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THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

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September 27, 2021

OML 2021 – 133

Monterey Select Board
c/o Melissa Noe
Town Administrator
435 Main Road, P.O. Box 308
Monterey, MA 01245

By email only: admin@montereyma.gov

RE: Open Meeting Law Complaints

Dear Ms. Noe:

This office received three complaints from John Weingold on March 27, 2021, alleging that the Monterey Select Board (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ The first complaint was originally filed with the Board on January 8, the second complaint was originally filed with the Board on January 12, and the third complaint was originally filed with the Board on January 15. Donald Coburn, who was Chair of the Board at the time of the complaints, responded to the complaints, on behalf of the Board, by letters dated January 11 and February 2. The complaints generally allege that the Board failed to review an Open Meeting Law complaint, deliberated outside of properly posted meetings, failed to announce that meetings were being recorded, and failed to allow public participation.

We appreciate the patience of the parties while we reviewed these matters. Following our review, we find that the Board violated the Open Meeting Law by failing to review an Open Meeting Law complaint and deliberating outside of a properly posted meeting via email. We find that the Board did not violate the Open meeting Law in the other ways alleged. In reaching this determination, we reviewed the original complaints, the Board’s responses to the complaints, and the complaint filed with our office requesting further review. We also reviewed the notice and open session minutes of the Board meeting held on December 23, 2020. Finally, we spoke with you by telephone on September 13.

¹ Unless otherwise indicated, all dates in this letter refer to the year 2021.

FACTS

We find the facts as follows. The Board is a three-member public body; thus two members constitute a quorum. The complainant is a member of the Board.

In 2018, the Town of Monterey submitted a request for proposals for a vendor to provide high-speed broadband internet service to the Town. During a meeting held on August 1, 2018, the Board reviewed a proposal from Fiber Connect for telephone and internet. Between December 21 and December 23, 2020, Chair Donald Coburn emailed documents to the other two Board members;² these documents pertained to an agreement with Fiber Connect to provide broadband internet services to the town. The emails included Mr. Coburn's thoughts and opinions on specific sections of the agreement. During a meeting held on December 23, 2020, the Board voted by majority vote to "accept the proposed broadband fiber network and construction agreement between Fiber Connect and Monterey." Additional facts will be presented where applicable in the Discussion section that follows.

On January 6, an individual filed a complaint alleging that the Board violated the Open Meeting by adding a topic to its notice within 48 hours of its January 6 meeting; failing to provide notice to an individual that he would be discussed during the January 6 meeting; and discussing the reputation and character of and complaints against an individual during open session rather than in executive session.³ On January 7, Mr. Coburn responded to the complaint on behalf of the Board.

DISCUSSION

I. We Decline to Review Allegations that the Board Failed to Make an Announcement that Meetings Were Being Recorded.

The second complaint alleges that the "Chair fails to warn people as required that the remote [Board] meetings are being recorded." The Open Meeting Law requires that "[a]fter notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting, the chair shall inform other attendees of any recordings." G.L. c. 30A, § 20(f). Here, the complaint does not identify any specific meetings where the Chair failed to make such an announcement, only indicating that such meetings were prior to January 5. Complainants must allege violations with a degree of specificity, as our office will not conduct broad audits of public bodies based on generalized allegations. See OML Declination 3-20-12 (Wilmington Board of Assessors).⁴ We therefore decline to review this allegation.

² Donald Coburn is no longer a member of the Board.

³ This complaint was filed by Jeremy Rawitz, a member of the Conservation Commission in the Town of Monterey. This office issued a decision resolving this complaint on March 25. See OML 2021-40.

⁴ Open Meeting Law determinations and declination letters may be found at the Attorney General's website, <https://www.mass.gov/the-open-meeting-law>.

Although we do not specifically review this allegation, we understand that the Board held three remote meetings in December 2020, which were recorded by the Board. These three meetings were held on the platform GoToMeeting, which automatically makes an announcement that the meeting is being recorded when the record button is activated. We advise the Board that the requirement that the chair inform attendees of any recording includes any recording made by members of the public body itself, including those made for public broadcasting or administrative purposes, such as assisting in the drafting of meeting minutes. See OML 2016-155; OML 2013-136; OML 2012-24. We have previously held that a sign may satisfy the requirement of notification of a recording and relieve the chair from making a verbal announcement at the start of the meeting. See OML 2016-155; OML 2013-136.

II. The Second Complaint Raises Allegations that Do Not Constitute Violations of the Open Meeting Law.

The second complaint alleges that the Chair i) conducted Board business “outside of open meetings completely by himself,” ii) “cuts off and mutes public speakers,” and iii) “blocks numerous . . . agenda items.” None of these allegations identify any specific meetings when these actions by the Chair occurred, and our office will not conduct broad audits of public bodies based on such generalized allegations. See OML 2014-119; OML 2012-106. Nevertheless, even if true, these allegations would not constitute a violation of the Open Meeting Law.

With respect to the allegation that the Chair conducted Board business on his own, the Open Meeting Law applies when a quorum of members of a public body meet and deliberate on matters within its jurisdiction. See G.L. c 30A, § 18. For purposes of the Open Meeting Law, a “quorum” is a simple majority of the members of a public body. Id. To the extent that the complaint may be construed as alleging that the Chair effectively made decisions that should have been made by the Board as a whole, this allegation goes to the authority of individuals such as the Chair versus the Board to take action on particular matters, which is not a matter governed by the Open Meeting Law. See OML 2018-144. We offer no opinion on whether any actions taken by the Chair could be a violation of some other town bylaw, law or regulation outside the scope of the Division’s review.

With respect to the allegation regarding public participation, the Open Meeting Law does not require that a public body allow public participation, but rather provides that “[n]o person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent.” G.L. c. 30A § 20(f). The law permits the Chair of the Board to decide who may speak at a meeting and for how long. See OML 2017-189; OML 2014-23; OML 2012-23. Thus, as it is within the Chair’s discretion to limit public participation, he would not violate the Open Meeting Law by doing so during a meeting.

Finally, regarding the allegation that the Chair “blocks” items from being placed on the notice, the Open Meeting Law imposes no obligation on chairs of public bodies to place items on a meeting agenda, unless a chair anticipates discussing a particular topic. See OML 2016-68. In fact, the Open Meeting Law does not require a public body to discuss any topic. See OML 2015-73; OML 2014-98; OML 2013-64; OML 2012-23. Rather, the law requires that a meeting notice list all topics the chair reasonably anticipates will be discussed. Thus, a chair would not violate

the Open Meeting Law by not including topics on a notice or deciding not to discuss such topics at meeting.

III. The Board Violated the Open Meeting Law by Failing to Review an Open Meeting Law Complaint.

The first complaint alleges that the Board failed to review an Open Meeting Law complaint. The Open Meeting Law requires that within 14 days of receipt of a complaint, the public body review the complaint's allegations; take remedial action, if appropriate; and send to the Attorney General a copy of the complaint and a description of any remedial action taken. G.L. c. 30A, § 23(b); 940 CMR 29.05(5). Upon the filing of an Open Meeting Law complaint with a public body, the chair "shall disseminate copies of the complaint to the members of the public body," and "the public body shall review the complaint's allegations." 940 CMR 29.05(3), (5). Thus, a public body must meet to review the complaint and formulate a response, or meet to delegate that authority, and respond to the complaint within 14 business days. See G.L. c. 30A, § 23(b); OML 2017-69; OML 2012-90.

Here, a complaint was filed with the Board on January 6 and Chair Coburn responded to the complaint on January 7. However, the Board did not first review the complaint and authorize the Chair to respond. Proper procedure requires that a public body review a complaint before authorizing an individual, such as the chair, to respond on its behalf. See OML 2017-132; OML 2012- 95; OML 2011-6. Once a public body has reviewed a complaint during a meeting, its decision to simply refer the complaint, rather than discuss its substance, is the public body's prerogative. See OML 2019-40; OML 2017-96. We find that the Board violated the Open Meeting Law when it did not first meet to review the complaint before the Chair responded. See OML 2013-173.

IV. We Find that a Quorum of Board Members Improperly Deliberated via Email but Did Not Deliberate via Social Media.

The Open Meeting Law was enacted "to eliminate much of the secrecy surrounding deliberation and decisions on which public policy is based." Ghiglione v. School Board of Southbridge, 376 Mass. 70, 72 (1978). The Open Meeting Law defines a "meeting," in relevant part, as "a deliberation by a public body with respect to any matter within the body's jurisdiction." G.L. c. 30A, § 18. The law defines "deliberation" as "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that 'deliberation' shall not include the distribution of other procedural meeting [sic] or the distribution of reports or documents that may be discussed at a meeting, provided than no opinion of a member is expressed." Id. For the purposes of the Open Meeting Law, a "quorum" is a simple majority of the members of a public body. Id.

All three complaints generally allege that a quorum of the Board deliberated by email, while the third complaint also alleges that a quorum of the Board deliberated via social media. Complainants must allege violations with a degree of specificity, as our office will not conduct broad audits of public bodies based on generalized allegations. See OML Declination 3-20-12 (Wilmington Board of Assessors). Here, we confine our review to the emails that were

exchanged among the Board between November 27, 2020, and February 25, as well as social media posts between November 4, 2020, and January 8, which were provided to this office by the complainant.

We decline to review any emails or social media posts that occurred between November 4, 2020, and December 4, 2020. Complaints alleging violations of the Open Meeting Law must be filed with the public body within 30 days of the alleged violation. G.L. c. 30A, § 23(b). If the alleged violation could not reasonably have been known at the time it occurred, then the complaint must be filed within 30 days of the date it should reasonably have been discovered. 940 CMR 29.05(3). Here, the complainant was a recipient of the emails that were sent on November 27, November 30, and December 4, 2020. In addition, social media posts that occurred on November 4, November 5, November 7, and November 25, 2020, were forwarded to the complainant on the day that they were posted. Accordingly, any complaint relating to these emails or social media posts should have been filed within 30 days. Because the complaints were filed on January 8, 10, and 15, which was between 35 and 65 days later, we find that the allegations with respect to these specific emails and social media posts are untimely and we decline to review them. See OML 2017-34; OML Declination 8-25-2014 (Barnstable Fire District Prudential Committee

We find that three emails sent on December 21, December 22, and December 23, 2020, contain improper deliberations because these emails reached a quorum of the Board and included one member's opinions on or suggested resolutions of matters to be discussed by the Board and within the Board's jurisdiction, namely, the approval of a contract for broadband internet. See OML 2018-118; 2015-3; OML 2014-108; OML 2013-136; Boelter v. Board of Selectmen of Wayland, 479 Mass. 233, 243 (2018). The expression of an opinion of by one public body member on matters within the body's jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. See OML 2016-104; OML 2015-33; OML 2012-73. Moreover, the Open Meeting Law does not carve out an exception to the definition of "deliberation" for discussions that do not result in a decision or vote. We find that the Board violated the Open Meeting Law by deliberating among a quorum via email. We order the Board to publicly release these three emails within 30 days of receipt of this determination, if it has not already done so.

We find that emails exchanged on February 19 and 25 did not constitute deliberation because the communications were either between Town Legal Counsel and the Town Administrator, who are not members of the Board, or between the Town Administrator and one member of the Board. See OML 2021-113; OML 2020-71. Therefore, because these communications were not between a quorum of Board members, the Board did not violate the Open Meeting Law. See OML 2020-71.

Finally, with respect to the allegations that a quorum of the Board deliberated outside of a properly posted meeting in the Monterey-Community Google Group we find no evidence of deliberation by a quorum of the Board. It is not a violation of the Open Meeting Law for a quorum of the members of a public body to also be members of a social media group. However, if a member of the Board were to communicate directly with a quorum of the Board over that social media platform, such communication may violate the Open Meeting Law. We find no

evidence that Board members communicated with a quorum of the Board on the Monterey-Community Google Group. However, one Board member posted comments on December 12, 2020, December 18, 2020, and January 8 pertaining to creating a human resource position, appointing an interim Town Administrator, or approving a contract for broadband internet services to the Monterey-Community Group. While the posts related to Board business, we find no evidence that the posts involved communication directed to a quorum of the Board, or that Board members responded to the posts of other members. The Open Meeting Law does not restrict an individual's right to make comments to the general public. See OML 2017-111. Here, we find that the posts by individual Board members were directed to members of the public who were members of the Monterey-Community Google Group, rather than specifically to a quorum of the Board. See OML 2017-192; OML 2017-111; 2015-15 (Open Meeting law restricts communication between or among a quorum of a public body outside of a meeting, indicating that the communicator's intent must be examined). As such, we find that the Board did not violate the Open Meeting Law.

However, we remind the Board that while the Open Meeting Law does not restrict an individual's right to make comments to the general public via social media, it does apply to communication between or among a quorum of a public body outside of a meeting. See OML 2017-111. The communicator's intent in posting to a social media platform is relevant; whether other members of the public body happen to see the communication is not determinative. When comments are made in a social media group that is closed to the public, it is reasonably inferable that posts are directed solely at the members of that group, and, when a quorum of a public body belongs to a closed group, especially if the group is small, it becomes more likely that posts and comments are targeted towards the other public body members. See OML 2018-145. We recognize that it is sometimes difficult to determine whether, under the circumstances, a given communication constitutes deliberation under the Open Meeting Law, and therefore our office specifically cautions public bodies on the use of social media and electronic communications. See OML 2017-88; OML 2014-80.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law by failing to meet to review an Open Meeting Law complaint. We also find that the Board violated the Open Meeting Law by deliberating via email and we order the Board to publicly release the December 21, December 22, and December 23, 2020, emails within 30 days of receipt of this determination to the extent it has not already done so.⁵ In addition, we order immediate and future compliance with the law's requirements, and we caution that similar future violations could be considered evidence of intent to violate the law.

We now consider the complaints addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the

⁵ The Board may publicly release the emails by reading their content during a meeting and listing the emails in the meeting minutes, or by referencing the emails during a meeting and posting the emails along with the minutes on the municipal website.

Board. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,

A handwritten signature in cursive script that reads "KerryAnne Kilcoyne".

KerryAnne Kilcoyne
Assistant Attorney General
Division of Open Government

cc: John Weingold: By email only – johnweingold@gmail.com

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.

Monterey Town Administrator

From: Monterey Town Administrator <admin@montereyma.gov>
Sent: Wednesday, October 27, 2021 10:02 AM
To: 'dscoburn@aol.com'
Subject: Need your assistance
Attachments: oml 2021-133

Hey Don,

So I am trying to meet the requirements of the OML determination that said you were in violation with three emails sent on 12/21/20, 12/22/20 and 12/23/20 containing improper deliberations. I do not have any of these emails and I need to be able to post them as they are directing on page 5, 3rd paragraph. Can you please check your sent folder in your personal emails for those dates and forward me the emails they are referring to so I can comply with the directive?

Thanks
M

Respectfully,
Melissa Noe
Town Administrator
Town of Monterey
413-528-1443 x111

Don't let the ugly in others kill the beauty in you! ☺

Monterey Town Administrator

From: Donald Coburn <coburndon123@gmail.com>
Sent: Wednesday, October 27, 2021 10:17 AM
To: Melissa
Subject: Fwd: Final agreement with Fiber Connect
Attachments: ADDENDUM FINAL.doc; Untitled attachment 00617.htm

Sent from my iPhone

Begin forwarded message:

From: dscoburn@aol.com
Date: December 21, 2020 at 6:22:35 AM EST
To: "steve@montereyma.gov" <steve@montereyma.gov>, "johnw@montereyma.gov" <johnw@montereyma.gov>, "adam@campram.com" <adam@campram.com>, "adam@bfcma.com" <adam@bfcma.com>, "rhvlaw@msn.com" <rhvlaw@msn.com>, "admin@montereyma.gov" <admin@montereyma.gov>
Subject: Final agreement with Fiber Connect
Reply-To: dscoburn@aol.com

I believe the attachment document reflects accurately the agreed to matters. I'm sure the people of Monterey would appreciate it if the Select Board could act on this document at our meeting on this coming Wednesday.

Adam may prefer to have these understandings set forth on Attachments A and E of the main agreement instead of having them in the attached addendum. I believe we should honor his preference in regard to where the language should be placed.

Don

ADDENDUM TO THE

BROADBAND FIBER NETWORK CONSTRUCTION AND OPERATION SERVICES AGREEMENT, By and between the Town of Monterey, Massachusetts and Fiber Connect LLC, which agreement is dated December ___ 2020.

In consideration of the Town of Monterey and Fiber Connect, LLC agreeing to the terms of the main contract between the parties referred to above, and other good and valuable consideration, the parties hereto agree as follows:

1. Monterey withdraws its demands for any part of the \$25,000 available under the MBI grant for legal and technical assistance and for price control limits on Fiber Connect's services.
2. If the town provides electricity at the town beach on Tyringham Road, Fiber Connect will create a "hot spot" there for free internet use with its fiber optic cable.
3. The agreements for free internet service at the town beach, the library and the community center shall continue so long as the main agreement between the parties is in force.
3. 4. Fiber Connect will finish installing at its own expense its fiber optic cable on Route 23 within Monterey, Route 57 and its side roads within Monterey, Blue Hill Road, River Road, and Corashire Road within Monterey before construction covered by the MBI grant is completed, except those portions of those roads noted in Attachment E of the main the agreement between the parties.
5. Attachment E of the main agreement between the parties is hereby modified by deleting the references to Beartown Mountain Road and Royal Hemlock Road and Monterey shall forthwith provide Fiber Connect with fiber optic cable easements on both of those roads.

IN WITNESS WHEREOF, each of the parties has duly executed this Agreement effective as of the date of execution of the main agreement between the parties.

FIBER CONNECT, LLC

TOWN OF MONTEREY SELECT BOARD

By: _____
Adam Chait, its CEO, Duly Authorized

By: _____
Donald Coburn, Chair

Steven Weisz, Member

John Weingold, Member

Monterey Town Administrator

From: Donald Coburn <coburndon123@gmail.com>
Sent: Wednesday, October 27, 2021 10:46 AM
To: Melissa
Subject: Fwd: Fiber Connect
Attachments: FC-Monterey Agreement FlnaXXX.pages; Untitled attachment 00009.htm; beach FCXXX.pdf; Untitled attachment 00012.htm

Sent from my iPhone

Begin forwarded message:

From: dscoburn@aol.com
Date: December 22, 2020 at 3:00:15 PM EST
To: "steve@montereyma.gov" <steve@montereyma.gov>, "johnw@montereyma.gov" <johnw@montereyma.gov>
Subject: Fiber Connect
Reply-To: dscoburn@aol.com

Steve and John,

These two documents just came a few moments ago from Adam. Bottom line: He doesn't want the Addendum as a separate document. So he doesn't need us to recite we are waiving the \$25,000 Pt. 1 of the Addendum.

Pt 2, service at the town beach is accepted, but he wants it in the separate agreement in the usual form used by his company, the second document sent today.

Pt. 3, free service for the library, community center for the life of the main agreement, he implicitly rejects, leaving each to run for 10 years from their date of execution.

Pt. 4, concerning the work to be done on areas he's already working on, he's dealt with by including those areas on the list in Attachment A and by not including them in Attachment E.

Pt. 5, concerning Beartown and Royal Hemlock, he deals with by including them in Attachment A and not excluding them in Attachment E.

Please be prepared to vote on this tomorrow.

Don



SUBSCRIBER AGREEMENT

This Subscriber Agreement ("**Agreement**") is entered into this 22nd day of December, 2020, by and between the parties described below.

PARTIES TO THIS AGREEMENT:

Network: Fiber Connect, LLC ("**Network**")

Subscriber: Town Beach ("**Subscriber**")

Subscriber Information: Billing Information (if different):

Property Address: 78 Tyringham Road Billing Name: Town Beach (Town Monterey)
01245 Billing Address: 435 Main Road

Telephone: 413.528.1443 Billing Telephone: _____

Secondary Telephone: admin@montereyma.gov E-mail Address: admin@montereyma.gov

AGREEMENT

The parties, intending to be legally bound, hereby agree as follows:

- Network Installation:** I ("Subscriber") understand that this Agreement allows the Network's infrastructure to be installed on my property, and is also an Agreement for telecommunications and/or other services. Setup charge is due at time of Agreement execution.
****Subscriber Initials** _____
- Service Offerings:** By signing this Agreement, when Network and its service offerings are available at my property, I agree to purchase the Service Package initiated by me below. All data services are best use and does not guarantee minimum data rates.
****Subscriber Initials** _____

SERVICE DESCRIPTION	QTY	NRC	MRC	TOTAL
Business Internet Service, best use to 1Gbps x 500Mbps, advanced SLA	1		\$ 0.00	\$ 0.00
Managed WiFi Service 802.11 b/g/n/ac with monitoring	1	\$ 0.00	\$ 0.00	\$ 0.00
Setup Paid Upfront		\$ -0.00		
Setup Financed		\$ -0.00		\$ 0.00
One Time Cost at Signing		\$ 0.00		
Monthly Cost				\$ 0.00

QTY = Quantity; NRC = Non Recurring Charge; MRC = Monthly Recurring Charge; Taxes and Fees may apply to some services.

- Network Availability:** In the event the Network, for whatever reason, never reaches my property within 12 months of signing date, then I shall have no further liability at any time to Fiber Connect, and I shall hold Fiber Connect harmless from any representations that have been made to me regarding the availability of the Network. Upon request, any setup fee(s) paid will be refunded in full without interest, less any outstanding account balance.
****Subscriber Initials** _____
- Agreement Financials:** I understand this is a contract with Fiber Connect, and by signing this, I agree to pay Fiber Connect, or its lawful designee, a Connection Fee ("**Connection Fee**") in one payment of \$ 0.00 at time of signing agreement and payments of \$ 0.00 per month over 10.00 years (120 months) ("**Term**"). This represents an annual interest rate of 0 % for setup fee financing. The outstanding principal of which can be paid off at anytime without any pre-payment penalties.
****Subscriber Initials** _____

5. *Method of Payment:* I understand that the Network's preferred method of payment is by auto-pay. I agree to utilize auto-pay to make my payments under this agreement. I further understand and agree that if I fail to use auto-pay (credit card or direct checking withdrawal), and use some other method of payment, I will receive a monthly administration and processing fee of five dollars (\$5).
**Subscriber Initials _____
6. *Dormancy Policy:* Fiber Connect does not offer subscribers a dormancy or vacation rate, nor does Fiber Connect allow seasonal suspension of a subscription.
**Subscriber Initials _____
7. *Early Termination:* I understand and agree that the Network will be installing a significant quantity of infrastructure materials in order for me to have the services hereunder. In the event I terminate early for any reason with the exception of moving outside of Fiber Connects service area, I agree to an early termination penalty equal to 90% of the remaining service agreement term, which I must pay as a material condition of being relieved of my contractual obligation hereunder.
**Subscriber Initials _____
8. *Right to Terminate Services:* Fiber Connect retains the right to terminate services for any reason with thirty (30) days written notice to the address on file. If termination of service is for reasons other than a violation of any conditions or policies in this agreement or published on our website, the penalty under "Early Termination" is waived.
**Subscriber Initials _____
9. *Network Policies:* I understand and agree that my use of the Network's services will be fully in compliance with the Network's Privacy, Acceptable Use, and other policies which the Network may adopt from time to time. Such policies may be found at www.bfcma.com/legal In the event the Network does not reach my property, then I shall have no further liability to Fiber Connect and Fiber Connect shall have no liability to me whatsoever.
**Subscriber Initials _____
10. *Property Access:* In order for me to facilitate the provision of services to my property, I will – if applicable, simultaneous to the signing of this Agreement, enter into a Property Access License with the Network substantially in the form attached hereto as **Appendix A**.
**Subscriber Initials _____
11. *Fiber Facilities:* I understand that Fiber Connect may be constructing new fiber facilities to service my premise. If new facilities are required then service may not be ready to be "turned up" or activated at the time of the premise equipment installation. Billing cycle will not begin until service is actually "lit" at the premise ONT.
**Subscriber Initials _____
12. *Installation Policy:* I have read and agree with the New Service Installation Policy which can be found on the Fiber Connect website under the "Legal Documents" section located at <http://www.bfcma.com>.
**Subscriber Initials _____
13. *Payment:* Payment for services are paid on the first of the service month. Upon initial service activation billing will be pro-rated beginning on the first full day service is made available and for the remainder of the current month. Upon proper termination conditions service will terminate at the end of the currently billed month. Any financing balance will be due at the time of termination based on current amortization schedule.
**Subscriber Initials _____
14. *Equipment Policy:* I understand, Fiber Connect is providing a Fiber To The Premise broadband service with on-premise fiber router of best use to speeds described in your selected offering. FC has no control or liability of speeds or connectivity beyond FC's network both upstream to the internet and downstream at the Subscriber premise beyond FC's premise equipment. **FC is not responsible for conditions that may effect WiFi on premise due to structural size, materials, radio interference, or otherwise. FC makes no warranties regarding signal strength or speeds over WiFi technologies within the premise.** FC can discuss further mechanisms to mitigate premise related issues if desired.
**Subscriber Initials _____
15. *Late Fees:* Fiber Connect will assess a one time late charge of ten (10) dollars per incident. Additionally a late charge of one and a half percent (1.5%) monthly on any delinquent charge greater than seven (7) days.
**Subscriber Initials _____
16. *Failed Payment Fees:* Fiber Connect may assess a charge of ten (10) dollars for any failed payment attempt.
**Subscriber Initials _____



17. *Fiber Connect Agreement*: This Agreement (and the documents to be executed pursuant to this Agreement) constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable or unenforceable, such void, voidable or unenforceable term or provision shall not affect any other term or provision of this Agreement. This Agreement shall be governed by the laws of the State of Massachusetts without regard to choice of law principles. For all litigation which may arise with respect to this Agreement, the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction and venue (and waive any claim of *forum nonconveniens*) of the United States Federal District Court for the District of Massachusetts if in federal court or Massachusetts if in state court. For judgment collection purposes only, the parties further consent to the jurisdiction of any state court located within a district which encompasses assets of a party against which a judgment has been rendered for the enforcement of such judgment or award against the assets of such party.

****Subscriber Initials** _____

18. *Corrections / Changes*: This Agreement may not be altered in any manner. Any changes, alterations, or corrections must be done by Fiber Connect. Any handwritten alterations will void this agreement. To request alterations please email sales@bfcma.com or call 413.429.4109

****Subscriber Initials** _____

19. *Other Documents and Policies*: Fiber Connect maintains additional documents and policies online at <https://www.fiberconnect.website/fiber-connect-legal-documents>. Customer understands these policies and that they may be updated from time to time. Notification of any policy changes will be done via email.

****Subscriber Initials** _____

IN WITNESS WHEREOF, the parties have executed this Contracted Utility Enhancement Agreement as of the date first written above.

SUBSCRIBER:

[Signature]

[Printed name]

NETWORK:

Adam Chait (CEO)

[Signature]

[Printed name]

Property Access License

1. Grant of License. Subscriber understands and agrees that delivery of services under that certain Subscriber Agreement between Subscriber and Fiber Connect, LLC (the "Network") requires the Network to connect its infrastructure to the premises. Subscriber grants the Network a non-exclusive license to access the premises to install and maintain fiber optic cable(s), electronic access portal(s), and any other equipment, to the premises, including rights of ingress and egress for maintenance purposes ("License"). This License shall be irrevocable with respect to the outdoor premises and shall extend throughout the term of this Agreement or until the date the Network's equipment is removed, whichever is later, with respect to the indoor premises. This License shall run with the land and, at the Network's sole discretion may be recorded with the county recorder. Unless otherwise provided by law, the fiber optic cable(s), electronic access portal(s), and any other equipment shall remain the Network's property, as applicable. If Subscriber is not the owner of the premises, Subscriber represents and warrants that the owner has granted Subscriber authority to grant this License.

2. Damage Covenant. Neither the owner(s), nor Subscriber or premises occupants shall damage the Network's infrastructure, including, but not limited to, fiber optic cable(s), electronic access portal(s), and any other equipment. Subscriber shall be jointly and severally liable to the Network directly, and the Network may obtain reimbursement directly from Subscriber, for such damages, including enforcement and court costs, and attorney fees. This provision shall survive the termination of any such agreement.

3. Temporary Drops. If, for any reason, a permanent connection to the premises cannot be made, a temporary drop may be used to install the Network's infrastructure to the premises. Subscriber and owner(s) shall hold the Network harmless from any and all claims arising from or related to injuries or damages, of whatever kind or nature, caused by such temporary drops.

4. LIMITATION OF LIABILITY. THE NETWORK'S LIABILITY TO SUBSCRIBER, OWNER(S) AND/OR USERS OF THE NETWORK'S INFRASTRUCTURE AT THE PREMISES (COLLECTIVELY, "NETWORK USERS") ON ACCOUNT OF ANY ACT OR OMISSION RELATED TO SUCH USE OF THE NETWORK SHALL BE LIMITED TO ACTUAL DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY, OR BODILY INJURY OR DEATH PROXIMATELY CAUSED BY THE NETWORK'S INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE. EXCEPT FOR SUCH DAMAGES, NETWORK USERS WILL NOT BE ENTITLED TO ANY OTHER DAMAGES FROM NETWORK, WHETHER INDIRECT, SPECIAL, CONSEQUENTIAL, RELIANCE, OR PUNITIVE DAMAGES, OR OTHER ECONOMIC LOSSES, REGARDLESS OF THE FORM OF ACTION. EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION 4, THE NETWORK AND EACH OF ITS EMPLOYEES, OFFICERS, AGENTS AND CONTRACTORS WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGES OR MODIFICATIONS TO, OR LOSS OR DESTRUCTION OF, NETWORK USERS' ELECTRONIC HARDWARE OR SOFTWARE, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA. SUBSCRIBER ASSUMES FULL RESPONSIBILITY FOR EDUCATING NETWORK USERS REGARDING VIRUSES, TROJAN HORSES, HACKER ATTACKS, ETC.. SUBSCRIBER AND OWNER(S) AGREE TO HOLD THE NETWORK HARMLESS FROM ALL CLAIMS PROXIMATELY CAUSED BY A NETWORK USER'S INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE. EXCEPT FOR SUCH DAMAGES, NETWORK WILL NOT BE ENTITLED TO ANY OTHER DAMAGES FROM SUBSCRIBER, INCLUDING INDIRECT, SPECIAL, CONSEQUENTIAL, RELIANCE OR PUNITIVE DAMAGES OR OTHER ECONOMIC LOSSES, REGARDLESS OF THE FORM OF ACTION.

This License is specific and proprietary to Fiber Connect. It is not to be modified without prior written consent of Fiber Connect. For any legal questions please contact Fiber Connect at 413.429.4109

SIGNED THIS 22nd day of December, 2020.

Property Owner / Landlord

Renter

Fiber Connect, LLC

COVID-19 RELEASE OF LIABILITY

On March 23, 2020, Governor Charlie Baker issued COVID-19 Order No. 13, ordering the closing of all non-essential businesses in the Commonwealth and imposing certain other restrictions. Cable service providers such as Fiber Connect LLC are considered to be essential businesses within the terms of the order.

The safety of our customers is paramount, and we are taking the following steps to reduce the risk of transmitting the coronavirus: See Exhibit A. Despite the steps we are taking, we cannot guarantee that our employees are non-contagious and free from the virus.

Prior to our technicians entering your home or office, we will need you to carefully review and sign this document stating that you understand the risks of virus transmission and are still voluntarily choosing to proceed. If you do not wish to sign this document, our technicians will not enter your home or office.

I, Town Monterey, understand that Fiber Connect LLC cannot guarantee that its technicians are not infected with the novel coronavirus that causes COVID-19 (the "Virus") or that they are not contagious. I understand that by inviting a technician into my home or office, I am voluntarily assuming the risk that I will become infected with the Virus. I am also voluntarily assuming the risk that other members of my household or employees of this office will become infected. **I hereby release and hold harmless Fiber Connect LLC from any and all liability associated with the transmission of the Virus and any damages resulting therefrom.**

Town Monterey

[INSERT NAME]

Date: _____, 2020

13\0351\COVID-19 release

EXHIBIT A

When work inside a premise is required for either an install or repair, the premise owner or their representative must:

- Prop open all necessary doors such as the entrance to the premise and door(s) to room(s) where work will be done.
- All persons inside the premise are asked to either remain 15 feet away from the crew member(s), or be in another room while work is being done.
- The crew member(s) may ask the premise owner or representative to move furniture or other obstacles while still maintaining the required 15 foot distance.

Any failure of the part of the premise owner or representative to respect this policy will result in immediate termination of the install or repair.

Town Monterey

[INSERT NAME]

Date: _____, 2020

Monterey Town Administrator

From: Donald Coburn <coburndon123@gmail.com>
Sent: Wednesday, October 27, 2021 12:13 PM
To: Melissa
Subject: Fwd: You may uncross your fingers now

Sent from my iPhone

Begin forwarded message:

From: dscoburn@aol.com
Date: December 23, 2020 at 12:15:48 PM EST
To: "baldino@masstech.org" <baldino@masstech.org>
Cc: "steve@montereyma.gov" <steve@montereyma.gov>, "johnw@montereyma.gov" <johnw@montereyma.gov>
Subject: You may uncross your fingers now
Reply-To: dscoburn@aol.com

Ok, Ok, that's good.

Today the Select Board approved the contract with Adam, accepted his separate contract for free broadband at the town beach, and expressly and specifically approved that portion of the main contract, 6.3 and 6.4, concerning the town's security interest protection.

Good luck with concluding MBI's deal with Fiber Connect. It would be nice, so nice, if we could have all contracts signed, sealed, and delivered before the new year.

Best,

Don