

**AGREEMENT**  
**(Special Magistrate Services)**

**THIS AGREEMENT** (“Agreement”) is entered into by and between the **Town of Highland Beach**, a Florida municipal corporation (“City”) and **Wagner Legal Services, PLLC (Kevin M. Wagner)**, an attorney licensed and practicing in the State of Florida, effective this \_\_\_\_ day of \_\_\_\_\_, 2024.

**RECITALS**

**WHEREAS**, the Town wishes to retain the services of Kevin M. Wagner to serve as the Town’s Code Enforcement Special Magistrate, and he is willing, qualified, and able to provide such professional services.

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

**SECTION 1: SPECIAL MAGISTRATE’S SERVICES.** Kevin Wagner (“Special Magistrate”) shall serve as a special magistrate for code enforcement hearings and other related hearings as requested by the Town. The Town will notify Special Magistrate of such hearings and the dates upon which the Town seeks Special Magistrate to serve. This is not an exclusive contract. The parties agree that 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 Town.

**SECTION 2: COMPENSATION.**

- a. **Payments.** The Town agrees to compensate Special Magistrate for services provided in the amount of One Hundred Ninety Dollars (\$190.00) per hour. The Special Magistrate shall not charge for travel time to and from the hearings.
- b. **Invoices.** Special Magistrate shall render monthly invoices to the Town for services that have been rendered in conformity with this Agreement in the previous month (to the nearest one-tenth (1/10) of an hour). Invoices will normally be paid within thirty (30) days following the Town’s receipt of the Special Magistrate’s invoice, in accordance with the Local Government Prompt Payment Act. Invoices shall be submitted to the address established below for the Town.

**SECTION 3: TERM AND TERMINATION.**

- a. **Term.** The term of this Agreement is for three (3) years with two (2) one (1) year extensions. The extensions may be exercised by the Town Manager on behalf of the Town.
- b. **Termination with or 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. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of transactions which occurred prior to termination. Town shall pay Special Magistrate for all services satisfactorily provided up to the date of termination.

**SECTION 4: GENERAL PROVISIONS.**

4.1 Independent Contractor. The relationship between the Town 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. The Special Magistrate shall be responsible for the payment of all payroll taxes, including, but not limited to, federal income tax, FICA, and federal and state unemployment taxes.

4.2 Compliance. The proceedings and duties of the Special Magistrate hereunder are pursuant to and shall be in accordance with Florida Statutes, including, but not limited to, Chapter 162, Florida Statutes, applicable case law, and the Town's Charter and Code of Ordinances. 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.

4.3 Law, Venue, Remedies, Waiver of Jury Trial, Sovereign Immunity. This Agreement shall be governed by the laws of the State of Florida. All legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each 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. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT. Nothing contained in this Agreement shall be construed or interpreted as consent by the Town to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes, as amended from time to time. The provisions and limitations of Section 768.28 are deemed to apply to this Agreement to claims or actions arising in tort and/or contract.

4.4 Authority to Practice. Special Magistrate hereby represents and warrants that he has and will continue to maintain all licenses and approvals required to conduct his business and provide the services required under this Agreement, and that he will always conduct his business and provide the services under this Agreement in a reputable manner.

4.5 Severability, Waiver, Preparation; Assignment. 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. 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. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This Agreement may not be assigned without prior written consent of all parties to this Agreement.

4.6 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 Town immediately if he becomes aware of any violation of this statute.

4.7 Notices. 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 Town shall be sent to:

Town of Highland Beach  
Attn: Town Manager  
3614 S. Ocean Boulevard  
Highland Beach, Florida 33487

and if sent to the Special Magistrate, shall be sent to:

Kevin M. Wagner, Esq.  
8129 Bautista Way  
Palm Beach Gardens, FL 33418  
[kyven@netscape.net](mailto:kyven@netscape.net)

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

4.8 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 Town as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- a. Keep and maintain public records required by the Town to perform the service.
- b. Upon request from the Town's custodian of public records or designee, provide the Town 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 Town.
- d. Upon completion of this Agreement, transfer, at no cost, to the Town all public records in possession of Special Magistrate or keep and maintain public records required by the Town to perform the service. If Special Magistrate transfers all public records to the Town 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 Town, upon request from the Town's custodian of public records or designee, in a format that is compatible with the information technology systems of the Town.

**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 TOWN CLERK, (561) 278-4548 OR**

**LGASKINS@HIGHLANDBEACH.US OR 3614 S. OCEAN BLVD.,  
HIGHLAND BEACH, FL 33487.**

4.9 Entirety of Agreement; Counterparts. The Town 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. This Agreement may be executed in one or more counterparts (in electronic form or otherwise), 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.

4.10 Palm Beach County IG. In accordance with Palm Beach County ordinance number 2011-009, Special Magistrate acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. Special Magistrate has reviewed Palm Beach County ordinance number 2011-009 and is aware of his rights and/or obligations under such ordinance.

4.11 Scrutinized Companies. As provided in Section 287.135, Florida Statutes, as amended from time to time, by entering into this Agreement, Special Magistrate certifies that it is not participating in a boycott of Israel. The Town and Special Magistrate agree that the Town will have the right to terminate this Agreement if Special Magistrate is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel. The Special Magistrate is under a continuing obligation for the term of this Agreement to immediately notify the Town of any violation of this provision.

4.12 E-Verify. Pursuant to Section 448.095(5), Florida Statutes, Special Magistrate shall to the extent applicable:

- a. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all sub-contractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the sub-contractor's newly hired employees;
- b. Secure an affidavit from all sub-contractors (providing services or receiving funding under this Agreement) stating that the sub-contractor does not employ, contract with, or subcontract with unauthorized aliens;
- c. Maintain copies of all sub-contractor affidavits for the duration of this Agreement;\
- d. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- e. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and
- f. Be aware that if the Town terminates this Agreement under Section 448.095(5)(c), Florida Statutes, Special Magistrate may not be awarded a public contract for at least one (1) year after the date on which this Agreement is terminated and will be liable for any additional costs incurred by the Town as a result of termination of this Agreement.

**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 Town.

**TOWN OF HIGHLAND BEACH**

ATTESTS:

By: \_\_\_\_\_  
Lanelda Gaskins, MMC, Town Clerk

By: \_\_\_\_\_  
Natasha Moore, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Leonard G. Rubin, Town Attorney

**SPECIAL MAGISTRATE:**

By: \_\_\_\_\_  
Kevin M. Wagner, Esq.  
Florida Bar No.: 88838