

Town of Fort Myers Beach  
Public Works Services, Inc.  
Agenda Item Summary

Blue Sheet Number: **2012-085**

**1. Requested Motion:** Motion to approve the retainer increase to \$10,000/month for Fowler White Boggs

**Meeting Date:** 10/1/12

**Why the action is necessary:** Town Council approved the original retainer agreement and since this is a change to that agreement it needs to be approved by Town Council

**What the action accomplishes:** Increases the retainer for Fowler White Boggs to \$10,000/month.

**2. Agenda:**

**3. Requirement/Purpose:**

**4. Submitter of Information:**

Consent  
 Administrative

Resolution  
 Ordinance  
 Other



Council  
 Town Staff  
 Town Attorney

**5. Background:** The firm Fowler White Boggs was retained by the Town on June 9, 2010 pursuant to an agreement that provides for a flat monthly retainer. An increase in the monthly retainer is warranted because of the number of attorney hours being spent on Town business. The increased retainer does not include any legislative/lobbying services. The firm can provide those services for a separately negotiated fee.

**6. Alternative Action:** Decline to approve the increased retainer amount.

**7. Management Recommendations:**

**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 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
- 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 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

A handwritten signature in black ink, appearing to be 'D. H. B.', written over a horizontal line. The signature is stylized and somewhat illegible.

Accepted and approved by the Town Council of Fort Myers Beach on this 9<sup>th</sup> 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:

<b>Area of Law</b>	<b>Rate</b>
<b>Administrative Law &amp; Hearings</b>	<b>\$290.00 for Partners and \$225.00 for Associates</b>
<b>Litigation</b>	<b>\$290.00 for Partners and \$225.00 for Associates</b>
<b>Labor Employment Law</b>	<b>\$290.00 for Partners and \$225.00 for Associates</b>
<b>Tax</b>	<b>\$290.00 for Partners and \$225.00 for Associates</b>

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