

RESOLUTION 32-2022

**A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR OF THE VILLAGE OF COMMERCIAL POINT TO ENTER INTO AN AMENDED AND RESTATED PROFESSIONAL SERVICES ENGAGEMENT AGREEMENT WITH DINSMORE & SHOHL LLP FROM JANUARY 1, 2022 TO DECEMBER 31, 2023.**

**WHEREAS**, the Village Council is authorized to retain legal counsel for a period of up to two years pursuant to Ohio Revised Code Section 733.48; and

**WHEREAS**, the Village Council wishes to retain the professional services of Dinsmore & Shohl LLP as its Village Solicitor in accordance with the terms detailed in the Amended and Restated Professional Services Engagement Agreement ("Agreement") attached to this Resolution; and

**WHEREAS**, the purpose of the Amended and Restated Professional Services Engagement Agreement is to modify the maximum amount to be paid per year for the General Economic Development Advice Special Project (from \$25,000 to \$32,000) and General Real Estate Matters Special Project (from \$25,000 to \$18,000) in Section 4 of the Agreement, and to update addresses in Section 7 of the Agreement; and

**WHEREAS**, the Village Council acts in its administrative capacity as to the engagement of legal counsel pursuant to Ohio Revised Code Section 733.48.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF COMMERCIAL POINT, PICKAWAY COUNTY, OHIO THAT:**

**Section 1. Authorization and Direction to Mayor to Enter into Amended and Restated Professional Services Engagement Agreement with Dinsmore & Shohl LLP.** The Mayor is hereby authorized and directed to enter into the Amended and Restated Professional Services Engagement Agreement with Dinsmore & Shohl LLP as depicted on Exhibit A to this Resolution, which is incorporated herein by reference.

**Section 2. Open Meetings Certification.** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any other committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

**Section 3. Effective Date.** This Administrative Resolution shall take effect and be in force from and after the earliest date allowed by law.

Vote on Passage of the Resolution:

Motion by: Tracy Joiner 2<sup>nd</sup>: Nancy Geiger

Roll Call:

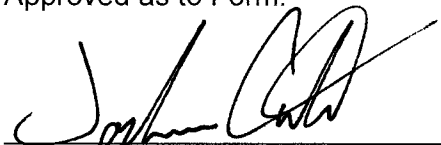
Yes Nancy Geiger                      Yes Tracy Joiner                      Yes Laura Wolfe  
Yes Ross Crego                      Yes Ryan Mitchem

Adopted this 15<sup>th</sup> day of August, 2022.

  
Allan D. Goldhardt, Mayor

  
Wendy Hastings, Fiscal Officer

Approved as to Form:

  
Joshua Cartee, Village Solicitor

**AMENDED AND RESTATED PROFESSIONAL SERVICES ENGAGEMENT AGREEMENT  
BETWEEN  
THE VILLAGE OF COMMERCIAL POINT AND DINSMORE & SHOHL LLP**

This Amended and Restated Professional Services Engagement Agreement (“Agreement”) made between the Village of Commercial Point, an Ohio municipal corporation (the “Village”), and Dinsmore & Shohl LLP (“Dinsmore”) is made this 15th day of August, 2022. In consideration of the mutual promises contained herein, the Parties agree as follows:

1. **PURPOSE OF REPRESENTATION**

Pursuant to the laws of the State of Ohio, the Village hereby retains Joshua M. Cartee, an attorney with Dinsmore & Shohl LLP, to serve as Village Solicitor for the Village and its elected and appointed officials. In exchange for Eight Thousand Dollars (\$8,000.00) per month, Mr. Cartee and Dinsmore agree to provide the following Routine Services:

- A. Attendance at all Regular and Special Council Meetings;
- B. Attendance at Regular Planning Commission, Board of Zoning Appeals, and Board of Building Appeal Meetings, or other similar board or commission meetings, as requested by the Mayor or Village Administrator;
- C. Reviewing and/or drafting all ordinances and resolutions;
- D. Attendance at all other board and commission meetings upon the request of the Mayor, Village Administrator, or their designee(s);
- E. Drafting, reviewing, and approving all contracts, agreements, leases, legal documents, and non-routine ordinances, resolutions, and proclamations;
- F. Providing legal advice to Village officials as necessary or upon request, including drafting legal memoranda and/or written legal opinions as requested by the Mayor, the Village Administrator, staff, or Council;
- G. Attend meetings and discussions with County, Township, State, and Federal officials and other governmental officials, as requested by the Mayor or Village Administrator;
- H. Provide prosecution services for the Village Mayor’s Court; and
- I. Attend meetings with the development community, as requested by the Mayor or Village Administrator.

2. **COSTS AND EXPENSES**

Court costs and all reasonable expenses incurred by the Village Solicitor and his law firm shall be billed to the Village. Such expenses include, without limitation, funds advanced on behalf of the Village, deposition and discovery costs, and court costs. The Village shall in no circumstance be responsible for any expenses incurred for travel to and from the Village in furtherance of Village business.

3. **COMPLEX LITIGATION**

Complex Litigation is defined as major litigation that involves, for example, significant written or oral discovery, significant motion practice, and/or attendance at evidentiary hearings before a judge or jury. Complex Litigation shall be separate and apart from the Routine Services provided under Section 1. Complex Litigation shall also include Ohio Revised Code Chapter 2506 appeals. The Mayor shall pre-approve rates for complex litigation prior to Dinsmore commencing work on any individual matter.

4. **SPECIAL PROJECTS**

Special Projects are defined as non-routine legal work requiring substantial time, effort, and attention. Subject to agreement of both the Village and Dinsmore, Dinsmore may undertake special projects that are outside the scope of Routine Services on a flat fee or hourly basis as agreed upon the Village Solicitor and the Mayor or Village Administrator. By way of example, in the event the electors of the Village decide to adopt a Charter, a Special Project may include advice rendered and attendance at meetings in relation to any Charter Review Commission or similar activity.

During the term of this Agreement, the following two Special Projects are hereby authorized:

(1) A Special Project to be known as "General Economic Development Advice," which is to be billed at Dinsmore's standard hourly rates less ten percent (10%) up to thirty-two thousand dollars (\$32,000) per each calendar year, and will be staffed primarily by a Dinsmore public finance attorney. The General Economic Development Advice Special Project will consist of legal advice relating to community reinvestment area (CRA) matters, tax increment financing (TIF) matters, new community authority (NCA) matters; and

(2) A Special Project to be known as "Real Estate Matters," which is to be billed at Dinsmore's standard hourly rates less ten percent (10%) up to eighteen thousand dollars (\$18,000) per each calendar year, and will be staffed primarily by a Dinsmore real estate attorney. The Real Estate Matters Special Project will consist of drafting, reviewing, and negotiating real estate agreements and transactions, such as easement agreements, acceptances of property, review of title reports, and other similar matters.

5. **ASSISTANT VILLAGE SOLICITOR(S)**

The Village Solicitor, at his discretion, shall utilize the services of other attorneys both within and outside Dinsmore as Assistant Village Solicitor and/or Special Counsel.

6. **CONFLICTS OF INTEREST**

A. The Village Solicitor and Dinsmore will make every reasonable effort to recognize and disclose to the Village any potential conflicts or the appearance of conflicts of interest as to all matters, particularly with respect to economic and development issues. In the event a non-waivable conflict of interest arises, the Village Solicitor will be responsible for arranging alternate representation with a disinterested law firm.

**RESOLUTION 32-2022**  
**Exhibit A (continued)**

B. Dinsmore presently represents M/I Homes in matters that are not directly related to the Village. Due to Dinsmore's continuing representation of M/I Homes in unrelated matters, there is the potential for a conflict of interest in the future. The Ohio Rules of Professional Conduct require that Dinsmore discloses certain matters to M/I Homes and the Village and obtain consent from both to engage in representation of both entities. Such consent must be obtained by both M/I Homes and the Village, and confirmed in writing. Dinsmore believes that it can provide competent and diligent representation to both M/I Homes and the Village in unrelated matters. However, the Village must consent to Dinsmore's representation of the Village. Dinsmore understands that it will not (a) use any information gained in Dinsmore's current or prior representation of M/I Homes to the detriment of the Village of Commercial Point, or (b) represent or advise M/I Homes with respect to (i) any dispute, claim, or litigation against the Village, or (ii) any proceeding in which M/I Homes or any of its affiliates has an adverse interest to the Village. Dinsmore has already advised M/I Homes of the matters contained herein. By executing this Agreement, the Village hereby voluntarily waives Dinsmore's potential conflict of interest and consents to Dinsmore representing both M/I Homes and the Village.

7. **TERM OF AGREEMENT**

This Agreement shall be in full force and effect from January 1, 2022 through December 31, 2023. Either Party may terminate this Agreement upon providing thirty (30) days' prior notice of its intent to terminate to the other Party. All notices hereunder must be in writing and will be deemed to have been duly given if delivered by hand, or if mailed by certified mail, return receipt requested, first class postage prepaid, to the Parties with written confirmation of receipt at the following addresses, or via email:

If to the Village of Commercial Point:

Wendy Hastings, Fiscal Officer (W.Hastings@commercialpointohio.gov)  
Village of Commercial Point  
10 W. Scioto St., P.O. Box 56  
Commercial Point, Ohio 43116

If to Dinsmore:

Joshua M. Cartee, Esq. (joshua.cartee@dinsmore.com)  
Dinsmore & Shohl LLP  
191 W. Nationwide Blvd., Suite 200  
Columbus, Ohio 43215

It is the Parties' intent to re-assess the appropriate monthly retainer fee for Routine Services at the end of each calendar year. Such re-assessment may result in the increase or decrease of the monthly retainer fee the Village pays to Dinsmore, depending on the amount of work performed for Village Solicitor services in the prior calendar year and anticipated work to be performed by Dinsmore for Village Solicitor services in the coming calendar year.

8. **INDEPENDENT CONTRACTOR STATUS**

The Parties agree that services provided under this Agreement are provided by an independent contractor and that the Village shall make no contributions to the Public Employees Retirement System for the services provided hereunder. This Agreement shall serve as acknowledgement of Dinsmore's independent contractor status per Ohio Revised Code § 145.038.


**RESOLUTION 32-2022**  
**Exhibit A (continued)**

9. **MISCELLANEOUS PROVISIONS**

- A. **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.
- B. **Parties in Interest.** This Agreement is enforceable only by Dinsmore and the Village. The terms of this Agreement are not a contract of assurance regarding compensation, continued employment, or benefit of any kind to any of Dinsmore's personnel assigned to the 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.
- C. **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 Party is void.
- D. **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.
- E. **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. This Agreement may be amended or modified only by a writing executed by the duly authorized officers of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

**DINSMORE & SHOHL LLP**

  
\_\_\_\_\_  
Joshua M. Cartee, Esq.

*Aug. 16, 2022*  
\_\_\_\_\_  
Date

**VILLAGE OF COMMERCIAL POINT**

\_\_\_\_\_  
Mayor Allan D. Goldhardt

\_\_\_\_\_  
Date