

1st reading 3-13-19  
2nd reading \_\_\_\_\_  
3rd reading \_\_\_\_\_  
Voted On 3-13-19  
Ayes: 6 Nays: 0  
PASSED ~~X~~ DEFEATED \_\_\_\_\_

**ORDINANCE NO. 2019-9**

**AN ORDINANCE  
CORRECTING SECTIONS 1 AND 2 OF ORDINANCE NO.  
2018-51 AND THE AGREEMENT BETWEEN ORANGE  
VILLAGE AND SINGERMAN MILLS DESBERG &  
KAUNTZ CO. L.P.A., AND DECLARING AN  
EMERGENCY.**

WHEREAS, on December 12, 2018 this Council enacted Ordinance No. 2018-51, which engaged Singerman Mills Desberg & Kauntz, Co. L.P.A., to represent Orange Village, and authorized the execution of an Agreement; and

WHEREAS, the Ordinance and Agreement had errors in the numbers that were contained in them, necessitating this corrective legislation.

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

SECTION 1. That Section 1 of Ordinance No. 2018-51 is amended to read:

SECTION 1. (a) That the Mayor be and is hereby authorized and directed to enter into an agreement to engage the law firm of Singerman Mills Desberg & Kauntz, Co. L.P.A. ("Singerman Mills"), in substantially the form as attached hereto as "Exhibit A," to represent the Village in connection with various routine matters, for a retainer of Three Thousand Seven Hundred Nineteen Dollars (\$3,719.00) per month, beginning January 1, 2019, and ending December 31, 2019. Such routine matters shall include:

- i. Attending all regular and special meetings of Council and Council work sessions, except as otherwise directed by the Council President.
- ii. Attending other board and commission meetings, and one monthly administrative staff meeting, upon the request of the Mayor.

- iii. Drafting ordinances and resolutions upon request of the Mayor, the Council President or a majority of Council.
- iv. Researching and drafting legal memoranda as requested by the Mayor, the Council President or a majority of Council.
- v. Providing legal advice to Village officials as necessary.
- vi. Responding to inquiries regarding Village matters.
- vii. Attending meetings and discussions with Village, County, State, and Federal officials and other governmental officials.
- viii. Reviewing and approving contracts and any other written documents, as requested by the Mayor or the Council President. This shall not encompass significant revisions of such documents or significant negotiations regarding the subject of such documents (e.g. revisions or negotiations that exceeds approximately five (5) hours).

(b) That for work outside the scope of the routine matters outlined above, the hourly rate and reimbursement for out-of-pocket expenses shall be as provided by agreement of the parties.

(c) That the firm of Singerman Mills, shall, on a monthly basis, provide the Mayor and the Treasurer with a written accounting of all time spent by members of the firm on Village business pursuant to this section. Such accounting shall include an itemization of time spent on Village matters, a description of the work performed, and an identification of the person performing the work.

SECTION 2. That Section 2 of Ordinance No. 2018-51 is amended to read:

SECTION 3. That in addition to the Agreement for Routine Services set forth above, Stephen L. Byron shall be employed as the Law Director for the Village at a salary of Three Thousand Dollars (\$3,000) per month, which shall be earnable salary for OPERS purposes and reported as W-2 (or equivalent) wages, payable to Stephen L. Byron or his designee. At least ten (10) hours per month of Routine Services, on average, shall be provided by Stephen L. Byron before he provides services (if any) under Section 1 hereof.

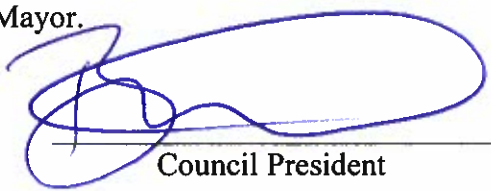
SECTION 4. That existing Sections 1 and 2 of Ordinance. No. 2018-51 are repealed, except that payments made in accordance with those sections as they were written are ratified.

SECTION 5. That the 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 105 of the Codified Ordinances of Orange Village.

SECTION 6. That this Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of Orange Village and, further, provides for the usual daily operation of a municipal department and allows for the continuation of work by the Orange Village Law Department, under contract, without interruption; wherefore, this Ordinance shall be in full force and effect from and after its adoption and approval by the Mayor.

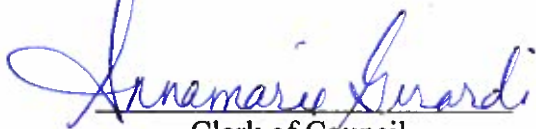
PASSED: 3-13, 2019

  
\_\_\_\_\_  
Council President

Submitted to the Mayor for approval on this 13 day of MARCH, 2019

Approved by the Mayor this 13<sup>th</sup> day of March, 2019

ATTEST:

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

  
\_\_\_\_\_  
Mayor

EXHIBIT A

**AMENDED AGREEMENT BETWEEN ORANGE VILLAGE  
AND SINGERMAN MILLS DESBERG & KAUNTZ CO. L.P.A.  
AND STEPHEN L. BYRON FOR LEGAL SERVICES**

This Amended Agreement is for legal services between Orange Village, an Ohio Municipal Corporation, ("Orange Village"), Singerman Mills Desberg & Kauntz Co. L.P.A. ("Singerman Mills"), and, Stephen L. Byron (Byron), effective the 1<sup>st</sup> day of January, 2019.

**WITNESSETH:**

**WHEREAS**, Orange Village wishes to engage Stephen L. Byron, as Law Director, and the firm of Singerman Mills Desberg & Kauntz, Co. L.P.A. to perform general legal services.

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

1. **Routine Services**. Except as otherwise provided herein, Stephen L. Byron and Singerman Mills agree to provide the following Routine Services:
  - a. Attending all regular and special meetings of Council and Council work sessions, except as otherwise directed by the Council President.
  - b. Attending other board and commission meetings, and one monthly administrative staff meeting, upon the request of the Mayor.
  - c. Drafting ordinances and resolutions upon request of the Mayor, the Council President or a majority of Council.
  - d. Researching and drafting legal memoranda as requested by the Mayor, the Council President or a majority of Council.
  - e. Providing legal advice to Village officials as necessary.
  - f. Responding to inquiries regarding Village matters.
  - g. Attending meetings and discussions with Village, County, State, and Federal officials and other governmental officials.
  - h. Reviewing and approving contracts and any other written documents, as requested by the Mayor or the Council President. This shall not encompass significant revisions of such documents or significant negotiations regarding the subject of such documents (e.g. negotiation work that exceeds approximately five (5) hours).
2. **Compensation for Routine Services**. Orange Village shall pay to Singerman Mills a retainer of Three Thousand Seven Hundred Nineteen Dollars (\$3,719.00) per month, beginning January 1, 2019, and ending December 31, 2019, and shall issue an annual 1099

or equivalent tax document. Stephen L. Byron shall be employed as the Law Director for the Village at a salary of Three Thousand Dollars (\$3,000.00) per month, which shall be earnable salary for OPERS purposes and reported as W-2 (or equivalent) wages, payable to Stephen L. Byron or his designee. Byron shall work an average of ten (10) hours per month for the salary identified herein. Byron may also provide some of the routine services for which compensation is paid to Singerman Mills.

3. **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. The fee arrangement set forth below in "Additional Projects" shall also apply to "Litigation."
4. **Billing.** Singerman Mills shall bill Orange Village monthly for all Routine Services, Litigation and Additional Projects, which billings shall set forth the date the services were rendered, the time devoted to the service recorded in tenth-of-an-hour increments, the attorney performing such services, and a brief description of the services provided.
5. **Term.** The rates set forth in this Agreement shall take effect and be in force from January 1, 2019, through December 31, 2019. Either Party may terminate this Agreement, however, upon providing to the other party thirty (30) days' notice of its intent to terminate the Agreement.
6. **Miscellaneous Provisions.**
  - a. **Additional Projects.** Subject to agreement of both parties, Singerman Mills may undertake Additional Projects, which are outside the scope of the Routine Services, on a flat fee or hourly basis. For projects that are billed hourly, Singerman Mills will offer a discounted blended hourly rate of \$250.00 per hour, unless a different rate is agreed upon by Singerman Mills and the Village.
  - b. **Expenses.** Singerman Mills 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 charges, computer-assisted research, copying charges, telegrams, messenger services, and long-distance travel.
  - c. **Applicable Laws.** Singerman Mills 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.
  - 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 Orange Village:

Mayor Kathy Mulcahy  
Orange Village  
4600 Lander Road  
Orange Village, Ohio 44022

If to Byron or Singerman Mills:


Stephen L. Byron  
Singerman Mills Desberg & Kauntz, Co. L.P.A.  
3333 Richmond Road, Suite 370  
Cleveland, Ohio 44122

- 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 Singerman Mills and Orange Village. The terms of this Agreement are not a contract or assurance regarding compensation, continued employment, or benefit of any kind to any of Singerman Mills' personnel assigned to Orange 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. The employment relationship documented herein has been created at the request and for the benefit of Stephen L. Byron. To the extent permitted by law, Stephen L. Byron waives any and all claims that may arise from said employment relationship.
- 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, except the Agreement authorized by Orange Village Ordinance No. 2017-4, which shall remain in effect. 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.

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

**SINGERMAN MILLS  
DESBERG & KAUNTZ, CO. L.P.A.**

  
\_\_\_\_\_  
Stephen L. Byron, Individually and on behalf of  
Singerman Mills Deberg & Kauntz Co. L.P.A.

**ORANGE VILLAGE**

  
\_\_\_\_\_  
Kathy Mulcahy, 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 as required by Ohio Revised Code §5705.01 to §5705.47.

3-13-19  
Date

Dino Kawander  
Orange Village Treasurer