

RESOLUTION NO. 2021-63

**RESOLUTION OF THE VILLAGE BOARD OF THE VILLAGE OF CALEDONIA
AUTHORIZING THE VILLAGE TO ENTER INTO AN ENGAGEMENT AGREEMENT
WITH THE LAW FIRM OF TERRY & NUDO, LLC**

WHEREAS, Mark and Sue Gracyalny have filed a lawsuit against the Village in Racine Circuit Court naming the Village of Caledonia, the Caledonia Utility District, Anthony E. Bunkelman, Village Engineer, Foth Infrastructure & Environment, LLC, and Globe Contractors, Inc., Case No. 2021-CV-000950.

WHEREAS, the Village's Utility Director Anthony Bunkelman has been named in the lawsuit as acting within the scope of his duties in regard to this matter;

WHEREAS, it has been recommended that the Village retain special litigation counsel to represent the Village in defense of this lawsuit;

NOW THEREFORE BE IT RESOLVED, that the law firm of Terry & Nudo, LLC is confirmed as Special Counsel to represent the Village of Caledonia, the Caledonia Utility District, and Anthony E. Bunkelman in this matter and that the engagement agreement attached hereto as **Exhibit A** (the "Engagement Agreement") is hereby approved and memorialized effective as of May 3, 2021;

BE IT FURTHER RESOLVED THAT that the Board finds that Anthony Bunkelman was working within the scope of his duties and the Village will provide and pay for his defense in this lawsuit;

BE IT FURTHER RESOLVED THAT the Village President and Village Clerk are authorized to execute the Engagement Agreement and that the Village Administrator and Village Attorney are authorized to assist in the matter as necessary in furtherance of the Board's directives.

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin,
this 17 day of May, 2021.

VILLAGE OF CALEDONIA

By: 

James R. Dobbs,
Village President

Attest: 

Joslyn Hoeffert,
Village Clerk



Todd A. Terry
Todd@LawMidwest.com

www.LawMidwest.com

May 4, 2021

Via E-mail (esekes@peglawfirm.com)

Village of Caledonia
c/o Tom Christensen, Village Administrator
5043 Chester Lane
Racine, WI 53402

Re: Litigation Defense

Dear Mr. Christensen:

I write in regard to the above matter. Thank you for selecting Terry & Nudo, LLC to represent you as we are humbled to be allowed to serve you. Our office strives to deliver high quality, cost effective legal services and will always work in your best interest, subject to our duties of professional responsibilities. Please do not hesitate to contact us if you have any questions or concerns.

1. **Identification of Clients.** Our clients will be identified as the Village of Caledonia, Mr. Anthony Bunkelman, and the Caledonia Utility District (hereinafter the "Clients"). Any reference in this correspondence to you or the clients will refer to the Village of Caledonia, Mr. Anthony Bunkelman, and the Caledonia Utility District.

2. **Scope of Engagement.** This engagement letter (the "Agreement") confirms the terms of our representation. As we discussed, the scope of our engagement on behalf of you as our clients, will, in general, be to represent you (collectively) in Racine County Circuit Court Case 21-CV-95, *Gracyalny v. Village of Caledonia et al.* This representation, unless agreed to via additional engagement, shall be limited to the trial court level. The engagement does not include any services in any appellate court.

3. **Staffing.** I will be the responsible attorney for this file. I will keep you informed of my offices progress and we will utilize our best efforts to respond to you as promptly as possible. In return, we request that you keep us informed of any developments that may affect our work as soon as you become aware of them and to be available when we need to consult with you or any other professionals or employees whom you designate to us as individuals who are providing you with additional assistance or advice on this matter.

4. **Conflicts of Interest.** We have checked our records and confirm that there is not a conflict of interest that prevents us from working on these matters based upon the information you have provided to us at this time.

5. Fees and Billing. The fees and costs for our engagement are not predictable at this point. Therefore, we cannot promise what fees or expenses will be necessary to resolve or complete our work. The payment of our firm's fees and costs are not contingent upon any specific outcome. The payment terms of our representation are as follows:

A. It has been agreed that you will compensate us for services, subject to the professional responsibility rules governing our practice, based upon the time devoted to your matter at the hourly rates charged by members of our firm. The agreed upon hourly rate is \$150.00 per hour.

B. We will bill you for support services, such as photocopy, long distance telephone and facsimile calls, messenger and delivery service, recording and filing fees.

C. We may ask you to pay directly invoices which we receive from third parties (such as filing fees with the Department of Financial Institutions or fees for corporate record books or a corporate seal) that bill us during our representation.

D. Statements are normally sent each month and reflect the services and expenses incurred to date. Payment shall be due promptly upon receipt. In addition, subject to our rules of professional responsibility, you agree that we may also cease performing services until satisfactory arrangements have been made for payments of amounts outstanding in excess of 45 days and the payment of future amounts.

6. Costs and Out of Pocket Expenses. The Client agrees to advance and pay to the Attorneys sufficient sums to pay all filing fees, court costs and all other necessary expenses in order to properly investigate, prepare and prosecute the claims, whether damages are recovered or not. No settlement shall be binding without the Client's consent. The Attorneys shall have a lien for their services and for their expenses incurred on behalf of the Client upon the proceeds paid in the Client's claims.

7. Termination of Representation.

A. Either of us may terminate this agreement at any time for any reason by written notice. Our firm is subject to applicable rules of professional conduct when terminating a client engagement. If we terminate the engagement, our firm will take all reasonable and practical steps to protect your interests. We will provide new counsel with any papers you have given us.

B. Unless previously terminated, our representation will end when we send our final statement of account. After the representation ends, there may be changes in laws or regulations that might affect your future rights and responsibilities. However, our firm does not have an obligation to continue to advise you about future legal developments, unless you engage us to do so.

8. Disposition of Files and Records. Following termination of our representation, any otherwise non-public information you have supplied to us which is retained by us will be kept confidential in accordance with applicable rules of professional conduct. This storage will be in a confidential and secured electronic format. At your request, electronically saved or produced documents will be returned to you promptly upon receipt of payment for outstanding fees and costs, unless applicable rules of professional responsibility require an earlier return. Our own files, including lawyer work product, pertaining to the representation will be retained by our firm. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, credit card accounting records and internal lawyer's work product such as drafts, notes, internal memoranda and legal and factual research prepared by or for the internal use of lawyers. We reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us any time after seven (7) years after termination of the engagement unless you request otherwise.

9. Opinions; Results. Either at the beginning or during representation, we might express opinions or beliefs concerning our representation and the results that might be anticipated. Any such statement made by us is an expression of opinion only and is not a promise or guaranty of results. At this early stage, it is difficult to say, with any precision, how 'strong' your case may be. Our position will become more defined once we have the appraisal conducted.

Please confirm your approval of this engagement agreement by signing and returning the enclosed duplicate copy in the envelope provided. If you have any questions or if this agreement does not accurately set forth our arrangement, please call me.

Sincerely,

TERRY & NUDO, LLC




Todd A. Ferry

TAT/ak

Agreed and accepted this 17th day of May, 2021.

VILLAGE OF CALEDONIA

By: 
Tom Christensen, Village Administrator