

## HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE

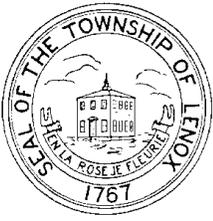
### AGENDA

Rest of River Municipal Committee  
September 21, 2018, 9:00 a.m., Lee Town Hall

1. Introductions (9:00 am)
2. Review of minutes of Sept. 7, 2018 meeting (9:05 am)
3. Executive Session – legal strategy, mediation (9:15 – 10:30 am)
4. Other Business (10:30 am – 10:40 am)
5. Adjournment (approximately 10:45 am)

***City and Town Clerks: Please post this notice pursuant to M.G.L. Chapter 39, Section 23B.***

***Please Note: In the case of inclement weather on the day of the meeting, please call BRPC at 413-442-1521, ext. 15 to confirm if the meeting is still being held.***



## HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE Meeting Minutes

Rest of River Municipal Committee; September 7, 2018, Lenox Town Hall, Land Use Room

**1. Introductions.** N. Karns opened the meeting at 9:01 a.m. Attending the meeting were the following Committee members:

Pat Carlino, Lee Select Board

Christopher Ketchen, Chief Administrative Officer, Towns of Lee and Lenox (9:07 a.m.)

Chris Rembold, Great Barrington Town Planner

Steve Shatz, Stockbridge Representative

Rene Wood, Sheffield Select Board

Others present:

Lauren Gaherty, BRPC

Tom Matuszko, BRPC Executive Director

N. Karns, BRPC Consultant

**2. Review of minutes of August 24, 2018 meeting.** *Motion to accept the minutes as presented was made by S. Shatz, seconded by P. Carlino, and approved by unanimous vote.*

**3. Updates.**

N. Karns clarified the remand and new permit process, given the work EPA and DEP are doing to answer the EAB's remand questions. It is highly likely the EPA will develop a new Statement of Basis on the remanded portions of the Permit. It is felt issues not subject to the remand will not be impacted. The new Statement of Basis & Permit will go through a public comment period of possibly 60 days; all submitted comments will be answered by the EPA; possible changes to the Statement of Basis & Permit may be made based on the comments; and finally the Statement of Basis & Permit will be released by the EPA. The new Permit is subject to the same EAB appeals process for all parties with standing, as was available and exercised on the previously issued Permit. Forecast: at least a year before this process is completed.

N. Karns believes the EPA is not going to issue the revisions, new Statement of Basis etc. if mediation is making progress. EPA's goal is to have the mediation succeed and avoid years of costly legal actions.

**4. Executive Session – to discuss legal strategy and mediation.**

At 9:10 a.m. N. Karns requested a motion to go into Executive Session to discuss legal strategy for potential mediation or actual litigation regarding the EPA Rest of River clean-up and the appeals of the EPA's Permit and the EAB decision. Such discussion, if held in open meeting, may have a detrimental effect on the legal position of the Rest of River municipalities' legal action with EPA and GE. After the Executive Session, the Rest of River Committee will reconvene in regular session. ***On a motion made by P. Carlino, seconded by S. Shatz, which carried unanimously with the following roll call vote: P. Carlino, Lee, AYE; C. Ketchen, Lenox, AYE; S. Shatz, Stockbridge, AYE; C. Rembold, Great Barrington, AYE; and R. Wood, Sheffield, AYE, the Committee went into Executive Session at 9:11 a.m.***

## 5. Bickerman Mediation Organizational Meeting

The Committee reopened the regular session at 9:56 a.m. and attended the J. Bickerman Organizational meeting. Prior to the meeting, all present had about 10 minutes to informally mix and mingle and introduce themselves. At a few minutes after 10:00 a.m. the Committee attended the Bickerman meeting. The following Rest of River Municipal Committee members were present:

Pat Carlino, Lee Select Board  
Christopher Ketchen, Chief Administrative Officer, Towns of Lee and Lenox  
Chris Rembold, Great Barrington Town Planner  
Steve Shatz, Stockbridge Representative  
Rene Wood, Sheffield Select Board

Other Committee associates were present:

Lauren Gaherty, BRPC  
Nat Karns, BRPC Consultant  
Ben Krass, Esq., Counsel  
Tom Matuszko, BRPC Executive Director

J. Bickerman opened the meeting, describing it as a procedural meeting and asked everyone to introduce themselves. It appeared all parties with standing were present, except DEP, including 4 representatives from GE; 5 representatives from EPA; 2 from City of Pittsfield; 1 from BEAT; numerous representatives from HRI; Mass Audubon and Jeff Cook. J. Bickerman next went over the mediator's role and his mediation experience. This appeared to be a repeat of the information he gave us at a prior meeting.

He then announced to the group that he had heard that the "towns are pulling out" of the mediation process. He also stated that he tried to meet with the Municipal Committee but was told the "towns don't want to meet with me." When Attorney Krass asked him to address the agenda and noted that all towns have formally voted to mediate, he cut him off. (Note: at this time the decision to mediate as voted by all 5 select boards still stands; it is incorrect that the towns were "pulling out.")

He proceeded to discuss the Ground Rules. Issues of how he planned to get information from one party and convey it to another were reviewed, in which he clearly spoke of taking an issue and discussing it with "Great Barrington or Pittsfield".

He said items have to be approved in a public meeting, but conversations within the mediation committee and private conversations are private and confidential. Didn't address emails to towns and felt "they have to work through it". Ground Rule: don't share the position of another member of the mediation process; make your public statements reflective of your position only. The issue of how to deal with the press if certain meetings are open was discussed but not resolved. He did note that towns need extra time.

Under VIII, Schedule, he spoke of a more substantive meeting following this organizational meeting, which would be a public meeting, in which each party would make a statement of position. He went back again to discussing the town's pulling out and took it a step further by saying that other groups have heard this too. He then spoke of a "rumor" he had heard that the State (DEP) has told the towns they are not interested in mediation at this time. At this point S. Shatz called him out on this "rumor" and said this meeting had no place for rumors. He stated that he thought the way J. Bickerman was conducting the meeting was inappropriate. He suggested he call DEP and ask them directly, to which Bickerman replied he has not been able to talk with them. Bickerman responded that he wanted to ask the Municipal Committee but was "denied the opportunity to talk to you about it."

Attorney Krass asked J. Bickerman how he planned to have the parties meet, how he would conduct the sessions. J. Bickerman said he would have parties talk to each other face to face. This led to discussion of quorums of municipal members being present and once again whether the open meeting law came into play. J. Bickerman then discussed smaller group and doing shuttle diplomacy.

How confidentiality would proceed within public open meeting laws was a question. R. Doheny, Pittsfield legal counsel, volunteered to write the AG's office and get an advisory on the applicability of the open meeting law and also to write the Sec. of State's office and get an advisory on applicability of the public records law. He is looking for the ground rules on each and agreed he will do this for all the represented municipalities and will get the received responses to each.

Jane Winn, BEAT, noted they have no problem with matters conducted in public; the environmental groups are less comfortable with meetings behind closed doors. She doesn't want to see back door deals like have previously been done, implying the Consent Decree.

S. Shatz again chastised J. Bickerman for starting the meeting with his statements re: ROR towns pulling out and continuing to bring this matter up. He noted all the towns are present and participating.

J. Bickerman said he "plans to bring other parties into this, those that don't have standing, at some point".

J. Bickerman stated next steps would be to gather goals and objectives from all parties. He wants another meeting where each party of standing would identify their goals and objectives and define what is success and failure. He mentioned that he has these from EPA and GE from previous mediation, but would like them updated to meet current conditions.

R. Doheny suggested J. Bickerman look to the written submissions made to the EPA during the public comment period and other publicly available documentation for such information.

J. Bickerman pushed hard on getting dates set and these statements from each group. Spoke of another organizational meeting.

GE noted the need for the mediation agreement to be signed by all parties before they would begin listing objectives. J. Bickerman pushed as to where the municipalities were on this and made comments that he never thought when he provided the agreement in June that he would not have it back by September. Attorney Krass said that it is "Under Review".

T. Gray noted that the environmental groups would like a copy of the draft mediation agreement; as of yet they have not been provided a copy of it. J. Bickerman again noted that edits would likely becoming from the Municipal Committee but would get a copy to the environmental groups. T. Gray wanted to know what the rush was – he's been in this for 30+ years and he would rather have a good cleanup than a rushed deal.

Brian Olsen of EPA, head of the cleanup program in the NE, stated why the EPA wanted to try mediation: it has been a long time since the cleanup began; millions of dollars already spent and Rest of River is already dragging on too long; the agency doesn't want to litigate for the next 10 years (but we will if we have to); delay doesn't help the river or the towns if we can come up with a settlement. He spoke of J. Bickerman at this point and reviewed his accomplishments in settlement mediations, with an emphasis on a recent resolution at Centredale Manor, RI. EPA is supportive of the mediation process; the Administration is pushing for cleanup as a priority. He noted EPA has told GE they feel EPA will win on the

remand. He wants to share the EPA's info with all parties and not have it appear first in the papers. He has 2 issues: 1) Get the PCBs out of the river and 2) Where to put it?

***At approximately 11:10 a.m. the Bickerman meeting recessed and the ROR Committee, on a motion by R. Wood and seconded by P. Carlino, returned to Executive Session, after which it would return to the mediation meeting and later to open session. Motion carried unanimously with the following roll call vote: P. Carlino, Lee, AYE; C. Ketchen, Lenox, AYE; S. Shatz, Stockbridge, AYE; C. Rembold, Great Barrington, AYE; and R. Wood, Sheffield, AYE.***

The Committee returned to the Mediation Organizational meeting at 11:25 a.m. S. Shatz made a personal statement about the review process in Stockbridge. He noted that R. Dohoney's requests to the AG's and Sec. of State's offices will help resolve key issues in the contracting process.

S. Shatz proposed Oct. 12<sup>th</sup> at 9 a.m. for an Executive Session of the Municipal Committee with J. Bickerman to take the next step in mediation, predicated on two items: 1) written advisory opinions received from the AG's and Sec. of State's offices; and 2) the ROR municipalities have had the finalized mediation agreement signed by their executive authority.

More discussion ensued on written objectives with J. Bickerman noting GE and EPA may want to review their statements of several years ago.

The Mediation Organizational Meeting adjourned about 11:30 am.

The Committee reconvened in open session at 11:40 a.m. S. Shatz proposed Oct. 12<sup>th</sup> at 9 a.m. for an Executive Session with J. Bickerman to take the next step in mediation, predicated on two items: 1) written advisory opinions received from the AG's and Sec. of State's offices; and 2) the ROR municipalities have had the finalized mediation agreement signed by their executive authority.

The next open meeting of the ROR Municipal Committee was set for Friday 9/21 at 9 a.m. at the Lee Town Hall.

## **6. Adjournment.**

***R. Wood motioned to adjourn, which was seconded by S. Shatz, and unanimously approved. The meeting adjourned at 11:50 a.m.***

### Meeting Materials:

- Meeting Agenda 9-7-2018
- Draft Meeting Minutes of 8-24-2018
- Agenda, Housatonic ROR Mediation; 10am; 9-7- 2018

Respectfully submitted,  
Rene Wood, Sheffield's Representative

**BICKERMAN DISPUTE RESOLUTION,  
PLLC MEDIATION AGREEMENT**

**BETWEEN**

**General Electric Company, United  
States,  
Commonwealth of Massachusetts, State of Connecticut, C. Jeffrey Cook, Rest  
of River Municipal Committee, Berkshire Environmental Action Team,  
Housatonic River Initiative, City of Pittsfield**

The ~~parties~~ Parties identified above, whose authorized representatives' signatures are affixed below, hereby agree to the terms and conditions of this Mediation Agreement.

**Commented [BFB1]:** This was both capitalized and uncapitalized at various points in the Agreement. Edits are to consistently capitalize this term.

**I. Purpose and Responsibilities**

The purpose of the mediation will be to attempt to arrive cooperatively and informally at a mutually acceptable resolution of the dispute over the EPA's October 2016 RCRA Corrective Action Permit Modification regarding the cleanup of the Housatonic River, including<sup>1</sup> the proceedings before the Environmental Appeals Board of the U.S. Environmental Protection Agency, *In Re General Electric*, RCRA Appeal Nos. 16-01, 16-02, 16-03, 16-04, and 16-05.

**Commented [BFB2]:** The original draft used both "including" and "including but not limited to." Either is fine but using both suggests that each has a different meaning, which is not the intent. We have therefore standardized use and defined the term "including" in footnote.

**II. Mediation Process**

**A. Overview**

John Bickerman will serve as mediator and may be assisted by others as reasonably necessary at his discretion to serve the parties and accomplish the objectives of this Agreement. The mediator may review written information submitted by the parties and counsel. He may also communicate *ex parte* with mediation participants and other interested parties and organizations, as necessary to accomplish the purpose of the Agreement. Before communicating *ex parte* with other interested parties and organizations, the mediator shall inform the Parties of his intent to do so and shall identify the interested parties and organizations with whom he intends to communicate. During any joint mediation session, representatives of the parties may be expected to ~~briefly~~ present their positions on the issues in dispute and respond to the other parties' positions,

**Commented [BFB3]:** Do the parties want the mediator to tell them, either before or at least after, he chooses to communicate with "other interested parties and organizations" so they at least know the universe of third-parties that may know about this?

<sup>1</sup> As used in this Agreement, the term "including" shall mean "including but not limited to."

except that it is understood, due to the nature of municipal decision making, that the Rest of River Municipal Committee and its member municipalities, should not be expected to ~~always be able to~~ respond as stated above in every instance. ~~These summary~~ Any presentations that are made may be ~~made~~ by counsel or other representatives of the parties. No rules of evidence ~~sh~~will apply except as set forth in Section VI. The mediator may meet separately and together, as necessary, with the parties, their counsel or other interested parties or organizations to assist in the resolution process. These contacts may be by telephone or in person.

**B. Party Representatives**

The participants in the process, as necessary and appropriate during the course of the mediation, shall include the following: for the United States, appropriate representatives of Department of Justice and Environmental Protection Agency ("EPA"), General Electric ("GE"), Commonwealth of Massachusetts, State of Connecticut, C. Jeffrey Cook, Rest of River Municipal Committee, Berkshire Environmental Action Team, Housatonic River Initiative, and City of Pittsfield.

The Parties understand that any settlement negotiated by the Parties –and recommended by the representatives of the Parties will need to be approved by authorized representatives of the Parties, including the appropriate municipal boards.

**III. Destruction of Documents**

Forty-five (45) days after the conclusion of the mediation, the mediator will: (i) destroy copies of all materials sent or provided to the mediator by the parties, including Confidential Materials (defined later in this Agreement), confidential statements, confidential communications, pleadings and other documents, ~~including but not limited to~~ including audio/visual tapes and electronic mail (e-mail) transmissions ("Mediation Materials"), to protect the confidential nature of the mediation; and (ii) certify compliance with subpart (i) to all Parties in writing. For the avoidance of doubt, the mediator shall ensure the destruction of Mediation Materials in the possession of anyone who assisted the mediator or to whom the mediator sent such materials pursuant to ~~under~~ Section II.A. of this Agreement. The mediator will retain a copy of the settlement agreement, if a settlement is reached.

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**Commented [BFB4]:** We have tweaked these provisions to ensure that the Parties receive notice from the mediator that he has complied with this destruction provision. In our experience, it is not common for someone to flout such a requirement, but it is something that may easily be overlooked. Certifying compliance is a useful and easy second-check.

#### **IV. No Legal Advice Rendered By The Mediator**

The parties to the mediation represent that they have obtained legal counsel or have chosen not to obtain legal counsel to advise them during the mediation. The mediator will not provide legal advice.

#### **V. Conflicts of Interest**

##### **A. Disclosure of Prior Relationships**

The mediator has made a reasonable effort to learn and has disclosed to the parties: (a) all business or professional relationships the mediator and/or the mediator's firm has had with the parties or their law firms within the past three years; (b) any financial interest the mediator has in any party; (c) any significant social, business or professional relationship the mediator has had with an officer or employee of a party or with an individual representing a party in the mediation; and (d) any other circumstances that may create doubt regarding the mediator's impartiality in the mediation.

Each party and its law firm has made a reasonable effort to learn and has disclosed to every other party and the mediator any relationships of a nature described in the preceding paragraph not previously identified and disclosed by the mediator.

The mediator has previously served in a similar capacity in the same dispute, with the United States, GE, Massachusetts and Connecticut as parties, in 2015 and 2016. The mediator is currently mediating a dispute involving EPA Region 1 regarding another Region 1 cleanup.

The parties and the mediator are satisfied that any relationships disclosed pursuant to the preceding paragraphs will not affect the mediator's independence or impartiality. Notwithstanding any such relationships, the parties have consented to the mediator to serve in the mediation, waiving any claim based on such relationships, and the mediator agrees to so serve.

##### **B. Future Relationships**

Neither the mediator nor the mediator's firm shall undertake any work for or against a party regarding the subject matter of the mediation. The mediator's firm may mediate other matters involving one or more of the parties during the pendency of

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the mediation.

## VI. Confidentiality

Unless the parties agree otherwise, this entire mediation process shall be deemed to be a compromise negotiation. All communications, offers, promises, conduct, ~~and~~ statements, information, reports, data, or documents, whether oral or written, made, prepared, or disclosed to another ~~n, made~~

**Commented [BFB5]:** This section is heavily edited to address a number of possible issues and ambiguities.

First, while the "Confidentiality" applies to the mediator, it does not expressly apply to anyone who assists him or to whom he may provide information under Section II.A. We have thus defined "mediator" in this section to encompass that broader group of potential persons who may possess confidential information.

Second, trying to separate out "all other information, reports, data and/or documents" from the earlier enumerated list of "offers, promises, conduct, and statements" as the original draft does is confusing and leaves room for significant interpretative ambiguity. For example, a document provided to the mediator is going to include "statements" and likely may include a party's proposed "offer" or some other "promise" in exchange for a settlement. What is to be made of this Agreement's distinction between each and what are the parties' obligations in light of that distinction? This draft does not draw the distinction but simply creates a default rule that all mediation information is confidential unless subject to an exception. The exceptions then include all of the possible exceptions from the prior draft. .

Third, these edits do not impose a requirement on the Parties and mediator to require any third-party to whom they disclose Confidential Materials to sign any statement that they will abide by these provisions. The Parties may consider including something like that, too, if they want maximum confidentiality protection – that would create privity of contract directly with those third parties to enforce this agreement.

in the course of the mediation by ~~the~~ any person or entity, including the parties, their agents, employees, experts, and attorneys, and the mediator are confidential (“Confidential Materials”). For purposes of this Section, the term “mediator” shall include anyone who assists the mediator and anyone to whom the mediator sends ~~st~~ materials ~~under~~ pursuant to Section II.A. of this Agreement.

~~Such offers, promises, conduct, and statements~~ Confidential Materials ~~will~~ shall not be disclosed to third parties, except: (i) in accordance with this Agreement; (ii) if previously disclosed or known to a Party or lawfully within the public domain; ~~persons- associated with the parties in the mediation process and persons-~~ or (iii) to entities to whom a ~~party~~ Party has a legal or contractual obligation to report, including where a Party is required to disclose Confidential Materials by the Freedom of Information Act, 5 U.S.C. Section 552, the Massachusetts Public Records Law, M.G.L. c. 66, Section 10, M.G.L. c.4, Section 7(26), the Connecticut Freedom of Information Act, C.G.S. Sections 1-200 *et seq.*, or other applicable law or regulation.; ~~and-~~ Prior to disclosing Confidential Materials to third parties under Section II.A. of this Agreement, the Parties or mediator shall provide a copy of this Agreement to such those parties and inform them that the materials being provided are Confidential Materials.

Confidential Materials shall otherwise be ~~are~~ privileged and ~~and~~ shall be inadmissible for any purpose, including impeachment, under Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule or common law provisions, in any forum, including in court or administrative proceedings.; ~~including impeachment, under Rule 408 of the Federal Rules of Evidence and any applicable~~

~~federal or state statute, rule or common law provisions. All other information, reports, data and/or documents prepared by or on behalf of the parties, and/or presented to the mediator are also deemed confidential unless they (a) were previously disclosed or known to a Party and/or lawfully within the public domain; or (b) are required to be disclosed by the Freedom of Information Act, 5 U.S.C. Section 552, the Massachusetts Public Records Law, M.G.L. c. 66, Section 10, M.G.L. c.4, Section 7(26), the Connecticut Freedom of Information Act, C.G.S. Section 1-200 et seq., or other~~

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~~applicable law or regulation.~~ If any request is received by any Party for the disclosure of ~~information, reports, data and/or documents deemed confidential~~ Confidential Materials under the Freedom of Information Act, 5 U.S.C. Section 552, the Massachusetts Public Records Law, M.G.L. c. 66, Section 10, M.G.L. c.4, Section 7(26), the Connecticut Freedom of Information Act, C.G.S. Sections 1-200 *et seq.*, or other applicable law or regulation, the Party receiving such request must promptly notify the other Parties and provide them a reasonable opportunity to seek to ~~protect said information, reports, data and/or documents~~ protect those Confidential Materials from disclosure.

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Evidence previously disclosed or known to a party, or that is otherwise admissible, shall not be rendered confidential, inadmissible, or not discoverable solely as a result of its use in the mediation. Furthermore, party's experts who participate in this mediation shall not be disqualified from assisting a party in subsequent litigation concerning the subject of the dispute of this mediation. Written communications provided directly by one party to the other party may or may not be considered confidential under the Alternative Dispute Resolution Act.

In his sole discretion, the mediator may restrict participation in this process to any party that fails to maintain confidentiality of mediation communications. The confidentiality provisions of this Mediation Agreement shall remain in full force and effect without regard to whether any legal actions or issues arising out of the case are

settled or concluded by final judgment or otherwise, and shall survive termination of this Mediation Agreement.

The Agreement in its entirety is subject to the Freedom of Information Act, the Massachusetts Public Records Law and the Connecticut Freedom of Information Act.

**VII. Settlement Agreement**

Any resolution of the dispute shall be reduced to writing and executed by the ~~parties~~Parties, and shall be subject to approval by vote of the appropriate executive body or officer as applicable to the ~~party~~Party. Parties are advised to have the settlement agreement independently reviewed by their own counsel prior to executing the Agreement.

**VIII. Disqualification of Mediator**

Neither John Bickerman, nor any person who assists him, shall be deemed to be a necessary party in any arbitral or judicial proceeding relating to the mediation or to the subject matter of this dispute. Neither John Bickerman, nor any person who assists him, may be called as a witness or an expert in any pending or subsequent litigation or arbitration involving the parties and relating to this dispute. Moreover, John Bickerman and any person who assists him shall be disqualified as witnesses or as experts in any pending or subsequent litigation or arbitration relating to this dispute.

**IX. Mediation Costs**

**A. Explanation of Mediation Costs**

GE and EPA shall each be responsible for payment of half the mediator's fees and expenses. Mediation fees represent charges for time spent with the parties, time required to study documents, research issues, correspond, make telephone calls, prepare draft and final agreements, and do such other things as may be reasonably necessary to facilitate the parties' reaching full agreement.

Actual expenses are billed at cost. They include expenses incurred for travel, meeting facilities, conference call bridges and any expenses incurred in providing reasonable accommodations as required by the Americans with Disabilities Act.

**B. Sharing of Mediation Costs**

The responsibility for payment of the mediator's fees and expenses shall be divided equally between GE and EPA. EPA and GE shall each establish appropriate contractual arrangements and other financial mechanisms to pay for their shares of the mediation expenses. The mediator shall provide monthly invoices to both GE and EPA.

C. Obligation of the EPA

The requirement of payment or obligation of funds by the EPA shall be subject to the availability of appropriated funds legally available for such purposes, and no provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the federal or state law. In the event the EPA fails to meet its financial obligation to the mediator, GE shall not be responsible to the mediator for such obligation.

X. Consent to Mediation

By their signatures on the attached pages, the parties to the action hereby consent to mediation and agree to be bound by the terms and conditions of this Agreement.

XI. Compliance with Laws.

The parties shall comply with and this Agreement shall be subject to all Federal, State and local laws, rules, regulations and orders as applicable, such provisions being incorporated herein by reference.

XII. Severability.

If any term or condition of this Agreement or any application thereof shall to any extent be found to be ~~held~~ invalid, illegal, or unenforceable by the court of competent jurisdiction, ~~the such~~ invalidity, illegality or, ~~and~~ enforceability shall be construed as narrowly as possible, ~~of~~ the remaining terms and conditions of this Agreement shall ~~not~~ be deemed to be affected thereby to the minimum extent necessary to provide the Parties substantially the benefits set forth in this Agreement ~~unless one or more parties would be substantially or materially prejudiced.~~

XIII. Entire Agreement.

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the Parties with respect to the matter described. This Agreement 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.

**Commented [BFB6]:** We haven't added a provision in, but the Parties may want to contemplate controlling law and venue to enforce this Agreement. Where one of the Parties is the State of Connecticut, there is at least some question as to whether MA or CT law would govern this agreement. We don't know if the Parties view this as a significant issue or have a shared intent on that point.

Signature blocks

For: United States

By: \_\_\_\_\_

Of: \_\_\_\_\_

Signature: \_\_\_\_\_

Dated: \_\_\_\_\_

**KP LAW, P.C.**  
101 ARCH STREET  
BOSTON, MA 02110  
(617) 556-0007  
FEDERAL TAX ID: 04-2746356  
INVOICE NO: 117316

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TOWN ADMINISTRATOR  
SHEFFIELD TOWN HALL  
21 DEPOT SQUARE  
SHEFFIELD, MA 01257

August 24, 2018  
IN REFERENCE TO: PROFESSIONAL SERVICES THROUGH July 31, 2018

**GENERAL LEGAL SERVICES**

07/09/2018	MRR	REVIEW PROPOSED REVISIONS TO MARIJUANA ESTABLISHMENT HOST COMMUNITY AGREEMENT; EXTENSIVE TELEPHONE CONFERENCE WITH SELECTMAN RE: HOST COMMUNITY AGREEMENT.	1.40	252.00
07/10/2018	MRR	REVISE MARIJUANA ESTABLISHMENT HOST COMMUNITY AGREEMENT; E-MAIL SELECTMAN RE: REVISED AGREEMENT.	1.00	180.00
07/18/2018	MRR	ANALYZE WELCO HOST COMMUNITY AGREEMENT AMENDMENT; EXCHANGE E-MAILS WITH TOWN ADMINISTRATOR RE: AMENDMENT.	0.70	126.00
07/23/2018	MRR	ANALYZE WELCO HOST COMMUNITY AGREEMENT AMENDMENT.	0.30	54.00
07/24/2018	MRR	REVIEW REVISED WELCO HOST COMMUNITY AGREEMENT AMENDMENT; E-MAIL TOWN ADMINISTRATOR RE: APPROVAL.	0.30	54.00
07/24/2018	MRR	REVIEW MEDIATION AGREEMENT.	0.30	54.00
07/26/2018	JDE	TELEPHONE CONFERENCE WITH ZONING BOARD OF APPEALS CLERK RE: REQUEST OF SOLAR DEVELOPER FOR PLANNING BOARD LETTER.	0.20	36.00
07/31/2018	MRR	E-MAIL SELECTMAN RE: TERMS OF MEDIATION AGREEMENT.	0.60	108.00
		SUBTOTAL:	4.80	\$864.00

**GENERAL LABOR SERVICES**

07/18/2018	TDZ	POLICE - LEGAL RESEARCH AND OPINION E-MAIL TO TOWN ADMINISTRATOR RE: CALCULATION OF PRIVATE DETAIL RATES OF PAY.	0.30	54.00
		SUBTOTAL:	0.30	\$54.00

TOTAL FEES: 5.10 918.00



HAGENS BERMAN

ATTORNEYS AT LAW

**HAGENS BERMAN SOBOL SHAPIRO LLP**  
1301 SECOND AVENUE, SUITE 2000  
SEATTLE, WA 98101  
www.hbsslaw.com

September 18, 2018

Housatonic

Client/Matter # 10696-0011

Invoice No: 267753314

**RE: Housatonic**

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**Billing Summary Through August 31, 2018**

Fees For Professional Services	\$6,110.00
Expenses and Advances	\$0.00
<b>CURRENT BILL</b>	<b>\$6,110.00</b>
Previous Balance Due	\$4,140.00
Payments Applied Since Last Invoice	\$4,140.00
Net Balance Forward	\$0.00
<b>TOTAL BALANCE DUE</b>	<b>\$6,110.00</b>

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**PROFESSIONAL SERVICES**

			HOURS	AMOUNT
7/10/2018	MFP	Prep for meeting with clients, including review of EAB decision and discussion with colleagues. L160 A101	2.40	\$960.00
7/24/2018	WHK	Draft memo regarding mediation strategy; review EAB decision & recent correspondence with EPA. L120 A103	3.00	\$900.00
8/7/2018	MFP	Call with clients regarding mediation. L160 A106	0.80	\$320.00
8/7/2018	WHK	Draft memo regarding strategy; telephone call with M. Pawa and L. Gaherty and N. Kars regarding same. L120 A103	4.00	\$1,200.00
8/15/2018	WHK	Revise memo regarding strategy. L120 A103	1.50	\$450.00
8/21/2018	MFP	Call with T. Conway regarding mediation and draft email summary of call to clients. L160 A108	2.40	\$960.00
8/22/2018	WHK	Draft memo regarding process on EAB remand, odds of success. L120 A104	1.00	\$300.00
8/23/2018	WHK	Telephone call with S. Shatz regarding EAB process. L120 A104	0.40	\$120.00
8/24/2018	WHK	Telephone call with J. Mickelson, finalize memo regarding EAB remand process. L120 A104	2.00	\$600.00
8/28/2018	WHK	Emails to L. Gaherty regarding mediation and strategy. L210 A104	1.00	\$300.00

**Total Fees**

**\$6,110.00**

**SERVICES RECAP**

		HOURS	RATE	AMOUNT
MFP	Pawa, Matthew	5.60	400.00	\$2,240.00
WHK	Kelman, Wesley	12.90	300.00	\$3,870.00



## HOUSATONIC REST OF RIVER MUNICIPAL COMMITTEE Meeting Minutes

Rest of River Municipal Committee; September 21, 2018, Lee Town Hall

1. **Introductions.** T. Matuszko opened the meeting at 9:09 a.m. Attending the meeting were the following Committee members:

Pat Carlino, Lee Select Board

Christopher Ketchen, Chief Administrative Officer, Towns of Lee and Lenox

Chris Rembold, Great Barrington Town Planner

Steve Shatz, Stockbridge Representative

Others present:

Lauren Gaherty, BRPC

Tom Matuszko, BRPC Executive Director

2. **Review of minutes of September 7, 2018 meeting.** *Motion to accept the minutes as presented was made by S. Shatz, seconded by P. Carlino, and approved by unanimous vote.*

3. **Executive Session – to discuss legal strategy and mediation.**

At 9:14 a.m. T. Matuszko requested a motion to go into Executive Session to discuss legal strategy for potential mediation or actual litigation regarding the EPA Rest of River clean-up and the appeals of the EPA's Permit and the EAB decision. Such discussion, if held in open meeting, may have a detrimental effect on the legal position of the Rest of River municipalities' legal action with EPA and GE. After the Executive Session, the Rest of River Committee will reconvene in regular session. ***On a motion made by S. Shatz and seconded by P. Carlino, which carried unanimously with the following roll call vote: P. Carlino, Lee, AYE; C. Ketchen, Lenox, AYE; S. Shatz, Stockbridge, AYE; and C. Rembold, Great Barrington, AYE; the Committee went into Executive Session at 9:14 a.m.***

The Committee reconvened in open session at 10:40 a.m. The Committee reviewed and approved the legal invoices from PK Law and Hagen Berman.

The next meeting of the ROR Municipal Committee was set for Fri., Sept. 28 at 9 a.m. at the Lee Town Hall.

**4. Adjournment.**

***Shatz motioned to adjourn, which was seconded by P. Carlino, and unanimously approved. The meeting adjourned at 11:43 a.m.***

Meeting Materials:

- Meeting Agenda 9-21-2018
- Draft Meeting Minutes of 9-7-2018
- Bickerman Mediation Agreement with KP Law & Mirayes edits
- Invoices from KP Law and Hagens Berman

Respectfully submitted,  
Lauren Gaherty, BRPC