

Board of County Commissioners

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County Administrator

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REQUEST FOR PROPOSAL

RFP NO. CA2018-01

Palm Beach County Board of County Commissioners
is seeking Proposals for:

OUTSIDE LEGAL COUNSEL FOR OPIOID LITIGATION

Date issued/available for distribution: January 4, 2018

Proposer **shall** submit one (1) unbound original hardcopy, three (3) bound hardcopies, and one (1) CD containing the complete proposal, with all copies signed by an official with the authority to bind the proposer in its proposal, to be received in the **PALM BEACH COUNTY ATTORNEY'S OFFICE** no later than **January 16, 2018, 5:00 p.m. Eastern Time**. Regardless of the method of delivery, each proposer is responsible for timely delivery of completed proposals to the County as directed. **See Section 1.7 of the RFP for Submittal Instructions.**

**ENVELOPE MUST BE IDENTIFIED WITH THE
DEADLINE DATE FOR THE RECEIPT OF PROPOSALS
AND
THE RFP NUMBER.**

CAUTION

Amendments to this Request for Proposal will be posted on the Palm Beach County Purchasing Department website:

<https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService> as they are issued. It is the sole responsibility of proposers to routinely check for any Amendments that may have been issued prior to the Deadline for receipt of proposals.

Palm Beach County shall not be responsible for the completeness of any Request for Proposal package not downloaded from this website or obtained directly from the Palm Beach County Attorney's Office.

**IN ACCORDANCE WITH THE PROVISIONS OF ADA, THIS DOCUMENT MAY BE
REQUESTED IN AN ALTERNATE FORMAT**

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SECTION 1

GENERAL INFORMATION

1.1 ISSUING OFFICE:

This Request for Proposal (RFP) is issued for the County of Palm Beach, hereinafter referred to as “County”, by the County Attorney’s Office. The County Attorney’s Office is the SOLE point of contact concerning this RFP. All communications regarding this RFP must be done through the County Attorney’s Office. See Section 1.8, Contact Person.

1.2 INTRODUCTION:

The County is seeking proposals for outside legal counsel services to advise and represent the County, in pursuing litigation seeking damages incurred by the County as a result of the opioid epidemic, on a contingency fee basis.

1.3 PURPOSE OF THE PROJECT:

The County is seeking to retain legal counsel with strong qualifications and expertise to advise and represent the County in pursuing litigation seeking damages incurred by the County as a result of the opioid epidemic. The selected outside counsel shall provide legal representation to the County in all aspects of the opioid litigation including any related appeals and counterclaims, from initiation to conclusion, on a contingency fee basis and incur the financial burden and all costs without payment guarantee if such litigation is unsuccessful or does not result in monetary recovery for the County. The selected outside counsel is expected to handle all aspects of the opioid litigation. The County Attorney’s Office will not be involved with or work jointly with outside counsel in performing any of the services under the Scope of Work. The County’s Selection Committee will recommend up to three most qualified proposers to the Board of County Commissioners (BCC) for consideration and selection. The BCC will make the final selection and final contract execution.

1.4 PERIOD OF CONTRACT:

The effective date of the contract will be upon approval by the BCC and will continue through conclusion of the litigation including any potential appeals and counterclaim. The County reserves the right to reject any and all proposals, and generally, to make the award which, in its judgment, will best meet the objectives of the County.

The County reserves the right to withdraw or cancel this RFP at any time without prior notice and the County makes no representations that any contract will be awarded to any proposer responding to this RFP.

1.5 QUALIFICATION OF RESPONDENTS:

The primary objective of this RFP is the potential selection of the most qualified law firm to represent the County in litigation seeking damages incurred by the County arising out of the opioid epidemic.

The firm must be available to meet with and advise County staff and the BCC on a periodic basis upon the County’s request. The firm must also be available to appear at meetings of the BCC on a periodic basis upon the County’s request.

The firm must possess a demonstrated experience, ability, knowledge and expertise related to complex litigation including mass tort, product liability, multi-district litigation, or class actions.

The firm must submit a proposal meeting all requirements of this RFP, and the proposal must be complete and accurate in all respects.

1.6 TIMETABLE:

All times referenced herein shall refer to Eastern Standard Time (EST).

The anticipated schedule and deadline for the RFP and contract approval are as follows:

<u>Activity</u>	<u>Date</u>	<u>Time</u>	<u>Location</u>
RFP available	01/04/18	12:00 p.m.	Download available at: https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService
Deadline for receipt of questions or comments	01/09/18	5:00 p.m.	Submitted to ldennis@pbcgov.org Email Subject Heading “RFP CA2018-01 Questions/Comments”
Deadline for receipt of proposals	01/16/18	5:00 p.m.	County Attorney’s Office 300 North Dixie Hwy, Ste 381 West Palm Beach, FL 33401 “Attention: Lauren Dennis Re: RFP CA2018-01”
Selection Committee Meeting	01/29/18	TBD	Governmental Center 301 N. Olive Avenue, 12 th Floor, McEaddy Conference Room W.P.B., FL 33401
Notice and posting of Selection Committee’s recommended proposers to BCC	02/02/18	5:00 p.m.	Email to all proposers and posted to http://discover.pbcgov.org/countyattorney/Pages/default.aspx

Deadline for receipt of protests	02/07/18	5:00 p.m.	Submitted to ldennis@pbcgov.org Email Subject Heading "RFP CA2018-01 PROTEST"
BCC Meeting consideration and selection	TBD	TBD	Governmental Center 301 N. Olive Avenue, 6th Floor W.P.B., FL 33401
Contract Start Date	<u>TBD</u>		

NOTE: County reserves the right to alter the above activities and/or times at the County's sole discretion.

1.7 PROPOSAL SUBMISSION:

All proposals must be submitted on 8½ x 11 inch paper.

One (1) unbound original hardcopy, three (3) bound hardcopies, and one (1) CD containing the complete proposal, with all copies signed by an official with the authority to bind the proposer, must be received in the County Attorney's Office at the address listed above by **January 16, 2018, 5:00 p.m.** Eastern Time. The original and all copies must be submitted in a sealed envelope or container. The proposer's complete return address must be included on the outer envelope or wrapper enclosing any materials submitted in response to this RFP. The outer envelope or wrapper should be addressed as follows:

Proposer Name
Address
Phone No.

Palm Beach County
Board of County Commissioners
County Attorney's Office
300 North Dixie Hwy., Ste 381
West Palm Beach, Florida 33401
Attention: Lauren Dennis
RTP Title: Outside Legal Counsel for Opioid Litigation

Due Date: **January 16, 2018, 5:00 p.m. Eastern Time**

Hand-carried proposals may be delivered to the above address ONLY between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding Martin Luther King on January 15, 2018 observed by the County. Regardless of the method of delivery, each

proposer is responsible for timely delivery of completed proposals to the County as directed.

Proposers are responsible for informing any commercial delivery services, if used, of all delivery requirements and for insuring that the required address information appears on the outer wrapper or envelope used by such service.

Appendix A, Business Information, must be signed by an officer of the company who is legally authorized to enter into a contractual relationship in the name of the proposer (“Authorized Person”), and proposers must affix their company’s corporate seal to the document. In the absence of a corporate seal, proposals must be notarized by a Notary Public.

The submission of a signed proposal by a proposer will be considered by the County as constituting a legal offer by the proposer to perform the required services under the terms in the submitted signed proposal in accordance with this RFP.

1.8 CONTACT PERSON:

The contact person for this RFP is Lauren Dennis, Legal Secretary, at (561) 355-2529 or e-mail address ldennis@pbcgov.org in the County Attorney’s Office.

Proposers are advised that from the date of release of this RFP until award of the contract, NO contact with County staff and/or designated Selection Committee members concerning this RFP is permitted, except as authorized by the contact person designated herein.

1.9 CONE OF SILENCE:

Proposers are advised that the “Palm Beach County Lobbyist Registration Ordinance” prohibits a proposer or anyone representing the proposer from communicating with any County Commissioner, County Commissioner’s staff, or any County Employee authorized to act on behalf of the Board of County Commissioners to award this contract regarding its proposal, i.e., a “Cone of Silence” except in writing i.e. fax, e-mail, or U.S. Mail. See Palm Beach County Code § 2-355.

The “Cone of Silence” is in effect from the date/time of the deadline for submission of the proposal, and terminates at the time that the Board of County Commissioners, or a County Department authorized to act on their behalf, awards or approves a contract, rejects all proposals, or otherwise takes action which ends the solicitation process.

Violations of the “Cone of Silence” are punishable by a fine of \$250.00 per violation. See id. Any contract entered into in violation of the cone of silence provisions in this section shall render the transaction voidable. Id. at § 2-355(g).

1.10 ADDITIONAL INFORMATION/AMENDMENT(S):

Any questions, comments (i.e., additional information or clarifications) must be made, no later than the date specified in the RFP Timetable (Section 1.6) and directed to the e-mail

address listed for the Contact Person (Section 1.8) above. The question or comment must contain the proposer's name, address, phone number, facsimile number and e-mail address.

Changes to this RFP, when deemed necessary by the County, will be completed only by written Amendment(s) issued prior to the Deadline for receipt of proposals. Proposers should not rely on any representations, statements or explanation other than those made in the RFP or in any Amendment to this RFP. Where there appears to be a conflict between the RFP and any Amendment issued, the last Amendment issued shall prevail.

Amendments to this RFP will be posted on the Palm Beach County Purchasing Department website: <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService> as they are issued. It is the sole responsibility of proposers to routinely check for any Amendments that may have been issued prior to the Deadline for receipt of proposals. Palm Beach County shall not be responsible for the completeness of any RFP package not downloaded from this website or obtained directly from the Palm Beach County Contact Person listed in Section 1.8.

It is the proposer's sole responsibility to assure receipt of all Amendments. The proposer should verify with the designated Contact Person (see Section 1.8) prior to entering a proposal that all Amendments have been received. Proposers are required to acknowledge the receipt of all Amendments as part of their proposal.

SECTION 2 GENERAL TERMS AND CONDITIONS

2.1 PROPOSAL GUARANTEE:

Proposer guarantees their commitment, compliance, and adherence to all requirements of the RFP by submission of their proposal.

2.2 MODIFIED PROPOSALS:

Proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal until the Deadline for receipt of proposals. The County will only consider the latest proposal submitted.

2.3 WITHDRAWAL OF PROPOSALS:

A proposal may be withdrawn only by written notification. Letters of withdrawal received after the Deadline for receipt of proposals will not be accepted unless the contract has been awarded to another vendor or no award has been made within ninety (90) days after the Deadline for receipt of proposals.

Unless withdrawn, as provided in this subsection, a proposal shall be irrevocable until the time that a contract is awarded.

2.4 LATE PROPOSALS, LATE MODIFIED PROPOSALS:

Proposals and/or modifications to proposals received after the Deadline for receipt of proposals specified in the RFP Timetable (Section 1.6) are late and shall not be considered.

2.5 RFP POSTPONEMENT/CANCELLATION:

The County may, at its sole and absolute discretion, reject any and all, or parts of any and all, proposals; waive any minor irregularities in this RFP or in the proposals received as a result of this RFP; postpone or cancel, at any time, this RFP process; or re-advertise this RFP.

2.6 COSTS INCURRED BY PROPOSERS:

All expenses incurred with the preparation and submission of proposals to the County, or any work performed in connection therewith, shall be borne by the proposer. No payment will be made by the County for proposals received, nor for any other effort required of or made by the proposers.

2.7 PROPRIETARY/CONFIDENTIAL INFORMATION:

Any material submitted in response to this Request for Proposal is considered a public document in accordance with Section 119.07, Fla. Stat. This includes material which the responding proposer might consider to be confidential. All submitted information that the responding proposer believes to be confidential and exempt from disclosure (i.e., a trade secret, etc.) must be specifically identified as such. Upon receipt of a public records request for information the proposer has designated as a trade secret or as otherwise exempt from Section 119.07, Fla. Stat., a determination will be made whether the identified information is, in fact, confidential.

2.8 NEGOTIATIONS:

The County may award a contract on the basis of initial proposals received, without discussions. Therefore, each submitted proposal should contain the proposer's best offer.

2.9 NO CONFLICT OF INTEREST:

Proposer represents that there is presently no interest and shall acquire no interest, either direct or indirect, which would conflict in any matter with the performance of the services under the contract, as provided in the rules regulating the Florida Bar, Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. Proposer further represents that no person having such conflict of interest shall be employed for said performance of services. Proposer further agrees to comply with County PPM #CW-O-052 regarding outside counsel conflicts of interest. (See Attachment 1, Exhibit C).

2.10 SMALL BUSINESS ENTERPRISE

Policy

It is the policy of the BCC that all business be afforded an opportunity for full participation in the free enterprise system. In order to implement the policy, BCC is committed to ensuring full and equitable participation by small business enterprises in the provision of goods and services.

SBE Goals

The County has established a minimum goal of 15% SBE participation for all County solicitations, inclusive of all alternates and change orders. This goal is a minimum, and no rounding will be accepted.

It will be the responsibility of the firm submitting a proposal to furnish all the necessary information to the County in order to receive points for SBE participation. Points will not be cumulative. Points shall be assigned based on the level of SBE participation as outlined below:

Table 1 - SBE Point System (Non-CCNA)

Scenario		Points
A	Proposer is a Palm Beach County certified SBE who will be providing 51% of the work with their own workforce.	10 points (or 10% if total evaluation points exceed 100)
B	Proposer has submitted proper documentation verifying that the County's Professional Services Goal of 15% has been met, utilizing Palm Beach County certified SBE subcontractors. One-half point will be awarded for each increment of five (5) percent by which said amount exceeds the established goal.	5-8 points (or 5%-8% if total evaluation points exceed 100)

NOTE: Final SBE points will be contingent upon a percentage of the total evaluation.

Instruction: If the RFP will be a defined dollar amount use the following paragraph; however, if it is subject to negotiation or interpretation, then SBE is to be evaluated solely on percentage not on dollar amount, and the paragraph below should be used with the words "dollar amount or" deleted.

Upon initiation of the RFP solicitation process, all potential and interested professional service firms or consultants shall be required to list all SBE and M/WBE sub-consultants' selected portion of work to be performed, and *dollar amount or* percentage for each on Schedule 1 and Schedule 2.

Points awarded for SBE participation shall not exceed ten percent (10%) of the total amount of possible points awarded.

Proposal Submission Documentation

SBE proposers proposing as prime consultants are advised that they must complete Schedule 1 and schedule 2, listing the work to be performed by their own workforce as well as the work to be performed by any SBE sub-consultant. Failure to include this information on Schedule 1 will result in the participation by the SBE prime proposers own workforce NOT being counted towards meeting the SBE goal. This requirement applies even if the SBE consultant intends to perform 100% of the work with their own workforce.

Proposers are required to submit with their proposal the appropriate SBE-M/WBE schedules in order to be deemed responsive to the SBE requirements. SBE-M/WBE documentation to be submitted is as follows:

Schedule 1 - List of Proposed SBE and M/WBE Participation

This list shall contain the names of all SBE prime and SBE sub- consultants intended to be used in performance of the contract, if awarded. This schedule shall also be used if an SBE prime proposer is utilizing ANY sub-consultants.

Schedule(s) 2 - Letter(s) of Intent to Perform as an SBE or M/WBE Subcontractor

A Schedule 2 shall be completed by the SBE Prime consultant. A schedule 2 shall be completed and signed by the proposed SBE sub-consultant listed on Schedule 1. SBE Primes and SBE sub-consultants shall specify the type of work to be performed, the cost and/or percentage. If the SBE intends to subcontract any portion of the job to another certified SBE or non-SBE, they are required to list the amount and the name of the sub-consultant on this form. The Prime may count toward its SBE goal second and third tiered SBE sub-consultants provided that the Prime submits a completed Schedule 2 form for each SBE sub-consultant. Additional sheets may be used as needed.

SBE Certification

Only those firms certified by Palm Beach County at the time of proposal submission shall be counted toward the established SBE goals. Upon receipt of a complete application, **IT TAKES UP TO NINETY (90) DAYS TO BECOME CERTIFIED AS AN SBE WITH PALM BEACH COUNTY.** It is the responsibility of the proposer to confirm the certification of any proposed SBE; therefore, it is recommended that proposers visit the on-line Vendor Directory at www.pbcgov.org/osba to verify SBE certification.

Counting SBE Participation (and M/WBE Participation for Tracking Purposes)

- a. Once a firm is determined to be an eligible SBE according to the Palm Beach County certification procedures, the Prime may count toward its SBE goals only that portion of the total dollar value of a contract performed by the SBE.
- b. The Prime may count toward its SBE goal a portion of the total dollar value of a contract with a joint venture, eligible under the standards for certification, equal to the percentage of the ownership and control of the SBE partner in the joint venture.

- c. The Prime may count toward its SBE goal the entire expenditures for materials and equipment purchased by an SBE sub-consultant, provided that the SBE sub-consultant has the responsibility for the installation of the purchased materials and equipment.
- d. Prime may count the entire expenditure to an SBE manufacturer (i.e., a supplier/distributor that produces goods from raw materials or substantially alters the goods before resale).
- e. The Prime may count sixty percent (60%) of its expenditure to SBE suppliers/distributors that are not manufacturers.
- f. The Prime may count toward its SBE goal second and third tiered SBE sub-consultants; provided that the Prime submits a completed Schedule 2 form for each SBE sub-consultant.
- g. The Prime may only count towards its SBE goal the goods and services in which the SBE is certified and performs with its own forces.

Responsibilities After Contract Award

Schedule 3(A) – Professional Services Activity Report

This form shall be submitted by the prime consultants with each payment application when SBE sub-consultants are utilized in the performance of the contract. This form shall contain the names of all SBE sub-consultants, specify the subcontracted dollar amount for each sub-consultant and show amount drawn and payments to date issued to sub-consultants. This form is intended to be utilized on all professional services contracts.

Schedule 4 – SBE-M/WBE Payment Certification

A schedule 4 for each SBE OR M/WBE sub-consultant shall be completed and signed by the proposed SBE after receipt of payment from the prime. If a SBE sub-consultant intends to disburse any funds associated with this payment to any sub-consultant for labor provided on this contract, the amount and name of the sub-consultant must be listed on this form. In addition, if the named sub-consultant is a certified SBE, then a schedule 4 shall be completed and signed by the named SBE after receipt of payment from the SBE sub-consultant. When applicable, the prime shall submit this form with each application submitted to the county for payment to document payment issued to a sub in the performance of the contract.

All proposers hereby assure that they will meet the SBE participation percentages submitted in their respective proposals with the sub-consultants contained on Schedules 1 and 2 and at the dollar values or percentages specified. Proposers agree to provide any additional information requested by the County to substantiate participation.

The successful proposer shall submit an SBE-M/WBE Activity Form (Schedule 3(A)) and SBE-M/WBE Payment Certification Forms (Schedule 4) with each payment application.

Failure to provide these forms may result in a delay in processing payment or disapproval of the invoice until they are submitted. The SBE-M/WBE Activity Form is to be filled out by the Prime Consultant and the SBE-M/WBE Payment Certification Forms are to be executed by the SBE firm to verify receipt of payment.

SBE Substitutions

After contract award, the successful proposer will only be permitted to replace a certified SBE sub-consultant who is unwilling or unable to perform. Such substitution must be done with other certified SBE's in order to maintain the SBE percentages submitted with the bid. Requests for substitutions must be submitted to the user Department and OSBA.

2.11 LOCAL PREFERENCE / LOCATION OF BUSINESS:

Pursuant to Section 2-80.47 of the Palm Beach County Code, Local Preference is not applicable to this solicitation; however, unless prohibited by federal, state or local law or where prohibited under the conditions of any grant, the location of a business shall be addressed through the evaluation criteria set forth in this solicitation.

2.12 PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL AUDIT REQUIREMENTS:

Pursuant to Palm Beach County Code, Section 2-421 - 2-440, as amended, Palm Beach County's Office of Inspector General is authorized to review past, present and proposed County contracts, transactions, accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Fla. Stat., in the same manner as a second degree misdemeanor.

2.13 RULES; REGULATIONS; LICENSING REQUIREMENTS:

The proposer shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. Proposers are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered, to include Executive Order No. 11246 entitled "Equal Employment Opportunity" as amended by Executive Order No. 11375, and as supplemented by the Department of Labor Regulations (41 CFR, Part 60).

2.14 CRIMINAL HISTORY RECORDS CHECK:

Pursuant to Palm Beach County Code Section 2-371 – 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), the County will conduct fingerprint based criminal history record checks on all persons not employed by the County who repair, deliver, or provide goods or services for, to, or on behalf of the County.

A fingerprint based criminal history record check shall be conducted on all employees of contractors and subcontractors of contractors, including repair persons and delivery persons, who are unescorted when entering a facility determined to be either a critical facility ("Critical Facilities") or a criminal justice information facility ("CJI Facilities"), which are critical to the public safety and security of the County. County facilities that require this heightened level of security are identified in Resolution R-2003-1274, as amended. In October 2013, compliance with the requirements of the U.S. Federal Bureau of Investigation's CJI Security Policy was added to the Ordinance, which includes a broad list of disqualifying offenses. The proposer is solely responsible for understanding the financial, schedule, implications, and/or staffing implications of this Ordinance. Further, the proposer acknowledges that it shall be solely responsible for any and all direct or indirect costs associated with compliance of this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the County.

2.15 REVIEW OF PROPOSALS:

Each proposal will be reviewed to determine if the proposal is responsive to the RFP. Proposals deemed to be non-responsive will be rejected without being evaluated by the Selection Committee. A responsive proposal is one which has been signed, has been submitted by the specified submission time, and has provided the information required to be submitted with the proposal (as stated in Section 3). While poor formatting, poor documentation, and/or incomplete or unclear information may not be cause to reject a proposal without evaluation, such substandard submissions may adversely impact the evaluation of your proposal, especially information relating to establishing financial/business stability. Proposers who fail to comply with all of the required and/or desired elements of this RFP, do so at their own risk.

2.16 EXCEPTIONS TO THE RFP:

All exceptions taken must be specific, and the proposer must indicate clearly what alternative is being offered to allow the County a meaningful opportunity to evaluate the proposal. Proposers are cautioned that submitting an alternative proposal does not relieve the proposer from submitting the requirements as stated in Section 3. The County is under NO obligation to accept any proposed exceptions or alternatives.

2.17 SELECTION PROCESS:

All proposals timely received will be reviewed first by the County Attorney's Office to determine if each proposer has submitted the required information and met all Proposal Requirements (as stated in Section 3). Those proposals fulfilling the Proposal Requirements shall be referred to the Selection Committee for review and further consideration.

The Selection Committee will evaluate all responses to this RFP that meet the Proposal Requirements and are deemed responsive. The Selection Committee intends to evaluate all proposals based on the information submitted with the proposal. Accordingly, proposers are urged to ensure that their proposal contains all the necessary information for the Selection Committee to fairly and accurately evaluate each of the criteria listed below in Section 2.18. However, an oral presentation, additional written information,

internal staff analysis, proposer presentations, outside consultants, and/or any other information may be required, at any time during the selection process, to help the Committee determine the final ranking of proposers. The Selection Committee may determine, as the result of additional information, that the impact of this information is significant and may be considered in the scoring and/or ranking, at the discretion of the Committee.

The Selection Committee shall meet in a public session to score each proposal by reviewing each proposal against the evaluation criteria listed below in Section 2.19. Upon completion of the Selection Committee's review and discussion of all the responsive proposals submitted, each Selection Committee member shall score each proposal and total the scores for each proposal. The proposals shall be assigned a ranking based upon the totals of each Selection Committee member's score for each proposal.

After the Selection Committee has developed an overall ranking for each proposer, the committee will then review, discuss, and declare the top ranked proposers (up to three proposers), and make its recommendation of the top ranked proposers (Recommended Proposers) for the BCC's consideration and selection.

The Selection Committee's recommendation of the top ranked proposers will be emailed to all proposers and will be posted at the County Attorney's Office website at <http://discover.pbcgov.org/countyattorney/Pages/default.aspx> until the deadline for receipt of protests set forth in Section 1.6.

The Recommended Proposers must be available for possible questioning by the BCC and shall present a five (5) minute presentation highlighting their qualifications to the BCC at the BCC meeting for consideration and selection.

2.18 RIGHT TO PROTEST

Any proposer may protest any recommendations of proposers, made by the Selection Committee, to the BCC, by submitting a written protest addressed to the Contact person listed in Section 1.8, by the deadline for receipt of protests set forth in Section 1.6. The protest shall identify the protestor, reference this RFP CA2018-01, and shall include a factual summary of the basis of the protest. Protests must be submitted in writing, addressed to the Contact person listed in Section 1.8, via email with the subject heading of the email titled as "RFP CA2018-01 PROTEST." The County Attorney or designee will have the authority and the sole discretion to uphold or deny the protest. The County Attorney or designee will issue a written statement of the determination within a reasonable period of time. The written statement shall provide the general rationale for said determination and shall be provided to the protestor.

2.19 EVALUATION CRITERIA:

- | | |
|--|------------------------------------|
| 1. Experience/Qualifications/Technical Knowledge and Capabilities/References
(See Section 3.1) | Weight <u>35 % (35 pts)</u> |
| 2. Resources/Key Personnel and | Weight <u>20 % (20 pts)</u> |

Operations
(See Section 3.2)

- 3. **Location and Accessibility and Availability to County** (See Section 3.3) **Weight 15% (15 pts)**
- 4. **Small Business Enterprise** (See Section 2.10) **Weight 10% (10 pts)**
- 5. **Fee Proposal** (See Section 3.4) **Weight 20% (20 pts)**

2.20 STANDARD CONTRACT PROVISIONS (ATTACHMENT 1):

The Recommended Proposers will be required to execute a contract similar to the attached Sample Standard Contract attached as Attachment 1. See also Section 2.16.

By submitting a proposal, the proposer is representing that the proposer has read, understood, and is willing to be bound by all the terms of the attached Sample Standard Contract provisions (general and specific). The County does, however, retain the right to modify the Sample Standard Contract during the selection process and to remove from consideration any proposer that is unwilling to agree to the suggested modifications. The Recommended Proposers will sign the Sample Standard Contract, as attached and/or as subsequently modified, prior to being presented to the BCC for consideration and selection. The Recommended Proposers shall provide documentation that demonstrates that the individual(s) executing the Contract has the authority to do so and to legally bind the Recommended Proposer. The Recommended Proposers will be presented to the BCC for consideration and selection and for possible approval of the signed Sample Standard Contract by the BCC. The BCC reserves the right to postpone or cancel approval of the Sample Standard Contract, signed by the Recommended Proposer, for any reason at their discretion. Should any Recommended Proposer be unable to agree to the terms of the Sample Standard Contract, the County may proceed to the next most advantageous proposal as determined by the Selection Committee or issue a new solicitation or cancel the procurement process in its entirety.

2.21 AWARD OF CONTRACT:

The award, if any, will be made to the responsive, responsible proposer whose proposal is considered to be the most advantageous to the County based on the BCC's consideration and selection of one proposer on the shortlist of up to three proposers recommended by the Selection Committee.

2.22 DISCLOSURE OF OWNERHIP INTERESTS:

Pursuant to a directive by the BCC, the Disclosure of Ownership Interest affidavit (DOIA, Appendix D) must be completed on behalf of any individual or business entity that seeks to do business with the County when applicable. Disclosure does not apply to nonprofit corporations, government agencies, or to an individual's or entity's interest in any entity

registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

Upon request from the County Attorney's Office, after posting the Recommended Proposers, each Recommended Proposer shall submit a completed DOIA (Appendix D) within a reasonable time. If a Recommended Proposer fails to submit a completed DOIA in a timely manner, the County, at its sole discretion, may elect to cancel the recommendation to the BCC for consideration and selection to that Recommended Proposer.

2.23 COMMENCEMENT OF WORK:

This RFP does not, by itself, obligate the County. The County's obligation will commence on the start date set forth in the contract duly approved by both parties. The County will not be responsible for any work done by the proposer, even work done in good faith, if it occurs prior to the contract start date set by the County.

2.24 INSURANCE AND INDEMNIFICATION REQUIREMENTS:

Prior to the effective date of the contract, it shall be the responsibility of the successful proposer to provide evidence of the minimum amounts of insurance coverage specified in Attachment 1, Article 10.

The successful proposer shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this contract, insurance coverages and limits (including endorsements) as described herein (see Attachment 1, Article 10). Failure to maintain the required insurance shall be considered default of the contract. The requirements contained herein, as well as the County's review or acceptance of insurance maintained by the successful proposer, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the successful proposer under the contract.

In addition, the successful proposer shall indemnify, hold harmless, and defend the County, its agents, servants, elected officials, and employees from and against any and all claims, liability, losses, expenses, penalties, interests, costs, damages, and/or causes of action of every kind or character, including attorney's fees and costs, whether during pendency of litigation, at trial or appellate levels or otherwise, which may be brought or assessed against the County or otherwise arise relating to performance under the Contract with the County or from any intentional or negligent act or omission by the proposer, including any agent, member, partner, associate, employee, or subcontractor. The successful proposer's obligations shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance. The provisions of this Section shall be in addition to any and all other legal remedies available to the COUNTY and shall not be considered to be the COUNTY'S exclusive remedy.

2.25 SUCCESSFUL PROPOSER NON-DISCRIMINATION POLICY:

Pursuant to Palm Beach County Resolution R-2017-1770, as may be amended, the successful proposer warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression or genetic information.

2.26 DRUG FREE WORKPLACE CERTIFICATION:

Proposers should submit, with their proposal, an executed Drug Free Workplace Certification (Appendix C) indicating that the proposer has implemented a Drug Free Workplace Program which meets the requirements of Section 287.087, Florida Statutes.

2.27 AUTHORIZED SIGNATURE:

The authorized representative signature required on all offers and the contract must be made by an officer of the company (if applicable).

2.28 HIPAA REQUIREMENT:

As a business associate of the County, the selected proposer shall be required to enter into a Business Associate Agreement with COUNTY (see Attachment 1, Exhibit B), and shall comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996, as it has been and may be amended from time to time, and the regulations promulgated thereunder (collectively "HIPAA").

SECTION 3 PROPOSAL REQUIREMENTS

PROPOSAL FORMAT AND CONTENT:

Format

Proposers **shall** submit one (1) unbound original hardcopy, three (3) bound hardcopies, and one (1) CD containing the complete proposal. Proposals should be typed, double spaced and submitted on 8 ½" x 11" size paper, using a single method of fastening (e.g., stapled, binder, etc.). Proposals should include only brief and concise narrative. The enclosure of elaborate or unnecessary verbiage or promotional material is discouraged.

Table of Contents

Proposals should contain a Table of Contents. The Table of Contents outlines, in sequential order, all of the areas of the proposal and it allows for clarity and ease of review of the proposal.

Letter of Transmittal

Proposals should contain a Letter of Transmittal addressed to Contact person listed in Section 1.8, and should, at a minimum, contain the following:

- a. Identification of Proposer, including name, address and telephone number.
- b. Proposed working relationship between proposer and subcontractors, if applicable.
- c. Name, title, address, telephone number, fax number and e-mail address of contact person during period of proposal evaluation.
- d. Signed by a person authorized to bind proposer to the terms of the proposal.

Technical Proposal

Proposals shall contain all of the information and documents listed below, each fully completed, signed, and notarized as required. Failure of a proposer to provide the required information is considered sufficient cause to deem the proposal non-responsive.

The item(s) marked by an asterisk (*) should be a part of the proposal; however, if these items are omitted, the proposer must submit the item(s) upon request from the County within a time frame specified by the County (normally within two working days of request) or the proposal shall be deemed non-responsive. All other items must be submitted with the proposal or it shall be deemed non-responsive.

Notwithstanding these submittal requirements, the County reserves the right, at its sole discretion, to waive any minor irregularity relating to the proposal. Upon request, it shall be the responsibility of the proposer to address the determined minor irregularity within a time frame specified by the County (normally within two working days of request). Failure of a proposer to provide the required information within the specified time frame is considered sufficient cause to deem the proposal non-responsive.

Each of the following requirements should be addressed in separate sections of the proposal.

3.1 EXPERIENCE/QUALIFICATION/TECHNICAL KNOWLEDGE AND CAPABILITIES/ REFERENCES

- 3.1.1 Proposals will be considered from law firms or attorneys. Proposers must demonstrate ability, knowledge, and expertise to provide the services identified in the Scope of Work.
- 3.1.2 Proposer shall submit a detailed statement of their experience, qualifications, and background for providing the services identified in the Scope of Work, specifically identifying any experience in complex litigation related to opioids, class actions, product liability, mass torts, etc.
- 3.1.3 Proposer shall submit a list of all clients for whom proposer has provided, within the last five (5) years, services similar to the Scope of Work; the lead attorney assigned to said matters; and a contact person (including phone number, address, and e-mail) for each client listed.
- 3.1.4 Proposer shall submit a list of any and all court cases it has filed within the last five (5) years related to opioids. For each case, proposer shall provide the case style, date the court case was filed, nature of the resolution (if any), the causes of action raised, the plaintiff(s), and the defendant(s).
- 3.1.5 Proposer shall provide a narrative detailing all potential causes of action, proposed parties to the litigation, recoverable damages if initiating an action on behalf of the County as identified in the Scope of Work, and any potential exposure of risk to the County such as counterclaims, any risk of prevailing party costs and fees (such as allowed by § 501.2105, Fla. Stat. or any other basis), etc.
- 3.1.6 Proposer shall describe the general capabilities including total size and staffing, research capabilities, ability to procure expert witnesses, and available financial resources to provide the services identified in the Scope of Work.
- 3.1.7 Proposer may submit other information and experience that demonstrates the proposer's expertise relative to the Scope of Work.

3.2 RESOURCES/KEY PERSONNEL AND OPERATIONS

The proposer shall provide:

- 3.2.1 The full legal name and organization structure of the firm.
- 3.2.2 The full name, state of the bar license and license number, and resume/profile of the attorney who will assume primary responsibility for the proposer's obligations under the Contract, and all other attorneys who will provide services under the Contract. All attorneys who provide services under the Contract must be a member in good standing of the state bar, and must personally demonstrate ability, knowledge and expertise relative to the Scope of Work. This section should detail the experience, education, expertise, qualifications, and knowledge of each attorney relative to the Scope of Work, including the length of time that each attorney has practiced law and specialized in the services and matters listed in the Scope of Work.
- 3.2.3 A description of the role of each attorney and other key personnel who will be responsible for providing the services under the Scope of Work or otherwise handling and monitoring the Contract.
- 3.2.4 Identify any attorney(s) of the proposer who has had any disciplinary action, malpractice claim, grievance, criminal action, or like proceeding filed against him or her where a determination in favor of a complainant or a finding of probable cause was entered. Please describe the nature of the complaint(s) and the ultimate resolution.
- 3.2.5 An affirmative statement to the effect that, to your knowledge, the retention of your firm would not result in a conflict of interest with any party in the potential litigation. Alternatively, should any potential conflict exist, specify the party with which there might be a conflict, the nature of the potential conflict, and the means proposed to resolve such conflict. List all governmental entities in Florida that you have a current contractual relationship with and briefly describe the nature of the relationship.
- 3.2.6 A description of the nature and magnitude of any litigation or proceeding whereby, during the past five years, a court or any administrative agency has ruled against your firm in any matter related to the professional activities of the firm. Similar information should be provided for current or pending litigation.

3.3 LOCATION AND ACCESSIBILITY AND AVAILABILITY TO COUNTY

Proposer shall specify the location(s), including the complete physical address, where the work for this project will be performed, including work performed by subcontractors, if applicable. Points for location shall be determined by each Selection Committee member based upon the requirements of the project.

Proposer shall thoroughly explain its accessibility and the areas of availability for meetings, general communications, coordination, and supervision. Proposer shall describe its local availability and degree of accessibility to the County. Describe the logistics of the proposer's accessibility to the County in terms of the geographic location of individuals with primary responsibility for the client relationship with the County, and the travel time and restrictions, if any, to be on site at the County.

3.4 FEE PROPOSAL

The proposer shall submit the attached Fee Proposal Page(s) (Appendix E) filled out and signed.

The County is anticipating a contingency fee proposal. Proposer shall submit detailed contingency fee structure information including the contingency fee percentage rate, itemized costs reimbursement, sliding scale contingency fee percentage rate, any direct and indirect fees and costs, payroll, supplies, overhead assigned to each person providing services under the Scope of Work, timeframe of when fees and costs are due to proposer, etc.

3.5 AMENDMENTS TO THE RFP

It is the proposer's responsibility to assure receipt of all amendments. The proposer shall verify with the designated contact person, prior to submitting a proposal, the number of amendments that have been received. Each amendment to the RFP shall be signed by an authorized person and shall be submitted with the proposal or the proposal shall be deemed non-responsive.

3.6 ADDITIONAL INFORMATION

Information considered by the proposer to be pertinent to this project and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Proposers are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices should be relevant and brief.

SECTION 4

SCOPE OF WORK/SERVICES

- 4.1** OUTSIDE COUNSEL shall represent the County in pursuing litigation seeking damages incurred by the County as a result of the opioid epidemic including any related appeals or counterclaims.
- 4.2** OUTSIDE COUNSEL shall investigate any potential claims and damages recoverable by the County as a result of the opioid epidemic including filing a lawsuit and litigating to conclusion.
- 4.3** OUTSIDE COUNSEL shall provide to the COUNTY or to the County Attorney's Office any information related to the services performed under the Scope of Work upon request including a summary report of all activities undertaken, if requested, by OUTSIDE COUNSEL.
- 4.4** The COUNTY and the County Attorney's Office shall be notified and consulted upon any potential for resolution for any lawsuit filed on the COUNTY'S behalf including any related appeals or counterclaims. Any potential settlement is subject to the COUNTY's approval.
- 4.5** OUTSIDE COUNSEL acknowledges and agrees that any legal action initiated, undertaken, or continued by OUTSIDE COUNSEL on COUNTY's behalf shall be done so based solely on the COUNTY's reliance on OUTSIDE COUNSEL's expertise, judgment, and recommendation. Accordingly, should attorney's fees, costs, interest, penalties, and/or damages of any kind be awarded or entered against the COUNTY in, or arising from, any legal action initiated, undertaken, or continued by OUTSIDE COUNSEL, including appeals and counterclaims, then OUTSIDE COUNSEL shall assume responsibility for such, and shall promptly indemnify, and remit payment to, COUNTY to fully cover the amounts of any and all such attorney's fees, costs, interest, penalties, and/or damages of any kind, and otherwise make the COUNTY whole. (See also Section 2.16)
- 4.6** OUTSIDE COUNSEL shall be familiar with, and shall comply with, all laws and regulations applicable to the services contemplated herein.
- 4.7** The COUNTY reserves the right to terminate the Contract upon notice as provided for in the Contract. Except in the event that the COUNTY terminates the Contract for good cause, OUTSIDE COUNSEL shall be entitled to reasonable legal fees for the actual legal services provided by OUTSIDE COUNSEL prior to termination of this Contract, but only if the COUNTY obtains any monetary recovery as a result of claims litigated by OUTSIDE COUNSEL prior to termination of the Contract.

**SECTION 5
ATTACHMENT**

ATTACHMENT 1 - SAMPLE STANDARD CONTRACT

**CONTRACT FOR PROFESSIONAL LEGAL SERVICES
BY AND BETWEEN
PALM BEACH COUNTY AND _____**

THIS CONTRACT is made and entered into on _____, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners (“COUNTY”) and _____, (“OUTSIDE COUNSEL”), whose Federal Tax Identification number is _____.

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

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

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

ARTICLE 1. LEGAL SERVICES

OUTSIDE COUNSEL shall perform outside legal counsel services (“Legal Services”), from initiation to conclusion, on behalf of the COUNTY, to pursue litigation to seek damages incurred by the COUNTY as a result of the opioid epidemic, in accordance with the terms of this Contract, including Exhibit A (Scope of Work/Services) and Exhibit D (OUTSIDE COUNSEL’S proposal), which are attached hereto and incorporated herein. As used herein, the Legal Services and the term “litigation” shall include any appeals and counterclaims.

Conflicting provision hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of the Contract, including Exhibits A, B and C; (2) the provisions of RFP NO. CA2018-01 and all Amendments thereto, which are incorporated into and made a part of this Contract; and (3) Exhibit D, OUTSIDE COUNSEL’S proposal dated _____.

ARTICLE 2. FEE PERCENTAGE

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

upon any favorable monetary recovery or monetary judgment for the COUNTY, OUTSIDE COUNSEL shall be entitled to a contingency fee rate of _____ of all monetary amounts recovered and shall be reimbursed all reasonable and necessary expenses associated with the legal services being rendered as set forth in ARTICLE 3 of this Contract.

ARTICLE 3. EXPENSES AND COSTS

(a) In any litigation in which OUTSIDE COUNSEL represents the COUNTY, from initiation to conclusion, as authorized by this Contract, upon any favorable monetary recovery or monetary judgment for the COUNTY, the COUNTY agrees to reimburse OUTSIDE COUNSEL 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 Contract 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 Contract shall be approved in writing by the County Attorney or designee, in advance, and paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.

(c) OUTSIDE COUNSEL shall maintain adequate records to justify all its charges, expenses and costs of performing the Legal Services for at least five (5) years after termination of this Contract. COUNTY shall have access to such books, records and documents as required for the purpose of inspection or audit during OUTSIDE COUNSEL'S normal business hours, at COUNTY'S expense, upon reasonable written notice.

(d) No reimbursement will be made for travel expenses incurred by OUTSIDE COUNSEL to, from, or within Palm Beach County without the prior written authorization of the County Attorney or designee.

ARTICLE 4. APPROVAL NECESSARY FOR SETTLEMENT

The COUNTY shall be notified and consulted upon any potential for resolution for any litigation. Any potential settlement is subject to the COUNTY's approval.

ARTICLE 5. DISCLOSURE AND OWNERSHIP OF DOCUMENTS

a) OUTSIDE COUNSEL shall maintain its files on this matter, including adequate records to justify all charges, expenses, and costs incurred in performing the LEGAL SERVICES, for at least five (5) years after termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this subparagraph for the purpose of inspection and/or audit during normal business hours, at the COUNTY's expense, upon reasonable written notice to OUTSIDE COUNSEL.

b) OUTSIDE COUNSEL shall provide status reports, either oral or in writing, at the request of the County Attorney's Office. At the request of the COUNTY, OUTSIDE COUNSEL shall deliver to the COUNTY all documents and materials prepared by and for the COUNTY in the course of providing the LEGAL SERVICES.

c) OUTSIDE COUNSEL has been advised that the COUNTY and all its activities are subject to the Public Records Law (Chapter 119, Florida Statutes) and the Sunshine Law (Section 286.011, Florida Statutes). OUTSIDE COUNSEL shall observe and comply with the requirements of these laws and all related COUNTY policies and procedures in performing the LEGAL SERVICES hereunder.

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

1. Keep and maintain public records required by the COUNTY to perform the service.
2. Upon request from the COUNTY's Custodian of Public Records, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. OUTSIDE COUNSEL further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.

3. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract's term and following completion of this Contract if OUTSIDE COUNSEL does not transfer the records to the COUNTY.
4. Upon completion of this Contract, OUTSIDE COUNSEL shall transfer, at no cost, to the COUNTY, all public records in possession of OUTSIDE COUNSEL unless notified by COUNTY's representative/liason, on behalf of the COUNTY's Custodian of Public Records, to keep and maintain public records required by the COUNTY to perform the service. If OUTSIDE COUNSEL transfers all public records to the COUNTY upon completion of this Contract, OUTSIDE COUNSEL shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If OUTSIDE COUNSEL keeps and maintains public records upon completion of this Contract, OUTSIDE COUNSEL shall meet all applicable requirements for retaining public records. All records stored electronically by OUTSIDE COUNSEL must be provided to the COUNTY, upon request of the COUNTY's Custodian of Public Records, in a format that is compatible with the information technology systems of the COUNTY, at no cost to the COUNTY.

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

IF OUTSIDE COUNSEL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO OUTSIDE COUNSEL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM

**BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG
OR BY TELEPHONE AT 561-355-6680.**

ARTICLE 6. CONFIDENTIALITY; DISCLOSURE AND OWNERSHIP OF DOCUMENTS

OUTSIDE COUNSEL shall provide periodic status reports, either oral or in writing, as requested by the County Attorney or designee.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain and not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense shall be kept confidential by OUTSIDE COUNSEL and shall not be disclosed to any other party, directly or indirectly, without the COUNTY's prior written consent unless required by an order issued by a court or like authority of lawful jurisdiction. All drawings, maps, and sketches, and other data developed or purchased under this Contract or at the COUNTY's expense, shall be and remain the COUNTY's property and may be reproduced and reused solely at the discretion of the COUNTY.

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

ARTICLE 7. BUSINESS ASSOCIATE AGREEMENT

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

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

with OUTSIDE COUNSEL, agreeing in writing to be bound by the same restrictions and conditions that apply to the OUTSIDE COUNSEL with respect to such protected health information.

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

ARTICLE 8. TERM; TERMINATION

a) This Contract shall be effective upon approval by both parties, and shall remain in place until the conclusion of any litigation relating to the opioid epidemic in which OUTSIDE COUNSEL represents the COUNTY; provided, however, that this Contract may be sooner terminated as provided for herein.

b) This Contract may be terminated by the COUNTY, with or without cause, upon ten (10) days' written notice to OUTSIDE COUNSEL. The Contract may be terminated by OUTSIDE COUNSEL upon ninety (60) days' written notice to the COUNTY so long as such termination is consistent with attorney's professional obligations. Upon termination by either party, OUTSIDE COUNSEL shall transfer to the COUNTY all work in progress, completed work, and other materials related to the legal services rendered under this Contract.

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

ARTICLE 9. OFFICE OF INSPECTOR GENERAL

Palm Beach County has established the Office of the Inspector General as contained in the Palm Beach County Code, Sections 2-421 – 2-440, as may be amended. The Inspector General's authority includes, but is not limited to, the power to review past, present and proposed County contracts, transactions, account and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the

OUTSIDE COUNSEL, its officers, agents, employees, and lobbyists in order to ensure compliance with Contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-241 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 10. INSURANCE

- A. OUTSIDE COUNSEL shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages and limits (including endorsements), as described herein. OUTSIDE COUNSEL shall agree to provide the COUNTY with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by OUTSIDE COUNSEL are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by OUTSIDE COUNSEL under the contract.
- B. **Commercial General Liability.** OUTSIDE COUNSEL shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. OUTSIDE COUNSEL shall provide this coverage on a primary basis.
- C. **Business Automobile Liability.** OUTSIDE COUNSEL shall maintain Business Automobile Liability at a limit of liability not less than **\$500,000** Each Accident for all owned, non-owned and hired automobiles. In the event OUTSIDE COUNSEL doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing OUTSIDE COUNSEL to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. OUTSIDE COUNSEL shall provide this coverage on a primary basis.
- D. **Worker's Compensation Insurance & Employers Liability.** OUTSIDE COUNSEL shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. OUTSIDE COUNSEL shall provide

this coverage on a primary basis.

- E. **Professional Liability.** OUTSIDE COUNSEL shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than **\$1,000,000** Each Claim. When a self-insured retention (SIR) or deductible exceeds **\$10,000**, COUNTY reserves the right, but not the obligation, to review and request a copy of OUTSIDE COUNSEL'S most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, OUTSIDE COUNSEL shall maintain a Retroactive Date prior to or equal to the effective date of this Contract. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims - made" form. If coverage is provided on a "claims - made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, OUTSIDE COUNSEL shall purchase a SERP with a minimum reporting period not less than 3 years. OUTSIDE COUNSEL shall provide this coverage on a primary basis.
- F. **Additional Insured.** OUTSIDE COUNSEL agrees to endorse COUNTY as an Additional Insured with a CG 2026 Additional Insured – Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." OUTSIDE COUNSEL shall provide the Additional Insured endorsement coverage on a primary basis.
- G. **Waiver of Subrogation.** OUTSIDE COUNSEL hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement to the policy, then OUTSIDE COUNSEL shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which specifically prohibits such an endorsement or voids

coverage should OUTSIDE COUNSEL enter into such an agreement on a pre-loss basis.

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

Palm Beach County
300 North Dixie Hwy, Ste 381
West Palm Beach, FL 33401
Attn: Kim Phan, Asst. County Attorney

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

ARTICLE 11. INDEMNIFICATION

OUTSIDE COUNSEL acknowledges and agrees that any legal action initiated, undertaken, or continued by OUTSIDE COUNSEL on COUNTY's behalf shall be done so based solely on the COUNTY's reliance on OUTSIDE COUNSEL's expertise, judgment,

and recommendation. Accordingly, should attorney's fees, costs, interest, penalties, and/or damages of any kind be awarded or entered against the COUNTY in, or arising from, any legal action initiated, undertaken, or continued by OUTSIDE COUNSEL, including appeals and counterclaims, then OUTSIDE COUNSEL shall assume responsibility for such, and shall promptly indemnify, and remit payment to, COUNTY to fully cover the amounts of any and all such attorney's fees, costs, interest, penalties, and/or damages of any kind, and otherwise make the COUNTY whole.

OUTSIDE COUNSEL shall indemnify, hold harmless, and defend the COUNTY, its agents, servants, elected officials, and employees from and against any and all claims, liability, losses, expenses, costs, damages, and/or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, which may arise by virtue of any intentional or negligent act or omission of OUTSIDE COUNSEL, including any agent, member, partner, associate, employee, or subcontractor thereof, in the performance of the LEGAL SERVICES.

ARTICLE 12. PERSONNEL

OUTSIDE COUNSEL represents that it has, or will secure at its own expense, all necessary personnel required to perform the LEGAL SERVICES as required herein. Such personnel shall not be employees of, or have any contractual relationship with, the COUNTY. The LEGAL SERVICES shall be performed by _____, or under his/her direct supervision. OUTSIDE COUNSEL may not substitute lead counsel without prior written authorization from the COUNTY. Such authorization shall be at the sole discretion of the COUNTY and is hereby delegated by the COUNTY to the County Attorney. All personnel engaged in performing the LEGAL SERVICES shall be fully qualified and, if required, authorized or permitted under federal, state, and local law to perform such services. Specifically, all lawyers performing the LEGAL SERVICES must be members in good standing of an applicable state bar to perform any of the LEGAL SERVICES hereunder. OUTSIDE COUNSEL warrants that the LEGAL SERVICES shall be performed by skilled and competent personnel to the highest professional standards.

ARTICLE 13. TRUTH-IN-NEGOTIATION CERTIFICATE

OUTSIDE COUNSEL's signature on this Contract shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete, and current as of the date of this Contract.

ARTICLE 14. CONFLICT OF INTEREST

a) OUTSIDE COUNSEL represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any matter with the performance of the LEGAL SERVICES, as provided in the rules regulating the Florida Bar, Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. OUTSIDE COUNSEL further represents that no person having such conflict of interest shall be employed for said performance of services. OUTSIDE COUNSEL further agrees to comply with COUNTY PPM #CW-O-052 regarding outside counsel conflicts of interest, which is attached hereto as Exhibit C and incorporated herein.

b) OUTSIDE COUNSEL shall promptly notify the COUNTY in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest, or other circumstance which may influence or appear to influence OUTSIDE COUNSEL's judgment or quality of the LEGAL SERVICES being provided. Such written notification shall identify the prospective business association, interest, or circumstance, the nature of work that OUTSIDE COUNSEL may undertake and request an opinion of the COUNTY as to whether the association, interest, or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the OUTSIDE COUNSEL. The COUNTY agrees to notify OUTSIDE COUNSEL of its opinion by certified mail within thirty (30) days of receipt of notification by OUTSIDE COUNSEL. If, in the opinion of the COUNTY, the prospective business association, interest, or circumstance would not constitute a conflict of interest by OUTSIDE COUNSEL, the COUNTY shall so state in the notification and OUTSIDE COUNSEL shall at its option, enter into said association, interest, or circumstance and it shall be deemed not in conflict of interest with respect to the LEGAL SERVICES.

ARTICLE 15. INDEPENDENT CONTRACTOR RELATIONSHIP

a) OUTSIDE COUNSEL and all its employees, agents, and servants are, and shall be, in the performance of the LEGAL SERVICES under this Contract, independent contractors and not an employee of the COUNTY. All persons engaged in the LEGAL SERVICES performed by OUTSIDE COUNSEL pursuant to this Contract shall at all times, and in all places, be subject to OUTSIDE COUNSEL's sole discretion, supervision, and control. OUTSIDE COUNSEL shall exercise direct control over the means and manner in which it and its employees, agents, and servants perform the LEGAL SERVICES. OUTSIDE COUNSEL does not have the power or authority to, and agrees

that it will not attempt to, bind the COUNTY in any promise, contract, or representation other than as specifically provided for in this Contract.

b) OUTSIDE COUNSEL warrants and represents that it has not employed or retained any company or person, other than a bona fide employee working solely for OUTSIDE COUNSEL, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for OUTSIDE COUNSEL, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

ARTICLE 16. NONDISCRIMINATION

OUTSIDE COUNSEL warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

ARTICLE 17. AUTHORITY TO PRACTICE

OUTSIDE COUNSEL hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a professional manner and that all services shall be performed by skilled and competent personnel to the highest professional standards.

ARTICLE 18. REMEDIES

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Contract shall be originally filed and later held in Palm Beach County. To encourage the prompt and equitable resolution of any litigation that may arise hereunder, the parties hereby waive any rights that either may have to a trial by jury. No remedy herein conferred upon the parties is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. The parties agree that time is of the essence in the performance of all obligations hereunder. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof.

No provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this

Contract, including but not limited to any citizen or employee of the COUNTY and/or OUTSIDE COUNSEL.

ARTICLE 19. NOTICE

All notices required in this Contract shall be sent by fax or mail to:

Palm Beach County
300 North Dixie Hwy, Ste. 381
West Palm Beach, Florida 33401
Attn: Kim Phan, Asst. County Attorney
(representative of the COUNTY)

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

.....

ARTICLE 20. CRIMINAL HISTORY RECORDS CHECK

OUTSIDE COUNSEL, OUTSIDE COUNSEL's employees, subcontractors of OUTSIDE COUNSEL and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 – 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Ordinance"), for unescorted access to critical facilities ("Critical Facilities") or criminal justice information facilities ("CJI Facilities") as identified in Resolution R-2013-1470, as may be amended. OUTSIDE COUNSEL is solely responsible for understanding the financial, schedule, and/or staffing implications of this Ordinance. Further, OUTSIDE COUNSEL acknowledges that it shall be solely responsible for any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the COUNTY.

This Contract may include sites and/or buildings which have been designated as either "critical facilities" or "criminal justice information facilities" pursuant to the Ordinance and Resolution R-2013-1470, as may be amended. COUNTY staff representing the COUNTY department will contact OUTSIDE COUNSEL and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. OUTSIDE COUNSEL shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the Contract and return them to the COUNTY. If OUTSIDE COUNSEL or its subcontractor(s)

terminates an employee who has been issued a badge, OUTSIDE COUNSEL must notify the COUNTY within two (2) hours. At the time of termination, OUTSIDE COUNSEL shall retrieve the badge and shall return it to the COUNTY in a timely manner.

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

ARTICLE 21 - SMALL BUSINESS ENTERPRISES SUBCONTRACTING

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

- A. If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the OUTSIDE COUNSEL shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.
- B. The Palm Beach County Board of County Commissioners has established a minimum goal for SBE participation of 15% on all County solicitations.
- C. The OUTSIDE COUNSEL agrees to abide by all provisions of the Palm Beach County Code establishing the SBE Program, as amended, and understands that failure to comply with any of the requirements will be considered a breach of contract.
- D. The OUTSIDE COUNSEL incorporates Schedule 1 List of proposed SBE-M/WBE Prime/Subcontractors) and Schedule 2 (Letter of Intent) attached hereto and made a part hereof, the names, addresses, scope of work, percentage and/or dollar value of the SBE-M/WBE participation on Schedule 1 and the Letter of Intent,

Schedule 2, signed by each of the listed SBE-M/WBE sub-consultants on Schedule 1 agreeing to perform the contract at the listed percentage and/or dollar value.

- E. The OUTSIDE COUNSEL understands that each SBE firm utilized on this Contract must be certified by Palm Beach County in order to be counted toward the SBE participation goal.
- F. The OUTSIDE COUNSEL understands that it is the responsibility of the department letting the contract and the Office of Small Business Assistance (OSBA) to monitor compliance with the SBE Ordinance requirements. In that regard, the CONTRACTOR agrees to furnish progress payment reports to both parties on the progress of the SBE-M/WBE participation on each pay application submitted.
- G. The OUTSIDE COUNSEL further agrees to provide OSBA with a copy of their contract with the SBE sub-consultant or any other related documentation upon request.
- H. After contract award, the successful OUTSIDE COUNSEL will only be permitted to replace a certified SBE subcontractor who is unwilling or unable to perform. Such substitution must be done with other certified SBEs in order to maintain the proposed SBE percentages submitted with the proposal. Requests for substitutions must be submitted to the department issuing the Request for Proposal and the OSBA.
- I. The OUTSIDE COUNSEL understands that it is prohibited from making any agreements with an SBE in which the SBE promises not to provide sub consultant quotations to other proposers or potential proposers.
- J. The OUTSIDE COUNSEL agrees to maintain all relevant records and information necessary to document compliance with the Palm Beach County Code and will allow the County to inspect such records.

ARTICLE 22 - FEDERAL AND STATE TAX

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

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

ARTICLE 23 - AVAILABILITY OF FUNDS

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

ARTICLE 24 - SUCCESSORS AND ASSIGNS

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

ARTICLE 25 – ARREARS

OUTSIDE COUNSEL shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. OUTSIDE COUNSEL further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 26 - PUBLIC ENTITY CRIMES

As provided in F.S. 287.132-133, by entering into this Contract or performing any work in furtherance hereof, OUTSIDE COUNSEL certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management

Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

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

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

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

ARTICLE 28 – REGULATIONS; LICENSING REQUIREMENTS

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

ARTICLE 29. SEVERABILITY

If any term or provision of this contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 30. ENTIRETY OF CONTRACT

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

IN WITNESS WHEREOF, the parties have duly executed this Contract on the day and year reflected in the first above written.

ATTEST:

SHARON R. BOCK
CLERK AND COMPTROLLER

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Melissa McKinlay, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
County Attorney

WITNESS

By: _____

Signature

Name

EXHIBIT A
SCOPE OF WORK/SERVICES
(from RFP No. CA2018-01, Section 4)

- 4.1** OUTSIDE COUNSEL shall represent the County in pursuing litigation seeking damages incurred by the County as a result of the opioid epidemic including any related appeals or counterclaims.
- 4.2** OUTSIDE COUNSEL shall investigate any potential claims and damages recoverable by the County as a result of the opioid epidemic including filing a lawsuit and litigating to conclusion.
- 4.3** OUTSIDE COUNSEL shall provide to the COUNTY or to the County Attorney's Office any information related to the services performed under the Scope of Work upon request including a summary report of all activities undertaken, if requested, by OUTSIDE COUNSEL.
- 4.4** The COUNTY and the County Attorney's Office shall be notified and consulted upon any potential for resolution for any lawsuit filed on the COUNTY'S behalf including any related appeals or counterclaims. Any potential settlement is subject to the COUNTY's approval.
- 4.5** OUTSIDE COUNSEL acknowledges and agrees that any legal action initiated, undertaken, or continued by OUTSIDE COUNSEL on COUNTY's behalf shall be done so based solely on the COUNTY's reliance on OUTSIDE COUNSEL's expertise, judgment, and recommendation. Accordingly, should attorney's fees, costs, interest, penalties, and/or damages of any kind be awarded or entered against the COUNTY in, or arising from, any legal action initiated, undertaken, or continued by OUTSIDE COUNSEL, including appeals and counterclaims, then OUTSIDE COUNSEL shall assume responsibility for such, and shall promptly indemnify, and remit payment to, COUNTY to fully cover the amounts of any and all such attorney's fees, costs, interest, penalties, and/or damages of any kind, and otherwise make the COUNTY whole. (See also Section 2.16)
- 4.6** OUTSIDE COUNSEL shall be familiar with, and shall comply with, all laws and regulations applicable to the services contemplated herein.
- 4.7** The COUNTY reserves the right to terminate the Contract upon notice as provided for in the Contract. Except in the event that the COUNTY terminates the Contract for good cause, OUTSIDE COUNSEL shall be entitled to reasonable legal fees for the actual legal services provided by OUTSIDE COUNSEL prior to termination of this Contract, but only if the COUNTY obtains any monetary recovery as a result of claims litigated by OUTSIDE COUNSEL prior to termination of the Contract.

EXHIBIT B

**Business Associate Agreement
Between Palm Beach County and _____**

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

A. General Provisions

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

B. Obligations of Business Associate

Business Associate agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;
2. Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information (“e-PHI”) and implement appropriate physical, technical and administrative safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;
3. Report in writing to the County any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breach of unsecured PHI (as defined in the HIPAA Breach Notification Rule) within three (3) business days of Business Associate’s discovery of the security incident or breach. Business Associate will comply with all applicable provisions of the HIPAA Breach Notification Regulations found at 45 CFR §164.400 *et seq.* when making breach notification to the County. The County shall have sole control over the timing and method of breach notification to affected individual(s), the Department of Health and Human Services, and, if applicable, the media. Business Associate agrees that, if requested by the County to do so, it will provide breach notification to affected individuals of any breach of unsecured PHI discovered by Business Associate. If requested by the County to make

breach notification to affected individuals, Business Associate shall comply with all applicable provisions of the HIPAA Breach Notification Regulations found at 45 CFR §164.400 *et seq.*, and any direction from the County;

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

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

C. Permitted Uses and Disclosures by Business Associate

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

D. Termination

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

Agreed to this _____ day of _____, 20_____.

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

WITNESS:

Signature

By: _____
Nancy Bolton, County HIPAA Privacy
Officer/Assistant County Administrator,
Through Verdenia Baker, County Administrator

APPROVED AS TO FORM AND

APPROVED AS TO TERMS

LEGAL SUFFICIENCY

AND CONDITIONS

By: _____
County Attorney

By: _____

WITNESS:

BUSINESS ASSOCIATE

Signature

Name

By: _____

EXHIBIT C

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

ISSUE DATE
January 4, 2017

EFFECTIVE DATE
January 4, 2017

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

UPDATES:

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

AUTHORITY:

Rule 4-1.7, Rules Regulating the Florida Bar.

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

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

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

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

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

Any lawyer¹ undertaking representation of Palm Beach County shall not represent any other client with regard to any litigation or other adversary proceeding in which Palm Beach County, a County Commissioner or a county employee (acting in their capacity as a county employee) is named as an adverse party.

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

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

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

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

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

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

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


VERDENIA C. BAKER
COUNTY ADMINISTRATOR

Supersession History:

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

SECTION 6 APPENDICES

- APPENDIX A - Business Information
- APPENDIX B - SBE Schedules 1, 2, 3(A) & 4
- APPENDIX C - Drug Free Workplace Certification
- APPENDIX D - Disclosure of Ownership Interests
- APPENDIX E - Fee Proposal Pages

**APPENDIX A
BUSINESS INFORMATION
RFP NO. CA2018-01**

Full Legal Name of Entity: _____
(Exactly as it is to appear on the Contract/Agreement)

Entity Address: _____

Telephone Number: (____) _____ Fax Number: (____) _____

Form of Entity:

- Corporation
- Limited Liability Company
- Partnership, General
- Partnership, Limited
- Joint Venture
- Sole Proprietorship

Federal I.D. Number: _____

(1) If Proposer is a subsidiary, state name of parent company.

Caution: All information provided herein must be as to Proposer (subsidiary) and not as to parent company.

(2) Is Entity registered to do business in the State of Florida? Yes No

If **yes** to the above, as of what date? _____

If not presently registered with the Division of Corporations to do business in the State of Florida as either a Florida or foreign corporation, Proposer acknowledges, by signing below, that if it is the Awardee it will register with the State of Florida prior to the effective date of the Contract with Palm Beach County.

SIGNATURE: _____

NAME (PRINT): _____

TITLE: _____

COMPANY: _____

APPENDIX B
SBE SCHEDULES 1, 2, 3(A), & 4
RFP NO. CA2018-01

SCHEDULE 1

LIST OF PROPOSED SBE-M/WBE PRIME AND/OR SUBCONTRACTOR PARTICIPATION

PROJECT NAME OR BID NAME: _____

PROJECT NO. OR BID NO.: _____

NAME OF PRIME BIDDER: _____

ADDRESS: _____

CONTACT PERSON: _____

PHONE NO.: _____ FAX NO.: _____

BID OPENING DATE: _____

USER DEPARTMENT: _____

THIS DOCUMENT IS TO BE COMPLETED BY THE PRIME CONTRACTOR AND SUBMITTED WITH BID PACKET. PLEASE LIST THE NAME, CONTACT INFORMATION AND DOLLAR AMOUNT OR PERCENTAGE OF WORK TO BE COMPLETED BY ALL SBE -M/WBE SUBCONTRACTORS ON THIS PROJECT. IF THE PRIME IS AN SBE-M/WBE, PLEASE ALSO LIST THE NAME, CONTACT INFORMATION AND DOLLAR AMOUNT OR PERCENTAGE OF WORK TO BE COMPLETED BY THE PRIME ON THIS PROJECT. THE PRIME AFFIRMS THAT IT WILL MONITOR THE SBES LISTED TO ENSURE THE SBES PERFORM THE WORK WITH ITS OWN FORCES.

Name, Address and Phone Number	(Check one or both Categories)		<u>DOLLAR AMOUNT OR PERCENTAGE OF WORK</u>				
	<u>M/WBE</u> Minority Business	<u>SBE</u> Small Business	Black	Hispanic	Women	Caucasian	Other (Please Specify)
1.	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	_____	_____	_____
2.	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	_____	_____	_____
3.	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	_____	_____	_____
4.	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	_____	_____	_____
5.	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____	_____	_____	_____

(Please use additional sheets if necessary)

Total _____

Total Bid Price \$ _____

Total SBE-M/WBE Participation Dollar Amount or Percentage of Work _____

I hereby certify that the above information accurate to the best of my knowledge: _____

Signature

Title

Note:

1. The amount listed on this form for a subcontractor must be supported by price or percentage listed on the signed Schedule 2 or signed proposal in order to be counted toward goal attainment.
2. Firms may be certified by Palm Beach County as an SBE and/or and M/WBE. If firms are certified as both an SBE and M/WBE, please indicate the dollar amount or percentage under the appropriate category.
3. M/WBE information is being collected for tracking purposes only.

Revised 9/7/2011

**OSBA SCHEDULE 2
LETTER OF INTENT TO PERFORM AS AN SBE-M/WBE SUBCONTRACTOR**

This document must be completed by the SBE-M/WBE Subcontractor and submitted with bid packet. Specify in detail, the particular work items to be performed and the dollar amount and/or percentage for each work item. SBE credit will only be given for items which the SBE-M/WBE Subcontractor are SBE certified to perform. Failure to properly complete Schedule 2 may result in your SBE participation not being counted.

PROJECT NUMBER: _____ PROJECT NAME: _____

TO: _____
(Name of Prime Bidder)

The undersigned is certified by Palm Beach County as a - (check one or more, as applicable):

Small Business Enterprise _____ Minority Business Enterprise _____

Black _____ Hispanic _____ Women _____ Caucasian _____ Other (Please Specify) _____

Date of Palm Beach County Certification: _____

The undersigned is prepared to perform the following described work in connection with the above project.
Additional Sheets May Be Used As Necessary

Line Item/ Lot No.	Item Description	Qty/Units	Unit Price	Total Price/ Percentage
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

at the following price or percentage _____
(Subcontractor's quote)

and will enter into a formal agreement for work with you conditioned upon your execution of a contract with Palm Beach County.

If undersigned intends to sub-subcontract any portion of this job to a certified SBE or a non-SBE subcontractor, please list the name of that subcontractor and the amount below.

Price or Percentage _____
(Name of Subcontractor)

The Prime affirms that it will monitor the SBE's listed to ensure the SBE's perform the work with its own forces. The undersigned subcontractor affirms that it has the resources necessary to perform the work listed without subcontracting to a non-certified SBE or any other certified SBE subcontractors except as noted above.

The undersigned subcontractor understands that the provision of this form to Prime Bidder does not prevent Subcontractor from providing quotations to other bidders.

(Print name of SBE-M/WBE Subcontractor)

By: _____
(Signature)

(Print name/title of person executing on behalf of SBE-M/WBE Subcontractor)

Revised 10/11/2011

Date: _____

**OSBA Schedule 3(A)
PROFESSIONAL SERVICES ACTIVITY REPORT**

Project No.: _____
Task Authorization No: _____

REPORTING PERIOD: _____

Prime Consultant Address: _____
City/State: _____ Zip _____
Contact Person: _____ Phone # _____
Contract Name: _____
Contract Term: _____ Contract Amount \$ _____
Total Percentage performed by the Prime's Firm: _____ SBE-M/WBE Firm: _____
Service Type: Architectural _____ Engineering _____ Surveying _____
Other (Specify) _____
Have Sub-Consultants completed work with its own workforce for this application?
Yes _____ No _____

Note: If yes, complete below:

SUB-CONSULTANTS

1. Firms Name: _____
Address/Tel: _____
Estimated Start Date: _____ Contract Amount: _____
SCOPE OF WORK: _____
Percentage/Hrs Completed: _____ Amount Paid To Date _____

2. Firm's Name: _____
Address//Tel: _____
Estimated Start Date: _____ Contract Amount: _____
SCOPE OF WORK: _____
Percentage/Hrs Completed: _____ Amount Paid To Date _____

3. Firm's Name: _____
Address/Tel: _____
Estimated Start Date: _____ Contract Amount _____
SCOPE OF WORK: _____
Percentage/Hrs Completed: _____ Amount Paid To Date _____

I certify that the above is true to the best of my knowledge

Signature/Title

Revised 9/7/2011

OSBA SCHEDULE 4 - SBE-M/WBE PAYMENT CERTIFICATION

The Prime Contractor is to submit Schedule 4 with its Monthly Payment Request to Palm Beach County to reflect actual payments made to the SBE-M/WBE Subcontractor. The Prime Contractor is not to request signature from an SBE-M/WBE Subcontractor unless it has made a payment to the SBE-M/WBE Subcontractor. The SBE-M/WBE Subcontractor is not to complete and sign this form unless it has received a payment from the Prime Contractor for services actually performed by the SBE-M/WBE Subcontractor. A separate Schedule 4 is required for each SBE-M/WBE Subcontractor payment.

This is to certify that _____ received
(SBE or M/WBE Subcontractor Name)

(Monthly) or (Final) payment of \$ _____ . _____

On _____ - _____ - _____ from _____
MM DD YYYY (Prime Contractor Name)

For labor and/or materials used on _____ / _____
(Project Name) (Work Order)

DEPT.: _____ PROJECT NO.: _____

PRIME CONTRACTOR VENDOR CODE: _____

SBE OR M/WBE SUBCONTRACTOR VENDOR CODE: _____

=====

If the SBE Subcontractor intends to disburse any funds associated with this payment to any Subcontractor for labor provided on this project, please provide the following information:

*Subcontractor Name: _____ Amount to be paid: _____

*Note: If the subcontractor listed in this section is an SBE or M/WBE a separate schedule 4 is required to verify payment.

=====

By: _____
(Signature of Subcontractor) (Print Name & Title of Person executing on behalf of Subcontractor)

STATE OF FLORIDA
COUNTY OF _____

Sworn to and subscribed before me this _____ day of _____, 20 _____

By: _____

Notary Public, State of Florida

Print, Type or Stamp Commissioned Name of Notary

Personally Known _____ OR Produced Identification _____ Type of Identification _____

APPENDIX C
DRUG-FREE WORKPLACE CERTIFICATION
RFP NO. CA2018-01

IDENTICAL TIE PROPOSALS - In accordance with Section 287.087, F.S., a preference will be given to vendors submitting with their proposals the following certification that they have implemented a drug-free workplace program which meets the requirements of Section 287.087; provided, however, that any preference given pursuant to Section 287.087, shall be made in conformity with the requirements of the Palm Beach County Code, Chapter 2, Article III, Sections 2-80.21 through 2-80.34. In the event tie proposals are received from vendors who have not submitted with their proposals a completed Drug-Free Workplace Certification form, the award will be made in accordance with Palm Beach County's purchasing procedures pertaining to tie proposals.

This Drug-Free Workplace Certification form must be executed and returned with the attached proposal, and received on or before time of proposal submission to be considered. The failure to execute and/or return this certification shall not cause any proposal to be deemed non-responsive.

Whenever two (2) or more proposals which are equal with respect to price, quality, and service are received by Palm Beach County for the procurement of commodities or contractual services, a proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

- (1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- (2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- (3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in number (1).
- (4) In the statement specified in number (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893, Florida Statutes, or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- (5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- (6) Make a good faith effort to continue to maintain a drug-free workplace through implementation Section 287.087, Florida Statutes.

THIS CERTIFICATION is submitted by _____ the
(Individual's Name)

_____ of _____
(Title/Position with Company/Vendor) (Name of Company/Vendor)

who does hereby certify that said Company/Vendor has implemented a drug-free workplace program which meets the requirements of Section 287.087, Florida Statutes, which are identified in numbers (1) through (6) above.

Signature Date

**APPENDIX D
DISCLOSURE OF OWNERSHIP INTERESTS
RFP NO. CA2018-01**

TO: **PALM BEACH COUNTY CHIEF OFFICER,
OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE**

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

BEFORE ME, the undersigned authority, this day personally appeared _____, hereinafter referred to as "Affiant," who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant appears herein as:
[] an individual **or**
[] the _____ of _____.
[position—e.g., sole proprietor, president, partner, etc.] [name & type of entity—e.g., ABC Corp., XYZ Ltd. Partnership, etc.]. The Affiant or the entity the Affiant represents herein seeks to do business with Palm Beach County through its Board of County Commissioners.

2. Affiant's address is: _____
_____.

3. Attached hereto as Exhibit "A" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater interest in the Affiant's corporation, partnership, or other principal. Disclosure does not apply to nonprofit corporations, government agencies, or to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

4. Affiant acknowledges that this Affidavit is given to comply with Palm Beach County policy, and will be relied upon by Palm Beach County and the Board of County Commissioners. Affiant further acknowledges that he or she is authorized to execute this document on behalf of the entity identified in paragraph one, if any.

5. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct and complete.

FURTHER AFFIANT SAYETH NAUGHT.

_____, Affiant
(Print Affiant Name)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, [] who is personally known to me or [] who has produced _____ as identification and who did take an oath.

(Print Notary Name)
State of Florida at Large
My Commission Expires: _____

APPENDIX E
FEE PROPOSAL PAGES
RFP NO. CA/2018-01

Page 1 of 2

THE PROPOSED CONTINGENCY FEE STRUCTURE IS: _____

The itemized costs to be reimbursed in the event of any monetary recovery as a result of any litigation initiated by proposer is as follows:

The itemized direct and indirect fees and costs to be reimbursed in the event of any monetary recovery as a result of any litigation initiated by proposer is as follows:

The overhead assigned to each person providing services under the Scope of Work to be reimbursed in the event of any monetary recovery as a result of any litigation initiated by proposer is as follows:

The timeframe of when the aforementioned fees and costs to be reimbursed in the event of any monetary recovery as a result of any litigation initiated by proposer is as follows:

Any other additional fees or costs not already mentioned to be reimbursed in the event of any monetary recovery as a result of any litigation initiated by proposer is as follows:

The Proposer certifies by signature below the following:

a. No payment shall be made by the COUNTY to Proposer for services provided under the Contract; however, in any litigation in which Proposer represents the COUNTY, from initiation to conclusion, as authorized by the Contract, upon any favorable monetary recovery or monetary judgment for the COUNTY, Proposer shall be entitled to the contingency fee rate, set forth in ARTICLE 2 of the Contract, on all amounts recovered and shall be reimbursed all reasonable expenses associated with the legal services rendered as set forth in ARTICLE 3 of the Contract.

**APPENDIX E
FEE PROPOSAL PAGES
RFP NO. CA/2018-01**

Page 2 of 2

b. This Proposal is current, accurate, complete, and is presented to the County for the performance of this Contract in accordance with all the requirements as stated in this RFP. Proposer expressly recognizes that the County will rely upon the information in the Proposal in entering into the Contract.

c. The Proposal is submitted without prior understanding, agreement, or connection with any corporation, firm, or person submitting a Proposal for the same materials, services, and supplies and is, in all respects, fair and without collusion or fraud.

d. The financial stability to fully perform the terms and conditions as specified herein. The County reserves the right to request financial information from the proposer at any time during the solicitation process and in any form deemed necessary by the County.

IMPORTANT: FAILURE TO SUBMIT THESE PAGES, INCLUDING ALL REQUIRED INFORMATION AND SIGNATURES, WILL BE CAUSE FOR "IMMEDIATE REJECTION" OF THE ENTIRE PROPOSAL RESPONSE. THIS PAGE MUST BE SIGNED BY AN OFFICER OF THE COMPANY WHO IS LEGALLY AUTHORIZED TO ENTER INTO A CONTRACTUAL RELATIONSHIP IN THE NAME OF THE PROPOSER.

NAME (PRINT): _____

TITLE: _____

COMPANY: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE NO. _____

SIGNATURE: _____

AMENDMENT No. 1

Dated January 12, 2018

Palm Beach County Attorney's Office
300 North Dixie Highway, Suite 381
West Palm Beach, Florida 33401

RFP NO. CA2018-01

Title: Outside Legal Counsel for Opioid Litigation

This Amendment is issued to provide additional information and clarification to the RFP document:

A. Proposers are advised of the following changes to the RFP:

1. **Section 2.17 SELECTION PROCESS is revised as follows:**

The Recommended Proposers must be available for possible questioning by the BCC and shall present a five (5) minute presentation highlighting their qualifications to the BCC at the BCC meeting for consideration and selection. The BCC shall have the discretion to adjust presentation speaking time limits.

2. **Appendix E Fee Proposal Pages and Section 3.4 FEE PROPOSAL are revised to include the following:**

Proposer will state whether the fee will be based on the gross monetary amount recovered or on the amount recovered minus the costs.

3. Section 5, ATTACHMENT 1, Sample Standard Contract, **ARTICLE 3. EXPENSES AND COSTS** is revised to include the following:

(e) OUTSIDE COUNSEL will advance all expenses and costs of the litigation. Reasonable and necessary expenses and costs will be reimbursed only out of a monetary recovery.

B. Question received from Robbins Geller Rudman & Dowd LLP and the County Attorney's Office response:

Q. 1. After reviewing the RFP, I was hoping to get clarification on whether more than one Firm would be permitted to respond as a team.

A.1. The RFP does not prohibit teams from submitting a proposal as long as the RFP requirements and Florida Bar Rule 4-1.5 and 4-1.5(g) are followed.

C. Questions received from Searcy Denney Scarola Barnhart and Shipley, P.A. and the County Attorney's Office response:

Q.1. Request 3.1.3, page 17, seeks a list of “all clients for whom proposer has provided, within the last five (5) years, services similar to the Scope of Work; the lead attorney assigned to said matters; and a contact person...for each client listed.”

- i. Related to Palm Beach County’s interpretation of the phrase “services similar to the Scope of Work,” we read the language as potentially seeking (1) clients for whom the consortium has provided services related to the national opioid litigation; (2) clients for whom the consortium provided services related to any litigation against the potential manufacturer/distributor defendants here; or (3) clients for whom the consortium has provided services related to any multidistrict litigation. Our consortium consists of seven law firms, all of which handle multidistrict and complex litigation projects on a regular basis, including litigation against manufacturers and distributors of pharmaceuticals. Each project may involve hundreds, if not thousands, of clients. We are preparing a list of all cases for which our consortium has been retained in this matter (i.e. the national opioid litigation) with the itemized information requested; is this a sufficient scope for the response to Request 3.1.3?
- ii. Secondly, if the County is seeking a list of clients outside those related to the national opioid litigation, in the interest of protecting the privacy of those clients to the extent possible, we request permission to omit the contact information for those clients.

A.1. (i) – It is the firm’s discretion to provide what information the firm believes best represents the firm’s experience, qualification, technical knowledge and capabilities.

(ii) –Client contact information for cases that are not related to the opioid litigation may be omitted.

Q.2. Contract for Professional Legal Services - a. Section 2.20, page 13, states that the Recommended Proposers will be required to execute a contract similar to Attachment 1 to the RFP. The following sentence appears to set forth that submission of a proposal constitutes a representation that the proposer will sign Attachment 1 in its current form. Is Palm Beach County amenable to considering alternative language to Attachment 1 or is the County adhering strictly to the language of the agreement?

A.2. Please refer to Section 2.16 Exceptions to the RFP.

Q.3. Monetary damages a. In Attachment 1, Contract for Professional Legal Services, as well as in Appendix E, Fee Proposal, the proposal refers to contingency fees based on monetary amounts recovered. As set forth in more detail in our proposed damage model (Section 3.1.5), a significant portion of the relief we intend to seek on behalf of Palm Beach County consists of non-monetary damages, e.g. addiction treatment assistance. Indeed, the judge assigned to this multidistrict litigation, Judge Polster, stated this morning his desire for the parties to agree to non-monetary relief in a very short time frame. This relief will likely correlate to a

dollar value but may not include money being directly paid to the County. As the proposal is currently worded, does the County anticipate the contingency fee and costs structure to be based solely on the dollars paid to Palm Beach County or will it take into account the value of equitable relief obtained through the litigation?

- A.3. The selected outside counsel shall provide legal representation to the County in all aspects of the opioid litigation including any related appeals and counterclaims, from initiation to conclusion, on a contingency fee basis and incur the financial burden and all costs without payment guarantee if such litigation is unsuccessful or does not result in monetary recovery for the County.

AMENDMENT No. 2

Dated January 16, 2018

Palm Beach County Attorney's Office
300 North Dixie Highway, Suite 381
West Palm Beach, Florida 33401

RFP NO. CA2018-01

Title: Outside Legal Counsel for Opioid Litigation

This Amendment is issued to provide additional information and clarification to the RFP document:

A. Proposers are advised of the following changes to the RFP:

1. **Section 1.16 TIMETABLE** is revised as follows:

Due to severe weather conditions and delivery carrier delays, the County will accept proposals received after the deadline of January 16, 2018, 5:00 p.m. Eastern Time upon proof that the proposer submitted the proposal to the County in a timely manner to meet the deadline set forth in the RFP. Proof of timely submission should be emailed to Lauren Dennis at ldennis@pbcgov.org by January 17, 2018, 5:00 p.m. Eastern Time. Any proposal submissions received after January 16, 2018, 5:00 p.m. Eastern Time with no proof of timely submission shall be deemed untimely and will not be considered by the County.