



**Bernstein, Shur,
Sawyer & Nelson, P.A.**
Jefferson Mill Building
670 North Commercial Street
Suite 108
PO Box 1120
Manchester, NH 03105-1120

T (603) 623-8700
F (603) 623-7775

Jim Merrill
Shareholder
603-665-8853 direct
jim.merrill@bernsteinshur.com

March 10, 2021

Via E-Mail

Karen Conard, City Manager
City of Portsmouth on behalf of
Coalition Communities 2.0
1 Junkins Avenue
Portsmouth, NH 03801

Re: Legislative Representation

Dear Manager Conard:

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. The terms stated in this letter form a binding agreement between the client(s) identified below 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 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 The Coalition Communities 2.0, who we may sometimes refer to in this letter as "you."

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.

Scope of Work

You have asked us to provide the following professional services to you: Lobbying and government relations services before the New Hampshire Legislative and Executive branches, including monitoring legislative or regulatory matters concerning school funding and taxation issues of concern or interest to you, advocating on your behalf concerning any such matters, communicating updates to you concerning such matters on a regular basis, being available to answer questions from you concerning such matters and providing strategic counsel on addressing such matters.

You have also asked us to help develop and maintain a website to help keep you and members of the public informed about school funding and taxation issues of concern or interest to you. While we do not develop or maintain websites, we have agreed to find a third party to do so which will be an expense separately approved by you in advance and thereafter billed to you.

The scope of our engagement is limited to the description above and does not include the offering of services or advice on any other matters including, but not limited to, tax advice or advice concerning disclosure obligations under federal or state securities laws, except as expressly included in the description above. The scope of this engagement also does not include external public relations, advertising communication or grassroots organizing services, considered as “Tier 2” services in the RFP issued by you initially or litigation or other legal counsel services considered as “Tier 3” services in the same RFP. Appendix B below further itemizes particular tasks arising under Tier 1, Tier 2 or Tier 3, along with the associated costs. If and when desired, we would be pleased to discuss any proposed revisions to our scope of work with you and will confirm any such revisions in writing.

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. As we have discussed, our firm regularly represents clients in land use, tax abatement, or other matters before municipalities that may be a member of The Coalition Communities 2.0. As a condition of our engaging on your behalf in this matter, you agree to waive any conflict that may arise from our firm’s work in such matters. 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 have agreed to provide our services to you for a flat monthly fee as set forth below:

- Months while the New Hampshire Legislature is in session (January through June in a budget year and January through May in a non-budget year): \$4,000.00 per month
- Summer months while the New Hampshire Legislature is out of session (July, August and September in a budget year and June, July, August and September in a non-budget year): \$2,500 per month
- Session Ramp Up Months (October, November and December in any year): \$4,000 per month

The first monthly payment will be due at the end of the first month in which this engagement letter is executed. Thereafter, we will bill you on a monthly basis until one of us provides the other with ten (10) calendar days' written notice of termination of the engagement. Once such notice has been provided, the final monthly payment will be due for the month in which the termination becomes effective.

Our general overhead is not a client expense and you will not be billed for telephone charges, photocopies, faxes, computerized research or other overhead items. You will, however, be billed for certain expenses pre-approved by you including but not limited to lobbying registrations, website development and maintenance as indicated above, express delivery services, travel expenses, and third-party expenses incurred on your behalf. In the case of third-party expenses, we will secure your advance approval and then forward the bills to you for payment directly to the service provider or vendor.

I understand that you are the person to receive our statements for professional fees and expenses, which will be sent via e-mail to the addresses shown above. If this is not accurate, please advise me to whom the Firm's statements should be sent and to what e-mail or physical address.

Expressions of Likely Outcome

Any expression on our part concerning the 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.

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 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.

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 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.

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,



Jim Merrill

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:



Karen Conard, Authorized Representative
The Coalition Communities 2.0

Date: 3/11/2021

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. 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 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 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.

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:



Karen Conard, Authorized Representative,
The Coalition Communities 2.0

Date: 3/11/2021

APPENDIX B

Scope of Work Outline **List of Services Provided by Coalition Communities 2.0**

Tier I – Lobbying and Advocacy

Cost:

- \$43,500.00 total during a state budget year (see Fee and Expenses section above for monthly breakdowns)
- \$42,000.00 total during a non-state budget year (see Fee and Expenses section above for monthly breakdowns)

Services (items 1 through 8; items 11-17)

- (1) Lobbying/advocacy
- (2) Gov't Relations Services
- (3) Monitoring Legislation
- (4) Monitoring Regulations
- (5) Updating Joint Board
- (6) Updating CC 2.0 Membership
- (7) Coordinating Testimony
- (8) Strategic Counseling/Planning
- (11) Organize Joint Board Meetings
- (12) Post Meetings of Joint Board (in concert with 3rd party web designer at separate cost TBD)
- (13) Post Meetings of Membership (in concert with 3rd party web designer at separate cost TBD)
- (14) Create Agendas for Joint Board/Membership
- (15) Minute Creation and Posting Same (in concert with 3rd party web designer at separate cost TBD)
- (16) Hosting in Person / Video Conferencing Services
- (17) Hosting Website and Page Content (in concert with 3rd party web designer at separate cost TBD)

Tier II – External Communications and Public Affairs

Cost: \$3,500.00 per month

Services: (items 9 and 10; items 18 through 21; item 24 “other”)

- (9) External Communications
- (10) Develop a Communications Plan
- (18) Establish a Social Media Presence (in concert with a 3rd party social media consultant at separate cost TBD)
- (19) Op-Ed Pieces
- (20) Interview Pieces
- (21) Spokesmanship
- (24) Grassroots organizing

Tier III – Legal and Regulatory

Cost: The regular hourly rates of Bernstein Shur attorneys who may work on any future legal or regulatory matter on your behalf, which subject to our prior review and approval of a new legal engagement, may be reduced by approximately 20% for municipal clients. By way of example, while other Bernstein Shur attorneys may work on a future matter, the regular hourly rates of the attorneys listed in our proposal include Ovide Lamontagne at \$440/hour; Matt Saldana at \$270/hour; and Lauren Pritchard at \$240/hour.

Services (items 22 and 23)

- (22) Legal Actions as Necessary
- (23) Regulatory Review