

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$50,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$50,000</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes No _____

Budget Account No.: Fund 4001 Department 720 Unit 1110 Object 3125

Reporting Category _____

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

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:
 Support services under original agreement were \$175,000 and reimbursable costs were \$50,000.

Elizabeth Chesley 8/14/07 *Jim J. Jacobs* 8/15/07
 OFMB Contract Development and Control
 8/14/07 8/15/07

B. Legal Sufficiency:

[Signature]
 Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Department Review:

 Department Director

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

**SECOND AMENDED AGREEMENT BETWEEN PALM BEACH COUNTY
AND
LAW OFFICES OF DE LA PARTE & GILBERT, P.A.
FOR SUPPORT SERVICES RE: INDIAN TRAIL IMPROVEMENT DISTRICT
v. PALM BEACH COUNTY, CITY OF WEST PALM BEACH ET. AL
v. PALM BEACH COUNTY; PALM BEACH COUNTY v. WELLINGTON ET. AL.**

THIS AGREEMENT is made and entered into this _____ day of _____, 2007, 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 support services related to the litigation in the consolidated cases styled, INDIAN TRAIL IMPROVEMENT DISTRICT, an independent special district, Plaintiff, v. PALM BEACH COUNTY, CASE NO.: 50 2005 CA 000965 XXXX MB AN, in the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida; CITY OF WEST PALM BEACH, a municipal corporation; SEMINOLE IMPROVEMENT DISTRICT, an independent special district; and CALLERY-JUDGE GROVE, L.P.; a Florida limited partnership v. PALM BEACH COUNTY, CASE NO.: 50 2004 CA 012091 XXXX AB, in the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida; and the case styled, PALM BEACH COUNTY, a political subdivision of the state of Florida v. VILLAGE OF WELLINGTON, a municipal corporation in Florida, SEMINOLE IMPROVEMENT DISTRICT, a special improvement district of the

state of Florida, CASE NO.: 502004CA010492XXXMB AF, in the Fifteenth Circuit Court in and for Palm Beach County, Florida.

(b) SUPPORT SERVICES shall mean the provision of legal expertise, legal and strategic advice and assistance in the prosecution of the County's interests in all aspects of the case listed in subsection (a) above including but not limited to: any/all hearings/trials related to the case, regardless of the tribunal, judge, or panel holding the hearing or trial; the preparation of pleadings, research, legal memoranda; the preparation of fact witnesses and/or expert witnesses; the preparation of discovery requests and/or discovery responses; the preparation of exhibits to be used at hearings, mediation, or meetings related to the case; the preparation of memoranda to the BOARD and participation at meetings with the BOARD or the BOARD's designee to discuss the case, as needed; depositions; and mediation, and formal or informal negotiations related to the case. SUPPORT SERVICES does not include work related to appeals from the case listed in subsection (a).

(c) The term of this AGREEMENT shall be effective as of March 1, 2005, and shall terminate when the cases 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 DOLLARS 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 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.

(c) 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 SUPPORT 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 SUPPORT SERVICES. The expenses and costs may include, but are not limited to, out-of-pocket expenses, photo copying at a rate of .30 per page, telefacsimile charges, express

mail, word processing charges, long distance telephone charges, cellular charges at a rate of .25 per minute, postage, printing, and mileage at the rate of .35 per mile. The BOARD will only reimburse OUTSIDE COUNSEL expert witness or consultant fees that have been previously approved in writing. 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 FORTY THOUSAND DOLLARS AND NO CENTS (\$40,000.00).

(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 SUPPORT 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.

(g) OUTSIDE COUNSEL shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the SUPPORT 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 SUPPORT 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 SUPPORT 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 SUPPORT SERVICES.

8. OUTSIDE COUNSEL represents that it has, or will secure at its own expense, all necessary personnel required to perform the SUPPORT SERVICES as required herein. Such personnel shall not be employees of or have any contractual relationship with the SUPERVISOR. The SUPPORT SERVICES shall be performed by EDWARD DE LA PARTE, JR., ESQUIRE, or under his direct supervision. All personnel engaged in performing the SUPPORT 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 SUPPORT 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 SUPPORT 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 SUPPORT 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 SUPPORT 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 SUPPORT 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 SUPPORT SERVICES an independent contractor and not an employee of the BOARD. All persons engaged in the SUPPORT 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. Any and all legal action necessary to enforce this AGREEMENT shall be originally filed and later held in Palm Beach County. No remedy herein conferred upon the parties is intended to be exclusive of any other remedy, and each and every such remedy shall be

cumulative and shall be in addition to every other remedy given hereunder or not or hereafter existing at law or in equity, by statute or otherwise. The parties agree that time is of the essence in the performance of all obligations hereunder. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof.

(b) In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees.

15. As provided in Sections 287.132-133, Florida Statutes, by entering into this AGREEMENT or performing any work in furtherance hereof, OUTSIDE COUNSEL certifies that it, its affiliates, suppliers, subcontractors, and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

16. All written notices required in this AGREEMENT shall be sent by certified mail, return receipt requested. If sent to the BOARD, the notice shall be mailed to:

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS
c/o CHIEF ASSISTANT COUNTY ATTORNEY ANDREW J. MCMAHON
PALM BEACH COUNTY ATTORNEY'S OFFICE
301 NORTH OLIVE AVENUE, SUITE 601
WEST PALM BEACH, FLORIDA 33401

If sent to OUTSIDE COUNSEL, the notice shall be mailed to:

EDWARD DE LA PARTE
LAW OFFICES OF DE LA PARTE & GILBERT, P.A.
101 E. KENNEDY BOULEVARD, SUITE 3400
TAMPA, FLORIDA 33602

17. The foregoing terms and conditions constitute the entire AGREEMENT between the parties hereto and any representation not contained herein shall be null and void and of no force or effect. Further, this AGREEMENT may be amended only in writing upon mutual consent of the parties hereto.

18. This AGREEMENT supercedes and replaces any prior written or oral agreements between the parties related to this representation.

IN WITNESS WHEREOF, the parties hereto have duly executed this AGREEMENT on the day and year first above written.

WITNESSES:

**PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS**

By: _____

By: _____

Commissioner Addie Greene
Chairperson of Board of County Commissioners

By: _____

WITNESSES:

ATTORNEY:

By: Varena Vg

By: [Signature]

Edward P. de la Parte, Jr.

By: [Signature]

**INTEROFFICE COMMUNICATION
PALM BEACH COUNTY**

BUDGET AVAILABILITY STATEMENT

DATE: August 14, 2007

TO: Mariana Diaz, Budget Analyst
Office of Financial Management & Budget

FROM: Guy Eggertsson, Fiscal Manager
Water Utilities Department



RE: Additional Legal Services Indian Trail Improvement District Acquisition
Del La Parte & Gilbert P.A.

FISCAL IMPACT ANALYSIS:

Summary of Fiscal Impact:

Capital Expenditures	
Operating Costs	\$50,000.00
Revenues	

Is item included in current budget? Yes No

Budget Account Number:

Fund	Agency	Organization	Object	Allocation
4001	720	1110	3125	100%

Recommended Sources of Funds/Summary of Fiscal Impact:

One-time expenditure to be funded by user fees.