

ORDINANCE NO. 126-23

AN ORDINANCE AUTHORIZING THE MAYOR TO ENGAGE THE SERVICES OF THE LAW FIRM OF ROETZEL & ANDRESS TO ASSIST THE CITY IN PREPARING LEGISLATION TO REGULATE THE USE OF THE CITY'S RIGHT OF WAY AND DECLARING AN EMERGENCY

WHEREAS, City Council desires to explore the adoption of regulations that would enable the City to enact reasonable measures ensuring that private (and at time, public) entities seeking to access the City's right of way and install infrastructure conform to a certain set of well-defined standards; and

WHEREAS, to protect the city's interests in this exploration and to achieve the best possible result for the City and all of its residents and businesses, the Law Director recommends the hiring of outside counsel with considerable experience in the area of formulating appropriate right of way regulations; and

WHEREAS, Council, upon recommendation of the Law Director and the Administration, deems it to be in the best interest of the health, safety and welfare of the citizens of Avon that outside special counsel be retained as quickly as possible to assist the Law Director in preparing legislation to regulate the City's vast network of right-of-way.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, LORAIN COUNTY, OHIO:

Section 1 - Effective upon the passage of this Ordinance, and pursuant to Article V, Section 2 of the Charter of the City of Avon, Council hereby authorizes the administration to retain the services of Roetzel & Andress, (hereinafter referred to as Roetzel, as special counsel to assist the Law Director in all matters relating to exploring the adoption of regulations that would enable the City to enact reasonable measures to ensure that private (and at time, public) entities seeking to access the City's right of way conform to a certain set of well-defined standards.

Section 2 - That the proposal for these services submitted by Attorney William R. Hanna of Roetzel is hereby accepted. Said proposal is marked as Exhibit A and made a part of this Ordinance by reference.

Section 3 - The Finance Director is hereby authorized to make payment from the General Fund No. 101-730-5349 in an amount not to exceed Ten Thousand (\$10,000.00) Dollars as set forth in attached Exhibit A.

Section 4 - That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 5 - That this Ordinance is hereby declared to be an emergency measure necessary

Ordinance No. 126-23 (Con't)

for the preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to retain outside special counsel as soon as possible to review existing ordinances and/or recommend revisions where needed to protect the City's interest in maintaining safe and reasonable access to the city's right of way for all existing and future users; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: November 27, 2023 DATE SIGNED: November 27, 2023

BY: Brian Fischer
Brian Fischer, President of Council

DATE APPROVED BY THE MAYOR: November 28, 2023

Bryan K. Jensen
Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior
John A. Gasior, Law Director

ATTEST:

Barbara Brooks
Barbara Brooks, Clerk of Council

Posted: November 29, 2023
Electronically and at City Hall as
Provided by Council

Prepared By:

John A. Gasior, Esq.
Law Director

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 126-23, passed by the Council of said City on November 27, 2023.

IN WITNESS WHEREOF, I have on this 28th day of November, 2023, affixed my signature and official seal.

Barbara J. Brooks
Barbara J. Brooks, Clerk of the Council
of the City of Avon, Ohio



ROETZEL

ROETZEL & ANDRESS, A LEGAL PROFESSIONAL ASSOCIATION

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whanna@ralaw.com

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November 27, 2023

Via Email and Regular U.S. Mail

The Honorable Bryan Jensen, Mayor
City of Avon, Ohio
36080 Chester Road
Avon, Ohio 44011

Re: **Legal Services – City of Avon – Right of Way Management Ordinance and Enforcement**

Dear Mayor Jensen:

We are pleased that the City of Avon has requested a proposal from the law firm of Roetzel & Andress (Roetzel) for legal services in connection with the City's consideration of a public right of way (PROW) management ordinance and potential adoption and enforcement of the same.

Fundamental to an attorney-client relationship is a clear understanding of the terms and conditions upon which we will be providing legal services. Accordingly, the purpose of this letter is to clarify and to confirm these terms and conditions. I will have primary responsibility for this matter, but I may utilize other attorneys in the office in the best exercise of my professional judgment. If at any time you have questions or concerns, please don't hesitate to contact me.

Scope of Services

Pursuant to discussions with the Director of Law, it is our understanding that we will assist the City of Avon in finalizing a draft of a PROW management Ordinance, which may include revision or rewriting of an existing draft ordinance; preparing a notice to be filed with the Public Utilities Commission of Ohio regarding the City's consideration of the Ordinance; responding to questions or comments that may be received from utilities related to the Ordinance; and otherwise assisting as requested in connection with City Council's consideration of the Ordinance. Additional services pursuant to this engagement letter may include advice and counsel related to enforcement of the Ordinance, including but not limited to issues that may arise under the Ordinance in connection with the anticipated construction of a fiber communications system in the City by Lit Communities.

Fees, disbursements, and other charges

Fees for our services are based upon the actual time expended by each attorney or paralegal or other support personnel working on your matter, at specified hourly rates described herein. Partial hours are billed in tenths of an hour. For the balance of 2023, we will cap our charges to the City of Avon at the discounted maximum rate of \$350 per hour for partners. For associates, we will charge the associate's standard rate, up to a maximum of \$265 per hour. Paralegal time will be charged at the rate of \$125 per hour. The foregoing rate caps and charges will be \$365, \$275 and \$130 per hour, respectively, after December 31, 2023.

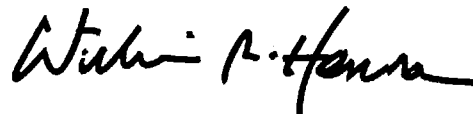
We will also charge the City for all disbursements made on your behalf, including copying charges, mileage, and the like. Roetzel's policy is that we cannot pay expenses exceeding \$1,500 for the City, and invoices for any such services would be forwarded to the City for direct payment. At this time, I do not anticipate incurring substantial expenses on behalf of the City.

The time needed to perform the services described in "Scope of Services" is difficult to predict at this time, but at this time we agree that we will not charge legal fees in excess of \$10,000 without further, written consent of the City.

Either party may terminate this engagement at any time, for any reason, by written notice, subject on Roetzel's part to the applicable rules of professional conduct. In the event the engagement should be terminated, we will take such steps as are reasonably practicable to protect the City's interests. Unless previously terminated, our representation will terminate upon our sending you a final statement for services rendered. Following such termination, any otherwise non-public information you have supplied to us will continue to be kept confidential in accordance with applicable rules of professional conduct.

If the foregoing terms and conditions are satisfactory, please indicate your approval and acceptance by signing and returning this letter, or a scanned copy of the letter. We appreciate the opportunity to work with the City of Avon on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "William R. Hanna".

ROETZEL & ANDRESS
William R. Hanna, Shareholder

WRH: lrp
Enclosures

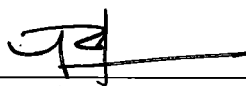
cc: John Gasior, Law Director

November 27, 2023

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On behalf of the City of Avon, I have read and understand the terms and conditions set forth in this letter, agree to same, and have the authority to bind the City of Avon to this letter agreement.

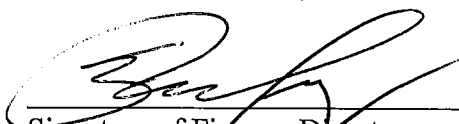
City of Avon, Ohio

By: 
Bryan Jensen, Mayor

Date: November 28, 2023

Fiscal Officer's Certificate

As the Finance Director and fiscal officer of the City of Avon, Ohio, I certify that as of the date of execution of the within Engagement Letter agreement with the law firm of Roetzel & Andress, the amount required to satisfy payment under the agreement has been fully appropriated, or authorized or directed for such purpose, and is in the treasury to the credit of the fund for which it is drawn, or in the process of collection, and not appropriated for any other purpose.


Signature of Finance Director

STEVEN J. MESLEY
Print Name

Date: 11.29.23