

ORDINANCE NO. _____

AN ORDINANCE TO DECLARE IT IMPRACTICAL AND UNFEASIBLE TO BID; TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT WITH COHEN & FREY, P.C., 32 PARKING PLAZA, ARDMORE, PENNSYLVANIA, AS SET FORTH BELOW, TO ASSIST IN THE PRESENTATION OF EVIDENCE, TRIAL, AND PREPARATION FOR TRIAL IN CITY OF LITTLE ROCK V. MARQUETTE TRANSPORTATION COMPANY GULF-INLAND, LLC, ET AL, NO. 4:23-CV-00831-BSM (U.S. DISTRICT COURT) [E.D. ARK.]], TO DECLARE AN EMERGENCY; AND, FOR OTHER PURPOSES.

WHEREAS, on September 10, 2021, loose barges being towed by a ship owned and operated by Marquette Transportation Company, Gulf-Inland, LLC, hit and damaged a stationery protection cell that was part of the Clinton Presidential Park pedestrian bridge and caused substantial damage; and,

WHEREAS, this occurred on the Arkansas River, a navigable stream of the United States, and a part of the McClelland-Kerr river transportation system, and is therefore a matter that is also governed by maritime law; and,

WHEREAS, since the filing of this litigation, the City has engaged Cohen & Frey, P.C. ("Cohn Law Firm") to provide its legal expertise in matters of maritime law; and,

WHEREAS, with the trial rapidly approaching, depositions to be taken, and legal issues to be resolved, it has been determined that the City needs the assistance of such specialized maritime counsel to properly present its claim for damages, or if appropriate, to mediate a settlement of the pending claim for damages; and,

WHEREAS, the short time frame of sixty (60) days for additional preparation and the trial or mediation of this matter, makes it impractical and unfeasible for any other firm to enter an appearance as counsel of record to assist in this matter, but because of the prior work with the Office of the City Attorney, the Cohen Law Firm is ready and willing to do so;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE CITY OF LITTLE ROCK, ARKANSAS:

Section 1. The Board of Directors declares that it is impractical and unfeasible to submit a contract for this specialized type of maritime legal services to a competitive selection process.

Section 2. The City Manager is authorized to enter into an agreement in substantially the same form as the attached as Exhibit A to this Ordinance.

1 **Section 3. Severability.** In the event any title, section, paragraph, item, sentence, clause, phrase, or
2 words of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or
3 adjudication shall not affect the remaining portions of this ordinance, which shall remain in full force and
4 effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this
5 ordinance.

6 **Section 4. Repealer.** All ordinances or resolutions of the City in conflict herewith are hereby repealed
7 to the extent of such conflict.

8 **Section 6. Emergency Clause.** *The ability to represent the City's legal interest in admiralty and a*
9 *maritime case in order to recover appropriate damages necessary to improve and replace a damaged*
10 *protection cell at the Clinton Presidential Park Pedestrian Bridge is essential to the public health, safety,*
11 *and welfare, especially in light of the short time frame between the date of this Ordinance and the trial of*
12 *this matter; an emergency is, therefore, declared to exist and this ordinance shall be in full force and effect*
13 *from and after the date of its passage.*

14 **PASSED: September, 2, 2025**

15 **ATTEST:**

APPROVED:

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19 **Allison Segars, City Clerk**

Frank Scott, Jr., Mayor

20 **APPROVED AS TO LEGAL FORM:**

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24 **Thomas M. Carpenter, City Attorney**

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CONTINGENCY FEE AGREEMENT

This engagement agreement (the “Agreement”) is entered into this ___ day of August 2025, by and between the law firm of Cohen & Frey, P.C. (“Special Counsel”), 32 Parking Plaza, Ardmore PA 19003 and the City of Little Rock Arkansas (“COLR”), Office of the City Attorney, 500 West Markham Street, Suite 310, Little Rock, AR 72201 for the purpose of entering into an attorney-client relationship with Special Counsel.

COLR desires legal representation in connection with a claim (the “Claim”) for the all costs and available damages associated with the removal and reconstruction of a bridge protection cell destroyed by Marquette Transportation Company which is the subject of active litigation captioned Little Rock Arkansas, City of v. Marquette Transportation Company Gulf-Inland LLC et al. CASE NO. 4:23-CV-00831 BSM (“Lawsuit”). This agreement supersedes any prior written or oral agreement between COLR and Special Counsel.

In consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. **Engagement.** Upon execution hereof by all parties, Special Counsel shall be engaged as legal counsel by COLR. By engaging Special Counsel as legal counsel, COLR authorizes Special Counsel to act on COLR’s behalf; to represent COLR in the Lawsuit and/or institute other legal action and to sign pleadings, discovery, and other documents on COLR’s behalf as Special Counsel determines to be reasonably necessary to pursue the Claim in consultation with the COLR’s Office of the City Attorney. Jeffrey Cohen and possibly other attorneys at Special Counsel will enter their appearance on behalf of COLR in the Litigation and Jeffrey Cohen will serve as lead trial counsel. Special Counsel will handle all aspects of the Litigation and be supported by COLR’s Office of the City Attorney and relevant COLR departments. COLR will make all necessary COLR employees available for consultation and if necessary to testify on behalf of COLR. COLR will support Special Counsel in the prosecution of the Claim with documents or data. COLR authorizes Special Counsel to consult, hire, and otherwise engage experts, and/or other consultants as Special Counsel determines to be reasonably necessary to pursue the Claim. Special Counsel will pay the fees of any experts it engages for the Litigation to be reimbursed to Special Counsel from recovery proceeds as detailed below. COLR further authorizes Special Counsel to receive and to hold money on COLR’s behalf, to deposit and dispose of such amounts as required by applicable law; to pay any expert, consultant, or other person as required by this Agreement; to pay all costs and expenses of pursuing the Claim; and to satisfy and/or resolve any liens, claims, or other encumbrances upon the Claim or proceeds of the Claim.

EXHIBIT A

2. **Representations and Warranties.** Special Counsel has not made, and does not hereby make, any guarantees, assurances, or promises regarding the merits of COLR's Claim, the probability of successfully pursuing the Claim, or the amount of a potential recovery, if any. This agreement is entered into without representations or warranties, expressed or implied, except that:

- a. COLR represents that it is the owner of all rights to pursue the Claim;
- b. COLR has not made any prior assignments or transfers of any portion of the rights, title, and interest in the Claim that is the subject of this engagement; and
- c. COLR has not encumbered, promised, or granted any liens upon his right to receive all or any part of the proceeds, if any, of the Claim, except as otherwise set forth in this Agreement.

In the event any of the above cease to be true, COLR will immediately notify Special Counsel, and Special Counsel may terminate this engagement at its discretion.

3. **Attorneys' Fees & Costs.** COLR agrees to pay to Special Counsel an attorney fee (the "Attorney Fee") for the legal services provided pursuant to this Agreement. Special Counsel's attorney fee will be a contingent fee, payable from and **only payable in the event of a recovery of money from pursuit of the Claim.** The sum total of all amounts received or recovered on behalf of COLR together with taxable costs and interest shall be the "Gross Recovery." The costs and expenses of pursuit of the Claim, including but not necessarily limited to Special Counsel's expenses, filing fees, court costs, witness fees, service or investigative fees, charges of any experts or consultants, and Special Counsel's reasonable charges for mailing and copying (including outside copying charges, rush delivery, and trial expenses), shall be the "Costs." The Attorney Fee will be calculated to be 33 and 1/3% of the Gross Recovery. The Costs will be paid from the Gross Recovery after deduction of the Attorney Fee. The balance of the proceeds of the Claim after deduction of the Attorney Fee and Costs, and after satisfaction of any liens or encumbrances on the proceeds of the Claim, will be paid to COLR. COLR agrees to pay the Attorney Fee and Costs as set forth above despite the fact that any proceeds of the Claim may be insufficient to completely compensate the COLR for the damages sustained to the protection cell or for the Claim. **COLR will not be responsible for any Attorney Fee or Costs in the event that there is no money recovered on the Claim (i.e., if there is no Gross Recovery).** If the Attorney Fee and/or Costs together exceed the amount of any recovery, the Attorney Fee will be paid before Costs, and the Costs will be paid first from the balance of any money recovered to the extent of such balance, with any remaining Costs being borne by Special Counsel.

4. **Quantum Meruit.** In the event this Agreement is terminated before any money is recovered on the Claim, or before any money recovered is fully disbursed, or before conclusion of the Claim (collectively, "Early Termination"), Special Counsel will be entitled to an Attorney Fee and Costs as compensation for work performed, and any costs incurred, prior to the Early Termination. Such Attorney Fee will be pro-rated according to the proportion of hours expended

by Special Counsel in pursuit of the Claim under this Agreement compared to the hours, if any, expended by COLR (if pro se) or by other legal counsel engaged to pursue the Claim from the date of this Agreement going forward. Costs will not be pro-rated. In the event of Early Termination, the Attorney Fee and Costs as determined by this paragraph will constitute a lien in Special Counsel's favor on all amounts (and each amount) recovered on COLR's behalf from pursuit of the Claim, whether such amounts are recovered by COLR (if pro se) or with the assistance of other counsel.

5. **Settlement:** Consistent with Arkansas law, **the City of Little Rock, acting through its Board of Directors, retains sole authority to accept or reject any settlement offer.** Special Counsel will promptly convey all offers and provide recommendations, but final approval rests exclusively with the Board.

6. **Understanding of Terms.** COLR has been provided with an opportunity to have the terms of this Agreement reviewed by legal counsel of its choice, including the payment provisions. COLR understands that it is under no obligation whatsoever to retain Special Counsel as its legal counsel in this or any other matter, and that COLR is free to later terminate Special Counsel's engagement at any time upon notice as described below, and subject to the Quantum Meruit provisions set forth below.

7. **Termination, Modification, and Notices.** This Agreement may be terminated by COLR or by Special Counsel at any time and for any reason upon the terminating party giving written notice of termination. The legal representation provided for by this Agreement will terminate upon receipt of such notice. This Agreement may only be modified by a writing signed by COLR and Special Counsel. All notices relating to the modification or termination of this Agreement will be sent to the addresses below:

Notice to Special Counsel:

Jeffrey D. Cohen, Esq.

Cohen & Frey, P.C.

32 Parking Plaza

Ardmore, PA 19003

With courtesy copy only to: jcohen@freightlaw.net

Notice to COLR:

Shawn Overton, Esq.

Office of the City Attorney

500 West Markham Street

Suite 310

Little Rock, AR 72201

8. **Governing Law.** This Assignment shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to the conflict of laws principles thereof. If any provision shall be held to be invalid or unenforceable,

the validity and enforceability of the remaining provisions shall not in any way be affected or impaired.

9. **Authority.** Each person who signs this Assignment represents and warrants that he or she has the authority and capacity to act on behalf of the party for whom they are signing and to bind the party and all who might claim through it to the terms of this Assignment.

10. **Counterparts.** This Assignment may be executed in counterparts and copies may be used instead of originals. The executed counterparts shall be construed as and constitute one document.

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

**For The City of Little Rock, Arkansas
("COLR"):**

**For Cohen & Frey, P.C. ("Special
Counsel"):**

Name

Name

Title

Title

Date

Date