

RESOLUTION NO. 2011-92

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS AND REQUIREMENTS OF A CONTRACT BETWEEN ST. JOHNS COUNTY, FLORIDA, AND NABORS, GIBLIN & NICKERSON, P.A., ATTORNEYS AT LAW, AND A CONTRACT BETWEEN ST. JOHNS COUNTY, FLORIDA, AND FOLEY & LARDNER, LLP, ATTORNEYS AT LAW, FOR THE PURPOSE OF PROVIDING BOND COUNSEL SERVICES TO ST. JOHNS COUNTY, AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE CONTRACTS ON BEHALF OF ST. JOHNS COUNTY

WHEREAS, periodically, **St. Johns County, Florida (County)**, has need to engage and retain the services of a law firm experienced in Florida and federal law relating to bond counsel services, county finances, county financial transactions and the incurrence of county debt (collectively referred to as **Services**); and

WHEREAS, in order to retain a law firm capable of providing such bond counsel services, the **County** issued a **Request for Proposals** which requested law firms to set forth a proposed methodology for providing said **Services**; and

WHEREAS, after **County** review of the proposals, **County** staff ranked number one the proposal submitted by **Nabors, Giblin & Nickerson, P. A., Attorneys at Law (Nabors)**, and ranked number two the proposal submitted by **Foley & Lardner, LLP, Attorneys at Law (Foley)**; and

WHEREAS, the **Board of County Commissioners of St. Johns County, Florida (Board of County Commissioners)**, authorized the **County** to enter into negotiations with **Nabors and Foley**; and

WHEREAS, the **County** desires to contract with **Nabors** to serve as principal bond counsel and **Foley** to serve as alternate bond counsel in order to receive such bond counsel services; and

WHEREAS, the **County** and **Nabors** have drafted a **Contract** (attached hereto as **Exhibit A**, and incorporated herein, including an attached and incorporated **Letter of Engagement**), which sets forth the terms, conditions, provisions and requirements associated with the **Services (Nabors Contract)**; and

WHEREAS, the **County** and **Foley** have drafted a **Contract** (attached hereto as **Exhibit B**, and incorporated herein, including an attached and incorporated **Letter of Engagement and Addendum**), which sets forth the terms, conditions, provisions and requirements associated with the **Services (Foley Contract)**; and

WHEREAS, the County has reviewed the terms, conditions, provisions and requirements of the **Nabors Contract** and the **Foley Contract**; and

WHEREAS, the County has determined that the provision of said **Services** set forth in the **Nabors Contract** and the **Foley Contract** is a proper public purpose, and is in the overall interests of the citizens of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The above Recitals are hereby incorporated into the body of this Resolution and are adopted as Findings of Fact.

Section 2. The Board of County Commissioners hereby approves the terms, provisions, conditions and requirements of the attached Professional Consulting Legal Services Agreement between St. Johns County, Florida, and Nabors, Giblin & Nickerson, P.A., Attorneys at Law, for the purpose of providing bond counsel services to St. Johns County, Florida, and authorizes the County Administrator, or designee, to execute the contract on behalf of St. Johns County.

Section 3. The Board of County Commissioners hereby approves the terms, provisions, conditions and requirements of the attached Professional Consulting Legal Services Agreement between St. Johns County, Florida, and Foley & Lardner, LLP, Attorneys at Law, for the purpose of providing bond counsel services to St. Johns County, Florida, and authorizes the County Administrator, or designee, to execute the contract on behalf of St. Johns County.

Section 4. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor or concept of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this nineteenth day of April, 2011.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

Attest:

Ram Halterman
Deputy Clerk

By:

[Signature]
Board Chair

RENDITION DATE 04/21/11

EXHIBIT A
NABORS CONTRACT

Professional Consulting Legal Services Agreement
Bond Counsel Services
To St. Johns County, Florida

THIS PROFESSIONAL CONSULTING SERVICES AGREEMENT (the "Agreement"), DATED the _____ day of _____, 2011, by and between St. Johns County, Florida, (the "County"), a political subdivision of the State of Florida, located at 500 San Sebastian View, St. Augustine, Florida 32084, and Nabors, Giblin & Nickerson, P. A., Attorneys at Law (the "Consultant"), with a place of business located at 2502 Rocky Point Drive, Suite #1060, Tampa, Florida 33607, sets forth the terms and conditions under which the Consultant will perform specified and/or detailed Bond Counsel Services, pursuant to which Consultant will perform certain consulting legal services for the County under the terms and conditions set forth below:

ARTICLE I – SERVICES

- 1.01 Consultant will perform such services as noted in the attached and incorporated form of Letter of Engagement and In connection with each bond financing requiring the services of Consultant as bond counsel will cause a Letter of Engagement to be executed on behalf of Consultant, by shareholder and key person, Steven E. Miller in substantially the form attached. If at any time during the term of this Agreement, key person Steven E. Miller is not affiliated with Nabors, Giblin & Nickerson, P.A., then the County shall have the right to terminate this Agreement, upon ten (10) days written notice to the Consultant.
- 1.02 Consultant shall not begin work on any project until Consultant receives the County's approval to begin work and executes and delivers said Letter of Engagement. If requested during the course of a project, Consultant shall give the County progress reports, whether oral or written, as the County may from time-to-time request. Consultant shall also present finished work product in a form and manner that is acceptable to the County.
- 1.03 Throughout the term of this Agreement, Consultant will be available at reasonable time to meet with designated County Representatives and attend scheduled County Commission meetings.

ARTICLE II – WARRANTIES AND REPRESENTATIONS

- 2.01 With regard to **Consultant's** performance of any and all services and obligations under this **Agreement**, **Consultant** makes the warranties and representation of this **Article II**.
- 2.02 **Consultant** will perform in a timely, professional, and ethical manner and will not use any improper methods when urging consideration of any matter.
- 2.03 **Consultant** will comply in full with all applicable Federal, State and local laws and regulations, including those which govern gifts and contributions. **Consultant** shall immediately notify **County** of any conduct on **Consultant's** part which may be in violation of any laws or regulations which govern **Consultant's** performance hereunder.
- 2.04 **Consultant** will comply with such **County** policies and procedures of which the **County** has given **Consultant** express notice. **Consultant** will immediately notify the **County** of any conduct on **Consultant's** part which may be in violation of any **County** policies or procedures which govern **Consultant's** performance hereunder.
- 2.05 **Consultant** has secured and will maintain all necessary licenses, certifications, or registrations which are required by law.

ARTICLE III – COMPLIANCE WITH LOCAL, STATE, AND FEDERAL RULES, REGULATIONS, AND LAWS

- 3.01 Both the **County**, and the **Consultant** shall abide by, and comply with, all applicable laws, rules, regulations, orders, and policies of the **County**, State, and Federal governments.

ARTICLE IV – FEES AND EXPENSES

- 4.01 Compensation for such noted Bond Counsel Consulting Services shall be established prior to commencement of each financing and shall be in accordance with **Consultant's** Proposal and as noted in each executed and accepted **Letter of Engagement**.

ARTICLE V – DURATION AND TERMINATION

- 5.01 The duration of this Agreement runs from April 1, 2011, through, and until 11:59 pm, on March 31, 2014, unless earlier terminated as provided elsewhere in this Agreement.
- 5.02 Except as noted elsewhere in this Agreement, the County may terminate this Agreement, with or without cause, on thirty (30) days written notice to Consultant at the address set forth above. Consistent with other provisions of this Agreement, Consultant will be compensated for any services and/or expenses that are authorized under this Agreement, and that are performed and/or accrued up to the date of the notice of termination.
- 5.03 This Agreement shall automatically renew every year, subsequent to the original duration, unless either the County or the Consultant, notifies, in writing, the other party that County or the Consultant does not intend to renew the Agreement. The same terms noted in this Agreement shall be in force in any automatic renewal unless the County and Consultant modify this Agreement, in the manner set forth in this Agreement.

ARTICLE VII – ACCESS TO RECORDS

- 6.01 The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials associated with this Agreement, shall be subject to applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and any other applicable State or Federal law. Access to such public records may not be blocked, thwarted, or hindered by placing the public records in the possession of a third party, or unaffiliated party.
- 6.02 The County shall have the right to consult with Consultant regarding its policies and practices governing the retention and disposal of documents and records related to Consultant's performance of this Agreement. The County shall also have the right to request that Consultant modify its policies and practices to ensure their compatibility with the County's policies and practices governing the retention and disposal of documents and records.

ARTICLE VII – INDEMNITY

- 7.01 To the extent permitted by law, the **Consultant** will indemnify and hold harmless the **County**, its affiliates and their officers, employees, directors and agents from all claims, liabilities, costs, and expenses, including reasonable attorney's fees, to the extent caused by a negligent act or omission or other wrongful conduct of **Consultant**.
- 7.02 **Consultant's** obligations to indemnify and hold harmless will survive the termination of this **Agreement**.

ARTICLE VIII– INDEPENDENT CONTRACTOR

- 8.01 **Consultant** is an independent contractor, and this **Agreement** will not be construed to create an association, partnership, joint venture, relation of principal and agent or employer and employee between the **County** and **Consultant** or any of the **Consultant's** employees within the meaning of any Federal, State, or local law.
- 8.02 **Consultant** will not enter into any agreement, oral or written, on behalf of the **County**, or otherwise obligate the **County**, without the **County's** advance written approval.

ARTICLE IX – MISCELLANEOUS

- 9.01 This **Agreement** and all matters collateral hereto will be governed by the laws of the State of Florida. Venue for any administrative and/or legal action arising under this **Agreement** shall be in St. Johns County, Florida.
- 9.02 If any provision of the **Agreement** is held invalid or unenforceable, the remaining provisions will remain in effect.
- 9.03 Notices provided will be in writing and sent by certified mail, return receipt requested. Notices to **Consultant** will be sent to the address written above. Notices to the **County** will be sent to:

Mr. Patrick F. McCormack
County Attorney
500 San Sebastian View
St. Augustine, Florida 32084

In the event that either address for the County, or the Consultant changes, then the party whose address changes must notify the other party in writing within fifteen (15) days of the address change.

- 9.04 Both the County and the Consultant acknowledge that this Agreement, including the attached and each executed Letter of Engagement, constitutes the complete agreement and understanding of the parties. Further, both the County and the Consultant acknowledge that any change, amendment, modification, or revision of this Agreement (other than automatic renewal or automatic termination, as noted elsewhere in this Agreement), shall be in writing, and shall be duly executed by duly authorized representatives of both the County, and the Consultant.
- 9.05 In light of the scope and rationale for this Agreement, neither the County, nor the Consultant, may assign, transfer, and/or sell any of the rights noted in this Agreement, or associated with this Agreement, without the express written approval of the other party. Should either the County, or the Consultant, assign, transfer, and/or sell any of the rights of this Agreement, without such prior written approval of the other party, then such action on the part of either the County, or the Consultant, shall result in the automatic termination of this Agreement, without further notice or action required on the part of the other party.
- 9.06 To the extent that the Consultant (including key personnel Steven E. Miller) needs to secure, obtain/acquire, and maintain permits, certificates, approvals and/or licenses, in order to perform the Scope of Services noted in the Agreement (which specifically includes the attached and each executed Letter of Engagement), then the Consultant (including key person Steven E. Miller) shall be solely responsible for securing, obtaining/acquiring, and maintaining any, and all, permits, approvals, certificates, and/or licenses required by Federal, State, and/or County law, rule, regulation, or ordinance.
- 9.07 Both the County, and the Consultant explicitly agree, and this Agreement explicitly states that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.
- 9.08 The failure of either party to insist upon strict performance of any term, condition, provision and/or requirement of this

Agreement, shall not be construed as a waiver of such term, condition, provision, and/or requirement on any subsequent occasion.

County

Consultant

By: _____
Signature

By: 
Signature

By: _____
Printed Name & Title

By: Steven E. Miller, Shareholder
Printed Name & Title

Date of Execution

March 29, 2011
Date of Execution

Legally Sufficient:

Deputy County Attorney

Date of Execution: _____

Cheryl Strickland, Clerk of Courts

By: _____
Deputy Clerk

Date of Execution

BOND COUNSEL ENGAGEMENT LETTER

(Date)

St. Johns County, Florida
Attn: Patrick McCormack, County Attorney
County Administration Building
500 San Sebastian View
St. Augustine, FL 32084

Re: Proposed Issuance of St. Johns County, Florida (describe bond issue)

Ladies and Gentlemen:

The purpose of this letter is to set forth the role we propose to serve and responsibilities we propose to assume as bond counsel to St. Johns County, Florida (the "Issuer") in connection with the issuance of the above-referenced bonds (the "Bonds") by the Issuer.

Bond counsel is engaged as recognized counsel specially experienced in Florida law and federal tax law relating to governmental obligations, whose primary responsibility will be to render an objective legal opinion with respect to the authorization and issuance of the Bonds and the tax treatment of interest payable on such Bonds. As bond counsel, we will examine applicable law, prepare the resolution or ordinance authorizing and securing the Bonds (the "Resolution") and other related financing documents, review certified proceedings, draft closing documents and undertake such additional duties as we deem necessary to render such opinion. The above-described services specifically include but are not limited to the following:

- a. Consultation with County officials, County staff, disclosure counsel and issuer counsel concerning all legal questions relating to the incurrence of the debt;
- b. attendance, upon request, at any meeting of the Board of County Commissioners or any meeting of staff during which the proposed debt will be considered;
- c. drafting all ordinances, resolutions and other non disclosure instruments authorizing and securing the Bonds and required in connection with their issuance utilizing the County's format for documents unless agreed otherwise;
- d. assistance to the County and its financial advisors and investment bankers in formulating financing plans pertaining to the proposed Bonds;
- e. analysis and resolutions of tax problems associated with financing plans pertaining to the Bonds, including preparation of ruling requests and contacts with the U.S. Treasury;
- f. drafting and review of all documents (other than drafting documents that are traditionally drafted by disclosure counsel) required for the sale and closing of the Bonds including without limitation resolutions, certificates, opinions, and notices of sale;
- g. drafting the form of the Bonds, supervision of the printing of the Bonds and conducting the preclosing and the closing in connection with the issuance of the Bonds;
- h. review of disclosure documents that are necessary for issuing and selling the Bonds whether by negotiated sale or competitive bid; and
- i. providing the County such other legal services and advice with respect to the Bonds as are traditionally provided by bond counsel.

Subject to the completion of proceedings to our satisfaction, we will render our opinion addressed to the County that:

1. the Issuer is a duly created and validly existing political subdivision of the State of Florida with the power to adopt the Resolution, perform the agreements on its part contained therein and issue the Bonds;
2. the Resolution has been duly adopted by the Issuer and constitutes a valid, binding and enforceable obligation of the Issuer;
3. the Bonds have been duly authorized, executed and delivered by the Issuer and are valid, binding and enforceable (limited) (general) obligations of the Issuer, payable (solely) from the sources provided therefore in the Resolution;
4. the interest paid on the Bonds will be (i) excluded from gross income for federal income tax purposes, and (ii) exempt from taxation under the laws of the State of Florida (subject to certain limitations expressed in the opinion); and
5. the Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Resolution is exempt from qualification as an indenture under the Trust Indenture Act of 1939.

The opinion will also opine as to such other matters, if any, that are at the date of closing normally included in the opinions of bond counsel for county and municipal bonds.

The opinion will be dated and executed and delivered by us in written form on the date the Bonds are exchanged for their purchase price (the "Closing") and will be based on existing law as of its date. Upon the delivery of the opinion and the filing of all appropriate closing documents, our responsibilities as bond counsel will be concluded with respect to the issuance of the Bonds. We agree, however, to provide continuing advice to the Issuer at no charge (not to exceed eight (8) hours of bond counsel time) concerning legal questions that may arise after the Closing with respect to the Bonds, including without limitation, questions concerning compliance with the Issuer's obligations under the Bonds and any actions necessary to assure that interest paid on the tax-exempt Bonds will continue to be excluded from gross income for federal income tax purposes.

In rendering the opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation. We do not review the financial condition of the Issuer, the feasibility of the project to be financed with the Bond proceeds, or the adequacy of the security provided to Bond owners, and we will express no opinion relating thereto.

As bond counsel, we will not assume or undertake responsibility for the preparation of an Official Statement or any other disclosure document with respect to the Bonds that is traditionally prepared by a disclosure counsel, nor are we responsible for performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document. Our opinion will so state. However, our responsibility will include the preparation or review of any portion thereof summarizing (a) state and federal law pertinent to the validity of the Bonds and the tax treatment of interest paid thereon, (b) the terms of the Bonds and the principal Bond documents, and (c) our opinion. In such case, we will express an opinion as to the fairness and accuracy of such descriptions, but will not express any opinion as to the accuracy, completeness or sufficiency of any disclosure statements under federal or state securities law standards.

We represent that we are currently insured (describe malpractice insurance) and will continue such insurance or its equivalent or better until the Bonds are issued or our engagement as bond counsel for the Bonds is terminated. If the Bonds are issued we will continue to remain so insured for at least six (6) years after the date of Closing.

In performing our services as bond counsel, we will serve as special counsel to the Issuer and we will represent its interests. We assume that other parties to the transaction will retain such counsel as they deem necessary and appropriate to represent their interests in the transaction. Our representation of the Issuer does not alter our responsibility to render an objective opinion as bond counsel. It does mean that we will not undertake a representation which conflicts with such representation of the Issuer, without the Issuer's prior, written, informed consent.

Based upon: (a) our current understanding of the terms, structure, size, method of sale and schedule of the financing, (b) the duties we will undertake pursuant to this letter, (c) the time we anticipate devoting to the financing, and (d) the responsibilities we assume, we agree that our fee hereunder will be \$_____. Such fee would be subject to adjustment, but only by mutual agreement, if: (i) the principal amount of the Bonds actually issued increases significantly, (ii) the Bonds are issued as separate issues, (iii) material changes in the structure or method of the financing occur, or (iv) unusual or unforeseen circumstances arise which require a significant increase in our time or responsibility (such as litigation or involvement in credit rating or enhancement negotiations).

The foregoing does not include validation. Based on the facts as we presently understand them, we will not require validation of the bonds. If validation is required by the Issuer or any other party, we will furnish drafts of suggest complaints, answers and other pleadings, proposed judgments and orders, procedural documents and notices, memoranda of law, briefs and any other appropriate documents for use by the Issuer's attorney with respect to the validation procedure and any appeal thereof without additional charge. If we are requested to participate in the proceedings, we will be pleased to do so and we will charge an extra fee for the time actually devoted at our standard hourly rates, but in no event more than \$_____ (excluding any appeal).

It is our policy to provide to you the most effective support systems available, while at the same time allocating the costs of such systems in accordance with the usage of the services by individual clients. Therefore, in addition to our fees for legal services, we also charge separately for certain costs and expense disbursements, including messenger, courier and other special communication costs; long-distance telephone and facsimile charges; document reproduction; and computer research facilities. Certain services and expenses which involve payments made to third parties include an additional charge based upon our internal costs with respect to those services and expenses. Large disbursement billings may be forwarded by us to you for direct payment by you to the supplier.

Our practice is to render one statement for professional services, disbursements and expenses at the Closing of the issue, and to receive payment in full at that time. While we will make every effort to include disbursements in the statement for the period in which the disbursements are incurred, some disbursements are not available to us until the following month in which case a supplemental statement will be rendered for these charges.

We agree that our fee for bond counsel services hereunder will be contingent upon the issuance of the Bonds. If the financing is abandoned, we will not be entitled to any fee for services but will be entitled to be reimbursed for our disbursements and expenses.

If the foregoing terms of this engagement are acceptable to you, please so indicate by returning the enclosed copy of this letter signed by an appropriate officer, retaining the original for your files.

We appreciate the opportunity to be of service to you. Our goal is to provide legal services on the most cost-efficient basis possible. If at any time you wish to discuss our billing policy and procedures, in general or in particular, we encourage you to contact us.

NAME OF FIRM

By: _____
(title)

Accepted and Approved by St. Johns County,
Florida:

By: _____
Its _____

Date: _____

EXHIBIT B
FOLEY CONTRACT

**Professional Consulting Legal Services Agreement
Bond Counsel Services
To St. Johns County, Florida**

THIS PROFESSIONAL CONSULTING SERVICES AGREEMENT (the "Agreement"), DATED the _____ day of _____, 2011, by and between St. Johns County, Florida, (the "County"), a political subdivision of the State of Florida, located at 500 San Sebastian View, St. Augustine, Florida 32084, and Foley & Lardner, LLP (the "Consultant"), with a place of business located at One Independent Drive, Suite 1300, Jacksonville, Florida 32202, sets forth the terms and conditions under which the Consultant will perform specified and/or detailed Bond Counsel Services, pursuant to which Consultant will perform certain consulting legal services for the County under the terms and conditions set forth below:

ARTICLE I – SERVICES

- 1.01 **Consultant will perform such services as noted in the attached and incorporated form of Letter of Engagement and Addendum and in connection with each bond financing requiring the services of Consultant as bond counsel will cause a Letter of Engagement and Addendum to be executed on behalf of Consultant, by partner and key person, Chauncey W. Lever in substantially the form attached. If at any time during the term of this Agreement, key person Chauncey W. Lever is not affiliated with Foley & Lardner, then the County shall have the right to terminate this Agreement, upon ten (10) days written notice to the Consultant.**
- 1.02 **Consultant shall not begin work on any project until Consultant receives the County's approval to begin work and executes and delivers said Letter of Engagement and Addendum. If requested during the course of a project, Consultant shall give the County progress reports, whether oral or written, as the County may from time-to-time request. Consultant shall also present finished work product in a form and manner that is acceptable to the County.**
- 1.03 **Throughout the term of this Agreement, Consultant will be available at reasonable time to meet with designated County Representatives and attend scheduled County Commission meetings.**

ARTICLE II – WARRANTIES AND REPRESENTATIONS

- 2.01 With regard to **Consultant's** performance of any and all services and obligations under this **Agreement**, **Consultant** makes the warranties and representation of this **Article II**.
- 2.02 **Consultant** will perform in a timely, professional, and ethical manner and will not use any improper methods when urging consideration of any matter.
- 2.03 **Consultant** will comply in full with all applicable Federal, State and local laws and regulations, including those which govern gifts and contributions. **Consultant** shall immediately notify **County** of any conduct on **Consultant's** part which may be in violation of any laws or regulations which govern **Consultant's** performance hereunder.
- 2.04 **Consultant** will comply with such **County** policies and procedures of which the **County** has given **Consultant** express notice. **Consultant** will immediately notify the **County** of any conduct on **Consultant's** part which may be in violation of any **County** policies or procedures which govern **Consultant's** performance hereunder.
- 2.05 **Consultant** has secured and will maintain all necessary licenses, certifications, or registrations which are required by law.

ARTICLE III – COMPLIANCE WITH LOCAL, STATE, AND FEDERAL RULES, REGULATIONS, AND LAWS

- 3.01 Both the **County**, and the **Consultant** shall abide by, and comply with, all applicable laws, rules, regulations, orders, and policies of the **County**, State, and Federal governments.

ARTICLE IV – FEES AND EXPENSES

- 4.01 Compensation for such noted Bond Counsel Consulting Services shall be established prior to commencement of each financing and shall be as noted in each executed and accepted **Letter of Engagement and Addendum**.

ARTICLE V – DURATION AND TERMINATION

- 5.01 The duration of this Agreement runs from April 1, 2011, through, and until 11:59 pm, on March 31, 2014, unless earlier terminated as provided elsewhere in this Agreement.
- 5.02 Except as noted elsewhere in this Agreement, the County may terminate this Agreement, with or without cause, on thirty (30) days written notice to Consultant at the address set forth above. Consistent with other provisions of this Agreement, Consultant will be compensated for any services and/or expenses that are authorized under this Agreement, and that are performed and/or accrued up to the date of the notice of termination.
- 5.03 This Agreement shall automatically renew every year, subsequent to the original duration, unless either the County or the Consultant, notifies, in writing, the other party that County or the Consultant does not intend to renew the Agreement. The same terms noted in this Agreement shall be in force in any automatic renewal unless the County and Consultant modify this Agreement, in the manner set forth in this Agreement.

ARTICLE VII –ACCESS TO RECORDS

- 6.01 The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials associated with this Agreement, shall be subject to applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and any other applicable State or Federal law. Access to such public records may not be blocked, thwarted, or hindered by placing the public records in the possession of a third party, or unaffiliated party.
- 6.02 The County shall have the right to consult with Consultant regarding its policies and practices governing the retention and disposal of documents and records related to Consultant's performance of this Agreement. The County shall also have the right to request that Consultant modify its policies and practices to ensure their compatibility with the County's policies and practices governing the retention and disposal of documents and records.

ARTICLE VII – INDEMNITY

- 7.01 To the extent permitted by law, the **Consultant** will indemnify and hold harmless the **County**, its affiliates and their officers, employees, directors and agents from all claims, liabilities, costs, and expenses, including reasonable attorney's fees, to the extent caused by a negligent act or omission or other wrongful conduct of **Consultant**.
- 7.02 **Consultant's** obligations to indemnify and hold harmless will survive the termination of this **Agreement**.

ARTICLE VIII– INDEPENDENT CONTRACTOR

- 8.01 **Consultant** is an independent contractor, and this **Agreement** will not be construed to create an association, partnership, joint venture, relation of principal and agent or employer and employee between the **County** and **Consultant** or any of the **Consultant's** employees within the meaning of any Federal, State, or local law.
- 8.02 **Consultant** will not enter into any agreement, oral or written, on behalf of the **County**, or otherwise obligate the **County**, without the **County's** advance written approval.

ARTICLE IX – MISCELLANEOUS

- 9.01 This **Agreement** and all matters collateral hereto will be governed by the laws of the State of Florida. Venue for any administrative and/or legal action arising under this **Agreement** shall be in St. Johns County, Florida.
- 9.02 If any provision of the **Agreement** is held invalid or unenforceable, the remaining provisions will remain in effect.
- 9.03 Notices provided will be in writing and sent by certified mail, return receipt requested. Notices to **Consultant** will be sent to the address written above. Notices to the **County** will be sent to:

Mr. Patrick F. McCormack
County Attorney
500 San Sebastian View
St. Augustine, Florida 32084

In the event that either address for the County, or the Consultant changes, then the party whose address changes must notify the other party in writing within fifteen (15) days of the address change.

- 9.04 Both the County and the Consultant acknowledge that this Agreement, including the attached and each executed Letter of Engagement and Addendum, constitutes the complete agreement and understanding of the parties. Further, both the County and the Consultant acknowledge that any change, amendment, modification, or revision of this Agreement (other than automatic renewal or automatic termination, as noted elsewhere in this Agreement), shall be in writing, and shall be duly executed by duly authorized representatives of both the County, and the Consultant.
- 9.05 In light of the scope and rationale for this Agreement, neither the County, nor the Consultant, may assign, transfer, and/or sell any of the rights noted in this Agreement, or associated with this Agreement, without the express written approval of the other party. Should either the County, or the Consultant, assign, transfer, and/or sell any of the rights of this Agreement, without such prior written approval of the other party, then such action on the part of either the County, or the Consultant, shall result in the automatic termination of this Agreement, without further notice or action required on the part of the other party.
- 9.06 To the extent that the Consultant (including key personnel Chauncey W. Lever) needs to secure, obtain/acquire, and maintain permits, certificates, approvals and/or licenses, in order to perform the Scope of Services noted in the Agreement (which specifically includes the attached and each executed Letter of Engagement and Addendum), then the Consultant (including key person Chauncey W. Lever) shall be solely responsible for securing, obtaining/acquiring, and maintaining any, and all, permits, approvals, certificates, and/or licenses required by Federal, State, and/or County law, rule, regulation, or ordinance.
- 9.07 Both the County, and the Consultant explicitly agree, and this Agreement explicitly states that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.

9.08 The failure of either party to insist upon strict performance of any term, condition, provision and/or requirement of this Agreement, shall not be construed as a waiver of such term, condition, provision, and/or requirement on any subsequent occasion.

County

Consultant

By: _____
Signature

By: CS _____
Signature

By: _____
Printed Name & Title

By: CHAUNCEY W. LEVER, JR. _____
Printed Name & Title
PARTNER

Date of Execution

3/29/2011 _____
Date of Execution

Legally Sufficient:

Deputy County Attorney

Date of Execution: _____

Cheryl Strickland, Clerk of Courts

By: _____
Deputy Clerk

Date of Execution

BOND COUNSEL ENGAGEMENT LETTER

(Date)

St. Johns County, Florida
Attn: Patrick McCormack, County Attorney
County Administration Building
500 San Sebastian View
St. Augustine, FL 32084

Re: Proposed Issuance of St. Johns County, Florida (describe bond issue)

Ladies and Gentlemen:

The purpose of this letter is to set forth the role we propose to serve and responsibilities we propose to assume as bond counsel to St. Johns County, Florida (the "Issuer") in connection with the issuance of the above-referenced bonds (the "Bonds") by the Issuer.

Bond counsel is engaged as recognized counsel specially experienced in Florida law and federal tax law relating to governmental obligations, whose primary responsibility will be to render an objective legal opinion with respect to the authorization and issuance of the Bonds and the tax treatment of interest payable on such Bonds. As bond counsel, we will examine applicable law, prepare the resolution or ordinance authorizing and securing the Bonds (the "Resolution") and other related financing documents, review certified proceedings, draft closing documents and undertake such additional duties as we deem necessary to render such opinion. The above-described services specifically include but are not limited to the following:

- a. Consultation with County officials, County staff, disclosure counsel and issuer counsel concerning all legal questions relating to the incurrence of the debt;
- b. attendance, upon request, at any meeting of the Board of County Commissioners or any meeting of staff during which the proposed debt will be considered;
- c. drafting all ordinances, resolutions and other non disclosure instruments authorizing and securing the Bonds and required in connection with their issuance utilizing the County's format for documents unless agreed otherwise;
- d. assistance to the County and its financial advisors and investment bankers in formulating financing plans pertaining to the proposed Bonds;
- e. analysis and resolutions of tax problems associated with financing plans pertaining to the Bonds, including preparation of ruling requests and contacts with the U.S. Treasury;
- f. drafting and review of all documents (other than drafting documents that are traditionally drafted by disclosure counsel) required for the sale and closing of the Bonds including without limitation resolutions, certificates, opinions, and notices of sale;
- g. drafting the form of the Bonds, supervision of the printing of the Bonds and conducting the preclosing and the closing in connection with the issuance of the Bonds;
- h. review of disclosure documents that are necessary for issuing and selling the Bonds whether by negotiated sale or competitive bid; and
- i. providing the County such other legal services and advice with respect to the Bonds as are traditionally provided by bond counsel.

Subject to the completion of proceedings to our satisfaction, we will render our opinion addressed to the County that:

1. the Issuer is a duly created and validly existing political subdivision of the State of Florida with the power to adopt the Resolution, perform the agreements on its part contained therein and issue the Bonds;
2. the Resolution has been duly adopted by the Issuer and constitutes a valid, binding and enforceable obligation of the Issuer;
3. the Bonds have been duly authorized, executed and delivered by the Issuer and are valid, binding and enforceable (limited) (general) obligations of the Issuer, payable (solely) from the sources provided therefore in the Resolution;
4. the interest paid on the Bonds will be (i) excluded from gross income for federal income tax purposes, and (ii) exempt from taxation under the laws of the State of Florida (subject to certain limitations expressed in the opinion); and
5. the Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Resolution is exempt from qualification as an indenture under the Trust Indenture Act of 1939.

The opinion will also opine as to such other matters, if any, that are at the date of closing normally included in the opinions of bond counsel for county and municipal bonds.

The opinion will be dated and executed and delivered by us in written form on the date the Bonds are exchanged for their purchase price (the "Closing") and will be based on existing law as of its date. Upon the delivery of the opinion and the filing of all appropriate closing documents, our responsibilities as bond counsel will be concluded with respect to the issuance of the Bonds. We agree, however, to provide continuing advice to the Issuer at no charge (not to exceed eight (8) hours of bond counsel time) concerning legal questions that may arise after the Closing with respect to the Bonds, including without limitation, questions concerning compliance with the Issuer's obligations under the Bonds and any actions necessary to assure that interest paid on the tax-exempt Bonds will continue to be excluded from gross income for federal income tax purposes.

In rendering the opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation. We do not review the financial condition of the Issuer, the feasibility of the project to be financed with the Bond proceeds, or the adequacy of the security provided to Bond owners, and we will express no opinion relating thereto.

As bond counsel, we will not assume or undertake responsibility for the preparation of an Official Statement or any other disclosure document with respect to the Bonds that is traditionally prepared by a disclosure counsel, nor are we responsible for performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document. Our opinion will so state. However, our responsibility will include the preparation or review of any portion thereof summarizing (a) state and federal law pertinent to the validity of the Bonds and the tax treatment of interest paid thereon, (b) the terms of the Bonds and the principal Bond documents, and (c) our opinion. In such case, we will express an opinion as to the fairness and accuracy of such descriptions, but will not express any opinion as to the accuracy, completeness or sufficiency of any disclosure statements under federal or state securities law standards.

We represent that we are currently insured (describe malpractice insurance) and will continue such insurance or its equivalent or better until the Bonds are issued or our engagement as bond counsel for the Bonds is terminated. If the Bonds are issued we will continue to remain so insured for at least six (6) years after the date of Closing.

In performing our services as bond counsel, we will serve as special counsel to the Issuer and we will represent its interests. We assume that other parties to the transaction will retain such counsel as they deem necessary and appropriate to represent their interests in the transaction. Our representation of the Issuer does not alter our responsibility to render an objective opinion as bond counsel. It does mean that we will not undertake a representation which conflicts with such representation of the Issuer, without the Issuer's prior, written, informed consent.

Based upon: (a) our current understanding of the terms, structure, size, method of sale and schedule of the financing, (b) the duties we will undertake pursuant to this letter, (c) the time we anticipate devoting to the financing, and (d) the responsibilities we assume, we agree that our fee hereunder will be \$_____. Such fee would be subject to adjustment, but only by mutual agreement, if: (i) the principal amount of the Bonds actually issued increases significantly, (ii) the Bonds are issued as separate issues, (iii) material changes in the structure or method of the financing occur, or (iv) unusual or unforeseen circumstances arise which require a significant increase in our time or responsibility (such as litigation or involvement in credit rating or enhancement negotiations).

The foregoing does not include validation. Based on the facts as we presently understand them, we will not require validation of the bonds. If validation is required by the Issuer or any other party, we will furnish drafts of suggest complaints, answers and other pleadings, proposed judgments and orders, procedural documents and notices, memoranda of law, briefs and any other appropriate documents for use by the Issuer's attorney with respect to the validation procedure and any appeal thereof without additional charge. If we are requested to participate in the proceedings, we will be pleased to do so and we will charge an extra fee for the time actually devoted at our standard hourly rates, but in no event more than \$_____ (excluding any appeal).

It is our policy to provide to you the most effective support systems available, while at the same time allocating the costs of such systems in accordance with the usage of the services by individual clients. Therefore, in addition to our fees for legal services, we also charge separately for certain costs and expense disbursements, including messenger, courier and other special communication costs; long-distance telephone and facsimile charges; document reproduction; and computer research facilities. Certain services and expenses which involve payments made to third parties include an additional charge based upon our internal costs with respect to those services and expenses. Large disbursement billings may be forwarded by us to you for direct payment by you to the supplier.

Our practice is to render one statement for professional services, disbursements and expenses at the Closing of the issue, and to receive payment in full at that time. While we will make every effort to include disbursements in the statement for the period in which the disbursements are incurred, some disbursements are not available to us until the following month in which case a supplemental statement will be rendered for these charges.

We agree that our fee for bond counsel services hereunder will be contingent upon the issuance of the Bonds. If the financing is abandoned, we will not be entitled to any fee for services but will be entitled to be reimbursed for our disbursements and expenses.

If the foregoing terms of this engagement are acceptable to you, please so indicate by returning the enclosed copy of this letter signed by an appropriate officer, retaining the original for your files.

We appreciate the opportunity to be of service to you. Our goal is to provide legal services on the most cost-efficient basis possible. If at any time you wish to discuss our billing policy and procedures, in general or in particular, we encourage you to contact us.

NAME OF FIRM

By: _____
(title)

Accepted and Approved by St. Johns County,
Florida:

By: _____
Its _____

Date: _____



PROPOSED ADDENDUM TO FORM OF ENGAGEMENT LETTER WITH ST. JOHNS COUNTY, FLORIDA

This Addendum is attached to and made a part of the Bond Counsel Engagement Letter between St. Johns County, Florida and Foley & Lardner LLP (the "Firm"). In the event of any conflict between this Addendum and the Engagement Letter, this Addendum shall control. The Engagement Letter is modified to include the following:

1. The scope of the engagement of the Matter may include providing Federal tax advice to the County. To The extent applicable, the Firm has established policies and procedures intended to ensure compliance with United States Department of the Treasury Circular 230, which governs standards of practice before the Internal Revenue Service. In that light, we wish to emphasize that the Firm is engaged to provide only legal services and that (1) the Firm is not engaged to verify facts, and attorneys of the Firm will not undertake to verify facts in the course of representation; (2) the Firm is not engaged to verify the accuracy of financial analysis, financial projections, or similar reports, and is not engaged to render any opinions regarding the accuracy of such reports; (3) the Firm is not engaged as experts in valuation, and is not engaged to render opinions concerning valuation matters; and (4) the Firm is not engaged as experts in engineering or similar disciplines, and is not engaged to render opinions relating to such matters. Although Circular 230 generally contemplates that attorneys must not rely upon unreasonable factual representations and assumptions in providing Federal tax advice, the Firm does not purport to have special expertise in non-legal disciplines to evaluate the reasonableness of any such factual representations or assumptions.
2. Foley & Lardner LLP is a limited liability partnership under the laws of Wisconsin. This means the County's right to recover damages in a legal malpractice action that may exceed our insurance and Firm assets is limited to the personal assets of the attorneys whose acts or omissions gave rise to the County claim.
3. We will retain our own files pertaining to the Matter, including material prepared by or for the internal use of our attorneys. These include the Firm's administrative records, time and expense reports, personnel and staffing materials, credit and accounting records, internal attorneys' work product (such as drafts, notes, internal memoranda and legal and factual research), written and electronic communications, pleadings, and investigative reports. The Firm has internal policies that determine the retention periods for closed representation files. Therefore, if the County does not request return of this file material, the Firm reserves the right to destroy it at the end of the defined retention period; provided, however, we will comply with any records retention schedule which may be provided to us by the County. Upon the County's reasonable request, the Firm will provide such portions of these file materials to the County as required by the applicable rules of professional responsibility or other legal requirements. Unless applicable rules of professional responsibility require an earlier return, we may retain such file material pending receipt of payment of any outstanding fees or costs.



Foley & Lardner LLP

By: _____

Name/Title: _____

Accepted and Approved by St. Johns County, Florida:

By: _____

Its: _____

Date: _____