CITY OF BROOK PARK, OHIO

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ordinance no: <u>1/389-2024</u>

INTRODUCED BY: MAYOR ORCUTT

AN ORDINANCE

RETAINING AND EMPLOYING THE

LAW FIRM OF WELTMAN, WEINBERG & REIS, CO., LPA TO ACT AS CO-COUNSEL WITH THE LAW DIRECTOR IN COLLECTIONS, AND DECLARING AN EMERGENCY

WHEREAS, the City of Brook Park may employ attorneys to provide professional and legal services, acting as co-counsel with the Law Director; and

WHEREAS, the City has specialized issues, requiring specialized, technical and legal assistance in legal collection issues for the Tax Department; and

WHEREAS, the results of these matters will have a very significant fiscal and operational impact on the City; and

WHEREAS, the City has determined that certain technical, professional and legal assistance will enable it to participate more effectively in these matters.

NOW THEREFORE, BE IT ORDAINED, by the Council of the City of Brook Park, State of Ohio, that:

SECTION 1: That the law firm of Weltman, Weinberg, & Reis, Co, LPA, is hereby retained to represent the City in all matters concerning legal tax collection, as further described in the contract attached as Exhibit "A".

SECTION 2: The money needed for the aforesaid transaction shall be paid from the General Fund, No. 100; theretofore, appropriated for said purposes.

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the adoption 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 action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

| emergency measure immediated public peace, health, safet further reason hire the law LPA; therefore this Ordina | ly necessary for the preservation of the y and welfare of said City, and for the firm of Weltman, Weinberg & Reis, Co., nce shall take effect and be in force its passage and approval by the Mayor. |
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| PASSED: | PRESIDENT OF COUNCIL |
| ATTEST: Clerk of Council | APPROVED: MAYOR |
| CERTIFICATE Carol Johnson, Clerk of Council, of the City of Brook Park, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ordinance / Resolution No | DATE |
| Clerk of Council | |
| Troyer Mencini Roberts Scott | |

I HEREBY APPROVE THE WITHIN INSTRUMENT AS TO LEGAL FORM AND CORRECTNESS

DIRECTOR OF LAW





COLLECTION AND LEGAL SERVICES AGREEMENT

This Agreement is made and entered into as of 2023 between the City of Brookpark (hereafter referred to as "Client") with its principal place of business at 6161 Engle Rd., Brook Park, OH 44142 and Weltman, Weinberg & Reis Co., L.P.A. (hereafter referred to as "Weltman"), with its principal place of business at 965 Keynote Circle, Cleveland, Ohio 44131, hereafter referred to as "parties".

In consideration of the mutual promises and commitments set forth herein of which is hereby acknowledged the parties agree as follows:

RECITALS

WHEREAS, Client has matters that require collection and/or legal services;

WHEREAS, Weltman is a law firm comprised of attorneys and support staff, which enables Weltman to practice law and perform collection activity;

WHEREAS, Weltman provides collection, legal, probate and bankruptcy representation nationally through its own offices and firm attorneys in Illinois, Indiana, Kentucky, Michigan, Ohio, New Jersey and Pennsylvania (hereafter referred to as "Footprint States") and provides legal representation outside of its Footprint States through attorneys it retains and supervises (hereinafter referred to as its "Network Attorneys"). There may be instances of variation on the above-defined "Footprint States" in Fee Schedules attached herein; this will be dependent on types of matters referred for collection, legal, probate or bankruptcy services.

The parties agree as follows:

ARTICLE I Scope of Agreement

- 1.1 Placement of Matters for Services: Client will, from time to time, on a non-exclusive basis, place with Weltman certain matters for collection and legal services. Client warrants that to the best of its knowledge the information on the matters is correct and that the obligations are properly due and owing. Client will advise Weltman, at time of placement, if any matters placed for services have previously been involved in litigation and/or if the Client is aware of attorney representation.
- 1.2 Method of Placement: Client will advise Weltman if matters placed for services will be provided manually or electronically. If manual, Client agrees to utilize one of Weltman's standard spreadsheet layouts, where applicable. If electronic, Client will advise Weltman the type of system used along with applicable Partner Plan and file layout (e.g. NeuAnalytics, YGC, Alm Latitude) and agrees to an introductory onboarding meeting.
- 1.3 Documentation: Client will timely provide Weltman with the documentation required by Weltman to support the matter conveyed in a manner mutually acceptable to both parties. Client will refer to Weltman any correspondence or documentation it receives on a matter assigned to Weltman. Supporting documentation on new matters will be forwarded as soon as practical. Weltman retains the right to close or dismiss and close any matter for which the client fails to timely provide the necessary documentation to support the collection or litigation process.

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1.4 Matter Handling Procedure: Weltman agrees to undertake such collection activity in connection with such matters and to use due diligence and employ lawful and ethical means, methods, and procedures as in Weltman's judgment, discretion and experience it believes will best effect the efficient collection of such matters. Client shall provide work standards to Weltman prior to the execution of this Agreement. If Client has not provided work standards, Weltman will work the matters pursuant to its own work standards. Weltman is not a data furnisher and does not report any information to the credit bureaus. Weltman will not engage in any unethical or unauthorized practice in violation of any state or federal law. Unless otherwise provided in Client's work standards, Weltman may institute legal action as appropriate in its discretion and proceed to execute on any judgments obtained. While Weltman will use its best effort to collect the obligations placed, it cannot warrant the collectability of any portfolio or particular matter nor can it predict the amount of time any matter will take to conclude. Weltman retains the right to close any matter it deems to be uncollectible or for which Client is unwilling or unable to adequately support throughout the litigation process.

ARTICLE II Reporting, Audit and Recall Requirements

- 2.1 Electronic Layout Format: If matters are to be placed electronically, Client will utilize the file layouts provided by Weltman or utilize one of the third party clearing house agencies that are used in the industry for the electronic transfer of matters. At time of placement, Weltman will provide the names and appropriate contact points with these providers upon request of Client. If Client prefers to use its own file layouts, they are to be provided to Weltman and Client will not change the file layout without first providing timely notice to Weltman of the change and supplying all information required by Weltman to make the changes on Weltman's side. Weltman will invoice the Client a one-time fee of \$1,000 should Client require Weltman to develop a custom file conveyance program and additional fees may apply should substantial changes be required to an existing program to comply with Client's specific needs.
- 2.2 Statement and Settlement Format: Weltman will advise Client as to its standard formats available for reporting to Client. Every effort will be made to utilize one of the standard formats prior to Client's requiring a customized format. If a customized settlement format is requested, Weltman will estimate the effort required to deliver it and will submit to Client before proceeding. Only after Client approval for custom development is obtained will Weltman begin the required effort. After confirmation of acceptance by Client, all custom report development will be involced at a rate of \$125 per hour on the next available settlement/invoice.

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2.4 Audits: Client has the right to conduct audits. Client will provide Weltman thirty (30) day notification when requesting an on-site audit visit, which will be conducted at the client's expense, and the time, location and scope of any audit are to be mutually agreed upon by both Client and Weltman. The audits will be based on the work standards contained in this Agreement and otherwise communicated to Weltman by Client. Weltman will be provided with a copy of the completed audit report and, when required, will provide a response to the audit within the time period requested.

2.5 Performance Metrics: Client and Weltman will agree on the performance items that Client will score. If there is a change in the number of items scored such that there is a change from the performance required under the Agreement existing at that time, adequate notice will be provided to Weltman before it is required to institute any change to meet the new scoring requirement. If the new scored item increases the work contemplated under this Agreement, Weltman will advise Client if there will be an additional fee to cover the change in work requirement. Only after Client approval of the fee is obtained will Weltman begin the required work or change the procedure.

2.6 Recall: Client may, in its sole discretion, recall any matter or matters from Weltman at any time. However, Client will not recall any matter without good cause where a promise to pay has been established and the debtor has not defaulted or a garnishment proceeding has been filed and is still active.

Client agrees that in the event of the recall of a nonpaying judgment matter within 36 months from the date of judgment, Weltman will be entitled to a closing fee of \$125. Further, in the event of the request to satisfy a judgment or release a lien on a recalled matter, Client agrees to pay any court costs and Weltman will be entitled to collect a processing fee at the rate in effect at the time of the request, currently \$250.

Client further agrees that in the event of the recall of a nonpaying prejudgment matter, Weltman will be entitled to a fee of \$500 as compensation for work done to date, preparing and filing a dismissal, if requested, and executing a substitution of counsel on a suitable form provided by client or its new counsel.

Client further agrees that in the event of the recall of any paying matter, Weltman shall be entitled to a \$175 closing fee for judgment matters and a \$500 flat fee for work completed on any prejudgment matter, additionally Client will pay Weltman any fees, costs, and litigation expenses due and an amount equal to the average of the contingent fees earned on the recalled matter during the six (6) months prior to recall or termination as compensation for lost revenue. Weltman is authorized to offset this amount against any funds it has of Client and invoice any amounts not offset.

Finally, on a closed matter on which Weltman filed a lien on real property, Weltman will be entitled to its fee under this Agreement if there is a payment as a result of the lien to the extent Client is still the owner of the matter or Client is itself entitled to a fee on the payment, in such case Weltman will satisfy the judgment and release the lien at no further charge to Client.

It is Client's obligation to notify the debtor of any matter recall and to provide the debtor instructions for future payments. Payments received by Weltman during the thirty (30) day period after recall will be remitted to Client without commission but net of the above fees. After thirty (30) days payments received by Weltman will be returned to the debtor. In no event will Weltman remit to a third party to whom the matter has been sold or transferred.

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ARTICLE III Fee Remittances, Court Costs and Application of Payments

3.1 Fees and Payment of Costs and Expenses for Contingent Fee Representation: The fees to be paid by Client to Weltman in return for services rendered shall be a 25% contingency rate on recoveries of all sums after reimbursement of costs as allowed by law and as set forth in this Agreement. In the event a matter requires legal action outside of its Footprint States and Weltman is authorized to forward the matter to one of its Network Attorneys, the contingent fee shall be increased to 35%. The contingency fee rates apply to any attorney fees that are awarded.

On collection matters Client will advance the required amount of \$400 per matter to establish the required levels needed for collection, bankruptcy and/or replevin representation at the time legal action is requested. All funds will be held in a court cost reserve ("Reserve"). As necessary, sums will be withdrawn from the Reserve to cover necessary court costs. If there are not sufficient funds in the Reserve to proceed with the appropriate legal action, Client will be advised of the amount to be advanced by Client and the action will not be filed until the cost advance is received from Client. Weltman will not take a contingency fee on recovered court costs. When the file is closed, all court costs in Reserve will be refunded to Client.

Commissions paid to Weltman on payments collected are in the nature of a fee and are nonrefundable. Should Client be required to refund any monies properly recovered by Weltman due to a bankruptcy preference action or other court order said refund is solely and fully the responsibility of Client and Weltman will not refund its commission on said amounts. The only exception is that Weltman will not retain commission on NSF payments.

All sums collected by Weltman, less the deductions authorized below, shall be forwarded to Client within thirty (30) days of receipt, except non-cash equivalents, which will be held in an IOLTA trust for ten (10) days. Weltman shall pay Client in United States Dollars by check, wire transfer or other electronic means agreed upon by the parties. All payments collected by Weltman or paid direct to client by matter debtor will be applied in the following sequence: principal balance, interest due if applicable, other charges if applicable and allowed by law, and court costs as allowed by law, advanced by Weltman or Client.

Weltman will remit on, business days prior to 5:00pm EST, a net basis the funds collected less deductions for Weltman's contingent fees, allowable court costs expended, litigation expenses, copying costs charged by the court for documents and other authorized expenses from funds recovered during a remittance period on all matters. Client will promptly report within ten (10) days of receipt to Weltman any payments it directly receives on matters that have been referred to Weltman, other than those payments from Weltman. Weltman will deduct the commissions due on those payments from the next remittance.

Client will be invoiced for all costs expended and other authorized expenses in excess of net recoveries during a remittance period. Client shall pay Weltman in United States Dollars by check, wire transfer or other electronic means agreed upon by the parties for all commission, fees, costs, and litigation related expenses, copying costs charged by the court for documents advanced by Weltman within thirty (30) days of the date of the invoice date from Weltman. If any invoice is not paid in full within the thirty (30)-day period, Client will provide an explanation as to any specific items that are not being paid in full. All invoices not paid in full within thirty (30) days, or for which an explanation acceptable to Weltman is not provided with regard to any unpaid amount, will be past due. Weltman is authorized to offset the past due amounts against future remittances. Additionally, Weltman is entitled to charge interest on balances past due 18% per annum or the maximum

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allowable rate effective at the time. Interest charges, if applicable, will be included in the subsequent settlement/invoice statements until such time as past due balances are satisfied.

3.2 Fees and Payment of Costs and Expenses for Hourly Fee and Fixed Fee Representation: On matters referred on an hourly fee basis, Client will pay Wellman the hourly rates as listed on the attached Exhibits. Client will also be responsible for all court costs expended, litigation expenses, copying costs charged by the court for documents and other authorized expenses. On bankruptcy matters not already being handled on a contingent fee basis, the Client will pay the fees shown on the attached Exhibit. On probate matters not already being handled on a contingent fee basis, the Client will pay the fees shown on the Attached Exhibit. If non-bankruptcy and/or probate legal services are to be provided on a fixed fee basis, Weltman will provide Client the services at the fixed fee rates as set forth on the attached Exhibits. Client shall pay Weltman within thirty (30) days of the date of the invoice date from Weltman.

"Costs" shall include but not be limited to sheriff's fees, private process service fees, court filing fees, motion fees, garnishment fees, abstract, and executions.

"Litigation Expenses" shall include but not be limited to court reporter fees, deposition costs and other fees necessary to complete the requested services.

3.3 Annual Fee and Rate Review: Weltman reserves the right to adjust fees and rate on an annual basis and will provide thirty (30) day notification of any adjustments.

ARTICLE IV General Provision

- 4.1 Payment Processing: Wellman has authority to endorse any checks and/or money orders payable to Client on Client's behalf. Said checks and/or money orders will be deposited into its trust account and remitted to Client in accordance with this Agreement.
- 4.2 Client Contact: Client will refer to Weltman any correspondence or documentation it receives on a matter assigned to Weltman. Client will not accept settlement or payment terms on any matters that have been referred to Weltman without consulting Weltman.
- 4.3 Settlement Authority: Weltman shall first attempt to obtain a lump sum payment in full. If Weltman believes it is in the best interest of Client, Weltman is next authorized to accept a lump sum or an installment payment plan settlement of 80% of the full balance plus costs without prior approval. Settlement arrangements not otherwise meeting this criteria will only be implemented after notice to and approval of Client.
- 4.4 Certain Defenses, Jury Trials, Appellate Work and Counterclaims: Appellate work, regulatory and complex defenses, jury trials and counterclaims are handled on an hourly basis. Should a counterclaim be received, Weltman will notify Client and seek further instructions before proceeding with the case, except that Weltman shall in all events protect Client's interests by responding to any counterclaim in a timely manner.

Weltman is authorized to undertake any work necessary to protect the response date at the hourly rates presented herein or as stated in the attached Exhibit. Client and Weltman shall mutually agree upon the fee arrangement for the continued representation on the entire matter, which shall be in writing and which will be an addendum to this Agreement.

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- 4.5 Background Checks: Weltman candidates undergo a pre-employment investigation process which includes a federal and national criminal database and drug screening. Weltman does not perform the background or drug screening on an annual basis nor does Weltman perform fingerprinting or credit checks. However, at times, based on state or regulatory requirements, Weltman may conduct additional background checks on select Weltman employees throughout their employment with Weltman.
- 4.6 SCRA Scrubs: All matters are put through an SCRA scrub at the time of placement and again before the filing of a suit, judgment or execution. Any additional SCRA scrubs will be the sole obligation of Client. Additional fees may apply should additional SCRA scrubs be required to comply with Client's specific requirements.

ARTICLE V Indemnification

- 5.1 Indemnification of Client: Weltman shall defend, Indemnify, and hold harmless Client and its respective employees, agents and representatives against any and all liabilities, judgments, damages, claims, demands, costs, expenses or losses (including reasonable attorney's fees) arising out of any action, inaction, or omission by Weltman, its employees, agents, or representatives, under this Agreement, including failure to comply with applicable laws or regulations.
- 5.2 Indemnification of Weltman: Client shall defend, indemnify, and hold harmless Weltman and its respective employees, agents and representatives against any and all liabilities, judgments, damages, claims, demands, costs, expenses or losses (including reasonable attorney's fees) arising out of any action, inaction, or omission by Client, its employees, agents or representatives, under this Agreement, including failure to comply with applicable laws or regulations.

ARTICLE VI Compliance with Applicable Law

- 6.1 Matter Legal Status Change Bankruptcy: In the event that Wellman or Client learns that a matter debtor has filed a Bankruptcy Petition with the United States Bankruptcy Court or has sought relief from creditors under any State law or the matter is included in a foreclosure action, Weltman shall continue its representation pursuant to the fees and hourly rates on the Fee Schedule attached herein. The Bankruptcy Department will file Proofs of Claim on a contingency fee basis at the rate of 25% in Chapter 7 asset cases, Chapter 11, 12 and 13 proceedings only if the outstanding balance exceeds \$1,000.
- 6.2 Matter Legal Status Change Probate: In the event that Weltman or Client learns that a matter debtor has become deceased, Weltman will confer with client to determine if representation should continue within our Probate Department. If so, Probate matters will be handled at a 25% contingency fee or in accordance with the Fee Schedule attached herein. The Probate Department will review probate deceased matters and/or file creditor claims in estate cases only if the outstanding balance is a minimum of \$500.
- 6.3 Statute of Limitations: Should Weltman learn the statute of limitations on any matter has expired, Weltman shall close and return said matter to Client. Weltman will not engage in collections on or file suit on a matter that is past the statute of limitations.

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6.4 Training Material: Weltman issues mandatory compliance training courses for all employees on an annual basis, which includes but is not limited to: Code of Conduct, Security Awareness and Regulatory Policies. As such, no client generated training courses will be conducted. Weltman's training material is proprietary and cannot be copied or distributed electronically. Clients can view Weltman's training material during onsite visits.

ARTICLE VII Termination and Change of Ownership

7.1 Termination and Notices: This Agreement may be terminated at any time, with or without cause, by either party for any reason upon thirty (30) days written notice to the other party. Any notice of termination will be addressed as follows:

Weltman, Weinberg & Reis Co., L.P.A. 965 Keynote Circle Cleveland, OH 44131 Attn: Eileen Bitterman Compliance Department WWR-CorpCompliance@weltman.com City of Brookpark 6161 Engle Rd. Brookpark OH 44142 Attn:

Upon said termination without cause, Client will pay any fees, costs, and litigation expenses due in addition to the fees on six (6) months of any payment plans then in effect on those matters as a buyout. Weltman is authorized to offset any amounts owed against funds it has of Client and invoice any amounts not offset.

ARTICLE VIII

Confidentiality: Each party agrees that all information communicated to either party, whether before or after the date hereof, shall be and was received in strict confidence, and shall be used only for the purposes of this Agreement or as contemplated by this Agreement, and that no confidential information shall be disclosed by either party without the prior written consent, except as may be necessary, because of legal, accounting or regulatory requirements beyond the control of either party or to perform the services required to be provided under this Agreement. Upon any such event the disclosing party shall notify the other party as soon as reasonably possible.

All non-public information communicated by Weltman to Client regarding Weltman including but not limited to its business practices and finances will be kept confidential by Client and used by Client only with regard to Weltman's qualification to provide services under this Agreement or any new Agreement between Weltman and Client.

ARTICLE IX Miscellaneous

9.1 Relationship: This Agreement and Weltman's representation of Client on any specific matter is not assignable, delegable or transferable, except that Weltman may use the services of third party vendors including services provided by an offshore vendor where appropriate and other counsel as may be required to carry out its representation hereunder and except where Client is required to convey this Agreement to a purchaser of matters until such time as Weltman may become formally engaged with purchaser under a separate agreement. This Agreement is a non-exclusive business arrangement.

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9.2 Entire Agreement: This instrument contains the entire Agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or extension is sought.

Each party may copy this completed Agreement for electronic storage in a non-editable format, at which time the paper form of this Agreement may be destroyed. Each party agrees that following the electronic storage of this Agreement, any hard copy printout of that electronically stored information will constitute an "original" of this Agreement.

- 9.3 Non Exclusive: Weltman and Client acknowledge that this is a non-exclusive Agreement and that Weltman may handle matters other than those contemplated by this Agreement, unless a conflict of interest exists.
- 9.4 Counterparts: This Agreement may be executed in several counterparts, each copy of which shall serve as an original for all purposes, but all copies shall constitute one and the same Agreement. This Agreement may be executed by electronic signature which will serve as an original for all purposes.
- 9.5 Severability: The provisions of this Agreement are severable. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality, or enforceability of the remaining provisions will in no way be affected or impaired thereby unless the provision held to be invalid, illegal or unenforceable causes this Agreement to fail in its essential purpose.
- 9.6 Choice of Law and Venue: This Agreement shall be interpreted in accordance with federal laws and the laws of the State of Ohio. The parties agree that any dispute shall be adjudicated by a court of competent jurisdiction in the State of Ohio.
 - 9.7 Commencement Date: This Agreement shall commence on the date of execution by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above and do each hereby warrant and represent that their respective signatory, whose signature appears below, has been and is on the date of this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement.

| City of Brookpark | Wellman, Weinberg & Reis Co., L.P.A. | |
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| By: Client Contact | Ву: | |
| Client Title 6161 Engle Rd Brookpark OH 44142 | 965 Keynote Circle Cleveland, OH 44131 | |
| Tax ID I HEREBY APPROVE THE WITHIN INSTRUMENT AS TO LEGAL FORM AND CORRECTNESS. | | |
| DIRECTOR OF LAW | | |
| Collection and Legal Services Agreement | | Initials: |

Weltman

Weltman, Weinberg & Reis Co., LPA
The single solution for every single creditor."

Government Representation

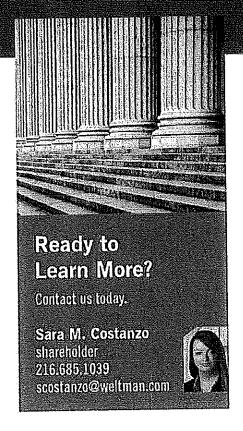
For more than 85 years, Weltman has been providing comprehensive collection services and legal representation to municipalities and government agencies. We have a long record of success in maximizing the recovery of outstanding debt and securing the fiscal health of a government entity while protecting its image with local residents and business owners. As a law firm with an in-house agency, we offer a comprehensive and efficient end-to-end solution supported by a robust compliance team, secure technology, and the highest client service standards.

Our Solutions Include:

- > Call & Letter Programs
- ▶ Skip Tracing & Asset Searches
- Tax and City Services Collection
- ► Full-Service City Charges
- ▶ Legal Action
- Bankruptcy Representation:
 - · Claim Presentment
 - Non-Dischargeable Litigation
 - Hardship Discharge Defense
 - · Relief from Co-Debtor's Stay

Weltman Can Help Your Organization:

- Ensure compliance with state and federal laws and regulations
- > Collect on debt both in and out of court



weltman.com

Why Choose Weltman?

Compliance

We help ensure strict compliance with all federal and state laws and regulations.

Experience

We've been leaders in the industry since 1930, and we have the pioneers to prove it.

Professionalism

We stand behind our work with the highest legal, ethical, and moral standards.

Efficiency

As a law firm with an in-house agency, we are an efficient end-to-end solution.