

**RESOLUTION NUMBER 19-16**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING THE CODE ENFORCEMENT SPECIAL MAGISTRATE SERVICES AGREEMENT BETWEEN THE TOWN AND THOMAS W. FRANCHINO, AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, Chapter 162, Florida Statutes, authorizes local governments to designate and hire special magistrates to hold hearings and assess fines against violators of county or municipal codes and ordinances; and

**WHEREAS**, the Town of Fort Myers Beach (“Town”) designated and hired Myrnabelle Roche as its special magistrate to hear code enforcement cases; and

**WHEREAS**, Myrnabelle Roche has advised the Town that she is unavailable to conduct the May, 2019 Town special magistrate code enforcement hearing after the Town sent out the required notices of hearing to the alleged violators – some of which are travelling from out of town to attend the hearing; and

**WHEREAS**, there was insufficient time before the scheduled and noticed code enforcement special magistrate hearing to bring before the Town Council for approval an alternate special magistrate agreement; and

**WHEREAS**, the Code of Ordinances of the Town (“Code”) authorizes the Town Manager to make emergency purchases of supplies, services or construction items and submit the emergency purchase to the town council for approval, as soon as practicable after the purchase.

**WHEREAS**, as authorized by the Code the Town Manager entered into an agreement with Thomas A. Franchino to provide code enforcement special magistrate services on an “as needed” basis as an alternate special magistrate to Myrnabelle Roche.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein.

Section 2. The code enforcement special magistrate services agreement between the Town and Thomas A. Franchino, attached hereto as Exhibit “A” is hereby ratified and approved.

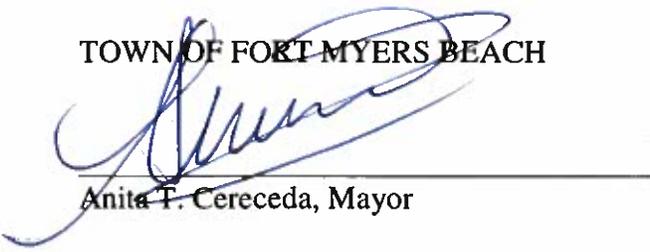
Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember Hosafros and seconded by Councilmember Shamp, and upon being put to a vote, the result was as follows:

Anita Cereceda, Mayor	aye
Ray Murphy, Vice Mayor	aye
Joanne Shamp, Councilmember	aye
Rexann Hosafros, Councilmember	aye
Bruce Butcher, Councilmember	aye

ADOPTED this 20<sup>th</sup> day of May, 2019 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



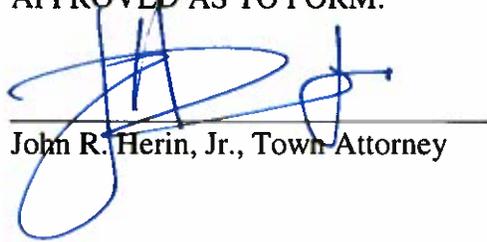
\_\_\_\_\_  
Anita T. Cereceda, Mayor

ATTEST:



\_\_\_\_\_  
Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
John R. Herin, Jr., Town Attorney

## INDEPENDENT CONTRACTOR AGREEMENT TO PERFORM SPECIAL MAGISTRATE SERVICES

This Independent Contractor Agreement (the "Agreement") is effective May 15, 2019, between the Town of Fort Myers Beach, Florida herein referred to as the Town, and Thomas W. Franchino, herein referred to as Contractor.

### RECITALS

1. It has been determined that the Contractor is duly qualified to, and has expertise to perform Special Magistrate services for Code Enforcement.
2. Contractor and the Town agree that it is to their mutual advantage to have Contractor to provide Special Magistrate services to the Town as it pertains to the Town code enforcement cases and issuing orders as delineated in Town ordinances and resolutions.

### AGREEMENT

- A. **DESCRIPTION OF WORK:** The Contractor agrees to provide the Town with professional services pertaining to Special Magistrate services ("Services"). Contractor agrees to provide the Services to the Town on an "as needed" basis. Contractor's services shall be provided at such place and time and in a manner as mutually agreed upon by Contractor and the Town. Contractor will perform the Services to the highest professional standards customarily accepted within the Contractor's industry or field. In the Contractor's performance of the Services hereunder, the Contractor is not required to maintain any specified daily or weekly schedule, and is not required to meet any quotas. However, Contractor must ensure that he is available to provide the Services to the Town promptly. Contractor is not required or invited to attend any meetings or functions for the Town's employees. Contractor may be invited to attend periodic meetings held to provide informational updates regarding code compliance. However, attendance at these meetings is not mandatory. The Services provided for by the Agreement shall be performed by Contractor and Contractor shall not have discretion to hire others at Contractor's expense to assist in completing services contemplated by this Agreement without the Town's written consent.
- B. **LICENSES AND CERTIFICATIONS:** Contractor ensures that he/she shall, at all times during the term of this Agreement, maintain any and all approvals, licenses, and/or certifications required to provide the Services and shall furnish copies of such documents to the Town. The Contractor shall immediately notify the Town if any approvals, licenses, or certifications are restricted, revoked or limited in any way during the term of this Agreement. Contractor further agrees that at all times it will comply with any or all applicable laws, rules, regulations and/or ordinances when performing the Services and duties contemplated under this Agreement.

C. **PAYMENT:** Contractor shall charge the Town (through the Town's billing process) for services performed pursuant to this Agreement. Contractor agrees to use independent discretion in providing the Services to the Town. Contractor further expressly agrees that he will charge the Town \$225.00 per hour, rounded up to the nearest quarter hour for providing the Services for the duration of this Agreement:

- Maximum fee for case preparation per case \$112.50 (one half hour of hourly rate).
- Maximum fee for conducting case hearing, including continuances and any mitigation hearing per case \$225.00.
- Maximum fee to issue findings of facts per case \$112.50 (one half hour of hourly rate).
- External post hearing activities in defense of findings of facts \$56.25 (one quarter hour of hourly rate) per 15 minutes.
- No additional fees or costs shall be permitted.

Contractor shall submit invoices for services rendered to the Town as necessary. Upon receipt of a proper invoice, the Town will process payments according to the following schedule:

- Payment shall be issued pursuant to Chapter 218 of the Florida Statutes.
- Payments will reflect services, on a case-by-case basis, invoiced for the previous month.
- Discrepancies shall be reported in writing within 30 days of payment issuance date, or deemed to be waived by the parties to this agreement.

D. **USE OF EQUIPMENT:** Contractor shall be solely responsible for providing any other supplies or materials needed to perform the Services set forth in this Agreement. The Town will not reimburse Contractor for any expenses that Contractor incurs pursuant to this Agreement other than travel at the discretion of the Town). The Town will provide the venue and recording device(s) for the hearing.

E. **RELATIONSHIP OF PARTIES:** This Agreement creates an independent contractor-Town relationship. The Town will not supervise the work of the Contractor. The Town is interested only in the results achieved. Contractor is solely responsible for the manner and method by which it provides the Services contemplated under this Agreement, and exercises exclusive discretion in this regard. Contractor is also solely responsible for the conduct and control of its employees, representatives or agents, and the work performed by those individuals. During the term of this Agreement, Contractor will report to the

Town Manager or his designee, who will act as the liaison between Contractor and the Town. Contractor is not an agent of the Town for any purpose. Contractor is not entitled to any benefits that the Town provides its employees, specifically including, but not limited to, sick leave, vacation, workers' compensation or any other insurance coverage. Contractor shall be solely responsible for withholding and paying any or all Federal, State, and local taxes, Social Security payments, and any other applicable deductions, taxes, or payments, including, but not limited to, unemployment and other payroll taxes. This is not an exclusive agreement. Contractor is free to contract with other parties for similar services.

**F. LIABILITY:** Contractor assumes all risk connected with the Services performed pursuant to this Agreement. Contractor shall be fully and solely responsible for providing, at its own cost and expense, any or all equipment that is required in the performance of its duties hereunder. Contractor also accepts all responsibility for the condition of tools and equipment used in the performance of this Agreement provided by Contractor. Contractor does hereby absolutely release, waive, discharge, covenant not to sue, and agree to indemnify, defend and hold harmless the Town and its members, council, owners, officers, directors, employees, and agents, and subsidiary and affiliated companies or organizations, and their respective predecessors, successors, and assigns, from all liability to Contractor or its employees, representatives or agents, for any and all losses, expenses or damages, and any claim for damages on account of death, personal injuries or property damage sustained by Contractor or its employees, representatives or agents, or any claims by third parties arising out of the action or failure to act of Contractor or its employees, representatives or agents, while rendering services under this Agreement.

**G. DURATION:** Either party may terminate this Agreement for any reason with 30 days written notice. The Town may terminate this Agreement immediately if Contractor breaches its obligations under this Agreement or engages in conduct which is immoral, illegal or which the Town deems to adversely affect the reputation of the Town. If not earlier terminated, the Agreement shall remain in force commencing on ~~October~~ <sup>May 16,</sup> ~~2019~~ through September 30, 2019. *TWT*

**H. NO AUTHORITY TO BIND:** Contractor shall have no authority to contract for or legally bind the Town with respect to any matter, including but not limited to the subject matter of the Agreement.

**I. CHOICE OF LAW AND JURY TRIAL WAIVER:** This Agreement and all related matters shall be governed by, construed, and enforced in accordance with the laws of the State of Florida. Contractor and the Town agree to waive any right to a trial by jury in any litigation over this Agreement or any supplement thereto, including any litigation arising out of Contractor's independent contractor status.

**J. SURVIVAL:** All representations and other relevant provisions of this Agreement

shall survive and thereby continue in full force and effect, notwithstanding any termination or expiration of this Agreement under paragraph G or otherwise.

**K. ENTIRE AGREEMENT:** This Agreement constitutes the entire understanding and agreement of the parties, and shall not be altered, modified, or amended unless such alteration, modification, or amendment is set forth in writing and signed by the parties.

**L. ATTORNEY'S FEES:** In the event that any of the parties institutes any action or proceeding against the other party (including such affiliates) relating to this Agreement, the prevailing party shall be entitled to reimbursement for all costs and expenses incurred in connection therewith, including payment of all reasonable attorney's fees and costs through all appellate levels.

By:

Roger T. Hernstadt, Town Manager

Contractor

Date Signed:

Date Signed: