

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: November 16, 2010

☒ Consent ☐ Regular
☐ Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: approve an amended agreement for legal services with Kaplan Kirsch and Rockwell LLP.

Summary: On July 20, 2010, the County Attorney approved an agreement allowing the law firm of Kaplan Kirsch and Rockwell LLP to represent the County in a case captioned Donald Trump et al. v. Palm Beach County, Case No. 502010CA018444, in the Fifteenth Judicial Circuit, for an amount not to exceed \$50,000. As the case has progressed, it has become apparent that authorization for greater legal fees is required to allow for continued legal representation through the resolution of the case. The amended agreement would apply to legal expenses incurred after July 20, 2010, and would be limited to an amount not to exceed \$500,000. The agreement also provides for reimbursable costs up to \$20,000, for a total of \$520,000. As a cost-savings measure, the amended agreement provides that the County Attorney's Office will perform all routine legal services not requiring expertise in aviation law, such as drafting discovery, defending/taking depositions, and attending hearings. Countywide (ATP)

Background and Justification: On July 20, 2010, the County Attorney approved an agreement allowing the law firm of Kaplan Kirsch and Rockwell LLP to represent the County in a case captioned Donald Trump et al. v. Palm Beach County, Case No. 502010CA018444, in the Fifteenth Judicial Circuit, for an amount not to exceed \$50,000. The case raises claims against Palm Beach County for nuisance, trespass, injunctive relief, and inverse condemnation, and against Bruce Pelly as an individual, for intentional battery, as a result of anticipated airport-related noise.

Kaplan Kirsch & Rockwell is a national law firm that specializes in aviation law, including airport-related noise issues, and has successfully represented the Department of Airports in other aviation-related litigation. Kaplan Kirsch & Rockwell's expertise in aviation litigation will assist the County Attorney's Office in successfully defending the case.

Attachments:

1. Agreement Between Palm Beach County and Kaplan Kirsch and Rockwell LLP for Legal Services
2. Amended Agreement Between Palm Beach County and Kaplan Kirsch and Rockwell LLP for Legal Services

Recommended by: _____

County Attorney

10/27/10

Date

Approved by: _____

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	520,000	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	520,000	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No _____

Budget Account No.: Fund 4100 Department 120 Unit 1110 Object 3125

Reporting Category _____

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

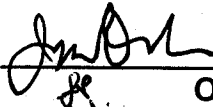
Approval of this item authorizes a not to exceed expenditure of \$500,000 for legal expenses plus up to \$20,000 for reimbursable expenses. The funding source is Department of Airports reserves.

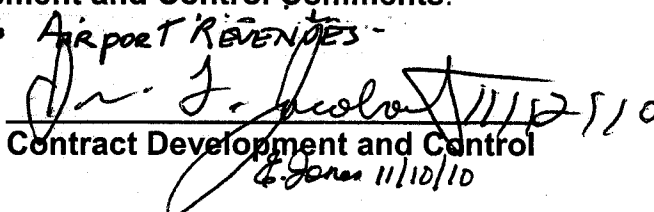
C. Departmental Fiscal Review: CM Simmon

III. REVIEW COMMENTS

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

100% FUNDED FROM AIRPORT REVENUES


 OFMB VA
 11/9/10 PM
 11-470


 Contract Development and Control
 11/10/10

B. Legal Sufficiency:


 Assistant County Attorney

C. Other Department Review:

 Department Director

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

Background and Justification (cont.):

As the Trump v. Palm Beach County case has progressed, it has become apparent that authorization for greater legal fees is required to allow for continued representation through the resolution of the case. The amended agreement proposes an amount not-to-exceed of \$500,000, and an allowance for reimbursable costs up to \$20,000, for a total of \$520,000. As a cost-savings measure, the amended agreement provides that the County Attorney's Office will perform all routine legal services not requiring expertise in aviation law, such as drafting discovery, defending/taking depositions, and attending hearings.

**AGREEMENT BETWEEN PALM BEACH COUNTY
AND KAPLAN KIRSCH AND ROCKWELL LLP FOR LEGAL SERVICES**

THIS AGREEMENT is made and entered into on this 20th day of July, 2010, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY", and Kaplan Kirsch and Rockwell LLP, hereinafter referred to as "ATTORNEY".

WITNESSETH:

WHEREAS, COUNTY desires to retain the Legal Services of ATTORNEY for purposes of assisting the County Attorney in complex airport noise matters requiring special expertise; and

WHEREAS, ATTORNEY desires to provide Legal Services to COUNTY as requested by the County Attorney.

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

1. COUNTY agrees to retain ATTORNEY, on an as needed basis, for advice, representation, and assistance to County Attorney on various legal matters including, but not limited to, defense of the COUNTY and Bruce V. Pelly in a case captioned *Donald Trump et al v. Palm Beach County* (Case No. 5010 CA 018444; Fifteenth Judicial Circuit Court); and, services in which an expert aviation legal consultant is deemed necessary by the County Attorney, hereinafter referred to as "Legal Services". ATTORNEY shall perform the Legal Services as may be requested by the County Attorney or his designee.

The lawyer primarily handling this matter on behalf of ATTORNEY is Peter Kirsch, Esq. who will be assisted by other partners and associates as needed including John Putnam and W. Eric Pilsk.

2. COUNTY agrees to pay ATTORNEY for the Legal Services rendered on a per hour basis as set forth in Exhibit "A" in the total amount not to exceed Fifty Thousand Dollars (\$50,000). Monthly bills shall be submitted to the County Attorney's office for review and approval prior to payment. Each item shall be set forth separately, specifically describing the work performed, and reflecting the actual time spent on each such matter. ATTORNEY agrees to bill COUNTY for work performed in tenth of an hour increments. ATTORNEY shall notify the COUNTY when the billable fees and costs reach ninety (90%) percent of the not-to-exceed amount provided for herein. Notification shall be made as soon as is practicable and prior to the next monthly invoice.

3. (a) COUNTY also agrees to reimburse ATTORNEY for any reasonable and ordinary expenses and costs incurred during the course of performing the Legal Services provided that COUNTY has approved all such expenses and costs prior to the time that such expenses and costs are incurred. The expenses and costs may include, but are not limited to, out-of-pocket expenses for express mail, computerized research, word processing charges, postage and photocopying. Court filing fees and costs, witness fees, and previously approved travel shall be itemized and invoiced separately. Total expenses and costs shall not exceed four percent (4%) of the not-to-exceed amount as set forth in

Paragraph Two (2) above without written authorization from COUNTY.

(b) 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. Photocopy charges shall describe the documents, purpose of duplication, and rate charged. Any out-of-county and related travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Agreement shall be approved by the County Attorney's Office, in advance, and 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 of County Commissioners.

(c) ATTORNEY 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. COUNTY 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 COUNTY's expense, upon five (5) days written notice.

4. This Agreement may be terminated by COUNTY upon written notice to ATTORNEY, and termination shall become effective upon receipt of the notice. This Agreement may be terminated by ATTORNEY upon sixty (60) days written notice to COUNTY so long as such termination is consistent with ATTORNEY's professional

obligations. Upon termination by either party, ATTORNEY shall transfer all work in progress, completed work, and other materials related to the Legal Services to COUNTY.

5. (a) ATTORNEY shall provide periodic status reports, either oral or in writing, as requested by the County Attorney or her designee.

(b) ATTORNEY shall deliver to the County Attorney's Office for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for COUNTY 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 COUNTY or at its expense shall be kept confidential by ATTORNEY and shall not be disclosed to any other party, directly or indirectly, without COUNTY'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 COUNTY's expense shall be and remain COUNTY's property and may be reproduced and reused solely at the discretion of COUNTY.

(d) ATTORNEY shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

6. ATTORNEY shall maintain during the term of this Agreement, standard Professional Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence with a maximum deductible of Fifty Thousand Dollars (\$50,000.00). A Certificate of Insurance, satisfactory to COUNTY, evidencing such coverage shall be

furnished to COUNTY immediately upon execution of this Agreement, with complete copy of such policy to be furnished upon COUNTY's request. Such certificates of insurance will provide COUNTY with thirty (30) days prior written notice of any cancellation or non-renewal.

7. ATTORNEY shall indemnify, hold harmless and defend COUNTY, its agents, servants, and employees from and against any and all claims, liability, losses and/or causes of actions which may arise by virtue of any intentional or negligent act or omission of ATTORNEY or any agent, member, partner, associate or employee thereof in the performance of the Legal Services.

8. ATTORNEY 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 COUNTY. The Legal Services shall be performed by ATTORNEY or under its supervision, and 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. ATTORNEY warrants that the Legal Services shall be performed by skilled and competent personnel to the highest professional standards.

9. ATTORNEY'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) ATTORNEY 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. ATTORNEY further represents that no person having such a conflicting interest shall be employed by ATTORNEY to perform the Legal Services.

(b) ATTORNEY shall promptly notify COUNTY in writing of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence ATTORNEY'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 ATTORNEY wants to undertake and request COUNTY's opinion as to whether the association, interest or circumstance would, in the opinion of COUNTY, constitute a conflict of interest if entered into by ATTORNEY. COUNTY agrees to notify ATTORNEY of its opinion within thirty (30) days of receipt of notification by ATTORNEY. If, in the opinion of COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by ATTORNEY, COUNTY 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. ATTORNEY further agrees to comply with Palm Beach County PPM #CW-0-052 regarding outside counsel conflicts of interest.

11. ATTORNEY is, and shall be, in the performance of the Legal Services an independent contractor and not an employee of COUNTY. All persons engaged in the Legal Services performed by ATTORNEY pursuant to this Agreement shall at all times, and in all places, be subject to ATTORNEY'S sole discretion, supervision, and control.

ATTORNEY shall exercise control over the means and manner in which it and its employees perform the work. ATTORNEY does not have the power or authority to bind COUNTY in any promise, agreement or representation other than as specifically provided for in this Agreement.

12. ATTORNEY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for ATTORNEY, 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 ATTORNEY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

13. ATTORNEY 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. 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 now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof.

15. All written notices required in this Agreement shall be sent by certified

mail, return receipt requested. If sent to COUNTY, the notice shall be mailed to:

County Attorney
Palm Beach County
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401
ATTN: Andrew McMahon, Esq.

If sent to ATTORNEY, the notice shall be mailed to:

Kaplan Kirsch & Rockwell LLP
1675 Broadway, Suite 2300
Denver, Colorado 80202
ATTN: Peter Kirsch, Esq.

16. 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.

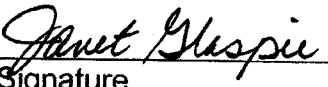
17. All exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

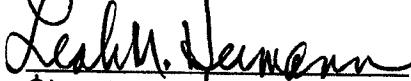
18. This Agreement shall be effective as of, and shall apply to legal services performed after, July 20, 2010 and shall terminate one (1) year from the effective date of this Agreement. At the sole option of COUNTY, this Agreement may be renewed for two (2) additional two (2) year periods at the same price, terms and conditions as set forth herein.

(Remainder of page intentionally left blank)

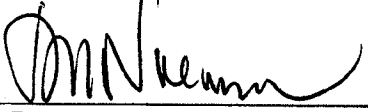
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on
the day and year first above written.

WITNESSES:

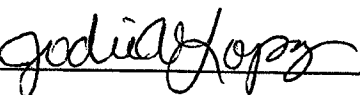
By: 
Signature
Janet Glaspie
Print Name

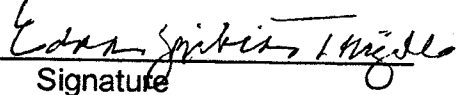
By: 
Signature
LEAH M. HERMANN
Print Name

PALM BEACH COUNTY, FLORIDA

By: 
Denise Nieman, County Attorney

WITNESSES:

By: 
Signature
Jodie A. Lopez
Print Name

By: 
Signature
EDNA YRIBIA TRUJILLO
Print Name

ATTORNEY:

Kaplan Kirsch & Rockwell LLP

By: 
Peter Kirsch, Esq.

Partner
Title

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

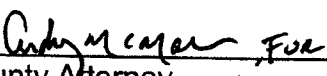
By: 
County Attorney

EXHIBIT A

Reduced Hourly Rates Based Upon Seniority

Mr. Kirsch	\$425
Mr. Putnam	\$375
Mr. Pilsk	\$375
Associates	\$250-275
Law Clerks	\$115