

NORTH CAROLINA
DARE COUNTY

This instrument has been preaudited
in the manner required by the Local
Government Budgets and Fiscal
Control Act.

Finance Director

CONTRACT FOR LEGAL SERVICES

This Agreement for the employment of Town Attorney is entered into the _____ day of _____, 201~~52~~, by and between Town of Nags Head, North Carolina, a body corporate and politic existing pursuant to the laws of the State of North Carolina (hereinafter “Town”), and Hornthal, Riley, Ellis & Maland, L.L.P. (hereinafter collectively referred to as “Attorney”) and is effective as of the 1st day of ~~August~~ July, 201~~52~~.

RECITALS

1. Town is in need of the legal assistance of a law firm to fill the position of Town Attorney.
2. The law firm is desirous of filling that position.
3. The parties desire to memorialize their agreement as hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants expressed herein it is agreed as follows:

1. Term of Employment: It is the agreement and understanding of the parties, that this is an appointed position and may be terminated at will by the Town provided, however, Attorney shall not cease employment in such manner as to prejudice any legal positions, whether by litigation or otherwise, the Town may be maintaining through the Attorney. In this regard, the Attorney shall not withdraw from any litigation, negotiations, drafting or the like without the specified permission of Town, if to do so would prejudice Town's position.

2. Services: Attorney shall provide to Town such legal services as Town requires and requests.

3. Independent Contractor Status: Attorney offers its services as an independent contractor and Town has no liability for payment of any benefits that would normally accrue to its employees by virtue of their employment with the Town.

4. Reimbursement and Billing: Attorney, including its partners, associates and paralegals, shall be reimbursed as follows:

- a. ~~\$2,200.00~~ 2,300 per month as retainer for attendance at two meetings per month and telephone consultation with town staff and officials.
- b. ~~\$175.00~~ 190.00 per hour for legal services other than attendance at two meetings per month and telephone consultation with town staff and officials performed for the Town plus actual expenses incurred. The hourly rate includes word processing, but does not include expenses such as long distance telephone calls, photocopies, telefax charges, overnight mail service, and computer assisted legal research, which are billed separately. Because of the high cost, computer-assisted legal research (a source of out-of-state case law which can be helpful if there are no North Carolina cases addressing the legal issue) will not be utilized unless specifically directed by the Town Council.
- c. Use of paralegals – ~~\$90.00~~ 100.00 per hour.

5. Expectations: Attorney recognizes the need of Town for accessibility and prompt service. To this end, it shall be the obligation of Attorney to diligently return phone

calls, be available upon request, and otherwise meet reasonable deadlines imposed by the Town. John D. Leidy, partner of the firm, shall be primarily responsible for providing the requisite services to the Town. However, Town understands it is hiring the firm as opposed to an individual attorney. In the event of Leidy's unavailability, the Town shall seek advice from other Partners or Associates within the firm who shall comply with the Town's needs.

6. Organization and Access to Services: Attorney represents the Town Council and not administration. However, the Attorney shall be assigned legal tasks by the Town Manager pursuant to instructions from the Town Council and unless requested to the contrary, shall report to the Town Manager as to the progress and status of legal matters. In the event Attorney recognizes a legal matter it deems in need of attention, the same shall be reported to the Town Manager for permission to proceed. Except in emergency situations, Attorney shall not initiate any legal action, or maintain any position on behalf of the Town, without the permission of the Town Council pursuant to the instruction of the Town Manager.

7. Non-exclusive Obligation: It is agreed and understood that Attorney is a private law firm with a substantial and varied practice. Nothing herein shall be construed as to prohibit the Attorney from continuing to serve its other clients and promote its practice outside representation of Town.

8. Conflict of Interest: During its representation, Attorney shall not undertake any new representation in conflict with the Town or any of its agencies. In the event a conflict of interest is discovered as a result of prior representation, the same shall immediately be reported by Attorney to the Town Manager. If the conflict is ethically irreconcilable, the Attorney shall not represent either the Town or its other client in the controversy.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ATTEST:

TOWN OF NAGS HEAD

Town Clerk

By: _____
Town Manager

(SEAL)

HORNTHAL, RILEY, ELLIS & MALAND, L.L.P.

By: _____
John D. Leidy, Partner