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**AGENDA REPORT  
May 22, 2018**

**Opioid Litigation**



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May 22, 2018**

**Opioid Litigation**

**SUBJECT:**

Approval of Opioid Contract between Brevard County and the Litigation Team of Charpentier Law Firm, P.A.; The Maher Law Firm; Wagstaff & Cartmell LLP; Robbins Geller Rudman & Dowd, LLP; and Lieff Cabraser Heimann & Bernstein, LLP.

**DEPT/OFFICE:**

County Attorney Office

**REQUESTED ACTION:**

To complete the action of selecting counsel, approve the terms of this outside counsel agreement for this litigation team to pursue all appropriate legal and equitable remedies in connection with the harm incurred by the County as a result of the unlawful, wrongful, deceptive and fraudulent practices of the pharmaceutical opioid drug manufacturers and entities in the chain of distribution.

**SUMMARY EXPLANATION and BACKGROUND:**

In negotiation, Mr. Charpentier has made Brevard County an enhanced offer that brings on an additional legal team and reduces the percentage contingency fee agreement. He believes this offer provides a better deal for Brevard County. Mr. Charpentier has added the additional partners of Lieff, Cabraser, Heimann, and Bernstein as well as Robbins, Geller, Rudman & Dowd, LLP. Mr. Charpentier's original offer capped fees and expenses at 30 percent of recovery. Mr. Charpentier is offering the following contingency fee arrangement, which continues to cap reasonable costs and expenses. The contingency fee arrangement is based on a percentage of the total monetary and non-monetary recovery in the litigation, as follows:

*Fee Basis.* The fee structure will take into account the stage of litigation at which the

case is resolved, as follows:

- (a) Upon commencement of the engagement up to the commencement of discovery, 4%;
- (b) After commencement of discovery up to the filing of any Motion(s) for Summary Judgment, 12.5%; and
- (c) After the filing of any Motions for Summary Judgment through trial and any post-trial appellate proceedings, 15%

*Fee Basis and Reasonable Cost/Expense Limitation.* Notwithstanding the fee percentages set forth above, the maximum percentage that COUNSEL will receive from the County as their fee and reimbursement of reasonable costs and expenses shall not exceed the following percentages:

- (a) Upon commencement of the engagement up to the commencement of discovery, 5%;
- (b) After commencement of discovery up to the filing of any Motion(s) for Summary Judgment, 17.5%;
- (c) After the filing of any Motions for Summary Judgment through trial and any post-trial appellate proceedings, 25%.

COUNSEL's fees shall be calculated by multiplying the applicable percentage above by the County's Total Recovery (monetary and non-monetary) before deducting the amount necessary to pay all Reasonable Costs/Expenses advanced by COUNSEL that are properly allocable to the County. Non-monetary recovery is defined as the total amount of non-monetary recovery directly awarded or obligated to be paid to the County specifically through either judgment or settlement of the County's lawsuit, including goods and/or services that, if paid for by the County, would be a budget item for which County funds would be allocated. The non-monetary value of any goods and/or services will be determined according to the fair market value of such items.

If the County does not receive a monetary recovery, the County is not obligated to pay any amounts to COUNSEL, whether as attorney's fees or as reimbursement for reasonable costs/expenses. The County is not obligated to pay any sums that, when aggregated, exceed the amount of monetary recovery.

The Board should be aware this litigation may involve a risk that, beyond a certain point, if the County loses, prevailing party attorney fees and costs could be assessed. If any matter arises that may have a court-ordered fee and/or cost triggering consequence, COUNSEL will immediately discuss the specific risks and potential cost consequence going forward. Under Florida Bar ethics rules, COUNSEL cannot guarantee or indemnify County from all risk of loss in litigation, but COUNSEL will take all necessary steps to protect County from risk of loss to the fullest extent permissible under the applicable law and ethics.

**CLERK TO THE BOARD INSTRUCTIONS:**

Attached Agreement to be signed by Chair after CAO procures COUNSEL's signatures.

**ATTACHMENTS:**

**Description**

- **Final Opioid Contract**



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 23, 2018

MEMORANDUM

TO: Eden Bentley, County Attorney

RE: Item II.D.1., Legal Services Retainer Agreement between the Litigation Team of Charpentier Law Firm, P.A.; The Maher Law Firm; Wagstaff & Cartmell LLP; Robbins Geller Rudman & Dowd, LLP; and Lief Cabraser Heimann & Bernstein, LLP for Opioid Epidemic Litigation

The Board of County Commissioners, in regular session on May 22, 2018, approved the Legal Services Retainer Agreement between the Litigation Team of Charpentier Law Firm, P.A.; The Maher Law Firm; Wagstaff & Cartmell LLP; Robbins Geller Rudman & Dowd, LLP; and Lief Cabraser Heimann & Bernstein, LLP for the opioid epidemic litigation team to pursue all appropriate legal and equitable remedies in connection with the harm incurred by the County as a result of the unlawful, wrongful, deceptive, and fraudulent practices of the pharmaceutical opioid drug manufactures, and entities in the chain of distribution. Enclosed is the executed Agreement for your action.

**Upon execution by all parties, please return the fully-executed Agreement to this office for inclusion in the official minutes.**

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

Encl. (1)

cc: Contracts Administration  
Finance  
Budget

## LEGAL SERVICES RETAINER AGREEMENT REGARDING OPIOID EPIDEMIC LITIGATION

This agreement is entered into by and between Brevard County ("COUNTY") and the legal team of the Charpentier Law Firm, Maher Law Firm, Wagstaff & Cartmell LLP, Robbins Geller Rudman & Dowd, and Loeff Cabraser Heimann & Bernstein, LLP (the "COUNSEL").

**1. Scope of Services.** COUNSEL shall represent the COUNTY in civil litigation to be promptly filed to pursue all appropriate legal and equitable remedies in connection with the harm incurred by the COUNTY as a result of the unlawful, wrongful, deceptive, and fraudulent practices of manufacturers of pharmaceutical opioid drugs and entities in the chain of distribution, which representation shall last through resolution of the lawsuit including through any and all appellate proceedings (the Litigation). COUNSEL have conducted an investigation and believe there is a valid basis to commence and prosecute the Litigation seeking monetary damages and other relief.

**1.1. Risks Inherent in Litigation.** COUNTY understands that this type of litigation can be extremely time consuming and that there are inherent risks in all litigation. COUNTY understands that these cases can take many months to gather information, analyze, and study. COUNTY understands that COUNSEL cannot guarantee or indemnify COUNTY from all risk of loss, but COUNSEL will take all necessary steps to protect COUNTY from risk of loss to the fullest extent permissible under the applicable law and ethics.

**1.2. Other Defendants.** COUNSEL will perform all necessary and prudent investigations to determine whether other categories of defendants should be added to the Litigation. Defendants other than manufacturers and entities in the chain of distribution may be added only with prior notification and opportunity to comment given to the County Attorney. If COUNTY wishes to retain COUNSEL for any purpose not specified under this Agreement, the parties must execute a separate written agreement for those services.

**1.3. Discovery.** It is important that any documents potentially relevant to this Litigation, in the broadest sense, are set aside and protected from destruction. This includes electronic records such as communications by e-mail. COUNSEL shall assist the COUNTY in identifying and preserving all relevant documents and electronic files. COUNTY will also make all necessary persons under its control available for consultation, depositions, records, or other evidence under its control available to COUNSEL for this case at no cost to COUNSEL.

**1.4. Forum.** COUNTY authorizes the County Attorney, in consultation with COUNSEL, to agree on the appropriate forum in which to bring the litigation.

## **2. Authorized Representatives.**

**2.1 Points of Contact.** COUNTY designates County Attorney Eden Bentley and Assistant County Attorney Christine M. Schverak as the authorized representatives to direct COUNSEL and to be the primary individuals to communicate with the COUNSEL regarding the subject matter of COUNSEL's representation of COUNTY under this Agreement. This designation is not intended to preclude communication between COUNSEL and other representatives of COUNTY. COUNSEL designates Mr. Stephen G. Charpentier and Mr. Mark Dearman to serve as COUNSEL's representatives.

2.2 *Authority.* COUNSEL's representative shall have the authority and responsibility to: (i) promptly inform the COUNTY's authorized representative of any decision or circumstance with respect to which the COUNSEL need the COUNTY's informed consent; (ii) reasonably consult with the COUNTY's authorized representative about the means by which the County's objectives are to be accomplished and communicate such information to COUNSEL; (iii) keep the COUNTY reasonably informed about the status of the matter; (iv) promptly comply with reasonable requests for information from the COUNTY's representative; (v) consult with the COUNTY's representative about any relevant limitation on the COUNSEL's conduct when the COUNSEL knows or reasonably should know that the COUNTY expects assistance not permitted by the Rules of Professional Conduct or any law; (vi) explain the matter to the extent reasonably necessary to permit the COUNTY to make informed decisions regarding the representation; and (vii) keep COUNSEL informed about communications with COUNTY. Nothing in this section shall preclude COUNTY from communicating with the other members of COUNSEL or the COUNSEL from communicating with the COUNTY on any of the areas of responsibility listed above. The COUNTY's representatives are authorized and responsible to act on behalf of the COUNTY with respect to communicating and coordinating with COUNSEL and with regards to administering the COUNTY's obligations under this Agreement.

2.3 *Key Documents.* COUNSEL shall provide the County Attorney and Assistant County Attorney with key documents at each point in the litigation with sufficient advance time to allow them to review the same and provide meaningful input.

### 3. *Conflicts of Interest.*

3.1 *General.* The COUNTY expects its COUNSEL to be free of conflicting interests and the appearance of conflicting interests.

3.2 *Other governmental plaintiffs.* The COUNTY understands that it may be one of multiple governmental plaintiffs being represented by any or all of COUNSEL in opioid epidemic-related litigation. The COUNTY consents to such representation and waives any potential conflict that might arise from such representation of other governmental entities. The COUNTY recognizes and agrees that an aggregate settlement of multiple opioid cases at one time may be reached, provided COUNSEL believe the aggregate settlement to be fair and adequate for the group as a whole. In this scenario, the case may be settled only with the COUNTY's prior written approval. The Board of County Commissioners has the final decision-making authority as to whether to accept any proposed settlement of the COUNTY's claims. If the COUNTY rejects any such settlement proposal(s), COUNSEL shall continue to represent the COUNTY through any trial and appellate proceedings.

3.3 *Certify No Conflict.* COUNSEL (individually, collectively, or in any combination) certify that it does not know of any facts concerning this Agreement or the services to be performed hereunder that constitute a violation of the Conflict of Interest Policy. Any potential arising conflict will be discussed with COUNTY. Each law firm acknowledges that the COUNTY ATTORNEY, in her sole discretion, shall have final authority to determine the existence of a conflict of interest and any and all necessary corrective actions, including termination of this Agreement.

3.4. *Limitations.* While this Agreement remains in effect, COUNSEL (individually, collectively, or in any combination) shall not act as counsel in any lawsuit or other adversarial proceeding in which the COUNTY is named as an adverse party or in which COUNSEL take or may take a position adverse to the COUNTY. COUNSEL further agrees that COUNSEL (individually, collectively, or in any combination) and its employees shall not have or hold any continuing or frequently recurring employment or contractual relationship substantially antagonistic to or incompatible with COUNSEL's loyal and conscientious exercise of judgment related to their performance under this Agreement.

**4. Attorney's Fees and Costs.**

4.1. *Contingency Fee Basis.* COUNSEL will undertake the representation and diligently prosecute the Litigation on a contingency fee and cost basis. COUNSEL shall expend all time, and advance all expenses, necessary to fully and effectively prosecute the Litigation. COUNTY is only obligated to attorney's fees to COUNSEL and to reimburse COUNSEL for reasonable costs/expenses expended by them only out of any Monetary Recovery.

4.2. *Seek recovery from Defendant.* COUNSEL agree to first seek recovery of all attorney fees from Defendant(s) in connection with any Monetary Recovery achieved for the County, and obtain payment of attorneys' fees from Defendant(s) for that Monetary Recovery. In which case, there would be an offset for fees obtained for the same type of recovery, and the COUNSEL would not seek fees from the COUNTY for the same category of relief.

4.3. *Fee Basis.* The fee structure will take into account the stage of litigation at which the case is resolved, as follows:

(a) Upon commencement of the engagement up to the commencement of discovery, 4%;

(b) After commencement of discovery up to the filing of any Motion(s) for Summary Judgment, 12.5%; and

(c) After the filing of any Motions for Summary Judgment through trial and any post-trial appellate proceedings, 15%

4.4. *Fee Basis and Reasonable Cost/Expense Limitation.* Notwithstanding the fee percentages set forth above, the maximum percentage that COUNSEL will receive from the COUNTY as their fee and reimbursement of reasonable costs and expenses shall not exceed the following percentages:

(a) Upon commencement of the engagement up to the commencement of discovery, 5%;

(b) After commencement of discovery up to the filing of any Motion(s) for Summary Judgment, 17.5%;

(c) After the filing of any Motions for Summary Judgment through trial and any post-trial appellate proceedings, 25%.

COUNSEL's fees shall be calculated by multiplying the applicable percentage above by the County's Total Recovery defined below (before deducting the amount necessary to pay all Reasonable Costs/Expenses advanced by COUNSEL that are properly allocable to the County). Note, however, that reasonable costs/expenses are capped pursuant to the percentages in this paragraph.

**4.5. Monetary Recovery Limits.** If the COUNTY does not receive a monetary recovery, the COUNTY is not obligated to pay any amounts to COUNSEL whatsoever, whether as attorneys' fees or as reimbursement for reasonable costs/expenses. In no circumstance shall the COUNTY be required to pay any sums as Law Firm(s) fee or for reasonable costs/expenses that, when aggregated, exceed the amount of the Monetary recovery. The monetary recovery is defined as the total amount of any monetary recovery, whether described as damages, restitution, or otherwise, directly awarded or obligated to be paid to the COUNTY specifically through either judgment or settlement of the COUNTY's lawsuit.

**4.6. Common Benefit Fund.** To the extent Reasonable Costs/Expenses are expended for the common benefit of the COUNTY and other similarly-situated plaintiffs (i.e. governmental entities that are also seeking to recover funds as a result of the sale, distribution, and use of opioids) represented by any or all of the COUNSEL (individually, collectively, or in any combination), the COUNTY shall only bear a proportionate, fair, and equitable share of such Reasonable Costs/Expenses as either determined by court order or, in absence of court order, based on the relative size of the COUNTY's Total Recovery (monetary and non-monetary). Representation for purposes of this section does not include representation of governmental entities solely as court-appointed leadership in *In re: National Prescription Opiate Litigation, MDL No. 2804*. Common benefit expenses are expenses expended for the common benefit of a group of clients. For example, if a deposition of a defendant expert witness is taken in one case, and this deposition can be used for and/or benefits the claims of many other clients, these costs will be classified as common benefit expenses. By using this common benefit expenses system, no one client has to solely bear costs that actually benefit the group as a whole, and many of the most substantial costs of litigation can be shared equitably by all.

**4.7. Net Recovery.** After the Total Recovery has been reduced by the COUNSEL's fee and reasonable costs/expenses, the remaining sum (i.e. the COUNTY's Net Recovery) shall be promptly remitted to the COUNTY. COUNTY is obligated to pay attorney's fees to COUNSEL and to reimburse COUNSEL for reasonable costs/expenses expended by them only out of any Monetary Recovery. The Total Recovery is defined as the amount of monetary recovery and non-monetary recovery combined, prior to the deduction of COUNSEL's fee and reimbursement of reasonable costs/expenses. Non-monetary recovery is defined as the total amount of any non-monetary recovery directly awarded or obligated to be paid to the COUNTY specifically through either judgment or settlement of the COUNTY's lawsuit, including goods and/or services that, if paid for by the COUNTY, would be a budget item for which COUNTY funds would be allocated. The monetary value of any goods and/or services for the purposes of this Agreement will be determined according to the fair market value of such items and/or according to other objective criteria.

4.8. *Recovery over Time.* In the event the Monetary Recovery is paid over a period of time (not in a single lump sum), the payment of attorneys' fees to the COUNSEL shall be made on a pro rata basis commensurate with the payment of the Monetary Recovery over time. This provision shall not apply to reimbursement of Reasonable Costs/Expenses, and all Reasonable Costs/Expenses shall be reimbursed in full from any Monetary Recovery and not made on a pro rata basis. By way of example only, if, in a settlement reached after the commencement of discovery, the COUNTY receives \$1,000,000 each year for five years, and the Reasonable Costs/Expenses are \$200,000, then COUNSEL would deduct the \$200,000 for Reasonable Costs/Expenses from the first year's payment of \$1,000,000. Following deduction for Reasonable Costs/Expenses, COUNSEL would immediately receive \$125,000 (or 12.5% of the initial payment of \$1,000,000) as the pro rata portion of COUNSEL's Fee and then remit to the COUNTY \$675,000. For each of the next four years, COUNSEL would deduct \$125,000 from the \$1,000,000 payment as the pro rata portion of the COUNSEL's fee and then remit to the COUNTY \$875,000.

4.9. *Disbursement Sheet.* At the time COUNSEL remits the COUNTY's recovery, COUNSEL shall provide the COUNTY with a detailed disbursement sheet reflecting the amount of attorney's fees retained by COUNSEL and the Reasonable Costs/Expenses, which shall include enough specificity to permit the COUNTY to determine what the cost/expenses is, the amount spent on the cost/expenses, the percentage thereof to be paid by the COUNTY (if the incurrence benefitted other entities) and, where not obvious, the reason for incurring the cost/expenses.

4.10. *Division of Fees or Costs with other Firms.* The COUNTY acknowledges and agrees that, if the Litigation is consolidated and/or coordinated with other actions as part of a multidistrict litigation, the COUNSEL may determine that it benefits the COUNTY to associate with additional firm(s), which may result in COUNSEL's decision to share with other firms the attorneys' fees to which they would be entitled under this Agreement. This sharing of attorney's fees with other law firms may be on a percentage basis or based on time spent by all counsel involved in assisting with the prosecution of the Litigation. The COUNTY consents to such association and sharing of fees, provided that no attorney or firm representing the COUNTY in this matter violates the COUNTY's Conflict of Interest Policy (as referenced below). Any such sharing of attorneys' fees will not increase, decrease, or otherwise affect the percentage or amount of attorneys' fees due under this Agreement. In addition, despite any such sharing of attorneys' fees, the COUNTY will not be responsible or obligated to pay any costs/expenses expended by other additional law firm(s) and any such costs/expenses shall not be included in Reasonable Costs/Expenses under this Agreement.

4.11. *Sister Provision.* Should COUNSEL contract with any other Florida local governmental entity with a similar population size seeking to recover similar elements of damages against similar defendants for the same scope of services under a contract with more favorable terms to the COUNTY than this agreement, COUNSEL will notify the County Attorney of the more favorable terms in writing. The notice shall include the contract language and explain why it is a more favorable terms. The COUNTY, through the County Attorney, shall have one hundred and twenty (120) days following notice of the fee and cost provisions, to notify COUNSEL of their acceptance of the alternative fee and cost/expense provisions in its entirety. If the COUNTY accepts the alternative fee and cost provisions, it shall be deemed to have

been automatically incorporated into this agreement and to replace the existing provision. The Sister provision is no longer operative once all of the Defendants in the then-operative complaint have admitted liability or liability has been determined on all pending counts against all the Defendants sued.

**5. Costs and Expenses.** COUNSEL agree to advance all reasonable costs and expenses of the litigation or any administrative proceeding. In the event of any monetary recovery, COUNTY agrees to reimburse COUNSEL for all reasonable costs and expenses advanced by COUNSEL. In the event that there is not a successful outcome, COUNSEL agree that none of COUNSEL's costs or expenses will be charged to COUNTY to the fullest extent permissible under the applicable law and ethics rules. In no circumstance shall the COUNTY be required to pay any sums to COUNSEL as reasonable costs/expenses and fees that, when aggregated, exceed the amount of the Monetary Recovery. If any matter arises that may have a court ordered fee and/or cost triggering consequence, COUNSEL will immediately discuss with COUNTY the specific risks and potential cost consequences going forward.

**5.1. Reasonable costs/Expenses.** Reasonable costs and expenses are defined as the out-of-pocket expenses actually incurred by COUNSEL in connection with the Litigation, including, but not limited to: court fees; process server fees; necessary and reasonable travel expenses of COUNSEL to attend depositions, court proceedings, witness interviews, and meetings related to the Litigation, and expert witnesses. COUNSEL shall maintain records specifying why attendance by its attorneys at the described events was necessary. Reasonable costs/expenses shall not include the following expenses: first-class or business-class airfare; routine copying and printing charges; fax charges; routine postage; office supplies; telephone charges unless related to teleconferencing services; local travel (within a 30-mile radius of the main office of the applicable attorney or individual Law Firm, including mileage, parking and tolls); delivery services performed by internal staff; electricity or other utilities; software costs or subscription fees; legal research costs (including but not limited to costs associated with any attorney or other person's time to perform legal research); routine internet or wireless access charges not associated with specific Litigation-related tasks; time expended by law clerks; or time expended by administrative staff.

**5.2. Travel Costs.** All travel costs, expenses and fees must be consistent with section 112.061, Florida Statutes to be eligible for reimbursement. The COUNTY does not authorize first class travel and requests that the lowest rates possible be obtained. Reasonable mileage will be reimbursed at the statutory rate. If travel time is devoted to working for one or more counties, the COUNTY should only be billed for the proportional time related to the COUNTY's matter. Food and beverage expenses are limited to the current rate of compensation established by law or county resolution or ordinance.

**6. Indemnification.** COUNSEL shall at all times indemnify, hold harmless and defend the County, its officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses (collectively, a "Claim") raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any acts or omissions of COUNSEL, any of their employees, agents, servants, or officers, or otherwise accrues from, results from, or is related to the subject matter of this Agreement, to the fullest extent allowable

under all applicable law and ethics rules. Notwithstanding the foregoing, COUNSEL shall not take any action that may violate any applicable ethics rules or laws and may not indemnify and/or hold the COUNTY harmless from adverse party legal fees and/or costs arising from or relating to the subject matter of this Agreement except as otherwise permitted under applicable law and ethics rules. In the event any Claim is brought against an Indemnified Party, COUNSEL, upon written notice from the County Attorney, shall defend each Indemnified Party against each such Claim by counsel satisfactory to the County Attorney or, at the County Attorney's option, pay for an attorney selected by the County Attorney to defend the COUNTY or other Indemnified Party. The obligations of this section shall survive the expiration or termination of this Agreement.

**7. Insurance.** COUNSEL shall procure and maintain during the entire period of performance under this agreement, the types of insurance specified below.

**7.1. General Liability.** COUNSEL shall maintain adequate General Liability Insurance for bodily injury and property damage, including but not limited to premises operation, products and completed operations, personal and advertising injury, and contractual liability with minimum limits of \$1,000,000 per occurrence.

**7.2. Automobile.** COUNSEL shall maintain adequate Automobile Liability Insurance for all owned, hired, or non-owned motor vehicles used in conjunction with the performance of this contract. The policy shall provide a minimum of \$1,000,000 per occurrence, combined single limit for bodily injury and property damage.

**7.3. Workers' Compensation.** COUNSEL shall maintain adequate Workers' Compensation and Employer's Liability coverage as required by statute and in full compliance with the applicable laws of the State of Florida; and Employer's Liability coverage in a minimum amount of \$500,000 per accident for injury / disease.

**7.4. Professional Liability.** COUNSEL agree to collectively maintain Professional Liability Insurance coverage with the limits of liability provided by such policy no less than Five Million Dollars (\$5,000,000) for each claim with a maximum deductible of Two Million Dollars (\$2,000,000), unless otherwise approved in advance by the County's Risk Management Division (RMD). Coverage will be written on a "claims-made" basis. This collective insurance shall be maintained continuously in force for a minimum of two (2) years following the expiration or termination of this Agreement, and shall annually provide COUNTY Risk Management Division (RMD) with evidence of continuous coverage. The obligations of this paragraph shall survive the expiration or termination of this Agreement.

**7.5. All Policies.** Excepting the Professional Liability Insurance, all policies of insurance must be written on an 'occurrence basis' and must be maintained for the duration of the contract. These are required minimum insurance requirements and will not in any way limit COUNSEL's liability under this contract. Such insurance coverage shall be on a coverage form acceptable to COUNTY and issued by companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in the State of Florida. In addition, each such insurer shall have and maintain throughout the period for which coverage is required a minimum A.M. Best Company Rating of "A-" and a minimum

Financial Size Category of "VII." COUNSEL shall submit a Certificate of Insurance (COI) demonstrating evidence of coverage. COUNSEL shall provide the County with an updated Certificate of Insurance at each renewal of the coverages during the agreement.

**8. Division of Attorneys' Fees.** COUNSEL may divide the COUNSEL's Fees received for the legal services provided under this Agreement with additional attorneys or law firms retained as associate COUNSEL, including but not limited to local COUNSEL in the jurisdiction in which any proceeding is filed. COUNSEL will provide COUNTY with notice and opportunity to comment before associate COUNSEL performs any work on behalf of COUNTY.

**9. Settlement Authority.** COUNSEL will not settle COUNTY's claim without approval of COUNTY, who will have the absolute right to accept or reject any individual settlement offer. It is the policy of the County Attorney's Office to keep the Board of County Commissioners apprised of major developments in pending litigation. The County Attorney and assigned Assistant County Attorney will be involved in any strategy or settlement discussions or proceedings. All demands, counter-demands and in-court pronouncements regarding settlements should be discussed with the County Attorney for scheduling and presentation to the Board of County Commissioners at an executive session. Any final settlement of any matter is subject to the express approval of the County Attorney and the Board of County Commissioners. Alternate dispute resolution may be considered for all litigation and disputes.

**10. Notices.** All written notice and communications to COUNTY relating to this Agreement shall be mailed or personally delivered to:

TO THE COUNTY      Eden Bentley, Esq.,  
County Attorney  
Brevard County Attorney's Office  
2725 Judge Fran Jamieson Way, C-308  
Viera, Florida, 32940

TO COUNSEL          The Charpentier Law Firm  
c/o Stephen G. Charpentier  
2285 W. Eau Gallie Boulevard  
Melbourne FL 32935

Mark J. Dearman, Esq.  
Robbins Geller Rudman & Dowd LLP  
120 East Palmetto Park Road, Suite 500  
Boca Raton, Florida 33432

**11. Public Records.** Florida has very broad public records laws. COUNSEL shall comply with all applicable requirements of the Florida Public Records Act with respect to the Law Firm's records relating to, arising from, or in connection with this Agreement.

**IF COUNSEL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO COUNSEL'S DUTY TO PROVIDE PUBLIC RECORDS**

**RELATING TO THIS CONTRACT, CONTRACT THE CUSTODIAN OF PUBLIC RECORDS  
AT: (321) 633-2090; Ms. Nadia Rivet, 2725 Judge Fran Jamieson Way, C-308,  
Viera, Florida 32940.**

**11.1. Duties.** To the extent that COUNSEL will act on behalf of the COUNTY, as provided under section 199.0701, Florida Statutes, COUNSEL shall:

(a) Keep and maintain public records required by the COUNTY to perform the services under this agreement.

(b) Upon request from the COUNTY's custodian of public records, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Florida law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this agreement and following completion of this agreement if COUNSEL does not transfer the records to the COUNTY.

(d) Upon completion or termination of this Agreement, transfer, at no cost, to the COUNTY all public records in possession of COUNSEL and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the COUNTY upon request in a format that is compatible with the information technology systems of the COUNTY.

(e) The failure of COUNSEL to comply with the provisions of this section shall constitute a material breach of this Agreement entitling the COUNTY to exercise any remedy provided in this Agreement or under applicable law.

(f) COUNTY understands that much of COUNSEL's files and documents compiled in connection with their investigation and prosecution of this matter may constitute work product and property of COUNSEL. Notwithstanding the foregoing, COUNSEL agree to comply with all requirements of Chapter 119, Florida Statutes, as may be applicable.

**11.2. Procedure.** A request for public records regarding this Agreement should be made directly to the COUNTY, who will be responsible for responding to any such public records requests. COUNSEL will promptly forward any public records request that it receives to the COUNTY point of contact. COUNSEL will provide any requested records to the COUNTY to enable the COUNTY to timely respond to the public records request.

**12. Miscellaneous Provisions.**

**12.1. Conflict Resolution.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with interpretation or enforcement of this Agreement shall be in the state courts of

the Eighteenth (18<sup>th</sup>) Judicial Circuit in and for Brevard County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court for the Middle District of Florida. Any and all disputes, controversies, claims or demands arising out of or relating to (i) this Agreement, (ii) any provision of this Agreement, (iii) the provision of services by COUNSEL to the COUNTY; and (iv) the relationship between the Parties, whether in contract, tort, or otherwise, at law or in equity, for damages or any other relief, shall be resolved in the courts of Brevard County. Each party will be responsible for its own attorney fees and costs. Each party waives its right to a jury.

*12.2. Assignment.* Neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by any of the individual COUNSEL without prior written consent of the County Attorney. If any of the law firms violate this provision, the COUNTY shall have the right to immediately terminate this agreement for material breach.

*12.3. Qualifications.* COUNSEL represent that each person and entity that will provide services under this Agreement is duly qualified to perform such services and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. COUNSEL agree that all services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services in litigation of this nature.

*12.4. Third Party Beneficiaries.* Neither COUNSEL nor the COUNTY intend(s) to directly or substantially benefit a third party by this Agreement. Therefore, COUNSEL and the COUNTY acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

*12.5. Sovereignty.* Except with regard to the contractual obligations expressly undertaken herein, the COUNTY fully preserves its sovereign immunity.

*12.6. Entire Agreement.* This Agreement contains the entire agreement between the parties. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

*12.7. Severability.* If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, then the remainder of that provision and of the entire Agreement will be severable and remain in effect. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of the parties.

*12.8. Power of Attorney.* The COUNTY grants COUNSEL a limited power of attorney that is limited to matters that are necessary to pursue the Litigation so that, subject to any express limitations stated above, COUNSEL have full authority to prepare, sign, and file all pleadings. COUNSEL are also authorized and empowered to act as the COUNTY's negotiator in any and all negotiations concerning the Litigation. To be clear, all decisions regarding final resolution of the Litigation, including settlement, are within the

sole power of the COUNTY. COUNSEL will take no action to settle the COUNTY claim without prior express written approval of the COUNTY (acting through the Board of County Commissioners.)

**13. Audit.** The COUNTY shall have the right to examine and audit books, records, other documents and supporting material for the purpose of evaluating compliance with this Agreement, and the fees charged to the COUNTY. Such books and records shall be preserved and made available to the COUNTY during business hours for examination, audit or reproduction. The COUNTY may employ, at its sole discretion, its internal audit department or independent outside auditors for purposes of accomplishing this audit. If an error is found that exceeds ten percent (10%) of COUNSEL's total billings to the COUNTY for the year in which the audit is conducted, then COUNSEL shall pay the cost of the audit. COUNSEL shall maintain records pertinent to the litigation costs and expenses for a period of three (3) years after expiration or termination of this Agreement, or, if any audit has been initiated and audit findings have not been resolved at the end of the three years, such books and records shall be retained until resolution of the audit findings. The obligations of this paragraph shall survive the expiration or termination of this agreement.

**14. Termination.**

**14.1. Material Breach.** In the event of a material breach of this Agreement by any party that remains uncured for thirty (30) days after written notice is provided by the COUNTY to COUNSEL or by COUNSEL to COUNTY, as applicable, this Agreement may be terminated. Any termination of this Agreement by the COUNTY shall be through formal action by the Board. Material breach includes, but is not limited to, failure of COUNSEL to comply with the COUNTY's conflict of interest policy, or failure to move the case forward in a timely fashion. In the event the COUNTY terminated this Agreement for material breach, COUNSEL shall not be entitled to receive any attorney's fees (notwithstanding any subsequent monetary recovery by the COUNTY) or any reimbursement for any litigation cost/expenses expended pursuant to this Agreement, absent a judicial determination that the COUNTY's termination was not properly based on a material breach.

**14.2. Termination for Convenience.** This Agreement may also be terminated for convenience for any reason other than material breach by the COUNTY, through formal action by the Board, upon not less than thirty (30) days' advance written notice to COUNSEL. If terminated for convenience, and the COUNTY obtains a Monetary Recovery, either through settlement or judgment, COUNSEL shall nevertheless be entitled to recover their COUNSEL Fee and all Reasonable Costs/Expenses from the Monetary Recovery on a quantum merit basis (subject to the limitations stated above).

**15. Effective Date.** This agreement is effective upon \_\_\_\_ day of \_\_\_\_\_, 2018.

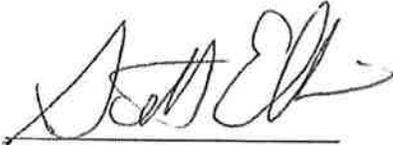
**16. Counterparts and Authority.** This Agreement may be executed in counterparts all of which, taken together, shall constitute one and the same agreement. Each party represents that the person signing on its behalf has been fully authorized by all required action to sign on behalf of and to bind that party to the obligations stated herein.

**(SIGNATURE PAGE FOLLOWS)**

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed on this the first date first above written.

ATTEST:

BREVARD COUNTY



Scott Ellis, Clerk

By: 

Rita Pritchett, Chair

(as approved by the Board on May, 22, 2018)

By: \_\_\_\_\_

**Stephen G. Charpentier, Esq.**  
Charpentier Law Firm, P.A.  
2285 W. Eau Gallie Boulevard  
Melbourne, FL 32935  
(321) 308-8020  
[steve@brevardlawyer.com](mailto:steve@brevardlawyer.com)

By: \_\_\_\_\_

**Steven R. Maher, Esq.**  
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(407) 839-0866  
[smaher@maherlawfirm.com](mailto:smaher@maherlawfirm.com)

By: \_\_\_\_\_

**Paulina do Amaral, Esq.**  
Lieff Cabraser Heimann &  
Bernstein  
250 Hudson Street, 8th Floor  
New York, NY 10013  
(212) 355-9500  
[pdoamaral@lchb.com](mailto:pdoamaral@lchb.com)

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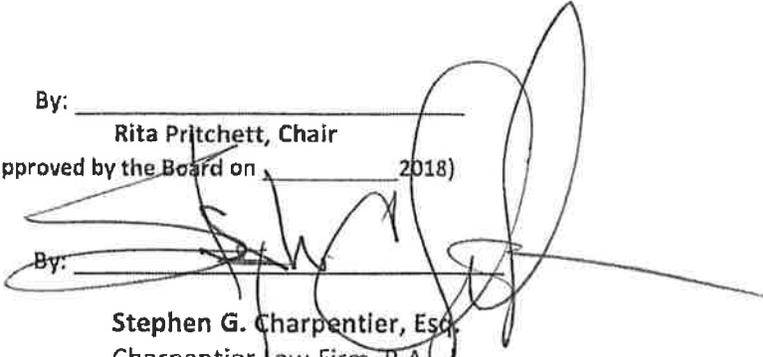
ATTEST:

BREVARD COUNTY

\_\_\_\_\_  
Scott Ellis, Clerk

By: \_\_\_\_\_  
Rita Pritchett, Chair  
(as approved by the Board on \_\_\_\_\_ 2018)

By: \_\_\_\_\_

  
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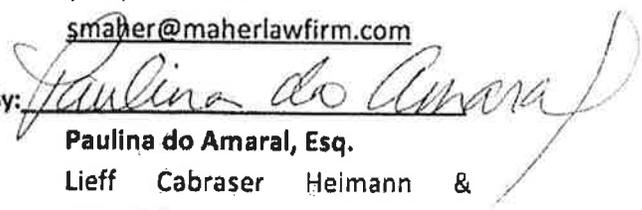
BREVARD COUNTY

\_\_\_\_\_  
Scott Ellis, Clerk

By: \_\_\_\_\_  
Rita Pritchett, Chair  
(as approved by the Board on \_\_\_\_\_ 2018)

By: \_\_\_\_\_  
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