

## **AGREEMENT FOR OUTSIDE COUNSEL SERVICES**

This Agreement is entered into this 7th day of March, 2012, 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 Fredrikson & Byron, 200 South Sixth Street, Suite 4000, Minneapolis, Minnesota, 55402-1425

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

### **SECTION 1. Scope of Services.**

Fredrikson & Byron 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 regarding representation of the City in various federal matters, including a now-unsealed *qui tam* matter commenced against the City in the U.S. District Court of Minnesota.

Services under this agreement shall be provided only by David Lillehaug or John Lundquist 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 Fredrikson & Byron 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, unless terminated earlier in accordance with the termination provisions of this Agreement, or unless extended by mutual agreement of the parties.

### **SECTION 3. Billings and Payment.**

A. That for Consultant's faithful performance of this Agreement, the City hereby agrees to compensate Consultant in the amount(s) and according to the schedule that follows.

Services will be reimbursed based on amount of time expended, and will be based on the firm's hourly rates, billed in one-tenth of an hour increments. City will receive a ten percent discounted fee on applicable hourly billing rates. All fees and expenses shall be paid in accordance with the City Attorney's Office Policy on Fees, attached hereto as Exhibit A and incorporated herein by reference, with the exception of Section II.D&E.

B. The above amounts shall fully compensate Consultant for all work and associated costs. The City will honor no claim for services and/or costs provided by the Consultant not specifically provided for in this Agreement.

C. Consultant shall submit an itemized billing statement monthly. Upon receipt of the invoice and verification of the charges by the Project Manager, the City shall make payment to Consultant within thirty (30) days.

#### **SECTION 4. Project Management.**

In order to coordinate the services of Fredrikson & Byron 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. Fredrikson & Byron 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.**

Fredrikson & Byron 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.**

Fredrikson & Byron 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 the Fredrikson & Byron to apply for, pay for, obtain and keep in effect all permits and/or licenses required.

#### **SECTION 7. Conflict of Interest.**

Fredrikson & Byron 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. Certain existing conflicts of interest as set forth in the Consultant's proposal and letter dated January 11, 2011, have been waived.

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

#### **SECTION 8. Indemnification and Hold Harmless.**

Fredrikson & Byron 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 directly from and to the extent of breach of the professional standard of care, but only to the extent covered and payable by Consultant's professional liability insurance.

## **SECTION 9. Insurance.**

Fredrikson & Byron 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  
                                  \$ 2,000,000 aggregate
  - b) Property Damage       \$ 1,500,000 each accident  
                                  \$ 2,000,000 aggregate
  - c) Policy must include an "all services, products, or completed operations" endorsement.
  
2. Automobile Insurance
  - a) Bodily Injury           \$ 750,000 per person  
                                  \$1,000,000 per accident
  - b) Property damage not less than \$50,000 per accident
  
3. Worker's Compensation and Employer's Liability  

Worker's Compensation per Minnesota Statute

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. Agent must state on the certificate if policy includes errors and omissions coverage.

- b) Fredrikson & Byron 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 policies 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 Fredrikson & Byron 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 Fredrikson & Byron, its employees, agents or officers to be an employee of the City, and Fredrikson & Byron 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 for all services rendered up to the receipt of the notice of termination and thereafter until the date of termination. Fredrikson & Byron 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 Fredrikson & Byron 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:

To Fredrikson & Byron:

Sara Grewing  
City Attorney  
400 City Hall  
15 W. Kellogg Boulevard  
Saint Paul, MN 55102

**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:**

**FREDRIKSON & BYRON**

\_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
Its

\_\_\_\_\_  
Director, Office of Financial Services

Approved as to Form:

\_\_\_\_\_  
Assistant City Attorney