

change BOS to SB

TOWN OF Monterey

BOARD OF SELECTMEN POLICY

Recycled Product Procurement Policy

Purpose: The Board of Selectmen and Town Administrator agree to establish standards to promote purchasing environmentally preferred products.

Policy: RECYCLED PRODUCT PROCUREMENT POLICY

In recognition of the need to make more efficient use of our natural resources, create markets for the materials collected in recycling programs, reduce solid waste volume and disposal costs, and serve as a model for private and public institutions, the Town of Monterey is committed to purchasing products which are environmentally preferable, and/or made of recycled materials whenever such products meet quality requirements and are available at reasonable prices and terms.

To the maximum extent practicable, the following recommendations should be adhered to:

- a) For all purchases of printing and writing paper for in-house use or custom printed materials by professional printers, including copier paper, offset paper, forms, stationary, envelopes, tablets, notepads and file folders, the minimum content standards shall be no less than 30% post-consumer recycled materials to meet the current state and federal minimum standards.
- b) Each department shall implement paper reduction techniques through the use of double-sided copies, sharing and circulating materials, use of email and reuse of discarded paper for draft works, scrap paper and internal messages.
- c) For all purchases of janitorial paper products and trash bags, a minimum of 10% recycled content shall be required, and/or these products are determined to be environmentally preferable by an independent third party organization such as the Forest Stewardship Council, US EPA, USDA, UL, or Green Seal.
- d) All purchases of office equipment shall be deemed energy efficient (example rated Energy Star) and all purchases of electronics shall be EPEAT registered silver or higher.
- e) Other recycled content products that should be considered by departments include, but are not limited to: outdoor fixtures and furnishings including picnic tables, benches, and recycling and trash containers made with post-consumer recycled plastic; remanufactured laser printer toner cartridges and remanufactured or refillable inkjet cartridges; re-refined antifreeze including on-site antifreeze recycling; remanufactured paint; and re-refined lubricating and hydraulic oils.
- f) To secure these products, departments should consult the Commonwealth of Massachusetts's 'Find Green Products and Services on Statewide Contracts', located on the Operational Services Division's Environmentally Preferable Products (EPP) Procurement Programs website

(www.mass.gov/epp) and shall adhere to EPA Recommended Affirmative Procurement Guidelines whenever practicable.

- g) The Town shall request its contractors and consultants to use and specify recycled products in fulfilling contractual obligations wherever practical.

_____ Date



P.O. Box 320325 * Boston, MA 02132

Voice: 617. 469 .2172
eFax: 617. 419. 1163
Mobile: 617. 308. 2172
bgreenblatt@beacon-llc.com

Beth S. Greenblatt
Managing Director

February 8, 2023

Mr. Peter Murkett
Chairperson
Monterey Renewable Energy Working Group
435 Main Road
Monterey, MA 01245

RE: Owner's Agent Support Services for a Solar Photovoltaic System Development

Dear Mr. Murkett:

Thank you for selecting Beacon Integrated Solutions, LLC ("Beacon") to provide to provide the Town of Monterey with Professional Owner's Agent Support Services in support of the Town's objective of pursuing the development of solar photovoltaic systems at various locations.

The purpose of this "Letter Agreement" is to confirm in writing the nature of our working arrangement with respect to the above and our billing and payment arrangements with respect to our provision of services (the "Services"), the scope of which is outlined in the "Scope of Services", attached hereto as Exhibit A the "Compensation Schedule", attached hereto as Exhibit B, and supplemental terms and conditions attached hereto as Exhibit C.

TERM, TERMINATION

During the term of this Letter Agreement, which shall commence on the date of execution hereof and end twelve (12) months thereafter unless terminated earlier or extended by either Party in accordance with the terms hereof (the "Term"). We will render statements for Services provided on a monthly basis per our usual practice. The Term of this Letter Agreement may be extended by mutual consent. We will expect payment for Services rendered to be made by you within thirty (30) days following your receipt of our statement.

Notwithstanding the above, either party may terminate this Letter Agreement at any time for any reason, upon thirty (30) days written notice to the other party of its intention to discontinue this Letter Agreement or immediately if a party breaches any material obligation hereunder and fails to cure such breach within ten (10) business days after receiving written notice of such breach. Upon termination of this Letter Agreement, the Town shall pay Beacon for services rendered to the date of termination, and expenses incurred through the date of termination.

ASSIGNED PERSONNEL

Beacon shall not use subcontractors or materialmen to perform the Scope of Work. All personnel assigned by Beacon shall be qualified for their assigned tasks.

If you agree with the foregoing, please execute this Letter Agreement in the place provided below and return one copy to me. We look forward to assisting you and your team with this important and exciting assignment.

Sincerely,

Beth S. Greenblatt

Beth S. Greenblatt

AGREED & ACKNOWLEDGED TOWN OF MONTEREY

By: 

Name: Justin Maker

Date: February 22, 2023

Exhibit A
Scope of Work

Task 1: Strategy Development

Beacon understands that the Monterey REWG is interested in investigating and pursuing a comprehensive strategy toward integrating solar photovoltaic systems, potentially paired with battery-energy storage solutions on the rooftops of two municipal buildings and two buildings privately owned by the non-for-profit Monterey Fire Company LLC.

As noted in the Request for Proposals, the Monterey REWG has estimated that each location had the general availability of the following capacity for solar generation:

- Monterey Firehouse, located at 411 Main Road, Monterey – 91.4 kW DC
- Pavilion, located at Fox Hill Road, Monterey – 126.6kW DC
- Monterey Highway Department Garage, located at the corner of Curtis and Gould Road) – 60.9 kW DC
- Monterey Highway Department Salt Shed, located at the corner of Curtis and Gould Road) – 58.6 kW DC

The Monterey REWG has been tasked with evaluating the best and most effective approach to affecting the implementation of renewable generation at the above locations. Key considerations that must be addressed include:

- Defining capacity requirements for the solar arrays, including maximizing system capacity based on the available roof area or match capacity to annual location consumption requirements.
- Funding options, including engaging in Lease and Power Purchase Agreements with a private entity that will develop, construct, own and operate the solar assets.
- Determine appropriateness and application of pairing Battery-Energy Storage Solutions with the solar assets allowing the Town and Monterey Fire Company to engage in demand response solutions.
- Determine allocation of net metering/alternative on-bill credit distribution.

Beacon will facilitate a meeting with the Monterey REWG. Based on our experience implementing comprehensive renewable energy infrastructure projects, Beacon recommends that the Monterey REWG form a Steering Committee comprised of a multi-disciplinary group of Monterey REWG members, Town administration, finance and Department of Public Works staff, Monterey Fire Company, and other stakeholders as appropriate.

To ensure Monterey REWG's goals are met, and stakeholder acceptance is achieved, Beacon will work with the Steering Committee to establish key stakeholder goals with respect to the project. It will be particularly important to address key goals and requirements for project classification and ultimate beneficiaries. We will facilitate a kick-off meeting/conference call to discuss project goals and objectives, project schedule, coordination and execution strategies, educational requirements, environmental strategies, and measurement protocols.

Task 2: Initial Site Due Diligence

To determine site suitability, several variables must be identified and considered including, among others:

- Roof condition and surface appropriateness
- Roof structural weight capacity and reserve capacity
- Orientation and access to insolation
- Permitting restrictions for any historic, geotechnical, or aesthetic considerations
- Utility interconnection limitations or challenges

Beacon understands that the Monterey REWG has been working with the UMass Clean Energy Extension Program to develop a preliminary report and data on the general potential for solar photovoltaic development on public and private property in Monterey, including rooftop and ground-mount solar solutions. Beacon assumes that the above data requirements will be addressed in some fashion in the report provided by the UMass Clean Energy Extension Program. Relying on the results of that analysis, data and report, Beacon will work with the Monterey REWG to develop a plan to pursue solutions that can be reasonably and cost-effectively implemented.

Task 3: Procurement Support

Beacon will leverage its success with other clients in developing and implementing a procurement strategy that provides for a streamlined procurement effort while ensuring that the proposals received are detailed, comprehensive and enable the Monterey REWG to make a buying decision based on key business criteria.

Given the size of the portfolio anticipated for this project, Beacon recommends Monterey REWG pursue an alternative procurement option available to public entities and not-for-profits is through the PowerOptions Solar Program. Beacon would support the Monterey REWG in seeking a proposal from the firm selected as a result of the competitive process undertaken by Power Options. PowerOptions, a Massachusetts non-profit energy-buying consortium consisting of non-profit and governmental organizations, undertook a competitively procured program for the purpose of group-purchasing of solar photovoltaic electricity. PowerOptions issued such competitive procurement and evaluated statements of qualifications from firms in response to a Request for Qualifications. Solect Energy, headquartered in Hopkinton, MA was selected as the most qualified entity to undertake the development of solar photovoltaic facilities on property to be leased from public entities in accordance with sub-clauses (ii) and (iii) (for Massachusetts state agencies and municipalities) of Section 137 of Chapter 164.

Beacon will provide commercial contracting support to the Monterey REWG Steering Committee and Monterey's Counsel.

Task 4: Project Meetings, Public Presentations and Entitlement Support

Beacon will support Monterey REWG at its meetings with the Steering Committee and other stakeholders. Additionally, Beacon will provide general project support to Monterey REWG throughout the lifecycle of the procurement and entitlement process.

Exhibit B
Compensation Schedule

The fees for this engagement cover the professional services provided by Beacon's principal, Beth Greenblatt. Beacon's discounted professional services hourly rate provided by Beth Greenblatt is \$165.00. We offer a budget of a not-to-exceed of \$15,000 for up to 90 hours of professional services. Travel is billed at cost and travel time is billed at our customary rate of 50% of the professional service rate.

Depending on the complexities involved with undertaking the above scope of work, combined with yet to be determined findings and recommendations from the UMass Clean Energy Extension Program, the total anticipated budget may be less than the above not-to-exceed amount. Beacon will only invoice for actual professional time incurred and travel expense.

Exhibit C
Supplemental Terms and Conditions

1. Conflict of Interest:

Both Monterey and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract.

2. Certification of Tax Compliance

This Contract must include a certification of tax compliance by the Contractor, as required by General Laws Chapter 62C, Section 49A (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or Subdivision).

3. Non-Discrimination/Affirmative Action

The Contractor shall carry out the obligations of this Agreement in compliance with all requirements imposed by or pursuant to federal, State and local ordinances, statutes, rules and regulations and policies prohibiting discrimination in employment. Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap or sexual orientation.

4. Assignment:

The Contractor shall not assign or otherwise transfer this Agreement, in whole or in part, without the prior written consent of Monterey, and shall not assign any of the moneys payable under this Contract, except by and with the written consent of Monterey.

5. Corporate Contractor:

If the Contractor is a corporation and is being executed by a party other than its president, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the Contractor. This Contract shall not be enforceable against Monterey unless and until the Contractor complies with this section.

6. Minimum Wage/Prevailing Wage:

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to G. L. c. 151, §1, *et seq.* (Minimum Wage Law) and the wage rates as set forth in G.L. c. 149 §26 to 27D (prevailing Wage).

7. Liability of Public Officials:

To the full extent permitted by law, no official, employee, agent or representative of Monterey shall be individually or personally liable on any obligation of Monterey under this Contract.

8. Indemnification:

The Contractor shall indemnify, defend and save harmless Monterey, Monterey's officers, agents and

employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including attorneys' fees) that may arise in whole or in part out of or in connection with the work being performed or to be performed, or out of any act or omission by the Contractor, its employees, agents, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

The foregoing provisions shall not be deemed to be released, waived, limit or modified in any respect by reason of any surety or insurance provided by the Contractor under the Contract.

9. Insurance

9.1 Workers Compensation Insurance:

The Contractor shall provide by insurance for the payment of compensation and the furnishing of other benefits under Chapter 152 of the General Laws of Massachusetts (The Worker's Compensation Act) to all employees of the Contractor who are subject to the provisions of Chapter 152 of the General Laws of Massachusetts. In the event that performance of the services provided for in this Contract necessitates the engagement of additional employees who are subject to the provisions of c.152, Contractor shall comply with all requirements of c.152.

Failure to provide and continue in force such insurance during the period of this Contract shall be deemed a material breach of this Contract, shall operate as an immediate termination thereof, and Contractor shall indemnify Monterey for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article.

The Contractor shall furnish to Monterey a certificate evidencing such insurance prior to the execution of this Contract before the same shall be binding on the parties thereto, except if specifically waived by Monterey.

9.2 Professional Liability Insurance

Liability of \$250,000 per claim and \$250,000 aggregate.

Failure to provide and continue in force such insurance during the period of this Contract shall be deemed a material breach of this Contract, shall operate as an immediate termination thereof, and Contractor shall indemnify Monterey for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article.

9.3 Other Insurance Requirements

- a. Comprehensive commercial general liability insurance with limits of at least \$1 Million per occurrence and \$2 Million annual aggregate for property damage and \$1 Million per person and \$2 Million per occurrence for bodily injury, which shall include Monterey as an additional insured, and which shall cover bodily injury, sickness or disease, or death of any person including employees and those persons other than the Contractor's employees, and claims insured by usual personal liability coverage, death, or property damage arising out of the Work including injury or destruction of tangible property, including loss of use resulting therefrom.
- b. Motor vehicle insurance for any motor vehicles used in performing the Work, with limits of at least \$500,000 per person, and \$1 Million per accident.

- c. The intent of the Specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and Monterey from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the work, including and not limited to Professional liability insurance where applicable.

All policies shall identify Monterey as an additional insured (except Workers' Compensation and Professional Liability) The Contractor must provide notice to Monterey immediately upon the cancellation modification of the policy. All Certificates of Insurance shall be on the "MIIA" or "ACORD" Certificate of Insurance form, shall contain true transcripts from the policies, authenticated by the proper officer of the Insurer, evidencing in particular those insured, the extent of coverage, the location and operations to which the insurance applies, the expiration date and the above-mentioned notice clauses.

- d. The Contractor shall obtain and maintain during the term of this Contract the insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts and acceptable to Monterey.

10. No Employment

The Contractor acknowledges and agrees that it is acting as an independent Contractor for all services rendered pursuant to this Contract, and neither the Contractor, nor its employees, agents, servants nor any person for whose conduct the Contractor is responsible shall be considered an employee or agent of Monterey for any purpose and shall not file any claim or bring any action for any worker's compensation unemployment benefits and compensation for which they may otherwise be eligible as an Monterey employee as a result of work performed pursuant to the terms of this Contract.

11. Payment

Monterey agrees to make all reasonable efforts to pay to the Contractor the sum set forth in the Contractor's bid or proposal within thirty (30) days of receipt of an invoice detailing the work completed and acceptance from Monterey of the work completed.

12. Waiver and Amendment

Amendments, or waivers of any additional term, condition, covenant, duty or obligation contained in this Contract may be made only by written amendment executed by all signatories to the original Agreement, prior to the effective date of the amendment.

13. Severability

If any term or condition of this Contract or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Contract shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

14. Forum and Choice of Law

This Contract and any performance herein shall be governed by and be construed in accordance with the laws of the Commonwealth. Any and all proceedings or actions relating to subject matter herein

shall be brought and maintained in the courts of the Commonwealth or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

15. Notices

Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified mailing properly addressed. Notice to the Contractor shall be deemed sufficient if sent to the address set forth on page 1 or furnished from time to time in writing hereafter.

16. Binding on Successors:

This Contract is binding upon the parties hereto, their successors, assigns and legal representatives (and where not corporate, the heirs and estate of the Contractor). Neither Monterey nor the Contractor shall assign or transfer any interest in the Contract without the written consent of the other.

17. Entire Agreement:

This Contract, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Contract supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

18. Change Orders

Change orders may not increase the contract price by more than twenty-five (25%) per cent, in compliance with General Laws Chapter 30B, §13.

Town of Monterey Unreasonable Noise Bylaw

1. Unreasonable Noise Prohibited. It shall be unlawful for any person or persons to create, assist in creating, continue or allow to continue any excessive, unnecessary, or unusually loud noise which either annoys, disturbs, injures, or endangers the reasonable quiet, comfort, repose, or the health or safety of others within the Town of Monterey. The following acts are declared to be loud, disturbing, injurious, unnecessary and unreasonable noises in violation of this section, but this enumeration shall not be exclusive, namely:

- a) Radio, Musical Instruments, and Television. The playing of any radio, television set, amplified or musical instruments, loudspeakers, or other electronic sound producing devices, in such a manner or with volume at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of persons in any dwelling, or other type of residence, or in any office, school, church, or of any persons in the vicinity.
- b) Shouting and Whistling. Yelling, shouting, hooting, whistling, singing, or the making of any other loud noises between the hours of 9:00 p.m. and 7:00 a.m., or the making of any such noise at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of persons in any type of dwelling, or of any persons in the vicinity.
- c) Animal Noises. The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the reasonable comfort or repose of any person.
- d) Devices to Attract Attention. The use of any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of noise. This section shall not apply to any person who is a participant in a school band or duly licensed parade or who has been otherwise authorized to engage in such activity.
- e) Construction and Home Maintenance Noise. The operation of vehicles, equipment, tools or machines used as a means of construction, maintenance, repair or demolition of a dwelling, building site, building, bridge, tower or road between the hours of 9:00 p.m. and 7:00 a.m., or the making of any such noise between the hours of 9:00 p.m. and 7:00 a.m., so as to annoy or disturb the reasonable comfort or repose of persons in any dwelling, or other type of residence, or in any office, school, church or of any persons in the vicinity.
- f) Excessive Engine Noise. The operation of illegally modified and excessively noisy motor vehicles at any time on public roads.

2. Exemptions. None of the terms or prohibitions of the previous section shall apply or be enforced against:

- a) Emergency Vehicles. Any police or fire vehicles or any ambulance while engaged in necessary emergency business.
- b) Highway and Utility Maintenance and Construction. Necessary excavation in or repairs of bridges, streets, or highways, or any public utility installation by or on behalf of the Town, or any public utility or any agency of the State of Massachusetts.

c) Noise caused by agricultural, farm-related activities as defined by M.G.L. Chapter 128 Section 1A, as amended from time to time, including but not limited to the operation of farm equipment, sawmills, harvesting equipment, noises from farm animals, and the like.

d) Noise caused by lawful hunting or other lawful discharge of firearms.

e) Noise from activities which have been duly licensed, permitted or otherwise allowed by a governmental body having jurisdiction to license, permit or allow the activity that generates the noise.

f) Organized Sports.

3. Penalties. The first violation of this Bylaw shall result in a verbal or written warning. The second violation this Bylaw shall be punished by a fine of not more than one hundred dollars (\$100.00). The third violation of this Bylaw within 12 months after the second violation shall be punished by a fine of not more than two hundred dollars (\$200.00). Further violations within 12 months after the last violation shall be punished by a fine of three hundred dollars (\$300.00). Each such act, which either continues or is repeated more than one-half (½) hour after issuance of a written notice of violation of this Bylaw shall be a separate offense and shall be prosecuted as a separate offense. If the violation occurs on the premises of rental property, which is a nonresident owner, then the owner must also be notified in writing that the violation has occurred.

4. Other Remedies.

a.) If a person or persons responsible for any activity which violates section 1 cannot be determined, the person in lawful custody and/or control of the premises, including but not limited to the owner, lessee or occupant of the property on which the activity is located, shall be deemed responsible for the violation.

b.) If the person or persons responsible for an activity which violated section 1 can be determined, any person or persons who remain in willful violation of this Bylaw after notice by a police officer may be arrested without a warrant provided that the violation occurs in the presence of a police officer and the conduct constitutes "Disorderly Conduct" as defined in M.G.L. Chapter 272 Section 53.

5. Enforcement. This Bylaw shall be administered under the provisions of M.G.L. Chapter 40 Section 21D and any statute, regulation or Town Bylaw implementing enforcement of such Bylaws.

6. Severability. If any provision of this Bylaw is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the Bylaw shall not be invalidated.

Commented [jm1]: Not sure that this reference is accurate or helpful.

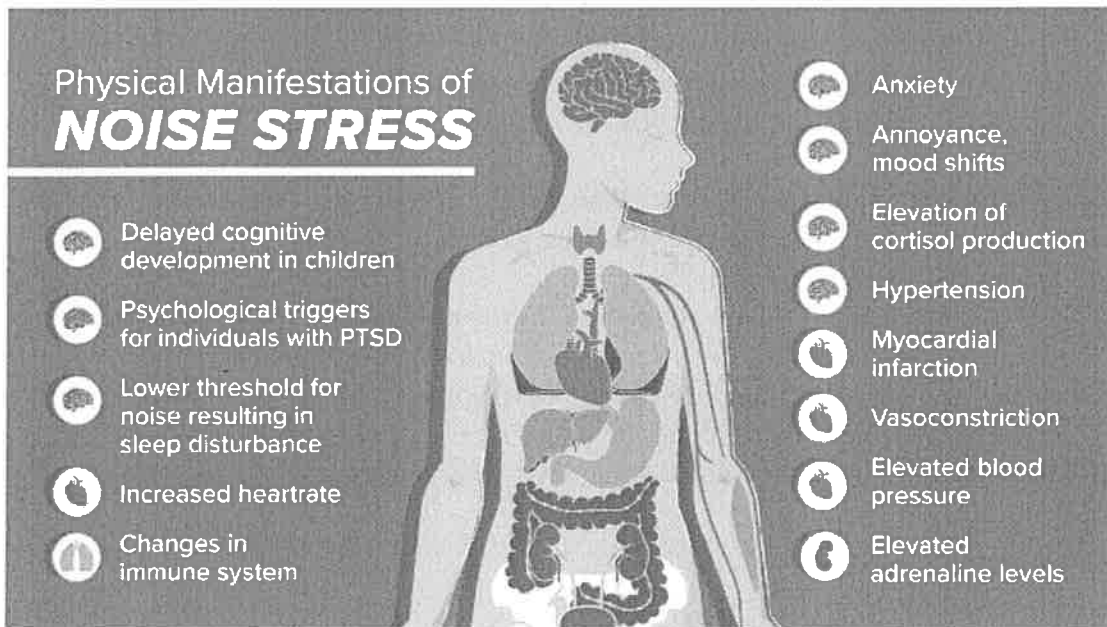
Town Administrator

From: Justin Makuc
Sent: Friday, February 17, 2023 9:35 AM
To: Town Administrator
Subject: Fw: Noise

----- Forwarded message -----

From: Kathie Tryon <[REDACTED]>
Date: Thu, Feb 16, 2023 at 10:24 PM
Subject: Noise

Hi all,
I hope you are all doing well.
This past Wednesday's Board of Selectmen's meeting was interesting.



As you probably know I live on Main Street in the village. There is a lot of traffic going through town primarily between dusk and dawn. Although in the summer months the flow of traffic on weekends continues to around midnight. As much as I wish the bypass went through in the 60's, as it would have significantly diminished our traffic in town, that unfortunately is not our reality. Many years ago, David McAllister made the comment re RT 23 traffic to "just think of it as flowing stream." I never was able to trick my brain into experiencing traffic that way. Since then traffic has increased, I accept that, and I am not making a complaint about the day to day hard working person, the mom or dad taking their kids to a game, the sounds from the ball field, or the basketball court, the builders and all their pickup trucks, the cement trucks, the construction equipment, the delivery trucks, the plow trucks, the sirens from the fire and police department's

frequent needed responses, the occasional muffler that's gone bad, the weed eaters, the leaf blowers, the hedge trimmers, the lawn mowers, the snow blowers, the barking dogs, the coyotes howling, the owls hooting or screeching, the bears breaking into things, the roar of the Konkapot going over the dam, Saturday and Sunday mornings in the village when the general store was open, the car alarms, the blowing of horns, the Sunday morning church bells, the happy people leaving the library talking it up at night.

All this activity is healthy for the growth and wellbeing of our people and our community. So, I guess you could say that this maybe is what David meant by the "Stream". All the noises of life in the village. Since I live in the village, I get to experience our stream of noise 24/7.

The reason for my above rambling is to make a point in that there are normal, acceptable amounts of day-to-day noise. However, especially during the summer, Rt 23 is a favorite touring road for vehicles with intentionally mounted aftermarket mufflers that profoundly increase their mufflers' noise decibels, and usually these vehicles are not going through one by one, and even at that the noise from one literally shocks you dead in your tracks as they suddenly rev up hill out of any direction from the village center. Often, they are in small groups and sometimes they are in very large groups.

How loud are they? Well, if I am on my phone, working from home on a virtual call, or listening to the radio or television, or trying to have a friendly conversation with family, neighbors, friends, or guests, you can't hear anything except for the violently loud muffler, and you must stop what you're doing and wait for them to pass, and the noise to diminish, however long that may take until you can hear again.

From my home I can hear these excessively loud mufflers as far away as the flats and up to about Kyes Corner. Mainly these vehicles are motorcycles but there are some souped up cars and trucks on occasion. You might think I am a motorcycle hater, but I am not, in fact I have my motorcycle license, and have done a lot of traveling locally, cross country, and internationally on motorcycles (with quiet stock mufflers).

As I mentioned, these excessively loud aftermarket mufflers are illegal in Massachusetts. I've attached the MA General Law below. I believe West Stockbridge is looking into this issue as well.

I hope you will take this noise issue as seriously as you are concerned for the quality of life for the Lake Buel people that live around the loud camp. I would like to see our police department ticket these excessively loud vehicles. Once that happens the word will get out on the internet to the regional North East, and New England motorcycle groups to avoid Monterey if they have these types of illegal aftermarket mufflers, just like most people know not to speed in Monterey or Tyringham or you'll get a ticket (this is regionally known in the North East as well).

Best
Kathie Tryon

MASSACHUSETTS

Laws of Massachusetts: General Laws

Chapter 90 § 7. Brakes, Lights and Other Equipment; Standards.

Every motor vehicle so operated shall be provided with a muffler or other suitable device to prevent unnecessary noise and with a suitable bell, horn or other means of signaling, with suitable lamps, and with a lock, key or other device to prevent such vehicle from being set in motion by unauthorized persons, or otherwise contrary to the will of the owner or person in charge thereof.

Chapter 90 § 16. Offensive or illegal operation of motor vehicles

Town Administrator

From: Justin Makuc
Sent: Friday, February 17, 2023 9:33 AM
To: Scott Jenssen; Town Administrator
Subject: Fw: Walker v Monterey M22PO509786
Attachments: 19_-_Amended_Complaint.pdf; Walker_v_Monterey_coverage_M22509786 (1).pdf; Walker v Monterey supplemental coverage.pdf

FYI

From: Kathleen Ronchi <Kathleen.Ronchi@cabotrisk.com>
Sent: Friday, February 17, 2023 9:21 AM
To: Justin Makuc <justin@montereyma.gov>
Cc: Susan Cooper <susan@montereyma.gov>
Subject: Walker v Monterey M22PO509786

Dear Justin:

Attached is our supplemental coverage correspondence and attachments for your reference. If there are any questions, please feel free to reach out to me.

Kathy

Kathleen Ronchi, AIC
Senior Claim Representative
MIIA Member Services
15 Cabot Road
Woburn, MA 01801

781.939.6847 Direct Line
781.376.9907 (fax)



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Nonprofit
Locally based
Member driven

Serving Massachusetts communities since 1982

MIIA Member Services

15 Cabot Road
Woburn, MA 01801-1003
TEL (800) 526-6442
FAX (781) 376-9907
www.emiia.org

November 1, 2022

Via email: justin@montereyma.gov

Select Board, Town of Monterey
Monterey Town Hall
Justin Makuc, Chair
435 Main Rd
P.O. Box 308
Monterey, MA 01245

Re: Terry Walker v. Town of Monterey et al.
U.S.D.C. District of Massachusetts, Civil Docket No. 3:22-cv-30117-KAR
Claim No.: M22PO509786

Dear Mr. Makuc:

Please accept this correspondence as MIIA Property & Casualty Group, Inc.'s ("MIIA") coverage position with respect to the complaint brought against the Town of Monterey ("Town"), Town Administrator Melissa Noe ("Noe") and former Select Board members Steven Weisz ("Weisz") and Donald Coburn ("Coburn") (collectively, "Town Defendants") by Terry Walker ("Plaintiff") in the United States District Court for the District of Massachusetts, Civil Docket No. 3:22-cv-30117-KAR ("Complaint"). The Complaint alleges that the Town Defendants retaliated against the Plaintiff, the Town Clerk, for reporting and complaining about alleged violations of the law and created a hostile work environment. As a result, the Plaintiff has brought claims for violation of the Whistleblower Act, violation of federal and state civil rights and intentional infliction of emotional distress.

MIIA administers a Public Officials Liability Coverage Form for the Town. We have closely examined said Coverage Form to determine if there is coverage available to the Town Defendants for the Complaint. For the reasons further explained below, MIIA will provide the Town Defendants with a defense in the above captioned matter under a full reservation of rights to later withdraw its defense of this matter and/or refuse to indemnify the Town Defendants in the event that it is determined that the allegations raised by the Plaintiff are not covered and/or are excluded under the Coverage Form.

In coming to our determination, we have reviewed the allegations in the Complaint and compared them to the coverage afforded under the Public Officials Liability Coverage Form administered by MIIA for the Town for the applicable time period. Below we have summarized the relevant allegations in the Complaint. While MIIA takes no position regarding the truth or validity of the allegations, we are obligated to compare the allegations as set forth by the Plaintiff to the Coverage Form to reach a coverage determination.

BACKGROUND

According to the Complaint, the Plaintiff has been employed by the Town as Town Clerk for approximately six years. The Plaintiff alleges that she has been repeatedly retaliated against for her objections to and refusals to engage in conduct which she believed to be illegal, a threat to public safety and/or violations of the Massachusetts State Ethics laws. The retaliation included taking away the Plaintiff's Town issued credit cards, removing her computer and printer access, harassing behavior and disparaging emails.

For example, the Plaintiff alleges that she made complaints of voter fraud against Noe because Noe allegedly insisted that voter ballots be destroyed and/or not counted in a local election. The Plaintiff also alleges that she refused to participate when Noe allegedly altered, amended or manipulated voter documents on multiple occasions. The Plaintiff alleges that she faced numerous instances of employment related retaliation and harassment as a result of making these complaints. She also alleges that she was subjected to a hostile work environment.

In May of 2021, the Plaintiff resigned from her work as the Town's lead grant writer based upon Noe's repeated harassment and unwanted criticism. In June of 2021, the Plaintiff complained to the Town regarding Noe's harassment and retaliation, however, no actions were taken. In July of 2021, an incident occurred following a Select Board meeting involving the Plaintiff and Noe. The Plaintiff allegedly feared for her safety and filed a police report regarding the incident. Thereafter, in September of 2021, Noe allegedly made false statements about the Plaintiff's work performance at a Select Board meeting in an effort to publicly discredit and disparage the Plaintiff. Despite the alleged harassment, the Town allegedly took little to no disciplinary action against Noe and her harassment of the Plaintiff increased.

The Plaintiff alleges that Noe and Coburn threatened that they would "dig up dirt" on the Plaintiff dating back forty years if she continued to pursue her complaints against them. In an email dated November 24, 2021, Coburn threatened the Plaintiff with bringing her "work history to the public's attention" if she did not withdraw her complaints. Weisz also allegedly attempted to get the Plaintiff to withdraw her complaints against Noe.

As a result of the above-described events, the Plaintiff filed the current four count Complaint. The specific counts are labeled as follows:

- Count I – Whistleblower (M.G.L. c. 149, § 185) against the Town;
- Count II – Massachusetts Civil Rights Act (M.G.L. c. 12, §§ 11H, 11I) against all of the Town Defendants;
- Count III – Intentional Infliction of Emotional Distress against Noe, Coburn and Weisz;
- and
- Count IV¹ – Violation of Civil Rights and Retaliation (42 U.S.C. § 1983) against Noe, Coburn and Weisz.

¹ This Count is labeled "Count I", however, it is likely a typographical error as there is already a Count I.

By way of relief, the Plaintiff is seeking money damages, interest, costs and attorney's fees. She alleges that she suffered loss of income, loss of wages, loss of employment benefits and other financial losses. Lastly, the Plaintiff is seeking punitive damages.

COVERAGE FORM PROVISIONS

In addressing MIIA's coverage obligations, we have reviewed the Plaintiff's allegations as raised in the Complaint and compared said allegations to the terms and conditions of the Public Officials Liability Coverage Form that MIIA issued to the Town. Sterilite Corp. v. Continental Gas Co., 17 Mass. App. Ct. 316, 318 (1983). We have referenced some of the more pertinent portions of the Coverage Form as they relate to MIIA's coverage position.

PUBLIC OFFICIALS LIABILITY COVERAGE FORM

SECTION I – Coverage

...

Coverage B – Employment Practices Liability

1. Coverage Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages resulting from "claims" against the insured by reason of "employment practices violations" or "third party violations" to which this coverage applies.

We will have the right and duty to defend any "claim" or "suit" seeking those damages, even if such "claim" or "suit" is groundless, false, or fraudulent. However, we will have no duty to defend any "claim" or "suit" seeking damages to which this coverage does not apply. . . .

...

...

- f. This coverage provides "back wages" for "employment practices violations" if there is a Back-Wages Limit shown in the Declarations. A separate Limit of Insurance applies to this coverage as described in Section III – Limits of Insurance.

...

- g. If a "claim" or "suit" includes both covered and uncovered matters, the insureds and we shall use best efforts to agree upon a fair and proper allocation between covered and uncovered damages with respect to the

settlement or any other indemnity payment made in connection with said “claim” or “suit”.

2. Exclusions

This Coverage B does not apply to any damages, costs, “claims” or “suits” made against the insured:

...

b. Arising out of “Personal or Advertising Injury”, however this exclusion shall not apply to:

(1) Libel, slander, or defamation arising out of an “employment practices violation”;

(3) Discrimination arising out of an “employment practices violation” or “third party violation”.

c. Arising out of the following:

(1) Bodily injury to, or sickness, disease, emotional distress, or death of any person. However, this exclusion shall not apply to emotional distress arising out of an “employment practices violation” or a “third party violation”; or

...

...

h. For fines, penalties, punitive damages, exemplary damages, or the multiplied portion of multiplied damages.

...

v. We shall not be liable for that part of “loss”, other than Defense Costs:

(1) Which constitutes “back-wages”, overtime, future wages, any other salary, wages, or earnings, or other similar “claims”, even if designated as liquidated damages, under any federal, state, or local statutes, rules, ordinances, or regulations; or for “claims” arising out of collective bargaining agreements, negotiations, or disputes.

However, this exclusion shall not apply to “back-wages” for “employment practices violations” if there is a Back-Wages Limit shown in the Declarations. A separate Limit of Insurance applies to this coverage as described in SECTION III – Limits of Insurance.

...

...

SECTION II - Who is an Insured

Each of the following is an insured:

1. You, the public entity named in the Declarations.
2. Your past, present, and future “executive officers” and other elected, appointed or employed officials operating under your jurisdiction while acting within the scope of their duties as such.

- ...
4. Your “employees,” but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

...

SECTION III – Limits of Insurance

- ...
2. The Annual Aggregate Limit is the most we will pay for all damages under this Coverage Form in one annual period. In no event shall our Annual Aggregate Limit be increased for any Extended Reporting Period.

- ...
4. Subject to Paragraph 2. above, the Back-wages Per Person Limit shown on the Declarations is the most we will pay for damages under Coverage B arising out of any “claim” for “back-wages”. Also subject to Paragraph 2. above, the Back-wages Per Person Limit shown on the Declarations is the most we will pay for the sum of damages under Coverage B arising out of more than one “claim” asserting that the insured owes any “back-wages” to one “employee”.

...

SECTION VII – Definitions

The words and phrases defined below apply to both the singular and plural of the defined words and phrases.

- ...
4. “Back-wages” means wages that would have been earned if a person had been employed, promoted, or received wage increases and includes overtime, future wages, pension and retirement benefits, even if designated as liquidated damages under any federal, state, or local statutes, rules, ordinances, or regulations arising out of an “employment practices violation”, but does not

include wage loss arising out of collective bargaining agreements, negotiations, or disputes.

...
8. "Claim" means any of the following in connection with alleged damages because of a "wrongful act", "employment practices violation", "third party violation", or "breach of fiduciary duty" to which this coverage applies:

- a. Written demand or notice for monetary or non-monetary relief;
- b. Summons, pleadings or legal documents filed or served in connection with a "suit";

...
12. "Employee" means any compensated or non-compensated "employee", including volunteer workers and student teachers teaching as part of their educational requirements. "Employee" includes a "leased worker". "Employee" includes a so-called volunteer or call firefighter or police officer. "Employee" does not include a "temporary worker" but does include seasonal or occasional workers. "Employee" does not include any person not considered a public employee as defined by Massachusetts General Laws Chapter 258.

13. "Employment practices violation" means "wrongful acts" involving:

- a. Employment related refusal to employ, promote, or grant tenure;
- b. Employment related dismissal, discharge, or termination of employment;
- c. Employment related coercion;
- d. Employment related demotion;
- e. Employment related evaluation, reassignment, or discipline;
- f. Employment related libel, slander, defamation, humiliation, or invasion of privacy;
- g. Employment related harassment or discrimination;
- h. Employment related retaliation; and
- i. Employment related violation of an individual's civil rights.

14. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws, or any other similar governing document.

...
27. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
...

d. Discrimination, unrelated to employment;

g. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

32. "Suit" means a civil proceeding in which damages because of "wrongful acts", "employment practices violations", "third party violations", or "breaches of fiduciary duty" to which this coverage applies are alleged. . . .

37. "Wrongful act" means any actual or alleged error, misstatement, misleading statement, act or omission, neglect or breach of duty, or any actual or alleged violation of civil rights, by an insured, individually or collectively, while acting within the scope of his or her duties as your "executive officer(s)", public official, officially appointed commission, committee, agency or board member, "employee" or volunteer worker, or while performing duties related to the conduct of your business.

As an initial matter, the Town is an insured under the Public Officials Liability Coverage Form. Additionally, Weisz and Coburn, as former members of the Select Board, are also insureds but only while acting within the scope of their duties as elected, appointed or employed officials operating under the Town's jurisdiction. Lastly, Noe, as the Town Administrator, is an insured but only for acts within the scope of her employment by the Town or while performing duties related to the conduct of the Town's business. As such, to the extent that Weisz and Coburn were not acting within the scope of their duties as members of the Select Board and/or Noe was not acting within the scope of her employment by the Town or while performing duties related to the conduct of the Town's business, they would not be considered insureds under the Coverage Form and not entitled to any coverage under it.

Coverage B of the Public Officials Liability Coverage Form provides coverage for those sums that the insured becomes legally obligated to pay as damages resulting from "claims" against the insured by reason of "employment practices violations" to which this coverage applies. The Coverage Form defines the term "employment practices violations", in relevant part, as "wrongful acts" involving employment related coercion, libel, slander, defamation, humiliation, harassment, discrimination, retaliation and violation of civil rights. Additionally, "wrongful act" is defined as any actual or alleged error, misstatement, misleading statement, act or omission, neglect or breach of duty, or any actual or alleged violation of civil rights. Here, the Complaint alleges "employment practices violations" including but not limited to employment

related coercion, slander, defamation, humiliation, harassment, retaliation and/or violation of civil rights sufficient to trigger coverage under the Coverage Form. While coverage is triggered under Coverage B, one or more exclusions and/or coverage limitations may operate to exclude portions of the Complaint and/or the damages sought from coverage.

Exclusion b excludes any damages, costs, "claims" or "suits" arising out of "personal or advertising injury". It further provides that this exclusion shall not apply to libel, slander, defamation and discrimination arising out of an "employment practices violation". Therefore, to the extent that it is later established that the alleged libel, slander, defamation and/or discrimination did not arise out of an "employment practices violation", the resulting damages would be excluded from coverage by operation of exclusion b.

Exclusion c(1) excludes any damages, costs, "claims" or "suits" arising out of bodily injury to, or sickness, disease, emotional distress or death of any person. It further provides, however, that this exclusion shall not apply to emotional distress arising out of an "employment practices violation". As such, similar to exclusion b above, to the extent that the Plaintiff's alleged emotional distress did not arise out of an "employment practices violation", it would be excluded from coverage by exclusion c(1).

Exclusion h excludes coverage for fines, penalties, punitive damages, exemplary damages or the multiplied portion of multiplied damages. Here, the Plaintiff is seeking punitive damages. As such, any award of punitive damages is excluded by exclusion h and MIIA will not pay any such punitive damages award under the Coverage Form.

Lastly, exclusion v(1) provides that MIIA shall not be liable for that part of loss, other than defense costs which constitutes "back-wages", overtime, future wages, any other salary, wages or earnings, or other similar "claims", even if designated as liquidated damages, under any federal, state or local statutes, rules, ordinances or regulations. It further provides, however, that this exclusion shall not apply to "back-wages" for "employment practices violations" if there is a Back-Wages Limit shown in the Declarations and that a separate Limit of Insurance applies to this coverage as described in SECTION III – Limits of Insurance. The Coverage Form defines the term "back-wages" as wages that would have been earned if a person had been employed, promoted or received wage increases and includes overtime, future wages, pension and retirement benefits, even if designated as liquidated damages under any federal, state or local statutes, rules, ordinances or regulations. Here, the Complaint alleges that the Plaintiff suffered lost wages and lost employment benefits. Therefore, because the Plaintiff is seeking "back-wages" for "employment practices violations", there is coverage for the Plaintiff's alleged "back-wages" subject to the Back-Wages Limit shown in the Declarations.

CONCLUSION

In summary, MIIA will provide the Town Defendants with a defense under the Public Officials Liability Coverage Form subject to a full reservation of its rights to later refuse to

Justin Makuc, Chair
Select Board
November 1, 2022
Page 9

indemnify them to the extent the claims and/or the resulting damages are not covered and/or are excluded from coverage.

In agreeing to defend the Town Defendants under this reservation of rights, MIIA does not waive, but instead expressly reserves all rights it has under the Public Officials Liability Coverage Form and Massachusetts law whether enumerated herein or not. Neither this letter, nor any action or inaction by MIIA, shall be considered a waiver of any known or unknown further defense to coverage. Furthermore, the foregoing in no way restricts MIIA from relying on or asserting any other grounds which are now available or which may become available to it in the future.

Please be advised that the Public Officials Liability Coverage Form has a per claim limit of insurance of \$1,000,000, with a Town deductible of \$2500.00. The Back-Wages Limit is \$150,000.

This matter has been forwarded to Attorney David Lawless at the law firm of Robinson Donovan PC. He may be reached at 413-732-2301. Internally, the MIIA claims handler assigned to this claim is Kathleen Ronchi. She may be reached at 781.939.6847. Should you have any questions or concerns regarding your retained representation in this matter and/or this reservation of rights, please feel free to discuss them with Ms. Ronchi.

If you are in possession of further information which you believe might impact the assessment of this matter, please forward the information to our attention as soon as possible. Additionally, in the event the Complaint is amended or altered in any way, please provide MIIA with a copy.

Very truly yours,



Andrew R. Weiner
Senior Counsel



MIIA Member Services

15 Cabot Road
Woburn, MA 01801-1003
TEL (800) 526-6442
FAX (781) 376-9907
www.emiia.org

February 17, 2023

Via email: justin@montereyma.gov

Select Board, Town of Monterey
Monterey Town Hall
Justin Makuc, Chair
435 Main Rd
P.O. Box 308
Monterey, MA 01245

Re: Terry Walker v. Town of Monterey et al,
U.S.D.C. District of Massachusetts, Civil Docket No. 3:22-cv-30117-KAR
Claim No.: M22PO509786

Dear Mr. Makuc:

This correspondence will supplement our previous coverage correspondence emailed to you on November 1, 2022. On behalf of Ms. Walker, an Amended Complaint has been filed. Mr. Coburn is no longer a named defendant and Ms. Susan Cooper has been added as a named defendant.

The Counts of the Complaint remain the same and our coverage analysis of November 1, 2022 remains the same.

As you may be aware, Attorney David Lawless at the law firm of Robinson Donovan PC will also represent the interests of Ms. Cooper.

For your reference, I am attaching our prior coverage correspondence dated November 1, 2022 and the Amended Complaint.

If there are any questions, please feel free to contact me.

Very truly,

/s/ Kathy Ronchi

Kathleen Ronchi, AIC
Senior Claim Representative.
Kathleen.ronchi@cabotrisk.com

**Town of Monterey
Policy Statement**

REQUEST TO USE LEGAL COUNSEL – FORM

Prior to completing this form, please check this box to confirm that you are familiar with the Town's policy for Contacting Town Counsel:

Name: Scott Steibel

Department/multimember group: Chair Board of Assessors

If multimember group, was this request approved by group at a meeting?

Date submitted: 02/21/2023

Requesting contact with: Town Counsel Special Counsel

Form of questions: Written questions via email Phone conversation Other:

Description of legal services needed/issue faced (attach written questions if applicable and/or explanatory documentation): Functions and Authority of the Board of Assessors

The Board of Assessors (BOA), being trained and certified by the Commonwealth of Massachusetts's Department of Revenue (DOR) is charged with the obligation and responsibility of ensuring the absolute integrity of the towns tax assessment process. The specific members of the BOA are elected by the townspeople to carry out these obligations and responsibilities.

Therefore the BOA, under the supervision of the DOR, is and must be the sole and exclusive authority of all aspects of the assessment process including all personnel issues involved with this assessment process. This includes any and all decision making regarding the operation and staffing and salaries of the assessors office.

We answer only to the Commonwealth and the voters and all laws and regulations pertaining to tax assessments.

**Town of Monterey
Policy Statement**

The BOA is the guardian of of the towns assessing process. All members of the BOA have taken an oath to protect the assessment process from all interference. Any efforts by anyone including any town official will be reported to the State Board of ethics.

We need the town council to agree that the above statement from Monterey's Board of Assessors.

Is this matter time sensitive? If so, please explain: Yes. Consultants that we must use for the upcoming, state mandated, 5 year town wide re-assessment are concerned with interference from Monterey town officials. Also, we have been have difficulty with the select board and finance committee in agreeing to add a consultant fees to the upcoming town meeting warrant. We also have had to fight with town officials to prevent the efforts to reduce, for no apparent reason the salary of the towns pricipal assessor

Is this matter confidential/subject to attorney-client privilege? If so, please explain: No

REQUEST: Approved Denied

2/22/23	Date	[Signature]	Select Board, Chair
2/22/23	Date	[Signature]	Select Board
	Date	[Signature]	Select Board

For use by Select Board Chair (or alternate Counsel Liaison) if request is reviewed by less than a majority of the Select Board. I deem this matter to be: Time sensitive Confidential