

RESOLUTION NO. 20-01-06

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA; RESOLUTION RATIFYING THE ENGAGEMENT OF SMITH HAWKS, PL, FOR LITIGATION COUNSEL SERVICES RELATED TO DOAH CASE NO. 19-1839GM; AUTHORIZING LITIGATION EXPENDITURES RELATED TO DOAH CASE NO. 19-1839GM; AUTHORIZING THE EXPENDITURE OF BUDGETED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in April 2019, the Village Council of Islamorada, Village of Islands (the “Village Council”), adopted Ordinance No. 19-03, which enacted amendments to the Comprehensive Plan of Islamorada, Village of Islands (the “Village”) to include provisions of the Keys Workforce-Affordable Housing Initiative; and

WHEREAS, on April 9, 2019, Catherine Bosworth filed a Petition (Case No. 19-001839) requesting a hearing by the Division of Administrative Hearings, challenging that the Comprehensive Plan amendment adopted by Ordinance 19-03 was not “in compliance” pursuant to F.S. 163.3184(1)(b) and that it violated F.S. Section 380.0552; and

WHEREAS, the Village Attorney recommended that the Village engage the law firm of Smith Hawks, PL (“Smith Hawks”), who is also engaged by the City of Marathon (the “City”) in defending its respective petition challenging implementation of the Keys Workforce-Affordable Housing Initiative within the City; and

WHEREAS, in May 2019, Village Attorney with approval of the Village Manager authorized the engagement of Smith Hawks in May 2019 to defend the Village in DOAH Case No. 19-001839; and

WHEREAS, budgeted funds for litigation expenditures were included within the Village Budget for both FY 18-19 and FY 19-20 under Village Attorney Professional Services; and

WHEREAS, the Village Council desires to ratify and approve the litigation expenditures to Smith Hawks related to DOAH Case No. 19-1839 GM during FY 18-19 and FY 19-20, as set forth herein; and

WHEREAS, the Village Council finds that ratification and approval of the Engagement Agreement with Smith Hawks and ratification and approval of the litigation expenditures for DOAH Case No. 19-1839 GM is in the best interest of the Village.

NOW THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

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

Section 2. **Ratifying Approval and Execution of Agreement with Smith Hawks.**

The Village Council hereby ratifies and approves the Engagement Agreement with Smith Hawks to provide services as outside litigation counsel for DOAH Case No. 19-1839 GM, a copy which is attached hereto as Exhibit "A", as previously executed by the Village Attorney. The Village Attorney is further authorized to execute any required agreements and/or documents to implement the terms and conditions of the Engagement and to execute any extensions and/or amendments thereto.

Section 3. **Ratifying and Approving Litigation Expenditures.** The Village Council hereby ratifies and approves the litigation expenditures to Smith Hawks related to DOAH Case No. 19-1839 GM during FY 18-19 and FY 19-20 in an amount not to exceed \$275,00.00.

Section 4. **Authorization of Village Officials.** The Village Manager and/or his designee and the Village Attorney are authorized to take all actions necessary to effectuate the intent of this Resolution.

Section 5. Authorization of Fund Expenditure. Notwithstanding the limitations imposed pursuant to the Village's Purchasing regulations as codified in the Village Code, the Village Manager is authorized to expend budgeted funds to implement the terms and conditions of the Engagement Agreement.

Section 6. Effective Date. This Resolution shall become effective immediately upon its adoption.

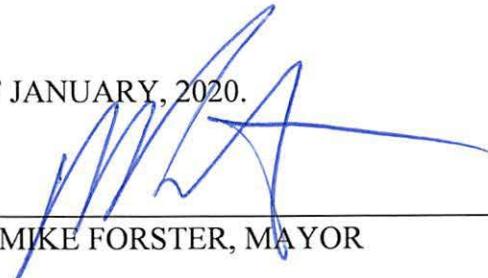
Motion to adopt by Councilwoman Deb Gillis, second by Councilman Jim Mooney.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Mike Forster	YES
Vice Mayor Ken Davis	ABSENT
Councilwoman Deb Gillis	YES
Councilman Jim Mooney	YES
Council Seat 2- vacant	

PASSED AND ADOPTED ON THIS 9TH DAY OF JANUARY, 2020.



MIKE FORSTER, MAYOR

ATTEST:



KELLY TOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY



ROGET V. BRYAN, VILLAGE ATTORNEY

SMITH/HAWKS
ATTORNEYS AT LAW

ENGAGEMENT AGREEMENT

Islamorada, Village of Islands, ("Client"), by execution of this Engagement Agreement ("Agreement"), hereby retains and employs the law firm of SMITH HAWKS, PL (the "Firm") as counsel to represent Client in the following matter: representation of Client in *Catherine Bosworth v. Islamorada, Village of Islands, Florida*, Case No.: 19-1839GM (the "Representation").

Due to the relationship between Client and Firm, no retainer shall be required. Monthly invoices will be sent via electronic mail by the Firm to the Client for the Client's review of expenses and fees incurred. Client shall raise any disputes on any invoice in writing within 30 days of receipt of said invoice and any invoice which has not been disputed in such time frame shall be deemed final and correct. The Client shall remit payment for all invoices within thirty (30) days of receiving the monthly invoice. Any amounts not paid within thirty (30) days shall be deemed past due and may bear interest at the rate of twelve percent (12%) per annum.

THE CLIENT AND THE FIRM ACKNOWLEDGE THAT THE FIRM HAS AND WILL CONTINUE TO REPRESENT THIRD PARTIES SEPARATELY IN UNRELATED MATTERS WITH, IN FRONT OF, OR AGAINST THE ISLAMORADA, VILLAGE OF ISLANDS, BUT IF THERE IS ANY DIRECT CONFLICT WITH THIS MATTER, THE FIRM WILL NOT REPRESENT A THIRD PARTY IN ANY LITIGATION AGAINST ISLAMORADA, VILLAGE OF ISLANDS IN DIRECT CONFLICT WITH THIS MATTER.

Any further representation on any matter outside the intended scope of the Representation shall require an amendment to this Agreement or the execution of a new Agreement.

Barton W. Smith, Esq. and Christopher Deem, Esq. shall be the attorneys primarily assigned to handle all aspects of matters related to the Representation. Ashley Sybesma, Esq., Nicola Pappas, Esq. and Michael J. Zeiler, Esq. shall be the attorneys who will assist in this Representation. Client expressly agrees that the scope of Representation and issues to be addressed shall not be expanded without the Firm's express written agreement.

In consideration of the foregoing, Client agrees as follows:

Work undertaken by Firm pursuant to the Representation shall be billed by time spent. All time will be billed on the Firm's normal billing schedule as explained more fully below. Mr. Smith, Mr. Deem, Ms. Sybesma, Ms. Pappas, and Mr. Zeiler shall hourly rate shall be \$250.00; and the hourly rate for legal assistants shall be \$120.00. The Firm reserves the right to raise the above-listed rates after one year, and each subsequent year thereafter. In no case shall the rates increase more than 5% in any given year. Client shall be responsible for any disbursements made in connection with the Representation. For some matters, additional flat fees above the hourly rates may be required, but the Firm customarily discloses such fees to the Client before the incurrence of such fees. Factors the Firm considers in applying its fee structure include:



- (a) The time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (b) The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- (c) The fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;
- (d) The significance of, or amount involved in, the subject matter of the Representation, the responsibility involved in the Representation, and the results obtained;
- (e) The time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;
- (f) The nature and length of the professional relationship with the client;
- (g) The experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services;
- (h) Whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the Representation; and
- (i) Unless otherwise specifically agreed in writing, our fees are not contingent upon the outcome or completion of a matter.

The Firm endeavors to assign work to the lowest cost provider of the service, as the Firm deems appropriate in accordance with the Representation. Notwithstanding the foregoing, expedited work and work performed under an unusually tight deadline sometimes must be performed by a higher cost provider. Clients should assess the need to make any calls or to contact the Firm's attorneys before making a call or contact, as the time for all responses to Client inquiries is billable to Client. Client understands that paralegals and other non-attorney employees of the Firm cannot and do not provide legal advice or counsel, and Client's entry into this Agreement constitutes explicit acknowledgment of this fact. All time spent on a matter prior to formal retention shall be billed to Client. The Firm endeavors to invoice for hourly charges and disbursements monthly, usually on the 16th of each month, otherwise as soon as the Firm is able to invoice its billing.

It is often impractical to determine in advance the amount of effort that will be needed to complete all the necessary work on a matter or the total amount of fees, charges and costs that may be incurred. Obviously, if any estimates or budgets are provided, they may need to be adjusted upward or downward in response to changing circumstances. Unless otherwise expressly agreed in writing, our estimates and budgets are not intended to be binding, are subject to unforeseen circumstances, and by their nature are inexact and do not limit or "cap" our fees and other charges or costs.

Failure of Client to promptly pay invoices generally results in termination of the Representation, regardless of the stage of Representation, without requirement of the Firm to give further counsel to Client or take further action on Client's behalf. Client accepts this limitation and acknowledges the sole responsibility of Client to take over management of its legal affairs in the event that Firm terminates the Representation for non-payment, or for any other reason. The Firm shall have a lien on all the Client's documents, property (both real and personal, regardless of homestead), or money in Firm's possession or another's for Firm's benefit for the payment of all sums due under this Agreement or related to the Representation, and upon property or funds received by Client by settlement, judgment, or otherwise, or which was an issue in litigation or related to the Representation, and the Firm is entitled to a charging lien or any other remedies for non-payment available at law or equity.

Filing fees, transcription, in-house costs and services, and all specialized services provided through outside sources (including but not limited to investigative services, accounting services, courier services, travel services, technology services, and printing services) shall be charged to Client based upon the actual or estimated expense incurred by the Firm in providing such items. Where estimates are used rather than actual expenses, the Firm shall consider the costs and availability of such services in the local community and shall set its estimates at rates competitive with such services.

The Firm usually does not charge handling or other processing fees with respect to disbursements incurred and passed on to its clients. However, depending upon the particular handling and processing involved with respect to the specific reimbursable expenses that may be incurred on behalf of Client, the Firm may charge to Client processing and handling fees of a small flat-rate nature commensurate with fees charged by other law firms, or at times, a percentage handling or processing fee of up to 10% of the amount actually paid on Client's behalf. Client shall be responsible for payment of any sales or service taxes imposed by the State of Florida or any other taxing authority with respect to the services provided.

To allow us to conduct a conflict check, you represent that you have identified for us all persons and entities that are or may become involved in the Representation, including all persons and entities that in any material respect are related, affiliated or associated with you, and other involved or potentially involved parties (such as parent corporations, subsidiaries and other affiliates, officers, directors and principals). You also agree that you will promptly notify us if you become aware of any other persons or entities that are or may become involved in the Representation. You agree to cooperate fully with us and to provide promptly all information known or available to you that is relevant to the Representation.

We do not and cannot guarantee the outcome of any matter. Either at the commencement or during the course of the Representation, we may express our opinions, views or beliefs concerning claims or courses of action and the results that might be anticipated. Any such statement made by any representative of our firm is intended to be an expression of opinions, views and beliefs only, based on information available to us at the time, and should not be construed by you as a guarantee of any type.

You can terminate our services at any time. If you do, you agree to give us prompt written notice of the termination. Upon our termination, you will remain obligated to pay for all services rendered and costs or expenses paid or incurred on your behalf before the termination or which are reasonably necessary thereafter. If we are attorneys of record in any proceeding, you agree to promptly execute and return to us the Substitution of Attorney we provide to you.

If we elect to withdraw from the Representation, you will take all steps necessary to free us of any obligation to perform further services, including the execution of any documents necessary to complete our withdrawal. Notwithstanding such withdrawal, you will remain obligated to pay us for all services provided and to reimburse us for all costs and expenses paid or incurred on your behalf before the termination or which are reasonably necessary thereafter. Our representation of you will be considered terminated at the earliest of your termination of our representation, our withdrawal from our representation of you, or the substantial completion of our work for you (as may be evidenced by a final bill, by a substantial period of inactivity not caused by our negligence or otherwise).

In the course of the Representation, we are likely to come into possession of copies or originals of documents or other materials belonging to you or otherwise constituting client records, such as correspondence, pleadings, transcripts, exhibits, physical evidence, and other items reasonably necessary to your representation (collectively, "Client Materials"). Once the particular matter to which those Client Materials relate has been concluded, we will make arrangements either to return the Client Materials to you, retain them in our storage facilities or dispose of them. If you do not request their return and in the absence of any other specific arrangements with you or legal requirements to the contrary, you agree that we may dispose of those Client Materials consistent with any reasonable records retention policy that we may have in effect from time to time. Moreover, unless you have sought the return of such Client Materials within two years after the conclusion of the matter to which they relate, we may destroy them and will be relieved of any responsibility to you with respect to them. If we conclude that it would be inappropriate or impermissible to destroy all or any portion of these Client Materials, you agree that we may return or deliver them to you at your last known address, and we will be relieved of any responsibility with respect to them. We may retain copies if we choose. You agree to pay the expense of the return (or any other directed delivery) of Client Materials. You also agree to take possession (whether or not you take possession of other Client Materials) of original documents, such as wills, investments, stock certificates, etc., whereupon we will have no further responsibility for them. Our own files pertaining to the Representation will not be delivered to you. You agree that our firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records, as well as internal lawyers' work product (such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports and mental impressions, prepared by us or for our internal use). You agree that our files remain our property and for various reasons, including the minimization of unnecessary storage expenses, or for no reason, we may destroy or otherwise dispose of our files a reasonable time after the conclusion of the matter.

This Agreement supersedes all other prior and contemporaneous written and oral agreements and understandings between us and contains the entire agreement between us; and can be modified only by your and our subsequent written agreement. You acknowledge that no promises have been made to you by us other than those stated in these writings. Any provision of this Agreement held in whole or in part to be unenforceable for any reason shall be severable if the essential terms of engagement both to you and us remain enforceable. In that case, the remainder of that provision and our agreement will remain in effect. This Agreement will be governed by the internal law, and not the law pertaining to choice or conflict of laws, of Florida, except to any extent required by applicable law or rules of professional conduct.

Unless expressly stated to the contrary, Firm's responsibility is limited solely to providing legal services directly related to the Representation referenced in this Agreement and does not include advice or service with respect to other areas including, but not limited to, the defense of criminal charges, personal injury claims, worker's compensation, taxation, probate, bankruptcy, real estate, and lien resolutions.

I have read, understand and agree to the terms and conditions set forth in this Agreement.

By: Roget V. Bryan

Date

Title: Village Attorney, for Islamorada, Village of Islands


5/13/19


Barton W. Smith, Esq.
SMITH HAWKS, PL

Date

05/14/2019