

## **REQUEST FOR PROPOSALS**

- 16. Award RFP-0548-06/TRJ – Legal Services for Insurance Claims and Litigations, to Nabors, Giblin & Nickerson, PA, Tallahassee (Taking Claims Related to Real Property Rights); Rissman, Weisberg, Barrett, Hurt, Donahue & McLain, P.A. of Orlando (Liability Services); and Broussard, Cullen, DeGailler & Eagan, PA of Orlando (Worker's Compensation Services).**

RFP-0548-06/TRJ will provide retained firms for three types of legal services. The first is *Worker's Compensation* including appellant services in the workers' compensation field. The second is for *Taking Claims Related to Real Property Rights* and the third is for *Liability Defense* to including appellant services in general liability, public official's liability, auto liability, and professional liability fields. Retained counsel will be assigned on a case-by-case basis. There is no assurance that the selection as defense counsel for the County will result in any minimum number of case referrals. The Risk Manager, after evaluating the claim, will be responsible for the referral of cases to the appropriate firm.

The selected attorneys will provide professional legal services for the County as needed and authorized as follows:

- (1) provide legal services on a case-by-case basis;
- (2) provide telephone consultation with the County's in-house counsel and Risk Management staff;
- (3) identify and prosecute as authorized by the County all the potential defendants to claims filed against the County; and
- (4) identify and obtain recoveries from third parties.

This project was publicly advertised and twelve firms requested bid packages. The County received proposals from five firms:

- Broussard, Cullen, DeGailler & Eagan
- Dean, Ringers, Morgan & Lawton, P.A.
- Nabors, Giblin & Nickerson, P.A.
- Rissman Barrett, Hurt, Donahue & McLain, P.A.
- Savage-Gaston & Hargrove, P.A.

The Evaluation Committee composed of Speed Thomas, Acting Director, Administrative Services, Linda Eiland, Risk Manager; Ann Colby, Assistant County Attorney; and Toni Udo, Risk Management Coordinator, evaluated

the submittals against the criteria specified in the RFP documents. Consideration was given to the following:

- Qualifications and experience of the firm and key personnel
- Technical Plan
- Management Plan
- Fee Proposal

The Evaluation Committee recommends that the Board award Agreements to Nabors, Giblin & Nickerson, PA, Tallahassee (Taking Claims); Rissman, Weisberg, et al, Orlando (Liability Services); and Broussard & Cullen et al, PA (Worker's Compensation Services).

The Administrative Services Department and the Fiscal Services Department/Purchasing and Contracts Division recommend that the Board approve the project and authorize the Chairman to execute the Agreements as prepared by the County Attorney's Office.

# B.C.C. - SEMINOLE COUNTY, FL RFP TABULATION SHEET

ALL RFP'S ACCEPTED BY SEMINOLE COUNTY ARE SUBJECT TO THE COUNTY'S TERMS AND CONDITIONS AND ANY AND ALL ADDITIONAL TERMS AND CONDITIONS SUBMITTED BY THE PROPOSERS ARE REJECTED AND SHALL HAVE NO FORCE AND EFFECT. RFP DOCUMENTS FROM THE CONSULTANTS LISTED HEREIN ARE THE ONLY RFP'S RECEIVED TIMELY AS OF THE ABOVE OPENING DATE AND TIME. ALL OTHER RFP DOCUMENTS SUBMITTED IN RESPONSE TO THIS SOLICITATION, IF ANY, ARE HEREBY REJECTED AS LATE.

CONTRACT NUMBER: <sup>0548 -</sup> RFP-~~0588~~-06/TRJ

CONTRACT TITLE: Legal services for Insurance Claims and Litigation

DUE DATE: February 22, 2006 at 2:00 pm

PAGE: 1 of 1

Response 1	Response 2	Response 3	Response 4
<p>Broussard, Cullen, DeGailler &amp; Eagan 445 West Colonial Dr. Orlando, FL 32804</p> <p>Michael Broussard, Principal Ph. (407) 649-8717 Fx. (407) 649-8680</p>	<p>Dean, Ringers, Morgan &amp; Lawton, P.A. 201 E. Pine Street; Suite 1200 Orlando, FL 32801</p> <p>William E. Lawton, President Ph. (407) 422-4310 Fx. (407) 648-0233</p>	<p>Nabors, Giblin &amp; Nickerson, P.A. 1500 Mahan Drive, Suite 200 Tallahassee, FL 32308</p> <p>Gregory T. Stewart, Secretary Ph. (850) 224-4070 Fx. (850) 224-4073</p>	<p>Rissman, Weisberg, Barrett, Hurt, Donahue &amp; McLain, P.A. 201 P.O. Box 4940 Orlando, FL 32802</p> <p>Jennings L. Hurt III, Partner Ph. (407) 839-0120 Fx. (407) 841-9726</p>
Response 5			
<p>Savage-Gaston &amp; Hargrove, P.A. P.O. Box 3329 Winter Park, FL 32789</p> <p>Joyce Savage-Gaston, President Ph. (407) 628-2077 Fx. (407) 628-2084</p>			

TABULATED BY: T. Jecks, Contracts Analyst

EVALUATION MEETING: March 15, 2006 at 3:00 pm in the Administrative Services Conference Room

RECOMMENDATION OF AWARD: General Liability / Rissman, Barrett, Hurt, Donahue & McLain, P.A.  
(posted 3/16/2006 @ 1:30 pm) Workers' Compensation / Broussard, Cullen, DeGailler & Eagan  
Taking Claims for Real Property / Nabors, Giblin & Nickerson

BCC Meeting: April 11, 2006

EVALUATION RANKINGS  
RFP-0548-06 Legal Services for Insurance Claims and Litigations

Taking Claims for Real Property

Nabors, Giblin & Nickerson	S. Thomas	L. Eiland	T. Udo	A. Colby	TOTAL POINTS	RANKING
Savage-Gaston & Hargrove	2	1	1	1	5	1
	1	2	2	2	7	2

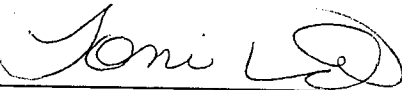
The Evaluation Committee recommends

Nabors, Giblin & Nickerson

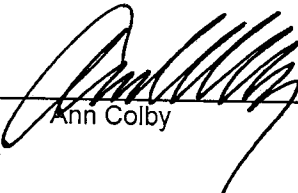


Speed Thomas

Linda Eiland



Toni Udo



Ann Colby

**EVALUATION RANKINGS**

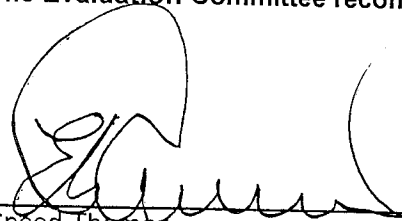
RFP-0548-06 Legal Services for Insurance Claims and Litigations

**General Liability**

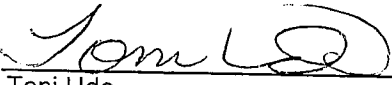
	S. Thomas	L. Eiland	T. Udo	A. Colby	TOTAL POINTS	RANKING
Broussard, Cullen, DeGailler, & Eagan	4	4	2	3	13	3
Dean, Ringers, Morgan and Lawton	1	2	4	1	8	2
Nabors, Giblin & Nickerson	5	3	3	5	16	4
Rissman, Weisberg, Barrett, Hurt, Donahue & McLain	3	1	1	2	7	1
Savage-Gaston & Hargrove	2	5	5	4	16	4

The Evaluation Committee recommends

Rissman, Weisberg, Barrett, Hurt, Donahue &amp; McLain

  
Speed Thomas

Linda Eiland

  
Toni Udo

Ann Colby

**EVALUATION RANKINGS**

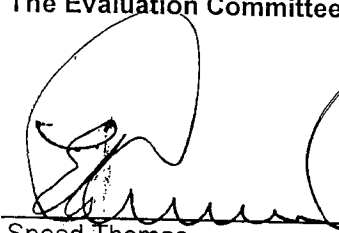
RFP-0548-06 Legal Services for Insurance Claims and Litigations

**Workers' Compensation**

	S. Thomas	L. Eiland	T. Udo	A. Colby	TOTAL POINTS	RANKING
Broussard, Cullen, DeGailler, & Eagan	2	1	1	1	5	1
Dean, Ringers, Morgan and Lawton	1	2	2	2	7	2
Savage-Gaston & Hargrove	3	3	3	3	12	3

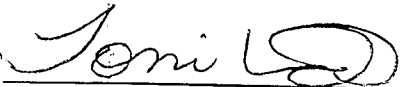
The Evaluation Committee recommends

Broussard, Cullen, DeGailler &amp; Eagan

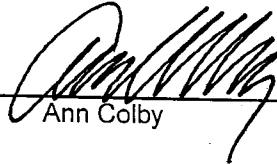


Speed Thomas

Linda Eiland




Toni Udo



Ann Colby

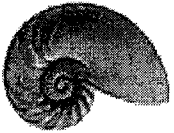
Linda Eiland/Seminole  
03/16/2006 01:56 PM

To Diane Reed/Seminole@Seminole  
cc Toni Udo/Seminole, Speed Thomas/Seminole@Seminole,  
Ann Colby/Seminole@Seminole  
bcc  
Subject Re: RFP-0548 

Yes, I concur.

Thank you

Linda Eiland, ARM  
Risk Management  
200 W. County Home Road  
Sanford, FL 32773  
Phone (407) 665-5950  
Fax (407) 665-5286  
email: leiland@seminolecountyfl.gov  
Diane Reed/Seminole

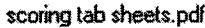


Diane Reed/Seminole  
03/16/2006 01:10 PM

To Linda Eiland/Seminole@Seminole  
cc  
Subject RFP-0548

Linda,  
How are you doing? Please review the attached sheets and e-mail me a brief memo that you agree with



the rankings and recommendations since you are not here to sign these. Thank you! 

Diane Reed  
Senior Contracts Analyst, Fiscal Services  
Seminole County Purchasing & Contracts  
1101 E. First Street  
Sanford, FL 32771-1468

407-665-7120 Ph  
407-665-7956 Fx  
[www.seminolecountyfl.gov/purchasing](http://www.seminolecountyfl.gov/purchasing)

--\*\*\*\*Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Seminole County policy does not differentiate between personal and business emails. E-mail sent on the County system will be considered public and will only be withheld from disclosure if deemed confidential pursuant to State Law. \*\*\*\*

--\*\*\*\*Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request.

**LEGAL SERVICES AGREEMENT (RFP-0548-06/TRJ)**  
**TAKING CLAIMS**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY" and **NABORS, GIBLIN & NICKERSON, P.A.**, whose address is 1500 Mahan Drive, Suite 200, Tallahassee, Florida 32308, hereinafter referred to as "ATTORNEY" and

**W I T N E S S E T H:**

**WHEREAS**, the COUNTY desires to retain the services of a competent and qualified attorney to represent COUNTY; and

**WHEREAS**, the COUNTY has requested and received proposals for the retention of services of an attorney; and

**WHEREAS**, ATTORNEY is competent and qualified and duly authorized to practice law in the State of Florida and the United States District Court for the Middle District of Florida and desires to provide its professional legal services to COUNTY according to the terms and conditions stated herein,

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, COUNTY and ATTORNEY agree as follows:

**SECTION 1. SERVICES.** ATTORNEY agrees to provide timely professional services for COUNTY and specifically perform those services set forth in the Scope of Services attached hereto and incorporated herein as Exhibit "A". ATTORNEY shall serve on an as needed basis with case assignment on a case by case basis as determined by COUNTY. All services are to be performed on an as needed basis. This Agreement alone does not authorize the performance of any services or require the COUNTY to authorize services.



## **SECTION 2. REQUESTS FOR SERVICES.**

(a) Requests for performance of professional services by the ATTORNEY under this Agreement shall be made by the COUNTY's Risk Manager or Administrative Services Director or their designees on behalf of the COUNTY. Each request for services shall describe the services required, state the dates for commencement and completion and state limitations on the Scope of Services. The COUNTY makes no promise as to the number of service requests nor that the ATTORNEY will perform any services for the COUNTY under this Agreement. The COUNTY reserves the right to contract with other parties for the services contemplated by this Agreement when it is determined by the COUNTY to be in the best interest of the COUNTY to do so.

(b) It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement will arise. The COUNTY designated the COUNTY's Risk Manager or Administrative Services Director as the COUNTY employees to whom all communications pertaining to the day-to-day conduct of the Agreement shall be addressed. The designated representatives shall have the authority to transmit instructions, receive information, and interpret and define the COUNTY's policy and decisions pertinent to the work covered by this Agreement.

**SECTION 3. CHANGES IN THE SCOPE OF SERVICES.** COUNTY or ATTORNEY may request changes that would increase, decrease or otherwise modify the Scope of Services. Such changes and method of compensation must be authorized by COUNTY in writing and duly signed by the parties.

## **SECTION 4. RESPONSIBILITY OF ATTORNEY.**

(a) The ATTORNEY agrees to timely provide the professional services and facilities required to assist COUNTY.

(b) The ATTORNEY shall keep abreast of statutes, regulations, codes and applicable case law in all areas of responsibility at his sole

expense.

(c) The ATTORNEY designates Gregory T. Stewart as the attorney to provide services to the COUNTY.

(d) The ATTORNEY agrees to utilize associates and legal assistants, under the supervision of ATTORNEY, where appropriate to accomplish cost effective performance of services.

(e) It shall be the responsibility of ATTORNEY to specifically request all required information and to provide himself with reasonably sufficient time to review all information so as not to delay without good cause performance under this Agreement.

(f) The ATTORNEY shall be responsible for the professional quality, technical accuracy, competence and methodology of the work done under this Agreement. The ATTORNEY shall, without additional compensation, correct or revise any errors or deficiencies in the work performed under this Agreement which result from the negligence of ATTORNEY.

(g) Neither the COUNTY'S review, approval or acceptance of, nor payment for, any of the services required shall be construed to operate as a waiver of any rights under this Agreement nor of any cause of action arising out of the performance of this Agreement and the ATTORNEY shall be liable to the COUNTY in accordance with applicable law for all damages to the COUNTY caused by the ATTORNEY'S negligent or wrongful performance of any of the services furnished under this Agreement.

#### **SECTION 5. PAYMENT FOR SERVICES AND BILLING.**

(a) In consideration of the promises and the faithful performance by ATTORNEY of his obligations, COUNTY agrees to pay ATTORNEY a fee based on a "Time Basis Method". ATTORNEY, his associates and assistants shall be compensated at rates as indicated in Exhibit "B," attached, for services authorized and performed.

(b) Authorized services may contain a "Limitation of Funds" amount. The ATTORNEY is not authorized to exceed that amount without the prior approval of the COUNTY. The approval, if given, shall be in writing and indicate a new "Limitation of Funds" amount.

(c) In lieu of, or in addition to, establishment of a "Limitation of Funds" amount, the COUNTY may provide for a "Not to Exceed" amount for any service authorization.

(d) COUNTY shall compensate ATTORNEY for the actual work hours required to perform the services authorized. Actual work hours shall not include compensation for travel time to or from the offices of ATTORNEY to Seminole County or travel time to court appearances. Payment shall be made to the ATTORNEY when requested as work progresses, but not more than once monthly for services rendered. ATTORNEY shall provide an itemized invoice based on actual services rendered.

(e) Reimbursable expenses shall be paid in addition to the payment due under subsection (d) above and shall include actual expenditures made by ATTORNEY, his employees or professional consultants in the interest of the work effort for the expenses listed in the following subsections:

(1) Expenses of transportation when traveling in connection with case assignments based on *Sections 112.061(7) and (8), Florida Statutes*, or their successor; long distance calls and facsimile transmissions.

(2) Expense for reproduction, postage and handling of material associated with the work effort.

(3) If authorized in writing in advance by the COUNTY, the cost of other expenditures made by ATTORNEY in the interest of the work effort.

**SECTION 6. GENERAL TERMS AND PAYMENT.**

(a) The ATTORNEY shall invoice the COUNTY or the Third Party Administrator, as designated by the COUNTY, by the 5<sup>th</sup> calendar day of each month for services performed during the preceding month. The COUNTY or Third Party Administrator shall pay the ATTORNEY within thirty (30) days of receipt of such valid invoice. Each service authorization shall be treated separately for final payment purposes.

(b) The COUNTY may perform or have performed an audit of the records of the ATTORNEY after final payment to support final payment under any service authorization issued hereunder. This audit would be performed at a time mutually agreeable to the ATTORNEY and the COUNTY subsequent to the close of the final fiscal period in which the last work is performed. Total compensation to the ATTORNEY may be determined subsequent to an audit as provided for in this subsection and the immediately following subsection, and the total compensation so determined shall be used to calculate final payment to the ATTORNEY. The accomplishment of this audit shall not delay final payment as provided in subsection 6(a).

(c) The ATTORNEY agrees to maintain any and all books, documents, papers, accounting records and other evidences pertaining to services performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at his office at all reasonable times during the Agreement period and for five (5) years from the date of final payment under this Agreement for audit or inspection as provided for in subsection 6(b). Separate accounting records shall be maintained by the ATTORNEY for each service authorized.

(d) In the event any audit or inspection conducted after final payment, but within the period provided in subsection 6(c) reveals any

overpayment by the COUNTY to the ATTORNEY under the terms of this Agreement, the ATTORNEY shall refund such overpayment to the COUNTY within thirty (30) days of notice of same by the COUNTY to the ATTORNEY.

**SECTION 7. OWNERSHIP OF DOCUMENTS.** All legal opinions or any other form of written instrument or document that may result from the ATTORNEY's services or have been created during the course of ATTORNEY's performance under this Agreement shall become the property of the COUNTY after final payment is made to the ATTORNEY, however, ATTORNEY retains the right to retain copies of his work product and to use same for appropriate purposes.

**SECTION 8. TERM.** This Agreement shall become effective upon execution by the COUNTY and shall run for a period of five (5) years unless terminated as provided herein.

**SECTION 9. NO CONTINGENT FEES.** The ATTORNEY warrants that it has not employed or retained any company or persons, other than a bonafide employee working solely for the ATTORNEY, to solicit or secure this Agreement and that ATTORNEY has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bonafide employee working solely for the ATTORNEY, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, COUNTY shall have the right to terminate the Agreement at its discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**SECTION 10. EQUAL OPPORTUNITY EMPLOYMENT.** ATTORNEY agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, disability or national origin and will take

affirmative steps to insure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, disability or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**SECTION 11. CONFLICT OF INTEREST.**

(a) The ATTORNEY agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY or which would violate or cause others to violate the provisions of *Part III, Chapter 112, Florida Statutes*, relating to ethics in government.

(b) The ATTORNEY hereby certifies that no officer, agent or employee of the COUNTY has any material interest (as defined in *Section 112.312(15), Florida Statutes*, as over 5%) either directly or indirectly, in the business of ATTORNEY to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

(c) Pursuant to *Section 216.347, Florida Statutes*, the ATTORNEY hereby agrees that monies received from the COUNTY pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or any other State or Federal agency.

**SECTION 12. ASSIGNMENT.** This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the other party and in such cases only by a document of equal dignity herewith.

**SECTION 13. SUBCONTRACTORS.** In the event ATTORNEY, during the course of the work under this Agreement, requires the services of any subcontractors or other professional associates in connection with service covered by this Agreement, ATTORNEY must secure the prior written approval of the COUNTY.

**SECTION 14. INDEPENDENT CONTRACTOR.** It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties, or as constituting the ATTORNEY (including its officers, employees, and agents) the agent, representative, or employee of the COUNTY for any purpose, or in any manner, whatsoever. The ATTORNEY is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

**SECTION 15. INDEMNIFICATION OF COUNTY.**

(a) The ATTORNEY shall indemnify and save harmless the COUNTY, its officers, agents, and employees from and against any claim, demand or cause of action of whatsoever kind or nature proximately arising out of error, omission, or any tortious act, whether intentional or negligent, of the ATTORNEY, its officers, agents, subcontractors or employees or any like person or entity in the performance of services under this Agreement.

(b) The ATTORNEY shall require all subcontractors to enter an agreement containing the provisions set forth in the preceding subsection in which agreement the subcontractors fully indemnifies the COUNTY in accordance with this Agreement.

**SECTION 16. INSURANCE.**

(a) The ATTORNEY shall provide, pay for, and maintain in force at all times during the term of this Agreement, such insurance, including Workers' Compensation Insurance and Professional Liability Insurance as

will provide to the COUNTY the protection contained in the foregoing Indemnification Section undertaken by the ATTORNEY.

(b) Such policy or policies shall be issued by a company or companies authorized to do business in the State of Florida. All policies required to be carried pursuant to this Section shall provide coverage for any and all claims based on the actions of the ATTORNEY in performing his services under this Agreement. Any liability policy or policies shall, at a minimum, carry limits of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00).

(c) Prior to the commencement of work hereunder, the ATTORNEY shall furnish to the COUNTY a certificate or written statement of the above required insurance. The policy or policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the COUNTY in such insurance shall not be effective until thirty (30) days after written notice thereof to the COUNTY. The COUNTY reserves the right to require a copy of such policy or policies upon request.

(d) The maintenance of the insurance coverage set forth herein shall not be construed to limit nor have the effect of limiting the ATTORNEY' liability under the provisions of the indemnification clause.

#### **SECTION 17. ALTERNATIVE DISPUTE RESOLUTION**

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY protest procedures prior to filing suit or otherwise pursuing legal remedies. COUNTY procedures for proper invoice and payment disputes are set forth in Section 22.15, "Prompt Payment Procedures," Seminole County Administrative Code.

(b) CONSULTANT agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were



not presented for consideration in the COUNTY protest procedures set forth in subsection (a) above of which the CONSULTANT had knowledge and failed to present during the COUNTY protest procedures.

(c) In the event that COUNTY protest procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

**SECTION 18. SERVICES NOT PROVIDED FOR.** No claim for services furnished by the ATTORNEY not specifically provided for herein shall be honored by the COUNTY.

**SECTION 19. ENTIRE AGREEMENT.**

(a) It is understood and agreed that the entire Agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof.

(b) Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties.

**SECTION 20. AGREEMENT AND SERVICE AUTHORIZATION IN CONFLICT.** Except as otherwise set forth, whenever the terms of this Agreement conflict with any service authorization this Agreement shall prevail.

**SECTION 21. RIGHTS AT LAW RETAINED.** The rights and remedies of the COUNTY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

**SECTION 22. NOTICES.** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to wit:

**For COUNTY:**

Administrative Services Department  
Attention: Risk Manager  
200 West County Home Road  
Sanford, Florida 32773

**For ATTORNEY:**

Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308

**SECTION 23. TERMINATION.**

(a) The COUNTY may, by written notice to the ATTORNEY, terminate this Agreement, in whole or in part, at any time, either for the COUNTY's convenience or because of the failure of the ATTORNEY to fulfill his Agreement obligations. Upon receipt of such notice, the ATTORNEY shall:

(1) immediately discontinue all services affected unless the notice directs otherwise, and

(2) deliver to the COUNTY all data, drawings, specification, reports, estimates, summaries, and such other information and materials as may have been accumulated by the ATTORNEY in performing this Agreement, whether completed or in process.

(b) If the termination is for the convenience of the COUNTY, the ATTORNEY shall be paid compensation for services performed to the date of termination based on the percentage of work completed. The COUNTY shall not be obligated to pay for any services performed by ATTORNEY after notice of termination has been given.

(c) If the termination is due to the failure of the ATTORNEY to fulfill his Agreement obligations, the COUNTY may take over the work and prosecute the same to completion by Agreement or otherwise. In such case, the ATTORNEY shall be liable to the COUNTY for reasonable additional costs occasioned to the COUNTY thereby. The ATTORNEY shall not be liable for such additional costs if the failure to perform the Agreement arises out of causes beyond the control and without the fault or negligence of the ATTORNEY.

(d) If, after notice of termination for failure to fulfill the Agreement obligations, it is determined that the ATTORNEY had not so failed, the termination shall be deemed to have been effected for the convenience of the COUNTY. In such event, adjustment in the Agreement price shall be made as provided in paragraph (b) of this Section.

(e) The rights and remedies of the COUNTY provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the date below written for execution by the COUNTY.

ATTEST:

NABORS, GIBLIN & NICKERSON, P.A.

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
GREGORY T. STEWART, President

(CORPORATE SEAL)

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

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
CARLTON HENLEY, Chairman

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

For the use and reliance  
of Seminole County only.

Approved as to form and  
legal sufficiency.

As authorized for execution  
by the Board of County Commissioners  
at their \_\_\_\_\_, 20\_\_\_\_  
regular meeting.

\_\_\_\_\_  
County Attorney  
AC/lpk  
3/20/06  
RFP-0548 inverse condemnation

Attachments:

- Exhibit "A" - Scope of Services
- Exhibit "B" - Rate Schedule

**LITIGATION MANAGEMENT GUIDELINES**  
**TAKING CLAIMS FOR REAL PROPERTY RIGHTS**

I. INTRODUCTION:

The primary purpose for these guidelines is to provide a clear and uniform framework of how the County wants cases to be managed with respect to handling communications, settlement and billing. Each of these areas is addressed herein.

The County contracts with a Third Part Administrator (TPA) to handle claims. The TPA may have additional requirements. The TPA will communicate those requirements on a claim by claim basis.

II. CASE ANALYSIS, STRATEGY AND BUDGET

Within sixty (60) days, except as indicated, following receipt of the case, counsel shall prepare and send all of the following:

- A. 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 shall also identify the pertinent statutes and/or case law that may affect the outcome of litigation. To be provided within 30 days of receipt of case.
- B. INVESTIGATION: Counsel shall identify any additional information or documentation that is needed to disprove the plaintiff's claims or to establish defenses. To the extent possible, investigation and information gathering shall be done by the County's Third Party Administrator (TPA).
- C. STRATEGY: Counsel shall define the strategy to be used in each lawsuit including:
  - 1. The anticipated course of action (i.e. motion to dismiss, motion for summary judgment, negotiated settlement, trial, etc.) to be taken.
  - 2. The factors or elements which must be proved or disproved and the necessary discovery to establish these defenses or proof.
  - 3. The timing of the discovery, filing of motions, negotiations, or other objectives.
  - 4. A description of how the work will be distributed among those who will be working on the case.
  - 5. The tactics to be used in defending the case and the advantages to be gained by the use of these tactics.
  - 6. 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.

**LITIGATION MANAGEMENT GUIDELINES**  
**TAKING CLAIMS FOR REAL PROPERTY RIGHTS**

- D. **BUDGET:** Counsel will also provide, within 30 days of receipt of case, an estimate of the anticipated cost of each significant aspect of the litigated workers' compensation case including:

1. Research
2. Discovery
3. Motions
4. Court appearances
5. Trial
6. Other

Within ninety (90) days following the termination of each lawsuit, the TPA will review the file to determine compliance with these guidelines, strategy and budget. If appropriate, a meeting will be arranged to discuss perceived problems and/or ways to improve defense of County claims.

- III. **COMMUNICATION:** The attorney shall be available for Risk Management Committee meetings or other county meetings as requested.

- A. **CORRESPONDENCE AND PLEADINGS.** Within 5 days of receipt of file, counsel is to send a letter directly to the TPA 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 County and the County's Legal Office. Defense counsel will promptly respond to all letters or phone calls, and will keep the County and TPA fully advised of the progress of each case. Whenever your correspondence contains a request for action on the part of the County or TPA, be certain it is captioned. Attached is a sample of a Suit Status Report that may be requested by the TPA.
- B. **DEPOSITIONS AND HEARINGS.** Immediately upon receipt, notice of all depositions or hearings shall be sent directly to the TPA with a copy to the County. Depositions and Hearings shall have a written summary sent directly to the TPA, with copies to the County and the County's Legal Office within 5 days.
- C. **EVALUATIONS.** Upon receipt, and at such other time as deemed necessary, defense counsel shall provide written or oral evaluations of the litigations. These evaluations shall disclose any weaknesses or strengths that have been discovered, any increase or decrease in anticipated costs, and an estimate of the settlement value of the case. The evaluations shall be as straightforward as possible to allow the County to meaningfully analyze the case to determine the course of action to be taken. Quarterly status reports will be provided to include a budget for legal services, amount paid to date, and review of current budget estimate.
- D. 60 days prior to Mediation, attorney will submit a report which includes: issues to be mediated, recommendations and evaluation.

**LITIGATION MANAGEMENT GUIDELINES**  
**TAKING CLAIMS FOR REAL PROPERTY RIGHTS**

- E. A Post Pretrial Conference status report must be mailed no later than ten (10) days after every Pretrial Conference.
- F. Attorney will finalize mediation strategy with adjuster at least ten days prior to mediation.
- G. 45 days before trial, attorney shall submit a pretrial report to include evaluation and recommendations. A pretrial conference must be scheduled, in person or by conference call with adjuster at least one week prior to trial to discuss strategy.
- H. After you have had a file for six (6) months, we want you to send a letter discussing your plan for closing the file unless you have sent the County a report in the previous thirty (30) days.
- I. All correspondence should be concise. Use a captioned format to highlight specific and separate issues, i.e. MEDICAL ISSUES, RECOMMENDATIONS FOR WORK TO BE DONE BY YOU, SETTLEMENT OF OPTIONS, ETC.
- J. Discovery, particularly depositions, must be conducted with a specific goal and defense theory in mind. Aimless or misdirected depositions are totally unacceptable. All depositions must be approved by the adjuster prior to scheduling. A brief summary of all depositions should be sent as soon as practical.
- K. All settlement demands should be reported immediately. In all cases, always provide us with all realistic options including compromise and settlement, even if you are convinced we have a winner. Always provide your professional opinion on which option you believe is in our best interest, and never pass on a settlement demand from a claimant's attorney without commenting on the reasonableness of said demand along with your recommended response.
- L. Upon request by the County's Risk Manager, and at such other times as deemed necessary, counsel shall provide written or oral evaluation of the litigation. Under no circumstance is counsel to retain services of any provider, such as surveillance, etc. without specific authority from the TPA and/or Risk Manager.
- M. Whenever your correspondence contains a request for action on the part of the County's TPA, be certain it is captioned.
- N. CONFIDENTIAL: It is understood that said communications between this firm and the named defendants, servicing agency and Risk Management Committee will be considered work product, which is confidential and privileged until such time as the claim, litigation or proceedings are concluded. See Florida Statute Section 119.07(n).

**LITIGATION MANAGEMENT GUIDELINES**  
**TAKING CLAIMS FOR REAL PROPERTY RIGHTS**

**IV. SETTLEMENTS:**

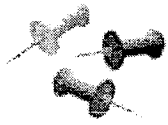
All settlement demands should be reported immediately. Legal counsel shall not settle any claim or litigation without prior written authorization from the Risk Manager. For claims that have exceeded the County's self-insured retention (SIR), legal counsel shall not settle any claim or litigation without prior written authorization of the Excess Carrier.

**V. BILLING – HOURLY RATE AS STATED IN CONTRACT**

All bills for legal services and costs shall be submitted either bi-monthly or when the unpaid balance due reaches \$2,500, whichever comes first. All bills shall state with particularity the legal work performed, the actual time expended to perform the work, the costs incurred, and who performed the work. Time shall be expressed in increments of one tenth (.10) of one hour. Attorneys submitting the bills for payment are responsible for the content of the bills and will work with the TPA to resolve any problems or answer questions. All bills shall be directed to the TPA for payment. Travel outside the Counties of Orange, Osceola or Seminole must be pre-approved by the Risk Manager or TPA.

All outside vendor type expenses such as Court Reporters, Federal Express, Photographs, Process Servers, Court Fees, Long distance phone calls, Experts, etc., shall be billed as "pass through" item, without any markup or multiplier. Copies of the invoice supporting the charge shall be included, as a matter of ongoing practice, with the Attorney's bill for services on which that outside charge is listed.





Valerie Morris/Seminole

03/22/2006 11:32 AM

To Lisa Spillman/Seminole@Seminole

cc

bcc

Subject ox900630

Lisa

I spoke with Gloria Eby who initiated this purchase order to be done. She canceled order with vendor and did not realize that she had to cancel with Finance also. That's why it was not cancelled before 9/30. Any more questions let me know. Thanks.

Valerie E. Morris  
Sr. Staff Assistant, Roads-Stormwater Division  
Public Works Dept.  
Ph:(407)665-5747 Fax:(407)665-5742  
VMorris@seminolecountyfl.gov

--\*\*\*\*Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Officials and employees are public records available to the public and media upon request. Seminole County policy does not differentiate between personal and business emails. E-mail sent on the County system will be considered public and will only be withheld from disclosure if deemed confidential pursuant to State Law. \*\*\*\*

EXHIBIT "B"

PROPOSER FIRM'S FEE SCHEDULE

*General Liability*

The Firm proposes to provide such services to Seminole County based upon an hourly rate for services. The following schedule of hourly rates are proposed:

Litigation Partners:	\$150.00 per hour
Litigation Associates:	\$135.00 per hour
Law Clerks:	\$ 70.00 per hour

The Firm would also seek reimbursement of all costs actually incurred in the representation of Seminole County, including, but not limited to, copy costs, witness and clerk fees, express mail costs and long distance telephone calls. Though the attorneys primarily responsible for providing representation are located in the Firm's Tallahassee office, no travel time or travel costs shall be billed to Seminole County. A copy of a form invoice is attached.

Seminole County  
February 24, 2006  
Page 2

Taking Claims Related to Real Property  
Rights -- Proposer Firm's Fee Schedule

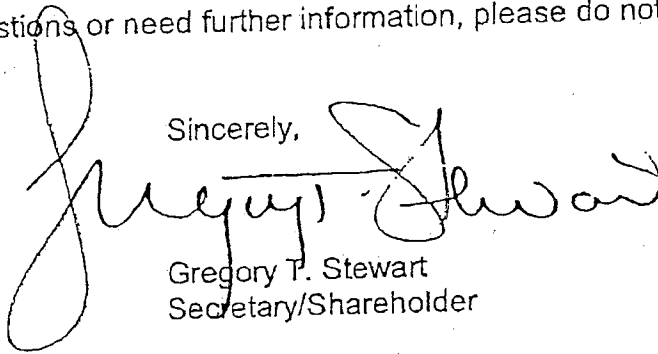
With respect to the Firm's submission for this area of specialization, the following schedule of hourly rates is proposed:

Litigation Partners:	\$155.00
Litigation Associates:	\$135.00
Law Clerks:	\$ 70.00

Additionally, a blended rate of \$145.00 per hour is proposed in this area of specialization.

Should you have questions or need further information, please do not hesitate to contact me.

Sincerely,



Gregory T. Stewart  
Secretary/Shareholder

GTS:pad

**LEGAL SERVICES AGREEMENT (RFP-0548-06/TRJ)**  
**GENERAL LIABILITY, INCLUDING AUTO**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY" and **RISSMAN, BARRETT, HURT, DONAHUE & MCLAIN, P.A.**, whose mailing address is P.O. Box 4940, Orlando, Florida 32802-4940, hereinafter referred to as "ATTORNEY" and

**W I T N E S S E T H:**

**WHEREAS**, the COUNTY desires to retain the services of a competent and qualified attorney to represent COUNTY; and

**WHEREAS**, the COUNTY has requested and received proposals for the retention of services of an attorney; and

**WHEREAS**, ATTORNEY is competent and qualified and duly authorized to practice law in the State of Florida and the United States District Court for the Middle District of Florida and desires to provide its professional legal services to COUNTY according to the terms and conditions stated herein,

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, COUNTY and ATTORNEY agree as follows:

**SECTION 1. SERVICES.** ATTORNEY agrees to provide timely professional services for COUNTY and specifically perform those services set forth in the Scope of Services attached hereto and incorporated herein as Exhibit "A". ATTORNEY shall serve on an as needed basis with case assignment on a case by case basis as determined by COUNTY. All services are to be performed on an as needed basis. This Agreement alone does not authorize the performance of any services or require the COUNTY to authorize services.

## **SECTION 2. REQUESTS FOR SERVICES.**

(a) Requests for performance of professional services by the ATTORNEY under this Agreement shall be made by the COUNTY's Risk Manager or Administrative Services Director or their designees on behalf of the COUNTY. Each request for services shall describe the services required, state the dates for commencement and completion and state limitations on the Scope of Services. The COUNTY makes no promise as to the number of service requests nor that the ATTORNEY will perform any services for the COUNTY under this Agreement. The COUNTY reserves the right to contract with other parties for the services contemplated by this Agreement when it is determined by the COUNTY to be in the best interest of the COUNTY to do so.

(b) It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement will arise. The COUNTY designated the COUNTY's Risk Manager or Administrative Services Director as the COUNTY employees to whom all communications pertaining to the day-to-day conduct of the Agreement shall be addressed. The designated representatives shall have the authority to transmit instructions, receive information, and interpret and define the COUNTY's policy and decisions pertinent to the work covered by this Agreement.

**SECTION 3. CHANGES IN THE SCOPE OF SERVICES.** COUNTY or ATTORNEY may request changes that would increase, decrease or otherwise modify the Scope of Services. Such changes and method of compensation must be authorized by COUNTY in writing and duly signed by the parties.

## **SECTION 4. RESPONSIBILITY OF ATTORNEY.**

(a) The ATTORNEY agrees to timely provide the professional services and facilities required to assist COUNTY.

(b) The ATTORNEY shall keep abreast of statutes, regulations, codes and applicable case law in all areas of responsibility at his sole

expense.

(c) The ATTORNEY designates Jennings L. Hurt, III as the attorney to provide services to the COUNTY.

(d) The ATTORNEY agrees to utilize associates and legal assistants, under the supervision of ATTORNEY, where appropriate to accomplish cost effective performance of services.

(e) It shall be the responsibility of ATTORNEY to specifically request all required information and to provide himself with reasonably sufficient time to review all information so as not to delay without good cause performance under this Agreement.

(f) The ATTORNEY shall be responsible for the professional quality, technical accuracy, competence and methodology of the work done under this Agreement. The ATTORNEY shall, without additional compensation, correct or revise any errors or deficiencies in the work performed under this Agreement which result from the negligence of ATTORNEY.

(g) Neither the COUNTY'S review, approval or acceptance of, nor payment for, any of the services required shall be construed to operate as a waiver of any rights under this Agreement nor of any cause of action arising out of the performance of this Agreement and the ATTORNEY shall be liable to the COUNTY in accordance with applicable law for all damages to the COUNTY caused by the ATTORNEY'S negligent or wrongful performance of any of the services furnished under this Agreement.

#### **SECTION 5. PAYMENT FOR SERVICES AND BILLING.**

(a) In consideration of the promises and the faithful performance by ATTORNEY of his obligations, COUNTY agrees to pay ATTORNEY a fee based on a "Time Basis Method". ATTORNEY, his associates and assistants shall be compensated at rates as indicated in Exhibit "B," attached, for services authorized and performed.

(b) Authorized services may contain a "Limitation of Funds" amount. The ATTORNEY is not authorized to exceed that amount without the prior approval of the COUNTY. The approval, if given, shall be in writing and indicate a new "Limitation of Funds" amount.

(c) In lieu of, or in addition to, establishment of a "Limitation of Funds" amount, the COUNTY may provide for a "Not to Exceed" amount for any service authorization.

(d) COUNTY shall compensate ATTORNEY for the actual work hours required to perform the services authorized. Actual work hours shall not include compensation for travel time to or from the offices of ATTORNEY to Seminole County or travel time to court appearances. Payment shall be made to the ATTORNEY when requested as work progresses, but not more than once monthly for services rendered. ATTORNEY shall provide an itemized invoice based on actual services rendered.

(e) Reimbursable expenses shall be paid in addition to the payment due under subsection (d) above and shall include actual expenditures made by ATTORNEY, his employees or professional consultants in the interest of the work effort for the expenses listed in the following subsections:

(1) Expenses of transportation when traveling in connection with case assignments based on *Sections 112.061(7) and (8), Florida Statutes*, or their successor; long distance calls and facsimile transmissions.

(2) Expense for reproduction, postage and handling of material associated with the work effort.

(3) If authorized in writing in advance by the COUNTY, the cost of other expenditures made by ATTORNEY in the interest of the work effort.

## SECTION 6. GENERAL TERMS AND PAYMENT.

(a) The ATTORNEY shall invoice the COUNTY or the Third Party Administrator, as designated by the COUNTY, by the 5<sup>th</sup> calendar day of each month for services performed during the preceding month. The COUNTY or Third Party Administrator shall pay the ATTORNEY within thirty (30) days of receipt of such valid invoice. Each service authorization shall be treated separately for final payment purposes.

(b) The COUNTY may perform or have performed an audit of the records of the ATTORNEY after final payment to support final payment under any service authorization issued hereunder. This audit would be performed at a time mutually agreeable to the ATTORNEY and the COUNTY subsequent to the close of the final fiscal period in which the last work is performed. Total compensation to the ATTORNEY may be determined subsequent to an audit as provided for in this subsection and the immediately following subsection, and the total compensation so determined shall be used to calculate final payment to the ATTORNEY. The accomplishment of this audit shall not delay final payment as provided in subsection 6(a).

(c) The ATTORNEY agrees to maintain any and all books, documents, papers, accounting records and other evidences pertaining to services performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at his office at all reasonable times during the Agreement period and for five (5) years from the date of final payment under this Agreement for audit or inspection as provided for in subsection 6(b). Separate accounting records shall be maintained by the ATTORNEY for each service authorized.

(d) In the event any audit or inspection conducted after final payment, but within the period provided in subsection 6(c) reveals any



overpayment by the COUNTY to the ATTORNEY under the terms of this Agreement, the ATTORNEY shall refund such overpayment to the COUNTY within thirty (30) days of notice of same by the COUNTY to the ATTORNEY.

**SECTION 7. OWNERSHIP OF DOCUMENTS.** All legal opinions or any other form of written instrument or document that may result from the ATTORNEY's services or have been created during the course of ATTORNEY's performance under this Agreement shall become the property of the COUNTY after final payment is made to the ATTORNEY, however, ATTORNEY retains the right to retain copies of his work product and to use same for appropriate purposes.

**SECTION 8. TERM.** This Agreement shall become effective upon execution by the COUNTY and shall run for a period of five (5) years unless terminated as provided herein.

**SECTION 9. NO CONTINGENT FEES.** The ATTORNEY warrants that it has not employed or retained any company or persons, other than a bonafide employee working solely for the ATTORNEY, to solicit or secure this Agreement and that ATTORNEY has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bonafide employee working solely for the ATTORNEY, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, COUNTY shall have the right to terminate the Agreement at its discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**SECTION 10. EQUAL OPPORTUNITY EMPLOYMENT.** ATTORNEY agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, disability or national origin and will take

affirmative steps to insure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, disability or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**SECTION 11. CONFLICT OF INTEREST.**

(a) The ATTORNEY agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY or which would violate or cause others to violate the provisions of *Part III, Chapter 112, Florida Statutes*, relating to ethics in government.

(b) The ATTORNEY hereby certifies that no officer, agent or employee of the COUNTY has any material interest (as defined in *Section 112.312(15), Florida Statutes*, as over 5%) either directly or indirectly, in the business of ATTORNEY to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

(c) Pursuant to *Section 216.347, Florida Statutes*, the ATTORNEY hereby agrees that monies received from the COUNTY pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or any other State or Federal agency.

**SECTION 12. ASSIGNMENT.** This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the other party and in such cases only by a document of equal dignity herewith.

**SECTION 13. SUBCONTRACTORS.** In the event ATTORNEY, during the course of the work under this Agreement, requires the services of any subcontractors or other professional associates in connection with service covered by this Agreement, ATTORNEY must secure the prior written approval of the COUNTY.

**SECTION 14. INDEPENDENT CONTRACTOR.** It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties, or as constituting the ATTORNEY (including its officers, employees, and agents) the agent, representative, or employee of the COUNTY for any purpose, or in any manner, whatsoever. The ATTORNEY is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

**SECTION 15. INDEMNIFICATION OF COUNTY.**

(a) The ATTORNEY shall indemnify and save harmless the COUNTY, its officers, agents, and employees from and against any claim, demand or cause of action of whatsoever kind or nature proximately arising out of error, omission, or any tortious act, whether intentional or negligent, of the ATTORNEY, its officers, agents, subcontractors or employees or any like person or entity in the performance of services under this Agreement.

(b) The ATTORNEY shall require all subcontractors to enter an agreement containing the provisions set forth in the preceding subsection in which agreement the subcontractors fully indemnifies the COUNTY in accordance with this Agreement.

**SECTION 16. INSURANCE.**

(a) The ATTORNEY shall provide, pay for, and maintain in force at all times during the term of this Agreement, such insurance, including Workers' Compensation Insurance and Professional Liability Insurance as

will provide to the COUNTY the protection contained in the foregoing Indemnification Section undertaken by the ATTORNEY.

(b) Such policy or policies shall be issued by a company or companies authorized to do business in the State of Florida. All policies required to be carried pursuant to this Section shall provide coverage for any and all claims based on the actions of the ATTORNEY in performing his services under this Agreement. Any liability policy or policies shall, at a minimum, carry limits of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00).

(c) Prior to the commencement of work hereunder, the ATTORNEY shall furnish to the COUNTY a certificate or written statement of the above required insurance. The policy or policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the COUNTY in such insurance shall not be effective until thirty (30) days after written notice thereof to the COUNTY. The COUNTY reserves the right to require a copy of such policy or policies upon request.

(d) The maintenance of the insurance coverage set forth herein shall not be construed to limit nor have the effect of limiting the ATTORNEY' liability under the provisions of the indemnification clause.

#### **SECTION 17. ALTERNATIVE DISPUTE RESOLUTION**

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY protest procedures prior to filing suit or otherwise pursuing legal remedies. COUNTY procedures for proper invoice and payment disputes are set forth in Section 22.15, "Prompt Payment Procedures," Seminole County Administrative Code.

(b) CONSULTANT agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were

not presented for consideration in the COUNTY protest procedures set forth in subsection (a) above of which the CONSULTANT had knowledge and failed to present during the COUNTY protest procedures.

(c) In the event that COUNTY protest procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

**SECTION 18. SERVICES NOT PROVIDED FOR.** No claim for services furnished by the ATTORNEY not specifically provided for herein shall be honored by the COUNTY.

**SECTION 19. ENTIRE AGREEMENT.**

(a) It is understood and agreed that the entire Agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof.

(b) Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties.

**SECTION 20. AGREEMENT AND SERVICE AUTHORIZATION IN CONFLICT.** Except as otherwise set forth, whenever the terms of this Agreement conflict with any service authorization this Agreement shall prevail.

**SECTION 21. RIGHTS AT LAW RETAINED.** The rights and remedies of the COUNTY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

**SECTION 22. NOTICES.** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to wit:

**For COUNTY:**

Administrative Services Department  
Attention: Risk Manager  
200 West County Home Road  
Sanford, Florida 32773

**For ATTORNEY:**

Rissman, Barrett, Hurt, Donahue & McLain, P.A.  
P.O. Box 4940  
Orlando, Florida 32802-4940

**SECTION 23. TERMINATION.**

(a) The COUNTY may, by written notice to the ATTORNEY, terminate this Agreement, in whole or in part, at any time, either for the COUNTY's convenience or because of the failure of the ATTORNEY to fulfill his Agreement obligations. Upon receipt of such notice, the ATTORNEY shall:

(1) immediately discontinue all services affected unless the notice directs otherwise, and

(2) deliver to the COUNTY all data, drawings, specification, reports, estimates, summaries, and such other information and materials as may have been accumulated by the ATTORNEY in performing this Agreement, whether completed or in process.

(b) If the termination is for the convenience of the COUNTY, the ATTORNEY shall be paid compensation for services performed to the date of termination based on the percentage of work completed. The COUNTY shall not be obligated to pay for any services performed by ATTORNEY after notice of termination has been given.

(c) If the termination is due to the failure of the ATTORNEY to fulfill his Agreement obligations, the COUNTY may take over the work and prosecute the same to completion by Agreement or otherwise. In such case, the ATTORNEY shall be liable to the COUNTY for reasonable additional costs occasioned to the COUNTY thereby. The ATTORNEY shall not be liable for such additional costs if the failure to perform the Agreement arises out of causes beyond the control and without the fault or negligence of the ATTORNEY.

(d) If, after notice of termination for failure to fulfill the Agreement obligations, it is determined that the ATTORNEY had not so failed, the termination shall be deemed to have been effected for the convenience of the COUNTY. In such event, adjustment in the Agreement price shall be made as provided in paragraph (b) of this Section.

(e) The rights and remedies of the COUNTY provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the date below written for execution by the COUNTY.

ATTEST:

RISSMAN, BARRETT, HURT, DONAHUE &  
MCLAIN, P.A.

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
JENNINGS L. HURT, III, President

(CORPORATE SEAL)

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

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
CARLTON HENLEY, Chairman

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

For the use and reliance  
of Seminole County only.

Approved as to form and  
legal sufficiency.

As authorized for execution  
by the Board of County Commissioners  
at their \_\_\_\_\_, 20\_\_\_\_  
regular meeting.

\_\_\_\_\_  
County Attorney  
AC/lpk  
3/20/06  
RFP-0548 general liability

Attachments:

- Exhibit "A" - Scope of Services
- Exhibit "B" - Rate Schedule



**EXHIBIT A**  
**LITIGATION MANAGEMENT GUIDELINES**  
**LIABILITY**

**I. INTRODUCTION:**

The primary purpose for these guidelines is to provide a clear and uniform framework of how the County wants cases to be managed with respect to handling communications, settlement and billing. Each of these areas is addressed herein.

The County contracts with a Third Part Administrator (TPA) to handle claims. The TPA may have additional requirements. The TPA will communicate those requirements on a claim by claim basis.

**II. CASE ANALYSIS, STRATEGY AND BUDGET**

Within sixty (60) days, except as indicated, following receipt of the case, counsel shall prepare and send all of the following:

- A. 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 shall also identify the pertinent statutes and/or case law that may affect the outcome of litigation. To be provided within 30 days of receipt of case.
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  - 1. The anticipated course of action (i.e. motion to dismiss, motion for summary judgment, negotiated settlement, trial, etc.) to be taken.
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LITIGATION MANAGEMENT GUIDELINES  
LIABILITY

D. BUDGET: Counsel will also provide, within 30 days of receipt of case, an estimate of the anticipated cost of each significant aspect of the litigated workers' compensation case including:

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2. Discovery
3. Motions
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6. Other

Within ninety (90) days following the termination of each lawsuit, the TPA will review the file to determine compliance with these guidelines, strategy and budget. If appropriate, a meeting will be arranged to discuss perceived problems and/or ways to improve defense of County claims.

III. COMMUNICATION: The attorney shall be available for Risk Management Committee meetings or other county meetings as requested.

- A. CORRESPONDENCE AND PLEADINGS. Within 5 days of receipt of file, counsel is to send a letter directly to the TPA 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 County and the County's Legal Office. Defense counsel will promptly respond to all letters or phone calls, and will keep the County and TPA fully advised of the progress of each case. Whenever your correspondence contains a request for action on the part of the County or TPA, be certain it is captioned. Attached is a sample of a Suit Status Report that may be requested by the TPA.
- B. DEPOSITIONS AND HEARINGS. Immediately upon receipt, notice of all depositions or hearings shall be sent directly to the TPA with a copy to the County. Depositions and Hearings shall have a written summary sent directly to the TPA, with copies to the County and the County's Legal Office within 5 days.
- C. EVALUATIONS. Upon receipt, and at such other time as deemed necessary, defense counsel shall provide written or oral evaluations of the litigations. These evaluations shall disclose any weaknesses or strengths that have been discovered, any increase or decrease in anticipated costs, and an estimate of the settlement value of the case. The evaluations shall be as straightforward as possible to allow the County to meaningfully analyze the case to determine the course of action to be taken. Quarterly status reports will be provided to include a budget for legal services, amount paid to date, and review of current budget estimate.
- D. 60 days prior to Mediation, attorney will submit a report which includes: issues to be mediated, recommendations and evaluation.

LITIGATION MANAGEMENT GUIDELINES  
LIABILITY

- E. A Post Pretrial Conference status report must be mailed no later than ten (10) days after every Pretrial Conference.
- F. Attorney will finalize mediation strategy with adjuster at least ten days prior to mediation.
- G. 45 days before trial, attorney shall submit a pretrial report to include evaluation and recommendations. A pretrial conference must be scheduled, in person or by conference call with adjuster at least one week prior to trial to discuss strategy.
- H. After you have had a file for six (6) months, we want you to send a letter discussing your plan for closing the file unless you have sent the County a report in the previous thirty (30) days.
- I. All correspondence should be concise. Use a captioned format to highlight specific and separate issues, i.e. MEDICAL ISSUES, RECOMMENDATIONS FOR WORK TO BE DONE BY YOU, SETTLEMENT OF OPTIONS, ETC.
- J. Discovery, particularly depositions, must be conducted with a specific goal and defense theory in mind. Aimless or misdirected depositions are totally unacceptable. All depositions must be approved by the adjuster prior to scheduling. A brief summary of all depositions should be sent as soon as practical.
- K. All settlement demands should be reported immediately. In all cases, always provide us with all realistic options including compromise and settlement, even if you are convinced we have a winner. Always provide your professional opinion on which option you believe is in our best interest, and never pass on a settlement demand from a claimant's attorney without commenting on the reasonableness of said demand along with your recommended response.
- L. Upon request by the County's Risk Manager, and at such other times as deemed necessary, counsel shall provide written or oral evaluation of the litigation. Under no circumstance is counsel to retain services of any provider, such as surveillance, etc. without specific authority from the TPA and/or Risk Manager.
- M. Whenever your correspondence contains a request for action on the part of the County's TPA, be certain it is captioned.
- N. CONFIDENTIAL: It is understood that said communications between this firm and the named defendants, servicing agency and Risk Management Committee will be considered work product, which is confidential and privileged until such time as the claim, litigation or proceedings are concluded. See Florida Statute Section 119.07(n).

LITIGATION MANAGEMENT GUIDELINES  
LIABILITY

IV. SETTLEMENTS:

All settlement demands should be reported immediately. Legal counsel shall not settle any claim or litigation without prior written authorization from the Risk Manager. For claims that have exceeded the County's self-insured retention (SIR), legal counsel shall not settle any claim or litigation without prior written authorization of the Excess Carrier.

V. BILLING – HOURLY RATE AS STATED IN CONTRACT

All bills for legal services and costs shall be submitted either bi-monthly or when the unpaid balance due reaches \$2,500, whichever comes first. All bills shall state with particularity the legal work performed, the actual time expended to perform the work, the costs incurred, and who performed the work. Time shall be expressed in increments of one tenth (.10) of one hour. Attorneys submitting the bills for payment are responsible for the content of the bills and will work with the TPA to resolve any problems or answer questions. All bills shall be directed to the TPA for payment. Travel outside the Counties of Orange, Osceola or Seminole must be pre-approved by the Risk Manager or TPA.

All outside vendor type expenses such as Court Reporters, Federal Express, Photographs, Process Servers, Court Fees, Long distance phone calls, Experts, etc., shall be billed as "pass through" item, without any markup or multiplier. Copies of the invoice supporting the charge shall be included, as a matter of ongoing practice, with the Attorney's bill for services on which that outside charge is listed.

4. Percentage of claims defended at trial:

Of the cases that were not resolved, approximately 25-30% were defended at trial. Section "8" of the Appendix contains summaries from The Florida Jury Verdict Reporter for some of the trials handled by the firm over the past several years.

5. Percentage of claims settled at trial:

Of the cases that went to trial, approximately 1% settled at trial. It is our firm's policy that if the client has decided to try the case, then we do not discuss settlement at trial, unless the client asks us to do so.

6. Percentage of plaintiff verdicts at trial:

Of the cases that were tried, approximately 5% resulted in plaintiff verdicts.

7. Percentage of defendant verdicts at trial:

Of the cases that were tried, approximately 95% resulted in defense verdicts.

8. Percentage of claims successful on appeal:

Only about 1% of the cases have been appealed, but we have been successful in 90% of those cases.

C. FEE PROPOSAL:

The firm proposes to perform attorney services at the following rates:

- \$135/hour for attorneys with 8 or more years experience;
- \$130/hour for attorneys with less than 8 years experience;
- \$95/hour for paralegals

The firm also proposes applying a 3% annual inflation factor to the hourly rates. For example, the hourly rate for the most experienced lawyers would increase to \$139/hour in the second year, to \$143/hour in the third year, \$147/hour in the fourth year, and \$152/hour in the fifth year.

## EXHIBIT B

# RISSMAN, WEISBERG, BARRETT, HURT, DONAHUE & MCLAIN, P. A.

ATTORNEYS AT LAW

STEVEN A. RISSMAN  
ROBERT C. BARRETT  
JENNINGS L. HURT III  
ROBERT A. DONAHUE  
JOHN E. MCLAIN III  
RICHARD S. WOMBLE  
JOHN P. DALY  
HILLARY A. McALL  
STACIE B. GREENE  
THEODORE N. GOLDSTEIN  
RAYMOND A. LOPEZ  
VANCE R. DAWSON  
RICHARD B. MANGAN JR.  
HENRY W. JEWETT II  
DANIEL M. POLLACK  
ART C. YOUNG  
DAVID B. MOFFITT  
DONALD J. MASTEN  
NICOLE D. RUCCIO  
DANIEL T. JAFFE  
BEATRIZ E. JUSTIN

OF COUNSEL  
ROBERT J. JACK  
DAVID H. POPPER  
ALFRED L. FRITH

EXECUTIVE DIRECTOR  
W. SCOTT PETERSON

R. CLIFTON ACORD II  
ROBERT D. BARTELS

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TELECOPIER (407) 841-9726  
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JOSEPH R. FITOS  
LAURA B. FLOYD  
PAUL B. FULMER  
JANNINE C. GALVEZ  
J. GREGORY GIANNUZZI  
BRIAN P. HASKELL  
F. DEAN HEWITT  
JEFFREY J. KERLEY  
DAVID R. KUHN  
WENDELYN J. LANE  
JAMIE R. LAPPAS  
G. WILLIAM LAZENBY IV  
MICHAEL E. MCCABE  
ELIZABETH P. MULLIGAN  
KARISSA L. OWENS  
WENDY L. PEPPER  
ROBERT H. PETERSON  
AMANDA M. REHER  
KELLEY A. RICHARDS  
JUAN A. RUIZ  
P. CHRIS SCHROEDER  
NICOLE SMITH  
JILL M. SPEARS  
F. PAUL TIPTON  
CHRISTIAN P. TROWBRIDGE  
JASON R. URBANOWICZ  
KAREN M. WALKER  
DAVID T. WHITE III

WWW.RISSMAN.COM

PLEASE REPLY TO: ORLANDO

February 27, 2006

VIA FACSIMILE TRANSMISSION AND U.S. MAIL

Timothy R. Jecks  
Seminole County  
Purchasing and Contracts Division  
1101 East First Street  
Room 3208  
Sanford, FL 32771

RE: RFP-0548-06/TRJ, Legal Services for  
Insurance Claims and Litigation

Dear Mr. Jecks:

This is to follow up our telephone conversation of February 27, 2006, in which you requested a supplement to our firm's proposal concerning the above RFP. You requested that we submit a "blended rate" with regard to our proposed attorney's fees.

The firm's proposed "blended rate" for attorney services is as follows:

- \$135/hour for attorneys; and

Timothy R. Jecks  
February 27, 2006  
Page 2

■ \$95/hour paralegals

Our proposal of February 21, 2006 had included a rate of \$130/hour for attorneys with less than eight (8) years experience. However, the three attorneys who will likely work on Seminole County's cases (myself, David White and David Kuhn) all have eight or more years experience. The firm continues to propose applying a 3% annual inflation factor to the hourly rates.

Please call if you need any further information or clarification concerning our proposal.

Very truly yours,



Henry W. Jewett II

HWJ/mrs

**LEGAL SERVICES AGREEMENT (RFP-0548-06/TRJ)**  
**WORKERS' COMPENSATION**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY" and **BROUSSARD, CULLEN, DEGAILLER & EAGAN, P.A.**, whose address is 445 W. Colonial Drive, Orlando, Florida 32804, hereinafter referred to as "ATTORNEY" and

**W I T N E S S E T H:**

**WHEREAS**, the COUNTY desires to retain the services of a competent and qualified attorney to represent COUNTY; and

**WHEREAS**, the COUNTY has requested and received proposals for the retention of services of an attorney; and

**WHEREAS**, ATTORNEY is competent and qualified and duly authorized to practice law in the State of Florida and the United States District Court for the Middle District of Florida and desires to provide its professional legal services to COUNTY according to the terms and conditions stated herein,

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, COUNTY and ATTORNEY agree as follows:

**SECTION 1. SERVICES.** ATTORNEY agrees to provide timely professional services for COUNTY and specifically perform those services set forth in the Scope of Services attached hereto and incorporated herein as Exhibit "A". ATTORNEY shall serve on an as needed basis with case assignment on a case by case basis as determined by COUNTY. All services are to be performed on an as needed basis. This Agreement alone does not authorize the performance of any services or require the COUNTY to authorize services.



## **SECTION 2. REQUESTS FOR SERVICES.**

(a) Requests for performance of professional services by the ATTORNEY under this Agreement shall be made by the COUNTY's Risk Manager or Administrative Services Director or their designees on behalf of the COUNTY. Each request for services shall describe the services required, state the dates for commencement and completion and state limitations on the Scope of Services. The COUNTY makes no promise as to the number of service requests nor that the ATTORNEY will perform any services for the COUNTY under this Agreement. The COUNTY reserves the right to contract with other parties for the services contemplated by this Agreement when it is determined by the COUNTY to be in the best interest of the COUNTY to do so.

(b) It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement will arise. The COUNTY designated the COUNTY's Risk Manager or Administrative Services Director as the COUNTY employees to whom all communications pertaining to the day-to-day conduct of the Agreement shall be addressed. The designated representatives shall have the authority to transmit instructions, receive information, and interpret and define the COUNTY's policy and decisions pertinent to the work covered by this Agreement.

**SECTION 3. CHANGES IN THE SCOPE OF SERVICES.** COUNTY or ATTORNEY may request changes that would increase, decrease or otherwise modify the Scope of Services. Such changes and method of compensation must be authorized by COUNTY in writing and duly signed by the parties.

## **SECTION 4. RESPONSIBILITY OF ATTORNEY.**

(a) The ATTORNEY agrees to timely provide the professional services and facilities required to assist COUNTY.

(b) The ATTORNEY shall keep abreast of statutes, regulations, codes and applicable case law in all areas of responsibility at his sole

expense.

(c) The ATTORNEY designates Michael Broussard as the attorney to provide services to the COUNTY.

(d) The ATTORNEY agrees to utilize associates and legal assistants, under the supervision of ATTORNEY, where appropriate to accomplish cost effective performance of services.

(e) It shall be the responsibility of ATTORNEY to specifically request all required information and to provide himself with reasonably sufficient time to review all information so as not to delay without good cause performance under this Agreement.

(f) The ATTORNEY shall be responsible for the professional quality, technical accuracy, competence and methodology of the work done under this Agreement. The ATTORNEY shall, without additional compensation, correct or revise any errors or deficiencies in the work performed under this Agreement which result from the negligence of ATTORNEY.

(g) Neither the COUNTY'S review, approval or acceptance of, nor payment for, any of the services required shall be construed to operate as a waiver of any rights under this Agreement nor of any cause of action arising out of the performance of this Agreement and the ATTORNEY shall be liable to the COUNTY in accordance with applicable law for all damages to the COUNTY caused by the ATTORNEY'S negligent or wrongful performance of any of the services furnished under this Agreement.

#### **SECTION 5. PAYMENT FOR SERVICES AND BILLING.**

(a) In consideration of the promises and the faithful performance by ATTORNEY of his obligations, COUNTY agrees to pay ATTORNEY a fee based on a "Time Basis Method". ATTORNEY, his associates and assistants shall be compensated at rates as indicated in Exhibit "B," attached, for services authorized and performed.

(b) Authorized services may contain a "Limitation of Funds" amount. The ATTORNEY is not authorized to exceed that amount without the prior approval of the COUNTY. The approval, if given, shall be in writing and indicate a new "Limitation of Funds" amount.

(c) In lieu of, or in addition to, establishment of a "Limitation of Funds" amount, the COUNTY may provide for a "Not to Exceed" amount for any service authorization.

(d) COUNTY shall compensate ATTORNEY for the actual work hours required to perform the services authorized. Actual work hours shall not include compensation for travel time to or from the offices of ATTORNEY to Seminole County or travel time to court appearances. Payment shall be made to the ATTORNEY when requested as work progresses, but not more than once monthly for services rendered. ATTORNEY shall provide an itemized invoice based on actual services rendered.

(e) Reimbursable expenses shall be paid in addition to the payment due under subsection (d) above and shall include actual expenditures made by ATTORNEY, his employees or professional consultants in the interest of the work effort for the expenses listed in the following subsections:

(1) Expenses of transportation when traveling in connection with case assignments based on *Sections 112.061(7) and (8), Florida Statutes*, or their successor; long distance calls and facsimile transmissions.

(2) Expense for reproduction, postage and handling of material associated with the work effort.

(3) If authorized in writing in advance by the COUNTY, the cost of other expenditures made by ATTORNEY in the interest of the work effort.

**SECTION 6. GENERAL TERMS AND PAYMENT.**

(a) The ATTORNEY shall invoice the COUNTY or the Third Party Administrator, as designated by the COUNTY, by the 5<sup>th</sup> calendar day of each month for services performed during the preceding month. The COUNTY or Third Party Administrator shall pay the ATTORNEY within thirty (30) days of receipt of such valid invoice. Each service authorization shall be treated separately for final payment purposes.

(b) The COUNTY may perform or have performed an audit of the records of the ATTORNEY after final payment to support final payment under any service authorization issued hereunder. This audit would be performed at a time mutually agreeable to the ATTORNEY and the COUNTY subsequent to the close of the final fiscal period in which the last work is performed. Total compensation to the ATTORNEY may be determined subsequent to an audit as provided for in this subsection and the immediately following subsection, and the total compensation so determined shall be used to calculate final payment to the ATTORNEY. The accomplishment of this audit shall not delay final payment as provided in subsection 6(a).

(c) The ATTORNEY agrees to maintain any and all books, documents, papers, accounting records and other evidences pertaining to services performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at his office at all reasonable times during the Agreement period and for five (5) years from the date of final payment under this Agreement for audit or inspection as provided for in subsection 6(b). Separate accounting records shall be maintained by the ATTORNEY for each service authorized.

(d) In the event any audit or inspection conducted after final payment, but within the period provided in subsection 6(c) reveals any

overpayment by the COUNTY to the ATTORNEY under the terms of this Agreement, the ATTORNEY shall refund such overpayment to the COUNTY within thirty (30) days of notice of same by the COUNTY to the ATTORNEY.

**SECTION 7. OWNERSHIP OF DOCUMENTS.** All legal opinions or any other form of written instrument or document that may result from the ATTORNEY's services or have been created during the course of ATTORNEY's performance under this Agreement shall become the property of the COUNTY after final payment is made to the ATTORNEY, however, ATTORNEY retains the right to retain copies of his work product and to use same for appropriate purposes.

**SECTION 8. TERM.** This Agreement shall become effective upon execution by the COUNTY and shall run for a period of five (5) years unless terminated as provided herein.

**SECTION 9. NO CONTINGENT FEES.** The ATTORNEY warrants that it has not employed or retained any company or persons, other than a bonafide employee working solely for the ATTORNEY, to solicit or secure this Agreement and that ATTORNEY has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bonafide employee working solely for the ATTORNEY, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, COUNTY shall have the right to terminate the Agreement at its discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**SECTION 10. EQUAL OPPORTUNITY EMPLOYMENT.** ATTORNEY agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, disability or national origin and will take

affirmative steps to insure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, disability or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**SECTION 11. CONFLICT OF INTEREST.**

(a) The ATTORNEY agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY or which would violate or cause others to violate the provisions of *Part III, Chapter 112, Florida Statutes*, relating to ethics in government.

(b) The ATTORNEY hereby certifies that no officer, agent or employee of the COUNTY has any material interest (as defined in *Section 112.312(15), Florida Statutes*, as over 5%) either directly or indirectly, in the business of ATTORNEY to be conducted here, and that no such person shall have any such interest at any time during the term of this Agreement.

(c) Pursuant to *Section 216.347, Florida Statutes*, the ATTORNEY hereby agrees that monies received from the COUNTY pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or any other State or Federal agency.

**SECTION 12. ASSIGNMENT.** This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the other party and in such cases only by a document of equal dignity herewith.

**SECTION 13. SUBCONTRACTORS.** In the event ATTORNEY, during the course of the work under this Agreement, requires the services of any subcontractors or other professional associates in connection with service covered by this Agreement, ATTORNEY must secure the prior written approval of the COUNTY.

**SECTION 14. INDEPENDENT CONTRACTOR.** It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties, or as constituting the ATTORNEY (including its officers, employees, and agents) the agent, representative, or employee of the COUNTY for any purpose, or in any manner, whatsoever. The ATTORNEY is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

**SECTION 15. INDEMNIFICATION OF COUNTY.**

(a) The ATTORNEY shall indemnify and save harmless the COUNTY, its officers, agents, and employees from and against any claim, demand or cause of action of whatsoever kind or nature proximately arising out of error, omission, or any tortious act, whether intentional or negligent, of the ATTORNEY, its officers, agents, subcontractors or employees or any like person or entity in the performance of services under this Agreement.

(b) The ATTORNEY shall require all subcontractors to enter an agreement containing the provisions set forth in the preceding subsection in which agreement the subcontractors fully indemnifies the COUNTY in accordance with this Agreement.

**SECTION 16. INSURANCE.**

(a) The ATTORNEY shall provide, pay for, and maintain in force at all times during the term of this Agreement, such insurance, including Workers' Compensation Insurance and Professional Liability Insurance as

will provide to the COUNTY the protection contained in the foregoing Indemnification Section undertaken by the ATTORNEY.

(b) Such policy or policies shall be issued by a company or companies authorized to do business in the State of Florida. All policies required to be carried pursuant to this Section shall provide coverage for any and all claims based on the actions of the ATTORNEY in performing his services under this Agreement. Any liability policy or policies shall, at a minimum, carry limits of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00).

(c) Prior to the commencement of work hereunder, the ATTORNEY shall furnish to the COUNTY a certificate or written statement of the above required insurance. The policy or policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the COUNTY in such insurance shall not be effective until thirty (30) days after written notice thereof to the COUNTY. The COUNTY reserves the right to require a copy of such policy or policies upon request.

(d) The maintenance of the insurance coverage set forth herein shall not be construed to limit nor have the effect of limiting the ATTORNEY' liability under the provisions of the indemnification clause.

#### **SECTION 17. ALTERNATIVE DISPUTE RESOLUTION**

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY protest procedures prior to filing suit or otherwise pursuing legal remedies. COUNTY procedures for proper invoice and payment disputes are set forth in Section 22.15, "Prompt Payment Procedures," Seminole County Administrative Code.

(b) CONSULTANT agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were



not presented for consideration in the COUNTY protest procedures set forth in subsection (a) above of which the CONSULTANT had knowledge and failed to present during the COUNTY protest procedures.

(c) In the event that COUNTY protest procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

**SECTION 18. SERVICES NOT PROVIDED FOR.** No claim for services furnished by the ATTORNEY not specifically provided for herein shall be honored by the COUNTY.

**SECTION 19. ENTIRE AGREEMENT.**

(a) It is understood and agreed that the entire Agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof.

(b) Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties.

**SECTION 20. AGREEMENT AND SERVICE AUTHORIZATION IN CONFLICT.** Except as otherwise set forth, whenever the terms of this Agreement conflict with any service authorization this Agreement shall prevail.

**SECTION 21. RIGHTS AT LAW RETAINED.** The rights and remedies of the COUNTY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

**SECTION 22. NOTICES.** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, with return receipt requested, addressed to the party for whom it is intended at the place last specified and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to wit:

**For COUNTY:**

Administrative Services Department  
Attention: Risk Manager  
200 West County Home Road  
Sanford, Florida 32773

**For ATTORNEY:**

Broussard, Cullen, DeGailler & Eagan, P.A.  
445 W. Colonial Drive  
Orlando, Florida 32804

**SECTION 23. TERMINATION.**

(a) The COUNTY may, by written notice to the ATTORNEY, terminate this Agreement, in whole or in part, at any time, either for the COUNTY's convenience or because of the failure of the ATTORNEY to fulfill his Agreement obligations. Upon receipt of such notice, the ATTORNEY shall:

(1) immediately discontinue all services affected unless the notice directs otherwise, and

(2) deliver to the COUNTY all data, drawings, specification, reports, estimates, summaries, and such other information and materials as may have been accumulated by the ATTORNEY in performing this Agreement, whether completed or in process.

(b) If the termination is for the convenience of the COUNTY, the ATTORNEY shall be paid compensation for services performed to the date of termination based on the percentage of work completed. The COUNTY shall not be obligated to pay for any services performed by ATTORNEY after notice of termination has been given.

(c) If the termination is due to the failure of the ATTORNEY to fulfill his Agreement obligations, the COUNTY may take over the work and prosecute the same to completion by Agreement or otherwise. In such case, the ATTORNEY shall be liable to the COUNTY for reasonable additional costs occasioned to the COUNTY thereby. The ATTORNEY shall not be liable for such additional costs if the failure to perform the Agreement arises out of causes beyond the control and without the fault or negligence of the ATTORNEY.

(d) If, after notice of termination for failure to fulfill the Agreement obligations, it is determined that the ATTORNEY had not so failed, the termination shall be deemed to have been effected for the convenience of the COUNTY. In such event, adjustment in the Agreement price shall be made as provided in paragraph (b) of this Section.

(e) The rights and remedies of the COUNTY provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the date below written for execution by the COUNTY.

ATTEST:

BROUSSARD, CULLEN, DEGAILLER &  
EAGAN, P.A.

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
MICHAEL BROUSSARD, President

(CORPORATE SEAL)

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

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
CARLTON HENLEY, Chairman

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

For the use and reliance  
of Seminole County only.

Approved as to form and  
legal sufficiency.

As authorized for execution  
by the Board of County Commissioners  
at their \_\_\_\_\_, 20\_\_\_\_\_  
regular meeting.

\_\_\_\_\_  
County Attorney  
AC/lpk  
3/20/06  
RFP-0548 Workers' Comp

Attachments:

- Exhibit "A" - Scope of Services
- Exhibit "B" - Rate Schedule

**LITIGATION MANAGEMENT GUIDELINES**  
**WORKERS' COMPENSATION**

**EXHIBIT A**

**I. INTRODUCTION:**

The primary purpose for these guidelines is to provide a clear and uniform framework of how the County wants cases to be managed with respect to handling communications, settlement and billing. Each of these areas is addressed herein.

The County contracts with a Third Part Administrator (TPA) to handle claims. The TPA may have additional requirements. The TPA will communicate those requirements on a case by case basis.

**II. CASE ANALYSIS, STRATEGY AND BUDGET**

Within sixty (60) days following receipt of the case, counsel shall prepare and send all of the following:

- A. 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 shall also identify the pertinent statutes and/or case law that may affect the outcome of litigation.
- B. INVESTIGATION: Counsel shall identify any additional information or documentation that is needed to disprove the plaintiff's claims or to establish defenses. To the extent possible, investigation and information gathering shall be done by the County's Third Party Administrator (TPA).
- C. STRATEGY: Counsel shall define the strategy to be used in each lawsuit including:
  - 1. The anticipated course of action.
  - 2. The factors or elements which must be proved or disproved and the necessary discovery to establish these defenses or proof.
  - 3. The timing of the discovery, filing of motions, negotiations, or other objectives.
  - 4. A description of how the work will be distributed among those who will be working on the case.
  - 5. The tactics to be used in defending the case and the advantages to be gained by the use of these tactics.
- D. BUDGET: Counsel will also provide an estimate of the anticipated cost of each significant aspect of the litigated workers' compensation case including:
  - 1. Discovery

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2. Motions
3. Hearing appearances
4. Other

Within ninety (90) days following the termination of each litigated workers' compensation case,, the TPA will review the file to determine compliance with these guidelines, strategy and budget. If appropriate, a meeting will be arranged to discuss perceived problems and/or ways to improve defense of County claims.

III. **COMMUNICATION:** The attorney shall be available for Risk Management Committee meetings or other county meetings as requested.

- A. All assignments will be referred to you directly by the TPA or County. Report directly to the TPA claims adjuster who is handling the file with copies of all correspondence to the Risk Manager and County Attorney's Office.
- B. Within fifteen (15) days of receipt of assignment contact adjuster to agree on litigation plan. An initial evaluation report must be mailed to the claims adjuster for the County's TPA within thirty (30) days of receipt of the file. This report must contain at least the following information:
  1. A recitation of the facts as you know them.
  2. Your theory of defense and the legal basis supporting your theory.
  3. Additional investigation, and/or discovery required to prevail under your theory.
  4. Progress reports should be sent at least every ninety (90) days.

Subsequent reports should provide updates on these items as events dictate.

- C. A Post Pretrial Conference status report must be mailed no later than ten (10) days after every Pretrial Conference.
- D. 45 days prior to Mediation, attorney will submit a report which includes: issues to be mediated, recommendations and evaluation.
- E. Attorney will finalize mediation strategy with adjuster at least ten days prior to mediation.
- F. 60 days before trial, attorney shall submit a pretrial report to include evaluation and recommendations. A pretrial conference must be scheduled, in person or by conference call with adjuster at least one week prior to trial to discuss strategy.
- G. After you have had a file for six (6) months, we want you to send a letter discussing your plan for closing the file unless you have sent the County a report in the previous thirty (30) days.

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- H. All correspondence should be concise. Use a captioned format to highlight specific and separate issues, i.e. MEDICAL ISSUES, RECOMMENDATIONS FOR WORK TO BE DONE BY YOU, SETTLEMENT OF OPTIONS, ETC.
- I. Discovery, particularly depositions, must be conducted with a specific goal and defense theory in mind. Aimless or misdirected depositions are totally unacceptable. All depositions must be approved by the adjuster prior to scheduling. A brief summary of all depositions should be sent as soon as practical.
- J. All settlement demands should be reported immediately. In all cases, always provide us with all realistic options including compromise and settlement, even if you are convinced we have a winner. Always provide your professional opinion on which option you believe is in our best interest, and never pass on a settlement demand from a claimant's attorney without commenting on the reasonableness of said demand along with your recommended response.
- K. Upon request by the County's Risk Manager, and at such other times as deemed necessary, counsel shall provide written or oral evaluation of the litigation. Under no circumstance is counsel to retain services of any provider, such as re-hab, surveillance, etc. without specific authority from the TPA and/or Risk Manager.
- L. Whenever your correspondence contains a request for action on the part of the County's TPA, be certain it is captioned.
- M. Special Disability Trust Fund/Subrogation: Be sure to include a separate section in your evaluation report and all subsequent reports addressing the potential for recovery from the SDTF or any other source.
- N. CONFIDENTIAL: It is understood that said communications between this firm and the named defendants, servicing agency and Risk Management Committee will be considered work product, which is confidential and privileged until such time as the claim, litigation or proceedings are concluded. See Florida Statute Section 119.07(n).

**IV. SETTLEMENTS:**

All settlement demands should be reported immediately. Legal counsel shall not settle any claim or litigation without prior written authorization from the Risk Manager. For claims that have exceeded the County's self-insured retention (SIR), legal counsel shall not settle any claim or litigation without prior written authorization of the Excess Carrier.

**V. BILLING – HOURLY RATE AS STATED IN CONTRACT**

All bills for legal services and costs shall be submitted either bi-monthly or when the unpaid balance due reaches \$2,500, whichever comes first. All bills shall state with particularity the legal work performed, the actual time expended to perform the work, the costs incurred, and

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who performed the work. Time shall be expressed in increments of one tenth (.10) of one hour. Attorneys submitting the bills for payment are responsible for the content of the bills and will work with the TPA to resolve any problems or answer questions. All bills shall be directed to the TPA for payment. Travel outside the Counties of Orange, Osceola or Seminole must be pre-approved by the Risk Manager or TPA.

All outside vendor type expenses such as Court Reporters, Federal Express, Photographs, Process Servers, Court Fees, Long distance phone calls, Experts, etc., shall be billed as "pass through" item, without any markup or multiplier. Copies of the invoice supporting the charge shall be included, as a matter of ongoing practice, with the Attorney's bill for services on which that outside charge is listed.



# BROUSSARD, CULLEN, DEGAILLER & EAGAN, P.A.

## ATTORNEYS AT LAW

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February 24, 2006

Timothy Jecks, Contracts Analyst  
Seminole County  
Attention: Purchasing and Contracts Division  
1101 East 1st Street, Room 3208  
Sanford, Florida 32771

Via Facsimile and regular mail  
407-665-7956

### RFP 0548-06/TRJ Amendment

Dear Mr. Jecks:

Please consider this an Amendment to Section 2 in our Response to RFP 0548-06/TRJ, which requested an hourly billing rate for all personnel as well as a blended rate. Said section is amended as follows:

#### FEE PROPOSAL

This Proposer typically submits a detailed statement reflecting services rendered with the time noted in increments of one-tenths of an hour. The billing is submitted on either a monthly or a quarterly basis, depending upon the desire of the client. The proposed hourly rates for actual reasonable time spent by either an attorney or a practicing paralegal are as follows:

Workers' Compensation:	
Experience	Fees
12+ years:	\$120.00
6 -12 years:	110.00
>6 years:	105.00
Paralegals	60.00
Attorney blended rate	115.00

Liability Defense:	
Experience	Fees
12+ years:	\$140.00
6 -12 years:	130.00
>6 years:	115.00
Paralegals	80.00
Attorney blended rate	125.00

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