

**AGREEMENT BETWEEN LEVY COUNTY AND
NATURE COAST BUSINESS DEVELOPMENT COUNCIL, INC.**

THIS AGREEMENT is made this ____ day of _____ 2021, between Levy County, a political subdivision of the State of Florida (the “County”), and Nature Coast Business Development Council, Inc., a Florida corporation (the “Council”).

WHEREAS, the Board of County Commissioners of the County deems it to be in the best interest and for the benefit of the health, safety, and general welfare of the citizens of the County to encourage and assist in the orderly economic development of the County; and

WHEREAS, the Council has been created, organized, and incorporated under Florida Statutes and is currently operating with the purpose of creating orderly economic development within the County; and

WHEREAS, the County has paid funds to the Council in prior fiscal years that have been unspent and held in reserve (the “Reserve Funds”); and

WHEREAS, the Board of County Commissioners of the County has agreed that the Council may utilize the Reserve Funds to supplement wage and benefit packages necessary for hiring an Executive Director; and

WHEREAS, the County has agreed to assist in funding the Council by making a budget appropriation for operations for fiscal year 2021-2022 and to provide for an annual audit of the Council financial records; and

WHEREAS, the County’s financial support of the Council as further provided herein constitutes a valid public purpose and is consistent with Section 125.045, Florida Statutes.

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

1. Services. The Council has provided certain services and expended certain funds for the purpose of organizing, initiating, and implementing plans for economic development within the County in years past and will continue to do so for the 2021-2022 fiscal year.

2. Payment. The County has budgeted the sum \$66,400 for the Council for fiscal year 2021-2022. The County shall pay such budgeted amount to the Council during the fiscal year 2021-2022 in equal quarterly installments at the beginning of each fiscal quarter. The Council shall use the foregoing funds for the purpose of promoting economic development within the County.

3. Reserve Funds. The Council may expend any portion of the Reserve Funds paid to the Council in prior fiscal years to supplement wage and benefit packages necessary for hiring an Executive Director.

4. Annual Budget and Annual Report. The Council shall provide the County with an approved Annual Budget and shall submit to the County on a quarterly basis a retroactive financial report of all expenditures, including any expenditures of the Reserve Funds, and an activities report. Annually, prior to the end of the term of this Agreement, the Council shall provide a report detailing how County funds were spent by the Council and detailing the results of the Council's efforts on behalf of the County ("Annual Report"); the Council's quarterly reports may be combined and amended as necessary to provide the Annual Report. The Annual Report shall include any information related to expenditure of any Reserve Funds. The County shall file a copy of the Annual Report with the State of Florida Office and Demographic Research and post a copy of the Annual Report on the County's website, as required by Section 125.045(4), Florida Statutes.

5. Audit. The Council shall annually submit an audited financial statement to the County no later than April 1 of each year of this Agreement. The County shall have the right to audit the Council's books and records from time to time for compliance by the EDC with the terms, conditions, limitations, restrictions, and requirements 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. The Council shall refund the County on a pro-rata basis any public fund balance and other public assets that exist at such time as the Council shall cease to exist. The terms of this Section shall survive termination of this Agreement.

7. Term and Termination. The term of this agreement shall extend from October 1, 2021, through September 30, 2022. 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 adhere to the requirements of Chapter 119 of the Florida Statutes and Section 11 below may result in immediate termination of this Agreement.

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 hereto 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 between the parties executing this Agreement that it is not intended by any of the provisions of any part of the 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 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 accordance with this Agreement shall be retained and maintained in accordance with the public records law, Florida Statutes, Chapter 119. The Council must comply with the public records laws, Florida Statute chapter 119, specifically 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

E-MAIL: 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. Termination. This Agreement may be terminated with or without cause by either party to the Agreement by providing at least ninety (90) days' prior written notice to the other party. In the event this Agreement is terminated by either party, the County shall not be liable for making any monetary contributions to the Council beyond the termination date and the Council shall refund to the County a pro-rated portion of the County's contribution for the fiscal year in which termination became effective.

17. 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.

18. 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.

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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.**

John Meeks
Chair

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:

Heather J. Encinosa
Interim County Attorney