

## **SPECIAL MAGISTRATE SERVICES AGREEMENT**

THIS AGREEMENT is made on the \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the CITY OF CLEARWATER, FLORIDA, P.O. Box 4748, Clearwater, Florida 33758-4748 (the "City") and NANCY B. MAG, ESQ., 304 Old Mill Pond Rd., Palm Harbor, FL 34683 ("Attorney").

### **W I T N E S S E T H:**

WHEREAS, the City wishes to retain Attorney to provide Special Magistrate Services to the City of Clearwater for the purpose of conducting hearings pursuant to § 162.07, Florida Statutes and Sects. 7-102 and 7-103(H)(2), Clearwater Community Development Code.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereto do hereby agree as follows:

**SECTION 1. AUTHORIZATION TO PROCEED AS SPECIAL MAGISTRATE.** Attorney is hereby authorized to provide Special Magistrate services as described in and for the professional fees described in this Agreement.

**SECTION 2. SCOPE OF SERVICES.** Attorney accepts designation by the CITY as the "special magistrate" ("Special Magistrate") for the purpose of conducting hearings pursuant to § 162.07, Florida Statutes and Sects. 7-102 and 7-103(H)(2), Clearwater Community Development Code.

- (1) All hearings conducted by Special Magistrate shall be held in the Clearwater City Council chambers, located on the 1st floor of the Clearwater Main Library, 100 N. Osceola Avenue, Clearwater, FL 33755, or at such other location designated by the City.
- (2) The hearings shall be held monthly on the second Tuesday of each month at 1:30 p.m. unless the hearings are rescheduled upon the mutual agreement of the parties.
- (3) The City Clerk shall be the clerk for the Special Magistrate and shall be responsible for scheduling all hearings, sending all notices, attending all hearings, and for all of the costs associated with completing the clerk's duties.
- (4) At the hearing, the Special Magistrate shall take testimony from a code enforcement officer employed by the CITY and from the person requesting the hearing (hereinafter "petitioner"), and may take testimony from others. All testimony at the hearing will be under oath and will be recorded at the CITY'S expense. Formal rules of evidence do not apply, but the Special

Magistrate shall ensure that due process is observed and governs the proceedings.

- (5) At the conclusion of the hearing, the Special Magistrate shall determine whether a violation under the CITY'S code has occurred; in which case, the Special Magistrate shall uphold or dismiss the violation. If the Special Magistrate upholds the violation, the Special Magistrate shall require the petitioner to pay the penalty assessed by the CITY and may also require the petitioner to pay CITY costs. The Special Magistrate may also exercise any powers authorized under Part I, Chapter 162, Florida Statutes and Sections 5-406, 7-102, and 7-103, Clearwater Community Development Code. The CITY Clerk will prepare the final administrative order for the Special Magistrate containing the Special Magistrate's determinations. The Special Magistrate will sign the final administrative order within 48 hours from the date of the hearing.

SECTION 3. TERM. This Agreement will be effective September 1, 2020 and will continue until terminated in accordance with Section 9 herein.

SECTION 4. RETAINER FEE. The City and Attorney agree to a flat rate retainer of \$500.00 per month for any month where hearings are held.

SECTION 5. CONFLICT OF INTEREST. It is understood by the City and Attorney that Attorney is not aware of any clients of the Attorney that currently present any conflict between the interests of the City and other clients of Attorney. If any potential conflict of interest arises during the time Attorney is acting as the Special Magistrate, Attorney will promptly inform the City. The City is under no obligation to agree to permit the conflict representation.

SECTION 6. INDEPENDENT CONTRACTOR; PUBLIC RECORDS LAW. Attorney agrees that Attorney and any persons employed by Attorney for purposes related to this agreement are not employees of the City for any purpose whatsoever, including unemployment tax, social security contributions, income tax withholding or workers compensation, whether state or federal. Attorney agrees to pay and be solely responsible for all applicable taxes, both state and federal, in connection with this agreement.

**In addition to all other contract requirements as provided by law, the contractor executing this agreement agrees to comply with public records law.**

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 727-562-4092, Rosemarie.Call@myclearwater.com, 600 Cleveland Street, Suite 600 Clearwater, FL 33755.**

The contractor's agreement to comply with public records law applies specifically to:

- a) Keep and maintain public records required by the City of Clearwater (hereinafter "public agency") to perform the service being provided by the contractor hereunder.
- b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, as may be amended from time to time, or as otherwise provided by law.
- c) Ensure that the public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.
- e) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
- f) The contractor hereby acknowledges and agrees that if the contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.
- g) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.
- h) If a civil action is filed against a contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:

1. The court determines that the contractor unlawfully refused to comply with

**the public records request within a reasonable time; and**

**2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.**

- i) **A notice complies with subparagraph (h)2. if it is sent to the public agency's custodian of public records and to the contractor at the contractor's address listed on its contract with the public agency or to the contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.**

**A contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.**

SECTION 7. DUAL OFFICE-HOLDING PROHIBITED. It is understood by the City and Attorney that Attorney may not act as a Special Magistrate for any other municipality or county while this agreement is in effect.

SECTION 8. CONSTRUCTION AND AMENDMENTS. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement may be amended only by a writing duly entered into by the City and the Special Magistrate.

SECTION 9. CANCELLATION OF AGREEMENT. The City may cancel or terminate this Agreement upon ten days advance written notice to the Special Magistrate. In the event of cancellation, the Special Magistrate shall immediately cease work hereunder and shall be reimbursed for eligible and documented reimbursable expenses incurred prior to the date of cancellation. The Special Magistrate may cancel this Agreement by giving 30 days written notice to the city.

IN WITNESS WHEREOF, the City and Attorney have executed this Agreement as of the date first written above.

THE CITY OF CLEARWATER

By: \_\_\_\_\_  
Frank V. Hibbard  
Mayor

Approved as to form:

Attest:

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Michael Fuino  
Assistant City Attorney

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Rosemarie Call  
City Clerk

Attest:

NANCY MAG, ESQ.

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