

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: **September 18, 2018** Consent Regular
 Ordinance Public Hearing

Department: **Risk Management**

Submitted By: **County Attorney's Office**

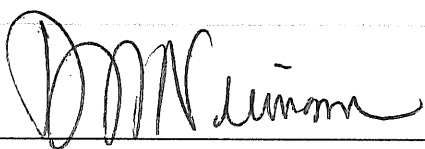
I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve a Contract for Professional Legal Services with Walton Lantaff Schroeder & Carson LLP to provide workers' compensation litigation defense services for Palm Beach County, Palm Tran Inc., and Constitutional Officers participating in the County's Self-Insurance Program for a period of three (3) years, beginning October 1, 2018, with two (2) additional one (1) year options at the same annual fixed fee of \$497,650.00, plus reasonable costs and expenses not to exceed three percent (3%) of the total fees (\$14,929.50 per fiscal year). Payments shall be made in four (4) equal installments (December 31st, March 31st, June 30th and September 30th of each fiscal year).

Summary: The law firm of John B. Clarke & Associates, P.A. has provided workers' compensation litigation defense services to Palm Beach County, Palm Tran Inc., and a number of Constitutional Officers for thirty-three (33) years. The contract expires on September 30, 2018. Following a competitive selection process, staff recommends this Contract for Professional Legal Services be awarded to Walton Lantaff Schroeder & Carson LLP to provide workers' compensation litigation defense services beginning October 1, 2018. Countywide (DO)

Background and Policy Issues: This Contract for Professional Legal Services with Walton Lantaff Schroeder & Carson LLP provides defense of litigated workers' compensation claims by County employees, Palm Tran employees, and employees of all Constitutional Officers that participate in the County's Self-Insurance Program (this does not include the Palm Beach County Sheriff's Office). The County will pay \$497,650.00 for legal services for each of the County's fiscal years 2018/2019, 2019/2020 and 2020/2021, plus reasonable costs and expenses not to exceed three percent (3%) of total fees (\$14,929.50) per fiscal year. Payments shall be made in four (4) equal installments. Staff has concluded that this new Contract for Professional Legal Services provides a substantial benefit to the County. **(Continued on page 3).**

- Attachments:**
1. Selection Committee Recommendation
 2. Contract for Professional Legal Services
 3. Confirmation of Insurance
 4. Budget Availability Statement

Recommended By:  9/5/18
County Attorney Date

Approved By: N/A
County Administrator Date

Background and Policy Issues (continued from page 1): Since 1985, the County has contracted with outside firms for workers' compensation litigation defense. Prior to that, cases were handled by the County Attorney's Office on an infrequent and part-time basis. Due to the complexity of the workers' compensation system in Florida and the lack of sovereign immunity cap (which exists for personal injury cases), historical research indicates that this method of defense proved costly for the County.

Workers' compensation is managed under the provisions and authority of Chapter 440 of the Florida Statutes. It is a unique and complex area of the law, and it is not unusual for litigated cases to stretch over several years before resolution. As such, there are several claims currently being handled by John B. Clarke & Associates, P.A. that continue to be eligible for reimbursement under the Special Disability Trust Fund (SDTF), for which eligibility ceased January 1, 1998. The SDTF was created in 1955 as a means to encourage employers to hire workers with pre-existing permanent physical impairments. If second injuries occurred with the new employer, the SDTF reimbursed associated medical and indemnity costs on a pre-determined scale.

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

On July 26, 2018, the County issued a Request for Proposal (RFP) for Workers' Compensation Legal Services. Four (4) law firms responded. Following the selection process, Walton Lantaff Schroeder & Carson LLP was selected. The firm's proposed annual fee for workers' compensation legal services is \$497,650.00, which represents a 4.24% increase over the expiring contract fees. For this annual fee, the County will enjoy the services of five (5) full-time attorneys with over sixty (60) years of experience in workers' compensation defense. In addition to the attorneys, there will be six (6) legal assistants assigned to the County's files. The above cost also contemplates the take-over of all existing files currently assigned to John B. Clarke & Associates, P.A.



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100 Australian Avenue, Suite 200
West Palm Beach, FL 33406
(561) 233-5400
Fax: (561) 233-5420
www.pbcgov.com

**Palm Beach County
INTER - OFFICE COMMUNICATION**

To: David Ottey, Chief Assistant County Attorney
From: Scott Marting, Director - Risk Management *SM*
Date: 8/17/2018
Subject: RFP – CA2018-02 Workers Compensation Legal Services

**Palm Beach County
Board of County
Commissioners**

- Melissa McKinlay, Mayor
- Mack Bernard, Vice Mayor
- Hal R. Valeche
- Paulette Burdick
- Dave Kerner
- Steven L. Abrams
- Mary Lou Berger

The Selection Committee (Harry George, Workers Compensation Manager, Risk Management; Jean Heald, Employee Safety/Loss Control Manager, Risk Management; Allen Gray, Manager, Office of Small Business Assistance; and I) for the referenced RFP met in public session on Friday, August 17, 2018 for the purpose of reviewing and evaluating responses from the following proposers:

- Kelley Kronenberg
- Walton, Lantaff, Schroeder and Carson LLP
- Hurley, Rogner, Miller, Cox and Waranch, P.A.

Following several hours of discussion the members of the Selection Committee individually scored the three respondent firms and agreed upon a recommendation to award a contract to Walton, Lantaff, Schroeder and Carson LLP

The composite rational for doing so included, but was not limited to:

- A strong understanding of the needs of Palm Beach County with respect to their overall approach including knowledge of the doctors, judges and opposing attorneys in the area.
- The ability of the proposed team to handle our account based on both their staff experience and their working relationships with similar public entities in South Florida.
- The longevity of approximately 85 years in the industry.

County Administrator

Verdénia C. Baker

"An Equal Opportunity
Affirmative Action Employer"

**CONTRACT FOR PROFESSIONAL LEGAL SERVICES
BY AND BETWEEN PALM BEACH COUNTY AND
WALTON LANTAFF SCHROEDER & CARSON LLP**

THIS CONTRACT is made and entered into this 18th day of September, 2018, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners (hereinafter referred to as "COUNTY") and **WALTON LANTAFF SCHROEDER & CARSON LLP**, a partnership authorized to do business in the State of Florida (hereinafter referred to as "OUTSIDE COUNSEL"), whose Federal Tax Identification number is 59-0536392.

WHEREAS, the COUNTY desires to engage OUTSIDE COUNSEL to provide the COUNTY, Palm Tran, Inc., and other Constitutional Officers in Palm Beach County (excluding the Palm Beach County Sheriff's Office) with legal representation in matters arising out of and related to workers' compensation claims, and

WHEREAS, OUTSIDE COUNSEL desires to provide legal representation to the COUNTY, Palm Tran, Inc., and other Constitutional Officers in Palm Beach County in matters arising out of and related to workers' compensation claims,

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

ARTICLE 1. LEGAL SERVICES: OUTSIDE COUNSEL agrees to represent the COUNTY, Palm Tran, Inc., and all Constitutional Officers in Palm Beach County that currently participate in the COUNTY's Self-Insurance Program (excluding the Palm Beach County Sheriff's Office) in all matters arising out of or related to workers' compensation claims filed by any of their employees (and others who claim workers' compensation benefits from any of them), as to which representation or assistance is requested by the COUNTY's Risk Management Department or the

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

ARTICLE 2. TERM: The term of the Contract shall be from the date this Contract is approved by the COUNTY through the COUNTY's fiscal years 2018/2019, 2019/2020 and 2020/2021, with two (2) additional one (1) year options for 2021/2022 and 2022/2023.

ARTICLE 3. FEES: The COUNTY agrees to pay OUTSIDE COUNSEL \$497,650.00 for LEGAL SERVICES, plus reasonable costs and expenses, which are not to exceed three percent (3%) of total fees per fiscal year. Payments for each fiscal year shall be made to OUTSIDE COUNSEL in four (4) equal installments (December 31st, March 31st, June 30th and September 30th of each fiscal year).

ARTICLE 4. PAYMENTS TO OUTSIDE COUNSEL:

- A. OUTSIDE COUNSEL shall send an invoice to the COUNTY thirty (30) days in advance of each installment due date. At that time, OUTSIDE COUNSEL shall provide the COUNTY with a listing of all active and inactive files assigned to OUTSIDE COUNSEL.
- B. The only time records required to be maintained by OUTSIDE COUNSEL shall be a listing of the total hours expended by OUTSIDE COUNSEL on all COUNTY files (without necessity for specificity as to individual attorney who performed services, specific matter upon which services were performed, date or time spent on specific services performed, or other detail). Listing of total hours relating to Palm Tran, Inc. files shall be reported separately but in the same manner as for the COUNTY files. The listings shall be provided to the COUNTY annually, within thirty (30) days after the close of each fiscal year and shall show totals only in each of the following categories: Pleadings, Legal/Medical Research, Depositions, Communications with Client, Trial/Hearing Preparation, Conferences or Consultations with Witnesses, Trial/Hearing Attendance, Communications with Attorneys, Communications with Others, and Miscellaneous. The listings shall be certified by OUTSIDE COUNSEL as to accuracy. The listings and certification shall be deemed adequate substantiation of time expended for the purposes of Article 6 concerning maintenance of records.

ARTICLE 5. REIMBURSABLE EXPENSES AND COSTS:

- A. The COUNTY agrees to reimburse OUTSIDE COUNSEL for reasonable out-of-pocket expenses and costs incurred during the course of providing the LEGAL SERVICES. The expenses and costs may include, but are not limited to, out-of-pocket expenses for extraordinary photocopying projects, not-to-exceed fifteen cents (\$.15) per page, courier charges, express mail, long distance telephone charges, postage, and printing. The COUNTY

will only reimburse OUTSIDE COUNSEL expert witness or OUTSIDE COUNSEL fees that have been previously approved in writing by the COUNTY's Attorney's Office. Court filing fees and costs, witness fees, and previously approved travel shall be itemized and invoiced separately.

- B. COUNTY shall not be responsible for the cost of any computerized legal research other than the actual billable hourly rate of OUTSIDE COUNSEL.
- C. The total amount of reimbursable expenses and costs shall not exceed three percent (3%) of the total fees per fiscal year (\$14,929.50).
- D. OUTSIDE COUNSEL covenants and agrees that any other type of billing or timekeeping, which allows compensation for time not actually spent by OUTSIDE COUNSEL, is not permitted under this Contract. Therefore, it shall be a material breach of the terms of this Contract for OUTSIDE COUNSEL, or anyone on OUTSIDE COUNSEL's behalf, to submit for payment any statement of services rendered that either (i) overstates the amount of time actually spent pursuant to this Contract; or (ii) includes time spent by any person not affiliated with OUTSIDE COUNSEL.
- E. Each statement of costs and fees represents an implied warranty that the statement sets forth only the actual time spent and only the actual costs incurred. The COUNTY may rely on the implied warranty.
- F. All requests for payment of expenses eligible for reimbursement under this Contract shall include legible copies of paid receipts, invoices, or other documentation acceptable to the COUNTY's Finance Department. Such documentation shall be sufficient to establish that the expenses were actually incurred and necessary in the performance of the LEGAL SERVICES. Photocopy charges shall give a general description of the documents. If duplication of more

than ten (10) documents is required, a general description of the category or type of documents copied will be sufficient documentation. Any out-of-county travel, per diem, mileage, meals, or lodging expenses, which may be reimbursable under the terms of this Contract, shall be approved by the COUNTY's Attorney's Office in advance and shall be paid in accordance with the rates and conditions set forth in the COUNTY's PPM #CW-F-009, incorporated herein by reference and available for inspection on the COUNTY's website at <http://www.pbcgov.com/publicaffairs/ppm/pdf/cw-f-009.pdf>.

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

ARTICLE 6. DISCLOSURE AND OWNERSHIP OF DOCUMENTS:

- A. OUTSIDE COUNSEL shall maintain its files on this matter, including adequate records to justify all charges, expenses, and costs incurred in performing the LEGAL SERVICES, for at least five (5) years after termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this subparagraph for the purpose of inspection and/or audit during normal business hours, at the COUNTY's expense, upon reasonable written notice to OUTSIDE COUNSEL.
- B. Copies of all correspondence and pleadings shall be directed to the COUNTY's Attorney's Office.
- C. OUTSIDE COUNSEL shall obtain prior written approval from the COUNTY's Attorney's Office before filing a counterclaim, cross-claim, or third-party claim, retaining any expert witness, or arranging any out-of-town travel.
- D. OUTSIDE COUNSEL shall provide periodic status reports, either oral or in writing, as requested by the COUNTY's Attorney's Office.

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

ARTICLE 7. CONFIDENTIALITY: All written and oral information not in the public domain and not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense, shall be kept confidential by OUTSIDE COUNSEL and shall not be disclosed to any other party, directly or indirectly, without the COUNTY's prior written consent unless required by an order issued by a court or like authority of lawful jurisdiction. All drawings, maps and sketches, and other data developed or purchased under this Contract or at the COUNTY's expense, shall be and remain the COUNTY's property and may be reproduced and reused solely at the discretion of the COUNTY.

ARTICLE 8. TERMINATION:

A. This Contract may be terminated, in whole or in part by the COUNTY, with cause upon five (5) business days written notice to OUTSIDE COUNSEL or without cause upon ten (10) business days written notice to the OUTSIDE COUNSEL. The Contract may be terminated by OUTSIDE COUNSEL upon ninety (90) days written notice to the COUNTY in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the OUTSIDE COUNSEL. Before OUTSIDE COUNSEL may terminate this Contract and/or seek to withdraw as counsel of record in any pending litigation being handled pursuant to this Contract, it must return to the COUNTY one-half (1/2) of all legal fees paid by the COUNTY under this Contract. Upon termination by either party, OUTSIDE COUNSEL shall transfer all work in progress, completed work, and other materials related to the LEGAL SERVICES to the COUNTY.

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

ARTICLE 9. OFFICE OF INSPECTOR GENERAL: The 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, accounts, 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) days 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 \$500,000.00 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by the 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 \$500,000.00 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. **Workers' Compensation Insurance & Employers Liability.** OUTSIDE COUNSEL shall maintain Workers' 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 \$1,000,000.00 Each Claim. When a self-insured retention (SIR) or deductible exceeds \$10,000.00, 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 three (3) years. OUTSIDE COUNSEL shall provide this coverage on a primary basis.

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

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

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

Palm Beach County Attorney's Office
c/o David Ottey, Chief Asst. County Attorney
300 North Dixie Highway, Suite 359
West Palm Beach, FL 33401

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

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

ARTICLE 11. INDEMNIFICATION: OUTSIDE COUNSEL shall protect, defend, reimburse, indemnify and hold 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 during and as a result of their performance of the terms of this Contract or due to the acts or omissions of OUTSIDE COUNSEL or any agent, member, partner, associate, or employee thereof in the performance of this Contract.

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 Stephen G. Kaufer, Esq. 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 by the OUTSIDE COUNSEL under the terms of this Contract.

ARTICLE 15. INDEPENDENT CONTRACTOR RELATIONSHIP:

- A. OUTSIDE COUNSEL and all its employees, agents, and servants are, and shall be in the performance of the LEGAL SERVICES under this Contract, independent contractors and not an employee of the COUNTY. All persons engaged in the LEGAL SERVICES performed by OUTSIDE COUNSEL pursuant to this Contract shall at all times and in all places be subject to OUTSIDE COUNSEL's sole discretion, supervision, and control. OUTSIDE COUNSEL shall exercise direct control over the means and manner in which it and its employees, agents, and servants perform the LEGAL SERVICES. OUTSIDE COUNSEL does not have the power or authority to, and agrees that it will not attempt to, bind the COUNTY in any promise, contract, or representation other than as specifically provided for in this Contract.
- B. OUTSIDE COUNSEL warrants and represents that it has not employed or retained any company or person, other than a bona fide employee working solely for OUTSIDE COUNSEL, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for OUTSIDE COUNSEL, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 16. FEDERAL AND STATE TAX: The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by OUTSIDE COUNSEL. OUTSIDE COUNSEL shall not be exempt from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the 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 17. 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 18. NONDISCRIMINATION: The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, OUTSIDE COUNSEL warrants and represents that, throughout the term of the Contract, including any renewals thereof, if applicable, 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 or expression, or genetic information. Failure to meet this requirement shall be considered default of the Contract.

ARTICLE 19. 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 20. 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 21. SCRUTINIZED COMPANIES:

A. 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 that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.

B. **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 or is engaged in business operations in Cuba or Syria.

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. Said certification must also be submitted at the time of Contract renewal, if applicable.

ARTICLE 22. PUBLIC RECORDS: 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:

- a) Keep and maintain public records required by the County to perform services as provided under this Contract.
- b) 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 COUNTY's PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- c) 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 the Contract term and following completion of the Contract, if OUTSIDE COUNSEL does not transfer the records to the public agency.
- d) Upon completion of the 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 the 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 the Contract, the OUTSIDE COUNSEL shall meet all applicable requirements for retaining public records. All records stored electronically by OUTSIDE COUNSEL must be provided to COUNTY, upon request of the COUNTY's Custodian of Public Records, in a format that is compatible with the information technology systems of COUNTY, at no cost to COUNTY.

Failure of OUTSIDE COUNSEL to comply with the requirements of this article shall be a material breach of this Contract. 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 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 OR BY TELEPHONE AT (561)355-6680.

ARTICLE 23. NOTICE: All notices required in this Contract shall be sent by electronic mail

or mail to:

Representative for the COUNTY:
David Ottey, Esq.
Chief Assistant County Attorney
Palm Beach County Attorney's Office
300 North Dixie Highway, Suite 359
West Palm Beach, Florida 33401

Representative for OUTSIDE COUNSEL:
Stephen G. Kaufer, Esq.
Senior Partner
Walton Lantaff Schroder & Carson LLP
1645 Palm Beach Lakes Boulevard, Suite 300
West Palm Beach, Florida 33401

ARTICLE 24. ENTIRETY OF CONTRACTUAL AGREEMENT: 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 25. 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 & COMPTROLLER

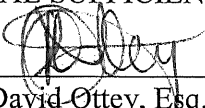
PALM BEACH COUNTY BOARD
OF COUNTY COMMISSIONERS

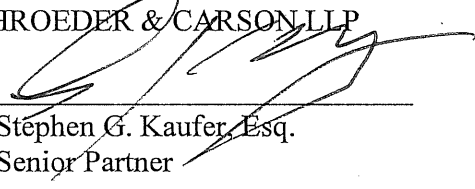
By: _____
Deputy Clerk

By: _____
Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

WALTON LANEAFF
SCHROEDER & CARSON LLP

By:  _____
David Ottey, Esq.
Chief Assistant County Attorney

By:  _____
Stephen G. Kaufer, Esq.
Senior Partner

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
Department Director



August 28, 2018

Palm Beach County Attorney's Office
c/o David Ottey, Chief Asst. County Attorney
300 North Dixie Highway, Suite 359
West Palm Beach, FL 33401

Attn: Mr. Ottey:

CONFIRMATION OF INSURANCE

We hereby confirm that Walton Lantaff Schroeder & Carson LLP has Professional Liability Coverage under Policy ALA#1567 with an annual limit of \$10,000,000 per claim and \$20,000,000 in the aggregate with the right, under stated conditions, to purchase extended reporting rights upon termination of such Policy by ALAS.

The self-insured retention under such Policy is \$250,000 each claim up to an aggregate of \$500,000 and \$100,000 each claim thereafter.

The Policy effective date is from January 1, 2018 to January 1, 2019.

Coverage under this Policy is provided on a claims-made basis. The Policy contains no Retroactive Date.

Such Policy is subject to the terms, conditions, limitations and exclusions stated therein.

**ATTORNEYS' LIABILITY ASSURANCE SOCIETY, INC.,
A RISK RETENTION GROUP**

By: Nancy J. Montroy
Nancy J. Montroy
Vice President - Director of Underwriting

Date: 8/28/2018



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/29/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Keyes Coverage Insurance 5900 Hiatus Road Tamarac FL 33321	CONTACT NAME: Wendy Aguayo PHONE (A/C, No. Ext): 954-724-7000 FAX (A/C, No): 924-724-7024 E-MAIL ADDRESS: waguayo@keyescorverage.com
INSURER(S) AFFORDING COVERAGE	
INSURED 12109 Walton Lantaff Schroeder & Carson LLP 9350 S. Dixie Highway 10th Floor Miami FL 33156	INSURER A: Hartford Casualty Insurance Co NAIC # 29424 INSURER B: Hartford Ins Co of the So. East 38261 INSURER C: Hartford Fire Insurance Co 19682 INSURER D: Certain Underwriters @ Lloyds INSURER E: INSURER F:

COVERAGES **CERTIFICATE NUMBER: 1147454646** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
D	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	ASF17F003082	1/1/2018	1/1/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 OTHER: \$
C	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			21 UUN KK3705	1/1/2018	1/1/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ OTHER: \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y	Y	21 XHU KK3258	1/1/2018	1/1/2019	EACH OCCURRENCE \$ 20,000,000 AGGREGATE \$ 20,000,000 OTHER: \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	21 WB ZT3431	1/1/2018	1/1/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida. its Officers, Employees and Agents is listed as additional insured.

CERTIFICATE HOLDER Palm Beach County Attorney's Office c/o David Ottey, Chief Asst. County Attorney 300 North Dixie Highway, Suite 359 West Palm Beach FL 33401	CANCELLATION 30 days notice/ 10 days for non-pay SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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**BUDGET AVAILABILITY STATEMENT
RISK MANAGEMENT**


REQUEST DATE: 9/7/18 REQUESTED BY: Risk Management

REQUESTED FOR: Workers Compensation Professional Legal Services

REQUESTED AMOUNT: \$497,650 AGENDA DATE: 9/18/18

BUDGET ACCOUNT NUMBER:

Fund: 5011 Agency: 700 Unit: 7242 Object: 3125

BAS APPROVED BY:  DATE: 9/7/18