

AGREEMENT FOR OUTSIDE COUNSEL SERVICES

This Agreement is entered into this 14th day of February, 2011 between the City of Saint Paul, a municipal corporation, 400 City Hall, 15 W. Kellogg Blvd., Saint Paul, MN 55102, on behalf of the Saint Paul City Attorney's Office, (CAO) and Kennedy and Graven, Chartered, 470 U.S. Bank Plaza, 200 South Sixth Street, Minneapolis, MN 55402.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

SECTION 1. Scope of Services.

Kennedy and Graven shall be appointed as outside counsel for the City of Saint Paul for the purpose of advising, initiating or assisting the City Attorney's Office ("CAO") with legal action that will result in the acquisition of properties along Maryland Avenue East immediately east and west of Clarence Street as needed for the Phalen Village Left Turn Lanes Project, as set forth in the Final Order 10-1361 attached hereto and incorporated by reference.

Services under this Agreement shall be provided only by Robert Lindall and John LeFevre unless another attorney has been agreed to in advance and in writing by the CAO.

All information and communications between the City of Saint Paul staff and CAO and Kennedy and Graven shall be considered confidential, attorney work product. All information and communications shall be handled in accordance with applicable rules of professional responsibility for attorneys, attorney-client privilege, and work-product.

SECTION 2. Time for Completion.

This Agreement shall become effective on the date first written above, and shall be in effect for one year from that date or until completion of the Scope of Services, unless terminated earlier in accordance with the termination provisions of this Agreement.

SECTION 3. Billings and Payment.

Kennedy and Graven shall be paid at an hourly rate of One Hundred and Sixty-Five Dollars (\$165.00). All fees and expenses will be paid in accordance with the City Attorney's Office Policy on Fees, attached hereto as Exhibit A and incorporated by reference herein.

Expenses which may be approved in accordance with the Policy shall not exceed \$2,000.00.

SECTION 4. Project Management.

In order to coordinate the services of Kennedy and Graven with the activities of the Saint Paul City Attorney's Office so as to accomplish the purposes of this Agreement, Sara Grewing,

Saint Paul City Attorney, or her designee (Contract Administrator), shall manage this Agreement on behalf of the City of Saint Paul and CAO and serve as liaison between the parties. Kennedy and Graven shall comply with all applicable rules of professional responsibility for attorneys in performing services under this Agreement.

SECTION 5. Work Products, Records, Dissemination of Information.

Kennedy and Graven agrees to maintain all files and 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.

SECTION 6. Compliance with Applicable Law.

Kennedy and Graven 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 Kennedy and Graven's performance of the provisions of this Agreement. It shall be the obligation of Kennedy and Graven to apply for, pay for, obtain and keep in effect all permits and/or licenses required.

SECTION 7. Conflict of Interest.

- A. Kennedy and Graven 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. Kennedy and Graven agrees that, should any conflict or potential conflict of interest become known, Kennedy and Graven will advise the City of the situation so that a determination can be made about Kennedy and Graven's ability to continue performing services under the Agreement.

SECTION 8. Indemnification and Hold Harmless.

Kennedy and Graven shall indemnify and hold harmless the City, its officers, agents and employees from all liability, claims, actions, judgments, damages, losses, costs or expenses, including reasonable attorney's fees, resulting from any act or omission by Kennedy and Graven, its officers, employees or agents in carrying out the terms of this Agreement or in failing to perform any obligation under this Agreement.

SECTION 9. Insurance.

Kennedy and Graven shall be required to carry insurance of the kind and in the amounts shown below for the term of this Agreement. Insurance certificates should state that the City of Saint Paul, its officials, employees, agents and representatives are named as Additional Insureds.

1. General 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 operations" endorsement.

2. Automobile Insurance

Kennedy and Graven agrees and warranties that any employee performing service(s) under this contract which requires that employee to drive their personal vehicle shall carry and have in place at all times and for the duration of this contract, personal automobile insurance of the kinds and amounts required by the State of Minnesota. Currently the minimum limits required are \$30,000 per person/\$60,000 per accident bodily injury, and \$20,000 property damage.

3. Workers Compensation and Employer's Liability

- a) Worker's Compensation insurance coverage 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.

4. Professional Liability Insurance

\$1,500,000 per occurrence
\$3,000,000 aggregate

5. General Insurance Requirements

- a) 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 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) Kennedy and Graven 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 extensions periods.
- c) The City reserves the right to review the insurance policy at any time, to verify that City requirements have been met.
- d) 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 10. Independent Contractor.

It is agreed by the parties that, at all times and for all purposes within the scope of this Agreement, the relationship of the Kennedy and Graven 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 Kennedy and Graven, its employees, agents or officers to be an employee of the City, and Kennedy and Graven shall be entitled to none of the rights, privileges, or benefits of Saint Paul employees.

SECTION 11. Termination.

- A. This Agreement will continue in full force and effect until completion of the services to be provided have been completed herein unless either party terminates it at an earlier date.
- B. Either party may terminate the agreement with or without cause upon fifteen days written notice.
- C. In the event of termination, the City will pay Kennedy and Graven for all services rendered up to the receipt of the notice of termination and thereafter until the date of termination. Kennedy and Graven will deliver all files and work product to the City prior to submitting the final invoice for payment.

SECTION 12. Amendment or Changes to Agreement.

- A. City or Kennedy and Graven 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 13. 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. Any notices or other communications shall be addressed as follows:

To City:

Sara Grewing, Esq.
City Attorney
400 City Hall
15 West Kellogg Blvd.
Saint Paul, MN 55102

To Kennedy and Graven:

Robert Lindall, Esq.
Kennedy and Graven
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402

SECTION 14. 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 15. 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:

KENNEDY AND GRAVEN:

City Attorney

By: _____
Its: _____

M. J. Ferne
Shareholder

Director, Office of Financial Services

Approved as to form:

Assistant City Attorney

CITY OF SAINT PAUL
OFFICE OF THE CITY ATTORNEY
Policy Regarding Fees for Legal Services by Outside Counsel
March 5, 1999

I. GOAL

The goal of this policy is to establish a formal and consistent process that ensures the City of Saint Paul (“City”) receives quality and cost-effective legal services, when the circumstances require the appointment of outside counsel in which the independence of the lawyers’ professional judgment is not compromised. The policy sets forth specific fee and expense billing standards and procedures. It establishes criteria that will best enable the City Attorney’s Office (“CAO”) to measure and monitor outside counsel’s performance, advance the City’s litigation strategy and minimize the City’s expenditures.

All outside counsel providing legal services to the City will review and confirm in writing their acceptance of this policy.

II. POLICY

The following outside counsel retainer policy and procedure is adopted by the CAO.

A. Fees.

1. The City will pay only those hourly rates, or alternative fees arrangements, it has pre-approved in writing. Rate increases will be honored only if agreed upon by the City in advance and in writing.
2. The City will pay no more than the most favorable rates that your law firm charges other similarly situated clients.
3. The City will pay only those fees which reflect the highest and best use of the legal professional’s time.
4. The City will pay only for the actual time spent completing a task with the time rounded to the nearest tenth (.1) hour.
5. The following fees are unacceptable and will not be paid by the City:
 - a. Preparing bills and invoices.
 - b. Responding to billing inquiries from the City.

- c. Routine or elementary legal research, including issues considered to be common knowledge among reasonably experienced counsel in this community.
- d. More than one attendee at a trial, hearing, court appearance, arbitration, mediation, deposition or any similar event unless approved in advance by the City.
- e. Non-attorney/non-paralegal work (e.g., secretaries, library staff, file clerks).
- f. Document stamping, collating, copying and faxing.

B. Expenses.

- 1. The City will pay only actual and reasonable expenses without any premiums or markups. Firms are expected to minimize expenses whenever possible.
- 2. Each expense item must be adequately detailed so as to enable the CAO to determine the exact nature, purpose and necessity of the expense.
- 3. Unless otherwise agreed upon, all routine expenses should be paid directly by your law firm and billed to the City as disbursements.
 - a. Actual copies of receipts for expenses over \$100 must be attached to your billing statement.
 - b. Disbursements over \$1,000 must be approved in advance.
- 4. The City will not pay any fees, charges or expenses associated with law firm overhead, including, but not limited to the following:
 - a. Rent and utilities, including local telephone charges.
 - b. Office supplies.
 - c. Refreshments during meetings, conferences and depositions.
- 5. The City will pay only actual and necessary long-distance telephone call charges.

6. The City will pay only the actual long-distance telephone line charges for outgoing fax transmissions where applicable. No per page or flat rate or local fax charges will be accepted.
7. The City will not pay on-line expenses for computerized legal research in excess of \$100 unless approved in advance.
8. The City will pay the actual cost to the law firm for photocopies not to exceed \$.10 per page.
9. The City will pay for the necessary and reasonable travel expenses outside the metropolitan area provided that the travel is approved in advance and each expense is separately identified with an amount and date incurred. Necessary and reasonable mileage and parking for travel within the metropolitan area will be paid without prior approval.

C. Expert Witnesses and Consultants.

1. The retention of expert witnesses, consultants, and the like must be pre-approved by the City.

D. Billing Procedures.

1. Invoices shall be submitted to the City on each file on a monthly basis.
2. Each activity includes the following itemization as a minimum:
 - a. The identity of the person performing the activity.
 - b. Date performed.
 - c. Actual time spent on the task.
 - d. An adequate description of the activity.
 - e. The cost of the service.
3. Each activity described should be specific enough to allow the CAO to determine what function is being performed and the necessity of the function to the progress of the case. The use of generic descriptions such as “work on file”, “review correspondence”, “research”, “prepare for meeting”, and “preparation of materials” are unacceptable.

4. Each invoice shall include a summary of the time spent by each person for that billing period and a cumulative total of time spent by all persons since inception of the file.

E. Pre-Approval of Certain Fees and Expenses.

1. Activities resulting in fees and expenses requiring approval or pre-approval by the City need not be reflected in formal correspondence. However, the name of the authorizer or the fact that permission was granted must be noted in an appropriate entry within the invoice submitted by the law firm.

F. Year 2000.

1. The law firm represents and warrants that it has taken the necessary measures to insure that all of its computer systems, programs, hardware and software systems will operate properly, whether independently or in conjunction with other systems used in the management and defense of the City's litigation, with regard to the implications of the year 2000.

G. Compliance.

1. The individual or law firm warrants and acknowledges on each statement for services submitted is also a representation by the individual or firm that the attorney in charge of the matter has reviewed the statement and has determined that it accurately reflects work expenses reasonably and necessarily incurred, is directly related to the matters listed and that the fees and charges reflected in the statement comply with the policies described herein and the Minnesota Rules of Professional Conduct.

H. Bill Review and Payment.

1. Payment of any bill by the City at anytime does not constitute a waiver of the City's rights subsequently to question, dispute, obtain reimbursement of, compromise or request repayment or future credit, for any bill or invoice previously paid. The City retains the right to audit all bills or files which are or have been the subject matter of any billing. Such an audit can include a requirement that the law firm produce any and all documentation which would support the billing submitted by the law firm.

RETAINER AGREEMENT ACKNOWLEDGMENT

The undersigned has read the Office of the City Attorney's Policy and Procedure for Retaining Outside Counsel and the Policy Regarding Fees for Legal Services by Outside Counsel, which are made a part hereof by reference, and on behalf of himself/herself and/or the law firm of _____, in consideration of its appointment by the City Council, agrees to comply with the paragraphs V and VIII of the Policy and Procedure for Retaining Outside Legal Counsel and the Policy Regarding Fees for Legal Services by Outside Counsel in connection with that certain lawsuit/matter entitled _____.

The undersigned further agrees on behalf of himself/herself in the above-identified law firm that, except with the prior approval of the City of Saint Paul, only the following persons will perform work in connection with the litigation at the hourly rates indicated.

Lawyer/Paralegal/Law Clerk

Hourly Rate

Dated: _____