their officers, employees, and agents with respect to the Clinic and any other activities undertaken pursuant to this Agreement.
11. Notices: Any notice or documentation permitted or required hereunder to be given or served on either Party shall be in writing signed in the name of or on behalf of the Party giving or serving the same. Notice shall be deemed to have been received at the time of actual receipt of any hand delivery or three (3) business days after the date of any properly addressed notice sent by mail as set forth below.

City of Amesbury  
Attn: Mayor  
62 Friend Street  
Amesbury, MA 01913

Town of West Newbury  
Attn: Town Manager  
381 Main Street  
West Newbury, MA 01985

12. Complete Agreement: This Agreement constitutes the entire Agreement between the Parties concerning the subject matter hereof, superseding all prior agreements and understandings, written or oral. There are no other agreements or understandings between the Parties concerning the subject matter hereof. Each Party acknowledges it has not relied on any representations by the other Party or by anyone acting or purporting to act for the other Party or for whose actions the other Party is responsible, other than the express, written representations set forth herein.

13. Amendment: This Agreement may be amended only in writing pursuant to the lawful authorization of the signatory to this Agreement.
14. Assignment: Neither Party shall assign or transfer any of its rights or interests in or to this Agreement, or delegate any of its obligations hereunder, without the prior written consent of the other Party.
15. Severability: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, or if any such term is so held when applied to any particular circumstance, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, or affect the application of such provision to any other circumstances, and the remaining provisions hereof shall not be affected and shall remain in full force and effect.
16. Jurisdiction: This Agreement shall be interpreted by the laws of the Commonwealth of Massachusetts.

IN WITNESS THEREOF, the CITY and the TOWN have executed this Agreement as of the date first written above.

CITY OF AMESBURY

TOWN OF WEST NEWBURY

---

Kassandra Gove  
Mayor

---

Angus Jennings  
Town Manager