

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

Meeting Date: January 24, 2012**Consent []****Regular [X]****Public Hearing []****Submitted By:** Administration

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a First Amendment to Legal Services Authorization 2011-0353-C (First Amendment) with Sundstrom, Friedman & Fumero for services related to the Glades Utility Authority (GUA) increasing the not-to-exceed amount from \$50,000 to \$100,000.

Summary: On March 15, 2011, the Palm Beach County Board of County Commissioners (BCC) approved an Agreement with Rose, Sundstrom & Bentley, LLP (now known as Sundstrom, Friedman & Fumero, LLP) for legal services related to complex utility projects agreements (R2011-0353). Pursuant to the Agreement, services were to be assigned pursuant to task specific Legal Services Authorizations. Legal Services Authorization 2011-0353-C was issued for services related to the financial crisis currently being experienced by the GUA. Pursuant to BCC direction, County staff has undertaken good-faith negotiations with representatives of the Cities of Belle Glade, Pahokee, and South Bay related to the County's Water Utilities Department (WUD) absorption of the GUA. However, at this time, it is not clear whether South Bay will agree to terms required by the County for the absorption to occur, and the County may therefore need to plan for an alternative resolution. The First Amendment modifies the Scope of Work of Legal Services Authorization 2011-0353-C to provide advice and counsel as to possible alternative resolutions to absorption of GUA into WUD and protection of the County's interest in those alternatives. The First Amendment also increases the not-to-exceed amount from \$50,000 to \$100,000. District 6 (MJ)

Background and Justification: Pursuant to Palm Beach County Administrative Code Section 305.04, the County Attorney's Office may utilize the services of outside counsel on matters requiring special legal expertise. Pursuant to the Administrative Code, the County Attorney's Office issued a Request for Proposals seeking outside counsel services for Water Utilities regulatory issues and complex utility projects/agreements. A selection committee reviewed and ranked the proposals, and recommended award to de la Parte & Gilbert, P.A., and Rose, Sundstrom & Bentley, LLP (now known as Sundstrom, Friedman & Fumero, LLP).

Attachments:

1. Budget Availability Statement
2. Two (2) Original First Amendments

Approved By:


County Administrator

1/13/12
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	<u>0</u>	\$0	\$0	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Expense	<u>\$50,000.00</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>\$50,000.00</u>	\$0	\$0	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

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

Is Item Included in Current Budget? Yes X No

Reporting Category N/A

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

- \ Fiscal year 2012 operating expense funded thru WUD's approved operating budget.

C. Department Fiscal Review:

Craig Williams

III. REVIEW COMMENTS

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

[Signature] 1/12/2012
OFMB
1/12/12 2:12 PM

[Signature] 1/13/12
Contract Development and Control

B. Legal Sufficiency:

[Signature] 1/17/12
Assistant County Attorney

**This amendment complies with
our review requirements.**

At the time of code
review, this was in
draft form.

C. Other Department Review:

[Signature]
Department Director

This summary is not to be used as a basis for payment.

ATTACHMENT "1"

**INTEROFFICE COMMUNICATION
PALM BEACH COUNTY
WATER UTILITIES DEPARTMENT
BUDGET AVAILABILITY STATEMENT**

DATE: January 11, 2012

TO: Aaron Maharaj, Budget Analyst
Office of Financial Management & Budget

FROM: Guy Eggertsson, Fiscal Manager 1
Water Utilities Department

Guy Eggertsson

RE: Legal Services for Glades Utility Authority

FISCAL IMPACT ANALYSIS:

Summary of Fiscal Impact:

Is item included in current budget? Yes X No ____

Budget Account Number:

Fund	Agency	Organization	Object	Amount
4001	720	1110	3125	\$50,000.00

Source of Funds:

Water Utility User Fees

**FIRST AMENDMENT TO LEGAL SERVICES AUTHORIZATION
R2011-0353-C**

THIS FIRST AMENDMENT, made and entered into this 24th day of January, 2012, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "County," and Sundstrom, Friedman & Fumero, a Florida limited liability partnership, hereinafter referred to as "Outside Counsel".

WHEREAS, on August 1, 2011, County and Outside Counsel entered into Legal Services Authorization R2011-0353-C for Outside Counsel services related to the Glades Utility Authority (hereinafter the "GUA LSA"); and

WHEREAS, County and Outside Counsel wish to amend the GUA LSA to modify the Scope of Work and modify the not-to-exceed amount.

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

1. The recitals set forth above are true and correct and are incorporated herein by specific reference.
2. **Exhibit "A"** to the GUA LSA is hereby replaced in its entirety by **Revised Exhibit "A"**, a copy of which is attached hereto and incorporated herein.
3. The not-to-exceed amount of the GUA LSA is hereby amended to \$100,000.
4. All other provisions of the GUA LSA, dated August 1, 2011, are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT
BLANK; SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement this ____ day of _____, 2012.


ATTEST:
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY
BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Shelley Vana, Chair

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Assistant County Attorney

Accepted by Outside Counsel:

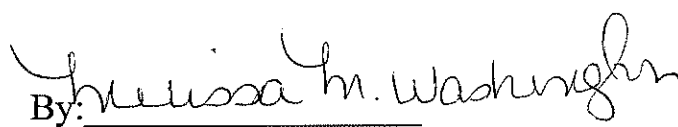
WITNESSES:

SUNDSTROM, FRIEDMAN &
FUMERO, LLP

By: 
Signature

BERNICE TORRES
Print Name

By: 
John Fumero

By: 
Signature

Melissa M. Washington
Print Name

Revised Exhibit A

GLADES UTILITY AUTHORITY RELATED MATTERS LEGAL SERVICES SCOPE OF WORK AND BUDGET

**Agreement between Palm Beach County and Sundstrom, Friedman & Fumero, LLP,
for Legal Services – January 24, 2012**

Background

Palm Beach County ("County") previously entered into an agreement with each of the Glades cities (City of Belle Glade, City of Pahokee and City of South Bay) regarding the obligation of each city to repay the County for money the County spent to construct the Lake Region Water Treatment Plant, which is a reverse osmosis treatment plant that provides quality water to Glades residents. The debt of the Glades cities was subsequently assumed by the Glades Utility Authority ("Authority") when the Glades cities transferred their operable utility assets to the Authority on October 1, 2009 pursuant to the Interlocal Agreement, dated June 16, 2009 that created the Authority.

The Board of Directors of the Authority ("Board") is composed of representatives of the four member entities: the County and the three Glades cities. The County has entered into an Agreement with the Authority to provide operation, maintenance and management services to the Authority ("Service Agreement"). The Palm Beach County Water Utilities Department ("Department") has been performing under the Service Agreement on behalf of the County pursuant to the annual budget adopted by the Board.

It has become apparent that the longstanding defects in the physical facilities that make up the Authority system will require a large capital infusion in order to ensure their future viability. The poor quality of the systems coupled with the cost of operating the facilities and servicing the debt of the facilities results in effectively the highest water and wastewater utility rates in the County. The Authority Board has, to date, refused to adopt sufficient utility rates and a budget for this fiscal year, which would pay the cost of operating and maintaining the system, including the debt service thereon. It is anticipated that the system will experience an operating deficit in excess of \$2 million this year, and at least as much in future years. In fact, the system is expected to reach operating deficit status by this April. The County has offered to absorb the Authority system into the overall County Water Utilities Department, and, upon reaching an agreement as to the terms of the absorption, to loan the GUA sufficient funds to continue operations until absorption. However, to date there is not universal agreement among the Glades cities as to the terms of the absorption.. Without the County loan, the system will shortly run out of cash and be unable to fund its operation and maintenance expenses, plus debt services. In light of the complexity of the legal issues presented, the County Attorney's office has expressed a desire to amend its legal services authorization with Outside Counsel in this regard.

Description of the Scope of Work

The County Attorney's Office has requested that Sundstrom, Friedman & Fumero, LLP

("Firm"), provide advice and counsel regarding Authority compliance with its contractual and financial obligations, and the options available to the County in this regard. This work will consist of conferring with Department staff and consultants, attending meetings and teleconferences, conducting legal research and preparing documents, whenever required by the Department and authorized by the County Attorney's Office. Specifically, there are a series of remedies which the County must consider, as manager of the system, including the declaration of a state of financial emergency pursuant to Chapter 218, Florida Statutes, having the system petition for bankruptcy in accordance with Florida and Federal law, enforcement of the Interlocal Agreement in the court of general jurisdiction in Palm Beach County (i.e., Circuit Court), mandamus and/or receivership. Further, it is anticipated that debt holders of the system will seek relief upon receipt of a notice of default or in anticipation thereof. In addition, the County has adopted covenants to budget and appropriate funds in relation to certain debt and operation and maintenance expenses of the GUA, which will need to be considered as part of any recommended action. Considering the complexity, and time intensity of this matter, the County Attorney's office requests the Board's authorization to retain outside legal counsel to assist it in this regard.

Glades Utility Authority Related Matters Legal Services
January 24, 2012

**Agreement Between Palm Beach County and
Sundstrom Friedman & Fumero, LLP, for Legal Services**

Task Description ¹	Personnel Hours			
	Attorneys	Paralegals	Law Clerks	Total
Advise the Department regarding Glades Utility Authority contractual and financial obligation compliance issues.	350	40	80	
Total	350	40	80	470

¹ None of these estimates include fees or costs associated with judicial or administrative litigation or appeals.

ROSE, SUNDSTROM & BENTLEY, LLP
GLADES UTILITY AUTHORITY RELATED MATTERS LEGAL SERVICES SCOPE OF
WORK
BUDGET SUMMARY

Position	Rate	Hours	Amount
Attorneys*	225	<u>350</u>	78,750
Paralegals	90	<u>40</u>	3,600
Law Clerks	60	<u>8</u>	<u>4,800</u>
Subtotal		<u> </u>	<u>\$87,150</u>
Expenses			<u>\$12,850</u>
Total			<u>\$100,00</u>

* There is a blended rate for all RSB attorneys pursuant to the Agreement for Legal Services, dated March 15, 2011.