

AGREEMENT FOR INTERIM COUNTY ATTORNEY SERVICES

This Agreement made and entered into this __ day of _____, 2021, by and between LEVY COUNTY, FLORIDA, a political subdivision of the State of Florida ("County") and the law firm of NABORS, GIBLIN & NICKERSON, P.A. ("NGN") for the provision of Interim County Attorney services as more particularly set forth herein.

WITNESSETH

WHEREAS, NGN represents that it has the ability to render the services as required by the County as set forth herein; and

WHEREAS, the County seeks to engage NGN to serve as interim county attorney ("Interim County Attorney").

NOW THEREFORE, in consideration of the above and the mutual covenants contained herein, the parties agree as follows:

ARTICLE I. RECITALS. The above recitals are true and correct and are incorporated herein as essential terms of this Agreement.

ARTICLE II. SCOPE OF SERVICES. NGN shall provide Interim County Attorney services in accordance with the Scope of Services set forth in EXHIBIT A attached hereto and incorporated by reference. Pursuant to Section 112.313(16), Florida Statutes, NGN and its attorneys are authorized to perform all legal services set forth in EXHIBIT A on behalf of the County.

ARTICLE III. COMPENSATION AND INVOICES.

3.1 Compensation. Compensation under this Agreement shall be as set forth in EXHIBIT B attached hereto and incorporated by reference.

3.2 Invoices for Interim County Attorney Services. NGN shall submit an invoice for the compensation for general Interim County Attorney services on a monthly basis. Each invoice will be for the prior month's service and in an amount equal to one twelfth of the agreed upon Annual Compensation amount of \$128,500 (\$10,708.33 per month). The invoice for Interim County Attorney Services shall include a summary of the actual services provided. The Annual Compensation will be prorated based on the number of days for any partial months of Interim County Attorney services.

3.3 Invoices for Litigation Services. All statements or invoices for fees and costs for Litigation services rendered, that are submitted by NGN to the County shall be submitted in detail sufficient for proper pre-audit and post-audit thereof to insure that the work performed, expense incurred, or service rendered actually took place, and that the correct amount has been charged.

3.4 Invoices for Extraordinary Services consisting of Matters Exceeding 10 Hours in Work. Services for those Interim County Attorney Services matters which will exceed ten (10) hours ("Extraordinary Services") shall be billed on an hourly basis. All statements or invoices for fees and costs for such services rendered, that are submitted by NGN to the County shall be submitted in detail sufficient for proper pre-audit and post-audit thereof to insure that the work performed, expense incurred, or service rendered actually took place, was properly authorized and that the correct amount has been charged.

3.5 Invoices for Special Services. Invoices for representation of the County with respect to the issuance of bonds, notes, or other obligations of the County, issuance of title certificates for the development of special revenue projects, specialized utility matters, or such other specialized services shall be negotiated on a project by project basis and subject to the approval of the County Coordinator. The terms for invoicing on those matters shall be determined as part of the project negotiations.

3.6 In the event a portion of an invoice submitted to the County for payment to NGN, as specified above, is disputed, payment for the disputed amount may be withheld pending resolution of the dispute, and the remainder of the invoice(s) will be processed for payment without regard to that portion which is in dispute.

ARTICLE IV. TERM AND TERMINATION.

4.1 The term of this Agreement shall be from June 25, 2021, and continue until terminated pursuant to the provisions of this Agreement.

4.2 The County or NGN may terminate this Agreement without cause by giving written notice to the other of its intent to terminate this Agreement. Such written notice of intent shall be given thirty (30) days prior to the actual date of termination unless a lesser or greater amount of time is mutually agreed to by the parties.

4.3 Upon such notification of termination, the parties shall cooperate to provide for an orderly transfer of responsibilities from NGN to its successor.

4.5 In the event sufficient budgeted funds are not available for a new monthly period, the County shall notify NGN of such occurrence and the Agreement shall terminate on the last day of the current monthly period without penalty or expense to the County. Such termination shall be deemed without cause.

4.6 The rights, duties and responsibilities of NGN shall continue in full force during the period of notice of termination set forth herein.

4.7 If the Agreement is terminated by the County or NGN as provided herein, NGN will be paid an amount which is equal to the total of all fees or costs incurred on or prior to the date of termination.

ARTICLE V. DESIGNATED PERSONNEL. Services provided by NGN to the County shall be rendered by Heather J. Encinosa, designated as the Interim County Attorney. Additional attorneys employed by NGN shall be used in the provision of legal services to the County on an as needed basis and at the direction of Heather J. Encinosa or her designee.

ARTICLE VI. INDEPENDENT CONTRACTOR. NGN is, and shall be, in the performance of the services provided herein an independent contractor and not an employee of the County. All persons engaged in the services provided herein shall at all times, and in all places, be subject to the NGN's sole discretion, supervision, and control. NGN does not have the power or authority to bind the County in any promise, agreement or representation other than as specifically provided for herein.

ARTICLE VII. OUTSIDE COUNSEL AND EXPERTS. From time to time, the Board may encounter issues which require retention of outside counsel or other experts with a specialized knowledge in a particular area. If such retention is required, NGN shall have the authority to use or retain on behalf of the County such additional experts or counsel that it deems necessary to implement the related objectives and programs of the County. Such retention shall be subject to the approval of the County Coordinator. Statements for fees and costs incurred by any approved consultant, expert or counsel, shall be first reviewed by NGN and, upon approval, submitted to the County Coordinator and/or the Board for payment, as appropriate.

ARTICLE VIII. CONTRACT ADMINISTRATION.

8.1 NGN shall accept direction from the Board; however, for ease and convenience of administration, the County hereby also designates its County Coordinator to provide policy direction and instructions to NGN in the administration of its duties hereunder to the extent that such direction and instruction does not conflict with the authority, policy or direction of the Board. The County also hereby authorizes the County Coordinator to appoint a designee to provide information, documentation, and requests to NGN related to specific Interim County Attorney Services.

8.2 NGN shall be entitled to reasonably rely upon direction received from the County Coordinator or his designee.

ARTICLE IX: CONTRACTOR REQUIREMENTS & CERTIFICATIONS.

9.1 NGN hereby certifies that it is legally entitled to enter into this Agreement with the County and that it will not be violating, either directly or indirectly, any conflict of interest statute or any other applicable laws by the performance of this Agreement.

9.2 In connection with the services to be performed under this Agreement, NGN shall comply with the applicable provisions of State and Federal Equal Employment Opportunity statutes and regulations.

ARTICLE X. GENERAL PROVISIONS.

10.1 Public Records.

IF NGN HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO NGN'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 310 SCHOOL STREET, P.O. BOX 310, BRONSON, FL 32621, PHONE: (352) 486-5218, EMAIL: LEVYBOCC@LEVYCOUNTY.ORG.

NGN must comply with the public records laws, Florida Statute Chapter 119, specifically NGN 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 contract term and following completion of the contract if the contractor does not transfer the records to the County.
- d. Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the contractor or keep and maintain public records required by the County to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor 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.

10.2 Insurance. During the term of this agreement, NGN shall maintain the following amounts of insurance as set forth on EXHIBIT C attached hereto or in a greater amount. NGN shall provide Certificates of Insurance or other evidence of the insurance coverages set out in EXHIBIT C. For each policy of insurance which is allowed by law to carry an additional named insured, the applicable Certificate of Insurance shall show "Levy County, a political subdivision

of the State of Florida, its elected officials, officers, agents, employees, and volunteers,” as additional named insured.

10.3 Conflict of Interest. NGN represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of this legal services provided herein, as provided in the standards set forth in Part III of Chapter 112, Florida Statutes. NGN shall promptly notify the County in writing of any circumstance or representation that may create a conflict of interest or other circumstance which may influence or appear to influence the NGN’s judgment or quality of service. NGN shall abide by The Florida Bar’s ethics rules and applicable provisions in Chapter 112, Florida Statutes, in the provision of the services provided herein.

10.4 Indemnification. To the fullest extent permitted by law, NGN shall indemnify and hold the County harmless, its officers and employees from liabilities, damages, losses, and costs including but not limited to reasonable attorney fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the NGN and other persons employed or utilized by the NGN in the performance of this Agreement.

10.5 Governing Law and Venue. This Agreement shall be governed by the laws of the State of Florida. Venue for all legal actions necessary to enforce this agreement shall be in Levy County, Florida.

10.6 Entire Agreement. The foregoing terms and conditions constitute the entire agreement between the parties hereto and any representation not contained herein shall be null and void and of no force or effect. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions of the parties, whether oral or written, pertaining to the subject matter hereof; however, NGN has provided services to the County and its Departments through various existing agreements. Those existing agreements shall remain in effect for the services included therein and will not be terminated or superseded by this Agreement.

10.7 Amendments. This Agreement may be amended only in writing upon mutual consent of the parties hereto. No amendment, supplement, modification or waiver of this Agreement shall be binding upon any party hereto unless executed in writing by such party. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this agreement, whether or not similar, unless otherwise expressly provided.

10.8 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

County: County Coordinator
Attn: Wilbur Dean
P.O. Box 310
Bronson, FL 32621

Interim County Attorney: Nabors, Giblin & Nickerson, P.A.
Attn: Heather J. Encinosa
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308

Either party may, by written notice given to the other party, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or three days after the date mailed.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year first hereinabove written.

LEVY COUNTY, FLORIDA

John Meeks, Chairman
Board of County Commissioners

ATTEST:

Date: _____

Clerk of the Circuit Court

APPROVED AS TO FORM:

Anne Bast Brown, County Attorney

NABORS, GIBLIN & NICKERSON, P.A

Heather J. Encinosa

Date: _____

Witnesses:

Signature

Print Name

Signature

Print Name

EXHIBIT A

SCOPE OF SERVICES

INTERIM COUNTY ATTORNEY SERVICES

NGN shall serve as the Interim County Attorney for the County and shall provide all legal services required by the County, which shall include but not limited to:

(A) Oversee and direct the implementation of internal legal activities and operations, which include planning, coordinating, administering, and evaluating projects, processes, procedures, systems and standards; ensure compliance with Federal, State and local laws, regulations, codes, and/or standards.

(B) Research and interpret the law using statutes, case law, ordinances and administrative regulations; provide legal advice, analysis, and opinions upon request for appointed County officials, administrative management staff and advisory boards concerning local government, administrative policy development, purchasing practices, real estate, code enforcement, public records, and/or other related legal issues.

(C) Prepare and/or review proposed legislation, ordinances, resolutions, contracts, deeds, leases, bond provisions and other legal documents requested by the County Commissioners, County Coordinator or management staff.

(D) Investigate complaints by or against the County; prepare cases for trial; represent the County in litigation, including administrative hearings, arbitration and civil trials before county, state and federal courts.

(E) Make informed decisions to bring regulatory, administrative and litigation matters to a cost-effective conclusion.

(F) Prepare, review, interpret and analyze a variety of information, data and reports and make recommendations based on findings.

(G) Prepare cost estimates for budget recommendations; monitor and control outside counsel expenditures.

(H) Coordinate, monitor and report to the Commission on the representation of the County by special outside counsel retained by the Commission.

(I) Attend meetings of the Board of County Commissioners and committees. Attendance at such meetings may be in-person or, in the event it is not possible for NGN to appear in person at any given meeting, via telephone or other technology.

(J) Providing such other legal services as the Board may from time-to-time direct.

EXHIBIT B
COMPENSATION

COMPENSATION FOR INTERIM COUNTY ATTORNEY SERVICES

(A) NGN shall be compensated for the Interim County Attorney services at the annual lump sum amount of \$128,500 (\$10,708.33 per month). Such amount shall be payable in twelve equal monthly installments.

(B) NGN shall submit an invoice for the compensation for Interim County Attorney Services on a monthly basis. Each invoice will be for the prior month's service and in an amount equal to one twelfth of the agreed upon Annual Compensation above. The invoice for Interim County Attorney Services shall consist of a request for payment for the prior month's service and will provide summary of the actual services provided under the general services provided as Interim County Attorney.

**COMPENSATION FOR LITIGATION AND EXTRAORDINARY
SERVICES EXCEEDING TEN (10) HOURS IN TIME**

NGN shall also provide legal services to the County in the prosecuting or defending litigation involving the County (for the purposes of this Agreement litigation is defined as those matters for which NGN serves as counsel of record for the County that are initiated by a filing in an administrative agency or tribunal or an action in state or federal court and shall also include all arbitrations and mediations) ("Litigation").

Additionally, NGN and the County recognize that in some extraordinary matters relating to Interim County Attorney Services that the amount of time involved will exceed ten (10) hours in attorney time. These types of activities may include but are not limited to the preparing, revising and reviewing extensive ordinances, policy provisions, contracts, resolutions, agreements, leases, interlocal agreements, special election ballots, procurement documents, and other legal documents on behalf of the County that are reasonably expected to require more than ten (10) hours of attorney time ("Extraordinary Services"). Prior to engaging in the provision of these Extraordinary Services, NGN shall provide written notice to the County Coordinator that the activity will exceed ten (10) hours and that the hourly billing provision for these Services will apply and shall obtain the approval of the County Coordinator prior to beginning these Extraordinary Services.

Litigation and Extraordinary Services will be compensated on an hourly basis at the following rates:

(A) NGN shall be compensated for Litigation and Extraordinary Services on an hourly basis at the following rates:

Partners	\$170 per hour
Associates	\$150 per hour
Clerks/Paralegals	\$75 per hour

(C) All statements or invoices for fees for such services rendered on Litigation and Extraordinary Services submitted by NGN to the County shall be submitted in detail sufficient for proper pre-audit and post-audit thereof to insure that the work performed, expense incurred, or service rendered actually took place, and that the correct amount has been charged.

(D) All invoices shall include documentation for costs and shall be submitted to, approved and processed for payment by the County Coordinator unless directed otherwise by the County Coordinator.

COMPENSATION FOR SPECIAL SERVICES
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NGN shall also provide various specialized services to the County, on an as needed basis (“Special Services”). These Special Services include but are limited to the following:

(A) Representing the County with respect to the issuance of bonds, notes, or other obligations of the County;

(B) Issuing title insurance commitments and policies;

(C) Preparing and implementing Special Revenue Projects for the County;

(D) Utility matters relating to capital projects, financing, rate setting, regulatory compliance, contracting, system development and enhancement.

Compensation for such Special Services shall be negotiated on a project by project basis, subject to the approval of the County Coordinator. The terms for invoicing on those matters shall be determined as part of the project negotiations.

REIMBURSEMENT OF COSTS

Under this Agreement, NGN will not charge the County for travel time on those matters which are compensated on an hourly basis.

In addition to the compensation specified above, NGN will be reimbursed for those expenses incurred which are directly related to the provision of services, including, but not limited to: copy and fax costs, long distance telephone costs, express mail and on-line research expenses.

NGN will be reimbursed for travel expenses in accordance with the provisions governing the travel of public officers and employees contained in Section 112.061, Florida Statutes.

EXHIBIT C

INSURANCE REQUIREMENTS

NGN shall maintain at a minimum, the following limits of insurance coverage during the term of this Agreement:

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| A. | Worker's Compensation | |
| | 1.) State | Statutory |
| | 2.) Employer's Liability | \$1,000,000 each accident |
| B. | Business Automobile & Commercial General Liability Insurance | \$1,000,000 each occurrence
(A combined single limit) |
| C. | Personal and Advertising Injury | \$250,000 |
| D. | Professional Liability | \$1,000,000 |

