

CONTRACT #Y16-166-ZM

This Contract is made as of the 23rd day of December, 2015 by and between Orange County, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as the COUNTY, and Aaron B. Thalwitzer, Esquire, an individual, authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose firm's Federal ID number is 20-1867767.

In consideration of the mutual promises contained herein, the COUNTY and the CONTRACTOR agree as follows:

ARTICLE 1 - SERVICES

The CONTRACTOR'S responsibility under this Contract is to provide professional/consultation services in the area of VAB matters, as more specifically set forth in the Scope of Services detailed on Exhibit A.

The COUNTY'S representative/liaison during the performance of this Contract shall be Katie Smith, Deputy Clerk, telephone no. (407) 836-7301.

ARTICLE 2 - STAFFING AND SUPERVISION

The VAB has engaged the CONTRACTOR, in part, based upon the lead attorney who will be assigned to do most of the work for the VAB. The VAB expects the lead attorney will be directly and primarily involved in VAB legal work unless the VAB agrees otherwise. All lawyers that the CONTRACTOR proposes to perform legal services for the VAB matter must be pre-approved by us, or we reserve the right not to consider their time expenditures.

We expect the CONTRACTOR to avoid:

- overstaffing;
- assigning additional lawyers or paralegals to a matter unless absolutely necessary, and then only with the VAB's authorization;
- charging for training time (which includes on-boarding time) when a new lawyer, paralegal or other timekeeper is added or another personnel shift is warranted;
- charging for time spent on preparing budgets, audit letters, invoices, responding to billing inquiries, or filing and organizing correspondence and pleadings;
- preparing written memoranda without the VAB's authorization (if such memoranda are authorized, please promptly provide the VAB with a copy);
- undertaking premature or peripheral legal or factual research;
- billing for unessential internal conferences, or for any administrative or staffing matters related to VAB work;

- digesting or summarizing documents, depositions, transcripts and the like, without the VAB's authorization; and
- assigning lawyers tasks when they are over-qualified (e.g., routine document review by a senior lawyer) or under-qualified (e.g., extensive research of complex legal principles by junior associates).

ARTICLE 3 - SCHEDULE

The CONTRACTOR shall commence services on December 28, 2015 and complete all services by December 27, 2016.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Attachment "A".

This contract may be renewed, by mutual agreement, for additional periods up to a cumulative total of four (4) years at the same prices, terms and conditions. Any change in price, terms or conditions shall be accomplished by written amendment to this contract.

Any order issued during the effective date of this contract, but not completed within that period, shall be completed by the CONTRACTOR within the time specified in the order. The contract shall govern the CONTRACTOR and the COUNTY'S rights and obligations with respect to the extent as if the order were completed during the contract's performance period.

ARTICLE 4- PAYMENTS TO CONTRACTOR

- A. The total amount to be paid by the COUNTY under this Contract for services, materials and "out of pocket" expenses shall not exceed Fifty Thousand Dollars (\$50,000). The CONTRACTOR will notify the COUNTY, in writing, when 90% of the estimated contract amount has been reached.

The CONTRACTOR shall be compensated at the following hourly rates for actual reasonable time spent by either an attorney fully licensed by the State of Florida or a practicing paralegal.

Partner	\$ <u>175.00</u>
Associate	\$ <u>150.00</u>

COUNTY reserves the right to negotiate a lump sum fee per case or assignment based upon the contractual hourly rates.

Any other type of billing or time keeping which allows compensation for time not actually spent by CONTRACTOR is not permitted. Therefore, it shall be a material breach of this contract for CONTRACTOR to submit for payment any statement for services rendered which either (i) overstates the amount of time actually spent by a member or employee of CONTRACTOR pursuant to this contract or (ii) includes time spent by any person not affiliated with CONTRACTOR.

The rates agreed upon herein are based upon the provision of service by an attorney or paralegal who is experienced in the areas of law described in the attached Scope of Services (Exhibit A). The extent of legal services rendered shall be subject to the approval of COUNTY. Approval of contract manager or his/her designee is required before incurring extraordinary expenses such as the retention of experts or travel out of state.

The CONTRACTOR will bill the COUNTY on a monthly basis, or as otherwise provided, at the amounts set forth in Attachment "A" for services rendered toward the completion of the Scope of Work. Where incremental billings for partially completed items are permitted, the total incremental billings shall not exceed the percentage of estimated completion as of the billing date.

- B. Invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the initiating COUNTY Department, indicating that services have been rendered in conformity with the Contract and then will be sent to the Finance and Accounting Department for payment. Invoices must reference this contract number. Invoices will be paid in accordance with the State of Florida Prompt Payment Act.
- C. Reimbursable Costs: COUNTY will reimburse the CONTRACTOR for the expenses incurred by it for copying (\$.15 per page), facsimile (\$1.00 per page), postage, overnight delivery, long distance telephone calls (exclusive of long distance telephone calls incurred between cities in which the CONTRACTOR has offices), lodging, meals (all travel, lodging and meals shall be at rates allowed to public employees under Florida Statute 112.061), court reporter fees, transcripts, court filing fees and process service charges, all without mark-up or multiplier. There will be no reimbursement for any other expenses not identified in the preceding sentence without the express written authorization of COUNTY. All invoices submitted for such reimbursements shall contain complete and detailed information supported by appropriate receipts as to the item or charge for which reimbursement is being requested.
- D. Final Invoice: In order for both parties herein to close their books and records, the CONTRACTOR will clearly state "final invoice" on the CONTRACTOR'S final/last billing to the COUNTY. This certifies that all services have been properly performed and all charges and costs have been invoiced to Orange County. Since this account will thereupon be closed, any and other further charges if not properly included on this final invoice are waived by the CONTRACTOR.

ARTICLE 5- TRUTH IN NEGOTIATION CERTIFICATE

Signature of this Contract by the CONTRACTOR shall act as the execution of the truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONTRACTOR'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to outside Contractors. The COUNTY shall exercise its right under this "Certificate" within one (1) year following final payment.

ARTICLE 6 – TERMINATION

A. Termination for Default:

The COUNTY may, by written notice to the CONTRACTOR, terminate this contract for default in whole or in part (release orders, if applicable) if the CONTRACTOR fails to:

1. provide products or services that comply with the specifications herein or fails to meet the COUNTY'S performance standards
2. deliver the supplies or to perform the services within the time specified in this contract or any extension
3. make progress so as to endanger performance of this contract
4. perform any of the other provisions of this contract

Prior to termination for default, the COUNTY will provide adequate written notice to the CONTRACTOR through the Manager, Procurement, affording him/her the opportunity to cure the deficiencies or to submit a specific plan to resolve the deficiencies within ten (10) days (or the period specified in the notice) after receipt of the notice. Failure to adequately cure the deficiency shall result in termination action. Such termination may also result in suspension or debarment of the CONTRACTOR in accordance with the County's Procurement Ordinance. The CONTRACTOR and its sureties (if any) shall be liable for any damage to the COUNTY resulting from the CONTRACTOR's default of the contract. This liability includes any increased costs incurred by the COUNTY in completing contract performance.

In the event of termination by the COUNTY for any cause, the CONTRACTOR will have, in no event, any claim against the COUNTY for lost profits or compensation for lost opportunities. After a receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONTRACTOR shall:

1. Stop work on the date and to the extent specified.
2. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
3. Transfer all work in process, completed work, and other materials related to the terminated work as directed by the COUNTY.
4. Continue and complete all parts of that work that have not been terminated.

Neither CONTRACTOR nor COUNTY shall be liable, nor may cancel this contract for default, when delays arise out of causes beyond the control of CONTRACTOR or COUNTY. Such causes may include but are not restricted to acts of God, acts of COUNTY in sovereign capacity, fires, floods, lightning strikes, epidemics, quarantine restrictions, strikes, freight embargoes, wars, civil disturbances, work stoppage, power failures, laws, regulations, ordinances, acts or orders of any governmental agency or official thereof, and unusually severe weather. In every case, the delay must be beyond the control of the claiming party. If CONTRACTOR is delayed in its performance as a result of the above causes, COUNTY, shall upon written request of CONTRACTOR, agree to equitably adjust the provisions of this contract, including price and delivery, as may be affected by such delay. However, this provision shall not be interpreted to limit COUNTY'S right to terminate for convenience.

B. Termination for Convenience

The COUNTY, by written notice, may terminate this contract, in whole or in part, when it is in the COUNTY'S interest. If this contract is terminated, the COUNTY shall be liable only for goods or services delivered and accepted. The COUNTY Notice of Termination shall provide the CONSULTANT thirty (30) days prior notice before it becomes effective. **A termination for convenience may apply to individual delivery orders, purchase orders or to the contract in its entirety.**

ARTICLE 7 - PERSONNEL

The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

The CONTRACTOR and all personnel engaged in performing the services shall agree to abide by Section 194.015, Florida Statutes and Attorney General Opinion 2010-03.

Any changes or substitutions in the CONTRACTOR'S key personnel, as may be listed in

Attachment "A", must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY before said change or substitution can become effective. The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field. The County may require, in writing, that the contractor *removes* from this contract any employee the County deems incompetent, careless, or otherwise objectionable.

ARTICLE 8 - FEDERAL AND STATE TAX

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

The CONTRACTOR shall be responsible for payment of its own and its share of its employee FICA and Social Security benefits with respect to this Contract.

ARTICLE 9 - AVAILABILITY OF FUNDS

The COUNTY'S performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the Board of County Commissioners, or other specified funding source for this procurement.

ARTICLE 10 - INSURANCE REQUIREMENTS:

CONTRACTOR agrees to maintain on a primary basis and at its sole expense, at all times throughout the duration of this contract the following types of insurance coverage with limits and on forms (including endorsements) as described herein. These requirements, as well as the County's review or acceptance of insurance maintained by CONTRACTOR is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by CONTRACTOR under this contract.

The CONTRACTOR shall require and ensure that each of its sub- contractors/consultants providing services hereunder (if any) procures and maintains until the completion of their respective services, insurance of the types and to the limits specified herein.

Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VIII or better.

(Note: State licenses can be checked via <http://www.flor.com/companysearch/> and A.M. Best Ratings are available at www.ambest.com)

Required Coverage:

- A. Workers' Compensation – The CONTRACTOR shall provide coverage for its employees with statutory workers' compensation limits, and no less than \$100,000 for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the County and its agents, employees and officials.

- B. Commercial General Liability - The CONTRACTOR shall provide coverage for all operations, including, but not limited to, contractual, products and completed operations and personal injury. The limits shall not be less than \$500,000 per occurrence, combined single limits (CSL), or its equivalent. The General Aggregate limit shall either apply separately to this contract or shall be at least twice the required occurrence limit.
- C. Business Automobile Liability - The CONTRACTOR shall provide coverage for all owned, non-owned and hired vehicles with limits of not less than \$500,000 per occurrence, combined single limits (CSL) or its equivalent. In the event the CONTRACTOR does not own automobiles the Proposer shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
- D. Professional Liability (Errors & Omissions) - The CONTRACTOR shall provide coverage for all claims arising out of services performed with limits not less than \$1,000,000 per claim. The aggregate limit shall either apply separately to this contract or shall be at least twice the required per claim limit.

Elective exemptions as defined in Florida Statute 440 will be considered on a case-by-case basis.

When a self-insured retention or deductible exceeds \$100,000 the COUNTY reserves the right to request a copy of CONTRACTOR'S most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis the CONTRACTOR agrees to maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract the CONTRACTOR agrees to purchase the SERP with a minimum reporting period of not less than two years. Purchase of the SERP shall not relieve the VENDOR/AGENCY of the obligation to provide replacement coverage.

By entering into this contract CONTRACTOR agrees to provide a waiver of subrogation or waiver of transfer of rights of recovery, in favor of the County for the workers' compensation and general liability policies as required herein. When required by the insurer or should a policy condition not permit the CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and request the policy be endorsed with a Waiver of Subrogation or a Waiver of Transfer of Rights of Recovery Against Others endorsement.

CONTRACTOR agrees to endorse the COUNTY as an Additional Insured with a CG 20 26 Additional Insured – Designated Person or Organization endorsement, or its equivalent to all commercial general liability policies. The additional insured shall be listed in the name of Orange County Board of County Commissioners.

Any request for an exception to these insurance requirements must be submitted in writing to the COUNTY for approval.

Prior to execution and commencement of any operations/services provided under this contract the CONTRACTOR shall provide the COUNTY with current certificates of insurance evidencing all required coverage. The certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the COUNTY. Certificates shall specifically reference the respective contract number. The certificate holder shall read:

Orange County Board of County Commissioners
c/o Purchasing & Contracts Division
400 E. South Street
Orlando, Florida 32801

ARTICLE 11 - INDEMNIFICATION

To the fullest extent permitted by law, the CONTRACTOR shall defend, indemnify, and hold harmless the COUNTY, its officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, cost and expenses (including attorney's fees) of any kind or nature whatsoever arising directly or indirectly out of or caused in whole or in part by any act or omission of the CONTRACTOR or its subcontractors (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the sole negligence of the COUNTY.

ARTICLE 12- SUCCESSORS AND ASSIGNS

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

ARTICLE 13 - REMEDIES

This Contract shall be governed by the laws of the State of Florida. Venue for any litigation involving this contract shall be the Circuit Court in and for Orange County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or at equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 14 - CONFLICT OF INTEREST

The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Florida Statutes 112.311. The CONTRACTOR further represents that no person having any interest shall be employed for said performance.

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

Conflicts of Interest - More Than Just Technical Conflicts

Apart from professional ethical requirements, and irrespective of whether a given situation involves a technical conflict of interest as recognized by applicable rules and codes, we expect the Contractor to be scrupulously alert to the possibility that the Contractor's other clients may from time to time have interests that are inconsistent with the VAB's. Please advise the VAB prior to taking on a matter for another client that involves such inconsistent interests.

ARTICLE 15 - MEDIA RELATIONS

The CONTRACTOR is not authorized to comment publicly on a VAB matter without our express authorization. Media inquiries should be referred to the VAB Chair via the VAB Coordinator.

ARTICLE 16 - EXCUSABLE DELAYS

The CONTRACTOR shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the CONTRACTOR'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONTRACTOR'S failure to perform was without it or

its subcontractor's fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the COUNTY'S right to change, terminate, or stop any or all work at any time.

ARTICLE 17 - ARREARS

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

ARTICLE 18 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The CONTRACTOR shall deliver to the COUNTY for approval and acceptance, and before being eligible for final payment or any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

All oral and written information not in the public domain or not previously known, and all information and data obtained, developed or supplied by the COUNTY, or at its expense, will be kept confidential by the CONTRACTOR and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced at the discretion of the COUNTY.

The COUNTY and the CONTRACTOR shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

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

ARTICLE 19 - INDEPENDENT CONTRACTOR RELATIONSHIP

The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Contract, an Independent CONTRACTOR, and not an employee, agent or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent CONTRACTOR and not as employees or agents of the COUNTY.

The CONTRACTOR does not have the power or authority to bind the COUNTY in any promise, agreement or representation other than as specifically provided for in this Agreement.

ARTICLE 20 - CONTINGENT FEES

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

ARTICLE 21 - ACCESS AND AUDITS

The CONTRACTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least five (5) years after completion of the contract. The COUNTY shall have access to all records, documents and information collected and/or maintained by others in the course of the administration of the contract. This information shall be made accessible at the CONTRACTOR'S local place of business to the County, including the Comptroller's Office and/or its designees, for purposes of inspection, reproduction and audit without restriction. If records are unavailable locally, it shall be the CONTRACTOR'S responsibility to insure that all required records are provided to the County at the CONTRACTOR'S expense.

ARTICLE 22 – EQUAL OPPORTUNITY

It is hereby declared that equal opportunity and nondiscrimination shall be the County's policy intended to assure equal opportunities to every person, regardless of race, religion, sexual orientation and gender expression/identity, sex, color, age, disability or national origin, in securing or holding employment in a field of work or labor for which the person is qualified, as provided by Section 17-314 of the Orange County Code and the County Administrative Regulations.

Further, the CONTRACTOR shall abide by the following provisions:

1. The CONTRACTOR shall represent that the CONTRACTOR has adopted and maintains a policy of nondiscrimination as defined by applicable County ordinance throughout the term of this contract.
2. The CONTRACTOR shall allow reasonable access to all business and employment records for the purpose of ascertaining compliance with the non-discrimination provision of the contract.
3. The provisions of the prime contract shall be incorporate by the CONTRACTOR into the contracts of any applicable subcontractors.

ARTICLE 23 - ENTIRETY OF CONTRACTUAL AGREEMENT

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

ARTICLE 24- ENFORCEMENT COSTS

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE 25 - AUTHORITY TO PRACTICE

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY upon request.

ARTICLE 26 - SEVERABILITY

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

ARTICLE 27 - MODIFICATIONS OF WORK

The COUNTY reserves the right to make changes in the work, including alterations, reductions therein or additions thereto. Upon receipt by the CONTRACTOR of the COUNTY'S notification of a contemplated change, the CONTRACTOR shall (1) if requested by COUNTY, provide an estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY in writing if the contemplated change shall affect the CONTRACTOR'S ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs in writing, the CONTRACTOR shall suspend work on that portion of the work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall issue a Contract Amendment or Change Order and the CONTRACTOR shall not commence work on any such change until such written amendment or change order has been issued and signed by each of the parties.

ARTICLE 28 - CONTRACT CLAIMS

"Claim" as used in this provision means a written demand or written assertion by one of the contracting parties seeking as a matter of right, the payment of a certain sum of money, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract.

Claims made by a CONTRACTOR against the COUNTY relating to a particular contract shall be submitted to the Procurement Manager in writing clearly labeled "Contract Claim" requesting a final decision. The CONTRACTOR also shall provide with the claim a certification as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the CONTRACTOR believes the COUNTY is liable; and that I am duly authorized to certify the claim on behalf of the CONTRACTOR/Consultant."

Failure to document a claim in this manner shall render the claim null and void. Moreover no claim shall be accepted after final payment of the contract.

The decision of the Procurement Manager shall be issued in writing and shall be furnished to the CONTRACTOR. The decision shall state the reasons for the decision reached. The Procurement Manager shall render the final decision within sixty (60) days after receipt of CONTRACTOR'S written request for a final decision. The Procurement Manager's decision shall be final and conclusive.

The CONTRACTOR/Consultant shall proceed diligently with performance of this contract pending final resolution of any request for relief, claim, appeal or action arising under the contract and shall comply with any final decision rendered by the Manager of Procurement.

ARTICLE 29 - TOBACCO FREE CAMPUS

Virtually all Orange County operations under the Board of County Commissioners are designated as tobacco free. This policy applies to parking lots, parks, break areas and worksites. It is also applicable to Contractors and their personnel during contract performance on County-owned property. Tobacco is defined as tobacco products including, but not limited to, cigars, cigarettes, electronic cigarettes, pipes, chewing tobacco and snuff. Failure to abide by this policy may result in civil penalties levied under Chapter 386, Florida Statutes, and/or contract enforcement remedies.

ARTICLE 30 - ADDENDA

All requirements contained in any addenda issued to the solicitation for this procurement are part of and hereby incorporated into this contract.

ARTICLE 31- NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the COUNTY shall be mailed to:

Orange County Comptroller Clerk's Office 201 S. Rosalind Ave., 4th Fl.

Orlando, FL 32801

and if sent to the CONTRACTOR shall be mailed to:

Aaron B. Thalwitzer, 1900 W. New Haven Ave., Suite 201

Melbourne, FL 32904, Email: Aaron@USLegalTeam.com

IN WITNESS WHEREOF, the Board of County Commissioners of Orange County, Florida has made and executed this Contract on behalf of the COUNTY and CONTRACTOR has hereunto set its hand the day and year above written.

CONTRACTOR:


Aaron B. Thalwitzer, Esq.

Name

ORANGE COUNTY, FLORIDA

By: 

for Johnny Richardson, CPPO, CFCM
Manager, Procurement Division

Carrie Woodell, MPA, CFCM, CPPO, C.P.M.
Procurement Division/Administrator



Signature

12/23/15

Date

Widerman Malek, P.I.

Firm Name

Partner

Title

12/23/15

Date

EXHIBIT A

SCOPE OF WORK

The Orange County Value Adjustment Board ("VAB") wishes to select and engage an attorney to provide service as legal counsel to the VAB. The VAB is created pursuant to Section 194.015, Florida Statutes.

The VAB is composed of two county commissioners, one school board member and two private citizen members, one each appointed by the Board of County Commissioners and the Orange County School Board.

As further described in Section 194.032, Florida Statutes, the VAB provides taxpayers an opportunity for administrative review of property taxes, including assessments of value for real and tangible personal property, complaints relating to denials of homestead exemptions and classifications of property and property tax deferrals. VAB hearing procedures are governed by Chapter 194, Florida Statutes, and rules promulgated by the Florida Department of Revenue (DOR), specifically Rule Chapters 12D-9 & 10. VAB hearings in Orange County are conducted by special magistrates appointed by the VAB. Special magistrate recommendations on VAB petitions have historically been adopted by the VAB without further reviews or hearings by the VAB.

Counsel to the VAB will be expected to attend all meetings of the VAB and render legal advice to members of the VAB and staff for the VAB. No meeting of the board shall take place unless counsel to the board is present.

Counsel shall perform all such legal and administrative services as would customarily be undertaken by private counsel to a board such as the VAB, including but not limited to the following:

1. Attend all meetings of the VAB and render such advice and assistance as required by the VAB to ensure that all actions taken by the board and its appointees meet the requirements of the law.
2. Research legal issues and prepare such opinions, memoranda and reports as requested by the VAB or the administrative support staff of the VAB. Such issues include review and response to any written complaints alleging noncompliance with the law by the VAB, special magistrate or support staff of the VAB.
3. Advise Board members, VAB staff and at times, special magistrates, on the interpretation and application of relevant statutes, regulations and policies, including Chapters 193 through 196, as well as the rules promulgated by the DOR.
4. Review all late-filed petitions to the VAB and make recommendations, without — holding hearings, on the acceptance or denial of such late-filed petitions.
5. Actively use the online VAB software, named AXIA, as provided by the Orange County Comptroller's Office.

Pursuant to Section 194.181, Florida Statutes, the VAB is not a party in judicial review of property taxes and therefore does not currently anticipate the scope of services to include representation in litigation.