



# CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 09/07/10

**SUBJECT:** Engagement of Legal Services relating to Innoprise Software, Inc. and authorization to proceed with litigation

**DEPARTMENT:** City Attorney

**RECOMMENDED MOTION:**

Recommend approval of the attorney services of S. LaRue Williams, Esquire relating to litigation against Innoprise Software, Inc. and authorizing the commencement of the litigation on behalf of the City of Port Orange.

**SUMMARY:**

Staff recommends approval. Innoprise Software, Inc. has not provided the software services as required in its contract with the city. The city staff has repeatedly communicated with and met with Innoprise to facilitate Innoprise's completion of its services. Innoprise has failed to complete. The city must proceed with litigation immediately, if the city is to recover the value of the contractual services. The attorney will be engaged to file a complaint on behalf of the City against Innoprise Software, Inc. pursuing all available legal remedies.

**ATTACHMENTS:**  Ordinance  Resolution  Budget Resolution

Other  Support Documents/Contracts Available for Review in Manager's Office

FINANCE DEPARTMENT

CITY ATTORNEY

CITY MANAGER

Approved as to Budget Requirements

Approved as to Form and Legality

Approved Agenda Item For:

Date

Date 9/1/2010

9/1/2010

9/7/10

**COUNCIL ACTION:**

- Approved as Recommended
- Disapproved
- Tabled Indefinitely
- Continued to Date Certain
- Approved with Modification:

KVP

KINSEY VINCENT PYLE  
ATTORNEYS AT LAW

150 South Palmetto Avenue, Suite 300, Daytona Beach, Florida 32114  
Telephone (386) 252-1561 / Fax Telephone (386) 254-8157

RECEIVED

JUL 22 2010

CITY OF PORT ORANGE  
CITY ATTORNEY

July 20, 2010

Margaret Roberts, City Attorney  
City of Port Orange  
1000 City Center Circle  
Port orange, Florida 32129

Re: Dispute with Innoprise Software, Inc.

Dear Margaret:

This letter confirms your request that Kinsey, Vincent, Pyle, P.L. furnish legal services to the City of Port Orange with respect to the above-referenced matter and states the terms of our engagement.

The engagement will include services which in the firm's judgment we are capable of furnishing and which are reasonably required or desirable to meet your needs including any necessary trial proceedings. The engagement will also include any appellate proceedings which you may authorize.

The total fee for services rendered will be calculated in accordance with the firm's schedule of hourly rates in effect at the time of billing (reduced for the City of Port Orange on the attached schedule).

Costs and expenses (including, without limitation, court costs, court reporter fees, copies, facsimiles, postage, photos, travel, litigation support, subpoenas, and expert fees) will be billed in addition to the fee.

No initial deposit is due at this time. Additional deposits may be required in the future.<sup>1</sup> Deposits are not intended to constitute the total fee, but any unused portion of such deposits will be refunded to you.

Continued engagement is dependent upon prompt payment of bills rendered and any deposits required.

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<sup>1</sup>If invoices are not timely paid, we may require additional retainers. During litigation, when the trial is scheduled, we may, in our discretion, require that the account be current and a sum equal to the anticipated expense of preparation for and attendance at trial be deposited.

60 YEARS OF EXCELLENCE

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Roy E. Kinsey  
1917 - 1984

C. Aubrey Vincent, Jr.  
1919 - 1977

Frank L. Pyle  
1919 - 1988

489.52D1

Any outstanding balances not paid within thirty (30) days of rendition will bear interest from the date of the bill at twelve (12%) percent per annum. Any outstanding balance unpaid after sixty (60) days will constitute authorized grounds for termination of services and withdrawal from any litigation. Please review your bills carefully. They will explain what we did for you. To avoid any misunderstanding as to the necessity for any services we may render or costs and expenses incurred or the amount charged, you should contact us immediately and no later than fifteen (15) days after a bill is received to discuss any concerns or objections you may have. Should you have any concern or objection, we will not proceed further until you and we have addressed such concerns or objections to our mutual satisfaction. It is important that you and we discuss such concerns or objections and, unless we hear from you otherwise, we will assume you have no concern with, or objection to, our services or bills and we will continue to furnish our services based on that assumption. All parties agree that any dispute or claim regarding this firm's representation of you shall be subject to legal action only in Volusia County, Florida.

We reserve the right to terminate the engagement and withdraw from any litigation at any time allowed by the Rules Regulating the Florida Bar including when we deem the matter to be non-meritorious, or if you fail to take our advice or cooperate with us or provide needed information, or if representation of you would violate the Rules, including presentation of testimony inconsistent with statements you make to us.

A charging lien in an amount equal to your obligation to us for services rendered, costs and expenses incurred in this matter and in any other matters in which we have represented you in the past or in the future, is authorized on, and is to be paid out of, all real and personal property, monies (including your deposits in this matter) or other things of value which are recovered, obtained, preserved or protected. Notice of such lien may be recorded at any time during or after conclusion of the representation. Any monies received are to be deposited into our trust account and disbursed in accordance with this agreement.

Although we will attempt to accomplish your objectives, we cannot and do not make any guarantees or warranties as to an outcome or, unless stated otherwise in this letter, the total fee for services to be rendered. This letter encompasses all of the terms of our engagement which may only be modified in writing. The laws of the State of Florida will govern this engagement.

You may, under limited circumstances (generally only if a contract or statute so provides), be entitled to seek to have your attorneys' fees and costs taxed against other parties and, if so, you authorize us to make such a claim on your behalf. Such claim is assigned to us as security for the payment of your obligation to us for services rendered, costs and expenses incurred in this matter and in any other matters in which we have represented you in the past or in the future, subject to the condition that we accept the assignment by notifying you in writing. Such an award does not determine or limit your obligation to us for the services rendered, costs and expenses incurred in asserting such a claim. Any collections of attorneys' fees and costs taxed against other parties will be credited to your obligation to us and any excess will be refunded to you.

Margaret Roberts, City Attorney  
City of Port Orange  
July 20, 2010  
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We agree to represent you based on these arrangements. If you agree, please sign and return a copy of this letter to us.

Sincerely,

KINSEY, VINCENT, PYLE, P.L.

By:   
S. LaRue Williams

Accepted:

CITY OF PORT ORANGE

By: \_\_\_\_\_

Dated: \_\_\_\_\_

KINSEY, VINCENT, PYLE, P.L.  
SCHEDULE OF HOURLY RATES

EFFECTIVE DATE: 6/1/2010

Standard hourly rates for the individuals listed are as shown. Rates are subject to change at any time.

<u>Attorneys</u>	<u>Hourly Rate</u>	<u>Reduced Rate</u>
S. LaRue Williams	\$ 350.00	\$300.00
J. Doyle Tumbleson	\$ 300.00	
MaryEllen G. Koberg (Of Counsel)	\$ 300.00	\$250.00
Christy F. Harris (Of Counsel)	\$ 320.00	
Robert Altman (Of Counsel)	\$ 250.00	
Drew C. Williams	\$ 215.00	
Matthew S. Welch (Of Counsel)	\$ 225.00	
 <u>Legal Assistants</u>		
Barbara Ann LaRocca	\$ 155.00	
Cheryl Upchurch	\$ 130.00	
Pam Clifton	\$ 130.00	

## City of Port Orange vs. Innoprise Software, Inc.

### Kinsey, Vincent, Pyle's Estimated Attorneys' Fees and Costs\*

	LOW	HIGH
I. Pleadings	\$ 1,500	\$ 3,000
II. Motions and Hearings (Preparation/Attendance)	\$ 2,000	\$ 5,000
III. Document Production (Requests/Production/ Review/Organizing)	\$ 1,500	\$ 3,000
IV. Discovery Requests and Responses	\$ 2,000	\$ 5,000
V. Depositions of Experts (Preparation/Attendance)	\$ 2,000	\$ 5,000
VI. Depositions of Fact Witnesses (Preparation/Attendance)	\$ 6,000	\$ 10,000
VII. Mediation (Preparation/Attendance)	\$ 2,000	\$ 4,000
VIII. Pre-Trial Requirements		
A. Compliance with Pre-trial court orders	\$ 1,000	\$ 2,000
B. Conferences with Opposing Counsel	\$ 1,000	\$ 2,500
C. Pre-Trial Conference	\$ 1,000	\$ 1,500
IX. Preparation for Trial		
A. Witness Meetings	\$ 3,000	\$ 6,000
B. Document Review/Organization	\$ 2,000	\$ 5,000
C. Other Trial Preparation	\$ 6,000	\$ 10,000
X. Trial (estimated 3 days)	<u>\$ 6,000</u>	<u>\$ 9,000</u>
<b>TOTAL</b>	<b>\$ 37,000</b>	<b>\$ 71,000</b>
 <b>Estimated Costs</b>		
I. Filing/Service Fees	\$ 450	\$ 500
II. Court Reporter Fees	\$ 2,000	\$ 5,000
III. Expert Fees	\$ 5,000	\$ 10,000
IV. Mediator's Fees	\$ 2,000	\$ 5,000
V. Other Out-of-Pocket Costs (copies, subpoenas service, etc.)	<u>\$ 2,000</u>	<u>\$ 5,000</u>
<b>TOTAL</b>	<b>\$ 11,450</b>	<b>\$ 25,500</b>
<b>GRAND TOTAL</b>	<b>\$ 48,450</b>	<b>\$ 96,500</b>

\*This estimate is very preliminary and based on a brief review of the contracts. Correspondence, e-mails and other documents. The aggressiveness of Defendant's counsel may change this estimate substantially. There is an attorneys' fee provision for the prevailing party which would entitle the City to be reimbursed for most of its fees and recoverable costs if it prevails.