

Special Counsel Retainer Agreement

Between

The City of Saint Paul, Minnesota;

&

Brian T. Grogan & his firm MOSS & BARNETT

Recitals

Whereas, the Heights Site is the location of the former Hillcrest Golf Course in the Greater East Side neighborhood of Saint Paul. The site is currently owned and controlled by the Saint Paul Port Authority (SPPA) who is identified as the Master Developer for the 112-acre The Heights parcel; and

Whereas, the City believes a geothermal-power franchise at the Heights Site would support 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; and

Whereas, federal and state laws for utilities, energy, and franchising significantly impact the projects and programs undertaken by City. Consequently, the City Attorney finds there is a need for special expertise to be available to City on a continuing basis, as well as on a specific project basis, to provide legal services relating to such federal and state laws; and

Whereas, Special Counsel is experienced in legal matters relating to municipal franchises, contracts, utilities, and energy law; and

Now, City and Special Counsel, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, agree as follows:

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Article 1.

Scope of Services & Acknowledgement of City's Policies.

Section 1.1. **Scope of Work.** Special Counsel agrees to provide legal services to City at the direction of the City Attorney's Office ("CAO") for evaluating the feasibility of creating a new geothermal-energy franchise, assisting in negotiating that franchise with the energy provider, and helping ensure compliance for this franchise under relevant local, state, and federal laws and regulations.

Specifically, Special Counsel agrees to provide legal services to City at the direction of the CAO as follows:

- § 1.1.1. Provide ongoing advice and guidance regarding aspects related to creating a geothermal franchise agreement, including drafting and negotiating a final franchise agreement in collaboration with the CAO, between the City and District Energy Saint Paul.
- § 1.1.2. Provide ongoing advice and guidance as directed by the CAO regarding geothermal energy law, utility law, franchising law, and any other related areas of law necessary to develop and execute a geothermal franchise agreement.
- § 1.1.3. Provide ongoing advice and guidance as directed by the CAO regarding changes in the utility regulatory and industry environment, including related right-of-way matters.
- § 1.1.4. Provide guidance and assistance, as directed by the CAO, regarding various regulatory requirements at the Federal and State level.
- § 1.1.5. Attend meetings and events the City Council and/or the CAO determines are necessary to attend.
- § 1.1.6. Research and analyze federal and state laws and regulations that impact geothermal and/or renewable energy and city-created franchises.
- § 1.1.7. Provide any other subsequently requested input or assessments as directed by the CAO regarding potential improvements in the City's geothermal-franchise regulation, monitoring, and administration.

Section 1.2. **Acknowledgment of City’s Policies.** Special Counsel for the City of Saint Paul, Brian T. Grogan—and via his firm, MOSS & BARNETT—acknowledges that he has read and reviewed both of the following policies from the Office of the Saint Paul City Attorney, which are made part of this Agreement by reference:

- *Policy and Procedure for Retaining Outside Counsel, and*
- *Policy Regarding Fees for Legal Services by Outside Counsel.*

Article 2

Time for Completion.

Section 2.1. **Term.** Unless terminated earlier or extended as outlined in this Agreement, the term of this Agreement shall begin on _____, and shall terminate either on, (i) January 1, 2026, or (ii) upon successful execution of a geothermal franchise agreement involving the City and District Energy, whichever event comes first.

Section 2.2. **Delays.** In the event there are delays caused by actions of City, or which may be reasonably requested by Special Counsel which may change the completion date, Special Counsel shall request an extension of time for completion of the project. The City Attorney will review the request and may grant to Special Counsel such extensions of contract time as may be reasonable.

Section 2.3. **Right to extend.** The City reserves the right to extend the term of this Agreement for a period of up to one year. The City may exercise this right by giving written notice to Special Counsel no later than thirty (30) days before the initial termination date.

Article 3
Billing and Payment.

Section 3.1. **Rate.** In exchange for Special Counsel’s good-faith performance of this Agreement, City agrees to compensate Special Counsel—and any Paralegal and/or Associate listed—according to the following table:

Lawyer or Paralegal	Hourly Rate
<i>Partner:</i> Brian T. Grogan	\$410.00
<i>Associate:</i> Katherine Marshall	\$300.00
<i>Paralegal:</i> Terri Hammer	\$195.00

Section 3.2. **Fee cap.** The total fees for services performed under Section 3.1 of this Agreement, unless amended, shall not exceed \$20,000. Any fees over this amount must be separately negotiated by the parties. This Section 3.2 is not intended to serve as a flat fee or fixed fee agreement. The parties recognize that services directed by CAO under Section 3.1 of this Agreement may increase or decrease the total fees under this Agreement.

Section 3.3. **Billing.** Special Counsel shall bill City on a monthly basis of each year for the services provided in this Agreement unless other terms are mutually agreed upon by City and Special Counsel.

If this Agreement is terminated, Special Counsel shall be paid for its services rendered up to—and including—the day termination is effective.

Section 3.4. **Itemized invoices.** Each invoice submitted by Special Counsel shall separately itemize, and state the fees, names of the lawyers and paralegals, amount of time, nature of work performed, and disbursements attributable to each separate matter to which such bill relates.

Section 3.5. **Option to withhold for unsatisfactory services.** In the event Special Counsel fails to comply with any terms or conditions of this Agreement, or to provide—in any manner—the work or services as agreed to in this Agreement, 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 Article 15 of this Agreement.

Article 4

Responsible Individuals.

Section 4.1. The individual(s) at Special Counsel’s firm primarily responsible for the performance of the legal services required of Special Counsel under this Agreement shall be those listed in the table above in Section 3.1 of this Agreement.

The CAO shall be responsible for directing Special Counsel to perform legal services for City. The responsible individual—or the Special Counsel overseeing the responsible individual—at the Special Counsel’s firm shall submit to the CAO the monthly billing statements provided in Article 3 of this Agreement.

Article 5

City’s Responsibilities.

Section 5.1. City agrees to provide Special Counsel with access to any information from City documents, staff, and other sources needed by Special Counsel to complete the work described in this Agreement.

Article 6

Work Products, Records, Dissemination of Information.

Section 6.1. **Definitions.** For purposes of this Agreement, the following words and phrases have the meanings defined in this section, except where the context clearly indicates that a different meaning is intended:

§ 6.1.1. **Work Product.** “Work product” shall mean any report, recommendation, paper, memorandum, presentation, drawing, demonstration, or other materials—whether in written, electronic, or other format—resulting from Special Counsel’s services under this Agreement.

§ 6.1.2. **Supporting Documentation.** “Supporting documentation” shall mean any surveys, questionnaires, notes, research, papers, analyses, whether in written, electronic, or in other format, and other resources and materials used to generate any and all work performed—and work products generated—under this Agreement.

§ 6.1.3. **Business Records.** “Business records” shall mean any books, documents, papers, account records, and other resources and materials—whether written, electronic, or in other format—belonging to Special Counsel and pertaining to work performed under this Agreement.

Section 6.2. **Property of City.** All deliverable work products and supporting documentation that result from Special Counsel’s services under this Agreement shall be delivered to City and shall become the property of City after final payment is made to Special Counsel with no right, title, or interest in said work products or supporting documentation vesting in Special Counsel.

Section 6.3. **Confidentiality.** Special Counsel 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’s authorized representative under Article 18.

Section 6.4. **Delivery on Termination.** In the event of termination, all documents finished or unfinished, and supporting documentation prepared by Special Counsel under this Agreement, shall be delivered to City by Special Counsel on or before the termination date and there shall be no further obligation of City to Special Counsel except for payment of amounts due and owing for work performed and expenses incurred through the date and time of termination.

Section 6.5. **Special Counsel’s Duty to Maintain Records.** Special Counsel agrees to maintain all files and records relating to work performed under this Agreement—including business records—in such a manner as will readily conform to the terms of this Agreement.

Special Counsel will also make such materials available at its office at all reasonable times during this Agreement period.

Special Counsel will also make such materials available at its office for ten (10) years from the date of the final payment under this Agreement for audit or inspection by City, the Auditor of the State of Minnesota, or other duly authorized representatives.

Section 6.6. **Data Practices Act.** Special Counsel agrees to abide strictly by Chapter 13, Minnesota Government Data Practices Act, with particular care and attention paid to the following sections of the Data Practices Act:

- Minnesota Statutes section 13.05, subdivisions 6 and 11;
- Minnesota Statutes section 13.37, subdivisions 1(b);

- Minnesota Statutes section 138.17;
- Minnesota Statutes section 15.17.

All of the data created, collected, received, stored, used, maintained, or disseminated by Special Counsel in performing functions under this Agreement is subject to the requirements of the Minnesota Government Data Practices Act. Special Counsel must comply with those requirements as if it were a governmental entity.

The remedies in Chapter 13 apply to Special Counsel. 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.

Article 7

Equal Opportunity Employment.

Section 7.1. Special Counsel 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. Special Counsel will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to the same.

Special Counsel agrees to be bound by and comply with the requirements of Saint Paul Legislative Code section 183.04 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.

Article 8

Compliance with Applicable Law.

Section 8.1. **Compliance with Applicable Law.** Special Counsel 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 Special Counsel's performance of the provisions of this Agreement.

Section 8.2. **Duty to Obtain Permits or Licenses.** It shall be the obligation of Special Counsel

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

Article 9

Conflict of Interest.

Section 9.1. **Conflicts.** Special Counsel agrees that it will not contract 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 City, other than as specifically disclosed to and consented to in writing by the City.

Section 9.2. **Compliance with Admin Code.** Special Counsel's acceptance of this Agreement indicates compliance with Chapter 24.03 of the Saint Paul Administrative Code, which provides, in relevant part:

“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.”

Section 9.3. **Duty to Disclose.** Special Counsel agrees that, should any conflict or potential conflict of interest become known, Special Counsel will, without delay, advise the CAO of the situation so that a determination can be made about Special Counsel's ability to continue performing services under this Agreement.

Article 10

Insurance.

Section 10.1. **Requirement to Carry Insurance.** Special Counsel shall be required to carry insurance of the kind and in the amounts specified and listed in this Article 10 of the Agreement, and for the term of this Agreement and any extension(s) agreed to by the parties under the terms of this Agreement.

Section 10.2. **Certificate Requirements.** Excluding Professional Liability Insurance and Workers' Compensation/Employers' Liability, insurance certificates must state that City, its employees, and officials are Insureds under Special Counsel's insurance policy. A cross-liability coverage endorsement shall be provided to the benefit of City. Every insured claimed against under the policy will be treated, at the time of the claim, as if they were the only insured under the policy.

Section 10.3. **General Liability Insurance.**

§ 10.3.1. Bodily Injury: \$1,500,000 each occurrence; \$3,000,000 aggregate.

§ 10.3.2. Property Damage: \$1,500,000 each accident; \$3,000,000 aggregate.

§ 10.3.3. Policy must include a “Completed Operations” endorsement.

Section 10.4. Automobile Insurance.

§ 10.4.1. Bodily Injury: \$ 750,000 per person; \$1,500,000 per accident

§ 10.4.2. Property Damage: not less than \$50,000 per accident

Section 10.5. Worker’s Compensation and Employer’s Liability.

§ 10.5.1. Worker’s Compensation per Minnesota Statute.

§ 10.5.2. Employer’s Liability shall have minimum limits of \$500,000 per accident; \$500,000 per employee; \$500,000 per disease policy limit.

§ 10.5.3. Contractors with ten (10) or fewer employees who do not have Worker’s Compensation coverage are required to provide City with a letter verifying their number of employees.

Section 10.6. Professional Liability Insurance. Professional liability insurance that includes malpractice coverage: \$5,000,000 per claim

Section 10.7. General Insurance Requirements.

§ 10.7.1. Excluding Professional Liability Insurance, the policy is to be written on an occurrence basis or as acceptable to City. The certificate of insurance must indicate if the policy is issued on a claims-made or occurrence basis. Special Counsel shall provide City and HRA with written notice not less than thirty (30) days prior to any cancellation, non-renewal, or any material changes in the policy—including, but not limited to, coverage amounts. Insurance agent must state on the certificate if the policy includes errors and omissions coverage.

§ 10.7.2. Special Counsel shall not commence work until a Certificate of Insurance covering all of the insurance required for this Agreement, or any specific 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 term and any extension periods.

§ 10.7.3. City reserves the right to request reasonable additional evidence regarding Special Counsel’s insurance policies at any time to verify that City requirements

have been met.

§ 10.7.4. Nothing shall preclude City from requiring Special Counsel to purchase and provide evidence of additional insurance.

§ 10.7.5. 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.

Article 11

Independent Contractor.

Section 11.1. It is agreed by the parties that, at all times and for all purposes within the scope of this Agreement, the relationship of Special Counsel to City is that of independent contractor and not that of employee.

No statement contained in this Agreement shall be construed or interpreted so as to find Special Counsel’s employees, agents, or officers to be employees of City, and they shall be entitled to none of the rights, privileges, or benefits of City employees.

Article 12.

Subcontracting.

Section 12.1. Special Counsel agrees not to enter into any subcontracts for any work contemplated under this Agreement without first obtaining the City’s prior written approval.

Article 13.

Hold Harmless.

Section 13.1. Special Counsel agrees to be responsible for any compensable injuries or damages, including reasonable costs of defending claims (“Losses”), incurred by City, its officers, agents, and employees, which are proximately caused by an error or omission of Special Counsel 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) Special Counsel is not liable for any Losses caused by or arising solely out of actions or omissions of City, its employees or

agents; and (2) Special Counsel and City agree that no claim will be settled or otherwise resolved without the consent of Special Counsel, which consent shall not be unreasonably withheld.

Article 14

Assignment.

Section 14.1. City and Special Counsel each bind themselves and their successors, legal representatives, and assigns of such other party, with respect to all covenants of this Agreement.

City and Special Counsel will not assign or transfer their interest in this Agreement without the written consent of the other.

Article 15

Termination.

Section 15.1. City has the right to terminate this Agreement at any time by giving notice of its intent to terminate to Special Counsel.

In the event of termination, City will pay Special Counsel for all services actually, timely, and faithfully rendered up to the receipt of the notice of termination and thereafter until the date of termination.

Special Counsel will deliver all work products and supporting documentation developed up to the time of termination prior to City rendering final payment for service.

Article 16

Default; City Remedies.

Section 16.1. City's Remedies in Event of Default. In the event Special Counsel fails or neglects to comply with any term or condition of this Agreement or to provide the services required in this Agreement, City shall have the following rights and remedies:

§ 16.1.1. to suspend payment of any invoices;

§ 16.1.2. to commence an action to recover the damages incurred by the City;

§ 16.1.3. to commence an action to compel specific performance of the Agreement by Special Counsel; and

§ 16.1.4. to terminate this Agreement.

Section 16.2. Remedies are Not Exhaustive. The remedies outlined in this Article and Agreement 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 under this Agreement.

Article 17

Amendment or Changes to Agreement.

Section 17.1. Modifying Services. City or Special Counsel 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 parties.

Section 17.2. Writing Required. 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.

Section 17.3. Vested Rights and Actions Retained. 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 in this document shall be deemed to include any future amendments, modifications, and additional schedules made in compliance with the terms of this Agreement.

Article 18

Notices.

Section 18.1. 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. A copy of said notice or demand given under this Agreement shall also be delivered to the following:

If to the City of Saint Paul:

Lyndsey Olson
Saint Paul City Attorney

400 City Hall
15 West Kellogg Boulevard
Saint Paul, MN 55102

If to the Special Counsel:

Brian T. Grogan
MOSS & BARNETT

150 South Fifth Street
Suite 1200
Minneapolis, MN 55402

Article 19

Waiver.

Section 19.1. Any fault of any one or more of the parties 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.

Article 20

Survival of Obligations.

Section 20.1. Survivability. The respective obligations of the City and Special Counsel under the terms and conditions of this Agreement—which, by their nature, would continue beyond their termination, cancellation, or expiration—shall survive termination, cancellation, or expiration of this Agreement.

Section 20.2. Severability. If a court or governmental agency with proper jurisdiction determines that this Agreement—or a provision within this Agreement—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 full

force and effect.

Article 21

Interpretation of Agreement; Venue.

Section 21.1. 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.

Article 22

Force Majeure.

Section 22.1. City and Special Counsel shall not be held responsible for performance if its performance is prevented by acts or events beyond the party's reasonable control. This includes, but is not limited to:

- unusually severe weather, or prolonged bad weather;
 - 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.
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Article 23.

Business Office.

Section 23.1. During the term of this Agreement, Special Counsel agrees to procure and maintain a business office in downtown St. Paul.

Article 24

Entire Agreement.

Section 24.1. It is understood and agreed that this entire Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matters contained in this Agreement.

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The parties now enter this Agreement, by their officials, as of the day and year written above and under their acknowledgement below:

*City of Saint Paul, Minnesota, a Minnesota
Home Rule Charter City*

Special Counsel

By: _____
Mayor's Office

By: _____
Brian T. Grogan
MOSS & BARNETT

Date: _____

Date: _____

By: _____
Lyndsey Olson
Saint Paul City Attorney

Date: _____

By: _____
John McCarthy
Director of the Dep't of Financial Services

Date: _____

Approved as to form:

By: _____
Kyle Citta
Assistant City Attorney

Date: _____