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FILE NO: 75931.3

January 14, 2010

VIA OVERNIGHT MAIL

Pamela A. Captain
City Attorney
City of Menasha
140 Main Street
Menasha, Wisconsin 54952-3151
pcaptain@ci.menasha.wi.us

Re: The Lafayette Life Ins. Co., et al. v. City of Menasha, et al., No. 4:09CV0064 (U.S. Dist. Ct., N.D. Ind.)

Dear Pam:

Enclosed please find an engagement letter from our local Indiana counsel in the above-captioned matter. To date, their involvement has been limited to filing papers on the City's behalf at our direction. We do not currently expect them to play a large substantive role in this matter. Having said that, they still require the City to execute and return an engagement letter.

Please sign the enclosed letter at your earliest convenience and return it to Brian Casey of Barnes & Thornburg LLP, 600 1st Source Bank Center, 100 North Michigan, South Bend, Indiana 46601. We would be happy to answer any questions you may have.

Sincerely,

Terence J. Rasmussen

cc: Edward J. Fuhr
Andrew Kintzinger

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Brian E. Casey
(574) 237-1285
brian.casey@btlaw.com

December 18, 2009

Pamela Captain, City Attorney
City of Menasha
140 Main Street
Menasha, WI 54952

Re: New Representation by Barnes & Thornburg LLP

Dear Ms. Captain:

The purpose of this letter is to confirm the terms and conditions under which our Firm will represent the City of Menasha, Wisconsin, Menasha Utilities, and Menasha Steam Utility (collectively "Menasha").

I am enclosing our Standard Terms of Engagement for Legal Services (September 2009) setting forth the standard terms upon which our Firm accepts client engagements. Our engagement by will be governed by these standard terms to the extent not expressly modified by this letter.

It is important from the outset of our relationship that we have a clear understanding as to the identity of our client. Menasha is our only client in this matter.

Our fees will be based on the reasonable value of our services as determined in accordance with the Indiana Rules of Professional Conduct. The primary basis for computing our fees in this matter will be the applicable hourly billing rate for each lawyer who works on it. Our applicable hourly billing rates currently range from $200 per hour to $600 per hour for lawyers, based on experience levels and the type of services performed. I will be primarily responsible for this matter, with my associate, Eric R. Thomason, assisting. My current hourly billing rate is $375.00 and Eric's is $250.00 per hour. These hourly billing rates are adjusted annually, typically in December.

Although Eric and I will be the lawyers responsible for this matter, we may assign portions of the work to be done to other Firm attorneys. In an effort to effect greater efficiencies and to reduce total fees, we may also ask one or more of our legal assistants to assist in this matter as well. Our current applicable hourly billing rates for legal assistants range from $130 to $225.00 per hour; these rates are also adjusted annually.

However, as indicated in our Standard Terms of Engagement for Legal Services, even where our applicable hourly billing rates are used as the primary basis computing our fees, the fees so computed can and will be adjusted up or down according to the circumstances. For

example, if it appears that there has been some duplication of effort, I may adjust the fee downward below the applicable hourly billing rates. On the other hand, if a particularly efficient job has been done, or we have been able to employ pertinent research from another matter to a large extent, I may adjust the fee upward. I may also take other factors into consideration, including the novelty or difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved, the results obtained and the time limitations imposed.

In addition to our fees, you will be responsible for payment of our other charges as set forth in our Standard Terms of Engagement for Legal Services.

As stated above, our engagement by you in connection with this Matter will be governed by the enclosed Standard Terms of Engagement to the extent not expressly modified by this letter. In particular, by signing this letter, you agree that we may represent other clients in certain matters adverse to you as described in the standard terms under the caption **"Waiver of Certain Potential Conflicts of Interest"**.

If this letter does not correctly reflect your understanding of the terms and conditions of our representation of you, please inform me at once. If you agree with the terms and conditions as stated above, please acknowledge your agreement by signing below and returning this letter to me.

We are pleased to have this opportunity to be of service and to work with you.

Very truly yours,

Barnes & Thornburg LLP

Brian E. Casey

BEC:msv
Enclosure

ACKNOWLEDGED AND AGREED

City of Menasha, Wisconsin, Menasha Utilities, and Menasha Steam Utility

Date: _____ By: _____
Pamela Captain

SBDS01 BCASEY 321605v1

BARNES & THORNBURG LLP
STANDARD TERMS OF ENGAGEMENT FOR LEGAL SERVICES

This statement sets forth the standard terms upon which Barnes & Thornburg LLP accepts engagements to act on behalf of its clients. Unless modified in writing by mutual agreement, these terms will be an integral part of our agreement with you. Therefore, we ask that you review this statement carefully and write us promptly if you have any questions. We suggest that you retain this statement in your file.

Our Client

The person or entity that we represent is the person or entity identified in our engagement letter and does not include any affiliates or relatives of such person or entity. This means that, unless we specifically agree otherwise, we do not have any lawyer-client relationship with your subsidiaries, parent company or other business entities in a commonly controlled group, nor with your owners, shareholders, members, managers, partners, directors, officers, employees or agents, nor, if you are an individual, with your spouse, children or other family members. Therefore, our representation of you will not impair our ability to represent another client with interests adverse to any such affiliate or family member without obtaining your consent.

The Scope of Our Work

With new clients, we follow the practice of describing the scope of our initial engagement in the letter we send accepting employment. With existing clients, we may not provide a description as to new matters upon which we are asked to provide services depending on the circumstances, but we will always be willing to provide such a description if asked. In any engagement we will limit our services to those you ask us to perform and those we deem reasonably necessary to accomplish the requested services. By way of illustration, we will not investigate or opine on claims against third parties or insurance coverage that is or may be available unless it is so stated in our engagement letter or you have specifically requested that we do so. Where you request specific services or advice or otherwise limit our engagement, we will confine our activities to those limitations. In that event, you should understand we will not investigate or advise you on other areas of law or potential consequences or issues arising outside these parameters. We will likewise limit our engagement and scope of services as requested to accommodate instructions to avoid incurring costs or to limit the amount of fees we incur. Such limitations may result in our not taking steps or performing work that we would otherwise consider advisable.

At times we are asked by our clients to express our opinion as to outcome of the matters on which we are working. When we are able to express opinions of this sort, they represent our best professional judgment but are not guarantees. Our 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. The outcome of legal matters and proceedings cannot be predicted with certainty.

Who Will Provide the Services

Customarily, each client of our Firm is served by a principal lawyer contact. The principal lawyer should be someone in whom you have confidence and with whom you enjoy working. You are free to request a change of principal lawyer at any time. Under the supervision of the principal lawyer, your work or parts of it may be performed by other lawyers and legal assistants in the Firm. This delegation may be for the purpose of involving lawyers, legal assistants, or other professionals with experience and knowledge in a given area or for the purpose of providing services on the most efficient and timely basis. Whenever practicable, we will advise you of the names of those lawyers, legal assistants and other professionals who work on your matters.

Our legal assistants and other professionals are <u>not</u> lawyers but possess training, experience and skills that enable them to assist our lawyers in discharging their responsibilities. They include law clerks (typically law students), paralegals, lobbyists, investigators, patent agents, research librarians, environmental analysts, translators, draftsmen and other technical (non-legal) specialists.

How Fees Will Be Set

In determining the fees we will charge for the legal services we will render for you, we will consider a number of factors, including:

- The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
- The amount of money or value of property involved and the results obtained;
- The time limitations imposed by you as our client or by the circumstances of the engagement;
- The experience, reputation and ability of the lawyers performing the services; and
- The likelihood that the employment will preclude other employment by our Firm.

Among these factors, the time and effort required are typically weighted most heavily. We will keep records of the time we devote to your work, including conferences (both in person and over the telephone), negotiations, court appearances, factual and legal research and analysis, document preparation and revision, and other related matters. We strongly believe that peer discussion and review is an important element of providing quality services, and so our time records will often reflect discussions between lawyers within our Firm concerning the matters in which we have been engaged.

The hourly rates of our lawyers and legal assistants applicable to the type of engagement have an important bearing on the fees we charge but are not necessarily the sole basis on which those fees are charged. Even where hourly rates are used as the primary basis of computing our fees, they can and will be adjusted up or down according to the circumstances. Our hourly rates are reviewed at least annually and may be changed periodically to reflect current levels of experience of the lawyers and legal assistants involved, changes in overhead costs, and other factors. Our statements based on hourly rates will reflect our applicable rates at the date of the statement, regardless when the work covered by the statement was performed.

We are sometimes requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Whenever possible we will furnish such an estimate based upon our best professional judgment, but always with a clear understanding that it is not a maximum or fixed fee quotation. The ultimate cost is invariably more or less than the amount estimated.

Other Charges

In representing our clients, there typically are other charges in addition to our fees that we itemize separately and bill to them. These include fees charged by government agencies and charges from service vendors, as well as clerical charges. Typical of such charges are messenger, courier and express delivery charges; photocopying, desktop publishing or printing and reproduction charges; filing fees and charges, including charges for electronic filings with governmental agencies and courts; court reporter fees for deposition transcripts and the like; witness fees; travel expenses; computerized legal research charges; and charges made by outside experts and consultants, including accountants, appraisers and other legal counsel (unless arrangements have been made for such outside experts and consultants to bill the client directly). Certain of these other charges may represent more than our direct cost to contribute toward covering our overhead expenses. We incur outside charges as agents for our clients, who agree that these charges will always be paid on a regular basis.

In some engagements that raise issues of foreign law it is necessary for us or the client to engage foreign counsel. If we engage foreign counsel on your behalf, we will typically require you to pay us for the foreign counsel's anticipated fees and charges before we remit payment to foreign counsel, and potentially before we engage them. We are not guarantors of the work of foreign counsel nor are we in a position to review the adequacy of their legal work or translation of documents. We engage foreign counsel to assist us specifically because we are not

licensed or familiar with the applicable legal system and therefore are not in a position to provide those legal services or judge their adequacy. If you wish to participate in the selection of foreign counsel, you may do so.

Terms of Payment

We will bill you on a regular basis, normally each month, for both fees and other charges. We rely on you to pay us promptly. Our fees and charges are due when you receive our statement. Also, if you do not pay us within 30 days of our statement or as otherwise agreed, you agree that we may discontinue providing services immediately and withdraw from representing you after providing reasonable notice of our intention to do so. After withdrawal, we may pursue collection of your account. You also agree that until we are paid in full on all of your legal matters, and except to the extent otherwise prohibited or limited by law, we shall have a lien on all papers and files in our possession related to any of the matters in which we have represented you, and any property recovered or obtained as a result of our work on your behalf. You agree to pay the costs of collecting the debt, including court costs, filing fees and reasonable attorneys' fees.

The Firm also reserves the right in its sole discretion to require an advance deposit at any time based on past payment history, creditworthiness or other factors that may cause the Firm to conclude it is appropriate to do so.

Advance Deposits

New clients of our Firm will ordinarily be asked to make an advance deposit with the Firm. Existing clients may also be required to provide advance deposits for particular matters if the Firm believes that is appropriate under the circumstances. Typically, the advance deposit is equal to the fees and other charges likely to be incurred during a two-month period. The advance deposit is charged for fees and other charges as our legal services are provided. Regular statements will be furnished to you for purposes of disclosing the fees and other charges which have been deducted from the advance deposit and the amount which must be paid to replenish the advance deposit to the agreed level. If the advance deposit proves insufficient to cover current fees and other charges on the basis stipulated, we may request that the balance be increased. At the conclusion of our legal representation or at such time as the advance deposit is no longer necessary or is appropriately reduced, the remaining balance of it will be returned to you.

Any advance deposit we receive from you will be held in our trust account until it is charged for fees and other charges for your account or is returned to you. No interest is paid on amounts held by us in our trust account. In particular, court rules in jurisdictions in which we practice require that interest earned on pooled client trust accounts is payable to a charitable foundation established in accordance with the court's rule. While your advance deposit is held by us in our trust account, it remains your property. However, by making the initial advance deposit and by replenishing or increasing it from time to time, you grant us a security interest in the balance of the advance deposit we hold in our trust account from time to time to secure payment of incurred fees and other charges for which you are responsible. You authorize us to apply the deposit to any fees and charges that you owe us for any services we have provided.

Other deposits that we receive to cover specific items will also be held by us in our general trust account (without interest) and disbursed as provided in our agreement with you, and you will be notified from time to time of the amounts applied or withdrawn. Any amount remaining after disbursement will be returned to you.

Waiver of Certain Potential Conflicts of Interest

As you are aware, we have over 500 lawyers and other professionals representing thousands of clients in various states, so it is foreseeable that our representation of our other clients may be or become directly adverse to your interests from time to time in matters on which our firm is not representing you. The Rules of Professional Conduct governing lawyers generally prohibit a lawyer or law firm from representing one client in a matter directly adverse to another client unless the affected clients provide informed consent confirmed in writing. In accordance with such Rules, by agreeing to our engagement letter, you consent that our Firm may represent any other clients in matters that are not substantially related to the matters on which we are representing you, even where our representation of such clients may be or become directly adverse to your interests. For example, such

representations may include advising our other clients (i) on the scope of your property rights, (ii) in transactions with you or negotiating or interpreting legal documents that affect your rights; (iii) on the existence, assertion or defense of legal claims against you or that you may have against our other clients; or (iv) on any disputes with you, even in court. You should bear in mind that your consent authorizes us to take on unrelated representations for other parties or entities to whom we are adverse in matters, transactions or disputes on which we represent you. Of course, the foregoing consent does not affect our obligation to protect confidential information you share with us in connection with our representation of you and not to use such information to your detriment.

Client Responsibilities

You agree to be truthful with us, to cooperate fully with us, to provide promptly all information (including documents and electronic data) known or available to you relevant to our representation. If your engagement involves actual or potential claims or litigation, you have an obligation to preserve potentially relevant information, including electronic data. It is important for you to ensure automatic deletions or record retention policies are suspended as necessary to ensure this information is preserved. You should discuss these issues with us at the outset of our engagement involving any claim or litigation, unless you have a sophisticated document retention policy and program that addresses these matters and you are familiar with these requirements. You should also discuss these issues with us as soon as a dispute or litigation related to any matter on which you have engaged us becomes reasonably foreseeable. You also agree to respond promptly to our requests for direction and other communications and to attend meetings and court proceedings at our request. You also agree to pay our statements for services and other charges in accordance with these terms of engagement.

Termination and Withdrawal

You may terminate our representation of you at any time without cause simply by notifying us. Your termination of our services will not affect your responsibility for payment of fees and other charges incurred before termination and in connection with an orderly transition of the matter.

We are subject to the Rules of Professional Conduct that require or allow us to withdraw from representing a client in various circumstances. These may include any circumstances in which withdrawal can be accomplished without material adverse effect on the interests of the client. Among other circumstances that may give rise to withdrawal, subject to the Rules of Professional Conduct, we may withdraw from representing you if you do not fulfill your client responsibilities to us, including failure to pay our fees and charges, or if we determine that our relationship has become impaired, such as by your failure to follow our advice relating to a representation.

We try to identify in advance and discuss with you any situation that may lead to our withdrawal and, if withdrawal ever becomes necessary, will give you prompt written notice of our withdrawal.

Unless previously terminated, our representation of you in any matter will terminate upon our completion of the services you retained us to perform. Generally, this will be indicated by your receipt of our final statement for services rendered on that matter.

Other than original documents that we receive from you or others in connection with the matter, the records and files we create and/or maintain during our representation belong to our Firm. We may maintain such records and files in electronic form. During the course of our representation, we will provide you with copies of documents and information that you may request so that you can keep and maintain your own file related to our representation. Upon termination of our representation and payment of any fees and other charges that have been incurred on any of the matters in which we have represented you, we will make certain parts of the file (such as correspondence, court filings, documents produced in discovery) available to you or successor counsel for inspection and copying at your expense. For various reasons, including the need to minimize unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any documents or other materials retained by us after the termination of the engagement. With respect to any engagement to which the Minnesota Rules of Professional Conduct apply, Minnesota Rule 1.16 controls and takes precedence over any conflicting provision of this paragraph.

Our representation of you in any matter is limited to that specific matter, and will not give rise to any ongoing attorney-client relationship. After termination of our representation of you in any matter, we may from time to time represent you in such subsequent matters as you may request. However, we are under no obligation to represent you in any subsequent matters, and nothing herein should be construed to give rise to any attorney-client relationship after such termination. If we do undertake to represent you in any subsequent matter, the scope and duration of our representation will be limited to that specific subsequent matter and, unless we expressly establish new terms of engagement with you at that time, these terms of engagement will apply.

Lawyers sometimes become personally entangled in court proceedings in connection with their clients' matters. If our Firm or any of our lawyers or staff are named as a party, or are required to produce evidence or appear, in a legal proceeding as a result of our services performed for you (other than as a result of our misconduct or negligence), you agree, even after our representation has terminated, to pay us for our lawyers' and non-lawyers' time and other charges and advances incurred in connection with our defense or participation in such proceeding, on the same basis that applies to our standard hourly fees and charges in effect at the time.

After termination of our representation of you in any matter, changes may occur in applicable laws or regulations that could have an impact upon your rights and liabilities. Unless you subsequently engage us to provide such advice on the same matter, our Firm has no continuing obligation to advise you with respect to future legal developments.

September 2009