

1. Requested Motion:

Move to approve Letter of Engagement dated February 22, 2010 with Nabors, Giblin and Nickerson for provision of legal services as bond counsel related to Revenue Refunding Note, Series 2007.

Corporate Meeting Date:

March 15, 2010

Why the action is necessary:

This action follows Council approval of this engagement on March 1, 2010.

What the action accomplishes:

This action allows Nabors, Giblin, and Nickerson to provide services to the corporation as well as to the Town.

2. Agenda:

- Consent
- Administrative

3. Requirement/Purpose:

- Resolution
- Ordinance
- Other: Contract

4. Submitter of Information:

- Council
- Town Staff
- Town Attorney

5. Background:

On March 1, 2010, the Town Council approved the retention of the lawfirm of Nabors, Giblin and Nickerson to assist the Town with issues related to the Utility Revenue Note, Series 2004. The Town's water utility corporation, the Town of Fort Myers Beach Public Works Services Inc., is the primary obligor of this note and the Town is the guarantor from non- ad valorem funds. This action by the corporation will allow the firm to provide services to the Corporation as well as to the Town.

As further background for the corporate directors, attached to this agenda item is the blue sheet for the agenda item as presented to the Town Council on March 1, 2010.

Attached: Nabors, Giblin, Nickerson Draft Engagement Letter dated February 22, 2010
Blue Sheet # 2010-027 from the Agenda Packet of March 1, 2010 for Town Council

6. Alternative Action: Unknown. It is not recommended for the corporation to have different counsel than the Town Council in this matter.

7. Management Recommendations:

8. Recommended Approval:

| Town Manager | Town Attorney | Finance Director | Public Works Director | Community Development Director | Cultural Resources Director | Town Clerk |
|---|---------------|------------------|-----------------------|--------------------------------|-----------------------------|------------|
|  | AD/SM | | | | | |

9. Council Action: Approved Denied Deferred Other

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**Nabors
Giblin &
Nickerson** P.A.
ATTORNEYS AT LAW

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1500 Mahan Drive
Tallahassee, Florida 32308
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February 22, 2010

VIA ELECTRONIC MAIL

Terry Stewart, Town Manager
Town of Fort Myers Beach and
Town of Fort Myers Beach Public
Works Services, Inc.
2523 Estero Boulevard
Fort Myers Beach, Florida 33931

Re: Town of Fort Myers Beach Utility Loan Refinancing

Dear Mr. Stewart:

We are providing this letter to describe our proposed role and responsibilities as bond counsel in connection with the above-referenced refinancing for the Town of Fort Myers Beach (the "Town") and the Town of Fort Myers Beach Public Works Services, Inc. (the "Corporation"). Based on our preliminary review of the Town's existing loan structure, the Corporation's Revenue Refunding Note, Series 2007 (the "Note") and other related documents, and assuming a commitment to extend such loan from SunTrust Bank would utilize the same financing structure and documents, we contemplate our scope of work would involve the following:

1. review of the Town and Corporation enabling legislation and various resolutions/loan agreements relating to all outstanding obligations in relation to the issuance of the Note;
2. consultation with Town officials and staff concerning all legal questions relating to the proposed issuance of the Note to SunTrust Bank, as to compliance with applicable law and pending or proposed revisions of the law, including U.S. Treasury regulations;

3. advice as to structuring procedures, required approvals and filings, schedule of events for timely issuance, potential cost-saving techniques and other legal matters relative to issuance of the Note;

4. preparation of a debt resolution and/or supplemental loan document incorporating the terms set forth by SunTrust Bank as well as incorporating necessary provisions relating to any outstanding obligations of the Town and Corporation with a view to providing a flexible framework of covenants to facilitate future issuances of debt, in cooperation with the Town staff, the Town's financial advisor, if any, and the Town's general counsel;

5. preparation of any other agreement or amendment relating to outstanding obligations of the Town and Corporation necessary, related or incidental to the issuance of the Note;

6. analysis and resolution of tax problems associated with the Note, including any contact with the U.S. Treasury, if necessary;

7. attendance at the Town/Corporation meeting approving issuance of the Note and attendance at pre-closing and signing of the documents by Town/Corporation officials;

8. prepare, obtain, deliver and file all closing papers necessary in connection with the sale and issuance of the Note to SunTrust Bank;

9. provision of an opinion in written form at the time the Note is delivered, which opinion shall cover (a) the legality of the Note and the proceedings by which it is issued, (b) the exclusion from gross income for federal income tax purposes of interest paid on the Note, (c) the qualification, if applicable, of the Note for special treatment under the Internal Revenue Code of 1986, as amended (e.g. bank qualified, etc.), and (d) such other issues that are customarily required of bond counsel; and

10. preparation and review the transcript of all proceedings in connection with the issuance of the Note and indicate any necessary corrective action.

Based on our understanding of the scope and necessary quick timing of this financing, we would propose a fee of \$9,500, plus actual out-pocket expenses. Payment of the fee would be contingent upon successful issuance of the Note. In addition to such fee, our firm would be reimbursed for travel or hotel charges in accordance with Chapter 112, Florida

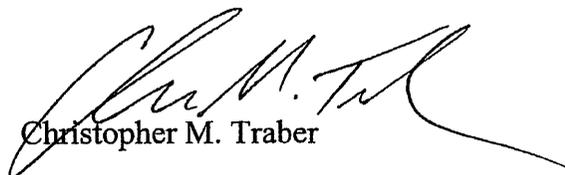
Terry Stewart, Town Manager
February 22, 2010
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Statutes, and complete expense account forms and attach evidence of out-of-pocket expenses, including telephone expenses, stenographic recording and transcription services, copying, recording, filing and certification fees, postage, courier service, overnight mail and facsimile transmission. Our firm would be reimbursed at \$.20 per copy for photocopies. Payment for the expenses listed above shall not be contingent upon whether the Note is issued.

Please note that the above-quoted fee is based on our understanding of the loan structure described above. However, such fee may vary: (i) if material changes in the loan structure or complexity occur, or (ii) if unusual or unforeseen circumstances arise which require a significant increase in our time or responsibility, including but not limited to, a loan structure change from its existing format, a new holder of the Note is contemplated, or the Town/Corporation extends the Note for a period longer than 36 months and therefore requires us to seek validation under Chapter 75, Florida Statutes. If, at any time, we believe the circumstances require an adjustment of our original fee estimate, we will consult with you and will not charge the increased fee unless agreed upon by both parties.

We look forward to working with the Town and Corporation again. If this engagement letter is acceptable to you, please have it approved in accordance with Town and Corporation procedures. If you or any other officials have any questions, please feel free to contact me at any time.

Very Truly Yours,



Christopher M. Traber

cc: Anne Dalton, Corporate Attorney

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: 2010-027

1. Requested Motion:

Move to approve Letter of Engagement dated February 22, 2010 with Nabors, Giblin and Nickerson for provision of legal services as bond counsel for refinancing of Revenue Refunding Note, Series 2007.

Meeting Date:

March 1, 2010

Why the action is necessary:

This action follows Council direction to move forward with refinancing of the water utility debt.

What the action accomplishes:

This action enables the Town Attorney and Town staff to begin the process of refinancing the debt associated with the original acquisition of the Town water utility system by the Town of Fort Myers Beach Public Works Services, Inc.

2. Agenda:

- Consent
- Administrative

3. Requirement/Purpose:

- Resolution
- Ordinance
- Other: Contract

4. Submitter of Information:

- Council
- Town Staff
- Town Attorney

5. Background:

On August 6, 2007, the Town of Fort Myers Beach Public Works Services, Inc. issued a Revenue Refunding Note, Series 2007 to SunTrust Bank in the amount of \$3,060,000, as approved by corporate Resolution 07-05U. This Note comes due on August 6, 2010 and must be either paid in full or refinanced at that time. The purpose of the Series 2007 Note was to redeem the Utility Revenue Note, Series 2004. The original Note in this series was utilized by the Corporation to finance the acquisition of the water utility system.

The Town of Fort Myers Beach guaranteed the Revenue Refunding Note, Series 2007 via Town Resolution 07-27, approved on August 6, 2007. In that guarantee, the Town pledged non-ad valorem revenues to pay this note in the event that the revenues pledged by the Corporation were insufficient to make the required payments on the Note when due. Due to the complexity of the current financial markets and note compliance issues with the Corporation, it is recommended that the Town utilize specialized financing counsel for this matter. The Town has utilized Nabors, Giblin and Nickerson in the past for issues related to the water utility as well as special assessments (Laguna Shores) and Council, Town Management and the Town Attorney have all expressed satisfaction with the quality and professionalism of its representation. The engagement letter specifies a fixed fee of \$9,500 plus actual out-of-pocket costs for all services; payment is contingent on successful financing. If the loan does not close, the firm would be reimbursed for expenses only. This is a standard custom in this field.

If approved by the Town Council, this matter will be submitted to the Town of Fort Myers Beach Public Works Services, Inc. for review and approval at its annual meeting. In compliance with corporate by-laws, the corporate annual meeting will be held subsequent to the Town election in March, 2010, i.e., on either March 15, 2010 or April 5, 2010. However, it is recommended that the Town Council not delay approval until after the corporate annual meeting, to enable counsel to begin working immediately on these issues.

Attached: Nabors, Giblin, Nickerson Draft Engagement Letter dated February 22, 2010

6. Alternative Action: Council would provide alternate direction.

7. Management Recommendations:

8. Recommended Approval:

| Town Manager | Town Attorney | Finance Director | Public Works Director | Community Development Director | Cultural Resources Director | Town Clerk |
|---|---------------|------------------|-----------------------|--------------------------------|-----------------------------|------------|
|  | AD/SM | | | | | |

9. Council Action: Approved Denied Deferred Other