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Attorneys at Law

November 27, 2024

BY HAND DELIVERY AND EMAIL

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Attorney Brian J. Winner
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Attorneys at Law
730 Main Street, Suite 1F
Millis, MA 02054

Re: October 1, 2024 Letters from Select Board Chairman Cavey and Attorney Brian J. Winner;
Notice of Claim under M.G.L. c. 258, § 4 and Preservation Letter to the Town of Stoughton

Dear Attorney Winner:

I am writing in response to your October 1, 2024 "Demand for Records and Litigation Hold Notice" claiming a "potential breach of SMAC's duties under the [Access] Agreement as well as federal and state law" and the Letter of the same date from Stoughton Select Board Chairman Cavey claiming breach of the Access Agreement, which collectively threaten imminent litigation. The SMAC Board of Directors feel the objective of these letters is to attempt to sideline it from covering the news of the construction of the South Elementary School, to control news coverage, and to punish and control SMAC. The Town of Stoughton (the "Town") Select Board's accusations that SMAC is taking sides in this hotly debated South Elementary School Building Project (the "Project"), or any other news stories, are untrue or pretextual. SMAC sets out below the facts as to why it believes this is the case, the applicable law, and then responds substantively to the requests made in the Letters.

The facts of this dispute, as I understand them, are these:

Select Board Chairman Stephen Cavey and Town Manager Tom Calter are members of the South Elementary School Building Committee (the "SBC") established to serve a public purpose, the construction of the Project.¹ The construction of the South School is an investment estimated at \$114 million by the SBC requiring \$66 million of the \$114 million to be paid by the Town. As you know, The Project Ballot Question was voted down at the June 11, 2024 Special Election despite its approval as a ballot question at

¹ Mr. Calter refers to his effort to obtain favorable Stoughton residents' votes to construct the South School as "passionately supportive" and characterizes obtaining the approval of the Project as a political "campaign," that he knows "how to win" which includes a "PAC", i.e., Political Action Committee to circulate information about the Project "around Town," and that he is experienced in obtaining his political objectives. See link to July 17, 2024, SBC meeting in which Mr. Calter participated by phone. <http://71.184.118.35/CablecastPublicSite/show/9774?site=2>.

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the May 2024 Town Meeting and so the project is the subject of wide and intense debate in the Town as is the Town's investment of \$66 million in the Project. Without any SMAC coverage of the ESBIWG meetings on November 20, 2024, Town Meeting voted to have the Select Board schedule an override vote.

The SBC established the Elementary School Building Independent Working Group ("ESBIWG") as part of its "Community Outreach" according to its January 10, 2024 Agenda. It appears from its Executive Summary dated November 12, 2024, the ESBIWG's mission is to advance the Project through the investigation and dissemination of information about the Project to the voting public of the Town. In the words of the Town Manager, Mr. Calter:

There are active Political Action Committees working in support and opposition to this project. In an effort to gather, vet and publish information for the public, I have formed the South School Building Project Independent Working Group. This working group consists of citizens and Town employees appointed by me During a 10-week period, the group will meet once a week to take testimony from subject matter experts By November 15, 2024, the working group will publish a document which will provide vetted information on the issues of known interest to our residents During the working group weekly meetings, members will take and challenge testimony.

Town Crier September 3, 2024, "A Message from the Town Manager's Office," dated August 29, 2024.

On September 3, 2024, a SMAC crew attempted to record and air a news story, an ESBIWG meeting, with the prior approval of the Chairman of the ESBIWG, John Anzivino. On SMAC's arrival the Vice Chairperson, Jess Minor, informed the SMAC recording crew that the ESBIWG did not want its event recorded. SMAC departed. Shortly thereafter, that same day, Gilda Pereira, Assistant to the Town Manager/Select Board, called the SMAC studio to state that the Town Manager, Mr. Calter, is not allowing SMAC to record the ESBIWG meeting under any circumstances that evening.

Fallout against SMAC from the Town by Messrs. Cavey, Calter and Mokrisky continued swiftly, culminating in the two Default Notice Letters, dated October 1, 2024, and served on SMAC. Additional events, actions and statements by the Town described below and highly detrimental to SMAC followed. These actions and statements do not appear to SMAC to be consistent with Massachusetts and federal law, only some of which is referenced below. Many of these actions and statements constitute breaches of the Access Agreement as well.

A public access news broadcaster covering a "working group" established by a Town Committee, the SBC, that takes expert testimony to gather and "vet" evaluative information to publish to voters of the Town at large for use by them to vote on a \$114 million Town construction project for "community outreach", a public purpose, is not political action by SMAC. Schools will be redistricted, and families therefore profoundly affected by the Project, whether it proceeds or not according to the information available on the issue. Mr. Calter's statements and actions, including preventing SMAC's attempt to cover the working group meeting and attempting to rationalize it, is political action. News coverage is not political. SMAC attempted to cover news, it did not and has no interest in promoting or defeating the Project. If the October 1, 2024 Letters are retaliatory, as the timing and the nature of the claimed breaches suggest, it suggests a political motivation to prevent coverage by SMAC. Efforts to stifle news coverage of public importance regarding governmental affairs is protected by the First Amendment. *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 776-77 (1978), rehearing denied 438 U.S. 907 (1978). The First

Amendment prohibits government officials from retaliating against individuals for engaging in protected speech. *See Crawford-El v. Britton*, 523 U.S. 574, 592 (1998); *Decotiis v. Whittemore*, 635 F.3d 22, 29-30 (2011) (“as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions ... for speaking out.”, citing *Mercado-Berrios v. Cancel-Alegria*, 611 F.3d 18, 25-26 (1st Cir.2010) (quoting *Hartman v. Moore*, 547 U.S. 250, 256 (2006) (internal quotation marks and citations omitted)). The Free Speech Clause applies to the speech of corporations. *See Citizens United v. Federal Election Com’n*, 558 U.S. 310, 342 (2010).

On September 4, 2024, Select Board Member Scott Carrara, voiced his opinion to the Town Manager and the public at large that he disagreed with SMAC not being allowed to record the ESBIWG meeting. Mr. Calter replied that it was his decision what gets recorded and aired in the Town by SMAC. A link to that meeting is: **Select Board Meeting 9-4-24**. Mr. Calter’s rationale, as published in the September 10, 2024 Edition of the “Stoughton Town Cryer” appears to be that because the ESBIWG is a working group, it is not subject to the Open Meeting Law, and therefore SMAC may be barred from recording. SMAC takes no position on the applicability of the Open Meeting Law to the ESBIWG. The applicability of the Open Meeting Law does not define the scope of SMAC’s news coverage authority, but the Open Meeting Law can inform protection under the First Amendment,² 42 U.S.C. § 1983, and newsworthiness. *See Connelly v. School Committee of Hanover*, 409 Mass. 232, 234 (1991).

SMAC does take issue with Mr. Calter’s assertion that as Town Manager, it is his decision what gets recorded and aired by SMAC. In addition, we object to the use of the Open Meeting Law as a means to assert editorial control over SMAC’s news coverage. The ESBIWG meeting was held in a public venue and open to the public and therefore SMAC should not have been barred from covering the meeting, and the Town Manager’s efforts to bar SMAC from doing its job is objectionable as a prior restraint on free speech.

Mr. Calter’s representation that the Town Manager controls SMAC’s ability to record anything, except the proceedings set out in Article 5, § 3 of the Access Agreement is incorrect, and damages SMAC’s reputation as an independent, unbiased news source. The Town Manager has no lawful authority to dictate what SMAC, an independent, private non-profit corporation, authorized by law and by contract to cover governmental and educational issues of interest to the public may or may not cover or broadcast. The Town Manager’s attempt to assert such control over SMAC constitutes censorship and a prior restraint on the First Amendment prohibited under both the Massachusetts and United States Constitution. *See Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 808 (2019). “[T]he Free Speech Clause prohibits governmental abridgment of speech.” SMAC is a public forum created pursuant to 47 U.S.C. § 531, as such SMAC is a Designated Public Forum. *See Halleck*, 587 U.S. 802, 811. “When the government provides a forum for speech (known as a public forum), the government may be constrained by the First Amendment”. *Id.* Mr. Calter’s statements and actions appear to be a prior restraint on free speech. *Sindi v. El-Moslimany*, 896 F.3d 1, 31-32 (1st Cir. 2018). “Free discussion of governmental affairs lies at the heart of the First Amendment.” *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 776-77 (1978).

Mr. Calter’s statements and actions may also constitute denial of civil rights under 42 U.S.C. § 1983. *ASOCIACIÓN DE SUBSCRIPCIÓN CONJUNTA DEL SEGURO DE RESPONSABILIDAD*

² Whether the meeting is subject to the Open Meeting Law goes to the creation of a “public forum” or a “designated forum” protected by the First Amendment and 42 U.S.C. §1983. The Supreme Court has treated a school board meeting, which appeared to be open for general public comment sessions, as a designated public forum. *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983), citing *City of Madison, Joint Sch. Dist. No. 8 v. Wis. Emp’t Relations Comm’n*, 429 U.S. 167 (1976).

OBLIGATORIO v. Juan A. FLORES GALARZA, 484 F.3d 1, 20 (2007) (“A private corporation may allege a constitutional violation under § 1983.”). Claims of abridgement of the First Amendment are actionable as violations of 42 U.S.C. § 1983; *Decotiis v. Whittemore*, 635 F.3d 22, 29-30 (2011); and carry the potential for compensatory damages, punitive damages and attorney’s fees. Punitive damages are available in a § 1983 action “when the defendant’s conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.” *Okosi v. Roby*, 715 F. Supp. 3d 166, 175 (D. Mass. 2024) (“Punitive damages [and attorney’s fees] are available in a § 1983 action when the defendant’s conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally [or Massachusetts] protected rights of others”...or “knowledge that [he] may be acting in violation of federal law.”). Proof of the defendant’s awareness of that risk may be circumstantial. *Okosi v. Roby*, 715 F. Supp. 3d 166, 176 (D. Mass. 2024). Knowledge of the risk that the actions may violate federal law may be proven with circumstantial evidence. *Joyce v. Town of Dennis*, 770 F.Supp.2d 424,428 (2011) (also citing G.L.A. 151B § 9 as a basis for attorney’s fees).

To the extent that the South School Project is, as Mr. Calter claims, a “campaign,” prohibiting opponent’s views is forbidden, including under *Anderson v. City of Boston*, 376 Mass. 178, 200 (1978). The Court stated that the use of facilities paid for by public funds would be improper, “at least unless each side were given equal representation and access.” *Id.* *Anderson* prohibits the political use of cable television resources. *Id.* The conclusion is the same under the Access Agreement, Article V, §13, and The Cable Communications Policy Act of 1984 (The Cable Act”), 47 U.S.C. §531.

The Cable Communications Policy Act of 1984 (The Cable Act”), cited in the Access Agreement provides:

a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity....

47 U.S.C. §531(e). A cable operator is “[a]ny person or group of persons...responsible for, through any arrangement, the management and operation of such a cable system. 47 U.S.C. § 522(5).

The Town is also in breach of the Access Agreement as set out below. Article V, § 2 provides:

Editorial discretion, the content of programming and the liability for programming placed on those Access Channel(s) which are operated by S.M.A.C. ***shall solely reside in and be the sole responsibility of the access producers and S.M.A.C. and not the MUNICIPALITY*** nor their LICENSEES.

(emphasis added). Indeed Article V, § 1 of the Access Agreement obligates SMAC to cover what *it decides* is the news in Stoughton. Further Article V, § 3 of the Access Agreement provides:

S.M.A.C. shall be solely responsible for providing live coverage of all regularly scheduled meetings of the Select Board, School Committee and Town Meeting for the MUNICIPALITY, to the fullest extent practicable and possible....[and] S.M.A.C. shall provide live coverage of one additional public meeting, per quarter, if requested by the MUNICIPALITY.

There is no construction of the Access Agreement that SMAC may cover nothing except what is requested by the Town Manager or anyone else, nor would that language be legally enforceable, including

under Article V, §§1 and 2, cited above.

During the Select Board Meeting on September 4, 2024, Mr. Calter interrogated SMAC Board Member Dave Lurie who stated that SMAC's Board of directors voted 5-0 to cover the September 3, 2024 ESBIWG meeting. The SMAC Board did not vote to cover anything. The SMAC Board voted not to cover the Climate Action Committee it had agreed to cover because it appeared the ESBIWG meeting was more urgent and had significant public interest given the \$114 million amount in question, the proposed second vote to try to get the Project approved, its impact on real estate bills of the Town's residents and the fact that it had been voted to a ballot then defeated despite the degree to which it had been promoted by Town Officials, all made for a more timely and compelling news story. At this meeting several Town residents also expressed their regret that Mr. Calter prevented SMAC's coverage.

On September 10, 2024, Mr. Calter again stated that he had authority to dictate SMAC's news coverage. A link to that meeting follows: <https://www.stoughton.org/ArchiveCenter/ViewFile/Item/1025>.

On September 11, 2024, Mr. Calter visited SMAC's studio shortly before 11:00 a.m. for an interview by David Walsh, a new producer. Mr. Calter and SMAC's Station Manager Anya Zulawnik spoke prior to the interview. Mr. Calter stated that the SMAC Board of Directors "had no right to take a vote to have *his* meeting recorded."

On September 12, 2024, Select Board Chairman Cavey and Robert Mullen, President and a Director of SMAC had a call. Mr. Cavey stated that SMAC's attempt to cover the ESBIWG meeting was "being political" and a breach of the Access Agreement. Notwithstanding that SMAC is accused of being political, in violation of the Access Agreement and the law, neither of the October 1, 2024 Letters mention this alleged breach. The failure to mention the alleged political violation in two letters informing SMAC of breaches of the Access Agreement demonstrates that the allegations that SMAC's efforts to cover a public meeting were a breach of the Access Agreement is untrue, lacks any substance, and cannot be justified. SMAC is a public cable access news broadcaster trying to cover a meeting regarding the construction of a public school with public funds which the public was urged to attend.³ The meeting, about the pros and cons of the expenditure of \$66 million of taxpayer money, will affect real estate tax bills of the residents of the Town.

On October 8, 2024, SMAC's Station Manager attended the Stoughton Town Manager's Director's Meeting at Town Hall. At the meeting SMAC provided an update as it did on March 14, 2024, about SMAC's capital equipment and programming.

On October 10, 2024, at 2:20 p.m. Mr. Calter telephoned SMAC President Mr. Mullen excoriating Mr. Mullen for what he claimed was SMAC's "political activity" including by attempting to cover the ESBIWG meeting and inaction, not in support of causes Mr. Calter deemed should be supported. The conversation lasted twenty-four minutes.

Finally, on October 28, 2024, Mr. Mokrisky called Luke Asack of SMAC expressing his displeasure about a SMAC video by Caroline Rowe, also of SMAC, about the Logistics Park Groundbreaking on October 17, 2024. Mr. Mokrisky then visited SMAC the next day. He complained that SMAC, by way of Messrs. Mullen and Bates, deliberately deleted credit paid to Mr. Mokrisky for the approval of the development of the site. Mr. Mokrisky claimed that this was the result of SMAC acting with "political

³ See Mr. Calter's September 4, 2024, Message in the September 10, 2024, *Town Crier*.

motivation.” A link to a Letter from SMAC to the Town of Stoughton Select Board is attached for further details.

CLAIMS

The Town is in breach of the editorial discretion provisions of the Access Agreement, which discretion is vested in SMAC not the Town. Those breaches are based on many of the same facts as the violations of federal and Massachusetts civil rights and constitutional rights set out above, including under M.G.L. c. 12 §11H and §11I, the Massachusetts Civil Rights Act (the “M.C.R.A.”), protecting both SMAC, its employees and officers and others. The civil rights claims (including Monell claims as to alleged §1983 violations) and constitutional claims are in part based on Town officials perpetrating the violations, as such acting under the color of state law. *Mancuso v. Massachusetts Interscholastic Athletic Ass’n, Inc.*, 453 Mass. 116, 123 (2009).

The Town’s statements (including at the March 14, 2024 Finance Committee Meeting regarding the Town’s Enterprise Fund as to which it falsely reported at a deficit) are libelous, damaging to its reputation, and actionable. *Boston Nutrition Society, Inc. v. Stare*, 342 Mass. 439, 442 (1961) (as to not-for-profit corporations). SMAC’s employees feel that the Town has created a potentially hostile work environment in connection with their work at SMAC as it relates to the Town. Obviously, SMAC is not in control of the individual rights of its employees and does not take a position on any claims they may have except to the extent that the Town exposes SMAC to the claims of its employees.

In order to exert maximum pressure on SMAC, the Town breached the Access Agreement refusing to pay over funds contractually and statutorily required to be paid to SMAC. The Town refused to pay SMAC its monthly payment of \$40,950.00, \$122,850.00 for the months of August, September and October.

Good faith and fair dealing requires neither party to a contract to deny the other party of the reasonable expectations of the benefits for which they contracted. *Robert and Ardis James Foundation v. Meyers*, 474 Mass. 181, 188-189 (2016) (“[a] breach occurs when one party violates the reasonable expectations of the other... The covenant “exists so that the objectives of the contract may be realized It provides “that neither party shall do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.”). At a minimum, the acts and statements by the Town that were willful, deliberate, and contrary to the provisions of the Access Agreement, such as editorial discretion, payment and retaliation for news coverage, deny SMAC of the benefit of its bargain with the Town under the Access Agreement as do other of the Town’s defaults under the Access Agreement.

In addition to the attorney’s fees and punitive damages available for the federal and state civil rights violations and collectible thereunder, M.G.L. c. 93A, §11 applies to Towns acting in a business capacity and are available in the present context. *City of Revere v. Bos./ Logan Airport Assocs., LLC*, 443 F. Supp. 2d 121, 128 (D. Mass. 2006) (a municipality is subject to liability under Chapter 93A when it is “acting in a business context”). It is abundantly clear the violations of the Access Agreement were willful and deliberate, whether or not retaliatory. To the extent that the Town’s claims, which are breaches themselves, and its other breaches were intended to control, sensor, or sideline SMAC, they are violations of M.G.L. Chapter 93A.⁴

⁴ A breach of contract constitutes an unfair act under Chapter 93A, when used “as a lever to obtain advantage for the party committing the breach in relation to the other party; i.e., the breach of contract has an extortionate quality that gives it the rancid flavor of unfairness.” *City of Revere v. Boston/Logan Airport Associates, LLC*, 443 F.Supp.2d 121, 129 (2006). In *City of Revere*, the Court held that the City of Revere was acting in a “business context” such that 93A may apply. *Id.*

Select Board Chairman Cavey's October 1, 2024 Letter

On March 14, 2024, the Stoughton Finance Committee held a public hearing which included an Article on the subject of the Stoughton Media Access Corporation ("SMAC") Enterprise Fund Account ("Article 10", Appropriation for FY2025 Cable Costs). Anya Zulawnik, Station Manager of SMAC, provided a presentation on SMAC's finances to the Finance Committee in connection with SMAC's Budget request. Mr. Calter and the Town Finance Director, Elizabeth Zaleski, among others were in attendance.

Ms. Zulawnik's presentation dealt specifically with SMAC's budget, including its budget request of \$491,000.00 and a description of recent capital acquisitions. The presentation included a summary and overview of SMAC's Budget of \$491,000.00 and capital needs as affected by its programming. The presentation included specific examples of how the equipment purchased improves the technology used by SMAC, its programming and overall ability to provide PEG programming and expand it. SMAC also discussed SMAC's work in the last two years (2022-2023) on capital acquisitions, its relocation and equipment requirements in support of its Budget. A link to that presentation to the Town of Stoughton is located at the following link: "<http://71.184.118.35/CablecastPublicSite/show/9606?site=2>".

The Finance Committee asked the Town Finance Director, Elizabeth Zaleski, about the "big number" reported by the Town in its Certification of free cash to the Massachusetts Department of Revenue at the public meeting. Ms. Zaleski misrepresented that SMAC had a deficit in the "Cable Public Access Enterprise Fund" of several tens of thousands of dollars. The Finance Director then explained that the Town was paying SMAC more than the media providers were paying the Town, creating the deficit, that the projected revenues were almost \$200,000 less than SMAC's Budget request and that she was at a loss as to how a deficit that large could be covered. She then concluded that SMAC's Budget request was "unsupported;" and that based on projected Town revenues sounded the alarm bell that if the situation did not right itself the deficit would grow to \$50,000.00. That claim was later proven untrue. That the Town expresses such dire concern about SMAC's Three-Year Capital Plan, when it does not know how much money is in the Enterprise Fund, is difficult to believe.

SMAC has requested the balance of the Enterprise Account, and all activity associated with it from 2017 when it was established to the date hereof per M.G.L. c. 44 §§ 53F ½, 53F ¾. SMAC hereby renews that request.

Article V, §5 of the Access Agreement provides that the "liaisons" it appointed, Chairman Cavey and Selectman Mokrisky, are charged "to further facilitate communication, transparency, and compliance with this Agreement." SMAC's President, Bob Mullen, emailed Chairman Cavey and Selectman Mokrisky, on January 9, 2024, with an invitation to meet and proposed dates to contact the Station Manager to discuss ideas they may have for SMAC and to provide a means of communication between SMAC and the Select Board. Cavey and Mokrisky did not respond, except to send the October 1, 2024 Letters. Rather than the Select Board's liaisons reaching out to SMAC to discuss issues of concern in the spirit of cooperation, the liaisons are now SMAC's biggest antagonists, and Mr. Cavey has issued Letters claiming SMAC is in default and threatening litigation. The SMAC Board thought that it had turned that corner with the Select Board after it issued the discredited K&P Letter last year.

The SMAC Board graciously accepted then Select Board Member, Stephen Cavey's congratulations at SMAC's Annual Meeting on October 25, 2023, on a job well done running SMAC. (*See link*). It is difficult to believe that in less than twelve months and despite two Select Board Members being "liaisons"

to SMAC charged under the Access Agreement “to further facilitate communication, transparency, and compliance with this Agreement,” matters of which both you and Mr. Cavey now complain, the Select Board now finds the degree of fault it claims.

As to SMAC’s Response to Select Board Chairman Cavey’s Letter:

1. Bylaws (Article XI, Section 4) –

Article XI, Section 4 of the Access Agreement states in relevant part as to Mr. Cavey’s claimed breach:

The Access Corporation agrees that within forty-five (45) days of the full execution of this Agreement, S.M.A.C. shall update and amend its Bylaws as may be necessary or advisable to be consistent with this Agreement.

Nowhere does the Access Agreement provide that SMAC, a private corporation, must prove to the Select Board that it amended its Bylaws, how it may have done so or with what language. If I am incorrect, please point out that language. The language above also leaves any such amendment to the discretion of it Board of Directors in that the revisions that may be “necessary or advisable to be consistent with [the Access] Agreement.” As a matter of good faith and not as an admission SMAC discloses it revised its Bylaws to reflect language consistent with the Access Agreement as to the Open Meeting Law, holding private sessions of its Board of Directors, reasons for doing so and notices. The revision(s) referenced in the Access Agreement, if any, were to be effective within 45 days of the full execution of the Access Agreement. According to our records that date was October 20, 2023. The SMAC Board of Directors updated and adopted its Bylaws effective September 30, 2023.

2. Quarterly Updates to Select Board (Article V, Section 5) –

If the true objective of the foregoing provision is transparency and liaisons (as I understand it currently Chairman Cavey and Board Member Mokrisky) one would think there would be a request by the liaisons before they claimed four updates have been missed.

Chairman Cavey and Selectman Mokrisky have both attended meetings of the SMAC Board during the past year. The Station Manager has appeared before the Select Board and the Finance Committee to provide updates to the Town regarding SMAC finances, budgetary needs, and operations. In addition, SMAC has been working with Chairman Cavey, the Select Board, and the Town Manager over the past year in what SMAC viewed as a collaborative manner. Specifically, the Station Manager participates in the Town Manager Department Head or Directors Meetings at Town Hall and provides an update on SMAC operations and equipment and has done so as recently as the October 8, 2024, meeting. At the meeting SMAC provided an update as it did on March 14, 2024, about SMAC’s capital equipment and programming. Respectfully, SMAC disagrees that “No such update has ever been provided despite the passage of over a year since the Agreement was executed.” The Three-Year Capital Budget mentioned in the Access Agreement as part of the quarterly update is included in ¶ 5 below.

3. Review, Annual Report and Audit (Article V, Section 9) –

The Access Agreement provides in relevant part:

Reviews, reports or audits of its finances and operations shall be conducted and provided annually by S.M.A.C. as may be required by the regulations of the Attorney General as they may be amended, to its members, if any, to the Stoughton Cable Advisory Committee, to the Issuing Authority and MUNICIPALITY, and if requested, to LICENSEES within ninety (90) days after the close of S.M.A.C.'s fiscal year or within sixty (60) days after the filing of its state and federal tax returns, including any tax extensions filed by S.M.A.C., whichever is later, or at such other time as may be agreed upon by the Parties.

I know of no Attorney General regulation that requires SMAC to send the Town, "The Issuing Authority" copies of the Form 990 in addition to sending them to the Attorney General as publicly available documents, which is what the Access Agreement requires. Please let me know if you know of any such requirement. Notwithstanding, attached is a link to the Form 990 filed with the Attorney General's Office. It is therefore publicly available in all respects. SMAC's 2023 Form 990 was also filed with the IRS on April 18, 2024. Mr. Cavey's commentary of receiving "evidence" appears incorrect as is, if there was such a requirement, the time frame of a year since the Access Agreements' execution in light of the above dates.

4. Inventory of Equipment and Facilities (Article V, Section 11) – SMAC has an inventory of equipment, and the Station Manager has provided an update and status/condition of SMAC's inventory at the Town Manager's Directors Meeting and at Finance Committee meetings (10/8-2024 and 3/14/2024 respectively) referenced above. Attached is that information, again, further updated to November 1, 2024, and detailed but at 6 pages, 2 of which deal with equipment at Town Hall, it is hardly dense.

5. SMAC's Three-Year Capital Budget is also attached. Again, this was discussed in connection with the Inventory of Equipment discussed above at the Town Manager's Directors Meeting and at the Finance Committee meetings.

Chairman Cavey made the Town Manager the point person to handle SMAC's response to his October 1, 2024 Letter. Mr. Calter *should be able* to confirm the information discussed at his Directors Meeting as well as the link to the March 14, 2024 Finance Committee Meeting provided above.

If there is further information the Town would like, please let me know. It is SMAC's position that the foregoing information demonstrates that the defaults claimed in Mr. Cavey's Letter were a result of a perceived politization by SMAC, that does not and did not exist and an effort to sideline its news coverage of the Project. SMAC is not in default of the Access Agreement, and the information provided herein cures any default by November 29, 2024, in accordance with Article VIII, Section 1 of the Access Agreement.

As to Letter from Attorney Brian J. Winner:

The most recent Access Agreement was executed by all parties on September 5, 2023. As of that date SMAC had already spent from August 12, 2021 until that date producing documents and information in the Select Board's last dispute with SMAC in 2021-2023. Given that the Access Agreement is dated September 5, 2023, and the Select Board was satisfied at that time with SMAC's performance, we do not intend to produce documents prior to that date.

The basis for the Letter includes that "[w]e have been asked to conduct a review with regard to potential breach of SMAC's duties under the Agreement as well as Federal and State law." Without more specifics as to the breach(es) claimed it is impossible to respond to this lack of specificity as is SMAC's

right under Article VIII, §1 of the Access Agreement on alleged breaches and cure provisions. Please provide additional details as to the breach(es) of the Access Agreement, and “federal and State law” so that SMAC may respond in an informed and intelligent manner. Without that detail your Letter, like Mr. Cavey’s, appears a to be a fishing expedition reminiscent of the relationship that SMAC thought was resolved by way of its settlement with the Town that resulted in the 2023 Access Agreement. It is SMAC’s position that until the Select Board, through counsel, identifies breaches in sufficient detail to permit an intelligent response by SMAC, the sixty-day time period to respond to your Letter under Article VIII, §1 does not begin.

SMAC is committed to transparency and cooperation with the Town under the Access Agreement, but the SMAC Board does not feel that is in any way reciprocated. SMAC provides Agendas at [this link](#).

SMAC has nothing to hide, but SMAC has an interest in its self-preservation and the autonomy dictated by its Articles, Bylaws and mission under the law to provide full news coverage affording all to be heard especially in matters as important and far reaching in consequence as the proposed \$114 million Project. To this end, SMAC’s officers have a fiduciary duty to secure SMAC’s future and autonomy in a manner consistent with the Access Agreement and in light of the legal obligations and limits on authority in the Access Agreement and under the law. The Select Board’s continued aggressive treatment of SMAC undermines its autonomy and mission.

The Access Agreement provides: “*S.M.A.C. shall maintain accurate books, records, and logs of its financial and programming activities....*” It is this universe of information that the parties agreed are to be shared. The Town’s access is “*to ensure compliance with this Agreement*”

As to the requests in your Letter:

1. Item 1 of your Letter is in the link in response to Mr. Cavey’s Letter at No. 3.
2. This request is unlimited and outside the scope of, or any reasonable reading of, the Access Agreement in both time and breadth. The information SMAC believes is responsive has been produced above.
3. Agendas are produced in the link above from the date of the Access Agreement forward. They are public documents send to the Town Clerk, but they are included here.
4. This is specifically *not* provided for in the Access Agreement and is one reason for example the Open Meeting Law does not apply.
5. The link to the Annual Meeting of October 25, 2023, which Mr. Cavey attended is [here](#). This is the only meeting recorded.
6. This request is outside the scope of, or any reasonable reading of, the Access Agreement in both time and breadth. The information SMAC believes is responsive has been produced above.
7. Basis of Private Sessions are set out in the Agendas which are a matter of public record, produced at the link above.

In light of the foregoing, especially the correspondence of Anya Zulawnik and Caroline Rowe. SMAC requests that the Select Board appoint new liaisons to SMAC. Also enclosed is a Preservation Letter directed to the Town of Stoughton. Please confirm its receipt on behalf of the Town.

SMAC reserves all its rights with respect to the information provided; SMAC does so in the interest of work towards attempting to settle a dispute, if possible. As such, neither this Letter nor any information disclosed by way of it is an admission of any breach. SMAC reserves its rights to supplement or revise this Letter and the information provided in connection with it. SMAC would appreciate the Town's input on the matters discussed in this Letter at your earliest convenience and before either SMAC or the Town resorts to further recourse.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph P. Zoppo", followed by a long horizontal flourish.

Joseph P. Zoppo, Esq.