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WILLIAM K. WARREN

PLEASE RESPOND TO THE EXETER OFFICE

May 11, 2021

Via Email Only to: citymanager@laconianh.gov
CITY OF LACONIA
City Council
Attention: Scott Myers,
City Manager
45 Beacon Street E
Laconia, New Hampshire 03246

RETIRED
MICHAEL J. DONAHUE
CHARLES F. TUCKER
ROBERT D. CIANDELLA
NICHOLAS R. AESCHLIMAN

Re: Updated Special Counsel Conflict of Interest Waiver and Representation Agreement

Dear City Manager Myers:

This marks our special counsel engagement with regard to the renewal of Cable Television Franchise Agreement with Atlantic Broadband (NH-ME), LLC. This renewal is through the Intermunicipal Agreement for a Consortium of the Municipalities of Alton, Belmont, Deerfield, Franklin, Gilford, Gilmanton, Laconia, New Durham, and Northwood for a Cable Franchise with Atlantic Broadband (NH-ME), LLC. As special counsel, Donahue, Tucker & Ciandella, PLLC (hereinafter the "Firm"), our representation will be limited to this matter. In other words, our Firm will not be working on other matters on behalf of the City of Laconia, except as specifically engaged, nor will we be providing general legal counsel to you. This is an important distinction, because under the Rules of Professional Conduct which govern our profession, our engagement as special counsel for the limited purpose described above may not preclude us from being engaged to represent other parties in matters involving the City of Laconia.

Accordingly, through this letter, our Firm seeks a waiver from you of future conflicts within the context and under the conditions and limitations contained in this letter. To the extent you decide to grant the requested waiver, please proceed to Exhibit A, our traditional Special Counsel Representation Agreement, which explains in greater detail the specifics of our potential representation.

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253
83 Clinton Street, Concord, NH 03301

I. CONFLICT OF INTEREST DEFINED

As you know, our Firm's ability to represent any and all clients is governed by New Hampshire's Rules of Professional Conduct (the "Rules") which include but are not limited to rules regarding conflicts of interest. A conflict may arise whenever the interests of a current client might affect, or be affected by, the personal, business, financial or professional interests of a lawyer, a professional or business associate or relative of the lawyer, another current client, or a former client. When there are such multiple interests, there is always a possibility for the existence to interfere with the lawyer's ability to serve one set of interests without adversely affecting other interests. Whenever such interests become conflicting, it is necessary for the lawyer to withdraw from all attorney-client relationships affected by such conflict and it is then necessary for each person to hire a new lawyer. Although we are not presently aware of a conflict created by the proposed work on the underlying matter, the nature and scope of our Firm's work for other clients may give rise to conflicts of interest in the future. Accordingly, the purpose of this letter is to explain how our Firm proposes to resolve future conflict issues so that the City of Laconia can decide now whether or not to be represented by our Firm in this matter.

II. SCOPE OF REQUESTED WAIVER

Our Firm only seeks a waiver for work that is entirely factually and legally unrelated to the underlying matter as discussed below. Thus, the Firm **does not** request a waiver that would allow it:

- 1) At any time, to attack, interpret or negotiate the work that the Firm performs for the City of Laconia in the underlying matter;
- 2) At any time, to disclose or use adversely to the City of Laconia, or to place itself in a position to disclose or use, any confidential and nonpublic information of the City of Laconia;
- 3) For so long as the Firm continues to represent the City of Laconia, to allege criminal, fraudulent or intentionally tortious conduct by the City of Laconia.

Outside of these limitations, under the waiver, our Firm is and will remain free to represent other parties adverse to the City of Laconia in matters wholly unrelated to the subject of this engagement. In other words, we may represent other clients in such matters, even if those matters are adverse to the City of Laconia. For purposes of the Rules, these matters shall be considered "unrelated" to the subject matter of this potential engagement. As a courtesy to the City of Laconia, but not as a matter of professional responsibility, we agree, so long as this matter remains active, to give you notice of future representations involving the City.

Although the City of Laconia may revoke this waiver as to future matters at any time, such revocation will not affect any matters undertaken by our Firm prior to receipt of notice of the revocation. In addition, and to the extent permitted by the Rules of Professional Conduct, City of Laconia must consent to our withdrawal from the City of Laconia's matters if withdrawal is necessary for our Firm to continue representing other clients. If our Firm does withdraw from a matter, however, it will assist the City of Laconia in transferring the matter to other counsel of the City of Laconia's choice and will not bill the City of Laconia for legal fees, expenses, or other charges arising from the need to assist successor counsel in fully and quickly coming up to speed.

III. CONSIDERATIONS RELATING TO THE DECISION TO WAIVE

We strongly urge you not to sign the waiver if you have any unanswered or unaddressed reservations or concerns. We also recommend that you discuss the waiver with independent counsel, perhaps general counsel to the City.

As we have explained, there are questions that the City of Laconia should address before a decision to waive future conflicts is made:

- 1) Is there a material risk of adverse disclosure or use of confidential information?
- 2) Is there a material risk that our Firm will be less zealous or eager when representing the City of Laconia in the underlying matter because of other adverse representations?
- 3) Is the City of Laconia ready, and willing to abide by the Waiver of Conflicts going forward?

As to the first two questions, we believe that any risk to the City of Laconia is minimal to nonexistent in light of the protections and limitations contained in this letter. As to the final question, that is necessarily the City of Laconia's choice and not ours. Although we are certainly willing to discuss potential amendments to this waiver that you would like us to consider, you should know that without a mutually acceptable waiver, we will not represent the City of Laconia in the underlying matter or in any other matter.

Finally, under the Rules of Professional Conduct, we will also be required to disclose this limited representation of the City of Laconia to any potential client who seeks our counsel and they will make their own determination as to whether they wish to proceed, knowing of our limited role in this matter.

City of Laconia

Re: *Updated* Special Counsel Conflict of Interest Waiver and Representation Agreement

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To the extent that you agree to waive future conflicts of interest as described herein, please proceed to Exhibit A, our Firm's traditional Special Counsel Representation Agreement. If those terms and conditions are also acceptable to you, please sign the enclosed Acknowledgement and Acceptance sheet (last page) and return the original sheet us in the self-addressed stamped envelope provided.

Sincerely,
DONAHUE, TUCKER & CIANDELLA, PLLC

A handwritten signature in black ink, appearing to read "K B Miller".

Katherine B. Miller, Esq.
kmiller@dtclawyers.com

KBM/cms

Enclosures (2)

CC: Brendan A. O'Donnell, Esq.

EXHIBIT A

Special Counsel Representation Agreement

This document will provide you with further information about the members of the Firm and about the Firm's basic policies. If the terms and conditions of this document are also acceptable to you, please sign the enclosed Acknowledgement and Acceptance sheet (last page) and return the original to us.

OUR FIRM/RESPONSIBLE ATTORNEY

I will be the attorney primarily responsible for your file. Attorney Brendan O'Donnell will be assisting me. Since there may be an occasion when lawyers you seek to speak with are in court, have a prior commitment, or happen to be away from the office, it may be necessary for another attorney in the Firm to meet with you or to handle an aspect of your matters. When you engage our Firm, you engage all attorneys in the Firm and, therefore, matters will be assigned within the Firm to the attorney with the requisite expertise. By engaging our Firm, we feel that you benefit from the shared knowledge and expertise of all its members.

Our office hours are from 8:00 a.m. to 5:00 p.m. Please ask for me, Attorney O'Donnell, or our telecommunications paralegal, Catherine Senter when calling. In my absence, she will assist you as much as possible. Catherine is instructed, however, not to give legal advice. In an emergency in my absence, she may refer your call to an available attorney in the Firm.

YOUR RIGHTS

As we work on your matters, we will keep you advised of their progress by forwarding to you copies of all correspondence. Please feel free to call at any time to inquire as to the status of any matter.

If at any time you become dissatisfied with our handling of your matters, you should not hesitate to tell me immediately so we can discuss and resolve the problem. It is essential to your representation that we maintain a good relationship throughout. You may terminate our representation at any time. In the event of termination, you will be responsible for payment of any fees earned or expenses incurred. We may terminate this representation only as permitted or required by law and regulations. Failure to pay fees or expenses or make deposits when due, will be cause for such termination.

Concerning electronic communications, attorneys and legal staff will make their best efforts to ensure that all substantive electronic communications pertinent to client representation are printed out and placed in the client's paper file. Some electronic communications, however, particularly those of transitory or inconsequential nature, may be electronically deleted from our

active e-mail system. By signing this agreement, you acknowledge that you have been apprised of the firm's electronic communications policy and that electronic communications that no longer exist in the Firm's active computer database will not be retrievable.

Electronic Data Communication and Storage

In the interest of facilitating our services to you, we may communicate with you or others by email, facsimile transmission, send data over the Internet, store electronic data via computer software applications hosted remotely on the Internet, or allow access to data through third-party vendors' secured portals or clouds. Electronic data that is confidential to your case may be transmitted or stored using these methods. In using these data communication and storage methods, our firm makes reasonable efforts to keep such communications and data access secure in accordance with our obligations under applicable laws and professional standards. You recognize and accept that we have no control over the unauthorized interception or breach of any communications or data once it has been sent or has been subject to unauthorized access, notwithstanding all reasonable security measures employed by us or our third-party vendors. You consent to our use of these electronic devices and applications and submission of confidential client information to third-party service providers during this engagement.

At the conclusion of this matter, you will be given an opportunity to request the return of any original documents related to your case. However, we are obligated to retain certain matters for up to twenty (20) years. If you do not request that these documents be sent to you, they will be stored with your closed file. Although this Firm will not keep your closed file permanently, we will store it for as long as is necessary to protect your foreseeable interest. We will be certain to maintain confidentiality throughout our entire involvement with this matter including the storage and eventual destruction of your file.

YOUR RESPONSIBILITIES

To achieve the best possible representation, you will need to cooperate with us fully and provide us with all the information we need to assist you. So that we may maintain continuous contact with you throughout the representation, please notify us immediately if there is any change in your address or telephone number.

It is important that we make our fee arrangements clear to you. My services will be billed at the rate of One Hundred Ninety Five Dollars (\$195.00) per hour, Associates' services will be billed at the rate of One Hundred Seventy Five Dollars (\$175.00) per hour, and paralegal services are billed at the rate of One Hundred Fifteen Dollars (\$115.00) per hour.

The rates quoted above shall remain fixed for the first year of the representation. Thereafter, rates may be adjusted to ensure comparability with our standard, new client billing rates for similar work.

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We will provide you with itemized statements on a monthly basis. In addition to paying our legal services, it is agreed that you will reimburse the Firm for all costs and expenses incurred in your case. This includes, if applicable, sheriffs service fees, investigative fees, court filing fees, special postage fees such as certified mail or large mailings, mileage (\$.56/mile), large photocopying projects, online legal research using LexisNexis and any other similar out-of-pocket expenses. Furthermore, outside paralegal services at a stated hourly rate or project rate for title searches and similar projects.

It is also agreed that fees for legal services and expenses will be paid promptly upon presentation of statements, unless other mutually satisfactory arrangements have been made with us. Unless waived by us, a finance charge of 1.5 percent per month (18 percent annual percentage rate) may be imposed on any balance not paid within thirty (30) days of billing. For your convenience, please be aware that we accept MasterCard, Visa and Discover.

Should our Firm be disengaged by you before conclusion of any matter, or should you be unable to make timely payment of our statements, we shall retain a lien on any sums on deposit with the Firm (including trust deposits), for attorney's fees and for all costs and expenses incurred. You also agree to pay us all attorneys' fees and costs incurred if we are required to undertake collection of any sum you owe us.

While this agreement is intended to prevent any confusion of the terms of my representation, should a fee dispute arise you are agreeing, pursuant to this paragraph, to submit any fee dispute between us to Fee Dispute Arbitration with the New Hampshire Bar Association. You understand that you have the right to use other court forums to address fee disputes, but we are both agreeable to compromising those rights to submit to binding arbitration. Any decision made by the arbitration panel, whether for you or us, will be final and non-appealable. It has the same effect and enforceability as if rendered by a court of law. The New Hampshire Bar Association selects the panel from among a list of volunteers who have agreed to hear fee disputes. There are no costs associated with the panelists. You are encouraged to seek independent legal counsel on this issue before agreeing to this provision.

If you have any questions about any of the foregoing, please do not hesitate to call to discuss them or to consult with independent counsel.

We look forward to representing you. While we cannot guarantee success in all cases, I want to personally assure you that our Firm will use its best efforts on your behalf.

If the terms and conditions of this document are also acceptable to you, please sign the enclosed Acknowledgement and Acceptance sheet (last page) and return the original to us.

ACKNOWLEDGEMENT AND ACCEPTANCE

The undersigned has read and fully understands the Special Counsel Conflict of Waiver letter as well as Exhibit A (the Special Counsel Representation Agreement), and hereby accepts and agrees to the terms and conditions disclosed both. The undersigned agrees to waive the potential future conflicts of interest under the conditions and limitations discussed in the Special Counsel Conflict of Interest Waiver letter.

CITY OF LACONIA

Date: _____, 2021

By: Scott Myers
Title: City Manager
Duly Authorized