

Regular Workshop – October 19, 2015
Agenda Item 8
Consent Item

- Agenda Item: Review and Approval of Engagement of Special Counsel Pursuant to Town Charter Requirements
- Presenter: Town Attorney and Town Manager
- Summary: Charter requirements (Article VI, Section 2) provide for Town Commission approval for engagement of Assistant Town Attorneys. The Town Attorney is seeking authorization for (1) engagement of Charlie Bailey for Code Enforcement Board training, and (2) engagement of Bryant Miller & Olive to defend against a certain Elections law complaint. This item is placed on the October 19, 2015 Regular Workshop Meeting Consent Agenda for Commission consideration.
- Attachments: 10-9-15 Memo, Town Attorney to Commission;
10-2-15, Engagement Agreement – Bryant Miller Olive;
8-14-15, Engagement Agreement – Charles Bailey, Williams Parker Harrison Dietz & Getzen
- Recommended Action: Approval of the Consent Agenda will forward this item to the November 2, 2015 Regular Meeting Consent Agenda for formal action.

MEMORANDUM

Date: October 9, 2015

TO: MAYOR DUNCAN AND TOWN COMMISSIONERS

CC: Dave Bullock, Town Manager

FROM: Maggie D. Mooney-Portale, Town Attorney

SUBJECT: Request for Consent to Appointment of Special Counsel for Designated Representation

Article VI (Sec. 2) of the Town Charter provides that the Town Attorney may appoint qualified attorneys to represent the interest of the Town with the “advice and consent” of the Town Commission.

This item is placed on the October 19, 2015 Workshop Meeting Agenda to request that the Town Commission move consideration of the engagement of special counsel to the November 2, 2015 Regular Meeting Consent Agenda for approval. Specifically, the Town Manager and Town Attorney are seeking approval and consent to special counsel for the following matters:

1. On September 28, 2015, the Town received a copy of a Complaint filed with the Florida Elections Commission that named the Town Commission a respondent to certain alleged violations of state election laws. The Florida Elections Commission has assigned the matter Case No. FEC 15-420. A Response to said Complaint was due from the Town within 14 days of receipt, on or before October 12, 2015. Due to the need to prepare a timely response to the Complaint, the Town Attorney and Town Manager engaged the law firm Bryant Miller & Olive as special litigation counsel to defend the Town’s interests in that particular administrative litigation. A redacted copy of the special counsel engagement agreement relating to said litigation is attached. Due to statutory confidentiality requirements contained within Section 106.25(7), Florida Statutes, documents relating to Election Law Complaints are not subject to public record disclosure until such time as the Commission on Elections makes a probable cause determination. The Town Attorney and Town Manager request Town Commission ratify, approve and consent to the engagement of Bryant Miller & Olive as special litigation counsel to defend in the Town’s interests in the above described litigation.

2. The Town Attorney and Town Manager are requesting the engagement of attorney Charles Bailey with the law firm of Williams Parker Harrison Dietz & Getzen to attend one (1) Town Code Enforcement Board meeting for the limited purpose of conducting a workshop/training session with the Code Enforcement Board. A copy of the special counsel engagement agreement relating to the limited engagement is also attached. Subject to the Town Commission's approval, it is anticipated that such training will occur at the December 14, 2015 Code Enforcement Board meeting. Accordingly, the Town Attorney and Town Manager request Town Commission ratify, approve and consent to the engagement of Charles Bailey of Williams Parker Harrison Dietz & Getzen to provide special counsel services to the Town's Code Enforcement Board for the sole purpose of conducting a training session with the board.

Please don't hesitate to contact me if you have any questions about this agenda item or either engagement agreement.

Bryant Miller Olive

Attorneys at Law
101 North Monroe Street
Suite 900
Tallahassee, FL 32301
Tel 850.222.8611
Fax 850.222.8969
www.bmolaw.com

October 2, 2015

Maggie D. Mooney-Portale, Town Attorney
Town of Longboat Key
c/o Persson & Cohen, P.A.
6853 Energy Court
Lakewood Ranch, FL 34240-8523

Re: Special Counsel Services Related to Representing the Town of Longboat Key in
the matter involving [REDACTED] v. Town Commission – Case No. FEC 15-420

Dear Ms. Mooney-Portale:

Thank you for considering Bryant Miller Olive (the "Firm") for purposes of providing special counsel services related to the above-referenced case pending before the Florida Elections Commission ("FEC"), wherein the complaining party has alleged violation of Florida election laws by the Town Commission of Longboat Key (the "Town") [REDACTED]. The Firm will be pleased to represent the Town Commission in this matter in accordance with the special counsel services provision of the Bond Counsel Retainer Agreement between the Town and the Firm dated August 1, 2012.

Our scope of services in the matter will include the following:

1. Reviewing the petition and complaint filed by the complainant.
2. Filing notices of appearance necessitated by FEC procedural rules.
3. Drafting and timely filing all necessary pleadings, including a response to the complaint.
4. Researching related issues.
5. Advising the town with respect to legal strategy, defenses, confidentiality and available courses of action.

6. Attending phone-conference and/or in-person meetings with Town staff and the Town Commission.
7. Appearing before the FEC for probable cause or other hearings.
8. Preparing and/or assembling evidentiary documents associated with defending the Town Commission.
9. Drafting proposed order(s) related to resolution of the case.

The Firm will provide legal services in this instance at our customary shareholder rate of \$295 per hour. In addition to hourly rates, the Firm will invoice for reimbursement for actual costs incurred, such as computer printing or photocopies, long distance telephone charges, travel expenses, and overnight delivery charges. Any travel expenses will be reimbursed in accordance with Section 112.061, Florida Statutes. We will bill periodically, but not less often than monthly, by detailed invoice reflecting hours and expenses with all appropriate back-up materials typically required by governmental entities.

Bryant Miller & Olive shall comply with requirements of the Florida Public Records Act, Chapter 119, Florida Statutes, including those applicable obligations to keep, maintain, provide access to, and maintain any applicable exemptions to public records, and transfer all such public records to the Town at the conclusion of this agreement as provided for in Florida Statutes 119.0701.

The Town may cancel or terminate this engagement upon written notice to the Firm. In the event of termination of this engagement, the Firm will immediately cease work and shall be reimbursed for eligible and documented time and reimbursable expenses incurred prior to the notice to stop work.

Maggie Mooney-Portale
Town of Longboat Key
October 2, 2015
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If the terms and conditions described in this letter are acceptable, please direct us to proceed by returning a signed copy for our files. We look forward to working with you and appreciate this opportunity to serve the Town of Longboat Key.

Sincerely,



Alan S. Zimmet

Direction to proceed this _____ day of _____, 2015:

By: _____
Dave Bullock, Town Manager

Reviewed as to Form and Correctness:

By: _____
Maggie Mooney-Portale, Town Attorney

WILLIAMS PARKER

ATTORNEYS AT LAW
EST. 1925

Charles D. Bailey, III
cbarley@williamsparke.com
E: (941) 552-5551
E: (941) 954-3172

August 13, 2015

VIA E-MAIL: mmooney@swflgovlaw.com
Town of Longboat Key
c/o Maggie Mooney-Portale, Esquire
Town Attorney
Persson & Cohen, P.A.
6853 Energy Court
Lakewood Ranch, FL 34240

Re: Engagement Agreement

Dear Ms. Mooney:

Thank you for asking us to assist the Town of Longboat Key with certain limited legal matters in connection with its Code Enforcement Board. We appreciate this opportunity and look forward to working with you.

Because the practice of law and the professional standards governing it have become increasingly complex, we, like many other firms, now follow the practice of entering into engagement letters with our clients. This letter (this "Agreement") describes the scope of our services, discusses the limits of our representation, and establishes the basis for our fees. This Agreement, once fully executed, will serve as the engagement of Williams Parker Harrison Dietz & Getzen (sometimes referred to in this Agreement as the "Firm") to provide legal counsel to you.

Identity of Client. We are representing only the Town of Longboat Key (referred to in this Agreement as the "you"), and not anyone else involved in this matter unless expressly stated otherwise. Thus, except as otherwise agreed, we will not act on behalf of any other entity owned by, or affiliated with, you or on behalf of any employee, officer, director, shareholder, manager, member, partner, or representative of you, and we will not represent any employee benefit plans or the fiduciaries to those plans. While we may provide legal advice generally to you that is useful to employees, officers, directors, shareholders, managers, members, partners, a plan or fiduciaries, our legal advice and legal representation is limited to you.

Scope of Representation. You are engaging us to provide the following legal services (the "Retained Services"):

Review the pertinent provisions of the Code of Ordinances of the Town of Longboat Key, Florida, and other related Town documents pertaining to the Town's Code Enforcement Board (the "Board"); review the Board's practices and procedures; and meet with the Board in a "workshop" session to discuss the duties and authorities of the Board, the standards and requirements to be applied when carrying out such duties and authorities, and discussing other considerations applicable to local government boards in Florida.

This Agreement covers only the Retained Services and excludes any other services, including services for which you may subsequently elect to engage the Firm. If, in our judgment, proper advice to you requires the engagement of special counsel in an area outside our expertise or jurisdiction, we will advise you and seek your approval to engage the special counsel.

Any material changes in the scope of our representation will be confirmed in writing. We understand that Town Attorney Mooney-Portale will be the primary contact for you with whom we will communicate regarding the Retained Services. If your contact information or desired contact changes, please notify us.

Fees. The fee for the Retained Services will be assessed on an hourly basis at a reduced rate of \$295. I will be the attorney primarily responsible for this matter.

Expenses. The Firm's reasonable out-of-pocket expenses which relate to the Retained Services, such as copying charges, recording and filing fees, courier and express delivery service fees, research related expenses, external file or data management service expenses and other costs related to our representation of you will be billed and payable in the same manner as our fees. If, with your consent, we engage any accounting or other professional firms to provide services supplementary to the Retained Services, the invoices from such firms will be included as expenses on our invoices without any mark-up.

Billing. Statements for fees and expenses normally will be billed monthly and are due within 30 days from the date of the statement. If you fail to pay us within this time frame, we retain the right to charge interest at a rate of 1.5% per month on the outstanding balance.

Confidentiality. We will protect the confidentiality and privileged status of information communicated by you and will not disclose this information to anyone except as may be permitted or required by the Florida Rules of Professional Conduct. To preserve the privileged status of the details regarding this matter, you should keep all information and communications regarding this matter confidential and not disclose any details to any third parties unless directed otherwise by us. We understand and acknowledge, however, that as a governmental entity you are subject to the requirements of Chapters 119 and Chapter 286, *Florida Statutes*, and we will comply with any and all applicable provisions of such statutes in the provision of the Retained Services.

Communications. Various communications systems and networks do not necessarily represent

a secure environment in which to conduct communications. Nevertheless, you authorize us to use such systems (including sending and receiving electronic mail) for communication of sensitive information.

Conflicts. We are governed by the Florida Rules of Professional Conduct regarding conflicts of interest. If a conflict of interest arises in the future, our ability to continue to represent the Client will be governed by those rules. Should a conflict arise between you and its employees, officers, directors, shareholders, members, partners or employee benefit plan fiduciaries, those persons should engage other legal counsel to advise them on their individual situations.

Termination of Representation. You may terminate this Agreement at any time. We reserve the right to terminate this engagement if you fail to honor this Agreement, including the nonpayment of fees for more than 30 days, or for any other just reason as permitted or required by the Florida Rules of Professional Conduct or applicable rules of court. In the event this engagement is terminated, any accrued and unpaid fees and expenses will be due within 30 days from the termination date.

Dispute Resolution; Venue. Prior to instituting an action for any dispute related to this Agreement or the Firm's representation of you, the parties agree to attempt to resolve the dispute through mediation in Sarasota County, Florida. The parties will select a single, Florida Supreme Court certified mediator in Sarasota County. Each party will pay its own attorneys' fees, and the costs of mediation will be split equally between the parties. If the parties fail to resolve the dispute through mediation, the exclusive venue for any action related to this Agreement or the Firm's representation of you will be in Sarasota County, Florida.

Firm Records Retention. We will comply with the obligations imposed by the Florida Rules of Professional Conduct relating to records retention. In accordance with those rules, if you request the return of any documents provided to us or any documents or materials prepared in the performance of the Retained Services, we may exclude from the requested materials our internal memoranda and records, attorney notes, drafts not intended for external distribution, and similar lawyer working materials. We will retain any files relating to your matters that you do not ask to have returned. However, to avoid indefinite storage, we reserve the right to dispose of any retained documents or other materials within a reasonable time after the completion of the Retained Services.

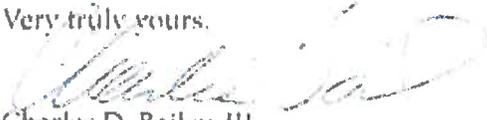
Notwithstanding the foregoing and pursuant to applicable Florida law, we recognize that our records associated with this limited engagement may be subject to Florida's public records laws, Florida Statutes 119.01, et seq, as amended from time to time. We shall comply with all public records obligations set forth 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 at the conclusion of this engagement, as provided for in Florida Statutes 119.0701.

Entire Agreement. This Agreement contains the entire agreement between you and the Firm

regarding our representation of you with respect to the Retained Services. This Agreement may not be modified except by written agreement signed by the parties. This Agreement will be binding upon the Firm and you, and their respective heirs, executors, legal representatives, successors, and assigns.

If the Retained Services, fees, and other arrangements in this Agreement are acceptable, please execute two copies of this Agreement, return one original to me, and retain one original for your records. We greatly appreciate your confidence in our Firm and look forward to representing you in this matter.

Very truly yours,

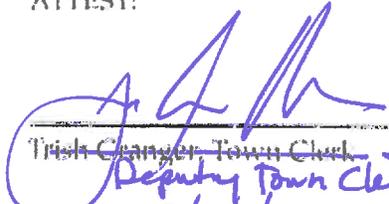

Charles D. Bailey, III
For the Firm

ACCEPTANCE

The Client hereby acknowledges and agrees to the foregoing,
Town of Longboat Key, Florida, a municipal corporation

TOWN OF LONGBOAT KEY

ATTEST:


~~Trish Granger, Town Clerk~~ *Jo Ann Mixon*
~~Deputy Town Clerk~~
Date: 8/28/2015

TOWN OF LONGBOAT KEY

By: 
David R. Bullock, Town Manager

Date: 8/28/2015

APPROVED AS TO FORM:


Maggie Mooney-Portale, Town Attorney

cc: David R. Bullock, Town Manager, Town of Longboat Key

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End of Agenda Item