



Board of Aldermen Request for Action

MEETING DATE: 2/21/2023

DEPARTMENT: Administration and Police

AGENDA ITEM: Resolution 1190 – retaining Jeffrey Place of the firm Jackson Lewis for labor attorney services.

REQUESTED BOARD ACTION:

Motion to approve Resolution 1190, approving the engagement of Jeffrey Place for labor attorney services.

SUMMARY:

Earlier this year, police staff notified Chief Lockridge of the intent to pursue collective bargaining representation and the potential of pursuing changes to the City Code relating to union representation. Following conversations with City Attorney John Reddoch and Police Chiefs in the region, it was determined that it would be in the best interest of the City to enlist the services of an attorney specializing in labor negotiations. Jeffrey Place with the firm of Jackson Lewis has extensive background in this area and represents most cities in the metro area in labor issues.

PREVIOUS ACTION:

Police Department staff and a union representative spoke at the February 7 Board meeting requesting changes to the City Code. Engagement of a labor attorney assists in staff review and recommendation regarding this ordinance and future negotiations.

POLICY OBJECTIVE:

Click or tap here to enter text.

FINANCIAL CONSIDERATIONS:

Hourly rates of \$440 per hour will be funded through the Police Department budget.

ATTACHMENTS:

- | | |
|--|-----------------------------------|
| <input type="checkbox"/> Ordinance | <input type="checkbox"/> Contract |
| <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Plans |
| <input checked="" type="checkbox"/> Staff Report | <input type="checkbox"/> Minutes |
| <input checked="" type="checkbox"/> Other: Engagement Letter (Exhibit A) | |

RESOLUTION 1190

RETAINING LABOR ATTORNEY CONTRACT

WHEREAS the Missouri Constitution at Article I § 29. Organized labor and collective bargaining. Reads "That employees shall have the right to organize and to bargain collectively through representatives of their own choosing"; and

WHEREAS the Missouri Courts determined that the Missouri Constitution Article I, § 29 right to bargain collectively applies to both private-sector and public-sector employees; and

WHEREAS after the Courts determination that Missouri Constitution Article I, § 29 right to bargain collectively applied to public-sector employees, the Missouri passed Missouri House Bill No. 1413 (2018) which chapter §105.500 dealing with collective bargaining and union issues for public bodies. Included within said chapter was §105.503

Applicability which reads as follows:

1. Except as provided in subsection 2 of this section, the provisions of sections 105.500 to 105.598 shall apply to all employees of a public body, all labor organizations, and all labor agreements between such a labor organization and a public body, whether collective bargaining rights are granted to such entities in section 105.510 or by judicial decision.
2. The provisions of sections 105.500 to 105.598 shall not apply to:
 - (1) Public safety labor organizations and all employees of a public body who are members of a public safety labor organization;
 - (2) The department of corrections and all employees of the department of corrections;
 - (3) Members of a labor organization who are not employed by a public body; and
 - (4) Any labor agreement between a labor organization and an employer that is not a public body.
3. Nothing in sections 105.500 to 105.598 shall be construed to interfere with the rights and obligations that are specified in title 29 of the United States Code, provided that in the case of a conflict with title 29 of the United States Code, the provisions of title 29 of the United States Code shall prevail.

WHEREAS the Missouri Courts determined that §501.503 could not prevent public safety officers from receiving the benefits of Missouri Constitution Article I, § 29. Then in 2021 the Missouri Supreme Court determined that Missouri Revised Statute § 105.503.2(1) was essentially and inseparably connected with all other provisions of H.B. 1413, so it was declared void in its entirety; and

WHEREAS §501.503 R.S.Mo remains a Missouri Statute; and

WHEREAS the City has passed Chapter 200 Article II covering Collective Bargaining issues with the city police; and

WHEREAS because of the above, labor relations and negotiations have become a specialized field. Area communities use the services of attorney Jeffery Place of the firm JacksonLewis who has extensive experience in the area of labor law. Staff has contacted Mr. Place who has provided an engagement letter attached hereto as Exhibit A; and

WHEREAS staff recommends that the city retain Jeffery Place of the firm Jackson Lewis pursuant to the terms and conditions set forth in Exhibit A.

II. RESOLUTION

Be it resolved by the City of SMITHVILLE Missouri approves retaining Jeffery Place of the firm Jackson Lewis pursuant to the terms and conditions set forth in Exhibit A.

III. EXECUTION/ADOPTION

PASSED AND ADOPTED by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, the 21st day of February, 2023.

Damien Boley, Mayor

ATTEST:

Linda Drummond, City Clerk

JacksonLewis

Jackson Lewis P.C.
7101 College Blvd, Suite 1200
Overland Park KS 66210
(913) 981 1018 Direct
(913) 981 1019 Fax
jacksonlewis.com

MY DIRECT DIAL IS: 913-205-7123
MY EMAIL ADDRESS IS: JEFF.PLACE@JACKSONLEWIS.COM

February 15, 2023

Via email: jlockridge@smithvillemo.org

Chief Jason Lockridge
City of Smithville, Missouri

Re: Confirmation of Engagement and Fee Agreement

Dear Chief Lockridge:

We are pleased that the City of Smithville, Missouri (the “City”) has decided to retain Jackson Lewis P.C. (herein “the Firm”) for legal representation with respect to the City’s labor relations matters. This letter details the scope of our client relationship and outlines the fees for our services.

A. Scope of Services

As we discussed, we will represent the City by providing advice and counsel with respect to the City’s labor relations matters, and primarily with respect to current issues raised by the Fraternal Order of Police. We will do our best to serve the City efficiently. While we cannot guarantee the success or outcome of any given matter, we will strive to vigorously represent the City. I will have primary responsibility for handling these matters and will utilize other attorneys and legal assistants in the firm in the best exercise of my professional judgment. If, at any time, you have any questions, concerns or comments, please contact me.

B. Fees

We charge for our time on an hourly basis, in one-tenth hour increments. We will invoice the City at our regular hourly rates for the work performed on the City's behalf. Our schedule of hourly rates for attorneys and other members of our professional staff is based on years of experience, level of professional attainment and geographic location. Currently, our hourly rates in the Kansas City office range from \$320.00 to \$675.00 for attorneys. My current regular hourly rate is \$675.00, but I can offer the City a discounted rate of \$440.00/hr during 2023. Our hourly rates may be subject to periodic increases over time, typically in January of each year. Any changes in billing rates will be communicated to the City at least thirty (30) days prior to implementation. We charge for all services rendered, including but not limited to, telephone calls, conferences, court and agency hearings, and other proceedings. Our entire billing process is explained in "A Word About Our Invoices," a copy of which is enclosed.

These discounted hourly rates, however, will not apply to complex matters which include, but are not limited to, class actions, multi-plaintiff litigations, and unfair competition litigation. For these matters, our regular hourly rates will apply.

C. Client Cooperation

The City understands and agrees that, in order for us to represent it effectively, it is necessary for the City to assist and cooperate with the Firm. The City agrees to (1) make itself (including its employees if applicable) available to discuss issues as they arise in this matter; (2) attend and participate in meetings, preparation sessions, court proceedings and other activities in connection with the representation; (3) provide complete and accurate information and documents to us on a timely basis; (4) make timely payment to any experts or vendors retained in connection with our services; and (5) advise whether there is an agreement to arbitrate the subject claim(s), either as set forth in a stand-alone arbitration agreement, an employee handbook, an employment application or otherwise.

D. Protection of Client Confidences –Communication Devices

We are always mindful of our central obligation to preserve the secrets and confidences of our clients. To that end, it is important that we agree from the outset what kinds of communications technology we will employ in the course of this Engagement. Unless the City specifically directs us to the contrary, for purposes of this Engagement, we agree that it is appropriate for us to use fax machines and e-mail in the course of the Engagement without any encryption or other special protections. In that regard, if there is a specific e-mail address which you would like us to use to communicate with you, other than your current City e-mail address, please let us know. Please also notify the Firm if the City has any other requests or requirements in connection with the methods of telecommunication, or persons to be included or copied in the circulation of documents relating to the Engagement.

E. Termination of Representation

The City may terminate this representation at any time, with or without cause. We also reserve the right to withdraw at any time to the fullest extent permitted by the applicable ethical rules. Any termination of our representation of the City would be subject to such approval as may be required from any court(s) in which we are appearing on the City's behalf. In the event of termination by either of us, fees and costs for work performed prior to termination will still be payable as provided for in this letter.

Following any termination of representation, client files will be released only following delivery to the Firm of a signed release letter containing appropriate directions and an acknowledgment of the obligation to pay outstanding fees. The City will be charged for the reasonable costs of retrieval, assembly, copying, processing and transfer of all files or materials, including Electronically Stored Information ("ESI").

Upon termination of representation, the Firm reserves the right to maintain the City's legal file in electronic format only.

F. Preservation of Documentation

Should a claim be received by the City, the City must take immediate steps to identify, preserve and collect all relevant information until the matter is completely resolved. This information includes all paper and all ESI related to the claim. ESI includes, but is not limited to, the following: e-mails, text messages and other electronic communications, word processing files, spreadsheets, PowerPoints, photos and other images, SharePoint, voicemail, databases, data files and archive files, regardless of whether the information is contained on servers, laptop and desktop computers, back-up tapes, home and personal computers, cloud storage systems, or portable ESI storage devices such as iPhones, Android phones, Blackberries and other smart phones, iPads, iPods, thumb drives, CD's, DVD's, and portable hard drives. This also will likely include any and all relevant surveillance tapes and recordings.

The City must also immediately suspend any document retention/destruction policy and put in place a "Litigation Hold." This Litigation Hold is designed to ensure that relevant electronic evidence is preserved and not destroyed, altered, modified, disposed of, or in any way compromised. Therefore, any individuals who may have relevant information or documents related to a matter must comply with this litigation hold.

Although this may seem like an onerous task, document retention is critical for the defense of a matter and to ensure the City complies with its legal obligation to preserve and produce relevant information. A failure to preserve documents or electronic data could have dire consequences in a matter. For example, in addition to monetary sanctions, the City may be precluded from using certain evidence at trial or the court may allow a jury to draw negative

inferences against the City. Under a worst case scenario, the court may award a judgment in favor of the claimant. Therefore, if the City has any doubt regarding whether paper or electronic data falls within the scope of a “Litigation Hold”, it should err on the side of preservation and contact us.

G. Advance Conflict of Interest Waiver

Because of the size, geographical reach and the broad scope of the Firm’s legal practice, it is possible that attorneys in one or more of the Firm’s offices or departments may now or in the future represent parties in matters in which their interests are adverse to those of the City or its affiliates, or have contractual or other dealings with the City. As a condition of our representation, the City agrees that the Firm may represent other parties in matters in which their interests are adverse to those of the City or its affiliates and waives any conflict that would otherwise exist in such matters, provided that (i) any matter in which the Firm represents an adverse party is not substantially related to the Firm’s work for the City, and (ii) if appropriate, an ethical wall is created to separate the other matter from the matters the Firm is handling for the City.

H. Potential Insurance Coverage

As employment defense counsel, the Firm cannot provide an opinion with respect to the extent or terms of the City’s coverage under any employment practices liability insurance, directors and officers or other insurance policies or programs (on an ongoing basis or otherwise). We urge the City to review this matter with its internal counsel, insurance broker or anyone else with whom it wishes to discuss the possibility of other insurance being applicable, e.g., an excess liability insurance policy, homeowners or personal insurance or any other form or kind of insurance including workers compensation insurance. As with any insurance policy, prompt and complete notice should be given, as required by the policy and by applicable law. Failure to do so could adversely affect the existence of or eligibility for any insurance coverage.

Further, please note that, in many instances, punitive damages may not be covered by the City’s insurance policies. There may also be other policy exclusions, as well as limits respecting any coverage(s). Again, please address any exclusions, or limits on coverage for the subject claim(s), with the City’s carrier(s), insurance broker, or legal counsel.

I. Dispute Resolution

City of Smithville, Missouri and Jackson Lewis P.C. agree that any dispute between us arising out of, or relating to, this agreement, or the breach thereof, shall be resolved by binding arbitration between the parties. This includes, but is not limited to any claims regarding attorney’s fees or costs under this agreement or regarding a claim of attorney malpractice, that is, whether any legal services Jackson Lewis P.C. has rendered, under this agreement or otherwise, were

improperly, negligently, or incompetently rendered, or otherwise rendered in breach of a contractual or ethical duty.

The City understands and acknowledges that, by agreeing to binding arbitration, it waives and thereby eliminates the right to submit the dispute for determination by a court and thereby also waives the right to a jury trial. The City acknowledges that it has been informed that the grounds for appeal of an arbitration award are very limited compared to a court judgment or jury verdict. Consequently, the City should carefully consider whether arbitration is acceptable to it and should consult with independent counsel.

Arbitration shall be in accordance with the Uniform Arbitration Act of Missouri. The dispute will be resolved by a single arbitrator to be selected by the parties.¹

The arbitrator must be an attorney in good standing in Missouri. The cost of the arbitration shall be shared by the parties, but the arbitrator shall have the right to allocate costs in the final award.

* * * *

If the foregoing is acceptable to the City, please sign below and return a copy of this letter to me.

If you have any questions at any time regarding the scope of our representation, the handling of any matter or the content of any invoice, please contact me at once. We are pleased to be of service to the City.

¹ *If in the opinion of any party, there arises a problem or unreasonable delay with the administration of the dispute, including but not limited to scheduling any hearing, any party upon 10 days written notice to the other, shall have the right and power to notify and engage the American Arbitration Association (AAA) to commence formal administration of the proceeding before the AAA in accordance with its then prevailing rules. The award rendered by the arbitrator(s) shall be final and may be confirmed in any court having jurisdiction thereof.*

Very truly yours,
JACKSON LEWIS P.C.

/s/ Jeffrey M. Place

Jeffrey M. Place
Attorney

Enclosure

Agreed to and Accepted by:

City of Smithville, Missouri

Signature: _____

Printed Name: Damien Boley

Title: Mayor

Date: February 21, 2023

A WORD ABOUT OUR INVOICES . . .

Invoices are sent to our clients monthly or pursuant to an insurance carrier's guidelines if applicable. Billings for services rendered on your matter(s) and for reasonable expenses incurred on your behalf are sent approximately three to four weeks after the completion of the month in which the work is performed.

As more fully discussed in the engagement letter, for any threatened or actual claim, please verify whether there is insurance of any kind that may cover the actual or potential claim and if there is, please provide prompt and complete notice to us and to the insurance carrier.

Subject to applicable guidelines, we charge for all services rendered on your matter(s) including, but not limited to, telephone calls, conferences, court and agency hearings, and other proceedings. These include reimbursement for travel-related expenses, such as lodging, meals, air travel, cab fares, auto expenses, parking fees, tolls and mileage. We also bill for all photocopying costs, telephone calls, facsimiles, postage, messenger service and, if required, delivery charges where material is sent via certified or registered mail or by express mail or package carrier. If a situation arises which requires overtime work by our secretaries, we will invoice you at our cost. All third party charges (e.g. filing, trial, and court reporter fees) are the responsibility of the client and should be paid directly by the client. The cost for computerized legal research is the rate calculated by our vendor LexisNexis. Your cost is not based on the annual discount arrangement the Firm has with LexisNexis. Payment for our services and expenses described are expected upon receipt of our invoice. We are confident our clients make every effort to pay us promptly.

We do our utmost to provide quality and professional service to our clients. In return, we expect timely payment for services rendered. A monthly service charge of one and a half percent (1.5%) is added to the unpaid balance of any invoice not paid within ninety (90) days after it is rendered.

Electronic discovery related charges will be billed directly by the vendor who provides these services, including those of our preferred vendor, Kroll Ontrack, Inc. These nonlegal services and expert witness charges are provided under separate agreement between you and the vendor or expert. The non-legal services that might be necessary for electronic discovery include: forensic collection of electronically stored information ("ESI") from your computer systems, computer forensic and other technical consulting, ESI processing, ESI uploading and search/review software hosting, ESI production, training, and project management services. You are responsible for making timely payment of their invoices so as to avoid any disruption in our legal services. Charges by Kroll or other e-services providers will be invoiced on our invoices or separately.

The above terms shall apply to each invoice unless the Firm and the client have agreed, in writing, to a modification of the billing arrangements.

Please forward all payments to our lock box:

**JACKSON LEWIS P.C.
P.O. BOX 416019
BOSTON, MASSACHUSETTS 02241-6019**

We also accept electronic payment of our invoices. If you choose to pay your invoice by electronic transfer, please include the invoice number in the transfer information and send payment to:

Bank	Bank of America N.A. One Bryant Park, 32nd Floor New York, NY 10036
Routing number DOM. WIRES	026009593
Routing number ACH/EFT	021200339
Account name	Jackson Lewis P.C. Attorney Business Account
Account number	381032861703
SWIFT Code INTL WIRES	BOFAUS3N
Please send confirmation notice (detailing client number and invoice number) to:	epayments@jacksonlewis.com

CREDIT CARDS - <https://www.jacksonlewis.com/payments/>

Please note, the Firm prohibits anyone from Jackson Lewis P.C. from processing credit card information on behalf of a client.

Our foreign - based clients must ensure payment is made via international money order payable in U.S. dollars. If payment is by regular check drawn on a foreign bank, we will add \$30.00 to our bill for banking charges. If you have any questions about our billing procedures or any time or disbursement charges, please speak to the attorney responsible for your matter.