

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

Meeting Date: March 17, 2009

Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Amendment No. 12 to the Contract (R96-0714D) for the employment of Denise M. Nieman as County Attorney for a term ending September 30, 2014.

Summary: This amendment provides for the services of Denise M. Nieman as County Attorney through September 30, 2014. The contract was automatically extended an additional one year to March 26, 2014; however, this amendment provides for the term to extend to September 30, 2014, to coincide with the County's fiscal year (October 1st through September 30th). No salary increase is being sought this year; the current annual salary is \$199,513. Any future increases will be limited to those provided other County employees. Countywide (DMN)

Background and Policy Issues: Denise Nieman has been with the County for more than 22 years, with the past 13 as the County Attorney. The current contract is for a five-year term which was automatically extended for an additional year to March 26, 2014, pursuant to the terms of the original contract. This amendment provides for the term to extend to September 30, 2014, which will conform the term with the County's fiscal year (October 1st through September 30th) as well as the terms of the County's other contract employees, the County Administrator and the Internal Auditor. No salary increase is being sought this year to the current salary of \$199,513. Any future increases will be limited to those provided other County employees, and in the same percentage, as approved by the Board in its budget process.

Attached is a review of the office's activities and accomplishments for the past year.

(Continued on Page 3.)

Attachments:

1. Amendment
 2. Salary Comparison Survey
-

Recommended by: _____

Department Director

Date

DM Nieman 3/2/09

Approved by: _____ N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Inc. (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:

John D. ... 3/6/09
 OFMB
 (initials) 3/4 3/31/09

Don J. ... 3/10/09
 Contract Development and Control
 E. Jones 3/10/09

B. Legal Sufficiency:

Maurice Cullen
 Chief Assistant County Attorney

This amendment complies with our review requirements.

C. Other Department Review:

 Department Director

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

Background and Policy Issues: (Continued from Page 1.)

The "County Attorney Office's Management Plan" that was adopted in 1996 continues to provide the framework and set the tone for the operation of the County Attorney's Office, one of the largest law firms in the County. The Palm Beach County Attorney's Office is highly respected by the judiciary and legal community.

The County Attorney's Office had several significant victories on the litigation front in the past year: We successfully defended a \$40-\$50 million inverse condemnation suit by Mizner Trail Golf Club, Ltd.; we established that a class of employees who were terminated or disciplined in violation of the Sunshine Law could not recover an estimated total of \$20 million in damages; and we obtained a jury verdict valuing 32 parcels in Unit 11 for less per acre than we offered pretrial, allowing that sensitive-lands acquisition project to stay within its budget. In addition, the County Attorney's Litigation Section obtained dismissal of a claim by a disadvantaged business enterprise that it was entitled to damages based on the failure to achieve 15% DBE participation on a \$92 million Palm Tran contract. The County successfully defended an appeal in the Eleventh Circuit, U.S. Court of Appeals which, had the County lost, would have resulted in either the reinstatement of a \$1.5 million verdict against the County or having to retry the four-week trial. The County further won a significant reversal in the Fourth District Court of Appeals in *Palm Beach County v. City of Boca Raton and City of Delray Beach, et al.*, which reaffirmed the County's right to use countywide tax revenues to fund fire rescue dispatch services.

Besides upholding the propriety of the Board's decisions and actions by administration and staff, these victories avoided significant negative impacts to the County's budget and insurance coverage costs. It could be said that our office paid for itself, for several years, just in these court case results.

Much significant work has also been done outside the courtroom, including, but not limited to the Red Light Camera Ordinance.

In addition, the Office continued to provide services to the Solid Waste Authority including legal assistance with the waste haulers contracts, the Alternative Western Landfill site selection process and numerous SWA construction projects.

On November 6, 2008, I celebrated my 22nd year with the County Attorney's Office, and I am wrapping up my thirteenth year as County Attorney. I appreciate the opportunity to continue to serve you.

Amendment No. 12 to the Contract
Between Palm Beach County and
Denise M. Nieman, County Attorney

This Amendment No. 12 dated March 17, 2009, to the Contract dated June 14, 1996 (R96-0714D) between Palm Beach County, a political subdivision of the State of Florida (hereinafter "County"), and Denise M. Nieman, Esq. (hereinafter "County Attorney"), an individual residing at 111 E. Tarpon Lane, Jupiter, Florida 33477.

WITNESSETH:

WHEREAS, the parties hereto have previously entered into an employment contract (R96-0714D) dated June 4, 1996 (hereinafter "the Contract"); and

WHEREAS, the parties have amended the Contract annually; and

WHEREAS, the term of the Contract has automatically extended for an additional one year which establishes March 26, 2014 as its current termination date; and

WHEREAS, the parties wish to further amend the Contract to provide for a change in the dates of its term so as to conform with the County's fiscal year (October 1st to September 30th) and to make those additional changes which coincide with the amended term; and

WHEREAS, this amendment provides that the County Attorney will receive a salary increase in the same percentage as other County employees should such increases be approved in the budget process; and

WHEREAS, the amended termination date of the Contract shall be September 30, 2014.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other such good and valuable consideration, the receipt of which the parties hereto expressly acknowledge, the parties agree as follows:

1. Section 1 of the Contract as amended is hereby deleted in its entirety and replaced with a new Section 1 which shall read as follows:

The County shall employ Denise M. Nieman, Esq., as the Palm Beach County Attorney pursuant to Section 4.3 of the Palm Beach County Charter for a term commencing on March 26, 2009, and terminating on September 30, 2014; provided that beginning October 1, 2010, the remaining four years of the Contract shall commence on October 1st of each year and extend through September 30th of the following year, reflecting the County's fiscal year. The County shall pay the

County Attorney an annual salary of \$199,513. plus any increase in salary, in the same percentage, as provided other County employees as determined by the Board of County Commissioners during its budget process and shall make a continuing contribution on behalf of the County Attorney into the NACO Deferred Compensation Program in the maximum amount allowable by law. In addition, the County shall pay the County Attorney a car allowance of five hundred dollars (\$500.00) per month. This Contract shall continue on the same terms and conditions as provided for herein for additional one (1) year periods, based on the County's fiscal year calendar, as set forth above, unless terminated in accordance with Paragraphs 10 or 11 herein.

2. All other terms and conditions of the Contract shall remain in full force and effect. This Amendment shall be effective upon execution hereof by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal on the day set forth above.

ATTEST:
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____

John F. Koons, Chairman

WITNESSES FOR COUNTY
ATTORNEY:

COUNTY ATTORNEY

Janet Glaspie

Denise M. Nieman
Denise M. Nieman

Jeannette Rappina

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: *Muhammad Lulla*
Chief Assistant County Attorney

COUNTY ATTORNEY SALARY SURVEY - JANUARY 2009

<u>ORGANIZATION</u>	<u>SALARY</u>	<u>DEFERRED COMP</u>	<u>CAR ALLOWANCE</u>	<u>BONUS</u>	<u>DATE OF HIRE</u>	<u># OF EMPLOYEES SUPERVISED</u>
MIAMI-DADE COUNTY	\$317,000	\$1,500 annual contribution to a 401A Supplement Retirement Account	\$250 Bi-Weekly	\$10,000 Annually	06/17/1970	152
BROWARD COUNTY	\$240,345	\$16,500 Annually	\$600 Monthly	N/A	05/31/2005	65
HILLSBOROUGH COUNTY	\$214,864	6.60%	\$3,540 Annually	Insurance Paid	08/16/2004	80
PINELLAS COUNTY	\$193,015	\$20,000 Annually	\$450 Monthly	N/A	04/2008	19
ORANGE COUNTY	\$207,834	\$15,500	N/A	N/A	10/28/2002	24
PALM BEACH COUNTY SCHOOL BOARD	\$194,500	None	\$6,000 Annually	None	11/04/05	23
PALM BEACH COUNTY	\$199,513.60	\$16,500 Annually	\$500 Monthly	N/A	11/06/1986	49
SOUTH FLORIDA WATER MANAGEMENT DISTRICT	\$178,152	Employer matched contribution Up to 5% maximum	N/A	N/A	08/21/1989	52
CITY OF WEST PALM BEACH*	\$161,813.12	Employee: 7.5% City: 9.5%	\$6,000 Annually	\$5,200 Annually (Annual Management Incentive Amount)	06/09/2002	19

*2008 figures not updated