



# Brevard County Board of County Commissioners

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Legislation Text

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**File #:** 2101, **Version:** 1

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### **Subject:**

Request permission to retain outside counsel for contractor dispute and potential litigation relating to the construction of the Central Disposal Facility (CDF) Slurry Wall Landfill Phase VI Side Slope Closure.

### **Fiscal Impact:**

Undetermined at this time

### **Dept/Office:**

County Attorney's Office/Solid Waste Department

### **Requested Action:**

Authorize the Solid Waste Department to hire outside counsel to represent the County in resolving construction deficiencies and potential litigation regarding the contract with Thalle Construction Company, Inc. (Thalle) for the construction of the Central Disposal Facility (CDF) Slurry Wall Landfill Phase VI Side Slope Closure project.

### **Summary Explanation and Background:**

Construction of the Central Disposal Facility (CDF) Slurry Wall Landfill Phase VI Side Slope Closure project is approaching completion. Solid Waste staff has found latent construction defects with the landfill gas collection system, liner system and stormwater system and notified the contractor. The contractor, Thalle, has hired SCS Engineers to investigate the cause of the defects and Solid Waste staff is monitoring the investigation. The contract price is \$11,246,873.60 and there are separate performance and maintenance bonds, each in the amount of the contract value.

Historically, the Board has hired outside counsel to represent the County in construction cases and to assert any breach of contract and liquidated damages claims which may arise. Any breach of contract claim will also involve the surety company which will give rise to the possibility that the County can recover attorney's fees paid, although it is also possible Thalle could recover fees from the county.

It is advisable to involve legal counsel with substantial experience in construction law as this area of practice is a niche specialty that is extremely document and engineering intensive. This office has contacted the Milne Law Group, which is a highly recommended law firm with a specialty in construction law cases. The attached proposed contract indicates an hourly rate of \$250 / hr. for partners, \$225/ hr. for associates and \$150 / hr. for paralegals.

It is recommended that Board authorize the Chair to execute the attached agreement with the Milne Law

Group, subject to the inclusion of the Board Policy (BCC-036) applicable to outside counsel, which is also attached.

**Clerk to the Board Instructions:**