CITY OF STOUGHTON, 207 S FORREST STREET, STOUGHTON, WISCONSIN

RESOLUTION OF THE COMMON COUNCIL

Resolution authorizing the proper City official(s) to engage the Canadian law firm of Cassels, Brock and Blackwell, LLP to assist the City with navigating the Canadian Companies Creditors Arrangement Act as it pertains to North American Fur Auctions, Inc.

Committee Action: Finance Committee

Fiscal Impact: Retainer of $5,000

File Number:	R - -2021	**Date Introduced:**	February 9, 2021

WHEREAS, the City of Stoughton has an Agreement to Undertake Development ("Agreement") with North American Fur Auctions, Inc. ("NAFA"), which allows the City to recover guaranteed amounts if NAFA does not meet its obligations outlined in the Agreement; and

WHEREAS, during 2020, NAFA sought protection under the Canadian Companies Creditors Arrangement Act ("CCAA"); and

WHEREAS, the City's law firm conducted a search of Canadian firms more familiar with the protections provided under the CCAA to assist the City in determining whether or not it can continue to bill NAFA under the Agreement; and

WHEREAS, Cassels, Brock and Blackwell, LLP has offered its services in assisting the City regarding whether there is any legal impediment, by virtue of the protections provided under the CCAA, to sending NAFA an invoice for payment of the guaranteed amounts that will come due in 2021; and

WHEREAS, Cassels, Brock and Blackwell, LLP has requested the City to sign an engagement letter and pay a $5,000 retainer in order to begin work related to this issue; and

WHEREAS, the retainer amount will be applied against the City's 2021 Legal budget, and if additional funds are required in excess of the retainer, the Finance Committee and City Council will be required to approve those amounts prior to the additional work proceeding.

BE IT RESOLVED by the Common Council of the City of Stoughton authorizes the proper City official(s) to engage the Canadian law firm of Cassels, Brock and Blackwell, LLP to assist the City with navigating Canadian Companies Creditors Arrangement Act as it pertains to North American Fur Auctions, Inc., and pay the initial retainer totaling $5,000

Council Action: ☐ **Adopted** ☐ **Failed** **Vote** _____

Mayoral Action: ☐ **Accept** ☐ **Veto**

_____

Mayor Tim Swadley Date

Council Action: _____ ☐ **Override** **Vote** _____

Cassels

January 19, 2021

PRIVILEGED AND CONFIDENTIAL
VIA EMAIL

dmarechal@cassels.com
tel: +1 403 351 2922
fax: +1 403 648 1151
file # 55405-1

City of Stoughton
207 S. Forrest Street
Stoughton, Wisconsin 53589
USA

Attention: Jamin Friedl, City Finance Director

Dear Sir:

Re: Engagement of Cassels Brock & Blackwell LLP – City of Stoughton, a Wisconsin Municipal Corporation re: North American Fur Auctions (US) Inc. et al

Thank you for choosing us to represent you in connection with the recovery of funds invested by the City of Stoughton in the acquisition and improvement of land conveyed to North American Fur Auctions (US) Inc. (the "**Obligation**"), which Obligation was subsequently assumed by NAFA Properties Stoughton LLC.

This letter outlines the standard arrangements that will govern our work on this matter. We believe that it is beneficial to our clients and our working relationship with them if these arrangements are clearly stated at the outset.

We will not render advice or services to you relating to income, sales, goods and services, or any other tax unless the terms of this engagement specifically state that such advice or services will be provided.

If you have any questions or concerns regarding these arrangements including the provisions of our Standard Terms for Client Engagements (see below), please let us know as soon as possible so that we can address any concerns to your satisfaction.

1. Identification of potential conflicts

We have searched our records against City of Stoughton, as well as the following names, which you gave us as being relevant for this matter:

- Stafford Rosenbaum LLP
- North American Fur Auctions (US) Inc.
- NAFA Properties Stoughton LLC
- Waygar Capital Inc.

Please let us know immediately if additional parties become involved in this matter or if your list of relevant names changes for any reason, especially for any parties whose interests may be adverse to yours. In such case, it will be necessary for us to conduct an updated conflict search.

We will not consider that a conflict of interest exists solely because we represent another client that is your competitor, customer, or supplier, or because that other client instructs us to make legal arguments or assert positions that may be inconsistent with your business or legal interests, or a position that you wish us to assert.

We will also not consider that a conflict of interest exists solely because another client is adverse in interest to you in an unrelated matter, or is adverse in interest to another entity in which you have an ownership interest (such as a subsidiary or affiliate) or with which you have a legal or contractual relationship.

When you agree to engage us in accordance with these terms, you agree that we are permitted to represent other clients in unrelated matters that may be adverse to your interests, including lawsuits, contract negotiations, acquisitions, financings, restructurings, regulatory proceedings and other matters. By providing your agreement in this regard, you are waiving our "duty of loyalty" to you.

2. Standard Terms for Client Engagements

Our Standard Terms for Client Engagements (see attached) include a variety of terms relating to our representation of you and will apply to each engagement that we undertake for you, subject to any differing terms set out in this letter or in future correspondence.

A copy of our Standard Terms is also available electronically via the link to *Standard Terms* at the bottom of the home page of our website (www.cassels.com).

Please review the Standard Terms carefully, as they contain a general, advance waiver of conflicts of interest and a consent for our firm to act in certain circumstances notwithstanding the existence of a conflict.

3. Accepting instructions from a designated individual

We will accept instructions for this engagement from Jamin Friedl or, alternatively, from such other person as that individual advises us is authorized to instruct us.

4. Fees and billing

Our fees are based on our assessment of the reasonable value of our services. To assist us in determining that value, we assign hourly billing rates to lawyers and other legal professionals and record the time they spend and the services they provide on each matter. These rates are subject to change from time to time. If at any time you would like to know the standard hourly rates of any legal professional working on your matter, please let us know.

Our Standard Terms contain information regarding our statements of account and our charges for disbursements and internal charges.

Our engagement with you will not be subject to your outside counsel guidelines or billing guidelines (if any) unless a member of the Audit and Risk Management Committee of the firm or the Managing Partner or a Deputy Managing Partner provides to you a signed, written acceptance of such terms or guidelines.

5. Retainer

We will require a retainer of $5,000 applicable to our anticipated fees, disbursements and internal charges. We may require additional retainer amounts over the course of the matter and may ask you to provide those amounts before any period of significant activity. We will hold in trust any amounts that you pay us as a retainer and either (a) credit them to our fees and expenses as set out in our statements of account or (b) hold the retainer amount as security over the course of the engagement, in which case you will still be required to remit payment on an ongoing basis as each invoice is rendered. We will reimburse you at the end of the matter for any remaining balance.

6. Governing law

Our engagement with you is governed by, and is to be interpreted, construed and enforced in accordance with, the laws of Alberta and the laws of Canada applicable in such province, excluding any rule or principle of conflicts of law that may provide otherwise. In this regard, you and we each irrevocably attorn to the jurisdiction of the courts of Alberta, which will have non-exclusive jurisdiction over any matter arising out of this engagement.

Your business needs will be our primary concern in this engagement. We appreciate your confidence and look forward to working with you on this matter.

If you have any questions, please contact the undersigned or our managing partner, Mark Bennett (at managing.partner@cassels.com or by phone at 416-869-5407).

Yours truly,

Cassels Brock & Blackwell LLP

Danielle Marechal

Danielle Marechal
Partner

DM/rk

We agree to engage your services in accordance with the terms set forth above.

Dated January _____, 2021.

CITY OF STOUGHTON, A WISCONSIN MUNICIPAL CORPORATION

By: _____
Name:
Title:

LEGAL*52066269.2

Cassels

STANDARD TERMS FOR CLIENT ENGAGEMENTS

OVERVIEW

These terms apply to any particular matter that we undertake for a client. The phrase "these terms," when used below, means the following Standard Terms for Client Engagements. In these terms, we use the term "you" to refer to our client(s); that term does not refer to or include any other person (see section 2, below). References to "us," "we," "our," and the "firm" are references to Cassels Brock & Blackwell LLP.

By engaging us, or by continuing to engage us or obtain advice or services from us, you hereby agree to these terms, including any amendments made to them from time to time. If, at any time, you do not wish to continue to be bound by these terms (subject to certain limitations contained below, including those in section 6), you may terminate your engagement of the firm by notice given in writing. However, these terms will continue to apply to advice or services provided up to the time that such notice is received by us.

1. NATURE OF OUR ENGAGEMENT

For each matter for which you engage us, we will provide you with legal services that in our professional judgment are reasonably necessary and appropriate to carry out the particular engagement.

These terms apply to all matters that we undertake for you. However, if we also set out in an engagement letter the details of a particular matter that we undertake for you the terms of that letter, to the extent that they conflict with these terms, will apply to that matter.

We will not provide legal advice or services except as described in these terms and in any engagement letter we may send you. Further, your engagement of us will not be subject to your outside counsel guidelines, billing guidelines, or your form of engagement letter (if any) unless a member of the Audit and Risk Management Committee of the firm or the Managing Partner or a Deputy Managing Partner provides to you a signed, written acceptance of such terms or guidelines.

2. OUR REPRESENTATION OF YOU

Our representation of you will not include representing related persons or entities, such as individuals or other persons who are, for example, shareholders, directors or officers of a corporation, or its parent, subsidiaries or affiliates, related corporate entities, partners of a partnership or participants in a joint venture, or members of a trade association or other organization. In acting for you, we are not acting for or taking on any obligations to any such related persons or entities, and no lawyer-client or other fiduciary relationship will exist between us and any of them.

3. INSTRUCTIONS

For clients that are organizations (such as corporations), we will accept instructions from anyone in your organization who has apparent authority in connection with the particular matter, unless you instruct us otherwise.

4. UNDERTAKING TO PRESERVE CONFIDENTIALITY

We will not misuse or, subject to applicable law, our professional and ethical obligations and your instructions, disclose your confidential information. Because we owe this duty to all our clients, we will not disclose to others information we hold in confidence for you (even where such confidential information may be relevant to our representation of those others) or disclose to you information we hold in confidence for others (even where such confidential information would be relevant to our representation of you).

5. IDENTIFICATION OF POTENTIAL CONFLICTS

We will conduct a review of our records at the beginning of each new matter and will contact you if we identify a potential conflicting interest in representing you in the particular matter.

We do not normally consider ourselves to have a conflicting interest because we represent other clients, including any business competitor, customer, or supplier of yours, on whose behalf we are asserting legal positions or arguments that may be inconsistent with those you are asserting or may wish to assert, or who in another matter is adverse in interest to an entity you have a relationship with (through ownership, contract, or otherwise). Unless you have asked us to perform a conflict search against a particular person or entity, our conflict search will not necessarily identify any issues arising from our representation of that person or entity.

6. REPRESENTATION OF OTHER CLIENTS

We wish to avoid any circumstances in which you would consider our representation of another client to be inconsistent with our obligations to and understandings with you.

However, by engaging us in accordance with these terms, you are also agreeing that, while you are our client, you will permit us to represent other clients in other matters, including litigation matters, that may be adverse to your interests, provided that: (a) no such matter is the same as or directly related to any matter in which we are representing you or have represented you; and (b) we protect your relevant confidential information. In this latter regard, you acknowledge that, if we establish a confidentiality screen in a timely manner, that screen will be sufficient protection of your confidential information.

By giving this consent, you are waiving any conflict that may exist as a result of the “duty of loyalty.” This provision will survive the termination of the engagement between you and us, and the firm may rely upon this consent to represent other clients in matters adverse to you in the future.

We are relying on the consent described above in agreeing to represent you in each matter. Except as described above, we will not seek any further consent from you or consult with you before advising, acting for, or representing another client with interests that may be adverse to yours. If you have any questions concerning the implications of providing this consent, we recommend that you seek advice from independent legal counsel (which may include your in-house counsel, if applicable).

If we learn that we are engaged in a matter that creates a conflict of interest or a potential conflict of interest and you have not already given your consent to us, we may ask for your consent to our continuing to act on terms satisfactory to all concerned.

7. INABILITY TO RECEIVE INSTRUCTIONS

We will make our best efforts to contact you in advance of any relevant date to advise you of your options concerning any action that may need to be taken. Very occasionally, however, we may be unable, or it may be impracticable, to receive timely instructions from you about a possible course of action where the decision required is time-sensitive, and the failure to act may have a negative impact on your matter. In such a case, you authorize us to take whatever steps we consider appropriate in the circumstances, which may include filing documents on your behalf with a court or regulatory body, to protect your position. We will, in such a case, take the minimum steps necessary and promptly advise you as to what we did and why.

8. TERMINATION

You may at any time give us written notice to terminate your engagement of us. On termination, you will pay to us all unpaid legal fees, disbursements, and internal charges incurred in the ordinary course of our representation of you. Subject to our professional and ethical obligations, we may at any time terminate our legal representation of you for any reason, including as a result of conflicts of interest that arise or unpaid legal fees, disbursements, or internal charges. Termination of our engagement, by you or by us, does not affect your responsibility to pay for legal fees, disbursements, and internal charges incurred to the date of termination or necessarily incurred afterwards as part of the orderly termination of our engagement.

Unless our engagement has already terminated, our representation of you in a particular matter will end when you receive our final statement of account. Upon termination of a matter, please advise us if you wish us to return to you any documentation you gave us. Otherwise, we will deal with it (and any work product created for you) in accordance with our records retention practices, which may differ from your practices. Unless you advise us otherwise in writing, we may retain or destroy any such records as we deem appropriate.

Once our work on a particular matter has been completed, we will not advise you as to subsequent legal developments relating to that matter. The fact that we may subsequently send you information without charge or include you in general mailings will not change the fact that our engagement has been terminated.

We also do not diarize or take further steps to confirm the status of, amend, update, or renew any security or other filings (including, without limitation, registrations made under applicable legislation, garnishments, and writs of seizure and sale) that we may have made on your behalf. You will need to take all necessary steps to ensure that registrations and other filings remain effective, including by noting expiry dates and undertaking required renewals.

9. ELECTRONIC COMMUNICATIONS

During the course of our engagement on any particular matter, we may exchange electronic versions of documents and emails with you using commercially available software. Unfortunately, the available technology is vulnerable to attack by viruses and other destructive electronic programs. As a result, while we have sought to take countermeasures, our system may occasionally reject a communication you send us; alternatively, we may send you something that your system rejects. Accordingly, we cannot guarantee that you will receive all electronic communications and documents that we send you, or that they will always be virus-free. We make no promises relating to the delivery or security of any electronic communications between us. You consent to our sending you electronic communications, including confidential documents, unencrypted.

10. PRIVACY

In the course of our engagement, you may provide to us (and we may collect) personal information that is subject to applicable privacy protection laws. On your behalf, we will collect, use, or disclose that personal information, as appropriate, in the ordinary course of providing our services to you and for those purposes described in our privacy policy, which can be found on our website.

11. STAFFING

Unless you instruct us otherwise, we will draw on the necessary internal resources to handle each particular matter properly. If appropriate, we may involve different lawyers or other legal professionals to deal with different aspects of the matter, including lawyers and legal professionals other than those noted in any engagement letter we may send you. (Our “legal professionals” include law clerks, articling and law students, research librarians, and technical specialists.)

12. LEGAL FEES

Our fees are based on our assessment of the reasonable value of our services. To assist us in determining that value, we assign hourly billing rates to each of our lawyers and legal professionals, and record the time they spend and the services they render on a matter. If we have not previously done so, we will, upon request, provide you with the hourly billing rates for the principal lawyers involved in a matter.

It may be necessary to involve other lawyers and legal professionals (other than those noted in the engagement letter, if we have sent you one) to work on a particular matter, in which case their time will also be recorded at their then current hourly rates.

Our billing rates may change from time to time. If they change during the course of an engagement, the new rates will then apply.

We would be pleased, for any particular matter, to provide an estimate of legal fees, disbursements, and internal charges that we anticipate will be incurred and to provide updated estimates as the matter progresses. Because of the inherent difficulty of predicting the amount of time a particular matter will require and the course the engagement will take, the estimate will be an approximation only. Our actual fees, disbursements, and internal charges may vary, possibly significantly, from the estimate. Estimates are based on the circumstances as we understand them at the time and on assumptions about events that will affect the scope and nature of our work.

13. DISBURSEMENTS AND INTERNAL CHARGES

Our legal fees in a particular matter do not include our disbursements and internal charges, which will be billed in addition to our fees for legal services. They typically include such things as messenger and express delivery charges, postage and courier charges, computer research charges, printing and reproduction costs, overtime costs for administrative staff, travel expenses, filing charges, court reporter fees for examinations and transcripts, witness fees, and fees for service of legal process.

© 2019 Cassels Brock & Blackwell LLP. All rights reserved. | **cassels.com**