

RESOLUTION NO. 15- 1349

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA APPROVING A CONTINGENT FEE RETAINER AGREEMENT BETWEEN THE TOWN OF MIAMI LAKES AND TRUJILLO VARGAS ORTIZ GONZALEZ LLLP TO REPRESENT THE TOWN IN CONNECTION WITH THE TOWN'S CONTRACTUAL RIGHTS AGAINST THE TOWN'S INSURANCE CARRIER ARISING OUT OF ITS CLAIMS FOR INSURANCE COVERAGE FOR ALL LAWSUITS RELATING TO MICHAEL A. PIZZI, JR.; PROVIDING FOR EXECUTION; PROVIDING FOR EXPENDITURE OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on August 20, 2015, Michael A. Pizzi, Jr. ("Mayor Pizzi") filed a lawsuit against the Town of Miami Lakes (the "Town") styled *Michael A. Pizzi, Jr. v. Town of Miami Lakes*, case number 2015-19296-CA-01, (the "Civil Fees Lawsuit"), which is currently pending before the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida; and

WHEREAS, on August 20, 2015, Mayor Pizzi filed another lawsuit against the Town styled *Michael A. Pizzi, Jr. v. Town of Miami Lakes*, case number 2015-19303-CA-01, (the "Criminal Fees Lawsuit"), which is currently pending before the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida; and

WHEREAS, the Town's insurance carrier, Preferred Governmental Insurance Trust, and/or its agents, Preferred Governmental Claim Services and Summit Risk Services, denied coverage for the Civil Fees Lawsuit and the Criminal Fees Lawsuit; and

WHEREAS, the Town disputes the denial of coverage and seeks to utilize the services of Trujillo Vargas Ortiz Gonzalez LLLP to represent the Town in claims(s) concerning the Town's contractual rights against the Town's insurance carrier and/or their agents, Preferred Governmental Insurance Trust, arising out of the Town's claims for insurance coverage for all lawsuits relating to Michael A. Pizzi, Jr., including but not limited to the claims brought in the Civil Fees Lawsuit and the Criminal Fees Lawsuit; and

WHEREAS, in order for Trujillo Vargas Ortiz Gonzalez LLLP to represent the Town, the Town must approve and execute a Contingent Fee Retainer Agreement with Trujillo Vargas Ortiz Gonzalez LLLP, a copy of which is attached hereto as Exhibit "A."

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF 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. Approval of the Contingent Fee Retainer Agreement. The Contingent Fee Retainer Agreement between the Town of Miami Lakes and Trujillo Vargas Ortiz Gonzalez LLLP, a copy of which is attached hereto as Exhibit "A," together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is hereby approved.

Section 3. Authorization of Town Officials. The Town Manager and/or his or her designee and the Town Attorney are authorized to take all actions necessary to implement the terms and conditions of the Contingent Fee Retainer Agreement.

Section 4. Authorization of Fund Expenditure. Notwithstanding the limitations imposed upon the Town Manager pursuant to the Town's Purchasing Procedures Ordinance 12-142, the Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Contingent Fee Retainer Agreement.

Section 5. Execution of Agreement. The Town Manager is authorized to execute the Contingent Fee Retainer Agreement on behalf of the Town, to execute any required agreements and/or documents to implement the terms and conditions of the Contingent Fee Retainer Agreement and to execute any extensions and/or amendments to the Contingent Fee Retainer Agreement, subject to the approval as to form and legality by the Town Attorney.


Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

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PASSED AND ADOPTED this 16th day of December, 2015.

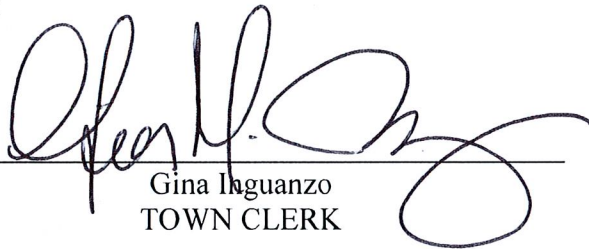
The foregoing resolution was moved for adoption by Councilman Mestre. The motion was seconded by Mayor Pizzi and upon being put to a vote, the vote was as follows:

Mayor Michael A. Pizzi, Jr.	<u>yes</u>
Vice Mayor Tim Daubert	<u>yes</u>
Councilmember Manny Cid	<u>yes</u>
Councilmember Tony Lama	<u>yes</u>
Councilmember Ceasar Mestre	<u>yes</u>
Councilmember Frank Mingo	<u>yes</u>
Councilmember Nelson Rodriguez	<u>yes</u>



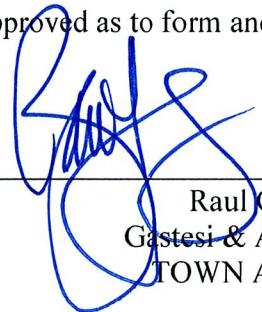
Michael A. Pizzi, Jr.
MAYOR

Attest:



Gina Inguanzo
TOWN CLERK

Approved as to form and legal sufficiency:



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

EXHIBIT “A”



815 Ponce De Leon Blvd, 3rd Floor, Coral Gables, FL 33134
Tel: 305.631.2528 | Fax: 305-631-2741

CONTINGENT FEE RETAINER AGREEMENT

The undersigned client (jointly and/or severally referred to as the “Client”), does hereby retain and employ **Trujillo Vargas Ortiz & Gonzalez LLP** located at 815 Ponce De Leon Blvd., Third Floor, Coral Gables, FL 33134 (the “Attorney” or the “Firm”), to represent Client, the Town of Miami Lakes, in claim(s) concerning its contractual rights against Client’s insurance carrier and/or their agents, Preferred Governmental Insurance Trust, arising out of its claims for insurance coverage for all lawsuits relating to Michael A. Pizzi, Jr., including but not limited to the claims brought in Miami Dade Cir. Ct. Case Nos. 2015-19296 and 2015-19303, as follows:

1. Attorneys’ Fees:

This employment is on a contingency basis. **If no recovery is made for, or on behalf of Client, the client shall not pay attorneys’ fees** for any of the professional services rendered in reference to this matter by the Attorney, except as follows:

a. Pre-Suit Actions:

If the Firm successfully resolves or settles Client’s claims against Client’s Insurer prior to the filing of a lawsuit or lawsuits, the Firm is entitled to **33%** of the gross proceeds of Client’s claims or damages. The proceeds will be disbursed subsequent to Client’s signing of a Closing Statement reflecting the amount awarded and the distribution of proceeds. **But if no recovery is made on behalf of the Client(s), then no attorneys’ fees shall be collected by the Firm or Attorneys.**

b. Litigated Actions:

If the Firm resolves or settles Client’s claims against Client’s Insurer after the filing of a lawsuit or lawsuits, the Firm is entitled to **40%** of the gross proceeds of Client’s claims or damages. The proceeds will be disbursed subsequent to Client’s signing of a Closing Statement reflecting the amount awarded and the distribution of proceeds. **But if no recovery is made on behalf of the Client(s), then no attorneys’ fees shall be collected by the Firm or Attorneys.**

If the payment of reasonable attorneys’ fees and costs, to be paid by the Insurance Company, is required to be determined by the Court, or if settlement is achieved via negotiation with Client’s Insurer, the Firm shall be entitled to receive the **greater** of either 40% of Client’s claims or damages, or all of the Firm’s reasonable attorneys’ fees and costs, including any and all contingency risk factor multipliers awarded by the Court.

c. Non-traditional Settlement:

If the Firm successfully resolves or settles Client’s claims with Mr. Pizzi, his

assigns, or legal representatives through non-traditional settlement means such as a *Coblentz* agreement or any other settlement where Client's Insurer is not a party to said settlement, the Firm is entitled to its hourly rate for all professional services rendered. The negotiated rate of the attorneys working on this matter for the firm shall be a blended rate of \$350.00 per hour. Any expenses or costs incurred on behalf of Client shall be billed separately to Client. Invoices shall be mailed by the Firm and payable by Client on a monthly basis upon the Firm's request.

d. Expenses:

The Firm and its Attorneys are entitled to receive all court costs and expenses incurred by the Firm or its Attorneys in reference to this matter. The Firm and its Attorneys shall have the authority, but shall not be obligated to, make advances of these expenses on behalf of Client in such amounts as its Attorneys shall determine best in representing Client in this matter. If not otherwise paid for by the Insurance Company, any and all such expenses incurred on Client's behalf shall be billed to Client on a monthly basis or deducted from Client's gross proceeds of any recovery. Attorney shall engage, with Client's consent or approval, any other professionals to render services on behalf of Client, including but not limited to experts or other consultants necessary for the prosecution of Client's claims or lawsuits against its Insurer. Client shall pay such professionals based on their reasonable hourly fees incurred.

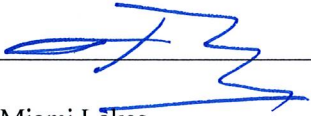
2. Client Cooperation & Rights

Client agrees to cooperate with the Attorneys' requests, to be available to the Attorneys at all reasonable times and places, and to keep Attorney fully advised, at all times, as to Client's current authorized contact, address and telephone number. It is agreed and understood that at any time during the existence of this contract, Attorney has discretion, upon reasonable notice, to withdraw as representative counsel and/or terminate its responsibilities and obligations under this agreement. This contract may be cancelled by Client after written notification to the Attorney for the work performed during that time. If Attorney has advanced funds to others in representation of the Client, the Attorney is entitled to be reimbursed for all such amounts as the Attorney has reasonably advanced on behalf of the Client. Client further understands that the Firm has the right to be co-payee on all insurance checks issued or recovered. Client shall be solely responsible to negotiate and obtain any and all endorsements necessary for the payment of sums owed to the Firm.

3. Entire Agreement:

This retainer agreement contains the entire understanding between Client and Attorney and there are no other agreements, promises or undertaking between them except as set forth herein. Client acknowledges having received a copy of this Contingent Fee Retainer Agreement. If at any time Client owes outstanding attorneys' fees and expenses to the Firm and the Firm must resort to its legal remedies to collect such fees and expenses, then Client agrees that the prevailing party in any action shall be entitled to recover from the non-prevailing party the prevailing party's reasonable attorneys' fees, costs and expenses and that said action shall be brought in the courts of Miami-Dade County.

Dated this 16th day of December, 2015.



Client
Town of Miami Lakes
Alex Rey
Town Manager
Duly Authorized Representative

Carlos Trujillo, Esq., For the Firm