

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: February 20, 2008 - KL Division County Attorney

Bulk Item: Yes  No  Staff Contact Person: Suzanne Hutton

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**AGENDA ITEM WORDING:**

Approval to rescind the Board's approval of the *Amendment to Agreement between Jerry Coleman P.I. and Monroe County, Florida* on 12/19/2007.

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**ITEM BACKGROUND:**

On 12/19/2007, the Board approved an *Amendment to Agreement* with Jerry Coleman to reduce the hourly charge set forth in his 7/18/2007 Agreement with the County for services on a "services needed" basis. Mr. Coleman did not sign the *Amendment to Agreement* following approval by the Board on 12/19/2007 and instead notified us he would no longer be working for the County after 1/31/2008.

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**PREVIOUS RELEVANT BOCC ACTION:**

8/17/2005 BOCC approved original *Agreement*  
1/18/2006 BOCC approved *First Amendment* (additional timekeepers)  
7/18/2007 BOCC approved new *Agreement* ("services needed" basis)  
12/19/2007 BOCC approved *Amendment to Agreement* (Item Q-2) (reducing hourly charge)

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**CONTRACT/AGREEMENT CHANGES:**

N/A

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**STAFF RECOMMENDATIONS:**

Approval.

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TOTAL COST: N/A

BUDGETED: Yes  No

COST TO COUNTY: N/A

SOURCE OF FUNDS: N/A

REVENUE PRODUCING: Yes  No

AMOUNT PER MONTH  Year

APPROVED BY: County Atty  OMB/Purchasing  Risk Management

DOCUMENTATION: Included  Not Required

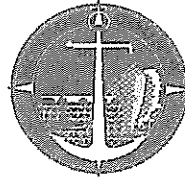
DISPOSITION: \_\_\_\_\_

AGENDA ITEM # \_\_\_\_\_



BOARD OF COUNTY COMMISSIONERS  
Mayor Charles "Sonny" McCoy, District 3  
Mayor Pro Tem Mario DiGennaro, District 4  
Mayor Pro Tem Dixie M. Spehar, District 1  
George Neugent, District 2  
Sylvia Murphy, District 5

*Office of the County Attorney*  
502 Whitehead Street, Rear  
Post Office Box 1026  
Key West, FL 33041-1026  
(305) 292-3470



December 20, 2007

Mr. Jerry Coleman, Esq.  
JERRY COLEMAN, P.I.  
201 Front Street, Suite 203  
Truman Annex Building 21, 2<sup>nd</sup> Floor  
Key West, FL 33040

Re: REVISED Amendment to Agreement Between Jerry Coleman, P.I. and Monroe County


Dear Mr. Coleman:

Enclosed please find the original and three (3) duplicate copies of the *REVISED Amendment to Agreement Between Jerry Coleman, P.I. and Monroe County* as approved by the Monroe County Board of County Commissioners at their regularly scheduled meeting held December 19, 2007 (Item Q-2).

Please personally executed all four (4) duplicate copies and return all four (4) to:

Kathy Peters  
Monroe County Attorney's Office  
P. O. Box 1026  
Key West, FL 33041-1026

Upon receipt of the executed copies from you, all will be transmitted to the Clerk for execution by the Mayor and processing. A fully executed copy will be transmitted to you upon receipt by this office. Thank you for your assistance in this matter.

Sincerely,  
  
Kathy Peters for:  
SUZANNE A. HUTTON  
County Attorney  
SAHkmp:

AMENDMENT TO AGREEMENT  
BETWEEN JERRY COLEMAN, P.L.  
AND MONROE COUNTY, FLORIDA

THIS AMENDMENT TO AGREEMENT is made and entered into this 19th day of December, 2007, between Monroe County Board of County Commissioners (hereinafter "COUNTY" or "BOCC") and JERRY COLEMAN, P.L. (hereinafter "ATTORNEY").

WHEREAS, the parties entered into a contract on July 18, 2007, for legal services related to affordable housing and land use; and

WHEREAS, no budget was provided to the Growth Management Division for Mr. Coleman's services; and

WHEREAS, administrative difficulties in allocating the costs to the appropriate cost centers have arisen due to the extension of Mr. Coleman's consulting into the area of land use; and

WHEREAS, County practice for advisory boards in general is that the attorney is contacted by County staff only if they are unable to answer questions of individual board members, and the attorney's time is dedicated to the meetings, preparation therefor, and responding to County staff; and

WHEREAS, the County Commission directed a decrease in outside counsel fees yet individual members of the Task Force and the Planning Commission contact the Attorney frequently outside of the meetings; and

WHEREAS, such practice creates a conflict between the attorney being expected to respond and the BOCC's direction to lower costs; and

WHEREAS, the County Attorney's office and the Growth Management Division have had staffing issues which have previously required Attorney to shepherd Task Force initiated ordinances through the ordinance vetting process, but the staffing issues are stabilizing; and

WHEREAS, the parties find it in their mutual best interests to clarify Attorney's responsibilities under the Agreement dated July 18, 2007; now therefore

IN CONSIDERATION of the mutual covenants contained herein the parties agree to as follows:

1. Section 6.3, Hourly Rates, and Changes to hourly rates shall be amended, effective January 1, 2008, to read as follows:

"6.3 Hourly Rates

Hourly rates for ATTORNEY and additional Timekeepers will be set at:

Approved Time Keepers:

Name: Jerry Coleman, Esq. (billed by firm – JERRY COLEMAN, P.L.) Hourly Rate: \$350.00.

Associate. Hourly Rate: \$175.

Name: Shannon McDonald (billed by firm – JERRY COLEMAN, P.L.) Hourly Rate: \$65.00 for paralegal work which is covered by Section 57.104, Florida Statutes.

Name: Shadrach Neiss (billed by firm – JERRY COLEMAN, P.L.) Hourly Rate: \$100.00 for paralegal work which is covered by Section 57.104, Florida Statutes.

ATTORNEY will charge no more than the hourly rate quoted above throughout the duration of the matter, unless otherwise agreed in writing and approved by COUNTY in the same manner as Agreement.”

2. Exhibit A, Section 1, of the July 18, 2007 agreement is hereby amended by adding the following two sentences to the first paragraph:

“After rendering a draft ordinance acceptable to the Task Force, Attorney shall advise the Board of County Commissioners at any advertised public hearing for which Attorney’s consultation is requested by one of the authorizing persons designated in Section 2, Paragraph D of this Exhibit. Attorney shall not participate in the vetting process between the Task Force and the BOCC hearings unless specifically requested to do so by the Director of Growth Management or the Director of Housing and Community Development.”

3. Exhibit A, Section 2.A, of the July 18, 2007 agreement is hereby amended by amending the paragraph to read as follows:

“A. Task Force: ATTORNEY shall advise the Task Force at their scheduled meetings. Discussions with Task Force Members outside of the advisory board meetings shall only be billable if the County Attorney or staff attorney, Division Director or Affordable Housing Coordinator of the Housing and Community Development Division, has requested that the Attorney respond directly to the Task Force member and a description of the conversation is provided with the billing and it pertains to the work of the Task Force. Task Force members should be directing their communications to County staff at times other than during meetings.”

3. Exhibit A, Section 2.C, of the July 18, 2007 agreement is hereby amended by amending the paragraph to read as follows:

“C. County Staff: Attorney shall consult with and advise the County staff at scheduled meetings, and in preparation therefore. Discussions with staff outside of the Task Force and Commission meetings shall only be billable if a description of the conversation is provided with the billing and it pertains to the matters approved under this agreement. Discussions with Growth Management staff outside of Task Force or County Commission proceedings shall only be billable if the Division Director has previously approved the communication, a description of the conversation is provided with the billing and it pertains to the matters approved under this agreement.”

4. Exhibit A, Section 2.D of the July 18, 2007 agreement is hereby amended to read:

"D. Other People: (i) ATTORNEY may bill for any time spent in communications with people with whom he is requested by the Task Force (not an individual member thereof) as reflected in the meeting minutes thereof, the County Commissioners, the County Administrator, the County Attorney, the Division Directors of Growth Management and of Housing and Community Development, the executive directors and staff of the Monroe County Land Authority and Housing Authority, and the Housing and Community Development staff, to meet or consult. Discussions outside of the Task Force and Commission meetings shall only be billable if a description of the conversation is provided with the billing and it pertains to the matters approved under this agreement.

(ii) ATTORNEY is authorized under this agreement to advise or consult with other parties or representatives of municipalities regarding their projects or potential projects where they relate and further unified coordination and sharing of housing and land use knowledge and resources within the Florida Keys, but such advice is not billable to the County and any consultation shall be billable to COUNTY only if one or more persons designated in section 2.D. (i) above has approved the consultation in conjunction with County activities. ATTORNEY may choose to provide similar services to others and bill those parties for such services, as long as the County is not billed for the same time spent and paid for by the other client. ATTORNEY shall not act as or be deemed by mere association with other work for the COUNTY to be a negotiator of contracts or other official authority for affordable housing or other land use transactions for the County, or as a representative of the COUNTY, with respect to any property, development or redevelopment rights, development or application reviews or approvals of any kind, except where such role is expressly requested by the County and the duty to perform such a role for the COUNTY is expressly accepted by ATTORNEY with specificity as to the transaction involved. This provision is expressly intended to preserve the COUNTY's confidential and attorney-client protections for every expressly mutually accepted matter upon which ATTORNEY performs accepted work (without limitation of the COUNTY's rights to waive or condition any such protections) and to also prevent any inadvertent or implied conflict of interest that would deprive or unduly restrict the ATTORNEY's ability to work in Monroe County or elsewhere in this state on land use and real estate or other matters for private or governmental clients, even where they might be or become adverse to the COUNTY, where a direct conflict of interest arising from simultaneous or substantial past representations does not exist. This provision is also meant to prevent limitation of consumers of legal services in Monroe County from engaging the ATTORNEY and the unreasonable preclusion of ATTORNEY from representing such third parties on land use and other matters where ATTORNEY has merely been in attendance at public meetings or the like where matters that ATTORNEY has not materially dealt with on behalf of the COUNTY are placed upon an agenda or discussed, or where ATTORNEY has merely been sent or copied, for instance, with an e-mail along with Task Force members or County staff in what are otherwise public documents or communications. In no case shall general legal consulting on land use legislation be construed to preclude ATTORNEY from ever working for private or other governmental clients on matters where legislation the ATTORNEY may have worked on may come into play in such matters.

(iii) However, the ATTORNEY and COUNTY agree that, unless conflict of interest is waived by the COUNTY according to ethical rules, ATTORNEY prior work only on the following matters precludes ATTORNEY from working on the following matters for the listed non-COUNTY clients (or their substantially same successors-in-interest) who were involved in such matters:

OVERSEAS REDEVELOPMENT COMPANY (or CORTEX or KEYS CARIBBEAN or entities substantially identified with Timothy Koenig) (Matter - Overseas Trailer Park Purchase and Lease)

CARLISLE GROUP (and "SEA GRAPE" affiliates or entities substantially identified with Lloyd Boggio) (Matter -Falcon Pass/Sea Grape Marathon Purchase and Lease)

PARK VILLAGE LLC and ISLANDER VILLAGE LLC (or entities substantially identified with Edwin Swift)(Matter – Park Village and Islander Village Purchase and Lease)

HABITAT FOR HUMANITY OF KEY WEST & LOWER KEYS, INC. (Matter – current Big Coppitt parcel redevelopment)

TRADEWINDS II LLC (or entities substantially identified with Peter Rososco)(Matter – Tradewinds II Purchase and Lease)

ROY's TRAILER PARK (or (or entities substantially identified with Michael Browning)(Matter – Roy's Trailer Park Purchase and Lease)

(iv) Any other contact or meeting with County officials and developers or property owners wherein ATTORNEY did not engage in any significant follow-on work for the COUNTY or such other parties in any matter discussed shall not be deemed a conflicting representation, consultation or relationship unless ATTORNEY and COUNTY expressly agree to have ATTORNEY work on the matter or issues involved in the future. The COUNTY and COUNTY ATTORNEY's OFFICE expressly acknowledge the that foregoing and prospective potential conflict of interest limitations on ATTORNEY's right to practice will not inhibit the ATTORNEY's ability to practice and will not constitute in their reasonable and considered judgment any violation of Florida Bar Rule 4-5.6."

5. The remaining provisions of the agreement dated July 18, 2007, not inconsistent herewith, remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seal on the day and year first above written.

(SEAL)


ATTEST: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Mayor/Chairman

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:

  
SUZANNE A. HUTTON  
COUNTY ATTORNEY

JERRY COLEMAN, P.L.

By: \_\_\_\_\_