

Monterey Town Administrator

From: Justin Makuc <justin@montereyma.gov>
Sent: Friday, May 27, 2022 5:52 PM
To: Monterey Administrator
Subject: [FWD: RE: Town Counsel services for Monterey, MA]
Attachments: image001.png; image003.jpg; image005.png; image008.jpg; MTC, Monterey Fee Agreement (Revised 5.27.22).pdf

----- Original Message -----

Subject: RE: Town Counsel services for Monterey, MA
From: "Adam J. Costa" <adam@mtclawyers.com>
Date: Fri, May 27, 2022 10:58 am
To: Justin Makuc <justin@montereyma.gov>
Cc: Kate Feodoroff <kate@mtclawyers.com>, Jay Talerman <jay@mtclawyers.com>, Lisa Mead <lisa@mtclawyers.com>

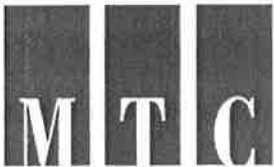
Thank you, Chairman Makuc.

I am confirming Wednesday, June 1, at 6:00 p.m. I appreciate the accommodation.

In the meantime, and in advance thereof, I offer the attached, revised Fee Agreement with accompanying Scope of Services and Billing Schedule, for the Board's consideration and, of course, for discussion on Wednesday. It offers a monthly flat fee as requested; and it identifies, in the Scope and Schedule, those items that fall within the fee and those that would be billed outside of it, i.e. hourly. Litigation is excluded, as you suggested. Labor and employment law services are included to a limited extent: namely, generic advice and assistance versus negotiations, grievances, litigation, etc. Even for a community of Monterey's size, we think that the Fee Agreement is aggressive, meaning that we've offered an overall fee that, we believe, is within Monterey's budget, while excluding less routine items that, if included, could severely dilute the effective hourly rate. With that said, the monthly flat fee includes most day-to-day representation, Annual and Special Town Meeting, monthly meetings (virtually and, quarterly, in-person), etc.

I look forward to discussing the above with the Board, on Wednesday.

Enjoy the holiday weekend.



Adam J. Costa
Mead, Talerman & Costa, LLC
30 Green Street · Newburyport, Massachusetts · 01950
Phone 978.463.7700 · Fax 978.463.7747
adam@mtclawyers.com · www.mtclawyers.com

The information contained herein is confidential and may be protected by the attorney-client and/or other applicable privilege(s). It is intended only for the named recipient(s). If you are neither an intended recipient nor a person responsible for delivery to a recipient, you are hereby notified that any unauthorized use, dissemination, distribution or reproduction of the contents hereof is strictly prohibited and may be unlawful.

If you have received the above transmittal in error, please delete the message and any attachment(s) hereto from your e-mail system and notify us immediately.

**FEE AGREEMENT
TOWN OF MONTEREY
TOWN COUNSEL SERVICES**

1. The Town of Monterey, a Massachusetts municipal corporation, acting by and through its Select Board, both with an address of 435 Main Road, Monterey, Massachusetts 01245, (the "Client") hereby agrees to retain the law firm of Mead, Talerman & Costa, LLC, with offices at 30 Green Street, Newburyport, Massachusetts 01950, and with associated offices in Millis, Massachusetts, and New Bedford, Massachusetts, (the "Firm") as Town Counsel.

2. The legal services contemplated hereunder are generally described in the "Scope of Services and Billing Schedule" annexed hereto as Attachment A and incorporated herein by reference.

3. Legal services actually performed by the Firm for the Client shall be charged pursuant to the "partial flat fee" billing method, as described in the aforementioned Attachment A.

4. No retainer is required under this Agreement.

5. The Client understands that it has the right to consult with another lawyer in connection with any of the terms of this Agreement prior to signing it.

6. The Client agrees to assume and pay for all out-of-pocket disbursements incurred in connection with the engagement and all other work performed by the Firm, from and after the date hereof (e.g. filing fees, courier fees, photocopying, printing, binding, certified and/or overnight mail, witness fees, sheriffs' and constables' fees, document recording fees, asset and information searches, deposition expenses, investigative expenses, other incidental expenses). If a particular charge is substantial, the Firm may request that the Client pay it directly to the vendor or reimburse the Firm immediately. The Firm agrees to obtain the Client's prior approval before incurring any disbursement in excess of \$1,000.00, except with regard to the expenses of noticed depositions. The Client agrees to pay for all of said out-of-pocket expenses within thirty (30) days of the date of any bill or statement of account for said out-of-pocket expenses.

7. It is understood and agreed that the hourly time charges for legal services include, but are not limited to, the following: reading and reviewing file materials; legal research; appearances at meetings, conferences and public hearings, and in court or before administrative agencies; preparation for the same; travel; telephone calls and conferences; correspondence; preparation of pleadings, motions and memoranda; preparing for and conducting depositions; and post-trial proceedings. Telephone calls and correspondence shall be billed at a minimum rate of two-tenths (2/10) of one (1) hour.

8. The Firm shall not at any time be required to continue to represent the Client unless all of the Firm's prior bills have been paid when due. In addition, the Firm shall not be required to represent the Client at trial unless the Client has paid to the Firm a retainer to cover the reasonably expected fees and expenses of trial required by the Firm.

9. In the event that the Firm ceases to represent the Client and the Client owes an outstanding indebtedness to the Firm, the Firm shall return to the Client all papers, documents and

tangible materials which the Client furnished to the Firm, if requested by the Client. The Client is not entitled to any other items such as investigative reports, depositions or the lawyer's work product, unless said items have been paid for.

10. It is understood and agreed that interim bills, and the final bill, rendered by the Firm shall, in addition to reflecting the time expended, take into account the factors prescribed by the Supreme Judicial Court to be considered as guides when determining the reasonableness of fees for legal services, including the following:

- (a) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly;
- (b) the fee customarily charged in the locality for similar legal services;
- (c) the amount involved and the results obtained;
- (d) the time limitations imposed by the Client or by the circumstances;
- (e) the nature and length of the professional relationship with the Client;
- (f) the experience, reputation and ability of the lawyer or lawyers performing the services.

11. The Firm will retain the Client's file for six (6) years following the close of the Client's matter. After that time, the Firm will destroy the Client's file. All originals will be provided to the Client during the representation of the Client.

12. The foregoing represents the entire agreement between the Client and the Firm. By signing below, the Client acknowledges that it has carefully read this Agreement, understands its contents and agrees to be bound by all of its terms and conditions; that the Firm has made no representation to the Client as to the likelihood of the outcome of any proceeding now pending or to be brought by or against the Client; and that the Client believes this Agreement to be fair and reasonable.

Town of Monterey

Date: _____, 2022

By: _____
Duly-authorized

Mead, Talerman & Costa, LLC

By: _____
Adam J. Costa, Manager

ATTACHMENT A
TOWN OF MONTEREY
SCOPE OF SERVICES AND BILLING SCHEDULE

The Firm's representation of the Town shall consist and be comprised of providing it with the following legal services at the referenced cost(s):

- i. The Firm's flat monthly fee shall be \$1,500.00, which shall include substantially all non-litigation legal services performed by the Firm's partners, associates and/or attorneys-of-counsel and related services performed by the Firm's support staff, except as otherwise stated below.
- ii. The flat fee includes all representation and legal opinions for general and land use matters.
- iii. The flat fee includes preparation for and in-person attendance at the Annual and one (1) Special Town Meeting per year. It also includes preparation for and attendance at up to one (1) board, commission or committee meeting per month, or twelve (12) such meetings annually, as requested; of these meetings, up to one (1) per quarter, or four (4) annually, may be in-person, if so desired; the others will be virtual.
- iv. The flat fee includes review of municipal contracts and procurement issues, as they arise.
- v. The flat fee includes representation of the Town in all significant licensing matters handled by the Select Board, including liquor licensing (if applicable).
- vi. The flat fee includes only generic legal advice and assistance with labor and employment matters, but not contract or union negotiations, grievances, mediation, arbitration or litigation. If the Firm is requested to represent the Town in these matters, they will be billed at the Firm's rate of \$180.00 per hour.
- vii. The flat fee does not include prosecution or defense of litigation or appeals, including before administrative agencies and courts of the Commonwealth, nor does it include mediation or arbitration. If the Firm is requested to represent the Town in these matters, they will be billed at the Firm's rate of \$180.00 per hour.
- viii. The Firm does not offer representation in routine tax-title matters or negotiation of cable services agreements, as such specialized items are generally handled by outside special counsel.
- ix. The Firm's fees do not include matters for which fees can be required from permit applicants under G.L. c. 44, § 53G. For such matters, the Firm will bill at the same rate of \$180.00 per hour but these fees will be borne by the applicants.
- x. The Firm does not charge for work performed by paralegals and support staff.
- xi. Office hours, either in-person or remotely, can be offered if so desired. If the Firm is requested to provide office hours, they will be billed at the Firm's rate of \$180.00 per hour.

xii. At the Firm's rate of \$180.00 per hour, the Firm is available to provide training seminar(s) on topics of assistance or interest to the Town. These topics might include Open Meeting Law compliance, conflicts of interest, the Public Records Law, procurement, substantive and procedural land use permitting requirements, etc. These seminars can be offered in-person or virtually.

xiii. The Firm's internal costs, such as telephone services, utilities and clerical assistance, are not the Town's responsibility. Nor are standard mailing fees or routine copying costs charged to the Town. Filing fees, the cost of bulk copying and extraordinary mailing fees (e.g. certified mailings, overnight mailings), recording costs and costs for other similar items are billed on a direct basis. Expert consultant fees, title examinations and costs for stenographic transcripts shall also be the Town's responsibility.

xiv. The Firm bills or else records itemized billing entries in increments of one-tenth (1/10) of an hour. Substantive telephone calls and conferences and receipt, review and drafting of correspondence and e-mails are billed or entered at a minimum rate of two-tenths (2/10) of an hour.

xv. Roundtrip travel to and from Town offices, courts, agencies and other locations will be billed on a portal-to-portal basis to and from the Firm's Millis office for all services excluded from the flat fee, above.

xvi. For the Town's convenience, all services provided by the Firm will be itemized on its monthly invoices.

xv. By executing the preceding Fee Agreement, the Firm and the Client agree to revisit and renegotiate, if necessary, the within Scope of Services and Billing Schedule, it being the parties' objective that said Scope and Schedule will create a mutually-beneficial relationship between them.

Monterey Town Administrator

From: clerk@montereyma.gov
Sent: Saturday, May 28, 2022 5:18 PM
To: Justin Makuc; susan@montereyma.gov; Monterey Assistant
Subject: scheduled hours

BOS,
I received your letter regarding my hours.

Beginning June 9 my scheduled hours will be as follows:

Thursdays 4 p.m. to 8 p.m.

Fridays 12 noon to 8 p.m.

Saturdays by appointment

Wednesdays I am available for Selectmen's meetings with an advanced notice.

The remainder of the 7.75 hours will be worked at my own discretion. I will work times and days when I feel safe and without hostility.

My assistant is available on these days, and I will feel safe at town hall. I feel this schedule is in the best interest of the citizens of Monterey and my goal is to accommodate everyone.

If I have to take a vacation day, I will work other days, so my job doesn't fall behind. I will keep you informed of the days that I will make up my hours.

I have a family vacation planned in June and will not be in the office on June 23rd or 24th. I will fill out a time off sheet next week.

I plan on attending the BOS meeting on June 1st at 6:00 p.m.

Terry Walker
Monterey Town Clerk

Town of Monterey, MA

Mediation Proposal and Fees

Quabbin Mediation

June 1, 2022

Hello I'm Bob Sekula, Mediation Director at Quabbin Mediation in Orange, MA.

Mediation is a process of discussion, cooperation and listening where 2 or more parties share and discuss their situation -- A forum for airing feelings desires problems etc., hearing those of the other parties and participating together in the transformation of the situation and all involved. All parties are assumed to be of great value to the process and the situation and are treated as such.

Mediators listen, reflect, and facilitate -- Asking questions, taking note of areas of importance and of agreement and difference. Sessions will often produce agreements/commitments coming from the parties themselves, often written out and signed.

Mediation sessions consist of usually 2 mediators and 2 or more participating parties. They can be of variable length, depending on how things go, usually 1-2 hours. Our charges are by the session, not the hour.

Fees include session fees plus a case-management fee. Case management includes touching base with parties before meeting, correspondence, paperwork, billing, writing agreements, arranging mediators etc.

Session fees are \$200 each up to 4 sessions. Case management fees \$50 for up to 2 sessions.

Example: 1 session: \$250. 2 sessions: \$450. 3 sessions: \$700. 4 sessions: \$900. More than 4 sessions: \$175 each without case management fee. Billing and payment can take place after all services rendered.

Thank you, we look forward to being of service to the town of Monterey,

Bob Sekula, Quabbin Mediation



TOWN OF MONTEREY

435 Main Rd. P.O. Box 308
Monterey, MA 01245

CK# 21655
5/26/22

Please review the following checklist when planning a special or theatrical event or when requesting a one day alcohol permit.

Event Checklist: Please check all that apply to your special/theatrical event.

Catered food

If you are service catered food your caterer must apply for a food services permit separately with the Board of Health. If this is a pot luck event and is open to the public event (open to all) you will need a temporary permit from the Board of Health.

Over 50 people

If your event will have more than 50 people you will need to submit an emergency contact sheet and plan along with this application (plain paper, no special format).

Tent or temporary structure larger than 700 sq ft

If you are using a tent or temporary structure you or the tent company will need to file for a building permit with the Building Department (online permitting system)

Parking

If the parking for your event will include street parking, a parking plan must be submitted with your application.

Alcohol

If you are a non-profit you will need to submit a copy of your 501(c)(3). Only non-profits may apply for an all alcohol permit (liquor, wine and beer). All applications for alcohol, beer and/or wine must submit a TIPS certified certificate of the person serving and a copy of your insurance certificate stating "alcohol liability" and list the Town of Monterey as an additional insured on it.

Music

If you will be having music, alcohol and more than 100 people you will need to submit a copy of the Certified Crowd Managers certificate that will be in attendance at the event.

Primary contact information:


Name: Erin Hunt Business Name: Bidwell House Museum

Full mailing address: 90 Box 537 / 100 Art School Rd Monterey MA 01245

Phone: 413-528-6888 Fax: _____

Email: bidwellhma@gmail.com

I certify that I will be responsible for the proper observance of the laws governing the dispensing of such alcoholic beverages. I hereby swear under the pains and penalty of perjury that the information I have given is true to the best of my knowledge and belief. If your permit(s) are granted they must be visible and on site on the day of your event. Failure to obtain a permit may result in your event being shut down and/or fines as they may be applicable.

Signature:  Date: 5/23/22

Printed Name: Erin Hunt



TOWN OF MONTEREY

435 Main Rd. P.O. Box 308
Monterey, MA 01245

SPECIAL EVENT/THEATRICAL EVENT AND/OR ONE DAY ALCOHOLIC BEVERAGE LICENSE

This application is subject to any and all laws, regulations, standard, guidelines and policies of the Town of Monterey and any State or federal agency, department or body otherwise having jurisdiction and further subject to the specific terms, conditions and restrictions printed or written herein below or attached.

Event Information:

Name of event: Bidwell Country Fair
Address of event: 100 Art School Road Monterey MA 01245
Date of event: 6/25/22 Start time: 12pm End time: 4pm
Number of people attending: 300 Distributor: _____

Will you be charging an admission? yes or no Circle one

Music?: yes or no Circle one

Please check the type of permit(s) you are requesting:

Theatrical Event permit

Beer and wine only permit requested.

All alcohol permit requested. **ONLY NON-PROFIT ORGANIZATIONS MAY APPLY FOR THIS PERMIT. A COPY OF YOUR 501(C)3 MUST BE SUBMITTED WITH APPLICATION.**

A COPY OF YOUR INSURANCE CERTIFICATE WHICH MUST STATE ON IT "ALCOHOL LIABILITY" AND BE SUBMITTED WITH THIS APPLICATION

Description of the event (please include any temporary structures, their size and the company providing the temporary structure(s) in your narrative):

Annual Bidwell Country Fair. Free to the public. Includes demos and talks by artisans, kids crafts, games. Snacks for sale - not catered. Musicians performing. Smaller tents - all under 600 SF. No ~~alcohol~~ alcohol.



Emergency Contacts for Bidwell Country Fair
Event Date: June 25, 2022

Diane Austin, Board President

Home: (617) 247-2596

Home: (413) 623-5825

Email: dinymarie1@gmail.com

Linnea Grealish, Board Vice President

Home: (413) 528-3892

Cell: (508) 254-5147

Email: linnea1027@comcast.net

Franklin Kern, Board Treasurer

Home: (212) 860-2383

Home: (413) 528-3421

Email: FRK@rwkm.com

Heather Kowalski, Executive Director

Home: (413) 551-7522

Cell: (724) 719-8859

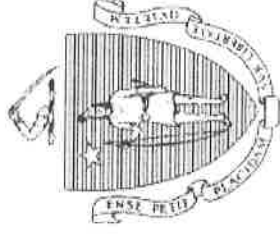
Email: bidwellhouse@gmail.com

Erin Hunt, Administrative Manager

Cell: (603) 387-9811

Email: bidwellhm2@gmail.com

Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Department of Fire Services
Office of the State Fire Marshal



Certificate of Completion

This certifies that

Kowalski Heather

Successfully completed the Crowd Manager Training Program
In accordance with 527 CMR 1.00:20.1.5.6 - Designation of a Crowd Manager

Date issued: July 26, 2021

Expires: July 26, 2024

Certificate #: EcGt429ZSSduG6B

Peter Ostroskey

State Fire Marshal

Grant Payment Request and Certification for Milestone 2 - Grant Agreement Relative to Broadband Service for the Town of Monterey ("Grant Agreement")

Name of Project: <u>FiberConnect Monterey</u>
Milestone # : <u>2</u>
Amount of Funds Requested: <u>\$285,000.00</u>

Fiber Connect Certification

I, Adam Chait, hereby certify that (1) Fiber Connect has achieved coverage in the Town of Monterey ("Town") that has resulted in not less than fifty percent (50%) of the Additional Residential Premises being currently Serviceable ([201] of Additional Residential Premises are currently Serviceable out of a total of [326] of Additional Residential Premises in the Town); (2) all of the Information in this grant payment request and the attached project status report, including the supporting documentation, is complete, true and accurate; (3) since the Effective Date of the Grant Agreement, Fiber Connect has been and remains in full compliance, subject to any prior breach which has been disclosed and cured, with the terms and conditions of said Grant Agreement and the Network Services Agreement between the Town and Fiber Connect to the best of my knowledge; (4) there is no pending or contemplated litigation or arbitration between Fiber Connect and the Town to the best of my knowledge; and (5) there is no material unresolved dispute between Fiber Connect and the Town to the best of my knowledge.

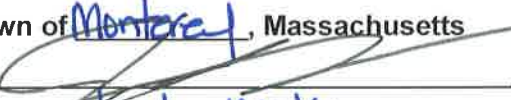


Authorized Signature (Chief Executive Officer)

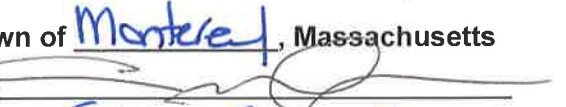
Name: Adam Chait **Date:** 2022-05-23

Town Certification

Each of the undersigned members of the Selectboard certifies that the foregoing statements are complete, true and correct to the best of his or her knowledge.

Town of Monterey, Massachusetts
By: 
Name: Justin Makic
Title: Select Board Chair
Date: 6/1/22

Town of _____, Massachusetts
By: _____
Name: _____
Title: _____
Date: _____

Town of Monterey, Massachusetts
By: 
Name: Susan Cooper
Title: Select Board member
Date: 6/1/22

Road	Homes	Homes Passed	
River Road South	0		3
Corashire Road South	0		4
Brett Road	9		
Swann Road	8		
Fairview Road South	3		
Beartown from Fairview to Forest	23		
Royal Hemlock	3		
Tyringham North of Heron Pond	1		
Mt Hunger East	16		
Norwalk Acres	9		
RT23 East of Hupi to Otis	1	1	
Sandisfield Road #74 south	6		
New Marlborough Road #39 South	22		
Wellman Road	3		
Gould Road	5		
Harmon Road	10		
Brook / West / Pine / North / Lake	18	18	
Laurel Banks	15	15	
Prescott Lane	5	5	
Sackman Way	12	12	
Camp / Seven Arts / Tin Can	9	9	
NE Cove	4		
North Cove	3		
Pixley Road	28	28	
Corashire Road North	3	3	
River Road North	9	9	
Blue Hill Road / Old Beartown	30	30	
RT23 West of Fairview	71	71	
Totals	326	201	125 Homes Left 61.66% Percent Complete

Grant Request/Information Form

Grant Writer Name: Dennis J. Lynch (DJL Consulting)

Are you requesting permission to write a grant or research available grants? Write a grant application.

Type of grant you are proposing to research and how the project you have in mind that you are seeking available grants for: (skip this if you are proposing to write a grant):

Name of Grant (if proposing to write a grant): Municipal Energy Technical Assistance Grant Program (META) offered by the the MA Department of Energy Resources (DOER).

Purpose of Grant: To seek technical assistance to develop site assessments of town properties for the installation of roof and or ground mounted solar photoelectric arrays to generate renewable electricity to help operate town facilities.

Maximum amount we can be awarded: \$12,500

Is there a town match and if so how much?: NONE

How many hours do you estimate it will take you to write this grant?: Approx: 46 hours.

When is the deadline to file this grant?: mid-July 2022

Will this grant require any staff time after it is awarded? If yes, what will this entail, how many hours will need to be devoted and who do you propose will manage the follow up required?: approximately 5 hours to interface with town departments, boards, commissions and the hired consultant. Dennis Lynch is available to provide this effort if required by the Select Board.

Additional Comments:

Please attach any information about the grant to help us in making our decision.

Securing this grant will compliment the current work by the Berkshire Regional Planning Commission to develop a plan which will enable Monterey to be designated a "Green Community" by the DOER.

To be completed by the Select Board

Approved (circle one): YES NO

Maximum hours approved for this project: _____

Nine point plan based on recommendations made by the Greene Report

Town of Monterey, Select Board

Retain professional services for Human Resources

1. The Town should retain professional human resource services.
2. The Town should retain professional mediation services.

Update and clarify Human Resources policies and procedures

3. The Town should adopt a new employee handbook.
 - Details specific procedures for the reporting, investigating and responding to employee disputes outside of the chain of command.
 - Directives for handling disputes between members of the Town's staff (including those under the direction of multi-member bodies) who are not necessarily employees.
 - Directives for handling improper behavior of citizens toward Town employees.
 - A specific chain of command, spelling out who is responsible for the oversight of individuals working for independent bodies that may or may not answer to the Select Board.
 - Include annual employee reviews, as well as a structure for compensation adjustments.
4. Action must be taken by the Town to address retaliatory conduct.
 - Assuring employees who have initiated complaints that they have the right to be free from retaliation.
 - Providing a conduit through which any retaliatory conduct can be reported.
 - Set a procedure for addressing retaliatory conduct, including consequences for continuing behavior.
5. The Town should implement procedures to independently address and provide redress to complainants.

Reorganize Town Administrator position

6. The Town should better and more narrowly define the Town Administrator role in the manner originally recommended to the Town.
7. The Town should separate the Town Administrator role from the Select Board secretary role.
 - The position of Select Board secretary be instated as a separate position from the Town Administrator. Preparation of meeting agendas and minutes should be reassigned to be a part of that position's duties, such that the agendas and minutes are being compiled by someone who does not also advise the Select Board on policy or personnel matters.

Improve Select Board leadership

8. The Town should offer leadership training for all Select Board members, the Town Administrator, and Department heads.
9. The Town should adopt a Select Board Code of Conduct.
 - Gives direction on Select Board interactions with other boards and committee members, Town staff, and the Town Administrator specifically.

Justin Makuc: _____

Date: _____

6/1/22

Susan Cooper: _____

Date: _____

6/1/22

DRAFT DRAFT DRAFT

Select Board

Town of Monterey

Policy policy regarding letters of understanding following public meetings

When the Select Board ("Board") meets with other individuals or multi-member bodies ~~Boards,~~ Commissions, and Committees, employees, and any other as deemed necessary in a public meeting, and matters of consequence are discussed, the Board, at the request of any Board member, shall ~~SB may~~ draft a letter of understanding to the other party(ies) clarifying the Board's ~~SB's~~ understanding of the substantive issues of that meeting, and clearly identifying any actions, if any, which are expected to ~~must~~ be undertaken by the various parties involved.

_____ This letter will be drafted by a member of the Board for consideration at the next regularly scheduled Board meeting following the initial discussion of the matter, where it may be amended. The letter may be adopted at the same or the very next regularly scheduled Board meeting.

While the Board ~~recognizes~~ we recognize that the meeting minutes will ~~summarize~~ mention the matters discussed, the Board ~~feels~~ we feel that this is a ~~more~~ clear and direct way of clarifying the Board's ~~our~~ understanding of the important matters addressed. This process allows for clear communication, and ensures that all parties are fully aware of any ~~ensuing~~ subsequent responsibilities and timelines. In matters pertaining to employees ~~of the Town,~~ this also allows for a clear ~~assignment~~ transfer of information to the employee's file.

Justin Makuc: _____ Date: _____

Susan Cooper: _____ Date: _____

LAW OFFICES OF TIMOTHY M. BURKE

BURKE LAW
117 Kendrick Street, Suite 300
Needham, Massachusetts 02494
(781) 455-0707

Timothy M. Burke
Jordan E. Burke
Jared S. Burke

May 26, 2022

SENT VIA CERTIFIED MAIL

Justin Makuc, Chairman Monterey Select Board
Town Hall, Monterey
435 Main Rd
Monterey, MA 01245

Re: Terry Walker

Dear Members of the Monterey Select Board,

Please be advised that this office represents the interests of Terry Walker (hereinafter "Ms. Walker") with regard to her employment with the Town of Monterey (hereinafter "Town"). This correspondence is intended to request Ms. Walker's personnel file from the Town under the Massachusetts Personnel Records Statute, M.G.L. c. 149, §52C.

The statute defines a "personnel record" as any "record kept by an employer that identifies an employee, to the extent that the record is used or has been used or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation or disciplinary action."

Accordingly, pursuant to M.G.L. c. 149, §52C, we request a full and complete copy of any and all written documents contained in Ms. Walker's personnel file within 5 business days following receipt of this request. If there are additional "personnel records" maintained by multiple offices outside of the Town Hall, we request any and all copies and/or versions of Ms. Walker's disciplinary and/or personnel file including, but not limited to, any "personnel records" in the possession of the Town. We are also requesting any records or reports of complaints made by Ms. Walker, including, but not limited to, to the Select Board and/or other Town employees, either in writing or orally, regarding the hostile work environment she has been subjected to.

This letter is also intended to give notice of a demand to preserve all evidence relating to claims of retaliatory and harassing treatment of Ms. Walker. This notice is also specifically requesting the preservation of all evidence related to any and all complaints raised by Ms. Walker including, but not limited to, complaints made or statements given during the investigation conducted by Greene & Hafer, LLC regarding the claims of a hostile work environment by our client.

The Town of Monterey, its Public Safety Department and/or office or other Departments within the Town, as well as, and any and all of their agents, representatives, and employees should not destroy, conceal or alter in any manner whatsoever any or all evidence, documents, information, paper or electronic data and/or other tangible items pertaining or relevant to or information discoverable in the above-referenced matter, including, but not limited to, all cellular telephone records, as well as any and all computers and data information stored on those computers relating to the decision making process for the recent action of denial Ms. Walker's request for safety measures to be put in place so that she can perform the duties of her job without fear of physical harm or verbal assault.

This notice includes, but is not limited to, all data generated and/or stored on any and all computers, telephones or recorded lines owned or used by Ms. Walker as well as any other member of the Town of Monterey; all data stored on any and all other electronic storage media of any type such as hard disks, floppy disks, CD-ROMs, DVDs, flash drives, backup tapes, online backup services or any other storage media or service; all emails; all instant messages; all SMS text messages; all audio data such as voicemail, tape recordings; and all photographs, videos, writing or other documentary material of any nature found or stored on the Town's computers, cellular telephones, or Internet accounts must be preserved. This notice also applies specifically, but without limitation, to any and all emails, instant messages, SMS text messages, email accounts, Internet addresses and/or Internet accounts utilized or established by the Town of Monterey, whether or not the data is stored locally on a computer used by the Town or stored by a third party on an Internet server.

With regard to electronic data created subsequent to the date of delivery of this letter, relevant evidence is not to be destroyed and the Town of Monterey is to take whatever steps are appropriate to avoid destruction of evidence. It is anticipated that these items will be used in evidence in forthcoming litigation.

Lastly, this correspondence is intended to place the Town on formal notice of Ms. Walker's Massachusetts Whistleblower Protection Act claim pursuant to M.G.L.C. 149 sec. 185.

Ms. Walker is an excellent public employee who has served the interests of the Town of Monterey diligently and honestly. During the course of her employment with the Town, Ms. Walker has repeatedly been retaliated against for her objections to, and refusals to engage in conduct, which she reasonably believed to be illegal, a threat to public safety and/or in violation of the Massachusetts State Ethics laws as well as Town's Departmental Rules and Regulations. The Green and Hafer report independently reached the same conclusion.

Ms. Walker's complaints and objections include, but are not limited to, voter fraud on behalf of Melissa Noe, who requested ballots be destroyed and/or not counted. Additionally, Ms. Noe altered, amended or manipulated voter documents on multiple occasions constituting a violation of MGL. c. 56, section 11, for defacement of a petition.

As a result of her complaints to these events and others, Ms. Walker has been subjected to multiple adverse employment actions including, but not limited to, subjecting her to an overtly

aggressive and hostile work environment, including, but not limited to verbal abuse and retaliation.

Despite the Greene & Hafer report's finding that Ms. Noe has been engaging in a misuse of power through "a pattern of conduct" that was retaliatory and manipulative toward Ms. Walker, the Select Board refused to conduct or take any meaningful corrective action against the Town's employees and public officials. Ms. Noe and others, including Select Board members Stephen Weisz and former board member Donald Coburn, have repeatedly attempted to coerce Ms. Walker to withdraw her harassment complaint against Ms. Noe. In retaliation, Ms. Noe filed three complaints, wrongfully accusing Ms. Walker of making false statements against her.

Ms. Noe continued her harassment of Ms. Walker by conducting her own personal unauthorized investigation of Ms. Walker's past employment history which was clearly done as a means to attempt to silence and coerce Ms. Walker from continuing her objections to Ms. Noe's unethical and illegal behavior. In the report filed by Greene and Hafer, they concluded that investigating Ms. Walker's past was an attempt by Ms. Noe and others, including former board member Donald Coburn, to discredit Walker.

It is patently clear that the retaliation and hostile treatment inflicted on Ms. Walker was done as a direct consequence for her ongoing complaints about and refusals to be a part of what she reasonably believed to be, at a minimum, unethical and discriminatory conduct in violation of the Town of Monterey's Departmental rules and regulations.

Pursuant to the requirements of M.G.L. 149, § 185, this correspondence is Ms. Walker's written notice to the Town of Monterey of her intent to pursue a claim pursuant to the Massachusetts Whistleblower Protection Act as well as Massachusetts and Federal Civil Rights statutes for retaliation for objecting to and refusing to engage in activities protected by state law and for reporting and/or objecting to matters that she reasonably believed to be violations of law or threats to public safety.

Should you wish to discuss this matter in more detail prior to the filing of Ms. Walker's complaint, please feel free to contact me at (781) 455-0707.

Very truly yours,

Timothy M. Burke

Timothy M. Burke

Cc: Melissa Noe, Town Administrator