

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: August 13, 2012      Consent      Regular  
    Ordinance      Public Hearing

Department:

Submitted By: COUNTY ATTORNEY

Submitted For: RISK MANAGEMENT

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: a Contract with the law firm of Clarke & Platt, P.A. to provide workers' compensation litigation defense services for Palm Beach County, Palm Tran, Inc., and Constitutional Officers participating in the County's Self Insurance Program for a period of five years from October 1, 2013 at an annual fixed amount of \$477,400.00, plus reasonable costs and expenses not to exceed four percent of the total fees (\$19,096.00 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, Palm Tran, Inc., and a number of Constitutional Officers. Their current Contract expires on September 30, 2013. After a competitive selection process in which proposals ranged from \$400,000 to \$1,600,000.00, 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, 2013. Countywide (AJM)

**Background and Justification (or Policy Issues):** This Contract 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 participating in the County's Self Insurance Program (this does not include the Sheriff). The County will pay \$477,400 for legal services for each of the County's fiscal years 2013/2014, 2014/2015, 2015/2016, 2016/2017 and 2017/2018 plus reasonable costs and expenses not to exceed four percent of total fees (\$19,096) per fiscal year; payments will 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 Contract provides a substantial benefit to the County. **(Continued on Page 3)**

**Attachments:**

- 1) Contract for Professional Legal Services
- 2) Budget Availability Statement

Recommended By:      8-1-13  
   Department Director     Date

Approved By: N/A  
   County/Deputy/Assistant County Administrator     Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact**

Fiscal Years	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Capital Expenditures	_____	<u>496,496</u>	<u>496,496</u>	<u>496,496</u>	<u>496,496</u>
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>Net Fiscal Impact</b>	_____	<u><u>496,496</u></u>	<u><u>496,496</u></u>	<u><u>496,496</u></u>	<u><u>496,496</u></u>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

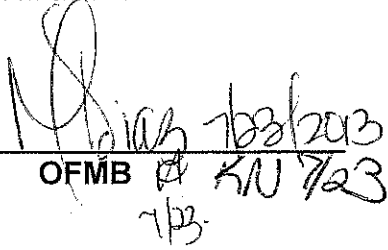
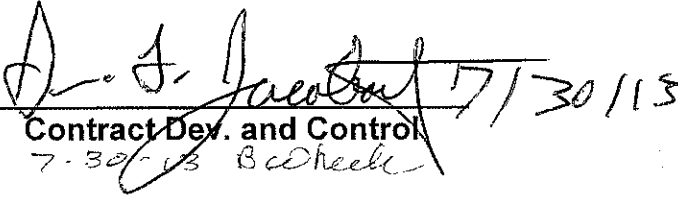
<b>Is Item Included In Proposed Budget?</b>	<b>Yes</b>	<input checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>
<b>Budget Account</b>	<b>Exp No.:</b>	<b>Fund</b>	<b>5011 Dept</b>	<b>700 Unit</b>
				<b>7242 Obj</b>
	<b>Rev No.:</b>	<b>Fund</b>	<b>_____ Dept</b>	<b>_____ Unit</b>
				<b>_____ Obj</b>

**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:**

 _____ OFMB 7/23/2013 KAU 723 7/23	 _____ Contract Dev. and Control 7-30-13 Bcdheek
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**B. Legal Sufficiency:**

  
 \_\_\_\_\_  
 Chief Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**Background and policy issues (continued from page 1):**

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.

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.

Following the recent RFP process, quotes for outside defense firms ranged from \$400,000 per year to \$1,600,000 per year. The selected firm, Clarke & Platt, P.A. proposed an annual fee of \$477,400 which represents a 3% increase over expiring contract fees. For this annual fee, the County receives 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.

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

THIS CONTRACT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners (hereinafter referred to as "COUNTY") and **CLARKE & PLATT, P.A.** [ ] an individual, [ ] a partnership, [ ] a corporation authorized to do business in the State of Florida, (hereinafter referred to as "OUTSIDE COUNSEL"), whose Federal Tax Identification number is 65-0115902.

**WHEREAS**, the COUNTY desires to engage OUTSIDE COUNSEL 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**, OUTSIDE COUNSEL 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:

**ARTICLE 1. LEGAL SERVICES**

OUTSIDE COUNSEL 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 OUTSIDE COUNSEL 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").

**ARTICLE 2. TERM**

The term of the Contract shall be from the date this Contract is approved by the COUNTY through the COUNTY's fiscal years 2013/2014, 2014/2015, 2015/2016, 2016/2017 and 2017/2018.

### **ARTICLE 3. FEES**

The COUNTY agrees to pay OUTSIDE COUNSEL Four Hundred Seventy Seven Thousand Four Hundred and 00/100 dollars (\$477,400.00) for Legal Services, plus reasonable costs and expenses, which are not to exceed four percent of total fees per fiscal year. Payments for each fiscal year shall be made to OUTSIDE COUNSEL in four equal installments (December 31, March 31, June 30 and September 30 of each fiscal year).

### **ARTICLE 4. PAYMENTS TO OUTSIDE COUNSEL**

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

b) The only time records required to be maintained by the OUTSIDE COUNSEL shall be a listing of the total hours expended by the OUTSIDE COUNSEL 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 OUTSIDE COUNSEL as to accuracy. The listings and certification shall be deemed adequate substantiation of time expended for the purposes of Article 6 concerning maintenance of records.

**ARTICLE 5. REIMBURSABLE EXPENSES AND COSTS**

a) The COUNTY agrees to reimburse OUTSIDE COUNSEL for reasonable out-of-pocket expenses and costs incurred during the course of providing the LEGAL SERVICES. The expenses and costs may include, but are not limited to, out-of-pocket expenses for extraordinary photocopying projects, not-to-exceed fifteen cents (\$.15) per page, courier charges, express mail, long distance telephone charges, postage, and printing. The COUNTY will only reimburse OUTSIDE COUNSEL expert witness or OUTSIDE COUNSEL fees that have been previously approved in writing by the County Attorney's Office. Court filing fees and costs, witness fees, and previously approved travel shall be itemized and invoiced separately.

b) COUNTY shall not be responsible for the cost of any computerized legal research other than the actual billable hourly rate of OUTSIDE COUNSEL.

c) The total amount of reimbursable expenses and costs shall not exceed Nineteen Thousand Ninety Six and 00/100 dollars (\$19,096.00).

d) OUTSIDE COUNSEL covenants and agrees that any other type of billing or timekeeping which allows compensation for time not actually spent by OUTSIDE COUNSEL is not permitted under this Contract. Therefore, it shall be a material breach of the terms of this Contract for OUTSIDE COUNSEL or anyone on OUTSIDE COUNSEL's behalf to submit for payment any statement of services rendered that

either (i) overstates the amount of time actually spent pursuant to this Contract, or (ii) includes time spent by any person not affiliated with OUTSIDE COUNSEL.

e) Each statement of costs and fees represents an implied warranty that the statement sets forth only the actual time spent and only the actual costs incurred. The COUNTY may rely on the implied warranty.

f) All requests for payment of expenses eligible for reimbursement under this Contract shall include legible copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expenses were actually incurred and necessary in the performance of the LEGAL SERVICES. Photocopy charges shall give a general description of the documents. If duplication of more than ten (10) documents is required, a general description of the category or type of documents copied will be sufficient documentation. Any out-of-county travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Contract shall be approved by the County Attorney's Office in advance, and shall be paid in accordance with the rates and conditions set forth in Palm Beach County PPM #CW-F-009, incorporated herein by reference, and available for inspection on the County's website at <http://www.pbcgov.com/publicaffairs/ppm/pdf/cw-f-009.pdf>.

g) No service, interest, or other similar charge is to be imposed with regard to any item, invoice, or request.

#### **ARTICLE 6. DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

a) OUTSIDE COUNSEL shall maintain its files on this matter, including adequate records to justify all charges, expenses, and costs incurred in performing the



LEGAL SERVICES, for at least five (5) years after termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this subparagraph for the purpose of inspection and/or audit during normal business hours, at the COUNTY's expense, upon reasonable written notice to OUTSIDE COUNSEL.

b) Copies of all correspondence and pleadings shall be directed to the County Attorney's Office.

c) OUTSIDE COUNSEL shall obtain prior written approval from the County Attorney's Office before filing a counterclaim, cross-claim, or third-party claim, retaining any expert witness, or arranging any out-of-town travel.

d) OUTSIDE COUNSEL shall provide periodic status reports, either oral or in writing, as requested by the County Attorney's Office.

e) OUTSIDE COUNSEL shall deliver to the COUNTY for approval and acceptance, and before being eligible for final payment of any amounts due, and owing, all documents and materials prepared by and for the COUNTY in the course of providing the LEGAL SERVICES.

(f) OUTSIDE COUNSEL has been advised that the COUNTY and all its activities are subject to the Public Records Law (Chapter 119, Florida Statutes) and the Sunshine Law (Section 286.011, Florida Statutes). OUTSIDE COUNSEL shall observe and comply with the requirements of these laws and all related COUNTY policies and procedures in performing the LEGAL SERVICES hereunder.

#### **ARTICLE 7. CONFIDENTIALITY**

All written and oral information not in the public domain and not previously known, and all information and data obtained, developed, or supplied by the COUNTY

or at its expense shall be kept confidential by OUTSIDE COUNSEL and shall not be disclosed to any other party, directly or indirectly, without the COUNTY's prior written consent unless required by an order issued by a court or like authority of lawful jurisdiction. All drawings, maps, and 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 solely at the discretion of the COUNTY.

#### **ARTICLE 8. TERMINATION**

a) This Contract may be terminated by the COUNTY upon ten (10) days' written notice to OUTSIDE COUNSEL. The Contract may be terminated by OUTSIDE COUNSEL upon ninety (90) days' written notice to the COUNTY. Before OUTSIDE COUNSEL may terminate this Contract and/or seek to withdraw as counsel of record in any pending litigation being handled pursuant to this Contract, it must return to the County one-half of all legal fees paid by the COUNTY under this Contract. Upon termination by either party, OUTSIDE COUNSEL shall transfer all work in progress, completed work, and other materials related to the LEGAL SERVICES to the COUNTY.

b) If OUTSIDE COUNSEL terminates this Contract before completion of any pending litigation being handled pursuant to this Contract, it shall not seek, nor be awarded, any work as OUTSIDE COUNSEL for the COUNTY on this or any other matter.

#### **ARTICLE 9. OFFICE OF INSPECTOR GENERAL**

Palm Beach County has established the Office of the Inspector General as contained in the Palm Beach County Code, Sections 2-421 – 2-440, as may be amended. The Inspector General's authority includes, but is not limited to, the power to

review past, present and proposed County contracts, transactions, account and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the OUTSIDE COUNSEL, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-241 – 2-440, and punished to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

#### **ARTICLE 10. INSURANCE**

- A. OUTSIDE COUNSEL shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages and limits (including endorsements), as described herein. OUTSIDE COUNSEL shall agree to provide the COUNTY with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by OUTSIDE COUNSEL are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by OUTSIDE COUNSEL under the contract.
- B. **Commercial General Liability.** OUTSIDE COUNSEL shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management

Department. OUTSIDE COUNSEL shall provide this coverage on a primary basis.

- C. **Business Automobile Liability.** OUTSIDE COUNSEL shall maintain Business Automobile Liability at a limit of liability not less than **\$500,000** Each Accident for all owned, non-owned and hired automobiles. In the event OUTSIDE COUNSEL doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing OUTSIDE COUNSEL to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. OUTSIDE COUNSEL shall provide this coverage on a primary basis.
- D. **Worker's Compensation Insurance & Employers Liability.** OUTSIDE COUNSEL shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. OUTSIDE COUNSEL shall provide this coverage on a primary basis.
- E. **Professional Liability.** OUTSIDE COUNSEL shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of OUTSIDE COUNSEL'S most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, OUTSIDE COUNSEL shall maintain a Retroactive Date prior to or equal to the effective date of this Contract. The Certificate of Insurance providing evidence of

the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims - made" form. If coverage is provided on a "claims - made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, OUTSIDE COUNSEL shall purchase a SERP with a minimum reporting period not less than 3 years. OUTSIDE COUNSEL shall provide this coverage on a primary basis.

F. **Additional Insured.** OUTSIDE COUNSEL shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." OUTSIDE COUNSEL shall provide the Additional Insured endorsements coverage on a primary basis.

G. **Waiver of Subrogation.** OUTSIDE COUNSEL hereby waives any and all rights of Subrogation against COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss contract to waive subrogation without an endorsement to the policy, then OUTSIDE COUNSEL shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation

requirement shall not apply to any policy, which specifically prohibits such an endorsement, or which voids coverage should OUTSIDE COUNSEL enter into such an contract on a pre-loss basis.

- H. **Certificate(s) of Insurance.** Prior to execution of this Contract, OUTSIDE COUNSEL shall deliver to the County Attorney's Office a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage. The certificate of insurance shall be issued to:

Palm Beach County  
c/o Andrew J. McMahon  
Chief Assistant County Attorney  
300 North Dixie Highway  
Suite 359  
West Palm Beach, FL 33401

- I. **Umbrella or Excess Liability.** If necessary, OUTSIDE COUNSEL may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

J. **Right to Review.** COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

**ARTICLE 11. INDEMNIFICATION**

OUTSIDE COUNSEL shall indemnify, hold harmless, and defend the COUNTY, its agents, servants, and employees from and against any and all claims, liability, losses, and/or causes of action which may arise by virtue of any intentional or negligent act or omission of OUTSIDE COUNSEL or any agent, member, partner, associate, or employee thereof in the performance of the LEGAL SERVICES.

**ARTICLE 12. PERSONNEL**

OUTSIDE COUNSEL represents that it has, or will secure at its own expense, all necessary personnel required to perform the LEGAL SERVICES as required herein. Such personnel shall not be employees of, or have any contractual relationship with, the COUNTY. The LEGAL SERVICES shall be performed by John B. Clarke, Esquire, or under her/his direct supervision. OUTSIDE COUNSEL may not substitute lead counsel without prior written authorization from the COUNTY. Such authorization shall be at the sole discretion of the COUNTY. All personnel engaged in performing the LEGAL SERVICES shall be fully qualified and, if required, authorized or permitted under federal, state, and local law to perform such services. OUTSIDE COUNSEL warrants

that the LEGAL SERVICES shall be performed by skilled and competent personnel to the highest professional standards.

**ARTICLE 13. TRUTH-IN-NEGOTIATION CERTIFICATE**

OUTSIDE COUNSEL's signature on this Contract shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete, and current as of the date of this Contract.

**ARTICLE 14. CONFLICT OF INTEREST**

a) OUTSIDE COUNSEL represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any matter with the performance of the LEGAL SERVICES, as provided in the rules regulating the Florida Bar, Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. OUTSIDE COUNSEL further represents that no person having such conflict of interest shall be employed for said performance of services.

b) OUTSIDE COUNSEL shall promptly notify the COUNTY in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest, or other circumstance which may influence or appear to influence OUTSIDE COUNSEL's judgment or quality of the LEGAL SERVICES being provided. Such written notification shall identify the prospective business association, interest, or circumstance, the nature of work that OUTSIDE COUNSEL 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 OUTSIDE COUNSEL. The COUNTY agrees to notify OUTSIDE COUNSEL of its



opinion by certified mail within thirty (30) days of receipt of notification by OUTSIDE COUNSEL. If, in the opinion of the COUNTY, the prospective business association, interest, or circumstance would not constitute a conflict of interest by OUTSIDE COUNSEL, the COUNTY shall so state in the notification and OUTSIDE COUNSEL shall at its option, enter into said association, interest, or circumstance and it shall be deemed not in conflict of interest with respect to the LEGAL SERVICES by the OUTSIDE COUNSEL under the terms of this Contract.

**ARTICLE 15. INDEPENDENT CONTRACTOR RELATIONSHIP**

a) OUTSIDE COUNSEL and all its employees, agents, and servants are, and shall be, in the performance of the LEGAL SERVICES under this Contract, independent contractors and not an employee of the COUNTY. All persons engaged in the LEGAL SERVICES performed by OUTSIDE COUNSEL pursuant to this Contract shall at all times, and in all places, be subject to OUTSIDE COUNSEL's sole discretion, supervision, and control. OUTSIDE COUNSEL shall exercise direct control over the means and manner in which it and its employees, agents, and servants perform the LEGAL SERVICES. OUTSIDE COUNSEL does not have the power or authority to, and agrees that it will not attempt to, bind the COUNTY in any promise, contract, or representation other than as specifically provided for in this Contract.

b) OUTSIDE COUNSEL warrants and represents that it has not employed or retained any company or person, other than a bona fide employee working solely for OUTSIDE COUNSEL, 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 OUTSIDE COUNSEL, any fee, commission,

percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

**ARTICLE 16. NONDISCRIMINATION**

OUTSIDE COUNSEL warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression.

**ARTICLE 17. AUTHORITY TO PRACTICE**

OUTSIDE COUNSEL hereby represents and warrants that it has and will continue to maintain all licenses and approvals 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.

**ARTICLE 18. REMEDIES**

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Contract shall be originally filed and later held in Palm Beach County. To encourage the prompt and equitable resolution of any litigation that may arise hereunder, the parties hereby waive any rights that either may have to a trial by jury. No remedy herein conferred upon the parties 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 hereafter existing at law or in equity, by statute or otherwise. The parties agree that time is of the essence in the

performance of all obligations hereunder. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof.

No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including but not limited to any citizen or employee of the COUNTY and/or OUTSIDE COUNSEL.

**ARTICLE 19. NOTICE**

All notices required in this Contract shall be sent by fax or mail to:

Andrew J. McMahon, Esquire  
Chief Assistant County Attorney  
Palm Beach County  
300 North Dixie Highway, Ste. 359  
West Palm Beach, Florida 33401  
(representative for the COUNTY)

If sent to OUTSIDE COUNSEL, the notice shall be mailed to:

John B. Clarke, Esquire  
Clarke & Platt, P.A.  
2110 North Florida Mango Road  
Suite 101  
West Palm Beach, Florida 33409  
(representative for CLARKE & PLATT, P.A.)

**ARTICLE 20. ENTIRETY OF CONTRACTUAL CONTRACT**

The COUNTY and OUTSIDE COUNSEL agree that this contract sets forth the entire contract between the parties, and that there are no promises or understandings other than those stated herein. None of the provision, terms and conditions contained in this contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties.

**ARTICLE 21. SEVERABILITY**

If any term or provision of this contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this contract shall be deemed valid and enforceable to the extent permitted by law.

IN WITNESS WHEREOF, the parties have duly executed this Contract on the day and year reflected in the first above written.

ATTEST:

SHARON R. BOCK  
CLERK AND COMPTROLLER

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor

OUTSIDE COUNSEL:

\_\_\_\_\_  
Firm Name

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

APPROVED AS TO FOR FORM  
AND LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Chief Assistant County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS

By: \_\_\_\_\_  
Department Director

IN WITNESS WHEREOF, the parties have duly executed this Contract on the day and year reflected in the first above written.

ATTEST:  
SHARON R. BOCK  
CLERK AND COMPTROLLER

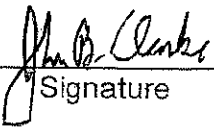
PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor

OUTSIDE COUNSEL:

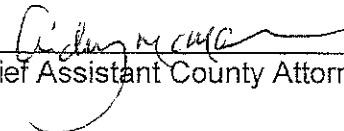
CLARKE & PLATT, P.A.  
Firm Name

By:   
Signature

John B. Clarke  
Type or Print Name

President  
Title

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By:   
Chief Assistant County Attorney

APPROVED AS TO TERMS  
AND CONDITIONS

By: \_\_\_\_\_  
Department Director

BUDGET AVAILABILITY STATEMENT  
RISK MANAGEMENT

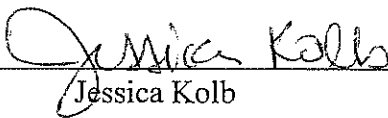
REQUEST DATE: 7/17/13 REQUESTED BY: County Attorney's Office

REQUESTED FOR: Clark and Platt P.A.

REQUESTED AMOUNT: \$496,496 AGENDA DATE: 8/13/13

BUDGET ACCOUNT NUMBER:

FUND: 5011 DEPT: 700 UNIT: 7242 OBJ: 3125

BAS APPROVED BY:  DATE: 7/17/13  
Jessica Kolb