

RESOLUTION 2021-15

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF ST. PETE BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE TWO RETAINER AGREEMENTS WITH THE SELECTED LAW FIRMS TO APPOINT TWO ATTORNEYS TO SERVE AS CITY SPECIAL MAGISTRATES FOR CODE ENFORCEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Request for Proposal (RFP) titled “Special Magistrate for Code Enforcement Services” was issued by the City of St. Pete Beach on June 16, 2021.

WHEREAS, the City’s selection committee has reviewed, interviewed, and selected individuals in the discipline of Special Magistrate for Code Enforcement Services.

WHEREAS, Sec. 22-270 of the City Code of Ordinances authorizes “... the appointment of one or more special magistrates with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective and inexpensive method of enforcing any codes and ordinances in force in St Pete Beach, where a pending or repeated violation continues to exist.”

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF ST. PETE BEACH, THAT:

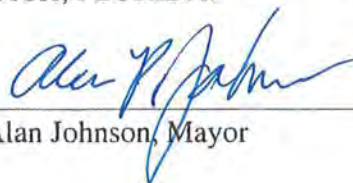
SECTION 1. Recitals. The above recitals (“Whereas” clauses) are true and correct and adopted hereby as findings, purpose and intent of the City Commission.

SECTION 2. The City Commission hereby authorizes the City Manager to execute the retainer agreements to appoint Thomas A. Thanas, Esq. and Erica F. Augello, Esq. as the City’s Special Magistrates.

SECTION 3. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED AND APPROVED BY THE CITY COMMISSION OF THE CITY OF ST. PETE BEACH, FLORIDA, THIS 15 DAY OF September, 2021MM.

CITY COMMISSION, CITY OF ST. PETE BEACH, FLORIDA.



Alan Johnson, Mayor

ATTEST:



Amber LaRowe, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



Andrew Dickman, City Attorney

PROFESSIONAL SERVICES AGREEMENT
(Special Magistrate Services)

THIS AGREEMENT ("Agreement") is entered into by and between the **City of St. Pete Beach**, a Florida municipal corporation ("City") and **Trask Daigneault, LLP**, a law firm with attorneys licensed to practice law in the State of Florida, effective this 15 day of September, 2021.

RECITALS

WHEREAS, the City is in need of special magistrate services for its code enforcement hearings and published a Request for Proposals for same; and

WHEREAS, Erica F. Augello, Esq. has, on behalf of the Trask Daigneault, LLP law firm, submitted a proposal in response to the City's solicitation expressing her interest to serve as a special magistrate ("Special Magistrate");

WHEREAS, the skills and experience of the Special Magistrate have been reviewed and it has been determined that Special Magistrate is qualified to provide the special magistrate services to the City; and

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the provision of the services to be provided by Special Magistrate to the City.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and Special Magistrate agree as follows:

SECTION 1: INCORPORATION OF RECITALS. The foregoing Recitals are incorporated into this Agreement as true and correct statements.

SECTION 2: SPECIAL MAGISTRATE'S SERVICES. Special Magistrate shall serve as a special magistrate for code enforcement hearing. The City will notify Special Magistrate of such hearings and the dates upon which the City seeks the Special Magistrate to serve. This is not an exclusive contract. The parties agree that the Special Magistrate shall serve in an ex officio capacity if Special Magistrate serves other local governments as a special magistrate, and that such service to other local governments does not create duties inconsistent with serving as the special magistrate to the City.

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP. No relationship of employer or employee is created by this Agreement, it being understood that Special Magistrate will act hereunder as an independent contractor and none of the Special Magistrate's, officers, directors, employees, independent contractors, representatives or agents performing services for Special Magistrate pursuant to this Agreement shall have any claim under this Agreement or otherwise against the City for compensation of any kind under this Agreement. The relationship between the City and Special Magistrate is that of independent contractors, and neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication. This Agreement is with the Firm but should the designated Special Magistrate relocate to another firm, the Special Magistrate shall continue in her capacity at the sole discretion of the City. The Special Magistrate must, however, immediately notify the City of her relocation.

SECTION 4: TERM AND TERMINATION.

a. **Term.** The term of this Agreement is for one year, which will automatically extend on a yearly basis unless otherwise directed by the City Commission prior to the expiration of the current term.

b. Termination without cause. Either party may terminate this Agreement at any time with or without cause by giving not less than thirty (30) days prior written notice of termination.

c. Termination for cause. Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have three (3) days from the date of the notice in which to remedy the breach. If such corrective action is not taken within three (3) days, then this Agreement shall terminate at the end of the three (3) day period without further notice or demand.

d. Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Notwithstanding the foregoing, the parties acknowledge and agree that this Agreement (and all Exhibits hereto) are subject to budgeting and appropriation by the City of funds sufficient to pay the costs associated herewith in any fiscal year of the City. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the City's governing board in any fiscal year to pay the costs associated with the City's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the City to be, insufficient to pay the costs associated with the City's obligations hereunder in any fiscal period, then the City will notify Special Magistrate of such occurrence and either the City or Special Magistrate may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the City of any kind whatsoever. City shall pay Special Magistrate for all services provided up to the date of termination.

SECTION 5: COMPENSATION.

a. Payments. The City agrees to compensate Special Magistrate for services provided in the amount of Two Hundred Dollars and 00/100 (\$200.00) per hour. Reasonable expenses are not included in the hourly rate and will assessed separately. Travel time is specifically excluded and will not be charged.

b. Invoices. Special Magistrate shall render invoices to the City for services that have been rendered in conformity with this Agreement in the previous month. Invoices will be reviewed and normally paid within thirty (30) days following the City's receipt of the Special Magistrate's invoice. Invoices shall be submitted to:

City of St. Pete Beach
Attn: City Attorney
St. Pete Beach City Hall
155 Corey Avenue
St. Pete Beach, FL 33706

Or electronically to: cityattorney@stpetebeach.org

If the City has questions or concerns regarding an invoice, it will notify Special Magistrate regarding the same within ten (10) days of receiving the invoice. The City will then pay the invoice within thirty (30) days of resolving the outstanding issues.

SECTION 6: COMPLIANCE. Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement.

SECTION 7: DISPUTE RESOLUTION, LAW, VENUE AND REMEDIES. All claims arising out of this Agreement or its breach shall be submitted first to mediation. The parties shall share the mediator's fee equally. The mediation shall be held in Pinellas County. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Pinellas County. 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 or 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.

SECTION 8: AUTHORITY TO PRACTICE. Special Magistrate hereby represents and warrants that she has and will continue to maintain all licenses and approvals required to conduct her business and provide the services required under this Agreement, and that she will at all times conduct her business and provide the services under this Agreement in a reputable manner. Proof of such licenses and approvals shall be submitted to the City upon request.

SECTION 9: 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, to 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 10: PUBLIC ENTITY CRIMES. Special Magistrate acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The Special Magistrate will advise the City immediately if it becomes aware of any violation of this statute.

SECTION 11: NOTICE. All notices required in this Agreement shall be sent by certified mail, return receipt requested, or by nationally recognized overnight courier, and if sent to the City and shall be sent to:

City of St. Pete Beach
Attn: City Manager
St. Pete Beach City Hall
155 Corey Avenue
St. Pete Beach, FL 33706

and if sent to the SPECIAL MAGISTRATE, shall be sent to:

Erica F. Augello, Esq.
Trask Daigneault, LLP
1001 S. Ft. Harrison Ave., Ste. 201
Clearwater, FL 33756

The foregoing names and addresses may be changed if such change is provided in writing to the other party.

SECTION 12: PUBLIC RECORDS. Special Magistrate shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes (§119.0701), and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records or designee, provide the City 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 Chapter 119, Florida Statutes, 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 this Agreement and following completion of this Agreement if Special Magistrate does not transfer the records to the City.
- (d) Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of Special Magistrate or keep and maintain public records required by the City to perform the service. If Special Magistrate transfers all public records to the City upon completion of the Agreement, Special Magistrate shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Special Magistrate keeps and maintains public records upon completion of the Agreement, Special Magistrate shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF SPECIAL MAGISTRATE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SPECIAL MAGISTRATE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION AMBER LAROWE, (727) 363-9220 OR alarowe@stpetebeach.org OR 155 COREY AVENUE, ST. PETE BEACH, FL 33706

SECTION 13: ENTIRETY OF AGREEMENT. The City and Special Magistrate agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

SECTION 14: WAIVER. Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

SECTION 15: PREPARATION. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

SECTION 16: COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of

which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement.


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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have made and executed this Professional Services Agreement as of the day and year set forth below by the City.

ATTEST:

By: 
Amber LaRowe, City Clerk


CITY OF ST. PETE BEACH

By: 
Alan Johnson, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 
Andrew Dickman, City Attorney

TRASK DAIGNEAULT, LLP:

By: 
Erica F. Augello, Esq.

AGREEMENT FOR SPECIAL MAGISTRATE CODE ENFORCEMENT SERVICES

THIS AGREEMENT is made this 15 day of September, 2021, between the CITY OF ST. PETE BEACH, a municipal corporation organized under the laws of the State of Florida, whose address is 155 Corey Avenue, St. Pete Beach, FL 33706 ("City"), and the DYE HARRISON LAW FIRM through Thomas A. Thanas, whose address is 1206 Manatee Avenue West, Bradenton, FL 34205 ("Special Magistrate").

NOW, THEREFORE, the City and the Firm agree to the following terms and conditions

1. The Dye Harrison Law Firm through its member, Thomas A. Thanas, shall provide Special Magistrate code enforcement services to the City. With the City Commission's approval of this Agreement, the City appoints Thomas A. Thanas to serve as the City's Special Magistrate in accordance with the terms and conditions of this Agreement, the conditions of the Request for Proposals dated June 16, 2021, including the General Terms set forth in the RFP, and the laws of the State of Florida.
2. The Special Magistrate warrants that he, Thomas A. Thanas, is fully qualified to perform the duties of Special Magistrate as provided by the City Code and Chapter 162, *Florida Statutes*, and that Thomas A. Thanas is a member in good standing of the Florida Bar.
3. This Agreement shall be in effect until terminated by either party pursuant to this paragraph. The City may terminate this Agreement at any time by providing the Magistrate with 30 days' written notice in advance of the intended termination date. The Magistrate may terminate this Agreement at any time by providing the Firm with 30 days' written notice in advance of the intended termination date. Unless otherwise directed by the City, the Magistrate shall prior to the termination date complete all duties including but not limited to the filing of written orders and findings of fact and conclusions of law in any case heard by the Magistrate.
4. The Special Magistrate shall be paid \$200.00 per hour, billable in increments of 1/10 hour, for services performed by the Firm pursuant to this Agreement including attendance at hearings and the preparation of orders including findings of fact and conclusions of law. Payment shall be made to the Special Magistrate's law firm. The Special Magistrate shall not bill for travel time to and from the location of hearings. The Special Magistrate shall not bill for out-of-pocket expenses unless previously approved in writing by the City's city manager or designee. The Special Magistrate's law firm shall submit a statement for services on a monthly basis. Monthly invoices shall be sent via email to cityattorney@stpetebeach.org.
5. The Special Magistrate's law firm is an independent contractor, and Thomas A. Thanas shall not be deemed an employee of the City. No benefits shall inure to the Special Magistrate or his law firm other than the compensation set forth in Section 4.

6. Thomas A. Thanas shall personally perform the services for his law firm under this Agreement. Hearings may not be conducted by other members of the law firm without the written consent of the city attorney and city manager or designee.
7. The Special Magistrate shall comply with the Florida Public Records Act and shall maintain confidentiality of records to the extent permitted by Florida law.
8. The Special Magistrate shall attend Special Magistrate code enforcement hearings on the date and time prescribed by the City, currently the second Monday of the month, and will make himself available on other dates as needed provided the parties agree upon the date and time

**DYE, HARRISON, KIRKLIUND, PETRUFF,
PRATT, & ST. PAUL, PLLC,**

BY: Thomas A. Thanas
Authorized Representative

SPECIAL MAGISTRATE,

BY: Thomas A. Thanas
Thomas A. Thanas

CITY OF ST. PETE BEACH,

BY: Al P. Johnson
Mayor

ATTEST: Alatome
City Clerk