

RETAINER AGREEMENT

THIS RETAINER AGREEMENT is entered into this ____ day of _____, 2024, by and between **MARTIN COUNTY, FLORIDA**, a political subdivision of the State of Florida, (the “County”) and **GEMMA TORCIVIA, ESQ.** (the “Special Magistrate”).

WITNESSETH:

WHEREAS, the County requires an attorney to serve as a special magistrate to conduct code enforcement hearings; and

WHEREAS, the Special Magistrate continues to be a current member in good standing of The Florida Bar; and

WHEREAS, the County has appointed the Special Magistrate to provide services pursuant to this Agreement, as authorized by Martin County Codes and Florida Statutes.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

1. General Scope of Services

All proceedings and duties of the Special Magistrate are authorized pursuant to Martin County Codes and Florida Statutes; including but not limited to, Chapter 1, Article 4, General Ordinances, Martin County Code, and Ch. 162, Florida Statutes. The Special Magistrate shall schedule and conduct all hearings in accordance with Martin County Codes and/or Florida Statutes. At the conclusion of the hearings, the Special Magistrate shall issue an order containing finding of fact, based on the evidence of record, and conclusions of law, and shall order proper relief consistent with the powers granted in Martin County Codes and/or Florida Statutes.

The Special Magistrate’s services are non-exclusive. The choice of Special Magistrate for any particular month or hearing is at the sole discretion of the County. Nothing herein shall be understood or interpreted by the Special Magistrate as guaranteeing the Special Magistrate a defined number of hours per month or annually, if any.

2. Compensation

The Special Magistrate shall be compensated for work completed at a rate of two hundred dollars (\$200.00) per hour for hearings, legal research services, and preparation of orders.

3. Billing

A statement for legal services rendered shall be provided on a regular basis and at least monthly. The Special Magistrate will structure the billing to identify the hours billed for each task or issue. The County agrees to pay all invoices within forty-five (45) days, in

accordance with the Local Government Prompt Payment Act. Service statements shall be sent to:

Martin County Board of County Commissioners
Building Department – Code Enforcement Division
900 SE Ruhnke Street
Stuart, FL 34994

4. Indemnification and Hold Harmless Agreement

The Special Magistrate shall indemnify and hold the County harmless from any and all claims, liability, losses and causes of action which may arise out of actions of negligence, in whole or in part of the Special Magistrate, its agents, employees or assigns, in the fulfillment of this Agreement. The Special Magistrate shall pay all claims and losses of any nature whatever in connection therewith, including all costs and judgments which may issue thereon. The Special Magistrate acknowledges and agrees that the compensation paid pursuant to this Agreement includes consideration for such indemnification. However, the amount the Special Magistrate shall be obligated to pay, if any, for indemnification shall be limited and not exceed the amount Special Magistrate is paid in compensation.

5. Professional Independence of the Special Magistrate

It is understood and agreed that the Special Magistrate is not an employee of the County. The Special Magistrate is, and shall remain, an independent professional with respect to all services performed under this Agreement. No partnership relationship between the County and the Special Magistrate is created or intended by this Agreement.

6. Assignment

This is an Agreement for unique personal services and the Special Magistrate’s obligation hereunder is not assignable. The Special Magistrate shall not assign, transfer, pledge, hypothecate, surrender, or otherwise encumber or dispose of any of its rights under this Agreement, or any interest in any portion of same, without the prior written consent of the County.

7. Conflicts

In the event a conflict arises between clients of the Special Magistrate and the County, the Special Magistrate shall immediately advise the County of such conflict, resign from such conflicting representation, and assist the conflicting clients in obtaining other counsel.

8. Term; Termination

This Agreement shall be for a term of two years, from December 1, 2024 to November 30, 2026, unless terminated earlier by the Board of County Commissioners for misfeasance, malfeasance or nonfeasance in the office, upon seven (7) calendar days’ prior written notice by certified mail, return receipt requested. If this Agreement is terminated, the Special

Magistrate shall be paid for work performed up to the date of termination that does not involve misfeasance, malfeasance or nonfeasance in office. The Special Magistrate shall have the right to terminate this Agreement by giving notice in writing to the County sixty (60) days prior to the intended termination date. This Agreement shall automatically renew under the same terms and conditions for additional terms of two years. All notices shall be given at the following addresses, unless amended in writing:

For County to: Building Department Director
900 SE Ruhnke Street
Stuart, FL 34994

With copy to: County Attorney
2401 SE Monterey Rd.
Stuart, FL 34996

For Special
Magistrate to: Gemma Torcivia
515 N. Flagler Dr., Suite 350
West Palm Beach, FL 33401

9. Audit

The Special Magistrate shall retain all public records relating to this Agreement for a period of at least three (3) years after final payment is made. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, the County reserves the right to have access to such records as required in this section for the purpose of inspection or audit during normal business hours, at the County's cost, upon five (5) days prior written notice. Public records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business between the County and the Special Magistrate.

10. Non-Discrimination

The Special Magistrate shall assure that no person shall, on the grounds of race, color, creed, national origin, handicap, or sex, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any activity under this Agreement. The Special Magistrate shall take all measures necessary to effectuate these assurances.

11. Compliance with Laws

The Special Magistrate, its employees, and subcontractors shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement.

12. Amendment

This Agreement may be amended only with the written approval of the parties.

13. Waivers

No act of omission or commission of either party, including without limitation, any failure to exercise any right, remedy, or recourse, shall be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or modification is to be effected only through a written modification to this Agreement.

14. Complete Agreement

This Agreement states the entire understanding between the parties and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. The Special Magistrate recognizes that any representations, statements or negotiations made by the County staff do not suffice to legally bind the County in a contractual relationship unless they have been reduced to writing, authorized, and signed by an authorized County representative.

15. Venue

This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Martin County, Florida.

16. Mediation

In the event of a dispute between the parties in connection with this Agreement, the parties agree to submit the disputed issue or issues to a mediator for non-binding mediation prior to filing a lawsuit. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for Martin County. The fee of the mediator shall be shared equally by the parties. To the extent allowed by law, the mediation process shall be confidential and the results of the mediation or any testimony or argument introduced at the mediation shall not be admissible as evidence in any subsequent proceeding concerning disputed issue.

17. Public Records

Failure to comply with the following provisions shall be deemed a material default subject to termination as provided herein. To the extent that disclosure of information is required by law or regulation or applicable legal or regulatory process, the COUNTY shall give notice as is practicable to the CONTRACTOR that such disclosure is required. CONTRACTOR shall comply with public records laws, specifically, CONTRACTOR shall:

- (i) keep and maintain public records required by COUNTY to perform the service;

(ii) upon request from COUNTY's custodian of public records, provide COUNTY 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;

(iii) 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 the Agreement term and following completion of this Agreement if CONTRACTOR does not transfer the records to COUNTY; and

(iv) upon completion of this Agreement, transfer, at no cost, to COUNTY all public records in possession of CONTRACTOR or keep and maintain public records required by COUNTY to perform the service. If CONTRACTOR transfers all public records to COUNTY upon completion of this Agreement, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of this Agreement, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to COUNTY, upon request from COUNTY's custodian of public records, in a format that is compatible with the information technology systems of COUNTY.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT (772) 419-6959, PUBLIC_RECORDS@MARTIN.FL.US, MARTIN COUNTY, ATTN: PUBLIC RECORDS LIAISON, 2401 SE MONTEREY ROAD, STUART, FLORIDA 34996.

18. E-Verify

As a condition precedent to entering into this AGREEMENT, and in compliance with Section 448.095, Fla. Stat., Contractor and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.

a. Contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this AGREEMENT.

b. The COUNTY, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.

c. The COUNTY, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.

d. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(5)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the COUNTY for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the COUNTY as a result of termination of any contract for a violation of this section.

e. *Subcontracts.* Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

IN WITNESS WHEREOF, the parties hereto have executed this document on the date first above written.

ATTEST:

MARTIN COUNTY BOARD OF
COUNTY COMMISSIONERS:

CAROLYN TIMMANN, CLERK
OF THE CIRCUIT COURT AND
COMPTROLLER

_____, CHAIRMAN

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

SARAH W. WOODS
COUNTY ATTORNEY

WITNESSES:

Zackery Good
Print Name: Zackery Good

SPECIAL MAGISTRATE:
Gemma Torcivia
Gemma Torcivia

Pamela Good
Print Name: Pamela Good