

RESOLUTION NO. 14-1241

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA AUTHORIZING THE TOWN ATTORNEY TO NEGOTIATE A CONTRACT WITH AKERMAN, LLP FOR CONSULTING IN THE CASE OF *MICHAEL A. PIZZI V. RICK SCOTT* (FLORIDA SUPREME COURT CASE NUMBER SC14-1634); AUTHORIZING THE TOWN MANAGER TO EXECUTE A CONTRACT WITH AKERMAN, LLP; AUTHORIZING THE TOWN MANAGER TO IMPLEMENT TERMS AND CONDITIONS OF CONTRACT WITH AKERMAN, LLP; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on August 21, 2014, former Mayor Michael Pizzi filed a “Petition for Writ of Mandamus Directing Governor to Forthwith Revoke Order of Suspension Upon Acquittal of all Charges Forming the Basis for the Executive Suspension of Public Official” (hereinafter, “Petition for Writ of Mandamus”) against Governor Rick Scott in the Florida Supreme Court (collectively, “the Action”); and

WHEREAS, the Action has been designated case number SC14-1634; and

WHEREAS, the Town of Miami Lakes, Florida (“the Town”) is not currently a party in the Action; and

WHEREAS, the Town Council deems it to be in the best interest of the Town to participate in the Action as interpretation of the Town’s governing document, the Charter of the Town of Miami Lakes, may be at issue in the Action; and

WHEREAS, the Town Council finds that it is their duty to support and defend the Charter of the Town of Miami Lakes; and

WHEREAS, the Town Council believes that the Town will benefit from the services of expert consultants in the Action; and

WHEREAS, the Town Attorney and the Town Manager have recommended to the Town Council that Akerman, LLP be retained as a consultant in the Action; and

WHEREAS, Section 2-152 of the Town’s Procurement Ordinance exempts certain goods and services from the Procurement Ordinance; and

WHEREAS, the retention of expert consultants is specifically exempt from the Procurement Ordinance in subsection 2-152(e); and

WHEREAS, attorneys at the law firm of Akerman, LLP have specific and/or unique expertise in appellate matters; and

WHEREAS, some attorneys at Akerman, LLP are board certified in City, County, and Local Government matters and others have served as judges in the appellate courts of this state, which gives them unique insights into cases such as the Action; and

WHEREAS, the Town Council approves of the Town Attorney's and Town Manager's recommendations and authorizes the Town Attorney to negotiate a retainer agreement with Akerman, LLP and authorizes the Town Manager to execute the retainer agreement with Akerman, LLP, in an amount not to exceed \$50,000.00.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

Section 2. Authorization of Town Officials. The Town Council hereby authorizes the Town Attorney to negotiate a retainer agreement with Akerman, LLP for consulting in the Florida Supreme Court case of *Michael A. Pizzi v. Rick Scott, Governor* (case number SC14-1634).

Section 3. Execution of the Contract. The Town Manager is authorized to execute a retainer agreement with Akerman, LLP for consulting in the Florida Supreme Court case of *Michael A. Pizzi v. Rick Scott, Governor* (case number SC14-1634) on behalf of the Town in an amount not to exceed \$50,000.00 in substantially the form attached hereto as Exhibit "A" (hereinafter, "Contract"), to be approved as to form and legality by the Town Attorney. The Town Manager is authorized to execute a retainer agreement with Akerman, LLP and take all steps necessary to implement the terms and conditions of a retainer agreement with Akerman, LLP.

Section 4. Authorization of Fund Expenditure. The Town Manager is authorized to expend budgeted funds from the Town's General Fund to implement the terms and conditions of a retainer agreement with Akerman, LLP up to \$50,000.00.

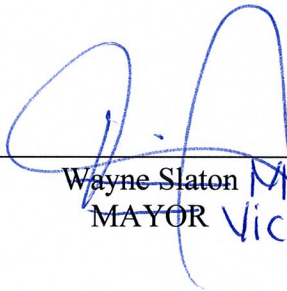
Section 5. Effective Date. This Resolution shall be effective immediately upon adoption.

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Passed and adopted this 27th day of August, 2014.

The foregoing resolution was offered by Tim Daubert who moved its adoption. The motion was seconded by Frank Mingo and upon being put to a vote, the vote was as follows:

Mayor Wayne Slaton	<u>Recused</u>
Vice Mayor Manny Cid	<u>YES</u>
Councilmember Tim Daubert	<u>YES</u>
Councilmember Tony Lama	<u>Absent</u>
Councilmember Ceasar Mestre	<u>YES</u>
Councilmember Frank Mingo	<u>YES</u>
Councilmember Nelson Rodriguez	<u>YES</u>




 Wayne Slaton Manny Cid
 MAYOR Vice Mayor

Attest:



 Marjorie Tejada
 TOWN CLERK

Approved as to form and legal sufficiency:



 Raul Gastesi, Jr.
 Gastesi & Associates, P.A.
 TOWN ATTORNEY

EXHIBIT “A”



Elizabeth M. Hernandez

Akerman LLP
One Southeast Third Avenue
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Miami, FL 33131-1714
Tel: 305.374.5600
Fax: 305.374.5095

August 27, 2014

Mr. Raul Gastesi, Jr., Esq.
Town Attorney
Town of Miami Lakes
8105 N.W. 155 Street
Miami Lakes, FL 33016

Via email at Raul Gastesi rgastesi@gastesi.com
Via email at reya@miamilakes-fl.gov

RE: Town of Miami Lakes
Matter: Michael A. Pizzi, Jr. v. Rick Scott

Dear Mr. Gastesi:

Thank you for allowing Akerman LLP to represent the Town of Miami Lakes, hereinafter referred to as ("Client"), in connection with the case of Michael A. Pizzi, Jr. v. Rick Scott, presently before the Supreme Court. In discussing the case with you, I understand that you will serve as primary counsel and our firm shall serve on a consulting basis to your office and assist in the research and drafting of pleadings.

Scope of Representation. Akerman agrees to render professional legal services to Client and Client agrees to retain Akerman as its Attorney, for the matter stated herein above as Akerman will be representing Client in the above matter.

Legal Fees. This will confirm our understanding regarding our fees in connection with our representation that any work performed by me pursuant to this Agreement shall be billed at an hourly rate of \$375.00 per hour for Elizabeth M. Hernandez, Gerald Cope, and J.C. Bermudez on any portion of the case or other related matter which you assign to us. In addition, we may be required to use other Akerman attorneys, including Shareholders, Of Counsel, Associates and Paralegals to represent your interests in this matter. It is our intent to avoid the use of two individuals for a single research or consulting issue to the extent possible. However, we will be working together and with your office, and in some instances more than one of the attorneys will be involved with such issues or consultations.

Costs. You may also incur disbursement charges in connection with our representation, including charges for photocopying, messenger services, word processing fees, travel fees, proportional cellular phone charges and other items, but these fees are not expected to be significant.

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Mr. Raul Gastesi, Jr., Esq.
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We may remit to you for direct payment to the vendor certain disbursements for printing, duplicating, transcripts and other charges as we may determine from time-to-time.

Billing. This will confirm our understanding regarding our fees in connection with our representation. Our engagement will be subject to the firm's billing policies as they may be amended from time-to-time. Billing statements are to be paid within 30 days of receipt of the bill. You agree to review bills promptly and bring to our attention any questions, discrepancies or disputes that you may have within 30 days of your receipt of the bill. After such 30-day period, it is agreed that the bill shall serve as a final account and that any issues, claims or disputes with respect to the bill have been resolved and waived.

Retainer. It is the firm's policy not to undertake any work on behalf of a client prior to the receipt of the executed fee agreement and a retainer. However, with our municipal clients and my relationship with your office, we shall waive said retainer requirement for this matter.

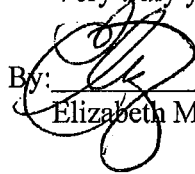
Vigorous Representation. We will do our utmost to serve your interests effectively. Gerald Cope and I will take primary responsibility for the consultation in this matter.

In providing legal services, we will act as your Attorney and provide you with legal advice and assistance with respect to the matters, which you ask us to advise on. You will be responsible for making the business and financial decisions in light of the advice that we provide you. As a matter of professional responsibility and ethics, we are generally required to preserve the confidences and secrets of our clients. The legal privilege for attorney-client communications exists to encourage candid and complete communication between a client and its lawyer. We urge you to inform us of all information, which might be relevant to our representation, and we trust that our attorney-client relationship will be based on mutual confidence and unrestricted communication in order to facilitate our proper representation of you.

We will be pleased to discuss any questions you may have regarding our billing practices or other matters. If you concur with the matters set forth above, please return an executed copy of this letter.

On behalf of the firm, we are very excited about working with you on this matter.

Very truly yours,

By:  _____
Elizabeth M. Hernandez, Esq.

Acknowledged and agreed to this ____ day of _____ 2014, as set forth above:

Raul Gastesi, Jr. Esq.
Town Attorney

Policy Statement on Billing Practices

1. General Overview. This policy statement is issued in order to inform our clients of the billing practices of Akerman LLP ("Firm"). Its purpose is to inform our clients of matters which commonly arise in the context of the business relationship between the Firm and its clients. Inevitably, situations arise which are unanticipated. In such event, a solution shall be found utilizing the principles set forth herein. If the terms of this Policy Statement differ from the engagement letter, then the terms of the engagement letter shall supersede any inconsistent terms herein.

2. Retainer Agreement and Fee. Representation is generally undertaken by virtue of a written engagement letter executed by and between the Firm and the client. In the case of corporate clients, the general practice of the Firm is to require the signature of a responsible individual on the engagement letter. The engagement letter governs the fees to be charged by the Firm and the duties to be performed. The engagement letter incorporates this policy statement by reference.

At our option, no work will be undertaken without an initial retainer. The Firm may ask for one retainer against which both fees and expenses will be applied, or ask for a fee retainer and an expense deposit against which fees and expenses may be applied. Unless the representation letter with the client provides otherwise, if either the retainer or expense deposit has been fully utilized, any unpaid fees or expenses may be charged against the unused portion of the retainer or deposit. The amount of the retainer will vary in accordance with the matter undertaken. A fee retainer is earned when paid. However, the client is granted credit against the retainer on a periodic basis, based on the fee being charged.

The expense deposit, unlike the fee retainer, is not deemed earned when paid. It is deposited in the Firm's trust account and drawn down as expenses and, in some instances, as indicated above, as fees are incurred. The nature of these expenses are discussed later in this policy statement. If the Firm has not requested a separate expense deposit, expenses will be charged against the fee retainer.

3. Firm Billing Practices.

a. Progress Billing. Fees are generally calculated on an hourly rate basis. Paralegal services are also charged at an hourly rate, although lower than the attorney rate. These rates may be adjusted periodically as a function of the overall pricing policies of the Firm. Unless a matter is to be billed on a different basis, the fee portion of a bill will be calculated by multiplying the hourly rate then in effect for each attorney or paralegal times the number of hours (or portion thereof) worked by each attorney or paralegal. Statements are transmitted to clients not less often than monthly and payment is expected upon receipt. Charges outstanding over 30 days accrue interest at the rate of 10 percent per annum. All fees and expenses are payable in U.S. currency or drafts or checks payable in U.S. currency.

b. Expenses. All clients are responsible for expenses incurred by the Firm in connection with the client's business. These out-of-pocket expenses include, but are not limited to, administrative fees for extraordinary accounting services, extraordinary secretarial or word processing time, long distance telephone calls, cellular phone charges, copy expenses,

parking costs, express mail charges, facsimile charges, associated counsel and expert fees, court reporter charges, witness fees, deposition transcripts, suit filing fees, process server fees, travel expenses including but not limited to mileage, food and lodging and all expenses. Some expenses include a firm surcharge.

c. Fee Policy. Attorneys' hourly time rates are based upon all factors which the Firm considers in the operation of its business. All attorney time in connection with a matter, including attorney administrative time on behalf of a matter, is billed. Except for overtime, the Firm does not charge on an hourly basis for the services of its secretarial staff or its administrative staff.

d. Security for Fees and Expenses. The Firm reserves the right, in appropriate cases, to request security for fees and expenses in addition to the execution, by a responsible individual, of an engagement letter. Security for fees and expenses and the determination of what will constitute acceptable security, will be made by the Firm after consultation with the client.

In addition, Florida law provides attorneys with liens upon materials coming into their possession to secure the payment of their fees. This retaining lien, as well as appropriate charging liens, may be asserted by the Firm in appropriate circumstances.

4. Employment of Additional Professionals. If the Firm deems it necessary to employ additional professionals with specialized skills and, after consultation with the client, the client deems it appropriate to do so, additional professionals may be employed by the Firm. In such event, where appropriate, the Firm will employ such professionals in the name of the client. Notwithstanding the form of employment of the professional, however, the client is obligated to pay the fees of the professional in full, upon the rendering of a statement. The Firm reserves the right to request and obtain an additional retainer to defray the fees and expenses of additional professionals employed in connection with a client matter. All fees and expenses of additional professionals shall be subject to the security provisions, interest provisions and other applicable provisions of this Policy Statement on Billing Practices.

5. Withdrawal From Representation. The client must fully cooperate with the Firm in a number of respects, which includes timely payment of progress billings. If we do not receive the full cooperation of the client or progress billings are not paid on a timely basis, we reserve the right to withdraw from representing the client.

6. Full Disclosure. We encourage our clients to read and reread this Policy Statement from time to time, and to have a full and complete understanding of it prior to executing our engagement letter. The members of the Firm are available to answer any questions concerning it. It is our goal to serve our clients and avoid misunderstandings of any kind.

7. Disposition of Files/Copies/Lien for Amounts Due. With respect to the files involving any Client matter, the files will remain the property of Akerman and Client will be furnished copies of documents as the matter progresses. If, at a later date, Client desires additional copies of said documents, Akerman may furnish those copies at a reasonable charge, to the extent Akerman has those copies and provided that the Client has paid in full all statements rendered. Documents involving work product of Akerman will remain the property

of Akerman and Client shall not be entitled to copies of any such internal documents. Akerman shall have a lien on all documents, property, or money in Akerman possession for the payment of all sums due to Akerman from Client under the terms of this Agreement. Akerman reserves the right at any time to dispose of its files without notice to Client, including destruction of such files, all without any notice to or consent of Client.