

FUNDING AGREEMENT FY2022-23

THIS AGREEMENT is effective on October 1, 2022 between **Levy County, a political subdivision of the State of Florida** (the “County”) and **Nature Coast Business Development Council, Inc., a Florida not-for-profit corporation** (the “Council.”)

WHEREAS, the Council was incorporated under Florida law “with the primary objective of improving the quality of life in the communities it serves by furthering economic development in Levy County, Florida, and its environs”; and

WHEREAS, the Board of County Commissioners (the “Board”) has determined that encouraging and assisting with economic development within the County serves a valid public purpose consistent with Section 125.045, Florida Statutes, and to that end, the County agrees to provide funding to the Council for fiscal year 2022-23 as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein, the Parties agree as follows:

1. Services. The Council will initiate, organize and implement plans that generate economic development within the County throughout the 2022-23 fiscal year.

2. Funding. The County has budgeted \$66,400 for the 2022-23 fiscal year and will pay such amount to the Council in equal quarterly installments (on or about October 1, January 1, April 1 and July 1) of \$16,600. County funds shall be used solely for salary, operations and the services described in Section 1.

3. Reserve Funds. The Council has County funds from previous fiscal years that remain unspent and are being held in reserve by the Council. The Council may expend these reserve funds solely for salary, operations and the services described in Section 1.

4. Annual Budget and Reports. The Council shall provide the County with:

- a. The annual budget approved by the Council (to be provided by December 1, 2022);
- b. Quarterly financial and activity reports that detail Council expenditures and economic development activities for the preceding quarter (to be provided by January 31, April 30, July 31 and October 31, 2023.)
- c. An annual report, as required by Section 125.045(4), Florida Statutes, that details how County funds were spent by the Council and details the results of the Council’s efforts on behalf of the County (to be provided by December 1, 2023). **In addition, the Council shall, on behalf of the County, file a copy of the Annual Report with the State of Florida Office of Economic and Demographic Research no later than December 1, 2023.** The County will post a copy of the annual report on the County’s website.

5. Audit. The Council shall annually submit an audited financial statement to the County no later than April 1, 2023. The County shall have the right to audit the Council's books and records from time to time for compliance with the terms of this Agreement, which shall extend for a period of three (3) years after the expiration of this Agreement. The County shall, upon reasonable notice, have full access during normal business hours for inspection, review and audit of the books and records.

6. Refund. In the event this Agreement is terminated or the Council ceases to exist, the Council shall refund any County fund balance that exists at that time. This Section shall survive expiration or termination of this Agreement.

7. Term and Termination. The term of this Agreement is from October 1, 2022 through September 30, 2023. Although it is recognized that obligations herein that have due dates beyond September 30, 2023 shall survive expiration or termination of this Agreement This Agreement may be terminated by either party upon delivery of written notice thirty (30) days in advance of the termination date desired by the terminating party. Failure of the Council to comply with the terms of this Agreement may result in immediate termination of this Agreement by the County.

8. Governing Law, Venue, and Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any dispute or controversy arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder shall be brought exclusively in the Eighth Judicial Circuit in and for Levy County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. In the event it becomes necessary for the County to file a lawsuit to enforce any term or provision under this Agreement, then the County shall be entitled to its costs and attorney's fees at the pretrial, trial, and appellate levels. BY ENTERING INTO THIS AGREEMENT, COUNCIL AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the County pursuant to Section 768.28, Florida Statutes.

9. Relationship of Parties. The Parties acknowledge that their relationship is that of independent contractors. The parties acknowledge and agree that the Council's Executive Director and any other employees or contractors are employees or contractors of the Council and not employees or contractors of the County, nor shall any other employee or contractor of either Party shall be deemed an employee or contractor of the other Party. Nothing contained herein shall be construed to create a partnership or joint venture between the Parties.

10. Third Party Beneficiaries. It is specifically agreed by the parties that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof, a third-party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

11. Indemnification and Waiver of Liability. The Council agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the County, its agents, representatives, officers, directors, officials and employees from and against claims, damages, losses and expenses (including but not limited to attorney's fees, court costs and costs of appellate proceedings) relating to, arising out of or resulting from the Council's negligent acts, errors, mistakes or omissions relating to professional Services performed under this Agreement. The Council's duty to defend, hold harmless and indemnify the County its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury; sickness; disease; death; or injury to impairment, or destruction of tangible property including loss of use resulting therefrom, caused by any negligent acts, errors, mistakes or omissions related to Services in the performance of this Agreement including any person for whose acts, errors, mistakes or omissions the Council may be legally liable. The parties agree that ten dollars (\$10.00) represents specific consideration to the Council for the indemnification set forth herein. The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of the County to enforce any of the provisions hereof shall not be construed to be a waiver of the right of the County thereafter to enforce such provisions. The terms of this Section shall survive expiration or termination of this Agreement.

12. Nondiscrimination. The Council will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, handicap or marital status. The Council will take affirmative action to ensure equal opportunity in recruitment advertising, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, age, handicap or marital status as provided by any and all other applicable federal, state or local laws, rules or regulations, whether presently existing or hereafter promulgated. The Council agrees that compliance with this provision constitutes a condition to continued receipt of funds. The Council further agrees that all contractors, subcontractors, or others with whom it uses in connection with this Agreement are not discriminating against those employees in violation of this provision. Upon receipt of evidence of such discrimination, the County reserves the right to immediately terminate this Agreement.

13. Public Records. Any record created by either party in connection with this Agreement shall be retained and maintained in accordance with Florida's public records law (Chapter 119, Florida Statutes). As required by Section 119.0701, Florida Statutes, the Council must:

- A. Keep and maintain public records required by the County to perform the service.

B. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119 Florida Statutes or as otherwise provided by law.

C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Council does not transfer the records to the County.

D. Upon completion of the Agreement, transfer, at no cost, to the County all public records in possession of the Council or keep and maintain public records required by the County to perform the service. If the Council transfers all public records to the public agency upon completion of the Agreement, the Council shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Council keeps and maintains public records upon completion of the Agreement, the Council shall meet all applicable requirements for retaining the public records. All records stored electronically must be provided to the public agency, upon the request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

E. **IF THE COUNCIL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COUNCIL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT TELEPHONE: 352-486-5218, EMAIL: LEVYBOCC@LEVYCOUNTY.ORG; MAILING ADDRESS: P.O. BOX 310, BRONSON, FL 32621.**

14. Severability. If a court having appropriate jurisdiction shall deem any term or condition of this Agreement invalid or unenforceable, the remainder of the terms and conditions of this Agreement shall remain in full force and effect. This Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all the terms and provisions hereof.

15. No Assignment. Neither party shall assign or otherwise transfer its rights, duties or obligations under this Agreement, in whole or in part, without the prior written consent of the other party.

16. Entire Agreement. This Agreement contains the entire agreement of the parties, and may be amended, waived, changed, modified, extended, or rescinded only by in writing signed by the party against whom any such amendment, waiver, change, modification, extension and/or rescission is sought.

17. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

**BOARD OF COUNTY COMMISSIONERS,
LEVY COUNTY, FLORIDA**

**NATURE COAST BUSINESS DEVELOPMENT
COUNCIL, INC.**

Russell Meeks Jr., Chairman



Print name: GEORGE BUCKNER III
Chair

ATTEST:

ATTEST:

Danny J. Shipp
Clerk of the Circuit Court and Ex Officio Clerk
of the Board

Approved as to form and legal sufficiency

Nicolle M. Shalley
County Attorney

**FIRST AMENDMENT TO
FUNDING AGREEMENT FY2022-23**

This **First Amendment** is effective on February 1, 2023 between **Levy County, a political subdivision of the State of Florida** (the "County") and **Nature Coast Business Development Council, Inc., a Florida not-for-profit corporation** (the "Council.")

WHEREAS, on October 4, 2022, the Levy County Board of County Commissioners approved a Funding Agreement for FY2022-23 under which the County provides funding for the Council; and

WHEREAS, after further review by the County Finance Officer and the Council's Finance officer, it is recommended that Section 5 of the Agreement be revised - as a full audited financial statement would be a significant and unnecessary expense for the Council given its size and small amount/number of financial transactions in a given year;

NOW, THEREFORE, in consideration of the promises and mutual covenants herein, the Parties agree as follows:

Section 5 of the Funding Agreement is deleted in its entirety and replaced with a new Section 5 as set forth below. Except as amended herein, the Funding Agreement remains in full force and effect.


5. Financial Reporting and Auditing. The Council shall annually submit a balance sheet, income statement prepared on either the accrual or modified accrual basis, and a statement of cash flows for the period ending the prior September 30th to the County no later than April 1, 2023. The County shall have the right to audit the Council's books and records from time to time for compliance with the terms of this Agreement, which shall extend for a period of three (3) years after the expiration of this Agreement. The County shall, upon reasonable notice, have full access during normal business hours for inspection, review and audit of the books and records, access to pertinent electronic data and records on a read-only or inquiry basis, and may require, at Council's expense, the Council to obtain a financial statement audit by a qualified independent auditor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

**BOARD OF COUNTY COMMISSIONERS,
LEVY COUNTY, FLORIDA**

**NATURE COAST BUSINESS DEVELOPMENT
COUNCIL, INC.**

Matt Brooks, Chairman



Print name: GEORGE BURDETTE
Chair

ATTEST:

ATTEST:

Danny J. Shipp
Clerk of the Circuit Court and Ex Officio Clerk
of the Board

Approved as to form and legal sufficiency

Nicolle M. Shalley
County Attorney