

AGREEMENT FOR PROFESSIONAL SERVICES

This **AGREEMENT** made and entered into this ____ day of _____, 2015, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky, created pursuant to KRS Chapter 67A (hereinafter the "LFUCG") and **FROST BROWN TODD LLC**, acting by and through W. Joseph Scholler, Frost Brown Todd, 9277 Centre Pointe Drive, Suite 300, West Chester, Ohio 45069 (hereinafter "Firm").

WITNESSETH:

WHEREAS, the LFUCG has begun the first phase of renegotiation of its collective bargaining agreements for corrections, police, and fire and emergency services employees; and

WHEREAS, in order to select a lead negotiator for the collective bargaining process, the LFUCG issued a request for qualifications ("RFQ"); and

WHEREAS, the Firm and Donald L. Crain and W. Joseph Scholler have extensive knowledge, experience and expertise in the area of contract development negotiation and analysis and are well qualified to perform such services; and

WHEREAS, the LFUCG wishes to retain the negotiating services of W. Joseph Scholler and Donald L. Crain, attorneys at law, to serve as negotiator for contract discussions and negotiations in regard to collective bargaining for LFUCG corrections, police, and fire and emergency services employees; and

WHEREAS, the current collective bargaining agreement for Corrections Officers and Sergeants expires on February 20, 2016; and

WHEREAS, the current collective bargaining agreement for Corrections Lieutenants and Captains expires on June 30, 2015; and

WHEREAS, the current collective bargaining agreement for Fire Majors expires on November 30, 2015; and

WHEREAS, the LFUCG wishes to efficiently utilize the services of the Firm in coordination with the legal services that the LFUCG can provide through its Department of Law;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and conditions contained herein, the LFUCG and the Firm mutually agree as follows:

I. EMPLOYMENT OF THE FIRM

The LFUCG does hereby engage the Firm, and the Firm does hereby accept the engagement in accordance with the covenants and conditions contained herein.

II. SCOPE OF SERVICES

The Firm agrees to provide professional services in accordance with the following terms and conditions:

2.1. Scope of Services. The Firm, through the services of Donald L. Crain and W. Joseph Scholler, and other attorneys as required and approved by LFUCG and the Firm, under the direction and at the request of the Mayor of the Lexington-Fayette Urban County Government (the "Mayor") and such of his assistants as he may designate, agree to render professional services regarding the collective bargaining process involving LFUCG and its divisions of Corrections to be undertaken pursuant to Kentucky Revised Statutes Chapter 67A.

The Services to be rendered shall be at the direction of the Mayor and/or his designated assistants and shall include the following:

- a. Consult with the Mayor, the Chief of Staff, the Commissioner of Law, the Commissioner of Public Safety and such other of the Mayor's assistants as he may designate, regarding preparation for, and the conduct of,

- negotiations for wages, relevant employee benefits including healthcare benefits, and other terms and conditions of employment;
- b. Develop negotiation positions and proposals including LFUCG goals and objectives;
 - c. Analyze union proposals and develop appropriate LFUCG responses;
 - d. Act as leader of the LFUCG negotiating team, under the direction of the Mayor and/or his designated assistants;
 - e. Develop negotiating plans and strategies including recommendations of the most appropriate course of action to accomplish LFUCG goals;
 - f. Provide updates to the Urban County Council upon request of the Mayor;
 - g. Assist the LFUCG in any subsequent court actions which may result from the negotiations, or other administrative process, subject to the supervision of the Commissioner of Law. It is understood that such services will be billed outside "Section 3.1 – Payments" at a rate to be negotiated by the Parties;
 - h. Perform any other task which is reasonably necessary to the completion of the negotiation process and the finalization of new labor agreements with the aforementioned bargaining units.

III. PAYMENT FOR SERVICES

3.1. Payment for Services.

A. Total Payment. In consideration of the Firm's performance of the variety of services described herein, the total amount of this agreement shall not exceed Eighty Thousand Dollars (\$80,000.00), excluding travel and out of pocket expenses. It is understood that Mr.

Crain or Mr. Scholler may utilize the services of associate attorneys to assist them during these negotiations.

B. Computer Research Charges. The Firm agrees that prior to conducting computerized legal research that it will consult with the Commissioner of Law to determine if said research can be performed through the Law Department's existing computer research plan.

C. Partial Payment. The LFUCG will make payments to the Firm for services rendered. The Firm shall submit monthly invoices to the LFUCG and the LFUCG shall make payment to the Firm within thirty (30) days after receipt of each invoice. Invoices shall contain an adequate description of services performed. Receipts or detailed descriptions for out-of-pocket expenses claimed must accompany each invoice.

D. Legal Work by LFUCG Department of Law. Should legal opinions be required during negotiations, any legal opinions shall be provided by the Commissioner of Law or designated LFUCG legal staff, unless otherwise requested by LFUCG. W. Joseph Scholler or Donald L. Crain, attorney at law, shall consult with the Commissioner of Law regarding the substance of such legal opinions if requested.

E. Efficient Transmission of Documents. The Firm agrees that it will utilize electronic transmission of documents whenever possible to avoid facsimile or copying charges.

F. Photocopy Charges. The Firm agrees that it will charge no more than 10 cents per page for black and white photocopies of documents and will use color copying only when necessary during collective bargaining negotiations.

G. With the exception of the above, the parties agree to Frost Brown Todd LLC's Additional Terms and Conditions of Client Engagements (copy attached as Exhibit "A") regarding expense and related issues.

IV. MISCELLANEOUS

4.1. **Non-discrimination.** The Firm agrees that it will not discriminate against any of its employees or applicants for employment because of their race, color, age, religion, sex, or national origin and agrees to abide by all federal and state laws regarding non-discrimination. Any violation of such provisions shall constitute a material breach of this Agreement.

4.2. **Indemnification; Hold Harmless.** The Firm hereby covenants and agrees to indemnify and hold harmless the LFUCG, individually and collectively from all fines, suits, claims, demands, actions, costs, obligations, attorney fees, or liability of any kind arising solely out of the negligent actions of the Firm.

4.3. **Ownership of Documents.** All documents which are obtained or prepared in the performance of this Agreement and/or pertaining to any of the matters with respect to which the Firm is providing services for the LFUCG, are to be and will remain the property of the LFUCG. Upon request after the termination or expiration of this Agreement, the Firm shall surrender to the LFUCG all reports, memoranda, correspondence, files, forms, contracts, documents, estimates, field notes, investigations, studies and other data and other materials (including all copies thereof). This paragraph shall survive the expiration or termination of this Agreement. The Firm may temporarily retain the reproducible materials described above and prepare copies of any of these documents provided the copies are produced at the Firm's own expense, and a copy of the final contracts negotiated pursuant to this Agreement will be provided to the Firm at LFUCG's expense.

4.4. **Assignment of Contract.** This Agreement shall not be assignable in whole or in part without the written consent of the parties hereto, and it shall extend to and be binding upon, the heirs, administrators, executors and assigns of the parties hereto.

4.5. Independent Contractor. The retention of and acceptance by the Firm for the rendering of the services agreed herein shall be for the Firm, acting as an independent contractor to the LFUCG.

V. CURTAILMENT AND TERMINATION

5.1. Curtailment or Termination of Services. The LFUCG and the Firm hereby agree to the full performance of the covenants contained herein. The LFUCG reserves the right, at its discretion, to immediately terminate or curtail the services provided pursuant to this Agreement for documented cause, including but not limited to misfeasance, malfeasance, or non-performance of the Agreement by the Firm.

A. In the event the LFUCG shall terminate or curtail the services or any part of the services of the Agreement herein provided for cause, the LFUCG shall notify the Firm in writing and the Firm shall discontinue work under this Agreement immediately upon receipt of such notice.

B. Either party to this Agreement may terminate this Agreement without cause upon thirty (30) days written notice. During the thirty day notice period, the Firm shall faithfully carry out its duties under this Agreement to facilitate the bargaining of the contracts referenced herein. Subject to the provisions of all paragraphs and subparagraphs of Section 3.1, the Firm shall receive compensation in full for services performed to the date of such termination or curtailment. The LFUCG shall make this final payment within thirty (30) days after the Firm has delivered the last of any partially completed documents, together with any records that may be required to determine the amount due.

5.2. Term of Agreement. This Agreement shall be effective upon execution by the Mayor, and shall remain in force for twelve months, or upon completion of the negotiation process and execution of new labor agreements, whichever period is longer.

5.3. Acknowledgements.

A. This Agreement contains all the understandings between the parties. It is represented and understood by the parties that the "Whereas" clauses preceding the Terms and Conditions part herein, are an integral part of this Agreement. This Agreement may not be varied, altered, or modified in any way by any party, except by written instrument signed by both appearing parties.

B. In the event that any provision or portions of this Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect to the fullest extent permitted by law.

C. This Agreement has been made in and shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Time is of the essence.

D. The parties agree that all discussions, reports, memoranda, correspondence, files, forms, contracts, documents, estimates, field notes, investigations, studies and other data shall remain confidential to the fullest extent permitted by law and the Firm further specifically agrees to make no public comments about the services being rendered pursuant to this Agreement except as directed by the Mayor or his designated assistants.

E. The parties hereto agree that any suit, action or proceeding with respect to this Agreement may only be brought in or entered by, as the case may be, (a) in the courts of the Commonwealth of Kentucky situated in Lexington, Fayette County, Kentucky or (b) the United States District Court for the Eastern District of Kentucky, Lexington Division, and the parties

hereby submit to the jurisdiction of such courts for the purpose of any such suit, action, proceeding, or judgment and waive any other preferential jurisdiction by reason of domicile. The parties hereby irrevocably waive any objection that they may now or hereafter have to the laying of venue of any suit, action, or proceeding arising out of or related to this Agreement brought in the courts of the Commonwealth of Kentucky or the United States District Court for the Eastern District of Kentucky, Lexington Division, and also hereby irrevocably waive any claim that any such suit, action, or proceeding brought in any one of the above-described courts has been brought in an inconvenient forum.

F. It is agreed that the Firm reserves the right to continue to represent or to undertake to represent existing or new clients in any matter that is not substantially related to the Firm's work for LFUCG even if the interests of such clients in those other matters are directly adverse to LFUCG, including litigation in which LFUCG or its officers or related entities are parties. The Firm agrees, however, that the prospective consent to conflicting representation reflected in the preceding sentence shall not apply in any instance where as the result of the Firm's representation of LFUCG, the Firm has obtained sensitive, proprietary or otherwise confidential information that, if known to any such other client of the Firm, could be used in any such other matter by such client to the material disadvantage of LFUCG and/or any of its individual officers or the entities represented by those officers or agents.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

FROST BROWN TODD LLC

By:


W. JOSEPH SCHOLLER

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

By: _____
JIM GRAY, MAYOR

WITNESS:

MEREDITH NELSON, COUNCIL CLERK

DATE: _____

EXHIBIT A

FROST BROWN TODD LLC

ADDITIONAL TERMS AND CONDITIONS OF CLIENT ENGAGEMENTS

1. **Expenses.** Expenses we incur on the engagement are charged to the Client's account. Expenses include such items as court costs, charges for computerized research services and hard copy document reproductions, long distance telephone, travel expenses, messenger service charges, overnight mail or delivery charges, extraordinary administrative support, filing fees, fees of court reporters and charges for depositions, fees for expert witnesses and other expenses we incur on your behalf. Our charges for these services reflect our actual out-of-pocket costs based on usage, and in some areas may also include our related administrative expenses.

2. **Monthly Statements.** Unless a different billing period is agreed upon with the Client, the Firm will render monthly statements indicating the current status of the account as to both fees and expenses. The statements shall be payable upon receipt. If statements are not paid in full within 30 days, we reserve the right to add a late charge of 1% per month of the amount due. If it becomes necessary for the Firm to file suit or to engage a collection agency for the collection of fees or expenses, the Client shall pay all related costs and expenses, including reasonable attorneys' fees.

3. **Advance Payments.** Any advance payment to be paid by the Client will normally be less than the Firm's ultimate fees and expenses. Such a payment or series of payments is not intended as a limitation upon the Firm's fees and expenses. The Firm may apply the advance payment toward any unpaid fees and expenses, in which event the Client shall make an additional deposit to restore the advance payment to its original level. Additional advance payments must be made within fifteen days of the date the request is made. Any unexpended balance of advance payments will be refunded to the Client, without interest, at the end of this engagement.

4. **Litigation Matters.** If this engagement involves litigation, the Client may be required to pay the opposing party's trial costs. Such costs include filing fees, witness fees, and fees for depositions and documents used at trial. We will not settle litigated matters without the Client's express consent. We require the Client's active participation in all phases of the case.

5. **Insurance coverage.** Unless we have been explicitly retained to address insurance coverage issues (as documented in this engagement letter), we have no responsibility or obligation to (a) identify any potentially applicable insurance coverage, (b) provide notice to any carrier, or (c) advise the Client on issues relating to insurance coverage at any point during our representation.

6. **Termination.** The Client has the right to terminate our representation at any time by notifying us of your intention to do so in writing. We will have the same right, subject to an obligation to give the Client reasonable notice to arrange alternative representation. In the event that either party should elect to terminate our relationship, our fees and expenses incurred up to that point still will be due to us. Upon payment to us of any balance due for fees and expenses, we will return to the Client, or to whomever the Client directs, any property or papers of the Client in our possession.

7. Withdrawal. Under the rules of professional conduct by which we are governed, we may withdraw from our representation of the Client in the event of, for example: nonpayment of our fees and expenses; misrepresentation or failure to disclose material facts concerning the engagement; action taken by the Client contrary to our advice; and in situations involving a conflict of interest with another client. If such a situation occurs, which we do not expect, we will promptly give the Client written notice of our intention to withdraw.

8. Post-Engagement Services. The Client is engaging our Firm to provide legal services in connection with a specific matter. After completion of that matter, changes may occur in the applicable laws or regulations that could have an impact on the Client's future rights and liabilities. Unless the Client engages us after completion of the matter to provide additional advice on issues arising from the matter, the Firm has no continuing obligation to advise the Client with respect to future legal developments.

9. Retention and Disposition of Documents. At the Client's request, its documents and property will be returned to the Client upon conclusion of our representation in the matter described above, although the firm reserves the right to retain copies of any such documents as it deems appropriate. Our own files pertaining to the matter will be retained by the firm. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records. All documents and property, including those belonging to the Client, that are retained by the firm will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, and consistent with professional conduct rules, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement without further notice to the Client.

10. Parent/Subsidiary/Affiliate Relationships. The Client may be a subsidiary of a parent organization or may itself have subsidiary or affiliated organizations. The Client agrees that the Firm's representation of the Client in this matter does not give rise to an attorney-client relationship between the Firm and any parent, subsidiary or affiliate of the Client (any of them being referred to as "Affiliate"). The Firm, during the course of its representation of the Client, will not be given any confidential information regarding any of the Client's Affiliates. Accordingly, representation of the Client in this matter will not give rise to any conflict of interest in the event other clients of the Firm are adverse to any of the Client's Affiliates.

11. Consultation with Firm Counsel. From time to time, issues arise that raise questions as to our duties under the professional conduct rules that apply to lawyers. These might include conflict of interest issues, and could even include issues raised because of a dispute between us and a client over the handling of a matter. The firm has several in-house ethics counsel who assist the firm's lawyers in such matters. We believe that it is in our clients' interest, as well as the firm's interest, that in the event that issues arise during a representation about our duties and obligations as lawyers, we receive expert analysis of our obligations. Accordingly, as part of our agreement concerning our representation, the Client agrees that if we determine in our own discretion during the course of the representation that it is either necessary or appropriate to consult with our firm's counsel (either the firm's internal counsel or, if we choose, outside counsel), we have the Client's consent to do so and that our representation of the

Client shall not, thereby, waive any attorney-client privilege that the firm may have to protect the confidentiality of our communications with our internal or outside counsel.

12. Retirement Plan Advice. If the Client engages the Firm to provide legal services with respect to a retirement plan that is subject to the Employee Retirement Income Security Act, the Client should be aware that certain "covered service providers" must disclose some very specific information to the Client as a responsible fiduciary before the Client engages those services. While the Firm would not usually be serving as a "covered service provider," there are some situations in which it might be. A description of the disclosures required in those situations can be located at www.dol.gov/ebsa/newsroom/fs408b2finalreg.html.

13. Authorization. By the Client's agreement to these terms of our representation, the Client authorizes us to take any and all action we deem advisable on the Client's behalf on this matter. We will, whenever possible, discuss with the Client in advance any significant actions we intend to take.

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