

Master Legal Services Agreement
(Barnes & Thornburg LLP, July –December 2014)

THIS MASTER LEGAL SERVICES AGREEMENT, is made effective the __ day of July, 2014, by and between the **CITY OF SAINT PAUL, MINNESOTA**, a municipal subdivision under the laws of the State of Minnesota, whose address is 15 West Kellogg Boulevard, St Paul, MN 55102 (hereinafter referred to as "**City**") and **BARNES & THORNBURG, LLP**, whose address is 225 South Sixth Street, Minneapolis, MN 55402, (hereinafter referred to as "**Consultant**").

WHEREAS, the City engages in, among other things, the financing of various activities supported by the public purposes of enhancing and furthering the well-being of the City of Saint Paul and its residents, including but not limited to public works, public safety, parks and recreation, economic development and redevelopment, and housing projects; and

WHEREAS, Chapter 5 of the Saint Paul City Charter provides that the City Council may, upon recommendation of the City Attorney, appoint special counsel in special circumstances, and fix special counsel's compensation;

WHEREAS, federal and state law and regulations significantly impact the projects and programs undertaken by the City, and the obligations issued by or on behalf of the City to finance such projects and programs and therefore the City attorney finds there is a need for special expertise to be available to the City on a continuing basis as well as on a specific project basis relating to such federal and state laws and regulations for housing, redevelopment and economic development projects; and

WHEREAS, the Consultant is experienced in legal matters relating to public finance, public bonds of varying types, tax increment financing, redevelopment, housing and related matters; and

WHEREAS, the Consultant is one of the law firms approved by the City Council to provide legal services to the City in public finance matters as provided in the City's Resolution No. _____, and authorized the City Attorney to set the terms of such provision of services.

NOW THEREFORE, the City and Consultant, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, agree as follows:

SECTION 1. Scope of Services.

A. Consultant agrees to provide legal services to the City at the direction of the City Attorney Office with respect to public bonds, tax increment financing, redevelopment and housing projects and programs and finance powers of the City ("General Legal Services").

B. Consultant further agrees to provide legal services to the City at the direction of the City Attorney's Office with respect to specific projects as follows:

1. Assist in planning the financing and structuring of the bond issue and, where appropriate, preparing enabling legislation;
2. Prepare or supervise the bond proceedings, including preparation of documents necessary or appropriate to the authorization, issuance, sale, bond opinion, and delivery of the bonds;
3. Assist in various aspects of preparing the official statement or other disclosure documents to be disseminated in connection with the sale of the bonds;
4. Obtain from governmental authorities such approvals, rulings, permissions, and exemptions as bond counsel determines are necessary or appropriate with respect to the issue;
5. Prepare all necessary closing documents and assemble transcripts concerning all proceedings taken in connection with the issuance and sale of the bonds;
6. Render opinions on such related matters as:
 - a. The applicability of particular provisions of federal and state securities law;
 - b. The applicability of tax law provisions governing estate and gift taxation;
 - c. The eligibility of the bonds for investment by various fiduciaries and other regulated investors;
 - d. The status of the bonds and related obligations under laws relating to creditors' rights; and
 - e. The validity and enforceability of security agreements, indentures, and other documents related to the bonds and their security;
7. Assist in presenting information to bond rating organizations and bond insurers, review documents related thereto and advise City accordingly;
8. Provide advice related to amendments to federal and state tax laws;
9. Advise in negotiating bond purchase agreements with underwriters;
10. Provide rebate/arbitrage services for IRS reporting purposes as necessary;
11. As requested, participate in public forums, City meetings, including Council committee meetings and HRA Board meetings, as bond counsel to explain legal aspects of financing; and
12. Assist in other specified activities related to the bonds.

C. A Scope of Work will be agreed upon by City and Consultant for specific projects. Each Scope of Work will be in the form of the attached Exhibit A and include a list of individuals who will perform the work, and a list of key tasks. Each Scope of Work will be signed by City and Consultant prior to the commencement of any work and shall be

incorporated into this Agreement as an attachment. City and Consultant agree that all of the terms and conditions of this Master Agreement shall apply to each Scope of Work.
 D. Consultant shall perform all legal services under Sections I.A and I.B. above in accordance with the requirements set forth in Exhibit B attached to this Agreement. Conduit bonds are excluded from this Agreement.

SECTION 2. Time For Completion.

A. Unless terminated earlier or extended as otherwise provided herein, the term of the Agreement shall commence upon the execution of the Agreement and shall terminate on December 31, 2014.

B. The legal services rendered by Consultant in accordance with Section 1.B. shall be commenced and completed in accordance with the schedule contained in each Scope of Work.

In the event that there are delays caused by actions of the City or which may be reasonably requested by the Consultant which can change the completion date, Consultant shall request an extension of time for completion of the project. The City Attorney will review the request and may grant to the Consultant such extensions of contract time as may be reasonable.

SECTION 3. Billings and Payment.

That for Consultant's faithful performance of this Agreement, the City hereby agrees to compensate the Consultant as follows:

(a) The Consultant shall be compensated for services provided hereunder at the rate of \$235.00 per hour for shareholder attorney time; \$185.00 for associate attorney time; \$130.00 per hour for paralegal time, and \$110 per hour for law clerk time. Provided, however, in the event that the fees of the Consultant will be paid by a private developer, the hourly rate of lawyer time is the Consultant's normal recovery or billing rate.

(b) In addition to the fees for services set forth above, the Consultant shall be entitled to reimbursement for its reasonable and necessary disbursements for duplication of documents; messenger or special delivery services; long distance telephone charges; telecopy or fax charges; and other reasonable and necessary amounts paid to third parties related to the services provided pursuant to this Agreement.

(c) The total fees, costs and expenses for services performed under Section 1.A. of this Agreement shall not exceed \$15,000.00.

(d) For general obligation and governmental revenue bonds (including, by way of example, sewer, water, or lease/annual appropriation bonds) bond counsel will be compensated according to the hourly rates as set forth in Section 3 (a) for hourly legal services, with fees capped in order not to exceed the following schedule and to comply with the state statute governing bond counsel fees:

<u>Principal Amount of Bonds</u>	<u>Bond Counsel Fee</u>
\$1,000,000 or less	\$4,900.00
\$1,000,001 to \$3,000,000	\$6,300.00
\$3,000,001 to \$5,000,000	\$8,400.00
\$5,000,001 to \$7,000,000	\$9,800.00

\$7,000,001 to \$11,000,000	\$12,600.00
\$11,000,001 to \$15,000,000	\$15,400.00
\$15,000,001 to \$20,000,000	\$18,200 .00
\$20,000,001 to \$25,000,000	\$21,000.00
\$25,000,001 to \$30,000,000	\$23,800.00
\$30,000,001 and above	To be negotiated

The above schedule assumes that the bond issue will be a fixed rate issue. In the event the bonds are sales tax revenue bonds or tax increment revenue bonds, or issued as a floating rate issue, with liquidity or credit enhancement provisions, City and Consultant will separately negotiate a different arrangement, which may be a "not-to-exceed" fee.

The Consultant shall bill the City on a monthly basis of each year for the services provided hereunder unless other terms are mutually agreed upon by the City and Consultant. In the event of termination of this Agreement, the Consultant shall be paid for its services rendered up to and including the day upon which termination is effective. Each invoice submitted by the Consultant shall separately itemize, and state the fees, names of the lawyers, amount of time, nature of work performed, and disbursements attributable to, each separate matter to which such bill relates.

In the event the Consultant fails to comply with any terms or conditions of the Agreement or to provide in any manner the work or services as agreed to herein, the CAO reserves the right to withhold any payment until the CAO is satisfied that corrective action has been taken or completed. This option is in addition to and not in lieu of the City's right to termination as provided in the Sections 15 and 16 of this Agreement.

SECTION 4. Responsible Individuals.

The individuals at the Consultant primarily responsible for the performance of the legal services required of the Consultant under this Agreement shall be Benjamin Johnson. The CAO shall be responsible for directing the Consultant to perform legal services for the City. The responsible individuals shall perform the legal services in accordance with the requirements set forth in Exhibit B. The responsible individuals at the Consultant shall submit to the CAO the monthly billing statements provided in Section 3 of this Agreement.

SECTION 5: City Responsibilities.

The City agrees to provide Consultant with access to any information from City documents, staff, and other sources needed by Consultant to complete the work described herein.

SECTION 6. Work Products, Records, Dissemination of Information.

A. For purposes of this Agreement, the following words and phrases shall have the meanings set forth in this section, except where the context clearly indicates that a different meaning is intended.

"Workproduct" shall mean any report, recommendation, paper, presentation, drawing, demonstration, or other materials, whether in written, electronic, or other format that results from Consultant's services under this Agreement.

"Supporting documentation" shall mean any surveys, questionnaires, notes, research, papers, analyses, whether in written, electronic, or in other format and other evidences used to generate any and all work performed and work products generated under this Agreement.

"Business records" shall mean any books, documents, papers, account records and other evidences, whether written, electronic, or in other format, belonging to Consultant and pertaining to work performed under this Agreement.

B. All deliverable work products and supporting documentation that result from the Consultant's services under this Agreement shall be delivered to the City and shall become the property of the City after final payment is made to the Consultant with no right, title, or interest in said work products or supporting documentation vesting in Consultant.

C. The Consultant agrees not to release, transmit, or otherwise disseminate information associated with or generated as a result of the work performed under this Agreement without prior knowledge and written consent of the City.

D. In the event of termination, all documents finished or unfinished, and supporting documentation prepared by the Consultant under this Agreement, shall be delivered to the City by Consultant by the termination date and there shall be no further obligation of the City to Consultant except for payment of amounts due and owing for work performed and expenses incurred to the date and time of termination.

E. The Consultant agrees to maintain all business records in such a manner as will readily conform to the terms of this Agreement and to make such materials available at its office at all reasonable times during this Agreement period and for six (6) years from the date of the final payment under the contract for audit or inspection by the City, the Auditor of the State of Minnesota, or other duly authorized representative.

F. Consultant agrees to abide strictly by Chapter 13, Minnesota Government Data Practices Act, and in particular Minn. Stat. §§ 13.05, subd. 6 and 11; and 13.37, subd. 1 (b) and Minn. Stat §§ 138.17 and 15.17. All of the data created, collected, received, stored, used, maintained, or disseminated by the Consultant in performing functions under this Agreement is subject to the requirements of the Minnesota Government Data Practices Act and Consultant must comply with those requirements as if it were a governmental entity. The remedies in Chapter 13 apply to the Consultant. If any provision of this Agreement is in conflict with the Minnesota Government Data Practices Act or other Minnesota state laws, state law shall control.

SECTION 7. Equal Opportunity Employment.

Consultant will not discriminate against any employee or applicant for employment for work under this Agreement because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to the same. Consultant agrees to be bound by and comply with the requirements of Section 183.04 of the Saint Paul Legislative Code and the Rules Governing Affirmative Action Requirements in Employment adopted by the Saint Paul Human Rights Commission.

This provision shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising, layoff or termination; rates of pay or their forms of compensation; and selection for training, including apprenticeship.

SECTION 8. Compliance with Applicable Law.

Consultant agrees to comply with all federal, state, and local laws or ordinances, and all applicable rules, regulations, and standards established by any agency of such governmental units, which are now or hereafter promulgated insofar as they relate to the Consultant's performance of the provisions of this Agreement. It shall be the obligation of the Consultant to apply for, pay for, and obtain all permits and/or licenses required.

SECTION 9. Conflict of Interest.

A. Consultant agrees that it will not contract for or accept employment for the performance of any work or services with any individual, business, corporation, or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the City.

B. Consultant's acceptance of this Agreement indicates compliance with Chapter 24.03 of the Saint Paul Administrative Code: "Except as permitted by law, no City official or employee shall be a party to or have a direct financial interest in any sale, lease, or contract with the City."

C. Consultant agrees that, should any conflict or potential conflict of interest become known, Consultant will advise the Purchasing Systems Manager of the situation so that a determination can be made about Consultant's ability to continue performing services under the Agreement.

SECTION 10. Insurance.

A. Consultant shall be required to carry insurance of the kind and in the amounts shown below for the life of the contract. Excluding Professional Liability Insurance, insurance certificates should state that the City of Saint Paul, its employees and officials are Additional Insureds. A cross suits endorsement shall be provided to the benefit of the City.

1. Public Liability Insurance

- | | | |
|--|-------------|-----------------|
| a) Bodily Injury | \$1,500,000 | each occurrence |
| | \$3,000,000 | aggregate |
| b) Property Damage | \$1,500,000 | each accident |
| | \$3,000,000 | aggregate |
| c) Policy must include an "all services, products, or completed transactions" endorsement. | | |

2. Automobile Insurance

- | | | |
|--|-------------|--------------|
| a) Bodily Injury | \$ 750,000 | per person |
| | \$1,500,000 | per accident |
| b) Property damage not less than \$50,000 per accident | | |

3. Worker's Compensation and Employer's Liability

- a) Worker's Compensation per Minnesota Statute
- b) Employer's Liability shall have minimum limits of \$500,000 per accident;

\$500,000 per employee; \$500,000 per disease policy limit.

- c) Contractors with 10 or fewer employees who do not have Worker's Compensation coverage are required to provide the City with a letter verifying their number of employees.

4. Professional Liability Insurance

- a) \$50,000,000 per occurrence
- b) \$50,000,000 aggregate

5. General Insurance Requirements

- a) Excluding Professional Liability Insurance, the policy is to be written on an occurrence basis or as acceptable to the City. Certificate of insurance must indicate if the policy is issued on a claims-made or occurrence basis. All certificates of insurance shall provide that the City's Division of Contract and Analysis Services be given not less than thirty (30) days prior written notice of cancellation, non-renewal or any material changes in the policy; including, but not limited to, coverage amounts. Agent must state on the certificate if policy includes errors and omissions coverage.
- b) The Consultant shall not commence work until a Certificate of Insurance covering all of the insurance required for this project is approved and the project manager has issued a notice to proceed. Insurance must remain in place for the duration of the original contract and any extension periods.
- c) The City reserves the right to review Contractor's insurance policies at any time to verify that City requirements have been met.
- d) Nothing shall preclude the City from requiring Contractor to purchase and provide evidence of additional insurance.
- e) Satisfaction of policy and endorsement requirements for General Liability and Auto Insurance, of "each occurrence" and "aggregate" limits, can be met with an umbrella or excess policy with the same minimum monetary limits written on an occurrence basis, providing it is written by the same insurance carrier.

SECTION 11. Independent Contractor.

It is agreed by the parties that, at all times and for all purposes within the scope of the Agreement, the relationship of the Consultant to the City is that of independent contractor and not that of employee. No statement contained in this Agreement shall be construed so as to find Consultant an employee of the City, and Consultant shall be entitled to none of the rights, privileges, or benefits of Saint Paul employees.

SECTION 12. Subcontracting.

The Consultant agrees not to enter into any subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of the City.

SECTION 13. Hold Harmless.

The Consultant shall indemnify, save and hold harmless, protect, and defend the City, its officers, agents and employees from all claims, actions or suits of any character brought for or on account of any claimed or alleged injuries or damages received by any person or property, including the City, resulting from any act or omission by any person employed by Consultant in carrying out the terms of this Agreement.

SECTION 14. Assignment.

The City and the Consultant each binds itself and its successors, legal representatives, and assigns of such other party, with respect to all covenants of this Agreement; and neither the City nor the Consultant will assign or transfer their interest in this Agreement without the written consent of the other.

SECTION 15. Termination.

A. The City has the right to terminate this Agreement at any time by giving notice thereof to the Consultant.

B. In the event of termination, the City will pay Consultant for all services actually, timely, and faithfully rendered up to the receipt of the notice of termination and thereafter until the date of termination. The Consultant will deliver all work products and supporting documentation developed up to the time of termination prior to the City rendering final payment for service.

SECTION 16. Default by Consultant; City Remedies.

In the event Consultant fails or neglects to comply with any term or condition of this Agreement or to provide the services stated herein, City shall have the following rights: (a) to suspend payment of any invoices; (b) to commence an action to recover the damages incurred by the City; (c) to commence an action to compel specific performance of the Agreement by Consultant; and (d) to terminate this Agreement. This remedy shall be in addition to any other remedies available to the City in law or equity. The City shall be entitled to recover reasonable attorney's fees and costs of collection associated with enforcing its rights hereunder.

SECTION 17. Amendment or Changes to Agreement.

A. City or Consultant may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes and method of compensation must be authorized in writing in advance by the City.

B. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the parties.

C. Modifications or additional schedules shall not be construed to adversely affect vested rights or causes of action which have accrued prior to the effective date of such amendment, modification, or supplement. The term "this Agreement" as used herein shall be deemed to include any future amendments, modifications, and additional schedules made in accordance herewith.

SECTION 18. Notices.

Except as otherwise stated in this Agreement, any notice or demand to be given under this Agreement shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested to the addresses set forth in the opening paragraph of this Agreement.

SECTION 19. Waiver.

Any fault of a party to assert any right under this Agreement shall not constitute a waiver or a termination of that right, this Agreement, or any of this Agreement's provisions.

SECTION 20. Survival of Obligations.

A. The respective obligations of the City and Consultant under these terms and conditions, which by their nature would continue beyond the termination, cancellation, or expiration hereof, shall survive termination, cancellation or expiration hereof.

B. If a court or governmental agency with proper jurisdiction determines that this Agreement, or a provision herein is unlawful, this Agreement or that provision, shall terminate. If a provision is so terminated but the parties legally, commercially, and practicably can continue this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

SECTION 21. Interpretation of Agreement; Venue.

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation related to this Agreement shall be venued in the District Court of the County of Ramsey, Second Judicial District, State of Minnesota.

SECTION 22. Force Majeure.

Neither the City nor the Consultant shall be held responsible for performance if its performance is prevented by acts or events beyond the party's reasonable control, including, but not limited to: severe weather and storms, earthquake or other natural occurrences, strikes and other labor unrest, power failures, electrical power surges or current fluctuations, nuclear or other civil military emergencies, or acts of legislative, judicial, executive, or administrative authorities.

SECTION 23. Business Office.

During the term of this Agreement and any extension hereof, the Consultant agrees to maintain a business office in downtown Saint Paul.

SECTION 24. Entire Agreement.

It is understood and agreed that this entire Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matters herein.

IN WITNESS WHEREOF, the parties hereto are authorized signatories and have executed this Agreement, the day and year first above written.

CITY OF SAINT PAUL

BARNES & THORNBURG, LLC

By: _____
Deputy Mayor

By: _____
Its: _____

By: _____
Office of Financial Services

Approved as to form:

Assistant City Attorney

Exhibit A

Scope of Work

Attachment to Master Legal Services Agreement

Dated: _____

1. Project _____

2. Description of legal services to be performed:

3. Consultant will begin work on _____, 200_, and complete the services by _____, 20__.

4. (a) Attorney fees for non- bond related work will be billed at the hourly rates set forth in section 3 (a) of the Master Legal Services Agreement, and costs will be reimbursed in accordance with Section 3 (b). Total fees and costs shall not exceed the amount of \$_____.

(b) If the project involves City Revenue Bonds or Tax Increment Bonds, then attorney fees for bond related work are agreed to be set at a fixed sum of \$ _____ payable, together with costs, solely from the proceeds of the bond sale. The Consultant shall provide a single line bill for the bond closing; provided, however, that no fees or costs are due or payable to Consultant if the bond closing does not occur. In addition, the Consultant shall provide the CAO and the Director of Financial Services with an itemized billing statement upon completion of the bond closing that will contain the following information: the names of the attorneys or paralegal performing the work, the nature and dates of the work performed and the amount of time associated with each item of work.

5. Individuals from the Consultant to work on this project are as follows:

6. Special provisions:

ACCEPTED AND AGREED TO:

City of Saint Paul, Minnesota:

Barnes & Thornburg, LLP:

By _____
Its Director of Office of Financial Services

By _____
Its _____
Tax Identification Number _____

Approved as to form:

Assistant City Attorney