

INTERGOVERNMENTAL AGREEMENT  
FIBER OPTIC NETWORK SERVICES  
BETWEEN  
TOWN OF ASHFIELD  
AND  
TOWN OF BUCKLAND

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2020 is by and between the Town of Ashfield, MA, acting by and through its Select Board and MLP (hereinafter "Ashfield") and the Town of Buckland, MA, acting by and through its Select Board and MLP (hereinafter "Buckland").

**Whereas**, Ashfield is building a fiber optic broadband network to serve its residents;

**Whereas**, Buckland wishes that broadband service be available to its residents and is desirous of having broadband service extended from Ashfield to Buckland;

**Whereas**, Ashfield is willing to accommodate Buckland as long as Ashfield incurs no capital expense, which is prohibited by law;

**Whereas**, Chapter 56, Section 228 of the Acts of 2018 states that "Notwithstanding any general or special law to the contrary, any city or town that has received a grant from the executive office of housing and economic development or Massachusetts Broadband Institute for purposes of constructing a municipally owned broadband network shall have the power and authority: (1) to provide internet access service to an unserved premises located in an adjacent municipality; and (2) to accept or acquire an easement or other real property interest in an adjacent city or town for purposes of constructing, owning, maintaining and operating infrastructure for providing internet access service to its own residents or to an unserved premises located in an adjacent municipality."

**Now, Therefore**, in consideration of mutual promises and covenants contained herein, the Parties agree as follows:

## 1. TERM

The Term of this Agreement shall commence upon the execution of the Agreement by all Parties. This Agreement may be terminated by Buckland once all capital costs for installation of the fiber optic network constructed in Buckland are paid for by Buckland to Ashfield. Upon termination Ashfield will continue to own all

components of the network including but not limited to cable, hardware attachments, pole licensing agreements and any and all other components of the system. Ashfield may terminate this agreement at any time but shall continue to provide service to the individual residences in Buckland listed on Exhibit A so long as the residents residing therein comply with the rules and regulations of the Ashfield MLP including payment of monthly services.

Should either Party default in the performance of any material obligation under this Agreement, and such default shall not have been cured within 30 days following the written notice of such breach by the non-defaulting Party, the non-defaulting Party may terminate this Agreement for cause effective upon the expiration of such 30-day period unless the non-defaulting Party has specified a later date.

## 2. SCOPE

This Agreement shall cover those roads, poles and premises as detailed in Appendix A. Buckland hereby grants permission and access to the public ways in Buckland for the purpose of construction, maintenance, repair and replacement of the fiber optic cable and network and any and all necessary equipment and accessories to serve the Buckland residents with broadband network services. This grant of permission and access shall survive this Agreement.

Any maintenance, repair, or replacement costs during the length of this contract for the distribution system in Buckland that is not funded through subscriber fees or insurance, or any future capital improvements not covered herein, will require an amendment or separate agreement.

Ashfield shall not be responsible for any further growth of the network in Buckland without an amendment hereto agreed to by both parties.

## 3. PAYMENT

The Parties hereto acknowledge and agree that Buckland has paid \$4,326.43 for Design and Cost estimates done by Westfield Gas & Electric (WG&E), \$15,486.44 for Make Ready and pole attachment licenses, and \$16,036 of the original \$16,096 estimated construction costs towards the construction of the broadband distribution network in Buckland. Due to an unforeseen vendor change, an additional estimated \$1,264 is due, to complete the network distribution construction costs for the distribution network in Buckland. \$60 is due for the original construction estimate. Thus, currently Buckland owes an additional \$1,324, for a total construction cost estimate of \$17,360. All costs are identified in Appendix B. Buckland also agrees to reimburse Ashfield for any documented construction costs not covered herein to complete the construction of the distribution network in Buckland.

Any maintenance, repair, or replacement costs during the length of this contract for the distribution system in Buckland that is not funded through subscriber fees or

insurance, or any future capital improvements not covered herein, will require an amendment or separate agreement for allocation of responsibility to pay.

Installation drop payments are estimated to be \$33,276.18, as noted in Appendix B and are due prior to performance of each stage of the project in accordance with Article 6 herein. Appendix C details individual drop cost estimates from Westfield Gas & Electric (WG&E).

Installation drops are performed by a contracted installer that will collect those costs directly from individual property owners or Buckland in accordance with Article 6 herein. It is the responsibility of Buckland to arrange with the installer for any subsidy available to property owners. It is the responsibility of the individual residents to sign up in a timely manner for installation of the drops.

#### **4. OWNERSHIP**

Ashfield shall own all components of the network including but not limited to cable, hardware attachments, pole attachment licenses and optical network terminals. Ashfield will be exclusively responsible for all operational costs and maintenance of the network.

#### **5. LICENSE AND FEES**

Ashfield shall obtain all licenses and permits required to conduct the activities pursuant to this Agreement, including pole attachment licenses, and shall promptly pay all fees, taxes or other state or municipal costs necessary for said licenses, permits or activities. If any permits or licenses are necessary from Buckland or require Buckland's assistance to acquire, Buckland shall issue said license or assist in obtaining such license.

#### **6. SERVICE**

Ashfield agrees to offer broadband services to premises listed in Appendix A through the town or its assigned service providers under agreements with residents of Buckland that are comparable to those of residents of Ashfield. Ashfield shall bill Buckland residents directly for the services provided.

Ashfield acknowledges that Buckland has paid cost outlined in Appendix B including Design & Cost Estimates, Make-Ready Verizon, and Distribution Network Construction costs.

Buckland shall contribute an amount not to exceed One Thousand Five Hundred Dollars (\$1,500) per Buckland Customer to be used solely for the direct cost of service drops to provide services to that particular Buckland Customer. The Balance of any such associated costs shall be borne by the Buckland Customers, without subsidy or assistance from Ashfield or Buckland.

Service drops will be installed by the Ashfield contractor and if the associated cost exceeds \$1,500, any amount exceeding said amount will be billed directly to the subscribing Buckland Customer in accordance with Ashfield practices.

The network shall be operated in accordance with generally accepted practices for such a network, the rules and procedures of Ashfield MLP, and the laws and regulations of the Commonwealth of Massachusetts. Changes in policy and practices, service providers and level of services offered shall be at the sole discretion of Ashfield MLP.

## **7. NETWORK SALE**

In the event that the network is sold, this Agreement shall terminate and parties acknowledge and agree that Ashfield shall compensate Buckland equal to the sale price proportionate to the value of the network servicing the Buckland Customers within 90 days of receipt by Ashfield of the sale price.

## **8. INDEMNITY & INSURANCE**

Ashfield shall indemnify Buckland from any and all debts demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands, and liabilities whatsoever of every name and nature both in law and in equity on account of injury to person or property or loss of life resulting from the Ashfield's performance under this agreement but only to the extent and in an amount for which the Town would otherwise be liable pursuant to the Massachusetts Tort Claims Act, M.G.L. c. 258.

Buckland shall indemnify Ashfield from any and all debts demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands, and liabilities whatsoever of every name and nature both in law and in equity on account of injury to person or property or loss of life resulting from the Buckland's performance under this agreement but only to the extent and in an amount for which the Town would otherwise be liable pursuant to the Massachusetts Tort Claims Act, M.G.L. c. 258.

By entering into this Agreement, the parties have not waived any governmental immunity or limitation of damages which may be extended to them by operation of law.

During the term of this Agreement, each party shall obtain and keep in full force and effect, public liability insurance in the amount of One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage arising out of any one occurrence, protecting the other party against any and all claims for bodily injury, Three Million Dollars (\$3,000,000) aggregate, death or property damages arising directly or indirectly out of the Indemnification Provisions of this Agreement.

## **9. NONDISCRIMINATION**

The Parties shall not discriminate against any person because of race, color, religious creed, national origin, gender, age, ancestry, handicap, gender identity, veteran's status, sexual orientation or any other protected class under the law.

## **10. AVAILABILITY OF FUNDS**

The obligations of the parties provided for by this Agreement are subject to the continued availability of Town funds and Town appropriations to continue operations of the MLP, as applicable.

## **11. ACCESS TO RECORDS**

Ashfield will make all books, accounts, data, records, reports, files and other papers required to be kept or kept in the course of the work to be performed under this Agreement available at all reasonable times for inspection, review and audit by Buckland or its authorized representative.

## **12. RIGHTS AND REMEDIES**

The parties' rights and remedies provided in this Agreement are in addition to any other rights and remedies provided by law.

## **13. CONFLICT OF INTEREST**

Each party shall adhere to the provisions of Massachusetts General Laws, Chapter 268A, with respect to the Conduct of Public Employees. In addition, no member, officer, or employee of either party, or its designee, or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one (1) year thereafter (or such longer period as may be provided in Chapter 268A of the Massachusetts General Laws), shall have any interest in any Agreement or sub-Agreement, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. Each party shall incorporate, or cause to be incorporated, in all such Agreements or sub-Agreements a provision prohibiting such interest, pursuant to the purposes of this subsection.

## **14. JURISDICTION**

This Agreement shall be interpreted by the laws of the Commonwealth of Massachusetts and any suit brought pursuant to this Agreement shall be commenced only in the Commonwealth Courts of Franklin County, MA. The Parties waive their rights to trial by Jury.

## **15. MODIFICATION, WAIVER OR CHANGE**

No modifications, waiver or change shall be made in the terms and conditions of this Agreement except as may be mutually agreed upon in writing by all parties hereto.

## **16. ASSIGNMENT**

Ashfield and Buckland recognize that each has a substantial interest in having the other perform or control the acts required of it by this Agreement. Neither party shall perform its duties through a delegate nor assign its interest under this Agreement without the written consent of the other. Nothing herein shall be construed to prevent an assignor's due performance of its entire obligation.

## **17. SUCCESSORS AND ASSIGNS**

Ashfield and Buckland each binds itself, its partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

## **18. ENTIRE UNDERSTANDING**

This Agreement, together with the attachments hereto, represent the entire understanding of the parties, and neither party is relying upon any representation not contained herein.

## **19. SEVERABILITY**

In the event that any provision of this Agreement shall be deemed invalid, unreasonable, or unenforceable by any court of competent jurisdiction, such provision shall be stricken from the Agreement or modified so as to render it reasonable, and the remaining provisions of this Agreement or the modified provision as provided above, shall continue in full force and effect and be binding upon the parties so long as such remaining or modified provisions reflect the intent of the parties as of the date of this Agreement. Further, should this Agreement omit any statutory or regulatory requirements which would otherwise render this Agreement illegal, then this Agreement shall be deemed amended to the minimum extent necessary to comply with said statutes or regulations.

## **20. OWNERSHIP OF DOCUMENTS**

The parties agree that all documents created for the project by Ashfield shall belong to Ashfield.

## **21. WARRANTY AND DISCLAIMER**

Ashfield cannot guarantee the Network Services but will provide the Network Services in a workmanlike manner, and in conformity with generally prevailing

industry standards. THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES. WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENT MADE ON OR PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT.

## **22. NO THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement shall be construed to create any duty, liability or standard of care to any person not a party to this Agreement or to create any rights or expectations in any such third party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized representatives' effective as of the day and year first above written.

**Town of Ashfield**

**Town of Buckland**

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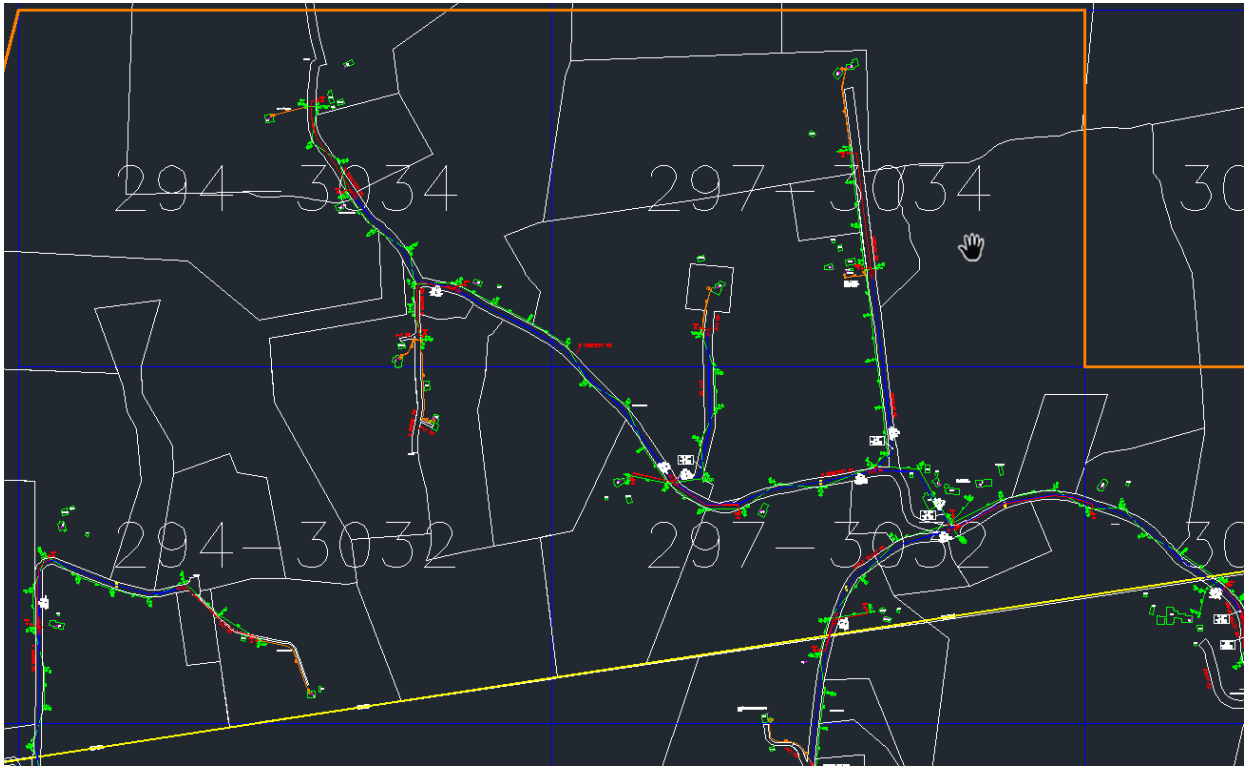
Thomas S. Carter  
Select Board Chair

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Zachary Turner  
Select Board Chair



## APPENDIX A – Service Region



STREET NAME	PARCEL STREET NBR	TYPE	ESTIMATED TOTAL INSTALLATION CHARGE
APPLE VALLEY RD	720	RES_ADDRESS	\$612.75
APPLE VALLEY RD	947	RES_ADDRESS	\$1,434.40
E BROWN RD	33	RES_ADDRESS	\$3,951.61
E BROWN RD	4	RES_ADDRESS	\$2,996.72
N BROWN RD	25	RES_ADDRESS	\$4,760.11
N BROWN RD	38	RES_ADDRESS	\$612.75
N BROWN RD	43	RES_ADDRESS	\$612.75
NORMAN RD	13	RES_ADDRESS	\$3,951.61
NORMAN RD	13	RES_ADDRESS	\$3,951.61
NORMAN RD	4	COM_ADDRESS	\$778.84
NORMAN RD	4	RES_ADDRESS	\$778.84
NORMAN RD	9	RES_ADDRESS	\$1,074.40
NORMAN RD	9-A	RES_ADDRESS	\$1,074.40
S CEMETERY RD	11	RES_ADDRESS	\$1,074.40
S CEMETERY RD	16	RES_ADDRESS	\$3,911.72
S CEMETERY RD	17	RES_ADDRESS	\$1,411.90
S CEMETERY RD	38	RES_ADDRESS	\$612.75

STREET NAME	PARCEL STREET NBR	TYPE	ESTIMATED TOTAL INSTALLATION CHARGE
S CEMETERY RD	49	RES_ADDRESS	\$2,489.33
S CEMETERY RD	56	RES_ADDRESS	\$612.75
S CEMETERY RD	NA/H05T49	RES_ADDRESS	\$1,074.40

## APPENDIX B – Payment Schedule

<b>Expense</b>	<b>Source</b>	<b>Cost</b>	<b>Payment Request</b>	<b>Paid</b>
Design & Cost Estimates	WG&E Invoice - Data Collection, Route Validation, Final Strand Map, Pole Application Processing, Pole Application Fees	\$4,326.43	2/14/2018	4/2/2018
Make Ready Verizon	VZ Pole Details for Poles on Brown, Cemetery and Norman in Applications 1308, 1309 + ES Estimates	\$15,486.44	12/31/2018	1/16/19
Distribution Network Construction	Ashfield / Sertex 19-06H_Ashfield_Contract breakout costs	\$17,360.00	6/7/2019	6/18/19
Drop Costs	WG&E Estimates	\$33,276.18		

## APPENDIX C – Individual Property Drop Costs

FSA	ID	STREET NAME	PARCEL STREET NBR	APT NBR OR NON-RESIDENTIAL TYPE	CITY	STATE	PDU HOUSE COUNT	INSTALL TYPE	AE-FT-LD	AE-FT-NE	TOTAL POLES ON PRIVATE PROPERTY	NON STANDARD DROP UG-FT	UG ROAD CROSSING FT EST	AERIAL COST	UNDER-GROUND COST	TOTAL INSTALLATION CHARGE	AERIAL Labor	UNDER-GROUND Labor	TOTAL INSTALLATION Labor	AERIAL Material	UNDER-GROUND Material	TOTAL INSTALLATION Material	TOTAL INSTALLATION Labor & Material	PARCEL ADDR
FSA05	886	N BROWN RD	25	RES_ADDRESS	BUCKLAND	MA	1	AE_NE_UG		539	2	475	0	\$ 1,471.47	\$ 3,951.61	\$ 5,423.08	\$ 808.50	\$ 2,950.00	\$ 3,758.50	\$ 662.97	\$ 1,001.61	\$ 1,664.58	\$ 5,423.08	25 N BROWN RD
FSA05	909	S CEMETERY RD	16	RES_ADDRESS	BUCKLAND	MA	1	AE_NE_UG		985	5	208	0	\$ 2,689.05	\$ 2,434.22	\$ 5,123.27	\$ 1,477.50	\$ 1,655.00	\$ 3,132.50	\$ 1,211.55	\$ 779.22	\$ 1,990.77	\$ 5,123.27	16 S CEMETERY RD
FSA05	891	NORMAN RD	13	RES_ADDRESS	BUCKLAND	MA	1	UG_LD		0	0	457	0	\$ -	\$ 3,951.61	\$ 3,951.61	\$ -	\$ 2,950.00	\$ 2,950.00	\$ -	\$ 1,001.61	\$ 1,001.61	\$ 3,951.61	13 NORMAN RD
FSA05	892	NORMAN RD	13	RES_ADDRESS	BUCKLAND	MA	1	UG_LD		0	0	457	0	\$ -	\$ 3,951.61	\$ 3,951.61	\$ -	\$ 2,950.00	\$ 2,950.00	\$ -	\$ 1,001.61	\$ 1,001.61	\$ 3,951.61	13 NORMAN RD
FSA05	912	S CEMETERY RD	49	RES_ADDRESS	BUCKLAND	MA	1	AE_LD_UG	38	0	1	165	0	\$ 55.11	\$ 2,434.22	\$ 2,489.33	\$ 20.00	\$ 1,655.00	\$ 1,675.00	\$ 35.11	\$ 779.22	\$ 814.33	\$ 2,489.33	49 S CEMETERY RD
FSA05	782	APPLE VALLEY RD	947	RES_ADDRESS	BUCKLAND	MA	1	AE_NE_UG		240	1	0	0	\$ 655.20	\$ 1,074.40	\$ 1,729.60	\$ 360.00	\$ 935.00	\$ 1,295.00	\$ 295.20	\$ 139.40	\$ 434.60	\$ 1,729.60	947 APPLE VALLEY RD
FSA05	910	S CEMETERY RD	17	RES_ADDRESS	BUCKLAND	MA	1	AE_NE_UG		225	1	0	0	\$ 614.25	\$ 1,074.40	\$ 1,688.65	\$ 337.50	\$ 935.00	\$ 1,272.50	\$ 276.75	\$ 139.40	\$ 416.15	\$ 1,688.65	17 S CEMETERY RD
FSA05	889	NORMAN RD	9	RES_ADDRESS	BUCKLAND	MA	1	UG_SD		0	0	0	0	\$ -	\$ 1,074.40	\$ 1,074.40	\$ -	\$ 935.00	\$ 935.00	\$ -	\$ 139.40	\$ 139.40	\$ 1,074.40	9 NORMAN RD
FSA05	890	NORMAN RD	9-A	RES_ADDRESS	BUCKLAND	MA	1	UG_SD		0	0	0	0	\$ -	\$ 1,074.40	\$ 1,074.40	\$ -	\$ 935.00	\$ 935.00	\$ -	\$ 139.40	\$ 139.40	\$ 1,074.40	9-A NORMAN RD
FSA05	908	S CEMETERY RD	11	RES_ADDRESS	BUCKLAND	MA	1	UG_SD		0	0	0	0	\$ -	\$ 1,074.40	\$ 1,074.40	\$ -	\$ 935.00	\$ 935.00	\$ -	\$ 139.40	\$ 139.40	\$ 1,074.40	11 S CEMETERY RD
FSA05	914	S CEMETERY RD	NA/H05T49 (43?)	RES_ADDRESS	BUCKLAND	MA	1	UG_SD		0	0	0	0	\$ -	\$ 1,074.40	\$ 1,074.40	\$ -	\$ 935.00	\$ 935.00	\$ -	\$ 139.40	\$ 139.40	\$ 1,074.40	NA/H05T49 S CEMETERY RD
FSA05	893	NORMAN RD	4	COM_ADDRESS	BUCKLAND	MA	1	AE_LD	170	0	0.5	0	0	\$ 778.84	\$ -	\$ 778.84	\$ 400.00	\$ -	\$ 400.00	\$ 378.84	\$ -	\$ 378.84	\$ 778.84	4 NORMAN RD
FSA05	894	NORMAN RD	4	RES_ADDRESS	BUCKLAND	MA	1	AE_LD	170	0	0.5	0	0	\$ 778.84	\$ -	\$ 778.84	\$ 400.00	\$ -	\$ 400.00	\$ 378.84	\$ -	\$ 378.84	\$ 778.84	4 NORMAN RD
FSA05	781	APPLE VALLEY RD	720	RES_ADDRESS	BUCKLAND	MA	1	AE_SD		0	0	0	0	\$ 612.75	\$ -	\$ 612.75	\$ 320.00	\$ -	\$ 320.00	\$ 292.75	\$ -	\$ 292.75	\$ 612.75	720 APPLE VALLEY RD
FSA05	887	N BROWN RD	38	RES_ADDRESS	BUCKLAND	MA	1	AE_SD		0	0	0	0	\$ 612.75	\$ -	\$ 612.75	\$ 320.00	\$ -	\$ 320.00	\$ 292.75	\$ -	\$ 292.75	\$ 612.75	38 N BROWN RD
FSA05	888	N BROWN RD	43	RES_ADDRESS	BUCKLAND	MA	1	AE_SD		0	0	0	0	\$ 612.75	\$ -	\$ 612.75	\$ 320.00	\$ -	\$ 320.00	\$ 292.75	\$ -	\$ 292.75	\$ 612.75	43 N BROWN RD
FSA05	911	S CEMETERY RD	38	RES_ADDRESS	BUCKLAND	MA	1	AE_SD		0	0	0	0	\$ 612.75	\$ -	\$ 612.75	\$ 320.00	\$ -	\$ 320.00	\$ 292.75	\$ -	\$ 292.75	\$ 612.75	38 S CEMETERY RD
FSA05	913	S CEMETERY RD	56	RES_ADDRESS	BUCKLAND	MA	1	AE_SD		0	0	0	0	\$ 612.75	\$ -	\$ 612.75	\$ 320.00	\$ -	\$ 320.00	\$ 292.75	\$ -	\$ 292.75	\$ 612.75	56 S CEMETERY RD
FSA05	840	E BROWN RD	4	RES_ADDRESS	BUCKLAND	MA	1	UG_LD		0	0	155	25	\$ -	\$ 3,059.22	\$ 3,059.22	\$ -	\$ 2,217.50	\$ 2,217.50	\$ -	\$ 841.72	\$ 841.72	\$ 3,059.22	4 E BROWN RD
FSA05	841	E BROWN RD	33	RES_ADDRESS	BUCKLAND	MA	1	UG_LD		0	0	498	0	\$ -	\$ 3,951.61	\$ 3,951.61	\$ -	\$ 2,950.00	\$ 2,950.00	\$ -	\$ 1,001.61	\$ 1,001.61	\$ 3,951.61	33 E BROWN RD