

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	June 2, 2020	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department:	County Attorney		
Submitted For:	Department of Housing and Economic Sustainability		

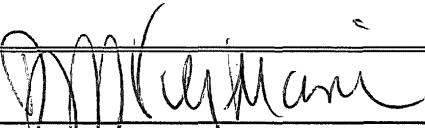
I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: An Agreement with the law firm of Fowler White Burnett, P.A., (Firm) in an amount not to exceed \$150,000, for loan closing, foreclosure, and related services in connection with loan programs administered by the County’s Department of Housing and Economic Sustainability (DHES) for an initial term through September 30, 2023, with an option to renew for one additional three year term at the County’s option.

Summary: The County, through DHES, processes a variety of loans to qualified businesses through various loan programs, including, but not limited to, U.S. Department of Housing and Urban Development Section 108 Loan Program; U.S. Department of Agriculture Intermediary Relending Program; U.S. Environmental Protections Agency Revolving Loan Program; U.S. Department of Energy Revolving Loan Program; and the County’s Micro Loan Program funded under the HUD Community Development Block Grant (CDBG). The requirements associated with the unique funding sources of these loans require specialized knowledge and, as such, DHES currently utilizes the services of the Firm to assist in loan closings, the handling of foreclosure matters on defaulted loans, and other related services. This Agreement allows for DHES to continue utilizing the Firm for such specialized services. Countywide (DB).

Background and Justification: On September 27, 2017, the County and the Firm entered into an initial agreement for services in an amount not to exceed \$50,000, billed at an hourly rate for partners of \$285 per hour; an hourly rate for associates of \$200 per hour; and an hourly rate for paralegals of \$125 per hour. By way of a billing error on behalf of the Firm, the sending of bills was delayed, and the Firm exceeded the initial not to exceed amount by \$82,419. In recognition of the error, the Firm has agreed to an aggregate reduction in the outstanding bill of \$32,926.58, leaving a balance of \$49,492.42 in excess of the initial cap. The new Agreement allows the County to satisfy the outstanding balance and allows DHES to continue to utilize the Firm at the previously established rates. The Firm is uniquely qualified to perform the specialized work required and, although alternative arrangements were considered, they were not as cost effective in light of the Firm’s rates and specialized knowledge. The funds required for the Agreement are currently budgeted in the DHES FY 2020 budget. No additional ad valorem funds are required.

1. Agreement between Palm Beach County and Fowler White Burnett P.A. for Legal Services (3 copies).

Recommended By:		4/30/2020
	County Attorney	Date
Approved By:	N/A	
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures					
Operating Costs	\$150,000				
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	\$150,000				

# ADDITIONAL FTE POSITIONS (Cumulative)					
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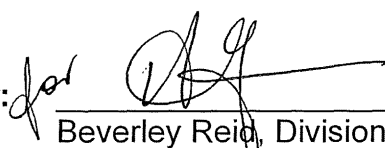
Is Item Included In Current Budget? Yes X No

Does this Item include the use of Federal Funds? Yes No X

Budget Account No.:


Fund 1539 Dept 143 Unit 2102 Object 3125 Program Code/Period


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

C. Departmental Fiscal Review: 
Beverley Reid, Division Manager


III. REVIEW COMMENTS

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

 5/1/2020
OFMB

 5/5/2020
Contract Development and Control
5/4/2020 TW

B. Legal Sufficiency:

 4/29/2020
Assistant County Attorney

C. Other Department Review:

Department Director

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

Fowler White Burnett

ATTORNEYS AT LAW

Miami | Fort Lauderdale | Palm Beach

Richard A. Wood

305.789.9200
(305) 728-7551 fax
rwood@fowler-white.com

March 17, 2020

David C. Beher, Esq.
Assistant County Attorney
Palm Beach County
301 N. Olive Avenue
Suite 601
West Palm Beach, FL 33401

VIA FEDERAL EXPRESS

Re: *Agreement with Law Offices of Fowler White Burnett, P.A. for Legal Services*

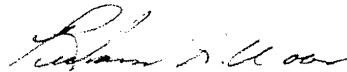
Dear David:

Pursuant to your instructions, enclosed please find three (3) original executed Agreement for Legal Services. Kindly return one (1) fully executed copy for our file.

With kindest regards,

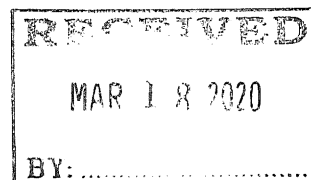
Very truly yours,

FOWLER WHITE BURNETT, P.A.



Richard A. Wood

cc: Kate Maguire (via e-mail)
Enclosure
4849-7344-8631, v. 1



**AGREEMENT BETWEEN PALM BEACH COUNTY
AND FOWLER WHITE BURNETT P.A. FOR LEGAL SERVICES**

This Agreement is made and entered into on _____ by and between **PALM BEACH COUNTY**, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners (“**COUNTY**”), and the law firm of **FOWLER WHITE BURNETT P.A.**, a Florida Corporation located at 1395 Brickell Avenue, 14th Floor, Miami, Florida 33131, whose Federal Tax I.D. Number is 59-1303994 (“**ATTORNEY**”).

WHEREAS, on September 27, 2017, the **COUNTY** and **ATTORNEY** entered into an agreement for legal services (“**Initial Agreement**”) in connection with certain loan foreclosure proceedings (“**Loan Foreclosure Services**”);

WHEREAS, on July 18, 2018, the **COUNTY** and **ATTORNEY** amended and restated the Initial Agreement (“**Amended Agreement**”) to include legal services in connection with the preparation and closing of certain loans available to qualified businesses through **COUNTY** loan programs (“**Loan Closing Services**”);

WHEREAS, the Amended Agreement provided that any fees related to the loan closings shall be billed directly to the borrowers;

WHEREAS, for legal services other than those related to the loan closings, the Amended Agreement contained a not-to-exceed amount of \$50,000.00 (“**Initial Billing Cap**”), billed at an hourly rate for partners of \$285.00 per hour; an hourly rate for associates of \$200.00 per hour; and an hourly rate for paralegals of \$125.00 per hour;

WHEREAS, as of October 24, 2019 (“**Valuation Date**”), **ATTORNEY** submitted bills to the **COUNTY** for services rendered in the aggregate amount of \$132,419.00 (“**Prior Bills**”), thereby exceeding the Initial Billing Cap by \$82,419.00;

WHEREAS, the **ATTORNEY** has agreed to an aggregate reduction of the Prior Bills in the amount of \$32,926.58, leaving a balance of \$49,492.42 in unpaid bills in excess of the Initial Billing Cap as of the Valuation Date (“**Reduced Outstanding Bill**”);

WHEREAS, the parties desire to terminate the Amended Agreement and to enter into this new Agreement to satisfy the Reduced Outstanding Bill and to set forth terms governing the engagement of **ATTORNEY** for continued legal services;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the **COUNTY** and the **ATTORNEY** agree as follows:

ARTICLE 1 - ENGAGEMENT.

COUNTY agrees to engage **ATTORNEY** to provide Loan Foreclosure Services, Loan Closing Services, and such Other Services as may be requested from time to time by **COUNTY** (collectively, “**Legal Services**”). Such Legal Services, include, but are not limited to, those services defined on the attached Exhibit A.

ARTICLE 2 - COMPENSATION.

(a) For Foreclosure Services and Other Services, COUNTY agrees to compensate ATTORNEY on an hourly basis as follows: an hourly rate for partners of \$285.00 per hour; an hourly rate for associates of \$200.00 per hour; and an hourly rate for paralegals of \$125.00 per hour (collectively, "Hourly Rates").

(b) For Loan Closing Services, ATTORNEY shall directly bill the Hourly Rates to borrowers in accordance with caps and terms on the attached Exhibit B. Such bills shall be paid by the borrowers as closing costs payable from the loan proceeds available to them under the applicable County loan program. Notwithstanding anything to the contrary, and in the event ATTORNEY and any borrower agree that unanticipated work not intended as contemplated by this Agreement is necessary to complete the Loan Closing Services, COUNTY expressly acknowledges the ability of ATTORNEY to charge any borrower the Hourly Rates for such unanticipated work, regardless of whether such fees and costs exceed the fee restrictions set forth in Exhibit B.

ARTICLE 3 – EXPENSES AND COSTS.

(a) COUNTY agrees to reimburse ATTORNEY for its reasonable and necessary 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 express mail, long-distance telephone charges, postage, printing, and photocopying.

(b) All requests for payment of expenses eligible for reimbursement under this Agreement shall include copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Clerk & Comptroller's Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Legal Services. Long distance telephone calls shall identify the person(s) called, purpose of call, time, and cost. Photocopying or printing charges shall give a general description of documents copied or printed and the rate charged. Mileage charges shall identify the destination, numbers of miles, rate, and purpose of travel. Any out-of-county travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Agreement shall be approved in writing by COUNTY, in advance, and paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.

(c) ATTORNEY shall maintain adequate records to justify all its charges, expenses, and costs of performing the Legal Services for at least three (3) years after termination of this Agreement. COUNTY shall have access to such books, records, and documents as required for the purpose of inspection or audit during ATTORNEY's normal business hours, at COUNTY's expense, upon reasonable written notice.

(d) No reimbursement will be made for travel expenses incurred by ATTORNEY when the destination is within Palm Beach County without the prior written authorization of the COUNTY.

ARTICLE 4 – INVOICING AND NOT-TO-EXCEED AMOUNT:

(a) The total amount to be paid by the COUNTY under this AGREEMENT to satisfy the Reduced Outstanding Bill, any bills incurred since the Valuation Date, and for any Legal Services, including any hourly fees, expenses, and/or cost reimbursements, **shall not exceed \$150,000.00 ("Billing Cap")**.

(b) ATTORNEY shall notify the COUNTY **in writing** when 90% of the Billing Cap (i.e. \$135,000.00) has been incurred in bills.

(c) ATTORNEY shall bill the COUNTY on a monthly basis. Invoices received from the ATTORNEY will be reviewed by the COUNTY, to verify that services have been rendered in conformity with the Agreement. If approved by the COUNTY, invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY's approval.

(d). In order for both parties herein to close their books and records, the ATTORNEY will clearly state "final invoice" on the ATTORNEY'S final/last billing to the COUNTY. This shall constitute ATTORNEY'S certification that all services have been properly performed and all charges and costs have been invoiced to COUNTY. Any other charges not properly included on this final invoice are waived by the ATTORNEY.

(e). If ATTORNEY fails to abide by these billing procedures, including, but not limited to, failing to timely invoice the COUNTY, exceeding the Billing Cap, and/or failing to notify the COUNTY in writing when 90% of the Billing Cap has been incurred in bills, then ATTORNEY shall forfeit any right to any such charges.

ARTICLE 5 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by the ATTORNEY 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 Agreement are accurate, complete, and current as of the date of the Agreement and no higher than those charged the ATTORNEY'S most favored customer for the same or substantially similar service.

ARTICLE 6 – EFFECTIVE DATE

This Agreement shall be effective on the date set forth above and shall terminate on September 30, 2023, unless terminated earlier in accordance with the terms herein. This Agreement may be renewed for one (1) additional three (3) year term at the COUNTY's option.

ARTICLE 7 - TERMINATION

This Agreement may be terminated by the ATTORNEY upon sixty (60) days' prior written notice to the COUNTY in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Agreement through no fault of the ATTORNEY. It may also be terminated, in whole or in part, by the COUNTY, with cause upon five (5) business days' written notice to the ATTORNEY or without cause upon ten (10) business days' written notice to the ATTORNEY. Unless the ATTORNEY is in breach of this Agreement, the ATTORNEY shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination. After receipt of a Termination Notice, except as otherwise directed by the COUNTY, in writing, the ATTORNEY shall transfer all work in progress, completed work, and other materials related to the Legal Services to COUNTY.

ARTICLE 8 - QUALIFICATIONS

ATTORNEY represents that it has, or will secure at its own expense, all necessary personnel required to perform the Legal Services. Such personnel shall not be employees of or have any contractual relationship with COUNTY. The Legal Services shall be performed by ATTORNEY or under its

supervision. All personnel engaged in performing the Legal Services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. ATTORNEY further warrants that the Legal Services shall be performed by skilled and competent personnel to the highest professional standards.

ARTICLE 9 - SUBCONTRACTING

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

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

ARTICLE 10 - AVAILABILITY OF FUNDS

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

ARTICLE 11 - INSURANCE

ATTORNEY shall maintain at its sole expense, in full force and effect, at all times during the term of this Agreement, insurance coverage and limits (including endorsements) as described herein. Failure to maintain the required insurance shall be considered default of the Agreement. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by ATTORNEY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by ATTORNEY under the Agreement. ATTORNEY shall notify COUNTY at least ten (10) days prior to cancellation, non-renewal or material change to the required insurance coverage. Where applicable, all coverage and endorsements shall apply on a primary and non-contributory basis.

- A. **Commercial General Liability**: ATTORNEY shall maintain Commercial General Liability at a limit of liability not less than \$500,000.00 each occurrence. Coverage shall not contain any endorsement(s) excluding Contractual Liability or Cross Liability.
- B. **Workers' Compensation Insurance & Employer's Liability**: ATTORNEY shall maintain Workers' Compensation accordance with Florida Statute Chapter 440. Policy shall include coverage for Employer's Liability.
- C. **Professional Liability**: ATTORNEY shall maintain Professional Liability, or equivalent Errors & Omissions Liability, at a limit of liability not less than \$1,000,000.00 each occurrence. When a self-insured retention (SIR) or deductible exceeds \$100,000.00 COUNTY reserves the right, but not the obligation, to review and request a copy of ATTORNEY's most recent annual report or audited financial statement. For policies written on a "claims-made" basis, ATTORNEY warrants the Retroactive Date equals or preceded the

effective date of this Agreement. 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 Agreement, ATTORNEY shall purchase a SERP with a minimum reporting period not less than three (3) years. The requirement to purchase a SERP shall not relieve ATTORNEY of the obligation to provide replacement coverage. 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.

- D. **Additional Insured Clause:** The Commercial General Liability policy shall be endorsed to include, "Palm Beach County Board of County Commissioners" as an Additional Insured. A copy of the endorsement shall be provided to COUNTY upon request.
- E. **Waiver of Subrogation:** ATTORNEY 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, then ATTORNEY shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should ATTORNEY enter into such an agreement on a pre-loss basis.
- F. **Certificates of Insurance:** Prior to each subsequent renewal of this Agreement, within forty-eight (48) hours of a request by COUNTY, and subsequently, prior to expiration of any of the required coverage throughout the term of this Agreement, ATTORNEY shall deliver to the COUNTY, unless otherwise directed by COUNTY, a signed Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Agreement have been obtained and are in full force and effect. The Certificate Holder shall read:

Palm Beach County Board of County Commissioners
c/o Sherry Howard, Deputy Director
Palm Beach County Department of Housing and Economic Sustainability
100 Australian Ave, Suite 500
West Palm Beach, FL 33406

- G. **Right to Revise or Reject:** COUNTY, by and through its Risk Management Department reserves the right to review, and modify the required insurance, including limits, coverage, and, or endorsements. 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 12 - INDEMNIFICATION

ATTORNEY 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 ATTORNEY's performance of the terms

of this Agreement or due to the acts or omissions of ATTORNEY.

ARTICLE 13 - SUCCESSORS AND ASSIGNS

The COUNTY and the ATTORNEY 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 Agreement. Except as above, neither the COUNTY nor the ATTORNEY shall assign, sublet, convey, or transfer its interest in this Agreement without the prior written consent of the other.

ARTICLE 14 - REMEDIES

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement 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.

No provision of this Agreement 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 Agreement, including but not limited to any citizen or employees of the COUNTY and/or ATTORNEY.

ARTICLE 15 - CONFLICT OF INTEREST

The ATTORNEY 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. The ATTORNEY further represents that no person having any such conflict of interest shall be employed for said performance of services.

The ATTORNEY 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 the ATTORNEY'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 the ATTORNEY 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 ATTORNEY. The COUNTY agrees to notify the ATTORNEY of its opinion by certified mail within thirty (30) days of receipt of notification by the ATTORNEY. If, in the opinion of the COUNTY, the prospective business association, interest, or circumstance would not constitute a conflict of interest by the ATTORNEY, the COUNTY shall so state in the notification and the ATTORNEY 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 the ATTORNEY under the terms of this Agreement.

ATTORNEY further agrees to comply with COUNTY PPM #CW-0-052 regarding Attorney conflict of interest. This PPM is incorporated herein by reference.

ARTICLE 16 - INDEPENDENT CONTRACTOR RELATIONSHIP

The ATTORNEY is, and shall be, in the performance of all work services and activities under this Agreement, 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 Agreement shall at all times, and in all places, be subject to the ATTORNEY'S sole direction, supervision, and control.

The ATTORNEY shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the ATTORNEY'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.

The ATTORNEY does not have the power or authority to bind the COUNTY in any promise, agreement, or representation, without the COUNTY's written approval.

ARTICLE 17 - SOLICITATION

The ATTORNEY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the ATTORNEY, to solicit or secure this Agreement 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 the ATTORNEY, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 18 - ACCESS AND AUDITS

The ATTORNEY 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 Agreement. 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 the ATTORNEY'S place of business.

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 the ATTORNEY, 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 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 19 - 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, the ATTORNEY warrants and represents that throughout the term of the Agreement, 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 Agreement.

As a condition of entering into this Agreement, the ATTORNEY 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, the ATTORNEY 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 the ATTORNEY retaliate against any person for reporting instances of such discrimination. The ATTORNEY 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. The ATTORNEY understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, 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. ATTORNEY shall include this language in its subcontracts.

ARTICLE 20 - AUTHORITY TO PRACTICE

The ATTORNEY 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 upon request.

ARTICLE 21 - SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, 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 Agreement shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 22 - PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the ATTORNEY certifies that it, its affiliates, suppliers, subcontractors and ATTORNEYS 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 23 - NOTICE

All notices required in this Agreement 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:

Sherry Howard
Deputy Director
Palm Beach County Department of Housing and Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, Florida 33406

With a copy to:

Howard J. Falcon III
Chief Assistant County Attorney
Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401

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

Richard A. Wood
Fowler White Burnett P.A.
Brickell Arch
1395 Brickell Avenue, 14th Floor
Miami, FL 33131

With a copy to:

Katherine A. Maguire
Fowler White Burnett P.A.
Northbridge Center
515 North Flagler Drive, Suite 2100
West Palm Beach, FL 33401

ARTICLE 24 - ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the ATTORNEY agree that this Agreement 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 Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

ARTICLE 25 - REGULATIONS; LICENSING REQUIREMENTS

The ATTORNEY shall comply with all laws, ordinances, and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. ATTORNEY 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 26 - SCRUTINIZED COMPANIES

- A. As provided in F.S. 287.135, by entering into this Agreement or performing any work in furtherance hereof, the ATTORNEY certifies that it, its affiliates, suppliers, subcontractors, and ATTORNEYS who will perform hereunder, have not been placed

on the Scrutinized Companies that boycott Israel List, or are 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 Agreement or performing any work in furtherance hereof, the ATTORNEY certifies that it, its affiliates, suppliers, subcontractors and ATTORNEYS 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 ATTORNEY, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Agreement renewal, if applicable.

ARTICLE 27 - PUBLIC RECORDS

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

- A. Keep and maintain public records required by the COUNTY to perform services as provided under this Agreement.
- 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. The ATTORNEY 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.
- 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 Agreement, if the ATTORNEY does not transfer the records to the public agency.
- D. Upon completion of the Agreement the ATTORNEY shall transfer, at no cost to the COUNTY, all public records in possession of the ATTORNEY 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 the ATTORNEY transfers all public records to the COUNTY upon completion of the Agreement, the ATTORNEY shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the ATTORNEY keeps and maintains public records upon completion of the Agreement, the ATTORNEY shall meet all applicable requirements for retaining

public records. All records stored electronically by the ATTORNEY 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 the ATTORNEY to comply with the requirements of this article shall be a material breach of this Agreement. 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. ATTORNEY 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 THE ATTORNEY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ATTORNEY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, 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.

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of the COUNTY and ATTORNEY 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
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS DEPARTMENT OF HOUSING
AND ECONOMIC SUSTAINABILITY

By: _____
County Attorney

By: _____
Deputy Director

WITNESS:

[SIGNATURE]

Olga M Bradham
[NAME]

FOWLER WHITE BURNETT P.A.:

[SIGNATURE]

Richard A. Wood
[NAME]

Managing Shareholder
[TITLE]

EXHIBIT A – SCOPE OF WORK

A. **Foreclosure Services:** With regard to defaulted loan matters referred to ATTORNEY, the ATTORNEY shall (i) initiate foreclosure proceedings on COUNTY liens attached to real and personal property and obtain legal title thereto in the name of the COUNTY through judicial sale; (ii) file all required legal actions to obtain court approval of COUNTY's attachment, seizure, sale, and/or garnishment of defaulted borrowers' assets pursuant to personal and corporate guarantees/pledges and perfected UCC security interests; (iii) file and obtain deficiency judgements, if available; and (iv) take any and all action required to protect the COUNTY's interests as it relates to borrower defaults (collectively, "Foreclosure Services"). Such Foreclosure Services, include, but are not limited to, continuing to pursue the COUNTY's interests in the pending actions:

1. America's Sound, Inc.
2. Medical Career Institute
3. James Harryton and Ashney Harryton
4. Royal Palm Beach Lakes, LTD
5. A&A Housing, Inc.

B. **Loan Closing Services:** ATTORNEY agrees to provide legal services in connection with the preparation and closing of certain loans ("Loan Closing Services") available to qualified businesses of the COUNTY through various loan programs administered by the COUNTY, including, but not limited to, U.S. Department of Housing and Urban Development Section 108 Loan Program; U.S. Department of Agriculture Intermediary Relending Program; U.S. Environmental Protections Agency Revolving Loan Program; U.S. Department of Energy Revolving Loan Program; and the COUNTY's Micro Loan Program (i.e., funding available under the HUD Community Development Block Grant (CDBG)).

In connection with such Loan Closing Services, ATTORNEY agrees to, among other things, prepare loan documents to be used in connection with each loan transacted by the COUNTY with the intention that such loan documents be essentially non-negotiable; prepare any legal opinions required in connection with the loan transacted by the COUNTY; and take any necessary and related service in connection with the closing of any loan not otherwise specified herein.

EXHIBIT B – FEES FOR LOAN CLOSING SERVICES

EXCEPT in the event of unanticipated additional work as set forth in Article 2(b) of this Agreement, ATTORNEY shall directly bill the borrowers for fees incurred relating to the Loan Closing Services in accordance with the following terms:

1. **The HUD Section 108 Loan Program:** Fees for Loan Closing Services shall be capped at Five Thousand Dollars (\$5,000.00) per loan closing.
2. **The U.S. Department of Agriculture (“USDA”) Intermediary Relending Program:** Fees for Loan Closing Services shall be capped at One Thousand Five Hundred Dollars (\$1,500.00) per loan closing if the USDA loan is leveraged with a HUD Section 108 loan; and fees for Loan Closing Services shall be capped at Two Thousand Five Hundred Dollars (\$2,500.00) per loan closing if the USDA loan is a stand-alone loan and not leveraged with other HUD loan programs.
3. **The U.S. Environmental Protection Agency (“EPA”) Loan Program:** Fees for Loan Closing Services shall be capped at One Thousand Five Hundred Dollars (\$1,500.00) per loan closing if the EPA loan is leveraged with a HUD Section 108 loan; and fees for Loan Closing Services shall be capped at Two Thousand Five Hundred Dollars (\$2,500.00) per loan closing if the EPA loan is a stand-alone loan and not leveraged with other HUD loan programs.
4. **The U.S. Department of Energy (“DOE”) Loan Program:** Fees for Loan Closing Services shall be capped at One Thousand Five Hundred Dollars (\$1,500.00) per loan closing if the DOE loan is leveraged with a HUD Section 108 loan; and fees for Loan Closing Services shall be capped at Two Thousand Five Hundred Dollars (\$2,500.00) per loan closing if the DOE loan is a stand-alone loan and not leveraged with other HUD loan programs.
5. **The County Microloan (“Microloan”) Program:** Fees for Loan Closing Services shall be capped at Two Hundred Fifty Dollars (\$250.00) per Microloan loan closing.