

PROFESSIONAL SERVICES AGREEMENT
(Special Magistrate Services)

THIS AGREEMENT ("Agreement") is entered into by and between the **City of Lake Worth Beach**, a Florida municipal corporation ("City") and B. Douglas MacGibbon, who is an attorney licensed to practice in the State of Florida ("Special Magistrate"), effective this ____ day of _____, 20__.

RECITALS

WHEREAS, the City is in need of special magistrate services for its code enforcement hearings and other related hearings; and,

WHEREAS, Special Magistrate has notified the City of his/her interest to serve as a special magistrate; and,

WHEREAS, the City Attorney reviewed the skill and experience of Special Magistrate and has 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 hearings and other related hearings. The City will notify Special Magistrate of such hearings and the dates upon which the City seeks Special Magistrate to serve. At the conclusion of the hearings, the Special Magistrate shall render an order containing findings of fact, based on the evidence of record, and conclusions of law, and shall order proper relief consistent with the powers granted by Florida law. 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 City.

SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP.

a. 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.

b. The City and Special Magistrate each for itself, its employees and contractors, agree that upon entering this Agreement, no member of the City Commission, no City employee, no City consultant, or other person, including a respondent or respondent's representative, shall have any ex parte communication with the Special Magistrate concerning any item before the Special Magistrate, or seek to influence, by any means, the

outcome of any matter which shall come before the Special Magistrate, except a proper hearing to which all parties have been given proper notice, or have waived such notice. This provision shall not apply to any City employee or contractor assigned to assist the Special Magistrate in the performance of strictly administrative or ministerial duties.

SECTION 4: 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 City Manager on behalf of the City.

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 Fifty Dollars (\$250.00) 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 City for services that have been rendered in conformity with this Agreement in the previous month. Invoices will normally be paid within thirty (30) days following the City's receipt of the Special Magistrate's invoice, in accordance with the Local Government Prompt Payment Act. Invoices shall be submitted to:

City of Lake Worth Beach
Attn: Finance Department
7 N. Dixie Highway
Lake Worth Beach, FL 33460

SECTION 6: 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, and the City'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.

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 mediator shall be a Florida Supreme Court Certified Mediator. The parties shall share the mediator's fee equally. The mediation shall be held in Palm Beach 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 Palm Beach 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: WAIVER OF JURY TRIAL. 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.

SECTION 9: AUTHORITY TO PRACTICE. Special Magistrate hereby represents and warrants that he/she has and will continue to maintain all licenses and approvals required to conduct his/her business and provide the services required under this Agreement, and that he/she will at all times conduct his/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. In the event a legal conflict arises between Special Magistrate and any respondent, Special Magistrate shall immediately advise the City of such conflict, and shall recuse himself/herself and take no further action in the case.

SECTION 10: 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 11: 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 12: 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 shall be sent to:

City of Lake Worth Beach

Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

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

B. Douglas MacGibbon, P.A.
141 Santa Monica Avenue
Royal Palm Beach, FL 33411
vancedoney@yahoo.com

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

SECTION 13: 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 CITY CLERK, (561) 586-1660 OR CITYCLERK@LAKEWORTH.ORG OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.

SECTION 14: 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 15: 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 16: PREPARATION. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

SECTION 17: 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.

SECTION 18: 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.

SECTION 19: 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 City and Special Magistrate agree that the City 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 City of any violation of this provision.

SECTION 20: E-VERIFY. Pursuant to Section 448.095(2), Florida Statutes, Special Magistrate shall:

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 City terminates this Agreement under Section 448.095(2)(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 City 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 City.

ATTESTS:

CITY OF LAKE WORTH BEACH

By: _____
Melissa Ann Coyne, MMC, City Clerk

By: _____
Betty Resch, Mayor

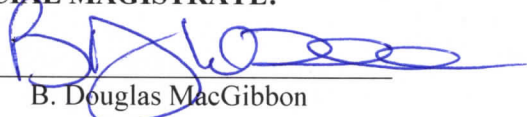
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Yannick Ngendahayo, Financial Services
Director

SPECIAL MAGISTRATE:

By: 
B. Douglas MacGibbon