

RESOLUTION NO. 14-

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, APPOINTING THE LAW FIRM OF BUTLER PAPPAS WEIHMULLER KATZ CRAIG, LLP, AS SPECIAL COUNSEL TO PURSUE CITY'S CLAIM FOR DAMAGES ARISING FROM A GENERATOR FIRE AT THE CITY'S BUILDING SERVICES FACILITY.

WHEREAS, the City Commission desires to appoint the law firm of Butler Pappas Weihmuller Katz Craig, LLP, (Butler Pappas) as special 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 Northwest 19th Avenue, in Fort Lauderdale, Florida; and

WHEREAS, the parties to the action, in addition to the City of Fort Lauderdale, Florida, as the insured client, include the insurer clients, and that the recovery of each client, respectively, will be based on a pro rata distribution of the entire recovery to be determined by the Joint Pro-Rata Litigation Fee Agreement to be executed between the clients and Butler Pappas; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That the law firm of Butler Pappas Weihmuller Katz Craig, LLP, is hereby appointed as special counsel to the City of Fort Lauderdale, Florida 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 Northwest 19th Avenue, in Fort Lauderdale, Florida; and

SECTION 2. That compensation for Butler Pappas is to be determined by the Joint Pro-Rata Litigation Fee Agreement, attached hereto, as Exhibit "A"; and

SECTION 3. That the City Attorney is authorized to execute the Joint Pro-Rata Litigation Fee Agreement, attached hereto, as Exhibit "A", on behalf of the City; and

SECTION 4. That such special counsel hereby appointed shall serve at the pleasure of the City Commission of the City of Fort Lauderdale, Florida.

ADOPTED this the _____ day of February, 2014.

Mayor
JOHN P. "JACK" SEILER

ATTEST:

City Clerk
JONDA K. JOSEPH

L:\COMM 2014\Resolutions\February 18\Butler Pappas.doc

JOINT PRO-RATA LITIGATION FEE AGREEMENT

RE:

Loss: Generator fire at Building Services facility in Fort
Lauderdale, Florida

Date of Loss: April 3, 2013

Insurer Clients: Underwriters c/o Price Forbes 43%
(Policy No. N13NA00421)
Underwriters c/o Price Forbes 7%
(Policy No. N13NA00420)
Lexington Insurance 30%
Arch Insurance Group 20%

Insured Client: City of Fort Lauderdale

Total Loss: \$151,767.89

Total Paid: \$101,767.89

Total Uninsured Loss: \$50,000.00

Our File Number: 0160-1305013

The Rules regulating the Florida Bar state several requirements of attorneys concerning contingency fee agreements and gives to clients their rights concerning those agreements. The attorney is required to enter into a written fee agreement signed by the clients and by an attorney for himself or for his law firm for compensation for services rendered or to be rendered whereby his compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement of an action or claim. The attorney is further required to furnish the clients with a copy of the signed contract.

This contract may be canceled by written notification to the attorney at any time within three (3) business days of the date the contract was signed, as shown below, and if canceled the clients shall not be obligated to pay any fees to the attorney or attorneys for the work performed during that time. If the attorney or attorneys have advanced funds to others in representation of the clients, the attorney or attorneys are entitled to be reimbursed for such amounts as they have reasonably advanced on behalf of the clients.

The clients also have a right to receive a closing statement reflecting an itemization of all costs and expenses together with the amount of fee received by each participating attorney or law firm. Any contingent fee contract and closing statement shall be available for inspection at reasonable times by the clients.

The law firm of Butler Pappas Weihmuller Katz Craig, LLP (hereinafter "Butler Pappas") is retained by the undersigned clients 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 Northwest 19th Avenue, in Fort Lauderdale, Florida.

The recovery of each client, respectively, will be based on a pro rata distribution of the total recovery. Each client's recovery will be its proportionate share of recoverable damages incurred multiplied by the actual total recovery. To date, excluding the time value of money, the total recoverable damages are determined to be the principal amount of One Hundred and Fifty-One Thousand, Seven Hundred and Sixty-Seven Dollars and 89/100 cents (\$151,767.89). The Insurers have paid One Hundred and One Thousand, Seven Hundred and Sixty-Seven Dollars and 89/100 cents (\$101,767.89) to the City of Fort Lauderdale pursuant to the respective insurance contracts. In addition, the City of Fort Lauderdale has an uninsured loss in the amount of a Fifty Thousand Dollar (\$50,000.00) deductible. Based on these amounts, each client's proportionate share of the recoverable damages is as follows:

Underwriters c/o Price Forbes (Policy -421)	\$43,760.19	(28.83%)
Underwriters c/o Price Forbes (Policy -420)	\$ 7,123.75	(4.69%)
Lexington Insurance Company	\$30,530.37	(20.12%)
Arch Insurance Group	\$20,353.58	(13.41%)
City of Fort Lauderdale	\$50,000.00	(32.95%)

The contingency legal fee of the law firm of Butler Pappas Weihmuller Katz Craig LLP, regarding this matter is as follows:

Pre-Lawsuit

\$1 - \$50,000	22%
\$50,001 - \$150,000	17%
\$150,001 - \$300,000	15%
\$300,001 - \$2,000,000	12%

Post Filing of Lawsuit

\$1 - \$50,000	30%
\$50,001 - \$150,000	25%
\$150,001 - \$300,000	23%
\$300,001 - \$2,000,000	20%

Each client is responsible for its proportionate share of Butler Pappas Weihmuller Katz Craig LLP's attorneys' fees in the event of a recovery. The Insurers will be responsible for 67.05% of the contingency fee, and the City of Fort Lauderdale will be responsible for 32.95% of the contingency fee.

Additionally, each client is responsible for paying its pro-rata share of the costs and expenses. The Insurers will be responsible for 67.05% of all costs and expenses, and the City of Fort Lauderdale will be responsible for 32.95% of all costs and expenses. To the extent the Insurers have fronted costs and expenses leading up to the execution of this Agreement, in the event of a recovery, the City of Fort Lauderdale will reimburse the Insurers for its pro rata portion of the costs and expenses previously fronted out of its recovery. However, in no event will the City of Fort Lauderdale be required to pay more than it recovers from any adverse parties. In the event there is no recovery, the Insurers will bear all costs. Costs and expenses are monies expended by the attorneys on behalf of the clients which include, but are not limited to, expert witness fees, traveling expenses, discovery costs, copying costs, filing fees, telephone charges and subpoena expenses. In exchange for fronting all costs and incurring costs in the event there is no recovery, the Insurers will have exclusive control over the direction of this matter, including the decision to accept a settlement offer, file a lawsuit, settle the lawsuit, or pursue rights on appeal.

The undersigned also agree that if the Insurers, the City of Fort Lauderdale, or Butler Pappas at any time believe there to be conflict of interest, or potential conflict of interest, in the continuing legal representation by Butler Pappas on behalf of the Insurers, and the City of Fort Lauderdale, that party believing such conflict or potential of such conflict to exist shall immediately state that belief, in writing, and express mail such written statement to the other two parties within 48 hours of forming said belief. Upon receipt of such written notice of conflict or potential conflict, yet consistent with all ethical and legal constraints, Butler Pappas will immediately seek dismissal as counsel of record on behalf of the City of Fort Lauderdale, but will continue to represent the Insurers. Butler Pappas, however, will retain a lien for attorneys fees incurred through the date when the law firm of Butler Pappas withdraws as counsel for the City of Fort Lauderdale based upon any outstanding hourly fees and costs.

If, for whatever reason, such an express delineation between the rights of recovery and that which is recovered is not clear and a dispute between the Insurers and the City of Fort Lauderdale is not resolved, upon written request by either the Insurers and/or the City of Fort Lauderdale, such dispute shall be submitted to arbitration. Arbitration shall consist of a three (3) member panel, all members of the Bar. Each party shall designate within ten (10) days a panel member of their choosing and within ten (10) days thereafter the two chosen members shall choose a third member of the panel. At a mutually agreeable location, within thirty (30) days of the three member panel being selected, an arbitration hearing will be held. Although the parties may have legal counsel present at such a hearing if they so choose, neither Butler Pappas or any attorney or person associated with Butler Pappas will be involved in such an arbitration procedure in any capacity whatsoever, including but not limited to rendering legal advice. The findings of the arbitration panel shall be binding upon all parties and all litigation costs, of any kind, as well as arbitration costs, including, but not limited to arbitrator's fees and expenses, shall be shared pro rata between the Insurers and Affordable based upon the total amount of monies recovered and the proportionate right of recovery as concluded by the arbitration panel.

In the event of any court award of attorneys' fees per a court rule, statute or contract, Butler Pappas is entitled to recover either the amount awarded by the court or the amount determined by this litigation fee agreement, whichever is greater. Additionally, both Butler Pappas and the undersigned clients understand and agree that the contingent fee set forth was calculated based upon the following criteria:

- (a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
- (b) The likelihood, if apparent to the clients, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (c) The fee customarily charged in the locality for similar legal services;
- (d) The amount involved and the results obtained;
- (e) The time limitations imposed by the clients or by the circumstances;
- (f) The nature and length of the professional relationship with the clients; and
- (g) The experience, reputation and ability of the lawyer(s) performing the services.

[signatures on following pages]

On behalf of the City of Fort Lauderdale

PRINTED NAME: _____

DATE: _____