

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: 8/17/2010

Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

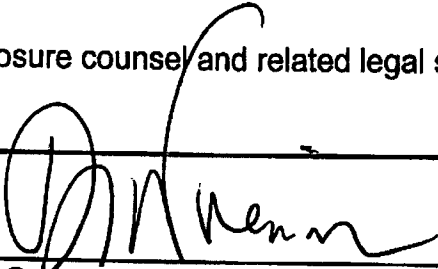
Motion and Title: Staff recommends motion to approve: an Agreement for disclosure counsel and related legal services with the law firm of Nabors Giblin & Nickerson, P.A. ("Attorney").

Summary: The County Finance Committee (the "CFC") reviewed RFP applications for County bond counsel and disclosure counsel on June 24, 2010. The CFC recommends that Attorney be selected as one of two law firms to provide disclosure counsel services to the County through September 30, 2013. Attorney's office is in Tallahassee, Florida. There is no Palm Beach County office. Countywide (PFK)

Background and Justification: The attached Agreement has been executed by the law firm.

Attachments:

1. Agreement for disclosure counsel and related legal services.

Recommended by:  8/5/10
County Attorney Date

Approved by: N/A _____
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* _____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No x _____

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____
Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

* **C. Departmental Fiscal Review: Attorneys fees and costs will paid from the proceeds of the sale of the bonds and cannot be estimated at this time.**

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

[Signature]
8/2/10 OFMB # 8/12/10
8/14/10

[Signature] 8/3/10
Contract Development and Control
E. Jones 8/3/10

B. Legal Sufficiency:
Paul F. [Signature] 7/26/10
Assistant County Attorney

This Contract complies with our contract review requirements.
At the time of our review, the contract was not executed.

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.
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**AGREEMENT BETWEEN PALM BEACH COUNTY
AND NABORS GIBLIN & NICKERSON, P.A.
FOR DISCLOSURE COUNSEL AND RELATED LEGAL SERVICES**

This Agreement is made and entered into on _____, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, ("County"), and the law firm of **NABORS GIBLIN & NICKERSON, P.A.**, a Florida corporation, located at 1500 Mahan Drive, #200, Tallahassee, Florida 32308-5167, Federal Tax I. D. Number 59-2427540, ("Attorney").

In consideration of the mutual covenants and agreements expressed in this Agreement, County and Attorney agree as follows:

1. **Engagement.** County agrees to engage Attorney to provide disclosure counsel services following appointment by the County's Board of County Commissioners on a particular County financing and for such other legal services outside the usual scope of disclosure counsel services as may be requested from time to time by the County Attorney (the "Legal Services").

2. **Compensation.**

(a) Upon Attorney's appointment to act as disclosure counsel for a particular County financing through an Amendment to this Agreement, County agrees to compensate Attorney at 50% of the bond counsel fee established by the schedule set forth in Exhibit "A" to this Agreement for a particular County financing.

(b) For Legal Services requested by the County Attorney which are outside the usual scope of services provided by disclosure counsel or which are unrelated to a financing for which Attorney has been appointed disclosure counsel, County agrees to compensate Attorney at \$200 per hour. Requested formal opinions provided by Attorney may be compensated on a "flat fee" basis for such opinions. Fees for Legal Services under this subsection (b) shall be paid as agreed to in writing by Attorney and the County Attorney or designee.

3. **Expenses and Costs.**

(a) County also agrees to reimburse Attorney for its reasonable and necessary expenses and costs incurred during the course of providing the Legal Services. The expenses and costs may include, but are not limited to, out-of-pocket expenses for express mail, long-distance telephone charges, postage, printing and photocopying.

(b) All requests for payment of expenses eligible for reimbursement under this Agreement shall include copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Legal Services. Long- distance telephone calls shall identify the person(s) called, purpose of call, time and cost. Photocopying or printing charges shall give a general description of documents copied or printed and the rate charged. Mileage charges shall identify the

destination, numbers of miles, rate, and purpose of travel. Any out-of-county travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Agreement shall be approved in writing by the County Attorney or designee, in advance, and paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.

(c) Attorney shall maintain adequate records to justify all its charges, expenses and costs of performing the Legal Services for at least three (3) years after termination of this Agreement. County shall have access to such books, records and documents as required for the purpose of inspection or audit during Attorney's normal business hours, at County's expense, upon reasonable written notice.

(d) No reimbursement will be made for travel expenses incurred by Attorney when the destination is Palm Beach County without the prior written authorization of the County Attorney or designee.

4. **Termination and Assignment.**

(a) This Agreement may be terminated by County upon written notice to Attorney, effective upon Attorney's receipt of the notice. This Agreement may be terminated by Attorney upon sixty (60) days written notice to County. Upon termination, Attorney shall transfer all work in progress, completed work, and other materials related to the Legal Services to County.

(b) Neither this Agreement nor any rights and responsibilities hereunder may be assigned, in whole or in part, by Attorney without County's prior written consent.

5. **Reports, Confidentiality, Public Records and Inspector General.**

(a) Attorney shall provide periodic status reports, either oral or in writing, as requested by the County Attorney or designee.

(b) Attorney shall deliver to County for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for County in the course of providing the Legal Services.

(c) All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by County or at its expense shall be kept confidential by Attorney and shall not be disclosed to any other party, directly or indirectly except as provided in subsection (e), without County's prior written consent unless required by an order issued by a court or like authority of lawful jurisdiction. All drawings, maps and sketches, and other data developed or purchased under this Agreement or at County's expense shall be and remain County's property and may be reproduced and reused at the discretion of County.

(d) Attorney shall comply with the provisions of Chapter 119, Florida Statutes and all other legal public records requirements.

(e) The County has established the Office of the Inspector General, Ordinance No. 2000-049 which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. Attorney shall fully cooperate with the Inspector General, including providing access to records relating to this Agreement. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and audit, investigate, monitor, and inspect the activities of Attorney, its officers, agents, employees, and lobbyists in order to ensure compliance with this Agreement's specifications and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

6. **Insurance.**

(a) Attorney will maintain in full force and effect, during the life of this Agreement, Standard Professional Liability Insurance with limits of not less than Five Million Dollars (\$5,000,000.00) each occurrence with a maximum deductible of One Hundred Thousand Dollars (\$100,000.00).

(b) A Certificate of insurance, satisfactory to County, evidencing such coverage and listing County as an additional insured, shall be furnished to County prior to execution hereof and before commencement of any Legal Services by Attorney under this Agreement, with complete copies of the applicable policy to be furnished upon County's request. Such certificate of insurance shall provide County with thirty (30) days prior written notice of any cancellation or non-renewal. Attorney must provide County with a renewal certificate thirty (30) days prior to expiration of the current certificate of insurance. Failure to provide and maintain certificates of insurance as required herein shall constitute a material breach of this Agreement.

7. **Indemnification.** Attorney shall indemnify, hold harmless and defend the County, its agents, servants, and employees from and against any and all claims, liability, losses and/or causes of actions (excluding attorney's fees) which may arise by virtue of any intentional or negligent act or omission of Attorney in the performance of the Legal Services.

8. **Performance Qualifications.** Attorney represents that it has, or will secure at its own expense, all necessary personnel required to perform the Legal Services. Such personnel shall not be employees of or have any contractual relationship with County. The Legal Services shall be performed by Attorney or under its supervision. All personnel engaged in performing the Legal Services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. Specifically, all lawyers performing the Legal Services must be members in good standing of The Florida Bar. Attorney must obtain prior written approval from the County Attorney or designee prior to permitting a lawyer who is not a member in good standing of The Florida Bar to perform any of the Legal Services hereunder. Attorney warrants that it is listed as qualified disclosure counsel in the Municipal Bond Buyer's "Red Book" and shall maintain such "Red Book" listing during the term of this Agreement. Attorney further warrants that the Legal Services shall be performed by skilled and competent personnel to the highest professional standards.

9. **Truth in Negotiation.** Attorney's execution of this Agreement shall act as the execution of a truth-in negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the date of this Agreement.

10. **Conflicts of Interest.**

(a) Attorney represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the Legal Services, as provided in the standards set forth in Chapter 112.311, Florida Statutes. Attorney further represents that no person having such a conflicting interest shall be employed by Attorney to perform the Legal Services.

(b) Attorney shall promptly notify the County Attorney in writing of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence Attorney's judgment or quality of the Legal Services. Such written notice shall identify the prospective business association, interest or circumstance and the nature of work that Attorney wants to undertake and shall request the County Attorney's opinion as to whether the association, interest or circumstance would constitute a conflict of interest if entered into by the Attorney. The County Attorney or designee shall advise Attorney in writing as to whether a conflict of interest exists within thirty (30) days after receipt of the notice from Attorney. If, in the opinion of the County Attorney, the prospective business association, interest or circumstance would not constitute a conflict of interest by Attorney, the association, interest, or circumstance shall not be deemed in conflict of interest with respect to the Legal Services.

(c) Attorney agrees that it shall not serve as underwriter's counsel on any County bond issue (excluding County-issued industrial development bonds) during the term of this Agreement.

(d) Attorney further agrees to comply with County PPM #CW-0-052 regarding outside counsel conflicts of interest. This PPM is incorporated herein by reference.

11. **Independent Contractor.** Attorney is in the performance of the Legal Services, an independent contractor and not an employee of County. All persons engaged in performing the Legal Services pursuant to this Agreement shall at all times be subject to Attorney's sole discretion, supervision, and control. Attorney shall exercise control over the means and manner in which it and its employees perform the work. Attorney does not have the power or authority to bind County in any promise, agreement or representation other than as specifically provided for in this Agreement.

12. **Solicitation.** Attorney warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Attorney to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Attorney,

any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

13. **Equal Employment.** Attorney warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or disability.

14. **Governing Law.** This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement shall be originally filed and later held in Palm Beach County. **To encourage prompt and equitable resolution of any litigation which may arise, the parties hereby waive any rights to trial by jury.** No remedy herein conferred upon the parties is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. The parties agree that time is of the essence in performing this Agreement. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof.

15. **Notices.** All written notices required in this Agreement shall be sent by certified mail, return receipt requested. If sent to County, the notice shall be mailed to:

County Attorney
Palm Beach County
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

If sent to Attorney, the notice shall be mailed to:

Robert L. Nabors, Esq.
Nabors Giblin & Nickerson, P.A.
1500 Mahan Drive, #200
Tallahassee, Florida 32308-5167

16. **Effective Date.** This Agreement shall be effective on the date set forth above and shall terminate September 30, 2013, unless terminated earlier in accordance with Section 4 above. This Agreement may be renewed for one (1) additional three (3) year term at the County's option.

17. **Non-Appropriations.** The County's performance and obligation to pay under this Agreement beyond the current fiscal year is contingent upon an annual appropriation by the County's Board of County Commissioners.

18. **Vendor List Certification.** As provided in Section 287.132-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereto, Attorney certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State

of Florida Department of Management Services within the 36 months immediately preceding the date hereof.

19. **Subcontracting/Small Business Enterprises (SBE)**. County reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this Agreement. Attorney is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If Attorney uses any subcontractors in performing this Agreement, the following provisions shall apply:

If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, Attorney shall promptly do so, subject to acceptance of the new subcontractor by the County.

The Palm Beach County Board of County Commissioners has established a minimum goal for SBE participation of 15% on all County solicitations.

Attorney agrees to abide by all provisions of the Palm Beach County Code establishing the SBE Program, as amended, and understands that failure to comply with any of the requirements will be considered a breach of contract.

Attorney understands that each SBE firm utilized on this Agreement must be certified by Palm Beach County in order to be counted toward the SBE participation goal.

Attorney shall provide County with a copy of Attorney's Agreement with any SBE subcontractor or any other related documentation upon request.

Attorney understands all the requirements to comply with the tasks and proportionate dollar amounts throughout the term of this Agreement as it relates to the use of SBE firms.

Attorney will only be permitted to replace a certified SBE subcontractor who is unwilling to or unable to perform. Such substitutions must be done with another certified SBE in order to maintain the SBE percentages established in this Agreement. Requests for substitutions of SBE's must be submitted to County's representatives and to the Office of Small Business Assistance.

Attorney shall be required to submit to County Schedule 1 (Participation of SBE-M/WBE Contractors) and Schedule 2 (Letter of Intent) to further indicate the specific participation anticipated, where applicable.

Attorney agrees to maintain all relevant records and information necessary to document compliance pursuant to Palm Beach County Code, Chapter 2, Article III, Sections 2-71 through 2-8013 and any revisions thereto, and will allow County to inspect such records.

20. **Entire Agreement.** The foregoing terms and conditions constitute the entire agreement between the parties hereto and any representation not contained herein shall be null and void and of no force and effect. Further, this Agreement may be amended only in writing upon mutual consent of the parties.

ATTEST:

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock,
Clerk & Comptroller

By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chair

WITNESS:

ATTORNEY: NABORS GIBLIN & NICKERSON, P.A.

Angela D. Matherne
(Signature)
Angela D. Matherne
Name (Type or Print)

Robert L. Nabors
(Individual)
Robert L. Nabors
Name (Type or Print)
Partner
Title

(corporate seal)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Paul F. J.
County Attorney

EXHIBIT A

Fee Schedule

