M E M O R A N D U M

Date: August 14, 2013

TO: Mayor Brown and Town Commissioners

FROM: Maggie D. Mooney-Portale, Town Attorney

Dave Bullock, Town Manager

SUBJECT: Consideration of Engagement of Deborah Getzoff of Lewis, Longman & Walker as Special Counsel for Environmental Adversarial Proceedings

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On July 5, 2013, Joe McClash ("McClash") filed a Petition for administrative proceeding (hearing) (the "Petition") challenging the Florida Department of Environmental Protection's ("Department") intent to issue a Joint Coastal Permit (File No. 0300119-004-JC) to the Town to construct several terminal groins at the north end of the island. When administrative challenges like this are filed they are typically reviewed for legal sufficiency by the Department within 15 days of receipt of the filing, and then if deemed legally sufficient by the agency forwarded to DOAH ("Division of Administrative Hearings") for an expedited hearing.

In response to the filing of the initial Petition, the Town Manager and I contacted Deboarah Getzoff with the law firm of Lewis Longman & Walker. Ms. Getzoff specializes in the type of coastal permitting challenge at issue and has a background representing private and public entities in administrative challenges. A copy of Ms. Getzoff's credentials and background has been previously provided via email.

Due to the expedited nature of administrative challenges, on July 22, 2013, the Town Manager and I executed an engagement letter on behalf of the Town with Ms. Getzoff to engage her services as special environmental legal counsel in responding to McClash's Petition. A copy of the executed engagement letter is attached for your consideration.

Following execution of the engagement letter, on July 23, 2013, Gene Jaleski ("Jaleski") also filed a Petition for administrative proceeding with the Department raising substantially similar allegations as those raised in McClash's Petition. Given this additional administrative challenge, Ms. Getzoff was also requested to provide counsel and advise responding to Jaleski's Petition.

The engagement of Ms Getzoff as special counsel to the Town is subject to the consent and approval of the Town Commission. Accordingly, it is our recommendation that the Town Commission ratify and approve the engagement of Ms. Getzoff pursuant to the terms outlined in the enclosed engagement letter to provide special counsel legal services to the Town in both administrative challenges associated with the Town's Joint Coastal Permit (File No. 0300119-004-JC).

LEWIS
LONGMAN &
WALKER | P.A.
ATTORNEYS AT LAW

Reply To: Bradenton

July 18, 2013

CONFIDENTIAL
ATTORNEY/CLIENT
PRIVILEGED

Via Electronic Mail

Town of Longboat Key
Dave Bullock, Town Manager
501 Bay Isles Road
Longboat Key, FL 34228
c/o Maggie D. Mooney-Portale, Esq., Town Attorney
1820 Ringling Boulevard
Sarasota, FL 34236

RE: Special Counsel Representation of Town of Longboat Key – Third Party Administrative Challenge by Joseph McClash

Dear Ms. Mooney-Portale and Mr. Bullock:

On behalf of the law firm of Lewis, Longman & Walker, P.A., I thank you sincerely for the opportunity to work with the Town of Longboat Key on the above referenced matter. The following represents the terms and conditions of representation by the Firm on this matter:

1. Services. Lewis, Longman & Walker, P.A. will provide advice and representation to you and the Town of Longboat Key concerning defending the issuance of a Department of Environmental Protection permit to the Town of Longboat Key for the construction of a shore protection project on the north side of the island. I will be the attorney in charge of this matter and will be primarily responsible for providing and supervising the legal services required. I will be responsible for ensuring that this matter is staffed in a manner adequate and appropriate to the requirements of the representation. We will use our best judgment to determine the amount of time, who is to perform specific tasks and work, and the nature of the services to be performed in your best interests.

2. Professional Fees. I will be the primary attorney working on your matter and my government rate is $275.00. In addition to me, I may assign work to other attorneys or paralegals within the office, depending upon who can best do the work in the most efficient manner. The hourly rate for attorneys ranges from $195.00 to $275.00 per hour. The hourly rate

for paralegals/law clerks ranges from $100.00 to $135.00 per hour. These rates will be in effect through December 2013 and will be modified annually thereafter in January of each subsequent year. We will provide you with our new rates along with the Firm's statement of services rendered in January of each year.

3. Costs and Expenses. The firm may charge costs and expenses for actual costs incurred during the course of the firm's representation for items such as extensive copying costs, delivery costs, overnight mailing, court reporters' fees, transcripts ordered, copies of transcripts, or filings associated with the representation. All out-of-town travel (defined as travel outside of Sarasota and Manatee Counties) shall be reimbursed in compliance with Florida Statutes 112.061. The firm may advance costs and seek reimbursement in our billings or may at the firm's discretion require the Town of Longboat Key to deposit these costs with us before the costs are incurred.

4. Retainer. We will not require a retainer for services for this matter.

5. Billing and Payment. We will bill the Town of Longboat Key on a monthly basis for professional services rendered and expenses incurred in connection with this matter, less any retainer amounts applied against these services and expenses. A billing invoice shall be directed to Dave Bullock, Town Manager at 501 Bay Isles Road, Longboat Key, FL 34228, and a copy of such invoice shall also be forwarded to Maggie D. Mooney-Portale via email at mmooney-portale@sarasotalawfirm.com. The Town of Longboat Key agrees to pay the amount of each statement in full within thirty (30) days of the billing date. Should the Town of Longboat Key question or dispute any items or any statements, the Town of Longboat Key will agree to notify the firm in writing of any such question or dispute within fifteen (15) days of the billing date. Any amounts remaining unpaid for more than thirty (30) days from the date of billing shall bear interest at the rate of twelve (12%) percent per annum, compounded daily, until paid.

6. Default. In the event any suit or action is brought to enforce the provisions of this Agreement in any administrative or judicial proceeding, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs incurred in such proceedings, including appeals.

7. Client Documents. During the course of your matter, you may be required to provide to us documents such as tax records, expense records, bank records, deeds, etc. We will hold these records, in our office, during the pendency of your action and for five months thereafter. At the conclusion of your matter, we will contact you and make arrangements for the return of the records you provided. It is your responsibility to secure the return of your records. We will retain the balance of your file for an appropriate time period. If arrangements are not made for the return of your records within six (6) years following the conclusion of your matter, they will be destroyed according to the guidelines set out in our Records Retention Policy.

8. Conflict of Interest. During the term of this engagement, Deborah Getzoff and the members of the firm shall observe the requirements regarding conflicts of interest as set forth in Rule 4-1 of the Florida Bar's Rules of Professional Conduct. Unless agreed to in writing by the Town Commission, during this engagement neither Ms. Getzoff nor the firm shall undertake representation of any other clients directly adverse to the Town of Longboat Key.

9. Public records. Pursuant to applicable Florida law, the firm's records associated with this engagement may be subject to Florida's public records laws, Florida Statutes 119.01, et seq., as amended from time to time. The firm shall comply with all public records obligations set for in such laws, including those obligations to keep, maintain, provide access to, and maintain any applicable exemptions to public records, and transfer all such public records to the Town of Longboat Key at the conclusion of this engagement, as provided for in Florida Statutes 119.0701 (2013). Notwithstanding the foregoing, the firm shall maintain and preserve all applicable exemptions and privileges associated with representation of the Town of Longboat Key in adversarial administrative litigation, until such a time that such exemption(s) and privilege(s) are no longer applicable.

10. Authority to Bind. The retention of the firm to serve as the Town of Longboat Key's special counsel in the above referenced third party administrative challenge shall be subject to the consent and approval of the Town Commission at a publicly noticed meeting. The parties anticipate that the firm's retention shall be considered by the Town Commission at the Special Meeting noticed for August 14, 2013.

We sincerely thank you for choosing our firm to assist you in this most important matter. All parties to this Engagement Letter consent and agree that the engagement is subject to the advise and consent of the Commission of the Town of Longboat Key at its upcoming public town meeting. If you agree with the foregoing terms and conditions, please sign in the space provided at the bottom of the letter, return the original to me in the enclosed self-addressed, stamped envelope and retain a copy for your records. On behalf of the Firm, I look forward to assisting you in this matter.

Sincerely,

LEWIS, LONGMAN & WALKER, P.A.

Deborah A. Getzoff

DAG/cej

ACCEPTED BY:

Dave Bullock

Dave Bullock, Town Manager

Town of Longboat Key

Maggie D. Mooney-Portale

Maggie D. Mooney-Portale, Esq.

Town Attorney

As Its: Town Attorney

7/22/2013

Date:

Attest:

Jo Ann Mixon, Deputy Town Clerk