

ORDINANCE NO. 2024-06

INTRODUCED BY COUNCILWOMAN WILLIAMS

**AN EMERGENCY ORDINANCE DIRECTING AND AUTHORIZING THE
EMPLOYMENT OF SAMUEL T. O'LEARY AND THE LAW FIRM OF THRASHER
DINSMORE & DOLAN AS FIRST ASSISTANT LAW DIRECTOR**

WHEREAS, pursuant to Ordinance No. 2024-05, this Council created the position of First Assistant Law Director; and,

WHEREAS, Section 9.07 of the Charter of the Village of Oakwood provides that the "Director of Law shall have such assistants and other employees as Council provides"; and,

WHEREAS, Samuel T. O'Leary and the law firm of Thrasher Dinsmore & Dolan have significant experience in municipal law and serving public entity clients on a wide variety of matters:

NOW THEREFORE, BE IT ORDAINED by the Council of the Village of Oakwood, County of Cuyahoga, and State of Ohio that:

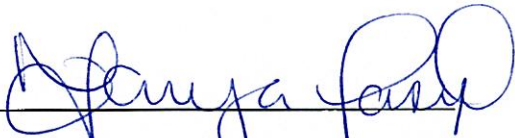
SECTION 1. The Mayor be and is hereby authorized and directed to enter into an Agreement to engage the law firm of Thrasher Dinsmore & Dolan in substantially the form attached hereto as Exhibit "A", to represent the Village in connection with matters within the scope of the duties of the First Assistant 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 111 of the Codified Ordinances of the Village of Oakwood.

SECTION 3. All provisions of all other Ordinances and Resolutions which are inconsistent with the provisions contained herein shall be modified accordingly.

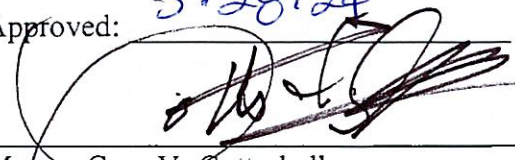
SECTION 4. That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health and safety of the inhabitants of the Village and for the further reason that the legal services provided by the First Assistant Law Director needs to go into effect in order to be able to continue to provide timely and necessary legal services to the Village, and that the same relates to the daily operation of a municipal department; 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: 3.8.24


Tanya Joseph, Clerk of Council


Erica L. Nikolic, President of Council

Presented to the
Mayor 3.28.24

Approved: 3.28.24

Mayor, Gary V. Gottschalk

I, Tanya Joseph, Clerk of Council of the Village of Oakwood, County of Cuyahoga, and State of Ohio, do hereby certify that the foregoing Ordinance No. 2024-06 was duly and regularly Passed by this Council at the meeting held on the 8th day of March, 2024.


Tanya Joseph, Clerk of Council

POSTING CERTIFICATE

I, Tanya Joseph Clerk of Council of the Village of Oakwood, County of Cuyahoga, and State of Ohio, do hereby certify that the foregoing Ordinance No. 2024-06 was duly posted on the 2nd day of April 2024, and will remain posted for a period of fifteen (15) days thereafter as provided in the Village Charter.


Tanya Joseph, Clerk of Council

DATED: 4.2.24

EXHIBIT "A"

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

This Agreement is for legal services between the Village of Oakwood, an Ohio Municipal Corporation, ("Village") and Thrasher, Dinsmore & Dolan ("TDD"), effective as of the _____ day of _____, 2024.

WITNESSETH:

WHEREAS, the Village wishes to engage Samuel T. O'Leary and the firm of TDD including attorneys Bridey Matheney, Todd Hicks, Christopher Elko and Dale Markowitz to perform general legal services as the Village's First Assistant Law Director, 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 Forty-Five Dollars and Zero Cents (\$245.00) 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 Council, prior to TDD commencing work on any individual matter, or in the event the parties agree that the rate shall be Two Hundred Forty-Five Dollars and Zero Cents (\$245.00) 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 Oakwood, unless the same is required as a reassignment of duties from the Law Director to the First Assistant Law Director.

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 the date first written above through December 31, 2024. 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. Unless a different rate is agreed upon by TDD and the Village, the hourly rate for such services shall be Two Hundred Forty-Five Dollars and Zero Cents (\$245.00) per hour.
- 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. Requests for reimbursement shall be submitted monthly in accordance with Section 3 of the Agreement.
- 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 Oakwood:

Mayor Gary V. Gottschalk
Village of Oakwood
24800 Broadway Avenue
Oakwood Village, Ohio 44146

If to TDD:

Samuel T. O'Leary, Esq.
Thrasher, Dinsmore & Dolan
1282 W. 58th Street
Cleveland, Ohio 44102

- 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.

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IN WITNESS WHEREOF, the Parties have executed this Agreement.

[SIGNATURE PAGE FOLLOWS]

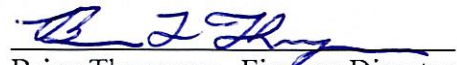
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IN WITNESS WHEREOF, the parties have hereunto set their hands to this Contract the day and year first above written.

VILLAGE OF OAKWOOD

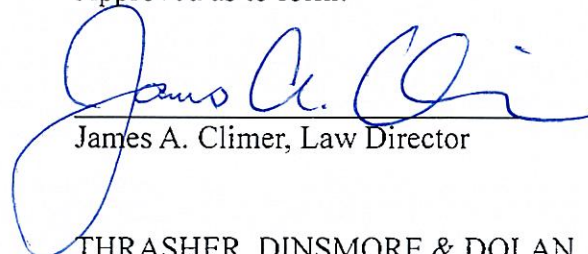


Mayor, Gary V. Gottschalk



Brian Thompson, Finance Director

Approved as to form:



James A. Climer, Law Director

THRASHER, DINSMORE & DOLAN

Ezio A. Listati, Principal and Managing Partner

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.

4-23-2024
Date



Brian Thompson, Finance Director