



January 16, 2022

Jarrold J. Cabral, Director  
Department of Public Works  
Town of Truro  
17 Town Hall Road  
Truro MA 02666

Office (508) 214-0400  
Email jcabral@truro-ma.gov

Harry Irwin <Harry@thoughtforms-corp.com>

**Re: PS 2024.010 - Town of Truro Energy Retrofit Enclosure Consulting  
Building Science Consulting Services  
Truro MA**

Dear Mr. Cabral and Mr. Irwin:

Building Science Corporation (BSC) is pleased to submit this proposal for building science consulting services for Department of Public Works, Town of Truro (the "Client"). The intent is to provide enclosure consulting related to current and future energy retrofits planned for various town buildings. The current 2024 hourly rates for building science consulting are:

Principals	\$275/hour
Senior Associate	\$225/hour
Associates	\$175/hour

BSC's consulting work can include assembly recommendations, materials selection, review of details and photos, telephone conference calls, participation in on-line meetings, and/or other miscellaneous consulting work the Client Design Team requires over the project. A site visit would be useful to understand existing conditions at the buildings; however, a half-day to full-day site visit will consume roughly \$2500-4000 of the proposed budget.

Limitations of the work include the following:

- BSC does not perform energy modeling, including "what if" comparisons of various retrofit measures.
- BSC does not have expertise in construction cost estimation, and will not provide cost estimates associated with various retrofit measures.
- Mechanical, electrical, and plumbing/MEP systems are under the purview of the MEP engineer; this is not BSC's area of specialization. However, BSC can provide some limited conceptual guidance on items such as non-fossil fuel equipment options.
- BSC is not a structural engineering firm, and cannot opine on the structural condition of the building.

Information on BSC personnel can be found on our website at:

<http://buildingscience.com/building-science-corporation-team>

BSC requires a **\$5,000 minimum project fee** for hourly contracts. The minimum project fee is due prior to commencing consulting services. Consulting hours will be billed against the minimum project fee until exhausted, after which, hours will be billed to the client. The contract balance will be invoiced at the end of each month. All payments are due within 30 days of invoicing. Any unused balance of the minimum project fee will not be refunded back to the client.

***This contract has a limited active term of one (1) year from signing/acceptance. If the \$5000 minimum fee is not consumed with BSC billable time before the end of the year term, the remaining balance will be retained by BSC.***

**January 16, 2022 – PS 2024.010 - Town of Truro Energy Retrofit Enclosure Consulting - Truro MA**

Please note: Our invoices are due within 30 days of receipt. A service charge of 1.5% will be applied to the unpaid balance starting 30 days after the due date. Interest will start to accrue at a rate of 1.5% per month until the outstanding balance has been paid, or 18% per year. We reserve the right to stop work for invoices not paid within 30 days of receipt.

BSC's W-9 form and blank/sample certificate of insurance (COI) are attached for reference.

Consulting services (such as analysis, document generation, correspondence, time on site, etc.) as well as travel time is billed at the above hourly rates. The contract rates will be valid through the end of the 2024 calendar year.

Expenses are billed at actual cost and are separate from the hourly rates listed above. Common expenses include airfare, hotel, rental car, fuel, parking, taxi, personal vehicle mileage, etc., as required as part of our consulting services. Out of state travel expenses will include a per diem of \$60 per day, to cover meals and incidentals.

We will make our best efforts to accommodate your requests in a timely manner; however, consulting services will depend on current time availability of our engineers and prompt responses will not always be possible.

If you agree with this proposal, please sign and date this letter in the area provided and return an original copy to us along with the **\$5,000 minimum project fee** at your earliest convenience. Please send the signed copy to:

Building Science Corporation  
70 Main Street  
Westford, MA 01886

Receipt of the letter and minimum project fee are required prior to commencing consulting services.

Very truly yours,



Kohta Ueno  
Principal, Building Science Corporation

**BY SIGNING THIS LETTER BELOW, YOU ARE ENTERING INTO A BINDING LEGAL AGREEMENT, CONSISTING OF THIS LETTER AND THE STANDARD TERMS AND CONDITIONS ATTACHED. ASK TO HAVE EACH TERM YOU DO NOT UNDERSTAND FULLY EXPLAINED TO YOU SO THAT YOU UNDERSTAND THE AGREEMENT YOU ARE MAKING.**

**Contracted For: PS 2024.010 - Town of Truro Energy Retrofit Enclosure Consulting  
Building Science Consulting Services  
Truro MA**

**Contract Fee:**

• 2024 BSC Hourly Rate Schedule	\$275/hour (Principals) \$225/hour (Senior Associate) \$175/hour (Associates)
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**Contract Term: Valid through December 31, 2024**

**Agreed and Approved By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Appendix A**

**BUILDING SCIENCE CORPORATION**  
**STANDARD TERMS AND CONDITIONS**

**1.0 BILLING**

- 1.1 Other than specified above or otherwise agreed, Invoices will be issued every month.
- 1.2 Additional Reimbursable Expenses are billed separately and are in addition to the professional fees. Such expenses include travel expense, expense of professional liability insurance requested by the Client dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally carried by Building Science Corporation or its sub-consultants, and other similar direct Project-related expenditures. All Building Science Corporation's work product and Services shall be in the English language. In the event translation or interpretation Services are required then any related expense shall be reimbursable to Building Science Corporation. All reimbursable expenses will be billed at actual cost. Expenses paid directly by you will not be shown in our billing. Electronic records of expenses shall accompany each billing invoice.

**2.0 WARRANTY AND LIABILITY**

- 2.1 Building Science Corporation maintains commercial insurance policies, evidence of which will be provided upon request. All policies are subject to annual renewal. Building Science Corporation will not undertake to guarantee continued coverage beyond the individual policy term.
- 2.2 Building Science Corporation's comprehensive general and automobile liability insurance coverage shall not exceed \$1,000,000.
- 2.3 Building Science Corporation, its employees, subcontractors and agents shall not be liable for indirect or consequential damages, including without limitation loss of use and loss of profits.
- 2.4 Building Science Corporation is not providing structural engineering or other engineering services with respect to the project or the work. Any and all structural engineering work or other engineering work shall remain the responsibility of the Structural Engineer or Engineer of Record. Building Science Corporation is not commenting on the adequacy of the structural design or its load carrying ability.
- 2.5 Building Science Corporation is not and shall not act as the Architect of Record nor shall it act as the Engineer of Record for the project. All final determinations as to compliance with the applicable codes and standards shall be reviewed and approved by the Architect of Record or the Engineer of Record as may be required under the applicable codes and standards and the Authority Having Jurisdiction.
- 2.6 Building Science Corporation shall be entitled to rely upon the accuracy, timeliness and completeness of services and information furnished by the Client, the Architect of Record, the Engineer of Record, the Contractor and the Client's Consultants.
- 2.7 Any unauthorized use of the materials or reports provided by Building Science Corporation shall be at the Client's sole risk and without liability to Building Science Corporation and Building Science Corporation's subconsultants. Moreover, no one other than the Client shall be entitled to use, rely upon or otherwise make use of any report or other material provided to the Client by Building Science Corporation without its written authorization and further any third party so using such report or materials shall do so at their own risk and without any obligation or liability to Building Science Corporation.
- 2.8 If specifically included in the Scope of Work, Building Science Corporation will perform site reviews. Building Science Corporation's site reviews are for the limited purpose of assisting the Architect of Record or Engineer of Record or Contractor in monitoring the construction of the building enclosure and mechanical systems and does not absolve the Architect of Record, Engineer of Record or Contractor from carrying out all construction in accordance with the Contract documents and applicable codes and standards. By reason of its site reviews or observations of the work in progress, Building Science Corporation shall not supervise, direct or have control over the work, nor shall Building Science Corporation have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, for occupational health and safety precautions and programs incident to the work of the Contractor or for any failure of the Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to the Contractor furnishing and performing the work or Architect of Record or Engineer of Record supervising the work. Building Science Corporation does not guarantee the performance of the Contractor and does not assume any responsibility or liability for the Contractor's failure to furnish and perform the work in accordance with the Contract documents.
- 2.9 In such instances where Building Science Corporation has agreed to site reviews its obligation shall be limited to the finite number of field visits specified in the Scope of Work.

**3.0 TERMINATION OR SUSPENSION**

- 3.1 Failure of the Client to make payments to Building Science Corporation in accordance with this Agreement shall be considered cause for termination or, at Building Science Corporation's option, cause for suspension of performance of Services under this Agreement. In such event, Building Science Corporation shall have the right to immediately withhold Building Science Corporation's Service(s), including the Instruments of Service, without notice. Prior to suspending Service(s), Building Science Corporation shall give seven days written notice to the Client. In the event of a suspension of Services due to failure of the Client to make payments to Building Science Corporation, Building Science Corporation shall have no liability to the Client for delay or damage caused to the Client because of such suspension of Services. Before resuming Services, Building Science Corporation shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of Building Science Corporation's Services. Building Science Corporation's fees for the remaining Services and the time schedules shall be equitably adjusted.
- 3.2 If the Client, for more than 30 consecutive days, suspends the Project, Building Science Corporation shall be paid for Services performed prior to notice of such suspension and for expenses incurred as a result of the interruption and resumption of Building

## January 16, 2022 – PS 2024.010 - Town of Truro Energy Retrofit Enclosure Consulting - Truro MA

Science Corporation's Services. Building Science Corporation's fees for the remaining Services and the time schedules shall be equitably adjusted at Building Science Corporation's good-faith discretion.

- 3.3 If the Project is suspended or Building Science Corporation's Services are suspended for more than 90 consecutive days, Building Science Corporation may terminate this Agreement by giving not less than seven days written notice.
- 3.4 This Agreement may be terminated by either party upon not less than seven days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- 3.5 In the event of termination not the fault of Building Science Corporation, Building Science Corporation shall be entitled to payment for Services performed prior to termination, together with Reimbursable Expenses then due. Additionally, Building Science Corporation shall be paid for expenses directly attributable to termination for which Building Science Corporation is not otherwise paid.
- 3.6 Any notice required hereunder may be given by courier service or mail, with return receipt requested, to the address set forth as follows:

To: Building Science Corporation, Attention Peter Baker, President, 70 Main Street, Westford, MA 01886, pbaker@buildingscience.com, unless otherwise requested in writing as provided by this provision.

To: Client at the address first written in this Agreement unless otherwise requested in writing as provided by this provision.

Notice shall be deemed received five business days after forwarding by courier or seven business days after being sent by mail with return receipt requested.

### 4.0 MISCELLANEOUS PROVISIONS

- 4.1 Nothing in this Agreement (express or implied) shall constitute or be deemed to constitute between the parties named in this Agreement the relationship of partners or partnership or employer - employee and neither Party shall have any authority to bind the other in any way.
- 4.2 The headings of paragraphs, sections and other subdivisions of this Agreement are for convenient reference only. They shall not be used in any way to govern, limit, modify, construe this Agreement or any part or provision or otherwise be given any legal effect.
- 4.3 No modification or alternation of any term or condition of this Agreement shall be valid unless in writing signed by persons duly authorized on behalf of each party.
- 4.4 This Agreement contains the entire understanding of the parties with reference to the subject matter of this Agreement and there is no other understanding, agreement, warranty or representation whether express or implied in any way extending, defining or otherwise relating to the provisions of this Agreement or binding on the parties with respect to the subject matter of this Agreement. Any previous agreements, understandings and negotiations on the subject matter shall cease to have any legal effect.
- 4.5 All work Building Science Corporation performs under this Agreement is a "Service" and all documents produced are Instruments of that service (the "Instrument(s) of Service").
- 4.6 Force Majeure: Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, insurrections, acts of terrorism or any other cause beyond the reasonable control of the party whose performance is affected.
- 4.7 Each provision of this Agreement shall be considered severable and, if for any reason any provision or provisions are determined to be invalid or contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement, which are still valid.
- 4.8 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and its Courts shall have exclusive jurisdiction. All matters concerning this Agreement and its validity, performance or breach shall be governed by the laws of the Commonwealth of Massachusetts, and the parties submit and consent to the jurisdiction of the courts of the Commonwealth of Massachusetts, including Federal Courts located in the Commonwealth of Massachusetts, in any action brought to enforce (or otherwise relating to) this Agreement.
- 4.9 Unless explicit reference is made to the intention to override Appendix A, if there shall be any conflict or contradiction between any provision contained in Appendix A and the Agreement or any other contractual obligation made part of this Agreement, then the provisions contained in Appendix A shall be deemed to be the controlling provision.
- 4.10 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all constituting together one and the same instrument, this being one of the counterparts.
- 4.11 The terms and conditions of this Agreement shall extend to and bind the parties named in this Agreement and their respective heirs, successors and assigns. Neither this Agreement nor any of the rights and obligations memorialized in this Agreement shall be assigned by either party hereto without the prior written consent of the other party hereto which shall not be unreasonably withheld.

## Request for Taxpayer Identification Number and Certification

**Give Form to the  
requester. Do not  
send to the IRS.**

▶ Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

<b>Print or type. See Specific Instructions on page 3.</b>	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. <b>Building Science Corporation</b>		
	2 Business name/disregarded entity name, if different from above		
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.		4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  Exempt payee code (if any) <b>5</b>  Exemption from FATCA reporting code (if any) _____  <small>(Applies to accounts maintained outside the U.S.)</small>
	<input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____ <b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is <b>not</b> disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ▶ _____		
	5 Address (number, street, and apt. or suite no.) See instructions. <b>70 Main Street</b>		Requester's name and address (optional)
	6 City, state, and ZIP code <b>Westford, MA 01886</b>		
	7 List account number(s) here (optional)		

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

<b>Social security number</b>									
				-					
<b>or</b>									
<b>Employer identification number</b>									
0	4	-	3	1	5	2	7	4	8

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶ <b>January 17, 2018</b>
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**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/16/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Hanson Insurance Agency 632 County Road PO Box 668 Hanson MA 02341		<b>CONTACT NAME:</b> Margaret McDermott <b>PHONE (A/C, No, Ext):</b> (781) 293-6376 <b>E-MAIL ADDRESS:</b> Marge@hansonins.com <b>FAX (A/C, No):</b> (781) 293-2969	
<b>INSURED</b> Building Science Corp 70 Main Street Westford MA 01886		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Graphic Arts Mutual Insurance NAIC # 25984 <b>INSURER B:</b> Utica Mutual Insurance Company NAIC # 25976 <b>INSURER C:</b> Lloyds of London <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	

**COVERAGES**      **CERTIFICATE NUMBER** 03/2020/101      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY BE REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> BROAD FORM CONTRACTUAL <input checked="" type="checkbox"/> NO HABITATIONAL EXCLUSIONS GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y		4427387	03/19/2020	03/19/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV. INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Employment Practices \$ 300,000
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y		4427387	03/19/2020	03/19/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CULP4461398	03/19/2020	03/19/2021	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	<b>PROFESSIONAL LIABILITY</b> RETRO DATE 07/24/2014			ANE219149820	03/19/2020	03/19/2021	Occurrence \$10,000 ded \$ 1,000,000 Aggregate \$30,000 ded \$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Certificate holder is granted waiver of subrogation and is an additional insured on all policies as required by written contract on all policies except the professional liability. Umbrella is forms follows. All coverage evidence by this certificate are primary and non-contributory to those provided by certificate holder.

<b>CERTIFICATE HOLDER</b>     CA 92546-8010	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

Select Board Meeting Minutes

August 8, 2023, Meeting (Hybrid)

Via Zoom Platform

Select Board Members Present: Kristen Reed-Chair, Susan Areson-Vice Chair, John Dundas-Clerk, Robert Weinstein-Member, Stephanie Rein-Member

Select Board Members Absent:

Others Present: Darrin Tangeman-Town Manager; Kelly Clark-Assistant Town Manager; Jamie Calise-Police Chief; Jarrod Cabral-DPW Director; Damion Clements-Director of Community Services; Katie Thibodeau-Office Assistant, Community Services Department; Harry Irwin (Applicant to Serve); Jim Sloman (Applicant to Serve); Nancy Medoff (Truro Voter); Bob Higgins-Steele (Truro Voter); Kevin Grunwald (Truro Voter); Bruce Jensen (Senior Cost Estimator/Section Manager at CHA Consulting, Inc.); Tim Hickey (Truro Voter); Gail Wickstrom (Truro Voter); Debbie White (Truro Voter); Carol Harris (Chair of the Climate Action Committee); Joan Holt (Truro Voter)

Chair Reed called the meeting to order at 5:00 pm and read the information for the public to access the meeting and participate. Chair Reed introduced the Members and Town staff present.

**PUBLIC COMMENT**

Chair Reed recognized the following individuals who commented on various topics not on the agenda in accordance with the Open Meeting Law: Ms. Medoff, Mr. Higgins-Steele, Mr. Grunwald, Mr. Weinstein, and Town Manager Tangeman.

**PUBLIC HEARINGS**

None

**INTRODUCTION TO NEW EMPLOYEES**

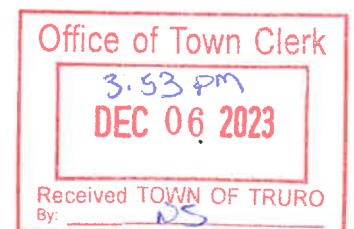
- A. Katie Thibodeau, Office Assistant, Community Services Department

Director of Community Services Clements introduced Ms. Thibodeau and Members welcomed her to the Community Services Department.

**BOARD/COMMITTEE/COMMISSION APPOINTMENTS**

- A. Interview and Possible Appointment; Harry Irwin-Energy Committee

Chair Reed announced that the Energy Committee currently has a vacant one-year Alternate position and then led the interview with Mr. Irwin who appeared via Zoom.



**Member Weinstein made a motion to appoint Harry Irwin to a one-year Alternate term on the Energy Committee which will expire June 30, 2024.**

**Vice Chair Areson seconded the motion.**

**Roll Call Vote:**

**Vice Chair Areson - Aye**

**Member Dundas - Aye**

**Member Weinstein - Aye**

**Member Rein - Aye**

**Chair Reed – Aye**

**So voted, 5-0-0, motion carries.**

**B. Interview and Possible Appointment; Jim Sloman-Pamet Harbor Commission**

Chair Reed led the interview with Mr. Sloman who appeared via Zoom.

**Member Rein made a motion to appoint Jim Sloman to a one-year Alternate term on the Pamet Harbor Commission which will expire June 30, 2024.**

**Member Weinstein seconded the motion.**

**Roll Call Vote:**

**Vice Chair Areson - Aye**

**Member Dundas - Aye**

**Member Weinstein - Aye**

**Member Rein - Aye**

**Chair Reed – Aye**

**So voted, 5-0-0, motion carries.**

**STAFF/COMMITTEE UPDATES**

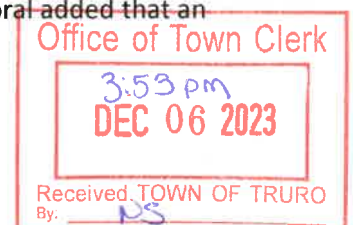
**A. Department of Public Works Facility Study Update and Peer Review Findings Presentation;  
Presenter: Jarrod Cabral, Public Works Director**

DPW Director Cabral provided an update on a meeting with Cape Light Compact regarding federal tax incentives and the Public Works Facility Study. Mr. Jensen reviewed the Peer Review findings to the Members. Following the presentation, Members commented or asked questions regarding the following highlighted topics: the differential in grading, costs associated with a substantial retaining wall, the impact of waiting and how it would increase the cost of this project (approximately 4% increase per year).

Chair Reed then asked if anyone from the public wished to comment, and Mr. Hickey had several questions regarding the project.

**B. Update on Relocation of Buildings to 25 South Highland Road Presenters: Jarrod Cabral,  
Public Works Director**

DPW Director Cabral provided an update on this topic to the Members and stated that there will be a public announcement on the Town website regarding this update. DPW Director Cabral added that an





update will also be mailed to direct Abutters. Without any unforeseen issues arising, DPW Director Cabral was hopeful that occupancy could occur in the spring or early summer of 2024.

**TABLED ITEMS**

None

**SELECT BOARD ACTION**

- A. Review Phase 1 of Climate Action Plan: Assess Vulnerabilities Presenter: Carol Harris, Chair of the Climate Action Committee

Prior to Chair Harris' presentation, Chair Harris expressed concern about the Town of Truro Select Board Agenda Item that had added language regarding "workload and time impacts to staff time". Chair Harris said that may not be true, and further, she was not notified ahead of this meeting of the added language. Members and Town Manager Tangeman noted that this can be corrected with a notation under a specific Select Board Agenda Item that this was the Town staff analysis of potential of Truro resources that may be utilized.

Chair Harris provided an overview and a review of Phase 1 of the Climate Action Plan.

After the presentation, Members commented and discussed the following highlighted topics with Town Manager Tangeman, and Chair Harris: the current status of lobstering in Truro, the reported lack of oxygen in the water, impact of economic loss of commercial fishing, ways to potentially create a climate action coordinator role in Town Hall dedicated to assist the Health & Conservation Agent and the Climate Action Committee, a possible Climate Summit, the concern about water, and the Members' support of an Article to create a climate action coordinator position and present the Article at Town Meeting, and adaptation to mitigate current and future climate events.

Assistant Town Manager Clark noted that there would not be "free cash" to fund a climate action coordinator until Spring 2024 due to the way the Special Town Meeting is structured but Town staff can search for potential grant awards as a solution.

Town Manager Tangeman added that through information, based upon market analysis provided by the Town consultant, the hiring range for a full-time climate action coordinator would be between \$61,000 - \$79,000 per year.

**Member Rein made a motion that the Select Board appoint John Dundas and Stephanie Rein to work with the Climate Action Committee and all associated departments, and Town staff, to organize a Truro Climate Summit at a time yet to be determined.**

**Member Weinstein seconded the motion.**

**Roll Call Vote:**

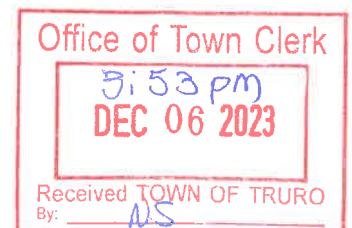
**Vice Chair Areson - Aye**

**Member Dundas - Aye**

**Member Weinstein - Aye**

**Member Rein - Aye**

**Chair Reed - Aye**



So voted, 5-0-0, motion carries.

Member Rein made a motion to direct the Select Board to create an Article for Spring Town Meeting to establish a climate action coordinator position and then seek funding for the position.

Member Weinstein seconded the motion.

Roll Call Vote:

Vice Chair Areson - Aye

Member Dundas - Aye

Member Weinstein - Aye

Member Rein - Aye

Chair Reed – Aye

So voted, 5-0-0, motion carries.

After the vote, Chair Reed recognized Ms. Holt who commented on the topic.

B. South Highland Road Discussion on Safety Issues Related to Traffic Speed Presenter: Jamie Calise, Police Chief, and Jarrod Cabral, Public Works Director

Chief Calise provided background and an overview of the safety issues related to South Highland Road with additional information provided by DPW Director Cabral.

After the presentation, Members commented and discussed the following highlighted topics with Chief Calise and DPW Director Cabral: signage locations, changing a route with the Cape Regional Transit Authority, the presence of temporary business signs along the roadway which exceed the time allowed by the Bylaw, the state has the only authority to change speed limits in Town, width of South Highland Road, and potential fog lines or double yellow lines to slow motorists down.

Chair Reed recognized the following individuals from the public who commented on this topic: Mr. Hickey, Ms. Wickstrom, and Ms. White.

### **CONSENT AGENDA**

A. Review/Approve and Authorize Signature:

1. MADOT Event Notification Form for Truro Treasures Weekend-September 16th-Highland Road-Road Closure

B. Review and Approve Appointment Renewals: Mary Rose-Community Preservation Committee; Richard Larkin-Historical Commission; Jennifer Shannon-Taxation Aid Committee

C. Review and Approve Select Board Minutes: Regular Meeting Minutes of 5.23.2023, Open Portion of Executive Session Minutes 6.16.2023

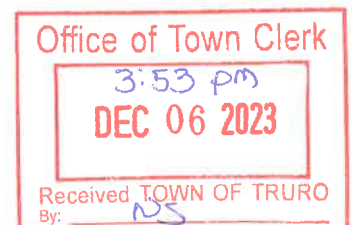
Prior to the vote on the Consent Agenda, Chair Reed announced her recusal on the Highland Road vote.

Chair Reed made a motion to approve the Consent Agenda as printed in the packet with the recusal of the Highland Road vote.

Member Rein seconded the motion.

Roll Call Vote:

Vice Chair Areson - Aye



Member Dundas - Aye  
Member Weinstein - Aye  
Member Rein - Aye  
Chair Reed – Aye  
So voted, 5-0-0, motion carries.

**SELECT BOARD REPORTS/COMMENTS**

Member Rein stated that she had nothing to share this evening.

Member Weinstein said that he recently attended the recent OneCape Summit and he said that Truro should be ashamed of itself as so little has been accomplished regarding the housing challenges. It has adversely affected businesses and the ability of younger residents to remain in the Town. Member Weinstein stated his discouragement in the way the Town has not acted in addressing the housing challenges. Member Weinstein also commented on the unacceptable connectivity provided by Comcast that is constantly interrupted in Barnstable County.

Member Dundas thanked the Lower Cape Ambulance Association for its years of dedicated service to the community as the service ends on September 1, 2023. Member Dundas noted that recently there was a Provincetown/Truro Recreation Center get together at the Truro Central School and the feedback was very positive.

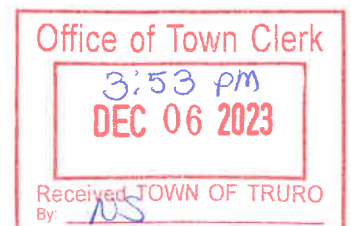
Vice Chair Areson thanked the Lower Cape Ambulance Association for their decades of service to Truro. Vice Chair Areson said that she is hearing great things about the Recreation Department from parents and families, and many have noted Austin Smith’s wonderful contributions. Vice Chair Areson also provided updates on recent School Committee and Board of Health meetings and actions. Vice Chair Areson also noted that Michael Fee had been recently appointed to the Finance Committee.

Chair Reed thanked the Members for their hard on all the projects which they undertake and also noted how well the Town staff communicates with the public.

**TOWN MANAGER REPORT**

Town Manager Tangeman reminded the public that the deadline to apply for childcare vouchers is August 31, 2023. Town Manager Tangeman noted that the Warrant for the Special Town Meeting closes on August 10, 2023, and that four citizens’ petitions have been received so far. Town Manager Tangeman reported that eight individuals attended his first Coffee with the Town Manager event last Monday and that he was impressed with the turnout and the topics discussed so he may do one or two of these events per month moving forward. Town Manager Tangeman highlighted that there were concerns about seasonal pet beach closures and the plan for the Walsh cottages. The educational panel discussion and municipal government forum for the community will be held on September 14, 2023, at 5 pm, at the Community Center. This will be a hybrid forum and more information will be released soon.

Town Manager Tangeman then reviewed the agenda for the next Select Board meeting.



Following the Town Manager Tangeman's report, Chair Reed asked Town Manager Tangeman for an update on the Housing Production Plan (HPP). Town Manager Tangeman reported that it was with the Planning Board for review. Once the review was completed, it would come to the Select Board.

Chair Reed and Town Manager Tangeman briefly discussed the staffing for the Building Committee (ad hoc or standing) and if the topic should be added to a future agenda. Assistant Town Manager Clark noted that the last time the charge was reviewed for the Building Committee was in 2011 so that should be the first order of business.

Chair Reed recognized Mr. Hickey who reminded the public of the upcoming "Concerts in the Summer" event this Thursday, at 6:30 pm, behind the library. Over 100 people have attended each of the most recent concerts. This will be the 6<sup>th</sup> of 9 concerts this summer and these events are free to the public.

**Member Rein made a motion to adjourn at 7:50 pm.**

**Vice Chair Areson seconded the motion.**

**Roll Call Vote:**

**Vice Chair Areson - Aye**

**Member Dundas - Aye**

**Member Weinstein - Aye**

**Member Rein - Aye**

**Chair Reed - Aye**

**So voted, 5-0-0, motion carries.**

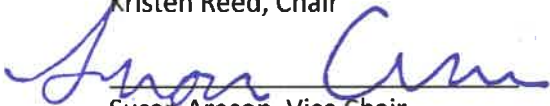
Respectfully submitted,



Alexander O. Powers  
Board/Committee/Commission Support Staff



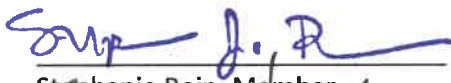
Kristen Reed, Chair



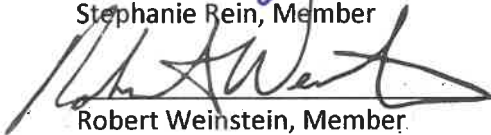
Susan Areson, Vice Chair



John Dundas, Clerk



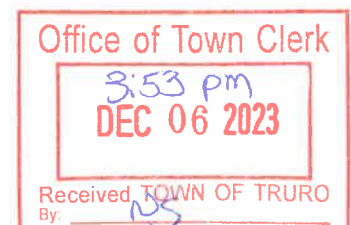
Stephanie Rein, Member



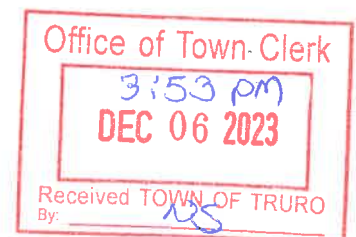
Robert Weinstein, Member

**Public Records Material Attachments**

Legal Notice



Application to Serve – Harry Irwin  
Application to Serve – Jim Sloman  
CHA Peer Review  
Climate Action Plan  
2023 Comments from DOT  
Previous Speed Study  
2017 Email Comments from DOT  
Chief of Police Kyle Takakjian’s Speed Study Request  
Historic Speed Study Documents  
MADOT Event Notification Form  
Application to Serve – Mary Rose  
Application to Serve – Richard Larkin  
Application to Serve – Jennifer Shannon



**Public Comment Climate Action Committee 2/1/2024**  
For the record

Preface:

Select Board Goals 2024

*14 The Select Board will provide support to and collaborate with the Climate Action Committee and the Energy Committee on the goals of creating a Climate Action Plan for the Town of Truro, and researching the hiring of a Climate Action Agent, as well as to work with the Climate Action Committee and Energy Committee to develop a policy memorandum that facilitates and guides progress in all relevant areas toward a "Net Zero Truro" by 2050, and will ask for updates at least twice per year. The Board will also revise the charges of the Energy Committee and the Climate Action Committee to incorporate the directives from Article 53 of the 2022 Annual Town Meeting.*

*Goals Addressed: A, C, D, E*

*Select Board Ambassador: Stephanie Rein*

The SB voted to fund a climate agent position using revenue from solar arrays.

Why not dedicate the current \$250K existing Metering Credits toward a half-time 5 year /\$50 K position or a full time 2.5 /\$100K/year full time position?

Revenue from future solar arrays could start an enterprise fund.

The EC has been working for 2+ years on generating more revenue from additional solar sites (Transfer Station, Burn Dump, library/COA parking lot and perhaps the school parking lot)

When I discussed solar array procurement next steps w/ the Town manager, I said I would prefer all or most the revenue from future arrays go into municipal decarbonization

He said the Town might consider funds above the Climate agent position's needs might be considered for other uses (a SB decision) but the SB had voted that revenue from solar arrays be dedicated to a climate agent position.

I said we could fight about that later.

I guess its later

Last summer the EC chair requested meeting with Town staff to discuss such a fund to municipal buildings decarbonization.

There was no meeting

Other towns :Brewster, Orleans, Chatham and Eastham, are sharing a climate agent.

Narrative:

"Hi Bob - I'll provide the information I know from Brewster's point of view.

Brewster used funding from their Green Communities designation grant for the first-year funding for a part-time Energy Manager position. We worked through CLC and Caitlin Cantella was hired by CLC and worked one day a week on Brewster matters. The Town then dedicated \$25,000/year (?) of the money it receives from the Captain's Golf Course driving range parking area solar canopy for continuing support of a part-time energy manager.

After Caitlin left CLC, the additional Towns expressed interest in combining individual part-time efforts to establish a shared full-time position. CLC is again involved in being the employer of that full time person for the 4 towns (Brewster, Chatham, Orleans as far as I am

aware. I thought that the hire was supposed to be made to start the first of this year but nothing was mentioned at the January Brewster Energy and Climate Action Committee meeting.

I'll let you know more as I find out information.

Colin"

I hope the CAC has contacted CLC, CCC and others to assess Truro's needs and help with the Climate agent hiring process.

Let's have a conversation about this.

Respectfully,

Bob Higgins-Steele, Truro voter

PDF attached

Bob Higgins-Steele  
PO Box 1039  
Truro, Ma 02666  
978-424-5749





# THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL  
ATTORNEY GENERAL

(617) 727-2200  
[www.mass.gov/ago](http://www.mass.gov/ago)

February 7, 2024

**VIA E-MAIL ONLY**

Robert Higgins-Steele  
[energy@truro-ma.gov](mailto:energy@truro-ma.gov)

**Re: Your Public Records Request**

Dear Robert Higgins-Steele:

I write in response to the public records requests made pursuant to the Massachusetts public records law, G.L. c. 66, § 10, and received on January 18, 2024. By using the e-form available through our website, you requested copies of records from the Office of the Attorney General (AGO), specifically:

1. Written confirmation described below that Municipalities may engage with PowerOptions to procure or lease solar arrays on municipal properties:
  - “In 2016, PowerOptions sought and received written confirmation from the Massachusetts Attorney General’s Office, Fair Labor Division, Bid Unit (“AGO Bid Unit”) that projects procured through a PowerOptions competitive program were exempt from the public construction competitive bidding requirements of G.L. c. 149 and c. 30, § 39M, pursuant to G.L. c. 164, § 137. The Attorney General’s written confirmation of the exemption from the public construction laws involved competitively procured projects under c. 164 § 137 that were coupled with a power purchase agreement. As further set forth below and as further confirmed by the AGO Bid Unit in 2022, an agreement to engineer, procure, and construct (“EPC”) and sell a service or similar product to a municipality or other political subdivision, which is a member of PowerOptions, is likewise exempt from the public construction competitive bidding requirements of G.L. c. 149 and c. 30, § 39M, pursuant to G.L. c. 164, §”
2. Further, you requested to know if that decision is still in effect.

As a preliminary matter, please note the following principles concerning public records requests. First, the Massachusetts Public Records Law (PRL), G.L. c. 66, § 10, provides for the identification, review, and disclosure of records that exist and are in the AGO’s custody. It does not require the

creation of a record<sup>1</sup> and consequently, does not contemplate the answering of questions or requests styled as interrogatories that involve the creation of a narrative or an arrangement of records in order to be responsive. Therefore, please note that in regard to Request #2, we are not required to respond to the Request as to whether the decision is still in effect or not.

Attached to this correspondence, please find 8 pages of documents responsive to your request and subject to disclosure under the public records law, G.L. c. 66, § 10 and G.L. c. 4, § 7, cl. 26.

You have the right to appeal this response to the Supervisor of Records pursuant to G.L. c. 66, § 10A(a), and to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under G.L. c. 66, § 10A(c).

Very truly yours,



Meryum Z. Khan  
Deputy Chief  
Fair Labor Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
(617) 963-2432  
[meryum.khan@mass.gov](mailto:meryum.khan@mass.gov)

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<sup>1</sup> See G.L. c. 66 § 6A(d); 32 Op. Atty. Gen. 157, 165 (May 18, 1977).

<sup>2</sup> See also G.L. c. 66A, 2(c); 940 CMR 11.04(1).

**Nosal, Jed**

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**Subject:** Chapter 164, sec. 137 Exemption

**From:** "Anderson, Deborah (AGO)" <[deborah.anderson@state.ma.us](mailto:deborah.anderson@state.ma.us)>

**Date:** September 16, 2016 at 8:17:55 AM EDT

**To:** "Nosal, Jed M." <[JNosal@brownrudnick.com](mailto:JNosal@brownrudnick.com)>

**Subject: Re: Chapter 164, sec. 137 Exemption**

Attorney Nosal,

Based on the facts you presented, this Office has concluded that FHA's SPSA and easement are exempt from the competitive bidding laws pursuant to M.G.L. c. 164, sec. 137.

Please email me if you have any further questions.

Deborah A. Anderson  
Assistant Attorney General  
Construction Bid Unit  
617-963-2371

---

**From:** Nosal, Jed M. <[JNosal@brownrudnick.com](mailto:JNosal@brownrudnick.com)>

**Sent:** Tuesday, September 13, 2016 4:41 PM

**To:** Anderson, Deborah (AGO)

**Subject:** Chapter 164, sec. 137 Exemption

Attorney Anderson –

This firm represents PowerOptions. As discussed briefly on Monday, I am writing to seek guidance from the Bid Unit of the Office of the Attorney General that a Solar Power & Services Agreement (SPSA) between the Fairhaven Housing Authority, a member of PowerOptions, and Solect, a solar developer, is exempt from the bidding requirement pursuant to G.L. c. 164, sec. 137. As you may recall, this issue is similar to that raised in a complaint that was made by the Foundation for Fair Contracting of Massachusetts in the fall of 2014 involving Bristol County Community College. In that matter, the Bid Unit concluded (via telephone conversation with counsel for the developer) that the development of a parking canopy solar project under an SPSA and a related license were exempt from the public construction competitive bidding laws pursuant to G.L. c. 164, § 137.

## **Background**

*PowerOptions* is a non-profit energy buying consortium that was created by the Massachusetts Health and Education Facilities Authority in 1996. It was formed specifically to “help nonprofits consolidate their energy buying influence.” PowerOptions consolidates that buying power of its 500+ members, which includes nonprofit institutions, universities, housing authorities and municipalities, among others.

*Solect* is a full-service solar photovoltaic (PV) project developer and installer based in Hopkinton, Massachusetts, delivering smart solar and energy management solutions to help businesses and organizations reduce energy costs. As an industry leader in commercial-scale solar energy, Solect takes a practical approach to the development, installation and on-going support of each system.

*Fairhaven Housing Authority* (FHA) is a housing authority organized pursuant to G.L. c. 121B, Section 3.

*PowerOptions Small Solar Program* is a competitively procured program for the purchase of renewable energy. Under this program, PowerOptions members may enter into a competitively procured pre-negotiated SPSA for the delivery of onsite renewable power at a guaranteed price for 20 years. Under the SPSA, Solect manages all aspects of the project including design, financing, construction, and on-going maintenance. PowerOptions members pay for the power generated, usually at a cost below their current delivered price and guaranteed for 20 years. Access to public facilities to install these projects is through a deed of easement

### **The Fairhaven- Solect SPSA and Easement**

The Fairhaven SPSA has a term of 20 years. Pursuant to the terms of the SPSA, Solect is required to design, engineer and install and construct the Photovoltaic (PV) System including obtaining all necessary permits. Solect, not FHA, will be the owner and operator of the PV System. Costs for operation, maintenance and repair are the sole responsibility of Solect. FHA has no responsibility for inspecting or monitoring the system. The PV system is the property of Solect or its financing party. FHA does have the option to purchase the PV system but such purchase is subject to a determination of fair market value. Absent FHA's option to purchase the PV system, Solect is obligated to remove the system at its own cost.

Pursuant to the SPSA, FHA is agreeing to purchase 100% of the Solar Services generated by the System, *i.e.*, the renewable energy generated by the PV System. Significantly, FHA is not obligated to pay for and is not contracting to acquire the PV System under the SPSA, nor is FHA paying for the installation or construction of that system.

In addition, the FHA has granted Solect an easement to use rooftops of certain building for installation of the PV system. This easement is for 20 years. Under the SPSA and Easement, Solect will install a PV system with rooftop rail-mounted panels and transformers. The system will be interconnected behind the building's main meter and will have no excess generation under current usage patterns.

### **The FHA SPSA and Easement are exempt from the competitive bidding laws pursuant to M.G.L. c. 164, § 137.**

Public entities, such as FHA, are authorized, by statute, to enter into a power purchasing agreement and dispose of real property by license or lease without going through a competitive process. *See* M.G.L. c. 164, § 137. That statute provides:

Notwithstanding any general or special law to the contrary, (i) any non-profit institution in the commonwealth or any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth,

including the executive, legislative and judicial branches of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, may, unless located within the boundaries of a community served by a municipal light department, participate in and become a member of any competitively procured program organized and administered, under this chapter, by or on behalf of any public instrumentality of the commonwealth or of any subsidiary organization thereof for the purpose of group purchasing of electricity, natural gas, telecommunications services or similar products; (ii) the disposition of municipal or state real property by lease, easement or license for renewable energy shall not require competitive bidding when part of a power purchase agreement or a net metering agreement in a program organized and administered under this section; (iii) any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, including the executive, legislative and judicial branches of the commonwealth, may, on behalf of the commonwealth, dispose of real property, by lease, easement or license, which is part of a power purchase agreement or net metering agreement in a program organized and administered under this section, including, but not limited to, construction of renewable energy projects on state property; and (iv) any renewable energy project which is part of a power purchase agreement or net metering agreement in a program organized and administered under this section and considered to be public construction shall be subject to sections 26 to 27D, inclusive, of chapter 149.

The FHA solar project is being conducted under the terms of a SPSA pursuant to the PowerOptions Small Solar Program. The PowerOptions Small Solar Program is a competitively procured program that is organized and administered under section 137 of chapter 164 on behalf of public instrumentalities of the Commonwealth for the purpose of purchasing electricity and similar products. PowerOptions held a competitive solicitation process through which Solect was selected as a private partner in the PowerOptions Small Solar Program. FHA is a member of PowerOptions, and FHA's SPSA and easement with Solect fall squarely within M.G.L. c. 164, § 137 as "group purchasing of electricity, natural gas, telecommunications services or similar products" and "disposition of real property by lease, easement or license for renewable energy". *Id.* The SPSA is a power purchase agreement or PPA, pursuant to which FHA has granted an easement to Solect to install and construct a privately-owned and operated PV system.

Pursuant to M.G.L. c. 164, section 137, FHA was not required to obtain competitive bids pursuant to c. 149, sec. 44A when entering into its agreements with Solect pursuant to PowerOptions Small Solar Program.

Thank you for your review of this matter. We are happy to answer any additional questions regarding this issue and look forward to your guidance.

-Jed Nosal



**Jed M. Nosal**

Counsel

Brown Rudnick LLP  
One Financial Center  
Boston, MA 02111  
T: 617-856-8272  
F: 617-289-0708  
M: 617-823-9129  
[jnosal@brownrudnick.com](mailto:jnosal@brownrudnick.com)  
[www.brownrudnick.com](http://www.brownrudnick.com)

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**From:** Anderson, Deborah (AGO)  
**Sent:** Wednesday, July 13, 2022 11:16 AM  
**To:** Nosal, Jed <[Jed.Nosal@wbd-us.com](mailto:Jed.Nosal@wbd-us.com)>  
**Subject:** RE: Follow-up on c. 164 sec. 137 and Competitive Bidding

Hi Jed,

I tend to agree with you that G.L. c. 164, section 137 exempts the proposed project from the competitive bidding laws found in G.L. c. 149 and G.L. c. 30, sec. 39M. That section allows an awarding authority such as a municipality to participate in and become a member of any competitively procured program organized and administered, under c. 164, for the purpose of group purchasing of electricity.

The applicability of that section does not seem to be limited to instances where the Municipality proposes to finance it through a power purchase agreement (PPA) rather than outright ownership.

As you know, the jurisdiction of the Attorney General's Office's Bid Unit is limited to G.L. c. 149, and c. 30, sec. 39M. I cannot give you any definitive advice regarding any other statutes.

Deborah A. Anderson  
Assistant Attorney General  
Construction Bid Unit  
100 Cambridge St., 12<sup>th</sup> floor  
Boston, MA [location]  
One Ashburton Place  
Boston, MA 02108 [mail]  
617-963-2371  
617-722-3066 Fax

[Deborah.Anderson@mass.gov](mailto:Deborah.Anderson@mass.gov)

Office hours: 8:00 AM – 4:00 PM

[COVID-19 Public Bidding Updates](#)

[Public Construction Bidding in MA Frequently Asked Questions](#)

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**From:** Nosal, Jed <[Jed.Nosal@wbd-us.com](mailto:Jed.Nosal@wbd-us.com)>  
**Sent:** Monday, May 2, 2022 1:21 PM  
**To:** Anderson, Deborah (AGO) <[deborah.anderson@mass.gov](mailto:deborah.anderson@mass.gov)>  
**Subject:** RE: Follow-up on c. 164 sec. 137 and Competitive Bidding

**CAUTION:** This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Thanks, Debbie. Here is the additional information on c. 164, sec 137 and the PowerOptions Solar program.

As you know, this firm represents PowerOptions. I am writing to seek guidance from the Bid Unit of the Attorney General's Office that an agreement to engineer, procure, and construct ("EPC") a solar photovoltaic ("PV") system between a municipality, which is a member of PowerOptions, and Solect, a PV project developer, is exempt from the public construction competitive bidding requirements of G.L. c. 149 and c. 30, § 39M, pursuant to G.L. c. 164, § 137. As you may recall, PowerOptions sought a received written confirmation from the Bid Unit in the past that certain municipal and state agency PV projects were not required to obtain competitive bids when entering into a power purchase agreement with a PV project developer pursuant to PowerOptions Solar Program. As further outlined below, PowerOptions seeks further clarity that the same exemption from competitive bidding applies a PV project that is purchased and owned by a public instrumentality as opposed to financed through a power purchase agreement.

## Background

PowerOptions was created in 1996 by the Massachusetts Health and Educational Facilities Authority (MHEFA), but became an independent not for profit entity after the dissolution of MHEFA. PowerOptions, Inc. is the largest energy service and product buying consortium in New England and offers a program that consolidates the buying power of its nonprofit and government agency members by conducting competitive procurements for energy products or services at pre-negotiated prices and terms. PowerOptions conducts an RFP process that involves extensive market research, the distribution of a comprehensive proposal package and bidding schedule to market participants, predetermined evaluation criteria, a bid review team, and final negotiations with the support of outside experts and legal counsel. Once the winning bid is selected, members may contract with the selected provider for the product or service under the pre-negotiated prices and terms. Examples of negotiated energy products and services include power purchase agreements ("PPA"), natural gas supply contracts, and an electric vehicle charging station program offering turn-key electric vehicle charging solutions.

Solar developers provide solar energy services primarily under two financing models. One model is for the solar developer to engineer, procure, and construct ("EPC") the solar facility, as well as to finance it by entering into long term PPAs to sell all of the energy generated to the purchaser or purchasers, essentially for the life of the asset. Another model is for the solar developer to contract to provide EPC services for the purchaser, who would then own solar facility outright and the right to the generation output without a PPA. On two occasions, the Bid Unit found PPAs and related easements exempt from the competitive bidding laws pursuant to M.G.L. c. 164, sec. 137. While the PPA financed model has been the dominate structure for these projects, there is growing interest in the ownership model.

For both ownership models, PowerOptions conducted competitive procurement processes for its solar energy program and selected Solect Energy for energy contracts under both models. Solect is a full-service solar PV project developer and installer based in Hopkinton, Massachusetts. The Town of Andover is a PowerOptions member. The Town of Andover seeks to contract with Solect to construct a solar PV system to be owned by the Town under the negotiated terms of PowerOptions program. The project will be paid for with municipal funds.

## Analysis

Municipalities may become PowerOptions members and may participate in PowerOptions' competitive procurement programs without conducting their own competitive procurement processes pursuant to G.L. c. 164, § 137, which provides

**Notwithstanding any general or special law to the contrary**, (i) any non-profit institution in the commonwealth or any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, including the executive, legislative and judicial branches of the commonwealth, or of **any political subdivision thereof**, or of any authority established by the general court to serve a public purpose, **may**, unless located within the boundaries of a community served by a municipal light department, **participate in and become a member of any competitively procured program** organized and administered, under this chapter, by or on behalf of any public instrumentality of the commonwealth or of any subsidiary organization thereof **for the purpose of group purchasing of electricity, natural gas, telecommunications services or similar products**; (ii) the disposition of municipal or state real property by lease,



easement or license for renewable energy shall not require competitive bidding when part of a power purchase agreement or a net metering agreement in a program organized and administered under this section; (iii) any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, including the executive, legislative and judicial branches of the commonwealth, may, on behalf of the commonwealth, dispose of real property, by lease, easement or license, which is part of a power purchase agreement or net metering agreement in a program organized and administered under this section, including, but not limited to, construction of renewable energy projects on state property; and (iv) any renewable energy project which is part of a power purchase agreement or net metering agreement in a program organized and administered under this section and considered to be public construction shall be subject to sections 26 to 27D, inclusive, of chapter 149.

The contemplated solar project in Andover would be contracted with Solect under the terms of the PowerOptions Program, which is a competitively procured program that is organized and administered under G.L. c. 164, § 137. This exemption is effective “[n]otwithstanding any general or special law to the contrary . . .”, including but limited to, G.L. c. 149 and c. 30, § 39M. Section 137 contains 4 distinct sub-clauses, each standing on its own. Sub-clause (i) of section 137 does not prescribe the type of purchasing model, so long as it is a competitively purchased program, and thus may or may not involve a PPA. Sub-clauses (ii) and (iii) are inapplicable in this requested guidance, because there would be no disposition of real property, and sub-clause (ii) through (iv) are otherwise inapplicable because the Andover EPC contract does not involve a PPA or net metering agreement.

Further, for avoidance of doubt, a PV project is a covered product under section 137. Turning to Section 137’s plain meaning, the first clause provides for two distinct categories of program offerings: (1) “electricity, natural gas, telecommunications *services*”; or (2) “similar [electricity, natural gas, telecommunications] *products*.” Under Chapter 164, the term, “electricity service” is a defined term, meaning “the provision of generation, transmission, distribution or ancillary services.” G.L. c. 164, § 1. Because Section 137 is written in the disjunctive “or,” the term “products,” must have a meaning distinct from “service.” A plain and ordinary meaning of “product” is “something that has been produced, *i.e.* tangible *goods* related to electricity services but beyond electricity service. This should encompass tangible goods, such as electric vehicle charging stations that provide electricity to electric vehicles, as well as solar PV facilities. Thus, an EPC contract under this program to construct a solar PV facility should be considered to be exempt from municipal competitive bidding requirements under Section 137.

We are happy to provide you with additional information or answer any questions. Thanks for your time.

-Jed

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**From:** Anderson, Deborah (AGO) <[deborah.anderson@state.ma.us](mailto:deborah.anderson@state.ma.us)>  
**Sent:** Monday, May 2, 2022 12:48 PM  
**To:** Nosal, Jed <[Jed.Nosal@wbd-us.com](mailto:Jed.Nosal@wbd-us.com)>  
**Subject:** RE: Follow-up on c. 164 sec. 137 and Competitive Bidding

Hi Jed,  
Nice to hear from you. Yes – go ahead and send me the needed information and I will take a look.  
Debbie

Deborah A. Anderson  
Assistant Attorney General  
Construction Bid Unit  
100 Cambridge St., 12<sup>th</sup> floor  
Boston, MA [location]  
One Ashburton Place

Boston, MA 02108 [mail]

617-963-2371

617-722-3066 Fax

[Deborah.Anderson@mass.gov](mailto:Deborah.Anderson@mass.gov)

Office hours: 8:00 AM – 4:00 PM

[COVID-19 Public Bidding Updates](#)

[Public Construction Bidding in MA Frequently Asked Questions](#)

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**From:** Nosal, Jed <[Jed.Nosal@wbd-us.com](mailto:Jed.Nosal@wbd-us.com)>

**Sent:** Monday, May 2, 2022 12:46 PM

**To:** Anderson, Deborah (AGO) <[deborah.anderson@mass.gov](mailto:deborah.anderson@mass.gov)>

**Subject:** Follow-up on c. 164 sec. 137 and Competitive Bidding

**CAUTION:** This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi Debbie – I hope you are well. If you recall we have discussed in the past the interplay between the public construction competitive bid requirements and certain energy projects procured under G.L. c. 164, section 137. My client, PowerOptions, has received some inquiries lately regarding the applicability of c. 149 and c. 30, sec. 39M to certain projects where the Municipality proposes to own a project outright rather than finance it through a power purchase agreement (PPA). Although we have received guidance on a project involving a PPA, I was wondering if I would send you a more detailed email and get the Bid Unit's take on whether c. 164, sec. 137 applicability changes based on ownership v. a PPA.

As always, thanks for your time and guidance.

-Jed

**Jed Nosal**

Partner

Womble Bond Dickinson (US) LLP

**d:** 857-287-3175

**m:** 617-823-9129

**e:** [Jed.Nosal@wbd-us.com](mailto:Jed.Nosal@wbd-us.com)

Independence Wharf

470 Atlantic Avenue

Suite 600

Boston, MA 02210



[womblebonddickinson.com](http://womblebonddickinson.com)



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# TOWN OF TRURO

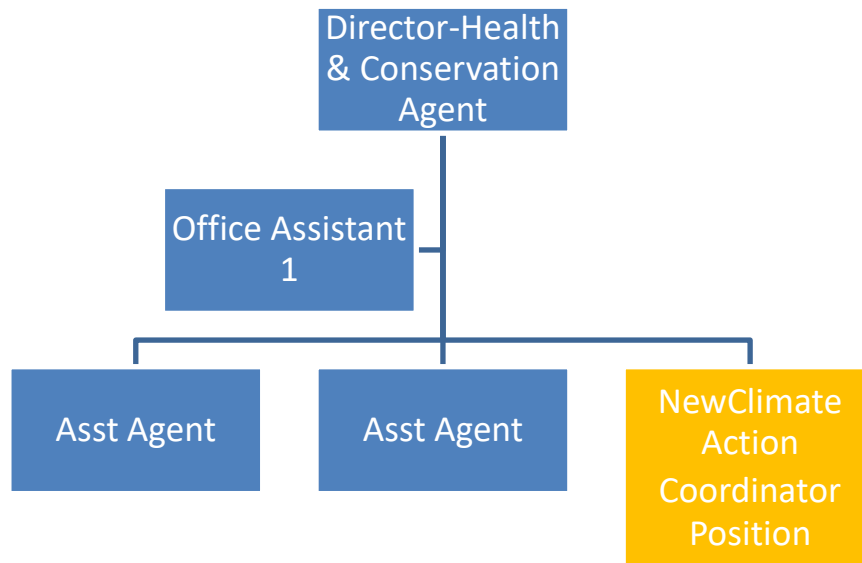
P.O. Box 2030, Truro, MA 02666

Tel: 508-349-7004, Extension: 110 or 124 Fax: 508-349-5505

## POSITION JUSTIFICATION FORM (BUDGETARY)

Complete this form to request additional personnel for your department. This form is to be used for full-time, part-time, temps anticipated for longer than two weeks and intern requests.

### Conservation & Health Department Organizational Structure



**Position title (position requested):** Climate Action Coordinator

**Department:** Health & Conservation

**Division:**

**Supervisor (direct supervisor):** Emily Beebe

**Start Month:**

F/T  P/T \_\_\_\_\_ hours per week

Intern  Winter/Spring  Summer  Fall/Winter

Temp (List start and end dates) \_\_\_\_\_



## POSITION SUMMARY

1. What are the major responsibilities of this position? What is the history and circumstances necessitating this position request? (Include 2-4 brief, clear, concise statements.)
  - Responsible for developing climate change mitigation and adaptation policy and implementation plans for adoption by the Select Board and Administration.
  - Communicate and coordinate with state and local climate agencies, boards and committees, residents, municipal staff, and business owners.
  - The impact of climate change in Truro will affect the health, safety, and livelihood of Truro's municipality, residents, and business owners. Municipal, residential, and commercial buildings will also be impacted. Addressing the impact requires on-going coordination among these major stakeholders.
2. What major new work will be done with the addition of this new position?
  - Assessing the impact on municipal and business revenues, health, and safety, coordinating responses among municipal departments, residents, local businesses, and county and state agencies, and widespread communication and outreach.
  - Identifying and coordinates opportunities for climate-change and sustainability related program funding
3. Why won't reorganizing existing personnel work?

Existing personnel are already at capacity conducting their statutory obligations.
4. Was a combined position with another department or division considered?

Yes, there was discussion about this position working from the DPW department.
5. Why now? What increase in workload has changed to necessitate this new position?

Please provide specific data (hours, calls for service, permits, inspections, etc.) that demonstrates why this position is now needed to address increased services, new organizational responsibilities, or increased workload.

Truro was designated a Green Community by Governor Deval Patrick in 2011, which makes the Town eligible for grants and planning opportunities. In 2013 the Town Meeting adopted a resolution on the Climate Crises, pledging to commit to meet our responsibility to address the increasing climate crises. In 2019 the Town Meeting voted to establish the Climate Action Committee (CAC) to begin working "without delay" on a local plan to address the climate crises. The Climate Action Committee, a small and dedicated group of citizens have worked arduously on their charge, but support and follow-through on their work requires a dedicated staff person. And while

support of the CAC has been taken up by the Health & Conservation Department and the Public Works Director, all of the climate-related work is in addition to the current responsibilities of municipal staff.

6. How does this position fit in with your department's mission and/or what impact does this position have on achieving the organization's overall goals and objectives?

**Values:** Collaboration and Sustainability

**Goals:** Goal C Protect and restore our fragile ecosystem

**Goal D** Use long-term and strategic planning to guarantee the future health and well-being of our community.

**Objective:** #10 The Select Board will provide support to and collaborate with the Climate Action Committee and the Energy Committee on the goals of creating a Climate Action Plan for the Town of Truro, and researching the hiring of a Climate Action Agent, as well as to work with the Climate Action Committee to develop a policy memorandum that facilitates and guides progress in all relevant areas toward a "Net Zero Truro" by 2050 and will ask for updates at least twice per year.

7. Are there efficiency, efficacy, accuracy, or financial benefits (including cost-savings elsewhere) to creating this position? Please explain.

To appropriately address the impact of climate change, Truro should assess financials, property, roads, health, and infrastructure that may be affected and the cost of responding or doing nothing.

An inappropriate response will waste money and effort. Doing nothing may incur greater expense and effort.

8. Is there a statutory requirement for this position? Please explain.

No.

## **KNOWLEDGE/EXPERIENCE**

1. What is the minimum level of education required for this position (i.e., Bachelor's, 2-year technical degree, H.S. Diploma)?

Bachelor's degree in Environmental Science, Conservation, Engineering, Communication, or similar training and/or experience.

2. Experience in what area(s) would be necessary for this job (i.e., sales, accounting, marketing, customer service)?

Training and/or experience in the impacts of climate change, conservation, and/or environmental management.

Listening to and effectively communicating with a variety of constituents.

Researching grants and developing grant applications.

**In addition to a degree**, how many years of experience does this job require?

Three to five

**In lieu of a degree**, how many years of experience does this job require?

Five to seven

**Skills:**

What are the skills necessary for this position?

Oral and written communication skills.

Presentation skills.

Decision-making skills.

Problem-solving skills.

Leadership skills.

Organization skills.

Interpersonal skills.

Other: Research

**Ability to:**

Interact in a positive manner with internal contacts.

Interact in a positive manner with external contacts.

Understand verbal/written instructions.

Complete tasks within critical deadlines.

Maintain highest level of confidentiality.

Knowledge/ability to use various software programs (Windows, Outlook, Excel, Word, email, etc.). List software used:

Word, Excel, Windows, Email, PowerPoint

Use basic math skills.

Other:

**Knowledge of:**

Municipal government

Other: State funding programs, grant writing, federal energy rebate programs

**FINANCIAL**

List the financial responsibilities of the position (i.e., signing authority, budgeting, expenditures, contract authority, etc.).

None



**SUPERVISION EXERCISED**

Which of the following best describes what supervisory responsibility the position has?

No supervisory responsibility.

No direct supervisory responsibility, provides assistance to lower-level employees.

Limited supervision, allocates and organizes work, provides guidance.

Direct supervision of at least one employee.

What position(s) does this position have direct responsibility for managing (including recruitment, selection, performance management)?

**UNION AFFILIATION OF PROPOSED POSITION**

Non-Union  LIUNA  AFSCME  Police Federation  Fire Union

STARTING SALARY \$57,500

SALARY RANGE FOR THIS POSITION \$60,706 to 79,207

PROPOSED GRADE FOR THIS POSITION grade 4

TOTAL COST OF BENEFITS FOR THIS POSITION \$19,177 to \$39,802 \_\_\_\_\_

**Signatures**

Town Manager:

Department Director:

Human Resources:

Please send this completed form to HR

**For internal use only (Budget Task Force)**

Date: \_\_\_\_\_

Approved

Denied

**REASON:**

**Job Title:** Climate Action Coordinator/Sustainability Director

**Reports to:** Health and Conservation Agent or DPW director

**Position Purpose:**

Responsible for developing **climate change mitigation and adaptation policy and implementation plans for adoption by the Select Board and Administration**. The coordinator will also communicate and coordinate with state and local climate agencies, boards and committees, residents, municipal staff, and business owners.

**Supervision:**

Supervision Scope: Performs routine functions under specific instructions from supervisor with some independent judgement.

Supervision Received: Works under the direction of the Health and Conservation Agent and/or DPW director

**Job Environment:**

Work is generally performed in a moderate noise environment under general office conditions with some interruptions from the general public. Field work is conducted as needed outdoors with exposure to various weather conditions. Evening and weekend work as events require.

Operates computer equipment, printer, facsimile machine, telephone, copier, and all other standard office equipment; research using proper on-line sources; uses word processing, presentation, email, and spreadsheet software.

Interacts with municipal staff, boards and committees, residents, business owners, Federal, state and county organizations, and climate-related organizations.

**Essential Functions:**

*The essential functions or duties listed below are intended to illustrate the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.*

1. Work with and attend, as needed, meetings of the Climate Action Committee to address climate change.
2. Communication: develop and deliver information and actions about climate change impacts town employees, residents, and business owners.
3. Data Analysis: identify financial, health, and commercial impact of climate change on Truro and track and report changes over time.
4. Develop actions/responses for the municipality, boards and committees, residents, and businesses to minimize Truro's carbon footprint.
5. Identify and develop responses to the town's vulnerabilities (health, economic, etc.).
6. Draft policies for the Select Board.
7. Collaborate with state and county agencies, Cape Light Compact, and local organizations.
8. Research and respond to grant opportunities for addressing climate change.

**Recommended Minimum Qualifications:**

Education, Training, and Experience:

- Bachelor's degree in Environmental Science, Conservation, Engineering, Communication, or similar training and/or experience.
- Training and/or experience in the impacts of climate change
- Listening to and effectively communicating with a variety of constituents
- Researching grants and developing grant applications

Special Requirements: none

Knowledge, Ability, and Skills:

1. Knowledge: awareness of and/or willingness to learn about the impact of climate change, green building/LEEDs, and conservation.
2. Ability: engage with a variety of constituents, keep up to date with state and local climate policies, continuously learn about advances in addressing the impacts of climate change; collaborative approach to work.
3. Skills: Researching and responding to grants; strong communication skills, including presentation and writing; community engagement and relationship building; able to partner and collaborate with various local and regional stakeholders.

Physical Requirements:

*The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.*

Employee must regularly maintain a stationary position for long periods of time. Frequently required to move in and around Town buildings, parks, beaches, and other terrain. Employee may move and lift equipment of varying weights including objects of up to 30 pounds. Frequently required to operate office equipment, computers, and handheld devices for long periods of time.

*This job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.*