

Meeting Date
May 26, 2016



AGENDA	
Section	Unfinished Business
Item No.	V B

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Authorize the Chair to Execute Agreement with the Firm of Garner, Bist, Wiener, et al (David S. Dee, Esquire) for Legal Services
DEPT/OFFICE:	County Attorney's Office/Solid Waste

Requested Action:
 Request authorization for the Chair to execute a letter of agreement with the firm of Gardner, Bist, Wiener, et al (David S. Dee, Esquire) for legal services to be provided on behalf of Brevard County with regard to environmental law issues related to the permitting of the US 1-92 Proposed Landfill.

Summary Explanation & Background:

Brevard County has been pursuing environmental permitting for a Class I and Class III landfill at the U.S. 1-92 site near Osceola County. Mr. Dee has been retained by the County since 2006 to assist with this pursuit. The Florida Department of Environmental Protection (FDEP) issued one of the required permits, the landfill permit, in 2011. A Notice of Intent to Issue the Environmental Resource Permit was advertised last month. Deseret Ranch (Farmland Reserve) and the Florida Audubon Society have expressed intent to challenge the permit.

The last engagement letter with Mr. Dee was executed in 2011. A new agreement is recommended to retain his services for the upcoming permit challenge and further efforts to develop the US 1-92 Landfill.

The Board's policy on outside counsel, BCC-36, also attached, will be part of the agreement.

Clerk to the Board Instructions:

Exhibits Attached: Letter Agreement; BCC-36

Contract /Agreement (If attached): Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
--	-----	-------------------------------------	----	--------------------------	----	--------------------------

County Manager 	Assistant County Manager	Department Director / Extension Scott L. Knox, County Attorney, 633-2090 Euripides Rodriguez, Solid Waste Management Director, 633-2046
Stockton Whitten	Assistant County Manager	



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

May 27, 2016

MEMORANDUM

TO: Scott Knox, County Attorney

RE: Item V.B., Agreement with Firm of Gerner, Bist, Wiener, et al (David S. Dee, Esquire) for Legal Services to be Provided on Behalf of Brevard County with Regard to Environmental Law Issues Related to the Permitting of the US 192 Proposed Landfill

The Board of County Commissioners, in regular session on May 26, 2016, executed Agreement with the Firm of Garner, Bist Wiener, et al (David S. Dee, Esquire) for legal services to be provided on behalf of Brevard County with regard to environmental law issues related to the permitting of the US 192 proposed landfill. Enclosed is an executed copy of the Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/cm

Encl. (1)

cc: Solid Waste Director
Finance
Budget



Gardner, Bist, Bowden, Bush,
Dee, LaVia & Wright, P.A.
ATTORNEYS AT LAW

Michael P. Bist
Garvin B. Bowden*
Benjamin B. Bush
David S. Dec

Telephone
850.385.0070

1300 Thomaswood Drive
Tallahassee, Florida 32308

www.gbwlegal.com

Facsimile
850.385.5416

Erin W. Duncan
Charles R. Gardner
John T. LaVia, III
Robert Scheffel "Scheff" Wright
**Board Certified Real Estate Lawyer*

January 29, 2016

Scott L. Knox
County Attorney
Brevard County
2725 Judge Fran Jamieson Way
Building C, Third Floor
Viera, FL 32940-6605

Dear Mr. Knox:

For many years I have had the privilege of assisting Brevard County ("County") with various issues affecting the County's solid waste management program. Among other things, I helped the County successfully obtain a solid waste permit from the Florida Department of Environmental Protection ("FDEP") that authorized the construction of the County's proposed landfill adjacent to U.S. 192. My work has been performed pursuant to engagement letters that I have executed from time to time with the County, including the most recent letter, which was approved by the Board of County Commissioners on October 4, 2011. It is my understanding that the County would like to execute a new engagement letter, which will authorize me to represent the County in upcoming administrative hearings and related proceedings concerning the Environmental Resource Permits ("ERPs") that the FDEP intends to issue for the County's U.S. 192 landfill facilities.

On behalf of Gardner, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A. ("Firm"), I am sending you this letter to confirm that we would be delighted to continue to assist the County with its efforts to develop the U.S. 192 landfill. We also will assist the County with any other legal tasks that the County wishes to assign to us. Accordingly, I have prepared this engagement letter, which will govern the Firm's work for the County.

Scott L. Knox, Esq.
January 29, 2016
Page 2

Qualifications and Case Management

With the County's approval, I will take primary responsibility for assisting the County and I will personally perform or supervise the Firm's work for the County. My qualifications and experience are summarized in my resume, which is attached to this letter.

I will work closely with you and other representatives of the County to ensure that the County's case is staffed appropriately. We want the County's work to be performed in the most efficient and cost-effective manner possible, while fully utilizing the Firm's expertise.

Fees and Billing Practices

We normally charge our clients an hourly rate for our legal services. My billing rate for private clients is \$350 per hour. The other senior attorneys in this Firm charge similar or greater amounts.

For Brevard County, the Firm is willing to reduce my normal billing rate to \$275 per hour. The maximum rate for our other senior attorneys also will be reduced to \$275. The rates that will be charged to the County are shown on Exhibit A, which is attached to this letter.

We are sensitive to the costs of legal services and we understand that every client wishes to avoid unnecessary expense. Accordingly, we will use our best efforts to ensure that the County's work is performed as efficiently as possible. When it is appropriate, we will assign tasks to attorneys, paralegals, or clerks with lower billing rates so that we can maximize our cost effectiveness.

Our clients are responsible for all reasonable costs that we incur during our representation of them. Such costs include long distance telephone calls, computer research services, copying charges, travel and out-of-pocket expenditures. Our requests for reimbursements from the County for meals, per diem, and travel, if any, will be limited to conform with the restrictions contained in Section 112.061, Florida Statutes, for state employees.

Scott L. Knox, Esq.
January 29, 2016
Page 3

We will provide the County with an itemized monthly invoice for our services. The invoice will identify each task that has been performed during the month, the person that performed the work, the date on which the work was performed, and the amount of our costs. Our invoices will include receipts or other appropriate documentation for our costs.

We recognize that the County may have its own limitations on reimbursements for costs and out-of-pocket expenditures. We will comply with any reasonable limitations imposed by the County, but we ask that such limitations be identified now so we can avoid confusion and misunderstandings later.

In 2006, the County provided us with a copy of the County's policy (No. BCC-36) concerning "Legal Services with Outside Counsel". We agree that the Firm will abide by the County's requirements in BCC-36.

Our invoices are payable upon receipt. If our invoices are not paid within 45 days, we may charge interest on the outstanding balance at the rate of 1.0% monthly (12% per annum), which is consistent with the requirements established by the Florida Legislature in the Florida Prompt Payment Act, Sections 218.70 et seq., Florida Statutes.

Conclusion

We hope that our proposal is acceptable to the County. If it is, the appropriate County official should sign in the space provided below and then return a copy of this letter to me.

Please call me if you have any questions. We look forward to a pleasant and successful relationship with you and Brevard County.

Sincerely,

GARDNER, BIST, BOWDEN, BUSH,
DEE, LAVIA & WRIGHT, P.A.

By: 

David S. Dee
For the Firm

Scott L. Knox, Esq.
January 29, 2016
Page 4

Accepted and agreed to this 26 day of May,
2016.

Brevard County

By:



JIM BARFIELD, CHAIRMAN

Scott L. Knox, Esq.
January 29, 2016
Page 5

EXHIBIT A

GARDNER, BIST, BOWDEN, BUSH, DEE, LAVIA & WRIGHT, P.A.

	<u>RATE</u>
MICHAEL P. BIST	\$275 per hour
GARVIN B. BOWDEN	\$200 per hour
BENJAMIN B. BUSH	\$200 per hour
DAVID S. DEE	\$275 per hour
ERIN W. DUNCAN	\$175 per hour
CHARLES R. GARDNER	\$275 per hour
JOHN T. LAVIA, III	\$250 per hour
ROBERT SCHEFFEL WRIGHT	\$250 per hour

*Of Counsel



Gardner, Bist, Bowden, Bush,
Dee, LaVia & Wright, P.A.
ATTORNEYS AT LAW

Michael P. Bist
Garvin B. Bowden*
Benjamin B. Bush
David S. Dee

Telephone
850.385.0070

1300 Thomaswood Drive
Tallahassee, Florida 32308

www.gbwlegal.com

Facsimile
850.385.5416

Erin W. Duncan
Charles R. Gardner
John T. LaVia, III
Robert Scheffel "Schef" Wright
*Board Certified Real Estate Lawyer

DAVID S. DEE

David S. Dee is a shareholder (partner) in the law firm of Gardner, Bist, Bowden, Bush, Dee, LaVia & Wright, P. A., and has 36 years of experience in the areas of environmental, land use, administrative, and governmental law.

Mr. Dee routinely handles cases involving environmental permitting, enforcement proceedings, agency rulemaking, and litigation. He has worked extensively with local, regional, state, and federal environmental agencies. He has represented counties, municipalities, environmental organizations, and private developers in a wide variety of cases throughout Florida. Mr. Dee has successfully handled major, complex cases involving electrical power plants, industrial facilities, landfills, resource recovery (waste-to-energy) facilities, cogeneration facilities, and other industrial activities.

Mr. Dee received a Bachelor of Arts degree in 1974 from Emory University and a Juris Doctor degree with high honors in 1979 from Florida State University. He is a member of several honorary organizations, including Phi Beta Kappa, Omicron Delta Kappa, and the Order of the Coif. He has been selected for several Who's Who publications, Outstanding Young Men in America, Florida Super Lawyers, Leading Florida Attorneys, The Best Attorneys Network, America's Leading Lawyers for Business, and The Best Lawyers in America. Mr. Dee was selected by Best Attorneys as the 2012 "Attorney of the Year" in Tallahassee in the area of Environmental Litigation, the 2014 "Attorney of the Year" in Tallahassee in the area of Environmental Law, and the 2016 "Attorney of the Year" in Tallahassee in the area of Litigation-Environmental.

He has been admitted to practice in all of the state and federal courts in Florida, plus the U.S. Courts of Appeals for the 11th Circuit and the District of Columbia. He has an "Av" rating in the Martindale-Hubbell legal directory.

Mr. Dee was the Chairman of the Environmental and Land Use Law Section of the Florida Bar Association. He served on the Section's Executive Council for eight years. Mr. Dee has lectured at more than 100 environmental law seminars, including programs conducted by the Florida Bar Association, the Florida Chamber of Commerce, and other state and national organizations.

Mr. Dee served for six years as the Chairman of the Advisory Board for the University of Florida's Hinkley Center for Solid and Hazardous Waste Management and he continues to serve on the Board. He is a member of the Florida Chapter of the Solid Waste Association of North

DEP solid waste regulations, including the DEP landfill rules in Chapter 62-701, Florida Administrative Code;

(t) assisted many local governments with their efforts to evaluate solid waste "flow control" issues;

(u) assisted many local governments with the development of franchise agreements, collection contracts, and other contracts involving solid waste issues;

(v) assisted Alachua County with the drafting and negotiation of a contract for the design, permitting, construction, and operation of a transfer station;

(w) assisted Leon County and the City of Key West with the preparation of requests for proposals ("RFP") and contracts for the transport and disposal of solid waste;

(x) assisted Martin County, Collier County, and Alachua County with the negotiation and preparation of contracts for the transport and disposal of solid waste;

(y) represented local governments before the Florida Legislature on a variety of issues, including legislation that would: create a moratorium on resource recovery facilities; authorize the beneficial reuse of ash; restrict local governments' ability to manage solid waste; and create new requirements for construction and demolition debris landfills;

(z) represented Lee County in formal administrative hearings that resulted in the issuance of a DEP renewal permit for the continued operation of the Gulf Coast Class I Landfill;

(aa) represented Leon County and TLA-Cambridge, LLC, respectively, in formal administrative hearings that resulted in the issuance of the DEP permits for the construction of their proposed transfer stations;

(bb) served on the City of Key West's Technical Advisory Committee for solid waste issues; and

(cc) assisted St. Lucie County, the City of Orlando, and other communities with their efforts to evaluate plasma arc gasification and other thermal waste conversion technologies.

David S. Dee
Page 5

Employment History

September 2011 to present	Gardner, Bist, et al.
2006-2011	Young van Assenderp, P.A.
1995-2005	Landers & Parsons, P.A.
1981-1995	Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A.
1979-1981	Hopping Boyd Green & Sams, P.A.



POLICY

TITLE: Legal Services with Outside Counsel

NUMBER: BCC-36

CANCELS: July 25, 2006

APPROVED: July 29, 2008

ORIGINATOR: County Attorney

REVIEW: July 29, 2011

I. OBJECTIVE

To establish guidelines for the retention and use of outside legal services and shall be attached and incorporated into all contracts executed by outside counsel.

II. DEFINITIONS AND REFERENCES

III. DIRECTIVES

A. TRANSACTION MANAGEMENT AND STRATEGY

1. Cooperation

We seek a cooperative teamwork approach to working with outside counsel and believe this is best achieved through open and active communications. The responsible Assistant County Attorney and your firm should consult on the management, strategy, procedure and all other significant aspects of a transaction or case. You and your firm should advise the attorney in advance of all important meetings, hearings, and other major events in a transaction or case.

2. Conflicts of Interest

The County expects its counsel to be free of conflicting interests and the appearance of conflicting interest. Potential conflicts are to be discussed with the responsible Assistant County Attorney immediately. The County expects financial concessions (e.g., return of fees paid) if a conflict or appearance of conflict requires the retention of alternate counsel.

3. Communications

Simultaneously with finding, copies of critical pleadings, motions, discovery, and correspondence should be forwarded to the responsible Assistant County Attorney after they have been served.

We expect you to be diligent in re-using off-the-shelf research to reduce your workload and our costs.

The principal contact between your firm and the County will be the responsible Assistant County Attorney. Please keep the County Attorney advised of any contacts you have with other County personnel outside of the Legal Department.

4. Staffing

The efficient and economical use of resources requires the County pre-approve both the staffing and the specific individuals within your firm who will be working on the County matter. The County will not pay fees for unapproved staff, nor for time spent by more than one attorney attending meetings, witness interviews, depositions, hearings, or other proceedings. The County will not pay fees in excess of eight (8) hours per day for any one individual except under exigent circumstances, the County will not pay any incremental costs resulting from substitution of counsel and then only with advance approval. If there is any uncertainty as to the level of effort County desires for any matter, we encourage you to discuss this candidly with the responsible Assistant County Attorney.

The employee at the lowest level of your firm's organization structure who is capable of doing the job, and who routinely does the job, should be the one assigned to it. For example, partners should not be billing for research, digesting depositions, drafting routine pleadings, or routine administrative work. Lawyers should not be billing for work that is typically assigned to a paralegal or an administrative employee, unless it results in lower overall costs to the County.

The responsible Assistant County Attorney should be consulted when it may be more efficient or economical for the County to perform certain tasks. In such event, a prompt determination will be made as to whether it is appropriate for County personnel to perform such tasks.

We expect you to utilize all the resources of the firm, including conferences with other firm attorneys, and we expect your firm to share the costs of such conferences. The billings for intra-office conferences shall be kept to a minimum.

5. Budgeting

From time to time for fiscal planning purposes, the responsible Assistant County Attorney may request a written budget applicable to the matter or case for which you have been retained. From time to time, we may request that you set specific limits on the time and resources you devote to certain matters. The County attorney may specify that the budget will be a not-to-exceed authorization and excesses shall be absorbed by the firm. In appropriate situations, we may also request "fixed price" or contingency fee arrangements. The Board of County Commissioners approve said budget. Once a budget is approved, your firm must stay within the budgeted amount unless an expanded budget is approved by the County Commission.

6. Work Handled by In-House Counsel

In order to effectuate cost savings, at the discretion of your firm, the responsible Assistant County Attorney may be used to coordinate employee witnesses and perform the initial factual investigation and in-house interviews. The Assistant County Attorney will arrange for any necessary meetings or interaction between outside counsel and County employees.

7. Discovery

We believe that discovery is necessary and essential for effective litigation. However, discovery, if not effectively controlled and managed, can result in major costs. Effective can result in obtaining fast results, thus perhaps saving County money in the long run. Discovery should proceed expeditiously to the extent necessary to obtain reasonably timely resolution of the litigation. Deposition schedules of county employee should be cleared with the Assistant County Attorney. Only one attorney from your law firm should attend a deposition or hearing related to discovery unless prior approval is obtained.

8. Strategy and Settlements

It is the policy of the County Attorney's Office to keep the Board of County Commissioners apprised of major developments in pending litigation. The County Attorney and the responsible Assistant County Attorney will be involved in any strategy or settlement discussions or proceedings. All demands, counter-demands and in-court pronouncements regarding settlements should be discussed with the County Attorney for scheduling and presentation to the Board of County Commissioners at an executive session. Any final settlement of any matter is subject to the express approval of the County Attorney and the Board of County

Commissioners. Alternate dispute resolution should be considered for all litigation and disputes.

9. Rate Increases

There shall be no increases in the rates charged by a firm's members or employees, as applied to a case involving the county, without County Commission approval after at least sixty (60) days' advance written notice. Approval of a reasonable rate increase shall not be unreasonably withheld every fourth year in the course of the litigation.

10. Minimum Charges

There shall be no standard minimum charges for any services performed such as telephone calls, file review, etc. Only the actual time expended shall be charged.

11. Disbursements

The County will not pay for administrative expenses such as secretarial time, work processing, overtime, or file maintenance. These expenses are to be included in your hourly rate. The County will reimburse the firm for copying costs, postage, and other reasonable and necessary expenses at the firm's costs.

12. Travel and Lodging

The County will pay reasonable travel expenses and time spent on County matters while traveling. The County does not authorize first class travel and request that the lowest rates possible be obtained. Reasonable mileage will be reimbursed at the statutory rate.

If travel time is devoted to working for one or more clients, the County should be billed only for the proportional time related to the County matter.

Food and beverage expenses shall be limited to the following: breakfast, \$6.00; lunch, \$11.00; dinner, \$19.00 per each twenty-four hour period, or at such other rate of compensation established by law or county resolution or ordinance.

13. Dispute Resolution

The County reserves the right to examine and audit books, records, other documents and supporting material for the purpose of evaluating compliance with this procedure, and the fees charged to the County. Such books and records shall be made available to the County during business

hours for examination, audit or reproduction. The County shall employ, at its sole discretion, its internal audit department or independent outside auditors for purposes of accomplishing this audit. If an error is found that exceeds ten per cent (10%) of your firm's total annual billings to the county for the year in which the audit is conducted, then your firm shall pay the cost of the audit.

14. Media Coverage

The County will handle all outside or press coverage regarding legal or business matters. Any inquires made to the firm are to be directed to the responsible Assistant County Attorney.

C. BILLINGS

1. Fees and Hourly Rates

All fees and hourly rates for legal services must be discussed and approved at the time of initial engagement. It is expected that all legal services shall be rendered at reasonable and competitive rates and that your hourly rates or fees shall be less than or no higher than the rates or fees charged to corporate clients of the firm.

2. Statements for Services

Statements must be submitted and conform to the following format: (a) identification of the specific individual in your firm performing the services; (b) the date and a brief description of the services rendered; (c) the time spent; (d) the billing rates of the attorneys and paralegals whose services appear on the statements; and (e) the County division or business unit involved. Statements should also itemize disbursements in detail, e.g., number of copies made times the rate. For travel disbursements, the statement should show a breakdown of the charges to include airfare, hotel, meals, and other expenses. For each specific matter or case, the statement should also include a total showing the total fees and costs from the inception of the case to date and another separate total showing the total for charges since the last billing period. Where a statement covers more than one matter or case, the requisite information should be provided separately for each matter.

To decrease the administrative burden of small billings, the County Requires all statements of \$250.00 or less to be held until the next billing cycle or until the final statement.

3. Billing Frequency

Billings should be rendered at least on a monthly basis. Alternatively,

billings on a less frequent basis may be acceptable, provided that monthly costs estimates are provided. The County will not pay any service or interest charges on statements for legal fees except to the extent required by law.

4. Subcontract Services

At the opening of the file or upon request by your firm, the County will decide whether we will pay directly for subcontracted services (e.g., court reporters; experts). Unless advised otherwise, we prefer the firm to pay these costs directly and to then include them on the next billing.

5. Maximum Billable Hours Per Day

No more than eight (8) hours per day for any one individual may be charged to the county except under exigent circumstances and only with the approval of the County Attorney.

D. PRIOR APPROVALS

1. The County reserves the right not to pay for the following activities unless approved in advance by the County Attorney.
 - a. Any extensive legal research to be performed by the firm.
 - b. Special services such as private investigators and experts provided such approval shall not be unreasonably withheld if your firm determines that such services are necessary for the successful prosecution of the litigation.
 - c. Extensive copying. The County Attorney should be consulted to determine if the copying can be done by an outside service or County at lower cost.
 - d. Extensive express document/communication deliveries (e.g., Federal Express, DHL). Electronic mail is the preferred means for rapid document delivery. See Section IV, Computerization below.

E. COMPUTERIZATION

The County suggests that all word processing be accomplished using WordPerfect as a standard to facilitate increased productivity between the County and outside counsel. If your firm can demonstrate that hourly rates are lower as a result of separate work processing charging, such charges may be separately authorized.

The use of computers can improve efficiency, communication and cost savings between the County and outside counsel. The following applications may be considered: (1) electronic mail to facilitate instantaneous communication; (2) billing software to electronically produce monthly statements; (3) docketing and calendaring system to ensure meeting, court and statute-of-limitation dates; (4)

document assembly system to permit laying new work over old; and (5) litigation support system to track large numbers of documents in litigation.

From time to time, your firm may be requested to make prior research as well as an index of your prior research available to the County. Such research would be provided at cost.

F. PUBLIC RECORDS

Your firm should be aware that many documents made available to you by the County and some documents produced by your firm in connection with the matter for which you have retained may be subject to disclosure upon a request made under the Florida Public Records Law. If a request for public records is made to your firm with regard to documents pertaining to the County, you should immediately notify the County Attorney and determine whether any exemption or privilege exists for the records requested. To the extent that no exemption or privilege exists, you should conform to County policy by promptly responding to public records requests by allowing inspection and copying, if requested, of the public records at issue.

G. OPTIONAL GUIDELINES

Following is a list of proposals that we view as effective means to increase efficiency and reduce the cost of legal services. These proposals will be discussed and determined at the time of initial engagement.

1. Billing Rates

There are numerous alternative billing arrangements that can lower the cost of legal services without compromising the outcome or working a disadvantage to your law firm. These include:

Identifying certain matters to be paid for on a contingency or risk-sharing basis

A block of hours at a reduced rate, with the rate changing after a specified number of hours have been expended on the matter.

No charge for start up time, such as learning various aspects of the case or familiarizing new lawyers with the case.

Discounted rates for all hours charged above a specified number, this can apply to a particular matter or to all matters handled by our firm.

A discount on all billings for the year, after the total billings reach a specified amount.

A rebate on total billings for the year, dependent on the difference between the actual billings and a guaranteed minimum billing amount.

A fixed hourly rate for certain types of ceases, independent of whether the work is done by a senior or junior attorney.

Billing rate adjustments to be made only at the start of each calendar year, with the prior approval of the County.


A fixed total fee for identified transaction or cases.

IV. RESERVATION OF AUTHORITY


The authority to issue and/or revise this policy is reserved to the Board of County Commissioners of Brevard County, Florida. The provisions set forth in this policy are subject to compliance with all applicable law.

DONE ORDERED and ADOPTED in Regular Session this 29 day of July A.D. 2008.

ATTEST:

By 
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By 
Truman G. Scarborough, Jr., Chair
(as approved by the Board on July 29, 2008)