

# BARNES & THORNBURG<sup>LLP</sup>

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October 16, 2020

Town of Munster  
c/o Dustin Anderson, Town Manager  
1005 Ridge Road  
Munster, IN 46321

**Re: State Legislative Relations Counsel**

Dear Dustin,

Barnes & Thornburg LLP (the “Firm”) is very pleased to serve as state legislative relations counsel to the Town of Munster (the “Client”). I am enclosing the Firm’s Standard Terms of Engagement for Legal Services setting forth the standard terms upon which the Firm accepts client engagements. The Firm’s engagement by the Client in this matter will be governed by these standard terms to the extent not expressly modified by this letter.

## **FEE FOR SERVICES**

Barnes & Thornburg LLP will perform the services described below for a fixed fee of \$5,000 per month for the time period November 1, 2020 through April 30, 2021. Non-Session months, May 1, 2021 through October 31, 2021, will be billed at \$3,000 per month. It is the Firm’s understanding that the Client will continue to retain the Firm for services for the 2022 Session of the General Assembly (commencing November 1, 2021) and beyond unless otherwise notified by the Client. Confirmation of continued representation will be handled each year prior to session via electronic mail, unless otherwise specified by the Client.

Upon the Client’s acceptance, this engagement will become effective immediately and the first payment will become due and owing. On or about the first day of each month thereafter, the Firm will bill the Client for the upcoming month’s fee. In representing our clients, the Firm may also make other charges in addition to our fees. Our fees and other charges will be billed on a monthly basis and are due upon receipt.

## **SCOPE OF SERVICES**

The lobbying services under this engagement will be as follows:

Atlanta Chicago Delaware Indiana Los Angeles Michigan Minneapolis Ohio Washington, D.C.

1. Assist the Client in developing legislative strategies for effectively advocating its interests before the Indiana General Assembly.
2. Monitor legislation introduced during the legislative session that may be of interest to the Client.
3. As required, draft legislation or amendments to legislation, or advocacy pieces regarding legislation to further the Client's interests.
4. Be available to, and if required, meet and discuss pertinent Client issues with Indiana legislators, and their staff for the purpose of influencing legislative action. The performance of such services with legislators and their staff is commonly defined as "legislative lobbying" under Indiana law.
5. Monitor and, if desired by the Client, testify at legislative interim committee hearings on matters concerning the Client.

#### **SCOPE OF LOBBY COMPLIANCE LEGAL SERVICES – FEES AND EXPENSES**

In representing the Client, the Firm may also incur charges and earn fees for which the Client will be responsible. Such other charges and fees may include, but not be limited to, lobbying compliance fees and lobbying compliance expenses.

Barnes & Thornburg LLP understands that Client may request Firm to draft or file lobby registration or activity reports for submission to the Indiana Lobby Registration Commission on behalf of Client. If requested by Client, the Firm will perform this legal service for an annual fixed fee of \$1,500.00 due upon first completion of registration or activity report.

The Firm is not responsible for the registration and reporting obligations of outside compensated lobbyists hired by the Client whose work is outside the scope of this engagement. If the Firm assists with the filing of a "Registration" or "Activity Report" for an employee of the Client whose work for the Client triggers the lobbyist threshold, this compliance work is for the benefit of the Client. If the employee lobbyist severs his employment with the Client, the employee lobbyist is responsible for any necessary filings. The Client must inform employee lobbyist of this requirement upon his/her departure from the Client.

#### **LOBBY REGISTRATION**

The Indiana Lobby Registration Commission (the "Commission") has taken the position that once a contract, oral or written, is entered into between a client and a lobbyist to lobby the Indiana General Assembly, the contract to lobby triggers a registration requirement with the Commission for both the client and the compensated lobbyist. Both the client and the compensated lobbyist must register as lobbyists with the Commission within fifteen days of entering into the contract. The execution of this engagement letter or confirmation of the engagement via electronic mail triggers this registration requirement.

The Commission requires two “Activity Reports” be filed each year wherein all lobbying expenses and compensation must be disclosed. The total amount of compensation under this engagement, plus expenses incurred under this engagement letter, must be reported on the “Activity Reports.” The Commission requires reporting of compensation even if no actual lobbying activity has occurred.

As you expect from lawyers, the Firm has an obligation not to reveal confidential information relating to the representation of a client, including information protected by the attorney-client privilege, unless the client gives informed consent. The Client acknowledges and provides such consent, to the extent necessary, to complete and comply with lobby registration, disclosure, and reporting requirements.

The Commission requires all records related to lobbying be maintained for a four-year period as they are subject to audit by the Commission. Under state statute, the Commission is required to randomly select at least five percent of all filings for inspection and audit. The Client may hire the Firm to advise it on an audit response or prepare audit filings as part of a new engagement.

Portions of the Client’s work may be assigned to various Firm personnel. Under Indiana legislative branch lobbying laws, some of these lobbyists may need to register with the Indiana Lobby Registration Commission. In such a case, each legislative branch lobbyist of the Firm must report compensation received under this engagement.

For the purposes of reporting, the Firm will automatically ascribe the entire engagement amount. This attribution is based on the reasonable value of our services as determined in accordance with the Indiana Rules of Professional Conduct. Therefore, each Firm legislative branch lobbyist will report his/her fees in proportion to the time spent engaging in legislative branch lobbying activity on behalf of the Client at the ascribed amount and in accordance with lobby reporting laws and regulations.

### **CONFLICTS OF INTEREST**

Loyalty is an essential element to a lawyer’s relationship to a client. As a general proposition, loyalty to a client prohibits undertaking representations directly adverse to that client without the client’s consent. Loyalty to a client is also impaired when a lawyer cannot consider, recommend, or carry out an appropriate course of action for the client because of the lawyer’s other responsibilities or interests; the conflict in effect forecloses alternatives that would otherwise be available to the client.

Under Rule 1.7 of the Indiana Rules of Professional Conduct, the Firm is precluded from representing a client if the representation of that client involves a concurrent conflict of interest; that is, where representation of one client will be directly adverse to another client, or where there is a significant risk that representation of one or more clients will be materially limited by the Firm’s responsibilities to another client, a former client or third person, or by personal interest. Despite that standard preclusion, the Firm may nonetheless represent a client where there is a concurrent conflict of interest if (1) we reasonably believe we will be able to provide competent

and diligent representation to each affected client, (2) the representation is not prohibited by law, (3) the representation does not involve the assertion of a claim by one client against another client represented by the Firm in the same litigation or other proceeding before a tribunal, and (4) each client gives informed consent, confirmed in writing.

The Client is aware that the Firm represents the interests of other persons and entities before various legislative, executive, and administrative agencies at the local, state, and federal level. In addition, the Firm represents a broad spectrum of clients in many different industries and matters. Some of those clients also look to the Firm as their general counsel. In addition, because of the Firm's size, and as the Client might expect, we have lawyers and non-lawyer lobbyists with many different views and philosophies. Some of the Firm's lawyers and non-lawyer lobbyists are from time to time involved with the political process for various candidates and causes, sometimes interests which are directly adversarial. Thus, as a condition of the Firm's undertaking this engagement, the Client must agree to waive all legal, business, and political conflicts which exist or may arise as a result of the Firm's representation of the Client and any other person or entity. The Firm reserves the right to withdraw in the event an unavoidable conflict should arise. The Client should know that, in similar engagement letters with many of the Firm's other clients, the Firm has asked for similar agreements to preserve its ability to represent the Client.

It is important from the outset of our relationship that the Firm has a clear understanding as to the identity of the Firm's client. The Firm's only client in the matter is the Client. The Firm can only undertake this engagement on the express understanding that for conflicts and other purposes, the Firm only represents the Client; the Firm does not represent any other officers, individuals, members, employees, affiliates, or other units of the Client.

The Client acknowledges and agrees that the Firm, and other clients described in the preceding paragraphs, will be undertaking representation of such clients in reliance on the Client's consent. Should the Client at some later time wish to revoke consent, the Client agrees that the method for doing so shall be by terminating the Firm's representation of the Client at that time, and that such revocation will not require Barnes & Thornburg LLP or its attorneys to discontinue representation of such other clients.

### **TERMINATION OF SERVICES**

The Client may terminate this engagement at any time simply by notifying the Firm. The Firm may terminate this engagement for nonpayment of our fees and other charges and where we are required or permitted to do so by the Rules of Professional Conduct after giving the Client reasonable notice and allowing time for the Client to engage successor counsel, if necessary.

Upon termination of this Agreement by either party, the Firm will be entitled (i) to retain all sums previously paid; (ii) to payment of all outstanding unpaid invoices; and (iii) to payment for services through the date that the Firm received notice of termination upon receipt and approval in accordance with this agreement of a statement covering such services.

**GENERAL**

I will assume primary responsibility for ensuring that the Client's needs are satisfied. Under my supervision, the Client's 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 or legal assistants with experience and knowledge in a given area or for the purpose of providing services on the most efficient and timely basis. Whenever practicable, the Firm will advise you of the names of those lawyers and legal assistants who work on the Client's matters.

In connection with this engagement, we agree that Barnes & Thornburg LLP is enrolled in and will verify the work eligibility status of all newly hired employees through the Federal E-Verify program (unless and until the E-Verify program no longer exists). This confirms that Barnes & Thornburg LLP has signed an affidavit stating that it does not knowingly employ an unauthorized alien. The Firm can provide a copy of that affidavit to you upon request.

**CONCLUSION**

If this letter accurately sets forth the engagement and the Client's understanding, please so indicate in the space provided below and return a signed copy of this letter to me. We ask the Client to acknowledge that, in reviewing and executing this letter, the Client has not relied on any advice provided by the Firm, but instead has acted solely in reliance upon the advice of other counsel.

I look forward to working with you on this matter. If you have any questions, please call me.

Sincerely,



Enclosure

Jacob A. German

AGREED AND ACKNOWLEDGED:

**TOWN OF MUNSTER**

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

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

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

**BARNES & THORNBURG LLP**