

**ORDINANCE NO. 2019-59**  
**INTRODUCED BY: MAYOR & COUNCIL**

**4218**

**AN ORDINANCE**  
**AUTHORIZING THE MAYOR TO ENTER INTO AN**  
**AGREEMENT WITH THRASHER, DINSMORE &**  
**DOLAN, A LEGAL PROFESSIONAL ASSOCIATION**  
**EFFECTIVE FROM JANUARY 1, 2020 THROUGH**  
**DECEMBER 31, 2021 AND DECLARING AN**  
**EMERGENCY.**

WHEREAS, the Council has previously engaged the law firm of Thrasher, Dinsmore & Dolan to perform general legal services for the Village of Chagrin Falls for a term ending on December 31, 2019; and

WHEREAS, the Village and the Law Director have agreed to enter into a new Contract for an additional two (2) year term.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE**  
**VILLAGE OF CHAGRIN FALLS, STATE OF OHIO:**

SECTION 1. The Mayor be and is hereby authorized and directed to enter into an Agreement to engage the law firm of Thrasher, Dinsmore & Dolan, in substantially the form attached hereto as Exhibit "A", to represent the Village in connection with matters within the scope of the duties of the Law Director of the Village.

SECTION 2. That actions of this Council concerning and relating to the passage of this legislation were adopted in lawful meetings of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in compliance with all legal requirements, including Chapter 114 of the Codified Ordinances of the Village of Chagrin Falls.

SECTION 3. That in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls, public notice of this Ordinance shall be given by posting a copy thereof for not less than fifteen (15) days in the Village Hall.

SECTION 4. That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health and safety of the inhabitants of the Village and for the further reason that the legal services provided by the Law Director needs to go into effect in order to be able to continue to provide timely and

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necessary legal services to the Village; wherefore provided it receives the affirmative vote of at least two-thirds (2/3) of all members elected to Council, this Ordinance shall be in full force and effect from and immediately upon its passage by this Council and approval by the Mayor; otherwise, it shall take effect and be in force after the earliest period allowed by law.

PASSED: November 25, 2019



\_\_\_\_\_  
Nancy Rogoff, Council President

Submitted to the Mayor for  
his approval on this

26<sup>th</sup> day of November, 2019

Approved by the Mayor



November 26, 2019

\_\_\_\_\_  
Mayor William Tomko

I hereby certify that Ordinance No. 2019-59 was duly enacted on the 25<sup>th</sup> day of November, 2019, by the Council of the Village of Chagrin Falls and posted in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls.



\_\_\_\_\_  
Clerk of Council

**EXHIBIT "A"**

**AGREEMENT BETWEEN THE VILLAGE OF CHAGRIN FALLS  
AND THRASHER, DINSMORE & DOLAN FOR LEGAL SERVICES**

This Agreement is for legal services between the Village of Chagrin Falls, an Ohio Municipal Corporation, ("Village") and Thrasher, Dinsmore & Dolan ("TDD"), effective the 1<sup>st</sup> day of January, 2020.

**WITNESSETH:**

**WHEREAS**, the Village wishes to engage Dale H. Markowitz, as Director of Law, Jared Flynn, Todd Hicks and Bridey Matheney as Assistant Directors of Law and the firm of TDD to perform general legal services as provided herein.

**NOW, THEREFORE**, intending to be bound by this Agreement, the Parties agree as follows:

1. **Routine Services.** TDD agrees to provide and Village agrees to pay for legal services at the rate of Two Hundred Sixty Dollars and Zero Cents (\$260.00) per hour, except as set forth in Section 2 of the Agreement.
2. **Litigation.** Litigation is defined as work performed in preparing or conducting pleadings, written or oral discovery or any motion practice, and attendance at hearings or other events before judges, magistrates, arbitration panels, court staff members or juries, and all post judgment activities including all appellate work. "Litigation" includes all work performed in response to Ohio Revised Code Chapter 2506 appeals. All rates for litigation shall be pre-approved by TDD and the Village, by approval of the Mayor, prior to TDD commencing work on any individual matter, or in the event the parties agree that the rate shall be Two Hundred Sixty Dollars and Zero Cents (\$260.00) per hour, no additional agreement shall be required and in no event will an Ordinance or Resolution be required to be adopted by the Council for the Village of Chagrin Falls.
3. **Billing.** TDD shall bill the Village monthly for all legal services, which billings shall set forth the date the services were rendered, the attorney performing such services, and a brief description of the services provided.
4. **Term.** The rates set forth in this Agreement shall take effect and be in force from January 1, 2020 through December 31, 2021. Either Party may terminate this Agreement, however, upon providing thirty (30) days' notice of its intent to terminate to the other Party.

5. **Miscellaneous Provisions.**

- a. **Additional Projects.** Subject to agreement of both Parties, TDD may undertake Additional Projects on a flat fee or hourly basis which are outside the scope of Routine Services. For projects that are billed hourly, TDD will offer a discounted blended hourly rate of Two Hundred Sixty Dollars and Zero Cents (\$260.00) per hour, unless a different rate is agreed upon by TDD and the Village and is approved by the Village.
- b. **Expenses.** For work outside the scope of routine matters, TDD shall also be reimbursed for out-of-pocket expenses incurred in connection with litigation and additional projects, including, but not by way of limitation, long-distance telephone and cellular telephone charges, computer-assisted research, copying charges, telegrams, messenger services and long-distance travel.
- c. **Applicable Laws.** TDD shall comply with all applicable foreign, federal, state, and local laws, rules, regulations, orders, ordinances and government requirements in the performance of this Agreement, including all applicable non-discrimination requirements, including without limitation the provisions of Presidential Executive Order 11246 and the rules and regulations issued thereunder, which are incorporated herein by this reference.
- d. **Notices.** All notices and other communications hereunder must be in writing and will be deemed to have been duly given if delivered by hand, or on the next business day if delivered by a recognized overnight courier, or on the third business day if mailed (by certified mail, return receipt requested, first class postage prepaid), to the Parties with written confirmation of receipt at the following addresses:

If to Chagrin Falls:

Mayor William Tomko  
Village of Chagrin Falls  
21 West Washington Street  
Chagrin Falls, Ohio 44022

If to TDD:

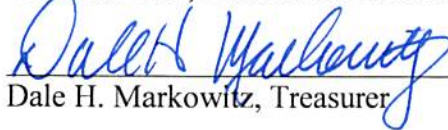
Dale H. Markowitz, Esq.  
Thrasher, Dinsmore & Dolan  
100 7<sup>th</sup> Avenue, Suite 150  
Chardon, Ohio 44024

- e. **Waiver.** No delay or failure on the part of any Party hereto in exercising any right, power or privilege under this Agreement or under any other instruments given in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege.
- f. **Severability.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, such provision shall be enforced to the greatest extent permitted by law, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
- g. **Parties in Interest.** This Agreement is enforceable only by TDD and the Village. The terms of this Agreement are not a contract or assurance regarding compensation, continued employment, or benefit of any kind to any of TDD's personnel assigned to the Village's work, or any beneficiary of any such personnel, and no such personnel, or any beneficiary thereof, shall be a third-party beneficiary under or pursuant to the terms of this Agreement.
- h. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Ohio without regard to its conflict of law principles.
- i. **Entire Agreement.** This Agreement constitutes the entire understanding of the Parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the Parties. This Agreement may be amended or modified only by a writing executed by the duly authorized officers of the Parties hereto.
- j. **Assignment.** This Agreement may not be assigned or transferred in whole or in part by either Party without the written consent of the other. Any purported assignment without the express written consent of the other is void.
- k. **Personal Service Contract.** The Parties agree that this Agreement is, and is intended to be, a "personal service contract" as provided in Section 145.038, Ohio Revised Code and as interpreted in Section 145-1-42(A) of the Ohio Administrative Code. This Agreement is, and is intended to be, a formal bilateral written contract between the parties as required by Section 145-1-42(A). The Parties further agree that since this is a personal service contract, no Public Employee's Retirement System deductions will be made from TDD's

compensation nor paid to the Public Employee's Retirement System of Ohio on and in accordance with provisions of Section 145-1-42(C) of the Ohio Administrative Code.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement.

**THRASHER, DINSMORE & DOLAN**

  
\_\_\_\_\_

Dale H. Markowitz, Treasurer

**VILLAGE OF CHAGRIN FALLS**

  
\_\_\_\_\_

William Tomko, Mayor

**CERTIFICATE OF AVAILABILITY OF FUNDS**

I certify that the money required to meet this proposal has hereby been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of this fund, free from any previous obligation or certification.

11 / 26 / 2019  
Date

  
Finance Director