

CITY OF MIDDLEBURG HEIGHTS, OHIO

Resolution No. 2024- **67**

Introduced By: Mayor Matthew Castelli

**A RESOLUTION
AUTHORIZING THE ENGAGEMENT OF BRICKER GRAYDON LLP
TO PROVIDE LEGAL SERVICES
AND DECLARING AN EMERGENCY**

WHEREAS, the Law Director is recommending the engagement of the law firm Bricker Graydon LLP to provide legal services in regard to the appeal of the decision of the Middleburg Heights Board of Zoning and Building Appeals filed by Vindicated Comics, Press and Entertainment, LLC in the Court of Common Pleas Case Number CV-24-102305, and other legal services as further described under "Scope of Representation" in the attached engagement letter; and

WHEREAS, the purpose of this Engagement Letter is to confirm the terms and conditions upon which Bricker Graydon LLP will provide those legal services.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO, AS FOLLOWS:

Section 1: That the Law Director is hereby authorized to sign the attached engagement letter authorizing Bricker Graydon to provide legal services.

Section 2: 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 any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Section 3: That this Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety, and welfare of said City. Wherefore, provided this Resolution receives the affirmative vote of at least two-thirds (2/3) of the members of Council it shall take effect and be in force immediately upon its passage and approval by the Mayor.

David Bortolotto

President of Council

Matt Coats

Mayor

Passed: 9/10/24

Presented to Mayor: 9/11/24

Attest: M. Mecla
Clerk of Council

Approved On: 9-11-24

| | Yea | Nay |
|------------|---------------|-------|
| Bortolotto | <u>h</u> | _____ |
| Ali | <u>h</u> | _____ |
| Sage | <u>f</u> | _____ |
| Meany | <u>x</u> | _____ |
| McGregor | <u>ABSENT</u> | _____ |
| Ference | <u>x</u> | _____ |
| Zakel | <u>x</u> | _____ |

I, Mary Ann Mecla Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Res 2024-67 adopted by the Council of the City of Middleburg Hts., on 9/10/24 was posted for a period of fifteen days, beginning 9/12/24 and remained so posted for fifteen days at the two posting places as designated by Charter.

Mary Ann Mecla
Clerk

CERTIFICATE

I, Mary Ann Mecla Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Res. 2024-67 passed on the 10th day of September 2024 by said Council.

Mary Ann Mecla
Clerk of Council



Bricker Graydon LLP
1100 Superior Avenue
Suite 1600
Cleveland, OH 44114
216.523.5405 Office
www.brickergraydon.com

William D. Mason
Of Counsel
216.523.5466 Direct Phone
wmason@brickergraydon.com

August 26, 2024

Santo T. Incorvaia, City Law Director
City of Middleburg Heights
15700 Bagley Road
Middleburg Heights, OH 44130
sincorvaia@middleburgheights.com

Re: Engagement Letter – City of Middleburg Heights/Legal Assistance

Dear Santo:

Thank you for selecting Bricker Graydon LLP (the "Firm") to represent you. The principal purpose of this letter is to set forth the nature of our engagement and the terms and conditions of our representation, which representation is subject to the approval of our Firm's Client Management Committee.

We submit for your approval the following provisions governing our engagement. If you are in agreement, please sign the enclosed copy of this letter in the space provided below and e-mail it back to me. If you have any questions about these provisions, do not hesitate to call. Again, we are pleased to have the opportunity to work with you.

1. Scope of Representation: The scope of our engagement will be to represent Middleburg Heights to provide legal assistance to the Law Department (the "Matter"). You understand that the Matter may limit or expand the scope of our representation from time to time, provided that any expansion must be agreed to by us in writing.

2. Clients: Our clients in this Matter will be you in your official capacity as Law Director for the City of Middleburg Heights.

3. Term of Engagement: Either of us may terminate the engagement at any time for any reason by written notice, subject on our part to applicable rules of professional conduct. In the event that we terminate the engagement, we will take such steps as are reasonably practicable to protect your interests in the above Matter.

4. Conclusion of Representation: Unless previously terminated, our representation of you will terminate upon our sending you our final statement for services rendered in this Matter.

5. Retention and Disposition of Documents: When our representation of you in this or any particular matter terminates, we may ask you if you desire your papers and property returned to you. If you do not respond requesting the return of your papers and property, you agree we may upon reasonable notice dispose of such papers and property. Our own files pertaining to the Matter will be retained by the Firm. These Firm files include, for example, Firm administrative records,



time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. All such documents retained by the Firm may be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement.

6. Fees: Generally, the principal basis for computing our charges for services rendered by our attorneys and paralegals are based on the time devoted to work on a particular legal matter multiplied by hourly rates for each professional performing such services. The Firm charges for all time devoted to legal matters, including the following examples: meetings and telephone conferences with clients and others relevant to the case or transaction; legal research, drafting, reviewing and commenting on documents; correspondence; interviewing or deposing witnesses; travel time; discussions among attorneys in our office involved in the matter; hearings and trials; answering requests for information from third parties.

7. William D. Mason will serve as your primary contact for purposes of communication and will delegate to other personnel as appropriate to handle particular projects or issues. The following blended hourly rates will apply for purposes of the Matter, and will be billed in one-tenth (1/10) of an hour increments:

| Experience Level | Hourly Rate |
|-----------------------------------|--------------------|
| Partner/Of Counsel/Senior Counsel | \$325 |
| Associate | \$325 |
| Paralegal | \$200 |

8. Expenses/Disbursements: In addition to charges for professional services as described above, the Firm also may bill for expenses incurred on your behalf. These expenses may include but are not limited to the following examples: duplication (at 0.10 cents per page); messengers, couriers and postal services; travel expenses including, where appropriate, meals, transportation, lodging and other business expenses. All expenses will be billed without markup.

In addition, our services frequently require engaging the services of third parties on our client's behalf. Generally, clients are asked to pay such third parties directly. Where small amounts are involved, the Firm may advance payments to third parties and include them in its periodic bills. These disbursements may include the following examples and will be billed based on the charges incurred by the Firm without markup: state agency filing fees; outside duplication of documents; fees for commencing lawsuits and service of process; deposition and court stenographer fees; expert witness and consultant fees; real estate recording fees and taxes; Uniform Commercial Code search fees; express delivery services (FedEx, etc...); local delivery or local filing services; and, in general, any fees or charges the Firm pays to governmental or quasi-governmental agencies on behalf of its clients.



9. Statements: The Firm renders statements on a monthly basis in a descriptive and disclosure-oriented format. The statements will reflect both legal fees and expenses/disbursements made on your behalf. Payment is due promptly upon receipt of our statement. If any statement remains unpaid for more than 30 days, we may suspend performing services for you.

10. Client Insurance Coverage: You may have commercial general liability or other insurance coverage which may provide some reimbursement for the legal fees associated with our engagement. We urge you to contact your insurer or broker to determine the nature and extent of the applicable coverage, if any. It is the client's responsibility to pay the Firm for services rendered and to obtain reimbursement from the insurer.

11. Client Responsibilities: You agree to cooperate fully with us and to provide promptly all information known or available to you relevant to our representation. You also agree to pay our statements for services and expenses in accordance with the terms of this agreement.

12. Conflicts: The Firm represents many other clients, including public entities (e.g., political subdivisions), companies, trade associations, and individuals. In undertaking any representation of a client, we perform a formal conflicts check within our office. Based on the information received as of the date of this Engagement Letter, we have found no apparent conflicts with respect to our Firm's representation of you. Bricker Graydon LLP represents Brixmor Property Group and its affiliate Brixmor GA Southland Shopping Center LLC in a matter with the City. The client agrees that by executing this engagement letter the City is agreeing to waive the right to disqualify the Firm. If at any time during our representation we become aware of a conflict with a client of the Firm, or determine that the representation of you would conflict with our previous representation of such clients, we will notify you and mutually determine how to proceed.

It is also possible that during the time that we are representing you, some of our present or future clients will have disputes or transactions with you. You agree that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a direct result of our representation of you in the Matter, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage.

In addition to the legal work the Firm provides to our clients, certain attorneys also provide government relations services to various clients of the Firm who have engaged us to perform such services ("Government Relations Services"). The Government Relations Services may include, but are not limited to, advocating certain positions on behalf of a client before the Ohio General Assembly, and before various federal, state and local legislative or regulatory bodies or officials. Such services may include, but are not limited to seeking the enactment, repeal or amendment of various laws, regulations or ordinances. In connection with the Government Relations Services, we may be engaged to advocate a position on issues that are adverse to your interests. By executing this engagement letter, you acknowledge that our work in this Matter will not disqualify the Firm



from providing Government Affairs Services to other clients, even when the interests of the client for whom we are providing Government Affairs Services are adverse to your interests. To the extent that such Government Relations Services present an actual or prospective legal conflict of interest, by executing this engagement letter, you are agreeing to waive the right to disqualify the Firm from providing Government Relations Services to other clients.

13. Secure Encryption of Records: In order to protect your data, we will deliver all material to you in an encrypted manner. You agree to the encryption of these documents to maintain their security and confidentiality.

14. Counterparts: This engagement letter may be executed in any number of counterparts, each of which shall be deemed an original instrument, but which together shall constitute one and the same document.

If the terms of this representation are agreeable to you, please sign one copy of this letter and return it to us. Upon receipt of the signed engagement letter, we will commence work on the Matter. Please call me if you have any questions.

Very truly yours,

BRICKER GRAYDON LLP

William D. Mason, Of Counsel



ACCEPTANCE

The foregoing terms of this engagement are in accordance with our understanding of the same and are hereby approved and accepted.

City of Middleburg Heights

By: Santo T. Incorvaia, City Law Director
on behalf of the City of Middleburg Heights

Date: _____