

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

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Meeting Date: March 13, 2018

Consent       Regular  
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

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**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve: Contract for Professional Legal Services with Gordon & Doner, P.A., for legal services relating to personal injury protection (PIP) insurance claims for Fire Rescue emergency transport services, for a one (1) year term commencing April 1, 2018, with one one-year renewal option. No payment shall be made by County; however, the law firm may retain any interest, penalties, postage and attorney's fees and costs paid by insurers arising from PIP demands and litigation.

**Summary:** Gordon & Doner, P.A. has provided the County with legal services relating to personal injury protection (PIP) insurance claims for Fire Rescue emergency transports since April 1, 2015. The legal services provided include representation of, and expert advice to, the County in demands and lawsuits filed on the County's behalf against insurers to recover PIP insurance benefits due to the County for emergency transports. No payment shall be made by the County to the law firm; however the law firm may retain any interest, penalties, postage and attorney's fees and costs paid by insurers arising from PIP demands and litigation, provided that the County has received full payment of all PIP benefits due or has duly authorized the settlement or compromise of a PIP claim. This contract is for a one-year term with one one-year renewal option at the County's discretion. Countywide (SGB)

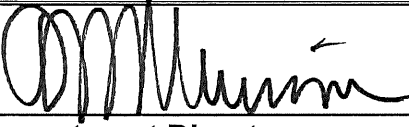
**Background and Justification:** Palm Beach County Fire Rescue responds to approximately 8,800 auto-related emergency incidents annually, with approximately 4,300 resulting in ground transport to area hospitals. The County contracts with a billing company to bill for those transport services, including the processing of PIP and medical insurance claims. Since April 1, 2015, Gordon & Doner has worked together with Fire Rescue's contracted billing company to enhance recovery of PIP benefits to the County from insurers, resulting in approximately \$67,000 revenue to the County from PIP benefits, interest and penalties, and approximately \$56,000 in attorney's fees paid to Gordon & Doner from PIP insurers.

**Attachment:**

1. Contract for legal services

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Recommended by: \_\_\_\_\_

  
Department Director

2/8/18  
Date

Approved by: \_\_\_\_\_

N/A

Date

**II. FISCAL IMPACT ANALYSIS**

**Five Year Summary of Fiscal Impact:**

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	—	—	—	—	—
Operating Costs	—	—	—	—	—
External Revenues	—	—	—	—	—
Program Income (Co.)	—	—	—	—	—
In-Kind Match (County)	—	—	—	—	—
<b>NET FISCAL IMPACT</b>	<b>**</b>	—	—	—	—
<b># ADDITIONAL FTE</b>					
<b>POSITIONS (Cumulative)</b>	—	—	—	—	—

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:**

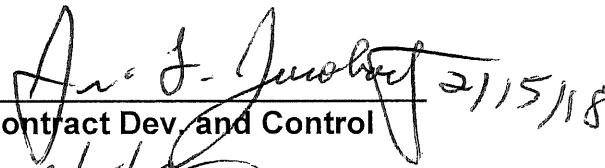
\*\*Any revenue received as a result of this contract is undeterminable at this time. No payment shall be made by County; however the law firm may retain interest, penalties, postage, and attorney's fees and costs that are paid by insurers arising from PIP demands and litigation.

**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

  
 EB  
 2/14  
 \_\_\_\_\_  
 OFMB                      2/14/18

  
 \_\_\_\_\_  
 Contract Dev. and Control                      2/15/18  
 TW

**B. Legal Sufficiency:**

  
 \_\_\_\_\_  
 Assistant County Attorney                      2/8/18

**C. Other Department Review:**

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

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

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

THIS CONTRACT is made and entered into on \_\_\_\_\_, 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 **GORDON & DONER, P.A.**, a Florida Profit Corporation authorized to do business in the State of Florida, ("OUTSIDE COUNSEL"), whose Federal Tax Identification number is 650371275.

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

**WHEREAS**, OUTSIDE COUNSEL desires to provide legal services, advice and 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 shall perform outside legal counsel services ("Legal Services") on behalf of COUNTY in the area of personal injury protection ("PIP") insurance claims arising from auto-related fire rescue emergency transport services in accordance with the terms of this Contract, including **Exhibit A** (Scope of Work/Services), which is attached hereto and incorporated herein.

**ARTICLE 2. TERM**

The term of the Contract shall be for a one (1) year period, commencing April 1, 2018, with one (1) one-year renewal option at the County's sole discretion, unless terminated sooner as provided for herein.

**ARTICLE 3. FEES**

No payment shall be made by the COUNTY to OUTSIDE COUNSEL for services provided under this Contract; however, in any PIP demand or litigation in which OUTSIDE COUNSEL represents the COUNTY, from initiation to conclusion, as authorized by this Contract, OUTSIDE COUNSEL shall be entitled to retain any interest,

penalties, postage and/or attorney's fees and costs paid by the insurer, provided that the COUNTY has received full payment of all PIP benefits due or has duly authorized the settlement or compromise of the PIP claim. OUTSIDE COUNSEL acknowledges and agrees that this opportunity for and potential recovery of interest, penalties, postage and/or attorney's fees and costs is full, fair and sufficient consideration and compensation to OUTSIDE COUNSEL for all the services rendered and obligations incurred by OUTSIDE COUNSEL under this Contract, including but not limited to any out-of-pocket expenses.

**ARTICLE 4. NO REIMBURSABLE EXPENSES AND COSTS**

a) The COUNTY shall not be responsible for any expenses or costs related to OUTSIDE COUNSEL's provision of services under this Contract. Any such expenses or costs shall be the responsibility of OUTSIDE COUNSEL, including, but not limited to, court filing fees and costs, deposition costs, travel expenses, expert witness and consultant fees, photocopying charges, long distance telephone charges, express mail or federal express charges, courier charges, facsimile charges, postage, printing, and research costs.

**ARTICLE 5. 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) On a quarterly basis or other timeframe requested by COUNTY, OUTSIDE COUNSEL shall provide the County Attorney with a report listing all court cases that were filed, pending or concluded during the quarter. For each case, the report shall include the case style and the case's status or result, including any PIP money recovered, including PIP insurance benefits, penalties, interest, postage and/or any portion of a court judgment that represents such, and attorney's fees and costs.

c) OUTSIDE COUNSEL shall provide other status reports, either oral or in writing, at the request of the County Attorney's Office. At the request of the COUNTY,

OUTSIDE COUNSEL shall deliver to the COUNTY all documents and materials prepared by and for the COUNTY in the course of providing the LEGAL SERVICES.

d) 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.

e) Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if OUTSIDE COUNSEL: (i) provides a service; and (ii) acts on behalf of the COUNTY as provided under Section 119.011(2) F.S., OUTSIDE COUNSEL shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. OUTSIDE COUNSEL is specifically required to:

1. Keep and maintain public records required by the COUNTY to perform the service.
2. Upon request from the COUNTY's Custodian of Public Records, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. OUTSIDE COUNSEL further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
3. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract's term and following completion of this Contract if OUTSIDE COUNSEL does not transfer the records to the COUNTY.
4. Upon completion of this Contract, OUTSIDE COUNSEL shall transfer, at no cost, to the COUNTY, all public records in possession of OUTSIDE COUNSEL unless notified by COUNTY's representative/liaison, on behalf of the COUNTY's Custodian of Public Records, to keep and maintain public records required by the COUNTY to perform the service. If OUTSIDE COUNSEL transfers all public

records to the COUNTY upon completion of this Contract, OUTSIDE COUNSEL shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If OUTSIDE COUNSEL keeps and maintains public records upon completion of this Contract, OUTSIDE COUNSEL shall meet all applicable requirements for retaining public records. All records stored electronically by OUTSIDE COUNSEL must be provided to the COUNTY, upon request of the COUNTY's Custodian of Public Records, in a format that is compatible with the information technology systems of the COUNTY, at no cost to the COUNTY.

Failure of OUTSIDE COUNSEL to comply with the requirements of this subsection shall be a material breach of this Contract. The COUNTY shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. OUTSIDE COUNSEL acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

**IF OUTSIDE COUNSEL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO OUTSIDE COUNSEL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT [RECORDSREQUEST@PBCGOV.ORG](mailto:RECORDSREQUEST@PBCGOV.ORG) OR BY TELEPHONE AT 561-355-6680.**

**ARTICLE 6. CONFIDENTIALITY; DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

To the extent allowed by Chapter 119, Florida Statutes, 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.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

**ARTICLE 7. BUSINESS ASSOCIATE AGREEMENT**

As a business associate of the COUNTY, OUTSIDE COUNSEL, including its agents, servants, subcontractors, and employees, shall carry out its obligations under this Contract in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and regulations promulgated thereunder ("HIPAA Regulations"), all as may have been and may be amended from time to time.

OUTSIDE COUNSEL and the COUNTY shall enter into the Business Associate Agreement ("BAA") attached hereto as **Exhibit B**, which is hereby incorporated herein as a part of this Contract and which may be updated from time to time by COUNTY in accordance with law. OUTSIDE COUNSEL shall require and ensure that any business associates, agents and/or subcontractors who have access to protected health information, in providing services contemplated by this Contract, enter into a written BAA with OUTSIDE COUNSEL, agreeing in writing to be bound by the same restrictions

and conditions that apply to the OUTSIDE COUNSEL with respect to such protected health information.

OUTSIDE COUNSEL shall protect, defend, reimburse, indemnify, and hold the COUNTY, its agents, employees and elected officers, harmless from and against all claims, liability, expense, loss, cost, penalties, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising as a result of the acts or omissions of OUTSIDE COUNSEL, including its agents, employees, servants and subcontractors, relating to the duties and obligations imposed by HIPAA, HITECH, HIPAA Regulations, the BAA, and/or any other business associate agreements relating to the services provided hereunder.

**ARTICLE 8. TERMINATION**

a) This Contract may be terminated by the COUNTY, with or without cause, 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 legal services rendered under this Contract.

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.

**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 pursuant 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 agrees to endorse 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 endorsement coverage on a primary basis.
- G. **Waiver of Subrogation:** OUTSIDE COUNSEL hereby waives any and all rights of Subrogation against the 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 agreement to waive subrogation without an endorsement to the policy, then OUTSIDE COUNSEL shall 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 voids coverage should OUTSIDE COUNSEL enter into such an agreement on a pre-loss basis.

- H. **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  
301 N. Olive Ave., Ste. 601  
West Palm Beach, FL 33401  
Attn: Sharon Burrows, Asst. County Attorney

- 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, elected officials, and employees from and against any and all claims, liability, losses, expenses, costs, damages, and/or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, which may arise by virtue of any intentional or negligent act or omission of OUTSIDE COUNSEL, including 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 Robert E. Gordon, 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 and is hereby delegated by the COUNTY to the County Attorney. 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. OUTSIDE COUNSEL further agrees to comply with COUNTY PPM #CW-O-052 regarding outside counsel conflicts of interest, which is attached hereto as **Exhibit C** and incorporated herein.

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, or genetic information.

It is the responsibility of OUTSIDE COUNSEL to maintain a written or non-written non-discrimination policy that conforms with the COUNTY's policy as set forth in Resolution R-2014-1421, as may be amended, throughout the term of the Contract. Failure to meet this requirement shall be considered default of the Contract.

#### **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:

Palm Beach County  
301 N. Olive Ave, Ste. 601  
West Palm Beach, Florida 33401  
Attn: Sharon Burrows, Asst. County Attorney  
(representative of the COUNTY)

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

Gordon & Doner, P.A.  
4114 Northlake Blvd.  
Palm Beach Gardens, FL 33410  
Attn: Robert E. Gordon, Esquire

#### **ARTICLE 20. CRIMINAL HISTORY RECORDS CHECK**

OUTSIDE COUNSEL, OUTSIDE COUNSEL's employees, subcontractors of OUTSIDE COUNSEL and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 – 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolution R-2013-1470, as may be amended. OUTSIDE COUNSEL is solely responsible for understanding the financial, schedule, and/or staffing implications of this Ordinance. Further, OUTSIDE COUNSEL acknowledges that its Contract price

includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the COUNTY.

This Contract may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and Resolution R-2013-1470, as may be amended. COUNTY staff representing the COUNTY department will contact OUTSIDE COUNSEL and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. OUTSIDE COUNSEL shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the contract and return them to the COUNTY. If OUTSIDE COUNSEL or its subcontractor(s) terminates an employee who has been issued a badge, OUTSIDE COUNSEL must notify the COUNTY within two (2) hours. At the time of termination, OUTSIDE COUNSEL shall retrieve the badge and shall return it to the COUNTY in a timely manner.

The COUNTY reserves the right to suspend OUTSIDE COUNSEL if OUTSIDE COUNSEL: 1) does not comply with the requirements of County Code Section 2-371 – 2-377, as amended; 2) does not contact the COUNTY regarding a terminated OUTSIDE COUNSEL employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

#### **ARTICLE 21 - SMALL BUSINESS ENTERPRISES SUBCONTRACTING**

The COUNTY reserves the right to accept the use of a subcontractor, or to reject the selection of a particular subcontractor, and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. OUTSIDE COUNSEL is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If OUTSIDE COUNSEL uses any subcontractors on this project, the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, OUTSIDE COUNSEL shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.



- A. The Palm Beach County Board of County Commissioners has established a minimum goal for SBE participation of 15% on all County solicitations.
- B. OUTSIDE COUNSEL agrees to abide by all provisions of the Palm Beach County Code establishing the SBE Program, as amended, and understands that failure to comply with any of the requirements will be considered a breach of contract.
- C. OUTSIDE COUNSEL shall be required to submit to the COUNTY Schedule 1 (Participation of SBE-M/WBE Contractors) and Schedule 2 (Letter of Intent) to further indicate the specific participation anticipated, where applicable. OUTSIDE COUNSEL understands that each SBE firm utilized on this contract must be certified by Palm Beach County in order to be counted toward the SBE participation goal.
- D. OUTSIDE COUNSEL understands that it is the responsibility of the department letting the contract and the Office of Small Business Assistance (OSBA) to monitor compliance with the SBE Ordinance requirements. In that regard, OUTSIDE COUNSEL agrees to furnish progress payment reports to both parties on the progress of the SBE-M/WBE participation on each pay application submitted.
- E. OUTSIDE COUNSEL further agrees to provide OSBA with a copy of their contract with the SBE sub-consultant or any other related documentation upon request.
- F. After contract award, the successful OUTSIDE COUNSEL will only be permitted to replace a certified SBE subcontractor who is unwilling or unable to perform. Such substitution must be done with other certified SBEs in order to maintain the proposed SBE percentages submitted with the proposal. Requests for substitutions must be submitted to the County Attorney and the OSBA.
- G. OUTSIDE COUNSEL understands that it is prohibited from making any agreements with an SBE in which the SBE promises not to provide sub consultant quotations to other proposers or potential proposers.

H. OUTSIDE COUNSEL agrees to maintain all relevant records and information necessary to document compliance with the Palm Beach County Code and will allow the County to inspect such records.

**ARTICLE 22 - FEDERAL AND STATE TAX**

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will provide an exemption certificate submitted by OUTSIDE COUNSEL. OUTSIDE COUNSEL shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is OUTSIDE COUNSEL authorized to use the COUNTY's Tax Exemption Number in securing such materials.

OUTSIDE COUNSEL shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

**ARTICLE 23 - AVAILABILITY OF FUNDS**

The COUNTY's performance and obligations to pay, if any, under this Contract are contingent upon an annual appropriation for its purpose by the Board of County Commissioners.

**ARTICLE 24 - SUCCESSORS AND ASSIGNS**

The COUNTY and OUTSIDE COUNSEL each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Neither the COUNTY nor OUTSIDE COUNSEL shall assign, sublet, convey, or transfer its interest in this Contract, without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and OUTSIDE COUNSEL.

**ARTICLE 25 – ARREARS**

OUTSIDE COUNSEL shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. OUTSIDE COUNSEL further warrants and represents that it has

no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

**ARTICLE 26 - PUBLIC ENTITY CRIMES**

As provided in F.S. 287.132-133, by entering into this Contract or performing any work in furtherance hereof, OUTSIDE COUNSEL 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 thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

**ARTICLE 27 - SCRUTINIZED COMPANIES (when contract value is greater than \$1 million)**

As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, OUTSIDE COUNSEL certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473.

If the COUNTY determines, using credible information available to the public, that a false certification has been submitted by OUTSIDE COUNSEL, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to F.S. 287.135.

**ARTICLE 28 – REGULATIONS; LICENSING REQUIREMENTS**

OUTSIDE COUNSEL shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion; Chapter 627.736, Florida Statutes; HIPAA; and the Fair Debt Collection Practices Act. OUTSIDE COUNSEL is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

**ARTICLE 29. 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.

**ARTICLE 30. 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.

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: \_\_\_\_\_  
Melissa McKinlay, Mayor

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY, *and Terms*  
*and Conditions*

By: *[Signature]*  
County Attorney

**GORDON & DONER, P.A.**

By: *[Signature]*  
Steven G. Calamusa, Director and Partner  
*Robert E. Gordon*

WITNESS

*[Signature]*  
Signature

*Emily Slater*  
Name

**EXHIBIT A**  
**SCOPE OF WORK/SERVICES**

- 4.1** OUTSIDE COUNSEL shall perform outside legal counsel services on behalf of COUNTY in the area of personal injury protection (“PIP”) insurance claims arising from auto-related fire rescue emergency transport services. OUTSIDE COUNSEL shall provide legal advice and representation to COUNTY on various matters relating to PIP insurance claims in order to maximize PIP payments, including account review, demand letters, legal action, and other issues relating to claim filing, billing and collections.
- 4.2** OUTSIDE COUNSEL shall be familiar with, and shall comply with, all laws and regulations applicable to the services contemplated herein, including but not limited to insurance laws and regulations, Chapter 627.736, Florida Statutes; the Fair Debt Collection Practices Act; and medical confidentiality and patient privacy laws, including HIPAA; all as may be amended from time to time.
- 4.3** OUTSIDE COUNSEL must be available for in person meetings at Palm Beach County Fire Rescue Headquarters, located at 405 Pike Road, West Palm Beach, Florida, 33411-3815.
- 4.4** OUTSIDE COUNSEL shall provide COUNTY with legal advice and counsel in the area of PIP law. This shall include reviewing and rendering advice on all applicable Fire Rescue forms, policies, and protocols in order to maximize PIP payments, including assignment of benefits and countersignature language.
- 4.5** In order to maximize revenue for auto-related emergency transport accounts, OUTSIDE COUNSEL shall coordinate their services with the services of the County’s third-party emergency transport billing contractor (“Billing Contractor”), in a manner that is cooperative and compliant with any applicable laws, including but not limited to Chapter 627.736, Florida Statutes, HIPAA, and the Fair Debt Collection Practices Act. OUTSIDE COUNSEL shall perform its services in a manner that does not impede the Billing Contractor’s ability to perform its services, including its timely filing of PIP and/or medical/Medicare/Medicaid insurance claims, and other billing activities. The coordination of services and timeframes between OUTSIDE COUNSEL and the Billing Contractor will be coordinated through Palm Beach County Fire Rescue finance staff.
- 4.6** Upon referral from the Billing Contractor of auto-related accounts that are missing necessary PIP information, OUTSIDE COUNSEL shall diligently and expeditiously research for additional and/or missing PIP information; after which such accounts and additional information, if any, shall be promptly referred back to the Billing Contractor within a timeframe that provides sufficient time for the

Billing Contractor to timely process the appropriate insurance claim(s), which may include PIP and/or medical insurance claims, and/or other billing.

- 4.7** Upon receipt of all auto-related account information from the Billing Contractor on a regular basis, OUTSIDE COUNSEL shall promptly undertake a comprehensive review of all said accounts and billing activity to ensure maximum PIP payments to the COUNTY, including any penalties and interest due to the COUNTY, and the appropriateness of any PIP insurer responses. This shall include, but not be limited to, a review of all PIP claims that have been paid, underpaid, denied, or are unpaid and overdue. OUTSIDE COUNSEL shall take all appropriate action on all such accounts, as warranted, to ensure maximum PIP payments to COUNTY, including timely demand letters and filing of legal action, all as provided for and in accordance with Chapter 627.736, Florida Statutes, and any other applicable laws.

In order to maximize PIP payments, OUTSIDE COUNSEL's review and action shall include prospective, on-going, and older, historical auto-related accounts. Any legal action deemed appropriate by OUTSIDE COUNSEL that falls outside what is authorized by Chapter 627.736, Florida Statutes, shall require prior approval by the County Attorney's Office.

- 4.8** OUTSIDE COUNSEL shall promptly remit all PIP money received on COUNTY accounts, and/or any portion of a court judgment that represents such, to the financial institution "lock box" identified by Palm Beach County Fire Rescue Finance staff, with the following information for each payment: Patient Name, Patient Account Number, Date of Service, Payor's Name, Payment Amount, and any additional information identified as necessary by Palm Beach County Fire Rescue Finance staff; however, as provided for in Section 4.12, OUTSIDE COUNSEL shall be entitled to retain any interest, penalties, postage and/or attorney's fees and costs paid by the insurer, provided that the COUNTY has received full payment of all PIP benefits due or has duly authorized the settlement or compromise of the PIP claim.
- 4.9** On a monthly basis or other timeframe requested by COUNTY, OUTSIDE COUNSEL shall provide COUNTY Fire Rescue finance staff with a summary report, in an industry standard electronic format, of all activity undertaken by OUTSIDE COUNSEL on all auto-related accounts, including, as applicable, status of research of PIP information; referrals back to Billing Contractor for insurance/bill processing; review of accounts and PIP insurer responses, including paid, underpaid, denied, or unpaid, overdue PIP claims; the status of all legal action taken and PIP insurer response, including demand letters and any litigation; and all payments received on any accounts, including PIP insurance benefits, penalties, interest, postage and/or any portion of a court judgment that represents such, and attorney fees and costs.

- 4.10** On a quarterly basis or other timeframe requested by COUNTY, OUTSIDE COUNSEL shall provide the County Attorney with a report listing all court cases that were filed, pending or concluded during the quarter. For each case, the report shall include the case style and the case's status or result, including any PIP money recovered, including PIP insurance benefits, penalties, interest, postage and/or any portion of a court judgment that represents such, and attorney's fees and costs.
- 4.11** OUTSIDE COUNSEL shall not use any patient information for any purpose other than to fulfill the scope and terms of this Contract.
- 4.12** No payment shall be made by COUNTY to OUTSIDE COUNSEL for services provided under this Contract; however, in any PIP demand or litigation in which OUTSIDE COUNSEL represents COUNTY, from initiation to conclusion, as authorized by this Contract, OUTSIDE COUNSEL shall be entitled to retain any interest, penalties, postage and/or attorney's fees and costs paid by the insurer, provided that the COUNTY has received full payment of all PIP benefits due or has duly authorized the settlement or compromise of the PIP claim. OUTSIDE COUNSEL acknowledges and agrees that this opportunity for and potential recovery of interest, penalties, postage and/or attorney's fees and costs is full, fair and sufficient consideration and compensation to OUTSIDE COUNSEL for all the services rendered and obligations incurred by OUTSIDE COUNSEL under this Contract, including but not limited to any out-of-pocket expenses.
- 4.13** OUTSIDE COUNSEL shall not initiate, undertake, or continue any PIP demand or legal action on COUNTY's behalf unless OUTSIDE COUNSEL, based on its best judgment and expertise in the area of PIP law, is reasonably certain that COUNTY will prevail. OUTSIDE COUNSEL acknowledges and agrees that any PIP demand or legal action initiated, undertaken, or continued by OUTSIDE COUNSEL on COUNTY's behalf shall be done so based solely on COUNTY's reliance on OUTSIDE COUNSEL's expertise, judgment, and recommendation in the area of PIP law. Accordingly, should attorney's fees, costs, interest, penalties, and/or damages of any kind, be awarded or entered against COUNTY in any PIP demand or legal action initiated, undertaken or continued by OUTSIDE COUNSEL, then OUTSIDE COUNSEL shall assume responsibility for such, and shall promptly indemnify, and remit payment to, COUNTY to fully cover the amounts of any and all such attorney's fees, costs, interest, penalties, and/or damages of any kind, and otherwise make COUNTY whole.

# EXHIBIT B

## Business Associate Agreement Between Palm Beach County and Gordon & Doner, P.A.

This Business Associate Agreement ("Agreement") between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as "the County," and Gordon & Doner, P.A., hereinafter referred to as "Business Associate," is executed to ensure that Business Associate will appropriately safeguard protected health information ("PHI") that is created, received, maintained, or transmitted on behalf of the County in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended and any related regulations ("HIPAA"), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended and any related regulations (the "HITECH Act").

### A. General Provisions

1. **Meaning of Terms.** The terms used in this Agreement shall have the same meaning as those terms defined in HIPAA.
2. **Regulatory References.** Any reference in this Agreement to a regulatory section means the section currently in effect or as amended.
3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

### B. Obligations of Business Associate

Business Associate agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;
2. Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information ("e-PHI") and implement appropriate physical, technical and administrative safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;
3. Report in writing to the County any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breach of unsecured PHI (as defined in the HIPAA Breach Notification Rule) within three (3) business days of Business Associate's discovery of the security incident or breach. Business Associate will comply with all applicable provisions of the HIPAA Breach Notification Regulations found at 45 CFR §164.400 *et seq.* when making breach notification to



the County. The County shall have sole control over the timing and method of breach notification to affected individual(s), the Department of Health and Human Services, and, if applicable, the media. Business Associate agrees that, if requested by the County to do so, it will provide breach notification to affected individuals of any breach of unsecured PHI discovered by Business Associate. If requested by the County to make breach notification to affected individuals, Business Associate shall comply with all applicable provisions of the HIPAA Breach Notification Regulations found at 45 CFR §164.400 *et seq.*, and any direction from the County;

4. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information by requiring such subcontractors to sign an agreement with Business Associate that contains, at a minimum, the same provisions as this Agreement;
5. Make PHI in a designated record set available to the County and to an individual who has a right of access in a manner that satisfies the County's obligations to provide access to PHI in accordance with 45 CFR §164.524 within 30 days of a request;
6. Make any amendment(s) to PHI in a designated record set as directed by the County, or take other measures necessary to satisfy the County's obligations under 45 CFR §164.526;
7. Maintain and make available information required to provide an accounting of disclosures to the County or an individual who has a right to an accounting within 60 days and as necessary to satisfy the County's obligations under 45 CFR §164.528;
8. To the extent that Business Associate is to carry out any of the County's obligations under the HIPAA Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to the County when it carries out that obligation;
9. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of the County, available to the Secretary of the Department of Health and Human Services for purposes of determining Business Associate's and the County's compliance with HIPAA and the HITECH Act;
10. Restrict the use or disclosure of PHI if the County notifies Business Associate of any restriction on the use or disclosure of PHI that the County has agreed to or is required to abide by under 45 CFR §164.522; and
11. If the County is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.*), Business Associate agrees to assist the County in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 C.F.R. §681.2); (b) taking all steps necessary to comply with the policies and procedures of the County's Identity Theft Prevention Program(if

the County is required to have a Program); (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of the County agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting the County of any Red Flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to the County of any threat of identity theft as a result of the incident.

12. Business Associate shall protect, defend, reimburse, indemnify and hold the County, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising as a result of a breach of unsecured PHI caused by any act or omission of Business Associate or arising from any other violation of HIPAA or the HITECH Act caused by any act or omission of Business Associate.

**C. Permitted Uses and Disclosures by Business Associate**

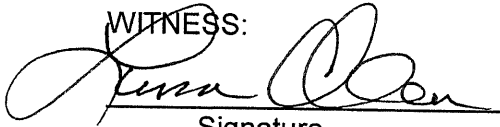
The specific uses and disclosures of PHI that may be made by Business Associate on behalf of the County include any uses or disclosures of PHI permitted by HIPAA that are necessary to perform the services that Business Associate has been engaged to perform on behalf of the County.

**D. Termination**

1. The County may terminate this Agreement if the County determines that Business Associate has violated a material term of the Agreement.
2. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this Agreement, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement if feasible.
3. Upon termination of this Agreement for any reason, Business Associate shall return to the County all PHI received from the County, or created, maintained, or received by Business Associate on behalf of the County that Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. If return is infeasible, the protections of this Agreement will extend to such PHI.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

WITNESS:



Signature

LUISA ALARCON  
Name

**PALM BEACH COUNTY, FLORIDA, BY ITS  
BOARD OF COUNTY COMMISSIONERS**

By: Nancy L Bolton  
Nancy Bolton, County HIPAA Privacy  
Officer/Assistant County Administrator,  
through Verdenia Baker, County Administrator

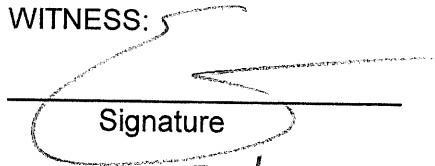
APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS  
AND CONDITIONS

By: Jim Burn  
County Attorney

By: Jim Burn  
Asst Co Attorney

WITNESS:



Signature

Emily Slater  
Name

**GORDON & DONER, P.A.**

By: Robert E. Gordon  
~~Steven G. Calamusa~~, Director and Partner  
Robert E. Gordon

# Exhibit C

**TO:** ALL COUNTY PERSONNEL  
**FROM:** VERDENIA C. BAKER  
COUNTY ADMINISTRATOR  
**PREPARED BY:** COUNTY ATTORNEY'S OFFICE  
**SUBJECT:** OUTSIDE COUNSEL CONFLICTS OF INTEREST  
**PPM #:** CW-O-052

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**ISSUE DATE**

January 4, 2017

**EFFECTIVE DATE**

January 4, 2017

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**PURPOSE:** The purpose of this memorandum is to establish the Board of County Commissioners' policy regarding actual and potential conflicts of interest of outside counsel representing Palm Beach County.

**UPDATES:**

Future updates of this PPM are the responsibility of the County Attorney.

**AUTHORITY:**

Rule 4-1.7, Rules Regulating the Florida Bar.

**POLICY:** The policy of Palm Beach County is to eliminate and limit conflicts of interest by outside counsel in order to prevent the occurrence of all adverse conflicts, resolve any conflicts that may otherwise arise during representation, and to provide a procedure to waive and consent to apparent conflicts of interest which would not adversely affect the interests of Palm Beach County.

Rule 4-1.7 (a) and (b) of the Rules Regulating the Florida Bar provides:

- “(a) Representing Adverse Interests. Except as provided in subdivision (b), a lawyer must not represent a client if:
- (1) the representation of 1 client will be directly adverse to another client; or
  - (2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

- (b) Informed Consent. Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:
- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  - (2) the representation is not prohibited by law;
  - (3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and
  - (4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.”

Under Rule 4-1.7 it is the responsibility of the lawyer to determine if undertaking the representation of a client constitutes a conflict of interest. If a lawyer representing Palm Beach County becomes aware of a conflict or potential conflict, such lawyer shall immediately notify the County Attorney in writing of the circumstances of such conflict of interest and the action which the lawyer is taking to resolve such conflict. It is the individual lawyer’s responsibility to comply with the Standards of Conduct established by the Florida Supreme Court (Rule 3-4).

Any lawyer<sup>1</sup> undertaking representation of Palm Beach County shall not represent any other client with regard to any litigation or other adversary proceeding in which Palm Beach County, a County Commissioner or a county employee (acting in their capacity as a county employee) is named as an adverse party.

All law firms serving as bond counsel or disclosure counsel as selected by the Board of County Commissioners are precluded from serving as underwriter’s counsel on any Palm Beach County bond issue. This prohibition includes all law firms serving as bond counsel or disclosure counsel for issues in which Palm Beach County is a conduit issuer.

A lawyer representing Palm Beach County who has undertaken, or wishes to undertake, representation of a client who has matters or transactions with Palm Beach County which the lawyer believes will not adversely affect his representation of the County shall apply to the County for a waiver under Rule 4-1.7. Examples of waivable conflicts would include representing clients: who have applications planned or pending for development orders or approvals or other land use review of a quasi-legislative nature; who have routine administrative matters; who are seeking permits from Palm Beach County; who have commenced real property foreclosure actions in which Palm Beach County has been named as a defendant having an obviously subordinate interest in the property; who have applications before the Palm Beach County Value Adjustment Board; and in similar non-adverse matters. To undertake or continue all such undertakings to represent such clients, the lawyer shall obtain a waiver as provided herein.

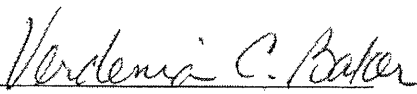
Any lawyer requesting a waiver under Rule 4-1.7 shall identify the prospective client, business association, interest or circumstance, the nature of the work that the attorney may undertake, explain

in writing why he believes the concurrent representation will not violate Rule 4-1.7, and furnish a copy of the written consent of such client. If the County Attorney and County Administrator agree that a waiver as to a particular conflict of interest is in the best interest of Palm Beach County, the County Attorney may consent to such waiver on behalf of the Board of County Commissioners; otherwise, the County Attorney may present such request to the Board of County Commissioners for its consideration.

Palm Beach County retains absolute discretion to object to any concurrent representation which results or has the potential to result in a conflict of interest.

The provisions of this PPM are to be read in conformity with Rule 4-1.7, Rules Regulating the Florida Bar, and the comments thereto.

<sup>1</sup>"Lawyer" as used herein includes the lawyer's law firm, partners and associates.

  
VERDENIA C. BAKER  
COUNTY ADMINISTRATOR

**Supersession History:**

1. PPM #CW-O-052, issued October 5, 1993
2. PPM #CW-O-052, reviewed and current July 12, 2011