

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: September 9, 2008

Consent Regular
 Public Hearing

Department

Submitted By: RISK MANAGEMENT

I. EXECUTIVE BRIEF

Motion and Title: Staff Recommends Motion to Approve an Agreement with the law firm of Clarke & Platt, P.A., to provide workers' compensation litigation defense services for Palm Beach County and Palm Tran, Inc., for claims of injury until September 30, 2011, with two (2) additional one (1) year options at the same price, terms and conditions stated herein at \$463,500.00 for legal services for each of the County's fiscal years 2008/2009, 2009/2010 and 2010/2011 plus reasonable costs and expenses not to exceed four percent of total fees (\$18,540.00) per fiscal year; payments shall be made in four equal installments (December 31, March 31, June 30 and September 30 of each fiscal year).

Summary: The law firm of Clarke & Platt, P.A., has provided workers' compensation litigation defense services to Palm Beach County and a number of Constitutional Officers. The contract with Clarke & Platt, P.A. expires on September 30, 2008. After a competitive selection process in which proposals ranged from \$400,000.00 to \$2,800,000.00, staff recommends the contract be awarded to Clarke & Platt, P.A. and that they continue to provide workers' compensation litigation defense services beginning October 1, 2008. Countywide (AJM)

Background and Policy Issues: This Agreement with the law firm of Clarke & Platt, P.A. provides defense of litigated workers' compensation claims by County employees, Palm Tran employees, and employees of all Constitutional officers that participate in the County's Self Insurance program (this does not include the Sheriff). The County will pay \$463,500.00 for legal services for each of the County's fiscal years 2008/2009, 2009/2010 and 2010/2011 plus reasonable costs and expenses not to exceed four percent of total fees (\$18,540.00) per fiscal year; payments shall be made in four equal installments (December 31, March 31, June 30 and September 30 of each fiscal year). Staff has concluded that this new Agreement provides a substantial benefit to the County. (Continued on page 3).

Attachments:

- 1. Agreement for Legal Services

Recommended by: Nancy L Bolton 8/22/08
Risk Management Department Date

Approved by: Bob Meunier 9/2/08
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	---	---	---	---	---
Operating Costs	---	482,040	---	---	---
External Revenues	---	---	---	---	---
Program Income (County)	---	---	---	---	---
In-Kind Match (County)	---	---	---	---	---
NET FISCAL IMPACT	\$ ---	, 482,040	---	---	---
# ADDITIONAL FTE POSITIONS (Cumulative)	0	---	---	---	---
Is Item Included in ^{Proposed} Current Budget?	Yes	X	No	---	---

Budget Account No.: Fund 5011 Department 700 Unit 7242 Object 4511

Reporting Category _____

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

C. Departmental Fiscal Review: Gary Kunkle

III. REVIEW COMMENTS

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

<p><u>atwillhite 8.27.08</u> 8/27/08 OFMB CN 8/27/08</p>	<p><u>Jim J. Javoy 8/28/08</u> Contract Development and Control 8/28/08</p>
---	---

B. Legal Sufficiency:

Dean A. John
 Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Department Review:

 Department Director

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

Background and policy issues (continued from page 1) In light of county-wide budget constraints, staff thoroughly researched the possibility of reducing costs by bringing workers' compensation litigation defense services in-house as an alternative to contracting with outside counsel.

Since 1985, the County has contracted with outside firms for workers' compensation litigation defense. Prior to that, cases were handled by the County Attorney's office on an infrequent and part time basis. Because of the complexity of the workers' compensation system in Florida and the lack of the sovereign immunity cap (which exists for personal injury cases) historical research indicates that this method of defense proved costly for the County.

Workers' compensation is managed under the provisions and authority of Chapter 440 of the Florida Statutes. It is a unique and complex area of the law, and it is not unusual for litigated cases to stretch over several years before resolution. As such, there are several claims currently being handled by Clarke & Platt, P.A. that continue to be eligible for reimbursement under the Special Disability Trust Fund (SDTF), for which eligibility ceased January 1, 1998. The SDTF was created in 1955 as a means to encourage employers to hire workers with pre-existing permanent physical impairments. If second injuries occurred with the new employer, the SDTF reimbursed associated medical and indemnity costs on a pre-determined scale. Clarke & Platt, P.A. has developed an exceptional expertise in recovering monies from the SDTF. Since 2001, they have been successful in recovering \$6,349,822.36. This recovery has exceeded the cost of the contract with the firm. For the most recent year, recoveries exceeded \$1M. If the County were to employ full time attorneys to handle workers' compensation matters in-house, it would be of the utmost importance to hire attorneys with extensive experience in obtaining SDTF reimbursements. During the recent RFP process, none of the proposing firms could demonstrate the same level of success with recovery under the SDTF.

Another area of complexity of workers' compensation litigation defense, particularly as it relates to local government, is the statutory presumption that firefighters and correction officers who develop hypertension, heart disease, hepatitis, and/or tuberculosis are presumed to have developed these diseases within the course and scope of their duties, barring any medical evidence to the contrary. These cases can mean considerable financial implications to the County. If such claims are not handled properly, those financial implications can increase exponentially.

There has never been a full time attorney employed by the County Attorney's office for the specific purpose of providing workers' compensation litigation defense. Currently, there are 239 active litigated workers' compensation files, and 433 inactive files. To enable the County Attorney's office to handle this work on an in-house basis with no negative financial impact to the County, the full time employment of various personnel with high levels of experience in this area of the law would first be required.

Following the recent RFP process, quotes for outside defense firms ranged from \$400,000 per year to \$2,800,000 per year. The selected firm, Clarke & Platt, P.A. proposed an annual fee of \$463,500, which represents a 3% increase over expiring contract fees. This is the first increase passed on by Clarke & Platt, P.A. since 2001. For this annual fee, the County enjoys the dedicated services of two full time attorneys. Both are partners with the firm and each has more than 20 years experience in workers' compensation defense. In addition to the attorneys, there are four full time legal assistants dedicated to the County's files.

In order to duplicate the services currently being provided to the County by Clarke & Platt, salary costs are estimated as follows:

2 senior level attorneys with excess of 20 years experience:

Salary Range	\$100,000	-	\$150,000
FICA	\$6,200		\$9,300
Medicare	\$1,450		\$2,175
Retirement (reg)	\$10,850		\$16,275
Health Ins.	\$6,170		\$9,255
Total Annual Salary	\$124,670	-	\$187,005

4 experienced legal assistants with 5 or more years experience:

Salary Range	\$40,000	-	\$50,000
FICA	\$2,480		\$3,100
Medicare	\$580		\$725
Retirement (reg)	\$4,340		\$5,425
Health Ins.	\$2,468		\$3,085
Total Annual Salary Range	\$49,868	-	\$62,335

If the County Attorney's office were to hire 2 senior attorneys and 4 legal secretaries, annual salary costs would range between **\$448,812** and **\$623,350**. This does not consider the costs associated with office space, office equipment and added security costs.

Additionally, salary costs have historically risen annually ranging between 2.5% and 6%. In contrast, contract costs for the services of Clarke & Platt, P.A. have remained flat for the past seven years, and the new annual contract fee is expected to remain flat through 2011.

If the workers' compensation defense program were to be brought in-house, it can be argued that it would not be necessary to hire 4 legal assistants. It is possible that the work could be effectively handled by 2 or 3. However, due to the complexity of the reimbursement process under the SDTF, it would be recommended that a fiscal specialist dedicated to the collection of reimbursement under the fund be added to the in-house staff.

Comparatively, most local government agencies outsource workers' compensation defense counsel. Broward County contracts with a panel of four firms that handle workers' compensation defense. There is one in-house attorney that handles non-catastrophic claims; however, a staff member from Broward County Risk Management has stated that she does not feel they have all of the resources that most law firms have regarding staffing, paralegals, clerks, etc. to fully support the amount of work that is required for the proper handling of workers' compensation claims. A representative of the Palm Beach County School District shared Broward County's concern regarding the proper level of staff, and also stated that they once tried handling these files in-house, but struggled to find a suitable candidate when the first attorney resigned. Miami-Dade County does have an in-house program; however they do have a considerable level of staff on payroll to handle the claims volume, including a full time collections specialist that handles SDTF reimbursements. Their annual cost for handling their 583 litigated workers' compensation claims (which includes salaries and fringe benefits) is \$1,293,737. Comparatively, Miami-Dade's cost per litigated file is \$2219.00, and Palm Beach County's cost per litigated file (at the annual contract rate of \$463,500 and current number of litigated files) will be \$1939.00, further illustrating the cost effectiveness of contracting for these services.

Although it would be possible to bring the program in-house, staff does not believe there would be sufficient savings to make such a transition at the current time. Rather, it would simply represent the shifting of a contracted expense to a payroll expense. However, staff will continue to monitor the costs associated with outside workers' compensation counsel, and at such time as the cost analysis shifts to a more favorable atmosphere in which to bring the program in-house, staff will return the Board with such a recommendation.

**AGREEMENT BETWEEN PALM BEACH COUNTY AND
CLARKE & PLATT, P.A. FOR LEGAL SERVICES**

THIS AGREEMENT is made and entered into this ____ day of _____, 2008, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY," and the law firm of **CLARKE & PLATT, P.A.**, hereinafter referred to as "ATTORNEY" or "contractor."

WITNESSETH:

WHEREAS, the COUNTY desired to engage the ATTORNEY to provide the COUNTY and other Constitutional Officers in Palm Beach County (excluding the Palm Beach County Sheriff's Office), and Palm Tran, Inc., with legal representation in matters arising out of and related to Workers Compensation claims, and

WHEREAS, the ATTORNEY desires to provide legal representation to the COUNTY, other Constitutional Officers in Palm Beach County, and Palm Tran, Inc., in matters arising out of and related to Workers Compensation claims;

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

1. The above recitals are true and correct and incorporated herein by reference.
2. The ATTORNEY agrees to represent the COUNTY, all Constitutional Officers in Palm Beach County that currently participate in the COUNTY's Self Insurance Program (excluding the Palm Beach County Sheriff's Office), and PALM TRAN, INC., in all matters arising out of or related to Workers Compensation claims filed by any of their employees (and others who claim Workers Compensation benefits from any of them) as to which representation or assistance is requested by the COUNTY's Risk Management Department or the COUNTY Attorney's Office. Representation with respect to PALM TRAN, INC. shall

only be for claims with dates of accident on or after January 1, 2000. Representation by the ATTORNEY shall include: general advice to the COUNTY on Workers Compensation matters and policy; preparation and filing of pleadings directed to all claims asserted; the handling of all discovery propounded by the claimants and all discovery necessary to defend against the claims asserted; preparation of appropriate motions and responses to motions by claimants; preparation of and consultation with witnesses, including expert witnesses (including medical experts); marshaling of evidence; attendance at and handling of all hearings related to the claims; attendance at mediations; attendance at both regular and special meetings with COUNTY staff and/or the Board of County Commissioners for the purposes of providing status reports and settlement recommendations on claims; attendance at and handling of trials; prosecution or defense of appeals as directed by the COUNTY; pursuit of claims from the State of Florida Special Disability Trust Fund; and, any legal research necessary to provide legal representation with respect to all of the foregoing (collectively, the "Legal Services").

3. The COUNTY agrees to pay the ATTORNEY \$463,500.00 for the Legal Services for each of the COUNTY's fiscal years 2008/09 and 2009/10, plus reasonable costs and expenses, which are not to exceed four percent of total fees (\$23,175.00) per fiscal year. Payments for each fiscal year shall be made to ATTORNEY in four equal installments (December 31, March 31, June 30 and September 30 of each fiscal year).

4. The ATTORNEY shall send an invoice to the COUNTY thirty days in advance of each installment due date. At that time, the ATTORNEY shall provide the COUNTY with a listing of all active and inactive files assigned to the ATTORNEY.

5. The only time records required to be maintained by the ATTORNEY shall be a listing of the total hours expended by the ATTORNEY on all COUNTY files (without necessity for specificity as to individual attorney who performed services, specific matter upon which services were performed, date or time spent on specific services performed, or other detail). Listing of total hours relating to PALM TRAN, INC. files shall be reported separately, but in the same manner as for COUNTY files. The listings shall be provided to the COUNTY annually, within thirty days after the close of each fiscal year and shall show totals only in each of the following categories: Pleadings, Legal/Medical Research, Depositions, Communications with Client, Trial/Hearing Preparation, Conferences or Consultations with Witnesses, Trial/Hearing Attendance, Communications with Attorneys, Communications with Others, and Miscellaneous. The listings shall be certified by ATTORNEY as to accuracy. The listings and certification shall be deemed adequate substantiation of time expended for the purposes of Paragraph 20A. concerning maintenance of records.

6. The COUNTY agrees to reimburse the ATTORNEY for reasonable costs and expenses incurred during the course of this legal representation, which may include, but not be limited to, out-of-pocket expenses for express mail, postage, photocopying charges by third parties, photocopy charges by the ATTORNEY at no more than \$.15 (Fifteen cents) per page; provided, however, that cumulative reimbursable costs and expenses shall not exceed four percent of the total fees payable hereunder for each COUNTY fiscal year. These costs and expenses shall be invoiced to the COUNTY at least bi-monthly. The following costs shall specifically be non-reimbursable: travel costs for travel in Palm Beach County, local telephone charges, courier charges, computerized research and

telefacsimiles. Court filing fees and costs, witness fees, court reporter fees, and previously approved out-of-county travel (which shall be in accordance with Section 112.061, Fla. Stat.) shall be itemized and invoiced separately; the COUNTY shall pay these items as an extra file expense item and such charges shall not be included in the four percent limitation.

7. All requests for reimbursement to which the ATTORNEY is entitled under the terms of this Agreement shall include copies of paid receipts, invoices, or other documentation required by the COUNTY's Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the scope of work described in this Agreement. Photocopy charges by third parties shall describe the documents, purpose of duplication, and rate charged. Any out-of-county travel and related, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Agreement will be paid in accordance with the rates and conditions set forth in Section 112.061, Fla. Stat.

8. Upon termination of this Agreement, the ATTORNEY shall transfer all work in progress, completed work, and other materials related to the terminated work to the COUNTY, unless the ATTORNEY continues to represent the COUNTY.

9. The ATTORNEY shall provide periodic status reports, either oral or in writing, as may from time to time be requested by the County Attorney or the COUNTY's Risk Management Department.

10. The ATTORNEY shall deliver to the COUNTY for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Agreement.

11. All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the ATTORNEY and will not be disclosed to any other party, directly or indirectly, without the COUNTY's prior written consent unless required by a lawful order. All drawings, maps, sketches, and other data developed, or purchased, under this contract or at the COUNTY's expense shall be and remain the COUNTY's property and may be reproduced and reused at the discretion of the COUNTY.

12. The ATTORNEY shall maintain during the term of this Agreement, standard Professional Liability Insurance in the amount of \$1,000,000 per occurrence.

13. The ATTORNEY shall indemnify and save harmless and defend the COUNTY, its Commissioners, agents, servants, and employees from and against any and all claims, liability, losses and/or cause of action which may arise from any negligent act or omission of the ATTORNEY, its agents, servants, or employees in the performance of services under this Agreement.

14. The ATTORNEY represents that it has, or will secure as its own expense, all necessary personnel required to perform the services under this Agreement at no additional cost to the COUNTY. Such personnel shall not be employees of or have any contractual relationship with the COUNTY. All of the services required herein shall be performed by the ATTORNEY or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. The ATTORNEY warrants that all services shall be performed by skilled and competent personnel to the highest professional standards.

15. The ATTORNEY represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in the standards set forth in Section 112.311, Fla. Stat. The ATTORNEY further represents that no person having an interest shall be employed for said performance.

16. The ATTORNEY shall promptly notify the COUNTY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the ATTORNEY's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the ATTORNEY may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the ATTORNEY. The COUNTY agrees to notify the ATTORNEY of its opinion by certified mail within thirty (30) days of receipt of notification by the ATTORNEY. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the ATTORNEY, the COUNTY shall so state in its opinion and the association, interest, or circumstance shall not be deemed in conflict of interest with respect to services provided to the COUNTY by the ATTORNEY under the terms of this Agreement.

17. The ATTORNEY shall have no responsibility with respect to Workers' Compensation matters on which a conflict of interest currently exists or which may occur in the future. The COUNTY shall have sole responsibility for handling the matter on behalf of the COUNTY. Should the ATTORNEY determine that a conflict exists during the term of

this Agreement, there shall be a one-time deduction from the annual flat fee for that year, calculated by the following formula:

$$\begin{array}{lcl} \text{numerator} & = & \text{number of conflict files} \\ \text{denominator} & = & \text{number of active \& inactive files at time conflict} \\ & & \text{determined} \end{array}$$

multiplied by the annual flat fee = amount of deduction.

18. The ATTORNEY is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the ATTORNEY's sole discretion, supervision, and control. The ATTORNEY shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the ATTORNEY's relationship and the relationship of its employees to the COUNTY shall be that of an independent Contractor and not as employees or agents of the COUNTY. The ATTORNEY does not have the power or authority to bind the COUNTY in any promise, agreement or representation other than specifically provided for in this Agreement or as authorized by the COUNTY.

19. The ATTORNEY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the ATTORNEY to solicit or secure this contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the ATTORNEY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

20. A. The ATTORNEY shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the COUNTY's costs, upon five (5) days written notice.

B. The COUNTY's performance and obligation to pay under this contract is contingent upon an annual appropriation for its purpose by the Board of County Commissioners.

21. The ATTORNEY warrants and represents that all of its employees are treated equally during employment without regard to race, color, physical handicap, religion, sex, age, sexual orientation, gender identity or expression, or national origin.

22. As provided in Sections 287.132-133, Fla. Stat., by entering into this contract or performing any work in furtherance hereof, the ATTORNEY certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by Section 287.133(3)(a), Fla. Stat.

23. The ATTORNEY hereby represents and warrants that it has and will continue to maintain all licenses and approval required to conduct its business, and that it will at all times conduct its business activities in a professional manner and that all services shall be performed by skilled and competent personnel to the highest professional standards.

24. This Agreement shall be governed by, and interpreted according to, the laws of the State of Florida. Any and all legal action necessary to interpret or enforce the

Agreement will be held only in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereunder existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

25. The ATTORNEY affirms the truthfulness and accuracy of its certification regarding lobbying attached to this Agreement as Exhibit A.

26. No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising therefrom.

27. A. The ATTORNEY shall at all times comply with all applicable Federal Transit Administration (also referred to in this Agreement as the "FTA") regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement (Form FTA MA (5) dated October, 2007) between the COUNTY and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. ATTORNEY's failure to so comply shall constitute a material breach of this Agreement.

B. The ATTORNEY further agrees to require each of its subcontractors, performing work related to this Agreement, to comply with the above-stated requirement and to include a provision requiring such compliance in all of its subcontracts. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

28. A. ATTORNEY and COUNTY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the COUNTY, ATTORNEY, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the underlying Agreement.

B. The ATTORNEY further agrees to require each of its subcontractors, performing work related to this Agreement, to comply with the above-stated requirement and to include a provision requiring such compliance in all of its subcontracts. It is further agreed that the provision shall not be modified, except to identify the subcontractor who will be subject to its provisions.

29. A. The ATTORNEY acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Agreement. Upon execution of this Agreement, the ATTORNEY certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the ATTORNEY further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the ATTORNEY to the extent the Federal Government deems appropriate.

B. The ATTORNEY also acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001, and 49 U.S.C. Section 5307(n)(1) on the ATTORNEY to the extent the Federal Government deems appropriate.

C. The ATTORNEY agrees to include the above two clauses in each subcontract related to the performance of this Agreement. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

30. A. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, and Federal transit law at 49 U.S.C. Section 5332, the ATTORNEY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the ATTORNEY agrees to comply with applicable Federal implementing regulations and any other implementing requirements FTA may issue.

B. Equal Employment Opportunity.

- (1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the ATTORNEY

agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to "Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Legal Services. The ATTORNEY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the ATTORNEY agrees to comply with any implementing requirements FTA may issue.

- (2) Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623 and Federal transit law at 49 U.S.C. Section 5332, the ATTORNEY agrees to refrain from discrimination against present and prospective

employees for reason of age. In addition, the ATTORNEY agrees to comply with any implementing requirements FTA may issue.

- (3) Disabilities. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the ATTORNEY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the ATTORNEY agrees to comply with any implementing requirements FTA may issue.

C. The ATTORNEY agrees to include the above-stated requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

31. A. Overtime Requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty (40) hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half the basic rate of pay for all hours worked in excess of forty (40) hours in such work week.

B. Violation; Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph A. above, the ATTORNEY and any subcontractor responsible therefore, shall be liable for the unpaid wages. In addition, such

ATTORNEY and subcontractor shall be liable to the United States for liquidated damages.

Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A. above, in the sum of \$10.00 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required herein.

C. Withholding for Unpaid Wages and Liquidated Damages: The COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the ATTORNEY or subcontractor under this Agreement or any other Federal contract with the same ATTORNEY, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same ATTORNEY, such sums as may be determined to be necessary to satisfy any liabilities of the ATTORNEY or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B. above.

D. Subcontracts: The ATTORNEY or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A. through D. of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The ATTORNEY shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs A. through D. of this section.

32. A. This Agreement contains certain standard terms and conditions required by U.S. DOT. All contractual provisions required by U.S. DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein

notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The ATTORNEY shall not perform any act, fail to perform any act, or refuse to comply with any COUNTY requests which would cause the COUNTY to be in violation of the FTA terms and conditions.

B. The ATTORNEY agrees to include the above-stated clause in each subcontract related to the performance of this Agreement. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

33. A. The ATTORNEY agrees to provide the COUNTY, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers, and records of the ATTORNEY which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The ATTORNEY agrees to permit the COUNTY and any of the foregoing entities to reproduce such books, documents, papers and records by any means whatsoever or to copy excerpts and transcriptions as needed.

B. The ATTORNEY agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the ATTORNEY agrees to maintain same until the COUNTY, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. See 49 CFR 18.39(i)(11).

34. A. This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the ATTORNEY is required to verify that neither the ATTORNEY nor any of its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The ATTORNEY is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in all subcontracts its enters into.

B. By signing this Agreement, the ATTORNEY certifies as follows:

The ATTORNEY certifies and affirms the truthfulness and accuracy of its certification and disclosure that neither it nor any of its principals or affiliates are excluded or disqualified from participation in this Agreement. This certification is a material representation of fact relied upon by COUNTY. If it is later determined that the ATTORNEY knowingly rendered an erroneous certification, in addition to remedies available to the COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and /or debarment. The ATTORNEY agrees to comply with the requirements of 49 CFR 29, Subpart C during the term of this Agreement. The ATTORNEY further agrees to include a provision requiring such compliance in all subcontracts.

C. If required by the COUNTY, a "Certificate Regarding Ineligible Contractors" must be completed and provided to COUNTY.

35. The ATTORNEY agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et. seq.* The ATTORNEY agrees to report each violation to the COUNTY and

understands that the COUNTY will, in turn, report each violation as required to assure notification to the FTA and the appropriate Environmental Protection Agency (EPA) regional office. The ATTORNEY will include the above-stated requirement in each subcontract exceeding \$100,000 that it enters into that is financed in whole or in part with Federal assistance provided by the FTA.

36. The ATTORNEY agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State of Florida's Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. Section 6321 *et. seq.*). The ATTORNEY further agrees to require each of its subcontractors to comply with the above-stated requirement and to include a provision requiring such compliance in all subcontracts.

37. A. This Agreement is subject to the requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in {U.S.} Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is ten percent (10%). The COUNTY's overall goal for DBE participation is ten (10%) established by COUNTY through its Department of Surface Transportation (referred to herein as "Palm Tran"). A separate contract goal has not been established for this Agreement.

B. Neither the ATTORNEY nor any of its subcontractors shall discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The ATTORNEY shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S.DOT assisted contracts. Failure by the ATTORNEY to carry out

these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the COUNTY deems appropriate. Each subcontract the ATTORNEY signs with a subcontractor must include the assurance in this paragraph. (See 49 CFR 26.13(b)). The ATTORNEY shall furnish a copy of each subcontract to Palm Tran.

C. The ATTORNEY shall submit with each invoice a report of DBE expenditures with a copy to Palm Tran. The report shall show each DBE, the amount of their subcontract, the amount earned to date, the amount earned for this respective invoice and the amount remaining to be earned. The report shall also have each DBE subcontractor to certify relative to the amounts earned and paid to date. The ATTORNEY's invoice may be withheld from payment until such time as the ATTORNEY submits the required report.

D. The ATTORNEY shall pay to each subcontractor the amount due within thirty (30) calendar days after receipt of payment from the COUNTY.

E. The ATTORNEY shall submit a quarterly utilization report concurrently with the submission of each invoice, with a copy to Palm Tran. Each utilization report shall be compared to the ATTORNEY's initial submission used for award of contract. The ATTORNEY shall be required to demonstrate the use of each DBE and the level of use for each previously identified DBE subcontractor. Failure to demonstrate the use of an identified DBE subcontractor may result in the withholding of payment until the ATTORNEY is in compliance or in the termination of the Agreement for material breach of contract. At the expiration or termination of this Agreement, the ATTORNEY shall report to COUNTY, with a copy to Palm Tran, the identity of each DBE with whom the ATTORNEY entered into

a subcontract with and the amount paid to the DBE for the purchase of supplies, materials and equipment.

F. The ATTORNEY must promptly notify Palm Tran whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The ATTORNEY may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the COUNTY. The ATTORNEY's violation of any of this Agreement's provision regarding DBE participation (i.e., paragraphs A through F of this Section 37) shall subject the ATTORNEY to sanctions, including but not limited to the termination of this Agreement.

38. All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the COUNTY shall be mailed to:

Denise M. Nieman, County Attorney
Palm Beach County
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401

and, if sent to the ATTORNEY shall be mailed to:

John B. Clarke, Esquire
Clarke & Platt, P.A
1800 Old Okeechobee Road, Suite 100
West Palm Beach, Florida 33409-5207.

A copy of all DBE reports or documents to be provided to Palm Tran shall be mailed to:

Atten: DBE Coordinator
Palm Tran
3201 Electronic's Way
West Palm Beach, FL 33407

39. The foregoing terms and conditions constitute the entire agreement between the parties hereto and any representation not contained herein shall be null and void and of no force and effect. Further, this Agreement may be amended only in writing upon mutual consent of the parties hereto.

40. This Agreement shall be effective as of October 1, 2008, and shall expire on September 30, 2011.

41. Notwithstanding the terms set forth in Paragraph 40, COUNTY or ATTORNEY may terminate this Agreement for "good cause" by providing ten (10) days advance written notice to the other.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida, has made and executed this Agreement on behalf of the COUNTY, and ATTORNEY has hereunto set his/her hand the day year above written.

ATTEST:

SHARON BOCK, CLERK
AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA, by its
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Chairperson

WITNESS:

ATTORNEY:

CLARKE & PLATT, P.A.

Name (Type or Print)

By: _____

John B. Clarke, Esquire

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

COUNTY ATTORNEY

Exhibit A

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(Contract Exceeding \$100,000)

The undersigned ATTORNEY certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The ATTORNEY undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The ATTORNEY, Clarke & Platte, P.A., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the ATTORNEY understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

By: _____ Date _____
Signature of ATTORNEY's Authorized Official

Name and Title of ATTORNEY's Authorized Official

WESTPORT INSURANCE CORPORATION

PROFESSIONALS ADVANTAGE FOR LAWYERS®

LAWYERS PROFESSIONAL LIABILITY INSURANCE

Westport Insurance Corporation
(A Stock Insurance Company, hereinafter called the "Company")

Policy Number: WLA308003313803
Renewal of Policy: WLW308003313802

DECLARATIONS

NOTICE: THIS IS A CLAIMS-MADE AND REPORTED POLICY. EXCEPT AS MAY BE OTHERWISE PROVIDED HEREIN, THIS COVERAGE IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS WHICH ARE FIRST MADE AGAINST AN INSURED AND REPORTED TO THE COMPANY WHILE THE POLICY IS IN FORCE.

A. Named Insured: CLARKE & PLATT, P.A.

Address: 1800 OLD OKEECHOBEE ROAD
SUITE 100
WEST PALM BEACH, FL 33409

B. Policy Period: From 12:01 A.M. 01-01-2008 To 12:01 A.M. 01-01-2009
Local time at the address stated herein

C. Limits of Liability: \$ 1,000,000 Per Claim
\$ 2,000,000 Aggregate for the Policy Period

D. Deductible: \$ 5,000 Per Claim

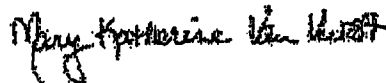
Claims Expenses are included within the Limit of Liability and Deductible.

E. Premium: \$ 5,824.00
Florida Hurricane Surcharge: \$ 58.24
Total Premium + Surcharge: \$ 5,882.24

F. Retroactive Date: None

The Declarations and the forms listed on the attached Schedule of Form(s) and Endorsement(s), together with the completed and signed application and supplements, shall constitute the contract between the NAMED INSURED and the Company.

WESTPORT INSURANCE CORPORATION



Countersignature

Date

Authorized Representative

WESTPORT INSURANCE CORPORATION

SCHEDULE OF FORM(S) AND ENDORSEMENT(S)

The Declarations and the forms listed below and attached hereto, together with the completed and signed application and supplements, shall constitute the contract between the NAMED INSURED and the Company.

FORMS AND ENDORSEMENTS

WIC FL-NOTICE	10-02	FLORIDA NOTICE TO POLICYHOLDERS
SP 3 897	04-07	AMEND ENDT - FL - TERMINATION ENDT
SP 3 383 I	02-06	DECLARATIONS
SP 3 689	02-06	SCHEDULE OF FORMS AND ENDORSEMENTS
SP 2 277	09-06	SIGNATURE PAGE
SP 3 370	02-06	ADDITIONAL LIM OF LIAB FOR CLAIMS EXP
SP 3 389	02-06	LIMITATION OF INDIVIDUAL PRIOR ACTS
SP 3 393	08-07	PROFESSIONAL ADVANTAGE FOR LAWYERS

SP 3 689 0206

Copyright ©2006 Westport Insurance Corporation. All rights reserved.
The reproduction or utilization of this work in any form whether by any electronic, mechanical, or other means, now known or hereafter invented, including xerography, photocopying, and recording, and information storage and retrieval system is forbidden without the written permission of Westport Insurance Corporation.