

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	March 17, 2020	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department:	County Attorney		
Submitted By:	County Attorney		

I. EXECUTIVE BRIEF

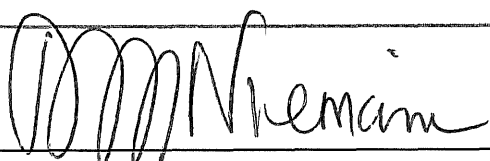
Motion and Title: Staff recommends motion to approve Contract for Professional Legal Services by and between Palm Beach County and Barry S. Balmuth P.A. for legal services in connection with eminent domain and inverse condemnation litigation for the County in an amount not to exceed \$750,000.00, including costs.

Summary: The legal services are necessary to litigate numerous pending condemnation projects and the defense of inverse condemnation claims. The agreement would commence upon approval of the Board of County Commissioners and would be for a maximum duration of three (3) years in an amount not to exceed \$750,000.00, including costs. The hiring of outside counsel will provide the means for the County to meet its project objectives and simultaneously provide sufficient opportunities for two attorneys at the County Attorney's Office to gain sufficient experience in eminent domain litigation through second chair assignments with outside counsel, for the handling of future assignments when the contract expires. Countywide (DO)

Background and Justification: The County has thirteen (13) eminent domain cases pending before the court, in addition to several projects that have been approved by the Board of County Commissioners for which condemnation proceedings in the Circuit Court is imminent. Moreover, three (3) of the pending cases are scheduled for trial and involve complex issues that require the services of an experienced attorney in the area of eminent domain litigation. Additionally, there are more than forty (40) pending projects that have been approved by the by the BCC for acquisition, which the County anticipates will occur within the next three (3) years. The County Attorney's Office has made a very diligent effort to hire an experienced eminent domain attorney to replace the prior eminent domain attorney to no avail, necessitating reliance on outside counsel to litigate the pending matters.

Attachments:

1. Contract for Professional Legal Services
2. Certificate of Liability Insurance
3. Confirmation of Insurance

Recommended By:		3/5/2020
	County Attorney	Date

Approved By:	N/A	Date
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II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2022	2024
Capital Expenditures					
Operating Costs	750,000				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	750,000				
# ADDITIONAL FTE					
POSITIONS (CUMULATIVE)					

Is Item included in current budget? Yes No

Does this Item include the use of federal funds? Yes No

Budget Account No.:

Fund _____ Agency _____ Organization _____ Object _____

B. Recommended Sources of Funds/Summary of Fiscal Impact: ***Allocations are based on a not to exceed amount and can be expended from various accounting lines for various projects where budget is available. Work is to be performed on a task order basis. Total fiscal impact will not exceed \$750,000***

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

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

Patricia Kewler 3/4/2020
OFMB PK

A. J. Hawley 3/11/2020
Contract Dev & Control
3/11/2020 TW

B. Legal Sufficiency

[Signature]
Chief Assistant County Attorney

C. Other Department Review

Department Director

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

**CONTRACT FOR PROFESSIONAL SERVICES
BY AND BETWEEN
PALM BEACH COUNTY AND BARRY S. BALMUTH, P.A.**

THIS CONTRACT is made as of the _____ day of _____, 2020, by and 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 BARRY S. BALMUTH, P.A., a professional association authorized to do business in the State of Florida, hereinafter referred to as OUTSIDE COUNSEL, whose Federal Tax I.D. is 65-0771481.

WHEREAS, The COUNTY desires to retain OUTSIDE COUNSEL with specialized expertise to provide legal services to the COUNTY on eminent domain and inverse condemnation matters;

WHEREAS, OUTSIDE COUNSEL desires to provide such legal services to the COUNTY;

WHEREAS, the COUNTY and OUTSIDE COUNSEL agree that all communication that they have had, and will have, relating to this Contract or the legal services is communication undertaken in an anticipation of litigation and/or within the scope of an attorney-client relationship;

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

ARTICLE 1 - LEGAL SERVICES

- a. The above recitals are true and correct and incorporated herein by reference.
- b. The parties hereby agree that OUTSIDE COUNSEL shall represent the COUNTY in the litigation of eminent domain and inverse condemnation matters, for various County condemnation projects and claims against the COUNTY. Barry S. Balmuth, Esquire, will assume primary responsibility on behalf of OUTSIDE COUNSEL for management of the legal services.
- c. It is anticipated that OUTSIDE COUNSEL will attempt, whenever possible, to achieve cost effectiveness by consolidating court hearings, limiting travel, streamlining case processing, using printed forms, using the appropriate level of staff experience required by task, and taking other actions to improve efficiency.
- d. It is further anticipated that OUTSIDE COUNSEL will include attorneys from the Palm Beach County Attorney's Office as second chair in all cases, and matters, and as such they will participate in discovery matters, order of taking hearings, trials, mediations, meetings, etc. as deemed necessary.
- e. OUTSIDE COUNSEL's responsibility under this Contract is to provide professional / legal services in the area of Eminent Domain / Inverse Condemnation Litigation, including but not limited to: review and draft resolutions; acquisition of property; file lawsuits; obtain orders of taking; prepare and attend hearings and mediations; file and respond to counterclaims, cross claims, third-party claims, and other pleadings and defenses; file discovery requests, discovery responses; pretrial motions; dismissals; file and obtain final judgments; trials and post-trial motions; prepare board items; fees and costs motions and hearings; and provide monthly status reports.
- f. The COUNTY's representative / liaison during the performance of this Contract shall be David Ottey, Esquire; Chief Assistant County Attorney; telephone number (561)355-6557.

- g. OUTSIDE COUNSEL's representative / liaison during the performance of this Contract shall be Barry S. Balmuth, Esquire; telephone number (561)242-9400.

ARTICLE 2 - SCHEDULE TERM

The term of the Contract shall be effective as of the date of approval by the Palm Beach County Board of County Commissioners and shall terminate no later than March 16, 2023.

ARTICLE 3 - PAYMENTS TO OUTSIDE COUNSEL

- a. The total amount to be paid by the COUNTY under this Contract for all services and materials including, if applicable, "out of pocket" expenses (specified in paragraph C below) shall not exceed a total contract amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) for legal services rendered on a per hour basis according to the following hourly rates, for time reasonably, competently, and actually spent by lawyers, law clerks, and Florida Registered paralegals:
 - i. Barry S. Balmuth, Esq. \$350.00 per hour
 - ii. Paralegals \$120.00 per hour
- b. OUTSIDE COUNSEL understands that its legal services will be capped at Seven Hundred Fifty Thousand Dollars (\$750,000.00).
- c. OUTSIDE COUNSEL shall notify the COUNTY when the billable fees and costs reach ninety percent (90%) of the not-to-exceed amount provided for herein, or Six Hundred Seventy-Five Thousand Dollars (\$675,000.00).
- d. OUTSIDE COUNSEL shall invoice the COUNTY on a monthly basis. The monthly bills shall be submitted to the County Attorney's Office for review and approval prior to payment. The bills shall be itemized to reflect each task performed by OUTSIDE COUNSEL and the actual time spent on each task, using one-tenth of an hour increments.
- e. Invoices received from OUTSIDE COUNSEL pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.
- f. **Final Invoice** In order for both parties herein to close their books and records, OUTSIDE COUNSEL will clearly state "final invoice" on OUTSIDE COUNSEL's final / last billing to the COUNTY. This shall constitute OUTSIDE COUNSEL's certification that all services have been properly performed and all charges and costs have been invoiced to Palm Beach County. Any other charges not properly included on this final invoice are waived by OUTSIDE COUNSEL.
- g. 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. Court filing fees and costs, witness fees, and previously approved travel shall be itemized and invoiced separately.

- h. The COUNTY shall not be responsible for the cost of any computerized legal research other than the actual billable hourly rate of OUTSIDE COUNSEL.
- i. Fees and costs of experts employed in the course of the litigation and of court reporters and transcripts are not included as such experts and court reporters shall enter into a separate agreement with the COUNTY.
- j. The total amount of reimbursable expenses and costs shall not exceed Thirty Thousand Dollars (\$30,000.00). The reimbursable expenses and costs provided for this Article are included in and not in addition to the total not-to-exceed amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) provided above. In no event will OUTSIDE COUNSEL receive more than a total of Seven Hundred Fifty Thousand Dollars (\$750,000.00) under this Contract, regardless of the purpose of the payment.
- k. OUTSIDE COUNSEL covenants and agrees that any other type of billing or timekeeping which allows compensation for the 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.
- l. 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.
- m. All requests for payment of expenses eligible for reimbursement under this Contract shall include legible copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expenses were actually incurred and necessary in the performance of legal services. Photocopy charges shall give a general description of documents. If duplication of more than ten (10) documents is required, a general description of the category or type of documents copied will be sufficient documentation. Any out-of-county travel, per diem, mileage, meals, or lodging expenses, which may be reimbursable under the terms of this Contract, shall be approved by the County Attorney's Office in advance and shall be paid in accordance with Section 112.061, Florida Statutes (2019).
- n. No service, interest, or other similar charge is to be imposed with regard to any item, invoice, or request.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

- a. Signature of this Contract by OUTSIDE COUNSEL shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged OUTSIDE COUNSEL's most favored customer for the same or substantially similar service.
- b. The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

ARTICLE 5 - TERMINATION

- a. This COUNTY may terminate this Contract upon written notice to OUTSIDE COUNSEL and termination shall become effective upon receipt of such notice. This Contract may be terminated by OUTSIDE COUNSEL upon ninety (90) days written notice to the COUNTY so long as such termination is consistent with attorney's professional obligations. Unless termination is required under Rule 4-1.16(a) of the Rules Regulating the Florida Bar, before OUTSIDE COUNSEL may terminate the Contract and/or seek to withdraw as counsel of record in any pending litigation being handled pursuant to this Contract, it must return to the COUNTY one-half of all legal fees paid by the COUNTY under the 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 the Contract, it shall not seek, nor be awarded, any work as OUTSIDE COUNSEL for the COUNTY on this or any other matter.

ARTICLE 6 - PERSONNEL

- a. 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.
- b. The legal services shall be performed by **Barry S. Balmuth, 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.
- c. 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.
- d. OUTSIDE COUNSEL represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.
- e. All of the services required herein under shall be performed by OUTSIDE COUNSEL or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.
- f. Any changes or substitutions in OUTSIDE COUNSEL's key personnel must be made known to the COUNTY's representative and written approval must be granted by the COUNTY's representative before said change or substitution can become effective.
- g. OUTSIDE COUNSEL warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.
- h. All of OUTSIDE COUNSEL's personnel, while on County premises, will comply with all COUNTY requirements governing conduct, safety and security.

ARTICLE 7 - FEDERAL AND STATE TAX

- a. 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 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.
- b. 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 8 - AVAILABILITY OF FUNDS

The COUNTY's performance and obligation to pay under this contract for subsequent fiscal years are contingent upon annual appropriations for its purpose by the Board of County Commissioners.

ARTICLE 9 - 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 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. **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.
- d. **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.

- e. **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 agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which specifically prohibits such an endorsement, or which voids coverage should OUTSIDE COUNSEL enter into such an agreement on a pre-loss basis.
- f. **Certificate(s) of Insurance** Prior to execution of this Contract, OUTSIDE COUNSEL shall deliver to the COUNTY's representative as identified in Article 26, a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage. The certificate of insurance shall be issued to

Palm Beach County
c/o David Ottey, Chief Assistant County Attorney
300 North Dixie Highway, Suite 359
West Palm Beach, Florida 33401
- g. **Umbrella or Excess Liability** If necessary, OUTSIDE COUNSEL may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- h. **Right to Review** COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

ARTICLE 10 - 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 OUTSIDE COUNSEL's performance of the terms of this Contract or due to the acts or omissions of OUTSIDE COUNSEL.

ARTICLE 11 - SUCCESSORS AND ASSIGNS

The COUNTY and OUTSIDE COUNSEL each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, 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.

ARTICLE 12 - REMEDIES

- a. This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
- b. 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 employees of the COUNTY and/or OUTSIDE COUNSEL.

ARTICLE 13 - 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 manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. OUTSIDE COUNSEL further represents that no person having any such conflict of interest shall be employed for said performance of services.
- b. OUTSIDE COUNSEL shall promptly notify the COUNTY's representative, 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 judgement or quality of services being provided hereunder. 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 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 services provided to the COUNTY by OUTSIDE COUNSEL under the terms of this Contract.
- c. OUTSIDE COUNSEL further agrees to comply with Palm Beach County PPM #CW-O-052 regarding outside attorney conflicts of interest. Said PPM is incorporated herein by reference and made part of this Contract.

ARTICLE 14 - EXCUSABLE DELAYS

- a. OUTSIDE COUNSEL shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of OUTSIDE COUNSEL or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

- b. Upon OUTSIDE COUNSEL's request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if OUTSIDE COUNSEL's failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY's rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 15 - ARREARS

OUTSIDE COUNSEL shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, 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 16 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

- a. OUTSIDE COUNSEL shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.
- b. To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by OUTSIDE COUNSEL and will not be disclosed to any other party, directly or indirectly, without the COUNTY's prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the COUNTY's expense shall be and remain the COUNTY's property and may be reproduced and reused at the discretion of the COUNTY.
- c. 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.
- d. Notwithstanding any other provision in this Contract, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General, Palm Beach County Code, Sections 2-421 - 2 440, as amended.

ARTICLE 17 - INDEPENDENT CONTRACTOR RELATIONSHIP

- a. OUTSIDE COUNSEL is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to OUTSIDE COUNSEL's sole direction, supervision, and control. OUTSIDE COUNSEL shall exercise control over the means and manner in which it and its employees perform the work, and in all respects OUTSIDE COUNSEL's relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.
- b. OUTSIDE COUNSEL does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

ARTICLE 18 - CONTINGENT FEES

OUTSIDE COUNSEL warrants 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 19 - ACCESS AND AUDITS

- a. OUTSIDE COUNSEL shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least five (5) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at OUTSIDE COUNSEL's place of business.
- b. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 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 OUTSIDE COUNSEL, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.
- c. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 20 - NONDISCRIMINATION

- a. 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.
- b. As a condition of entering into this Contract, OUTSIDE COUNSEL represents and warrants that it will comply with the COUNTY's Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, OUTSIDE COUNSEL shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall OUTSIDE COUNSEL retaliate against any person for reporting instances of such discrimination. OUTSIDE COUNSEL shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace in Palm Beach County. OUTSIDE COUNSEL understands and agrees that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this

Contract, disqualification or debarment of the company from participating in County contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. OUTSIDE COUNSEL shall include this language in its subcontracts.

ARTICLE 21 - 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 reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

ARTICLE 22 - 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 23 - 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 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

ARTICLE 24 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance.

If sent to the COUNTY, notices shall be addressed to:

David Ottey, Chief Assistant County Attorney
Palm Beach County Attorney's Office
300 North Dixie Highway, Suite 359
West Palm Beach, Florida 33401

With copy to:

Morton Rose, P.E., Director, Roadway Production Division
Palm Beach County Engineering & Public Works Department
2300 North Jog Road
West Palm Beach, Florida 33411

If sent to OUTSIDE COUNSEL, notices shall be addressed to:

Barry S. Balmuth, Esq.
2505 Burns Road
Palm Beach Gardens, Florida 33410

ARTICLE 25 - ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and OUTSIDE COUNSEL agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25-Modifications of Work.

ARTICLE 26 - 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. 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 27 - 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. Pursuant to F.S. 287.135(3)(b), if OUTSIDE COUNSEL is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Contract may be terminated at the option of the COUNTY.
- 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.
- c. 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 28 - PUBLIC RECORDS

- a. 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:
 - i. Keep and maintain public records required by the County to perform services as provided under

this Contract.

- ii. 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.
 - iii. 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.
 - iv. 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, 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.
- b. 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.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida, has made and executed this Contract on behalf of the COUNTY; and OUTSIDE COUNSEL has hereunto set its hand the day and year above written.

ATTEST:


SHARON R. BOCK
CLERK AND COMPTROLLER

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS:

By: _____
Deputy Clerk


By: _____
Dave Kerner, Mayor

**APPROVED AS TO FORM &
LEGAL SUFFICIENCY**



David Ottey,
Chief Assistant County Attorney

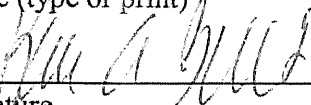
WITNESSES:



Signature

Julie R. Strunk

Name (type or print)

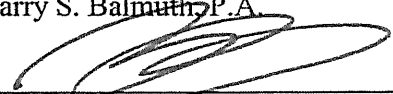


Signature

Karen A Balmuth

Name (type or print)

OUTSIDE COUNSEL:

Barry S. Balmuth, P.A.


Barry S. Balmuth, Esq.

ATTACHMENT 2



BARRY-3 OP ID: SMW

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/06/2019

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 Abacoa Insurance Group - PBG 4500 PGA Blvd, Suite 202 Palm Beach Gardens, FL 33418 Kathleen Betancourt	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: <table style="width: 100%; border: none;"> <tr> <td style="text-align: center; border: none;">INSURER(S) AFFORDING COVERAGE</td> <td style="text-align: center; border: none;">NAIC #</td> </tr> <tr> <td style="border: none;">INSURER A : Atlantic Casualty Insurance Co</td> <td style="border: none;"></td> </tr> <tr> <td style="border: none;">INSURER B :</td> <td style="border: none;"></td> </tr> <tr> <td style="border: none;">INSURER C :</td> <td style="border: none;"></td> </tr> <tr> <td style="border: none;">INSURER D :</td> <td style="border: none;"></td> </tr> <tr> <td style="border: none;">INSURER E :</td> <td style="border: none;"></td> </tr> <tr> <td style="border: none;">INSURER F :</td> <td style="border: none;"></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Atlantic Casualty Insurance Co		INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
INSURER(S) AFFORDING COVERAGE	NAIC #														
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INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															
INSURED Barry S Balmuth, PA 2505 Burns Road Palm Beach Gardens, FL 33410															

COVERAGES CERTIFICATE NUMBER: 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			
A	GENERAL LIABILITY			L144001725	11/01/2019	11/01/2020	EACH OCCURRENCE \$ 1,000,000			
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000			
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000			
	GEN'L AGGREGATE LIMIT APPLIES PER:									PERSONAL & ADV INJURY \$ 1,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC									GENERAL AGGREGATE \$ 2,000,000
										PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$			
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$			
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$			
	<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (PER ACCIDENT) \$			
	<input type="checkbox"/> SCHEDULED AUTOS									
	<input type="checkbox"/> NON-OWNED AUTOS									
	UMBRELLA LIAB <input type="checkbox"/> OCCUR						EACH OCCURRENCE \$			
	EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$			
	DED RETENTION \$									
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS OTH-ER			
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)			N/A			E.L. EACH ACCIDENT \$			
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$			
							E.L. DISEASE - POLICY LIMIT \$			

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER Oaks Center of the Palm Beaches Ltd 4500 PGA Blvd Ste 207 Palm Beach Gardens, FL 33418	CANCELLATION 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 Kathleen Betancourt
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**LAWYERS PROFESSIONAL LIABILITY INSURANCE
POLICY DECLARATIONS**

Policy Number
19MCFL000584

Issuing Company
Medmarc Casualty Insurance Company
4795 Meadow Wood Lane, Suite 335 West
Chantilly, VA 20151
(A Stock Company)

1 Named Insured and Address

Barry S. Balmuth, P.A.
The Oaks Center-2505 Burns Road
Palm Beach Gardens, FL 33410

2 Policy Period

Effective Date: 8/20/2019
Expiration Date: 8/20/2020

12:01 A.M. Standard Time at the address
of the Named Insured as stated herein.

3 Retroactive Date

8/20/1997

Unless indicated otherwise in an
Endorsement attached to this **policy**

4 Limit of Liability

\$500,000.00 Each Claim
\$500,000.00 Aggregate

5 Deductible

\$5,000.00 Each Claim
\$5,000.00 Aggregate

6 Premium

\$4,165.00

7 Fees (if applicable)

\$0.00

Issue Date: 08/13/2019