



AGENDA REPORT
May 30, 2019

**Approval, Re: Associate Medical Examiner Temporary Staffing Contract
Change Order**

SUBJECT:

Approval, Re: Associate Medical Examiner Temporary Staffing Contract Change Order - Barton and Associates, Inc.

FISCAL IMPACT:

To be determined. However, expenditures will be offset by previously budgeted and approved vacant salaries.

DEPT/OFFICE:

Public Safety Office

REQUESTED ACTION:

It is requested the Board approve the continuation of a temporary medical examiner staffing contract with Barton and Associates, Inc. Due to the difficulty in hiring permanent replacements, it is forecast vacancies will continue in the foreseeable future. In anticipation of this, it is requested the Board approve the continuation of a temporary staffing services contract and authorize the County Manager or Designee to sign all related contract documents, budget change requests, or any other documents as needed to continue medical examiner capability.

SUMMARY EXPLANATION and BACKGROUND:

In January of 2019, the medical examiner's office lost two associates; one retired and another resigned to return home to his spouse. In anticipation of the understaffing, the County entered into a temporary services contract with Barton and Associates for the temporary placement of an associate medical examiner ensuring the office continue with a minimum level of service. Concurrently, the County entered into a separate contract with another company to recruit potential associate medical examiner candidates to fill full time vacancies. To date no viable candidates have been identified. Realizing this difficulty and the amount of time required to recruit permanent employees in this career field for placement, Staff projects the existing temporary staffing contract cost with Barton and Associates will exceed County Manager approval thresholds.

CLERK TO THE BOARD INSTRUCTIONS:

N/A

ATTACHMENTS:

Description

- ▢ **LTA Agreement-BartonandAssociates**
- ▢ **Initial Contract Form-BartonandAssociates**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

May 31, 2019

MEMORANDUM

TO: Matthew Wallace, Public Safety Director

RE: Item F.7., Approval of Associate Medical Examiner Temporary Staffing Contract Change Order

The Board of County Commissioners, in regular session on May 30, 2019, approved the continuation of Temporary Medical Examiner Staffing Contract with Barton and Associates, Inc.; and authorized the County Manager, or his designee, to execute all related contract documents, budget change requests, or any other documents as needed to continue medical examiner capability.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/cmw

cc: County Manager
Budget
Finance

Barton Associates

Locum Tenens Agreement

This Locum Tenens Agreement (“**Agreement**”), by and between Barton & Associates, Inc., a Delaware corporation having a location at 300 Jubilee Drive, Peabody, MA 01960 (“**Barton**”), and Brevard County Board of County Commissioners, a/an Florida government agency on behalf of itself and its Public Safety Group having a location at 1750 Cedar St., Rockledge, FL 32955 (“**Client**”), is effective as of September 26, 2018 (the “**Effective Date**”).

Section 1 | Overview of Services

This Agreement sets forth the terms and conditions under which Client will use Barton to coordinate the temporary placement (also colloquially referred to as an “**assignment**”) of contract locum tenens providers (each, a “**Provider**”) according to Client’s needs. Each assignment will be subject to the terms and conditions of this Agreement and the placement-specific confirmation(s) (each, a “**Placement Order**”) issued to Client setting forth the fees, expenses, dates, and other commercial terms of the placement.

Section 2 | Pre-Placement Activities

Client will provide a request which will include a list of required qualifications that any Provider accepted by Client for placement will meet.

(a) In response to Client’s requests, Barton agrees:

1. to present information to Client regarding one or more available Providers for Client’s consideration for placement;
2. if Client accepts a Provider for placement, to coordinate the placement and to memorialize its terms in a Placement Order; and
3. once the terms of an assignment are agreed upon, to use its best efforts to support Client’s pre-assignment processes by helping Client obtain any required documents or other materials, including the documents and materials needed to verify Client’s required qualifications.

(b) Client’s written or email acceptance of both a Provider and the specific terms of work under Section 2(a)-2 is valid and binding on the date of such written or email acceptance; however, a Placement Order must be signed or confirmed for Barton’s records.

(c) Prior to any assignment, Client agrees to review the Provider information submitted by Barton and to notify Barton in writing within two business days if any submitted Provider was already known to Client. If Client fails to so notify Barton, Barton will be deemed to have introduced Client to the submitted Provider.

Section 3 | Insurance

(a) Barton shall maintain a professional liability (medical malpractice) insurance policy with limits of \$1,000,000 per claim and \$3,000,000 in the annual aggregate covering itself and eligible Providers duly assigned under this Agreement. The malpractice coverage available under that insurance policy is subject to the policy’s terms, conditions, and limitations. The Certificate of Insurance shall reflect by name through either endorsement or schedule, the Providers receiving coverage. If such policy is written on a “Claims-made” (rather than “occurrence”) basis, continuous coverage shall be maintained in effect from the date of commencement of services to a period of at least four (4) years beyond the termination or completion of services.

(b) Client agrees to inform Barton of any incident of which Client is aware that may result in a malpractice claim or other legal action against any Provider arising out of services rendered under this Agreement. This Section 3(b) survives termination of this Agreement.

(c) Commercial General Liability insurance: Barton shall maintain a policy with a \$ 1,000,000 combined single limit for each occurrence to include Personal Injury and Errors & Omissions.

(d) Workers' Compensations and Employers Liability Insurance Coverage: Barton shall maintain a policy to apply for all employees at the statutory limits for the State of Florida in compliance with applicable state and federal laws. The policy must include Employers Liability for limits of \$100,000/each accident; \$100,000/disease-policy limit; \$100,000/disease-each employee.

(e) These policies of insurance may be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice has been provided to County, (and ten (10) days' notice for delinquent insurance premium payments)

Section 4 | Financial Terms

(a) On a weekly basis or as otherwise agreed upon, Barton will invoice Client. Each invoice will be based on services provided and/or on the commercial terms contained in each Placement Order or, if applicable, any separate agreements between the parties. Unless otherwise agreed, the rates included on each Placement Order are inclusive of Provider's services, Barton's services, and professional liability expenses.

(b) Client will remit full payment to Barton of all invoiced amounts in accordance with the Florida Prompt Payment Act (§218.74 Fla. Stat.).

Section 5 | Term & Termination; Continuation & Cancellation

(a) This Agreement is effective on the Effective Date and will remain in effect unless it is terminated under Section 5(b).

(b) Either party may terminate this Agreement, for any reason or no reason, upon 30 days' written notice to the other party. Either party may terminate this Agreement if any term or condition is materially breached by the other party, provided the breaching party fails to cure the breach within 15 days of receiving notice from the non-breaching party.

1. Termination of this Agreement automatically cancels all assignments and their Placement Orders according to the terms of Section 5(d) through Section 5(f).

(c) If Client and Provider so agree, any assignment may be continued past its originally anticipated end date. Client agrees to communicate these continuations to Barton so that the parties, if needed, may memorialize their understanding.

(d) Client may cancel any assignment: (i) for any reason by giving Barton at least 30 days' written or email notice that, (A) if the assignment has commenced, shall not be effective until 30 days from the date Barton receives such notice, or (B) if the assignment has not yet commenced, shall not be effective until 30 days from the date on which the assignment commences; or (ii) immediately upon notice to Barton if Client determines, in its discretion, that the Provider cannot conform or has failed to conform to prevailing standards of professional or clinical conduct.

1. If Client does not provide the notice required under Section 5(d), Client shall be responsible for promptly paying to Barton all fees and expenses that would reasonably have been payable to Barton had Client provided such notice. The parties agree that such payment is reasonable

and constitutes compensation, not a penalty, and that Barton's right to such payment is Barton's exclusive remedy for Client's failure to comply with its notice obligations in Section 5(d).

(e) Barton may cancel any assignment: (i) for any reason upon 30 days' written notice to Client; or (ii) immediately if (A) Client fails to comply with any term or condition in Section 4 or (B) any Provider cancels or is unwilling or unable to perform such assignment. If Client requests, following any cancellation Barton will use its best efforts to present alternative available Providers to Client for Client's consideration of a new or continued assignment.

(f) Neither termination of this Agreement nor cancellation of any assignment shall release either party from any liability that has already accrued, comes into effect because of such termination or cancellation, or otherwise expressly or impliedly survives such termination or cancellation.

Section 6 | Confidentiality

(a) Each party who receives Confidential Information (defined below) agrees to maintain all Confidential Information in confidence. The receiving party will also maintain reasonable safeguards to ensure the confidentiality of all Confidential Information and will not use any Confidential Information other than strictly as necessary to perform its obligations under this Agreement. The receiving party will not disclose any Confidential Information except: (a) with the prior written consent of the disclosing party; (b) if disclosure is made only to its directors, officers, employees, agents, or advisors who have a need to know the Confidential Information in order to fulfill the receiving party's obligations or to enforce the receiving party's rights under this Agreement; or (c) as required to comply with its legal obligations. "**Confidential Information**" includes the terms of this Agreement and each Placement Order, the identities of and other information relating to Providers, and all other non-public or proprietary business information owned or licensed by the disclosing party or any of its affiliates.

(b) FLORIDA PUBLIC RECORDS LAW: Notwithstanding any confidentially agreement set forth herein, both parties understand that the County is subject to the Florida Public Records Law, Chapter 119, Florida Statutes and all other applicable Florida Statutes. If the materials provided by the Contractor do not fall under a specific exemption, under Florida or federal law, materials provided by the Contractor to the County would have to be provided to anyone making a public records request.

Section 7 | Conversion

(a) Before Client or any Client Affiliate (defined below) may engage or attempt to engage, other than under this Agreement, any Provider introduced to Client by Barton, one of the following conditions must be met. Client must either:

1. wait at least 24 months from the end of the Provider's most recent assignment, or, if only a submittal of the Provider's information and no assignment had been made, 12 months from the last submittal date; or
2. wait at least 12 months after the date the Provider first rendered services to Client and pay to Barton an amount equal to \$45,000.00 (the "**Conversion Fee**"); or
3. promptly pay to Barton an amount equal to three times the Conversion Fee, minus \$5,000.00 for each month in which the Provider renders services pursuant to this Agreement.

(b) The parties agree that the payment described in Section 7(a)-3 above is reasonable and constitutes compensation, not a penalty. Barton's right to such payment is Barton's exclusive remedy for any failure by Client to comply with Section 7(a)-1 or Section 7(a)-2. This Section 7 survives termination of this Agreement.

Section 8 | Acknowledgements

The parties agree that, despite anything that may be stated or implied differently:

(a) Neither Barton nor any of its directors, officers, employees, representatives, or agents is licensed to practice medicine or to provide medical services. Each Provider, for all purposes, is an independent contractor, not an employee, agent, representative, or partner, of Barton or Client. Barton and Client do not and will not control, direct, or attempt to control or direct any Provider's services or compliance with professional or legal obligations. All medical, clinical, and other decisions and actions, including when, where, and how to render services, are solely those of each respective Provider;

(b) Barton's services with respect to screening or prescreening any Provider shall be limited to the assistance described in Section 2(a)-3 above. Client shall have the sole and complete authority and responsibility for reviewing, processing, credentialing, and approving each Provider according to applicable law and Client's policies and bylaws;

(c) Client's obligation to make payments is independent and is not conditioned upon or subject to anything, including Client's satisfaction with any Provider's performance;

(d) If Barton provides its services to any affiliate of Client, including any facility, entity, or organization controlling, controlled by, or under common control with Client through a group, hospital system, or contractual or other arrangement (each, a "**Client Affiliate**"), that signs or is identified on a Placement Order, such Client Affiliate, together with Client jointly and severally, shall be responsible for all of Client's obligations under this Agreement; and

(e) Because Barton does not use or disclose "protected health information," as defined in the Health Insurance Portability and Accountability Act of 1996 (as amended, and including its regulations, "HIPAA"), for or on behalf of Client, Barton is not Client's "business associate" under HIPAA.

Section 9 | Miscellaneous

(a) This Agreement, together with all Placement Orders, is the sole and entire agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, statements, understandings, and representations (whether oral or written) regarding its subject matter. This Agreement and all Placement Orders shall control over any different or additional terms in any purchase order or non-Barton ordering document, and no terms included in any such purchase order or other document shall apply to or be binding on the parties.

(b) Neither this Agreement nor any Placement Order may be amended or modified except by a writing signed by each party. However, the dates set forth in Placement Orders may be modified via email. Handwritten changes made to any term or condition of this Agreement or any Placement Order are void and are not binding on either party. Nothing in any Placement Order shall modify or be construed to modify any term, condition, or provision of this Agreement, unless it is explicitly identified as a modification to this Agreement.

(c) No waiver of any right under this Agreement is effective unless in writing signed by the waiving party. Either party's failure to exercise its contractual rights shall not be deemed to be a waiver of the same. If any term of this Agreement is held invalid or void, the court may modify this Agreement as necessary to cure the invalidity and to effect the original intentions of the parties.

(d) With the exception of Barton's rights to compensation under Section 5(d)-1 and Section 7(a)-3, the rights and remedies provided in this Agreement are cumulative, not exclusive.

(e) *Neither party will be liable or responsible under any circumstances for any consequential, incidental, special, exemplary, punitive, or indirect damages of any kind, regardless of whether they arise in breach of contract, tort, or otherwise, or whether their possibility was advised. In addition, Barton shall not be responsible or liable to Client or any third party in connection with any act, omission, or*

occurrence that is beyond Barton's control, which includes the acts and omissions of Providers. This Section 9(e) survives termination of this Agreement.

(f) Barton agrees to the fullest extent permitted by law, to indemnify and hold harmless the Client and its agents and employee from and against all claims, damages, losses, and expenses, personal injuries (including but not limited to death), attorney's fees, court costs, and interest (prejudgment or otherwise) directly arising from the gross negligence or willful misconduct of Barton in its performance of this Contract. Barton shall not be liable to the degree or extent of damages, loss, or expenses are determined to be the fault of the Client.

(g) Barton shall utilize the Department of Homeland Security's E-Verify system to verify the employment eligibility of all of its new employees hired during the term of the contract, which shall not include Providers each of whom is an independent contractor.

This Agreement is effective as of the Effective Date and may be executed in counterparts.

Barton & Associates, Inc.

Client: Brevard County Board of County Commissioners

DocuSigned by:
Signature: Courtney Hosley
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Name: Courtney Hosley
Title: Senior manager, Sales and Staffing

Signature: Matthew Wallace

Name: Matthew Wallace
Title: Director, Public Safety

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**



INITIAL CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor:	
2. Fund/Account #:	3. Department Name:
4. Contract Description:	
5. Contract Monitor:	7. Contract Type:
6. Dept/Office Director:	

SECTION II – REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency				_____
Risk Management				_____
County Attorney				_____

SECTION III – REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency				_____
Risk Management				_____
County Attorney				_____

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	
Department	
Program	
Contact Name	
Cost Center, Fund, and G/L Account	
Vendor Information (SAP Vendor #)	
Contract Status	
Contract Title	
Contract Type	
Contract Amount	
Storage Location (SAP)	
Contract Approval Date	
Contract Effective Date	
Contract Expiration Date	
Contract Absolute End Data (No Additional Renewals/Extensions)	
Material Group	
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	
"Right To Audit" Clause Included in Contract	
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	