

**Gulf Consortium
November 28, 2012
Agenda Item # 6**

Statement of Issue or Executive Summary: As a public entity, the Gulf Consortium requires the professional services of a General Counsel in order to provide legal assistance and advice.

Background: The Gulf Consortium has multiple responsibilities for ensuring proceedings and actions are compliant with Florida Law. A General Counsel, and the expertise they provide, can help ensure the Gulf Consortium will comply.

Analysis: At the last Gulf Consortium meeting, the Interim Manager (FAC) was authorized to draft a contract with Nabors, Giblin & Nickerson, and P.A. to secure the services of an Interim General Counsel. The attached contract accomplishes the direction given to the Manager.

Options:

- 1) Approve the contract as presented and authorize the Administrative Officer to execute the contract.
- 2) Provide other direction.

Fiscal Impact: \$250 per hour for services provided, NOT TO EXCEED \$5000 per month without prior authorization of the Consortium. Travel expenses will be paid, in addition to the amounts above, in accordance with Section 112.061, Florida Statutes.

Recommendation:

Approve a motion directing the Administrative Officer to execute the contract.

Division and Staff Person's Name: Doug Darling, Florida Association of Counties.

Moved *Comm Constance*; Seconded *Comm Whitmore*

Action: Approved *✓*; Approved as amended _____; Defeated _____.

AGREEMENT FOR INTERIM GENERAL COUNSEL SERVICES

THIS AGREEMENT is made and entered into this 22nd of October, 2012 by and between the Gulf Consortium, a legal entity and public body organized and existing under the laws of the State of Florida (hereinafter referred to as the "Consortium") and Nabors, Giblin & Nickerson, P.A., whose business address is 1500 Mahan Drive, Suite 200, Tallahassee, Florida 32308 (hereinafter referred to as the "General Counsel").

WITNESSETH:

WHEREAS, the Consortium desires to obtain the professional services of the General Counsel to provide general legal services to aid in conducting the business of the Consortium until such time as an ongoing general legal counsel is selected; and

WHEREAS, the General Counsel represents that it has expertise in the type of professional services that will be required by the Consortium.

NOW, THEREFORE, in consideration of the following mutual premises, covenants, provisions, representations, agreements and provisions, the parties hereto agree as follows:

ARTICLE I

GENERAL COUNSEL SERVICES

SECTION 1.01. DEFINITIONS. As used in this Agreement, the following terms shall have the following meanings unless the context hereof otherwise requires.

"Additional Services" means the legal services described in Sections 2.01 and 2.02 hereof.

"Agreement" means this Agreement for General Counsel services, including any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

"Basic Services" means the legal services described in Sections 1.02 and 1.03 hereof.

"Board" shall mean the Board of Directors of the Consortium.

"Consortium" means the Gulf Consortium, a legal entity and public body created by interlocal agreement pursuant to section 163.01(7), Florida Statutes.

"Fiscal Year" means the period commencing on October of each year and continuing through the next succeeding September 30, or such other period as may be established as the fiscal year for the Consortium.

"Interlocal Agreement" means the interlocal agreement entered into by participating counties pursuant to section 163.01(7), Florida Statutes, creating the Consortium and establishing its charter.

"Manager" means the Florida Association of Counties, as interim manager, or its successor under contract with the Consortium.

"RESTORE Act" means the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

SECTION 1.02. BOARD MEETINGS. General Counsel shall provide to the Consortium the following General Counsel services and legal advice to support the Board at its meetings:

- (A) review all agenda materials in advance and where necessary provide comment and advice as to form and legality;
- (B) attend all Board meetings upon reasonable notice; and
- (C) be available to provide advice, conduct legal research and render opinions on legal issues raised by the Board and relating to the functions of the Board and the Consortium.

SECTION 1.03. GENERAL COUNSEL. The General Counsel will provide to the Consortium and its Manager the following General Counsel services:

- (A) provide legal advice and assistance on the transition of the Gulf Consortium in its early stages of its existence from its initial creation to the full functioning of the Gulf Consortium
- (B) provide general advice and legal research on the powers and authority of the Consortium under its charter established by the Interlocal Agreement and Florida law;
- (C) draft and review resolutions, agreements or other documentation required by the Consortium or the Board in the performance of its duties under the Interlocal Agreement and Florida law;

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(D) research and provide advice on the RESTORE Act and rules and regulations thereunder, and compliance therewith; and

(E) be available to provide Additional Services as directed by the Board or the Manager.

SECTION 1.04. COMPENSATION FOR GENERAL COUNSEL SERVICES.

(A) In consideration for the performance of General Counsel services to be provided pursuant hereto, the Consortium agrees to pay the General Counsel a fee of \$250 per hour for each General Counsel attorney providing services. However, the Consortium shall not be obligated to pay the General Counsel more \$5,000 per month, unless the Board approves an amount in excess of \$5,000. (B) Compensation shall be paid at one-half (1/2) the hourly rate specified above for the hours incurred in travel from the host office of the attorney performing legal services to the location where Consortium Board meetings are conducted and to such other locations where services are required to be provided.

ARTICLE II

ADDITIONAL SERVICES

SECTION 2.01. DEVELOPMENT OF THE PLAN. The parties acknowledge that the Consortium has been formed for the purpose of, among other things, developing the plan to be developed by "a consortium of local political subdivisions" as set forth in the RESTORE Act. The General Counsel may be asked to evaluate information developed by the Consortium's plan consultants and other professionals, and make recommendations to the Board.

SECTION 2.02. OTHER ADDITIONAL SERVICES. The Board or the Manager may request the General Counsel to perform other legal services, including litigation, and to research or prepare legal opinions beyond the scope of the services called for in Sections 1.02 and 1.03 of this Agreement. Such services shall be deemed Additional Services.

SECTION 2.03. COMPENSATION AND AUTHORIZATION.

(A) At the request of the Manager or the Board, prior to commencement, the General Counsel shall submit an estimate of the anticipated cost of any proposed Additional Services for approval.

(B) All legal services hereunder shall be authorized by the Manager or the Consortium Board.

SECTION 2.04. REIMBURSEMENT OF COSTS. In addition to the legal fees or other compensation provided in this Agreement, General Counsel shall be reimbursed for costs incurred on long distance telephone charges, travel expenses,

overnight delivery charges and photocopies. Any travel expenses shall be reimbursed in accordance with section 112.061, Florida Statutes.

ARTICLE III

GENERAL PROVISIONS

SECTION 3.01. TERM OF AGREEMENT. This Agreement shall be for a term commencing on October 22, 2012, and ending on September 30, 2013. However, the term hereof may be extended by mutual agreement of the parties for successive 24 month periods.

SECTION 3.02. QUALIFIED PROFESSIONALS REQUIRED. The General Counsel services to be provided hereunder relate to legal services which require that all professionals assigned to assist the Consortium be members of the Florida Bar in good standing.

SECTION 3.03. INSURANCE.

(A) During the term of this Agreement, the General Counsel shall provide, pay for, and maintain, with a company satisfactory to the Consortium, the professional liability insurance described herein. Such insurance shall be from a responsible company duly authorized to do business in the State of Florida or responsible risk retention group insurance companies registered with the State of Florida. The insurance coverage and limit required must be evidenced by a properly executed certificate of insurance on a form which is acceptable to the Consortium. The certificate must be personally, manually signed by the authorized representatives of the insurance company shown on the certificate with proof that the representative is an authorized representative. In addition, certified, true and exact copies of the insurance policy required shall be provided to the Consortium, on a timely basis, if required by the Consortium. The certificate and policy shall contain a provision that thirty days written

notice by registered or certified mail shall be given the Consortium of any cancellation, intent not to renew, or reduction in the policy's coverage, except in the application of the aggregate limits provisions. In the event of a reduction in the aggregate limit of the policy, the General Counsel shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. The acceptance by the Consortium of any certificate of insurance evidencing the insurance coverage and limits required in this Agreement does not constitute approval or agreement by the Consortium that the insurance requirements have been met or that the insurance policy shown on the certificate of insurance is in compliance with the requirements of this Agreement.

(B) Professional Liability insurance shall be maintained with limits not less than \$2,000,000. If coverage is provided on a claims made basis then coverage must be continued for the duration of this Agreement and for not less than one year thereafter, or in lieu of continuation, provide an "extended reporting clause" for one year.

(C) If any insurance provided pursuant to this Agreement expires during the term hereof, a renewal certificate of insurance and, if requested by Consortium, a certified, true copy of the renewal policy shall be furnished by General Counsel thirty days prior to the date of expiration.

SECTION 3.04. SUBCONTRACTORS. The services to be performed hereunder shall be performed by General Counsel, unless otherwise authorized in writing by the Consortium, which shall not be unreasonably withheld. The employment of, contract with, or use of the services of any other person or firm by General Counsel,

as independent contractor or otherwise, shall be subject to the prior written approval of the Consortium. No provision of this Agreement shall, however, be construed as constituting an agreement between the Consortium and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against the Consortium beyond such as may otherwise exist without regard to this Agreement.

SECTION 3.05. DEFAULT AND TERMINATION. The General Counsel serves at the pleasure of the Board. The General Counsel shall have the right to terminate this Agreement upon 60 calendar days written notice to the Consortium. The General Counsel shall be entitled to payment for professional fees earned and reimbursable costs incurred prior to the date of such termination.

SECTION 3.06. DISCLOSURE. General Counsel represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder.

SECTION 3.07. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes all prior other and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein.

SECTION 3.08. AMENDMENTS AND WAIVERS. No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by all parties hereto. No waiver of any of the provisions of this Agreement

shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

SECTION 3.09. NOTICES. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the parties at the following address:

Consortium: Gulf Consortium
c/o Florida Association of Counties
100 South Monroe Street, Suite 100
Tallahassee, Florida 32301
Attention: Chris Holley

General Counsel: Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
Attention: Sarah Bleakley, Esq.

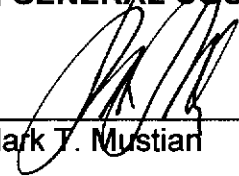
Either of the parties may, by notice in writing given to the other party, designate any further or different addresses which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or facsimile transmission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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for General Counsel services on the day and year first written above.

GULF CONSORTIUM

By: _____

**NABORS, GIBLIN & NICKERSON,
P.A., GENERAL COUNSEL**

By: _____
Mark T. Mustian