



## **CITY OF NEW BEDFORD**

### **OFFICE OF THE CITY SOLICITOR**

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# **MEMORANDUM**

**TO:** City Clerk

**FROM:** Mikaela A. McDermott, City Solicitor

**DATE:** August 4, 2016

**RE:** Determination and Consent Pursuant to Mass. Rules of Professional Conduct, Rule 1.7 –  
Representation of Town of Acushnet and City of New Bedford in Connection with  
Proposed LNG Facility

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Attached please find copy of fully executed Determination and Consent regarding the above entitled matter.

Please place on file accordingly.

Thank you.

/bar

enclosure



*The Leader in Public Sector Law*

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August 3, 2016

**Jonathan M. Silverstein**  
[jsilverstein@k-plaw.com](mailto:jsilverstein@k-plaw.com)

Mikaela A. McDermott, Esq.  
City Solicitor  
New Bedford City Hall  
133 William Street  
New Bedford, MA 02740

Re: Determination and Consent Pursuant to Mass. Rules of Professional Conduct, Rule 1.7 –  
Representation of Town of Acushnet and City of New Bedford in Connection with  
Proposed LNG Facility

Dear Ms. McDermott:

You have requested our legal representation of the City of New Bedford, as Special Counsel, regarding the proposed expansion/construction of a so-called liquefied natural gas (“LNG”) facility and connecting pipeline in Acushnet as part of the so-called Access Northeast Project (hereinafter, “the LNG project”). This would involve the City’s potential participation in the FERC proceedings and any related negotiations with the project proponents. As you know, KP Law, P.C., serves as Town Counsel to the Town of Acushnet and has also been involved with the LNG project on behalf of the Town and may continue to do so.

Regarding the firm’s ability to represent both client municipalities with respect to the LNG project, our relationship with each client creates an interest that requires disclosure pursuant to the Rules of Professional Conduct applicable to members of the Massachusetts Bar, and we must obtain the “informed consent” of each community, after disclosure of adequate information and explanation about the risks of, and alternatives to, the proposed simultaneous representation, before we can undertake such representation. In addition, while the State Ethics Commission has determined that KP Law, P.C. and its individual attorneys are not “municipal employees” pursuant to the Conflict of Interest Law, we provide this letter to dispel any appearance of conflict on the firm’s behalf in this matter.

#### MULTIPLE REPRESENTATION DISCLOSURE

The representation of multiple clients is regulated under the Massachusetts Rules of Professional Conduct. The relevant provision, Rule 1.7, states that an attorney may not represent multiple clients if doing so involves a concurrent conflict of interest. The standard for determining whether a concurrent conflict of interest exists is: (1) will the representation of one client be directly adverse to another client; or (2) is there a significant risk that the representation of one or more clients will be materially limited by our responsibilities to another client. Even where a concurrent conflict of interest exists, we may still undertake the simultaneous representation if: we reasonably

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Mikaela A. McDermott, Esq.

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believe that we will be able to provide competent and diligent representation to each client; there is no legal prohibition on the simultaneous representation; the simultaneous representation does not involve the assertion of a claim by one client, against another, in a single piece of litigation or other proceeding before a tribunal; and each client gives informed consent, confirmed in writing.

I do not believe that our role as Town Counsel to the Town of Acushnet, including any guidance we may provide to the Town regarding the LNG project, creates a concurrent conflict of interest with respect to our service to the City of New Bedford as Special Counsel. Furthermore, even if a concurrent conflict of interest is present, I do not believe that our ability to provide competent and diligent representation to the City will be affected by our representation of Acushnet as Town Counsel, either generally or with specific reference to the LNG project.

Please note that if the two municipalities should become adverse to one another in connection with the LNG project, we may be limited or precluded by the Rules of Professional Conduct from representing either client against one another. While the two communities' interests appear to be consistent at this time, I simply wanted to alert you to that possibility.

## DETERMINATION

As noted above, it is my belief that the firm's representation of Town of Acushnet and City of New Bedford, for the purposes and under the conditions described in this letter, does not constitute a concurrent conflict of interest. It is my further belief that even if a concurrent conflict of interest exists, our ability to provide competent and diligent representation to the City will not be negatively impacted by our simultaneous representation of Acushnet as Town Counsel. It is, however, for you to determine, as Appointing Authority, as to whether the representation described herein will not impair the integrity of this firm's services to the City, either generally or with respect to the LNG project.

Therefore, I request that you, as Appointing Authority, consent to KP Law, P.C.'s simultaneous representation of the Town of Acushnet with regard to the LNG project, as outlined in this letter, as well as the City of New Bedford. Should you so consent, I ask that you sign the enclosed determination as required by the Rules of Professional Conduct. Please sign the two originals provided, return one copy to me, and retain one copy for your records.

Thank you for your consideration. Please do not hesitate contact me with any questions you have in this regard.

Very truly yours,

Jonathan M. Silverstein

JMS/jam

Enc.

cc: Mayor

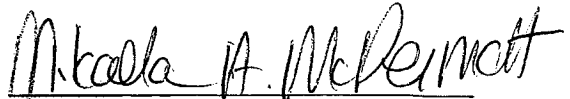
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### DETERMINATION

I hereby determine, on behalf of the City of New Bedford, in accordance with Supreme Judicial Court Rule 3:07, PR 1.7(a) and (b), that pursuant to a July 27, 2016 letter from Special Counsel KP Law, P.C., I consent to KP Law, P.C.'s representation of the City with regard to matters involving the Access Northeast liquefied natural gas expansion project, notwithstanding that KP Law, P.C. also serves as Town Counsel to the Town of Acushnet with regard to similar matters involving said project. I further determine that KP Law, P.C.'s responsibilities to the City will not be materially limited by its responsibilities to the Town of Acushnet. .

Dated: August 4, 2016

CITY OF NEW BEDFORD



Mikaela A. McDermott  
City Solicitor

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