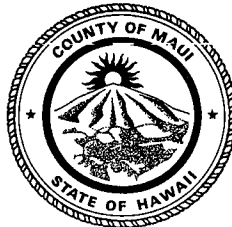


PRL-1(46)

ALAN M. ARAKAWA  
Mayor



PATRICK K. WONG  
Corporation Counsel

EDWARD S. KUSHI  
First Deputy

LYDIA A. TODA  
Risk Management Officer  
Tel. No. (808) 270-7535  
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV  
TELEPHONE: (808) 270-7740  
FACSIMILE: (808) 270-7152


OFFICE OF THE  
COUNTY COUNCIL

2018 NOV -7 PM 12:36

RECEIVED

November 7, 2018

MEMO TO: Donald S. Guzman, Chair  
Parks, Recreation, Energy, and Legal Affairs Committee

FROM: Richelle M. Thomson  
Deputy Corporation Counsel 

SUBJECT: LITIGATION AGAINST OPIOID MANUFACTURERS AND  
DISTRIBUTORS (PRL-1(46))

Transmitted herewith are a proposed resolution authorizing retention of special counsel and a bill for an ordinance authorizing the Mayor to enter into an intergovernmental agreement with the other Hawaii counties related to litigation against manufacturers and distributors of prescription opioids.

We request that these matters be heard at the committee's earliest convenience.

Should you have any questions or concerns, please do not hesitate to contact me. Thank you for your anticipated assistance in this matter.

# Resolution

No. \_\_\_\_\_

## AUTHORIZING SELECTION OF SPECIAL COUNSEL TO REPRESENT THE COUNTY OF MAUI IN LITIGATION AGAINST OPIOID MANUFACTURERS AND DISTRIBUTORS

WHEREAS, the Council of the County of Maui (“Council”) recognizes that there is an opioid epidemic in the United States of America and said opioid epidemic has damaged the County of Maui, and will continue to cause damage to the County of Maui; and

WHEREAS, the County of Maui may recover its damages by engaging in litigation against the opioid manufacturers and distributors; and

WHEREAS, the County of Kauai, Hawaii County, City and County of Honolulu, and County of Maui (“Counties”) wish to be jointly represented by special counsel to represent the Counties in litigation against the opioid manufacturers and distributors; and,

WHEREAS, the Council alone is authorized to retain or employ special counsel upon a resolution passed by two-thirds vote; and

WHEREAS, the Counties, through the County of Kauai, have identified the law firms of Auto Accident Law Center, dba Hawai'i Accident Law Center, and Napoli Shkolnik, PLLC as having the requisite skill and experience to serve as special counsel; and

**Resolution No. \_\_\_\_\_**

WHEREAS, the Council finds there is a real necessity to retain special counsel to represent the County of Maui in the opioid litigation because of the complexity of the issues; and

WHEREAS, Auto Accident Law Center, dba Hawai'i Accident Law Center, and Napoli Shkolnik, PLLC, shall be supervised by the County of Kauai's Office of the County Attorney, in cooperation with the Department of the Corporation Counsel pursuant to the proposed Professional Services Contract, attached hereto as Exhibit "1"; and

WHEREAS, Auto Accident Law Center, dba Hawai'i Accident Law Center, and Napoli Shkolnik, PLLC's conduct shall reflect their understanding that the County of Maui is a public entity that has obligations, concerns, and interests that extend beyond those of a private litigant; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the Council hereby approves and authorizes the employment of Auto Accident Law Center, dba Hawai'i Accident Law Center, and Napoli Shkolnik, PLLC, to provide legal services related to litigation against the opioid manufacturers and distributors on behalf of the County of Maui on a contingency fee basis pursuant to the proposed contract attached as Exhibit "1"; and

**Resolution No. \_\_\_\_\_**

2. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY:



---

RICHELLE M. THOMSON  
Deputy Corporation Counsel  
County of Maui

**CONTRACT NO. \_\_\_\_\_**  
**PROFESSIONAL SERVICES CONTRACT**  
**(LEGAL SERVICES)**

THIS CONTRACT is entered into this \_\_\_ day of \_\_\_\_\_ 2018, by and between the COUNTY OF KAUA'I, a political subdivision of the State of Hawaii, through its Office of the County Attorney, whose address is 4444 Rice Street, Suite 220, Lihu'e, Hawaii 96766 (hereinafter "County"), and the law firms of AUTO ACCIDENT LAW CENTER dba HAWAI'I ACCIDENT LAW CENTER and NAPOLI SHKOLNIK PLLC, whose addresses are 733 Bishop Street, Suite 2390, Honolulu, HI 96813 and 360 Lexington Avenue, 11<sup>th</sup> Floor, New York, NY 10017 respectively (hereinafter "Special Counsel").

WITNESSETH

WHEREAS, the County desires to engage Special Counsel to represent the County of Kaua'i, and other Counties of the State of Hawai'i if they so choose, in a case to be filed against various parties including but not limited to the Manufacturers, Distributors, and Marketers, and any and all other necessary parties, of prescription opioid medications, and other related matters; and

WHEREAS, this procurement is permissible as a professional services procurement pursuant to HRS 103D-304 and HAR 3-122-65, and advertised for fiscal year 2018-2019, Professional Services, Notice No. 2019-PROF-1, A.1; and

WHEREAS, the law firms of Hawai'i ACCIDENT LAW CENTER and NAPOLI SHKOLNIK, PLLC, submitted a joint resume and were one of the law firms who responded to the County's annual request for legal professional services; and

WHEREAS, a committee of three members was formed by the Office of the County Attorney to review and rate all qualified providers of legal professional services; and

WHEREAS, Special Counsel was selected by the committee; and

WHEREAS, Special Counsel is competent, qualified, ready, willing and able to render such services;

NOW, THEREFORE, in consideration of the terms, conditions and agreements contained herein on the part of Special Counsel to be performed and payment provided for herein by the County to be paid, the parties agree as follows:

1. Employment of Special Counsel. The County hereby retains Special Counsel to perform, and Special Counsel hereby agrees to perform, the services set forth in this Agreement.
2. Scope of Work. Special Counsel shall provide all such professional legal services as may be necessary to represent the County of Kaua'i, and other Counties of the State of Hawai'i if they so choose, in a case to be filed against various parties including but

not limited to the Manufacturers, Distributors, and Marketers, and any and all other necessary parties, of prescription opioid medications, and other related matters. As necessary, Special Counsel shall retain the services of other professional consultants to assist Special Counsel in the conduct of this engagement whose professional services are needed in conjunction with the performance of Special Counsel's services under this Contract. Special Counsel's retention of such professional consultants shall be subject to the County's consent except for those professional consultants who have already been retained. This recognizes the circumstance that Napoli Skholnik is involved in Opioid litigation across the nation and have already hired professional consultants prior to the execution of this contract. Special Counsel welcomes the County to review and comment of the professional consultants that have already been hired.

3. Time of Performance. Special Counsel shall begin to provide the described services upon the date set forth in the Notice to Proceed issued by the Officer in Charge.
4. Compensation. The County agrees to compensate Special Counsel on a contingency fee basis in which all parties agree that Special Counsel will only be compensated if the subject case is settled and or a verdict is received in which the County is paid damages according to the law, in accordance with the following rate schedule:
  - A. Special Counsel shall be compensated a contingency fee of TWENTY-FIVE PERCENT (25%) of a total settlement or a verdict. The contingency fee shall be calculated after the costs of litigation are deducted from the total settlement or verdict. In the event an hourly attorney's fee must be determined for the purposes of a quantum meruit attorney's fee determination prior to any settlement offer, the hourly fee shall not exceed \$325. If an offer of settlement is made by defendants, the quantum meruit attorney's fee shall be TWENTY-FIVE PERCENT (25%) of that settlement offer.

Any award of attorney's fees shall be included as part of the total settlement or the verdict. The TWENTY-FIVE (25) percent contingency attorney's fee shall be calculated from a total settlement or a verdict amount that includes an attorney fee award, if any.

- B. Costs shall be deducted from the total amount of a settlement or a verdict before the calculation for attorney's fees/client distribution is made. The TWENTY-FIVE PERCENT attorney's fee and the SEVENTY-FIVE PERCENT county portion shall be calculated from the remainder amount after the deduction of costs from a total settlement amount or a verdict. Special Counsel shall account for all reasonable out-of-pocket expenses, including but not limited to postage, telephone and telegraph communications, courier or messenger services, copying or printing of all records, and travel expenses. Special Counsel shall, as a condition of such reimbursement, present copies of all invoices and/or receipts for such out-of-pocket expenses. Reimbursement or payment for any "out-of-pocket" expenses shall be deducted from the amount of funds received in the subject case. For

copying costs, Special Counsel shall charge the County no more than 10 cents per page. The County shall pay Special Counsel one dollar (\$1) per page for outgoing facsimile charges, and Special Counsel shall not bill the County for incoming facsimiles received by Special Counsel.

For all air travel, the County will only reimburse Special Counsel the cost of an "economy" or "coach" class airline ticket.

The County is not obligated to pay any "per diem" expenses of Special Counsel. The County shall reimburse Special Counsel for any meals at reasonable cost.

The County reserves the right to be notified of and to approve of any travel for more than one person from Special Counsel's law firm.

For any hotel or off island accommodation, the County is only obligated to pay the room rate for a single occupancy, non-smoking room. The County is not obligated to reimburse Special Counsel for any expenses associated with family members.

For any car rental costs, Special Counsel shall only bill the County for no more than a compact, four-door, automatic transmission car at the lowest available price. Special Counsel shall verify that any car rental costs meet the above requirement. Any rental car shall only be used by the above named Special Counsel and NOT by any family members, friends, acquaintances or employees of Special Counsel's business or law firm.

Special Counsel is solely responsible for any fines, sanctions, violation of law, court rules or orders incurred during the performance of this agreement for Special Counsel and shall not be compensated and or reimbursed as a result thereof.

- C. The parties agree and acknowledge that Special Counsel is an independent contractor while providing professional legal services for the County. The parties further agree and acknowledge this Agreement is for special and temporary professional services and that the law applicable to regular and permanent employees, such as those relating to vacations, worker's compensation, sick leave, retirement, civil service and classification, shall not apply to Special Counsel.
- D. The parties agree and acknowledge Special Counsel shall act as co-counsel with the Office of the County Attorney.
- E. That in no event shall the County pay Special Counsel more than a total of TWENTY-FIVE PERCENT (25%) of any award of damages received by the County for professional legal services rendered as special counsel, unless this Agreement is amended by the parties hereto, in writing. The TWENTY-FIVE PERCENT (25%) shall represent attorneys fees after costs are deducted from a

total settlement or a verdict. County's SEVENTY-FIVE PERCENT (75%) portion shall be calculated from the amount after costs are deducted from a total settlement or a verdict.

- F. That Special Counsel will keep an accurate account of all time devoted to and spent in connection with this case, and will submit the same shortly after the end of each month hereafter, with certification of the services and charge, until such time as the Special Counsel's services are terminated. County may require Special Counsel to verify by notarized statement that all expenses, charges and hours listed are a true and an accurate reflection of time and resources spent in representing the County in the above entitled matter.
  - G. That in accordance with Section 103-53 of the Hawai'i Revised Statutes (Haw. Rev. Stat), the final payment on this Agreement shall not be settled until Special Counsel obtains receipt of a tax clearance from the tax commissioner of the State of Hawai'i to the effect that all delinquent taxes levied or accrued under State statutes against Special Counsel have been paid.
  - H. Both the County and Special Counsel may terminate this agreement upon THIRTY (30) days notice in writing.
  - I. That any and all payments shall be made to the firm of HAWAII ACCIDENT LAW CENTER.
  - J. Special Counsel may bill for any work performed at the direction of the Office of the County Attorney, the Mayor of the County of Kaua'i, the Director of Finance, and the Kaua'i County Council subject to the approval of the County Attorney.
  - K. Special Counsel shall include in all billing a breakdown by category of all costs.
  - L. The County shall not pay nor shall Special Counsel request any interest on any late or overdue payment of fees for legal services.
5. Changes. Subject to Chapter 103D Haw. Rev. Stat., as amended, and its implementing rules, the County and Special Counsel may from time to time, make changes in the scope of work to be performed by Special Counsel. Such changes, including any increase or decrease in the amount of compensation which is agreed upon between the County and Special Counsel, shall be effected by written amendments to this Agreement. Increases in compensation and increases in the maximum contract amount shall be subject to availability and appropriation of funds.
6. Insurance. Special Counsel shall procure and maintain, on primary basis and at its sole expense, at all times during the life of the contract insurance coverages, limits, including endorsements described in Exhibit A, incorporated herein, against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work by Special Counsel or Special Counsel's agents,



representatives, employees, or subcontractors. The requirements contained herein, as well as the County's review or acceptance of insurance maintained by Special Counsel is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Special Counsel. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions, and coverage(s) of Insurance Service Office (ISO) policies, forms, and endorsements. Special Counsel's failure to procure and or maintain insurance required under this Agreement shall constitute a material breach of the Agreement.

7. Officer-in-Charge. The County Attorney shall be the Officer-in-Charge of this Agreement, shall represent the County on all matters relating to this Agreement, and shall have the authority and responsibility to act on behalf of the County to resolve any disputes with Special Counsel relating to this Agreement.
8. General Terms and Conditions. The general terms and conditions contained in the County's General Terms and Conditions for Professional Services Contracts dated November, 2017 is hereby incorporated and made a part of this Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

RECOMMENED FOR APPROVAL

COUNTY OF KAUA'I

By \_\_\_\_\_  
County Attorney

By \_\_\_\_\_  
Director of Finance

By \_\_\_\_\_  
County Clerk

APPROVED AS TO FORM  
AND LEGALITY:

SPECIAL COUNSEL:  
HAWAI'I ACCIDENT LAW CENTER

By \_\_\_\_\_  
County Attorney

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF HAWAI'I            )  
  ) ss.  
COUNTY OF KAUA'I         )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me appeared **KEN M. SHIMONISHI**, to me personally known, who, being by me duly sworn, did say that he is the Director of Finance of the COUNTY OF KAUA'I, a political subdivision of the State of Hawai'i; that said instrument was signed on behalf of said COUNTY OF KAUA'I by authority of its Charter; and said **KEN M. SHIMONISHI** acknowledged said instrument to be the free act and deed of said COUNTY OF KAUA'I.

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_  
Notary Name: \_\_\_\_\_ Circuit  
Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
Notary Signature Date

\_\_\_\_\_  
Notary Public, State of Hawai'i  
My commission expires:

STATE OF HAWAI'I            )  
  ) ss.  
COUNTY OF KAUA'I         )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me appeared **JADE K. FOUNTAIN-TANIGAWA**, to me personally known, who, being by me duly sworn, did say that she is the County Clerk of the COUNTY OF KAUA'I, a political subdivision of the State of Hawai'i; that the seal affixed to the foregoing instrument is the seal of said COUNTY OF KAUA'I; and that said instrument was signed and sealed on behalf of said COUNTY OF KAUA'I by authority of its Charter; and said **JADE K. FOUNTAIN-TANIGAWA** acknowledged said instrument to be the free act and deed of said COUNTY OF KAUA'I.

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_  
Notary Name: \_\_\_\_\_ Circuit  
Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
Notary Signature Date

\_\_\_\_\_  
Notary Public, State of Hawai'i  
My commission expires:

STATE OF HAWAI'I )  
 ) ss.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he/she is a Partner of **HAWAI'I ACCIDENT LAW CENTER** registered to do business in the State of Hawai'i; that the foregoing instrument was signed in the name of and on behalf of said partnership, and that said Partner acknowledged that he/she executed said instrument as his/her free act and deed and as the free act and deed of said partnership.

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_  
Notary Name: \_\_\_\_\_ Circuit \_\_\_\_\_  
Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Hawai'i

\_\_\_\_\_  
Notary Signature Date

My commission expires:

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2018)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO A COOPERATIVE PURCHASING AGREEMENT WITH THE CITY AND COUNTY OF HONOLULU, HAWAII COUNTY, AND COUNTY OF KAUAI FOR LEGAL SERVICES RELATING TO POTENTIAL LITIGATION AGAINST MANUFACTURERS, DISTRIBUTORS, AND MARKETERS FOR PRESCRIPTION OPIOID MEDICATIONS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The City and County of Honolulu, County of Maui, Hawaii County, and County of Kauai (hereinafter referred to as “Employer Group”) anticipate the necessity of legal action against the manufacturers, distributors, and marketers for prescription opioid medications.

The Employer Group wishes to be jointly represented by special counsel. Each member of the Employer Group will execute a Cooperative Purchasing Agreement with the County of Maui. An example of the proposed Cooperative Purchasing Agreement between the County of Kauai and County of Maui is attached hereto and incorporated herein by reference as Exhibit “1.”

The Employer Group and County of Kauai wish to retain Auto Accident Law Center, dba Hawai'i Accident Law Center, and Napoli Shkolnik PLLC(“Firms”). A draft Professional Services Agreement between the Firms and the County of Kauai is attached hereto and incorporated herein by reference as Exhibit “2” (with internal exhibits omitted).

Section 2.20.020, Maui County Code, provides that, unless authorized by

ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof.

SECTION 2. Council authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to execute the Agreements, all other necessary documents relating to the Agreements, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:



---

RICHELLE M. THOMSON  
Deputy Corporation Counsel  
County of Maui

**COOPERATIVE PURCHASING AGREEMENT  
SPECIAL DEPUTY LEGAL SERVICES FOR AMICUS CURIAE REPRESENTATION**

- I. PURPOSE of this Agreement is to provide government entities with the opportunity to participate in a multi-jurisdictional cooperative contract. It is a means by which government entities subject to HRS chapter 103D, may join together in order to achieve cost-effective and efficient acquisition of Special Deputy legal services for representation related to a lawsuit to be filed against Manufacturers, Distributors and Marketers for prescription opioid medications. Additional benefits of the cooperative procurements are the potential administrative and contract management savings of a single cooperative contract, rather than multiple contracts for various governmental entities. Furthermore, given the trend of submitting such lawsuits to Multi-District Litigation processes ("MDL") and the probability of such a case being removed from State to Federal court and being consolidated therein the various counties find it wise to pursue a multi-jurisdictional cooperative contract.
- II. EFFECTIVE DATES OF THIS AGREEMENT shall remain in effect until the term of the contract, identified in Section V, has expired or been extended, or has been terminated for cause.
- III. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION: The County of Kauai (hereinafter "Kauai") is authorized by agreement of the participant to act as the procurement officer for this multi-jurisdictional cooperative solicitation, resulting in a master contract, pursuant to Chapter 103D, Hawaii Revised Statutes (HRS) and Chapter 3-128 Hawaii Administrative Rules (HAR) for the following services described. Jurisdictions will only be allowed to join prior to the effective date of the master contract.
- IV. TYPE OF CONTRACT: OPTIONAL  
Purchasing agencies of the jurisdiction named in Section VII are not required, but may use the resulting contract.
- V. TERM OF THE CONTRACT: The master contract is scheduled to be effective upon date of its full execution until completion of the lawsuit.
- VI. POINT OF CONTACT INFORMATION: Provide contact information below for response to inquiries regarding this cooperative purchasing agreement or to the resulting master contract.

Cooperative Purchasing Agreement (CPA)  Name: Phone Number: E-Mail Address:	Master Contract (if different than CPA contact)  Name: Mauna Kea Trask Phone Number: (808) 241-4930 E-Mail Address: mtrask@kauai.gov
---	--

- VII. PARTIES TO THIS AGREEMENT have affixed their signatures in execution of this Agreement.

City and County of Honolulu	County of Kauai
By: _____ (signature)	By: _____ (signature)
Name:	Name:
Title:	Title: Chief Procurement Officer
Date: _____	Date: _____
Approved as to form and legality:	Approved as to form and legality:
Name: _____	Name: _____
Date: _____	Date: _____

County of Maui

Hawai'i County

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

Name:

Name:

Title:

Title: Chief Procurement Officer

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

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

Approved as to form and legality:

Approved as to form and legality:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

**CONTRACT NO. \_\_\_\_\_**  
**PROFESSIONAL SERVICES CONTRACT**  
**(LEGAL SERVICES)**

THIS CONTRACT is entered into this \_\_\_ day of \_\_\_\_\_ 2018, by and between the COUNTY OF KAUA'I, a political subdivision of the State of Hawaii, through its Office of the County Attorney, whose address is 4444 Rice Street, Suite 220, Lihu'e, Hawaii 96766 (hereinafter "County"), and the law firms of AUTO ACCIDENT LAW CENTER dba HAWAI'I ACCIDENT LAW CENTER and NAPOLI SHKOLNIK PLLC, whose addresses are 733 Bishop Street, Suite 2390, Honolulu, HI 96813 and 360 Lexington Avenue, 11<sup>th</sup> Floor, New York, NY 10017 respectively (hereinafter "Special Counsel").

WITNESSETH

WHEREAS, the County desires to engage Special Counsel to represent the County of Kaua'i, and other Counties of the State of Hawai'i if they so choose, in a case to be filed against various parties including but not limited to the Manufacturers, Distributors, and Marketers, and any and all other necessary parties, of prescription opioid medications, and other related matters; and

WHEREAS, this procurement is permissible as a professional services procurement pursuant to HRS 103D-304 and HAR 3-122-65, and advertised for fiscal year 2018-2019, Professional Services, Notice No. 2019-PROF-1, A.1; and

WHEREAS, the law firms of Hawai'i ACCIDENT LAW CENTER and NAPOLI SHKOLNIK, PLLC, submitted a joint resume and were one of the law firms who responded to the County's annual request for legal professional services; and

WHEREAS, a committee of three members was formed by the Office of the County Attorney to review and rate all qualified providers of legal professional services; and

WHEREAS, Special Counsel was selected by the committee; and

WHEREAS, Special Counsel is competent, qualified, ready, willing and able to render such services;

NOW, THEREFORE, in consideration of the terms, conditions and agreements contained herein on the part of Special Counsel to be performed and payment provided for herein by the County to be paid, the parties agree as follows:

1. Employment of Special Counsel. The County hereby retains Special Counsel to perform, and Special Counsel hereby agrees to perform, the services set forth in this Agreement.
2. Scope of Work. Special Counsel shall provide all such professional legal services as may be necessary to represent the County of Kaua'i, and other Counties of the State of Hawai'i if they so choose, in a case to be filed against various parties including but



not limited to the Manufacturers, Distributors, and Marketers, and any and all other necessary parties, of prescription opioid medications, and other related matters. As necessary, Special Counsel shall retain the services of other professional consultants to assist Special Counsel in the conduct of this engagement whose professional services are needed in conjunction with the performance of Special Counsel's services under this Contract. Special Counsel's retention of such professional consultants shall be subject to the County's consent except for those professional consultants who have already been retained. This recognizes the circumstance that Napoli Skholnik is involved in Opioid litigation across the nation and have already hired professional consultants prior to the execution of this contract. Special Counsel welcomes the County to review and comment of the professional consultants that have already been hired.

3. Time of Performance. Special Counsel shall begin to provide the described services upon the date set forth in the Notice to Proceed issued by the Officer in Charge.
4. Compensation. The County agrees to compensate Special Counsel on a contingency fee basis in which all parties agree that Special Counsel will only be compensated if the subject case is settled and or a verdict is received in which the County is paid damages according to the law, in accordance with the following rate schedule:
  - A. Special Counsel shall be compensated a contingency fee of TWENTY-FIVE PERCENT (25%) of a total settlement or a verdict. The contingency fee shall be calculated after the costs of litigation are deducted from the total settlement or verdict. In the event an hourly attorney's fee must be determined for the purposes of a quantum meruit attorney's fee determination prior to any settlement offer, the hourly fee shall not exceed \$325. If an offer of settlement is made by defendants, the quantum meruit attorney's fee shall be TWENTY-FIVE PERCENT (25%) of that settlement offer.

Any award of attorney's fees shall be included as part of the total settlement or the verdict. The TWENTY-FIVE (25) percent contingency attorney's fee shall be calculated from a total settlement or a verdict amount that includes an attorney fee award, if any.

- B. Costs shall be deducted from the total amount of a settlement or a verdict before the calculation for attorney's fees/client distribution is made. The TWENTY-FIVE PERCENT attorney's fee and the SEVENTY-FIVE PERCENT county portion shall be calculated from the remainder amount after the deduction of costs from a total settlement amount or a verdict. Special Counsel shall account for all reasonable out-of-pocket expenses, including but not limited to postage, telephone and telegraph communications, courier or messenger services, copying or printing of all records, and travel expenses. Special Counsel shall, as a condition of such reimbursement, present copies of all invoices and/or receipts for such out-of-pocket expenses. Reimbursement or payment for any "out-of-pocket" expenses shall be deducted from the amount of funds received in the subject case. For

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- C. The parties agree and acknowledge that Special Counsel is an independent contractor while providing professional legal services for the County. The parties further agree and acknowledge this Agreement is for special and temporary professional services and that the law applicable to regular and permanent employees, such as those relating to vacations, worker's compensation, sick leave, retirement, civil service and classification, shall not apply to Special Counsel.
- D. The parties agree and acknowledge Special Counsel shall act as co-counsel with the Office of the County Attorney.
- E. That in no event shall the County pay Special Counsel more than a total of TWENTY-FIVE PERCENT (25%) of any award of damages received by the County for professional legal services rendered as special counsel, unless this Agreement is amended by the parties hereto, in writing. The TWENTY-FIVE PERCENT (25%) shall represent attorneys fees after costs are deducted from a

total settlement or a verdict. County's SEVENTY-FIVE PERCENT (75%) portion shall be calculated from the amount after costs are deducted from a total settlement or a verdict.

- F. That Special Counsel will keep an accurate account of all time devoted to and spent in connection with this case, and will submit the same shortly after the end of each month hereafter, with certification of the services and charge, until such time as the Special Counsel's services are terminated. County may require Special Counsel to verify by notarized statement that all expenses, charges and hours listed are a true and an accurate reflection of time and resources spent in representing the County in the above entitled matter.
  - G. That in accordance with Section 103-53 of the Hawai'i Revised Statutes (Haw. Rev. Stat), the final payment on this Agreement shall not be settled until Special Counsel obtains receipt of a tax clearance from the tax commissioner of the State of Hawai'i to the effect that all delinquent taxes levied or accrued under State statutes against Special Counsel have been paid.
  - H. Both the County and Special Counsel may terminate this agreement upon THIRTY (30) days notice in writing.
  - I. That any and all payments shall be made to the firm of HAWAII ACCIDENT LAW CENTER.
  - J. Special Counsel may bill for any work performed at the direction of the Office of the County Attorney, the Mayor of the County of Kaua'i, the Director of Finance, and the Kaua'i County Council subject to the approval of the County Attorney.
  - K. Special Counsel shall include in all billing a breakdown by category of all costs.
  - L. The County shall not pay nor shall Special Counsel request any interest on any late or overdue payment of fees for legal services.
5. Changes. Subject to Chapter 103D Haw. Rev. Stat., as amended, and its implementing rules, the County and Special Counsel may from time to time, make changes in the scope of work to be performed by Special Counsel. Such changes, including any increase or decrease in the amount of compensation which is agreed upon between the County and Special Counsel, shall be effected by written amendments to this Agreement. Increases in compensation and increases in the maximum contract amount shall be subject to availability and appropriation of funds.
6. Insurance. Special Counsel shall procure and maintain, on primary basis and at its sole expense, at all times during the life of the contract insurance coverages, limits, including endorsements described in Exhibit A, incorporated herein, against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work by Special Counsel or Special Counsel's agents,

representatives, employees, or subcontractors. The requirements contained herein, as well as the County's review or acceptance of insurance maintained by Special Counsel is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Special Counsel. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions, and coverage(s) of Insurance Service Office (ISO) policies, forms, and endorsements. Special Counsel's failure to procure and or maintain insurance required under this Agreement shall constitute a material breach of the Agreement.

- 7. Officer-in-Charge. The County Attorney shall be the Officer-in-Charge of this Agreement, shall represent the County on all matters relating to this Agreement, and shall have the authority and responsibility to act on behalf of the County to resolve any disputes with Special Counsel relating to this Agreement.
- 8. General Terms and Conditions. The general terms and conditions contained in the County's General Terms and Conditions for Professional Services Contracts dated November, 2017 is hereby incorporated and made a part of this Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the day and year first above written.

RECOMMENED FOR APPROVAL

COUNTY OF KAUA'I

By \_\_\_\_\_  
County Attorney

By \_\_\_\_\_  
Director of Finance

By \_\_\_\_\_  
County Clerk

APPROVED AS TO FORM  
AND LEGALITY:

SPECIAL COUNSEL:  
HAWAI'I ACCIDENT LAW CENTER

By \_\_\_\_\_  
County Attorney

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF HAWAI'I            )  
  ) ss.  
COUNTY OF KAUA'I         )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me appeared **KEN M. SHIMONISHI**, to me personally known, who, being by me duly sworn, did say that he is the Director of Finance of the COUNTY OF KAUA'I, a political subdivision of the State of Hawai'i; that said instrument was signed on behalf of said COUNTY OF KAUA'I by authority of its Charter; and said **KEN M. SHIMONISHI** acknowledged said instrument to be the free act and deed of said COUNTY OF KAUA'I.

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_  
Notary Name: \_\_\_\_\_ Circuit  
Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
Notary Signature Date

\_\_\_\_\_  
Notary Public, State of Hawai'i  
My commission expires:

STATE OF HAWAI'I            )  
  ) ss.  
COUNTY OF KAUA'I         )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me appeared **JADE K. FOUNTAIN-TANIGAWA**, to me personally known, who, being by me duly sworn, did say that she is the County Clerk of the COUNTY OF KAUA'I, a political subdivision of the State of Hawai'i; that the seal affixed to the foregoing instrument is the seal of said COUNTY OF KAUA'I; and that said instrument was signed and sealed on behalf of said COUNTY OF KAUA'I by authority of its Charter; and said **JADE K. FOUNTAIN-TANIGAWA** acknowledged said instrument to be the free act and deed of said COUNTY OF KAUA'I.

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_  
Notary Name: \_\_\_\_\_ Circuit  
Doc. Description: \_\_\_\_\_

\_\_\_\_\_  
Notary Signature Date

\_\_\_\_\_  
Notary Public, State of Hawai'i  
My commission expires:

STATE OF HAWAI'I )  
 ) ss.  
CITY AND COUNTY OF HONOLULU )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he/she is a Partner of **HAWAI'I ACCIDENT LAW CENTER** registered to do business in the State of Hawai'i; that the foregoing instrument was signed in the name of and on behalf of said partnership, and that said Partner acknowledged that he/she executed said instrument as his/her free act and deed and as the free act and deed of said partnership.

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_  
Notary Name: \_\_\_\_\_ Circuit  
Doc. Description: \_\_\_\_\_

\_\_\_\_\_

Notary Public, State of Hawai'i

\_\_\_\_\_  
Notary Signature Date

My commission expires: