

AGREEMENT

Between

NASSAU COUNTY

and

NABORS, GIBLIN & NICKERSON, P.A.

For

LEGAL SERVICES

1. **Parties.** This "Agreement is made and entered into by and between Nassau County, a political subdivision of the State of Florida (the "County"), and Nabors, Giblin & Nickerson, P.A. ("Special Counsel").
2. **Term.** This Agreement begins on the date it is executed by the County and will continue, unless sooner terminated pursuant to the terms hereof, until the completion of the Litigation (as defined below).
3. **Scope.**
  - A. County hereby retains Special Counsel to represent County (including any offices or employees, in their official capacity, of the County that Special Counsel properly designates as named plaintiffs) in litigation for the purpose of seeking damages, penalties, interest, attorney's fees, costs, and all other appropriate relief for the non-payment or underpayment to the County of transient occupancy taxes by online booking companies such as hotels.com, Expedia.com, Travelocity and others, whether the action proceeds in the civil court system (including trial and all necessary appeals and review proceedings) or before any federal, state, or local administrative or governmental agency, department or board (collectively, the "Litigation").
  - B. Special Counsel will provide sufficient resources, including attorney time, to diligently prosecute the Litigation. County agrees to fully cooperate with Special Counsel in its efforts by timely providing Special Counsel with information known to the County relative to the scope of the Litigation, by keeping Special Counsel reasonably informed of developments, by making its agents and employees reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings and trial, and by consulting with Special Counsel regarding the Litigation. To assist in the prosecution of the Litigation, the County will provide sufficient administrative resources in an effort to gather necessary information on the transient occupancy tax sought to be collected as part of the Litigation.

- C. The County designates David Hallman, County Attorney, as the County's representative to coordinate with Special Counsel as to all matters connected with the Litigation. This designation is not intended to preclude communication between Special Counsel and other County representatives.
4. **Representation of Related Interests.** Special Counsel shall have the right to represent other individuals, business entities, municipalities, governmental agencies or governmental subdivisions in other transient occupancy tax actions or similar litigation without the consent of the County, subject to the Rules of Professional Conduct relating to conflicts of interest, and may join such other parties as plaintiffs in those actions or litigation as Special Counsel deems appropriate in its sole discretion.
5. **Compensation.**
- A. The employment of Special Counsel will be on a contingency fee basis. Specifically, if Special Counsel is successful in obtaining and collecting a recovery for the County – whether through the administrative process and/or civil court system, and whether by settlement, arbitration award, Court Judgment, upon appeal or otherwise – Special Counsel will receive attorney's fees in the following amounts (based upon the amount actually collected or the value actually received by the County):
- i. As to any settlement from any adverse party before suit is filed (or if suit is filed but the suit does not include a particular online company due to an expected resolution between that company and the County during the audit or assessment process of any claims the County has or may have against that company for the non-payment or underpayment of transient occupancy taxes), Special Counsel will receive Twenty-five Percent (25%) of the Gross Recovery (defined below); and
  - ii. If any recovery is made at any time after suit is filed (except any recovery covered by the preceding paragraph), Special Counsel will receive Thirty Percent (30%) of the Gross Recovery.
- B. In the event any other County contracts with Special Counsel to pay a contingency percentage lower than the amount provided under this Agreement, the contingency fee percentage for the County shall be reduced to that of such other County.
- C. The proceeds of any recovery shall be paid into Special Counsel's law firm trust account and promptly disbursed to the County consistent with the terms of this Agreement and the applicable Rules of Professional Conduct.

**6. Gross Recovery.**

- A. The term "Gross Recovery" shall include all damages, penalties, interest, attorney's fees, costs, and, without limitation, the then present value of any monetary payment agreed or ordered to be made by adverse parties in the Litigation or their insurance carrier(s), whether by settlement, arbitration award, court judgment, or otherwise, without reduction for recovery of Costs as defined below. In the event the Litigation establishes the liability for such taxes not yet due and payable by such adverse parties, but does not award damages for past due taxes, the Gross Recovery shall include the amounts collected prospectively for a period of three (3) years from the date of the Final Judgment rendered in the Litigation.
- B. If payment of any part of the relief received by the County will be in the form of property or services ("In Kind"), the value of such property and services for purposes of calculating the Gross Recovery shall be calculated based on the present value of the In Kind property or services at the time of receipt thereof. The attorney's fees for the value of the In Kind relief shall be paid out of any initial lump-sum payment by the defendants. If the initial lump-sum payment is insufficient to pay the attorney's fees in full, the balance will be paid from amounts subsequently received before any distribution to the County.

**7. Costs.**

- A. It will be necessary for Special Counsel to incur and advance certain court costs and other types of expenses in prosecuting the Litigation. These costs and other expenses may include, but are not limited to, the following: filing and service fees; external costs for investigative services; travel expenses (including air fare, ground transportation, vehicle mileage, lodging and meals); deposition expenses and court reporter fees; preparation of exhibits, graphics, and transcripts on appeal; and miscellaneous copying, binding, postage, shipping, and courier expenses. In addition, Special Counsel has discretion under this Agreement to employ expert witnesses Special Counsel determines are required to prosecute the Litigation, and the amounts paid to those expert witnesses shall be included within the definition of Costs.
- B. All such costs as defined in paragraph 7(A) shall be subject to the following limitations:
  - i. Costs for which reimbursement is sought must be verified by attached receipts.
  - ii. Claims for mileage and meals cannot exceed the statutory allowance as provided for under Chapter 112, Florida Statutes, as amended.

- iii. Any required lodging shall be reimbursed at the single-person rate.
  - iv. Any required car rentals shall be reimbursed at the standard-size vehicle rate.
  - v. Common carrier travel shall be reimbursed at the coach class rate.
  - vi. Neither faxes nor legal research costs (Lexis, Westlaw, etc.) shall be reimbursed.
- C. County agrees to reimburse Special Counsel for all reasonable Costs out of its share of the Gross Recovery, after the attorney's fee specified in Paragraph 5 above has been calculated and deducted.
- D. County understands that Special Counsel may incur certain expenses, including, for example, expenses for travel, experts, depositions and copying, that jointly benefit multiple clients. In that event, the expenses shall be allocated by Special Counsel among the relevant clients on a pro rata basis, and the County's portion of those expenses shall be considered Costs.
- E. In some instances, it may be necessary for Special Counsel to retain special outside counsel to assist on matter relating to the Litigation. Special Counsel has entered into a Memorandum of Understanding with the firm of Colson, Hicks and Eidson for this purpose and the County hereby consents to that relationship. Special Counsel has also retained the services of Brown, Garganese, Weiss & D'Agresta, P.A. to assist on this matter and the County hereby consents to that retention. The County agrees that Special Counsel, subject to County's prior written consent, may retain such other special outside counsel. In such instance, the fees of such special outside counsel shall be paid by Special Counsel from the attorney's fees specified in Paragraph 5 above and shall not be deemed a part of Costs.
- F. If there is no recovery, Special Counsel will be solely responsible for payment of the Costs. In no event shall the County be liable to pay or reimburse Special Counsel for Costs and fees, collectively, in an amount exceeding the amount of any recovery.
8. **Reasonableness.** The County and Special Counsel have discussed the reasonableness of the contingency fee provided for in this Agreement, as opposed to the use of an hourly rate, a fixed fee, quantum meruit, or some other possible basis for calculating the attorney's fees to be paid to Special Counsel. The County and Special Counsel agree that under all the circumstances a contingency fee is the most reasonable and equitable way to compensate Special Counsel in light of the effort required and the risks to be undertaken in the Litigation. The County and Special Counsel further understand that the substantial effort required to prosecute the Litigation and the

substantial costs to be incurred by Special Counsel will not be compensated for or reimbursed if there is no recovery. Therefore, the County agrees that it will not contest the reasonableness or fairness of this contingency fee Agreement.

**9. Possible Efforts by Defendants to Invalidate Agreement.**

A. Past defendants in litigation involving public entities have challenged and sought to invalidate contingency fee arrangements between public entities and outside counsel. The County and Special Counsel believe that any such challenge to this Agreement will lack merit and that this contingency fee arrangement is valid and in the public interest. The County agrees to join Special Counsel in opposing any such challenge. However, in the event this contingency fee arrangement is found to be invalid, Special Counsel agrees to continue to represent the County in the Litigation with the understanding that, if there is no recovery, the County will owe nothing for attorney's fees or Costs.

B. If there is a recovery, and this contingency fee arrangement is found to be invalid, the County shall pay a reasonable fee for the services rendered, plus Costs. If the parties are unable to agree on the reasonable fee for the services rendered, or for any other disputes arising under this Agreement, such disputes shall be determined by arbitration proceedings before the Judicial Arbitration and Mediation Service ("JAMS"). Resolution of any such arbitration shall be based on the principle that reasonableness shall be determined exclusively in accordance with the parties' expectations regarding fees and Costs under this Agreement.

**10. Assignment.** Special Counsel is expressly employed because of its unique skills, ability and experience and, therefore, it is understood that no substitution or assignment may be made unless the County expressly approves such substitution or assignment in writing. Special Counsel is expressly prohibited from subcontracting any legal services required hereunder unless such subcontracting is consented to in writing by the County, which consent shall not be unreasonably withheld.

**11. Division of Attorney's Fees.** Special Counsel may divide the attorney's fees received for the legal services under this Agreement with any other attorneys or law firms properly retained as associate counsel, provided such firms are approved in advance in writing by the County (based on consideration of the County's conflict of interest policy and any other applicable County policies and interests). The terms of the division, if any, will be disclosed to the County. The County is informed that, under the Rules of Professional Conduct of The Florida Bar, such division may be made only with the County's written consent after a full disclosure to the County. The County will not unreasonably withhold approval of associate counsel retained by Special Counsel or unreasonably refuse to consent to a proposed division of fees among counsel.

**12. Legal Services Specifically Excluded.** Special Counsel does not agree to provide any representation beyond that described in Paragraph 3 above. In particular, the

County agrees that Special Counsel has no obligation or responsibility to provide representation in defending any legal action against the County commenced by any person in connection with claims brought against the County related to the Litigation, except with regard to compulsory counterclaims related to the subject matter of the Litigation, which counterclaims shall be defended by Special Counsel. If the County wishes to retain Special Counsel to provide any legal services not provided under this Agreement, a separate written agreement between Special Counsel and the County will be required, following negotiation of and agreement on the additional compensation to be paid by the County for that representation.

13. **Attorney's Lien.** Special Counsel shall have a lien to the fullest extent of Florida law for attorney's fees and Costs on all claims and causes of action that are the subject of its representation of the County under this Agreement and on all proceeds of any recovery collected, whether by settlement, arbitration award, Court judgment, or otherwise.

14. **Withdrawal or Discharge.**

A. If the County discharges Special Counsel due to a material breach of this Agreement by Special Counsel that is not cured within thirty (30) days after written notice of such breach is provided to Special Counsel, Special Counsel may be entitled to a fee based upon quantum meruit less the amount of the County's damages caused by Special Counsel's breach of contract.

B. If any withdrawal or discharge governed by Paragraph 14(B) or (C) occurs, the County shall have the right to obtain and retain any and all work product produced by Special Counsel, and Special Counsel will be reimbursed out of any recovery for all costs otherwise recoverable under this Agreement which costs are reasonable and necessary to the Litigation.

C. If Special Counsel withdraws due to a material breach by the County, which breach is not cured within thirty (30) days after written notice of such breach is provided to the County, or if the County discharges Special Counsel for any reason other than a material breach of this Agreement by such counsel, the County agrees to compensate Special Counsel as follows:

i. If the County discharges Special Counsel before Special Counsel has substantially completed performance of the services necessary to conclude the Litigation as to one or more defendants, as to those defendants, the County agrees to compensate Special Counsel for the reasonable value of the legal services provided plus reimbursement for Costs; and

ii. If the County discharges Special Counsel after Special Counsel has substantially completed performance of the services necessary to conclude the Litigation as to one or more defendants, Special Counsel shall receive the full fee, plus reimbursement for Costs, as provided by this Agreement, as to each such

defendant. Both payment of attorney's fees and reimbursement for Costs will be paid by the County at the time of recovery.

15. **Settlement.** Special Counsel will not settle the County's claims without the approval of the Nassau County Board of County Commissioners, which shall have the absolute right to accept or reject any settlement. Special Counsel will notify the County promptly of the terms of any settlement offer received by Special Counsel.
16. **Conflict of Interest.** While performing services under this Agreement, Special Counsel shall not act as counsel in any lawsuit or other adversary proceeding in which the County or any Nassau County Commissioner is named as an adverse party, and shall not undertake any representation of any party (whether through lobbying or the provision of legal services) before the Board of County Commissioners in connection with any quasi-judicial or other hearing involving an application, contract, claim, or other matter.
17. **Confidentiality.** This Agreement established the relation of attorney-client among the parties hereto. Special Counsel is to hold all money and property of the County in trust for the County's benefit, is not to divulge its confidences, and is entitled to the candid cooperation of County employees in all matters related to the Litigation. If the Florida Public Records Act (Chapter 119, Florida Statutes) is applicable to Special Counsel's records, Special Counsel shall comply with all requirements thereof.
18. **Independent Contractor; Third-Party Beneficiary.** Special Counsel is an independent contractor under this Agreement. Services provided by Special Counsel hereunder shall not be provided by Special Counsel as officers or employees of the County. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
19. **Contingency Fee.** Special Counsel warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Special Counsel, to solicit or secure this Agreement and that they have not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Special Counsel, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, the County shall have the right to terminate this Agreement without liability, at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.
20. **Disclaimer of Guarantee.** Although Special Counsel may offer an opinion about possible results regarding the subject matter of this Agreement, Special Counsel cannot guarantee any particular result. The County acknowledges that Special Counsel has made no promises about the outcome and that any opinion offered by Special Counsel in the future will not constitute a guarantee.

21. **Applicable Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida, without resort to conflict of law principles. Exclusive venue for any litigation relating in any way to this Agreement shall be in the Circuit Court for Nassau County, Florida. Any required mediations or arbitrations under this Agreement shall be held in Nassau County, Florida.

22. **Notices.** Notice under this Agreement shall be given by email or email attachment, and sent as follows:

TO NASSAU COUNTY:

dhallman@nassaucountyfl.com

TO SPECIAL COUNSEL:

Robert L. Nabors – rnabors@ngnlaw.com

Edward A. Dion – edion@ngnlaw.com

23. **Execution.** It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes, but all of which shall constitute one and the same Agreement, and a copy signed by Special Counsel and the County is being provided to the County at the time of execution.

24. **Joint Preparation; Headings.** Preparation of this Agreement has been a joint effort of the County and Special Counsel and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other. Headings are inserted into this Agreement solely for convenience and shall not be considered in interpreting this Agreement.

25. **Entire Agreement; Amendment; Severance.** This Agreement fully expresses all understandings of the parties concerning all matters related to their agreement for specialized legal services, and this Agreement constitutes the entire agreement and understanding between the County and Special Counsel for the services to be performed. No modification, amendment, or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Nassau County Board of County Commissioners and Special Counsel, In the even a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the respective dates under each signature.



**COUNTY:**

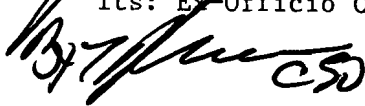
NASSAU COUNTY, through its  
BOARD OF COUNTY COMMISSIONERS

ATTEST:

AS TO CHAIRMAN'S SIGNATURE:

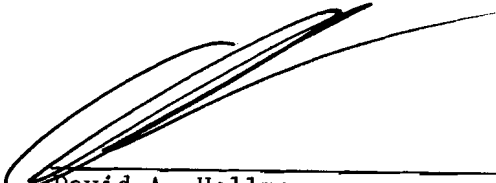


JOHN A. CRAWFORD  
Its: Ex-Officio Clerk

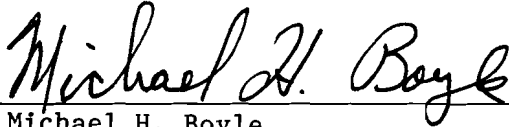


CSO 802  
6/14/10

Approved as to form by the  
Nassau County Attorney:



David A. Hallman

By: 

Michael H. Boyle  
Its: Chairman

9th day of June, 2010.

**SPECIAL COUNSEL:**

NABORS, GIBLIN & NICKERSON, P.A.

By: 

20th day of May, 2010.