

RESOLUTON NO. 2023-525

**A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR
TO EXECUTE A LETTER OF ENGAGEMENT GOVERNING
COMPENSATION FOR EMPLOYMENT LAW COUNSEL BY
OGLETREE, DEAKINS, NASH, SMOAK, AND STEWART, P.C.**

WHEREAS, the Board of Aldermen of the City of Frontenac has determined it to be in the best interests of the City to engage legal counsel dedicated to and specializing in employment law, and

WHEREAS, the Board of Aldermen authorized the execution of a letter of engagement for employment law counsel by Ogletree, Deakins, Nash, Smoak, and Stewart, P.C. ("the Firm") effective May 17, 2021, and

WHEREAS, the current letter of engagement will soon expire, and the Firm has proposed a new letter of engagement, including new hourly rates.

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF ALDERMEN OF
THE CITY OF FRONTENAC, ST. LOUIS COUNTY, MISSOURI AS FOLLOWS:**

Section One.

The Mayor of the City of Frontenac ("the City") is hereby authorized to execute a new letter of engagement on behalf of the City with the Firm establishing the terms and conditions of compensation under which the Firm is to provide legal services to the City as employment law counsel, which engagement letter shall be substantially in accord with the provisions in Exhibit "A" attached hereto and incorporated herein by reference.

Section Two.

Effective June 1, 2023, the compensation of the Firm for employment law services shall be as reflected in the engagement letter hereby approved.

**ADOPTED BY THE BOARD OF ALDERMEN OF THE CITY OF FRONTENAC,
MISSOURI, THIS 18TH DAY OF APRIL 2023.**

Presiding Officer

Attest:

Leesa Ross, City Clerk

APPROVED THIS 18TH DAY OF APRIL 2023.

Kate Hatfield, Mayor

Attest:

Leesa Ross, City Clerk



OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

Attorneys at Law

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April 6, 2023

Jaysen Christensen
City Administrator
City of Frontenac
10555 Clayton Road
Frontenac, MO 63131

RE: *Engagement Letter – City of Frontenac*

Dear Jaysen:

We are pleased to have the opportunity to continue to be of service to the City of Frontenac. We look forward to working with you and will do our best to provide the highest quality legal services in a responsive, efficient manner.

The purpose of this letter is to confirm the terms of our representation. If you are in agreement, please sign the letter in the space indicated below and return it to me at your earliest convenience. Of course, if you have any questions about these terms or any other aspect of our engagement, please do not hesitate to contact me.

Client. We are being engaged to represent the City of Frontenac (the “City”) only. Unless we agree otherwise in writing, our representation does not extend to any affiliate of the City or any other entity or individual.

Scope of Services. You asked us to represent the City in connection with general labor and employment matters concerning the City.

Limitation on Obligation. You acknowledge that we are not your general counsel and have not undertaken to represent the City’s interests in any matter other than that described above. Our representation does not entail a continuing obligation to advise you concerning subsequent legal developments that might have a bearing on your affairs generally.

Staffing. We intend to provide quality legal services in an efficient, economical manner. I will be the attorney primarily responsible for the representation, with assistance from other attorneys as needed. From time to time, we may assign tasks to other attorneys, paralegals, or support personnel as is appropriate in our professional judgment.

Responsibilities. In reliance upon information and guidance provided by you, we will provide legal counsel and assistance to the City in accordance with this letter, keep you reasonably informed of progress and developments, and respond to your inquiries.

You agree to cooperate with us throughout our representation; disclose all facts that may be relevant to the matter or that we request; assist in the identification, preservation, and collection of relevant information; and keep us apprised of related developments. You also will make necessary representatives reasonably available to attend meetings, discovery proceedings, hearings, and other proceedings. Your responsibilities will also include approving negotiation, discovery, and litigation strategy and determining acceptable terms of any settlement.

Advice About Possible Outcomes. Though we may express opinions about the matter, possible courses of action, and results that might be anticipated, any such statement is intended as an expression of opinion only and should not be construed as a promise or guarantee. You acknowledge that we have not made and will not make any promise or guarantee about the outcome of this matter and will not construe any statement by us as such.

Preservation of Data. To the extent that this matter involves litigation or reasonably anticipated litigation, please be advised that courts can impose harsh penalties for the failure to safeguard data that may be relevant. You should immediately identify any such data – whether kept in paper, electronic, or other format – and safeguard it for the duration of this matter. This may require you to suspend any regular document or data destruction that you would otherwise follow. You should make certain that all relevant directors, managers, and employees, including your information technology staff, are aware of and abide by this requirement.

Insurance Coverage. You should review any potentially applicable general or specialized insurance policies to determine whether any coverage is available. If we do not hear further from you in this regard, we will assume that you have reviewed your policies and satisfied yourself that there is no coverage for any of the claims or costs of defense. Please note that the scope of our engagement does not extend to providing coverage opinions or advising you with regard to any rights or responsibilities that you might have under any insurance policy.

Fees and Expenses. Our fees will be based on the amount of time spent by attorneys, paralegals, and legal assistants on your matter. Each individual has an hourly billing rate based generally on his or her experience, the market in which he or she practices, and any special expertise. The rate multiplied by the time spent on your behalf, measured in tenths of an hour, will be the basis for determining the fee.

We have agreed that the discounted billing rate for me and other shareholders or senior counsel will be \$410 per hour. Associate rates will be discounted by 15% off our standard hourly rates. Time devoted by paralegals and legal assistants is charged at billing rates currently ranging from \$100 -

\$200 per hour. These hourly rates apply to all time spent on the City's behalf. Our hourly rates are adjusted annually at the end of each calendar year and otherwise from time to time to reflect increased experience, as well as special expertise of our personnel and inflationary cost increases affecting our practice. However, we have agreed to hold the above discounted rates for a two-year period from the date our engagement begins and to adjust rates thereafter only as agreed by the City in writing.

The time for which the City will be charged will include, but will not be limited to, telephone and office conferences with the City and counsel, witnesses, consultants, court personnel, and others; conferences among our personnel; factual investigation; legal research; responding to the City's requests to provide information to auditors in connection with reviews or audits of financial statements; drafting of letters, pleadings, briefs, and other documents; travel time; waiting time in court or elsewhere; and time in depositions and other discovery proceedings.

In addition to our fees, we will be entitled to payment or reimbursement for disbursements and other charges incurred in performing services such as photocopying, messenger and delivery, air freight, negotiated discounted amount for computerized research, videotape recording, travel (including mileage, parking, airfare, lodging, meals, and ground transportation), telecopying, word processing, court costs, and filing fees. To the extent we directly provide any of these services, we reserve the right to adjust the amount we charge, at any time or from time to time, as we deem appropriate, in light of our direct costs, our estimated overhead allocable to the services, and outside competitive rates. Unless special arrangements are made, fees and expenses of others (such as experts, investigators, witnesses, consultants, and court reporters) and other large disbursements will not be paid by our firm and will be the responsibility of, the City. These expenses may be billed directly to the City or we may forward such invoices (whether made to the City or the firm) to the City for direct payment.

Clients sometimes ask us to estimate fees and other charges that they are likely to incur. Any estimate that we may provide will be based on our professional judgment and circumstances as they appear at the time. Any such estimate is subject to the understanding that, unless we agree otherwise in writing, it does not and will not represent a guarantee, maximum, or fixed-fee quotation.

We will normally provide monthly statements describing our services, fees, and costs. On occasion, expenses may take more than a month to appear on our invoices. Our invoices are due upon receipt.

Use of Work Product. Consistent with our dedication to providing efficient client service, we will draw upon our previous work product where appropriate to promote efficiency in providing representation during this engagement. Similarly, unless otherwise agreed in writing as to specific items, we reserve the right to use work product developed during this representation for our own purposes and to promote efficient client service to other clients.

In House Counsel Privilege. You understand that, as lawyers, we are required to follow certain rules of professional conduct. From time to time, issues may arise that raise questions concerning our duties under these rules. Our firm has designated in-house counsel who advise and represent the Firm on these issues and other legal matters. When such matters arise, our lawyers are

instructed by Firm policy to seek the advice of these in-house counsel and, sometimes, outside counsel. Accordingly, if, in our discretion, we determine that it is appropriate to consult with our Firm's in-house counsel (or outside counsel), you consent to our doing so. You agree that this type of consultation will not create a conflict of interest between the City and the Firm and that the Firm's continued representation of the City will not waive any attorney-client privilege that the Firm has with its in-house or outside counsel. This means that the Firm will not be required to disclose to the City any communications with in-house or outside counsel on such issues.

Award or Agreement on Fees and Expenses. The fees and expenses billed to you are your responsibility. The parties to a dispute may agree, or a court may order, that another party is to pay some or all of our fees or expenses or costs. This will not affect your obligation to pay our fees and expenses, and we will not be obligated to enforce any such agreement or order. While we may state a claim for recovery of attorney's fees and/or costs from the adverse party, recovery on these claims is unpredictable and you should not rely on any such recovery in making strategy, settlement, or other decisions pertaining to the case. Any amounts actually received by us from another party or source will, of course, be credited against the fees and expenses for which you are otherwise obligated to us.

Waiver of Potential Future Conflicts. Ogletree Deakins is an international law firm that represents individuals, companies, and other entities through offices in locations throughout the U.S. and in other countries. The potential exists that we may in the future be asked to represent a party in a matter adverse to the City. Depending on the circumstances, such a situation could lead a court or tribunal to conclude that a conflict of interest exists. The City agrees not to unreasonably exercise its discretion in granting conflict waivers when requested.

Term of Engagement.

You have the right at any time to terminate our services and representation upon written notice to the Firm. Such termination shall not, however, relieve you of your obligation to pay for all services rendered and disbursements and other charges made or incurred on behalf of you prior to the date of termination. Unless otherwise previously terminated, our engagement to represent you as to any specific matter ends at the conclusion of the matter or issuance of our final statement, whichever occurs first.

Subject on our part to the Rules of Professional Conduct and any applicable requirement to seek permission of the court, we reserve the right to withdraw from our representation with your consent or for good cause. Good cause may include the your failure to honor the terms of the engagement letter, your failure to pay amounts billed in a timely manner, your failure to cooperate or follow our advice on a material matter, or any fact or circumstance that would, in our view, impair an effective attorney-client relationship or would render our continuing representation unlawful or unethical. If we elect to do so, you will take all steps necessary to free us of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to complete our withdrawal, and we will be entitled to be paid for all services rendered and disbursements and other charges made or incurred on behalf of you prior to the date of withdrawal.

Conclusion of Representation; Retention and Disposition of Documents. At such time as we complete the services the City requested in this matter, our representation will be terminated and the City will be considered a former client of our firm. We use record retention policies or practices, which may be revised from time to time, that contemplate retention of client-representation work product and other records for an appropriate period of time, after which records may be destroyed. These policies may apply to both hard copy and electronic records, such that no records in any form may be available after disposal. Unless there is applicable law or a written agreement to the contrary as to a specific client and matter, we reserve the right in our discretion to destroy any records we deem appropriate at the time we deem appropriate after the conclusion of representation on a matter. At our discretion, we also reserve the right to keep a copy of any or all file materials after the termination of a representation.

Dispute Resolution. In the unlikely event that a dispute arises relating to this engagement or our Firm's services or fees, the parties agree to attempt to resolve the dispute through informal discussions.

Acknowledgment of Terms of Engagement. If this letter correctly reflects your understanding of the terms and conditions of our representation, please confirm your acceptance by signing the enclosed copy in the space provided below and return it to me. Upon your acceptance, these terms and conditions will apply retroactively to the date we first performed services on your behalf. If this letter is not signed and returned, you will be obligated to pay us the reasonable value of any services we may have performed on your behalf.

We are pleased to have this opportunity to continue to be of service and to work with the City of Frontenac. Should you have any questions about our services, staffing, billings, or other aspects of our representation, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric A. Todd", with a stylized flourish at the end.

Eric A. Todd

EAT/kak

I/we read and understand the terms and conditions set forth in this letter and agree to them.

Signed: _____ Date: _____

By: _____
Name

Title

For: _____
Entity

General Provisions

Except as modified by the accompanying engagement letter or other written agreement between the parties, the following provisions will apply to the relationship between Ogletree, Deakins, Nash, Smoak & Stewart, P.C., and our clients:

1. The time for which a client will be charged will include, but will not be limited to, telephone and office conferences with a client and counsel, witnesses, consultants, court personnel, and others; conferences among our personnel; factual investigation; legal research; responding to clients' requests to provide information to auditors in connection with reviews or audits of financial statements; drafting of letters, pleadings, briefs, and other documents; travel time; waiting time in court or elsewhere; and time in depositions and other discovery proceedings.

2. In addition to our fees, we will be entitled to payment or reimbursement for disbursements and other charges incurred in performing services such as photocopying, messenger and delivery, air freight, negotiated discounted amount for computerized research, videotape recording, travel (including mileage, parking, airfare, lodging, meals, and ground transportation), telecopying, word processing, court costs, and filing fees. To the extent we directly provide any of these services, we reserve the right to adjust the amount we charge, at any time or from time to time, as we deem appropriate, in light of our direct costs, our estimated overhead allocable to the services, and outside competitive rates. Unless special arrangements are made, fees and expenses of others (such as experts, investigators, witnesses, consultants, and court reporters) and other large disbursements will not be paid by our firm and will be the responsibility of, the client. These expenses may be billed directly to the client or we may forward such invoices (whether made to the client or the firm) to the client for direct payment.

3. Although for a client's convenience, we may occasionally furnish budgets or other estimates of fees or charges that we anticipate will be incurred on a client's behalf, these estimates are subject to unforeseen circumstances and are by their nature inexact. We are not bound by any estimates except as otherwise expressly set forth in the engagement letter or otherwise agreed to by us in writing.

4. Fees, disbursements, and other charges will be and are payable upon presentation. We expect prompt payment.

5. A client shall have the right at any time to terminate our services and representation upon written notice to the firm. Such termination shall not, however, relieve the client of the obligation to pay for all services rendered and disbursements and other charges made or incurred on behalf of the client prior to the date of termination. Unless otherwise previously terminated, our engagement to represent you as to any specific matter ends at the conclusion of the matter or issuance of our final statement, whichever occurs first.

6. We reserve the right to withdraw from our representation with the client's consent or for good cause. Good cause may include the client's failure to honor the terms of the engagement letter, the client's failure to pay amounts billed in a timely manner, the client's failure to cooperate or follow our advice on a material matter, or any fact or circumstance that

would, in our view, impair an effective attorney-client relationship or would render our continuing representation unlawful or unethical. If we elect to do so, the client will take all steps necessary to free us of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to complete our withdrawal, and we will be entitled to be paid for all services rendered and disbursements and other charges made or incurred on behalf of the client prior to the date of withdrawal.

7. Ogletree Deakins uses record retention policies or practices, which may be revised from time to time, that contemplate retention of client-representation work product and other records for an appropriate period of time, after which records may be destroyed. These policies may apply to both hard copy and electronic records, such that no records in any form may be available after disposal. Unless there is applicable law or a written agreement to the contrary as to a specific client and matter, we reserve the right in our discretion to destroy any records we deem appropriate at the time we deem appropriate after the conclusion of representation on a matter.