

1 Introduced April 26, 2011, by Councilman  
2 Cusimano, seconded by Councilwoman  
3 Harbison (by request of Administration)

4 **RESOLUTION R11-09**

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6 A resolution authorizing the Mayor of the City of Slidell to execute a Legal  
7 Services Contract with Bienvenu, Foster, Ryan & O'Bannon, L.L.C. relating to the design  
8 and construction of the Slidell Senior Citizen's building.

9 WHEREAS, Perez Architects, APC were employed on February 2, 2009 to  
10 design plans for construction of the new Slidell Senior Citizen's Center; and  
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12 WHEREAS, the construction project was bid and awarded to Braithwaite  
13 Construction, Inc. on October 23, 2009; and  
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15 WHEREAS, Stuart Consulting was hired to perform program management  
16 services; and  
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18 WHEREAS, the construction contract with Braithwaite Construction, Inc. was  
19 for 270 days and ended on September 2, 2010; and  
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21 WHEREAS, it has been discovered that numerous discrepancies have been  
22 found in the plan documents and deficiencies in workmanship.  
23

24 NOW THEREFORE BE IT RESOLVED by the Slidell City Council that  
25 pursuant to Charter Section 4-02(D) the Mayor is hereby authorized to execute a Legal  
26 Services Contract with the Bienvenu, Foster, Ryan & O'Bannon, L.L.C. to represent the  
27 City relating to the design and construction of the Slidell Senior Citizen's Center building.  
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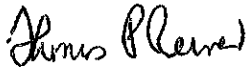
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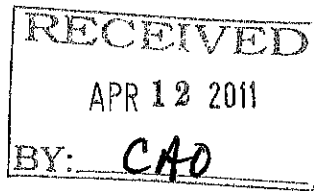
**ADOPTED** this 26th day of April, 2011.



Landon Cusimano  
President of the Council  
Councilman-at-Large




Thomas P. Reeves  
Council Administrator



**CITY  
ATTORNEY**

# Memo

**To:** Tim Mathison, Chief Administrative Officer  
**From:** Patrick J. Berrigan, City Attorney   
**Date:** April 7, 2011  
**Re:** Fee Agreement and Authority to Represent by  
John W. Waters, Jr., Partner  
Bienvenu, Foster, Ryan & O'Bannon, L.L.C.



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Please find attached a copy of a Fee Agreement and Authority to Represent between the City and John Waters in the Senior Center building controversy. I have read it and approve it, and I do request that you examine it and get back with me so that we may be able to prepare it for the Mayor's signature.

## FEE AGREEMENT AND AUTHORITY TO REPRESENT

The City of Slidell, herein represented by \_\_\_\_\_, its \_\_\_\_\_, duly authorized, the undersigned client (hereinafter referred to as "Client"), does hereby retain and employ the law firm of Bienvenu, Foster, Ryan & O'Bannon, L.L.C. (hereinafter referred to as "Attorney"), as its attorney to represent Client in connection with the following matter:

### *The rights of the City of Slidell against those responsible for the design and construction of the Slidell Senior Center*

**1. ATTORNEY'S FEES.** As compensation for legal services, Client agrees to pay my Attorney as follows:

Client agrees to pay Attorney's Fees at a rate of \$250 per hour for attorneys with over 10 years experience, \$175 per hour for attorneys with less than 10 years experience, \$100 per hour for paralegals and law clerks and \$35 per hour for miscellaneous employees of Attorney. Hours will be billed in increments of 6 minute. Attorney will provide Client with itemized monthly statements for Professional Services Rendered (including Costs and Expenses; see below), and Client agrees to promptly pay each Statement. If Client fails to pay each Statement within ten (10) days of Attorney's request, Attorney shall have, in addition to other rights, the right to withdraw as Client's Attorney based on Client's failure to fulfill an obligation to Attorney.

**2. COSTS AND EXPENSES.** In addition to paying Attorney's Fees, Client agrees to pay all costs and expenses in connection with Attorney's handling of this matter. Costs and expenses shall be billed to Client as they are incurred, and Client hereby agrees to promptly reimburse Attorney. These costs may include (but are not limited to) the following: long distance telephone charges, photocopying (\$ 0.10 per page), facsimile costs, express delivery charges, deposition fees, expert fees, subpoena costs, court costs, sheriff's and service fees, travel expenses and investigation fees. Client may be asked to pay directly to vendors large charges such as those for depositions, of experts or investigation fees.

**3. NO GUARANTEE.** Client acknowledges that Attorney has made no promise or guarantee regarding the outcome of Client's legal matter. In fact, Attorney has advised Client that litigation in general is risky, can take a long time, can be very costly and can be very frustrating. Client further acknowledges that Attorney shall have the right to cancel this agreement and withdraw from this matter if, in Attorney's professional opinion, the matter does not have merit, Client does not have a reasonably good possibility of recovery, Client refuses to follow the recommendations of Attorney, and/or Client fails to abide by the terms of this agreement, and/or if Attorney's continued representation would result in a violation of the Rules of Professional Conduct, or at any other time as or if permitted under by the Rules of Professional Conduct.

**4. ALTERNATIVE DISPUTE RESOLUTION.** In the event of any dispute or disagreement concerning this agreement, Client and Attorney agree to submit to arbitration by the Louisiana State Bar Association Lawyer Dispute Resolution Program. Client further agrees that any award by the arbitrator shall include the costs and expenses of arbitration, including attorney's fees actually incurred (if Attorney represents itself, Attorney shall record its fees and charges as it would otherwise accrue in the representation of a third party). In the event that Client does not comply with the arbitrator's decision and satisfy an award within thirty (30) days of the rendering of a decision and Attorney resorts to judicial enforcement of the award, Attorney shall be entitled to recover as well ten percent (10%) of the whole amount awarded (plus costs, expenses and attorney's fees) as a penalty in accordance with Louisiana Civil Code Article 3106.

**NOTICE: By initialing in the space below, you are agreeing to have any dispute arising out of the matters included in the "Alternative Dispute Resolution" provision decided by neutral binding arbitration as provided by Louisiana Arbitration Law; and you are giving up your right**

to have the dispute decided in a court or jury trial. By initialing in the space below, you are also giving up your rights to discovery and appeal. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the Louisiana Arbitration Law.

I have read and understand the foregoing and agree to submit to neutral binding arbitration disputes arising out of the matters included in the "Alternative Dispute Resolution" provision.

Client's Initials \_\_\_\_\_  
Attorney's Initials \_\_\_\_\_

**5. TERMINATION OF REPRESENTATION.** Client understand that it has the right to terminate the representation upon written notice to that effect. Client understand that it will be responsible for any fees or costs incurred prior to the discharge or termination. At the time of any termination in the representation, Client understands that it will be given an accounting for all fees, expenses and costs, which Client will still be responsible for paying.

**6. ENTIRE AGREEMENT.** Client has read this agreement in its entirety and Client agrees to and understand the terms and conditions set forth herein. Client acknowledges that there are no other terms or oral agreements existing between Attorney and Client. This agreement may not be amended or modified in any way without the prior written consent of Attorney and Client.

This agreement is executed by me, the undersigned Client, on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**CLIENT**

\_\_\_\_\_  
City of Slidell by \_\_\_\_\_, \_\_\_\_\_

The foregoing agreement is hereby accepted on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**ATTORNEY**

\_\_\_\_\_  
**Bienvenu, Foster, Ryan & O'Bannon, L.L.C.,**  
by John W. Waters, Jr., member/partner