

**Master Legal Services Agreement**  
(Ballard Spahr LLP, March 2019-December 2019)

**THIS MASTER LEGAL SERVICES AGREEMENT**, is made effective the 1<sup>st</sup> day of March, 2019, 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, Minnesota 55102 (hereinafter referred to as “**City**”) and **BALLARD SPAHR LLP**, whose address is 2000 IDS Center, 80 South 8<sup>th</sup> Street, Minneapolis, Minnesota 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.

**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’s 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, or another specifically agreed upon form, 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 1A and 1B 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, 2019.

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.

C. 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.

D. The City reserves the right to extend the term of this Agreement for a period of up to two years (to December, 2021). The City can exercise this right by giving written notice thereof to Consultant no later than December 31, 2019.

### **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. The City and the Consultant shall mutually agree upon new per hour rates and annual adjustments. Consultant will adjust its hourly rates each January 1.

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 annually.

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 ranges at set forth in Exhibit C attached hereto and made a part hereof.

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.

*“Work product”* 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 and Workers' Compensation/Employers' Liability, 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.



- c) The City reserves the right to request reasonable additional evidence regarding Contractor's insurance policies at any time to verify that City requirements have been met.
- d) Nothing shall preclude the City from requiring Consultant 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 agrees to be responsible for any compensable injuries or damages, including reasonable costs of defending claims ("Losses"), incurred by the City, its officers, agents, and employees, which are proximately caused by an error or omission of the Consultant or any of its personnel committed in connection with the performance of the professional legal services provided under the terms of this Agreement; provided, however, that (1) Consultant is not liable for any Losses caused by or arising solely out of actions or omissions of the City, its employees, or its agents; and (2) Consultant and City agree that no claim will be settled or otherwise resolved without the consent of Consultant, which consent shall not be unreasonably withheld.

**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 the Consultant agrees to procure a business office space on a daily basis in downtown Saint Paul. If the term of this Agreement is extended on a long-term basis, the Consultant will maintain a business office in downtown St. 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. To the extent not in consistent with the provisions of this Agreement, the Terms of Engagement (the “Ballard Spahr Standard Terms”) attached as Exhibit D are incorporated by reference into this Agreement; provided, however, the City and the Consultant agree that the sections of the Ballard Spahr Standard Terms under the headings “Fees and Expenses,” “Retainer and Trust Deposits,” and “Conflicts of Interest” are not applicable to this Agreement.

**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

BALLARD SPAHR LLP

By: \_\_\_\_\_  
Deputy Mayor

By: \_\_\_\_\_  
Benjamin W. Johnson  
Its: Partner

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 \_\_\_\_\_, 20\_\_, 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:**

**Ballard Spahr LLP:**

By \_\_\_\_\_  
Its Director of Office of Financial Services

By \_\_\_\_\_  
Its \_\_\_\_\_  
Tax Identification Number \_\_\_\_\_

*Approved as to form:*

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

## **Exhibit B**

### **Legal Services**

Consultant agrees to perform all legal services under the Master Legal Services Agreement and each Scope of Work in accordance with the following requirements:

1. Unless directed otherwise by the CAO, all requests for legal services, advice and opinions by Consultant, and other communications between the Consultant and City shall be through the CAO.
2. The CAO shall be copied on all communications whether in the form of memos, letters, e-mails, faxes and the like.
3. The CAO shall be informed of all meetings scheduled with City staff including the project name and agenda.
4. Do not assume you know how the City will decide upon or handle a particular matter or issue. Simply because it has been the City's custom or practice in the past does not mean it should or will continue to be the same in the matter you are currently handling.
5. For most files, it should be unnecessary to involve more than one attorney. If the case requires more involvement than one attorney, prior approval must be secured from the CAO.
6. Do not "double up" at meetings or court hearings. Unless prior approval has been obtained, the City will not pay for more than one attorney at any meeting or court hearing.
7. The client is the City and the City, through its executive director and project managers, makes the decisions on all business negotiations and other items regarding a project. Your role as outside legal counsel is to provide legal counsel and advice to the project managers and executive director, and provide the City with possible courses of action, options and solutions.
8. It is important to listen to the needs of the project manager and to draft clear, concise and easy to understand language that effectuates the intentions of the City.
9. If it appears that the amount of attorney's fees will greatly exceed the original estimate or "not to exceed" amount, then you should notify the project manager as soon as possible so that appropriate action can be taken to minimize ongoing expenses or fund the increased costs.

## Exhibit C

### Fee Ranges

#### GENERAL OBLIGATION BONDS (NORMAL-FIXED RATE-NEW MONEY AND CURRENT REFUNDINGS, NOT MULTI-PURPOSE ISSUES)

\$500,000 or less  
\$500,000 to \$1,000,000  
\$1,000,000-\$3,000,000  
\$3,000,000-\$5,000,000  
\$5,000,000-\$7,000,000  
\$7,000,000-\$11,000,000  
\$11,000,000-\$15,000,000  
\$15,000,000-\$20,000,000  
\$20,000,000-\$25,000,000  
\$25,000,000 and above

#### BOND COUNSEL FEES

\$3000, plus hard costs  
\$3,500-\$5,000, plus hard costs  
\$5,000-\$7,000, plus hard costs  
\$6,000-\$9,000, plus hard costs  
\$7,500-\$11,500, plus hard costs  
\$10,000-\$16,500, plus hard costs  
\$12,000-\$21,500, plus hard costs  
\$15,000-\$25,000, plus hard costs  
\$14,000-\$30,000, plus hard costs  
TO BE NEGOTIATED

#### GENERAL OBLIGATION BONDS (ADVANCE REFUNDINGS-FIXED RATE)

\$500,000 or less  
\$500,000 to \$1,000,000  
\$1,000,000-\$3,000,000  
\$3,000,000-\$5,000,000  
\$5,000,000-\$7,000,000  
\$7,000,000-\$11,000,000  
\$11,000,000-\$15,000,000  
\$15,000,000-\$20,000,000  
\$20,000,000-\$25,000,000  
\$25,000,00 and above

#### BOND COUNSEL FEES

\$4,000, plus hard costs  
\$4,000-\$6,000, plus hard costs,  
\$6,000-\$10,000, plus hard costs  
\$7,500-\$14,000, plus hard costs  
\$9,500-\$15,000, plus hard costs  
\$12,000-\$17,500, plus hard costs  
\$15,000-\$25,000, plus hard costs  
\$15,000-\$30,000, plus hard costs  
\$20,000-\$35,000, plus hard costs  
TO BE NEGOTIATED

UTILITY REVENUE BONDS (NORMAL-FIXED RATE) AND LEASE PURCHASE (PRIVATE PLACEMENT)

BOND COUNSEL FEES

\$500,000 or less	\$4000, plus hard costs
\$500,000 to \$1,000,000	\$4,000-\$7,500, plus hard costs
\$1,000,000-\$3,000,000	\$7,500-\$10,000, plus hard costs
\$3,000,000-\$5,000,000	\$8,000-\$14,000, plus hard costs
\$5,000,000-\$7,000,000	\$10,000-\$17,500, plus hard costs
\$7,000,000-\$11,000,000	\$12,000-\$20,000, plus hard costs
\$11,000,000-\$15,000,000	\$15,000-\$25,000, plus hard costs
\$15,000,000-\$20,000,000	\$15,000-\$30,000, plus hard costs
\$20,000,000-\$25,000,000	\$17,500-\$35,000, plus hard costs
\$25,000,000 and above	TO BE NEGOTIATED
<u>PUBLIC SALE LEASE REVENUE BONDS</u>	TO BE NEGOTIATED

The above schedules assume that the bond issues will be a fixed rate issue. In the event the bonds are sales tax revenue bonds or tax increment 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 quarterly 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.

## Exhibit D

### Terms of Engagement



## Terms of Engagement

The following terms together with the accompanying letter of engagement constitute the terms of your engagement of Ballard Spahr LLP (“Ballard Spahr”) as your lawyers. Unless modified in writing by mutual agreement, these terms will be an integral part of Ballard Spahr’s agreement with you. Therefore, we ask that you review these terms carefully and contact us promptly if you have any questions. We suggest that you retain these terms in your file.

- 1. CLIENT.** It is understood that Ballard Spahr’s Client for purposes of this representation is limited to the individual or entity specifically identified in the engagement letter and does not include others.
- 2. SCOPE OF REPRESENTATION.** Our representation is limited to performance of the services expressly described in the engagement letter and does not include representation of you or your interests in any other matter. It is important that you have a clear understanding of the legal services we will provide and that you contact us promptly to discuss any questions that you may have about them. You may limit or expand the scope of the representation from time to time, provided that any substantial change is agreed to by us and made in writing. We will provide legal counsel to you in reliance upon information and guidance provided by you, keep you reasonably informed of the status of the matter, and respond to your inquiries. Any expressions on our part concerning the outcome of your legal matters are expressions of our professional judgment, but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed.
- 3. REGARDING FEDERAL TAX ADVICE.** In the course of our representation, we may render tax advice to you on various legal matters. You understand that you may not use such tax advice to avoid any penalties that may be imposed by the Internal Revenue Service unless, in accordance with the Internal Revenue Service rules of practice, we are specifically engaged to provide a formal, written tax opinion for that purpose. Accordingly, you acknowledge that we may legend any written tax advice that we provide in the course of this engagement to indicate that it may not be relied on for purposes of penalty protection. You further understand that our representation does not include the provision of any tax advice concerning transactions in which you may participate that would be “reportable transactions” within the meaning of Section 6707A of the Internal Revenue Code of 1986, as amended, and that our provision of tax advice concerning such transactions would require a separate engagement for that purpose. In particular, we shall not advise as to any transaction in which you may participate in which your or our disclosure of its tax treatment or tax structure is limited by any person other than you, our client, unless we are separately engaged by you for that purpose.

4. **STAFFING.** Customarily, each client of Ballard Spahr is served by a Relationship Partner (a principal lawyer contact) and one or more Matter Billing Lawyers (a lawyer designated to oversee an individual matter that Ballard Spahr handles on your behalf). Your work or parts of it may be performed by other lawyers and legal assistants at Ballard Spahr. Such delegation may be for the purpose of involving lawyers or legal assistants with special expertise in a given area or for the purpose of providing services on the most efficient and timely basis.

5. **ELECTRONIC DISCOVERY.** In matters involving electronic discovery, Ballard Spahr will work closely with the client's representatives and agents to ensure that all tasks associated with electronic discovery, including data preservation, data collection and processing, are performed in accordance with relevant legal and ethical standards. You agree to facilitate Ballard's management of electronic discovery by timely assigning relevant business, legal or IT representatives, including retained vendors, to assist Ballard and its representatives as needed. If you choose to use Ballard Spahr's electronic discovery system (Relativity®) for a given matter, you will be charged unit prices for data hosting and data processing, as set forth in Section 10 and in the Disbursement Pricing Schedule, in addition to fees for any necessary Litigation Support time.

6. **TERMINATION OF ENGAGEMENT.** Either of us may terminate the engagement at any time for any reason by written notice, subject on our part to applicable rules of professional conduct. Your termination of our services will not affect your responsibility for payment of legal services rendered and additional charges incurred before termination and in connection with an orderly transition of the matter. If permission for withdrawal is required by a court, we will apply for such permission and you agree to engage successor counsel to represent you.

We are subject to the rules of professional responsibility for the jurisdictions in which we practice, which list several types of conduct or circumstances that require or allow us to withdraw from representing a client, including for example: nonpayment of fees or costs, misrepresentation or failure to disclose material facts, action contrary to our advice, and conflict of interest with another client. We try to identify in advance and discuss with our client any situation which may lead to our withdrawal, and if withdrawal ever becomes necessary, we give the client written notice of our withdrawal.

7. **CONCLUSION OF REPRESENTATION.** Unless previously terminated, our representation will conclude upon our sending you our final invoice for services rendered in this matter.

8. **RETENTION AND DISPOSITION OF DOCUMENTS.** Following the termination of our representation or the conclusion of the matter, any otherwise nonpublic information you have supplied to us which is retained by us will be kept confidential in accordance with applicable rules of professional conduct. At your request, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our own files pertaining to the matter will be retained by Ballard Spahr. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. We reserve the right to destroy or otherwise dispose of any

such documents or other materials retained by us within a reasonable time after the termination of the engagement.

**9. POST-ENGAGEMENT ISSUES.** You are engaging Ballard Spahr to provide legal services in connection with the matter referred to in the accompanying engagement letter. After completion of the matter, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you engage us after completion of the matter to provide additional advice on issues arising from the matter, Ballard Spahr has no continuing obligation to advise you with respect to future legal developments.

**10. FEES AND EXPENSES.** Our fees will be based primarily on the amount of time spent on your behalf. Each lawyer and legal assistant has an hourly billing rate based generally on experience and special knowledge. The rate multiplied by the time expended on your behalf, measured in tenths of an hour, will be the initial basis for determining the fee. The billing rates for this matter are specifically discussed in the engagement letter. These billing rates are subject to change from time to time. Other factors may be taken into consideration in determining our fees including the responsibility assumed, the novelty and difficulty of the legal problem involved, the skill required to perform the work, the particular experience or knowledge provided, time limitations imposed by you or the transaction or matter, the benefit resulting to you, and any unforeseen circumstances arising in the course of our representation.

We will include on our invoices separate charges for performing services and expenses such as photocopying, messenger and delivery service, computerized research, travel, long-distance telephone fees, faxing fees and electronic discovery fees, including data hosting and data processing, in accordance with the attached Disbursement Pricing schedule. In litigation matters, such expenses may also include deposition costs, process servers, court reporters and witness fees. We may elect to have you billed directly for certain expenses such as consultants, appraisers, and local counsel.

Invoices normally will be rendered monthly for work performed and expenses recorded on our books during the previous month. Payment is due promptly upon receipt of our invoice. Invoices rendered in December must be paid prior to the end of the year. If any invoice remains unpaid for more than 30 days, we may suspend performing services for you and withdraw as your counsel unless arrangements satisfactory to us have been made for payment of outstanding invoices and the payment of future fees and expenses. To the extent Ballard Spahr has agreed to a discounted fee arrangement, we reserve the right to revoke that arrangement if invoices are not paid in a timely manner.

Fees and costs relating to this matter are not predictable. Accordingly, unless specifically stated to the contrary in the engagement letter, we have made no commitment to you concerning the maximum fees and costs that will be necessary to resolve or complete this matter. It is expressly understood that payment of Ballard Spahr's fees and costs is in no way contingent on the ultimate outcome of the matter. Occasionally, we will, in appropriate circumstances, provide legal services on a contingent fee basis. Any such contingent fee arrangement will be set forth in the engagement letter.

**11. RETAINER AND TRUST DEPOSITS.** New clients of Ballard Spahr are commonly asked to deposit a retainer. If you deposit a retainer with us, you grant us a security interest in that deposit. Typically,



the retainer is equal to the fees and costs likely to be incurred during a one-month period. It will be deposited in our general trust account. The retainer will be applied to our final billing in the matter and we will then return to you, without interest, any unearned portion of the retainer.

All trust deposits we receive from you, including retainers, will be placed in a trust account for your benefit. By court rule in each jurisdiction in which Ballard Spahr has an office, your deposit will be placed in a pooled account unless you request otherwise or we judge it appropriate to establish a segregated account. By court rule in each of these jurisdictions, interest earned on the pooled account is payable to a charitable foundation established in accordance with such court rule. Interest earned on any segregated trust account will be added to the deposit for your benefit and will be includable in your taxable income.

**12. CLIENT RESPONSIBILITIES.** You agree to pay our invoices for services and expenses in a timely manner as provided in paragraph ten, above. In addition, you will be candid and cooperative with us and will keep us informed with complete and accurate factual information, documents and other communications relevant to the subject matter of our representation or otherwise reasonably requested by us. Because it is important that we are able to contact you at all times in order to consult with you regarding your representation, you will inform us, in writing, of any changes in the name, address, telephone number, contact person, email address, state of incorporation or other relevant changes regarding you or your business. Whenever we need your instructions or authorization in order to proceed with legal work on your behalf, we will contact you at the latest business address we have received from you.

**13. CONFLICTS OF INTEREST.** Ballard Spahr represents many other companies and individuals. It is possible that present or future clients of Ballard Spahr will have disputes or transactions with you. For example, although we represent a bank in litigation, we may concurrently have clients whom we represent in connection with obtaining a loan from the same bank. You agree that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not *substantially related* to our work for you even if the interests of such clients in those other matters are directly adverse. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a nonpublic nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. You should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent you.

You will provide Ballard Spahr with a list of entities within your corporate or immediate personal family. If you affiliate with, acquire, or are acquired by or merge with another company, you will provide us with sufficient notice to permit us to withdraw as your attorneys if we determine that such affiliation, acquisition or merger creates a conflict of interest between any of our clients and the other party to such affiliation, acquisition or merger, or if we determine that it is not in the best interests of Ballard Spahr to represent the new entity.

You have agreed that our representation of you in the matter described in the engagement letter does not create an attorney-client relationship between Ballard Spahr and other entities in your personal or corporate

family. Accordingly, our representation of you in the matter identified in the engagement letter will not give rise to any conflict of interest in the event other clients of Ballard Spahr are adverse to members of your personal or corporate family.