

RECORD OF ORDINANCES

Ordinance No. 2019-3

Passed JANUARY 14 2019

AN ORDINANCE AUTHORIZING THE MAYOR AND VILLAGE ADMINISTRATOR TO EXECUTE AN EMPLOYMENT AGREEMENT WITH MATTHEW ROTH FOR THE PROVISION OF PROSECUTOR SERVICES TO BALTIMORE MAYOR'S COURT AND THE DECLARATION OF AN EMERGENCY

WHEREAS, it is necessary for the Village to hire a part-time Prosecutor for Baltimore Mayor's Court commencing January 1, 2019; and,

WHEREAS, the Mayor has appointed Matthew Roth to fill the position; and,


WHEREAS, the Finance Committee has previously reviewed the matter and approved the employment of a part-time Prosecutor; and,

WHEREAS, this ordinance needs to be passed on an emergency basis in order for the Prosecutor's position to be filled effective January 1, 2019;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF BALTIMORE, FAIRFIELD COUNTY, OHIO, THREE-FOURTH'S (3/4'S) OF ITS MEMBERS CONCURRING:

SECTION 1: That the Mayor and Village Administrator are authorized and directed to enter into an employment agreement with Matthew Roth, Esq., for the provision of Prosecutor services for Baltimore Mayor's Court, pursuant to the terms of the Agreement for Prosecution Services, which agreement is attached hereto and incorporated herein.

SECTION 2: For the reasons noted in the preamble, this ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, morals, and welfare of the citizens of Baltimore, Ohio. This ordinance shall become effective upon its passage by Council.


Brad Nicodemus, Mayor

DATE OF PASSAGE: 1-14-2019

EFFECTIVE DATE: 1-14-2019

ATTEST: 
Brian Bibler, Fiscal Officer

SPONSOR: MOHLER

APPROVED AS TO FORM: 
Jeffrey Feyko, Village Solicitor

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CERTIFICATE OF AVAILABILITY OF FUNDS

I certify that the money required to meet this contract has 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 Sections 5705.01 and 5705.47, Ohio Revised Code.

1-14-19

Date



Brian Bibler, Fiscal Officer

AGREEMENT FOR PROSECUTION SERVICES

THIS AGREEMENT (the "Agreement") is being executed as of the 14th day of January, 2019, by and between the Village of Baltimore, Ohio ("Village"), and Matthew Roth, Esq. ("Prosecutor") for the prosecution of certain criminal and civil cases before Baltimore Mayor's Court.

IN CONSIDERATION OF the mutual promises contained herein, the parties hereby agree as follows:

I. Services

- (a) During the term of this Agreement, Prosecutor hereby agrees that he will undertake to prosecute all cases coming before Baltimore Mayor's Court, arising out of alleged violations of traffic or criminal ordinances of Baltimore or traffic and criminal statutes of the State of Ohio, which occur within the corporate limits of Baltimore.
- (b) Prosecutor hereby agrees that he will undertake to prosecute all cases coming before Baltimore Mayor's Court, arising out of alleged criminal violations of zoning ordinances, property maintenance ordinances or municipal income tax ordinances of Baltimore, which occur within the corporate limits of Baltimore.
- (c) Prosecutor further agrees that he will consult with and advise all persons concerning violations of the criminal statutes of the State of Ohio, alleged to have occurred within the corporate limits of Baltimore, and will assist such citizens, when necessary and in the interest of justice, or when requested by an officer of the Baltimore Police Department in the preparation and filing of complaints charging such offenses.
- (d) Prosecutor further agrees that he will consult with and advise the officers of the Baltimore Police Department, and all other appropriate officials for Baltimore when necessary, concerning the prosecution or enforcement of the criminal and traffic statutes for the State of Ohio, and zoning ordinances, property maintenance ordinances and income tax ordinances of Baltimore within the corporation limits of Baltimore.
- (e) It is mutually understood and agreed that the responsibility of Prosecutor under this Agreement shall be limited to those functions set forth above, and specifically that he shall not be required to: engage in any investigations other than those that would normally be performed by a typical Ohio municipal Prosecutor's office in regard to and incidental to the prosecution thereby of routine cases; take depositions; prosecute appeals by the plaintiff, Village, or State from judgments of the Baltimore Mayor's Court or Fairfield County Municipal Court; or prepare or consider legislation.
- (f) The description of the Services set forth may be amended only upon mutual agreement of the parties.

- (g) Prosecutor reserves the right to decline to represent Baltimore as long as written notice is provided at least seven (7) days before a scheduled hearing in the specific case.
- (h) Baltimore, by and through its Village Solicitor, reserves the right under this Agreement to represent Baltimore in any specific case filed in or coming before Baltimore Mayor's Court upon giving written notice to Prosecutor at least seven (7) days before a scheduled hearing in that specific case, that Baltimore Village Solicitor intends to represent the Village. It is further mutually understood and agreed that, notwithstanding any of the above provisions of this Agreement, Baltimore shall have the absolute right, in its sole discretion, to undertake to prosecute by and through the Baltimore Village Solicitor, any case coming before Baltimore Mayor's Court, arising out of alleged violations of the codified ordinances of Baltimore, or alleged violations of the traffic and criminal statutes of the State of Ohio, which occur within the corporation limits of Baltimore, or any appeal from judgments of Baltimore Mayor's Court relating thereto.
- (i) Baltimore shall reimburse Prosecutor costs related to the expert witness fees and other extraordinary prosecution expenses only upon the prior written approval and at the discretion of the Baltimore Village Administrator. Prosecutor shall provide an invoice, which shall a detailed list of the services provided and the dates for which the services were performed, to Baltimore for actual expenses incurred under this Section.
- (j) Baltimore Mayor's Court shall typically be held on the second and fourth Wednesday of each month. Baltimore Mayor's Court may also have special hearings, such as prisoner arraignment hearings, as justice may require. Prosecutor will hear cases on these dates or when otherwise called upon by the Village to do so. In the event that Prosecutor is unable to attend any Court session, he shall be solely responsible for providing a qualified replacement and paying any expenses associated with the replacement.

II. Fee for Services

- (a) In consideration of Prosecutor's performance of the Services detailed in Section 1, Baltimore shall pay Prosecutor the flat fee sum of One Hundred Twenty-Five and 00/100 Dollars (\$125.00) per session for the term of this Agreement. Said fee shall be paid on a monthly basis in the amount of Two Hundred Fifty and 00/100 Dollars (\$250.00).
- (b) Said fees shall be either hand-delivered to or sent by regular U.S. mail to Matthew Roth.

III. Relationship of Parties

Prosecutor shall be free to contract for similar services to be performed for other governmental entities while under this Agreement with Baltimore. As an independent contractor for the Village, Prosecutor acknowledges that he shall not be entitled to benefits typically provided to Village employees, including but not being limited to pension, sick leave and health insurance benefits. In performance of duties within the scope of this Agreement, the Prosecutor shall be regarded as a representative of Baltimore and serve as Baltimore's appointed official for such tasks.

IV. Liability

The parties agree that Prosecutor, in the performance of legal services as set forth in this Agreement, shall be regarded as a duly appointed official of the Village of Baltimore and shall be protected by the Village from any liability, claim or loss arising from negligent acts or omissions to act in cases that are within the scope of and in furtherance of the terms of this Agreement. Additionally, Prosecutor, pursuant to the terms of this Agreement, shall be regarded as a duly appointed Prosecutor of the Village and shall be entitled to any an all applicable statutory protections and indemnifications relating thereto.

V. Term of Agreement; Termination

- (a) The term of the Agreement shall be for a period of one (1) year commencing on January 1, 2019 and ending on December 31, 2019. This Agreement shall automatically renew for additional one year periods unless terminated by either party pursuant to Section V (b). Upon such automatic renewal, the terms of the Agreement shall remain the same as provided herein, subject to any written amendment by the parties as provided in section VI (g).
- (b) The Agreement may be terminated upon the occurrence of any of the following events:
 - (i) The Agreement may be terminated at any time by either party for any reason upon written notice provided to the other party at least thirty (30) days prior to such termination.
 - (iii) The Agreement shall immediately terminate, without penalty, in the event that the Village fails to budget and/or appropriate the funds necessary under this Agreement for any additional terms.

VI. Miscellaneous

- (a) During the term of this Agreement, if Prosecutor agrees to provide assistance to Baltimore in addition to the Services specified above, such assistance will be provided by Prosecutor in accordance with the quotation made by Prosecutor to Baltimore for such assistance, and upon the mutual agreement of the parties.
- (b) Employees of Prosecutor who perform any Services shall at all times be considered and remain employees of Prosecutor, and the act of performing any Services hereunder shall in no way make such persons employees of Baltimore for any purpose, except as otherwise specifically provided herein.
- (c) Prosecutor shall not be liable for any delay or failure in performance of his obligations hereunder caused by strikes or other labor disputes, riots or other public disorders, governmental or legal regulations or prohibitions, fire or other casualty or other causes beyond its control, whether similar or dissimilar to those enumerated.

- (d) This Agreement may not be assigned, transferred or vested upon another by either party without the prior written consent of the other party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- (e) Any notice required or permitted to be given under this Agreement shall be in writing and shall be delivered personally or mailed by regular U.S. Mail, to the party for whom intended at such address as such party shall designate for the purpose of written notice to the other party, and shall be deemed to have been effectively given to the recipient party on the date such notice is personally delivered or is placed in the custody of the U.S. Postal Service.

Until further notice, such addresses shall be as follows:

For Prosecutor: Matthew Roth, Esq.
7523 OAK VALLEY RD
REYNOLDSBURG, OHIO 43068


For Baltimore: Village of Baltimore
Attention: Village Administrator
103 West Market Street
Baltimore, Ohio 43105

- (f) This Agreement sets forth the full and entire agreement between the parties and supersedes all prior proposals, communications, agreements, negotiations or understandings, whether oral or written, with respect to the subject matter hereof. No changes, alterations, modifications, additions, or qualifications to the terms of this Agreement shall be made or be binding unless upon mutual agreement, made in writing and signed by all of the parties.
- (g) This Agreement may not be varied by any other document issued by either party, and may be amended or modified only by means of written instrument which is signed by both parties and which refers specifically to this Agreement and expressly states that an amendment or modification to this Agreement is being made in the respects set forth in such instrument.
- (h) This Agreement shall be governed by Ohio law and it is specifically agreed that proper venue for any legal action shall be Fairfield County, Ohio.
 - (i) If any term, covenant, warranty, paragraph, clause, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated and this Agreement shall be construed as if the invalid, void, or unenforceable provision were omitted.


IN WITNESS WHEREOF, the undersigned have caused to be hereunto affixed their corporate name and seal and have executed this Agreement as of the date first set forth above.

VILLAGE OF BALTIMORE, OHIO:

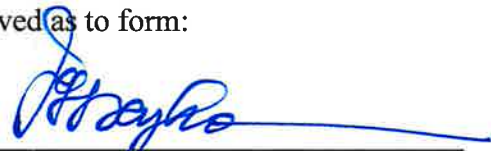

Teri Wise, Village Administrator


Brad Nicodemus, Mayor

PROSECUTOR:


Matthew Roth

Approved as to form:

BY 
Jeffrey Feyko, Village Solicitor