



Legislation Text

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Agenda Item Name:

Phosphate Mine professional services agreement between Alachua County, Union County and de la Parte & Gilbert, P.A., and Interlocal Agreement between Alachua County and Union County

Presenter:

Sylvia Torres

Description:

Union County has requested Alachua County's assistance and support with defending the recent environmental resource protection amendments to Union County's comprehensive plan and land development regulations from a Bert Harris action brought by HPS II. The assistance and support comes in the form of a waiver and authorization to allow de la Parte & Gilbert, the firm representing Alachua County in the matter, to represent and assist Union County's counsel and an agreement that Alachua County will pay the costs associated with de la Parte & Gilbert's services. If the agreements are executed, Union County will be required to seek the recovery of fees and costs if they are the prevailing party in the litigation, including those fees and costs associated with de la Parte & Gilbert's services, and repay Alachua County to the extent fees and costs are recovered.

Recommended Action:

Approve the agreements and authorize the Chair to execute the agreements on behalf of the County. Direct staff to return with the necessary budget amendment to fund the agreements.

Prior Board Motions:

On March 23, 2021, the Board reaffirmed the County's support for Union County and directed staff to return with necessary contract and budget amendments to protect environmental resources.

On September 22, 2020, the Board requested an update on the phosphate mine at a future meeting. Staff updated Board by email "Update on a few regionally significant environmental issues" (dated Sept. 30, 2020), attached.

On December 10, 2019, the Board received a presentation by contracted experts regarding the proposed Union/Bradford County phosphate mine (attached). The Board directed staff to prepare a chair letter to Bradford County, Union County, and the North Florida Regional Planning Council, and affected municipalities this letter should include a link to that evening's presentation, and a staff prepared summarized presentation of both the deficiencies of the existing mining application and the risk associated with the project.

On July 9, 2019, the Board approved the 1st Amendment to Legal Representation with de la Parte & Gilbert for legal representation regarding the proposed HPSII phosphate mine in Union/Bradford Counties and approval of the Budget Amendment. The Manager had executed the original

agreement under her budget signature authority and the Board, through the 1st Amendment, increased the amount from \$50,000 or less to more than \$600,000. The Board also authorized the Chair to send a letter to the City of Gainesville (any other interested parties) informing of the Board's actions regarding the mine and soliciting other entity interest in partnering with the County. This contract includes Mr. de la Parte retaining experts to review the mine application and related issues.

On March 26, 2019, the Board authorized the County Attorney to hire outside Counsel to represent the Board in issues associated with the Union/Bradford County HPSII Phosphate Mine and adopted Resolution 2019-36 urging the Governor to take the following actions regarding phosphate mining:

- Comprehensively map the portions of the Floridan aquifer impacted by the 25 gypstacks;
- Study the environmental and human health effects of phosphate mines and gypstacks;
- Direct the Harmful Algal Bloom Task Force to study the possible contribution of phosphate mining and gypstacks to red tide;
- Require full restoration of pre-1975 mined lands and existing mines; and
- Halt all additional permitting for phosphate mining, phosphogypsum stacks and expansions

On May 3, 2018, the Board directed staff to keep the Board of County Commissioners apprised of all developments relating to the proposed strip-mining operations in Union and Bradford Counties on a meeting by meeting basis if necessary.

On January 23, 2018, the Board approved the allocation of \$25,000 from the General Fund Reserves for unanticipated contract environmental services expenses and requested that the Chair organize a meeting between Bradford County and Alachua County and authorize a Chair letter and the necessary resolution.

On September 7, 2017, during Commission comments the Board was presented a draft letter to the Union County Board of County Commissioners regarding technical assistance with regards to a proposed phosphate mine that was requested at the September 5, 2017 meeting. The Board approved the transmission of the letter.

On September 5, 2017, the Board directed Alachua County staff to regard and react to the issue (proposed phosphate mine) in Union County as if it were an immediate threat to Alachua County's natural resources specifically the Santa Fe River and to act as if the proposal was ours. The understanding is that if staff needs additional resources that they would approach the Board and request the resources. This motion did not authorize staff to hire new staff for example, but staff should be generous with assistance to Union County within existing resources. Authorize the Chair to send a letter to the Union County Board letting them know that the above motion was passed and provide the link to the video in the letter. The letter should be brought back to the September 7, 2017 meeting to be reviewed prior to it being sent.

On July 11, 2017, the Board directed staff to attend Bradford County meeting to express Alachua County's concerns on the water quality impacts and report back to the Board after the July 20 meeting.

On June 27, 2017, the Board authorized that two additional Chair letters to be signed and transmitted regarding the phosphate mines in Bradford and Union County be sent to Lawtey and Starke by request of The Our Santa Fe River group.

On January 10, 2017, the Board authorized a Chair letter to support the moratorium on the proposed mining operation in Union County.

On December 6, 2016, the Board authorized Chair letters to Bradford and Union counties to invite them to joint meetings to discuss the mine application.

On May 3, 2016, the Board was presented with a proposed HPSII Phosphate Mine, New River Basin, Bradford and Union Counties agenda item. The Board authorized Chair letters to various agencies including the Army Corps of Engineers and the Alachua Conservation Trust expressing Alachua County's concerns regarding the proposed HPSII Phosphate Mine and the potential offer of staff help, directed staff to establish measurements of water quality and water quantity for the New River and Santa Fe River, and authorized staff to return to the Board with other options for consideration protecting Alachua County Residents' interests in water quality.

On April 26, 2016, the Board moved to refer to the County Manager and staff to come back with options for Alachua County in addressing water issue impacts to the Santa Fe River System and direct the Manager to schedule the Tuesday May 3, 2016 at 1:30 P.M. as a special meeting so action may be taken. Staff should provide draft letters expressing the County's concerns to all applicable agencies and entities for the Board to consider.

On March 22, 2016, by consensus the Board referred the matter of Union County's recently declared moratorium on phosphate mining to the County Manager. They would like to use this time to ascertain what the effects would be on Alachua County and authorize the EPD department to provide information to Union County.

Fiscal Consideration:

The FY22 budget includes \$1,006,800 for the de la Parte & Gilbert agreement as this was and FY22 budget enhancement request; funded from General Fund Special Expense 001.04.0490.519.31.41. The interlocal agreement appears to have no cost, but pay provide financial reimbursement if a favorable determination is made.

The County does have an existing agreement with de la Parte & Gilbert for related services on this same issue. The County is under amendment 1 of the contract, with a total contract amount of \$621,302 and unspent balance of \$399,086 as of 10/6/21. This balance will likely be requested to be carried forward from FY21, also in General Fund Special Expense, 001.04.0490.519.31.41

Background:

Alachua County assisted Union County in drafting environmental protections for its comprehensive plan and land development regulations. Union County is currently in litigation with HPS II, a company that is proposing a phosphate mine in Union and Bradford Counties, over the application of those additional environmental protections. The Board has previously expressed an interest in this project due to potential effects of the mine on the Santa Fe River. Alachua County has retained the services of de la Parte & Gilbert to represent the County on the issue of the proposed mine and now Union County would like to utilize de la Parte & Gilbert due to the firm's familiarity with the proposed mine.