

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR LEVY COUNTY, FLORIDA

LEVY COUNTY, FLORIDA, a political
subdivision of the State of Florida,

Plaintiff,

vs.

CASE NO. 2024-CA-000078

DANNY J. SHIPP, Clerk of Circuit Court,
for Levy County, Florida,

Defendant.

_____ /

REQUEST FOR CASE MANAGEMENT CONFERENCE

Plaintiff, LEVY COUNTY, FLORIDA (the "County") by and through its below-signed attorneys, request the Court to schedule a Case Management Conference in the above-styled cause and as grounds therefore states:

1. This action was instituted on April 22, 2024 by the filing of a Petition for Issuance of Writ of Mandamus by the County (the "Petition"), against the Clerk of the Court of Levy County, Florida (the "Clerk"). On April 23, 2024, a copy of the Petition was provided to the Judicial Assistant for Judge DeThomasis, along with a proposed Alternative Writ of Mandamus, for the Court's consideration. A copy of that correspondence is attached hereto as Exhibit "A".

2. On April 25, 2024, the Clerk filed a Motion to Dismiss Facially Insufficient Petition for Issuance of Writ of Mandamus directed to the sufficiency of the Petition. A copy of the motion is attached as Exhibit "B".

3. The issues raised in the Petition directly relate to the effective administration of the County's budgetary and financial functions. These include the respective obligations and responsibilities of both the County's budget office and the Clerk in the functions.

4. The County request the Court to schedule Case Management Conference to address the orderly resolution of the issues in this matter and the establishment of a schedule to address matters related to the County's Petition and the Clerk's Motion to Dismiss.

WHEREFORE, the County prays that the Court schedule a hearing, a Case Management Conference, to consider the scheduling of matters related to these proceedings in the above-styled cause.

Respectfully submitted,

/s/ Gregory T. Stewart

GREGORY T. STEWART
Florida Bar No. 203718
MATTHEW R. SHAUD
Florida Bar No. 122252
LISA B. FOUNTAIN
Florida Bar No. 948802
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**ATTORNEYS FOR PLAINTIFF
LEVY COUNTY, FLORIDA**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by Electronic Mail via the Florida Courts E-Filing Portal, as authorized by Fla. R. Jud. Admin. 2.516, on this 7th day of May 2024, to:

STANLEY H. GRIFFIS III, ESQUIRE
The Griffis Law Firm, LLC
13 SE 1st Avenue
Chiefland, Florida 32626
(352) 535-2948
stan@griffislawoffice.com

**ATTORNEY FOR DEFENDANT
DANNY J. SHIPP, CLERK OF THE
CIRCUIT COURT AND COMPTROLLER,
LEVY COUNTY**

/s/ Gregory T. Stewart

GREGORY T. STEWART

UNOFFICIAL
DOCUMENT

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Tallahassee, Florida 32308
(850) 224-4070 Tel
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Reply to Tallahassee

**Nabors
Giblin &
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ATTORNEYS AT LAW

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8201 Peters Road
Suite 1000
Plantation, Florida 33324
(954) 315-0268 Tel

April 23, 2024

Via Electronic Mail

Honorable Craig C. DeThomasis
Circuit Court Judge
Levy County Courthouse
355 South Court Street
Bronson, Florida 32621
hagans@circuit8.org

Re: Levy County, Florida v. Danny J. Shipp
Case No. 2024-CA-000078 (8th Jud. Cir., Levy Co.)

Dear Judge DeThomasis:

This office represents Levy County, Florida in the above-referenced matter. For the Court's consideration, enclosed please find a proposed alternative writ of mandamus. Also enclosed is a courtesy copy of the Petition for Issuance of Writ of Mandamus (the "Petition") filed with the Court on April 22, 2024.

Should you find the Petition establishes a *prima facie* case for relief, I respectfully request the proposed alternative writ be entered. Upon entry, the County will serve the Petition and alternative writ upon the Defendant as required by law.

Thank you for your attention to this matter.

Respectfully,



Matthew R. Shaud
Counsel for Plaintiff, Levy County, Florida

MRS:III

Enclosures

cc: Gregory T. Stewart, Esq.
Lisa B. Fountain, Esq.

Exhibit "A"

**IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR LEVY COUNTY, FLORIDA**

LEVY COUNTY, FLORIDA, a political
subdivision of the State of Florida,

Plaintiff,

vs.

CASE NO.

DANNY J. SHIPP, Clerk of Circuit Court,
for Levy County, Florida,

Defendant.

PETITION FOR ISSUANCE OF WRIT OF MANDAMUS

Plaintiff, LEVY COUNTY, FLORIDA (the “County”) by and through its undersigned counsel, sues Defendant, DANNY J. SHIPP, Clerk of the Court of Levy County, Florida, (the “Clerk”), files this Petition for Issuance of Writ of Mandamus, and alleges as follows:

INTRODUCTION

1. This is an action seeking the issuance of a writ of mandamus directed to the Clerk to prohibit the interference with the lawful actions of the County in the establishment of a designated budget office, and to allow access by the County budget officer to the County’s financial records necessary to facilitate the establishment of a County budget office and the preparation and administration of the budget of the County.

JURISDICTION AND VENUE

2. This court has jurisdiction to issue a writ of mandamus under Article V, Section 5(b) of the Florida Constitution, and Florida Rule of Civil Procedure 1.630.

3. Venue is proper in Levy County, Florida, as all parties are located therein and all activities which form the basis of the above action occurred in Levy County.

PARTIES

4. The County is a political subdivision of the state and a non-charter County under the Constitution of the State of Florida.

5. The Clerk is the duly elected Clerk of the Court for Levy County, Florida.

GENERAL ALLEGATIONS

6. Chapter 129, Florida Statutes, requires the Levy County Board of County Commissioners (the “Board”) to annually prepare and adopt a balanced County Budget, that includes all Constitutional Officers. This County Budget process must occur within a strict statutory timeframe in order for property taxes to be levied and collected to fund the adopted Budget.

7. To facilitate the mandatory requirement of preparing and adopting a County Budget, both for County functions but also the various Constitutional Officers, section 129.025, Florida Statutes, sets out various alternatives for designation of the primary entity responsible for that process. That provision states as follows:

129.025 County budget officer. —

(1) Each board of county commissioners may designate a county budget officer to carry out the duties set forth in this chapter. Unless the board designates a different officer, the clerk of the circuit court or the county comptroller, if applicable, shall be the budget officer for the purposes of this chapter.

(2) The Legislature finds that the duties of county budget officer set forth in this chapter do not fall within the constitutional responsibilities performed by the several clerks of the circuit court as auditor and custodian of county funds. The position of county budget officer shall not constitute an office in the meaning of s. 5, Art. II of the State Constitution.

§ 129.025, Fla. Stat.

8. The provision of section 129.025, Florida Statutes, makes two specific determinations as to the selection of a budget officer relevant to the matter. First, that the responsibility for the designation of a budget officer is exclusively the responsibility of the Board of County Commissioners. Second, that the duties of budget officer do not fall within the scope of the Clerk of the Court's constitutional responsibilities as the auditor and custodian of county funds. Therefore, the determination to designate a budget officer other than the Clerk has no impact on the duties and responsibilities of the Clerk under the law.

9. Pursuant to the statutory authority, on July 8, 1980, the Board adopted a Resolution designating Doulgas M. McKoy, Clerk of the Circuit Court, as Budget Officer for Levy County.

10. To facilitate the Clerk's and County's Financial Systems, the County and the Clerk on May 22, 1999, obtained a license and software agreement for Financial Information Management Systems from an entity known as America Data Group Software ("ADG"). A copy of the Agreement is attached as **Exhibit "A"**. The funding for this license and software agreement was by the County. The ADG Financial Management Information System provided numerous functions both for the Clerk and the County including general ledger, budget preparation, financial statements, accounts receivable, accounts payables, and payroll/personnel with check reconciliation. It also had options for the management of building permit systems and occupational license and business license components. The agreement also was priced for two databases consisting of the Clerk's office and the Board's functions. ADG's shared Payroll, Budget, and Finance Fund Management System has been used since it was acquired for the preparation of the County Budget and all related accounting functions. County employees from all departments have user access in the ADG system and use it daily in the performance of their duties. The ADG

system allows each user to be set up with access to the functions that are necessary and relevant for their position.

11. On May 15, 2017, the Board adopted Resolution Number 2017-015, which repealed the July 8, 1980 Resolution and designated the Clerk of the Circuit Court for Levy County as the County Budget Officer to carry out the duties set forth in Chapter 129, Florida Statutes. The Defendant was the Clerk of the Circuit for Levy County at the time of the adoption of Resolution Number 2017-015. In the Resolution, the Board also adopted a detailed Budget Policy and Procedures to provide a "...framework to facilitate consistent adherence to Florida Statutes and sound fiscal stewardship in matters, pertaining to the preparation, approval, adoption, execution, and amendment of the County's annual budget County Budget." Levy Cnty. Resol. No. 2017-015, p. 2, § I.

12. Since 2016, the Finance Officer of the Clerk of the Court, who was primarily responsible for the preparation of the County Budget was Jared Thomas Blanton. Mr. Blanton, who was an employee of the Clerk's Office, worked closely with County staff in the preparation of the Budget. Mr. Blanton resigned from his position with the Clerk on February 27, 2024. The resignation of Mr. Blanton created concern by the County as to whether the Clerk's office had sufficient experience to handle the function related to the County budget.

13. At the March 5, 2024 Regular Meeting of the Board, the County Coordinator placed an item on the agenda for the Board to consider options for preparation of the County's FY25 Budget as a result of the recent resignation of the Finance Director from the Office of the Clerk. The Board directed County staff to research these issues and present the various options to the Board at the April 2, 2024 Board Meeting.

14. As requested, County staff conducted research and reviewed all options for the preparation of the FY25 Budget and the County Budget Officer's duties. As part of this review, County staff also had discussions with the Clerk, outside counsel for labor and employment law matters, and the former Finance Director.

15. Throughout this process, County staff kept the Clerk and his legal counsel informed concerning the process and also provided them with the draft memo regarding options for County Budget Officer, incorporated the Clerk's suggested modifications to that memo, and provided a draft list of files and necessary access to ADG as a starting point for follow-up transition meetings if that was the direction of the Board. County staff also informed the Clerk as to the presentation of the agenda item on April 2nd.

16. During this time, various individual County Commissioners also had discussions with the Clerk regarding the County Budget Officer duties. In all those discussions, the Clerk indicated that whichever option was selected by the Board regarding the duties of the County Budget Officer and the preparation of the FY25 Budget, that he would do his part regardless of if it meant continuing to serve as County Budget Officer pursuant to Resolution Number 2017-015 or cooperating in the transition of those duties to a newly designated Budget Officer.

17. At the April 2nd meeting of the Board, County staff presented the Memorandum regarding the options for FY25 County Budget preparation and adoption. A copy of the memorandum is attached hereto as **Exhibit "B"**. After discussion, the Board: (1) approved Resolution Number 2024-13 to repeal Resolution Number 2017-015, to allow the Board to designate a Board employee as the County Budget Officer and to establish an updated County Budget Policy; (2) approved a Temporary Employment Agreement to employ Jared Blanton, CPA, MBA and to designate him to serve as the County Budget Officer until September 30, 2024; and

(3) directed County staff to work with the Clerk on identifying the necessary areas of cooperation (such as files needed and the necessary ADG access) to ensure timely preparation of the FY25 County Budget. A copy of Resolution 2024-13 and the approved Temporary Employment Agreement are attached as **Exhibit “C”** and **Exhibit “D”**, respectively.

18. Commencing on April 2nd, County staff attempted to communicate and coordinate with the Clerk and his employees to obtain the files and ADG access to County financial records necessary for a transition of County Budget Officer duties. However, on April 2nd, the County Attorney received a telephone call from the Clerk’s outside legal counsel who stated that no ADG access can be provided to the County Budget Officer for Budget functions and the Board would have to make public records requests for any County Budget files (paper or electronic), then the Clerk will have to process, including review, redaction, and likely a significant charge to the Board. During the next few days, County staff made multiple attempts to discuss these matters with the Clerk including the need to transition to the new designated Budget Officer. Such efforts were unsuccessful.

19. At this point, County staff became increasingly concerned that the Clerk would not grant access to the County’s files and records located in ADG system that would be necessary to perform current FY24 County Budget functions. Further, as each County Department had already submitted its respective budget requests through the ADG system, as required by the adopted FY25 Budget Calendar, the budget requests could not be accessed for review and processing as a result of the Budget Officer’s lack of access to the ADG system. Additionally, a Public Workshop on the Preliminary Budget is scheduled for Tuesday, May 7th and County staff are attempting to assemble the necessary documentation needed for the presentation for the Board and the public through alternative and manual means because the Clerk has denied the Budget Officer access to

the County records in the ADG system, including the recent budget request input by County Departments. A continuing, prolonged lack of access to County budget files and records in the ADG system will prevent or severely hinder the County's ability to timely prepare and adopt its FY24-25 budget as required by section 129.03, Florida Statutes, and to levy millage in accordance with the strict statutory timeframes in section 200.065, Florida Statutes.

20. On April 9th, the County Attorney received an email from the Clerk's outside legal counsel which stated that the Clerk was unwilling to communicate, provide access to the Board's Budget records, or assist in any regard with the transition of County Budget Officer duties. The Clerk's legal counsel further advised the Board to "procure its own budgeting software to fulfill its responsibilities", to "transition without his [the Clerk's] participation," to use "budget data from prior years", and that ongoing contact with Clerk's staff was prohibited. A copy of the email is attached hereto as **Exhibit "E"**.

21. The Clerk's position that he would not participate in the transition to the new County Budget Officer is a significant impairment in the lawful transition under the process established by Florida Statutes.

22. As set forth in section 129.025, Florida Statutes, the Clerk has no entitlement to perform the functions of budget officer. The designation of the entity to perform the budget officer function is exclusively that of the Board of County Commissioners. The failure to cooperate in the transition of those functions to a designated budget officer, at the direction of the Board of County Commissioners, fails to serve a lawful public purpose. More importantly, the Clerk's refusal to allow the County's designated Budget Officer to access the ADG system directly impacts the transition and ongoing performance of those functions. The ADG system was acquired to manage and maintain the County's financial records and was contemplated as performing a joint

sharing of its functions by both the Clerk and the County. The denial of access to the County's designated Budget Officer directly impairs the ability to access and perform the budget functions in serving the public. The County is not seeking access that would allow the Budget Officer to perform the Clerk's constitutional and statutory functions. For example, the Budget Officer should not have user access to process payments (post transactions) for the County's expenditures; however, the Budget Officer requires user access to view or inquire about the payment transactions in the ADG system. Other County departments continue utilizing the ADG system in the performance of their functions, just not the designated Budget Officer.

23. Contrary to the position of the Clerk, the Clerk and Board cannot each work in a vacuum, without communication or cooperation. They must work in a coordinated manner to efficiently and effectively carry out their separate, but interrelated, financial duties for the County. To operate otherwise would require, at a minimum, hundreds, if not thousands of hours of manual inputs by County staff and Clerk staff, increasing the opportunity for human error, and would significantly slow County Payroll, Budget, and Finance activities.

24. Given the Clerk's position, pending Budget duties, and imminent statutory deadlines for County Budget preparation and adoption, the Board must seek redress by Court action to compel the Clerk to provide immediate access to the County records necessary for Budget functions and to cooperate in the transition of County Budget Officer duties.

WHEREFORE, the County respectfully prays that this Court enter an Order Granting the request of relief as follows:

- A. Issue an Order to Show Cause or Alternative Writ of Mandamus responding to the Petitioner;
- B. Require the Clerk to cease interfering with the lawful designation of the Budget

Officer by the Board of County Commissioners of Levy County;

- C. Allow access by the County's designated Budget Officer to all County records held or maintained by the Clerk, including the ADG system, that are necessary for the Budget Officer to perform his duties; and
- D. For any such other relief as the Court deems just and proper.

**UNOFFICIAL
DOCUMENT**

Respectfully submitted this 22nd day of April 2024.

/s/ Matthew R. Shaud

GREGORY T. STEWART

Florida Bar No. 203718

MATTHEW R. SHAUD

Florida Bar No. 122252

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**ATTORNEYS FOR PLAINTIFF
LEVY COUNTY, FLORIDA**

UNOFFICIAL
DOCUMENT

**AMERICAN DATA GROUP
SALES AND LICENSE AGREEMENT**

This agreement is made between the Levy County Clerk's Office, a Florida entity (hereinafter referred to as "Licensee") and AMERICAN DATA GROUP, INC., a Colorado corporation, with offices at 7853 East Arapahoe Court, Suite 3000, Englewood, Colorado 80112-1377 (hereinafter referred to as ADG).

It is agreed that the attached price quote of April 29, 1999 will represent the negotiated price for ADG software and services and the License Agreement that follows for the intent and terms of the sale. Additional the attached Loan Amortization for payment and term.

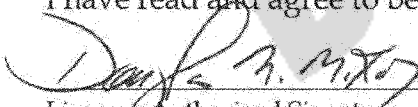
CUSTOMER CONTACT INFORMATION:

Mr. Douglas M. "Mac" McKoy Phone 352-486-5266
Levy County Clerk of Court
P.O. Box 610
Bronson, FL 32621

PAYMENT PAYABLE AS FOLLOWS:

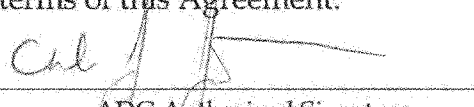
1. A check for \$7,500 as down payment must accompany this Agreement for the purchase of Progress software and maintenance fees.
2. Remaining Balance for software is due on installation of software. Optional modules and services are payable upon delivery. Installation and Training will be billed as work is completed.
3. Terms are net cash upon receipt of ADG invoice. Past due amounts are subject to a 1.5% per month (18% APR) service charge, or maximum rate allowed by law.

I have read and agree to be bound by the terms of this Agreement:



Licensee Authorized Signature

Clerk of Court 5-10-99
Title Date



ADG Authorized Signature

President 5-22-99
Title Date

Quote for:
 Mac McKoy
 Revised per User
 Meeting

**Levy County
 Clerk's Office
 Financial Management
 Information System**

Good for 60 Days
 from: April 29, 1999

Description	Price	Unit	Total:
American Data Group Software:			
Financial Information Management System			
General Ledger - Budget Preparation - Financial Statements - Accounts Receivable - Accounts Payable - Purchase Orders w/Encumbrances - Inventory Control - Centralized Cash	Priced for two Databases - Clerk's Office and BOC-each additional at \$5,000		\$26,000
Electronic Requisitions System			\$6,000
Payroll/Personnel with Check Reconciliation			\$8,000
Utility Billing - Work Orders Processing - Handheld Ready			\$15,000
Electronic Time Card Entry System			\$6,000
Fixed Asset with Fleet Maintenance			\$6,000
Laser Check Printing with a Hp Laser Printer			No Charge
Money Track System (Price \$6,000)			No Charge
Windows95 or 98 Terminal Elimination for Mail and File Transfers	\$70	15	\$1,050
SUB TOTAL			\$68,050
American Data Group Services			
		Estimated Hours	
Installation, Setup and Conversion*	\$100	30	\$3,000
Training*	\$100	230	\$23,000
Customer's Option for Custom Modifications*	\$100	20	\$2,000
SUB TOTAL			\$28,000
Progress 4GL RDBMS			
Development Systems			
4GL Development System	\$2,780	1	\$2,780
Deployment Product			
Query/RESULTS Report Writing	\$575	1	\$575
Database Product			
Workgroups Server	\$200	15	\$3,000
SUB TOTAL			\$6,355
Quote Total Pricing:			\$102,405
Annual Maintenance and Support Plan			
Financial Management Information (all modules) Software Cost	\$74,050	15%	\$11,108
Progress 4GL RDBMS Software Cost	\$6,355	15%	\$953
SUB TOTAL			\$12,061
Options			
Building Permit System			\$6,000
Occupational License/Business License			\$6,000
Imaging System Software			\$6,000
Cash Drawer with Receipt Printer	\$1,200	2	\$2,400

NOTE:

*The above services are billed at \$100/hour plus per diem expenses such as travel, meals and lodging. We estimate the approximate hours to give a fair look at total cost. Please note you only pay for services actually incurred.

TERMS AND CONDITIONS

1. DEFINITIONS

- A. "ADG" means American Data Group, a Colorado Corporation.
- B. "ADG Program" means each program delivered to Licensee and identified as an ADG program and embodied in any form, including but not limited to object form, machine-readable or printed form. "ADG Program" also includes any modifications or update of a delivered program provided by ADG to Licensee to supplement, enhance or replace such delivered program. "ADG Program" also includes any operating manuals and related documentation delivered to Licensee by ADG.
- C. "Licensee" means ADG customer named on this Agreement.
- D. "Hardware" means the computer equipment, if any, and related products listed on this Agreement.
- E. "Central Processing Unit" (or "CPU") means a centrally controlled computer system that includes one or more processors, memory, mass storage (disk or equivalent storage) work station(s) and optional printer(s). A work station, while it may have its own processor, memory, mass storage, and printer, normally shares the resources and data base of the central system, and is normally connected to the central system either directly, or indirectly (via telephone system), during everyday use.

2. HARDWARE DELIVERY AND INSTALLATION

- A. ADG will coordinate the delivery and installation of the Hardware, if any. Title and risk of loss shall pass to Licensee at time of delivery regardless of whether installation has occurred.
- B. Licensee will be responsible for all delivery and installation charges for Hardware and will reimburse to ADG any delivery and Hardware installation charges paid by ADG to carrier(s) or Hardware manufacturer.

3. TRAINING

ADG will train Licensee in the use of ADG Programs at ADG's training facility in Englewood, Colorado or such other places as Licensee may designate, if the price of training is included on the face of this Agreement. No reimbursement for airfare or lodging will be made to Licensee. Any obligation of ADG to provide training or installation hours expires 180 days from initial delivery of programs licensed under this Agreement. As a prerequisite Licensee shall have had adequate training in the basic operation of the Hardware. At least one trainee shall be an officer or senior manager of Licensee.

4. INSTALLATION HOURS (IF ANY) AND EXPENSE

Installation hours included with this Agreement (if any), are understood to include all time spent by ADG personnel on behalf of Licensee, exclusive of time spent in ADG training classes. Installation hours shall include, but are not limited to, travel expense to and from Licensee, time spent on-site with Licensee, phone assistance and other installation services for Licensee, up to the number of installation hours included. Any excess installation hours will be billed at ADG's current hourly rate plus expenses. Licensee shall reimburse to ADG all expenses incurred during installation including, but not limited to, such expenses as travel, lodging, and meals, outside services and computer rental.

5. **LICENSE**

A. ADG grants to Licensee a personal, non-assignable, non-exclusive and nontransferable License to use the ADG Programs described above, while this Agreement is in force, in object and source code forms, and only for one Central Processing Unit at one location.

B. This Agreement, the License granted hereby and any of the ADG Programs to which it applies may not be assigned, sub-licensed, leased, or otherwise transferred by Licensee, except as specifically allowed by this Agreement.

C. ADG shall retain the sole and exclusive rights of ADG Programs and have all rights in ADG programs and supporting materials relating thereto including, but not limited to, all processes, ideas, data and printed material supplied by ADG to Licensee. It is understood that ADG does not convey any legal or equitable rights of ownership in ADG Programs to Licensee.

D. A separate Licensee is required for each Central Processing Unit on which the ADG programs will be used. No Licensee may market, sell, lease, transfer or assign, or grant any interest in the License or ADG Programs to any third party. ADG may cancel, at its sole discretion, any License for violation of the terms of the License or this Agreement. In addition ADG may seek any legal or equitable remedy available against Licensee for any violation of the terms of the License.

6. **PROTECTION AND SECURITY**

Licensee acknowledges the valuable and confidential nature of the ADG Programs and their supporting materials and that Trade Secrets are embodied in the ADG programs, and shall use its best efforts to maintain the confidentiality thereof. Pursuant to its obligations of confidence to third parties for any purpose any ADG Program or supporting materials in any form without the prior written consent of ADG. This provision shall survive termination of the License Agreement.

7. **RESTRICTIONS ON USE**

A. Licensee shall not print or copy in any form, in whole or in part, any ADG Program or supporting materials, except for its own use, for protection against loss (backup copies), and for proper dissemination of information to Licensee's employees.

B. Any copies of ADG Programs made by Licensee in any form as may be permitted hereunder shall be the sole and exclusive property of ADG and shall become subject to all terms and conditions of the Agreement.

C. All copies of ADG Programs permitted hereunder shall remain in the possession, custody and control of Licensee at the Licensee's location, or at an off-site location for purposes of backup and security only, or at a temporary substitute location.

8. **HARDWARE PRODUCTS AND SERVICES DISCLAIMER**

WITH RESPECT TO ALL HARDWARE, LICENSEE AGREES THAT ITS SOLE REMEDY IN CASE OF ANY DEFECTS SHALL BE SUCH REMEDY AS IS AFFORDED BY THE HARDWARE MANUFACTURERS WARRANTY OF THE HARDWARE, OR SUCH OTHER REMEDY AGAINST THE HARDWARE MANUFACTURER AS IT MAY HAVE UNDER ANY PROVISION OF CONTRACT OR LAW. ADG ITSELF, ITS DISTRIBUTORS OR AGENTS, DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS OR ADEQUACY FOR ANY PARTICULAR PURPOSE OR USE, OF QUALITY, OF PRODUCTIVENESS OR OF CAPACITY, WITH RESPECT TO ANY SUCH HARDWARE. IN NO EVENT SHALL ADG BE LIABLE TO LICENSEE FOR LOSS OF PROFITS, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, ARISING OUT OF TORT, BREACH

OF WARRANTY OR ANY OTHER BREACH OF CONTRACT, REPRESENTATIONS OR OBLIGATIONS WITH RESPECT TO SUCH HARDWARE, PRODUCTS AND SERVICES. HARDWARE WARRANTY IS OBTAINED THROUGH SEPARATE AGREEMENT BETWEEN HARDWARE MANUFACTURER AND LICENSEE.

9. **WARRANTY OF PROGRAMS FURNISHED BY ADG**

ADG warrants to Licensee that if the ADG Programs contain errors, ADG agrees to correct them at its sole expense, after receipt of reasonable written notice from Licensee. "Errors" shall not be construed to mean any lack of program functions or features that are not specified in ADG's operating manuals and program specifications. The notice must be received within one (1) year of delivery of the ADG programs to Licensee. The parties further agree that time spent in detecting and correcting errors attributable to faulty systems operation by Licensee personnel, modifications not made by ADG, hardware malfunctions or computer manufacturer software changes or errors will constitute an additional cost to be paid for by the Licensee at hourly rates currently in effect. It is further understood and agreed that ADG is not liable for equipment efficiency or estimated run times, and that Licensee's requirements for work stations, printer(s), disk devices and related hardware are dependent upon Licensee's file sizes, transaction volumes, and other such factors. Licensee is solely responsible for determining and obtaining such hardware.

10. **LIMITATION OF REMEDY AND OF LIABILITY**

LICENSEE AGREES THAT THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OF ADG PROGRAMS AND HARDWARE, AND ADG DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS, OR ADEQUACY FOR ANY PARTICULAR PURPOSE OR USE, OF QUALITY, OR PRODUCTIVENESS, OR OF CAPACITY. LICENSEE FURTHER AGREES THAT ADG SHALL NOT BE LIABLE, WHETHER IN CONTRACT, WARRANTY, TORT, OR OTHERWISE, TO LICENSEE OR ANY OTHER PERSON CLAIMING THROUGH OR UNDER LICENSEE, FOR ANY DAMAGE OR EXPENSE, WHETHER CONSEQUENTIAL OR INCIDENTAL, DIRECT OR INDIRECT, SPECIAL OR GENERAL, ARISING FROM LOSS OF PROFITS OR BUSINESS OR OTHERWISE, AND WHETHER CAUSED BY DEFECT, NEGLIGENCE, BREACH OF WARRANTY, DELAY IN DELIVERY OR OTHERWISE, AND IN NO EVENT SHALL ADG BE LIABLE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR EXPENSE. NO OBLIGATION OR LIABILITY SHALL ARISE OR FLOW OUT OF ADG'S RENDERING TECHNICAL OR OTHER ADVICE IN CONNECTION WITH ADG PROGRAMS OR SERVICE OR HARDWARE. ADG'S LIABILITY HEREUNDER FOR DAMAGES SHALL NOT IN ANY EVENT EXCEED THE CHARGES PAID BY LICENSEE FOR THAT PARTICULAR ADG PROGRAM INVOLVED REGARDLESS OF THE FORM OF ACTION. NO ACTION ARISING OUT OF ANY CLAIMED BREACH OF THE AGREEMENT OR TRANSACTIONS UNDER THE AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS ACCRUED.

11. **TERM AND TERMINATION**

A. This Agreement shall be effective from the date of signing by a duly authorized officer of ADG and shall apply to all ADG Programs now or in the future delivered by ADG to Licensee. Licensee's acceptance of any ADG Program from ADG shall be conclusive evidence of Licensee's agreement that the use of such Program is governed by this Agreement.

B. Termination of this License for any reason shall not relieve Licensee of its obligations of confidence, protection and security, or of its restrictions on copying and use as provided herein with respect to any ADG Program.

12. **PATENT AND COPYRIGHT INDEMNIFICATION**

A. ADG will defend, at its expense, any action brought against Licensee to the extent that it is based on a claim that ADG Programs supplied to Licensee constitute direct infringement of any duly issued United States patent or infringement of copyright in the United States, and ADG will pay all damages and costs finally awarded against the Licensee in such actions that are attributed to such claim, provided that ADG is promptly informed in writing and furnished a copy of each communication, notice or other action related to the alleged infringement and is given authority, information, and assistance (at ADG's expense) necessary to defend or settle such claim. ADG will not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with the Licensee specification, or from a combination with or an addition to programs not developed and supplied by ADG, or a modification of the ADG Programs after delivery to ADG.

B. In the event an ADG Program furnished hereunder is in ADG's opinion likely to or does, become the subject of a claim of infringement of a copyright or patent, ADG may at its option and expense, procure for Licensee the right to continue using the ADG Program or modify it to make it non-infringing or replace it with a non-infringing program, which may, at ADG's option, come under this same Agreement. If in ADG's opinion none of the foregoing alternatives is reasonably available to ADG then ADG may terminate the License of the ADG Program upon thirty (30) days written notice to Licensee. If the ADG Program is the subject of a claim of patent or copyright infringement, Licensee may notify ADG in writing during the one-month period after ADG's notice of termination that Licensee elects to continue to be licensed with respect to the ADG Program until there has been an injunction or the claim has been withdrawn and the indemnity herein with respect to ADG shall reciprocally apply to Licensee; it being understood that ADG may participate, at its expense, in the defense of any such action, if such claim is against ADG.

C. THE FOREGOING STATES THE ENTIRE LIABILITY OF ADG WITH RESPECT TO INFRINGEMENT OF ANY COPYRIGHTS OR PATENTS BY THE ADG PROGRAMS OR ANY PARTS THEREOF AND IS IN LIEU OF ALL WARRANTIES OR CONDITIONS, EXPRESSED OR IMPLIED, IN REGARD THERETO.

13. **SECURITY AGREEMENT IN HARDWARE PURCHASED UNDER THIS AGREEMENT**

Title to the Hardware, if any, shall vest in Licensee and payment shall be due according to terms specified on the face of this Agreement. ADG shall retain a security interest in the hardware until all sums due hereunder are paid in full. Licensee will execute any financing statements deemed necessary by ADG to perfect its security interest. This Agreement shall serve as a security agreement and Licensee authorizes ADG to file a copy of this Agreement or any financing statements deemed necessary to perfect ADG's security interest.

14. **COVENANT AGAINST LIENS AND TO PROTECT EQUIPMENT**

As long as ADG holds a security interest in the Hardware, Licensee shall maintain it in good operating condition; keep it free from liens and encumbrances; not use or permit use of it in any manner likely to be injurious to it; not remove or permit removal from original location or make or permit any alterations without the prior written consent of ADG; permit inspection by ADG at reasonable times; assume full risk of loss or damage to the Hardware immediately upon its delivery to Licensee's location; procure and maintain fire, extended coverage, vandalism and malicious mischief insurance to the full insurable value of the Hardware, with the loss payable to ADG and Licensee as their interests shall appear.

15. **DEFAULT**

Should Licensee fail to make any payment within ten (10) days of its due date, or fail to perform any other of the Licensee's obligations hereunder upon thirty (30) days written notice, or should Licensee be or become insolvent, or be a party to any bankruptcy or receivership proceeding, prior to full payment of all amounts payable hereunder, ADG may:

A. with or without demand or notice to Licensee declares the entire amount unpaid immediately due and payable;

B. enter upon the premises where the Hardware and ADG Programs (pursuant to this Agreement) may be found and remove them (Licensee shall assemble the Hardware and ADG Programs and make them available to ADG at a place reasonably convenient to both parties) and shall permit and assist ADG in effecting the retaking and removal of such Hardware and ADG Programs; and

C. sell any or all the Hardware as permitted under applicable law, applying the proceeds for the sale to payment of the expenses of retaking, repairing and selling the Hardware, reasonable attorney fees including attorney fees on appeal and to the satisfaction of all indebtedness then due and unpaid under this Agreement. Any surplus shall be paid to Licensee and any deficiency shall be paid to ADG by Licensee.

16. PRICES and TAXES

The prices set forth on the face of this Agreement are to be paid by Licensee to ADG for Hardware and ADG Programs purchased and licensed pursuant to this Agreement. Such prices shall be paid in United States dollars. Such prices are exclusive of sales, use and like taxes. Any such taxes which ADG may be required to pay or collect shall be paid by Licensee. Such sums shall be due and payable to ADG upon invoice from ADG.

17. DEFERMENTS, CHARGES AND CANCELLATIONS

All deposits are non-refundable and shall be forfeited in the event of cancellation. In addition, any costs or expenses incurred by ADG prior to or resulting from deferment or cancellation will be charged to Licensee and payable within ten (10) days of the date of the invoice.

18. ANNUAL SUPPORT FEE

Payment of the Annual Support Fee and acceptance by ADG, will entitle a Licensee for the succeeding year to:

- A. the most current version of the software and related documentation for the ADG Programs contracted for and any improvements made to the systems during the year;
- B. access to continuing assistance in using the software through correspondence, technical news, and other communications designed to keep the Licensee aware of current developments;
- C. phone support during normal business hours (not to include phone training);
- D. off-site storage of programs and documentation.

Annual support shall be invoiced each year on the anniversary date of this Agreement at the then current Annual Support Fee and shall be subject to such terms and conditions as are in effect at that time.

19. NOTICE

Any notice under this Agreement shall be in writing and shall be effective when actually delivered or when deposited in the mail, registered or certified, addressed to either party at their address stated in this Agreement or such other addresses as either party may designate by written notice to the other.

20. **COSTS AND ATTORNEY'S FEES**

In the event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sums as the Court may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

21. **OPERATING ENVIRONMENT**

ADG assumes no responsibility for the operating environment in which ADG Programs are to function.

22. **FORCE MAJEURE**

ADG shall not be in default by reason of any failure of its performance under this Agreement if such failure results, whether directly or indirectly, from fire, explosion, strike, freight embargo, act of God, or of the public enemy, war, civil disturbance, act of government, de jure or defacto, or any agency or official thereof, labor shortage, transportation contingencies, unusually severe weather, default of manufacturer or supplier as a subcontractor, quarantine or restriction, epidemic, or catastrophe, lack of timely instructions or essential information from Dealer or otherwise varied beyond the control of ADG.

23. **GENERAL**

A. This Agreement constitutes the entire agreement between the parties and supersedes all previous communications, representations or agreements, either oral or written, with respect to the subject matter hereof, and no representations or statements of any kind made by any representative of ADG, which are not stated herein, shall be binding upon ADG. No addition to or modification of any provision in this Agreement shall be binding upon either party unless made in writing and signed by Licensee and a corporate officer of ADG at ADG's office in Englewood, Colorado. No course of dealing or usage of trade or course of performance shall be relevant to explain or supplement any terms expressed in this Agreement.

B. If any of the provisions or portions of this Agreement are invalid under an applicable statute or rule of law, they are to that extent to be deemed omitted.

C. This Agreement shall constitute an offer until accepted by ADG in Englewood, Colorado.

D. It is agreed that the laws of the State of Florida shall govern without reference to the place of execution of performance of same. Any and all legal actions must be transacted or brought in the courts in the State of Florida. This Sales Agreement and License is not valid or binding upon ADG until accepted by ADG at Englewood, Colorado.

There are no other implied responsibilities of American Data Group, Inc.

Memorandum

Date: March 26, 2024

To: Levy County Board of County Commissioners (“Board”)

From: Nicolle Shalley, County Attorney, with input and assistance from Wilbur Dean, County Coordinator; Ali Tretheway, Procurement Coordinator; and Jacqueline Martin, Human Resources Director (“County Staff”)

Re: Agenda Item for April 2, 2024 Regular Meeting - Options for County FY24-25 Budget Preparation

Chapter 129, Florida Statutes, requires the Board of County Commissioners to annually prepare and adopt a balanced County Budget. This process must occur within a strict statutory timeframe (June through September) in order for property taxes to be levied. Per Section 129.025, Florida Statutes, the Board of County Commissioners is to designate a county budget officer to carry out the “Budget Duties” set forth in Chapter 129. If the Board does not designate a different officer, the Clerk of the Circuit Court must serve as the County Budget Officer. The statute also clarifies that the duties of County Budget Officer do not fall within the Clerk’s constitutional responsibilities of auditor and custodian of county funds (the “Finance Duties”).

Based on information from the Florida Association of Counties, the vast majority of Florida Counties have designated a Board of County Commissioners employee as the County Budget Officer.

In Resolution Number 2017-015 adopted by the Board on May 15, 2017 (and still in effect), the Board designated the Clerk of the Court to serve as the County Budget Officer. The Board may designate a different County Budget Officer by adoption of a subsequent resolution.

At the March 5, 2024 Regular Meeting, the County Coordinator placed an item on the agenda for the Board to consider options for preparation of the County’s FY24-25 Budget with the resignation of the Finance Director from the Office of the Clerk. At that meeting, the Board directed County Staff to review all options and return to the Board at its April 2nd Meeting so the Board could determine how best to proceed.

On March 12, 2024, the Chair of the Board and the County Attorney had a productive meeting with the Clerk to discuss options for preparation of the FY24-25 Budget.

At the March 18, 2024 Regular Meeting, the Board adopted the “FY2025 Budget Process” calendar establishing the critical timeline for adoption of the Budget.

As requested by the Board, based on research and discussions with the Clerk, outside counsel for labor and employment law and the former Clerk's Finance Director, County Staff offers the below options for FY24-25 Budget preparation to assist the Board in making an informed decision on how to proceed. The Clerk is amenable to whichever option the Board chooses. And, of course, the Board may consider and request staff to research any other option that Commissioners may offer.

Option 1 - Clerk hire a Budget Officer. The Clerk posted and advertised a Budget Officer/Manager position on March 11, 2024 with a close date of April 2, 2024. As of the date of this Memo, applications have been received and the Clerk is proceeding with interviews. Concerns with this option are qualified candidates (which is frequently a challenge in filling County positions) and, if one is hired, they would begin work with little time to become familiar with the County's operations and budget and would be expected to meet the critical dates in the adopted Budget Calendar. It is noted that, even if the Board assumes the Budget Duties, the Clerk will proceed with a hiring to handle the Clerk's remaining Finance Duties.

Board Action Required to Implement Option 1: If the Board selects this Option, until such time as the position is filled, County staff would continue to work with staff assigned by the Clerk to follow the critical path and ensure a Budget is prepared and adopted. The Clerk has stated he will work on this Option and continue to serve as the County Budget Officer, if that is what the Board chooses.

Option 2 - Existing Clerk Finance staff to prepare Budget, supplemented by outside assistance. The Clerk has two staff members, experienced with Budget Duties, who could be assigned to preparation of the Budget. In addition, the Clerk contacted the Florida Clerks and Comptrollers Association and his counterparts in nearby Counties to inquire about assistance with preparation of the County's Budget and he received offers of assistance. Concerns with this option are the Clerk's Finance staff are few (like many County offices) and have other Finance Duties and assistance from other Counties, at the time they too are preparing their budget, may not be enough.

Board Action Required to Implement Option 2: If the Board selects this Option, County staff would continue to work with staff assigned by the Clerk (and outside assistance, if any) to follow the critical path and ensure a Budget is prepared and adopted. The Clerk has stated he will work on this Option and continue to serve as the County Budget Officer, if that is what the Board chooses.

Option 3 - Board to contract with an independent contractor (an outside person or entity) for Budget Officer services. Generally, the Board can obtain professional services by contracting with an independent contractor. However, staff was unable to find an example of a County contracting with an outside person or entity to serve as the County Budget Officer, nor any legal authority for doing so. This is likely because these services are integral to the operation of the County, require a great deal of input from County Departments, involve access to and use of specific County software in order prepare the Budget and interface with other County financial functions - none of which lends itself to being handled by an independent contractor.

Board Action Required to Implement Option 3: Not a viable option, no action required.

Option 4 - Board hire a County Budget Officer.

- a. **Permanent Position:** As noted above, most Florida Counties have a full-time employee (that reports either directly to the Board or to the County Manager) whose duties include serving as the County Budget Officer. The concern with this option is lack of time for County staff to research this model, report back to the Board, create a job description and complete a hiring process at this point in the FY24-25 Budget Calendar timeline.

Board Action Required to Implement Option 4a: Not a viable option at this time, given time constraints, but Board may wish to direct County staff to research and report back on implementing this option in the near future.

- b. **Temporary Position:** Policy Number 209 in the County's adopted Personnel Policies and Procedures allows the County to employ temporary employees for a specified, limited period (generally 6 months or less.) Such an employee can be an executive/professional whose terms of temporary employment are established by contract. The concern with this option is that it is not a permanent solution; however, it could get the County through the preparation and final adoption of the FY24-25 Budget in September.

Board Action Required to Implement Option 4b: The Board would need to adopt a resolution designating a County employee as the County Budget Officer (since the current Resolution designates the Clerk) and enter into an employment contract with a temporary employee to serve in that capacity. For this option, the County Attorney has prepared a resolution and a temporary employment contract (reviewed by the County's outside labor and employment law counsel) to employ the former Clerk's Finance Director from April 3 to September 30 to serve as the County Budget Officer for purposes of preparation of the FY24-25 Budget and other necessary Budget Duties. Both documents are in the back-up to this agenda item. In addition, County staff will need to coordinate with the Clerk and his staff regarding the needed files and ADG access to move the Budget Duties (not the Clerk's Constitutional Finance Duties) to the Board.

Fiscal/staffing considerations: There is a vacant FTE in the Clerk's Office with the resignation of the Finance Director. With Option 1, that FTE would be filled. With Option 2, there would be FTE savings, but an increased burden on existing County and Clerk staff. With Option 4a, an FTE would be created on the Board side for Budget Duties and an FTE would remain on the Clerk side for Finance Duties. With Option 4b, a budget amendment would be necessary to transfer funds to pay the temporary employee and an FTE would remain on the Clerk side for Finance Duties. None of the Options result in the County "double paying" for Budget Duties.

Deputy Clerk MRASS1

**RESOLUTION
NUMBER 2024-13**

**A RESOLUTION OF THE BOARD OF COUNTY
COMMISSIONERS OF LEVY COUNTY, FLORIDA,
SETTING FORTH THE MANNER OF DESIGNATING THE
COUNTY BUDGET OFFICER; ADOPTING A BUDGET
POLICY GOVERNING PREPARATION, APPROVAL,
ADOPTION, EXECUTION AND AMENDMENT OF THE
COUNTY BUDGET; AND PROVIDING A REPEALING
CLAUSE AND AN EFFECTIVE DATE.**

WHEREAS, the Levy County Board of County Commissioners ("Board") has authority through its home rule powers to prepare, approve, adopt, execute and amend its annual County budget, as established in Chapter 129, Florida Statutes ("F.S.");

WHEREAS, Chapters 129 and 200, F.S., provide foundational framework for the structure and procedural timelines of adoption of county budgets;

WHEREAS, Chapter 129, F.S., gives specific requirements for a variety of county budget issues, including a directive for adoption of a budget system to control a county's finances, regulations regarding a county's expenditures, a prohibition against a county's expenditures exceeding its adopted budget, requirement for balanced county budgets, and prescribed methods of accounting, procedures for adoption and amendment of a county's budget;

WHEREAS, Section 129.025, F.S., states "[e]ach board of county commissioners may designate a county budget officer to carry out the duties set forth in this chapter." And "[u]nless the board designates a different officer, the clerk of the circuit court or the county comptroller, if applicable, shall be the budget officer;"

WHEREAS, on May 15, 2017, the Board adopted Resolution 2017-015 which appointed and designated the Clerk of the Circuit Court as County Budget Officer and adopted policies and procedures governing the preparation, approval, adoption, execution, and amendment of the County budget;

WHEREAS, after preliminary research, the Board finds that in a majority of Florida counties, the board of county commissioners designate a board employee, not the Clerk, to serve as the County Budget Officer;

WHEREAS, the Board now desires to set forth the manner by which it will designate a different county budget officer and to update the policies and procedures

1 governing the preparation, approval, adoption, execution, and amendment of the County
2 budget;

3
4 **WHEREAS**, nothing in this Resolution is intended to affect the Clerk of the Circuit
5 Court's duties (set forth in Article 8, Section 1 of the Florida Constitution) to serve as ex
6 officio clerk of the board, auditor and custodian of funds for the County; and

7
8 **WHEREAS**, nothing in this Resolution is intended to affect the Board's statutory
9 legislative authority over the County Budget and County Budget amendment process.

10
11 **NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners,
12 of Levy County, Florida, that:

13
14 **Section 1. County Budget Officer; Manner of Designation; Authority; Limitations.**

15 The Board shall, from time to time, designate a Board employee (full-time, part-time or
16 temporary) to serve as the County Budget Officer. Such County Budget Officer is
17 authorized to carry out the duties set forth in Chapter 129, F.S., as further guided by the
18 County Budget Policy set forth in Section 2 of this Resolution. The authority granted to
19 the County Budget Officer in no way affects or supercedes the Clerk of the Circuit Court's
20 duties (set forth in Article 8, Section 1 of the Florida Constitution) to serve as ex officio
21 clerk of the Board, auditor and custodian of funds for the County. Such authority in no
22 way affects or supercedes the Board's statutory legislative authority over the County
23 Budget, or the Board's statutory authority to amend or repeal this Resolution.

24
25 **Section 2. County Budget Policy.**

26
27 I. Purpose. The primary purpose of this Budget Policy is to formally establish a
28 budget policy to facilitate compliance with Florida Statutes and sound fiscal stewardship
29 in matters pertaining to the preparation, approval, adoption, execution, and amendment
30 of the County's annual budget ("County Budget.")

31
32 II. Duties of County Budget Officer. The County Budget Officer shall:

- 33
34 A. Carry out the duties of a county budget officer as set forth in Chapter 129,
35 F.S.
36
37 B. Procure professional services as necessary for the County Budget Officer
38 to carry out their duties, provided such procurement complies with the Levy
39 County Procurement Code.
40
41 C. Authorize budget amendments (if the total appropriations of the fund does
42 not change) in accordance with the procedures provided in this Policy, all
43 as authorized by Section 129.06(2)(a), F.S.
44
45 D. Develop written administrative procedures to maintain the County's Budget
46 in compliance with Sections 129.03 and 129.06, F.S., other applicable state

1 laws, and sound accounting and budgetary practices. Such administrative
2 procedures are for the purpose of implementing this Policy, and may not be
3 inconsistent with this Policy or applicable state law.
4

- 5 E. Develop forms, processes, and documentation requirements for the County
6 Budget adoption or amendments thereto, as are necessary to ensure
7 compliance with state law, this Policy, and administrative procedures, if any.
8

9 III. Budget Preparation. The County Budget shall be prepared in compliance with
10 state law, including, but not limited to the following:
11

- 12 A. The County Budget shall be prepared to the level of detail required by the
13 annual financial report mandated by Sections 218.32(1) and 129.01(2), F.S. A
14 greater level of detail may be used, if necessary, to meet a state or federal
15 requirement.
16

- 17 B. Constitutional Officer proposed budgets are due by June 1, but the Board
18 may by Resolution require submittal by May 1 of each year. If received in
19 sufficient time, Constitutional Officer proposed budgets will be incorporated
20 into the Preliminary County Budget. Otherwise, they will be incorporated into
21 the Tentative Budget. Constitutional Officers are requested to attend the
22 public budget meetings and workshops to address the Board and answer
23 Board questions regarding their budget requests.
24

- 25 C. Outside Agency budget requests are required by May 1.
26

- 27 D. The Budget Officer and the County Coordinator will coordinate to develop a
28 process and calendar for budget request submissions, workshops and
29 required hearings for review and adoption of the County Budget. The
30 calendar must allow for multiple public meetings prior to required TRIM and
31 adoption hearings, as necessary.
32

- 33 E. Individual County Department budgets will be prepared by the Budget Officer
34 and the County Departments pursuant to the following guidelines:
35

- 36 1. County Department Directors/Managers shall submit to the Budget Officer
37 their portions of Department budget requests no later than the date
38 specified in Budget Officer administrative procedures.
39
40 2. No requested County departmental increases from the prior year's
41 Department budget, unless preapproved by the County Coordinator, will
42 be incorporated into the Preliminary County Budget.
43
44 3. The format and numerical values of all of the County Budget versions will
45 be compiled from the line item level and summarized to the prescribed
46 level of detail by the Budget Officer.

1
2 4. The Budget Officer may annually review and restructure certain elements
3 of the County Department portions of the County Budget for sound
4 accounting practices, cost methods, etc. Any significant changes will be
5 communicated to the County Coordinator and applicable County
6 Department(s). Functional and operational changes to County
7 Departments are beyond the scope of the Budget Officer's authority and
8 duties.
9

10 F. The individual County Department budgets, the Constitutional Officer budgets
11 (if available), the Outside Agency budgets (if available), and any other
12 applicable information for a County Budget shall be compiled by the Budget
13 Officer into the Preliminary County Budget prior to presentation to the Board
14 at a public meeting. Individual briefings of Board members, County
15 Departments, County Coordinator, or other affected parties, may be
16 conducted prior to presentation of the Preliminary County Budget to the
17 Board.
18

19 G. Once the Preliminary County Budget is finalized and any desired pre-briefings
20 are complete, the Budget Officer will present the Preliminary County Budget
21 to the Board at public meetings and workshops for Board discussion and
22 direction regarding development of the Tentative Budget.
23

24 H. The Board may change any part of the Preliminary County Budget by majority
25 vote of the quorum present at the public meeting.
26

27 I. Once the Board adopts a Tentative Budget and Tentative Millage in the
28 timeframe required by law, the Budget Officer will monitor the Tentative
29 County Budget for any major financial impacts necessitating adjustment prior
30 to the Final Budget.
31

32 J. The Board may change any part of the Tentative Budget by majority vote of
33 the quorum present at the public meeting.
34

35 K. Increments or decrements and any other separate and distinct options to
36 balance the County Budget will be presented to the Board at the public
37 meetings and workshops and require approval or rejection by majority vote of
38 the quorum present at the public meeting.
39

40 L. The County Budget (Tentative and Final) may be approved by the Board after
41 proper notice is given in accordance with Sections 200.065 and 129.03(3)(b)
42 and (c), F.S. The Board Office shall prepare and publish the required notices.
43

44 M. The County Budget must balance total sources to uses, including reserves
45 brought forward as sources and anticipated ending reserves as uses.
46

1 N. Receipts in the County Budget must be at least 95% of those anticipated to be
2 collected from all sources.

3
4 O. County Budget reserves shall be allowed as follows:

5
6 1. A Contingency Reserve of up to 10% of total appropriations.

7
8 2. A Cash Carry Forward Reserve of up to 20% of total appropriations for the
9 purpose of paying expenses until revenues for the current year are
10 available.

11
12 3. Capital Outlay Reserve.

13
14 4. Bond Sinking Reserve.

15
16 P. Upon the close of each fiscal year, and after ending fund balances are
17 ascertained, the Budget Officer may adjust Reserves automatically for the
18 difference in actual carry forward to that which was projected during the
19 summer County Budget review sessions. This adjustment shall not be
20 considered a County Budget amendment since it will not change fund
21 appropriations. Any subsequent movements after this adjustment from the
22 Reserves would require a County Budget amendment.

23
24 Q. Grant and project budgets, once appropriated by the Board, have been
25 formally appropriated. Any unspent project funding, whether in fund balance
26 or reimbursable contracts, shall be automatically re-appropriated, once
27 known.

28
29 R. If actual Carry Forward is significantly less than the amount projected in the
30 summer session and requires a reduction of expenditure budget, a County
31 Budget amendment approved by the Board will be required.

32
33 S. Prior to November 30th following each fiscal year end, the Budget Officer
34 shall present to the Board a final County Budget including all funds and a
35 summary of all budget amendments and administrative adjustments made to
36 the original adopted County Budget throughout the preceding fiscal year,
37 whether such amendments were previously approved by the Board. The
38 Board may accept this final County Budget by a motion and majority vote
39 recorded in the minutes, or by resolution if required by applicable law.

40
41 IV. Budget Amendments. Pursuant to Section 129.06, F.S., the County Budget may be
42 amended any time during the year and up to 60 days after year-end. Any County Budget
43 amendments after a year-end are intended to be for corrective purposes, rather than
44 prescribed or allowed as normative.

1 A. The following budget amendments may be approved by the County Budget
2 Officer: Amendments for appropriations for expenditures within a fund made to
3 increase or decrease particular lines or categories, so long as total appropriations
4 do not change.

5
6 B. The following budget amendments may be approved by motion of the Board
7 and vote recorded in the Board minutes: Increases to appropriations (expense
8 budgets) within a fund from contingency reserves, but no expenditures may be
9 made directly from reserves.

10
11 C. The following budget amendments must be approved by written resolution
12 adopted by the Board:

13
14 1. Appropriations of reserves for capital projects.

15
16 2. Receipts of a nature from sources not anticipated in the County
17 Budget and received for a particular purpose (including, but not limited to,
18 grants, donations, gifts, reimbursements for damages) and appropriation of
19 those receipts.

20
21 3. Increased proprietary fund receipts and appropriation of those
22 receipts.

23
24 4. Any County Budget amendment required for a purpose not
25 specifically addressed in A or B above.

26
27 V. Administration of Budget.

28
29 A. The modified accrual or accrual basis of accounting must be followed for all
30 funds in the County Budget, depending on fund type. Governmental funds
31 shall use modified accrual and the current resources measurement focus.
32 Proprietary funds shall use full accrual accounting.

33
34 B. Current operating expenditures should not exceed current operating
35 revenues. County expenditures (by whatever means) shall not exceed the
36 County Budget, controlled at the level of detail prescribed in III.A. above.

37
38 C. One-time revenues or sources should not be utilized to pay for recurring
39 expenditures.

40
41 D. When deficits develop or appear to be developing, the County will seek
42 corrective paths to maintain fiscal health.

43
44 E. One-time sources should only be used for non-recurring expenditures, capital
45 outlay, or reserves.

- 1 F. Recognizing the primary reliance upon ad valorem taxes, the County should
2 seek diversified revenue sources where possible, including:
3
4 1. Setting appropriate charges and fees for services to pay for the costs of
5 providing those services, to the degree legal and feasible.
6
7 2. Utilizing dedicated revenue options to offset ad valorem impacts on
8 property owners, where legal and feasible
9
- 10 G. Prior to Board acceptance or approval, grant programs should be examined for
11 net financial impact to ad valorem resources, giving consideration to:
12
13 1. The availability of match required;
14
15 2. Value of benefits derived;
16
17 3. Administrative/financial burden; and
18
19 4. Ongoing locally-generated funds that will be required to support the
20 program or capital asset after grant funding is no longer available.
21
- 22 H. Functions performed from various dedicated revenue sources should be
23 reviewed for participation in reimbursing the General Fund for
24 administrative/financial overhead burdens to mitigate impacts on ad valorem
25 resources.
26
- 27 I. Assigning, committing, or earmarking available revenues so as to restrict the
28 full flexibility of potential uses allowed by law should be avoided.
29
- 30 J. Provided that the County is able to pay for operating expenditures with
31 operating revenues, planning for long-term capital construction and equipment
32 replacement needs should be prioritized and funded in the interest of forward-
33 thinking stewardship.
34
- 35 K. It will be the County's goal to build and maintain Contingency Reserves of no
36 less than 8% of total appropriations by major fund, as well as Cash Carry
37 Forward Reserves of no less than 12% of total appropriations by major fund.
38
- 39 L. Major Funds shall be defined in a contemporary context based on priorities of
40 the Board and the inevitable funding structures that develop as a result at that
41 time, but Major Funds shall always include the General Fund and
42 Transportation Trust Fund (a/k/a Road & Bridge Fund).
43
- 44 M. Capital Outlay Reserves have no legal limit, and will be prioritized after the
45 above minimums for operating security are met.
46

1 N. In any and all matters not specifically addressed in this Policy, state law will
2 govern County budget policy, process, and practice.

3
4 O. In any and all matters not specifically addressed in this Policy or in state law,
5 sound accounting practices, fiscal stewardship, and public accountability will
6 direct County budget policy, process, and practice.

7
8
9 **Section 3. Repeal; Effective Date.** Resolution Number 2017-015 is hereby repealed
10 and shall be of no further force or effect. This Resolution shall become effective upon
11 adoption.

12
13 **PASSED AND DULY ADOPTED** on April 2, 2024.

14
15 **BOARD OF COUNTY COMMISSIONERS**
16 **OF LEVY COUNTY, FLORIDA**

17
18 
19 _____
20 Desiree Mills, Chair

21 **ATTEST:** Danny J. Shipp, Clerk
22 of the Circuit Court and Ex-officio Clerk
23 to the Board of County Commissioners

24
25 
26 _____
27 Danny J. Shipp, Clerk

28 Approved as to form and legal sufficiency

29
30 
31 _____
Nicolle M. Shalley, County Attorney

TEMPORARY EMPLOYMENT AGREEMENT

This **Temporary Employment Agreement** (the "Agreement") is entered into by and between the **Levy County Board of County Commissioners** ("Employer" or "Board") and **Jared Thomas Blanton, CPA** ("Temporary Employee" or "Mr. Blanton.")

Section 1. Background and Purpose

Policy Number 209 of the Board adopted Levy County Personnel Policies and Procedures allows the County to employ temporary employees for a specified, time limited period. Such a temporary employee can be an executive/professional whose terms of employment are established by contract. The Board desires to employ a County Budget Officer to prepare a balanced County Budget for Board adoption in September 2024 as required by Florida law.

Generally, Policy Number 209 encourages the filling of temporary positions using existing County employees. However, the County's Human Resources Department was unable to find an existing Board employee with the experience, training and education necessary to serve as the County Budget Officer on a temporary basis. By virtue of his previous employment as the Levy County Finance Director, as well as budget and finance work for other Florida local governments and in the private sector, Mr. Blanton has considerable detailed and historical understanding of the Levy County Budget, Florida Statutes Chapter 129, and is a Florida Certified Public Accountant.

Recognizing the Clerk of the Circuit Court has served as the County Budget Officer since 1980, both parties understand it is essential to cooperate with and have the cooperation of the Office of the Clerk of the Court, in particular as to necessary software access and sharing of budget files, in order to timely prepare the FY24-25 County Budget and carry out County Budget Officer functions, and to enable the Clerk to continue to fulfill the duties of auditor and custodian of County funds as required by the Florida Constitution.

The purpose of this Agreement is to establish the terms of temporary employment for Mr. Blanton to serve as the County Budget Officer, and in particular, to timely prepare the FY24-25 Levy County Budget in accordance with critical timeline set forth in the Budget Calendar adopted by the Board and attached as Exhibit "A" to this Agreement.

Section 2. Applicability and Severability

This Agreement sets forth the complete understanding of the parties with respect to the temporary employment and it expressly creates no property interest in and to full-time employment with the County.

While both parties enter into this Agreement in good faith that all portions comply with applicable State and Federal law, any terms of this Agreement that are determined to violate such law, shall be null and void upon such determination being made by counsel

to the Board, a State or Federal Agency, or by a court of competent jurisdiction. Any portion of this Agreement rendered null and void shall be severable and the remaining portions of this Agreement shall remain in effect. The parties may agree to alternative, compliant terms in order to maintain the temporary employment and such terms shall be memorialized in a written amendment.

Section 3. Term of Employment

This Agreement and the term of temporary employment will commence at 8am on Wednesday, April 3, 2024 and will terminate at 5pm on Monday, September 30, 2024 (the "Term"). The Term may not be extended by the parties; however, the parties agree the Employer may shorten the Term, upon 2 weeks advance written notice to the Temporary Employee, if that best serves the needs of the Employer.

Section 4. Duties and Conduct.

Temporary Employee is hereby designated the County Budget Officer and shall carry out the duties thereof as set forth in Chapter 129, Florida Statutes and as further guided by the County Budget Policy adopted by Resolution Number 2024-13 attached as Exhibit "B" to this Agreement. The duty of primary priority during the Term is to timely prepare the FY24-25 Levy County Budget in accordance with critical timeline set forth in the Budget Calendar attached as Exhibit "A."

Temporary Employee has been provided a copy of the Personnel Policies and Procedures Manual adopted by the Board in May 2023 and agrees, during the Term, to conduct himself in accordance with the applicable conduct policies therein (as may be amended from time to time by the Board) such as, but not limited to "County Premises and Work Areas," "Personal Conduct," "Participation in Community Affairs" and "Workplace Violence."

Each party agrees to cooperate with the Office of the Clerk of the Court as necessary to timely prepare the FY24-25 County Budget and perform the duties of County Budget Officer, and to enable the Clerk to fulfill the duties as auditor and custodian of County funds as required by the Florida Constitution.

Section 5. Supervision

Temporary Employee shall work under the supervision of and report directly to the County Coordinator.

Section 6. Compensation

Temporary Employee shall be salary exempt and shall be compensated the salary of \$87,720 for the Term. If the Term is shortened by the Employer, the salary will be reduced in relation to the number of workdays days in the Term that are eliminated.

Section 7. Benefits. Temporary Employee acknowledges that he is not entitled to any benefits offered to full-time County employees, such as insurance, paid absences, vacations and/or holidays.

Section 8. Work Hours and Location. Temporary Employee will work such hours as are necessary to meet the workload demands of County Budget Officer and deadlines to timely prepare the County FY24-25 Budget for adoption by the County Commission. Particular work hours (schedule) are left to the discretion of the Temporary Employee.

Generally one to two workdays per week may be worked remotely from a home office, provided Temporary Employee maintains a fully-equipped home office and works with County IT to ensure connectivity necessary to maintain productivity. Temporary Employee is responsible for outfitting his home office, maintaining a secure environment for work materials with locks as necessary, furniture, and a reliable internet connection. Temporary Employee will not be reimbursed for utility or internet usage for time worked remotely. The County will provide Temporary Employee with a laptop with adequate specifications for the level of work Temporary Employee is required to do, and set up for a secure VPN and/or Remote Desktop connection to his home office.

Temporary Employee will provide monitor(s), docking station, keyboard, mouse, battery backup, speakers, camera, and other computer equipment as he deems necessary for use at his home office. Temporary Employee will not be reimbursed for the above items, nor for de minimus home office supplies like paper, pens, printer ink, staples.

The Employer will provide a fully-equipped office in the Levy County Government Center for use by the Temporary Employee and the Temporary Employee is required to be available on-site when requested by the County Coordinator or his designee.

Each party, by their respective signature below, enters into this Temporary Employment Agreement.

Temporary Employee

Jared Thomas Blanton, CPA, MBA



Employer

Levy County Board of County Commissioners



Desiree Mills, Chair

Approved as to form and
legal sufficiency



Nicolle M. Shalley, County Attorney

Exhibit "A" to Temporary Employment Agreement

Item 5.

Proposed Budget Calendar - FY 2025 Budget Process

BOARD MEETING:	Date	Time	Description	Limitations and Notes
	Thursday, March 7, 2024	3:00 PM	Finance Holds Training Workshop for Staff	Training Workshop may not be annual if staff turnover is low.
	Thursday, March 14, 2024	3:00 PM	Finance Creates ADG Departmental Budget and Sends out Budget Instruction Email	No later than - Aim for Same Day as Training
	Thursday, April 4, 2024	11:59 PM	Departmental Budget Requests Due	
	Thursday, April 11, 2024	11:59 PM	Finance Summarize Payroll Requests & Prelim Payroll Budget Estimates	Consider Wage Study 2024 Update
	Tuesday, April 23, 2024	2:00 PM	Coordinator & Budget Officer Finalize List of Approved Options	For Inclusion in Preliminary Staff Budget
YES	Tuesday, May 7, 2024	2:00 PM	Budget Workshop - Preliminary Staff Budget	Overview of Economic Environment, Payroll Data, and Major Funds. Start Departmental Budget Review and Option Considerations
YES	Tuesday, May 21, 2024	2:00 PM	Preliminary Assessment Updates (EMS, Fire, SW, Road MSBUs)	Finance portion from 5/7 Meeting may need to delay to here if not ready, otherwise, will be light
	Saturday, June 1, 2024	5:00 PM	Clerk, Sheriff, Supervisor of Elections, and Property Appraiser submit Budget	Following Monday - Hopefully turned in Friday
YES	Tuesday, June 18, 2024	2:00 PM	Budget Workshop Constitutional Officers & Outside Agencies	Could Also Deal with Misc BOCC Options
	Monday, July 1, 2024	12:00 PM	Property Appraiser Certifies the Taxable Value on Certification of Taxable Value (Form DR-420)	
YES	Tuesday, July 16, 2024	2:00 PM	Budget Workshop - Municipal Fire Updates and Final Capital and Miscellaneous Options	Fire Requests Must be submitted by June 20th.
YES	Tuesday, July 30, 2024	2:00 PM	Final Budget Workshop for BOCC to Determine Proposed Millage and For Budget Officer to Present Tentative Budget to BOCC	Will need special meeting just for Tentative Budget Presentation and to Set Proposed Millage: We cannot get balanced before 7/16 meeting, but are required to certify the Millage, Budget Hearing Date, and some other info to PA by Aug 4.
YES	Tuesday, September 3, 2024	5:01 PM	Tentative Millage Hearing and Tentative Budget Hearing.	Must be 5:01 or later. Cannot be combined with other business. Cannot conflict with School Board.
YES		5:15 PM	Public Hearing to adopt Annual Assessment Resolution	Consult with NGN On This Date
YES	Tuesday, September 17, 2024	5:01 PM	Final Hearing to Adopt Millage and Final Budget for Fiscal Year 2025.	Must be 5:01 or later. Cannot be combined with other business.

From: [Levy County Attorney](#)
To: [Encinosa, Heather](#)
Subject: FW: Transition of County Budget Officer duties
Date: Friday, April 19, 2024 10:59:13 AM

Nicolle M. Shalley

County Attorney

Levy County, Florida

Physical address: 355 Garner Street, Bronson, Florida 32621

Mailing address: P.O. Box 310, Bronson, Florida 32621

352-486-3389 (office phone)

352-441-0024 (cell phone)

LevyCountyAttorney@levycounty.org

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From: Stanley Griffis <stan@griffislawoffice.com>
Sent: Tuesday, April 09, 2024 1:07 PM
To: Levy County Attorney <LevyCountyAttorney@levycounty.org>
Cc: Danny J. Shipp <levyclerk@levyclerk.com>
Subject: RE: Transition of County Budget Officer duties

Ms. Shalley:

Thank you for the messages. At your request, the Clerk's office has spent significant time researching what can, and should, be done regarding the BOCC's access to the Clerk's financial software. As I have indicated to you before, the Clerk wishes to maintain separation between the Clerk's constitutional requirements and the BOCC's obligation to prepare its budget. To that end, we again ask that the Board procure its own budgeting software to fulfill its responsibilities. The Clerk does not consent to allowing access to its software to BOCC employees. The Clerk asks that you please accept his position and move forward with your transition without his participation. We do not desire to meet again regarding this subject. The Board is in possession of budget data from prior years to assist Mr. Blanton.

Finally, the ongoing contact with Clerk's employees or agents for access/information to Clerk's data contained in your requests is improper. Neither Ali, nor any other county employee, has permission to directly obtain data from the Clerk's IT staff.

Thank you.

Exhibit "E"

Stan Griffis.



Stan Griffis, Esq.
The Griffis Law Firm, LLC
13 SE 1st Ave.
Chiefland, FL 32626
P: 352-535-2948
stan@griffislawoffice.com
www.GriffisLawOffice.com

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From: Levy County Attorney <LevyCountyAttorney@levycounty.org>

Sent: Tuesday, April 9, 2024 12:07 PM

To: Danny J. Shipp <levyclerk@levyclerk.com>; Danny J. Shipp <levyclerk@levyclerk.com>

Cc: Stanley Griffis <stan@griffislawoffice.com>; Levy County Commission District 3 <district3@levycounty.org>; Levy County Commission District 1 <district1@levycounty.org>; Levy County Commission District 4 <district4@levycounty.org>; Levy County Commission District 5 <district5@levycounty.org>; Levy County Commission District 2 <district2@levycounty.org>; Wilbur Dean <dean-wilbur@levycounty.org>; Ali Tretheway <tretheway-ali@levycounty.org>; Jared Blanton <budgetoffice@levycounty.org>

Subject: RE: Transition of County Budget Officer duties

Importance: High

Hi Danny – Since we received no communication from you or your legal counsel, Ali contacted ADG late yesterday. Max Grimm (ADG Customer Success Agent) informed Ali that he worked with your Staff yesterday morning regarding ADG access for the County Budget Officer and that it seemed your Office was in the process of setting up the requested User access to the functions that Ali requested: Edit/Action access to Budget Functions in ADG Software Levy BOCC only; Inquiry access to all budget, Accounts Receivable/Receipt, General Ledger, AP, and Payroll & Personnel Data in ADG Software for the Levy BOCC only, and the ability to perform Budget Adjustments (Amendment) transactions Levy BOCC only. If so, we appreciate your efforts, and ask that you or your Staff please advise when you expect the BoCC Budget Officer User access to be active?

Has there been any progress on providing the requested BoCC Budget files: (1) The following files (with mirrored file structures and filepaths so as to maintain external PowerPivot linking): X/Data, X/Analysis, X/Finance/Budget, X/Finance/Jared Miscellaneous Work Files, X/Jared Internal Work, X/Finance/BOCC Meetings (this one contains historical Year End BA files), and X/Reference; and (2) Any files pertaining to the FY 2025 County budget process acquired by, or created by, Clerk staff. If we do not hear from you by tomorrow (Wednesday) at noon, Ali will follow up directly with IT on this request.

Again we offer -- if there is any issue, question or misunderstanding with regard to this transition and these requests, let's promptly meet and work through it. If you are not willing to communicate with us, please designate someone from your Finance Staff to do so. The first BoCC public meeting to review the FY2025 Budget is Tuesday, May 7th and much work (that depends access to Budget files and ADG) needs to be done in preparation for that meeting. We must get this transition of duties completed and move forward with cooperation between the BoCC Budget Office and the Clerk Finance/Accounting Office. Thank you.

Nicolle M. Shalley

County Attorney

Levy County, Florida

Physical address: 355 Garner Street, Bronson, Florida 32621

Mailing address: P.O. Box 310, Bronson, Florida 32621

352-486-3389 (office phone)

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From: Levy County Attorney

Sent: Friday, April 05, 2024 5:02 PM

To: Danny Shipp (shipp-danny@levyclerk.com) <shipp-danny@levyclerk.com>; Danny J. Shipp (levyclerk@levyclerk.com) <levyclerk@levyclerk.com>

Cc: stan@griffislawoffice.com; Desiree Mills (district3@levycounty.org) <district3@levycounty.org>; John Meeks (district1@levycounty.org) <district1@levycounty.org>; Tim Hodge (district4@levycounty.org) <district4@levycounty.org>; Matt Brooks (district5@levycounty.org) <district5@levycounty.org>; Rock Meeks (district2@levycounty.org) <district2@levycounty.org>; Wilbur Dean <dean-wilbur@levycounty.org>; Ali Tretheway (tretheway-ali@levycounty.org) <tretheway-ali@levycounty.org>; budgetoffice@levycounty.org

Subject: RE: Transition of County Budget Officer duties

Importance: High

Hi Danny – Since we've not heard from you, this email is a follow up on the request below. There are critical dates on the Calendar for FY24-25 County Budget Preparation and Adoption that must be met. We do not expect your Office to handle this transition entirely on your side or entirely at your expense. I spoke to Brady with New River Technology and he confirmed having spoken to your Office about these matters and he again offered his assistance with any IT services that either of us need for this transition. Brady seemed reasonably confident that ADG (now Tripleview Technologies) could work out a solution that would allow the BoCC and the Clerk to carry out their respective functions using the ADG program. Please provide the contact info for your ADG account/support rep and we will copy your Office on any correspondence that we have with ADG. Or, if you have already been working with ADG on this, please share that correspondence with us. Ali and I are available to meet anytime (except 10-11am and 2-3pm) on Monday and anytime on Tuesday or Wednesday, let me know who to invite from your Office to resolve these remaining transition details. As time is of the essence, I would appreciate a response before 2pm on Monday. Thank you.

Nicolle M. Shalley

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Levy County, Florida

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From: Levy County Attorney

Sent: Wednesday, April 03, 2024 5:07 PM

To: Danny Shipp (shipp-danny@levyclerk.com) <shipp-danny@levyclerk.com>; Danny J. Shipp (levyclerk@levyclerk.com) <levyclerk@levyclerk.com>

Cc: stan@griffislawoffice.com; John Meeks (district1@levycounty.org) <district1@levycounty.org>; Rock Meeks (district2@levycounty.org) <district2@levycounty.org>; Desiree Mills (district3@levycounty.org) <district3@levycounty.org>; Tim Hodge (district4@levycounty.org) <district4@levycounty.org>; Matt Brooks (district5@levycounty.org) <district5@levycounty.org>; Wilbur Dean <dean-wilbur@levycounty.org>; Ali Tretheway (tretheway-ali@levycounty.org) <tretheway-ali@levycounty.org>; budgetoffice@levycounty.org

Subject: Transition of County Budget Officer duties

Importance: High

Good Afternoon Danny - This email is to request your reasonable cooperation in transitioning the County Budget Officer duties to a BoCC employee – as the BoCC voted to do yesterday pursuant to Section 129.025, Florida Statutes. I understood - from your prior meeting with the Chair of the BoCC (which she asked me to attend as the County Coordinator was unavailable) and from our subsequent conversations - that, whichever option the Board chose regarding County Budget Officer duties and preparation of the FY24-25 Budget, you would do your part. Whether that meant continuing to serve on behalf of the Board as its County Budget Officer (pursuant to Resolution Number 2017-015, which is attached) or whether that meant cooperating to transition those duties to whomever the Board designated.

I kept you and your legal counsel informed throughout this process – providing you with the draft County Staff memo regarding the options for County Budget Officer, requesting (and making) your suggested edits to that Memo, providing you with a draft list of files and access to “ADG” (the County’s finance software) as a starting point for a follow-up meeting between Ali (the BoCC employee most familiar with ADG) and whatever staff person you designated, along with IT to figure out the export/transfer of the necessary Budget files and how ADG can be accessed for County Budget Officer functions, and informing you that I had been requested by the County Coordinator to agenda this item and make the presentation to the BoCC and how I would do that.

Yesterday, at the start of the BoCC Meeting, your legal counsel approached me to advise that the BoCC would have to purchase expensive software to do the Budget preparation. I explained to your legal counsel that the BoCC had not yet made a decision regarding County Budget Officer and that, if they did, I was confident that BoCC staff and Clerk staff with expertise in ADG, aided by IT and ADG support (if necessary) could work out those details. During my presentation of the agenda item, I so advised the BoCC. Neither you, nor your legal counsel, contradicted my statement or advised the BoCC differently.

At 1:25pm and 2:27pm yesterday (shortly after the BoCC Meeting adjourned), Ali and Wilbur followed up with emails to Kay and Schonna in your Office to provide them with a copy of the Temporary Employment Agreement for a County Budget Officer and the email address for the County Budget Officer and to request access for the County Budget Officer to certain ADG Budget functions necessary to transition those duties from your Office. That email was forwarded to me yesterday evening and it is attached. I just confirmed that Ali and Wilbur have received no response.

At 2:34pm yesterday, I received a call from your legal counsel who informed me that: (1) you and he consulted with IT and no ADG access can be provided to the County Budget Officer for Budget functions; and (2) the BoCC will have to make public records requests for any County Budget files (paper or electronic), then the Clerk will have to process, including review, redaction, and likely a significant charge to the BoCC. I expressed to your legal counsel, with some frustration, that I did not believe either of those things.

First, ADG is a software program (marketed specifically for local governments as scalable and

customizable) with different modules (e.g., Payroll/timecards, Requisitions, General Ledger, Budget Preparation) and different levels of User authorizations. We already have BoCC staff users (such as Ali) who have considerable ADG access. Surely the knowledgeable County staff (in the Clerk and BoCC offices) can have a conversation with IT and ADG to see what can be done to appropriately limit access to Budget functions (the BoCC's responsibility) vs. auditor and custodian of funds functions (the Clerk's responsibility). Perhaps we don't have to re-invent the wheel - 52 Florida Counties (including small, rural ones like Hendry and Hardee) have Budget functions handled by a BoCC employee – perhaps one of them also uses ADG. If it is necessary to further customize the Levy County version of ADG and there are costs, that is understandable. Let's work through those issues.

Second, County Budget files are the BoCC's files. Chapter 129, Florida Statutes make clear the BoCC is responsible for annually preparing and adopting a balanced County Budget (that includes the Budgets of all County Constitutional Officers, except the Property Appraiser) and they can designate a County Budget Officer to carry out those duties for the BoCC. The 2017 Resolution (and the prior 1980 Resolution, also attached) makes clear that the BoCC designated the Clerk to act as it's County Budget Officer and provides specific Budget Policy and Procedures that the Clerk is to follow in carrying out those duties for the BoCC. For your legal counsel to tell the BoCC that it must make public records requests to obtain the County Budget files that it needs to meet its statutory obligation to prepare and adopt a balanced budget is simply wrong as a matter of law, obstructionist and in bad faith. Your legal counsel did state that he was not familiar with the 2017 Resolution, so I agreed to provide it (it is attached to this email). If there is a misunderstanding about what files are being requested, let's work through those issues.

I ask you to confirm that you are willing to cooperate in good faith to transition the County Budget Officer duties from your Office to the BoCC's designated County Budget Officer. It is critical that we schedule a meeting of the knowledgeable persons to work through the transition details and allow the FY2024-25 Budget Process to move forward. Please let me know who to invite to that meeting from your Office, your ADG contact/support/representative and which of our IT persons (Brady, Rich?) that you and your legal counsel consulted regarding these issues. I look forward to your prompt response.

Nicolle M. Shalley

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**UNOFFICIAL
DOCUMENT**

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT,
IN AND FOR LEVY COUNTY, FLORIDA

LEVY COUNTY, FLORIDA, a political
Subdivision of the State of Florida

Levy Case: 38-2024-CA-78

Plaintiff,

vs.

DANNY J. SHIPP, Clerk of Circuit Court,
for Levy County, Florida,

Defendant.

**MOTION TO DISMISS FACIALLY INSUFFICIENT
PETITION FOR ISSUANCE OF WRIT OF MANDAMUS**

Danny J. Shipp, Clerk of the Circuit Court and Comptroller for Levy County, Florida, moves this Court for its order dismissing the Petition for Issuance of Writ of Mandamus filed in this cause because it is facially insufficient. The Petition does not show a clear legal right to the relief requested, does not show a clear legal ministerial duty on the part of the Clerk to perform, and does not show that there are no other adequate remedies at law. *See Bd. Of County Comm'rs Broward County Fla. v. Parrish*, 154 So. 3d 412, 417 (Fla. 4th DCA 2014). As grounds for this Motion, the Movant states as follows:

INTRODUCTION

The Clerk of the Circuit Court's authority is derived from Constitutional and Statutory Law. *Alachua County v. Powers*, 251 So. 2d 32, 35 (Fla. 1977). Generally speaking, the Clerk of Circuit Court and Comptroller is the auditor, recorder, and custodian of all county funds. *See* § 125.17, Fla.

Stat.; Art. VIII, Sec. 1(d) and Art. V, Fla.Const. The Florida Legislature and Florida Supreme Court have enacted hundreds of other obligations on the Clerk, which are not relevant to the issues herein.

In this matter, from at least 1980 through April 2, 2024, the Levy County Clerk of the Circuit Court was designated the County Budget Officer per statutory default. The County Budget Officer's responsibilities are to compile and recommend a tentative budget to the Board of County Commissioners. See § 129.03(3), Fla. Stat. Section 129.025, Fla. Stat., states:

- (1) Each board of County commissioners may designate a county budget officer to carry out the duties set forth in this chapter. Unless the board designates a different officer, the clerk of the circuit court of the county comptroller, if applicable, shall be the budget officer for the purposes of this chapter.
- (2) The Legislature finds that the duties of the county budget officer set forth in this chapter do not fall within the constitutional responsibilities performed by the several clerks of the circuit court as auditor and custodian of county funds.

As recognized in the statute, the Clerk's lawful requirements to account and report are discrete from the County Budget Officer's obligations to compile and recommend a budget to the Board of County Commissioners (BOCC).

On May 10, 1999, the Levy County Clerk of Court¹ entered a software contract with American Data Group, Inc., (ADG), which continues to be in force between the Clerk and ADG. The software has enabled the Clerk to perform its statutory lawful duties to account and report, as well as to perform the defaulted budget officer responsibilities to prepare and present to the BOCC a tentative budget each year that said role was applicable to its office by default.

¹ Douglas "Mac" McKoy was the Clerk of Court in 1999.

The contract, which is attached to the Petition, grants a *non-assignable, nontransferable* license to use the ADG Programs to the Licensee (the Clerk of Court) in its paragraph 5. The language in the contract additionally restricts use to the Licensee's employees in paragraph 7.

On April 2, 2024, Plaintiff passed a resolution under § 129.025(1), Fla. Stat., which designated the county budget officer responsibilities to a BOCC employee named Jared Blanton. Mr. Blanton was a former employee of the Clerk who resigned, as stated in the Petition. There is no dispute that the Board has a statutory right to designate a budget officer. However, its newly employed budget officer, Mr. Blanton, is no longer covered under the software license as a former employee of the Clerk's office.

It is clear that the County's resolution had the effect of terminating the Clerk's statutory responsibilities to act as the county budget officer. As such, the Clerk no longer has any duty to prepare and present a budget to the BOCC. And while a clerk has the responsibility to act as auditor of county funds, it is also without dispute that a board does not have the right to audit the clerk's office. See *Powers*, 351 at 37.

Here, the County seeks mandamus relief to "Require the Clerk to cease interfering with the lawful *designation* of the Budget Officer by the Board of County Commissioners of Levy County" and "allow access by the County's designated Budget Officer to *all* County records held or maintained by the Clerk, *including the ADG system*, that are necessary for the Budget Officer to perform his duties..." The Petition does not contain a legal citation as to what law, statute, case, or rule allows it third-party access to confidential records or software licensed to and/or maintained by the Clerk.

In its entirety, the Petition is facially deficient. It does not state what statute requires the Clerk to permit a non-employee access to all county

records for any purpose. The Petition does not state grounds of clear legal right to the relief requested. The Petition does not show where a Chapter 119 request for public records by the BOCC has been directed to the Clerk. The Petition does not allege that Mr. Blanton is an independent certified public accounting firm. He is shown as an employee with his contract attached to the Petition as well. Because the Plaintiff has not shown [and cannot show] how the Clerk has failed to perform a duty owed to it, the Petition is facially insufficient and fails as a matter of law.

APPLICABLE STANDARD FOR MANDAMUS

Mandamus is a common law remedy that is used to enforce an established legal right by compelling a public officer or agency to perform a duty *required by law*. A party who petitions the court for a writ of mandamus must show a violation of a clear legal right and corresponding breach of an indisputable legal duty. *Pleus v. Crist*, 14 So. 3d 941 (Fla. 2009); *Cason v Ross*, 207 So. 3d 1024 (Fla. 1st DCA 2017); *DeGregorio v. State*, 205 So. 3d 841 (Fla. 2^d DCA 2016); *Fraternal Order of Police v. Odio*, 491 So. 2d 339 (Fla. 3^d DCA 1986); *Board of County Com'rs Broward County Florida v. Parrish*, 154 So. 2d 412 (Fla. 4th DCA 2014); *Seigler v. Bell*, 148 So. 3d 473 (Fla. 5th DCA 2014).

One of the most fundamental requirements for the issuance of the writ is that the legal duty of the public officer or agency must be ministerial, and not discretionary. *Pace v. Singeltary*, 633 So. 2d 516 (Fla. 1st DCA 1994); *City of Tarpon Springs v. Planes*, 30 So. 3d 693 (Fla. 2^d DCA 1994); *City of Miami v. Village of Key Biscayne*, 197 So. 3d 580 (Fla. 3^d DCA 2016); *Barnett v. Antonacci*, 122 So. 3d 400 (Fla. 4th DCA 2013); *Architectural Sheet Metal, Inc. v. RLI Ins. Co.*, 936 So. 2d 1181 (Fla. 5th DCA 2006).

A duty or act is defined as ministerial “when there is no room for the exercise of discretion, and the performance being required is directed by law.” *Town of Manalapan v. Rechler*, 674 So. 2d 789 (Fla. 4th DCA 1996), citing *Solomon v. Sanitarians’ Registration Bd.*, 155 So. 2d 353 (Fla. 1963); *Miami-Dade County Bd. Of County Com’rs v. An Accountable Miami-Dade*, 208 So. 3d 724 (Fla. 3d DCA 2016); *Bennet v. Clerk of Circuit Court Citrus County*, 150 So. 3d 277 (Fla. 5th DCA 2014); *Gawker Media, LLC v. Bollea*, 170 So. 3d 125 (Fla. 2d DCA 2015).

This requirement underscores the limited use of a writ of mandamus. It may be employed only to enforce a right by compelling performance of a corresponding duty, and not to litigate and entitlement to the right. *City of Bradenton v. Johnson*, 989 So. 2d 25 (Fla. 2d DCA 2008); *Miami-Dade County Bd. Of County Com’rs v. An Accountable Miami-Dade*, 208 So. 3d 724 (Fla. 3d DCA 2016); *Butler v. City of Melbourne Police Dept.*, 812 So. 2d 547 (Fla. 5th DCA 2002). “Central to mandamus relief is the ministerial character of the compelled action—a situation arising where there ‘is no room for the exercise of [the respondent’s] discretion, and the performance being required is directed by law.’” *Bd. of County Comm’rs Broward County Fla. v. Parrish*, 154 at 417. In the instant case, the Plaintiff has not shown the performance being required is directed by law.

Moreover, mandamus is not appropriate if there is another adequate remedy. Generally, a party who has failed to exhaust other administrative or legal remedies is not entitled to a writ of mandamus. *Butler v. Jones*, 225 So. 3d 923 (Fla. 1st DCA 2017); *Finfrock v. Florida Civil Commitment Center*, 34 So. 3d (Fla. 2d DCA 2010); *LaFerte-Diaz v. Department of Corrections*, 187 So. 3d 908 (Fla. 3d DCA 2016); *Bass v. State*, 103 So. 3d 933 (Fla. 4th DCA 2012); *Duggan v. Dept. of Corrections*, 665 So. 2d 1152 (Fla. 5th DCA 1996).

ARGUMENT

The Petition is facially insufficient and must be denied. First, the Petition contains no allegation of an established legal duty that the Clerk is required to perform by law nor that the performance being sought is required by law.

A party who petitions the court for a writ of mandamus must show a violation of a clear legal right and corresponding breach of an indisputable legal duty. The Plaintiff alleges no clear legal right to the Clerk's licensed software. The BOCC can show no authority that gives it a clear legal right to the Clerk's licenses software that performs the Clerk's discrete functions nor "all" of its records relative to any function. Because there is no clear legal right of the Plaintiff to the ADG software, there is no breach of a Clerk ministerial duty.

Second, the Petition contains no allegation of the Clerk "interfering with the lawful designation of the Budget Officer by the Board of County Commissioners of Levy County." The Board passed its resolution, which it was entitled, and it is now the BOCC's employee/Budget Officer's responsibility to compile and recommend a budget to the Board. There are numerous ways to go about the duty without accessing the proprietary licensed software of the Clerk's Office. As such, the Clerk declining access to its licensed software to a non-employee cannot be construed as interfering with the designation of the Board's newly employed Budget Officer who is admittedly not a Clerk's employee.

Third, an essential requirement to invoke jurisdiction for a writ is a clear legal, ministerial duty on the party of the defendant to perform. In its entirety, there is no ministerial duty alleged in the Petition. Discretionary decisions do not support mandamus.

One of the most fundamental requirements for the issuance of the writ is that the legal duty of the public officer or agency must be ministerial, and not discretionary. A duty or act is defined as ministerial “when there is no room for the exercise of discretion, and the performance being required is directed by law.” An example of a ministerial duty may be the issuance of a marriage license applied and paid for by qualified applicants. The Clerk would be required to issue the license if all statutory requirements were met in the application. Granting access to a licensed software program to a non-employee third-party is not a ministerial duty. At best, the Clerk’s decision to allow third-party access, in any form, to its software is discretionary; and subject to the terms of its contract with the software company. See Petition’s attachment.

Mandamus may be employed only to enforce a right by compelling performance of a corresponding duty, and not to litigate and entitlement to an alleged right. The Petition’s plain language shows the Plaintiff seeks to litigate an entitlement to “allow access by the County’s designated Budget Officer to *all* County records held or maintained by the Clerk, *including the ADG system*, that are necessary for the Budget Officer to perform his duties.” Entitlement is not the standard. Thus, the Petition fails on its face.

The Petition makes it clear that the access it seeks is a right that it believes it is entitled. The Plaintiff seems to predicate this belief it holds on its allegation that it contributed the funds that purchased the software licensed to the Clerk’s Office. The attached contract to its Petition does not show where the County is a license holder or a party to the contract.

Where contracts are clear and unambiguous, they should be construed as written, and the court can give them no other meaning. In construing a contract, the legal effect of its provisions should be determined from the

words of the entire contract. *Khosrow Maleki, P.A. v. M.A. Hajianpour, M.D., P.A.*, 771 So. 2d 628, 631 (Fla. 4th DCA 2000). (citation omitted). Likewise, "[a] court may not change the terms of a contract to achieve what it might think is a more appropriate result, or to relieve one side from an improvident bargain." *Rosenstein v. Rosenstein*, 976 So. 2d 1148, 1149 (Fla. 4th DCA 2008) (citation omitted).

The Plaintiff has a new employee who it named as its Budget Officer, and who it has made clear in its Petition is no longer an employee of the Clerk's Office. Simply because the Budget Officer may believe access to the Clerk's software program is an expeditious avenue for him to perform his duty, perhaps as he may have done in the past as a Clerk employee, does not impart a correlative duty on the Clerk under any theory and is not the proper standard of a common law writ of mandamus. In sum, litigating third-party access and licenses to the Clerk's software databases is not appropriate for mandamus relief.

Mandamus is also not appropriate if there is another adequate remedy. Generally, a party who has failed to exhaust other administrative or legal remedies is not entitled to a writ of mandamus. To the extent Plaintiffs actually seek "records," they do not allege that they have done so under Chapter 119. This chapter provides an entire statutory scheme to seek public records, with statutory limits. Additionally, the Board is statutorily authorized to employ "an independent certified public accounting firm to audit any funds, accounts, and financial records of the county and its agencies and governmental subdivisions," as per § 125. 01(x), Fla. Stat. But what is clear and relevant to these proceedings is that no statute gives the Plaintiff the right to have one of its employees access the financial records of the Clerk's office. In sum, the Board has failed to exhaust its available legal

remedies and has failed to plead a facially sufficient Petition for Writ of Mandamus.

The Plaintiff has not established any of the three required prongs for issuance of a writ. It has not pleaded a clear legal right to the relief requested; it has not shown a clear, legal, ministerial duty on the part of the Clerk to perform; and it has not shown that there is no other adequate remedy. The Petition should be denied as facially insufficient.

CONCLUSION

Based on the foregoing, Plaintiff has submitted a facially insufficient request for common law mandamus relief. The Clerk of the Circuit Court and Comptroller for Levy County respectfully requests this Court's order *denying the petition on the merits*.

CERTIFICATE OF SERVICE

I CERTIFY THAT a true and correct copy hereof was filed in the FLORIDA E-PORTAL, which will serve an electronic copy by e-mail to all counsel of record, on this 25th day of April, 2024.

Respectfully submitted,

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