

3J-1

Agenda Item #:

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: December 1, 2015 [X] Consent [] Regular
[] Workshop [] Public Hearing

Department: Planning, Zoning and Building Department

Submitted By: Planning, Zoning and Building Department

Submitted For: Code Enforcement Division

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: Resolution approving a Standard Form Agreement for Special Magistrate Services and authorizing the County Administrator or her designee to execute the Standard Form Agreement.

Summary: Chapter 162, Florida Statutes, Article 10 of the Unified Land Development Code and various other Palm Beach County codes and ordinances provide for the resolution of violations and disputes by a practicing lawyer acting as a special master, special magistrate or hearing officer ("Special Magistrate"). It is necessary to update the standard form previously approved on November 21, 2006. Countywide (SF)

Background and Justification: To serve as a Special Magistrate, individuals must be a graduate of a law school accredited by the American Bar Association; demonstrate knowledge of administrative laws, land use law, and local government regulation and procedures; and be a current member, in good standing, of the Florida Bar Association. Special Magistrates are appointed for terms of one year, without limitation on the number of terms a Special Magistrate may serve.

- Attachments:**
- 1. Resolution adopting Standard Form Agreement for Special Magistrate Services
 - Exhibit A - Agreement for Special Magistrate Services

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Recommended by: Roberta Caldwell 11/16/15
Executive Director Date

Approved By: [Signature] 11/19/15
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No XX

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

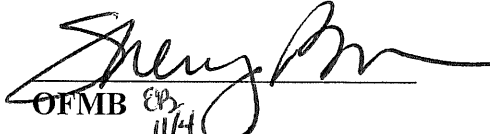
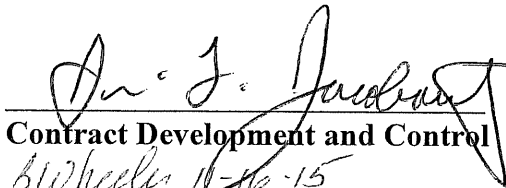
Program _____

B. **Recommended Sources of Funds/Summary of Fiscal Impact:** There is no fiscal impact with the updating of standard form.


C. **Department Fiscal Review:** Not Negative

III. REVIEW COMMENTS

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

  11/10/15
OFMB ^{EP} 11/4 Contract Development and Control
B. Wheeler 11-16-15

B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

Department Director

RESOLUTION NO. R-2015-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ADOPTING A STANDARD FORM AGREEMENT FOR SPECIAL MAGISTRATE SERVICES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 162, Florida Statutes, Article 10 of the Unified Land Development Code and various other Palm Beach County codes and ordinances provide for the resolution of violations and disputes by a practicing lawyer acting as a special master, special magistrate or hearing officer ("Special Magistrate"); and

WHEREAS, to serve as a Special Magistrate, individuals must be a graduate of a law school accredited by the American Bar Association; demonstrate knowledge of administrative laws, land use law, and local government regulation and procedures; and be a current member, in good standing, of the Florida Bar Association; and

WHEREAS, the standard form Agreement for Special Magistrate Services has not been updated in some time, and it is necessary to revise the standard form; and

WHEREAS, the delegation to the County Administrator or his/her designee has the authority to execute the standard form Agreement for Special Magistrate Services will eliminate delays caused by requiring such items to be brought to the Board of County Commissioners for approval and will, therefore, be consistent with the goal of the Board of County Commissioners to streamline the agenda process.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. The foregoing recitals are true and correct and are incorporated herein.
2. The standard form Agreement for Special Magistrate Services attached hereto as Exhibit "A" is hereby approved and replaces that standard form Agreement approved on November 21, 2006.
3. The Board of County Commissioners hereby authorizes the County administrator or his/her designee to execute the standard form Agreement for Special Magistrate Services attached as Exhibit "A" and to sign all future time extensions, task assignments, certifications, and other forms associated with the

standard form Agreement for Special Magistrate Services and necessary minor amendments that do not substantially change the scope of work or terms and conditions of the standard form Agreement for Special Magistrate Services as approved by the Board.

4. For the purpose of this Resolution, the Executive Director of the Department of Planning, Zoning and Building shall be considered to be the designee of the County Administrator.

5. If any section, sentence, clause, phrase or word of this Resolution is held invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the remaining portions of this Resolution.

6. This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

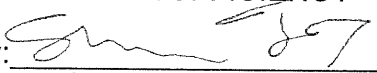
- Commissioner Mary Lou Berger, Mayor -
- Commissioner, Hal R. Valeche, Vice Mayor -
- Commissioner Shelley Vana -
- Commissioner Paulette Burdick -
- Commissioner Steven L. Abrams -
- Commissioner Melissa McKinlay -
- Commissioner Priscilla A. Taylor -

The Chair thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2015.

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

SHARON R. BOCK, CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
By: 
County Attorney

**AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND**

**FOR
SPECIAL MAGISTRATE SERVICES**

THIS AGREEMENT is made this _____ day of _____,
201____, between PALM BEACH COUNTY, FLORIDA, a political subdivision of
the State of Florida, of 301 N. Olive Avenue, West Palm Beach, Florida 33401,
hereinafter referred to as the ("County"), and (Name)
_____ of (Address) _____,
hereinafter referred to as ("Counsel"), both hereinafter referred to collectively as
the "Parties".

WHEREAS, the County desires to retain the services of Counsel as a
special master, special magistrate and/or hearing officer ("Special Magistrate")
with regard to presiding over code violation matters, pursuant to Chapter 162,
Florida Statutes, Article 10 of the Palm Beach County Unified Land Development
Code ("ULDC"), and any other code or ordinance in force in Palm Beach County
that is designated by the Board of County Commissioners for enforcement by a
Special Magistrate; and

WHEREAS, Counsel fulfills the qualifications required of a Special
Magistrate as set forth in Article 2 of the ULDC.

NOW, THEREFORE, in consideration of the mutual covenants and
agreements hereinafter contained, the Parties hereto agree as follows:

SECTION 1. EMPLOYMENT AS A SPECIAL MAGISTRATE. The County hereby agrees to engage and appoint Counsel as a Special Magistrate, to be one of a pool of Special Magistrates, and Counsel hereby agrees to perform the services set forth in the Scope of Services on an as needed basis. Counsel understands that training may be necessary and required to properly fulfill the duties of a Special Magistrate and agrees that if the County chooses to provide Special Magistrate training ("Required Training"), Counsel will make himself/herself available for such training.

SECTION 2. SCOPE OF SERVICES. Counsel shall perform the duties of a Special Magistrate in accordance with Article 2 of the ULDC, as may be amended from time to time and any other applicable codes or ordinances. As a Special Magistrate, Counsel shall have the authority to hold hearings, determine whether the codes and ordinances of Palm Beach County have been complied with, assess applicable fines, penalties and costs as provided by law, order mitigation for violations of the codes and ordinances of Palm Beach County, impose liens on real and personal property as provided by law, and exercise such authority as provided by law. Counsel, in the performance of his or her duties as Special Magistrate, shall avoid ex parte communications with any party involved in a code or ordinance violation proceeding, shall avoid impropriety and the appearance of impropriety, shall diligently perform his/her duties as a Special Magistrate, and shall render orders in a timely manner.

SECTION 3. NO DUAL OFFICE HOLDING. Counsel shall not engage in dual office holding in violation of Article 2 Section 5 of the Florida Constitution

while services are being performed for the County pursuant to this Agreement. During the term of this Agreement, Counsel shall not enter into any contract with another governmental entity to perform services as a special magistrate, special master and/or hearing officer and shall not accept a position on a governmental board or commission that exercises the sovereign power of the governmental entity by making, executing, or administering the laws on behalf of the governmental entity. During the term of this Agreement, should Counsel wish to undertake any employment beyond the scope of this Agreement that Counsel believes may constitute dual office holding as prohibited by Article 2 Section 5 of the Florida Constitution, Counsel shall obtain the written consent of the County Attorney before accepting such employment or shall first terminate this Agreement as provided in Section 8.

SECTION 4. THE COUNTY'S RESPONSIBILITY. The County's responsibilities are as follows:

- A. To provide clerical and administrative personnel as may be reasonably required by Counsel for the proper performance of his/her duties.
- B. To provide compensation as set forth in Section 6 of this Agreement.
- C. To provide a facility for all necessary hearings, meetings or training sessions.

SECTION 5. TERM. This Agreement shall be for a period of one (1) year

from the date of execution of the Agreement, and shall be automatically renewable for each year thereafter, provided neither cancellation nor resignation has occurred pursuant to the terms of this Agreement.

SECTION 6. COMPENSATION. Compensation for the services performed by Counsel shall be payable as follows:

- A. The compensation for this Agreement shall be at an hourly rate of TWO HUNDRED DOLLARS (\$200.00). Counsel shall bill hourly only for the time spent holding hearings, reviewing motions and memoranda, subpoenaing witnesses and drafting orders.
- B. Counsel shall receive a flat fee of \$200 for any Required Training session.
- C. Counsel shall prepare and submit written invoices to the Department/Division Director who requested Special Magistrate services for approval. Invoices received from Counsel pursuant to this Agreement will be reviewed and approved by the Department/Division Director to verify that services have been rendered in conformity with the Agreement. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the Department/Division Director's approval.

SECTION 7. DEVOTION OF TIME. The Counsel shall be available for performance of the duties of Special Magistrate at reasonable times at the County's request and shall perform such duties in a timely manner.

SECTION 8. TERMINATION OF AGREEMENT. This Agreement may be terminated by the County, with or without cause, upon ten (10) days written notice. This Agreement may be terminated by Counsel, with or without cause, upon thirty (30) days written notice.

SECTION 9. REMEDIES.

- A. This Agreement is to be governed by the laws of the State of Florida. The venue for any litigation resulting out of this Agreement shall be in Palm Beach County, Florida.
- B. No remedy herein conferred upon any party 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. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
- C. Should litigation be necessary to enforce any term or provision of this Agreement, each party shall bear its own costs of litigation and attorneys' fees.

SECTION 10. EXTENT OF AGREEMENT.

- A. This Agreement represents the entire and integrated agreement between the County and Counsel and supersedes all prior negotiations, representations or agreements, either written or oral.

B. This Agreement may only be amended, supplemented, modified, changed or canceled by a duly executed written instrument.

SECTION 11. NON-EXCLUSIVITY. This shall not be an exclusive contract. The County has the right to enter into Agreements with other qualified persons to provide the services of a Special Magistrate with regard to the hearing of violations of any code or ordinance in force in Palm Beach County which is designated by the Board of County Commissioners for enforcement by a Special Magistrate. Counsel shall have the right to enter into other employment agreements that do not conflict with or violate the terms of this Agreement.

SECTION 12. NOTICES. All notices (other than a legal opinion from the County Attorney) required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery with signed acceptance, other delivery service requiring signed acceptance or electronic mail (email) with a delivery receipt. Such notices shall be addressed to:

Counsel:

Name

Address

City, State and Zip

Email

Email

County:

Palm Beach County
Attn: Executive Director of Planning, Zoning and Building
2300 Jog Road
West Palm Beach, Florida 33411
Email: Rcaldwel@pbcgov.org
Email: AMcIntosh@pbcgov.org

Attorney for the County:
County Attorney
301 North Olive Avenue, 6th Floor
West Palm Beach, Florida 33401
Email: Sxfox@pbcgov.org
Email: LHermann@pbcgov.org

Such notices shall be deemed received: (1) if delivered by hand delivery, on the date of delivery; (2) if sent by certified or registered mail, on the date it is received as evidenced by signature on the return receipt; or (3) if by email, on the date of delivery as shown on the delivery confirmation receipt, unless such date is a weekend or holiday, in which case the email shall be deemed received upon the next business day following delivery. The refusal to accept delivery shall constitute acceptance and, in such event, the date of delivery shall be the date on which delivery was refused. Any change of address must be made by written notice to the other Party and such change shall be effective three (3) days following receipt of such written notice by the other Party. Any change of email address shall be effective upon receipt. If written notice, demand or request is made as provided herein, then in the event that such notice is returned to the sender by the U.S. Postal System because of insufficient address, incorrect address or otherwise (but not refusal of acceptance), such notice shall be

deemed to have been received by the Party to whom it was addressed on the date that such was initially placed in the U.S. Postal System by the sender.

SECTION 13. CONFLICT OF INTEREST.

- A. Counsel 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 services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics.
- B. During the term of this Agreement, Counsel shall not represent any party in any enforcement proceeding prosecuted by the County in the Fifteenth Judicial Circuit Court or before any Palm Beach County Special Magistrate or board.
- C. For a period of two years from the date of termination of this Agreement, Counsel shall not act as an agent or attorney in any proceeding before any decision-making body of the County on any matter that was the subject of a proceeding that was considered by Counsel as a Special Magistrate.

SECTION 14. THIRD PARTY BENEFICIARIES. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or Counsel.

SECTION 15. INSPECTOR GENERAL. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of Counsel, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

SECTION 16. NONDISCRIMINATION. Counsel warrants and represents that while performing services under this Agreement all of its employees and all persons Counsel comes into contact with pursuant to this Agreement shall be treated equally without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

Counsel has submitted to the County a copy of his/her non-discrimination policy which is consistent with the above, as contained in Resolution R-2014-1421, as amended, or in the alternative, if Counsel does not have a written non-discrimination policy, he/she has acknowledged through a signed statement

provided to the County that Counsel's non-discrimination policy conforms to R-2014-1421, as amended.

SECTION 17. AUTHORITY TO PRACTICE. Counsel hereby represents and warrants that he/she has and will continue to maintain all licenses and approvals required to conduct his/her business, and that he/she will at all times conduct his/her business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the County's representative upon request.

SECTION 18. SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

SECTION 19. NON-WAIVER. No waiver by County or Counsel of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to County or Counsel upon any breach under this Agreement shall impair such right to remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by County or Counsel of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other breach, or of a subsequent breach of the same or any other term, covenant or condition herein contained.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

ATTEST: **PALM BEACH COUNTY, FLORIDA**

County Administrator or Designee

WITNESS: **Special Magistrate:**

By: _____
Signature

Signature

Type or print name

Type or Print Name

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

**APPROVED AS TO
TERMS AND CONDITIONS:**

By: _____
County Attorney

By: _____
Executive Director, Planning, Zoning, and Building