

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: September 13, 2011

Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Amendment No. 14 to the Contract (R96-0714D) with Denise M. Nieman, County Attorney; providing for a term commencing October 1, 2011 through December 31, 2016, with optional renewal periods.

Summary: This amendment provides for a straight term through December 31, 2016, with optional renewal periods, instead of an automatic annual renewal. The severance language has also been revised to comply with legislation enacted this past session. Countywide (DMN)

Background and Policy Issues: Denise Nieman has been with the County Attorney's Office (CAO) for 25 years, serving the past 15 years as the County Attorney. The current contract is for a five-year term which was automatically extended for an additional year to September 30, 2016, pursuant to the terms of the original contract. This amendment extends the term an additional three months through December 31, 2016, as consideration for removing the automatic renewal and other provisions pertaining thereto, including the annual 90-day notice. The amendment also provides for three 2-year options to renew under the same terms and conditions. The Board continues to have the option to terminate the agreement at any time. Further, this amendment conforms to the new legislation that limits severance pay. All other terms and conditions remain the same, including a salary of \$199,513, which it has been since 2008.

(Continued on Page 3.)

Attachments:

1. Amendment

Recommended by: _____

Department Director

Date

 8.22.11

Approved by: _____

N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	199,513
External Revenues	_____	_____	_____	_____	_____
Program Inc. (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	199,513
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Proposed Budget? Yes X No _____

Budget Account No.: Fund 0001 Department 280 Unit 2100 Object 1201
 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:

Denise Nieman's salary is included in the proposed FY 2012 budget in the General Fund. Section 11 does not include deferred compensation and car allowance which remain unchanged in this amendment.

[Signature]
 OFMB JA 8/25/11

Contract Development and Control

[Signature] 8/26/11

B. Legal Sufficiency:

[Signature] for Jim Mize
 Chief Assistant County Attorney

This amendment complies with our review requirements.

C. Other Department Review:

n/a
 Department Director

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

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

Through the County Attorney's leadership, management, and organizational skills, the CAO continues to be a highly respected law firm. We are known by the judiciary, the legal community, and members of the public to be professional, responsive, dedicated, competent, ethical, and hardworking. Even though we are doing more with less in each passing year, our work quality remains consistently excellent.

The CAO's litigation section and appellate team's track record continues to be outstanding, achieving many favorable results on behalf of the County. Significant work also persists outside the courtroom. The CAO's commitment to furthering ethics reform is evident in not only the drafting of the successful charter amendment and ballot question, but also in the rewrite of the three ordinances through membership on the Ethics Ordinance Drafting Committee and our role in bringing to fruition the committee's work. In fact, it was primarily the CAO's efforts that brought home the coveted NACO Achievement Award for Ethics Reform.

The CAO provided extensive legal services related to the Neighborhood Stabilization Program Grant Awards (I-III), which now total nearly \$90 million. The CAO continued to provide legal services for the Solid Waste Authority's construction program, including the award of the contract for the new Waste-to-Energy Facility, assistance with closing out the contract for the refurbishment of the existing Waste-to-Energy Facility, and other expansion projects.

In addition, the CAO is actively involved in the legal community and various associations, including the Florida Association of County Attorneys (FACA). As previously reported, two of our attorneys were publicly recognized by FACA this year for their significant contributions. The CAO participated in the Palm Beach County Bar Association's Diversity Internship program which was funded through grant money, allowing the CAO to join this valuable program without expending County resources. As for the County Attorney in particular, she recently completed a term on the 15th Judicial Circuit's Judicial Nominating Commission and now serves on the Federal Magistrate Judge Merit Selection Panel.

Believing it is important to give back to our community, many attorneys are personally involved in various charities and other similar organizations. As a collective group, the CAO's "dress down days" resulted in recent charity donations of \$150 to the Boys and Girls Clubs of PBC, \$110 to Safe Harbor Animal Sanctuary, and \$105 to Friends of Veterans. The office also participated in, and received recognition for, the Angel Tree Program through the Salvation Army, donating hundreds of dollars' worth of gifts to children during the holidays. We also have a team that participates in the Lawyers Have Heart 5K to benefit the American Heart Association, and much of the staff participated in the Susan B. Komen Breast Cancer 5K. The County Attorney serves as Vice Chair of the St. Mary's Medical Center Board of Governors and recently completed her term on the SunFest, Inc.'s Board of Directors reaching the level of Past-President.

Amendment No. 14 to the Contract
Between Palm Beach County and
Denise M. Nieman, County Attorney

This Amendment No. 14 dated September 13, 2011, 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 Florida Legislature this past session amended Section 215.425, F.S. to include certain restrictions on severance pay, necessitating revision to the Contract; and

WHEREAS, this amendment eliminates one-year extensions, instead providing for a straight term contract with renewal options.

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. Paragraph 1 of the Contract is amended 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 October 1, ~~2010~~2011, and terminating ~~September 30, 2015~~; ~~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.~~ December 31, 2016. 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~~ may be renewed for three additional two-year periods on the same terms and conditions as provided ~~for herein for additional one-year periods, based on the County's fiscal year calendar, as.~~ The County Attorney shall notify the Board 90 days prior to the expiration date of this Contract of this renewal option. Should the County not renew the Contract, the provisions set forth above, unless terminated in accordance with Paragraphs 10 or 11 herein in subparagraph 10.B apply.

2. Subparagraphs 10.A and 10.B are amended as follows:

10.A. The County Attorney may be removed from her position at any time in the event that a majority of the Board of County Commissioners is unsatisfied with the performance of her job duties as County Attorney. In the event the County terminates this Agreement pursuant to this subparagraph, the County shall provide as severance pay to the Attorney an amount equal to but not exceeding 20 weeks of all salary and benefits provided for herein through the remaining term of this Agreement; provided, however, that the Attorney shall, in no event, receive less than the equivalent of six (6) months of salary and benefits calculated from the date of the County's notification of termination to the Attorney. There shall be no severance pay in the event Attorney is terminated for misconduct as defined in Section 443.036(29), Florida Statutes.

10.B. In the event the County ~~provides to the Attorney 90 days' written notice of non-renewal in advance of the end of the term of this Agreement and any renewals thereof~~ elects not to renew the Contract, the Attorney shall be entitled to receive as severance payments from the County, the remaining salary and benefits provided for herein during the 90-day notice period, together with the equivalent of ninety (90) additional days of salary and benefits pursuant to the terms of this Agreement. ~~The County Attorney shall notify the Board of these renewal requirements in advance of the ninety (90)~~

day period severance pay from the date of termination in an amount equal to but not exceeding 20 weeks of all salary and benefits provided for herein.

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

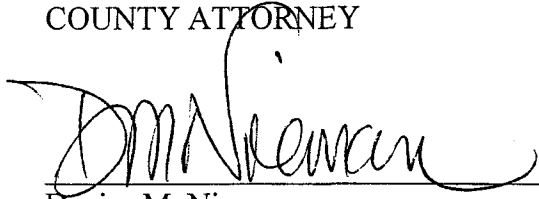
By: _____

Karen T. Marcus, Chair

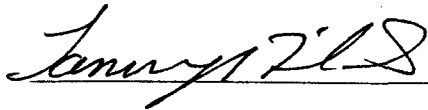
WITNESSES FOR COUNTY
ATTORNEY:

COUNTY ATTORNEY






Denise M. Nieman



APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
James C. Mize, Jr.
Chief Assistant County Attorney