

CITY OF SANIBEL

RESOLUTION NO. 18-044

A RESOLUTION APPOINTING THE LAW FIRM OF HENDERSON FRANKLIN STARNES & HOLT, P.A. TO REPRESENT THE CITY OF SANIBEL CITY COUNCIL OF WHICH JOHN D. AGNEW, ESQUIRE WOULD BE LEAD COUNSEL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has met with and evaluated Attorney John D. Agnew of the law firm Henderson Franklin Starnes & Holt, P.A. ("Henderson Franklin"); and

WHEREAS, after evaluation of such, the City finds that Attorney John D. Agnew and the law firm of Henderson Franklin meet the City's need for legal services; and

WHEREAS, the City desires to retain the services of Henderson Franklin; and

WHEREAS, the City desires to retain Attorney John D. Agnew to provide the services of City Attorney;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sanibel, Florida:

SECTION 1. The City of Sanibel employs John D. Agnew as City Attorney to perform functions and duties specified in the City of Sanibel Charter for the City Attorney and to perform other legally permissible and proper duties and functions as the City Council shall from time to time assign. The said employment is for an indefinite term. The City Attorney shall act as chief legal advisor and counsel to the City Council and shall provide legal representation and advice to the City Council and, as appropriate, the City Manager, City Staff, the Planning Commission, and Council Advisory Boards as directed by the City Council. The City Attorney shall report directly to the City Council and shall have sole responsibility for the employment and management of personnel within the City Attorney's Office and operation of the City Attorney's Office.

SECTION 2. The law firm of Henderson Franklin is hereby approved to provide legal services to the Sanibel City Council and the Sanibel Planning Commission.

SECTION 3. Attorney John D. Agnew is hereby approved to provide the services of City Attorney to both City Council and the Sanibel Planning Commission in addition to providing general legal services to the City Manager and others designated by her.

SECTION 4. Both the Law Firm and Attorney John D. Agnew shall perform legal services under the direction of the Sanibel City Council.

SECTION 5. Both the Law Firm and Attorney John D. Agnew shall serve as chief legal advisor to the council and administration and shall represent the city in all legal proceedings and perform such other related duties as the council may deem necessary.

SECTION 6. The hourly billing rate for services shall be \$250.00 per hour for partner attorneys and \$175.00 per hour for associate attorneys. The hourly billing rate for paralegals shall be \$100.00 per hour. These rates shall not be increased without approval of City Council.

SECTION 7. The City shall pay reasonable costs and out-of-pocket expenses, including reasonable and necessary expenses for travel (including mileage at City's rate per mile), copying, postage and delivery service, and other actual out-of-pocket expenses if reasonable and necessary.


SECTION 8. The Law Firm shall send statements for services on a monthly basis showing the correct amount of time for each person who renders billable services, the hourly rate and the amount of fees for the services. Clerical services are deemed to be overhead and not billable.

SECTION 9. The City of Sanibel is a governmental entity, funded by taxes. Accordingly, the Law Firm, John D. Agnew and the City shall endeavor to employ cost-saving measures, including the use of the City's offices, the City's computerized legal research provider, and personnel where practicable, use of the City's Paralegal, and other similar cost-saving devices

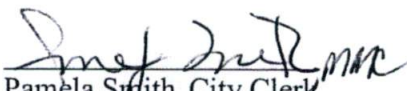
SECTION 10. Effective date.

This Resolution shall take effect retroactively to July 11, 2018.

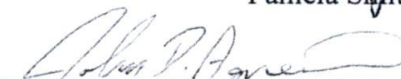
DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida, this
7th day of August, 2018.


Kevin Ruane, Mayor

AUTHENTICATION:


Pamela Smith, City Clerk

APPROVED AS TO FORM:


John D. Agnew, City Attorney

7/27/18
Date

Vote of Council members:

Ruane	<u>yea</u>
Denham	<u>yea</u>
Goss	<u>yea</u>
Maughan	<u>yea</u>
Smith	<u>yea</u>

Date filed with City Clerk: August 7, 2018



Henderson|Franklin
ATTORNEYS AT LAW

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Bonita Springs • Naples • Sanibel

Reply to
John D. Agnew
Direct Fax Number 239.344.1538
Direct Dial Number 239.344.1364
E-Mail: john.agnew@henlaw.com

July 2, 2018

VIA HAND DELIVERY AND ELECTRONIC MAIL

Mayor and City Council Members
City of Sanibel
800 Dunlop Road
Sanibel, FL 33957

Re: City Attorney Services for the City of Sanibel, Florida

Dear Mayor and City Council Members:

It is with pleasure that I write to express my personal interest, and that of my firm, Henderson, Franklin, Starnes & Holt, P.A., in providing legal services to the City of Sanibel. Pursuant to the City's June 7, 2018 press release, and in light of City Attorney Ken Cuyler's impending retirement, it is my understanding the City is in immediate need for legal services. I am ready, willing and able to fulfill that need, with the further benefit of having the support and resources of Southwest Florida's largest and oldest law firm fully behind me.

Our proposal is to provide the City of Sanibel, on an external contract basis, with the exceptional quality of services it has expected from its in-house counsel. In so doing, I would personally take primary responsibility and serve as the City's point of contact for all its legal needs, but with the backing and expertise of over 50 other Henderson Franklin attorneys practicing in Lee County. Enclosed for your consideration is my resume, together with relevant information about my firm. As you will note, I have a background that includes both counseling and litigation, representing governmental entities, special districts, businesses, and individuals. With my diverse experience, combined with departments of local attorneys specializing in land use and environment, real estate, and insurance defense, among others, we can provide any legal services the City requires—not only in the areas of law currently served by your in-house counsel, but also in areas of the law currently outsourced by the City.

Henderson Franklin proposes to provide all legal services required or requested by the City of Sanibel at rates of \$250/partner, \$175/associate, and \$100/paralegal. These rates are significantly discounted from our regular rates, and are competitive with the

Henderson, Franklin, Starnes & Holt, P.A.

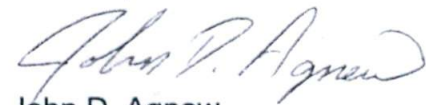
Mayor and City Council Members
City of Sanibel
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rates we currently provide to other Southwest Florida city and county governments, school districts, and special districts. Further, it would be my intent to utilize, whenever possible and practical, the services of the City's in-house paralegal, who I am pleased to understand will be retaining her current position.

I am confident this proposed arrangement can result in significant savings to the City of Sanibel, relative to its current legal department expenses. The transparency provided by hourly billing provides accountability and also allows the City and its citizenry the opportunity to fully evaluate and understand the time required of the City Attorney position, as configured. Not only will this information be of immediate benefit, but if the City later wishes to later move to a flat-fee arrangement, it can budget prudently based on an actual-time and cost billing history.

Should there be any questions related to this proposal, I welcome the opportunity to answer them. If the City of Sanibel is interested in proceeding with the proposed engagement, I look forward to working with the City's designee to quickly finalize the details, ensuring the City has no lapse in its legal support. In the interim between now and the City Council's decision, my firm and I appreciate your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "John D. Agnew".

John D. Agnew

Enclosures
cc: Jim Isom

JOHN D. AGNEW

1715 Monroe Street, P.O. Box 280, Fort Myers, Florida 33902

(239) 344-1364

john.agnew@henlaw.com

EDUCATION

UNIVERSITY OF KENTUCKY COLLEGE OF LAW—Lexington, Kentucky

Juris Doctor, December 2005

Bachelor of Health Science (Health Services Management), *summa cum laude*, May 2001

RELEVANT LEGAL EXPERIENCE

HENDERSON, FRANKLIN, STARNES & HOLT, P.A., Fort Myers, Florida

July 2006 to present

Shareholder

- Provide business and employment counsel to private companies, governmental entities, and special districts
 - Draft and/or revise business contracts, construction contracts, service contracts, leases, employment or independent contractor agreements, releases, and other legal documents
 - Prepare construction contracts for local school district
 - Prepare employment agreements and releases for local airport authority
 - Review/revise aircraft purchase and sale documents for local mosquito control district
 - Prepare employment, confidentiality, non-disclosure, and non-compete agreements
 - Provide advice and legal opinions on proactive measures, compliance, and conflict resolution
 - Perform legal research and provide legal opinions on current or pending laws
 - Advise on Sunshine Law, including responses to public records requests, conduct of public meetings, and conduct of "shade" meetings
 - Review proposed personnel policies and actions prior to implementation
 - Review proposed employment policies and handbook provisions
 - Advise clients regarding sensitive personnel issues, including discipline or termination
- Extensive experience with mediations, arbitrations, and litigation in state and federal court
 - Routinely handle real estate disputes involving purchase agreements, leases, or title issues
 - Breach of purchase agreement, seeking damages or specific performance
 - Breach of lease, seeking eviction and/or damages
 - Title issues involving adverse claims of ownership, possession, or use
 - Routinely handle construction disputes
 - Defective work or failure to perform
 - Claims of lien on property or bonds
 - Routinely handle business disputes relating to contracts, business break-ups, or debt collection
 - Breach of contract or tortious interference with business relations
 - Breach of fiduciary duty, accountings, and/or business dissolution
 - Enforcement or defense of restrictive covenants
 - Assist with the collection of debts owed by virtue of mortgage, promissory note, or other contract or equity
 - Routinely handle employment claims relating to wage/overtime, discrimination, or retaliation
 - Representation in administrative charge process before the Equal Employment Opportunity Commission and the Florida Commission on Human Relations
 - Representation in state and federal court actions

LEGAL HONORS AND ACTIVITIES

- **Martindale-Hubbell**, AV-Preeminent (highest) rating (2011-present)
- **Florida Super Lawyers**, Rising Star (2009-2012), Super Lawyers (2013-present)
- **Lee County Bar Association**, Executive Council (2011-2015)
 - Served as President (2014), Past President, Vice-President, Treasurer, and Secretary
- **Twentieth Judicial Circuit Professionalism Committee**, Member (2014-2015)
- **Twentieth Judicial Circuit Local Professionalism Panel**, Member (2014-2015)

COMMUNITY INVOLVEMENT

- **PACE Center for Girls of Lee County, Inc.**, Board of Directors (2014-present)
 - Serve as Treasurer on Executive Committee (2016-present)
- **Abuse Counseling & Treatment, Inc. (ACT)**, Board of Directors (2017-present)
 - Serve as Vice-President on Executive Committee (2018-present)

MILITARY EXPERIENCE

UNITED STATES ARMY

Active Army 1994 – 1998; Army National Guard 1998 - 2008

Airborne Ranger, Infantry

Unit Assignments

- 2/75 Ranger Regiment (1994-1996, including deployments to Panama and Haiti); Long Range Surveillance Detachment (LRSD), 311th MI, 101st Airborne Division (1996-1998); 1/149 Infantry Regiment (1998-2006, including domestic counter-drug operations in Kentucky and deployment to Bosnia and Herzegovina); 1/124 Infantry Regiment (2006-2008)

Ranks and Positions

- Held all enlisted and non-commissioned officer ranks from Private (E-1) through Sergeant First Class (E-7), serving in progressive roles from rifleman to team leader, squad leader to platoon sergeant
- Held commissioned ranks of Second Lieutenant (O-1) and First Lieutenant (O-2), serving as an infantry rifle platoon leader

Significant Schools

- Infantry Basic Training, Airborne, Ranger, SERE (Survival, Evasion, Resistance, and Escape), Air Assault, EMT, Primary Leadership Development Course (Honor Graduate and Leadership Awardee), Basic Non-Commissioned Officer Course, Advanced Non-Commissioned Officer Course, Infantry Officer Basic Course (Honor Graduate)

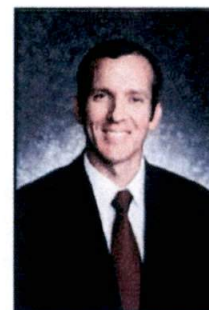
Significant Honors and Awards

- Competed in three annual Best Ranger Competitions, twice placing among the top five two-man teams (1998, 2006)
- Awarded four Army Commendation Medals
- Awarded seven Army Achievement Medals
- Honorable Discharge

John D. Agnew

Stockholder

Office	Fort Myers
Direct Dial	239.344.1364
Fax	239.344.1538
E-mail	john.agnew@henlaw.com



Undergraduate Degree	University of Kentucky, B.H.S., <i>summa cum laude</i> , 2001
Law Degree	University of Kentucky, J.D., 2005
Admitted to The Florida Bar	2006

John Agnew has a diverse practice, representing businesses, individuals, governmental entities, and special districts. His roles range from proactive counseling and document preparation in a boardroom setting, to mediations, arbitrations, and litigation in state and federal court. On the counseling side, John acts as general counsel for clients, providing advice, legal opinions and alternative solutions to issues with the aim of maintaining compliance or otherwise resolving conflict outside of litigation.

In the event litigation is desired or unavoidable, John has extensive experience in business and employment disputes, among others. Regarding business litigation, some of the matters John routinely handles include disputes relating to contracts, real estate, construction, commercial leases, ADA accessibility, business break-ups, loan defaults, and defending against TCPA and other debt collection-related claims. With respect to employment law, John frequently handles cases involving enforcement of non-compete agreements, defense of FLSA wage and hour claims, and defense of discrimination or retaliation claims.

John holds the highest (AV Preeminent) rating by Martindale-Hubbell and has been selected by Florida Super Lawyers® for recognition in business litigation for ten consecutive years (2009-2018). Prior to becoming an attorney, John was an Army Ranger; and, in June 2017, Florida Super Lawyers Magazine featured his story in "Special Force: After 50-mile marches and parachute jumps, former U.S. Army Ranger John Agnew may have over prepared for courtroom combat."

When not working, John enjoys spending time with his family and pursuing a variety of outdoor activities.

PROFESSIONAL AND CIVIC AFFILIATIONS

John is active in the legal community. He is a past President of the Lee County Bar Association and was a member of its Executive Council from 2011-2015. He is a past appointee to the Twentieth Judicial Circuit Professionalism Committee and the Twentieth Judicial Circuit Local Professionalism Panel. He is also a Fellow of the Florida Bar Foundation and a past member of the Calusa Chapter of the American Inns of Court.

John is also active in the general community. He serves on the Executive Committees for the Board of Directors for PACE Center for Girls of Lee County and the Board of Directors for ACT (Abuse Counseling & Treatment, Inc.). John is also a member of the Greater Fort Myers Chamber of Commerce, having graduated from its Leadership Program and served as a facilitator for many other Leadership Program classes.