



NUECES COUNTY HOSPITAL DISTRICT

Administrative Offices

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Corpus Christi, Texas 78401-0835

Phone: (361) 808-3300
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BOARD OF MANAGERS ORDER **MAY 22, 2018**

AUTHORIZATION TO FILE SUIT TO RECOVER DAMAGES SUFFERED BY NUECES COUNTY HOSPITAL DISTRICT AS A RESULT OF THE IMPROPER MARKETING, SALE, AND DISTRIBUTION OF OPIOID MEDICATIONS AND APPROVAL OF PROFESSIONAL SERVICES AGREEMENT FOR PRIVATE LEGAL COUNSEL

WHEREAS, the Nueces County Hospital District ("Hospital District" or "District") is a body politic and corporate and a political subdivision of the State of Texas, established and created pursuant to the Texas Constitution, Article IX, Section 4 and the Texas Health and Safety Code (the "Health Code"), Chapter 281, and operated in accordance with the Health Code and other applicable laws of the State of Texas;

WHEREAS, the Hospital District's Board of Managers ("Board") have been duly appointed pursuant to Health Code, § 281.021(a); and pursuant to the collective authorities of Health Code, § 281.047 and § 281.048, the Board is the District's governing body and the Board has, and at the time of adoption of this Order had, full power and authority to manage, control, administer, and to adopt rules governing operation of the District;

WHEREAS, it reasonably appears that the Hospital District has suffered damages as a result of the improper marketing, sale, and distribution of opioid medications;

WHEREAS, the Hospital District is empowered to authorize suit to seek recovery of such damages pursuant to Health Code, § 281.056(a);

WHEREAS, it is necessary for the Hospital District to institute civil legal proceedings requiring legal services, and the Hospital District's Board of Managers finds as follows:

- 1) there is a substantial need for the legal services;
- 2) the legal services cannot be adequately performed by the attorneys and supporting personnel of Nueces County, or by the attorneys and supporting personnel of the Hospital District, or by the attorneys and the supporting personnel of another governmental entity; and
- 3) the legal services cannot be reasonably be obtained from attorneys in private practice

under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained and because the Hospital District does not have appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees; and

WHEREAS, the Hospital District is empowered to employ private legal counsel to prosecute civil litigation and the District desires to select The Law Office of Richard Schechter, P.C., The Lanier Law Firm, P.C., Reich & Binstock, LLP, The Law Office of James B. Ragan, and their respective team, and The Purnell Law Firm, Phipps Anderson Deacon, LLP, and their respective team to serve as Private Legal Counsel.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The Board of Managers grants an exemption from competitive bidding and proposal procedures in accordance with Texas Local Government Code, § 262.024(a)(5) providing that a contract for personal or professional service is exempt from the requirement established by § 262.023 of the Local Government Code.
2. Pursuant to Health Code, § 281.056(b) the Board of Managers selects The Law Office of Richard Schechter, P.C., The Lanier Law Firm, P.C., Reich & Binstock, LLP, The Law Office of James B. Ragan, and their respective team, and The Purnell Law Firm, Phipps Anderson Deacon, LLP, and their respective team to serve as Private Legal Counsel to serve as Private Legal Counsel and the Board approves and adopts the terms and conditions of employment of such counsel as set out in the attached Professional Services Agreement.
3. The Board of Managers authorizes Private Legal Counsel to file such claims and litigation as Private Legal Counsel deems necessary against opioid manufacturers, distributors, and other in the chain of commerce and such other defendants as may be added to the litigation. The lawsuit concerns applicable common law or statutory causes of action that may exist for damages resulting from the improper marketing, sale, and distribution of opioid medications.
4. The Hospital District's Administrator is authorized to execute, on behalf of Nueces County Hospital District, an agreement with Private Legal Counsel (hereinafter the "Agreement") containing terms and provisions substantially similar to those contained in the attached agreement because the Board of Managers find that there is a substantial need for the legal services of Private Legal Counsel which cannot adequately be performed by the attorneys and supporting personnel of Nueces County, or by the attorneys and supporting personnel of the Hospital District, or by the attorneys and the supporting personnel of another

governmental entity, nor can the legal services reasonably be obtained from attorneys in private practice under a contract providing only for payment of hourly fees without regard to the outcome of the matter because of the nature of the representation.

5. All fees to be paid to Private Legal Counsel are contingent upon the recovery of the penalties, attorneys' fees and costs as provided for in the Agreement and shall be paid only from such recovery and no money shall be due or paid from the General Fund or any special fund under the Agreement.
6. The Hospital District's Administrator is authorized to do any and all things necessary or convenient to accomplish the purposes of this order.

**NUECES COUNTY HOSPITAL DISTRICT
BOARD OF MANAGERS**

Van Huseman
Chairman

Claude C. Jennings, C.P.A.
Vice Chairman

Rodney J. Hart, P.E.
Member

Robert N. Corrigan, Jr.
Member

John E. Valls
Member

Ted A. Daniel
Member

Sylvia Tryon Oliver
Member

THE STATE OF TEXAS
COUNTY OF NUECES
NUECES COUNTY HOSPITAL DISTRICT

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1. The members of the Board of Managers (the "Board") of the Nueces County Hospital District (the "Hospital District") have been duly appointed pursuant to Texas Health and Safety Code (the "Health Code"), §281.021.

3. On the 22nd day of May, 2018 the Board convened in a special meeting at the Hospital District's regular meeting place (the "Meeting"), the duly constituted members and officers of the Board being as follows:

and all of said persons were present, except the following absentees:

_____ and _____, thus constituting a quorum.

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YEAS: _____
NAYS: _____
PRESENT NOT VOTING: _____
ABSENT: _____

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5. The attached Order is a true and correct copy of the original on file in the official records of the Hospital District; the duly qualified and acting members of the Board on the date of the Meeting are those persons shown above, and, according to the records of my office, each member of the Board was given actual notice of the time, place, and purpose of the Meeting and had actual notice that the Order would be considered; and the Meeting and deliberation of the aforesaid public business, was open to the public and written notice of said meeting, including the subject of the Order, was posted and given in advance thereof in compliance with the provisions of Chapter 551, Texas Government Code, as amended.

6. I am the Secretary of the Board having been duly appointed pursuant to Health Code, §281.023(b).

7. The foregoing Order is in full force and effect; that the same has not been rescinded, nor has it been amended or modified in any way.

IN WITNESS WHEREOF, I have hereunto signed my name officially and affixed the seal of the Hospital District on this the 22nd day of May, 2018.

Jonny F. Hipp
Secretary, Board of Managers
Nueces County Hospital District

{HOSPITAL DISTRICT SEAL}

Private Legal Counsel Agreement

PROFESSIONAL SERVICES AGREEMENT
(Contingent Fee Special Counsel for Opioid Litigation)

The Parties to this Agreement (“Agreement”) are Nueces County Hospital District (“CLIENT”) and The Law Office of Richard Schechter, P.C., The Lanier Law Firm, P.C., Reich & Binstock, LLP, and The Law Office of James B. Ragan and their respective team and The Purnell Law Firm, Phipps Anderson Deacon, LLP and their respective team (collectively, “SPECIAL COUNSEL”).

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

I. Purpose of Representation

1.01 CLIENT has found a substantial need to employ SPECIAL COUNSEL to assist CLIENT'S attorney in the prosecution of causes of action against the manufacturers and distributors of opioids arising under the laws of the State of Texas and federal law against one or more of the following: Purdue Pharma, Endo Pharmaceuticals, Janssen Pharmaceuticals, Insys Therapeutics, the McKesson Corporation, Cardinal Health and AmerisourceBergen and their corporate affiliates, parents, and subsidiaries, and such other defendants as may be added to the litigation (collectively, "Defendants"). The lawsuit concerns the fraudulent and deceptive misrepresentations to create a demand for pain medications as well as not properly monitoring the distribution of the medications in Nueces County, Texas and Defendants' violations of the DTPA, fraud, unjust enrichment, negligence, violations of the federal Controlled Substances Act and civil conspiracy, and any other applicable common law or statutory causes of action, ("Defendants' Violations").

1.02 CLIENT has found a substantial need for the legal services which cannot be adequately performed by CLIENT'S attorneys or the attorneys of a governmental entity, nor, because of the nature of the matter for which legal services will be obtained, can they be reasonably obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter. The estimated amount that may be recovered from the litigation exceeds \$100,000.00.

1.03 Subject to the supervision, direction, and control of the Nueces County Attorney, SPECIAL COUNSEL will prosecute a civil case on behalf of CLIENT against Defendants or other defendants deemed necessary to the prosecution of the civil case. In the civil case, SPECIAL COUNSEL shall seek necessary and appropriate damages, civil penalties, and attorney's fees and such other pecuniary recovery as may be provided for by the laws of the State of Texas and/or any relevant local, state and/or federal statutory and/or common law in connection with the Defendants' Violations of the DTPA, fraud, unjust enrichment, negligence, violations of the federal Controlled Substances Act and civil conspiracy, and any other applicable common law or statutory causes of action, including but not limited to environmental statutes, rules and regulations including those laws that preceded the current statutes ("the Representation").

1.04 CLIENT has determined pursuant to Local Government Code §262.024(a)(4) that this

Agreement is for *professional services*, requiring work that is predominantly mental or intellectual, rather than physical or manual, requiring special knowledge or attainment and a high order of learning, skill, and academic intelligence.

1.05 The term of this Agreement shall end after the conclusion of the Representation, unless either party extends or by termination of this Agreement by providing 30 days written notice for no cause.

1.06 SPECIAL COUNSEL shall prosecute causes of action on behalf of CLIENT against Defendants and seek necessary and appropriate damages, civil penalties, and attorney's fees and such other pecuniary recovery as may be provided for by the laws of the State of Texas and/or any relevant local, state, federal statutory and/or common law in connection with the activities of Defendants. The primary attorneys handling this representation are SPECIAL COUNSEL. SPECIAL COUNSEL shall furnish the services for the Representation. SPECIAL COUNSEL agrees to perform necessary legal work with reference to the Representation, and will work specifically with the Nueces County Attorney or her designee. SPECIAL COUNSEL will work under the supervision, direction, and control of the Nueces County Attorney or her designee.

1.07 To enable SPECIAL COUNSEL to provide effective representation, CLIENT agrees to do the following: (1) disclose to SPECIAL COUNSEL, fully and accurately and on a timely basis, all facts and documents within CLIENT's knowledge that are or might be material or that SPECIAL COUNSEL may request, (2) keep SPECIAL COUNSEL apprised on a timely basis of all developments relating to the Representation that are or might be material, (3) attend meetings, conferences, and other proceedings when it is reasonable to do so, and (4) otherwise cooperate fully with SPECIAL COUNSEL.

1.08 Neither party shall assign, in whole or in part, any duty or obligation of performance under this Agreement, without the express written permission of the other parties, unless otherwise authorized in this Agreement.

1.09 The person or entity that SPECIAL COUNSEL represents is CLIENT, and SPECIAL COUNSEL's attorney-client relationship does not include any related persons or entities. If any potential conflict arises with respect to the Representation, SPECIAL COUNSEL will make full disclosure of the possible effects of such Representation on the professional judgment of each individual associated with SPECIAL COUNSEL working on the Representation. In the event a potential conflict occurs during the course of the Representation, SPECIAL COUNSEL will make full written disclosure of such to the Nueces County Attorney.

1.10 It is understood and agreed that SPECIAL COUNSEL's engagement is limited to the Representation. SPECIAL COUNSEL is not being retained as general counsel, and SPECIAL COUNSEL's acceptance of this Agreement does not imply any undertaking to provide legal services other than those set forth in this Agreement.

1.11 Any expressions on SPECIAL COUNSEL's part concerning the outcome of the Representation, or any other legal matters, are based on SPECIAL COUNSEL's professional

judgment and are not guarantees. Such expressions, even when described as opinions, are necessarily limited by SPECIAL COUNSEL's knowledge of the facts and are based on SPECIAL COUNSEL's views of the state of the law at the time they are expressed. SPECIAL COUNSEL has made no promises or guarantees to CLIENT about the outcome of the Representation, and nothing in these terms of engagement shall be construed as such a promise or guarantee.

II. Compensation and Other Matters

2.01 For and in consideration of the services performed under this Agreement, subject to the limitations in this Agreement, CLIENT agrees to pay SPECIAL COUNSEL as follows:

2.02 Any fee payable to SPECIAL COUNSEL will be from the portion of any award, judgment, and/or settlement allocated by law to CLIENT. This Agreement shall not confer upon SPECIAL COUNSEL any rights to any portion of any sum awarded to the State of Texas as a result of the Representation.

2.03. In the event of a judgment against the Defendant(s) and only to the extent collected from any Defendant(s), the CLIENT agrees to pay SPECIAL COUNSEL a fee consisting exclusively of all the attorney's fees awarded pursuant to any statutory basis for recovery of attorney's fees and expenses, and 20% of each additional dollar, if any, in excess of the award of attorney's fees awarded to CLIENT and collected by SPECIAL COUNSEL, or 30% of any amount award to CLIENT and collected by SPECIAL COUNSEL, if the judgment does not provide for an award of attorney's fees for CLIENT. SPECIAL COUNSEL'S fee as set forth in this paragraph is the same regardless of whether the litigation is tried or appealed. The contingent fee set forth in this section will be subject to the limitations set forth in this Agreement pursuant to Subchapter C, Chapter 2254 of the Texas Government Code and in no event shall exceed the amount set forth in Section 2.07.

2.04 In the event of a settlement with the Defendant(s), the CLIENT agrees to pay SPECIAL COUNSEL 30% of any settlement if it does not contain a separate allocation for the award of attorney's fees; or in the event the settlement provides for a separate allocation for the recovery for attorney's fees, SPECIAL COUNSEL shall recover the amount of the settlement designated for attorney's fees to CLIENT plus 20% of each additional dollar awarded to the CLIENT and collected by SPECIAL COUNSEL. The contingent fee set forth in this section will be subject to the limitations set forth in this Agreement pursuant to Subchapter C, Chapter 2254 of the Texas Government Code and in no event shall exceed the amount set forth in Section 2.07.

2.05 The amount recovered for purposes of the contingent fee computation in paragraphs 2.03 and 2.04 is the amount CLIENT receives before reimbursable expenses are deducted. In the event attorney's fees are awarded pursuant to a statutory basis for recovery, SPECIAL COUNSEL shall not be entitled to the additional recovery of attorney's fees as a reimbursable expense.

2.06 SPECIAL COUNSEL will be responsible for paying all expenses of litigation directly to the vendor, such as fees owed to experts, deposition expenses, and other court costs or fees.

2.07 The amount of the contingent fee and reimbursement of expenses under this Agreement will be computed in accordance with Subchapter C, Chapter 2254 of the Texas Government Code. SPECIAL COUNSEL's contingent fee is limited to the lesser of 30% of the amount recovered by CLIENT or four times SPECIAL COUNSEL's base fee, as that term is used in Texas Government Code §2254.106. Because of the expected difficulties in performing the work under this Agreement, the amount of expenses expected to be risked by SPECIAL COUNSEL, the expected risk of no recovery, and the expected long delay in recovery, a reasonable multiplier for the base fee in this matter is four. SPECIAL COUNSEL's reasonable hourly rate for the work performed under the Agreement is \$900 an hour for shareholders and partners, \$500 an hour for senior level associates practicing 10 years or more; \$450 per hour for other attorneys, and \$200 per hour for paralegals or law clerks consistent with the relevant experience, demonstrated ability, and standard hourly billing rates for these attorneys, paralegals, and law clerks. These rates apply to the subcontracted work performed, if any, by an attorney, law clerk, or paralegal. The base fee will be computed pursuant to Chapter C, Section 2254 of the Texas Government Code by multiplying the number of hours the attorney, paralegal or law clerk worked in providing legal or support services for the CLIENT times the reasonable hourly rate for the work performed by the attorney, paralegal or law clerk. The base fee is computed by adding the resulting amounts. The computation of the base fee does not include hours or costs attributable to work performed by a person who is not SPECIAL COUNSEL or a partner, shareholder, or employee of SPECIAL COUNSEL or law firm. There are no differences in the method by which the contingent fee is computed if the matter is settled, tried, or tried and appealed. SPECIAL COUNSEL's fee as set forth in this contract is the same regardless of whether the matter is settled, tried, or tried and appealed.

2.08 Reimbursement of subcontracted work, if any, under Texas Government Code Section 2254.107 shall meet the requirements of Chapter 2254 of the Texas Government Code, including Texas Government Code Section 2254.106(a) requirements, without regard to the expected or actual amount of recovery under this Agreement.

2.09 Payment of the contingent fee and reimbursement of expenses under this Agreement will be paid and limited by the requirements set forth in Subchapter C, Chapter 2254 of the Texas Government Code, including Section 2254.105(5) and all other applicable sections.

2.10 SPECIAL COUNSEL assume joint responsibility for the Representation. Any contingent fee earned and expenses advanced shall be divided as follows: The Law Office of Richard Schechter, P.C., The Lanier Law Firm, P.C. and their respective team 60% and The Purnell Law Firm, Phipps Anderson Deacon, LLP and their respective team 40%. If there is a recovery, then upon recovery, the Defendants will be instructed to transfer all of the recovery funds to NCHD by wire or check payable to NCHD in care of Mr. Jonny F. Hipp, Administrator of NCHD or his designee. Mr. Jonny F. Hipp shall also receive the information from Special Counsel designated by sections 3.03 and 3.04 of this Agreement. Upon approval by NCHD of SPECIAL COUNSEL's computation of the amount of the contingent fee which SPECIAL COUNSEL is required to submit by Section 3.04 of this Agreement, NCHD shall distribute 60% of that contingent fee to The Law Office of Richard Schechter, P.C., The Lanier Law Firm, P.C. and their respective team and 40% of that contingent fee to The Purnell Law Firm, Phipps Anderson Deacon, LLP and their respective team. Thereafter, out of the remaining funds received from the

Defendants after payment of the contingent fee to The Law Office of Richard Schechter, P.C., The Lanier Law Firm, P.C. and their respective team and The Purnell Law Firm, Phipps Anderson Deacon, LLP and their respective team, then NCHD shall distribute a separate sum to each respective team to reimburse them for the Reimbursable Expenses due it as provided for by this Agreement and approved by NCHD based upon the information delivered to her as required by Section 3.04 of this Agreement.

2.11 CLIENT shall have the absolute right to settle the case for no penalty, which would yield no contingent fee on penalties to SPECIAL COUNSEL. Client will not be liable for reimbursable expenses in the event that Client settles the case for no penalty and makes no recovery of expenses or attorney's fees. CLIENT will assign any award of attorney's fees to SPECIAL COUNSEL, who shall have the obligation to collect them from the Defendants. SPECIAL COUNSEL will be responsible for paying all expenses of litigation directly to the vendor, such as, expert witness fees, deposition expenses, and other court costs/fees. CLIENT will not advance any litigation expenses under this Agreement. Nueces County Hospital District will pay nothing in advance of resolution of the case and afterwards will pay nothing unless there is a recovery from Defendants and the payment will come only from the funds paid by the Defendants.

2.12 The fee to be paid under this Agreement shall come exclusively out of any recovery (including but not limited to any attorney's fees and expenses) awarded in any judgment resulting from the Representation, or any settlement during the Representation, and CLIENT shall be liable to SPECIAL COUNSEL for no more than the fee and reimbursable expenses as described herein. CLIENT has specifically allocated and made available from currently budgeted funds the sum of \$0 to discharge any obligation that CLIENT may incur arising out of this Agreement in the event the fee is determined to be prohibited by law.

2.13 It is expressly understood that the fee described above shall be the sole source of compensation to SPECIAL COUNSEL for overhead costs and expenses (with the exception of the reimbursable expenses listed below) and includes, but is not limited to, all costs for clerical work, including overtime, computer time, meals, clerical filing, and proofreading. SPECIAL COUNSEL agrees that they are neither authorized to seek reimbursement nor is CLIENT obligated to pay for mileage within Nueces County, parking fees, local facsimile (fax) transmissions, use of law library, or other costs or expenses (similar or dissimilar) except for those for which reimbursement is specifically provided for in this Agreement, if any. Expert witness fees, mediation fees, expenses associated with depositions, discovery, pretrial matters and hearings or trial (such as costs of the transcript, and court reporter or videographer fees), travel outside Nueces County, research and investigation related fees and expenses, Westlaw expenses, and expenses associated with creating demonstrative exhibits or other means of evidence presentation during trial or hearings (such as trial graphics) shall constitute the reimbursable expenses ("the Reimbursable Expenses"). SPECIAL COUNSEL shall advance all the Reimbursable Expenses. Reimbursable Expenses shall be recovered by SPECIAL COUNSEL out of any settlement or judgment that arises out of the Representation. Travel expenses for Richard Schechter, P.C., The Lanier Law Firm, P.C. and Phipps Anderson Deacon, LLP to Nueces County are reimbursable. All other SPECIAL COUNSEL must receive pre-approval for reimbursement from the Nueces County Attorney for travel expenses to Nueces

County.

Notwithstanding any other provision of this Agreement, in no event will the contingent fee plus the reimbursement of expenses together exceed 35% of the recovery.

2.14 SPECIAL COUNSEL has been engaged to provide legal services in connection with the Representation, as specifically defined in this Agreement. After completion of the Representation, changes may occur in the applicable laws or regulations that could affect CLIENT's future rights and liabilities in regard to the Representation. Unless SPECIAL COUNSEL is actually engaged after the completion of the Representation to provide additional advice on such issues, SPECIAL COUNSEL has no continuing obligation to give advice with respect to any future legal developments that may pertain to the Representation other than the obligations set out in this Agreement.

2.15 At the conclusion of the Representation, SPECIAL COUNSEL will return to CLIENT any documents that SPECIAL COUNSEL is specifically requested to return. As to any documents so returned, SPECIAL COUNSEL may elect to keep a copy of the documents in SPECIAL COUNSEL's stored files. CLIENT owns all final work product generated from the Representation.

2.16 Any notice required or permitted to be given by the CLIENT to SPECIAL COUNSEL hereunder may be given by hand delivery, facsimile, email, or certified United States Mail, postage prepaid, return receipt requested, addressed to:

The Lanier Law Firm, P.C.
6810 Cypress Creek Parkway
Houston, Texas 77069
Fax: (713) 659-2204
Email: wml@lanierlawfirm.com
Email: reagan.bradford@lanierlawfirm.com

Richard Schechter
Law Office of Richard Schechter, P.C.
One Greenway Plaza, Suite 740
Houston, Texas 77046
Fax: (713) 622-1680
Email: richard@rs-law.com

And also to

Simon Purnell
The Purnell Law Firm
711 N. Carancahua, Ste. 512
Corpus Christi, Texas 78401
Fax: (361) 288-8932
Email: purnell.simon@gmail.com

And

Martin J. Phipps
PHIPPS ANDERSON DEACON LLP
THE PHIPPS
102 9th Street
San Antonio, Texas 78215
Fax: (210) 340-9799
Email: mhipps@phippsandersondeacon.com

Any notice required or permitted to be given by SPECIAL COUNSEL to the CLIENT hereunder may be given by hand delivery, facsimile, email, or certified United States Mail, postage or fee prepaid, return receipt requested, addressed to:

Jonny F. Hipp, ScD, FACHE
Administrator/Chief Executive Officer
Nueces County Hospital District
555 North Carancahua, Suite 950
Corpus Christi, Texas 78401
Fax: (361) 808-3274
Email: jonny.hipp@nchdcc.org

Laura Garza Jimenez
Nueces County Attorney
901 Leopard, Room 207
Corpus Christi, Texas 78401
Fax: (361) 888-0577
Email: laura.jimenez@co.nueces.tx.us

Such notices shall be considered given and complete upon successful transmission or upon deposit in the United States Mail.

2.17 SPECIAL COUNSEL affirmatively consents to the disclosure of email addresses that are provided to CLIENT. This consent is intended to comply with the requirements of the Texas Public Information Act. TEX GOV'T CODE ANN. §552.137, *ET sequitur*, as amended, and shall survive termination of this Agreement. This consent shall apply to email addresses provided by SPECIAL COUNSEL and agents acting on SPECIAL COUNSEL's behalf and shall apply to any email address provided in any form for any reason whether related to this Agreement or otherwise.

2.18 It is expressly understood that SPECIAL COUNSEL has no authority to settle or otherwise compromise the position of CLIENT or any of its officers. CLIENT retains all authority to settle the case.

2.19 Nothing herein shall be construed as creating any personal liability on the part of any

officer or agent of CLIENT.

2.20 If any provision of this Agreement is held in whole or in part to be unenforceable, void, or voidable for any reason, then such provision will be modified to reflect the parties' intention and to make the provision enforceable. It is the parties' intention that the suit against Defendants shall continue regardless of whether any single part of this Agreement is unenforceable, void or voidable. In the event that one or more provisions of this Agreement is held unenforceable, all remaining provisions of this Agreement that have not been determined by a court as being unenforceable, void, or voidable, shall remain in full force and effect.

III. Required Recitals

3.01 This Agreement is effective only after review and approval by the Comptroller for the State of Texas.

3.02 SPECIAL COUNSEL must and shall keep current and complete written time and expense records that describe in detail the time and money spent each day in performing the contract [this Agreement] as required by Section 2254.104(a) Texas Government Code.

3.03 (a) SPECIAL COUNSEL shall permit CLIENT or CLIENT's attorney or CLIENT's governing body or other governing officials, the Attorney General for the State of Texas, the State Auditor, or any other appropriate official, to inspect or obtain copies of the time and expense records kept in accordance with Section 3.02, at any time on request, as required by Section 2254.104(b) Texas Government Code. (b) In addition to the requirement set forth in subsection (a), SPECIAL COUNSEL shall submit monthly status reports of all times and expenses to Mr. Jonny F. Hipp, Administrator/CEO NCHD effective after the last signature of this Agreement.

3.04 Upon conclusion of any matter for which SPECIAL COUNSEL was retained, SPECIAL COUNSEL shall provide CLIENT with a complete written statement that describes the outcome of the matter, states the amount of any recovery, shows SPECIAL COUNSEL's computation of the amount of the contingent fee, and contains the final complete time and expense records required by Section 2254.104(c) Texas Government Code. The complete written statement required under this section is public information under Chapter 552 of the Texas Government Code and may not be withheld from a requester under that chapter under Section 552.103 or any other exception from required disclosure.

3.05 All time and expense records required by Section 3.02 are public information subject to required disclosure under Chapter 552 of the Texas Government Code. Information contained in the time and expense records may be withheld from a member of the public under Section 552.103 only if, in addition to meeting the requirements of Section 552.103, the chief legal officer or employee of CLIENT determines that withholding the information is necessary to protect the CLIENT's strategy or position in pending or reasonably anticipated litigation. If any information is withheld from public disclosure in accordance with this subsection, CLIENT shall segregate said information from information that is subject to required public disclosure.

3.06 The amount recovered for purposes of the contingent fee computation is the amount obtained before expenses are deducted.

3.07 Any subcontracted legal or support services performed by a person who is not SPECIAL COUNSEL or a partner, shareholder, or employee of SPECIAL COUNSEL is an expense subject to reimbursement only after receiving written permission from CLIENT and only in accordance with Subchapter C, Chapter 2254 of the Texas Government Code.

3.08 SPECIAL COUNSEL agrees to fully indemnify, defend and hold harmless CLIENT for and from any cost or expense arising from or related to any judgment, fine, fee, penalty, award, sanction or other cost or expense, to include attorney's fees, which may be ordered, imposed on or assessed against CLIENT arising from a ruling that the claims brought were frivolous or the conduct of SPECIAL COUNSEL. To the extent sanctions are issued as a result of the conduct of one or more specific SPECIAL COUNSEL, the SPECIAL COUNSEL sanctioned will be the only counsel responsible for the indemnification.

Nueces County Hospital District

By: _____
Jonny F. Hipp, ScD, FACHE
Administrator/Chief Executive Officer

_____ Date

APPROVED BY:

Laura Garza Jimenez
Nueces County Attorney

_____ Date

The Law Office of Richard
Schechter P.C.

_____ Date

The Lanier Law Firm, P.C.

_____ Date

The Purnell Law Firm

_____ Date

Phipps Anderson Deacon, LLP

Date

Reich & Binstock LLP

Date

The Law Office of James B. Ragan

Date

APPROVED BY:

OFFICE OF THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

By: _____
Deputy Comptroller or his designee

Date