

Exhibit A

**AGREEMENT FOR PROFESSIONAL SERVICES  
BY AND BETWEEN**

**MCCARTHY & BARNES, PLC  
AND  
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the “Effective Date”), by and between the City of Duluth, hereinafter referred to as “City”, and McCarthy & Barnes, PLC, located at 11 East Superior Street, Suite 330, Duluth MN 55802-2027, hereinafter referred to as “Service Provider” for the purpose of rendering services to the City.

WHEREAS, the City desires to utilize Service Provider’s professional services to provide legal services relating to defending worker’s compensation claims against the City; and

WHEREAS, Service Provider has represented itself as qualified and willing to perform the services required by the City; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. Services

Service Provider will provide legal guidance, representation and support related to the worker’s compensation defense litigation matters at the direction of the City Attorney.

II. Fees

It is agreed between the parties that Service Provider’s hourly rate for the term of this Agreement shall be \$155.00 per hour plus mileage and out of pocket expenses and shall not exceed the sum of Fifty Thousand dollars (\$50,000), payable from City Fund 605, Department 036, Division 1650, and Object 5304. The Service Provider will not incur additional fees and expenses without prior written authorization from the City. All bills for services rendered shall be submitted monthly to the City Attorney. Such billings shall be accompanied by documentation as shall reasonably be requested by the City Attorney.

III. General Terms and Conditions

1. Amendments

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and Service Provider only upon being reduced to writing and signed by a duly authorized representative of each party.

2. Assignment

Service Provider represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City Attorney.

3. Agreement Period

The term of this Agreement shall commence on the Effective Date and performance shall be completed by December 31, 2020, unless terminated earlier as provided for herein. Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Service Provider under this Agreement shall become the property of the City and Service Provider shall promptly deliver the same to the City. Service Provider shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach of Service Provider, the City shall retain all other remedies available to it, and the City shall be relieved from payment of any fees in respect of the services of Service provider which gave rise to such breach.

4. Data and Confidentiality, Records and Inspection

- a. The City agrees that it will make available all pertinent information, data and records under its control for Service Provider to use in the performance of this Agreement, or to assist Service Provider wherever possible to obtain such records, data and information.
- b. All reports, data, information, documentation and material given to or prepared by Service Provider pursuant to this Agreement will be confidential and will not be released by Service Provider without prior authorization from the City.
- c. Service Provider is subject to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (“MGDPA”), with regards to all data created, collected, received, stored, used, maintained or disseminated in the performance of this Agreement and must comply with the MGDPA as if it were the City.
- d. Records shall be maintained by Service Provider in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- e. Service Provider will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders,

or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

- f. Service Provider shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- g. Service Provider shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement. Service Provider will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

5. Service Provider Representation and Warranties

Service Provider represents and warrants that:

- a. Service Provider and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. Service Provider and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the City and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
- c. Service Provider has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Service Provider will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.
- d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Service Provider is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Service Provider contrary to the terms of any instrument or agreement.

- e. There is no litigation pending or to the best of the Service Provider's knowledge threatened against the Service Provider affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the Service Provider to perform its obligations hereunder.
  - f. The Service Provider will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.
6. Independent Contractor
- a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Service Provider as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. Service Provider and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Service Provider's employees while so engaged, and any and all claims whatsoever on behalf of Service Provider's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Service Provider's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A benefits or contribution. Further, City shall in no way be responsible to defend, indemnify or save harmless Service Provider from liability or judgments arising out of Service Provider's intentional or negligent acts or omissions of Service Provider or its employees while performing the work specified by this Agreement.
  - b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
  - c. Service Provider expressly waives any right to claim any immunity

provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity

Service Provider shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the Service Provider's a) breach of this agreement or b) its negligence or misconduct or that of its agents or contractors in performing the Services hereunder or c) any claims arising in connection with Service Provider's employees or contractors, or d) the use of any materials supplied by the Service Provider to the City unless such material was modified by City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

8. Insurance

Service Provider shall obtain and maintain for the Term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

- a. Professional Liability Insurance in an amount not less than **\$1,500,000** Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 60 days' notice prior to any cancellation or modification shall be required; and in such event, Service Provider agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement. S cancellation, non-renewal or material change provisions included.
- b. Upon request, Service Provider shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
- c. Upon request, a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- d. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Service Provider's interests and liabilities.

9. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

**City:** Gunnar Johnson  
City of Duluth Attorney's Office  
411 W First Street  
City Hall Room 440  
Duluth MN 55802

**Service Provider:** Robert C. Barnes  
McCarthy & Barnes, PLC  
11 East Superior Street  
Suite 330  
Duluth, MN 55802-2027

10. Civil Rights Assurances

Service Provider, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

11. Laws, Rules and Regulations

Service Provider agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

12. Applicable Law

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

13. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

14. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

15. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

**CITY OF DULUTH**

**MCCARTHY & BARNES, PLC**

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

By: \_\_\_\_\_

Attest:

Its: \_\_\_\_\_  
Title of Representative

By: \_\_\_\_\_  
City Clerk  
Date: \_\_\_\_\_

Date: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
City Auditor

Approved as to form:

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