

1st reading 6-7-23  
2nd reading SUSPENDED  
3rd reading 6-7-23  
Voted On 6-7-23  
Ayes: 6 Nays: 0  
PASSED X DEFEATED   

6/5/2023

## ORDINANCE NO. 2023-9

### AN ORDINANCE ENGAGING ZASHIN & RICH CO., L.P.A., TO PROVIDE SPECIAL COUNSEL TO ORANGE VILLAGE IN EMPLOYMENT RELATED MATTERS AND DECLARING AN EMERGENCY.

WHEREAS, this Council has the authority to engage special counsel to provide legal services on behalf of Orange Village; and

WHEREAS, this Council determines it is necessary to engage special counsel to represent Orange Village in negotiations, administrative proceedings and court actions for labor and employment related matters; and

WHEREAS, the Law Director has recommended the engagement of Zashin & Rich Co. L.P.A. to perform the aforesaid services required of special counsel; and

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

SECTION 1. That Zashin & Rich Co. L.P.A. ("Special Counsel") is engaged as special counsel to Orange Village, to represent the Village in negotiations, administrative proceedings and court actions for labor and employment related matters.

SECTION 2. The Village will pay Special Counsel at the rate of \$200-\$260 per hour for services provided by an attorney and \$110 per hour for services provided by a paralegal as shown in "Exhibit A" (the "Agreement"). At the conclusion of the tax year provided for herein, the Village shall issue Special Counsel the tax form known as a "1099," or equivalent tax reporting form as provided by law.

SECTION 3. That any and all expenditures that have been made which are consistent with the attached agreement and this ordinance are ratified.

SECTION 4. 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 5. 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 immediate engagement of special counsel to represent the Village in negotiations, administrative proceedings and legal actions for labor and employment related matters; wherefore, this Ordinance shall be in full force and effect from and after its adoption and approval by the Mayor.

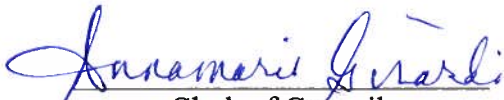
PASSED: June 7, 2023

  
Council President

Submitted to the Mayor for  
approval on this 7<sup>th</sup> day of June, 2023

Approved by the Mayor this  
7<sup>th</sup> day of June, 2023

ATTEST:

  
Clerk of Council

  
Mayor



Stephen S. Zashin  
OSBA Certified Specialist in  
Labor and Employment Law  
[ssz@zrlaw.com](mailto:ssz@zrlaw.com)

January 8, 2020

Chief Christopher Kostura  
Orange Village  
4600 Lander Road  
Orange Village, OH 44022

**RE: Orange Village - General  
Matter No. 4171-20-01**

Dear Chief Kostura:

We are pleased to represent Orange Village in connection with the above-referenced matter. Thank you again for allowing us to serve your interests.

The terms of this engagement letter and the attached Standard Terms of Engagement will govern our representation. Upon the completion of our services with respect to this matter, we hope that you will choose to engage our firm to perform additional services. Absent an express written agreement to the contrary, the terms of our engagement set forth in this letter and the Standard Terms of Engagement will apply to this matter and to other matters which we agree to undertake on your behalf.

Unless otherwise agreed in writing, our fees will be based on the time devoted to this matter by each attorney, law clerk, paralegal, and other legal assistants at their respective hourly rates in effect at the time the services are performed. The hourly rates, which are subject to periodic review and adjustment, are based on such considerations as the skill required to perform the particular services, the likelihood that the acceptance of the particular engagement will preclude other engagement by the firm or the lawyers in question, the experience, and the reputation and ability of the lawyers performing the services. My current hourly rate is \$500 per hour. Other or different personnel may work on your matter as well. The current hourly rates for other firm personnel range from \$360 to \$500 for partner-level attorneys, \$240 to \$350 for associate-level attorneys, and \$150 for paralegals, clerks, and other legal assistants. As a professional courtesy, we will be reducing our hourly rates to \$260 for partner-level attorneys, \$200 for associate-level attorneys, and \$110 for paralegals, clerks, and other legal assistants. If this matter is covered by an insurance carrier and to the extent that this letter, the Standard Terms of Engagement and the firm's retention from the insurance carrier conflict, the terms of the firm's engagement by the insurance carrier will apply.

In addition to our fees, we will be entitled to payment for disbursements and other charges incurred in performing services as more particularly described in the Standard Terms of Engagement.

**Exhibit "A"**

Fees, disbursements, and other charges will be billed monthly and are payable upon presentation. We expect prompt payment. We are entitled to interest of one-percent (1%) per month on all invoices that are not paid within thirty days.

No advance payment is required to begin representation. However, we reserve the right in the future to request such an advance payment. In that case, all other billings must be paid without considering the credit for this deposit, and when the representation is concluded, any excess will be returned to you.

Please review the terms of this engagement letter carefully, as well as the terms set forth in the Standard Terms of Engagement. If you have any questions, please give us a prompt call. Unless we hear from you in writing to the contrary, we will assume you have agreed to the terms of this engagement letter.

On behalf of Zashin & Rich Co., L.P.A., I thank you for the privilege of representing you and look forward to serving your interests.

Very truly yours,

**ZASHIN & RICH CO., L.P.A.**

Stephen S. Zashin



SSZ/cmh  
Enclosure



## **STANDARD TERMS OF ENGAGEMENT**

This is a supplement to our engagement letter dated January 8, 2020. The purpose of this document is to set out additional terms of our agreement to provide legal services. Because these additional terms of engagement are a part of our agreement to provide legal services, you should review them carefully and should promptly communicate to us any questions concerning this document. We suggest that you retain this statement of additional terms along with our engagement letter for your records.

### **Scope of Representation**

We will at all times act on your behalf to the best of our ability. Any expressions on our part concerning the outcome of the representation, or any other legal matters, are based on our professional judgment and are not guarantees. Such expressions, even when described as opinions, are necessarily limited by our knowledge of the facts and are based on our views of the state of the law at the time they are expressed. In retaining us, you recognize that all legal matters involve risks. We cannot and have not made any promises or guarantees to you about the outcome of the representation, and nothing in these terms of engagement shall be construed as such a promise or guarantee.

Upon accepting this engagement on your behalf, we agree to do the following: 1) provide legal counsel in accordance with these terms of engagement in reliance upon information and guidance provided by you; and 2) keep you reasonably informed about the status and progress of the matters we are handling for you.

To enable us to provide effective representation, you agree to do the following: 1) disclose to us, fully and accurately and on a timely basis, all facts and documents that are or might be material or that we may request; 2) keep us apprised on a timely basis of all developments relating to the matters we are handling for you that are or might be material; 3) attend meetings, conferences, and other proceedings when it is reasonable for you to do so, and where it may be required by a court or other tribunal; and 4) otherwise cooperate fully with us.

It is our policy that the person or entity that we represent is the person or entity that is identified in our engagement letter and does not include any affiliates of such person or entity (*i.e.*, if you are a corporation or partnership, any parents, subsidiaries, employees, officers, directors, shareholders, or partners of the corporation or partnership, or commonly owned corporations or partnerships; or, if you are a trade association, any members of the trade association). Accordingly, for conflict of interest purposes, we may represent another client with interests adverse to any such affiliate without obtaining your consent.

It is our further policy that our representation is limited to performance of the services described in the engagement letter and does not include representation of you or your interests in any other matter.

After the completion of the matter, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. We always strive to keep our clients updated on matters on which we have been retained. However, unless you engage us after completion of the matter to provide additional advice on issues arising from the matter, the firm has no continuing obligation to advise you with respect to future legal developments.

If, during the course of our engagement, we send you a letter or other written communication advising you about a Federal tax issue, you may notice a statement toward the end saying that our advice may not be relied upon for the purpose of avoiding penalties that may be imposed. (That legend will appear on every e-mail or fax that we send even if there is no tax issue involved.) This does not mean that we have not carefully considered the advice we sent to you. Rather, is intended to enable us to render that advice in a cost efficient manner. Rules recently adopted by the Treasury Department require that in the absence of such a legend, any tax advice must be given only in a full-blown, formal legal opinion. Like all law firms, if we were to issue a formal opinion, we would need to follow certain prescribed procedures. In most cases, the cost to our clients would exceed the value received if we were to follow those procedures. In any case where we think that a formal opinion may be appropriate, we will discuss the matter with you.

### **When We Bill**

We will send you a bill each month for the services performed during the previous month. This bill will also include out-of-pocket expenses. These are described below.

We want our clients to be satisfied with both the quality and cost of our services. We therefore encourage our clients to discuss with us any questions relating to fees for our services. We will make every effort to provide you with bills in a format that meets your needs.

### **How Fees Will Be Set**

We will keep accurate records of the time we devote to your work, including conferences (both in person and over the telephone), negotiations, factual and legal research and analysis, document preparation and revision, travel on your behalf, and other related matters. We record our time in units of one tenth of any hour.

The hourly rates of our lawyers are adjusted annually to reflect current levels of legal experience, changes in overhead costs, and other factors. We are often requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Whenever possible, we will furnish such an estimate based upon our professional judgment, but always with a clear understanding that it is not a maximum or fixed-fee quotation.

### **Retainers**

If we have agreed to a retainer, it is further agreed that we have a security interest in that deposit. Retainers are usually considered to be unearned advances. They are placed into trust accounts, usually placed in pooled interest-bearing trust accounts governed by rules adopted by the bar associations in the jurisdictions in which we practice. All accruing interest is paid to a charitable fund established by those bar associations. The need to replenish the retainer is a condition of our continued work and is set forth in the Engagement Letter itself.

### Disbursements and Other Charges

In addition to our fees, we will be entitled to payment or reimbursement for disbursements and other charges incurred in performing services such as photocopying, messenger and delivery, overnight delivery and air freight, computerized research, videotape recording, travel (including mileage, parking, air fare, lodging, meals, and ground transportation), long distance telephone, telecopying, word processing in special circumstances, courts costs, and filing fees. To the extent we directly provide any of these services, we reserve the right to adjust the amount we charge at any time or from time to time, and the charge will approximate our cost. Unless special arrangements are made, fees and expenses of consultants and professionals (such as experts, investigators, witnesses, and court reporters) and other large disbursements will not be paid by our firm and will be the responsibility of, and billed directly to, you or you will be asked to advance to us an estimate of those costs.

### Payment of Invoices

Our invoices are payable within 30 days of receipt. Any amounts not paid within 30 days will be subject to a late charge at the monthly rate of one-percent (1%). In the event that a bill remains unpaid past the due date, the firm may discontinue services. If we represent you in a pending litigation, we may seek to withdraw as your counsel. Whether or not we elect to discontinue representation, if collection activities become necessary, we will be entitled to seek reasonable attorneys' fees and costs of collection.

### Conflicts of Interest

It is unavoidable that from time to time conflicts of interest develop between or among our clients, or between clients, or former clients, and prospective clients we wish to represent. In these situations, we are required, if we are authorized to do so, to disclose the conflicts to our clients, former clients, and prospective clients and consult with them and to obtain the clients' or former clients' consents before we may proceed. We wish to confirm that you agree that you will promptly and in good faith consider our requests for consent.

### Termination

You shall have the right at any time to terminate our services and representation upon written notice. Such termination shall not, however, relieve you of the obligation to pay for all services rendered and disbursements and other charges made or incurred on your behalf prior to the date of termination.

We reserve the right upon reasonable notice to cease performing work and to withdraw from the representation (a) with your consent, (b) for good cause, or (c) for any other reason permitted or required by law. Good cause may include your failure to honor the terms of the engagement letter, your failure to pay amounts billed in a timely manner, your failure to furnish deposits for fees and costs or to otherwise provide a requested advance for fees and costs, or any fact or circumstance that would in our view, impair an effective attorney-client relationship or would render our continuing representation unlawful, unethical or unreasonably burdensome. If we elect to do so, you must take all steps necessary to free us of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to

complete our withdrawal, and we will be entitled to be paid for all services rendered and disbursements and other charges made or incurred on your behalf prior to the date of withdrawal.

#### **Record Retention**

At the conclusion of a matter we often undertake to review the file and discard extra copies of documents. We then send the balance of the file on that matter to an off-site facility for storage at our expense, unless a client requests us to deliver the file to it. To minimize the file storage expense, we reserve the right, subject to your contrary direction, to retain files for only ten years and to destroy all older files to the extent practicable; provided that we use our reasonable efforts to review old files and retain original legal instruments such as notes, leases, mortgages, deeds, stock certificates, marital equitable distribution agreements and other items of obvious value. If you wish to handle the disposition of files in a different manner, please let us know. Otherwise, we will proceed as set forth above.

#### **Communications and Confidentiality**

In the course of our representation of you, we have a duty to preserve the confidentiality of our communications with you and other information relating to the representation. However, you and we need to recognize that all means of communication are, to some degree, susceptible to misdirection, delay or interception. E-mail and cellular telephone communications present special risks of inadvertent disclosure. However, because of the countervailing speed, efficiency, and convenience of these methods of communication, we have adopted them as part of the normal course of our operations. Unless you instruct us to the contrary, we will assume that you consent to our use of e-mail and cell phone communications in representing you.

#### **Marketing Matters**

Our firm has a public web site that may identify some of our clients and publicly disclosed transactions and other legal matters we have handled. In addition, we develop various marketing, advertising, and informational materials from time to time that contain similar information. You agree that we may publicly identify you as a client of Zashin & Rich Co., L.P.A.

#### **Insurance**

You agree to immediately determine whether insurance coverage is or may be available with respect to the subject matter of the engagement and to promptly provide notice to any insurer that may provide coverage. If an insurer pays any portion of our charges, you agree that you will remain responsible for payment of any amounts billed by us but not paid by the insurer, unless we have agreed otherwise in writing.