

1. **Requested Motion:** Motion to approve Agreement for Legal Services with Fowler White Boggs.

Meeting Date: 12/5/13

Why the action is necessary: Pursuant to the Town Charter, Agreements for Town Attorney services must be approved by Town Council

What the action accomplishes: Approves the Agreement.

2. **Agenda:**

Consent
 Administrative

3. **Requirement/Purpose:**

Resolution
 Ordinance
 Other

4. **Submitter of Information:**

Council
 Town Staff
 Town Attorney

5. **Background:** The proposed Agreement for Legal Services provides for an increase in the retainer and provides that attorney time spent on "special projects" (i.e. projects such as Estero Boulevard; total ordinance rewrites, and drafting of complex contracts) will be outside the monthly retainer and will be billed at a reduced "blended rate."

6. **Alternative Action:** Decline to approve the Agreement.

7. **Management Recommendations:** Approve the Agreement

8. **Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

9. **Council Action:**

Approved Denied Deferred Other

PROFESSIONAL SERVICE AGREEMENT
LEGAL SERVICES

Fowler White Boggs, P.A. (the "Firm") agrees to provide professional legal services to the Town of Fort Myers Beach, Florida, as provided in Article VIII of the Town Charter.

The professional fees payable to the firm shall be in accordance with the Schedule of Fees, which is attached hereto and marked Exhibit "A" and is made a part of this agreement.

The monthly retainer (flat fee amount) will include the following:

- Attending Town Council meetings on the first and third Monday of each month. Attendance at Work Sessions as needed
- Revising Town ordinances per Town Council direction
- Draft & revise Town Resolutions per Town Council direction
- Advise Town Council on legal issues
- Research and provide legal opinions to Town Council upon request
- Advise Town staff on legal issues when requested by Town Manager
- Prepare and/or revise Town agreements with vendors and other third parties
- Review Town documents for legal sufficiency
- Coordinate with Town Manager regarding legal components of Town business and attendance at staff meetings to address legal issues when specifically requested by Town Manager
- Advise Town Clerk and Town Council pertaining to public records requests & sunshine matters
- When requested by Town Council, assist Town advisory committees with sunshine issues and other legal matters
- Assist in negotiating contracts and agreements for approval by the Town Council
- Prepare and/or revise Interlocal Agreements with County and other jurisdictions upon request and Assist the Town Council in negotiating with County and other jurisdictions

In addition to the retainer, the Firm shall be reimbursed its cost and expenses incurred in representing the Town. The Town will not be charged for travel to and from regular meetings and/or workshops of the Town Council unless it relates to representation outside the monthly retainer.

It is the intent of the parties for this agreement to continue in full force and effect until December 31, 2014; however, the Firm acknowledges that Section 8.01 of the Town of Fort Myers Beach Charter authorizes the Town Council to remove the Firm as the Town

Attorney for any reason by motion requiring three affirmative votes. The Firm may terminate the agreement by giving the Town Council at least 60 days advanced written notice; however, as to matters and or cases being handled on an hourly basis, the Firm agrees to continue such representation until the matter is completed or the Town Council retains substitute counsel.

For non-retainer services, the Firm will serve as the Town Counsel and represent the Town in all civil suits, actions, legal proceedings, administrative and real estate matters and shall serve as Issuer Counsel in all bond proceedings all of which will be invoiced separately. Firm will also provide services for major projects outside the monthly retainer. The Firm agrees not to represent any party directly adverse to the Town. The Town Council acknowledges that the Firm has a regional and state wide legal practice and as such may have clients who desire to do business in the Town. Should such representation occur, the Firm agrees to request and obtain a waiver of conflict from the Town before initiating the legal representation consistent with the Florida Bar Rules of Professional Conduct. In addition, in the unlikely event of a conflict with representation of the Town on a specific matter, the Firm will promptly notify the Town thereof and proceed in accordance with the requirements of the Florida Bar Rules of Professional Conduct.

FOWLER WHITE BOGGS

By: _____

Accepted and approved by the Town Council of Fort Myers Beach on this 16th day of December, 2013.

Alan Mandel, Mayor

Michelle Mayher, Town Clerk

EXHIBIT "A"

Schedule of Fees

Commencing January 1, 2014, the monthly Retainer will be \$12,500 through December 31, 2014. This retainer covers Town Attorney services for the Town of Fort Myers Beach responding to general questions, attending Council and Local Planning Agency Meetings; preparing amendments to existing Ordinances; preparing Resolutions, Policies, and correspondence; providing advice to staff on an as needed basis. For services not covered by the retainer such as major projects (determination of what constitutes a "special project" will be made jointly between Fowler White Boggs and the Town Manager), administrative hearings and/or appeals, litigation, employment matters, real estate and bond transactions, and IRS or state tax matters, we will bill at reduced hourly rates as follows:

Area of Law	Rate
Administrative Law & Hearings	\$270.00 for Partners and \$225.00 for Associates
Litigation	\$270.00 for Partners and \$225.00 for Associates
Labor Employment Law	\$270.00 for Partners and \$225.00 for Associates
Tax	\$270.00 for Partners and \$225.00 for Associates
Special Projects	\$225.00 blended rate for all Attorneys

The Firm shall invoice the Town on a monthly basis for the retainer, and by separate invoices for additional fees and costs.

PROFESSIONAL SERVICE AGREEMENT

LEGAL SERVICES

Fowler White Boggs, P.A. (the "Firm") agrees to provide professional legal services to the Town of Fort Myers Beach, Florida, as provided in Article VIII of the Town Charter.

The professional fees payable to the firm shall be in accordance with the Firm's proposal submitted on May 14, 2010. A copy of Section II, Fees, is attached hereto and marked Exhibit "A" and is made a part of this agreement. The parties agree to review the retainer amount within six (6) months from the date of this agreement to determine whether it adequately addresses compensation in relation to the hours expended in performing the duties assigned by the Town Council.

The \$8,200.00 monthly retainer (flat fee amount) will include the following:

- Attending Town Council meetings on the first and third Monday of each month. Would anticipate one or two Council workshops each month.
- Preparing & revising Town ordinances per Town Council direction
- Draft & revise Town Resolutions per Town Council direction
- Advise Town Council on legal issues
- Research and provide legal opinions to Town Council upon request
- Advise Town staff on legal issues when requested by Town Manager
- Prepare and/or revise Town agreements with vendors and other third parties
- Review Town documents for legal sufficiency
- Coordinate with Town Manager regarding legal components of Town business and attendance at staff meetings to address legal issues when specifically requested by Town Manager
- Advise Town Clerk and Town Council pertaining to public records requests & sunshine matters
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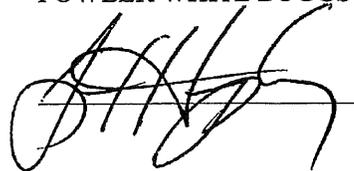
In addition to the retainer, the Firm shall be reimbursed its cost and expenses incurred in representing the Town. The Town will not be charged for travel to and from regular meetings and/or workshops of the Town Council unless it relates to representation outside the monthly retainer.

It is the intent of the parties for this agreement to continue in full force and effect until September 30, 2011; however, the Firm acknowledges that Section 8.01 of the Town of Fort Myers Beach Charter authorizes the Town Council to remove the Firm as the Town Attorney for any reason by motion requiring three affirmative votes. The Firm may terminate the agreement by giving the Town Council at least 60 days advanced written notice; however, as to matters and or cases being handled on an hourly basis, the Firm agrees to continue such representation until the matter is completed or the Town Council retains substitute counsel.

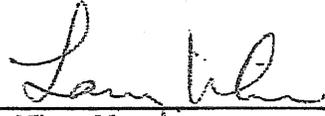
For non-retainer services, the Firm will serve as the Town Counsel and represent the Town in all civil suits, actions, legal proceedings, administrative and real estate matters and shall serve as Issuer Counsel in all bond proceedings all of which will be invoiced separately. The Firm agrees not to represent any party directly adverse to the Town. The Town Council acknowledges that the Firm has a regional and state wide legal practice and as such may have clients who desire to do business in the Town. Should such representation occur, the Firm agrees to request and obtain a waiver of conflict from the Town before initiating the legal representation consistent with the Florida Bar Rules of Professional Conduct. In addition, in the unlikely event of a conflict with representation of the Town on a specific matter, the Firm will promptly notify the Town thereof and proceed in accordance with the requirements of the Florida Bar Rules of Professional Conduct.

To insure a smooth transition of Counsel for the Town and in the best interest of the Town, it is be important for the Firm to be able to consult with Anne Dalton, Esquire. Therefore, Town Council authorizes and agrees to compensate Anne Dalton at her hourly rate when responding to the Firm's request and when representing the Town on a specific matter. Town Council will be kept informed as to the matters where the Firm needs to consult with her.

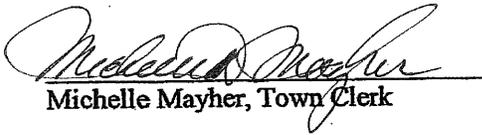
FOWLER WHITE BOGGS



Accepted and approved by the Town Council of Fort Myers Beach on this 9th day of June 2010.



Larry Kiker, Mayor



Michelle Mayher, Town Clerk

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EXHIBIT "A"

II. Fees

Our goal is to continuously evaluate our relationships with our clients to improve service, advising of changes in the law which affect municipalities. Budgets are a key component of our partnering strategy. Cost containment initiatives require frequent and consistent communication to minimize unpleasant legal and financial surprises. Understanding the client objective for each matter is an important part of our commitment to align our interest with our client.

Our firm proposes a **Retainer of \$8,200 per month through December 31, 2010**. This retainer would cover Mr. Humphrey's and/or his designee's time as the principal attorney for the Town of Fort Myers Beach responding to general questions, attending Council and Planning Board Meetings, preparing Ordinances, Resolutions, Policies, and correspondence. For representations not covered by the retainer such as administrative hearings and/or appeals, litigation, employment matters, real estate and bond transactions, and IRS or state tax matters, we will bill at reduced hourly rates as follows:

Area of Law	Rate
Administrative Law & Hearings	\$290.00 for Partners and \$225.00 for Associates
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Labor Employment Law	\$290.00 for Partners and \$225.00 for Associates
Tax	\$290.00 for Partners and \$225.00 for Associates

The Firm shall invoice the Town on a monthly basis for the retainer, additional fees and costs.