



**TO:** Honorable Mayor & Members of the  
Fort Lauderdale City Commission

**FROM:** Cynthia A. Everett, City Attorney

**DATE:** February 18, 2014

**TITLE:** Resolution approving the Joint Pro-Rata Litigation Fee Agreement between the City and Butler Pappas Weihuller Katz Craig, LLP (“Butler Pappas”) to serve as legal counsel

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**Recommendation**

Resolution approving the Joint Pro-Rata Litigation Fee Agreement between the City and Butler Pappas Weihuller Katz Craig, LLP (“Butler Pappas”) to serve as legal counsel to seek recovery of damages arising from a generator fire that occurred on or about April 3, 2013, at the Building Services facility located at 700 N.W. 19<sup>th</sup> Avenue.

**Background**

On April 3, 2013, at the request of City maintenance staff, an outside service company, Circle Generator, conducted a load test of the generator located outside the Department of Sustainable Development (DSD) Building. During the testing, the generator caught fire and sustained substantial damage. The loss was immediately reported to the City’s property insurer and several inspections have taken place to date by their fire investigators. According to the fire cause and origin expert report, the fire started in the generator exhaust system due to unspent gas which accumulated and when the unit was run under load, it generated heat and ignited the fire.

The generator was considered a total loss, and as a result, needed to be replaced. The City’s actual cash value (ACV) claim for damage totaled \$151,767.89, and after applying a \$50,000 deductible, the City’s property insurer will be reimbursing the City \$101,767.89.

The City’s property insurer has retained counsel to pursue subrogation against Circle Generator and the generator’s manufacturer to recover their costs of \$101,767.89 paid to the City. While not contractually or legally required, the City’s property insurer is willing to pursue recovery of the City’s deductible of \$50,000 as part of this litigation, if approval is granted by the City, in exchange for the City sharing a percentage of the attorneys’ fees, costs, and expenses.

**Resource Impact**

There is no resource impact to the City, unless a recovery of some portion of the \$50,000 deductible occurs. If a recovery occurs, the City would be responsible for 32.95% of attorneys' fees, costs and expenses. However, in no event will the City be required to pay more than it recovers from any adverse parties. In the event there is no recovery, the City's property insurer will bear all costs of the litigation.

Attachment:

Exhibit 1 - Joint Pro-Rata Litigation Fee Agreement

Exhibit 2 - Resolution

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Prepared by: Ginger E. Wald, Assistant City Attorney

Cynthia A. Everett, City Attorney