

Clay County Agreement/Contract No. 2020/2021-_____

**2021-2022 PROFESSIONAL SERVICES AGREEMENT
[Independent Contractor for Family Court Magistrate Services]**

This 2021-2022 Professional Services Agreement (“Agreement”) is made and entered into this _____ day of September, 2021, by and between Clay County, a political subdivision of the State of Florida (the “County”), and K. Beth Luna, an individual (the “Contractor”), for professional magistrate services to be provided within the County for the Circuit Court, Fourth Judicial Circuit of Florida (the “Court”).

RECITALS

WHEREAS, by ordinance codified in Sec. 2-1, Clay County Code, the County’s Board of County Commissioners has imposed the \$65 court cost authorized under Section 939.185, Florida Statutes (“\$65 Funds”); and

WHEREAS, as provided under Section 939.185(1), Florida Statutes, twenty-five percent of the \$65 Funds collected shall be allocated to fund innovations, as determined by the chief judge of the circuit, to supplement state funding for the elements of the state courts system identified in Section 29.004, Florida Statutes (“Innovations Allocation”); and

WHEREAS, the elements of the state courts system identified in Section 29.004, Florida Statutes, include, under subsection (8) thereof, general magistrates and special magistrates; and

WHEREAS, the Chief Judge of the Court has requested that the County fund services for a contractor to serve as a Family Court Magistrate for the Court from the proceeds of the Innovations Allocation; and

WHEREAS, the County intends to provide funding for a contractor to serve as a Family Court Magistrate for the Court from the proceeds of the Innovations Allocation as requested by the Chief Judge for the County’s Fiscal Year commencing October 1, 2021, and ending at midnight on September 30, 2022 (“Service Period”); and

WHEREAS, the County wishes to engage the Contractor as the Family Court Magistrate for the Service Period and the Contractor agrees to the engagement under the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing Recitals, the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged and all objections to the sufficiency and adequacy of which are hereby waived, the parties agree as follows:

1. Scope of Services. During the Service Period, the Contractor will serve as a Family Court Magistrate for the Court, and in such capacity shall perform the following services (“Services”):

- (a) Conduct hearings and prepare reports and recommendations to the Court and proposed orders for the Court in the following family law cases and proceedings and Baker Act cases and proceedings involving both pro se litigants and attorneys:

- (1) Dissolution of marriage;
- (2) Annulment;
- (3) Support unconnected with dissolution of marriage;
- (4) Child support;
- (5) Proceedings under the Uniform Interstate Family Support Act;
- (6) Paternity;
- (7) Disestablishment of paternity;
- (8) Parenting plans and time-sharing;
- (9) Proceedings for temporary or concurrent custody of minor children by extended family;
- (10) Name changes;
- (11) Dependency hearings;
- (12) Marchman Act; and
- (13) Baker Act.

- (b) Conduct hearings and prepare reports and recommendations to the Court and proposed orders for the Court in proceedings for the modification and enforcement of orders entered in cases and proceedings under subparagraph (a).

2. Service Standards. In performing the Services, the Contractor shall:

- (a) Efficiently manage the Contractor's assigned caseload and prepare the required reports and recommendations and proposed orders timely;
- (b) Conduct all legal research as may be required;
- (c) Remain current on the laws and rules of court applicable to the Services;
- (d) Provide coverage for other magistrate hearings when necessary and directed by the Court's Administrative Judge in the County (the "Administrative Judge") or the Lead Magistrate in the County; and,
- (e) Exercise the highest degree of ethics, professionalism and ability.

3. Supervision. The Services provided by the Contractor shall be as assigned by the Administrative Judge and the Lead Magistrate of the Court. The work product for the Services provided by the Contractor is subject to the review and approval of the Administrative Judge and the Lead Magistrate of the Court. During the Service Period, the Contractor will be under the general supervision of the Administrative Judge.

4. Venue. All Services provided by the Contractor shall be limited to cases and proceedings of the Court lodged within the County.

5. Invoicing and Payments.

- (a) For all Services provided by the Contractor in accordance with paragraph 1 during the Service Period, the County will pay the Contractor \$50.00 per hour not to exceed one hundred thirty (130) hours per calendar month. The Contractor shall submit a written invoice to the Administrative Judge on a monthly basis in time-sheet format, indicating the dates and times of Services. Following the signed authorization by the Administrative Judge, the Contractor shall ensure the submittal of each invoice to the County for payment of Services provided under this Agreement. In no event shall the Contractor receive any payment for any Services provided by the Contractor in accordance with paragraph 1 outside of the Service Period.
- (b) The County shall pay the Contractor in accordance with the Local Government Prompt Pay Act as set forth in Part VII of Chapter 218, Florida Statutes.
- (c) The Contractor will not be reimbursed for mileage or any other expense associated with the Services.
- (d) The maximum obligation on the part of the County to pay the Contractor under this Agreement shall never exceed the total appropriation of the Innovations Allocation during the fiscal year of the County within which the Service Period occurs that is not otherwise encumbered under agreements heretofore entered into between the County and third parties.
- (e) In the event that sufficient unencumbered appropriated funds within the Innovations Allocation are not available, the County shall promptly notify the Contractor in the manner provided under subparagraph (b) of paragraph 6, as well as the Administrative Judge, whereupon this Agreement shall be deemed terminated without penalty or expense to the County or to the Court.

6. Term of Agreement; Termination.

- (a) The effective date of this Agreement is October 1, 2021, and this Agreement shall terminate at midnight on September 30, 2022.
- (b) The County may terminate this Agreement without cause by providing written notice to the Contractor thirty (30) days prior to termination by certified U.S. mail, which notice shall be deemed effective upon being deposited in the mail. The County shall also provide a copy of such notice to the Administrative Judge. Upon termination, the County is obligated to pay for Services already performed by the Contractor at the time of termination, but not yet paid by the County.

- (c) If, in the opinion of the Administrative Judge, the Contractor, for any reason, has failed to fulfill the Contractor's obligations under this Agreement in a timely manner, or if the Contractor violates any provision of this Agreement, or if, in the sole discretion of the Administrative Judge, the Contractor's work product is not acceptable, or if the Contractor's Services are not required due to cancellation or rescheduling of the Family Court program, the County may terminate this Agreement effective immediately upon written notice to the Contractor served by certified U.S. mail, which notice shall be deemed effective upon being deposited in the mail, and the County shall have no obligation to pay the Contractor for any Services not performed prior to that date. The County shall also provide a copy of such notice to the Administrative Judge.

7. Indemnification. The Contractor shall be liable, agrees to be liable for, and shall indemnify, defend and hold the County, the Court, the Florida Supreme Court, the Florida State Courts System, and each of their principals, officers and employees harmless from all claims, suits, judgments and damages including court costs and attorney's fees arising out of intentional acts, negligence or omissions by the Contractor in the course of the operations of and performance pursuant to this Agreement.

8. Scrutinized Companies Certification: In compliance with Section 287.135(5), Florida Statutes, the undersigned hereby certifies that the Contractor is not participating in a boycott of Israel as defined in Section 287.135(1), Florida Statutes; is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List as referred to in Section 287.135(2), Florida Statutes; and does not have business operations in Cuba or Syria as defined in Section 287.135(1), Florida Statutes. In accordance with Section 287.135(3), Florida Statutes, the County shall have the option of terminating this Agreement if the Contractor is found to have submitted a false certification as provided under Section 287.135(5), Florida Statutes, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as defined in Section 287.135(1), Florida Statutes.

9. Miscellaneous Provisions.

- (a) Governing Law and Venue. This Agreement shall be governed, construed and enforced under and pursuant to the laws and rules of the State of Florida, and the United States of America. Unless the parties otherwise agree, any action to interpret and/or enforce this Agreement shall be brought and maintained in the Fourth Judicial Circuit, in and for Clay County, Florida.
- (b) Severability. The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and, notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause,

term, or condition held to be illegal or void renders the balance of the Agreement impossible to perform. No waiver by either party of any term or condition of this Agreement will be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different paragraph, subparagraph, clause, phrase, or other provisions of this Agreement.

- (c) Construction. This Agreement sets forth the entire Agreement between the parties with respect to the subject matter hereof, and no purported amendment or modification of this Agreement shall be binding upon either party unless the same has been reduced to writing and signed by both parties. The parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the party who prepared this Agreement. The general maxim of interpretation of contracts (that a contract shall be construed against the drafter) shall not apply to the interpretation of this Agreement.
- (d) Independent Contractor. The parties declare and specifically intend that the Contractor is an independent contractor and not an agent or employee of the County, the Court, the Florida Supreme Court or the Florida State Courts System, and is not entitled to receive any benefits available to the employees thereof, or to any coverage under the workers compensation or unemployment insurance thereof.
- (e) Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the Contractor, the County, and their respective successors and permitted assigns.
- (f) Records Retention and Auditing.
 - (1) The Contractor will maintain all records made or received by the Contractor in conjunction with the Contractor's obligations under this Agreement in accordance with Rules 2.420 and 2.440, Florida Rules of Judicial Administration. Violation of this provision will be grounds for immediate termination of this Agreement in the manner provided under subparagraph (c) of paragraph 6.
 - (2) The Contractor will retain all records relating to the Contractor's duties under this Agreement for a period of at least five (5) years after final payment is made. The records include any supporting documentation necessary to adequately evaluate and substantiate payments made under this Agreement.
 - (3) The Contractor will maintain a file available for inspection by the Administrative Judge or the designee of the Administrative Judge containing documentation of all costs associated with this Agreement.

The Contractor will maintain the file until otherwise notified by the Trial Court Administrator for the Court ("TCA") or for a period of four (4) years following the termination date of this Agreement, whichever occurs first. The County may unilaterally terminate this Agreement in the manner provided under subparagraph (b) of paragraph 6 if the Contractor refuses or otherwise fails to allow public access to all documents, papers, letters or other material made or received by the Contractor in conjunction with this Agreement for which public access is required by law.

- (4) The Court may reproduce any written materials generated as a result of the Contractor's work without any additional compensation being paid or owed to the Contractor, and the Contractor shall not be deemed to have any intellectual property rights or interests in any of the work product produced by the Contractor in performing the Services.
- (5) The County and the TCA shall have the right to audit all files and records created or maintained by the Contractor under this subparagraph. The Administrative Judge, the TCA, or any of their designees shall have the right, at any time or place, to inspect and review the Services performed by the Contractor, including but not limited to documents, reports and audio or video recordings or transcripts of proceedings, and to assess the quality of Services provided by the Contractor. The Administrative Judge and the TCA may reject any Services that do not meet the highest standards of professionalism, in which case no payment will be due for such Services rejected under this clause.
- (g) **Attorney's Fees.** In the event either party shall retain an attorney to litigate on its behalf against the other party regarding the enforcement or interpretation of this Agreement or regarding the rights, remedies, obligations or liabilities of the parties arising under this Agreement, the party prevailing on the majority of its claims, or which successfully defends against a majority of the other party's claims, shall be entitled to an award of reasonable attorney's fees and costs against the other party, including fees and costs incurred from the date of referral of the dispute to the prevailing party's attorney through the conclusion of litigation, or incurred in bankruptcy or on appeal. Nothing contained herein is intended to serve as a waiver of sovereign immunity and extend the County's liability beyond the limits established in Section 768.28, Florida Statutes. The provisions of this paragraph shall survive any termination of this Agreement.
- (h) **Insurance and Taxes.** The Contractor shall be solely responsible for procuring appropriate insurance as well as filing income taxes, FICA, and any other withholdings from the Contractor's own compensation, and the Contractor shall comply with all federal, state, and local tax laws.
- (i) **Remedies.** The rights and remedies set forth in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law or in equity.

- (j) Acts of God. Performance of this Agreement by either party is subject to acts of God, disaster, strikes, civil disorders, curtailment of transportation facilities, or other emergencies making it impossible or illegal to provide Services under this Agreement.
- (k) Non-assignability; Subcontracting. All Services shall be performed exclusively by the Contractor and shall not be assigned to another individual without prior written permission of the County and the Administrative Judge. The Contractor may not subcontract any Services to be provided pursuant to this Agreement. Neither this Agreement nor any of the Contractor's rights or obligations may be assigned by the Contractor unless agreed to by the parties in writing.
- (l) Conflict of Interest. Throughout the Service Period, the Contractor must not accept nor perform any other employment, assignments of contracts nor obligations that would conflict with the Contractor's duties and obligations provided under this Agreement.
- (m) Public Use of the Name of the Fourth Judicial Circuit.
 - 1. The Contractor shall not refer to the Court or the Fourth Judicial Circuit or any of its judges or courts, in advertising, news releases, brochures, catalogs, television and radio advertising, letters of reference, websites, or any other media used generally by the Contractor in its commercial marketing initiatives, in such a way that it represents or implies that the Court prefers or endorses the products or services offered by the Contractor. This provision will not be construed as limiting the Contractor's ability to refer to the Court as one of its customers through the County.
 - 2. The Contractor shall not make or permit to be made any public release of information pertaining to this Agreement without prior written approval of the Administrative Judge and the Trial Court Administrator for the Court.
- (n) Integration. This Agreement constitutes the entire agreement between the parties and supersedes all prior written or oral understandings between the parties. This Agreement may only be amended, supplemented, or modified by a written instrument signed by each of the parties.
- (o) Non-exclusivity. This Agreement is a non-exclusive contract and does not create an exclusive relationship between the County and the Contractor. The Contractor shall be free to provide services that are not in conflict with the Services to be provided under the Agreement, and the County shall be free to obtain similar professional services from other contractors.

- (p) Compliance with State and Federal Laws. The Contractor shall provide Services in compliance with the requirements of the ordinances of the County, and federal and state laws, included but not limited to, the Americans With Disabilities Act of 1990 and Title II of the 1964 Civil Rights Act. The Contractor by entering into this Agreement represents that the Contractor has adopted and will maintain a policy on nondiscrimination throughout the term of this Agreement. On written request by the County, the Administrative Judge or the TCA, the Contractor shall permit reasonable access to its records of employment, employment advertisement, application forms, and other pertinent data and records by the representatives of the County or the Court for the purpose of investigating compliance with the nondiscrimination provisions of this Agreement. To the extent applicable, the Contractor must comply with Chapter 119, Florida Statutes (Public Records); Section 286.011, Florida Statutes (Public Meetings); and Rule 2.430, Rules of Judicial Administration. Violation of any part of this subparagraph by Contractor will be grounds for termination of this Agreement by the County in the manner provided under subparagraph (b) of paragraph 6.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (904) 278-4754, publicrecords@claycountygov.com, POST OFFICE BOX 1366, GREEN COVE SPRINGS, FLORIDA 32043.

- (q) Waiver of Breach. No waiver by the County of any breach of any provision of this Agreement by the Contractor shall constitute a waiver of any other breach of either the same provision or of any other provision by the Contractor. The failure of the County to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof or any other provisions.
- (r) The Contractor acknowledges that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on behalf of each as of the date and year first above-written.

**Clay County, a political subdivision of the
State of Florida**

By: _____
Mike Cella
Its Chairman

ATTEST:

Tara S. Green
Clay County Clerk of Court and Comptroller
Ex Officio Clerk to the Board

Contractor

By: _____
K. Beth Luna

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In his official capacity as Administrative Judge of the Circuit and County Courts of Clay County, Florida, the undersigned does hereby approve this Professional Services Agreement in Green Cove Springs, Clay County, Florida.

Don H. Lester
Administrative Judge