



## OFFICE OF THE COUNTY ATTORNEY

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### MEMORANDUM

DATE: October 25, 2018

TO: All Department Directors

FROM: Mitchell O. Palmer, County Attorney *M. Palmer 10/25/18*

RE: **Departmental responsibilities when the County Attorney's Office rejects a proposed contract document<sup>1</sup>**

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This memorandum provides guidance for those occasions when the County Attorney's Office (CAO) reviews and rejects a proposed contract document because of one or more objectionable contract clauses. Specifically, the focus of this memorandum is those contractual undertakings that are, overall, lawful undertakings, but wherein the CAO is forced to reject the document because one or more contract provisions unduly expose the County to liability or are otherwise indecipherable.

Examples of such clauses include, but are not limited to, refusal to acknowledge the County's self-insured status, one-sided indemnity promises, and failure to acknowledge the County's sovereign immunity protections. Additional examples are clauses that are so grammatically flawed as to render them amenable to alternative interpretations or, worse, meaningless.

Often, these situations involve a contracting party that insists on using its standard form of agreement document despite the County's efforts to negotiate changes.

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<sup>1</sup> This memorandum is issued concurrently with a memorandum addressing the County Attorney's 18-Month Rule.

\* Board Certified in Construction Law

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If the Department recommends approval of the contract document by the Board of County Commissioners, despite the CAO's rejection of the document, the Department must include commentary in the "Background Discussion" of the agenda memorandum to this effect. **The commentary must be in boldface type.** In addition, any memorandum generated by the CAO must be included as an attachment to the agenda item.

Please respect this request. Failure to include (1) the boldfaced commentary and (2) the CAO opinion memorandum, if any, as an attachment, may result in the item being pulled from the agenda. As to time sensitive undertakings, removal of an item from a County Commission agenda can have very undesirable consequences.

Copies to:

All Assistant County Attorney(s)

Ed Hunzeker, County Administrator

Dan Schlandt, Deputy County Administrator

Cheri Coryea, Deputy County Administrator

Theresa Webb, Purchasing Official, Financial Management Department

Sia Mollanazar, Deputy Director, Public Works

Joy Leggett-Murphy, Land Acquisition Division Manager, Property Management Department

Jeff Bowman, Chief Code Enforcement Officer, Building and Development Services Department

Debbie Voorhees, Contract Manager, Parks & Recreation Department

Linda Klasing, Risk Manager, Risk Management Division, County Attorney's Office