

Agenda Item #: **3D-4**

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: October 3, 2006

Consent Regular
 Public Hearing

Department:

Submitted By: COUNTY ATTORNEY
Submitted For: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a second amended agreement for legal services regarding underground injection control rules and permits with de la Parte & Gilbert, P.A. The second amended agreement revises the contract provisions relating to travel reimbursement.

Summary: The second amended agreement allows the law firm of de la Parte & Gilbert, P.A. to provide legal services regarding administrative and judicial proceedings involving recent rule amendments promulgated by the United States Environmental Protection Agency and the Florida Department of Environmental Protection and associated permit proceedings relating to the State and Federal Underground Injection Control Program, and amends the contract provisions relating to travel reimbursement. Countywide (ATP)

Background and Justification: The proposed second amended agreement would allow de la Parte & Gilbert, P.A., to provide legal services regarding administrative and judicial proceedings involving recent rule amendments promulgated by the United States Environmental Protection Agency and the Florida Department of Environmental Protection and associated permit proceedings relating to the State and Federal Underground Injection Control Program, with Edward de la Parte, Jr. serving as co-counsel to Assistant County Attorney Amy Petrick. The agreement has been amended to allow for the reimbursement of travel expenses without prior Board approval, as part of the capped expenses of \$20,000.00 already provided for under the original contract. Mr. de la Parte is an AV rated lawyer, with over 27 years experience representing public and private clients in the area of environmental and land use law. He has served as principal attorney on several landmark water law cases in the state of Florida, such as Village of Tequesta v. Jupiter Inlet Corporation, 371 So.2d 663 (Fla. 1979), and has considerable experience litigating water service area disputes. Additionally, Mr. de la Parte has represented government-owned utilities in numerous administrative proceedings, ranging from rulemaking procedures to permit challenges.

Attachments:

1. Amended Agreement Between Palm Beach County and de la Parte & Gilbert, P.A. for Legal Services Re: Underground Injection Control Permits & Rules
2. Original Agreement

Recommended by: DMN Neman 9/18/06
Department Director Date

Approved by: _____ N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2005	2006	2007	2008	2009
Capital Expenditures	—	—	—	—	
Operating Costs	—	—	—	—	
External Revenues	—	—	—	—	
Program Income (County)	—	—	—	—	
In-Kind Match (County)	—	—	—	—	
NET FISCAL IMPACT	—	—	—	—	
# ADDITIONAL FTE POSITIONS (Cumulative)	—	—	—	—	

Is Item Included in Current Budget? Yes ___ No ___

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____

Reporting Category

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Handwritten: [Signature] 9-20-06
 [Signature] 9/19/2006 OFMB
 [Signature] 9/19/06
 [Signature] 9/19/06
 [Signature] 9/26/06 Contract Dev. and Control
 9/26/06 This Amended Agreement complies with our review requirements.

B. Legal Sufficiency:
 [Signature] Taylor Petrich
 Assistant County Attorney

C. Other Department Review:

 Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

**SECONDED AMENDED AGREEMENT BETWEEN PALM BEACH COUNTY AND
LAW OFFICES OF DE LA PARTE & GILBERT, P.A. FOR LEGAL SERVICES RE:
UNDERGROUND INJECTION CONTROL PERMITS & RULES**

THIS AGREEMENT is made and entered into this _____ day of _____, 2006, by and between **PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida (hereinafter referred to as "BOARD") and **LAW OFFICES OF DE LA PARTE & GILBERT, P.A.**, (hereinafter referred to as "OUTSIDE COUNSEL").

In consideration of the premises and mutual covenants and agreements expressed herein the parties agree as follows:

1. (a) The BOARD hereby retains the OUTSIDE COUNSEL to provide LEGAL SERVICES regarding administrative and judicial proceedings involving recent rule amendments promulgated by the United States Environmental Protection Agency and the Florida Department of Environmental Protection and associated permit proceedings relating to the State and Federal Underground Injection Control Program.

(b) LEGAL SERVICES shall mean all work necessary to prosecute the County's interests in the administrative challenges listed in subsection (a) above including but not limited to: appearance and representation at any/all hearing, trials and other proceedings relating to the above-referenced matter, regardless of the tribunal, judge, or panel holding the hearing, trial or other proceeding; preparation of pleadings, briefs, research, legal memoranda; preparation of fact witnesses and/or expert witnesses; preparation of discovery requests and/or discovery responses; preparation of exhibits to be used at hearings, mediation, or meetings related to the above-referenced matter; memoranda to the BOARD and participation at meetings with the BOARD or the BOARD's designee to discuss the above-referenced matter, as needed;

representation during depositions; and representation during mediation, and formal or informal negotiations related to the above-referenced matter.

(c) The term of this AGREEMENT shall be effective as of January 1, 2006, and shall terminate when the administrative challenges referenced in subsection (a) of this article reach a final disposition.

(d) It is anticipated that OUTSIDE COUNSEL will attempt whenever possible to achieve cost effectiveness by consolidating hearings, limiting travel, streamlining case processing, using printed forms, using the appropriate level of attorney or staff experience required by task, and taking other actions to improve efficiency.

2. (a) The BOARD shall pay OUTSIDE COUNSEL for the LEGAL SERVICES rendered on a per hour basis according to the following hourly rate schedule in a total amount not to exceed TWO HUNDRED THOUSAND AND NO CENTS (\$200,000.00):

i.) Edward de la Parte, Jr.	\$250.00 per hour
ii.) Other Shareholders	\$215.00 per hour
iii.) Associate Attorneys	\$175.00 per hour
iv.) Law Clerks	\$115.00 per hour
v.) Paralegals	\$90.00 per hour.

(b) OUTSIDE COUNSEL understands that its LEGAL SERVICES will be capped at TWO HUNDRED THOUSAND DOLLARS AND NO CENTS (\$200,000.00) and there will be no additions to that amount.

(c) OUTSIDE COUNSEL shall notify the BOARD when the billable fees and costs reach ninety (90%) percent of the not-to-exceed amount provided for herein. Said notification shall be made as soon as is practicable.

(d) Bills shall be submitted to the BOARD for review and approval every thirty (30) days. Payment will be submitted for all approved bills within thirty (30) days of

receipt. Each item shall be set forth separately, specifically describing the work performed, and reflecting the actual time spent on each such matter. Billable hours shall be measured in six (6) minute increments. Compensation of OUTSIDE COUNSEL hours will be for actual time spent providing LEGAL SERVICES related to the cases. Overtime pay at premium rates will not be compensated.

3. (a) The BOARD agrees to reimburse OUTSIDE COUNSEL for any and all reasonable and ordinary expenses and costs incurred during the course of providing the LEGAL SERVICES. The expenses and costs may include, but are not limited to, out-of-pocket expenses, photo copying at a rate of .15 per page, express mail, word processing charges, telefacsimile charges, long distance telephone charges, cellular telephone charges at the rate of .25 per minute, postage and printing. The BOARD will only reimburse OUTSIDE COUNSEL expert witness or consultant fees that have been previously approved in writing by the BOARD. Court filing fees and costs, witness fees, and travel shall be itemized and invoiced separately.

(b) BOARD shall not be responsible for the cost of any computerized legal research other than the actual billable hourly rate of OUTSIDE COUNSEL.

(c) The total amount of reimbursable expenses and costs, shall not exceed TWENTY THOUSAND DOLLARS AND NO CENTS (\$20,000.00).

(d) OUTSIDE COUNSEL covenants and agrees that any other type of billing or time keeping which allows compensation for time not actually spent by OUTSIDE COUNSEL is not permitted under this AGREEMENT. Therefore, it shall be a material breach of the terms of this AGREEMENT for OUTSIDE COUNSEL or anyone on OUTSIDE COUNSEL's behalf to submit for payment any statement of services rendered that either (i) overstates the amount of time actually spent pursuant to this AGREEMENT, or (ii) includes time

spent by any person not affiliated with OUTSIDE COUNSEL.

(e) Each statement of costs and fees represents an implied warranty that the statement sets forth only the actual time spent and only the actual costs incurred. The BOARD may rely on the implied warranty.

(f) All requests for payment of expenses eligible for reimbursement under this AGREEMENT shall include copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expenses were actually incurred and necessary in the performance of the LEGAL SERVICES. Long distance telephone calls shall identify the person(s) called, purpose of the call, time and cost. Photocopy charges shall give a general description of the documents. If duplication of more than ten (10) documents is required, a general description of the category or type of documents copied will be sufficient documentation. Any out-of-county travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this AGREEMENT shall be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes and all applicable policies and procedures established by the BOARD.

(g) OUTSIDE COUNSEL shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the LEGAL SERVICES for at least three (3) years after termination of this AGREEMENT. The BOARD shall have access to such books, records and documents as required in this subparagraph for the purpose of inspection and/or audit during normal business hours, at the BOARD's expense, upon reasonable written notice.

4. This AGREEMENT may be terminated by either party only upon good cause shown. OUTSIDE COUNSEL reaching or exceeding the fee cap set forth herein, shall not constitute good cause for termination. The BOARD shall provide written notice to OUTSIDE

COUNSEL, and termination shall become effective upon receipt of the notice. OUTSIDE COUNSEL shall provide sixty (60) days written notice to the BOARD. Upon termination by either party, if fully paid in accordance with this AGREEMENT, OUTSIDE COUNSEL shall transfer all work in progress, completed work, and other materials related to the LEGAL SERVICES to the BOARD.

5. (a) OUTSIDE COUNSEL shall provide periodic status reports, either oral or in writing, as requested by the SUPERVISOR or her designee.

(b) OUTSIDE COUNSEL shall deliver to the BOARD for approval and acceptance, and before being eligible for final payment of any amounts due, and owing, all documents and materials prepared by and for the BOARD in the course of providing the LEGAL SERVICES.

(c) All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the BOARD or at its expense shall be kept confidential by OUTSIDE COUNSEL and shall not be disclosed to any other party, directly or indirectly, without the BOARD's prior written consent unless required by an order issued by a court or like authority of lawful jurisdiction. All drawings, maps and sketches, and other data developed or purchased under this AGREEMENT or at the BOARD's expense shall be and remain the BOARD's property and may be reproduced and reused solely at the discretion of the BOARD.

(d) OUTSIDE COUNSEL has been advised that the BOARD and all its activities are subject to the Public Records Law (Chapter 119, F.S.) and the Sunshine Law (Section 286.011, F.S.) OUTSIDE COUNSEL shall observe and comply with the requirements of said laws in performing the services required hereunder.

6. OUTSIDE COUNSEL will maintain in full force and effect, during the life of this AGREEMENT, Standard Professional Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence with the maximum deduction of Fifty Thousand Dollars (\$50,000.00).

(a) Certificates of Insurance, satisfactory to the BOARD evidencing all such coverages shall be furnished to the BOARD immediately upon execution hereof and before commencement of any services under this AGREEMENT, with complete copies of policies to be furnished upon the BOARD's request. Such certificates of insurance will provide the BOARD with thirty (30) days prior written notice of any cancellation or non-renewal.

(b) Approval of the insurance by the BOARD shall not relieve or decrease liability of OUTSIDE COUNSEL hereunder.

7. OUTSIDE COUNSEL shall indemnify, hold harmless and defend the BOARD, its agents, servants, and employees from and against any and all claims, liability, losses and/or causes of action which may arise by virtue of any intentional or negligent act or omission of OUTSIDE COUNSEL or any agent, member, partner, associate or employee thereof in the performance of the LEGAL SERVICES.

8. OUTSIDE COUNSEL represents that it has, or will secure at its own expense, all necessary personnel required to perform the LEGAL SERVICES as required herein. Such personnel shall not be employees of or have any contractual relationship with the SUPERVISOR. The LEGAL SERVICES shall be performed by EDWARD DE LA PARTE, JR., ESQUIRE, or under his direct supervision. OUTSIDE COUNSEL may not substitute lead counsel without prior written authorization from the BOARD. Such authorization shall be at the sole discretion of the BOARD. All personnel engaged in performing the LEGAL SERVICES

shall be fully qualified and, if required, authorized or permitted under State and local law to perform such services. OUTSIDE COUNSEL warrants that the LEGAL SERVICES shall be performed by skilled and competent personnel to the highest professional standards.

9. OUTSIDE COUNSEL's signature on this AGREEMENT shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this AGREEMENT are accurate, complete and current as of the date of this AGREEMENT.

10. (a) OUTSIDE COUNSEL represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the LEGAL SERVICES, as provided in the standards set forth in Part III of Chapter 112, Florida Statutes. OUTSIDE COUNSEL further represents that no person having such a conflicting interest shall be employed by OUTSIDE COUNSEL to perform the LEGAL SERVICES.

(b) OUTSIDE COUNSEL shall promptly notify the BOARD in writing of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence OUTSIDE COUNSEL's judgment or quality of the LEGAL SERVICES. The notice shall identify the prospective business association, interest or circumstance and the nature of work that OUTSIDE COUNSEL want to undertake and request the BOARD's opinion as to whether the association, interest or circumstance would, in the opinion of the BOARD, constitute a conflict of interest if entered into by the OUTSIDE COUNSEL. The BOARD agrees to notify OUTSIDE COUNSEL of its opinion within thirty (30) days of receipt of notification by OUTSIDE COUNSEL. If, in the opinion of the BOARD, the prospective business association, interest or circumstance would not

constitute a conflict of interest by OUTSIDE COUNSEL, the BOARD shall so state in its opinion, and the association, interest, or circumstance shall not be deemed to be a conflict of interest with respect to the LEGAL SERVICES. OUTSIDE COUNSEL further agrees to comply with Palm Beach County PPM #CW-0-052 regarding outside counsel conflicts of interest. Said PPM is incorporated herein by reference and made a part of this contract.

11. OUTSIDE COUNSEL is, and shall be, in the performance of the LEGAL SERVICES an independent contractor and not an employee of the BOARD. All persons engaged in the LEGAL SERVICES performed by OUTSIDE COUNSEL pursuant to this AGREEMENT shall at all times, and in all places, be subject to OUTSIDE COUNSEL's sole discretion, supervision, and control. OUTSIDE COUNSEL shall exercise direct control over the means and manner in which it and its employees perform the work. OUTSIDE COUNSEL does not have the power or authority to bind the BOARD in any promise, agreement or representation other than as specifically provided for in this AGREEMENT.

12. OUTSIDE COUNSEL warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for OUTSIDE COUNSEL, to solicit or secure this AGREEMENT and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for OUTSIDE COUNSEL, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this AGREEMENT.

13. OUTSIDE COUNSEL warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, sex, age, national origin, ancestry, marital status, sexual orientation or disability.

14. (a) This AGREEMENT shall be governed by the laws of the State of Florida.