

ORDINANCE 16- 09

AN ORDINANCE AUTHORIZING AND DIRECTING THE VILLAGE ADMINISTRATOR AND FISCAL OFFICER TO EXECUTE A PERSONAL SERVICE CONTRACT FOR LEGAL SERVICES WITH ISAAC WILES BURKHOLDER & TEETOR, LLC AND DECLARING AN EMERGENCY

WHEREAS, in November 2014, the Village of Thornville retained the law firm of Isaac Wiles Burkholder & Teetor, LLC, and in particular, Attorney Brian M. Zets, to serve as its Village Solicitor; and

WHEREAS, the 2014 personal services contract for legal services will expire on November 1, 2016; and

WHEREAS, Council for the Village of Thornville understands and recognizes its need to retain an individual and law firm with a peculiar skill and aptitude to serve as Village Solicitor; and

WHEREAS, Council for the Village of Thornville is pleased with the level of service and work performed currently by its Village Solicitor, and wants to continue this professional relationship; and

WHEREAS, the law firm of Isaac Wiles Burkholder & Teetor LLC, and in particular Attorney Brian M. Zets, wants to continue providing legal services to the Village of Thornville, and has agreed to keep its rates the same as the previous contract; and

WHEREAS, Council for the Village of Thornville now wants to retain again the services of Isaac Wiles Burkholder & Teetor LLC and in particular, Attorney Brian M. Zets, to serve as Village Solicitor.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Thornville, County of Perry, State of Ohio:

SECTION 1: The Village Administrator and Fiscal Officer are hereby authorized and directed to execute a personal services contract for legal services with Isaac Wiles, in substantially the same format and content, as the document attached hereto as Exhibit "A" and incorporated herein by reference, on behalf of the Village of Thornville.

SECTION 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of Council and that all deliberations of the Council and any of decision making bodies of the Village of Thornville which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the State of Ohio.

SECTION 3: All prior legislation, or parts thereof, which is/are inconsistent with this Ordinance is/are hereby repealed as to the inconsistent parts thereof.

SECTION 4: Council declares this to be an emergency measure immediately necessary for the preservation of the public peace, health, and safety of this municipality and the further reason that Village Council needs to approve and enter into this Agreement as soon as possible in order to continue providing the Village with uninterrupted legal services. Wherefore, provided this Ordinance receives the required affirmative votes of Council, this Ordinance shall take effect and be in force immediately upon passage by Council and approval by the Mayor.

Passed in Council this 28 day of Nov., 2016.



Gavin Renner, Mayor

ATTEST



~~Danielle Lovett~~, Clerk of Council

Temp.

APPROVED:

Approved as to form this 22nd day of September 2016



Brian M. Zets, Esq.
Village Solicitor

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT (the Agreement), is entered into and effective this 28th day of December, 2016, by and between Isaac Wiles Burkholder & Teetor, LLC (IWBT) and the Village of Thornville (the Village), pursuant to Ordinance No. 16-09, passed by the Village Council on November 28, 2016.

In consideration of the mutual promises contained herein, IWBT and the Village agree as follows:

1. **Purpose of Representation.** Pursuant to the laws of the State of Ohio, the Village hereby retains IWBT to serve as Village Solicitor for the Village and its elected and appointed officials. As Solicitor, IWBT shall be responsible for performing any and all duties pursuant to all Village Ordinances and laws of the State of Ohio.
2. **Scope of Representation.** IWBT shall, from time when called up by members of Village Council or any other Village Official, render any and all such legal services as Village Solicitor as may requested, including by not limited to: ordinance and document preparation; initiate and defend litigation (administrative, state, or federal actions); draft and review contracts or other written documents; respond to inquiries; draft legal memoranda; provide legal representation in conjunction with specific transactions; advice the Village on legal issues as may specifically requested; and perform any other duties as requested by the Village, its Council, or Officials, elected or appointed.

IWBT shall attend any and all regular and special meetings of Village Council, and other public, regular, or special meetings, when requested to do so by the Village.

General direction on all legal matters shall be given to IWBT through Village Council, the Mayor, Village Administrator and/or Fiscal Officer. IWBT will perform only such legal services for the Village that are authorized and requested.

3. **Compensation.** IWBT shall compile a monthly itemized statement of services rendered, funds advanced, and expenses incurred and shall submitted same to the Village Administrator immediately following the month in which such services were rendered and funds advanced and expenses incurred for and on behalf of the Village.

The Village shall pay IWBT for all legal services rendered at an hourly rate. Time devoted by attorneys will be charged at a rate of \$130.00 per hour and time devoted by paralegals will be charged at a rate of \$85.00 per hour, payable monthly. All time will be invoiced in .10/hour intervals. The Village shall reimburse IWBT for any and all costs advanced on behalf of the Village. The Village also shall reimburse IWBT for expenses incurred for large copy projects and any necessary courier charges.

Payment is due by the Village upon receipt of the statement. In the event the village should disagree with, dispute question the amount stated to be due under any statement which was issued, the Village agrees to communicate such disagreement, dispute or question to IWBT in writing within 30 days following receipt of such statement. In the absence of such written communication regarding the amount stated to be due under any statement within such time, IWBT shall be entitled to assume that the Village has agreed to the amount of such statement and will pay the same amount within 30 days following receipt of such statement. In the absence of such written communication regarding the amount stated to be due under any statement within such time, IWBT shall be entitled to assume that the Village has agreed to the amount of such statement and will pay the same amount within 30 days following receipt of such statement.

4. **Designation of Village Solicitor.** Brian M. Zets, an attorney with IWBT, shall be designated as Village Solicitor and shall be the primary attorney and contact person for the Village. All other attorneys at IWBT are Assistant Solicitors when acting on behalf of the Village.
5. **Terms of Agreement.** Is it agreed and understood by one between the Village and IWBT that the term of this Agreement shall be for two years beginning January 1, 2017, and may be terminated by either IWBT or the Village upon thirty (30) days written notice.
6. **Settlement Authority.** No settlement of any nature shall be made for any Village claim or suit without approval of the Village Council.
7. **Professional Liability Insurance.** The Solicitor, as well as all ISBT attorneys providing services on behalf of the Village, shall at all times maintain professional liability insurance in an amount satisfactory to the Village and shall provide evidence of such coverage upon request of the Village.
8. **Conflicts of Interest.** Given the fact that IWBT represents other Ohio municipalities and non- municipals clients, in addition to the Village, IWBT will take reasonable efforts to recognize and disclose to the Village, any potential conflict. IWBT and the Village acknowledge and understood that conflicts of interest between the Village and other clients of IWBT could occur from time to time. If possible that during the time that IBWT is serving as Village Solicitor, some of the IWBT's present or future clients will have disputes or transactions with the Village. The Village agrees that IWBT may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to IWBT's work for the Village. IWBT agrees, however, the Village's prospective consent to conflicting representation shall not apply in any instance where, as a result of its representation the Village, IWBT has

obtained propriety or other confidential information of information of a nonpublic nature, that, if known to such other clients, could be used in any such other matter by such client to the Village's material disadvantage.

9. **Applicable Laws.** IWBT shall comply with all applicable foreign, federal, state and local laws, rules, regulations, orders, ordinances, and government requirements in the performance of the Agreement.
10. **Notice.** All notice and other communication mandated hereunder shall be in writing and will be deemed to have been given if delivered by hand, or on the next business day if delivered by hand, or on the next business day if delivered by a recognized overnight courier, or when actually delivered if mailed by certified mail, return requested at the following addresses:

If to the Village of Thornville:

Beth Patrick
Village Administrator
Village of Thornville
Municipal Building
P.O. Box 607
Thornville, Ohio 43076

If the IWBT:

Brian M. Zets, Esq.
Isaac Wiles Burkholder & Teetor, LLC
Two Miranova Place Suite 700
Columbus, Ohio 43215

11. **Severability.** If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable to any extent, such provision shall be enforcement to the greatest extent permitted by law and the remainder of the Agreement and the application of such provisions to the other persons or circumstances shall be affected thereby and shall be enforced to the greatest extent of the law. The intent of this Section is that if any provisions are found invalid, void or unenforceable, they are to be served from the Agreement, and the remaining provisions shall be considered independent, valid, and enforcement.

12. **Governing Law.** The 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.
13. **Entire Agreement.** The Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings, and agreements between the Village and IWBT. The Agreement may be amended or modified only by a writing executed by the Village and IWBT.
14. **Assignment.** The Agreement may not be assigned or transferred in whole or part by either the Village or IWBT without the written consent of the other. Any purported assignments without the express written consent of the other Party is void.
15. **Personal Service Contract.** The Village and IWBT agree the Agreement is, and is intended to be, a "personal service contract" as recognized in R.C. 145.012 and as identified in the Ohio Administrative Code. The Agreement is, and is intended to be, a formal bilateral written contract between the Village and IWBT, as required by the Ohio Revised Code. The Village and IWBT agree that since this is a personal service contract, not Public Employee's Retirement System deductions will be made from IWBT compensation nor paid to the Public Employee's Retirement System of Ohio.

VILLAGE OF THORNVILLE, OHIO

By: Beth Patrick
Beth Patrick
Village Administrator

By: Melissa Tremblay
Melissa Tremblay
Fiscal Officer

ISAAC, WILES, BURKHOLDER & TEETOR, LLC

By: Michael L. Close
Michael L. Close Esq. Managing Partner

CERTIFICATE OF AVAILABLE FUNDS

I certify that the money required to meet this contract has hereby been lawfully appropriated for such purpose and is in the treasury or in the process of being collection to the credit of this fund, free from any previous obligation or certification as required by Ohio Revise Code 570501 to 5705.47.

Date

12/28/16

Melissa Tremblay
Melissa Tremblay, Fiscal Officer