



AGENDA REPORT
July 10, 2018

Brevard County v. The State of Florida

SUBJECT:

Increase Fee Budget for Blue Origin Bond Validation Suit

FISCAL IMPACT:

Increase from \$35,000.00 to \$75,000.00 coming from North Brevard Development District funds.

DEPT/OFFICE:

County Attorney Office

REQUESTED ACTION:

Authorize increase in fee budget for Nabors, Giblin & Nickerson to continue bond validation lawsuit at the Circuit Court Level from a fee budget of \$35,000.00 to a Not to Exceed (NTE) fee budget of \$75,000.00.

SUMMARY EXPLANATION and BACKGROUND:

On December 19, 2018, the Board of County Commissioners approved filing a bond validation suit to solidify the County's authority to borrow up to \$8,100,000 to satisfy the grant incentive payable in lump sum to Blue Origin. Under the terms of the engagement, the North Brevard Development District and the Board of County Commissioners authorized Nabors, Giblin and Nickerson (NG&N) to proceed. At the time, fees were estimated to not exceed \$35,000.00. At this point in the litigation, NG&N has incurred \$28,357.50 in fees. With the intervention of the Clerk of Court in the lawsuit, the Clerk has now instituted significant amounts of discovery. The Clerk anticipates 18 hours of depositions and has reserved three days for trial. NG&N has requested that the North Brevard Development District and the Board of County Commission approve up to \$75,000.00 in fees, which should be adequate to complete discovery and to try the case at the circuit court level. The trial is currently set for July 30-August 1, 2018. On June 22, 2018, the North Brevard Development District voted to increase NG&N's fee budget to \$75,000.00.

CLERK TO THE BOARD INSTRUCTIONS:

Return signed acceptance of letter to the County Attorney's Office (CAO) and the North Brevard Development District for their records. CAO will forward to NG&N.

ATTACHMENTS:

Description

- **Letter from Nabors, Gibling & Nickerson; Previous Retainer Letter with NTE Limits On It.pdf**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

July 11, 2018

MEMORANDUM

TO: Eden Bentley, County Attorney Attn: Christine Schverak

RE: Item F.31., Acceptance of Letter and Authorization for Increase of the Fee Budget for the Brevard County v. State of Florida - Blue Origin Bond Validation Suit

The Board of County Commissioners, in regular session on July 10, 2018, accepted and authorized the Letter for increase of the fee budget for Nabors, Giblin & Nickerson to continue the Blue Origin Bond Validation lawsuit at the Circuit Court Level from \$35,000 to a Not to Exceed (NTE) fee budget of \$75,000, and coming from the North Brevard Development Economic District funds for the Brevard County v. State of Florida. Enclosed is the executed Letter for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/ds

Encl. (1)

cc: NBEDZ Director
Finance
Budget

TALLAHASSEE
1500 Mahan Drive
Suite 200
Tallahassee, Florida 32308
(850) 224-4070 Tel
(850) 224-4073 Fax

Nabors
Giblin &
Nickerson P.A.
ATTORNEYS AT LAW

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(813) 281-2222 Tel
(813) 281-0129 Fax

FORT LAUDERDALE
110 East Broward Boulevard
Suite 1700
Fort Lauderdale, Florida 33301
(954) 315-3852 Tel

Reply to Tallahassee

June 19, 2018

Via Electronic Mail

Eden Bentley, County Attorney
Brevard County Attorney's Office
2725 Judge Fran Jamieson Way, Suite C-308
Viera, Florida 32940
eden.bentley@brevardfl.gov

Re: Brevard County, Florida, and the North Brevard Development District
v. The State of Florida, etc.
Case No. 05-2018-CA-018298 (18th Cir., Brevard Co.)
Agreement for Legal Services

Dear Ms. Bentley:

As you are aware, our firm is representing Brevard County, Florida, in the validation of the note to fund the reimbursement grant to Blue Origin of Florida, LLC, ("Blue Origin") which is a condition of the Incentive Agreement entered into between the North Brevard Economic District and Blue Origin. Under the terms of the engagement, our fees were limited at the trial level to \$35,000.00. At this point in the litigation, we have incurred \$28,357.50 in fees, related to our engagement on this matter. Absent any significant escalation of the litigation, we would anticipate being able to conclude this matter without any additional funding. However, as a result of the intervention by the Clerk, there clearly appears to be significantly more work required than originally contemplated. As you are aware, the Clerk initially filed a Motion to Dismiss our Complaint for Validation, which required us to address the issues raised in a memo and subsequently have a hearing to argue the Motion to Dismiss. That Motion was denied.

Eden Bentley, County Attorney
June 19, 2018
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The attorney for the Clerk has now instituted significant amounts of discovery that will render the original cap insufficient. At this point the Clerk has indicated that he wishes to take the deposition of five separate witnesses and has estimated that he will need 18 hours to complete these depositions. The Clerk has also disclosed that they intend to call four witnesses and two experts. Though not all of these need to be deposed, there are several who we would recommend that we do depose. Finally, the Clerk's attorney has indicated that he has requested three (3) days to try the Bond Validation. We personally feel that, that is excessive, but the Court has set aside this time in order to try the case. As a result of the escalation of the litigation by the Clerk, we feel that it is highly likely that we will exceed the \$35,000.00 cap. At this point, we believe that not to exceed the amount should be increased to \$75,000.00. We will continue to strive to minimize any additional costs but at this point, the Clerk is substantially escalating the costs of litigation.

Should you have any questions, please feel free to contact me.

Sincerely,



for Gregory T. Stewart

GTS:lll

cc: (via Electronic Mail)
CHRISTINE M. SCHVERAK
Assistant County Attorney
christine.schverak@brevardfl.gov

ACCEPTED:

By: 

Rita Pritchett, Chair
Brevard County, Florida

ATTESTED:


Scott Ellis, Clerk

AS APPROVED BY THE BOARD ON JULY 10, 2018



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

February 9, 2018

MEMORANDUM

TO: Scott Knox, County Attorney

RE: Item V.B., Payment of Debt Service on Financing of Blue Origin Grant Agreement for Blue Origin Validation

This is to correct memorandum of January 24, 2018. The Board of County Commissioners, in regular session on December 19, 2017, adopted Resolution No. 17-257, authorizing the issuance of its Non-Ad Valorem Revenue Note, Series 2018; approved Interlocal Agreement between the North Brevard Economic Development District and Brevard County relating to the payment of debt service on financing of Blue Origin Grant Agreement; authorized retaining bond counsel Nabors, Giblin & Nickerson to file a bond validation suit, not to exceed \$35,000 at the circuit court level and \$25,000 at the appellate level, seeking court approval of Brevard County borrowing up to \$8,100,000 to satisfy the grant incentive payable in lump sum to Blue Origin; and further, as the bond validation proceeding is expected to be ongoing when the incentive is due to Blue Origin, the Board of County Commissioners authorized the North Brevard Economic Development District to make the first payment to Blue Origin in the amount of \$1.379 million within 120 days of receipt of the Certificate of Occupancy (CO). Enclosed is certified copy of Resolution, executed Interlocal Agreement, and Nabors, Giblin & Nickerson bond counsel judicial validation document for your action.

Upon execution by the North Brevard Economic Development District and you, please return the fully-executed Interlocal Agreement, and the Nabors, Giblin & Nickerson document to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

for: Donna Scott
Tammy Rowe, Deputy Clerk

/ds

Encls. (3)

cc: NBEDZ Director
County Manager
Finance
Budget

TALLAHASSEE
1500 Mahan Drive
Suite 200
Tallahassee, Florida 32308
(850) 224-4070 Tel
(850) 224-4073 Fax

**Nabors
Giblin &
Nickerson P.A.**
ATTORNEYS AT LAW

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FORT LAUDERDALE
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(854) 315-9882 Tel

Reply to Tallahassee

November 27, 2017

Via Electronic Mail

Scott Knox
County Attorney
Brevard County, Florida
2725 Judge Fran Jamieson Way
Viera, Florida 32940
Scott.Knox@brevardcounty.us

Re: Validation of Brevard County, Florida
Non-Ad Valorem Revenue Note Series 2018

Dear Mr. Knox:

It is my understanding that Brevard County, Florida is seeking the judicial validation of its proposed Non-Ad Valorem Revenue Note Series 2018. We would be pleased to represent the County in those and related proceedings.

We propose that the legal services for such proceedings be compensated on an hourly basis at the following hourly rates which are consistent with the provisions of Section 4 of the Firm's Bond Counsel Retainer Agreement relating to Ancillary Services:

- Partners: \$275.00 per hour
- Associates: \$225.00 per hour
- Law Clerks: \$ 75.00 per hour

> NOT TO EXCEED \$35,000 AT CIRCUIT COURT LEVEL
NOT TO EXCEED \$25,000 AT APPELLATE LEVEL

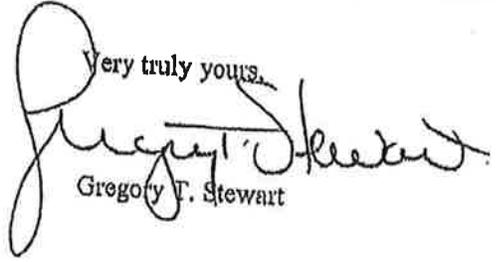
Time spent in travel would not be charged.

In addition to such legal fees, the firm will expect to be reimbursed for actual costs incurred on long-distance telephone charges, travel expenses and overnight delivery charges. Photocopies will be billed at 25 cents per page. Such fees and costs would be billed on a monthly basis and submitted to the County for fees and costs incurred the previous month.

Ex. D

Scott Knox
County Attorney
November 27, 2017
Page 2

If you have any questions or desire any further information, please feel free to call us at any time.

Very truly yours,

Gregory T. Stewart

GTS:III

ACCEPTED:

By: 
Scott Knox RITA PRITCHETT, CHAIR
County Attorney
Brevard County, Florida

AS APPROVED BY THE BOARD ON December 19, 2017