

Barefoot Bay Recreation District
Regular Meeting of the Board of Trustees

March 8, 2019

1:00 PM

1225 Barefoot Boulevard, Building D/E



BAREFOOT BAY RECREATION DISTRICT

Barefoot Bay Recreation District Regular Meeting
Friday, March 8, 2019 at 1 P.M.
Building D&E

AGENDA

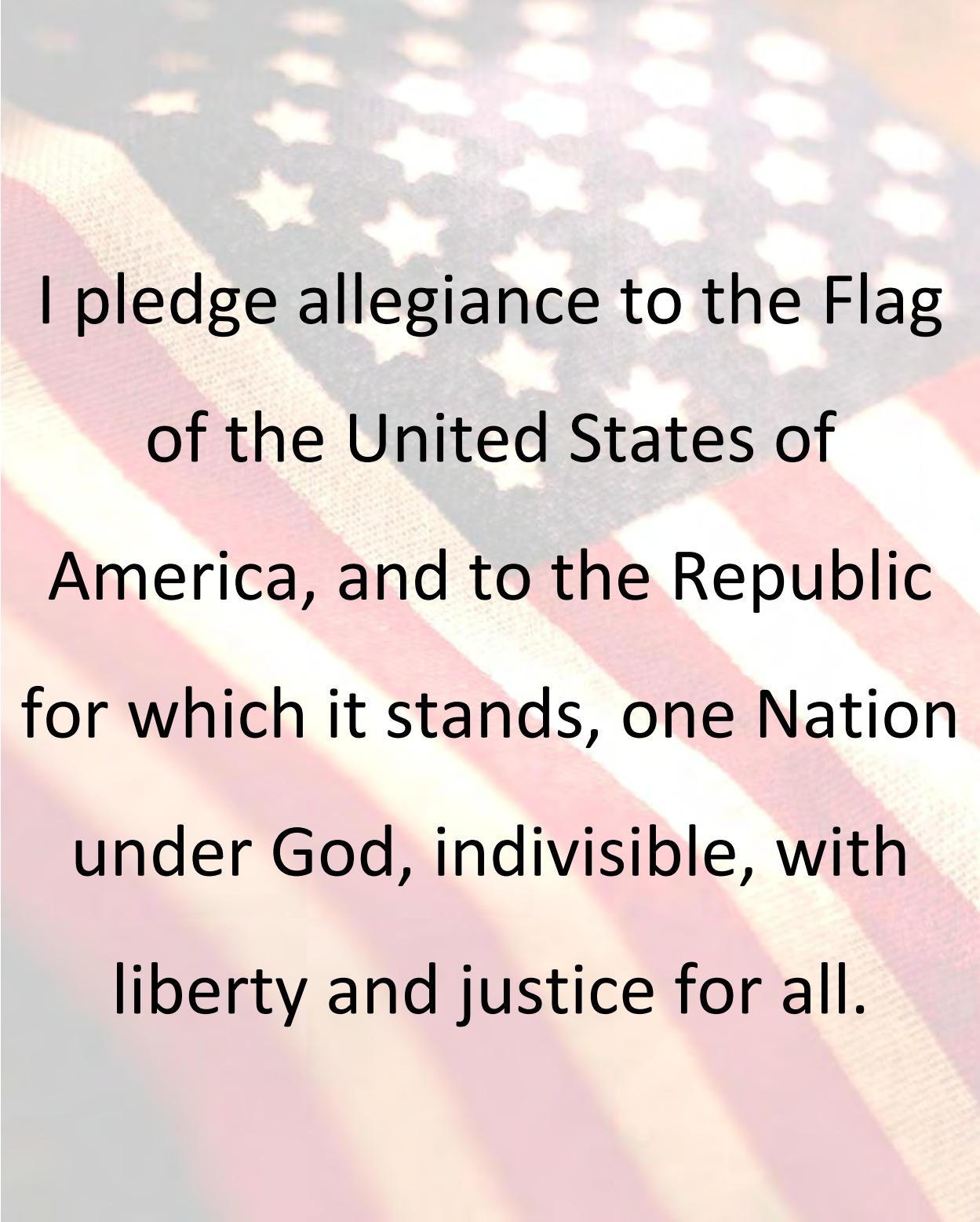
Please silence all electronic devices

1. Thought for the Day
2. Pledge of Allegiance to the Flag
3. Roll Call
4. Presentations and Proclamations
5. Approval of Minutes
6. Treasurer's Report
7. Audience Participation
8. Unfinished Business
 - A. Discussion of Post Office at the Shopping Center
9. New Business
 - A. Renewal of Legal Services Agreement
10. Manager's Report
11. Attorney's Report
12. Incidental Trustee Remarks
13. Adjournment

If an individual decides to appeal any decision made by the Recreation District with respect to any matter considered at this meeting, a record of the proceedings will be required and the individual will need to ensure that a verbatim transcript of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based (FS 286.0105). Such person must provide a method for recording the proceedings verbatim.

Thought of the Day





I pledge allegiance to the Flag
of the United States of
America, and to the Republic
for which it stands, one Nation
under God, indivisible, with
liberty and justice for all.

Roll Call

Trustees

Chairman - Mr. Klosky

1st Vice Chair – Mr. Wheaton

2nd Vice Chair – Ms. Henderson

Secretary - Mr. Diana

Treasurer - Mr. Loveland

Also Present

General Counsel- Cliff Repperger, Jr., Esq.

Community Manager - John W. Coffey, ICMA-CM

District Clerk - Dawn Myers

Presentations

Approval of Minutes

To Be Delivered

Treasurer's Report

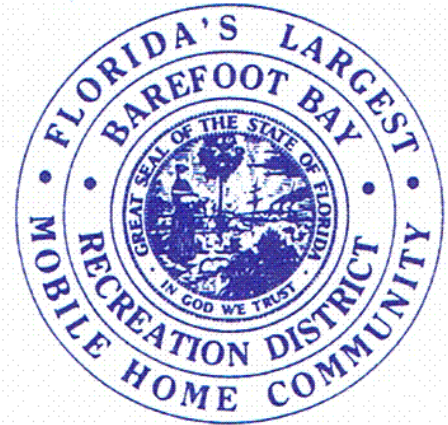
To Be Delivered

Audience Participation

Unfinished Business

Board of Trustees Meeting Agenda Memo

Date: March 8, 2019
Title: **Discussion of a Post Office at the Shopping Center**
Section & Item: 8A
Department: Shopping Center
Fiscal Impact: TBD
Contact: David Wheaton, Trustee; John W. Coffey, ICMA-CM, Community Manager
Attachments: N/A
Reviewed by
General Counsel: N/A
Approved by: John W. Coffey, ICMA-CM, Community Manager



Requested Action by BOT

Review of Trustee Wheaton's proposal and direction to staff.

Background and Summary Information

At the February 26th BOT meeting, Trustee Wheaton presented a proposal to flip the tenants of the Barber Shop and future Veterans' Area (current Resident Relations Office) to permit the owner of the Barber Shop to open a satellite post office. Chairman Klosky volunteered to ask the Veterans if they would agree to the swap of spaces.

Chairman Klosky met with representatives of the veterans who told him they were opposed to the proposal.

Staff requests direction from the BOT regarding this matter.

New Business

Board of Trustees Meeting Agenda Memo

Date: March 8, 2019

Title: Renewal of Legal Services Agreement

Section & Item: 9A

Department: BBRD General Counsel/Administration

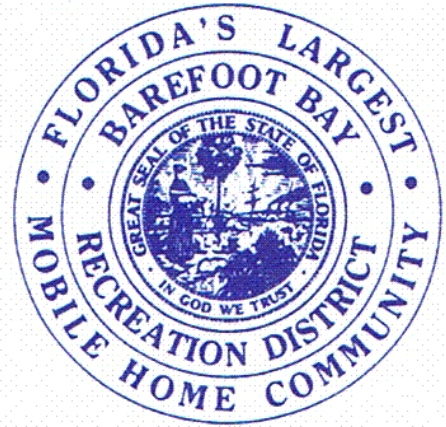
Fiscal Impact: Amount of Annual Legal Budget and/or costs of preparation, publishing, and review of RFP and submissions (if desired).

Contact: General Counsel Cliff Repperger
(321) 984-2700

Attachments: Memorandum to the Board regarding Legal Services Agreement Renewal, Proposed Memorandum of Understanding, and Initial Contract for Legal Services.

Reviewed by
General Counsel: Yes

Approved by:



Requested Action by BOT

Consider Memorandum of Understanding for renewal of Legal Services Agreement from April 14, 2019 to April 13, 2022.

Background and Summary Information

BBRD and GrayRobinson, P.A. (Clifford R. Repperger, Jr.) entered into an initial Contract for Legal Services ("Contract") on or about April 13, 2007. The initial Agreement was renewed in 2010, 2013, and 2016 via Memoranda of Understanding for additional three (3) year terms and currently expires on April 14, 2019. The Contract was transferred to and assumed by Rossway Swan (upon General Counsel Cliff Repperger switching law firms in March 2018).

Rossway Swan is proposing renewal of the Contract for an additional three (3) year term beginning April 14, 2019 ending April 13, 2022. All substantive terms, including rates and termination, are proposed to stay the same.

Board options are:

1. Approve and execute the Memorandum of Understanding.
2. Propose a modification/amendment to the Contract for Legal Services.
3. Prepare and issue a Request for Proposals (RFP) for Legal Services to begin upon expiration of the existing Contract for Legal Services on April 14, 2019.



**ROSSWAY SWAN TIERNEY BARRY
LACEY & OLIVER, P.L.**

MELBOURNE

One Harbor Place
1901 S. Harbor City Blvd., Suite 500
Melbourne, Florida 32901
Telephone: 321.984.2700

VERO BEACH

The Modern One Building
2101 Indian River Boulevard, Suite 200
Vero Beach, Florida 32960
Telephone: 772.231.4440

CORAL GABLES*

Gables International Plaza
2655 LeJeune Rd., Penthouse 1-C
Coral Gables, Florida 33134
Telephone: 305.443.5020

crepperger@rosswayswan.com

MEMORANDUM

TO: Joseph Klosky, Chairman and Honorable Board of Trustees
Barefoot Bay Recreation District (“BBRD”)

CC: John Coffey, Community Manager, BBRD

FROM: Clifford Repperger, General Counsel, BBRD

DATE: March 1, 2019

SUBJECT: Renewal of Contract for Legal Services

On April 13, 2007, BBRD and GrayRobinson, P.A. entered into a Contract for Legal Services. The initial Contract has been renewed three times (in 2010, 2013, and 2016) via Memoranda of Understanding. The Contract was transferred to and assumed by Rossway Swan in March of 2018. If the Board if so inclined, I am willing to renew the term of the Contract for an additional three (3) year term with all other provisions of the initial Contract (including rates and thirty (30) day termination) remaining the same.

Enclosed for your consideration is a draft proposed Memorandum of Understanding renewing the term of the Contract for Legal Services and a copy of the initial Contract. It is my understanding that this matter will be placed on the March 8, 2019 Board Meeting Agenda (along with a copy of this Memorandum) for your consideration.

If you have any questions or concerns regarding this matter, please do not hesitate to contact me.

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING entered into this ____ day of March, 2019 between BAREFOOT BAY RECREATION DISTRICT, an Independent Special District of the State of Florida (hereinafter referred to as “BBRD”), 625 Barefoot Boulevard, Barefoot Bay, Florida 32976 and ROSSWAY SWAN TIERNEY BARRY LACEY & OLIVER (hereinafter referred to as “Rossway Swan”), 1901 S. Harbor City Boulevard, Suite 500, Melbourne, Florida 32901.

RECITALS

WHEREAS, BBRD and GrayRobinson entered into a non-exclusive Contract for Legal Services (“Contract”) on or about April 13, 2007; and

WHEREAS, Article 6 of the Contract provides for a three (3) year term commencing on April 13, 2007; and

WHEREAS, On or about March 12, 2010, the Contract was renewed for a three (3) year term by way of a Memorandum of Understanding from April 13, 2010 to April 13, 2013; and

WHEREAS, on or about March 26, 2013, the Contract was renewed for a three (3) year term by way of a Memorandum of Understanding from April 14, 2013 to April 13, 2016; and

WHEREAS, on or about January 26, 2016, the Contract was renewed for a three (3) year term by way of a Memorandum of Understanding from April 14, 2016 to April 13, 2019; and

WHEREAS, on or about March 9, 2018, the Parties agreed to a transition/assignment of the Contract obligations and duties from GrayRobinson to Rossway Swan due to General Counsel Clifford R. Repperger, Jr., changing law firms; and

WHEREAS, the Parties are agreeable to renewing the term of the Contract for an additional three (3) year term; and

WHEREAS, the Parties intend for all other terms of the Contract, except as modified herein, to remain in full force and effect;

NOW THEREFORE, in consideration of the premises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto hereby agree as follows:

1. The term of the Contract between the Parties shall be renewed for an additional three (3) year term from April 14, 2019 to April 13, 2022.

2. All references in the Contract to “GrayRobinson” shall read “Rossway Swan.”

3. The firm address for purposes of Notice under Article 16 of the Contact shall be:

Clifford R. Repperger, Jr.
Rossway Swan
1901 S. Harbor City Boulevard, Suite 500
Melbourne, FL 32901
Telephone (321) 984-2700
Facsimile (321) 723-4092

4. Except as modified herein, all other terms of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding on the dates written below.

Signed, sealed and delivered
in the presence of:

**BAREFOOT BAY RECREATION
DISTRICT**

Witness:

By: _____

Printed Name:

Printed Name: Joseph Klosky
As its: Chairman, Board of Trustees

Printed Name:

Date: _____

Signed, sealed and delivered
in the presence of:

ROSSWAY SWAN

Witness:

By: _____
Printed Name: Clifford R. Repperger, Jr.
Title: Partner

Printed Name:

Date: _____

Printed Name:

GENERAL COUNSEL - LEGAL SERVICES

THIS GENERAL COUNSEL – LEGAL SERVICES CONTRACT ("Contract") is made and entered into this 13th day of April, 2007 by and between the **BAREFOOT BAY RECREATION DISTRICT - BOARD OF TRUSTEES**, a special board constituted as an agency and instrumentality of the BAREFOOT BAY RECREATION DISTRICT, a municipal corporation of Brevard County, Florida having an office and place of business at Barefoot Bay Recreation District, 625 Barefoot Boulevard, Barefoot Bay, Florida 32976-7305 ("BBRD"), and **GRAYROBINSON, ATTORNEYS AT LAW**, 1800 West Hibiscus Boulevard, Suite 138, Melbourne, Florida 32901 ("GrayRobinson").

WITNESSETH THAT

WHEREAS, BBRD is authorized to enter into a non-exclusive Contract with a firm for providing General Counsel Legal Services ("Legal Services"); and

WHEREAS, GrayRobinson warrants to BBRD that it is qualified to conduct the legal services and meet the obligations hereinafter stated; and

WHEREAS, GrayRobinson warrants that the representations made by it in its response to Request for Qualifications ("RFQ") to BBRD are valid, accurate, and binding upon it; and

WHEREAS, GrayRobinson is willing to provide all of the work as directed by BBRD that corresponds to the Scope of Services as described in Article 2 of this Contract; and

WHEREAS, BBRD desires to have GrayRobinson provide legal services in accordance with the Scope of Services as described in Article 2 of this Contract.

NOW, THEREFORE, in consideration of the premises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1
RECITALS

The recitals set forth above are true and correct and are incorporated as a part of this Contract.

ARTICLE 2
GRAYROBINSON'S OBLIGATIONS/SCOPE OF SERVICES

GrayRobinson shall furnish to the BBRD all professional and Legal Services, including, personnel, management, materials, and related items, and shall perform all operations necessary to satisfactorily carry out the Scope of Services set out as follows:

Scope of Services

- A. Attend all regular meetings of the BBRD and such other meetings as designated and directed by the BBRD.
- B. Defend the BBRD as directed by the BBRD in all legal matters.
- C. Prosecute such legal causes as directed by the BBRD.
- D. Draft such resolutions, agreements, laws, or other legal documents as required by the BBRD.
- E. Render such legal opinions, advice, and legal counseling as requested by the BBRD.
- F. File proceedings to validate obligations, certificates, or bonds to be issued by the BBRD and/or work with outside counsel for this purpose.
- G. Prepare necessary legal documents and close all real estate transactions entered into by the BBRD.
- H. Such other legal services as requested by the BBRD including review of and/or amendments to the BBRD Charter and/or Deed of Restrictions.

It is specifically understood by the Parties that although GrayRobinson is responsible for providing legal services as defined in the Scope of Services at the direction of the BBRD, GrayRobinson shall report directly to the BBRD and specifically agrees that its primary duty of loyalty is to the BBRD and not to BBRD's individual property owners, employees and/or administrative staff of BBRD, or the Trustees in their individual capacity.

ARTICLE 3

GRAYROBINSON'S REPRESENTATIONS AND STAFFING

GrayRobinson hereby represents and warrants that it, its associates and/or its employees have all necessary licenses to perform the Legal Services as set forth herein, and are qualified to perform said Legal Services.

GrayRobinson is authorized and mandated to provide all legal services to BBRD unless BBRD directs otherwise or other legal counsel are employed to provide such services. It is mutually agreed between the parties that Clifford Repperger, Jr. shall have the primary responsibility for serving as counsel to the BBRD and he may appoint such attorneys from the firm as he deems necessary to render legal services provided under this Contract.

GrayRobinson agrees to supply and furnish all office space, supplies, copy machines, furniture, word processing equipment, filing cabinets, personnel, and all other services as required to perform its responsibilities pursuant to the Scope of Services as provided in Article 2.

ARTICLE 4
CONFIDENTIALITY AND RELATED MATTERS

Regarding the ethics of the profession that will govern GrayRobinson's representation, several points deserve emphasis. As a matter of professional responsibility, GrayRobinson is required to preserve the confidences of its clients. This professional obligation and the legal privilege for attorney-client communications exist to encourage candid and complete communication between a client and its lawyer. GrayRobinson can perform truly beneficial services for a client only if it is aware of all information that might be relevant to the representation. Consequently, GrayRobinson trusts that its attorney-client relationship with the BBRD will be based on mutual confidence and unrestrained communication that will facilitate proper representation of the BBRD. Additionally, since GrayRobinson represents the BBRD, its client relationship is with the BBRD and not with the individual property owners, employees and/or administrative staff of the BBRD, or the Trustees in their individual capacity. In this instance, GrayRobinson's professional responsibilities are owed to the BBRD alone, and no conflict of interest may be asserted by the individual property owners, employees and/or administrative staff of the BBRD, or the Trustees in their individual capacity, because GrayRobinson represents persons with respect to interests that are adverse to the individual persons or business organizations who have a relationship with the individual property owners, employees and/or administrative staff of the BBRD, or the Trustees in their individual capacity,

ARTICLE 5
BBRD'S OBLIGATIONS AND RESPONSIBILITIES

Under this Contract, BBRD as client, policy-maker, and authoritative entity is solely responsible for directing all legal services to be provided in accordance with the Scope of Services as set out in Article 2.

BBRD shall timely furnish GrayRobinson with any and all information, documentation, criteria, objectives, and schedules necessary for GrayRobinson to adequately perform and carry out its legal duties and obligations in accordance with the Scope of Services as set out in Article 2.

BBRD shall designate in writing all designees who shall have the authority to transmit instructions or directions to GrayRobinson, receive information on behalf of BBRD, and to make strategic and final determinations regarding legal services provided by GrayRobinson pursuant to this Contract.

BBRD shall examine all studies, reports, and/or other documents prepared by GrayRobinson and render decisions or provide direction in a timely manner to prevent delay GrayRobinson's performance of services pursuant to this Contract.

ARTICLE 6

TERM OF CONTRACT, TERMINATION, FEE & COSTS, AND PAYMENT

The term of this Contract shall be three (3) years, commencing on April 13, 2007. This Contract may be terminated by either party for any reason with or without cause upon thirty (30) days written notice to the other party. In the event of termination by either party, GrayRobinson agrees to assist with transfer of any and all legal files as directed by BBRD to any future entity providing legal services to BBRD after such termination is effective.

The hourly rate pursuant to this Contract shall be fixed for three (3) years from the date of commencement. The hourly rate shall be \$175.00 per hour for partner attorney work performed (Clifford R. Repperger, Jr.), \$150.00 per hour for associate attorney work performed, and \$85.00 per hour for paralegal work performed.

In addition, BBRD hereby agrees to pay GrayRobinson, P.A. the following costs and reimbursements in its performance of the Scope of Services pursuant to Article 2:

- A. All costs incurred in the defense or prosecution of legal causes including but not limited to the cost of service of process and subpoenas, depositions, witness fees, and expert fees.
- B. The cost of telephone calls and facsimile transmissions outside of Brevard County.
- C. Travel and per diem expenses as provided under Florida Statutes §112.061.
- D. The cost of photocopying (\$.20 per page).
- E. The cost of certification and outside copies.

All such costs shall be paid by GrayRobinson, and submitted to BBRD at the end of each month for reimbursement.

Clifford R. Repperger, Jr., as Lead Attorney, shall be responsible for all GrayRobinson invoicing and any questions relating to invoices shall be directed to him. BBRD shall make full payment within thirty (30) days after receipt and acceptance by BBRD of the GrayRobinson's invoice. BBRD may request additional documentation of cost incurred so that proper payment can be derived. BBRD may disallow and deduct any cost for which proper documentation is not provided.

ARTICLE 7
ATTORNEY'S FEES

In any action or proceeding between BBRD and GrayRobinson arising out of this Contract or the transaction contemplated hereby, the prevailing party in such action or proceeding shall be entitled to recover all costs of such action or proceeding incurred by it, including reasonable attorney's fees, at trial and on appeal.

ARTICLE 8
TIME FOR PERFORMANCE

Time periods for performance hereunder may be extended for either party in the event of any ongoing action extending beyond the Contract Term.

ARTICLE 9
APPLICABLE STATE LAW

The rights, obligations, and remedies of the parties as specified under this Contract shall be interpreted and governed in all respects by the laws of the State of Florida. Venue for any litigation involving this Contract shall be the Circuit Court in and for Brevard County, Florida. BBRD and GrayRobinson agree that any suit, action, or other legal proceeding arising hereunder shall be before a judge and each hereby intentionally, voluntarily, and knowingly waive any right the parties may have to a trial by jury. In any action or proceeding between the BBRD and GrayRobinson arising out of this Contract or the transaction contemplated hereby, the prevailing party in such action or proceeding shall be entitled to recover all costs of such action or proceeding incurred by it, including reasonable attorneys' fees for resolution of such dispute, including negotiations at trial and on appeal.

ARTICLE 10
SURVIVAL

Should any provision of this Contract be deemed by the courts to be illegal, invalid, or in conflict with any law of the State of Florida, the validity of the remaining provisions shall not be impaired.

ARTICLE 11
INDEPENDENT CONTRACTOR

The provisions of this Contract are not intended to create, nor shall they be in any way interpreted to create, a joint venture, a partnership, or any other similar relationship between the parties hereto. GrayRobinson shall operate as an independent contractor and shall not be considered in any way to be acting as an employee or agent for BBRD.

As an independent contractor providing legal services, GrayRobinson agrees to maintain appropriate malpractice insurance coverage of at least \$1,000,000.00 per claim.

ARTICLE 12
NONDISCRIMINATION

GrayRobinson agrees to comply with all federal regulations including those pertaining to non-discrimination in hiring and employment practices.

ARTICLE 13
ENTIRE CONTRACT

This Contract constitutes the entire agreement between the parties hereto. This Contract supersedes any and all prior agreements, discussions, negotiations, arrangements, or understandings, whether written, oral, or implied, with respect to the subject matter of this Contract for the location(s) being serviced. This Contract may not be modified or amended without the prior written consent of each party.

ARTICLE 14
ASSIGNMENT

GrayRobinson may not assign or transfer any right or obligation of this Contract in whole or in part. Any assignment or transfer of any obligation under this Contract shall be void, and shall not release GrayRobinson from any liability or obligation under the Contract, or to cause any such liability or obligation to be reduced to a secondary liability or obligation.

ARTICLE 15
NO THIRD-PARTY RIGHTS

It is specifically agreed between GrayRobinson and Authority that no provision of this Contract is intended to establish or authorize any private right of action by any person, entity, member of the public, or third party beneficiary not a signatory party to this Contract to enforce this Contract or otherwise bring or maintain any action arising out of its terms.

ARTICLE 16
NOTICE

Whenever in this Agreement it shall be required or permitted that notice or demand be given or served by either party to this Agreement, such notice or demand shall be given or served in writing and sent to Parties at the addresses set forth as follows:

If to GrayRobinson:

Clifford R. Repperger, Jr., Esquire
GrayRobinson, P.A.
1800 West Hibiscus Boulevard
Suite 138
Melbourne, Florida 32901

If to BBRD:

Chairperson
Barefoot Bay Recreation District
625 Barefoot Boulevard
Barefoot Bay, Florida 32976

All such notices shall be sent by certified or registered mail or by reputable overnight courier, and in such case, shall be effective as of the date of delivery or attempted date of delivery. Any such address may be changed from time to time by either party serving notice as above provided. It shall be the responsibility of each party to provide notice of any change in address as provided above, and the addresses above shall be deemed valid unless such notice has been provided.

IN WITNESS WHEREOF the parties hereto have set their hands and seals the date and year first above written.

Signed, Sealed and Delivered
in the presence of:

Barrie K. Jenkins
Witness

Cristle L. Cushman
Witness

BAREFOOT BAY RECREATION DISTRICT
- BOARD OF TRUSTEES

By: John Keegan
John Keegan, Chairperson

Attest: Wilma C. Weglein
Wilma Weglein, First Vice Chair

(corporate seal)

GRAYROBINSON, P.A. ATTORNEYS AT LAW

By: Clifford R. Repperger, Jr.

Attest: _____
(corporate seal)

Jayne A. Logan
Witness

Cynthia K. Adair
Witness

Helen M. Sansone



personally known

Manager's Report

To Be Delivered

Attorney's Report

Incidental Remarks from Trustees

Adjournment