

Agenda Item #:

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: October 1, 2013

[] Consent

[X] Regular

☐ Public Hearing

Department:

Submitted By: COUNTY ATTORNEY

Submitted For: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: a) approve a Contract for Professional Legal Services with the law firm of Harris Penn Lowry LLP to represent the County on a contingency basis in litigation for violations of the federal Fair Housing Act (FHA); and b) provide direction to the County Attorney on which potential defendants should be sued.

Summary: a) Preliminary research of federal government-mandated lending data indicate that mortgage origination and lending activities were targeted at minority borrowers in the County, in violation of the FHA. Taxing authorities in other states have brought suit for damages they have incurred to their tax bases, as well as for direct expenses arising out of Code Enforcement, police responses, and other costs caused by the FHA violations. Harris Penn Lowry LLP, which has its principal office in Atlanta, Georgia, was the only law firm to respond to the County's request for proposals for legal services on this matter. The firm will bear the risk of all litigation-related expenses until there is either a settlement or a judgment in the County's favor. b) The County Attorney requests direction as to which potential defendants should be directly sued as opposed to negotiated with in the context of lawsuits brought by other taxing authorities. Countywide (AJM)

Background and Justification: From approximately 2002 through 2008, certain lenders targeted high-cost mortgages at minority borrowers, with little or no regard to the borrowers' ability to qualify for more favorable terms or even to repay the loans. Academic and Congressional studies revealed that lenders involved in such predatory activities were unconcerned about the risk of default because the mortgages were sold to investors around the world, and the originating lenders profited from origination fees and closing costs, as well as servicing fees in some cases. Class action lawsuits have resulted in settlements that benefit the federal and state government, and in some cases borrowers, but not the local taxing authorities. Lawsuits by taxing authorities have been filed in Maryland, Tennessee, and Georgia, with the earliest suits resulting in settlements once motions to dismiss were denied.

(Continued on page 3)

Attachments:

- ## 1. Contract for Professional Legal Services

Recommended by:

County Attorney

Date _____

Approved by:

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>*</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes ☐ No ☐

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____

Reporting Category _____

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

*The County will not be required to advance litigation cost costs will be deducted from any settlement or judgment. /

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

[Signature]
OFMB 9/11/13 9/12

[Signature] 9/17/13
Contract Development and Control
9-17-13 Barhiller

B. Legal Sufficiency:

[Signature]
Chief Assistant County Attorney

At the time of our review,
the contract was not
executed, and proof of
insurance was not
available.

C. Other Department Review:

Department Director

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

(continued from page 1):

The cost of investigating the specifics of the predatory loans is substantial, as will be the cost of experts to value the impact on the tax base. As a result of the significant anticipated litigation costs, the County Attorney's Office determined that a contingency arrangement with outside counsel would best serve the County's interests. The costs involved, as well as the relatively unusual nature of the expertise required to litigate the case, may well explain why the County Attorney's Office received but one response to its request for proposals. The County Attorney's Office recommends that the firm of Harris Penn Lowry LLP be engaged to represent the County on a contingency basis. The County will not be required to advance any of the costs of litigation or pre-litigation due diligence; costs will be deducted from any settlement or judgment. Several standard terms the County uses in professional services agreement, such as reimbursement for travel and copying charges, have been modified at prospective outside counsel's request to accommodate the risk of the contingency basis of the representation.

The County Attorney also requests direction as to which prospective defendants should be sued directly, and which others should be approached as part of negotiations of lawsuits initiated by other taxing authorities. The County Attorney recommends that it be given authority to work with Harris Penn Lowry LLP to address the issue on a case-by-case basis, and direction that the County is prepared to initiate a suit against the entities associated with respect to lending practices with Bank of America and entities it has acquired or with which it has merged. No litigation will be commenced until attempts to resolve the claims by negotiation have been exhausted.

The anticipated litigation is likely to involve issues handled by the Tax Collector, and may implicate tax revenues lost by municipalities and other taxing authorities included in County tax bills. Consequently, both the outside counsel and the County Attorney expect to work closely with all affected agencies and Constitutional officers.

**CONTRACT FOR PROFESSIONAL LEGAL SERVICES
BY AND BETWEEN
PALM BEACH COUNTY AND HARRIS PENN LOWRY LLP**

THIS CONTRACT is made and entered into this ____ day of October, 2013, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners ("COUNTY") and law firm of **HARRIS PENN LOWRY LLP**, a Georgia partnership authorized to do business in the State of Florida, ("OUTSIDE COUNSEL"), whose Federal Tax Identification number is 20-3934941.

WHEREAS, the COUNTY desires to engage OUTSIDE COUNSEL to provide legal representation to the COUNTY, and

WHEREAS, OUTSIDE COUNSEL desires to provide legal representation to the COUNTY;

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, on a contingency basis, to investigate and prosecute potential claims the COUNTY may determine to pursue based on improper mortgage origination and lending activity to COUNTY residents and against any and all mortgage originators, brokers, underwriters, lenders or other culpable parties that are identified to have engaged in such activities to a material degree sufficient, in the opinion of OUTSIDE COUNSEL, to merit the risks and expenses of contingency litigation ("LEGAL SERVICES"). Prior to the filing of any action against any defendant or group of defendants on behalf of the COUNTY (the

"CLAIMS"), separate authorization shall be obtained from the COUNTY, and no action shall be filed without such separate authorization. The COUNTY shall be the final decision maker with respect to any significant issues relating to any litigation on behalf of the COUNTY, including any and all press releases, which may not be released without prior approval of the COUNTY. The Palm Beach County Attorney, or designee, shall supervise OUTSIDE COUNSEL, its Attorneys and any Third Firms, all of whom shall perform their services for the COUNTY at the COUNTY's direction.

ARTICLE 2. TERM

The term of the Contract shall be from the date this Contract is approved by the COUNTY until December 15, 2015, unless: a) the parties otherwise agree to extend it; or b) OUTSIDE COUNSEL have initiated wither litigation or settlement discussions on behalf of the COUNTY, in which case the Contract may be terminated as otherwise provided herein.

ARTICLE 3. FEES

Subject to any required court approval, the COUNTY agrees to pay OUTSIDE COUNSEL a contingency fee equal to:

- a) 20% of all amounts recovered for the COUNTY on the CLAIMS as a result of any settlement, mediation, judgment, verdict, award, restitution, disgorgement, or otherwise achieved prior to the filing of any complaint against such defendant;
- b) 25% of all amounts recovered for the COUNTY on the CLAIMS as a result of any settlement, mediation, judgment, verdict, award, restitution, disgorgement, or otherwise achieved after the filing of a complaint, but prior to the

commencement of discovery, whether such complaint was brought directly on behalf of the COUNTY or on behalf of OUTSIDE COUNSEL's' other clients (the "COMPLAINT");

c) 30% of all amounts recovered for the COUNTY on the CLAIMS as a result of any settlement, mediation, judgment, verdict, award, restitution, disgorgement, or otherwise achieved after the commencement of discovery (and through and including any initial dispositive motions) but prior to the filing of any summary judgment motion on the COMPLAINT;

d) 33% of all amounts recovered for the COUNTY on the CLAIMS as a result of any settlement, mediation, judgment, verdict, award, restitution, disgorgement, or otherwise achieved after the filing of any summary judgment motion and through the conclusion of a trial on the COMPLAINT;

e) 35% of all amounts recovered for the COUNTY on the CLAIMS as a result of any settlement, mediation, judgment, verdict, award, restitution, disgorgement, or otherwise achieved after any appeal of a trial verdict on the COMPLAINT is filed.

The fact that a recovery may consist in part of an amount denominated by a fact-finder or defendant party as "attorney's fees" does not limit any contingency fee due hereunder. The contingency fee due hereunder shall be calculated based upon the total value of the "amounts recovered on the CLAIMS," defined to mean the financial value of the entire recovery and benefit obtained from defendants for the COUNTY, including any award denominated as "attorney's fees" and any case expenses, including those advanced by OUTSIDE COUNSEL. Such attorneys fees shall be paid at the above contingency rates whether the amounts recovered on the CLAIMS result from litigation brought directly on behalf of COUNTY or result from settlement of COUNTY's CLAIMS

in connection with OUTSIDE COUNSEL's prosecution of any COMPLAINT for OUTSIDE COUNSEL's other clients. For purposes of this calculation injunctive relief shall be deemed to have no financial value, except to the extent it includes any payment of money for the COUNTY's benefit (e.g., to help remediate injuries) and the COUNTY has control over the monies as paid. In the event of settlement, the fees paid under this Contract shall be in lieu of any statutory fees COUNTY might otherwise have been entitled to recover.

In the event OUTSIDE COUNSEL determines the need to further associate with other attorneys or law firms as local, liaison, or co-counsel ("Third Firms") for the proper handling of the CLAIMS, OUTSIDE COUNSEL shall negotiate the attorney fee split with any such Third Firms and payment of said fees to any Third Firms shall be made directly by OUTSIDE COUNSEL or as otherwise agreed between OUTSIDE COUNSEL and such Third Firms, and shall not constitute expenses incurred on Client's behalf in prosecuting this action. OUTSIDE COUNSEL shall notify Client prior to such an agreement, if one becomes necessary, at which time OUTSIDE COUNSEL, COUNTY and the Third Firm(s) may enter into a revised contract of representation, subject to COUNTY's approval, wherein the terms of engagement, including the basis for the fee division, shall be memorialized in writing. OUTSIDE COUNSEL shall be responsible for allocating work and proportionately dividing any fees according to the work performed in the prosecution of the CLAIMS.

ARTICLE 4. SETTLEMENTS, PAYMENTS TO OUTSIDE COUNSEL, COUNTY WITNESSES

a) No settlement of any nature shall be made of the CLAIMS without the agreement of the COUNTY. Any settlement or judgment amount shall be paid directly to OUTSIDE COUNSEL on behalf of the COUNTY. OUTSIDE COUNSEL shall hold such amount on behalf of OUTSIDE COUNSEL and the COUNTY, and shall disburse such amount in accordance with the terms of this Contract. OUTSIDE COUNSEL may retain therefrom any previously advanced expenses and the contingency fee owed to them under this Contract, and shall deliver the remaining amount to the COUNTY, with documentation and support as provided in Article 5 of this Contract.

b) The COUNTY agrees that it will not, over OUTSIDE COUNSEL's written objection, accept any settlement offer or proposal that would circumscribe or restrict OUTSIDE COUNSEL's ability to represent other clients in suits arising from the same or similar transactions or events. COUNTY also agrees not to directly negotiate any settlement without OUTSIDE COUNSEL's knowledge and consent.

c) OUTSIDE COUNSEL makes no warranties, express or implied, regarding the successful outcome of the LEGAL SERVICES provided under this Contract. All expressions relative thereto have been and will be only matters of OUTSIDE COUNSEL's' opinion.

d) The COUNTY's designated witnesses shall appear upon reasonable notice at any and all depositions and court or arbitration hearings, and shall cooperate and comply with all reasonable requests of OUTSIDE COUNSEL in connection with the provision of the LEGAL SERVICES.

ARTICLE 5. REIMBURSABLE EXPENSES AND COSTS

a) In the event of a recovery, the COUNTY agrees to be responsible for all reasonable out-of-pocket expenses incurred on the COUNTY's behalf by OUTSIDE COUNSEL in investigation of the COUNTY's potential CLAIMS and in prosecuting COUNTY's CLAIMS or any COMPLAINT for the COUNTY's benefit. Such expenses shall be paid to OUTSIDE COUNSEL from, and limited to, the gross recovery proceeds. Where a recovery is achieved on behalf of COUNTY and OUTSIDE COUNSEL's other clients, COUNTY will pay its *pro rata* share of expenses (i.e. the percentage of COUNTY's recovery relative to the entire recovery for all of OUTSIDE COUNSEL's clients). Expenses are expected to include, but are not limited to, filing fees, deposition costs, travel expenses, expert witness and consultant fees, photocopying charges, long distance telephone charges, express mail or federal express charges, courier charges and facsimile charges. Expenses directly incurred by the COUNTY for travel and per diem for its own employees for out of town appearances shall be advanced by the COUNTY, but shall be reimbursed to the COUNTY from the COUNTY's gross recovery proceeds, if any, after calculation of attorney's fees.

b) The expenses and costs may include, but are not limited to, out-of-pocket expenses for 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 for expert witness or outside consultant fees incurred solely on behalf of COUNTY 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.

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

d) The 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.

e) 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. Any out-of-county travel, per diem, mileage, meals, or lodging expenses incurred solely on behalf of COUNTY 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>. COUNTY acknowledges that OUTSIDE COUNSEL is based in Atlanta, Georgia, and where OUTSIDE COUNSEL's travel is necessary to meet with COUNTY to perform the LEGAL SERVICES under this Contract, COUNTY agrees that OUTSIDE COUNSEL's related travel expenses are deemed pre-approved.

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

d) 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.

(e) 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 OUTSIDE COUNSEL at its expense shall be kept confidential and shall not be disclosed to any other party, directly or indirectly, without the COUNTY's or OUTSIDE COUNSEL's prior written consent, as the case may be, unless required by an order issued by a court or like authority of lawful jurisdiction. Exclusive of OUTSIDE COUNSEL's proprietary information, all drawings, maps, and sketches, and other data developed or purchased by the COUNTY and pertaining to the COUNTY 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. . Upon termination by either party, OUTSIDE COUNSEL shall transfer to the COUNTY all work in progress, completed work, and other materials related to the prosecution of COUNTY's CLAIMS.

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 further work as OUTSIDE COUNSEL for the COUNTY on this or any other matter.

c) If this Contract is terminated by either COUNTY or OUTSIDE COUNSEL before completion of any pending litigation on any COMPLAINT, or any settlement

thereof, for which OUTSIDE COUNSEL has provided LEGAL SERVICES for the benefit of the COUNTY, OUTSIDE COUNSEL shall be entitled to full payment for services rendered, provided that COUNTY obtains a recovery but regardless of whether a COMPLAINT was filed on COUNTY's behalf concerning its CLAIMS. "Full payment for services rendered" shall be the contingency fee percentage equal to the status of litigation OUTSIDE COUNSEL prosecutes for the COUNTY's benefit as provided in ARTICLE 3 at the time of termination.

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. **Certificate(s) of Insurance.** Prior to execution of this Contract, OUTSIDE COUNSEL shall deliver to the COUNTY'S representative 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**

- G. **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.
- H. **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 James M. Evangelista, Esquire, or under 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.

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 of the COUNTY)

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

James M. Evangelista, Esquire
Harris Penn Lowry LLP
400 Colony Square
1201 Peachtree Street NE
Suite 900
Atlanta, Georgia 30361

ARTICLE 20. ENTIRETY OF 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

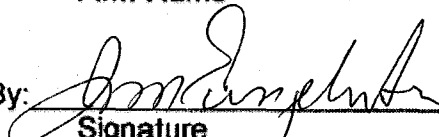
PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Mayor

OUTSIDE COUNSEL:

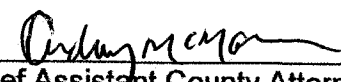
Harris Penn Lowry LLP
Firm Name

By: 
Signature

James M. Evangelista
Type or Print Name

Partner
Title

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: 
Chief Assistant County Attorney