

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: April 10, 2007 Consent Regular
Department: Ordinance Public Hearing
Submitted By: COUNTY ATTORNEY
Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

Approve an Amendment to the Agreement (Resolution No. R-2002-0278) with Ogletree, Deakins, Nash, Smoak & Stewart, P.A., for Legal Services, pursuant to which David M. DeMaio, Esq. will continue to represent the interests of the County, Maurice Rosenstock and Daniel Hyndman in the case of James McCarthy v. Palm Beach County, et al., Case No. CA 01-13485 AO, at a new schedule of rates, in an amount not to exceed \$180,000.00, and costs not to exceed \$35,000.

Summary: James McCarthy claims that he was arrested in December 1997, and charged with twenty-two counts of grand theft, as a result of false information provided to the State Attorney's Office by Maurice Rosenstock and Daniel Hyndman. DeMaio is a former Assistant United States Attorney who has handled similar lawsuits, and David DeMaio has represented the Palm Beach County Sheriff's Office and the City of West Palm Beach. His law firm represents the County in labor matters. COUNTYWIDE (AJM)

Background and Justification: At the time of McCarthy's arrest, Rosenstock was a consultant to the County and Hyndman was an Assistant County Attorney. McCarthy was (and is) president of County Collection Services, Inc. ("CCSI"), which had been assigned approximately 11,000 accounts to collect on the County's behalf. Two audits, one of which was conducted by the County's Internal Auditor, disclosed that CCSI had not paid all the amounts it had collected to the County. Civil litigation between the County and CCSI, involving claims and counterclaims over who owes what to whom, is on-going regarding prejudgment interest. The trial resolution judge found that CCSI owes the County some \$90,000 net (prior to interest being added). McCarthy was successful in having the criminal charges dismissed by arguing that he lacked the specific intent the crime requires. After threatening this lawsuit for some time, McCarthy filed it in late 2001, and trial began on March 19, 2007. A mistrial was ordered when Plaintiff's counsel was hospitalized. At the time of the mistrial, the Court had granted the County's Motion for Directed Verdict on the only count applicable to it, and the individual Defendants each had one count remaining against them. Extensive delays caused by the Plaintiff's tactics and the need to retry the case have necessitated adjustment to the rates and the cap.

Attachments:

1. Agreement Between Palm Beach County and Ogletree, Deakins, Nash, Smoak & Stewart, P.C. for Legal Services

Recommended by:

Mansreen Cullen for Denise Nieman 4/4/07
Department Director Date

Approved by: N/A Date
Assistant County Administrator

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Capital Expenditures	_____	_____	_____	_____
Operating Costs	<u>\$60,000</u>	_____	_____	_____
External Revenue	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____
In-King Match (County)	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$60,000</u>	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____			

Is Item Included in Current Budget? Yes X No _____

Budget Account No.: Fund 5010 Agency 700 Org. 7130 Object 4511

Reporting Category _____

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

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Development and Contract Comments:

This item provides funding for the increase over the contractual limit imposed in the original agreement.

CA
4/4/2007
 OFMB
John D. ... 4-4-07
4/15/07
John 4-4-07 CN 4-4-7
4/15/07
 Contract Development and Control
John F. ... 4/15/07

B. Legal Sufficiency:

Richard M. ...

 Chief Assistant County Attorney

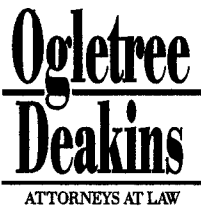
This amendment complies with our review requirements.

The effective date of this Amendment is retroactive

C. Other Department Review:

_____ Department Director

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



OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

701 Brickell Avenue
Suite 2020
Miami, Florida 33131
Telephone: 305.374.0506
Facsimile: 305.374.0456
www.ogletreedeakins.com

RECEIVED

APR - 2 2007

P.B. COUNTY ATTORNEY

March 30, 2007

Andrew McMahon, Esq.
Chief Assistant County Attorney
Palm Beach County Attorney's Office
301 N. Olive Avenue, Suite 301
West Palm Beach, FL 33401

Re: McCarthy v. Palm Beach County, et al.
Case No. 01-13485-AO

Dear Drew:

Enclosed is the original of the new Agreement, which I have signed and had witnessed. I would appreciate your efforts in getting this approved. Please call me if you have any questions or comments.

Best Regards,

David M. DeMaio
DMD/ar
Enclosure

3932302.1

**AMENDMENT TO AGREEMENT BETWEEN PALM BEACH COUNTY AND
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C., FOR LEGAL SERVICES**

THIS AMENDMENT TO AGREEMENT, made and entered this _____ day of _____, 2007, by and between **PALMBEACH COUNTY**, a political subdivision of the State of Florida (the "COUNTY"), and **OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.**, successor-in-interest to Whelan, DeMaio & Kiszkiel, P.A. ("OUTSIDE COUNSEL")

WITNESSETH:

WHEREAS, OUTSIDE COUNSEL is representing the interests of the COUNTY, Maurice Rosenstock, and Daniel Hyndman, in the matter of James McCarthy v. Palm Beach County, et al., pursuant to an Agreement for Legal Services (R2002 0278) between the County and Whelan, DeMaio & Kiszkiel, P.A., entered February 22, 2002, (the "Agreement"), and

WHEREAS, Whelan, DeMaio & Kiszkiel, P.A., merged into the law firm of OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C., as of January 1, 2004; and,

WHEREAS, the litigation has been considerably delayed and complicated by, among other things, abatement of the case while a related matter was litigated, Plaintiff's tactics, the Court's congested trial docket, and a mistrial due to Plaintiff's counsel's illness, which necessitates a retrial of the case;

NOW, THEREFORE, in consideration of the mutual covenants and agreements expressed herein the parties agree as follows:

1. The above recitals are true and correct and incorporated herein by reference.
2. The rate of compensation for LEGAL SERVICES as provided in the Agreement is increased to a new schedule of rates, as follows: 1st to 4th year associates, \$195.00/hr.; 5th year associates and up, \$210.00/hr.; Partners, \$225.00/hr., up to an amount not to exceed \$180,000 (an

increase of \$50,000 over the contractual limit in the original Agreement). OUTSIDE COUNSEL shall notify the COUNTY, in writing, when the fees have reached 90% of the contractual limit.

3. Out-of-pocket costs and expenses shall not exceed \$35,000.00 (an increase of \$10,000.00 over the contractual limit in the original Agreement). OUTSIDE COUNSEL shall notify the COUNTY, in writing, when the fees have reached 90% of the contractual limit.

4. This Amendment to Agreement shall be effective as of January 1, 2007.

5. All other terms and conditions of the parties' Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this AMENDMENT TO AGREEMENT on the day and year reflected in the first line hereof.

ATTEST:
Sharon Bock, Clerk & Comptroller

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

By: _____
Clerk

By: _____
Addie Greene, Chairperson

WITNESS:

Anabel Rodriguez
Signature

OUTSIDE COUNSEL:

David M. DeMaio
David M. DeMaio, Esquire

Anabel Rodriguez
Name (Type or Print)

David M. DeMaio
Typed or Printed Name

Jacqueline Miranda
Signature

Shareholder
Title

Jacqueline C. Miranda

Name (Type or Print)

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**



Chief Assistant County Attorney

VERIFICATION OF INSURANCE

ISSUED TO: To Whom It May Concern

WE, the undersigned Insurance Brokers, hereby verify that the following described insurance is in force as of the date hereof:-

PROFESSIONAL INDEMNITY INSURANCE

NAME OF ASSURED: OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C. and others as more fully described in the Policy wording.

<u>POLICY NO.</u>	<u>INSURER(S)</u>	<u>PARTICIPATION</u>	<u>POLICY PERIOD</u>
PS 198278332	Columbia Casualty Company	50%	12:01 a.m. April 1, 2006 to
LW00600364	St. Paul Surplus Lines Insurance Company	25%	12:01 a.m. April 1, 2007
CLX-1000538	Interstate Fire & Casualty Company	25%	

LIMIT: \$20,000,000 per claim/\$20,000,000 annual aggregate (as provided for in the policy wording)

RETENTION: \$500,000 per claim/\$1,000,000 annual aggregate/\$100,000 each claim thereafter

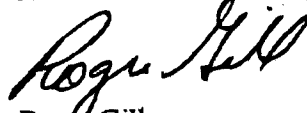
Subject to the terms, conditions, exclusions and limitations of the Policy.

This document is furnished as a matter of information only. The issuance of this document does not make the person or organization to whom it is issued an additional Assured, nor does it modify in any manner the contracts of insurance between the Insured and Insurers. Any amendment, change or extension of such contract can only be effected by specific endorsement attached thereto.

Date: April 20, 2006

AON RISK SERVICES, INC.

PER:



Roger Gill
Aon Professional Services Group