

RESOLUTION NO. 2011-93

**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 FOLEY & LARDNER, LLP, ATTORNEYS AT LAW, FOR THE PURPOSE OF PROVIDING DISCLOSURE COUNSEL SERVICES TO ST. JOHNS COUNTY, AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE CONTRACT 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 disclosure 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 disclosure 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 the selected firms; and

**WHEREAS**, because the **County** is contracting with **Nabors** to serve as principal bond counsel for the **County** and the **County** desires to engage separate disclosure counsel, the **County** desires to contract with **Foley** in order to receive such disclosure counsel services; and

**WHEREAS**, the **County** and **Foley** have drafted a **Contract** (attached hereto as **Exhibit A**, 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 **Foley Contract**; and

**WHEREAS**, the County has determined that the provision of said Services set forth in 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 Foley & Lardner, LLP, Attorneys at Law, for the purpose of providing disclosure 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. 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:

Pam Halteman  
Deputy Clerk

By:

[Signature]  
Board Chair

RENDITION DATE 04/21/11



**EXHIBIT A**  
**FOLEY CONTRACT**

**Professional Consulting Legal Services Agreement  
Disclosure 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 Disclosure 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 disclosure counsel services 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 Disclosure 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:  \_\_\_\_\_  
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

## DISCLOSURE COUNSEL ENGAGEMENT LETTER

(Date)

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

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

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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 disclosure counsel to St. Johns County, Florida (the "Issuer") in connection with the issuance of the above-referenced bonds (the "Bonds") by the Issuer.

Disclosure counsel is engaged as recognized counsel specially experienced in Florida law and federal law relating to disclosure requirements that pertain to governmental debt obligations, whose primary responsibility will be to render an objective legal opinion with respect to the County's issuance of the Bonds and its compliance with Rules 10(b)-5 and 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934. As disclosure counsel, we will examine applicable law, draft all required disclosure documents; review such other financing documents of the Issuer 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. Consult with County officials, County staff, bond counsel and issuer counsel concerning disclosure requirements, questions and issues relating to the initial issuance the Bonds and concerning continuing disclosure requirements.
- b. Attend upon request any meeting of the County or any meeting of County staff relating to disclosure matters that pertain to the County's issuance of the Bonds.
- c. Draft the County's bond purchase agreement in the event the Bonds are offered pursuant to a negotiated sale.
- d. Draft the County's public sale solicitation documents in the event the Bonds are offered pursuant to a competitive bid, or proposal.
- e. Draft the County's preliminary and final official statements in connection with the Bond offering.
- f. Supervise and coordinate the printing and delivery of the preliminary and final official statements.
- g. Review all Bond documents prepared in connection with the issuance of the Bonds to the extent such documents involve or affect disclosure matters.

- h. Provide a written Rule 10(b)-5 and Rule 15c2-12 (Securities and Exchange Commission) disclosure opinion to the County at the time the Bonds are issued.
- i. Consult with County officials and staff regarding all matters relating to continuing disclosure requirements that pertain to the Bonds, specifically to include those imposed by Securities and Exchange Commission Rule 15c2-12.
- j. Consult with County officials and staff concerning disclosure questions that may arise with respect to the Bonds after they are issued.
- k. Provide the County such other legal services and advice with respect to the Bonds as are traditionally provided by disclosure counsel.

Subject to the completion of proceedings to our satisfaction, we will render our opinion addressed to the County and the underwriter that will include, without limitation, substantially the following:

- a) in the course of preparation of the Official Statement, we participated in conferences with certain officials and employees of, and counsel and consultants for, the county, including but not limited to, its bond counsel and its financial advisor. Our discussions in the conferences did not disclose to us any information which gives us reason to believe that the Official Statement (except as to the financial and demographic information, engineering and statistical data included in the Official Statement, and the information and statements provided under the headings "BOOK-ENTRY ONLY SYSTEM," "FINANCIAL GUARANTY INSURANCE POLICY" and "THE "2004 RESERVE ACCOUNT INSURANCE POLICY" and in the Appendices, (to be modified as applicable) as to which we do not express any opinion) contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; and
- b) the Disclosure Certificate, together with the Official Statement, satisfy the requirements contained in Rule 15c2-12(b)(5) promulgated by the United States Securities and Exchange Commission for the issuance of the Bonds and for provision of the information at the times and in the manner required by said rule.

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 disclosure 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 disclosure 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 disclosure counsel time) concerning legal questions that may arise after the Closing with respect to disclosure issues or questions that relate to the Bonds, including without limitation, questions concerning compliance with the Issuer's disclosure

obligations under the Bonds and any actions necessary to assure that the Issuer performs its continuing disclosure responsibilities with respect to the Bonds.

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.

As disclosure counsel, we will not assume or undertake responsibility for the preparation of the bond resolution or any other nondisclosure document with respect to the Bonds that is traditionally prepared by bond counsel. However, our responsibility will include the preparation or review of any portion thereof that is necessary to render our disclosure counsel opinion with respect to the Bonds.

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 disclosure counsel 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 disclosure 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 disclosure 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, or (iii) unusual or unforeseen circumstances arise which require a significant increase in our time or responsibility.

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 disclosure 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: \_\_\_\_\_



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

This Addendum is attached to and made a part of the Disclosure 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.



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Foley & Lardner LLP

By: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Accepted and Approved by St. Johns County, Florida:

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**Laura Taylor**

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**From:** Jean Mangu [jmangu@edcolaw.com]  
**Sent:** Wednesday, March 30, 2011 1:45 PM  
**To:** Laura Taylor  
**Cc:** Michael Hunt; Patrick McCormack; Diane Lehmann; Judy Hamilton; Bridget Mein  
**Subject:** April 19 BCC Meeting - Two Agenda Items - Bond Counsel Agreements and Disclosure Counsel Agreement  
**Attachments:** Bond Counsel Agenda Item for April 19, 2011 BCC Meeting.PDF; Disclosure Counsel Agenda Item for April 19, 2011 BCC Meeting.PDF; Agenda Cover Sheet - Bond Counsel Contracts - Nabors & Foley V2.doc; Agenda Cover Sheet - Disclosure Counsel Contract - Foley V2.doc; 2011ResolutionBondCounselNaborsandFoleyV1.doc; 2011ResolutionDisclosureCounselFoleyV1.doc  
**Importance:** High

Laura,

Attached please find two complete agenda items for the April 19 BCC meeting. Michael has approved these items.

The first is for a resolution approving two (2) Bond Counsel agreements, one with Nabors Giblin and another with Foley & Lardner.

The second is for a resolution approving a Disclosure Counsel agreement with Foley & Lardner.

Also attached separately are the Word version of each agenda cover sheet and each resolution (without the exhibit(s) attached).

I have two signed originals of each agreement and will have them delivered to the County Attorney's office so they will be available for execution after the April 19 meeting. After execution, one signed original should be retained by the County and the other signed original should be sent to the applicable law firm.

If you have any questions or concerns, please don't hesitate to call. Thank you for your assistance with these agenda items.

Jean

**JEAN M. MANGU**  
**EDWARDS COHEN**

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Jacksonville, Florida 32202  
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