

TRIPP SCOTT

ATTORNEYS AT LAW

EDWARD J. POZZUOLI
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November 12, 2021

Mr. Shawn D. Smith
City Attorney, City of Key West
1300 White Street
Key West, FL 33040

Re: Representation

Dear Mr. Smith,

Thank you for asking Tripp Scott, P.A. to assist you with regard to the above referenced matter. The purpose of this retainer agreement is to set forth the scope of our services and to provide you with our applicable billing rates and retainer requirements.

1. **SCOPE OF LEGAL SERVICES:** For purposes of this engagement, Tripp Scott, P.A. agrees to represent the City of Key West ("the Client"). The Client has retained Tripp Scott, P.A. to provide legal review regarding cruise ship capacity and impact of alternative next steps regarding the three city referendums, Florida Statute Section 311.25 and such other obligations pertaining to cruise ships and ports. Additionally, we understand that our communication will be with City Attorney Shawn D. Smith. Although we may be dealing directly with the officers, agents, employees, directors or other personnel employed and/or associated with Client, we represent the Client and not any of these individuals in their individual capacity.

2. **FEES FOR SERVICES:** Edward Pozzuoli, William Davell, and Shari McCartney shall be the primary attorneys on this matter. My billing rate is \$500 an hour. Partners generally bill out at \$450 an hour, associate level attorneys shall bill out at \$350 an hour, paralegals bill out at \$90 an hour. All of the above rates are for the current calendar year and are subject to change annually thereafter. It is understood that the hourly time charges include, but are not limited to: court appearances, telephone conferences, office conferences, legal research, depositions, review of file materials and documents sent and received; preparation for trials, hearings, depositions and conferences, creating and implementing litigation strategy; drafting of pleadings, instruments, office memoranda and correspondence.

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3. FEES FOR COSTS: In addition to fees for services, you will be responsible for all costs incurred on your behalf which typically include court costs, deposition costs, travel expenses, and standard office costs such as postage, photo copying, facsimile charges, Westlaw or legal research charges, and long-distance telephone charges, as well as other costs incurred in this matter. You should be aware that disbursements and expenses that are incurred by the firm on your behalf will be billed to you with our statement for fees.

4. RETAINER FEE: Because of the nature of this matter my firm is requesting a retainer fee of \$10,000, which we will place in our trust account. *The retainer amount is not a cap or an estimate of the amount of fees to be incurred in this matter. We reserve the right to require payment of additional retainer amounts as may become necessary.* We shall bill you on a monthly basis and we ask that you pay our monthly invoices in a timely and expeditious manner so that we can continue to vigorously represent your interests in this matter. At the end of the matter, any remaining portion of the retainer will be applied against the final statement for fees and costs that we bill to you. Should there be any balance remaining from the retainer amount at the time this matter is concluded, that balance will be refunded to you.

5. MONTHLY BILLING STATEMENT: Our statements will be submitted to you on a monthly basis, if no objection is made in writing to our statements within thirty days of receipt of the same, all objections shall be waived and the full amount of the charges will be due.

6. AGREEMENT TO COMMUNICATE VIA EMAIL: Also, the Client acknowledges that: (i) Tripp Scott, P.A., the Client, and others participating in this engagement may correspond or convey documentation via Internet email unless the Client expressly requests otherwise; (ii) no party has control over the performance, reliability, availability, or security of Internet e-mail, and (iii) Tripp Scott, P.A. shall not be liable for any loss, damage, expense, harm, or inconvenience resulting from the loss, delay, interception, corruption, or alteration of any Internet e-mail due to any reason beyond Tripp Scott, P.A.'s reasonable control.

7. CONTEMPORANEOUS ADVICE: **It is normal in the course of representing clients that we will give you advice in response to a question. Please remember that contemporaneous advice is given based on the facts presented by you and based upon our general knowledge of the law. Legal research and analysis could result in different advice. If you seek contemporaneous advice please remember this limitation on that advice and use the advice accordingly.**

8. NOTICE OF LITIGATION HOLD: It is a litigant's legal duty to preserve all information potentially relevant to its case as soon as litigation is reasonably anticipated. Therefore, it is now incumbent upon you to preserve all information of any type, hard copy or electronic, related in any way to your claims or any claims against you. Any questions you may have as to the relevance of particular documents should be resolved in favor of preservation and retention. You must take every reasonable step to preserve all potentially relevant information until further notice from us. Failure to do so could result in extreme penalties against you. It is vital at this stage that you also discontinue any and all data destruction or server backup recycling policies that may be employed on your electronic data. If you have any questions as to how to ensure that this is done, your IT support should be able to assist you.

9. TERMINATION OF AGREEMENT: You may terminate this agreement upon written notice to the undersigned at any time. Similarly, Tripp Scott, P.A. may also terminate this agreement upon written notification to the Client and subject to the Florida Rules of Professional Conduct. If this agreement is terminated, the unearned portion of the retainer, if any, will be refunded to you. In addition, if at any time, Tripp Scott, P.A. is unable to locate the Client, the firm may terminate all further representation by sending a letter to the Client's last known address. Any termination of our representation will not affect your obligation to pay for services and costs previously rendered. Upon termination of our relationship, we agree to cooperate with any successor counsel to accommodate a smooth transition of representation.

10. WITHDRAWAL FROM REPRESENTATION: We reserve the right to withdraw from representing you if you have misrepresented or failed to disclose material facts to this firm, if we disagree about the course of action which should be pursued, if you fail to cooperate with us on a timely basis, or for any other reason permitted by the Florida Rules of Professional Conduct.

11. DISPUTE RESOLUTION: If for some reason our law firm is required to pursue any outstanding amounts owed by you, the law firm shall be entitled to recoup its reasonable attorney's fees and costs. Further, if there is a dispute regarding the payment of our fees and costs, or if any other dispute arises out of our representation of you, all parties agree that the sole and exclusive venue for resolving any dispute shall be in Broward County.

12. RETAINING AND CHARGING LIEN. If you retain a new attorney to conclude this matter, you would be required to immediately pay this firm for all of the attorney's fees and costs that it incurred. This firm shall have a retaining lien on the case file as well as client funds or property in this firm's possession until all attorney's fees and costs are paid to this firm (i.e., payment would need to be received by this firm prior to it transferring the files to a new attorney).

13. REPRESENTATION FOR ADDITIONAL MATTERS: Should you request Tripp Scott, P.A. to represent you regarding any additional matters outside the scope of this initial engagement and Tripp Scott, P.A. is both able and available to provide that representation, a subsequent engagement letter will be sent to you. The subsequent letter will incorporate the instant agreement by reference, and if necessary, specify any modifications to the applicable billing rates or retainer amount. You will be requested to sign the subsequent engagement letter before Tripp Scott, P.A. can begin representing you on that new matter. Unless otherwise specified, any additional services requested to be provided by our firm beyond the scope of the above matter will be billed to you in accordance with our hourly rates in effect at the time those services are rendered, and subject to the terms set forth in this letter.

14. COMMENCEMENT OF REPRESENTATION: If this letter is consistent with your understanding of the scope and terms of our representation and our fee agreement, please sign where indicated and return the original to me for our files. Unless and until we receive the signed copy of this letter, along with the full initial retainer, an attorney-client relationship has not been formed.

15. COMPLETE AGREEMENT: This Agreement may only be altered or amended by specific written agreement of the parties.

I look forward to working with you on this matter. Feel free to contact me at any point with any questions or comments relating to these matters.

Very truly yours,



EDWARD J. POZZUOLI
For the Firm

SO AGREED AND CONSENTED TO:

By:

CLIENT



CITY OF KEY WEST