

**CONTRACT FOR
SPECIAL MAGISTRATE SERVICES**

This is an agreement between the City of Alachua, a municipality in Alachua County Florida, hereinafter referred to as **City**, and Michael D. Durham, hereinafter referred to as Special Magistrate.

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, City and Special Magistrate agree as follows:

ARTICLE 1

DEFINITIONS

- 1.1 City of Alachua. A municipality in Alachua County Florida.
- 1.2 City Commission. Elected governing body of the City of Alachua.
- 1.3 Special Magistrate. A quasi-judicial official subject to the same duties, rights and immunities as other judicial officers, required to operate independently and impartially and to exercise discretion in formulating orders within the parameters of the jurisdiction granted.
- 1.4 Michael D. Durham, is the person selected and appointed to perform the services pursuant to this Agreement and is a member of the Florida Bar in good standing for no less than four (4) years prior to the effective date of this Agreement and must so remain for the Agreement term.

ARTICLE 2
SCOPE OF SERVICE

2.1 The Special Magistrate hereby agrees:

- A. To perform the functions indicated by and specifically set forth in Article II Chapter 12, of the City of Alachua Code of Ordinances including, among other things, holding hearings and assessing fines against violators of City codes and ordinances, generally, as provided below:
 - 1. To issue subpoenas to alleged violators and witnesses to appear at hearings and using the subpoena power to procure evidence for the hearings;
 - 2. To take testimony under oath or affirmation;
 - 3. To issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance; and
 - 4. To adopt rules for conduct at the hearing in accordance with all City ordinances, resolutions, procedures, and applicable law relating to the conduct of quasi-judicial hearings and thereafter conduct the hearings in conformance with those rules.
- B. To attend and preside over Code Enforcement hearings when matters and cases are assigned;
- C. To oversee and confirm that adequate public notice of hearing is given;
- D. To oversee and assure that adequate notice is given to all alleged violators;
- E. To oversee and assure that minutes of each hearing are kept;
- F. To oversee and assure that a recording of each hearing is made and kept;
- G. To hear all cases scheduled for a regular or a special hearing date or continue them to a date certain;
- I. To issue an order at the close of evidence and thereafter issue a written order that shall include findings of fact based on evidence of record and conclusions of law and ordering the proper relief;
- J. To issue orders acknowledging compliance with previous orders; and
- K. To issue orders imposing fines.

2.2 City hereby agrees to cooperate expeditiously and provide necessary administrative staff and

financial support as to all matters referenced in this Section 2.

ARTICLE 3
COMPENSATION AND METHOD OF PAYMENT

- 3.1 City shall pay a Special Magistrate fee of Two-hundred dollars and no cents (\$200.00) per hour with a two-hour minimum per hearing. There is no minimum amount for time utilized outside of a hearing. No travel time or expense shall be charged by or paid the Special Magistrate.
- 3.2 City agrees that it will make its best efforts to pay Special Magistrate within thirty (30) calendar days of receipt and approval (as to form) of Special Magistrate's invoice.
- 3.3 Invoices submitted by Special Magistrate shall reflect the time, place, date, duration and billing will be expressed in hours and tenths of hours (ex. 10.1= 1 hour 6 minutes).
- 3.4 No work or services outside or beyond the hearings herein described will be paid except as that previously approved and authorized by and on the "Change Order" form attached as Exhibit A.
- 3.5 Payment will be made to Special Magistrate at:

Name: Michael D. Durham

Address: 321SE 3RD Street G11, Gainesville, Florida 33601

ARTICLE 4

4.1 Term and Termination.

- A. The term of the Contract shall begin on the date the Agreement is approved by the City Commission and fully executed, continue through September 30 of the instant City fiscal year and automatically renew for successive two year terms unless terminated by either party upon a thirty day written notice to the other or terminated earlier by the City Commission for misfeasance, malfeasance or nonfeasance in office.

- B. The Special Magistrate shall be paid compensation for services performed up to the date of termination.

ARTICLE 5

CHANGES IN AGREEMENT

- 5.1. City or Special Magistrate may request changes such as in compensation or modification of the scope of the services. Changes must be agreed upon in writing prior to any deviation from the terms of this Agreement, shall be at the discretion of the City, be approved by the City Commission and accomplished by Change Order (Exhibit A) or Amendment to this Agreement.

ARTICLE 6

MISCELLANEOUS

- 6.1 Assignment. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered under any circumstances by Special Magistrate without the written consent of the City Manager. However, the Agreement shall run to the City and its successors.
- 6.2 Relationship. The parties to this Agreement intend and declare that the relationship created by this Agreement is that of independent contractor to the City. Further, no agent, employee or servant of the Special Magistrate deemed to be the employee, agent or servant of the City.
- 6.3 All Prior Agreements Merged. This document supersedes all prior negotiations, correspondence, conversations, agreements or understandings concerning the subject matter of this Agreement. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon prior representations or agreements, whether written or oral.
- 6.4 Notices. Whenever either party desires to give notice unto the other, it must be in writing, sent by email, to the party for whom it is intended, at the address last specified for receiving notice. For the present, the parties designate the following address for receiving notice:

City of Alachua:

Kathy Winburn, Planning and Community Development Director
kwinburn@cityofalachua.com

Special Magistrate:

Name: Michael Durham

Email: michael@durhamfloridalaw.com

6.5 Public Records. Special Magistrate shall allow public access to all documents, papers, letters or other material subject to the provisions of 119, Florida Statute (F.S.) made or received by

Special Magistrate: in conjunction with this Contract. Specifically, Special Magistrate: must:

1. Keep and maintain public records that ordinarily and necessarily would be required by COA in order for COA to perform the services being performed by Special Magistrate:.
2. Provide the public with access to public records on the same terms and conditions that COA would provide the records and at a cost that does not exceed the cost provided in 119, F.S., or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.
4. Meet all requirements for retaining public records or transfer, at no cost to COA, all public records in possession of Special Magistrate: upon termination of the contract. All records stored electronically must be provided to COA in a format that is compatible with the information technology systems of COA.

Special Magistrate: must promptly provide COA with a copy of any request to inspect or copy public records in possession of Special Magistrate: and shall promptly provide COA a copy of Special Magistrate: response to each such request. Failure to grant such public access will be grounds for immediate termination of this Contract by COA.

This provision will apply to all services provided unless Special Magistrate: can demonstrate by clear and convincing evidence that it is not or was not acting on behalf of COA under

Florida law. The Special Magistrate: will be held liable for plaintiff attorney fees and costs if a suit is properly filed and the court finds that the Special Magistrate: unlawfully refused to comply with a public records request within a reasonable time.

The Special Magistrate: shall contact Deputy City Clerk Alan Henderson, Custodian of City Public Records, at (386) 418-6104 or ahenderson@cityofalachua.com, concerning any questions the Special Magistrate: may have regarding the duty of Special Magistrate: to provide Public Records.

- 6.6 Right to Audit. The Special Magistrate: agrees to furnish such supporting detail as may be required by COA to support charges or invoices, to make available for audit purposes all records covering charges pertinent to the purchase and to make appropriate adjustments in the event discrepancies are found. COA will pay the cost of any audit. COA shall have the right to audit the Special Magistrate's records pertaining to the work/product for a period of three (3) years after final payment.

Signature Page Follows

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: CITY OF ALACHUA, by its Mayor, authorized to execute same by Commission action on the day ____ of _____, 2019 and _____,

SPECIAL MAGISTRATE


CITY OF ALACHUA



Michael D. Durham



Date



Witness

Gib Coerper, Mayor

ATTEST:

Adam Boukari, City Manager/Clerk

Approved as to form:

Marian Rush, City Attorney