

INTRODUCED BY:

ORDINANCE NO. 2022-138

AN ORDINANCE ENGAGING MINC LLC TO PROVIDE LEGAL SERVICES; AND DECLARING THIS TO BE AN URGENT MEASURE

WHEREAS, on the recommendation of the City’s Law Director, City Council desires to engage the firm of Minc LLC to provide the City of Beachwood, Ohio Legal Services.

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

Section 1: The Mayor is hereby authorized and directed to enter into an agreement to engage the firm of Minc LLC to provide the City of Beachwood, Ohio Legal Services due to Senior Administrative Personnel receiving defamatory and threatening anonymous communications. Such legal services shall be provided at the rates further outlined in the “Engagement of Legal Representation” in a total amount not to exceed Twenty-Five Thousand Dollars and No/Cents (\$25,000.00), a copy of which is attached hereto and incorporated herein as Exhibit “A”.

Section 2: It is found and determined that all formal actions and deliberations of Council and its committees relating to the passage of this legislation that resulted in formal action were in meetings open to the public where required by Chapter 105 of the Codified Ordinances of the City.

Section 3: This Ordinance is declared to be an urgent measure immediately necessary for the preservation of public peace, health or safety or the efficient operation of the City, and for the further reason that the legal services provided herein are needed for the current operation of the City; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

WHEREFORE, this Ordinance shall be in full force and effect from and after the earliest date permitted by law.

Attest: I hereby certify this legislation was duly adopted on the 7th day of November, 2022, and presented to the Mayor for approval or rejection in accordance with Article III, Section 8 of the Charter on the 8th day of November, 2022.

Clerk

Approval: I have approved this legislation this 8th day of November, 2022 and filed it with the Clerk.

Mayor

Michael J. Pelagalli, Esq.
mpelagalli@minclaw.com

October 27, 2022

City of Beachwood
c/o Stewart Hastings
216-595-5462
Stewart.Hastings@beachwoodohio.com

RE: Engagement of Legal Representation

Dear City of Beachwood:

The law firm of Minc LLC (“the Firm”) is pleased to welcome you as our client. This letter confirms that you have retained the Firm to represent you in removing content from the Internet, plus other matters as you may request in writing. In representing your interests, we shall investigate anonymous, defamatory, and threatening e-mails and online postings directed to or concerning senior administrative staff for the City of Beachwood.

Experience has shown that the attorney-client relationship works best when there is a mutual understanding about fees and payment terms. Thus, in order to avoid any misunderstanding, it is the policy of the Firm to require a written agreement.

Legal Fees

Minc LLC bills for its services at an hourly rate in increments of 1/10th and you will receive regular, itemized billing statements which will identify the services provided to you by the Firm during the course of your representation. The amount of legal fees billed is based upon actual work performed on your case, the Firm is very conscious of attorneys’ fees and expenses and will prudently try to ensure that the Client is billed fairly and responsibly. However, because of the possibility of unpredictable and unforeseen circumstances, it is not possible for us to quote a specific inclusive fee for professional services or for the costs for which you will be responsible.

Hourly billing rates range between \$250.00 and \$600.00. Current hourly rates for attorneys at the Firm are as follows:

Aaron Minc	\$600.00
Daniel Powell	\$450.00
Dorrian Horsey	\$375.00
Michael Pelagalli	\$350.00
Nathan Woodward	\$350.00
Michele Simonelli	\$350.00
Caroline Ford	\$280.00

The above schedule of hourly rates for attorneys is based on years of experience and specialization in training and practice. You agree that hourly rates may be reviewed periodically by the Firm and increased to reflect changes in experience of attorneys, the market and other

factors, on a reasonable basis. Other paralegal, law clerk, or case management/admin professional time will be billed to you at their respective hourly rates between \$100-\$150.

During the representation, the Firm may retain co-counsel or local counsel. You will be consulted concerning this decision. You agree that you will sign any engagements with local counsel and any other third-party service providers as necessary or appropriate for your legal matter. In the event the Firm does sign such an agreement instead, you agree that you are responsible for paying all cost and expenses incurred directly or you agree to reimburse the Firm for the same if payment is advanced by the Firm on your behalf.

The Firm will send a monthly statement itemizing the legal services rendered and costs expended, which will be due and payable upon receipt. You agree that you will have 15 days from the receipt of the invoice to review and dispute any time entry or expense. Any courtesy discounts given by the Firm on invoices are made in consideration of prompt payment within 15 days of the invoice date. The Firm reserves the right to void any discount if payment is not made promptly.

You and the Firm recognize that timely resolution of any disputes of incurred fees and/or expenses and timely payment of all invoices is essential to a successful matter. If any time entry or cost is disputed, you will be responsible to notify the Firm, in writing, about the specific time entry or expense that is disputed. You agree to waive the right to dispute any time entry or expense if not received in writing within 15 days of receipt of the invoice. In the event that you are financially unable to promptly pay any such bill in full, specific arrangements must be made with our office for regular monthly payments on your obligation. The Firm cannot in good faith represent your interests without your good faith effort to compensate us for legal services rendered. In the event the balance is not paid in full within 30 days, we reserve the right to charge interest accruing at the rate of 12% per year on the unpaid balance.

We request that you submit a retainer in the amount of \$0. The monthly invoices will be applied against the retainer balance. In the event that the monthly invoices are not paid in full, no arrangements have been made regarding your obligation, the Firm may cease representation of you. Representation will not be reestablished until the retainer has been replenished and the Firm feels adequately secure that it will receive payment for any future work performed.

You hereby acknowledge that we have made no guaranty regarding the outcome of this matter. You further acknowledge that notwithstanding the success (or lack of success) of this matter, this firm will be paid and that you, by executing this fee letter, unconditionally guarantee the payment of our fees.

Costs and Disbursements

Certain costs incurred on your behalf in rendering legal services, such as filing fees, long distance telephone calls, copy and delivery charges, travel expenses, court reporter charges and the like, are payable by you. Invoices for such items will either be sent directly to you for payment, or, if advanced by the Firm, will be billed directly to you as part of your billing invoice.

Interest and Collection of Past Due Accounts

In the event you fail to timely meet your payment obligations interest will accrue on the entire unpaid principal balance of your account. A \$30.00 fee will be added to the balance of your

account for any returned check. Our firm or our assignees shall be entitled to recover the reasonable attorneys' fees incurred by or on behalf of our firm, or by or on behalf of our assignees, in any litigation, including appeals, instituted to collect our fees.

Notice to Insurers

The Firm advises you to investigate whether any insurance coverage or policy could apply to the representation of this dispute. In many situations, the timely presentation of claims to an insurer is necessary to preserve an insured's contractual rights. We are available to discuss this further should you have any questions.

Acknowledgment Regarding Electronic Transfer of Documents

You hereby authorize the Firm to electronically receive and deliver documents to you, to persons and entities directed or designated by you and to opposing parties, counsel, accountants, expert witnesses, and other parties, directly or indirectly involved in the legal matter(s) we are undertaking for you, and through any on-line service provider, remote software, or other means hereafter available. You acknowledge that risks of inadvertent dissemination and misappropriation by unauthorized parties exist, and that risks of system infection by "computer viruses" or other tampering exist, and that you will bear such risks and hereby waive any and all claims, actions, and causes of action against the Firm arising therefrom and agree not to make any claims against the Firm relating thereto.

Termination of Representation

You have the right to terminate our representation at any time. We have the same right, subject to an obligation to give you reasonable notice to arrange alternate representation. The Firm may elect to withdraw from representation if, among other things, you fail to honor the terms of this agreement by failing to pay invoices, failing to cooperate or follow our advice on a material matter, you have misrepresented or failed to disclose any material fact to us, or if any fact or circumstance arises or is discovered that would, in this firm's view, render our continuing representation unlawful or unethical. This firm has an obligation to promptly return all client papers and property to you upon termination of the representation by either party. It is your duty to notify the Firm of the manner in which the papers and property are to be returned to you.

If you discharge the Firm or the Firm withdraws from the representation for any reason, you will remain liable for all fees and any expenses incurred by the Firm on the Client's behalf prior to such termination or withdrawal, plus any fees and expenses incurred at Client's request in connection with the transition to substitute counsel.

Firm Not Responsible for Liability Related to Claims

In no event will the Firm be liable for any judgment against you, and you acknowledge and understand that any lawsuit may well result in counterclaims, motion to strike, motion to show cause, ANTI-SLAPP motion, or an unanticipated contingent or actual liability. Additionally, you recognize that you may become potentially liable for the opposing parties' attorneys' fees and/or court cost should an adverse judgment be rendered against you in any legal proceeding undertaken by the Firm as a result of this agreement.

Ohio Law Governs

This agreement will be governed by and construed under Ohio law. Any dispute arising out of or under this agreement shall be subject only to the Bedford Municipal Court unless the jurisdictional limits for said Municipal Court shall be exceeded at which time the Cuyahoga County Court of Common Pleas shall have sole and exclusive jurisdiction. You irrevocably consent to the personal and subject matter jurisdiction of said courts.

Ethical Consideration

You should be aware of an ethical requirement imposed upon all Ohio attorneys, that if a client, in the course of representation by an attorney, perpetrates a fraud upon any person or tribunal, the attorney is obligated to call upon the client to rectify the same, and if the client refuses or is unable to do so, the attorney is required to reveal the fraud to the affected person or court.

It is the Firm's intention to vigorously represent you in this matter. While the Firm believes that its attorneys are very aggressive, its attorneys are also very careful to follow the ethical guidelines and the local customs and practices for lawyers. If a situation ever arises where the Firm feels that the actions being requested violate any of the ethical rules or practices, the Firm will inform you immediately.

Retention of Records

Minc LLC will retain electronic copies of your file(s) in connection with this matter for a period of twenty-four (24) months after the matter has concluded. Thereafter, if you have not requested a copy of the file be sent to you at your expense, the file will be destroyed at the Firm's discretion and without further notice.

Questions / Communications

You are encouraged to discuss any questions you may have about statements issued or services rendered with myself or a member of the Firm familiar with your account. We feel that communication is the most important aspect of successful representation. We will remain prompt and accessible, and we will, of course, apprise you of all significant developments in this matter. If at any time you have any questions or concerns, please feel free to contact any attorney working on your matter.

Future Representation

This engagement does not extend to any other matter not covered by this letter, unless or until agreed by you and the Firm in writing. In the event that you retain the Firm to represent you in additional matters after the date of this letter, the terms of this letter will apply to all such matters unless a subsequent agreement is made between you and the Firm in writing.

Please indicate your agreement with the terms specified above by signing this letter. You may pay the retainer fee for this matter by check, credit card, ACH deposit, or wire transfer.

Very truly yours,



Michael Pelagalli

The above terms and conditions are hereby acknowledged, understood and agreed:

City of Beachwood

Mayor of Beachwood, signor

Approved as to form:

Stewart Hastings, Director of Law
Nathalie E. Supler, Assistant Law Director
Matthew A. Kurz, Assistant Law Director
25325 Fairmount Boulevard
Beachwood, Ohio 44122
216-595-5462
Date: _____

CERTIFICATE OF THE DIRECTOR OF FINANCE

To the Mayor/Director of Public Safety:

I hereby certify that the amount required to meet the City's obligations under this contract has been lawfully appropriated and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrance.

Larry Heiser
Director of Finance
Date: _____