

**PROFESSIONAL SERVICES AGREEMENT
FOR THE
CITY OF PORT ST. LUCIE
SPECIAL MAGISTRATE**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into on this ____ day of _____ 2021, between the City of Port St. Lucie, a Florida municipal corporation ("City") and Robert Makemson, individually ("Special Magistrate"). The City and Special Magistrate may be referred to individually as a "Party" or collectively as "the Parties."

RECITALS:

WHEREAS, the City, pursuant to the City's Code of Ordinances Section 37.01 and Ch. 162, Florida Statutes (2019), has established the Office of Special Magistrate who shall have all the powers and authority of a code enforcement board; and

WHEREAS, the City wishes to contract for the non-exclusive services provided herein with at least three (3) special magistrates; and

WHEREAS, the Special Magistrate is qualified, willing, and able to provide the services set forth herein; and

WHEREAS, the Special Magistrate agrees to provide certain professional services to the City, and the City agrees to compensate the Special Magistrate for such services,

NOW THEREFORE, in consideration of the premises and the mutual covenants listed herein, the Parties agree as follows:

WITNESSETH:

The recitals set forth above are hereby incorporated into this Agreement and made a part hereof for reference. The Special Magistrate is a licensed attorney in good standing with the Florida Bar Association or a retired Judge. The City agrees to accept from the Special Magistrate, and the Special Magistrate agrees to provide to the City, professional services pursuant to the terms and conditions outlined in the City's Request for Proposal (E-Bid) #20170264, incorporated herein by this reference.

1. **DESCRIPTION OF SERVICES.** The Special Magistrate shall serve the City non-exclusively on an as-scheduled basis to conduct hearings and issue orders containing findings of fact, based on evidence of record and issue conclusions of law. The Special Magistrate shall have the jurisdiction and authority to hear and to decide alleged violations of the City's Code of Ordinances or applicable provisions of the Florida Statutes for building and/or code matters and exercise the powers of the code enforcement board as provided in Ch. 162, Florida Statutes and City of Port St. Lucie Code of Ordinances. City staff shall coordinate and schedule hearings. The Special Magistrate shall work with City staff on scheduling and availability.

2. **PAYMENT; RATE; BILLING.** The City does not warrant or guarantee any minimum number of hours or days or a specific number of cases per hearing.

- a) **INVOICE.** The Special Magistrate shall invoice the City for his/her services as provided herein. The invoice shall include detail of work completed, including the hourly rate and the number of hours worked. The Special Magistrate may invoice for preparation time, however, the maximum, including reviewing minutes from prior cases, shall be two (2) hours per agenda. The Special Magistrate may not bill the City for costs associated with driving/travel time, hearing preparation (other than as provided herein) including but not limited to copies, or administrative staff time. All invoices must include Vendor Number, Purchase Order Number, unique invoice number, and a detailed description of services rendered.
- b) **RATE FOR SERVICES.** The City agrees to pay the Special Magistrate for professional services provided in accordance with this Agreement at the following rates:

Regular Hourly Rate of \$140.00 per hour (Minimum of 2 hours)
On-Call Hourly Rate of \$160.00 per hour (Minimum of 1 hour)

3. **DURATION OF AGREEMENT.** The term of this Agreement shall commence April 26, 2021 and terminate April 25, 2022. This Agreement may be terminated by either Party with or without cause upon thirty (30) days written notice. The Special Magistrate serves at the pleasure of the City Council and may be removed from service at any time, with or without cause, by a majority vote of the City Council.

4. **CONSIDERATION.** The Parties agree that the consideration for this Agreement shall be, for the City, the professional services provided by the Special Magistrate, and for the Special Magistrate, the sums paid by the City.

5. **PUBLIC RECORDS.** The Special Magistrate shall allow public access to all documents, papers, letters, and other materials that are subject to the provisions of Ch. 119, Florida Statutes, and made or received by the City in conjunction with this Agreement. The Special Magistrate shall, to comply with public records laws, specifically to:

- a) Keep and maintain public records required by the public agency to perform the service.
- 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 in this chapter or as otherwise provided by law.
- c) Ensure that 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 Agreement term and following completion of the contract if the Special Magistrate 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 Special Magistrate or keep and maintain public records required by the public agency to perform the service. If the Special Magistrate transfers all public records to the public agency upon completion of the contract, the Special Magistrate shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Special Magistrate keeps and maintains public records upon completion of the contract, the Special Magistrate 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.

IF THERE ARE QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, REGARDING THE DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY CLERK
121 SW PORT ST. LUCIE BLVD.
PORT ST. LUCIE, FL 34984
(772) 871-5157
PRR@CITYOFPSL.COM

6. **SPECIAL MAGISTRATE RESPONSIBILITIES.** The Special Magistrate shall conduct hearings and issue an order containing findings of fact based on evidence presented and conclusions of law. The Special Magistrate is expected to know applicable provisions of law to perform his/her task and may not rely on the City Attorney's office for advice or legal counsel.

- a) **EMPLOYMENT RELATIONSHIP.** The Special Magistrate is an independent contractor and is not an employee or agent of the City. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor between the City and the Special Magistrate during or after the performance of this Agreement. The Special Magistrate shall take responsibility and shall bear all losses resulting to him/her on account of errors or omissions.
- b) **COMPLIANCE.** The Special Magistrate shall comply with all applicable provisions of safety laws, rules, ordinances, regulations, and orders of duly constituted public authorities and agencies exercising regulatory authority over him/her.
- c) **JUDICIAL IMMUNITY.** The Florida Supreme Court has held that the doctrine of Judicial Immunity embraces persons who exercise a judicial or quasi-judicial function. See *Office of State Attorney, Fourth Judicial Circuit of Florida v.*

Parrotino, 628 So. 2d 1097 (Fla. 1993). Thus, the concept of judicial immunity applies to Special Magistrates while acting within the scope of their administrative functions and duties.

- d) **EMPLOYMENT.** The Special Magistrate may undertake concurrent employment where permissible but shall not represent a person or entity before the City Council or any City Advisory Board or Commission, including but not limited to a case before any special magistrate hearing at any time which he or she serves as a Special Magistrate for the City nor conflict with the scheduling of Special Magistrate hearings. The Special Magistrate is expected to be familiar and comply with the dual office-holding prohibition.
- e) **CONFLICT OF INTEREST.** The Special Magistrate may not hire or employ any person who presently exercises any functions or responsibilities on behalf of the City or has any personal financial interest, directly or indirectly, unless otherwise disclosed and approved by the City. In the event a conflict arises between the Parties, the Special Magistrate shall immediately advise the City of such conflict, resign from such conflicting representation, and assist the conflicting clients in obtaining other legal counsel.

7. **NOTICES.** All notices or other communications hereunder shall be in writing and shall be deemed duly given if delivered in person or sent by certified mail, return receipt requested, and addressed as follows:

If to the City:

City Attorney
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984

If to the Special Magistrate:

Robert Makemson
3321 SE Fairway W
Stuart, FL 34997-6029
United States
Office: 772-631-5897
Email: bobmakemson@gmail.com

8. **CITY'S RESPONSIBILITY.** The City shall provide the hearing rooms for the Special Magistrate hearings and shall be responsible for the costs of preparation and recording the hearings and related documents. The City will provide the Special Magistrate with sufficient forms for his/her findings of fact and conclusions of law for each hearing. All clerical expenses for the hearings shall be incurred by the City.

9. **VENUE AND CHOICE OF LAW.** This Agreement shall be governed by the laws of the State of Florida. In the event either Party initiates a legal proceeding or legal action regarding this Agreement, venue shall be in the Nineteenth Judicial Circuit in St. Lucie County, Florida for claims under state law and the Southern District of Florida for claims which are justiciable in Federal Court.

10. **INDEPENDENT CONTRACTOR.** The Special Magistrate is not an employee of the City. The Special Magistrate is, and shall remain, an independent professional with respect to all services performed under this Agreement. No partnership between the Parties is created or intended by this Agreement.

11. **ASSIGNMENT.** No assignment of this Agreement or any provision herein shall be valid or enforceable without the prior written approval of both Parties. Special Magistrate shall not delegate, assign or subcontract any part of the work required to be performed under this Agreement or assign any monies due Special Magistrate hereunder without first obtaining the written consent of the City.

12. **PUBLIC POLICY.** The Parties to this Agreement expressly agree that it is not their intention to violate any public policy, statutory or common law rules, regulations, or decisions of any governmental or regulatory body. If any provision of this Agreement is judicially or administratively interpreted or construed as being in violation of any such policy, rule, regulation, or decision, the provision, sections, sentence, word, clause, or combination thereof causing such violation will be inoperative (and in lieu thereof there will be inserted such provision, section, sentence, word, clause, or combination thereof as may be valid and consistent with the intent of the Parties under this Agreement) and the remainder of this Agreement, as amended, will remain binding upon the Parties, unless the inoperative provision would cause enforcement of the remainder of this Agreement to be inequitable under the circumstances.

13. **ENTIRE AGREEMENT; AMENDMENT.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements between the Parties. This Agreement may only be amended by written document, properly authorized, executed, and delivered by both Parties.

IN WITNESS WHEREOF, the Parties to this Agreement have set their hands and seals on the date first above-written.

SIGNATURE PAGE FOLLOWS

CITY COUNCIL
CITY OF PORT ST. LUCIE,
A Florida municipal corporation

By: _____
Russ Blackburn
City Manager

ATTEST:

Karen A. Phillips, City Clerk

SEAL

APPROVED AS TO FORM:

James D. Stokes
City Attorney

SPECIAL MAGISTRATE



Robert Makemson, Esq.