

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: February 3, 2025

Agenda Item: 5B	Prepared by: Chris Noury, City Attorney
Agenda Section: Consent: Resolution	Date: January 28, 2025
Subject: A Resolution to accept the settlement from Air B&B and its affiliates regarding the lawsuit and authorize the Interim City Manager to sign the documents on behalf of the City	Division: Legal

Background:

A Resolution of the City of North Myrtle Beach to accept the settlement from Air B&B and its affiliates regarding the lawsuit City of Charleston, City of North Myrtle Beach et al vs. Air B&B et al, 2021-cp-10-1650 and to authorize the Interim City Manager to sign the settlement document on behalf of the City and to further authorize the Interim City Manager to sign the Replacement Fee Agreement with Special Counsel that represents North Myrtle Beach in the litigation.

- The City of North Myrtle Beach along with other municipalities including Charleston, Myrtle Beach, and Mount Pleasant, among others, brought suit against Air B&B and its affiliates, as well as other short-term rental platforms, seeking to recover from Air B&B Accommodations Taxes (A-Taxes) which the cities allege Air B&B should have collected and remitted to each of the Plaintiffs along with business license taxes that should have been paid to each of the Plaintiffs.
- The Parties have agreed to settle with Air B&B for \$60 million for any applicable Accommodation Taxes and any Business License Taxes for all periods prior to and including September 30, 2024.
- After September 30, 2024, Air B&B will collect applicable A-Taxes in each of the plaintiff's jurisdictions and will remit the collected taxes to Plaintiff's in accordance with the applicable law in each of Plaintiff's jurisdiction.
- After September 30, 2024, Air B&B will obtain applicable business licenses from each Plaintiff and will pay the applicable business license tax in each Plaintiff's jurisdiction based on Air B&B's income attributable to each of Plaintiff's jurisdiction.
- North Myrtle Beach's portion of the settlement will be \$2,034,978.00 after payment of attorney fees and expenses.
- The original fee agreement with Special Counsel who represents the Plaintiffs will be amended to provide a reduction of the fee to be paid to Special Counsel.

Recommended Action:

Adoption of the Resolution

Reviewed by Department Head	Reviewed by Interim City Manager	Reviewed by City Attorney
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Council Action:

Motion By _____ 2nd By _____ To _____

RESOLUTION

**A RESOLUTION OF THE CITY OF NORTH MYRTLE BEACH
TO ACCEPT THE SETTLEMENT FROM AIR B&B AND ITS AFFILIATES
REGARDING THE LAWSUIT CITY OF CHARLESTON, CITY OF NORTH MYRTLE BEACH
ET AL VS. AIR B&B ET AL, 2021-CP-10-1650 AND TO AUTHORIZE THE INTERIM CITY
MANAGER TO SIGN THE SETTLEMENT DOCUMENT ON BEHALF OF THE CITY AND
TO FURTHER AUTHORIZE THE INTERIM CITY MANAGER TO SIGN THE REPLACEMENT
FEE AGREEMENT WITH SPECIAL COUNSEL THAT REPRESENTS NORTH MYRTLE
BEACH IN THE LITIGATION.**

WHEREAS, the City of North Myrtle Beach along with other municipalities including Charleston, Myrtle Beach, and Mount Pleasant, among others, brought suit against Air B&B and its affiliates, as well as other short-term rental platforms, seeking to recover from Air B&B Accommodations Taxes (A-Taxes) which the cities allege Air B&B should have collected and remitted to each of the Plaintiffs along with business license taxes that should have been paid to each of the Plaintiffs; and

WHEREAS, the Parties have agreed to settle with Air B&B for \$60 million for any applicable Accommodation Taxes and any Business License Taxes for all periods prior to and including September 30, 2024; and

WHEREAS, after September 30, 2024, Air B&B will collect applicable A-Taxes in each of the plaintiff's jurisdictions and will remit the collected taxes to Plaintiff's in accordance with the applicable law in each of Plaintiff's jurisdiction; and

WHEREAS, after September 30, 2024, Air B&B will obtain applicable business licenses from each Plaintiff and will pay the applicable business license tax in each Plaintiff's jurisdiction based on Air B&B's income attributable to each of Plaintiff's jurisdiction; and

WHEREAS, North Myrtle Beach's portion of the settlement will be \$2,034,978.00 after payment of attorney fees and expenses; and

WHEREAS, the original fee agreement with Special Counsel who represents the Plaintiffs will be amended to provide a reduction of the fee to be paid to Special Counsel.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL FOR THE CITY OF NORTH MYRTLE BEACH:

Section 1: The Settlement Agreement referenced above is hereby approved.

Section 2: The amendment to the Fee Agreement with Special Counsel is approved.

Section 3: The Interim City Manager is authorized to sign the above-mentioned documents on behalf of the City.

Section 4: This Resolution shall become effective upon the date of passage.

Resolved this third day of February 2025.

Marilyn Hatley, Mayor

ATTEST:

Allison K. Galbreath, City Clerk

RESOLUTION: RES 25-03

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made by and between undersigned Plaintiffs, the City of Charleston et. al. (collectively, “Plaintiffs”), and Defendants, Airbnb, Inc. and all of its subsidiaries and affiliates (collectively, “Airbnb”), in the litigation filed in the Court of Common Pleas for the Ninth Judicial Circuit of South Carolina and docketed as Case No. 2021-CP-10-1650 (in general, the “Litigation” and with respect to Airbnb, the “Airbnb Litigation”). Hereafter, Plaintiffs and Airbnb shall be referred to individually as a “Party” and collectively as “the Parties.”

RECITALS

WHEREAS, on July 7, 2022 Plaintiffs filed a Third Amended Complaint in the Litigation seeking to recover from Airbnb (i) Local, Municipal, Tourist Development, and Beach Preservation Accommodation(s) Fees and Taxes (collectively, “A-Taxes”) which Plaintiffs allege Airbnb should have collected and remitted to each of Plaintiffs and (ii) Business License Taxes Plaintiffs allege Airbnb should have paid to each of Plaintiffs.

WHEREAS, Plaintiffs asserted that Airbnb had an obligation to (i) collect the A-Taxes set forth in Paragraph No. 32 of the Third Amended Complaint (collectively, the “Applicable A-Taxes”) and remit such taxes to Plaintiffs and (ii) pay the Business License Taxes set forth in Paragraph No. 43 of the Third Amended Complaint (the “Applicable Business License Taxes”);

WHEREAS, Airbnb disputed that it had any obligation to (i) collect and remit the Applicable A-Taxes to each of Plaintiffs or (ii) pay the Applicable Business License Taxes to each of Plaintiffs;

WHEREAS, the Parties wish to resolve the Airbnb Litigation and avoid the time, expense, and uncertainties associated with additional litigation;

WHEREAS, the Parties further desire to confirm (i) the tax base upon which Airbnb will collect and remit Applicable A-Taxes and (ii) the terms on which Airbnb will pay Applicable Business License Taxes; and

NOW, THEREFORE, in consideration of the above recitals, the covenants and agreements contained herein, and other good and valuable consideration, the Parties agree as follows:

AGREEMENT

1. Settlement Payment. Airbnb shall pay, and Plaintiffs shall accept, payment of \$60,000,000 (\$60 million) (the “Settlement Payment”) in full and complete satisfaction of any and all liability or potential liability of Airbnb for any Applicable A-Taxes and any Applicable Business License Taxes, including any applicable or potentially applicable penalties and interest, for all periods prior to and including September 30, 2024. Airbnb shall make the Settlement Payment no later than thirty

- (30) days after the date the last Party signs this Agreement. Allocation of the Settlement Payment to and amongst Plaintiffs is the sole responsibility of Plaintiffs and their counsel and Airbnb shall have no responsibility or liability for any disputes or controversy over how the Settlement Payment is allocated amongst Plaintiffs.
- a. For the avoidance of doubt, no part of the Settlement Payment reflects the payment of any penalty.
 2. Dismissal of Airbnb Litigation. Within fifteen (15) days after the date the Settlement Payment is made, the Parties shall file a Stipulation and Order of Dismissal with the Court of Common Pleas for the Ninth Judicial Circuit dismissing the Airbnb Litigation with prejudice. That Stipulation and Order of Dismissal shall have no effect on Plaintiffs' actions against other Defendants in the Litigation.
 3. Collection of Applicable A-Taxes. Starting October 1, 2024, Airbnb will begin collecting Applicable A-Taxes in each of Plaintiffs' jurisdictions and will remit such collected taxes to Plaintiffs in accordance with applicable law in each of Plaintiffs' jurisdictions.
 - a. Airbnb will collect Applicable A-Taxes on the following charges: (i) the nightly rental charge paid by individuals who rent accommodations through the Airbnb platform ("Guests"); (ii) any cleaning fee or other fee charged by owners of the accommodations and paid by Guests; and (iii) any service fee charged by Airbnb to Guests.
 4. Payment of Applicable Business License Taxes. Airbnb will obtain applicable business licenses from each of Plaintiffs and will pay the Applicable Business License Taxes in each of Plaintiffs' jurisdictions based solely on Airbnb's income attributable to each of Plaintiffs' jurisdictions.
 - a. The initial annual Applicable Business License Taxes will be due April 30, 2025 and will be based on Airbnb's income for the period May 1, 2024 through April 30, 2025.
 5. Release by Airbnb. Airbnb hereby releases, acquits, and forever discharges Plaintiffs from any and all claims, rights, demands, obligations, actions or causes of action relating to Applicable A-Taxes and Applicable Business License Taxes owed by Airbnb to Plaintiffs for all periods prior to and including September 30, 2024, whether such claims, rights, demands, obligations, actions or causes of action are known or unknown, actual or potential, matured or unmatured, except for those obligations agreed to herein.
 6. Release by Plaintiffs. Plaintiffs release, acquit, and forever discharge Airbnb from any and all claims, rights, demands, obligations, actions or causes of action relating to Applicable A-Taxes and Applicable Business License Taxes owed by Airbnb to Plaintiffs for all periods prior to and including September 30, 2024, whether such

claims, rights, demands, obligations, actions or causes of action are known or unknown, actual or potential, matured or unmatured, except for those obligations agreed to herein.

7. No Admissions. Except as otherwise stated with specificity herein, the Parties' exchange of the consideration stated in this Agreement is in full satisfaction of all claims, statements, and positions made or taken by the Parties with respect to the Airbnb Litigation, and such exchange of consideration is not to be construed in any way as an admission or concession by either Party of the validity of any of the claims, statements, or positions made or taken by the other Party.
8. Costs. Each Party shall bear its own costs, expenses and attorney fees incurred in connection with the negotiation and drafting of this Agreement.
9. Authority. Each Party represents and warrants that it has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of the Parties and to bind the Parties to its terms. The person(s) executing this Agreement on behalf of each of the Parties warrants they have full authorization to execute this Agreement.
10. Agreement as Complete Integration/Amendments. This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement properly executed by the Parties. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.
11. Confidentiality. The Parties, and their respective attorneys and representatives agree they will each keep the contents of this Agreement confidential and will not disseminate information relating to the substance or contents of this Agreement to any person except as (a) may be required by law, (b) may become necessary to effect compliance with the law, (c) may be ordered by a court of competent jurisdiction, (d) may be requested by Airbnb's independent accounting firms or legal counsel, or (e) agreed in writing by the Parties to this Agreement; in each case, solely to the extent required, necessary, ordered, requested, or agreed. If a request is made for disclosure of this Agreement, and Plaintiffs believe there is an obligation to disclose any part or all of this Agreement in response to such request, before making such disclosure Plaintiffs shall inform Airbnb and give Airbnb a reasonable opportunity to file any challenge to such disclosure that it deems appropriate.
12. Captions. The paragraph titles and captions used in this Agreement are inserted only as, and intended solely for, the convenience of reference, and shall in no

manner modify, expand, limit, constrain, or describe the scope or intent, or in any other way affect the terms or conditions, of this Agreement.

13. No Construction against Drafting Party. The Parties acknowledge that each of them and their respective legal counsel have had the opportunity to review this Agreement, and that this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions have been prepared by a particular Party.
14. Arbitration: Any disputes arising out of, related to, or in any way connected to the enforceability, application, breach or interpretation of this Agreement shall be resolved by binding arbitration before JAMS in South Carolina or remotely, as the exclusive remedy for such dispute, under the JAMS Rules for Expedited Arbitration. The Federal Arbitration Act governs all substantive and procedural interpretation and enforcement of the arbitration agreement set forth in this Section. Any arbitration commenced shall be heard and determined by such JAMS panelist as may be agreed to by the Parties, or selected by JAMS if the Parties cannot agree. The prevailing party in any arbitration or petition to compel arbitration shall be entitled to its actual attorneys' fees and costs.
15. Execution Knowing and Voluntary. Each of the Parties acknowledges and represents: (i) that it has fully and carefully read and considered this Agreement prior to its execution; (ii) that it has had the opportunity to make whatever investigation or inquiry it deems necessary or appropriate in connection with the subject matter of this Agreement; (iii) that it has been afforded the opportunity to negotiate any and all terms hereof; and (iv) that it is executing this Agreement voluntarily and free from any undue influence, coercion, duress or fraud of any kind.
16. Counterparts and Signature Page. This Agreement may be signed via PDF or facsimile and in counterparts, all of which shall have full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement is made and is effective as of the last date written below.

Date

AIRBNB, INC.

By: _____

Its: _____

Date

CITY OF CHARLESTON, SOUTH
CAROLINA

By: _____

Its: _____

Date

CITY OF NOTTH CHARLESTON,
SOUTH CAROLINA

By: _____

Its: _____

Date

CHARLESTON COUNTY, SOUTH
CAROLINA

By: _____

Its: _____

Date

CITY OF ISLE OF PALMS, SOUTH
CAROLINA

By: _____

Its: _____

Date

CITY OF FOLLY BEACH, SOUTH
CAROLINA

By: _____

Its: _____

Date

CITY OF COLUMBIA, SOUTH
CAROLINA

By: _____

Its: _____

Date

CITY OF MYRTLE BEACH, SOUTH
CAROLINA

By: _____

Its: _____

Date

CITY OF NORTH MYRTLE BEACH,
SOUTH CAROLINA

By: _____

Its: _____

Date

TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____

Its: _____

Date

CITY OF GREENVILLE, SOUTH
CAROLINA

By: _____

Its: _____

Date

TOWN OF MOUNT PLEASANT, SOUTH
CAROLINA

By: _____

Its: _____

Date

TOWN OF EDITSO BEACH, SOUTH
CAROLINA

By: _____

Its: _____

Date

BEAUFORT COUNTY, SOUTH
CAROLINA

By: _____

Its: _____

Date

TOWN OF PORT ROYAL, SOUTH
CAROLINA

By: _____

Its: _____

Date

HORRY COUNTY, SOUTH CAROLINA

By: _____

Its: _____

Date

THE TOWN OF SURFSIDE BEACH,
SOUTH CAROLINA

By: _____

Its: _____