



AGENDA ITEM REQUEST FORM

Item No. 22

Administration

Connie Hoffmann, Town Manager
Dept Head's Signature

Department Submitting Request

REG COMMISSION
Meeting Dates 7:00PM

DEADLINE TO
Town Clerk

ROUNDTABLE
Meeting Dates 7:00PM

DEADLINE TO
Town Clerk

- Oct 12, 2010
- Nov 9, 2010
- Dec 7, 2010
- Jan 11, 2011
- Feb 8, 2011
- Mar 8, 2011

- Oct 1 (5:00 pm)
- Oct 29 (5:00 pm)
- Nov 23 (5:00 pm)
- Dec 31 (5:00 pm)
- Jan 28 (5:00 pm)
- Feb 25 (5:00 pm)

- Oct 26, 2010
- Nov 22, 2010
- Dec 14, 2010
- Jan 25, 2011
- Feb 22, 2011
- Mar 22, 2011

- Oct 15 (5:00 pm)
- Nov 12 (5:00 pm)
- Nov 30 (5:00 pm)
- Jan 14 (5:00 pm)
- Feb 11 (5:00 pm)
- Mar 11 (5:00 pm)

*Subject to Change

- | | | | |
|---------------------------------------|---|---------------------------------------|---------------------------------------|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Reports | <input type="checkbox"/> Consent | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Quasi Judicial | <input type="checkbox"/> Old Business | <input type="checkbox"/> New Business |

SUBJECT TITLE: ENGAGEMENT OF TOWN ATTORNEY'S SERVICES

EXPLANATION: The Town Commission directed the Town Manager and Mayor to discuss with the Town Attorney ways to reduce costs associated with legal services and the terms of the Town Attorney's engagement.

As background information, the FY 2009/2010 budget for Town Attorney expenses was \$470,000, however, the budget was exceeded for reasons everyone knows and the Commission appropriated funds to cover those expenses. We significantly reduced the budget for legal fees in the current fiscal year to \$400,000.

Based on the many complicated issues we are dealing with, it will require that the Town Attorney, Town staff, and the Town Commission be ever cognizant of the legal expenses we incur with our requests, actions and directives so that we can hold those costs within budgeted levels. The Town Attorney has agreed to forgo the agreed increase in hour rates for the next two fiscal years to assist us in controlling costs. In addition, she and her team have created standard RFP language and standard contract language to be used in the future that should cut down on the time they spend in reviewing RFPs and contracts into which the Town enters. She has emphasized that receiving complete information and clear policy direction also significantly impacts the time required to address Town issues.

She and I agree that it would be very difficult to define a reasonable monthly retainer for her firm's ongoing and predictable services at this time, but feel it is an idea that should be revisited after we get through some of these difficult issues and see how the Commission's new meeting schedule impacts the legal fees.

RECOMMENDATION: Consideration of Town Attorney's proposal to forgo scheduled hourly fee increases, and revisit the idea of a combined retainer/hourly fee arrangement as part of the next budget cycle.

EXHIBITS: Memo from Town Attorney and existing engagement letter

FISCAL IMPACT AND APPROPRIATION OF FUNDS:

- Amount \$ _____ Acct # _____
- Transfer of funds required From Acct # _____

Reviewed by Town Attorney
 Yes No

Town Manager Initials CH

10/13/2010

Memo

To: Mayor and Town Commission, Lauderdale-By-The-Sea

Cc: Connie Hoffmann, Town Manager

From: Susan L. Trevarthen, Town Attorney

Date: October 20, 2010

Re: Our Retainer for Town Attorney Services

As you know, some have inquired regarding the attorneys fees for the past fiscal year. The Town has had quite a full agenda of legal matters this year, most of which were unexpected. The year included items such as:

- Four separate proposals to amend the Town Charter;
- The election season, and transition to a new Commission and new Boards;
- Developing an entirely new way of handling Town Commission meetings and roundtables with the new Town Commission and administration;
- Winning the motions to dismiss the Harris Act claims and continuing to defend against the remaining claims;
- Dealing with changes in the majority of the senior management staff of the Town, including the labor claims related to several firings and the settled litigation against the former Town Manager;
- Revisiting and, in some cases, re-doing projects to conform to the direction of the new Town Commission and administration;
- Negotiating and drafting the new Town Manager's contract; and
- Implementing local ethics and conduct regulations.

We are already budgeted for a decline in budgeted expenses in the Fiscal Year 2010/11 budget and, with the assistance of the Town Commission, the new Town Manager and her staff, we will strive to accomplish this goal.¹ As requested at the August 25, 2010, meeting of the Town Commission, I have conferred further with the Town Manager and the Mayor regarding our Town

¹ As always, new litigation and new developments in existing litigation cannot be fully budgeted, and must be dealt with as they arise.

Attorney services and, at the Town Manager's request, prepared this memo for the October 26 roundtable meeting.

First and foremost, it is important to note that our Retainer is to serve as the Town Attorney, and we serve only at the pleasure of the Town Commission. There is no guaranteed term of service; at any Town Commission meeting, the majority could choose to make a change. There is no agreed minimum notice period or penalty that the Town must pay if it were to terminate its relationship with us. The Retainer does not guarantee that we will receive any particular amount or value of work from the Town. It merely memorializes our agreed rates, and a few other aspects of our relationship with the Town. You have noted, in your discussions of other kinds of contracts, how such provisions can be a substantial and sometimes hidden source of additional costs for the Town; our Retainer is brief and straightforward, and contains no such surprises.

Executed in April 2008, our Retainer with the Town provides that the hourly rate increases 5% per year. Our current billing rate is \$215 per hour. This is a blended hourly rate, and applies to time devoted to Town matters by everyone from young associates to name partners of the Firm, who routinely bill at much higher hourly rates. The Town's matters have been handled primarily by experienced attorneys, shareholders and members of the Firm, so the blended rate has been beneficial to the Town to date. The Retainer also provides that the Town will pay a 2.5% average administrative cost factor, saving the Town and us from the need for detailed cost accounting. The terms of this Retainer compare favorably with those applicable to our similar municipal clients.

The Town Manager and I concur that this may not be the best time to consider implementing a fixed fee component. The workload is high and is still in flux, as the new Town Commission and administration are revisiting and rethinking many issues in the Town. We are concerned that a fixed fee that is based on the bills from the prior six or twelve months could end up setting the rate too high to be representative of the Town's basic needs.

After considering the above, receiving the input of the Town Manager, and meeting with the Mayor, we have decided to make the following changes. We will:

- Forego the 5% increase for Fiscal Years 10/11 and 11/12;
- Charge actual costs instead of the 2.5% average cost factor;
- Formalize in our Retainer that the Town is not being billed for phone calls with the Mayor and Commissioners on general matters;
- Beginning in Fiscal Year 2012/13, agree to a 3% rate of increase in the hourly rate, rather than the current 5%; and
- During the budget preparation process in 2011, if the Town Commission wishes, we are open to revisiting the issue of whether to pursue a fixed retainer amount for some regular and predictable services while continuing to charge an hourly rate for other services, as has been done previously in the Town.

We feel these are very meaningful acknowledgements of the economic difficulties currently faced by the Town. We hope you will agree, and appreciate your continued trust in our Firm.

WEISS SEROTA HELFMAN
PASTORIZA COLE & BONISKE, P.L.

ATTORNEYS AT LAW

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*OF COUNSEL
April 3, 2008

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Esther Colon, Town Manager
Town of Lauderdale-By-The-Sea
4501 Ocean Drive
Lauderdale-By-The-Sea, Florida 33308

Re: Engagement of Weiss Serota Helfman
Pastoriza Cole & Boniske, P.L.

Dear Ms. Colon:

We are pleased that the Town of Lauderdale-By-The-Sea wishes to engage our Firm to provide legal services for the Town. From our experience, we have found that clients appreciate a frank and open discussion and understanding of the services that we will perform and the basis upon which they will be expected to pay for those services.

This letter is intended to set forth our understanding as to the nature and scope of the legal services we have agreed to render for you, the amount of our fees for those services and the manner in which our fees for those services will be paid.

1. Nature of Legal Services. We have been engaged to serve as Town Attorney for the Town of Lauderdale-By-The-Sea.

2. Fees for Services. You will be charged and agree to pay for our services at the rate of \$195.00 per hour for all attorneys, with an automatic 5% increase each year, on October 1st, together with applicable taxes, if any. It is contemplated that Daniel L. Abbott will have primary responsibility for the Town's legal affairs. It is our practice to charge for actual time expended on your behalf, but not less than 2/10ths of an hour for each activity.

3. Costs. In addition to the attorneys fees discussed in paragraph 2, the Firm will add a 2.5% administrative fee to each bill to cover administrative costs such as delivery charges, long distance telephone charges, photocopies (xerox), postage, faxes, and computer research expenses. Non-incidentals costs such as court reporter expenses (including cost of transcript and court reporter's fee for attendance), court costs (such as filing fees, service of process, newspaper publication costs, subpoena costs, witness fees, recording fees, etc.), accounting and appraisal fees, expert fees, trial/hearing exhibit costs, investigation costs, and applicable lobbyist registration fees, will continue to be itemized and billed.

4. Payment of Fees and Costs. Our invoices will be submitted to you on a monthly basis and each invoice will be due and payable when rendered. You must understand that if any invoice remains unpaid for more than 30 days after it is rendered, we reserve the right, in our discretion, to cease to provide further legal services to you. You will, however, be liable to us for the payment of any fees earned and any costs incurred by us to that time.

5. Termination of Representation. We will serve at the pleasure of the Town and may be terminated at any time.

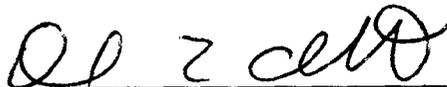
6. Representation of Other Clients. We are bound by rules of legal ethics not to represent any client if the representation of that client will be directly adverse to the interests of another client unless each such client consents to such representation after consultation.

7. Commencement of Representation. Upon the Town's approval, we will commence our representation.

We appreciate your confidence in our Firm and we assure you that we will make every effort to perform our services in a prompt and efficient manner.

Very truly yours,

WEISS SEROTA HELFMAN
PASTORIZA COLE & BONISKE, P.L.

By: 
Daniel L. Abbott

Esther Colon, Town Manager
Town of Lauderdale-By-The-Sea
April 3, 2008
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AGREED AND ACCEPTED on April 8, 2008, 2008

**TOWN OF LAUDERDALE-BY-THE-SEA, a Florida
municipal corporation**

By: 
Esther Colon
Town Manager