

RESOLUTION NO. 07-591

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA APPROVING THE RETAINER AGREEMENT WITH GONZALO R. DORTA, P.A. AS LEAD COUNSEL FOR TOWN OF MIAMI LAKES V. MIAMI DADE COUNTY - CASE NO. 07-30357-31; AUTHORIZING TOWN OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE RETAINER AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE RETAINER AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Miami Lakes (the "Town") on October 16, 2007 selected Gonzalo R. Dorta, P.A. ("Special Counsel") to serve as lead counsel for the Town in the case styled Town of Miami Lakes v. Miami-Dade County - Case No. 07-30357-31; and

WHEREAS, the Town Council finds that approval of the Retainer Agreement with Special Counsel is in the best interest of the Town.

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

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

Section 2. Approval of Retainer Agreement. The Retainer Agreement between the Town of Miami Lakes and Gonzalo R. Dorta, P.A., a copy of which is attached 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 approved.

Section 3. Authorization of Town Officials. The Town Manager and Town

Attorney are authorized to take all steps necessary to implement the terms and conditions of the Retainer Agreement.

Section 4. Authorization of Fund Expenditure. Notwithstanding the limitations imposed upon the Town Manager pursuant to the Town's Purchasing Procedures Ordinance, the Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Retainer Agreement and to allocate \$100,000.00 from the reserve budget for anticipated litigation costs and fees.

Section 5. Execution of the Retainer Agreement. The Town Manager is authorized to execute the Retainer Agreement on behalf of the Town, to execute any required agreements and/or documents to implement the terms and conditions of the Retainer Agreement and to execute any extensions and/or amendments to the 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.

PASSED AND ADOPTED this 13 day of November, 2007.

Motion to adopt by Michael Pizzi, second by Mary Collins.

FINAL VOTE AT ADOPTION

Mayor Wayne Slaton	<u>yes</u>
Vice Mayor Nancy Simon	<u>yes</u>
Councilmember Roberto Alonso	<u>yes</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember Robert Meador	<u>no</u>

Councilmember Michael Pizzi

yes

Councilmember Richard Pulido

yes

Wayne Slaton

Wayne Slaton
MAYOR

ATTEST:

Debra Eastman

Debra Eastman, MMC
TOWN CLERK

Approved as to form and legality for the use
and benefit of the Town of Miami Lakes only:

MS

Weiss, Serota, Helfman, Pastoriza,
Cole & Boniske, P.L.
TOWN ATTORNEY

EXHIBIT A

GONZALO R. DORTA, P.A.

ATTORNEYS AT LAW
334 MINORCA AVENUE
CORAL GABLES, FLORIDA 33134

TELEPHONE (305) 441-2299
TELEFAX (305) 441-8849
E-MAIL: ORD@DORTALAW.COM

November 6, 2007

Alex Rey, Town Manager
Town of Miami Lakes
15700 N.W. 67th Avenue
Miami Lakes, Florida 33014

RETAINER AGREEMENT

RE: *Town of Miami Lakes vs. Miami-Dade County*
(Case No. 07-30357-31)
Subject: *Litigation Fee/Mitigation Case*

Dear Mr. Rey:

This letter constitutes our formal terms of engagement between my firm and the Town of Miami Lakes ("Town") with respect to my appearing as lead counsel in the pending civil action between the *Town of Miami Lakes, Florida vs. Miami-Dade County, Florida*, Case No. 07-30357 CA 31. I have agreed to undertake this representation on behalf of Miami Lakes under the following terms and conditions.

First, the Town will agree to pay a base hourly rate of \$120.00 for all paraprofessional and support attorney time dedicated to the case. This base hourly rate includes a \$20 hourly rate for all non-attorney/paralegal time and the rate of \$100.00 an hour for all base attorney time. On the first of each calendar month, this firm will provide a billing statement to the Town reflecting all base attorney and non-attorney time dedicated in that month to the case and payment is expected before the next billing cycle or within thirty (30) days of presentment. If the Town has any questions concerning any particular line item or entry in the bill, it is very important that you identify in writing any objections with respect to any particular item or bill before payment is made on that bill.

Second, the Town is solely responsible for the bills of all vendors in connection with this litigation. For example, it will be the responsibility of the Town to pay the invoices and obligations incurred with court reporters, process servers, outside copying services, postage, and in the event experts are retained with the approval of the client, the fees and costs of those experts whose engagement must first be approved by the appropriate manager and/or official of the Town before their engagement. The bills of vendors must be paid pursuant to the terms of payment per the vendors' invoices and/or service contracts. Although there may come a time where this firm may advance payment or pay an invoice of a vendor, it is not the obligation of this firm to pay those

expenses and the fact that this firm may on one or more occasions pay an invoice of a vendor to prevent interruption of those services, said payment does not alter or otherwise modify the Town's responsibility to pay these litigation expenses. In the event that this firm does advance payment or pay an outstanding invoice from a vendor, that payment will be reflected as a cost in the following monthly statement. However, it is not the obligation of this firm to pay the expenses associated with this litigation.

In addition to the aforesaid base hourly rate, the Town shall also pay this firm a percentage of all gross recovery, whether by way of settlement or judgment, that this firm obtains for the Town from the County with respect to the mitigation payments that the Town has already paid the County and/or are obligated to pay the County. This contingency fee is payable only if this firm makes a recovery for the Town. The parties acknowledge that the customary hourly fee of Mr. Dorta is \$400 an hour with a retainer fee of no less than \$30,000. The parties have negotiated these customary fees to allow for a fee only upon recovery for the Town. The parties acknowledge that the aforesaid base hourly rate of \$100.00 does not fully compensate Mr. Dorta's time. Consequently, the Town agrees to pay this firm the following fee on all gross recovery obtained by this firm whether by settlement or judgment as follows:

- The Town shall pay this firm 25% of any gross recovery, whether by way of settlement or judgment that this firm obtains with respect to the Town's mitigation payment numbers 1 through 4;
- The Town shall pay the firm 20% of any recovery the firm obtains from the County with respect to all mitigation payments made by the Town after Miami Gardens incorporated consisting of payments 5 and 6;
- The above contingency fee is based upon the following schedule of payments:

1.	2000 - 2001	\$ 1,191,781.00
2.	2001 - 2002	\$ 1,494,934.00
3.	2002 - 2003	\$ 1,516,538.00
4.	2003 - 2004	\$ 1,560,608.00
5.	2004 - 2005	\$ 1,604,305.00
6.	2005 - 2006	\$ 1,679,707.00

The parties understand that recovery includes any gross amount recovered from, refunded by, or reimbursed by the County on all payment(s) on mitigation fees that the

Town has paid to the County from the inception of these fees through payment number 6. There will be no offset and/or setoff or reduction of the gross recovery before the applicable contingency fee is applied to determine the applicable attorney fee to which this firm is entitled pursuant to the terms of this agreement.

It is understood that this firm will not entertain or otherwise undertake similar work from other cities and/or incorporated political entities until this litigation is concluded and, the parties also understand that in order for this firm to undertake this representation, this firm had to forego certain public-related litigation in order to undertake this case. As such, the acceptance of this particular employment will preclude other employment by this firm.

The contingency fee set forth above was arrived by taking into consideration the applicable factors in accordance with Rule 4-1.5 of the Florida Rules of Professional Conduct particularly, the factors involving the novelty, complexity and difficulty of the questions raised in this litigation along with the experience and skills necessary to perform these legal services properly. The parties understand that the undersigned's customary contingency fee and hourly rate are significantly higher than those that the Town will pay in connection with this employment. However, the aforesaid hourly rate and contingency fee are in line with and below those customarily charged in this locality for legal services of a comparable or similar nature provided by an attorney of equal or comparable skill and experience.

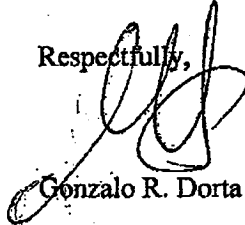
However, in the event there is a dispute or issue over the fee arrangement in this engagement agreement then, the court will determine and set such rate or award such fees that the court deems proper. In said event, the parties defer to the court's determination of the fee in light of the recovery made and issues involved.

If there is a statutory and/or contract basis for the Town to recover the legal fees and costs that it has paid to this firm in connection with this litigation, this firm will pursue said claim on behalf of the Town at no additional cost or fee to the Town. However, if the governing law permits, this firm will be entitled to file a fee petition to recover from the County only the difference between the total fees charged to the Town and the regular hourly rate and customary contingency fee that this firm charges in like-kind or similar cases to fully compensate the firm at its customary rates. This fee award will be collected from the County exclusively pursuant to applicable law in accordance with an order from the presiding judge, if awarded.

Alex Rey, Town Manager
November 6, 2007
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I look forward to working with the fine leadership of the Town of Miami Lakes and it is understood by the parties that the firm of Weiss and Serota will remain in the case as co-counsel for the Town. If these terms are agreeable to the Town, please have an authorized officer pursuant to a proper resolution, if applicable, enter his or her signature below on behalf of the Town so binding the Town to the terms of this agreement.

Respectfully,



Gonzalo R. Dorta

Town of Miami Lakes, Florida, a
Municipality of the State of Florida

By: _____

Authorized Representative of the
Town of Miami Lakes

cc: Nina Boniske, Esq. ✓

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