



**Bernstein, Shur,  
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February 3, 2023

Matthew Sturgis, Town Manager  
Town of Cape Elizabeth  
320 Ocean House Road  
Cape Elizabeth, ME 04107

Re: Legal Representation

Dear Matt:

Thank you for selecting Bernstein Shur. We may sometimes refer in this letter to Bernstein Shur as the "Firm," or "we."

The purpose of this letter is to set forth the terms of the Firm's agreement to provide professional services to Town of Cape Elizabeth who we may sometimes refer to in this letter as "you."

The terms stated in this letter form a binding agreement between you and the Firm. Please read this letter carefully. If you have any questions or concerns, please call me. Otherwise, please sign and return this letter in the enclosed envelope or by e-mail to provide us with a written acknowledgement of your agreement to these terms.

### **Party or Parties Represented**

We are being hired to represent Town of Cape Elizabeth.

Our representation of you does not constitute our representation of any affiliate, subsidiary or parent entity or any individual owner, officer, director, shareholder, member, partner or employee, unless we subsequently agree to such representation in writing.

We have not been engaged to provide advice to any person, or entity that has not expressly retained us to do so and we disclaim any duty to provide advice that we have not been retained to provide.

I understand that you should receive our statements for professional fees and expenses via email at the following email address [matthew.sturgis@capeelizabeth.org](mailto:matthew.sturgis@capeelizabeth.org). If this is not accurate, please advise me where our statements may be sent and to whose attention.

### **Scope of Work**

You have hired us to provide legal representation to you with respect to general counsel legal services for the Town of Cape Elizabeth through February 13, 2026. Set forth below is a fixed fee that you have agreed to pay for legal services. The services included within the fixed fee Scope of Services are as follows: advising the Town Council and the Town's boards, departments, and staff; drafting ordinances; attending meetings; general labor and employment advice; contract review; policy review; and answering correspondence. This work shall be defined as the "Scope of Services." Not included in the Scope of Services are any appeals of municipal board decisions to any adjudicatory boards, agencies or courts; litigation; tax increment financing; representation before the Maine Human Rights Commission, the Maine Worker's Compensation Board, the Maine Labor Relations Board, and the Maine Board of Arbitration and Conciliation; labor negotiations which require our presence at the bargaining table or before the MLRB and/or the MBAC; employee disciplinary and termination actions; and bond issues.

In regard to the bond counsel services, we provide a set of fixed fee options for individual bond issues depending on the type of transaction (e.g. Maine Municipal Bond Bank general resolution issues, public sales, direct purchase bank transactions). This way, before the matter is underway, you will know the legal cost and can determine whether to pay the bond counsel fee from bond proceeds or from another source.

This engagement letter provides a description of our expected representation. If our assignment is revised, this will affect our fee quotation. We are pleased to discuss any proposed revisions with you and any required changes in our fee quotation. We will confirm revisions to our scope of work and fees, typically via email.

### **Conflicts of Interest**

Before beginning our representation, we conducted a computerized name check against our client records in order to determine whether a disqualifying conflict of interest exists between our representation of you and our representation of any other clients.

We have not identified any such conflicts at this time. However, during the course of our representation, you should be alert for the development of any new or potential conflict that may arise. Please notify the attorney you are working with at the Firm immediately if you become aware of a conflict or potential conflict. Additionally, for our business purposes, please let us know if you change your company name or acquire any companies or entities so we may update our records. In the event that a conflict arises, we will attempt to resolve it, to the extent permitted by the applicable Rules of Professional Conduct, by making any necessary disclosures and seeking any needed consents from you and any other affected client. In the event that we are unable to

obtain such consent, or that we conclude that we should not continue to represent you in light of the conflict, you agree that we may terminate this representation.

### **Fees and Expenses**

We generally bill for our services on an hourly basis, but in this instance, you have retained us on a fixed fee basis for the Scope of Services. We agree that our fees will be \$62,000 per year through February 13, 2026. We agree that you will pay our fees in twelve (12) equal monthly installments of \$5,166.66. We agree to check-in periodically to discuss the fixed fee amount and the work performed under this agreement to determine if adjustments to the fee are requirement. The parties may adjust the annual fee upon mutual agreement.

Any work performed outside of the Scope of Services for the first year will be billed at \$265 per hour for associates and \$290 per hour for municipal practice group shareholders. As discussed above, any municipal bond counsel services will be negotiated on a fixed-fee basis. In addition, we may be assisted by one of our other attorneys or paralegals who will be billed at their prevailing rates. Professional rates for the firm are generally adjusted annually on January 1 of each year.

Our quotation of a fixed fee is based upon two critical factors. First, you have made known to us the material facts upon which we have based our fee quotation. Second, you have defined the scope of work for which you have engaged us as indicated above. As is the case with any client relationship, in order for it to work, there must be communication about how the relationship is progressing.

Our general overhead is not a client expense. However, expenses directly related to your representation may be incurred and you agree to reimburse us for them. These expenses may include retention of accountants, appraisers, or other non-lawyer professionals in a non-litigated matter or witness fees, investigative costs, or deposition costs in a litigated matter. These are only examples and this list is not exclusive. These expenses are your responsibility whether or not we decide to advance these expenses on your behalf. We may forward the bills for expenses to you for direct payment to the service provider or vendor. Unless the circumstances dictate otherwise, we will ordinarily consult with you before incurring an expense anticipated to exceed \$500.00.

We will bill you \$5,166.66 per month through February 13, 2026, unless otherwise modified in accordance with this agreement, and thereafter by agreement. We will also provide the Town with a summary of our work for each month. Any work which falls outside the Scope of Services shall be billed separately. Payment is due within 30 days of your receipt of our billing statement. We reserve the right to charge a late fee of 1½% per month for all fees and expenses that are not paid from an advance retainer or remitted within 30 days.

### **Estimates of Fees and Costs or Expressions of Likely Outcome**

Any expression on our part concerning the cost or outcome of your matter is an expression of our professional judgment, not a guarantee. Our opinions are necessarily limited by our

knowledge of the facts which may be incomplete and are based on the circumstances at the time they are expressed which may evolve, at times in unpredictable ways. Unless we expressly agree in writing to a maximum or a fixed fee, our projections of fees and costs are not binding upon us.

### **Confidentiality and the Attorney-Client Privilege**

We respect your confidences and are required to protect your confidential information and our communications with you. This professional obligation and the legal privilege associated with attorney-client communications exist to encourage candid and complete communication between us. However, you should be aware that the attorney-client privilege applies only to those communications between a client and a law firm that are made for the purpose of obtaining legal advice. To the extent that your communications with the Firm do not fall within this classification, they may not be privileged. For example, communications with our government relations or public affairs professionals regarding lobbying or public affairs services or with our information technology professionals regarding cybersecurity services may not be covered by the attorney-client privilege.

Additionally, the attorney-client privilege may be waived if communications between us are shared with others or made public. Please discuss with us in advance any plans you may have to share our communications with the public or with persons outside of the Firm, including with other professionals you may have retained to assist you in this matter (e.g., engineers, accountants, or appraisers).

For similar reasons, you must be careful with e-mail communications, texts and communications made by way of various social media. Use care in the choice of the computer you use to communicate with us. If you use a computer at your work or home that may be accessed by others, such as family members or your employer, there is a risk that electronic communications may be read by third parties and/or constitute a waiver of the attorney-client privilege. We will assume that you have considered this when you supply an e-mail address to us and that you have determined that your computer is secure. If you have any concerns, please discuss them with us.

### **File Retention in Completed Matters**

At the conclusion of this engagement, we will scan your file and destroy the paper copy, with the exception of original documents that derive value by being retained in the original form, which will be returned to you. We will retain the scanned image of your file for at least eight years. If you wish for us to return the entire paper file to you, you must expressly notify us of this desire and agree to pay for shipping and handling of the file.

### **Arbitration and Choice of Law**

As a condition of our willingness to represent you in the matter described above under “Scope of Work” we require that you agree to submit any claims that may arise in the future against the Firm for malpractice or any other reason to binding arbitration pursuant to the Arbitration and Choice of Law Agreement attached hereto as **Appendix A**.

### **Termination of Our Representation**

This agreement, except for the arbitration and choice of law provisions, which will survive indefinitely, may be terminated by you or the Firm with or without cause at any time upon reasonable notice and consistent with applicable legal rules of ethics. If we are representing you in a litigated matter, we may be required to seek the permission of a judge or administrative body before we can discontinue our representation. If you terminate our representation or fail to pay our fees after reasonable notice, which we consider a form of termination, you agree to expeditiously locate replacement counsel. We also will consider our representation of you to have ended if we have not been asked to provide any services to you for a 12-month period. If you subsequently engage us to perform further or additional services, the lawyer-client relationship will be reestablished, subject to the terms on which we may agree at that time.

The fact that we might inform you from time to time of developments in the law which might be of interest to you, by newsletter or other means does not constitute performing legal services and will not reestablish a lawyer-client relationship that has terminated by the passage of time or otherwise. Additionally, we assume no obligation to inform you of any developments in the law unless we have been specifically engaged in writing to do so.

In order to avoid any future misunderstandings we ask that you please sign a copy of this letter and a copy of Appendix A in the places indicated and return the signed copies to us. If you have questions or concerns before signing, please call me. In the event that you do not send back signed copies, you will be deemed to have accepted the terms of engagement set forth in this letter and the arbitration agreement set forth in Appendix A if you give us instructions to continue work on this matter after you have received this letter. If you retain us for further work in the future, we may not issue a new engagement letter and, in that case, the terms in this document will continue to apply.

We appreciate the opportunity to be of assistance to you and we look forward to working with you.

Sincerely,



Mary E. Costigan

Cape Elizabeth  
February 3, 2023  
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I UNDERSTAND AND AGREE TO THE TERMS OF THIS LETTER INCLUDING THE ARBITRATION PROVISIONS CONTAINED IN APPENDIX A WHICH REQUIRE ME TO RESOLVE ANY DISPUTE THAT MAY ARISE BETWEEN ME AND THE FIRM THROUGH BINDING ARBITRATION AND NOT BY A TRIAL BEFORE A JUDGE OR JURY:

Town of Cape Elizabeth, Maine

\_\_\_\_\_  
Matthew Sturgis, Town Manager, Town of Cape Elizabeth  
Authorized Representative

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

## APPENDIX A

### Arbitration and Choice of Law Agreement

**READ THIS DOCUMENT CAREFULLY. IT CONTAINS AN AGREEMENT TO SUBMIT ANY CLAIMS THAT MAY ARISE IN THE FUTURE AGAINST THE FIRM FOR MALPRACTICE OR ANY OTHER REASON TO BINDING ARBITRATION.**

You agree to resolve all disputes that we may have with each other by way of binding arbitration, at the request of either party, consistent with the terms outlined here, except for disputes regarding our fees for work performed by Maine lawyers which you may instead choose to submit to binding arbitration pursuant to Rule 7 of the Maine Bar Rules.

The arbitration requirement set forth in this Agreement is not limited to fee disputes. It applies to any and all disputes that you choose not to submit to Rule 7 arbitration, including claims that we failed to provide you with competent representation or breached a duty of care that we owe to you.

**By signing this Agreement you agree that you will not sue the Firm in a court of law for malpractice or any other reason and that you will, instead, submit any such dispute to binding arbitration.**

Arbitration is a private and confidential means of resolving disputes. It is commonplace in commercial settings. Arbitration is an alternative to a public court trial and may more quickly and efficiently resolve disagreements. Either party may request arbitration of any dispute between you and the firm by sending a written demand for arbitration to the other.

**In considering whether to agree to the binding arbitration provisions of this Agreement, you should carefully consider the following.**

- **By agreeing to arbitration, you will not have access to a jury trial.**
- **An impartial arbitrator, not a judge or a jury, will resolve all disputed facts between us and will apply the law to those facts.**
- **The availability of discovery may be more limited in arbitration and the rules of evidence may be less strictly applied. This means that the parties' ability to obtain documents and take depositions may not be as robust in arbitration and also that an arbitrator may be willing to consider some types of evidence that a court would not be willing to consider.**
- **Additionally, rights to appeal an arbitration decision are much more limited than the appeal rights available in court.**

If we have a dispute and we submit it to arbitration, you and the Firm will attempt to mutually agree upon a neutral arbitrator to resolve the dispute. We agree the arbitrator will apply the American Arbitration Association's rules for the resolution of commercial disputes as they exist at the time of the arbitration with the exception noted below. American Arbitration Association

rules may be found at <https://www.adr.org/Rules>. If the applicable arbitration rules require the parties to share the costs of the arbitration, including the fees of the arbitrator, we each agree to pay half of those costs and fees and we further agree, whether required by the rules of arbitration or not, that the failure to pay arbitration fees or costs in a timely manner shall be considered acts of default that result in an arbitration award to the other party. Each side will bear its own attorney fees and related costs.

If we cannot agree to the selection of an arbitrator within thirty days after one of us formally requests arbitration, you and the Firm agree to hire the American Arbitration Association to fully manage the arbitration of the dispute and we will both abide by their rules for the selection of a qualified arbitrator and for the resolution of the dispute with the exception of the default for non-payment of fees or costs as described in the preceding paragraph.

Any arbitration or court proceeding that may be required to resolve disputes between us shall occur in Augusta, Maine; Portland, Maine; or in Manchester, New Hampshire, whichever is closest to the office location in which the lead attorney involved in your matter works. The procedural and substantive law of Maine or New Hampshire, without reference to its choice of law principles, shall govern the resolution of any dispute between us depending upon the location of the arbitration; i.e., if the arbitration is conducted in New Hampshire, New Hampshire law will apply and if the arbitration is conducted in Maine, Maine law will apply.

**IF YOU HAVE ANY CONCERNS REGARDING THE PROS AND CONS OF ARBITRATION VERSUS COURT PROCEEDINGS, YOU ARE ADVISED TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL PRIOR TO SIGNING THIS AGREEMENT IN WHICH YOU AGREE TO WAIVE YOUR RIGHT TO COURT PROCEEDINGS, INCLUDING WAIVER OF A TRIAL BEFORE A JUDGE OR JURY.**

I UNDERSTAND AND AGREE TO THE TERMS OF THIS ARBITRATION AND CHOICE OF LAW AGREEMENT WHICH REQUIRES ME TO RESOLVE ANY DISPUTE THAT MAY ARISE BETWEEN ME AND THE FIRM THROUGH BINDING ARBITRATION AND NOT BY A TRIAL BEFORE A JUDGE OR JURY:

Town of Cape Elizabeth, Maine

\_\_\_\_\_  
Matthew Sturgis, Town Manager, Town of Cape Elizabeth  
Authorized Representative

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