

**VILLAGE OF YELLOW SPRINGS, OHIO
RESOLUTION 2025-17**

**AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO AN AGREEMENT WITH
SMITH, MEIER & WEBB CO., L.P.A. FOR PROSECUTION SERVICES**

WHEREAS, effective April 1, 2025, the Xenia Law Department will no longer provide prosecution services for state law violations or Village ordinance violations within our jurisdiction; and

WHEREAS, it is the recommendation of the Village Solicitor and Village Manager that these services be provided for by contract with outside counsel; and

WHEREAS, the Village Solicitor and Village Manager recommend engaging the services of Mark Donald Webb to serve as the Village Prosecutor,

**NOW, THEREFORE, COUNCIL FOR THE VILLAGE OF YELLOW SPRINGS, OHIO HEREBY
RESOLVES THAT:**

Section 1. Mark Donald Webb of Smith, Meier & Webb Co., L.P.A. shall serve as Prosecutor for the Village of Yellow Springs, Ohio, to perform such duties as provided for in Ohio Revised Code 1901.34 and 705.11.

Section 2. The Village Manager for the Village of Yellow Springs is hereby authorized to execute an Agreement for Legal Services in a form substantially similar to Exhibit A.


Kevin Stokes, President of Council

Passed: 3-17-2025

Attest: 
Judy Kintner, Clerk of Council

ROLL CALL:

Kevin Stokes _Y__

Gavin DeVore Leonard __Y__

Carmen Brown _ABSENT__

Brian Housh _ Y

Trish Gustafson _Y__

AGREEMENT FOR INDEPENDENT CONTRACTOR PROSECUTORIAL SERVICES

This Agreement to provide independent contractor prosecutorial services (the "Agreement") is made and entered into this _____ day of _____, 2025 by and between the **VILLAGE OF YELLOW SPRINGS** (the "Village") and **SMITH, MEIER & WEBB LPA**, 140 North Main Street, Suite B, Springboro, Ohio 45066 ("SMW"), collectively referred to herein as the "Parties", under the following circumstances:

WHEREAS, the Village requires an experienced firm to independently contract with the Village to perform its prosecutorial services; and

WHEREAS, the Village desires to engage SMW to perform such services starting April 1, 2025, and SMW desires to accept such engagement as an independent contractor.

NOW, THEREFORE, the Parties agree as follows:

1. **Retention/Engagement/Duties**. The Village hereby engages SMW as an independent contractor, and SMW hereby accepts such engagement as an independent contractor to serve as a prosecutor for the Village, on an as-needed basis upon the terms and conditions set forth in this Agreement. SMW is expected to exercise independent judgment, manage time effectively, and devote the time and effort necessary to perform the duties hereunder. SMW shall at all times provide an attorney(s) in good standing and licensed to practice law in Ohio and shall maintain professional liability insurance in an amount that is at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate.
2. **Services**. SMW shall provide the following services to the Village as follows ("Services"):
 - a. Represent the Village in cases brought before the Xenia Municipal Court for misdemeanor (whether classified or unclassified) criminal offenses that occur in the Village of Yellow Springs whether such charges are filed under State law or Yellow Springs Village Ordinances.
 - b. Review and file charges on behalf of the Village and make charging recommendations when necessary.
 - c. Handle pre-trial matters on criminal cases, including the preparation of discovery with assistance of the Village representative(s), the preparation of witnesses and evidence, the preparation and filing of subpoenas, the filing of motions and responses to motions and the appearance at hearings.

- d. Handle trials on criminal cases, including negotiating plea agreements or the appearance and prosecution of cases at trial.

- e. Advise the Yellow Springs Police Department on matters related to criminal cases filed by the Village's police officers. The Yellow Springs Police Department shall be given cell phone numbers for SMW to obtain such advice in emergency situations after hours.
3. **Victim's Advocate.** The Village shall retain a victim advocate and shall coordinate the provisions of victim advocate services to the victims in criminal cases. Webb shall not be responsible for victim advocate services.
4. **Term.** The term of this Agreement shall commence on April 1, 2025 and shall continue until March 31, 2026.
5. **Termination.** This Agreement may be terminated by any party with ninety (90) days prior written notice.
6. **Compensation.** SMW shall furnish Services to the Village at an annual rate of Eight Thousand Three Hundred Thirty Three Dollars and Thirty-Three Cents (\$8,333.33), which shall be paid to SMW in monthly installments. If the Village requests SMW to provide services beyond the Services noted above, SMW shall provide a written proposal of a fixed price or hourly rate. SMW may also request additional compensation should he deem the circumstance warrants it. No additional compensation will be paid without prior written approval.
7. **Expenses.** Unless otherwise agreed by the Parties in writing and in advance, SMW shall not be reimbursed for any costs advanced in furtherance of pending cases, including but not limited to court costs, legal research expenses, duplicating expenses, telephone charges, mileage, postage, secretarial services or delivery costs. To the extent SMW shall have all court costs billed directly to the Village by the Court. Those costs are included in the monthly fee to be paid to Webb pursuant to the terms of this Agreement.
8. **Records.** Any records or files pertaining to any matter handled by SMW for the Village under this Agreement shall remain the property of the Village at all times. Documents used in the performance of this Agreement may be subject to the Ohio Public Records Act and shall be made available to the Village during the course of this Agreement. If this Agreement is terminated, SMW shall immediately return to the Village all records, files, and any and all work product resulting from work performed under this Agreement. Upon termination of this Agreement, the Village reserves the right to allow SMW to finish pending cases. Compensation to SMW for any Services to be provided by them after termination shall be negotiated by the Parties at the time of termination.
9. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon personal delivery or upon sending, by registered or certified mail, postage prepaid, addressed to the other party at the address identified on page one of this Agreement, or at such other address or addresses that a party may designate in the event the party's address changes before this Agreement is terminated. When written notices are provided by either party by registered or certified mail in accordance with the terms of this Agreement, copies of the written notice shall also be provided to the other party via electronic mail.

10. **Independent Contractor Status.** SMW shall not be considered "public employees" and shall not be entitled to any benefits made available to employees of the Village, including but not limited to participation in Ohio Public Employees Retirement System, unemployment compensation, health insurance, or paid time off. The Village shall not be required to utilize SMW exclusively, or at all, and may, in its sole discretion, have other contractors or employees perform the same or similar services as SMW. SMW acknowledges that the Village will not provide any workers' compensation coverage and that the Village will not withhold any federal, state or local taxes on the services performed by SMW hereunder. SMW agrees that they shall remit to the appropriate federal, state or local governmental entities any and all taxes associated with the services provided hereunder and indemnifies and hold the Village harmless for any withholding tax or other tax liability asserted against the Village as a result of SMW's failure to pay such taxes.
11. **Assignment.** This Agreement may not be assigned by the Village or SMW without the express written consent of the other party. This prohibition shall not prohibit SMW from using other attorneys in his officer to cover Services.
12. **Amendment.** This Agreement may be amended or modified only by a written instrument executed by the Parties.
13. **Governing Law.** This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Ohio.
14. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties.
15. **Miscellaneous.** The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and by facsimile signature. It shall not be necessary that the signature on behalf of both Parties hereto appear on each counterpart hereof. All counterparts hereof shall collectively constitute a single agreement. The Parties agree that the terms and provisions of this Agreement embody their mutual intent and that they are not to be construed more liberally in favor of, or more strictly against, any party hereto. The Parties do not intend to, and this Agreement shall not, confer any benefit hereunder on any person, firm, or corporation other than the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

VILLAGE OF YELLOW SPRINGS

SMITH, MEIER & WEBB, LPA

By: Johnnie Burns, Village Manager

By: