

BILL NO. 488

ORDINANCE NO. 469

INTRODUCED BY: Trustees Slama, Fortune, Graves, Whitmore and Eisenhauer

**AN ORDINANCE APPOINTING THE VILLAGE ATTORNEY AND
AUTHORIZING THE CHAIRMAN TO EXECUTE A CONTRACT FOR
LEGAL SERVICES**

WHEREAS, the office of Village Attorney of Twin Oaks, Missouri requires appointment by the Village and the Board desires to appoint the law firm of Cunningham, Vogel & Rost, P.C. as Village Attorney and to provide legal services to the Village; and

WHEREAS, to that end, the Board of Trustees desires to authorize the Chairman to execute a contract with Cunningham, Vogel & Rost, P.C. for legal services and to provide a designated licensed attorney to serve as Village Attorney;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF TWIN OAKS, MISSOURI, AS FOLLOWS:

Section One. The Chairman is hereby authorized to execute the Legal Services Agreement with Cunningham, Vogel & Rost, P.C. attached hereto and incorporated herein. Cunningham, Vogel & Rost, P.C., is hereby appointed Village Attorney of Twin Oaks, Missouri. Cunningham, Vogel & Rost, P.C., in consultation with the Board, shall designate such attorneys in the firm to attend Board of Trustees meetings and serve such other duties as Village Attorney as may be deemed necessary or appropriate. The powers, duties, and terms of such office shall be as may be established by ordinance and as set forth in the attached Legal Services Agreement.

Section Two. This ordinance shall be in full force and effect after its passage and approval as provided by law.

PASSED AND APPROVED THIS 7 DAY OF October, 2015.


Ray Slama, Chairman
Board of Trustees

ATTEST:


Kathy A. Runge
Village Clerk/Controller

First Reading: 10-7-2015

Second Reading: 10-7-2015

LEGAL SERVICES AGREEMENT

This Legal Services Agreement (the "Agreement"), made and effective this 7 day of October, 2015, by and between the **Village of Twin Oaks**, Missouri (hereinafter referred to as the "Village"), and **Cunningham, Vogel & Rost, P.C.** (hereinafter referred to as "Cunningham, Vogel & Rost"):

WHEREAS, Cunningham, Vogel & Rost and their designated attorney, ^{Paul Rost, PW} have been ^ appointed to serve as Village Attorney for the Village; and PW

WHEREAS, it is the desire of the of the Village to engage Cunningham, Vogel & Rost and its attorneys to perform legal services for the Village as Village Attorney; and

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES EXPRESSLY MADE HEREIN, IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. Term. The term of engagement for legal services shall commence as of the date of this Agreement and shall continue at the pleasure of the Board of Trustees until terminated by the Village or Cunningham, Vogel & Rost. Cunningham, Vogel & Rost shall designate an attorney to attend the meetings and handle the Retainer/Basic Services as defined herein (the "Village Attorney").

2. License. The Village Attorney, any Substitute Attorney (as hereinafter defined), as well as all supervising attorneys shall be duly licensed to practice law in the courts of the State of Missouri.

3. Substitute Attorney. In the event the designated Village Attorney cannot attend a meeting of the Board of Trustees or other board or commission as may be requested of him or her, the Village Attorney shall designate an attorney with the firm ("Substitute Attorney") to attend the meeting unless the Chairman determines that there is no need for legal counsel at such meeting. While attending meetings as provided herein, any Substitute Attorney shall be Acting Village Attorney and shall have all duties and authorities of the Village Attorney. The Village Attorney may designate an Assistant Village Attorney, where appropriate, to serve as the Substitute Attorney/Acting Village Attorney by default.

4. Retainer/Basic Services.

The following services shall be rendered to the Village at the rate of \$155.00 per hour:

- a. Attendance and representation at all regular meetings of the Board of Trustees, including executive sessions;
- b. Attendance and representation at all regular meetings of the Planning & Zoning Commission;
- c. Attendance and representation at all meetings of the Board of Adjustment;

- d. Consultations by telephone with the Chairman, Village Clerk/Controller and Assistant Village Clerk for legal advice on general municipal matters, up to four (4) hours per month.

5. Charges for Other Legal Services. Other legal services required by the Village and not specified as Retainer/Basic services above shall be performed at the then applicable regular hourly rates of the applicable CVR attorneys or staff, which for 2015 range from between \$145.00/hour to \$190.00/hour for associates, and \$225.00/hour to \$325.00/hour for principals. To the extent paralegals or other legal staff perform designated tasks, 2015 regular hourly rates are currently \$80.00/hour to \$135.00/hour. The 2015 hourly rate schedule of CVR lawyers and staff is **attached hereto**. CVR and the Client mutually agree that hourly rates designated in this Agreement and chargeable to the City may be adjusted upward each calendar year so that the rates, collectively, may increase in the aggregate not more than 5% per annum from the commencement of this Agreement. Bond Counsel Services requiring an opinion, or as otherwise specified by the parties, shall be compensated under such separately established mutually agreeable terms as are appropriate for the circumstances of the specific project and set forth in the bond approval document or other authority of the issuer. Any matters for which the Village is entitled to reimbursement from a third party shall be billed at the regular hourly rates of CVR at the time the service is provided.

6. Billing Procedures. On a monthly basis, Cunningham, Vogel & Rost shall bill the Village for legal services and costs and shall provide the Village with such details as it may request from time to time, including, without limitation, hourly reports and itemizations.

7. Cash Outlays. The Village shall reimburse Cunningham, Vogel & Rost for its normal cash outlays and costs, including those reflected on the **hourly rate schedule attached hereto**.

8. Right of Termination. The Village and Cunningham, Vogel & Rost shall have the right to immediately terminate this Agreement in its entirety at any time with or without cause.

9. Additional Terms of Engagement. Legal services shall be performed subject to the Additional Terms of Engagement **attached hereto** and incorporated herein.

10. Miscellaneous.

a. Severability. The provisions of this Agreement shall be deemed severable.

b. Contract Application/Award Requirements. The parties acknowledge that at the time of application and/or prior to award of this Agreement, the Village has received on file proof of citizenship, residency or lawful presence of the signatory pursuant to §208.009 RSMo., and pursuant to §285.530 RSMo., a sworn affidavit and provision of documentation affirming enrollment and participation in a federal work authorization program.

c. Headings. The headings and captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement or any provision hereof.

d. Entire Agreement; Amendment. The parties hereto agree that this Agreement shall constitute the entire agreement between the parties and no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the duly authorized agents of the parties.

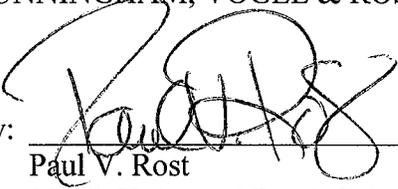
e. Counterparts. This Agreement may be executed in multiple counterparts.

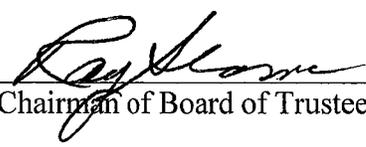
IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written.

CUNNINGHAM, VOGEL & ROST, P.C.

VILLAGE OF TWIN OAKS, MISSOURI

By: _____


Paul V. Rost
333 S. Kirkwood Road, Suite 300
St. Louis, MO 63122


Chairman of Board of Trustees

ATTEST:


Kathy Runge, Village Clerk/Controller

ADDITIONAL TERMS OF ENGAGEMENT

Our Client. The person(s) or entity(ies) who are the client in this engagement are limited to those specifically stated in the accompanying engagement letter. In order to avoid misunderstandings and/or inadvertent conflicts of interest in the future, it is understood that, in the absence of written agreement to the contrary, neither this engagement nor our work in connection with this engagement shall be understood or taken to create an attorney-client relationship with other, including related or affiliated (*e.g.*, parent, subsidiary, shareholder, partner, joint venture, etc.), persons or entities.

Provision of Legal Services, Generally. This engagement is for provision of professional legal services and not for the provision of business, personal, accounting, technical, financial or other advice not constituting legal services. It is agreed that the client is not relying upon counsel in this engagement for advice in areas other than professional legal services, even if such matters should be discussed in connection with the engagement.

Bond Counsel Services. If legal services involve bond/note counsel services, including the rendering of an approving opinion of bond or note counsel: except as expressly provided in the foregoing letter, such services do not include assisting in the preparation or review of an official statement, private placement memorandum or other form of offering or disclosure document to be disseminated in connection with the sale of the obligations or any other disclosure document with respect to the obligations, or performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document or rendering advice regarding the official statement or other disclosure document. Other than preparation and delivery of transcripts, such services do not include providing continuing advice to you or to or any other party after closing on the obligations. Customarily, an approving opinion is delivered on the date the obligations are exchanged for their purchase price. An approving opinion will be based on and issued subject to facts and law existing as of its date. In rendering our approving opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation, and will assume continuing compliance by the issuer of the obligations with applicable laws relating to the obligations. During the course of this engagement, we will rely on you or other applicable parties to provide us with complete and timely information on all developments pertaining to any aspect of the obligations and their security. It is hereby acknowledged that the various legal opinions delivered concurrently with the delivery of bonds or notes express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. By rendering a legal opinion, the opinion giver does not become an insurer or guarantor of that expression of professional judgment, of the transaction opined upon, or of the future performance of parties to such transaction, nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

Entire Agreement. The accompanying engagement letter, together with these Additional Terms of Engagement, shall constitute the entire agreement between us concerning the engagement and shall not be modified or supplemented, except in a subsequent writing signed by the parties.

Periodic Billings for Legal Services. Unless other arrangements have been made, it is our policy to render periodic statements for legal services on a monthly basis. We normally base these interim statements on hourly rates of lawyers and legal assistants working on the matter. Statements will be due upon presentation and are to be paid no later than thirty (30) days following the invoice date. The amounts paid on our interim billings are applied to the total final fee. If any statement amount remains unpaid sixty (60) days after the invoice date, the firm reserves the right to terminate its services, consistent with applicable Rules of Professional Conduct.

Determining the Fee. Generally, fees are primarily based on hourly rates for the respective lawyer or legal assistant involved. These rates vary depending on expertise and experience. We adjust these rates from time to time, as lawyers gain experience and expertise, and with economic conditions. When agreed to by engagement letter, fees are sometimes fixed irrespective of the hours involved. Circumstances, including those set out below may require departure from the application of hourly rates. Determination of the total final fee may await conclusion of each specified case or matter so that all relevant factors may be considered.

The firm has clients in multiple states. Our lawyers are subject to rules governing the professional conduct of lawyers in those states. In addition to time spent, these rules list other factors that can be considered in determining a reasonable fee. These include: reputation, the skill and experience required to complete the services properly; the

extent to which the acceptance of the particular matter will preclude other employment; the amount involved; the results obtained; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; and whether the fee is fixed or contingent. In the absence of agreement with you, those factors will not be used to increase our billings for fees above the charge resulting from application of hourly rates.

Paralegals/Legal Assistants/Document Clerks. Certain work will be done by paralegals, sometimes called "legal assistants." Such persons, although not lawyers, have undergone training to perform certain kinds of services at lower rates. In matters involving significant quantities of document management, document clerks may be used to perform tasks at lower rates than those of legal assistants. All such work is supervised by lawyers. The use of such persons allows us to deliver legal services to you at a lower cost.

Client Disbursements. Matters may require, from time to time, certain monetary advances to be made on your behalf by the firm. Some of "client disbursements" represent out of pocket charges we advance, others represent internal costs (including costs such as fees for service of process, court filing fees, deliveries, copying charges, travel expenses, computer assisted legal research, etc.). It is understood that while acting as your lawyers, we have the authority to use our best judgment in making such expenditures on your behalf. Unless we have made prior arrangements with you, we will send you monthly billings for client disbursements incurred during the preceding month. If the nature of the matter is such that we anticipate substantial advances, we may require a separate deposit for such purpose. Substantial individual items in excess of \$250, such as expert witness fees, the costs of deposition transcripts, printing costs, etc., may be billed directly to you by the vendor of such services. In many matters when lawyers must examine legal authorities, it is more economical to accomplish the task using computer databases of legal precedents (instead of the traditional method of manual retrieval). In such instances, the special charges assessed by the provider of these services are shown on client disbursement billings as "Electronic Research."

Client Files. During the course of client representation, this firm retains electronic and paper records relating to the professional legal services we provide so that we are better able to assist you with your legal needs and, in certain situations, to comply with professional guidelines. We employ physical, electronic, and procedural safeguards to preserve client confidentiality and to protect your non-public information. This firm agrees to retain and securely store your client files (which include documents generated by this firm, by the client, and by others) for a period of six (6) months after completion or termination of the representation, absent other written agreement between this firm and you regarding disposition of your files. You may request, in writing, the return of your client files at any time within such six (6) month period. Absent such a written request, your files will be deemed abandoned. In such case, you hereby authorize this firm to destroy your files at any time after expiration of such six-month period. All such client files will be destroyed unless this firm is otherwise required to retain same pursuant to the Code of Professional Responsibility or the Ethical Rules promulgated thereunder.

E-mail Confidentiality. This firm often communicates using e-mail. Any attorney or legal assistant e-mail could contain attorney-client, confidential, or other privileged communications. While the firm makes every effort to ensure that our e-mail and server are secure, Missouri lawyers are required by the Missouri Bar Disciplinary Counsel to notify prospective recipients of e-mail that (1) e-mail communication is not a secure method of communication, (2) any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from the firm to you or vice versa, and (3) persons not participating in our communication may intercept our communications by improperly accessing your computer or the firm's computer or even some computer unconnected to either you or the firm that the e-mail passes through. Unless you otherwise instruct us in writing, this firm will assume you have consented to receive communications via e-mail. If in the future you change your mind and want future communications to be sent by a different method, please contact the firm in writing immediately.

Public Information. The firm represents many governmental entities throughout the region and undertakes pro bono and other actions in order to protect the interests of our municipal clients. By this engagement you agree we may share public information among our municipal clients in furtherance of your interests, for educational purposes, to establish qualifications or experience, or otherwise to allow our lawyers to provide service to local governments or otherwise promote municipal interests, provided that the firm's sharing of public information does not authorize disclosure of confidential information unless deemed impliedly or expressly authorized in furtherance of your specific representation.

CUNNINGHAM, VOGEL & ROST, P.C.

legal counselors to local government

BILLING RATES*

Attorneys:

Thomas A. Cunningham	\$325.00 @ hour
Daniel G. Vogel	\$315.00 @ hour
Paul V. Rost	\$285.00 @ hour
David A. Streubel	\$285.00 @ hour
G. Kimberly Diamond	\$225.00 @ hour
Erin P. Seele	\$180.00 @ hour
Erin M. Baker	\$170.00 @ hour*
Margaret C. Eveker	\$165.00 @ hour
Steven M. Lucas	\$160.00 @ hour
Daniel T. Manning	\$135.00 @ hour */ \$145.00 @ hour**

* August 2015

** October 2015

Paralegals/Legal Assistants: \$80.00 to \$135.00 @ hour

COSTS & EXPENSES

Document Imaging	\$0.10 @ pg (B/W), \$0.50 (Color)
Facsimiles	no cost
Courier Services	at cost
Electronic Research	at cost (CVR discounted, pro-rated rate)
Mileage	no charge or actual cost
Long Distance Telephone	no charge
Miscellaneous	actual cost

* Billing rates effective as of January 1, 2015; subject to change.

FEE PROPOSAL

Due: August 14, 2015

Submitted: August 10, 2015

The following is the fee proposal of Cunningham, Vogel & Rost, P.C. in response to the request for Letters of Interest for Village Attorney and legal counsel service to the Village of Twin Oaks, Missouri and pursuant to the narrative RESPONSE of CVR dated this date and also filed with the City.

Below is the detailed description of the fee proposal, and attached is the detailed **Legal Services Agreement** and an ordinance to appoint a Village Attorney and approve such Contract reflecting this fee proposal in the event that the Village elects to accept CVR's proposal. **Attachments include proof of citizenship or "E-Verify" certification legally required prior to Village application or award of applicable contracts.**

The **Legal Services Agreement** includes terms and rates as follows:

1. **Retainer/Basic Services.** A flat retainer rate of **\$155/hour** for attendance and representation by the appointed Village Attorney or designee at all regular meetings of the Board of Trustees, including executive sessions; all regular Planning and Zoning meetings, and meetings of the Board of Adjustment; and consultations by telephone with the Village Clerk/Controller, Assistant Village Clerk and/or Chairman for legal advice on general municipal matters, up to four (4) hours per month. Typical general municipal consultation issues would involve personnel practices, code compliance, conflict of interest, general municipal law, and Roberts' Rules of Order, Hancock amendment issues, procurement procedures and election law, as well as issues of potential liability. A **\$0** monthly retainer fee is proposed so that only services requested and needed would incur charges in any billing period. CVR is to select and utilize specific CVR attorney or staff members so as to most efficiently and cost-effectively facilitate the most responsive and best result for the Village. Paul Rost and Maggie Eveker would be proposed as the primary designated attorneys, with availability of others all to be billed at this flat retainer rate.
2. **Other Legal Services.** Other legal services required by the Village and not specified as Retainer/Basic services above shall be performed at the then applicable regular hourly rates of the applicable CVR attorneys or staff which for 2015 range from between **\$145.00/hour to \$190.00/hour** for associates, and **\$225.00/hour to \$325.00/hour** for principals. To the extent paralegals or other legal staff perform designated tasks, 2015 regular hourly rates are currently **\$80.00/hour to \$135.00/hour**. The 2015 hourly rate schedule of CVR lawyers and staff is **attached to the Legal Services Agreement**. Bond Counsel Services requiring an opinion, or as otherwise specified by the parties, shall be compensated under such separately established mutually agreeable terms as are appropriate for the circumstances of the specific project and set forth in the bond approval document or other authority of the issuer. Any matters for which the Village is entitled to reimbursement from a third party shall be billed at the regular hourly rates of CVR at the time the service is provided.

3. **Cash Outlays.** The Village shall reimburse Cunningham, Vogel & Rost, P.C. for its normal cash outlays and costs, including those reflected on hourly rate schedule, attached to the legal services agreement.

COSTS & EXPENSES

Document Imaging	\$0.10 @ pg (B/W), \$0.50 (Color)
Facsimiles	no cost
Courier Services	at cost
Electronic Research	at cost (CVR discounted, pro-rated rate)
Mileage	no charge or actual cost
Long Distance Telephone	no charge
Miscellaneous	actual cost