

RESOLUTION NO. 11-10

A RESOLUTION AUTHORIZING EMPLOYMENT CONTRACT WITH SCOTT, MONEY & RAY, PLLC; GRANTING AUTHORITY TO THE MAYOR TO EXECUTE SAID RESOLUTION AND AUTHORIZING CITY SECRETARY TO AUTHENTICATE MAYOR'S SIGNATURE TO THIS RESOLUTION AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL INSTRUMENTS REQUISITE IN IMPLEMENTING THIS RESOLUTION AND AUTHORIZING CITY SECRETARY TO AUTHENTICATE CITY MANAGER'S SIGNATURE TO THIS RESOLUTION.

A regular meeting of the City Council of the City of Commerce, Texas, was held in Commerce, Texas, at City Hall, on the 15th day of March 2011 at 6:00 p.m., a majority of council members being present and constituting a quorum, the following resolution was adopted:

WHEREAS, Scott, Money and Ray, PLLC has been employed to prosecute any causes of action arising out of illegal dumping activities in the corporate city limits of Commerce, Texas; and

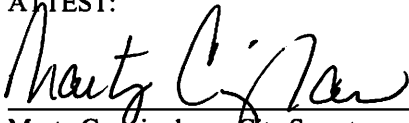
WHEREAS, after careful consideration the City Council deems it would be in the best interest and general welfare of the City of Commerce that the said employment contract be accepted.

NOW, THEREFORE, BE IT RESOLVED that the Mayor of the City of Commerce, Texas, be authorized and he is hereby authorized to execute this Resolution;

BE IT FURTHER RESOLVED that the City Secretary be authorized and she is hereby authorized to attest to the signature of the Mayor Pro Tem to this Resolution, and to attest to the signature of the City Manager to any instruments requisite to implementing this Resolution.

PASSED BY THE GOVERNING BODY of the City Council of the City of Commerce, Texas, on the 15th day of March 2011.

ATTEST:


Marty Cunningham, City Secretary

(seal)

CITY OF COMMERCE, TEXAS


Quay Throgmorton, Mayor

APPROVED AS TO FORM:

Marty C. Law for
Jim McLeRoy, City Attorney

I, Marty Cunningham, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of a Resolution, and that the same has not been repealed and is in full force and effect.

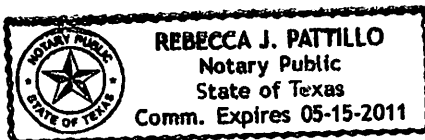
(seal)

Marty Cunningham
Marty Cunningham
City Secretary

Sworn to and subscribed before me, on this the 30th day of March, 2011,
to certify which witness my hand and seal of office.

(seal)

Rebecca J. Pattillo
Notary Public, State of Texas



EMPLOYMENT CONTRACT

STATE OF TEXAS

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COUNTY OF HUNT

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THIS IS AN AGREEMENT between the City of Commerce, a political subdivision of the State of Texas, (hereinafter referred to as "Client") and Scott, Money, Ray & Thomas, PLLC, (hereinafter referred to as "Attorney"), whose principal office address is PO Box 1353, 2608 Stonewall Street, Greenville, Texas 75403-1353, whereby Client retains and employs Attorney to represent Client in prosecuting Client's claims, as follows:

WITNESSETH:

Client hereby employs the aforementioned Attorney, and authorizes and empowers Attorney to institute and maintain, and to prosecute any causes of action arising out of illegal dumping activities in the corporate city limits of Commerce, Texas in violation of Texas law, codes, rules and/or regulations. Attorney hereby accepts said employment, and agrees to act on behalf of Client to the best of Attorney's ability. This Contract shall be subject to the following terms:

1. Definition of "The City of Commerce":

Our client is The City of Commerce, not its City Council, City Manager, or Council members. Out of necessity, we will abide by the wishes of the elected officials who make up the City Council, but our ethical duties will run to the City itself. All communications will be addressed to The City of Commerce c/o City Manager with copies to the City Council. Our representation in this matter is limited to the City of Commerce, and the term "The City of Commerce" does not include, and our representation of The City of Commerce does not mean, that we represent the managers, officers, or employees of The City of Commerce.

2. Scope of Work:

We have been hired to pursue money damages arising from illegal dumping activities in the corporate city limits of Commerce, Texas in violation of Texas law, codes, rules and/or regulations. We may accomplish our objective through any means available, including litigation and/or mediation. Our engagement is limited to providing legal services and does not include accounting, financial, management, or other non-legal services.

3. Conflicts of Interest:

Our investigations have identified several parties that are potentially adverse to The City of Commerce. We have checked our conflict of interest records and have found no indication of any current or prior representation that would be a conflict with any of these parties. If during the course of our representation you become aware of any other person or entity with interests adverse to The City of Commerce's in connection with illegal dumping matters, please promptly advise us so that we can check our records for any conflict.

Additionally, we represent many other companies and individuals. It is possible that during the time that we are representing The City of Commerce, some of our present or future clients will have disputes or transactions with The City of Commerce. This contract constitutes the agreement of The City of Commerce that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for The City of Commerce even if the interests of such clients in those other matters are directly adverse to The City of Commerce. We understand, however, that The City of Commerce has not agreed that we may use confidential information of The City of Commerce that we have learned during the course of our representation to the disadvantage of The City of Commerce nor that The City of Commerce has agreed we may represent another party adverse to The City of Commerce when there is a reasonable basis for The City of Commerce to believe its confidential information could be used to The City of Commerce's disadvantage.

In certain instances, it may become appropriate for The City of Commerce to consider seeking sanctions from a court against the opposition or opposition's counsel. If we reach a professional judgment that you should consider such, we will so advise The City of Commerce.

However, we reserve the right to decline to seek such sanctions because of conflicts or for other reasons. If we conclude that we are not able to seek such sanctions, but The City of Commerce desires to seek such sanctions, we will consult with The City of Commerce to determine alternative courses for The City of Commerce to follow.

4. Cooperation:

We will need the full cooperation of The City of Commerce and timely and full disclosure of facts and developments. We assume and must rely on the accuracy and completeness of the facts disclosed to us in providing our advice. In litigation matters, this is particularly important in order to satisfy discovery requests with respect to the causes of action alleged in the lawsuit. Failure to provide full disclosure and discovery may cause the court to impose sanctions; these may be severe and may include striking defenses or claims and imposing monetary fines.

5. Personnel:

Daniel Ray and Andrew Thomas will have the primary responsibility for representing The City of Commerce. Other lawyers in our firm (including younger lawyers) and legal assistants may be involved when we believe it would be beneficial to The City of Commerce.

6. Evaluations:

Any views we express about a likely result are only expressions of our estimation, for we do not make representations or guarantees to The City of Commerce as to the probability of ultimate success or any particular result.

7. Records:

The City of Commerce should retain all originals and copies of documents The City of Commerce desires for future reference. At the conclusion of a matter The City of Commerce should advise us of which, if any, documents The City of Commerce wishes we return. We retain most of our file for a certain period of time, but ultimately our file will be destroyed. We do not contact our clients prior to such destruction. If The City of Commerce wants any documents returned upon conclusion of this matter, The City of Commerce must request such at that time. In the absence of such a request, we disclaim responsibility for the return of any documents or their preservation for any particular length of time.

8. Disclosure to Third Parties:

From time to time we use services provided by third parties. These include litigation support, storage, document management, computer systems, information technology services, accounting and financial services, and similar services. We also may use contract lawyers and non-lawyers in certain matters. As a result, these parties may have access to confidential client information. We endeavor to deal only with providers who understand our obligation to maintain the confidences of our clients. Your signature below shall signify the consent of The City of Commerce to our use of such third parties and the resulting disclosure of potential confidential information.

9. Fee:

The City understands normal contingency fees Attorney Charges for this type of litigation are 33% to 40%. In consideration for the services rendered and to be rendered by Attorney, The City of Commerce also hereby transfers, assigns, and conveys to Attorney an undivided interest in and to The City of Commerce's causes of action in the amount of 33% of any and all sums of money and property recovered for the City of Commerce from any party. Because the recovery must be split 50%/50% with the state of Texas, this fee will be 16.67% of the total recovery.

In addition, Attorneys will seek attorneys fees from the opposing parties in order to defray

the amount of the fee paid from the City of Commerce's ½ of the total recovery. Any attorney's fees recovered will be applied to the contingency fee described above. Therefore, for example, if the Attorneys recover \$100,000 in fines and an additional \$10,000 in attorneys' fees, the City's portion of the recovery (\$50,000) is subject to the 1/3 contingency fee – or \$16,666.67. Because the \$10,000 in awarded attorneys' fees will be applied to that amount, the City will pay only \$6,666.67 to Attorney. If the attorneys' fees are greater than the 1/3 contingency fee, the Attorney shall receive the attorneys' fees but will not be paid any additional moneys from the City.

10. Additional Charges:

Our invoices will reflect charges for items such as court costs, long distance telephone charges and facsimile charges, document copying, printing and scanning expenses, messenger and special delivery services, computerized legal and other research systems, travel expenses as per IRS guidelines, filing and recording fees, and deposition reporting and transcript costs. These charges will be reimbursed by the City only upon successful money recovery, and will be paid per the terms in Section 12, below. In no event will the City be required to pay for expenses over their portion of the recovery in any suit.

11. Billing Practices and Payment:

We bill for matters on a monthly basis. Aggregate expenses in excess of \$250 will be billed monthly. No payment will be due to Attorneys until successful money recovery has been obtained.

12. Expenses:

All reasonable expenses incurred by Attorney in the handling of this project shall be deducted from the gross settlement proceeds at the time the case is settled or resolved, after the contingent fee in Section 9 (above) is calculated.

The expenses contemplated above, include but are not limited to any and all out of pocket expenses incurred in connection with this case, including but not limited to the following expenses: filing fees, court costs, certified copies of documents, pleadings, orders, etc., transcripts, depositions, duplication costs, postage, office supplies, photographs, trial exhibits, long distance phone & fax calls, appraisal fees, consultants, expert witnesses and other fees associated with preparation and trial testimony, investigation fees, delivery charges, overnight mail/parcel services, parking, toll road & mileage expenses, out of town expenses including travel expense, air fare, hotels, meals, and any other expense incurred in connection with the matter.

13. Experts and Expert Fee Estimates:

The City of Commerce understands experts may be necessary to proceed to trial. Attorneys may retain experts upon approval of the City Manager. Attorneys will pay their retainers and invoices as necessary, and be reimbursed for this cost as described in Section 12.

14. Media Inquiries:

From time to time, we may receive media inquiries concerning this matter. Applicable ethical requirements may preclude or limit our response to those inquiries. Subject to ethical limitations, we will abide by The City of Commerce's instructions concerning whether and in what manner we respond to media inquiries. In the absence of specific instructions, we will respond to such inquiries in accordance with our judgment, revealing non-confidential information when it is ethical to do so and appears to advance The City of Commerce's interests.

15. Electronic Mail:

In the course of our representation, we may have occasion to communicate with The City of Commerce and with others by electronic mail. Such communications will not be encrypted. Although interception of such communications by a third party would constitute a violation of federal law, we can offer no assurance that such interception will not occur. We will abide by any instructions The City of Commerce may give us concerning electronic mail communications; in the absence of such instructions, we will use our own judgment regarding the advisability of using such means of communication.

16. Texas Law to Apply

This Agreement shall be construed under and in accordance with the laws of Texas, and all obligations of the parties created hereunder are performable in Hunt County, Texas.

17. Parties Bound

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

18. Legal Construction

In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

19. Prior Agreements Superseded

This Agreement constitutes the sole and only Agreement of the parties and supersedes any prior understandings or written or oral agreement between the parties respecting the within subject matter.

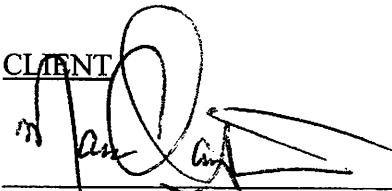
TAX DISCLOSURE AND ACKNOWLEDGMENT:

CLIENT IS ADVISED TO OBTAIN INDEPENDENT AND COMPETENT TAX ADVICE REGARDING THESE LEGAL MATTERS SINCE LEGAL TRANSACTIONS CAN GIVE RISE TO TAX CONSEQUENCES.

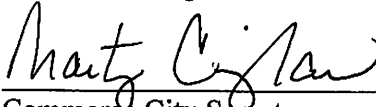
THE UNDERSIGNED LAW FIRM AND ATTORNEY HAVE NOT AGREED TO RENDER ANY TAX ADVICE AND ARE NOT RESPONSIBLE FOR ANY ADVICE REGARDING TAX MATTERS OR PREPARATION OF TAX RETURNS, OR OTHER FILINGS, INCLUDING, BUT NOT LIMITED TO, STATE AND FEDERAL INHERITANCE TAX AND INCOME TAX RETURNS.

THIS CONTRACT IS SIGNED in The City of Commerce, on March 15, 2011.

CLIENT



Mayor, City of Commerce
City Manager



Commerce City Secretary

ATTORNEY

Daniel W. Ray

Andrew D. Thomas