



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.13.

2/11/2020

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### **Subject:**

Williamson D. v. Brevard County

### **Fiscal Impact:**

Paid through insurance

### **Dept/Office:**

County Attorney

### **Requested Action:**

Approve the attached settlement agreement.

### **Summary Explanation and Background:**

On January 17, 2020, under a proposed settlement agreement, the Plaintiffs have agreed to accept \$430,000 for attorney fees, costs and litigation expenses. Additionally, as previously approved pursuant to a mediation on April 6, 2016, the plaintiffs will remain entitled to \$60,000 in compensatory damages, plus any accruable post judgment interest. The total of \$490,000 fully resolves all claims made or that could have been made relating to the invocation practices of the County, and all claims regarding fees and costs. These sums will be paid by the insurance trust with which Brevard County has a coverage agreement. In turn, the Parties will request the District court enter a proposed consent amended final judgment that vacates the prior permanent injunction and issues a new more limited permanent injunction that "permanently enjoins the County from continuing the invocation-speaker-selection practices and procedures as explained by the Commissioners in their testimony taken in the action and as embodied in Resolution 2015-101, insofar as such practices and procedures resulted in discrimination in favor of certain monotheistic religions." Nothing in the consent judgment shall be construed as resolving or having a preclusive effect with respect to the issue of whether the County must permit nontheists to deliver opening invocations. The proposed consent order is in line with the 11<sup>th</sup> Circuit's opinion. Attached is the Settlement Agreement and Exhibit A, which contains the relevant terms. Exhibits B-E are not attached, as they deal with court filings that will implement the relevant terms. Request the Board authorize the County Attorney, or designee, to sign the settlement documents and the County Manager to sign any required budget change requests or other documents associated with this action.

### **Clerk to the Board Instructions:**

Return Clerk's memorandum to County Attorney's Office.



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

February 12, 2020

**M E M O R A N D U M**

TO: Eden Bentley, County Attorney

RE: Item F.13., Williamson D. v. Brevard County

The Board of County Commissioners, in regular session on February 11, 2020, executed and approved the Settlement Agreement for Williamson D. v. Brevard County. Enclosed is the fully-executed Settlement Agreement.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

/ds

Encl. (1)

cc: Finance  
Budget

MICHAEL M. BELL  
MICHAEL J. ROPER  
MICHAEL H. BOWLING  
JOSEPH D. TESSITORE  
DALE A. SCOTT  
CHRISTOPHER R. FAY  
CINDY A. TOWNSEND  
ANNA E. ENGELMAN



**Bell & Roper, P.A.**  
ATTORNEYS AT LAW

SHERRY G. SUTPHEN  
DAVID B. BLESSING  
FRANK M. MARI  
JOHN M. JANOUSEK  
JENNIFER C. BARRON  
NICHOLAS J. MARI  
BRAULIO M. RODRIGUEZ  
CHRISTOPHER W. HOEG  
DEREK J. ANGELL

2707 EAST JEFFERSON STREET ■ ORLANDO, FL 32803  
T: 407.897.5150 ■ F: 407.897.6947  
WWW.BELLROPERLAW.COM

January 28, 2020

Brevard County Board of County Commissioners  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

Re: *Williamson v. Brevard County*  
Case No.: M.D. Fla. 6:15-cv-1098-Orl-28DCI  
Our File No.: 027-043

Dear Brevard County Commissioners:

The *Williamson* lawsuit relates to the prior policies and practices of the Board of County Commissioners for selection of invocation speakers at Board of County Commissioners meetings. After the opinion of the United States Court of Appeals for the Eleventh Circuit became the final ruling on the merits of the plaintiffs' claims, a remaining issue was the plaintiffs' entitlement to attorney's fees, costs, and litigation expenses. The plaintiffs contended that they are the prevailing parties and are therefore entitled to a significant award for their attorney's fees, costs, and litigation expenses.

After exchanging many settlement offers and demands, we reached an agreement (subject to final approval by the Board of County Commissioners) on January 17, 2020 to settle the plaintiffs' claims for attorney's fees, costs, and litigation expenses for four hundred thirty thousand dollars (\$430,000.00). This sum would be paid by the insurance trust with which Brevard County has a coverage agreement. Under the proposed settlement agreement, the plaintiffs would remain entitled to a sixty-thousand-dollar (\$60,000.00) payment for settlement of their damages claims, as agreed at mediation held on April 6, 2016.

Since the United States Court of Appeals for the Eleventh Circuit vacated in part the Final Judgment previously entered by the district court on November 29, 2017, the parties have agreed to the form of a Consent Amended Final Judgment. If the Board approves the settlement and the district court enters the Consent Amended Final Judgment, Brevard County would be permanently enjoined "from continuing the invocation-speaker-selection practices and procedures as explained by the Commissioners in their testimony taken in this action and as embodied in Resolution 2015-101, insofar as such practices and procedures resulted in discrimination in favor of certain monotheistic religions." This proposed final injunction tracks the ruling of the United States Court of Appeals for the Eleventh Circuit. The Consent Amended Final Judgment would explicitly state:

Brevard County Board of County Commissioners  
January 28, 2020  
Page 2

“nothing in this Consent Judgment shall be construed as resolving or having preclusive effect with respect to the issue of whether the County must permit nontheists to deliver opening invocations.”

Please do not hesitate to contact me if any additional information regarding the proposed settlement of the *Williamson* lawsuit would be helpful to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'FM Mari', with a stylized flourish at the end.

Frank M. Mari

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

DAVID WILLIAMSON, CHASE  
HANSEL, KEITH BECHER,  
RONALD GORDON, JEFFERY  
KOEBERL, CENTRAL FLORIDA  
FREETHOUGHT COMMUNITY,  
SPACE COAST FREETHOUGHT  
ASSOCIATION, and HUMANIST  
COMMUNITY OF THE SPACE  
COAST,

Plaintiffs,

v.

BREVARD COUNTY,

Case No. 6:15-cv-1098-Orl-28DCI

Defendant.

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AMENDMENT TO SETTLEMENT AGREEMENT

All parties to the above-captioned action hereby agree that the Settlement Agreement between the parties that was signed by counsel for the parties on January 17, 2020, is hereby amended to remove paragraph 9 of the Settlement Agreement; that paragraph 9 of the Settlement Agreement is null and void and of no further effect; that all other provisions of the Settlement Agreement remain in effect; and that this Amendment to Settlement Agreement is hereby incorporated into and made part of the Settlement Agreement.

IT IS SO AGREED AND STIPULATED ON BEHALF OF PLAINTIFFS

By:



Alex J. Luchenitser (Trial Counsel for Plaintiffs)

Date:

1/29/2020

Alex J. Luchenitser (Trial Counsel)\*  
Americans United for Separation of Church and State  
1310 L Street NW, Suite 200  
Washington, DC 20005  
Tel.: 202-466-7306 / Fax: 202-466-3353  
luchenitser@au.org

Daniel B. Tilley  
Florida Bar #102882  
ACLU of Florida  
4343 West Flagler St., Suite 400  
Miami, FL 33134  
Tel.: 786-363-2714 / Fax: 786-363-1257  
dtilley@aclufl.org

Rebecca S. Markert\*  
Andrew L. Seidel\*  
Freedom From Religion Foundation, Inc.  
10 N. Henry Street  
Madison, WI 53703  
Tel.: 608-256-8900 / Fax: 608-204-0422  
rmarkert@ffrf.org / aseidel@ffrg.org

Daniel Mach\*  
ACLU Program on Freedom of Religion and Belief  
915 15th Street NW  
Washington, DC 20005  
Tel.: 202-548-6604 / Fax: 202-546-0738  
dmach@aclu.org

\*Appearing *pro hac vice*.

IT IS SO AGREED AND STIPULATED ON BEHALF OF DEFENDANT BREVARD  
COUNTY

By: \_\_\_\_\_  
Frank M. Mari  
(Counsel for defendant Brevard County)

Date: \_\_\_\_\_

Michael J. Roper, Esq.  
mroper@bellroperlaw.com  
Frank M. Mari, Esq.  
fmari@bellroperlaw.com  
Bell & Roper, P.A.  
2707 E. Jefferson Street  
Orlando, FL 32803  
Telephone: (407) 897-5150  
Facsimile: (407) 897-3332

Christine M. Schverak, Esq.  
christine.schverak@brevardfl.gov  
Brevard County Attorney's Office  
2725 Judge Fran Jamieson Way  
Bldg. C — Suite 308  
Viera, FL 32940  
Telephone: (321) 633-2090  
Facsimile: (321) 633-2096

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

DAVID WILLIAMSON, CHASE  
HANSEL, KEITH BECHER,  
RONALD GORDON, JEFFERY  
KOEBERL, CENTRAL FLORIDA  
FREETHOUGHT COMMUNITY,  
SPACE COAST FREETHOUGHT  
ASSOCIATION, and HUMANIST  
COMMUNITY OF THE SPACE  
COAST,

Plaintiffs,

v.

BREVARD COUNTY,

Case No. 6:15-cv-1098-Orl-28DCI

Defendant.

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SETTLEMENT AGREEMENT

All parties to the above-captioned action hereby agree to settle this action on the substantive terms set forth in the Proposed Consent Amended Final Judgment attached hereto as Exhibit A. The Proposed Consent Amended Final Judgment is hereby incorporated into this Settlement Agreement. The parties further agree to the following procedural terms:

1. Once this Settlement Agreement is approved by the plaintiffs listed in the caption above ("Plaintiffs"), Plaintiffs' counsel shall sign the agreement. Once this Settlement Agreement is approved by those officials of Brevard County ("the County") and of its insurance trust whose approval is necessary for the Settlement Agreement to be presented to



the Brevard County Board of County Commissioners (“the Board”) for final approval, counsel for the County shall sign the agreement.

2. As soon as possible after both Plaintiffs’ counsel and the County’s counsel sign the agreement, and in any event within three (3) business days thereof, Plaintiffs shall file the Joint Status Report attached hereto as Exhibit B in the U.S. District Court for the Middle District of Florida and the Joint Status Report attached hereto as Exhibit C in the U.S. Court of Appeals for the Eleventh Circuit. These documents shall advise the respective courts that the parties have reached a settlement agreement that is contingent on final approval by the Board and shall ask the courts to continue to refrain from taking any further actions in this case until the Board either approves the Settlement Agreement or fails to timely approve it.

3. This Settlement Agreement is contingent on final approval by the Board, in accordance with Chapter 286 of the Florida Statutes, within sixty (60) days after it has been signed by both counsel for Plaintiffs and counsel for the County. If the Board rejects the Settlement Agreement, or fails to act on it within sixty (60) days and the approval deadline is not extended by mutual agreement of the parties, this Settlement Agreement shall be deemed void and of no further effect.

4. Within seven days of the Board’s approval of this Settlement Agreement, the County Manager of Brevard County or a designee thereof shall sign the Settlement Agreement, and counsel for the County shall provide the signed Settlement Agreement to Plaintiffs’ counsel.

5. Within seven (7) days of the date that counsel for the County provides Plaintiffs’ counsel with a copy of the Settlement Agreement that has been signed by the County

Manager or his designee to confirm the Board's approval of the Settlement Agreement, Plaintiffs shall file with the District Court the Joint Motion by All Parties for Approval and Entry of Consent Amended Final Judgment attached hereto as Exhibit D, together with the Proposed Consent Amended Final Judgment attached hereto as Exhibit A.

6. If the District Court declines to enter the Proposed Consent Amended Final Judgment, the parties shall attempt in good faith to agree on any modifications to the Proposed Consent Amended Final Judgment that may be necessary to secure the District Court's approval. But if the parties are ultimately unable to secure approval of the Proposed Consent Amended Final Judgment by modifying it or through an appeal of a denial of approval, this Settlement Agreement shall be deemed void and of no further effect.

7. Within seven (7) days of the District Court's entry of the Proposed Consent Amended Final Judgment, Plaintiffs shall file with the Eleventh Circuit Exhibit E hereto, a Joint Motion to Withdraw as Moot Plaintiffs-Appellees' Motion for Appellate Attorney's Fees and Litigation Expenses.

8. The signing by counsel for the County of this Settlement Agreement shall be deemed to authorize Plaintiffs' counsel to electronically sign Exhibits B, C, D, and E hereto on behalf of counsel for the County.

9. Prior to the filing with the District Court of the Proposed Consent Amended Final Judgment and the Joint Motion by All Parties for Approval and Entry of Consent Amended Final Judgment, no party or employee, insurer, agent, or affiliate thereof shall disclose the amount set forth in paragraph 5 of the Proposed Consent Amended Final Judgment to anyone

other than the parties themselves or employees or agents of the parties, of their attorneys, of their insurers, or of the organizations' that employ the parties' attorneys.

IT IS SO AGREED AND STIPULATED ON BEHALF OF PLAINTIFFS

By:   
Alex J. Luchenitser (Trial Counsel for Plaintiffs)

Date: 1/17/2020

Alex J. Luchenitser (Trial Counsel)\*  
Americans United for Separation of Church and State  
1310 L Street NW, Suite 200  
Washington, DC 20005  
Tel.: 202-466-7306 / Fax: 202-466-3353  
luchenitser@au.org

Daniel B. Tilley  
Florida Bar #102882  
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4343 West Flagler St., Suite 400  
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Washington, DC 20005  
Tel.: 202-548-6604 / Fax: 202-546-0738  
dmach@aclu.org

\*Appearing *pro hac vice*.

IT IS SO AGREED AND STIPULATED ON BEHALF OF DEFENDANT BREVARD COUNTY, CONTINGENT UPON APPROVAL BY THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS.

By: \_\_\_\_\_  
Frank M. Mari  
(Counsel for defendant Brevard County)

Date: \_\_\_\_\_

Michael J. Roper, Esq.  
mroper@bellroperlaw.com  
Frank M. Mari, Esq.  
fmari@bellroperlaw.com  
Bell & Roper, P.A.  
2707 E. Jefferson Street  
Orlando, FL 32803  
Telephone: (407) 897-5150  
Facsimile: (407) 897-3332

Christine M. Schverak, Esq.  
christine.schverak@brevardfl.gov  
Brevard County Attorney's Office  
2725 Judge Fran Jamieson Way  
Bldg. C — Suite 308  
Viera, FL 32940  
Telephone: (321) 633-2090  
Facsimile: (321) 633-2096

IT IS HEREBY CONFIRMED THAT THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS HAS APPROVED THIS SETTLEMENT AGREEMENT.

By: Bryan Andrew Lober  
Brevard County Manager or designee thereof

Date: 2/11/2020

Print name and title: BRYAN A. LOBER CHAIR

→ Scott Ellis  
SCOTT ELLIS, CLERK

# EXHIBIT A

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**DAVID WILLIAMSON, CHASE  
HANSEL, KEITH BECHER,  
RONALD GORDON, JEFFERY  
KOEBERL, CENTRAL FLORIDA  
FREETHOUGHT COMMUNITY,  
SPACE COAST FREETHOUGHT  
ASSOCIATION, and HUMANIST  
COMMUNITY OF THE SPACE  
COAST,**

**Plaintiffs,**

**v.**

**BREVARD COUNTY,**

**Case No. 6:15-cv-1098-Orl-28DCI**

**Defendant.**

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**PROPOSED CONSENT AMENDED FINAL JUDGMENT**

In accordance with an agreement by all parties to this case, the Court hereby ORDERS and ADJUDGES as follows:

1. Pursuant to 28 U.S.C. § 2201, the Court hereby issues a declaratory judgment that the invocation-speaker-selection practices and procedures of Brevard County (“the County”), as explained by the Brevard County Commissioners (“the Commissioners”) in their testimony taken in this action and as embodied in Brevard County Board of County Commissioners (“the Board”) Resolution 2015-101, violated the Establishment Clause of the First Amendment to the United States Constitution by discriminating in favor of certain monotheistic religions.

2. The Court vacates entirely the permanent injunction contained in its original Final Judgment (Doc. 115 ¶ 6, filed November 29, 2017). The Court hereby permanently enjoins the County from continuing the invocation-speaker-selection practices and procedures as explained by the Commissioners in their testimony taken in this action and as embodied in Resolution 2015-101, insofar as such practices and procedures resulted in discrimination in favor of certain monotheistic religions.

3. Consistent with the Opinion of the United States Court of Appeals for the Eleventh Circuit issued on July 8, 2019, nothing in this Consent Judgment shall be construed as resolving or having preclusive effect with respect to the issue of whether the County must permit nontheists to deliver opening invocations.

4. The Court hereby incorporates into this Consent Judgment the parties' Mediation Partial Settlement Agreement dated April 6, 2016 and filed November 13, 2017 (Doc. 112-2) and specifically orders as follows:

a. The County shall pay the plaintiffs listed in the caption above ("Plaintiffs") as compensatory damages the total sum of \$60,000.00, to be divided among Plaintiffs in accordance with an agreement among them.

b. The \$60,000 payment plus any accruable post-judgment interest shall be made by or on behalf of the County to Plaintiffs' counsel ACLU Foundation of Florida, Inc., via a lump-sum check, certified check, cashier's check, or wire transfer, within thirty (30) days of entry of this Consent Judgment.

c. The \$60,000 payment shall fully resolve all claims for damages that Plaintiffs made against the County in this action, as well as any other claims for damages that Plaintiffs could have brought relating to invocations at Board

meetings against the County, its past or present boards, commissioners, agents, employees, or attorneys, Preferred Government Insured Trust, Preferred Governmental Claims Solutions, or PGCS Claim Services.

5. In satisfaction of Plaintiffs' claims for attorney's fees, expenses, and costs, the County shall pay or cause to be paid \$430,000.00 to Plaintiffs' counsel Americans United for Separation of Church and State. Further:

a. The \$430,000.00 payment shall be made by or on behalf of the County to Americans United for Separation of Church and State, via a lump-sum check, certified check, cashier's check, or wire transfer, within thirty (30) days of entry of this Consent Judgment.

b. The \$430,000.00 payment shall fully resolve all claims for attorney's fees, expenses, and costs that Plaintiffs or Plaintiffs' counsel made against the County in this action, as well as any other claims for attorney's fees, expenses, and costs that Plaintiffs or Plaintiffs' counsel could have brought relating to invocations at Board meetings against the County, its past or present boards, commissioners, agents, employees, or attorneys, Preferred Government Insured Trust, Preferred Governmental Claims Solutions, or PGCS Claim Services.

6. On or before twenty-one (21) days after the date that Brevard County pays all monetary relief ordered in this Consent Judgment, counsel for Plaintiffs shall file a Satisfaction of Judgment in this action.



7. The Court retains jurisdiction to enforce (if necessary) this Consent Judgment.

IT IS SO ORDERED AND ADJUDGED.

By: \_\_\_\_\_  
John Antoon, II  
United States District Judge

Date: \_\_\_\_\_

MICHAEL M. BELL  
MICHAEL J. ROPER  
MICHAEL H. BOWLING  
JOSEPH D. TESSITORE  
DALE A. SCOTT  
CHRISTOPHER R. FAY  
CINDY A. TOWNSEND  
ANNA E. ENGELMAN



**Bell & Roper, P.A.**  
ATTORNEYS AT LAW

SHERRY G. SUTPHEN  
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BRAULIO M. RODRIGUEZ  
CHRISTOPHER W. HOEG  
DEREK J. ANGELL

2707 EAST JEFFERSON STREET • ORLANDO, FL 32803  
T: 407.897.5150 • F: 407.897.6947  
WWW.BELLROPERLAW.COM

January 22, 2020

**ATTORNEY CLIENT COMMUNICATION  
PRIVILEGED – CONFIDENTIAL  
ATTORNEY WORK PRODUCT**

(via e-mail)  
Christine Valliere, Esq.  
Assistant County Attorney, Brevard County  
2725 Judge Fran Jamieson Way, Bldg. C  
Viera, FL 32940

Re: Waters Mark Development Enterprises, LC v. Brevard County  
Case no.: 05-2014-CA-41947  
Court: Fla. Circuit Court, 18th Jud. Circuit, Brevard  
Our file no.: County 026-768

Dear Christine:

Preferred Governmental Claims Solutions ("Preferred") recently issued two letters concerning coverage issues as to the above matter. Preferred states it was obligated to cover defense costs up to \$100,000, as this matter involves a Bert J. Harris, Jr., Private Property Rights Protection Act ("Harris Act") claim. Preferred states our firm, working on the County's behalf pursuant to our retention by Preferred, has reached the coverage limits, including the \$50,000 self-insured retention.

Based on such exhaustion of coverage, as to continued legal representation, the County has the following options: 1) retain our firm independently to continue litigating this matter on the County's behalf; 2) have the County Attorney's office assume handling of the County's defense; or 3) hire another attorney or firm to defend the County.

Our firm would be happy to continue working on the County's behalf. If the County wishes to retain our continued services, this letter, if signed below, will confirm our engagement. It also provides information concerning our fees, billing, and collection policies, and other terms which will govern our relationship if the County wishes to retain us. We do not wish to be overly formal, but have found it helpful to confirm the nature and terms of our representation. Of course, we welcome any questions as to the terms below, or any aspect of the attorney-client relationship.

Communication: We believe communication is essential to the attorney-client relationship, and our efforts on your behalf. In this regard, we will endeavor to provide you with regular status updates, and will otherwise inform you of key events or occurrences throughout the course of this litigation, and our representation. Of course, we welcome any feedback, questions, or other communications at any time, and fully encourage the same.

Billing: For our services, we would offer the County our firm's governmental defense rate which we have been charging to Preferred: \$180/hour for partner time, \$145/hour for associate time, and \$85/hour for paralegal time. We bill our time in 1/10-hour increments (6 minutes). We prepare and submit our bills for payment on a monthly basis. We charge for all time spent representing client interests, including but not limited to: telephone calls and conferences with your representatives, co-counsel, opposing counsel, consultants (if any), and others; conferences amongst our legal and paralegal personnel; legal research; responding to client requests for information; preparation of letters, pleadings, and other documents; attendance at depositions, hearings, mediations, closings, trials, and other proceedings; and travel. Our rates are then applied to each task. Our invoices will be itemized, and include a brief description of the task, the amount of time spent on the task, and the total fee for the task. Each invoice is payable upon receipt, and any unpaid balance not paid within thirty (30) days of the billing date may incur interest at a rate of 1.5% per month. Should we receive a payment at a time when more than one invoice is outstanding, we will apply that payment to the oldest, outstanding bill.

Costs:<sup>1</sup> The County will be responsible for all charges we incur in the course of this representation, and will be responsible for reimbursing us for any actual costs advanced on your behalf. We will generally front case costs, and will seek reimbursement from you through our monthly bills. However, we may forward larger cost bills and invoices (e.g., expert witness invoices, mediator invoices) to you for payment directly to the vendor. We are committed to remaining on the cutting edge of computer and communications technology so as to provide you with a competitive advantage. Our charges will include, but are not limited to: charges for copying (\$0.15 per page); facsimiles; messenger services; long distance telephone calls; computer research services; airfare (business class), car rental, lodging, and meals for out-of-town trips; and court filings. These charges may also include any applicable sales or service tax.

Potential for Conflicts of Interest: Our firm represents a variety of governmental entities and officers, and private entities and individuals, throughout the state. As to governmental clients we are currently handling a number of matters similar to this litigation on behalf of counties, cities, law enforcement agencies, water management districts, and the like, numerous civil rights cases in defense of such entities, and various other civil matters (e.g., commercial litigation, personal injury defense). Presently, we have not identified, and do not foresee, any conflicts of interest which could impact our ability to represent the County. But, should we become aware of the same, we will immediately and fully inform you of the same, and take any actions necessary to first and foremost protect your interests, and the interests of any third parties.

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<sup>1</sup> As of Preferred's notification to us as to exhaustion of coverage, a balance of \$18,558.66 was owed to our retained expert appraiser John Robinson. On November 7, 2019, we submitted Robinson's October 2019 invoice (\$25,118.15) to Preferred for payment. It appears Preferred issued a partial payment to Robinson, on or about January 10, 2020, of \$6,559.49.

**Completion of Representation:** Upon completion of the matter to which this representation applies, or otherwise upon the earlier termination of our relationship, the attorney-client relationship will end unless we have expressly agreed to a continuation with respect to other matters. Your retention of our firm is, of course, terminable at will. However, termination of our services will not relieve your obligation to pay fees and expenses incurred prior to termination.

**"Legal Services with Outside Counsel" policy:** You have provided us with a copy of County Policy BCC-36 concerning "Legal Services with Outside Counsel." Should the County finalize our retention, we agree to abide by the requirements of Policy BCC-36.

\* \* \*

Again, we sincerely appreciate the County's confidence in our firm, and look forward to continuing to work with you and the County, if that is the County's desire. If the County indeed wishes to finalize our retention, please have a duly authorized representative sign below where indicated and return a copy of this letter to us.

We thank you for your attention to this matter.

Sincerely,



Dale A. Scott

DAS/eh

cc: Jad Brewer, Esq., Assistant County Attorney (via e-mail)  
Julie L. Jones, Risk Manager, Brevard County (via e-mail)

**Signed and approved on behalf of Brevard County:**

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title/Office:** \_\_\_\_\_

MICHAEL M. BELL  
MICHAEL J. ROPER  
MICHAEL H. BOWLING  
JOSEPH D. TESSITORE  
DALE A. SCOTT  
CHRISTOPHER R. FAY  
CINDY A. TOWNSEND  
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**Bell & Roper, P.A.**  
ATTORNEYS AT LAW

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T: 407.897.5150 ■ F: 407.897.6947  
WWW.BELLROPERLAW.COM

January 22, 2020

**ATTORNEY CLIENT COMMUNICATION  
PRIVILEGED – CONFIDENTIAL  
ATTORNEY WORK PRODUCT**

(via e-mail)

Christine Valliere, Esq.  
Assistant County Attorney, Brevard County  
2725 Judge Fran Jamieson Way, Bldg. C  
Viera, FL 32940

Re: Waters Mark Development Enterprises, LC v. Brevard County  
Case no.: 05-2014-CA-41947  
Court: Fla. Circuit Court, 8th Jud. Circuit, Brevard County  
Our file no.: 026-768

Dear Christine:

Enclosed you will find our estimated budget through trial (bench trial phase, and jury trial phase as to damages), and any potential appeals (interlocutory appeal following the bench trial, and any appeal as to any damages jury verdict). Our intent in preparing this budget is to be as conservative as reasonably possible, and err on the side of overestimating. But, the figures provided are indeed estimates, and ultimate expenditures could be greater than (or less than) the figures stated based on a number of factors, including court rulings, unexpected factual or legal developments, and the actions of the opposing parties and attorneys. For example, as we have discussed, to date opposing counsel has stonewalled us as to good faith discovery responses, which has increased fees and costs significantly.

In estimating fees and costs as to the two trials, and the two potential appeals, it is exceedingly difficult at this time to offer precise numbers as the issues in the case are not, yet, fully crystalized. As such, for present purposes, we have provided equal estimates as to anticipated fees and costs for the two trial phases, and the two potential appeals. Certainly, as the case progresses, we should be able to provide more accurate estimates as to anticipated

Christine Valliere, Esq.  
January 22, 2020  
Page 2 of 2

fees and costs as may be required for the two trials, and any appeals the County may wish to pursue, or may be forced to defend.

We thank you for your attention to this matter. Of course, please feel free to contact me with any questions or concerns, or if you require anything else.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale A. Scott". The signature is fluid and cursive, with the first name "Dale" being more prominent than the last name "Scott".

Dale A. Scott

DAS/eh  
Encl.

cc: Jad Brewer, Esq., Assistant County Attorney (via e-mail)  
Julie L. Jones, Risk Manager, Brevard County (via e-mail)

## LITIGATION BUDGET

(through trials and appeals, if necessary)

Proposed by: Dale A. Scott, Esq.

Waters Mark Development Enterprises, LC v. Brevard County

Date: January 22, 2020

Law Firm: Bell & Roper, P.A.

BR Case No.: 026-768

<b>I.</b>	<b>INITIAL PLEADING - PRELIMINARY ACTIVITY</b>	<b>Estimated Hours</b>	<b>Fees</b>
A.	Receipt and review of original Summons and Complaint (and amended Complaints), and attachments and exhibits	0.00	\$0.00
B.	Prepare motions to dismiss, and supporting and supplemental memorandums	0.00	\$0.00
C.	Prepare, serve, and file Answer and Affirmative Defenses	0.00	\$0.00
D.	Receipt and review of claims file, materials from client, etc.	0.00	\$0.00
E.	Preparation of Initial Suit Report	0.00	\$0.00
<b>Subtotal:</b>		<b>0.00</b>	<b>\$0.00</b>

<b>II.</b>	<b>FACT FINDING/INFORMATION MANAGEMENT</b>	<b>Estimated Hours</b>	<b>Fees</b>
A.	Prepare, file and serve initial discovery on Plaintiff (Interrogatories and Request to Produce)	0.00	\$0.00
B.	Receipt and review of Plaintiff's initial discovery	0.00	\$0.00
C.	Prepare and serve answers to Plaintiff's initial discovery requests (Interrogatories and Request to Produce)	15.00	\$2,700.00
D.	Prepare file and serve non-party requests re: financial records, land sale records, etc.	15.00	\$2,700.00
E.	Receipt and review of records from client	10.00	\$1,800.00
F.	Receive and analyze documents received from Plaintiff	50.00	\$9,000.00
G.	Receive and analyze documents received from non-parties	30.00	\$5,400.00
<b>Subtotal:</b>		<b>120.00</b>	<b>\$21,600.00</b>

<b>III.</b>	<b>DEPOSITIONS</b>	<b>Estimated Hours</b>	<b>Fees</b>
A.	Prepare for and attend depositions of Plaintiff representatives	50.00	\$9,000.00
B.	Prepare for and attend depositions of miscellaneous witnesses	15.00	\$2,700.00
B.	Prepare for and attend pre-deposition conferences with Defendant's employee/agents	10.00	\$1,800.00
C.	Prepare for and attend depositions of Defendant's employees/agents	30.00	\$5,400.00
D.	Prepare for and attend depositions of expert witnesses	20.00	\$3,600.00
<b>Subtotal:</b>		<b>125.00</b>	<b>\$22,500.00</b>

<b>IV.</b>	<b>MISCELLANEOUS</b>	<b>Estimated Hours</b>	<b>Fees</b>
A.	Legal research re: liability and damages, discovery issues, etc.	25.00	\$4,500.00
<b>Subtotal:</b>		<b>25.00</b>	<b>\$4,500.00</b>

<b>V.</b>	<b>MOTION PRACTICE AND PRE-TRIAL ACTIVITY</b>	<b>Estimated Hours</b>	<b>Fees</b>
A.	Preparation of Motions to Compel & miscellaneous pleadings and motions (including motions for summary judgment)	80.00	\$14,400.00
B.	Preparation of supplemental discovery	10.00	\$1,800.00
C.	Receipt and review of motions from Plaintiff's counsel, and preparation of responses	60.00	\$10,800.00
D.	Preparation for and attendance at Court hearings	15.00	\$2,700.00
E.	Preparation for and attendance at Case Management Conference	4.00	\$720.00
F.	Receipt and review of Court Orders	2.00	\$360.00
G.	Preparation of Mediation Statement	0.00	\$0.00
H.	Preparation for and attendance at mediation conference	0.00	\$0.00
<b>Subtotal:</b>		<b>171.00</b>	<b>\$30,780.00</b>

<b>VI.</b>	<b>COMMUNICATION</b>	<b>Estimated Hours</b>	<b>Fees</b>
A.	Reporting to client re: depositions, discovery, status of suit, etc.	5.00	\$900.00
B.	Correspondence with client	5.00	\$900.00
C.	Correspondence with opposing counsel	5.00	\$900.00
D.	Correspondence with clerk of court, non-parties, etc.	2.00	\$360.00
E.	Telephone conferences with client representatives	15.00	\$2,700.00
F.	Telephone conferences with expert witnesses	10.00	\$1,800.00
<b>Subtotal:</b>		<b>42.00</b>	<b>\$7,560.00</b>

<b>VII.</b>	<b>TRIAL ACTIVITIES (PHASE 1 - BENCH TRIAL)</b>	<b>Estimated Hours</b>	<b>Fees</b>
A.	Prepare exhibits, pre-trial statements, trial briefs, etc.	40.00	\$7,200.00
B.	Prepare witnesses for testimony, cross-examination, etc.	25.00	\$4,500.00
C.	Misc. preparation (review deposition transcripts, review exhibits, prepare witness questions, prepare evidentiary objections, etc.)	100.00	\$18,000.00
D.	Attend trial	60.00	\$10,800.00
E.	Prepare and argue post-trial motions, etc.	35.00	\$6,300.00
F.	Correspondence/communication with opposing attorney	7.00	\$1,260.00
G.	Correspondence/communication with insured/client	5.00	\$900.00
<b>Subtotal:</b>		<b>272.00</b>	<b>\$48,960.00</b>

<b>VIII.</b>	<b>TRIAL ACTIVITIES (PHASE 2 - JURY TRIAL AS TO COMPENSATION)</b>	<b>Estimated Hours</b>	<b>Fees</b>
A.	Prepare exhibits, pre-trial statements, trial briefs, etc.	40.00	\$7,200.00
B.	Prepare witnesses for testimony, cross-examination, etc.	25.00	\$4,500.00
C.	Misc. preparation (review deposition transcripts, review exhibits, prepare witness questions, prepare evidentiary objections, etc.)	100.00	\$18,000.00
D.	Attend trial	60.00	\$10,800.00
E.	Prepare and argue post-trial motions, etc.	35.00	\$6,300.00
F.	Correspondence/communication with opposing attorney	7.00	\$1,260.00
G.	Correspondence/communication with insured/client	5.00	\$900.00
<b>Subtotal:</b>		<b>272.00</b>	<b>\$48,960.00</b>



<b>IX.</b>	<b>APPELLATE ACTIVITIES (FIRST POTENTIAL APPEAL AS TO BENCH TRIAL RULING)</b>	<b>Estimated Hours</b>	<b>Fees</b>
A.	Review and analyze opposing brief(s)	10.00	\$1,800.00
B.	Research as to appellate issues	30.00	\$5,400.00
C.	Prepare brief(s)	100.00	\$18,000.00
D.	Prepare misc. motions (motions for rehearing, etc).	30.00	\$5,400.00
E.	Prepare for and attend oral argument(s)	20.00	\$3,600.00
F.	Correspondence/communication with insured/client	4.00	\$720.00
<b>Subtotal:</b>		<b>194.00</b>	<b>\$34,920.00</b>

<b>X.</b>	<b>APPELLATE ACTIVITIES (SECOND POTENTIAL APPEAL AS TO JURY VERDICT AS TO COMPENSATION)</b>	<b>Estimated Hours</b>	<b>Fees</b>
A.	Review and analyze opposing brief(s)	10.00	\$1,800.00
B.	Research as to appellate issues	30.00	\$5,400.00
C.	Prepare brief(s)	100.00	\$18,000.00
D.	Prepare misc. motions (motions for rehearing, etc).	30.00	\$5,400.00
E.	Prepare for and attend oral argument(s)	20.00	\$3,600.00
F.	Correspondence/communication with insured/client	4.00	\$720.00
<b>Subtotal:</b>		<b>194.00</b>	<b>\$34,920.00</b>

<b>XI.</b>	<b>COSTS</b>		<b>Estimates Costs</b>
A.	Depositions, Court Reporters		\$15,000.00
B.	Service of subpoenas/witness fees		\$1,000.00
C.	Copies of records from non-parties		\$2,000.00
D.	Postage, faxes, computerized legal research, mileage		\$1,500.00
E.	Fees for retained expert witnesses (land economist, appraiser, etc.)		\$60,000.00
F.	Fees for deposition of expert witnesses		\$5,000.00
<b>Subtotal:</b>			<b>\$84,500.00</b>

<b>Total Budget for Planned Activities - Fees (\$180/hr.)</b>		<b>1,415.00</b>	<b>\$254,700.00</b>
<b>Total Budget for Costs</b>			<b>\$84,500.00</b>
<b>ANTICIPATED LITIGATION BUDGET</b>			<b>\$339,200.00</b>



## POLICY

**TITLE:** Legal Services with Outside Counsel

**NUMBER:** BCC-36

**CANCELS** July 25, 2006

**APPROVED:** July 29, 2008

**ORIGINATOR:** County Attorney

**REVIEW:** July 29, 2011

### I. OBJECTIVE

To establish guidelines for the retention and use of outside legal services and shall be attached and incorporated into all contracts executed by outside counsel.

### II. DEFINITIONS AND REFERENCES

### III. DIRECTIVES

#### A. TRANSACTION MANAGEMENT AND STRATEGY

##### 1. Cooperation

We seek a cooperative teamwork approach to working with outside counsel and believe this is best achieved through open and active communications. The responsible Assistant County Attorney and your firm should consult on the management, strategy, procedure and all other significant aspects of a transaction or case. You and your firm should advise the attorney in advance of all important meetings, hearings, and other major events in a transaction or case.

##### 2. Conflicts of Interest

The County expects its counsel to be free of conflicting interests and the appearance of conflicting interest. Potential conflicts are to be discussed with the responsible Assistant County Attorney immediately. The County expects financial concessions (e.g., return of fees paid) if a conflict or appearance of conflict requires the retention of alternate counsel.

3. Communications

Simultaneously with finding, copies of critical pleadings, motions, discovery, and correspondence should be forwarded to the responsible Assistant County Attorney after they have been served.

We expect you to be diligent in re-using off-the-shelf research to reduce your workload and our costs.

The principal contact between your firm and the County will be the responsible Assistant County Attorney. Please keep the County Attorney advised of any contacts you have with other County personnel outside of the Legal Department.

4. Staffing

The efficient and economical use of resources requires the County pre-approve both the staffing and the specific individuals within your firm who will be working on the County matter. The County will not pay fees for unapproved staff, nor for time spent by more than one attorney attending meetings, witness interviews, depositions, hearings, or other proceedings. The County will not pay fees in excess of eight (8) hours per day for any one individual except under exigent circumstances, the County will not pay any incremental costs resulting from substitution of counsel and then only with advance approval. If there is any uncertainty as to the level of effort County desires for any matter, we encourage you to discuss this candidly with the responsible Assistant County Attorney.

The employee at the lowest level of your firm's organization structure who is capable of doing the job, and who routinely does the job, should be the one assigned to it. For example, partners should not be billing for research, digesting depositions, drafting routine pleadings, or routine administrative work. Lawyers should not be billing for work that is typically assigned to a paralegal or an administrative employee, unless it results in lower overall costs to the County.

The responsible Assistant County Attorney should be consulted when it may be more efficient or economical for the County to perform certain tasks. In such event, a prompt determination will be made as to whether it is appropriate for County personnel to perform such tasks.

We expect you to utilize all the resources of the firm, including conferences with other firm attorneys, and we expect your firm to share the costs of such conferences. The billings for intra-office conferences shall be kept to a minimum.

5.     Budgeting

From time to time for fiscal planning purposes, the responsible Assistant County Attorney may request a written budget applicable to the matter or case for which you have been retained. From time to time, we may request that you set specific limits on the time and resources you devote to certain matters. The County attorney may specify that the budget will be a not-to-exceed authorization and excesses shall be absorbed by the firm. In appropriate situations, we may also request "fixed price" or contingency fee arrangements. The Board of County Commissioners approve said budget. Once a budget is approved, your firm must stay within the budgeted amount unless an expanded budget is approved by the County Commission.

6.     Work Handled by In-House Counsel

In order to effectuate cost savings, at the discretion of your firm, the responsible Assistant County Attorney may be used to coordinate employee witnesses and perform the initial factual investigation and in-house interviews. The Assistant County Attorney will arrange for any necessary meetings or interaction between outside counsel and County employees.

7.     Discovery

We believe that discovery is necessary and essential for effective litigation. However, discovery, if not effectively controlled and managed, can result in major costs. Effective can result in obtaining fast results, thus perhaps saving County money in the long run. Discovery should proceed expeditiously to the extent necessary to obtain reasonably timely resolution of the litigation. Deposition schedules of county employee should be cleared with the Assistant County Attorney. Only one attorney from your law firm should attend a deposition or hearing related to discovery unless prior approval is obtained.

8.     Strategy and Settlements

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 the responsible 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 should be considered for all litigation and disputes.

9. Rate Increases

There shall be no increases in the rates charged by a firm's members or employees, as applied to a case involving the county, without County Commission approval after at least sixty (60) days' advance written notice. Approval of a reasonable rate increase shall not be unreasonably withheld every fourth year in the course of the litigation.

10. Minimum Charges

There shall be no standard minimum charges for any services performed such as telephone calls, file review, etc. Only the actual time expended shall be charged.

11. Disbursements

The County will not pay for administrative expenses such as secretarial time, work processing, overtime, or file maintenance. These expenses are to be included in your hourly rate. The County will reimburse the firm for copying costs, postage, and other reasonable and necessary expenses at the firm's costs.

12. Travel and Lodging

The County will pay reasonable travel expenses and time spent on County matters while traveling. The County does not authorize first class travel and request 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 clients, the County should be billed only for the proportional time related to the County matter.

Food and beverage expenses shall be limited to the following: breakfast, \$6.00; lunch, \$11.00; dinner, \$19.00 per each twenty-four hour period, or at such other rate of compensation established by law or county resolution or ordinance.

13. Dispute Resolution

The County reserves the right to examine and audit books, records, other documents and supporting material for the purpose of evaluating compliance with this procedure, and the fees charged to the County. Such books and records shall be made available to the County during business

hours for examination, audit or reproduction. The County shall 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 per cent (10%) of your firm's total annual billings to the county for the year in which the audit is conducted, then your firm shall pay the cost of the audit.

14. Media Coverage

The County will handle all outside or press coverage regarding legal or business matters. Any inquiries made to the firm are to be directed to the responsible Assistant County Attorney.

C. BILLINGS

1. Fees and Hourly Rates

All fees and hourly rates for legal services must be discussed and approved at the time of initial engagement. It is expected that all legal services shall be rendered at reasonable and competitive rates and that your hourly rates or fees shall be less than or no higher than the rates or fees charged to corporate clients of the firm.

2. Statements for Services

Statements must be submitted and conform to the following format: (a) identification of the specific individual in your firm performing the services; (b) the date and a brief description of the services rendered; (c) the time spent; (d) the billing rates of the attorneys and paralegals whose services appear on the statements; and (e) the County division or business unit involved. Statements should also itemize disbursements in detail, e.g., number of copies made times the rate. For travel disbursements, the statement should show a breakdown of the charges to include airfare, hotel, meals, and other expenses. For each specific matter or case, the statement should also include a total showing the total fees and costs from the inception of the case to date and another separate total showing the total for charges since the last billing period. Where a statement covers more than one matter or case, the requisite information should be provided separately for each matter.

To decrease the administrative burden of small billings, the County Requires all statements of \$250.00 or less to be held until the next billing cycle or until the final statement.

3. Billing Frequency

Billings should be rendered at least on a monthly basis. Alternatively,

billings on a less frequent basis may be acceptable, provided that monthly costs estimates are provided. The County will not pay any service or interest charges on statements for legal fees except to the extent required by law.

4. Subcontract Services

At the opening of the file or upon request by your firm, the County will decide whether we will pay directly for subcontracted services (e.g., court reporters: experts). Unless advised otherwise, we prefer the firm to pay these costs directly and to then include them on the next billing.

5. Maximum Billable Hours Per Day

No more than eight (8) hours per day for any one individual may be charged to the county except under exigent circumstances and only with the approval of the County Attorney.

D. PRIOR APPROVALS

1. The County reserves the right not to pay for the following activities unless approved in advance by the County Attorney.
  - a. Any extensive legal research to be performed by the firm.
  - b. Special services such as private investigators and experts provided such approval shall not be unreasonably withheld if your firm determines that such services are necessary for the successful prosecution of the litigation.
  - c. Extensive copying. The County Attorney should be consulted to determine if the copying can be done by an outside service or County at lower cost.
  - d. Extensive express document/communication deliveries (e.g., Federal Express, DHL). Electronic mail is the preferred means for rapid document delivery. See Section IV, Computerization below.

E. COMPUTERIZATION

The County suggests that all word processing be accomplished using WordPerfect as a standard to facilitate increased productivity between the County and outside counsel. If your firm can demonstrate that hourly rates are lower as a result of separate work processing charging, such charges may be separately authorized.

The use of computers can improve efficiency, communication and cost savings between the County and outside counsel. The following applications may be considered: (1) electronic mail to facilitate instantaneous communication; (2) billing software to electronically produce monthly statements; (3) docketing and calendaring system to ensure meeting, court and statute-of-limitation dates; (4)

document assembly system to permit laying new work over old; and (5) litigation support system to track large numbers of documents in litigation.

From time to time, your firm may be requested to make prior research as well as an index of your prior research available to the County. Such research would be provided at cost.

F. PUBLIC RECORDS

Your firm should be aware that many documents made available to you by the County and some documents produced by your firm in connection with the matter for which you have retained may be subject to disclosure upon a request made under the Florida Public Records Law. If a request for public records is made to your firm with regard to documents pertaining to the County, you should immediately notify the County Attorney and determine whether any exemption or privilege exists for the records requested. To the extent that no exemption or privilege exists, you should conform to County policy by promptly responding to public records requests by allowing inspection and copying, if requested, of the public records at issue.

G. OPTIONAL GUIDELINES

Following is a list of proposals that we view as effective means to increase efficiency and reduce the cost of legal services. These proposals will be discussed and determined at the time of initial engagement.

1. Billing Rates

There are numerous alternative billing arrangements that can lower the cost of legal services without compromising the outcome or working a disadvantage to your law firm. These include:

Identifying certain matters to be paid for on a contingency or risk-sharing basis

A block of hours at a reduced rate, with the rate changing after a specified number of hours have been expended on the matter.

No charge for start up time, such as learning various aspects of the case or familiarizing new lawyers with the case.

Discounted rates for all hours charged above a specified number, this can apply to a particular matter or to all matters handled by our firm.

A discount on all billings for the year, after the total billings reach a specified amount.



A rebate on total billings for the year, dependent on the difference between the actual billings and a guaranteed minimum billing amount.

A fixed hourly rate for certain types of ceases, independent of whether the work is done by a senior or junior attorney.

Billing rate adjustments to be made only at the start of each calendar year, with the prior approval of the County.

A fixed total fee for identified transaction or cases.

#### IV. RESERVATION OF AUTHORITY

The authority to issue and/or revise this policy is reserved to the Board of County Commissioners of Brevard County, Florida. The provisions set forth in this policy are subject to compliance with all applicable law.

DONE ORDERED and ADOPTED in Regular Session this 29 day of July A.D. 2008.

ATTEST:


By



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

By



Truman G. Scarborough, Jr., Chair  
(as approved by the Board on July 29, 2008)