

CONTRACT # Y24-142

This Contract is made as of the 1st day of September, 2023 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 Walker, Revels, Greninger, PLLC, a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal I.D. or Social Security number is 84-4277909.

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 Secondary General Liability/Tort Legal Counsel as more specifically set forth in the Scope of Services detailed in Exhibit "A".

The COUNTY'S representative/liaison during the performance of this Contract shall be John Petrelli, telephone no. (407) 836-9636.

ARTICLE 2 SCHEDULE

The CONTRACTOR shall commence services on September 12, 2023 and complete all services by November 30, 2025.

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

This contract may be renewed, for two (2) additional one (1) year periods upon mutual written agreement of the parties 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 3 PAYMENTS TO CONTRACTOR

A. The total amount to be paid by the COUNTY under this Contract for the base period, shall not exceed One Hundred Thousand Dollars (\$100,000). The CONTRACTOR will notify the COUNTY, in writing, when 90% of the estimated contract amount has been reached. The CONTRACTOR will bill the COUNTY on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit "B" for services rendered toward the completion of the Scope of Services. Where incremental billing for partially completed items is 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 Department for payment. Invoices will be paid in accordance with the State of Florida Local Government Prompt Payment Act.

A valid invoice shall include the following:

1. Reference to the Delivery Order/ Purchase Order Number
2. Delivery Dates/ Service Dates
3. Itemization of Goods Delivered/ Services Rendered
4. Unit Prices in accordance with the Exhibit "B"

C. **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 4 INSURANCE REQUIREMENTS

Vendor/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 Vendor/Contractor is not intended to and shall not in any manner limit or qualify the liabilities assumed by Vendor/Contractor under this contract. Vendor/Contractor is required to maintain any coverage required by federal and state workers' compensation or financial responsibility laws including but not limited to Chapter 324 and 440, Florida Statutes, as may be amended from time to time.

The Vendor/Contractor shall require and ensure that each of its sub-Vendors/sub-Contractors 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 www.floir.com/companysearch/ and A.M. Best Ratings are available at www.ambest.com)

Required Coverage:

- Commercial General Liability - The Vendor/Contractor shall maintain coverage issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with a limit of liability of not less than \$1,000,000 per occurrence. Vendor/Contractor further agrees coverage shall not contain any endorsement(s)

excluding or limiting Product/Completed Operations, Contractual Liability, or Separation of Insureds. The General Aggregate limit shall either apply separately to this contract or shall be at least twice the required occurrence limit.

Required Endorsements:

- Additional Insured- CG 20 26 or CG 20 10/CG 20 37 or their equivalents.
Note: CG 20 10 must be accompanied by CG 20 37 to include products/completed operations
- Waiver of Transfer of Rights of Recovery- CG 24 04 or its equivalent.
Note: If blanket endorsements are being submitted please include the entire endorsement and the applicable policy number.
- Business Automobile Liability - The Vendor/Contractor shall maintain coverage for all owned; non-owned and hired vehicles issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with limits of not less than \$500,000 (five hundred thousand dollars) per accident. In the event the Vendor/Contractor does not own automobiles the Vendor/Contractor 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.
- Workers' Compensation - The Vendor/Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than \$100,000 each incident of bodily injury or disease for Employers' Liability. Elective exemptions as defined in Florida Statute 440 will be considered on a case-by-case basis. Any Vendor/Contractor using an employee leasing company shall complete the Leased Employee Affidavit.

Required Endorsements:

- Waiver of Subrogation- WC 00 03 13 or its equivalent
- Professional Liability- with a limit of not less than \$1,000,000 per occurrence/claim

When a self-insured retention or deductible exceeds \$100,000 the COUNTY reserves the right to request a copy of Vendor/Contractor most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis the Vendor/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 Vendor/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/Contractor of the obligation to provide replacement coverage.

By entering into this contract Vendor/Contractor agrees to provide a waiver of subrogation or a 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 Vendor/Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Vendor/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.

Prior to execution and commencement of any operations/services provided under this contract the Vendor/Contractor shall provide the COUNTY with current certificates of insurance evidencing all required coverage. In addition to the certificate(s) of insurance the Vendor/Contractor shall also provide endorsements for each policy as specified above. All specific policy endorsements shall be in the name of the Orange County, Florida.

For continuing service contracts renewal certificates shall be submitted immediately upon request by either the COUNTY or the COUNTY's contracted certificate compliance management firm. The certificates shall clearly indicate that the Vendor/Contractor has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. Vendor/Contractor shall notify the COUNTY not less than thirty (30) business days (ten business days for non-payment of premium) of any material change in or cancellation/non-renewal of insurance coverage. The Vendor/Contractor shall provide evidence of replacement coverage to maintain compliance with the aforementioned insurance requirements to the COUNTY or its certificate management representative five (5) business days prior to the effective date of the replacement policy (ies).

The certificate holder shall read:

Orange County, Florida
c/o Risk Management Division
201 S. Rosalind Avenue
Orlando, Florida 32801

ARTICLE 5 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 6

SUBCONTRACTING AND MINORITY/WOMEN EMPLOYMENT PARTICIPATION

- A. The CONSULTANT shall be responsible for reporting Minority/Women Business Enterprise (M/WBE) sub-CONSULTANT contract dollar amount(s) for the M/WBE sub-Consultant(s) listed in this document, by submitting the appropriate documents, which shall include but not limited to fully executed sub-consultant agreements and/or purchase orders evidencing contract award of work, to the Business Development Division. Submittal of these sub-consultant agreements/purchase orders is a condition precedent to execution of the prime contract with the COUNTY. Quarterly updated M/WBE utilization reports and Equal Opportunity Workforce Schedule to be submitted every quarter during the term of the contract. Additionally, the CONSULTANT shall ensure that the M/WBE participation percentage proposed in the Consultant's Proposal submitted for this Contract is accomplished.
- B. Subsequent amendments to this contract shall be submitted with the appropriate documentation evidencing contractual change or assignment of work to the Business Development Division, with a copy to the COUNTY'S designated representative, within ten (10) days after COUNTY'S execution.
- C. The CONSULTANT shall be responsible for reporting, on the Equal Opportunity Workforce Schedule, the local minority/women employment percentage levels within the firm and the minority/women employment percentage levels that the firm anticipates utilizing to fulfill the obligations of this Contract. The report(s) shall be submitted to the Business Development Division, on a quarterly basis during the life of the Contract.
- D. The awarded prime CONSULTANT shall furnish written documentation evidencing actual dollars paid to **all sub-Consultants** utilized by the prime CONSULTANT on the project. This will include, but not limited to: copies of cancelled checks, approved invoices, and signed affidavits certifying the accuracy of payments so that the COUNTY may determine actual MWBE participation achieved by the prime CONSULTANT prior to the issuance of final payment.
- E. The awarded prime Consultant's responsibilities and requirements are listed below and shall be included in the sub-agreement:
 - 1. Whereas the prime consultant is being paid in accordance with the Local Government Prompt Payment Act, contractor shall incorporate a 72-hour prompt payment assurance provision and payment schedule in all sub-contracts between the prime and sub-contractors.

Note: The County reserves the right to verify that all sub-contractors are being paid within 72 hours of the County's remittance to the prime contractor.

- 2. File copies of all executed subconsultant agreement/contracts between the prime and all M/WBE subcontractors on the project to Orange County Business Development Division one-time for the duration of the contract.

3. The awarded prime Consultant shall furnish written documentation evidencing actual dollars paid to each subconsultant utilized by the prime Consultant on the project. This will include, but not limited to: copies of cancelled checks, approved invoices, and signed affidavits certifying the accuracy of payments so that the County may determine actual participation achieved by the prime Consultant prior to the issuance of final payment.
4. The sub-consultant agreement shall include: (a) the percentage of the overall contract value to be sub-contracted; and (b) the dollar amount based on the percentage of the contract value to be sub-contracted (if available at time of sub-consultant agreement).
5. The prime Consultant shall submit an updated quarterly MWBE utilization report and the Equal Opportunity Workforce Schedule report for all professional service contracts. The required reports are to be submitted to the Business Development Division no later than the fifth day after end of reporting period.
6. All sub-contracts shall include the following statement: "It is the M/WBE responsibility to submit the required Quarterly M/WBE utilization reports to the prime and Final M/WBE payment verification form to Business Development Division denoting the percentage of the overall contract fees"

The M/WBE's failure to submit the required documents could negatively impact their M/WBE certification.

7. The awarded prime Consultant shall not substitute, replace or terminate any M/WBE firm without prior written authorization of the Business Development Division, nor shall the prime reduce the scope of work or monetary value of a subconsultant without written authorization of the Business Development Division.
8. Upon execution of any renewal or extension to this contract, the Prime Consultant shall execute renewals with all approved specified sub-consultants for the full duration of the contract.
9. The prime Consultant shall expeditiously advise all M/WBE's and the Business Development Division of all change orders, contract modifications, additions and deletions to any and all contracts issued to the M/WBE firm on their team.
10. The COUNTY may at its discretion require copies of subcontracts/purchase orders for the non-M/WBE's listed on **SCHEDULE OF SUBCONTRACTING - M/WBE PARTICIPATION FORM** and or utilized on the project. However, if this option is not exercised the awarded Proposer shall provide a list of all non-M/WBE sub-Consultants certifying that a prompt payment clause has been included in that contract or purchase order.

- F. By entering into this contract, the CONSULTANT affirmatively commits to comply with the M/WBE subcontracting requirements submitted with his/her Proposal. The failure of the CONSULTANT/CONTRACTOR to comply with this commitment during the Contract's performance period may be considered a breach of Contract.

The COUNTY may take action up to and including termination for default if this condition is not remedied within the time period specified by the Manager, Procurement.

ARTICLE 7 SERVICE-DISABLED VETERAN (SDV) REPORTING

The prime CONSULTANT shall be responsible for reporting (SDV) sub-Consultant contract dollar amount(s) for the SDV firms(s) listed in the document by submitting appropriate documents evidencing contract award of work to the Business Development Division (BDD). The report(s) shall be submitted in the (BDD) with a copy to the representative within ten (10) days after issuance of individual assignments or task authorizations:

- A. Subsequent amendments to this contract shall be submitted with the appropriate documentation evidencing contractual change or assignment of work to the BDD, with a copy to the COUNTY'S designated representative, within ten (10) calendar days after COUNTY'S execution.
- B. The awarded prime CONSULTANT shall furnish written documentation evidencing actual dollars paid to all sub-Consultants utilized by the CONSULTANT on the project. This will include, but not limited to: copies of cancelled checks, approved invoices, and signed affidavits certifying the accuracy of payments so that the COUNTY may determine actual SDV participation achieved by the CONSULTANT prior to the issuance of final payment.
- C. File copies of all executed sub-consultant agreements/contracts between the prime and all SDV Sub-consultants on the project to Orange County Business Development Division one time for the duration of the contract period. The Scope and **Schedule of Subcontracting - SDV Participation** form and the letter of Intent must be included in the sub-consultant agreement.
- D. Notwithstanding any termination provisions in this Subcontract Agreement, the Prime Consultant shall not terminate this Subconsultant Agreement without prior written authorization of the Orange County Business Development Division Manager, nor shall the Prime Consultant amend this Subconsultant Agreement, or reduce the Scope of Work or monetary value awarded under this Subconsultant Agreement, without prior written authorization of the Orange County Business Development Manager.
- E. It is the intent of the COUNTY to insure prompt payment of all sub-Consultantss working on COUNTY projects. The CONSULTANT shall:
- I. Submit copies of executed contracts between the CONSULTANT and all of its SDV sub-Consultants to the Business Development Division.

2. Whereas the Prime Consultant is being paid in accordance with the Local Government Prompt Payment Act, Consultant shall incorporate a 72 Hour prompt payment assurance provision and payment schedule in all contracts between the CONSULTANT and SDV sub-Consultants.

Note: The County reserves the right to verify that all sub-contractors are being paid within 72 hours of the County's remittance to the prime contractor.

- F. By entering into this contract, the CONSULTANT affirmatively commits to comply with the SDV requirements submitted with his/her Proposal. The failure of the CONSULTANT to comply with this commitment during the Contract's performance period may be considered a breach of Contract.

ARTICLE 8 DISLOCATED WORKERS

The CONSULTANT has committed to hire 0 () CareerSource Central Florida participants residing in the Orlando MSA. Therefore, within five (5) days after contract award, the CONSULTANT shall contact the Orange County Business Development Liaison (BDD) at (407) 836-7317 to assist with meeting this requirement. The BDD Liaison will work with the CareerSource Central Florida staff and the CONSULTANT to ensure that the process is properly adhered until all requirements have been met. CareerSource Central Florida participants may be employed in any position within the firm but must be hired on a fulltime basis.

The failure of the CONSULTANT to comply with these hiring commitments after contract award shall be grounds for termination of the contract for default.

During performance of the contract, the CONSULTANT will take appropriate steps to ensure that individuals hired under this program are retained. However, if it becomes necessary to replace an employee, the CONSULTANT shall contact the BDD Liaison. At its discretion, COUNTY may periodically request submission of certified payrolls to confirm the employment status of program participants.

ARTICLE 9 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 10 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 11 **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.

ARTICLE 12 **TERMINATION**

A. Termination for Default:

The COUNTY may, by written notice to the CONTRACTOR, terminate this contract for default in whole or in part (delivery 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 them 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 CONTRACTOR 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 13 FORCE MAJEURE

1. The Contractor shall not be held responsible for any delay and/or failure in performance of any part of this contract to the extent such delay or failure is caused by explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond the Contractor's control so long as the Contractor's delay is not caused by the Contractor's own fault or negligence. That notwithstanding, the Contractor shall notify the County in writing within seven (7) hours after the beginning of any such cause that would affect its

performance hereunder and the County reserves the right the request additional information that supports the validity of the Contractor's Force Majeure claim. Failure to notify the County in a timely manner of any claim of Force Majeure made pursuant to this section is cause for termination of this contract.

2. If the Contractor's performance is delayed pursuant to this section for a period exceeding forty-eight (48) hours from the date the County receives the required Force Majeure notice, the County shall have the right to terminate this contract thereafter and shall only be liable to the Contractor for any work performed and validated (if required for payment hereunder) prior to the date of the County's contract termination.
3. If the Contractor's performance is delayed pursuant to this section, the County may, upon written request of the Contractor, agree to equitably adjust the provisions of this contract, including price, performance, and delivery, as may be affected by such delay. However, this provision shall not be interpreted to limit the County's right to terminate for convenience.

ARTICLE 14 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 hereafter 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.

Any changes or substitutions in the CONTRACTOR'S key personnel, as may be listed in Exhibit "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 remove from this contract any employee the COUNTY deems incompetent, careless, or otherwise objectionable.

ARTICLE 15 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 16 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 17 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 18 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 19 CONTINGENT FEES

The CONTRACTOR warrants that it has not employed or retained 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 firm, 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 20 **ACCESS AND AUDITS**

The CONTRACTOR shall establish and maintain a reasonable accounting system, which enables ready identification of CONTRACTOR'S cost of goods and use of funds. Such accounting system shall also include adequate records and documents to justify all prices for all items invoiced as well as all charges, expenses and costs incurred in providing the goods for at least five (5) years after completion of this contract. The COUNTY or its designee shall have access to such books, records, subcontract(s), financial operations, and documents of the CONTRACTOR or its sub-Contractors as required to comply with this section for the purpose of inspection or audit anytime during normal business hours at the CONTRACTOR'S place of business. This right to audit shall include the CONTRACTOR'S sub-Contractors used to procure goods or services under the contract with the COUNTY. CONTRACTOR shall ensure the COUNTY has these same rights with sub-Contractor(s) and suppliers.

ARTICLE 21 **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, sex, sexual orientation and gender expression/identity, 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:

- A. 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.
- B. 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.
- C. The provisions of the prime contract shall be incorporate by the CONTRACTOR into the contracts of any applicable subcontractors.

ARTICLE 22 **DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION.**

By executing this contract the firm affirms that it is in compliance with the requirements of 2 C.F.R. Part 180 and that neither it, its principals, nor its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

ARTICLE 23

FLORIDA CONVICTED/SUSPENDED/DISCRIMINATORY COMPLAINTS.

By executing this contract the firm affirms that it is not currently listed in the Florida Department of Management Services Convicted/Suspended/Discriminatory Complaint Vendor List.

ARTICLE 24

SCRUTINIZED COMPANIES

- A. By executing this Agreement, the Contractor certifies that it is eligible to bid on, submit a proposal for, or enter into or renew a contract with the County for goods or services pursuant to Section 287.135, Florida Statutes.
- B. Specifically, by executing this Agreement, the Contractor certifies that it is **not** on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel.
- C. Additionally, if this Agreement is for an amount of one million dollars (\$1,000,000) or more, by executing this Agreement, the Contractor certifies that it is **not**:
1. On the "Scrutinized Companies with Activities in Sudan List" or the "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List," created pursuant to Section 215.473, Florida Statutes; and/or
 2. Engaged in business operations in Cuba or Syria.
- D. The County reserves the right to terminate this Agreement immediately should the Contractor be found to:
1. Have falsified its certification of eligibility to bid on, submit a proposal for, or enter into or renew a contract with the County for goods or services pursuant to Section 287.135, Florida Statutes; and/or
 2. Have become ineligible to bid on, submit a proposal for, or enter into or renew a contract with the County for goods or services pursuant to Section 287.135, Florida Statute subsequent to entering into this Agreement with the County.
- E. If this Agreement is terminated by the County as provided in subparagraph 4(a) above, the County reserves the right to pursue any and all available legal remedies against the Contractor, including but not limited to the remedies as described in Section 287.135, Florida Statutes.
- F. If this Agreement is terminated by the County as provided in subparagraph 4(b) above, the Contractor shall be paid only for the funding-applicable work completed as of the date of the County's termination.
- G. Unless explicitly stated in this Section, no other damages, fees, and/or costs may be assessed against the County for its termination of the Agreement pursuant to this Section.

ARTICLE 25 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 26 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."

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/Contractor's written request for a final decision. The Procurement Manager's decision shall be final and conclusive.

The Contractor 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 27 TOBACCO FREE CAMPUS

All Orange County operations under the Board of County Commissioners shall be tobacco free. This policy shall apply 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, e-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 28 **VERIFICATION OF EMPLOYMENT STATUS**

Prior to the employment of any person under this contract, the contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of (a) all persons employed during the contract term by the contractor to perform employment duties within Florida and (b) all persons, including subcontractors, assigned by the contractor to perform work pursuant to the contract with Orange County. Please refer to USCIS.gov for more information on this process.

Only those employees determined eligible to work within the United States shall be employed under the contract.

Therefore, by submission of a bid or proposal in response to this solicitation, the contractor confirms that all employees in the above categories will undergo e-verification before placement on this contract. The contractor further confirms his commitment to comply with this requirement by completing the E- Verification certification.

ARTICLE 29 **LAWS AND REGULATIONS**

All applicable Federal and State laws, municipal and County ordinances shall apply to the solicitation and Contract.

ARTICLE 30 **BUSINESS ASSOCIATE AGREEMENT**

The Business Associate Agreement attached hereto shall govern all matters necessary to enforce the provisions of the HIPAA Privacy and Security Rules 45 CFR Parts 160, 162, and 164 as applicable to this contract.

ARTICLE 31 **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 Parties shall each bear their own costs, expert fees, attorneys' fees, and other fees incurred in connection with this Agreement and any litigation that arises either directly, or indirectly.

ARTICLE 32 **JURY WAIVER**

Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this agreement.

ARTICLE 33 **GOVERNING LAW AND VENUE**

Any and all legal actions associated with this contract will be governed by the laws of the State of Florida. Venue for any litigation involving this contract shall be in the Ninth Circuit Court in and

for Orange County, Florida. Should any federal claims arise for which the courts of the State of Florida lack jurisdiction, venue for those actions will be in the Orlando Division of the U.S. Middle District of Florida.

ARTICLE 34 NO REPRESENTATIONS

Each party represents that they have had the opportunity to consult with an attorney, and have carefully read and understand the scope and effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.

ARTICLE 35 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 36 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 37 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 38 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 39 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 40 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:

Carrie Mathes, Manager II, Procurement Division
400 East South Street, 2nd Floor
Orlando, Florida 32801

and if sent to the CONTRACTOR shall be mailed to:

Joshua Walker

Walker, Revels, Greening PLLC

189 S. Orange Ave, Suite 1600

Orlando, FL 32801

ARTICLE 41 ATTACHMENTS

The following attachment(s) is/are attached hereto, and made a part of this Contract in order of precedence:

- A. Attachment A: Business Associate Addendum
- B. Attachment B: Orange County Government, Orlando, Florida, Defense Counsel Guidelines

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:

Walker, Revels, Greeninger, PLLC
Company Name


Signature

Joshua Walker
Typed Name

Manager
Title

9/7/23
Date

ORANGE COUNTY, FLORIDA:

Carrie Mathes
Carrie Mathes, MPA, CFCM, NIGP-CPP, CPPO,
C.P.M.
Procurement Division Manager

9.11.2023
Date

SCOPE OF SERVICES

A. OVERVIEW

Orange County and its Tax Collector, Property Appraiser, Supervisor of Elections, Clerk of Circuit Court and Comptroller are parties to the Interlocal Risk Management and Self-Insurance Agreement. The agreement sets forth the self-insurance program for the Board of County Commissioners and the constitutional officers identified above. The implementation and administration of the agreement through the Board, the several constitutional officers, the County's Risk Management Committee, and the Director is hereafter referred to as the "Program".

The Program is a mechanism through which liability and tort issues are settled, litigated or denied.

The Program is administered by the Risk Management Director, John Petrelli, and a third-party administrator responsible for the initial investigation and evaluation of claims. The disposition of claims is made by the Director in conjunction with the Risk Management Committee composed of members appointed by the County. This includes claims defense litigation similar to that required by an insurance carrier or large self-insurer.

B. RESPONSIBILITIES OF THE FIRM:

The Firm shall provide:

1. Competent and cost-effective legal defense, including appellate services in the area of general liability/tort law.
2. Legal advice and services unrelated to individual claims, such as drafting contract indemnity clauses, advice regarding insurance, and assistance in legislative tort issues.
3. Work with the County's lead tort counsel firms, Dean, Ringers, Morgan & Lawton, P.A., O'Connor & O'Connor, LLC and Hilyard, Bogan & Palmer, PA, under the guidance of the Director.

C. RESPONSIBILITIES OF THE COUNTY:

1. The Director, after consultation with counsel for the signatory entity against whom a claim is lodged, shall assign each case to one of the several retained law firms as he or she may decide to be in the Program's best interests. There is no assurance that selection of counsel for the program will result in any minimum number of case referrals.
2. The County considers these legal services to be personal in nature. Therefore, if one or more principals or key personnel terminate his/her association with a firm with whom a contract is executed, the County shall reserve the right to subsequently execute a contract with any such firm with whom such principals or key personnel may become associated.
3. Furthermore, the County shall reserve the right to terminate a contract with any firm from whom a principal or key personnel becomes disassociated.

ORANGE COUNTY GOVERNMENT
ORLANDO, FLORIDA
DEFENSE COUNSEL
REPORTING AND BILLING GUIDELINES
GENERAL LIABILITY/TORT

A. INTRODUCTION

The primary purpose for these guidelines is to provide a clear and uniform framework of how the third party administrator and Orange County requires cases to be managed with respect to communication, settlement, and billing. Each of these areas is addressed herein.

B. CASE REFERRAL

The law firm will designate one or more attorneys (or a "lead attorney") to receive new assignments. Cases should then be assigned to one attorney to be handled through the conclusion of the case. The County may designate a specific attorney in the firm to handle the case. Assignments of more than one attorney on a file must be approved by the third party administrator and Director.

C. NEW ASSIGNMENT ACKNOWLEDGMENT

Within 5 days of receipt of a file counsel will acknowledge in writing receipt of new assignments to the third party administrator identifying the attorney assigned and a brief plan for the immediate response to the claim. Copies of all correspondence, notices and pleadings shall be provided to the Director and the third party administrator. Defense counsel will promptly respond to all letters or phone calls, and will keep the Director and the third party administrator fully advised of the progress of each case. Requests for action on the part of the third party administrator or Director should be highlighted in correspondence.

D. INITIAL REPORTS

Within 30 days of assignment, counsel will submit an initial report to the third party administrator. This report must contain at least the following information:

1. **Analysis** - A written analysis of the case which provides the initial evaluation of the case and identifies the strengths and weaknesses of the case. Counsel's analysis shall also include:
 - a. Summary of the claim
 - b. Legal opinion of liability; whether case should be tried or settled
 - c. Pertinent statutes and/or case law
 - d. An estimated settlement range and jury verdict range
2. **Investigation** - Defense counsel shall identify any additional information needed to establish defenses in the action. To the extent possible this investigation and information gathering shall be done by the program's third party administrator.
3. **Strategy** - Counsel shall define the strategy to be used in each lawsuit including:
 - a. The anticipated course of action (i.e. motion to dismiss, motion for summary judgment, negotiated settlement, trial, etc.) to be taken.
 - b. The factors or elements which must be proved or disproved and the necessary discovery to establish these defenses or proof.

- c. The timing of the discovery, filing of motions, negotiations, or other objectives.
 - d. The tactics to be used in defending the case and the advantages to be gained by the use of these tactics.
 - e. If applicable, counsel will specifically address available defenses under Florida Statute 768.28, with particular emphasis on planning level decisions as compared with operational level decisions.
4. BUDGET - Along with the initial case analysis, Counsel must submit a budget broken down into the stages of litigation. One attorney must assume primary defense responsibility, assisted by an associate and/or paralegal if necessary. Other staffing requirements must be pre-approved. Defense counsel will provide an estimate of the anticipated cost of each significant aspect of the litigation, including the following:
- a. Anticipated hours and fees to be incurred for research, preliminary pleadings, discovery, motions, pretrial preparation and trial;
 - b. Anticipated depositions and estimated costs;
 - c. Anticipated costs of court reporters or hearing officers;
 - d. Anticipated expenses.

E. STATUS REPORTING

Counsel shall supply a concise status update whenever events change any fact, judgment or opinion bearing on the case. Status updates should be provided at least every 90 days, even if there has been no activity. Reports should not repeat previously reported events. These reports should include:

- a. Discovery completed, including deposition summaries.
- b. Current evaluation of liability.
- c. Current estimate of damages.
- d. Settlement demand and offer, if any.
- e. Significant discovery planned for next six months.
- f. Suitability of dispositive motions.
- g. Budget through current stage, and explanation for budget deviations.
- h. Other significant changes.

F. DEPOSITION AND OTHER DISCOVERY SYNOPSIS

Wait time in excess of thirty (30) minutes for a non-appearance at a deposition will need to be approved. Immediately upon receipt, notice of all depositions or hearings shall be sent directly to the third party administrator with a copy to the Orange County Risk Manager. A brief synopsis must be submitted within ten (10) days of the deposition or receipt of discovery. The report will include:

- 1. Description of testimony or other discovery affecting the claim.
- 2. Impression of witness (deposition).
- 3. Effect upon case/defense strategy.
- 4. Any recommended future activity.

G. SETTLEMENT CONFERENCE/MEDIATION or HEARING

- 1. Counsel shall notify the third party administrator of a settlement conference, mediation or hearing as soon as the date is set.

2. A brief written summary or telephonic update of the result of the settlement conference, mediation or hearing shall be supplied to the third party administrator within 5 days.
3. Mediations will be attended by the Director (or designee) who must be contacted to schedule mediations with a minimum of three weeks prior notice to allow sufficient time for counsel and adjuster to provide reports to the Risk Management Committee (RMC) for settlement authorization.
4. REPORTING:
 - a. Give a brief synopsis of the case - no more than 2-3 sentences.
 - b. Attorney's opinion as to strengths and weaknesses of the case.
 - c. Attorney's opinion as to outcome of the trial.
 - d. County's change of prevailing using a percentage.
 - e. Trial costs and breakdown thereof.
 - f. Trial witnesses and County trial representative must be timely notified of trial dates and adequately prepared prior to any deposition or other testimony.
 - g. Counsel shall submit a pre-trial report 30 days before trial.

Section 41.01 CASE DEVELOPMENTS

H. CASE FILE DOCUMENTATION

Counsel shall supply copies of the following items as a matter of course:

1. TO TPA AND COUNTY RISK MANAGEMENT:
 - a. Answers
 - b. Pleadings
 - c. Release, Dismissals or Final Judgments
2. TO TPA ONLY:
 - a. Deposition notices and Interrogations
 - b. All correspondence

I. GENERAL PRACTICES

1. Discovery, particularly depositions, must be conducted with a specific goal and defense theory in mind. Aimless or misdirected depositions are unacceptable.
2. In all cases, provide realistic options including compromise and settlement, and identify which option you believe is best, comment on the reasonableness of a settlement demand, and recommend a response.

J. FILE HANDLING

Counsel shall evaluate and explain any recommended course of action clearly identifying its positive and value added impact on the case. Any course of action, which does not advance the case or further a realistic strategic/economic outcome, should be avoided.

After counsel has had the file for six (6) months, a brief letter must be sent to the third party administrator detailing plans for closing the file unless counsel has sent the third party administrator a report within the previous thirty (30) days.

K. COMMUNICATION

Efficient and cost effective litigation management is achieved by close teamwork between the third party administrator / Orange County and counsel. Orders and/or instructions for litigation management are to be accepted from the third party administrator. Counsel and the third party administrator / Orange County should agree prior to taking a course of action, i.e. filing summary judgment, etc.

The attorney shall be available for Risk Management Committee meetings or other Program meetings as requested.

L. CONFIDENTIALITY

It is understood that said communication between counsel, Legal Bill Review, the named defendants and Orange County is considered attorney work product, which is confidential and privileged until such time as the claim litigation or proceeding are concluded. See Florida Statute Section 119.07. Legal Bill Review, Inc. is specifically employed as an agent of the third party administrator and all communication is deemed confidential.

M. EXPERT WITNESSES

Expert witnesses, including medical witnesses, shall not be engaged without prior approval from the third party administrator. Unless otherwise authorized, the third party administrator will arrange Independent Medical Examinations.

N. INVESTIGATION / SURVEILLANCE / REHABILITATION

Under no circumstance is counsel to retain services of any provider, such as rehab, surveillance, etc. without specific authority from the third party administrator and/or County Risk Manager.

O. INTRA-OFFICE CONFERENCES

We will not pay for intra-office conferences. We will not pay for file memoranda giving directions to staff, or any other form of intra-office conference, whether oral or written. We will not pay for memos to the file following telephone calls.

P. FILE REVIEWS

We will not pay for any repetitive file reviews. We will not pay for searching a file to look for documents, reports, etc.

Q. RESEARCH

We will not pay for legal research, which exceeds eight (8) hours per pleading without prior approval from the third party administrator. We will not pay for legal research to educate or re-familiarize counsel with the basic principals of law needed for the defense of the matter.

R. REVISIONS

We will not pay for proofreading, editing mistakes and textual changes necessitated by substandard work product. Edits/revisions in work are only billable if new information is obtained or requested by the third party administrator / Orange County.

S. SETTLEMENT AUTHORITY

Authorization of settlement may only be given by the third party administrator / Orange County. Certain settlement recommendations are reviewed and authorized by the RMC at their weekly meetings, so timely coordination with adjuster on meeting agenda items is required.

T. USE OF APPROPRIATE PERSONNEL

Counsel must assign personnel appropriate to a particular case or legal task to handle the matter to conclusion. Do not reassign the file to other counsel without prior approval. We will not pay for transfer file reviews due to internal reasons. Tasks are to be assigned to staff at the appropriate level of expertise and billing rate as requested by Orange County. We approve of using a qualified paralegal when appropriate and expect that paralegal tasks will be performed at paralegal rates. Clerical tasks are never billable.

We will not reimburse for work performed by an attorney or paralegal that could have been more cost effectively performed by the third party administrator/Orange County personnel, unless approved in advance and in writing.

U. PARALEGAL TASKS

Including but not limited to:

1. Separate, organize and open files.
2. Separate note sheets on files.
3. Schedule and arrange depositions.
4. Coordinate discovery responses (with adjuster approval only).
5. Draft and send Request for Production of Documents (standard).
6. Draft and send Subpoenas.
7. Review files for discovery responses (with adjuster approval only).
8. Line by line deposition summary.
9. Coordinate and schedule independent medical evaluations (with adjuster approval only).
10. Prepare Interrogatories (form).
11. Prepare medical indices.
12. Summarize employment records.
13. Summarize medical records.
14. Prepare Entry of Appearance/Notice of Representation.
15. Organize and prepare exhibit list.
16. Requesting and obtaining medical records (with adjuster approval only).
17. Prepare Hearing/Mediation/Deposition Notices.

V. CLERICAL TASKS

Including but not limited to:

1. Scheduling and arrangements
2. Calendaring
3. Scheduling meetings

4. Scheduling of appointments
5. Conflict checks
6. Telephone calls and or correspondence to copy service providers, etc.
7. Travel arrangements
8. Processing vendor bills
9. Photocopying
10. Faxing
11. Obtaining directions/addresses/telephone numbers
12. Confirming and/or canceling appointments/meetings
13. Preparation of transmittal correspondence

W. BILLING PRACTICES

(i) BILLING INCREMENTS

Counsel shall bill time in one-tenth (0.10) for hour increments.

(ii) FREQUENCY OF BILLING

All cases shall be billed on a bi-monthly basis or when the unpaid balance due reaches \$2,500 whichever comes first. Attorneys submitting the bills for payment are responsible for the content of the bills and will work with the third party administrator and its independent bill review company to resolve problems or answer questions. All bills shall be directed to the third party administrator or designee for payment.

(iii) DISBURSEMENTS

Counsel will get prior approval on all expenses greater than \$200.00. Counsel shall pay all expense items and submit a copy of the expense documentation with the monthly invoice.

X. MULTIPLE ATTORNEY/PARALEGAL ATTENDANCE

Unless otherwise approved in advance, only one attorney is authorized to attend depositions, meetings, hearings, etc. The third party administrator / Orange County recognizes that there are complicated cases, which may require assistance of a paralegal, however, authorization must be obtained by the third party administrator/Orange County. If co-counsel or a paralegal is approved, we will reimburse one attorney or paralegal at the full hourly rate. We will reimburse co-counsel or paralegal at 50% of the normal hourly rate, except as authorized by the third party administrator / Orange County.

Y. TRAVEL TIME AND EXPENSES

We will only reimburse counsel for travel expenses in excess of 25 miles at the rate of \$0.44.5 per mile. There will be no reimbursement for trips under twenty-five (25) miles. Travel time will be reimbursed at \$50.00 per hour. Travel outside the Counties of Orange, Osceola or Seminole must be pre-approved by the Risk Manager.

1. When attending multiple hearings at the same location on behalf of the Program and/or other insurance carriers, counsel shall pro rate the travel expense among all files.
2. Coach class airfare, moderately priced hotel accommodations and meals will be reimbursed. Travel expenses shall be itemized on counsel's billing, with copies of all

receipts attached.

Z. BILLING FORMAT

Counsel shall submit bills on a monthly basis with the original and a copy attached. The billing format must provide the following:

Fees

1. Date of service
2. Specific detailed description of each task performed
3. Identity of the individual performing the task
4. Amount of time billed per task
5. Hourly rate and dollar amount
6. Professional level of each timekeeper
7. Travel time is to be billed separately from the task performed as a result of the travel
8. Billing should be in increments of one-tenth (0.10) of an hour only
9. Where multiple activities are billed on a single day, each activity must be shown and charged separately. Time entries should be grouped only where the activity takes less than one-tenth (0.10) of an hour.

Expenses

1. All expenses are to be itemized by date including photocopies, mileage, and long distance phone and facsimile charges.

Each interim and final statement will reflect current period outstanding fees plus cumulative paid fees from the inception of the legal activities of the file.

AA. EXCLUDED EXPENSES

Effective immediately, the following items will not be reimbursed, unless we have specifically agreed to accept the expenses:

1. Word processing, clerical or secretarial charges, whether expressed as a dollar disbursement or time charge
2. Storage of open or closed files, rent, electricity, postage, local telephone or any other items traditionally associated with overhead
3. Per photocopy charges in excess of \$0.15 (fifteen cents) per page
4. Receipt or transmission of local facsimiles charges. We will pay only the actual long distance telephone line charges incurred for fax transmissions.
5. Auto mileage rates in excess of \$0.44.5 (forty four and one half cents) per mile, for trips over 25 miles only.
6. We will not reimburse overtime incurred for the convenience of counsel or by counsel's failure to meet deadlines known in advance. For all staff involved on the file.
7. Equipment, books, periodicals, research materials or Westlaw/Lexis or other like items.
8. Express charges, messenger services or like, without prior consent by the third party administrator. We expect these expenses to be incurred in emergency situations only. Where case necessity requires the use of these services, we will consider reimbursement on a case-by-case basis.
9. Responding to requests from auditors for Orange County / third party administrator or

counsel disputing a recommended reduction.

BB. FLAT CHARGES: MINIMUM CHARGES

Counsel shall not apply flat charges as part of its rate structure unless such flat charges have specifically been agreed to by the third party administrator or Orange County Risk Manager, nor shall counsel apply a minimum charge for any activity.

CC. DISPUTES

Any audit disputes should be sent by mail or fax to Legal Bill Review, Inc. with objective supportive documentation of the task in question, within thirty (30) days of receipt of the Explanation of Audit in order for the task to be reconsidered. Any audit dispute received after thirty days (30) will not be reconsidered.

No disputes are allowed due to violation of client guidelines.

DD. PERFORMANCE EVALUATION

In order to insure that superior results are achieved in the most cost-effective manner, The Program is committed to the on-going evaluation of services provided by counsel, by measuring substantive performance in such areas as:

- o Extent to which the firm is fully familiar with all aspects of the Law.
- o Ability to resolve assignments in an expeditious and cost-effective manner.
- o Extent to which firm communicates with adjusters prior to taking a course of action.
- o Ability of the firm to mitigate case within or below the settlement authority level and within established budget.
- o Ability of the firm to prepare for and effectively present its case at a hearing or trial.
- o Competence of attorney staff.
- o Extent to which firm complies with reporting and billing requirements of The Program.
- o Ability of the firm to obtain a favorable result.

EE. REPORT SAMPLES

Orange County's Risk Management Department believes that an effective defense requires an early and thorough evaluation of the case. Therefore, we require an Initial Analysis and Case Budget within thirty (30) days of the date of assignment. For all employment claims, the attached Claimant Data Sheet should be submitted along with the initial case analysis.

Periodic Report is required three (3) months after the initial case analysis and every three (3) months thereafter until resolution of the case. Pre-Trial Assessment is required thirty (30) days before trial. It is not necessary to copy Risk Management on routine correspondence, notices, etc.

A sample outline for each report is attached. These outlines are meant as minimum guidelines. You may add to your report, as you deem necessary.

INITIAL CASE ANALYSIS

Insured/Client:

Plaintiff/Charging Party:

Facts as determined from insured investigation:

Liability:

- a. Summary of the Claim.
- b. Counsel's opinion.
- c. Strengths and weaknesses of the case.
- d. Credibility of Insured's witnesses.
- e. Does documentation support Insured's version?
- f. Additional investigation needed, if any.
- g. Suitability of dispositive motions and % chance for success.
- h. Is expert testimony likely to be needed?

Damages:

- a. Counsel's estimate of recoverable damages.
- b. Pre-judgment interest of plaintiff's attorney fees.
- c. Availability of punitive damages.

Settlement:

- h. Counsel's opinion as to whether the case should be tried or settled.
- i. Counsel's opinion of settlement value.
- j. Is ADR appropriate? If not, Why not?
- k. Settlement demand.
- l. Pre-claim settlement negotiations (if any).

Plaintiff's Counsel:

- a. Ability and general reputation.

CLAIMANT DATA SHEET

Prepared by: _____ Date: _____

1. Claimant's name:
2. Date of claimed negligent action:
3. Claimant's occupation:
4. Department of Program:
5. Claimant's annual salary:
6. Analysis of claimant's injuries:
7. Cost of claimant's medical treatment. Applicable collateral sources:

PERIODIC REPORT

Insured/Client:

Plaintiff:

Significant dates:

- Trial:
- Settlement Conference:
- Other:

Discovery completed:

For Deposition, indicate deponent, reason deposed and impression of witness. Please provide a deposition summary. It is not necessary to send a copy of the deposition, unless requested.

Current evaluation of liability:

- Explain any change from previous report.

Current estimate of damages:

- Verdict value;
- Settlement value.

Settlement:

- Current demand;
- Current offer, if any;
- ADR recommended?

Significant discovery or other activity planned in the next six (6) months:

Suitability of dispositive motions and % of chance of success:

Budget through this state of litigation:

- Amount actually billed through this state of litigation.
- Difference.
- Please explain any variance in the amount spent. Does the budget need adjustment? If yes, attach budget.

Other significant changes since prior report.

PRE-TRIAL ASSESSMENT

Insured/Client:

Plaintiff:

Trial date and probability of being tried on that date:

Final pre-trial conference date:

Pending claims:

- Liability evaluation of each;
- Damages associated with each;
- Probability of verdict for each;
- Attorney fees awarded?

Witness:

- Demeanor, credibility and role of each plaintiff's witness;
- Demeanor and credibility of each defense witness.

Additional work between now and trial:

Total budget:

Budget to date:

Amount billed to date:

Amount anticipated through trial:

Please explain any difference between the amounts budgeted and billed or anticipated to be billed:

ORANGE COUNTY, FLORIDA

and

WALKER, REVELS, GRENINGER, PLLC

ADDENDUM TO CONTRACT NO. Y24-142

related to

**BUSINESS ASSOCIATE ASSURANCE OF COMPLIANCE WITH THE
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
PRIVACY, BREACH AND SECURITY RULES AND THE
FLORIDA INFORMATION PROTECTION ACT (FIPA)**

THIS ADDENDUM is by and between, ORANGE COUNTY, FLORIDA (the "County"), a charter county and political subdivision of the State of Florida, located at 201 South Rosalind Avenue, Orlando, Florida 32801, on behalf of its OFFICE OF ACCOUNTABILITY/RISK MANAGEMENT (the "Covered Healthcare Component"), and REVELS, GRENINGER, PLLC ("Business Associate"), located at 189 South Orange Avenue, Suite 1600, Orlando, Florida, 32801. The County and Business Associate may be referred to herein individually as "Party" or collectively as "Parties".

RECITALS

WHEREAS, the County has been designated as a "Hybrid Entity" under the HIPAA Privacy and Security Rules, 45 CFR §164.105; and

WHEREAS, pursuant to 45 CFR §164.105(a)(2)(iii)(D), the County, as a Hybrid Entity, has documented that its OFFICE OF ACCOUNTABILITY/RISK MANAGEMENT is a "Covered Healthcare Component" of the County and, as such, when the County is acting through its OFFICE OF ACCOUNTABILITY/RISK MANAGEMENT, it must be treated as a "Covered Entity"; and

WHEREAS, in connection with the provision of services to the County (collectively referenced to as "Services") by the Business Associate, the County, through its Covered Healthcare Component, may disclose to the Business Associate certain Protected Health Information ("PHI") that is subject to protection under the HIPAA Privacy and Security Rules, 45 CFR Parts 160, 162, and 164; and

WHEREAS, the HIPAA Privacy and Security Rules require that a Covered Entity, as well as a Hybrid Covered Entity when it is acting through one of its Covered Healthcare Components, receives adequate assurances that the Business Associate will comply with certain obligations with respect to the PHI received in the course of providing Services to, or on behalf of, the Covered Entity or Hybrid Covered Entity; and

WHEREAS, the purpose of this Addendum is to comply with the requirements of the HIPAA Privacy and Security Rules, 45 CFR Parts 160, 162, and 164, and the Florida Information Protection Act, §501.171, Florida Statutes, and 42 CFR Part 2, where applicable, and as amended; and

WHEREAS, the County and Business Associate have entered, or will be entering into, a contract for services known as Contract No. Y24-142 (the "Agreement") and the Parties wish to adopt this Addendum to the Agreement in order to ensure that the Services provided by the Business Associate pursuant to the Agreement are provided in compliance with the requirements of the HIPAA Privacy and Security Rules, 45 CFR Parts 160, 162, and 164, and the Florida Information Protection Act, §501.171, Florida Statutes, and 42 CFR Part 2, where applicable, and as amended.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, agreements and obligations herein stated, the Parties agree as follows:

Section 1. Incorporation

A. **Recitals Incorporated.** The above recitals are true and correct and are hereby incorporated as a material part of this Addendum.

B. HIPAA Privacy and Security Rules 45 CFR Parts 160, 162, and 164, and the Florida Information Protection Act, §501.171, Florida Statutes, and 42 CFR Part 2, where applicable and as amended, are hereby incorporated into this Addendum.

C. To the extent that this Addendum, or the Agreement, imposes more stringent requirements than those contained in HIPAA Privacy and Security Rules 45 CFR Parts 160, 162, and 164, the Florida Information Protection Act, §501.171, Florida Statutes, and 42 CFR Part 2, where applicable and as amended, those more stringent requirements of this Addendum, or the Agreement, will control.

Section 2. Definitions.

A. Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in 45 CFR §§160.103, 162.103, 164.103, 164.402, and 164.501, and §501.171, Florida Statutes.

1. ***Breach*** shall have the meaning given to such term as found in 45 CFR §164.402, and the Florida Information Protection Act, §501.171, Florida Statutes.

2. ***Designated Record Set*** shall mean a group of records maintained by or for a covered entity that is: (a) the medical records and billing records about individuals maintained by or for a covered health care provider; (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (c) used, in whole or in part, by

or for the covered entity to make decisions about individuals. For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a covered entity.

3. **Disclosure** shall mean the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.
4. **Florida Information Protection Act** shall mean the Florida Information Protection Act ("FIPA") codified at §501.171, Florida Statutes.
5. **HIPAA Privacy and Security Rules** shall mean the Standards for Privacy, Security, Breach, Notification, and Enforcement at 45 CFR Parts 160, 162 and 164.
6. **Individual** shall mean the person who is the subject of PHI, and shall include a person who qualifies as a personal representative, in accordance with 45 CFR §164.502(g).
7. **Individually Identifiable Health Information** shall mean information that is a subset of health information, including demographic information collected from an individual, and: (a) is created or received by a health care provider, health plan, employer, or health care clearinghouse; (b) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (c) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
8. **Privacy Officer** shall mean the individual designated by the County pursuant to 45 CFR §164.530, who is responsible for the development and implementation of the County's policies and procedures as they relate to its, and its Covered Healthcare Component's, compliance with HIPAA Privacy and Security Rules.
9. **Personally Identifiable Information ("PII")** shall mean either of the following:
 - a. An individual's initials, first name, or first initial and last name in combination with any one or more of the following data elements for that individual:
 - i. A social security number;
 - ii. A driver's license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
 - iii. A financial account number or credit or debit card number in combination with any required security code, access code, or

- password that is necessary to permit access to an individual's financial account;
- iv. Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or
 - v. An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.
 - vi. Any other identifier, as referenced in the Department of Health & Human Services "Safe Harbor Standards."
 - vii. The term "Personally Identifiable Information" does not include information about an individual that has been made publicly available by a federal, state, or local governmental entity. The term also does not include information that is encrypted, secured, or modified by any other method or technology that removes elements that personally identify an individual or that otherwise renders the information unusable.
- b. A user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.
 - c. The PII provided pursuant to the Agreement shall be limited to what is necessary for the Business Associate to meet its obligations thereunder.
10. ***Protected Health Information ("PHI")*** shall mean an individual's identifiable health information that is – or has been – created, received, transmitted, or maintained in any form or medium, on or behalf of the County, with the exception of education records covered by the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, as amended, and the health care records of students at post-secondary educational institutions or of students eighteen (18) years of age or older, used exclusively for their health care treatment which have not been disclosed to anyone other than a health care provider at the student's request. The PHI provided pursuant to the Agreement shall limited to what is necessary for the Business Associate to meet its obligations thereunder.
11. ***Required by Law*** shall have the same meaning as the term "required by law" in 45 CFR §164.103.

12. **Secretary of Health and Human Services** shall mean the Secretary of the Health and Human Services (“HHS”) or any other officer or employee of HHS to whom the authority involved has been delegated.
13. **Security Incident or Incident** shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PII contained in any form or interference with system operations in an information system that contains PHI or PII.
14. **Use** shall mean the sharing, employment, application, utilization, examination, or analysis of PII or PHI within an entity that maintains such information.

Section 3. Scope of Agreement

A. **Independent Status of Parties.** The Parties agree that they are, and shall be, independently responsible for complying, and shall independently comply, with the HIPAA Privacy and Security Rules and FIPA, as it may be amended from time to time. The Parties further agree that they are, and shall be, responsible for their own actions and conduct and shall not assume responsibility for the actions and conduct of one another. Additionally, the Parties agree that they shall maintain all corporate formalities establishing separate and individual control by each organization's board of directors, as applicable.

B. The Business Associate acknowledges that the confidentiality requirements set forth herein shall apply to all of its employees, agents, and representatives. The Business Associate assumes responsibility and liability for any damages or claims, including state and federal administrative proceedings and sanctions brought against the County, including costs and attorneys' fees, resulting from the breach by the Business Associate of the confidentiality requirements of this Addendum.

Section 4. Privacy of Protected Health Information and Confidentiality of Personal Information.

A. **Permitted Uses and Disclosures of PHI and PII by Business Associate.** The Business Associate may use, or disclose, PHI and PII received from the County to its officers and employees. The Business Associate may disclose PHI and PII to a business associate that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit PHI and PII on its behalf if the Business Associate obtains satisfactory assurances, in accordance with 45 CFR §164.504(c)(1)(i) and §501.171(2), that the subcontractor will appropriately safeguard the information. All other uses or disclosures, not otherwise authorized by this Addendum or otherwise governed by law, are prohibited.

B. **Responsibilities of the Business Associate.** Regarding the use or disclosure of PHI and PII, the Business Associate agrees to:

1. Only use or disclose the PHI and PII as allowed under this Addendum or otherwise by applicable law.
2. Only use or disclosure PHI and PII in a manner that would not violate the HIPAA Privacy and Security Rules, or FIPA, if done so by a Covered Entity.
3. Establish and implement appropriate procedures, physical, and technical safeguards to prevent improper access, uses, transmissions, or disclosures of PHI and PII for mitigating, to the greatest extents possible under the circumstances, any deleterious effects from any improper access, use, or disclosure of PHI and PII that the Business Associate reports to the County. Safeguards shall include, but are not limited to: (a) the implementation and use of electronic security measures to safeguard electronic data; (b) requiring employees to agree to access, use, or disclose PHI and PII only as permitted or required by this Addendum; and (c) taking related disciplinary action for inappropriate access, use or disclosure as necessary.
4. Ensure that the Business Associate's subcontractors or agents to whom the Business Associate provides PHI or PII, created received, maintained, or transmitted on behalf County agree to the same restrictions and conditions that apply to the Business Associate with respect to PHI and PII, and ensure that its subcontractors or agents agree to establish and implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of all PHI and PII that it creates receives, maintains, or transmits on behalf of the County.
5. Make the Business Associate's records, books, accounts, agreements, policies, and procedures available to the Secretary of HHS for determining the County's compliance with the HIPAA Privacy and Security Rules, and also, with the State of Florida's Department of Legal Affairs to determine the County's compliance with FIPA.
6. Limit use by, or disclosure to, its subcontractors, agents, and other third parties, to the minimum PHI and PII necessary to perform or fulfill a specific function required or permitted hereunder.
7. Provide information to the County to permit the County to respond to a request by an individual for an accounting of disclosures within five (5) days of receiving a written request from the County, if the Business Associate maintains a Designated Records Set on behalf of the County.
8. At the request of, and in the time and manner designated by, the County, provide access to the PHI and PII maintained by the Business Associate to the County or individual, if the Business Associate maintains a Designated Records Set on behalf of the County.

9. At the request of, and in the time and manner designated by, the County, make any amendment(s) to the PHI and PII when directed by the County, if the Business Associate maintains a Designated Record Set on behalf of the County.
10. Establish and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI and PII the Business Associate creates, receives, maintains, or transmits on behalf of the County.
11. Report to the County any Security Incident involving PHI and PII that the Business Associate discovers in the manner detailed in Section 7 below.

C. **Compliance with the County's Policies.** The Business Associate hereby agrees to abide by the County's policies and practices for its Covered Healthcare Component that relate to the confidentiality, privacy, and security of PHI and PII.

D. **Use of PHI and PII for Management and Administration or Legal Responsibilities of the Business Associate.** The Business Associate may use PHI and PII received by the County pursuant to the Agreement for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. However, the Business Associate will only be allowed to use PHI and PII for the aforementioned uses if:

1. the disclosure is required by law; or
2. the Business Associate obtains reasonable assurances from the person to whom the PHI and PII is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notified the Business Associate of any instances in which the person is aware of a confidentiality breach of PHI or PII.

E. **Data Aggregation Services.** With respect to PHI and PII created or received by the Business Associate in its capacity as the Business Associate of the County, the Business Associate may combine such PHI and PII it has received from the County with the PHI and PII received by the Business Associate in its capacity as a Business Associate of another Covered Entity, or Hybrid Covered Entity, to permit data analysis that relates to the health care operation of the respective Covered Entity, or Hybrid Covered Entity, if data analyses is part of the Services that Business Associate is to provide to the County pursuant to the Agreement.

F. **Compliance.** The Business Associate agrees to keep all PHI and PII confidential and secure in compliance with the provisions of this Addendum and according to current state and federal laws.

Section 5. Confidentiality

A. In the course of performing under this Addendum, each Party may receive, be exposed to, or acquire the confidential information including, but not limited to, all information, data, reports, records, summaries, tables, and studies, whether written or oral, fixed in hard copy or contained in any computer database or computer readable form, as well as any information identifiable as confidential ("Confidential Information") of the other Party.

B. For purposes of this Addendum, Confidential Information shall **not** include PHI, the security and privacy of which is the subject of this Addendum. The Parties, including their employees, agents, or representatives shall:

1. not disclose to any third party the Confidential Information of the other Party except as otherwise permitted by this Addendum, or as mandated by the State of Florida's Public Records Laws;
2. only permit use of such Confidential Information by employees, agents, and representatives having a need to know in connection with performance under the Agreement; and
3. advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential.

C. This provision shall not apply to Confidential Information:

1. after it becomes publicly available through **no fault** of either Party;
2. which is later publically released by either Party in writing;
3. which is lawfully obtained from third parties without restrictions; or
4. which can be shown to be previously known or developed by either Party independently of the other Party.

Section 6. Security

A. **Security of Electronic Protected Health Information and Personal Information.** The Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI (as defined in 45 C.F.R. §160.103) and PII (as defined by §501.171, Florida Statutes) that the Business Associate creates, receives, maintains, or transmits on behalf of the County consistent with the HIPAA Privacy and Security Rules and FIPA.

B. **Reporting Security Incidents.** The Business Associate will report to the County any Incident of which the Business Associate becomes aware that is:

1. a successful unauthorized access, use or disclosure of Electronic PHI or PII;
2. a modification or destruction of electronic PHI or PII; or
3. interference with system operations in an information system containing electronic PHI or PII.

Section 7. Reporting Requirements

A. **Reporting.** The Business Associate shall make a good faith effort to identify any use or disclosure of protected information not provided for in this Addendum.

B. **Reporting to the County.**

1. The Business Associate will report to the County within:
 - a. two (2) days of any suspected – or confirmed – access, use, or disclosure of PHI or PII, regardless of form, not permitted or required by this Addendum of which the Business Associate becomes aware; and
 - b. twenty-four (24) hours of discovery, any Security Incident of which the Business Associate is aware.
2. Such report shall include the identification of each individual whose unsecured PHI and PII has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
3. Reports of Security Incidents shall include a detailed description of each Incident, at a minimum, to include: (a) the date of the Incident; (b) the nature of the Incident; (c) the information involved, whether the information was accessed, disclosed, used, modified, destroyed, etc.; (d) the identities of the individual(s) and their relationship to the Business Associate; (e) a description of the Business Associate's response to each Incident; (f) and the name and title of the individual the County should contact for additional information.
4. The Business Associate will conduct such further investigation as is reasonably required by the County and promptly advise the County of additional information pertinent to the Incident.
5. The Business Associate will cooperate with the County in conducting any required risk analysis related to such Security Incident(s).

6. The Business Associate will cooperate with the County in complying with any applicable notification requirements pursuant to the Breach Notification Rule and/or pursuant to Florida law (including but not limited to, §§501.171 and 817.5681, Florida Statutes), and in taking steps determined by the County to be necessary to mitigate any potential harm caused by a Security Incident. The Business Associate will pay and/or reimburse the County for any reasonable expenses the County incurs in notifying individuals of, and /or mitigating potential harm caused by, a Security Incident caused by the Business Associate and/or its subcontractors or agents.

C. **Reporting to Individuals.** In the case of a breach of PHI or PII discovered by the Business Associate, the Business Associate shall first notify the County of the pertinent details of the breach and, upon prior approval of the County's Privacy Officer, shall notify each individual whose unsecured PHI or PII has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed as a result of such breach. Such notification shall be in writing by first-class mail to the individual (or the next of kin if the individual is deceased) at the last known address of the individual or next of kin, respectively, or, if specified as a preference by the individual, by electronic mail. Where there is insufficient or out-of-date contact information (including a phone number, email address, or any other form of appropriate communication) that precludes written (or, if specifically requested, electronic) notification to the individual, a substitute form of notice shall be provided, including, in the case that there are ten (10) or more individuals for which there is insufficient or out-of-date contact information, a conspicuous posting on the web site of the Business Associate involved or notice in major print of broadcast media, including major media in the geographic areas where the individuals affected by the breach are likely to reside. In any case deemed by the Business Associate to require urgency because of possible imminent misuse of unsecured PHI or PII, the Business Associate may also provide information to individuals by telephone or other means, as appropriate.

D. **Reporting to Media.** In the case of a breach of PHI discovered by the Business Associate where the unsecured PHI of more than five hundred (500) persons or unsecured PII of more than five hundred (500) persons is reasonably believed to have been, accessed, acquired, or disclosed, after prior approval by the County, the Business Associate shall provide notice to prominent media outlets serving the state or relevant portion of the state involved.

E. **Reporting to HHS and the State of Florida Department of Legal Affairs.** The Business Associate shall cooperate with the County to provide notice to the Secretary of HHS of unsecured PHI and to the State of Florida, Department of Legal Affairs, of unsecured PII that has been acquired or disclosed in a breach. If the breach was with respect to five hundred (500) or more individuals, such notice must be provided immediately. If the breach was with respect to less than five hundred (500) individuals, the Business Associate may maintain a log of such breach occurring and annually submit such log to the County so that it may satisfy its obligation to notify the Secretary of HHS documenting such breaches occurring in the year involved.

F. **Content of Notices.** All notices and reports required under this Addendum shall include the content set forth 45 C.F.R § 164.404 and FIPA. Notification to individuals, except that references therein to a "Covered Entity," shall be read as references to the Business Associate.

1. Regardless of the method by which notice is provided to individuals under this section, notice of a breach shall include, to the extent possible, the following: (a) a brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known; (b) a description of the types of unsecured PHI and PII that were involved in the breach (such as full name, social security number, date of birth, home address, account number, or disability code); (c) the steps individuals should take to protect themselves from potential harm resulting from the breach; (d) a brief description of what the covered entity involved is doing to investigate the breach, to mitigate losses, and to protect against any further breaches; and (e) contact procedures for individuals to ask questions or learn additional information, which shall include a toll free telephone number, an e-mail address, web site, or postal address.

G. **Notice to Credit Reporting Agencies.** In the case of a breach of PII discovered by the Business Associate where the unsecured PII of more than one thousand (1000) individuals has reasonably believed to have been, accessed, acquired, or disclosed, after prior approval by the County, the Business Associate shall notify all consumer reporting agencies nationwide, that complete and maintain files in accordance with the provisions of §501.171(5), Florida Statutes.

H. **Financial Responsibility.** The Business Associate shall be responsible for all costs related to the notice required by this Section.

I. **Mitigation.** The Business Associate shall mitigate, to the extent practicable, any harmful effects that are known to the Business Associate of use or disclosure of PHI or PII in violation of this Addendum, the HIPAA Privacy and Security Rules, HITECH Act, and FIPA.

J. A violation of this Section shall be a material violation of this Addendum.

Section 8. Termination

A. **Automatic Termination.** The County is authorized to automatically terminate the Agreement, if it determines that the Business Associate has violated a material term of this Addendum.

B. **Opportunity to Cure or Terminate.** At the County's sole discretion, the County may either: (1) provide notice of breach and an opportunity for the Business Associate to reasonably and promptly cure the breach or end the violation and terminate the Agreement if the Business Associate does not cure the breach, or end the violation within the reasonable time specified by the County; or (2) immediately terminate the Agreement if the Business Associate has breached a material term of this Addendum and cure is not possible.

C. **Effects of Termination.** Termination of the Agreement shall not affect any claim or rights that may arise based on the acts or omissions of the Parties prior to the effective date of termination.

D. **Duties of Business Associate Upon Termination of the Agreement.**

1. When the Agreement is terminated, the PHI and PII that the Business Associate received from, created, or received on behalf of the County must be destroyed or returned to the County, at the Business Associate's expense, including all PHI and PII in the possession of the Business Associate's subcontractors or agents. However, if the Business Associate determines that returning or destroying PHI and PII is not feasible, the Business Associate must maintain the privacy protections under this Addendum, and according to applicable law, for as long as the Business Associate retains the PHI and PII, and the Business Associate may only use or disclose the PHI and PII for specific uses or disclosures that make it necessary for the Business Associate to retain the PHI and PII.
2. If the Business Associate determines that it is not feasible for the Business Associate to return PHI or PII in the subcontractor's or agent's possession, the Business Associate must provide a written explanation to the County of such reasons and require the subcontractors and agents to agree to extend any and all protections, limitations, and restrictions contained in this Addendum to the subcontractor's or agent's use or disclosure of any PHI and PII retained after the termination of the Agreement, and to limit any further uses or disclosures for the purposes that make the return or destruction of the PHI or PII not feasible.

Section 9. Miscellaneous

A. **Agreement Subject to All Applicable Laws.** The Parties recognize and agree that the Agreement, and any and all activities performed thereunder, is governed by federal, state, and local laws, including the regulations, rules, and policies of the U.S. Department of Health and Human Services including, but not limited to, HIPAA Privacy and Security Rules, FIPA, and their accompanying regulations. The Parties further recognize and agree that the Agreement is subject to new legislation as well as amendments to government regulations, rules, and police, and agree to amend this Addendum accordingly.

B. **No Third Party Beneficiaries.** Nothing expressed or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties any rights, remedies, obligations, or liabilities whatsoever.

C. **Survival.** The rights and obligations of the Parties in Sections 4, 5, 6, 7 in their entirety, as well as subsections 8D., 9E., 9G., and 9H., shall survive termination of the Agreement indefinitely.

- D. **Amendment.** This Addendum may only be revoked, amended, changed, or modified by a written amendment that is executed by both Parties.
- E. **Enforcement Costs and Attorneys Fees.** If any legal action or other proceedings, including arbitration, is brought for the enforcement of this Addendum, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provision of this Addendum, each Party will hereby be responsible for its own costs and attorneys' fees.
- F. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the County to comply with the Privacy and Security Rules.
- G. **Indemnification.** To the fullest extent permitted by law, the Business Associate 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, costs, and expenses (including attorney's fees) of any kind or nature whatsoever arising directly or indirectly out of or caused in whole or part by any act or omission of the Business Associate, 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. In the event the Business Associate is a state department or division, or a political subdivision of the State of Florida, indemnification shall follow the provisions of §768.28, Florida Statutes.
- H. **Signatory Authority.** Each signatory to this Addendum represents and warrants that he or she possesses all necessary capacity and authority to act for, sign, and bind the respective entity or person on whose behalf he or she is signing.
- I. **Governing Law.** This Addendum shall be governed by and construed in accordance with the laws of the State of Florida to the extent not preempted by the HIPAA Privacy Rules or other applicable federal law.
- J. **Notice.** All notices and other communications under this Addendum shall be in writing and shall be deemed received when delivered personally or when deposited in the U.S. mail, postage prepaid, sent registered, or certified mail, return receipt requested, or sent via nationally recognized and receipted overnight courier service, to the Parties at their respective principal office or record as set forth below or as designed in writing from time-to-time. No notice of a change of address shall be effective until received by the other Party(ies).

To the County:

Orange County HIPAA Privacy Officer
2002-A East Michigan Street
Orlando, FL 32806
(407) 836-9214

AND

Orange County Administrator

Administration Building, 5th Floor
201 S Rosalind Avenue
Orlando, FL 32801

To the Business Associate:

Joshua Walker
Walker, Revels, Greninger, PLLC
189 S. Orange Ave
Suite 1600
Orlando, FL 32801

K. **Severability.** If any provision of this Addendum, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Addendum, or the application of such affected provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Addendum shall be valid and shall be enforced to the fullest extent permitted by law. It is further the intention of the Parties that if any provision of this Addendum were capable of two constructions, one that rendered the provision void and one that renders the provision valid, then the provision shall have the meaning that renders it valid.

L. **Successors and Assigns.** The Business Associate shall not assign either its obligations or benefits under this Addendum without the expressed written consent of the County, which shall be at the sole discretion of the County. Given the nature of this Agreement, neither subcontracting nor assignment by the Business Associate is anticipated and the use of those terms herein does not indicate that permission to assign or subcontract has been granted.

M. **Venue and Waiver of Jury Trial.** Any action or proceeding seeking to enforce any provision, or based on any right arising out of this Addendum shall be brought in the federal or state courts located in Orange County, Florida, and each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue therein. Any and all rights to a trial by jury are hereby waived.

N. **Waiver and Breach.** No failure by a Party to insist upon the strict performance of any covenant, agreement, term, or condition of this Addendum shall constitute a waiver of any such breach or such covenant, agreement, term, or condition. Any Party may waive compliance by the other Party with any of the provisions of this Addendum if done so in writing. No waiver of any provision shall be construed as a waiver of any other provision or any subsequent waiver of the same provision.

O. **Entire Agreement.** The Agreement, this Addendum and/or any additional addenda or amendments to the Agreement, any documents incorporated herein by reference, and/or attachments hereto, shall construe the entire understanding between the Parties as to the rights, obligations, duties, and services to be performed hereunder.

IN WITNESS HEREOF, the parties have executed this Addendum as of the date first above written.

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ORANGE COUNTY, FLORIDA

By: Orange County Board of County Commissioners

BY: Lari Mathis

DATE: 9.11.2023

THE BUSINESS ASSOCIATE

Business Associate: Walker, Revels, Greninger, PLLC

By: [Signature]

Printed Name: Joshua Walker

Official Title: Mgr

Date: 9/7/23

STATE OF Florida

COUNTY OF Orange

The foregoing instrument was acknowledged before me this 9th day of September
2023, by Joshua Walker

(Seal)



[Signature]
Signature Notary Public
Print, Type/Stamp Name of Notary

Personally Known or Produced Identification []

Type of Identification Produced: _____