

EXHIBIT B

SPECIAL MAGISTRATE AGREEMENT

THIS AGREEMENT is made and entered into on this _____ day of _____, 2018, by and between the City of Coconut Creek, Florida, a Florida municipal corporation, hereinafter referred to as "CITY," and David Nathan Tolces, Esq. of Goren, Cherof, Doody & Ezrol, P.A., with principal offices located at 3099 E Commercial Blvd., Ste. 200, Fort Lauderdale, FL 33308-4348, hereinafter referred to as "SPECIAL MAGISTRATE," for professional Municipal Special Magistrate services.

WHEREAS, the CITY and SPECIAL MAGISTRATE desire to enter into an Independent Contractor Agreement wherein David Nathan Tolces, Esq. shall act in the capacity of Special Magistrate in code enforcement related matters within the jurisdictional boundaries of the City of Coconut Creek, Florida; and

WHEREAS, Chapter 162, Florida Statutes, provides that municipalities may appoint Special Magistrates as an alternative method of hearing code enforcement issues; and

WHEREAS, Section 2-227, "Jurisdiction," of the City's Code of Ordinance, provides that the Special Masters or Magistrates of the CITY shall be selected by the City Commission from a list of candidates recommended by the City Manager; and

WHEREAS, the City Commission has selected David Nathan Tolces, Esq., as SPECIAL MAGISTRATE for code enforcement cases; and

WHEREAS, the City of Coconut Creek and David Nathan Tolces, Esq., wish to enter into this Agreement in order to set out the terms and conditions of the professional services related to the position of SPECIAL MAGISTRATE.

NOW, therefore, in consideration of the terms and conditions hereafter set forth and the mutual promises set forth herein, the CITY and SPECIAL MAGISTRATE agree as follows:

1. SERVICES:

A. SPECIAL MAGISTRATE hereby agrees to provide Special Magistrate services for CITY by adjudicating code enforcement issues that may be assigned to SPECIAL MAGISTRATE by CITY.

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B. SPECIAL MAGISTRATE hereby agrees that at the conclusion of each hearing a written order, which shall include findings of fact and conclusions of law, shall be promptly prepared and furnished to all parties.

C. SPECIAL MAGISTRATE hereby acknowledges that he is an independent contractor under this Agreement and has only the benefits provided by this Agreement. This Agreement shall not in any way be construed to create a partnership, association, or any other kind of joint venture between the parties hereto.

D. SPECIAL MAGISTRATE hereby acknowledges that he is a member in good standing of the Florida Bar engaged in the private practice of law. Further, SPECIAL MAGISTRATE acknowledges that he has no existing client relationship, which would pose a conflict of interest as to his service as a SPECIAL MAGISTRATE for CITY.

E. SPECIAL MAGISTRATE shall be free to provide similar services at other locations and for other persons while under contract with the CITY. SPECIAL MAGISTRATE's services are non-exclusive to CITY. The CITY may contract with additional entities or persons under a similar agreement such as this Agreement, if in its sole discretion of the CITY, the CITY desires to do so.

2. PAYMENT:

A. CITY hereby agrees to pay SPECIAL MAGISTRATE one hundred and fifty dollars (\$150.00) per hour or the fractional part thereof for time spent by the SPECIAL MAGISTRATE for attendance at said hearings and for any other work including, but not limited to, preparation and research for SPECIAL MAGISTRATE hearings and for drafting appropriate orders and documents which result from said hearings.

B. SPECIAL MAGISTRATE hereby agrees to provide the CITY and CITY Attorney with a monthly invoice outlining the services provided as contemplated by the herein Agreement and the time billed as SPECIAL MAGISTRATE under the conditions set forth herein.

C. Payment shall be mailed by CITY to SPECIAL MAGISTRATE at:

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David Nathan Tolces, Esq.

3. TERM OF AGREEMENT:

A. This Agreement shall commence and be effective upon the date of approval by the CITY Commission for CITY. The initial Agreement period shall be for three (3) years. The City reserves the right to extend the Agreement for two (2) additional one (1) year periods, providing both parties agree to the extension; all the terms, conditions and specifications remain the same; and such extension is approved by the City's Contract Administrator in writing.

B. In the event services are scheduled to end because of the expiration of this Agreement, the SPECIAL MAGISTRATE shall continue the service upon the request of the Contract Administrator. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing Agreement. The SPECIAL MAGISTRATE shall be compensated for the service at the rate(s) in effect when the CITY invokes this extension clause.

C. This Agreement may be terminated by either party at will upon sixty (60) days written notice to the other party. The SPECIAL MAGISTRATE hereby agrees that he shall, however, complete any hearings and complete written orders as to any code enforcement case for which hearings have commenced and/or concluded.

4. GOVERNMENT IMMUNITY:

Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract.

5. NOTICE:

Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the following addresses:

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CITY

City Manager
City of Coconut Creek
4800 West Copans Road
Coconut Creek, FL 33063
With a copy to the City Attorney at the same address.

SPECIAL MAGISTRATE

David Nathan Tolces, Esq.

ADDRESS

PHONE

FAX

EMAIL

6. PUBLIC RECORDS:

SPECIAL MAGISTRATE shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with Florida law, SPECIAL MAGISTRATE agrees to:

A. Keep and maintain all records that ordinarily and necessarily would be required by the CITY in order to perform the services;

B. Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat., or as otherwise provided by law;

C. Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the SPECIAL MAGISTRATE does not transfer the records to the CITY;

D. Upon completion of the services within this Agreement, at no cost, either transfer to the CITY all public records in possession of the SPECIAL MAGISTRATE or keep and maintain public records required by the CITY to perform the services. If the SPECIAL MAGISTRATE transfers all public records to the CITY upon completion of the services, the SPECIAL MAGISTRATE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the

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SPECIAL MAGISTRATE keeps and maintains public records upon completion of the services, the 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, in a format that is compatible with the information technology systems of the CITY.

If SPECIAL MAGISTRATE does not comply with this Section, the CITY shall enforce the Agreement provisions in accordance herewith and may unilaterally cancel this Agreement in accordance with state law.

IF THE SPECIAL MAGISTRATE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLA. STAT., TO THE SPECIAL MAGISTRATE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT 954-973-6774, PublicRecords@coconutcreek.net 4800 West Copans Road, Coconut Creek, FL 33063.

7. NON-DISCRIMINATION COVENANT:

That SPECIAL MAGISTRATE shall for him/herself, as a part of the consideration hereof, hereby covenant and agree that:

A. No person on the ground of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, gender identity or expression, or veteran or service member status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the performance of this Agreement; and

B. No employee or applicant for employment on the ground of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, gender identity or expression, or veteran or service member status shall be discriminated against during the course of employment or application for employment to be employed

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in the performance of this Agreement with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to performance of this Agreement.

That in the event of a proven breach of the above non-discrimination covenant, the CITY shall have the right to terminate this Agreement as if this it had never been made, and avail itself of any remedies available in law or equity.

8. ASSIGNMENTS:

SPECIAL MAGISTRATE hereby agrees that the services provided in this Agreement are personal in nature and may not be assigned or transferred to any other party without the prior written consent of the City Commission.

9. AGREEMENT SUBJECT TO FUNDING:

This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Coconut Creek in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

10. VENUE:

This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this Agreement is situated exclusively in the 17th Judicial Circuit Court in and for Broward County, Florida.

11. SEVERABILITY; WAIVER OF PROVISIONS:

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

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12. INTERPRETATION:

The language of this Agreement has been agreed to by both Parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires.

13. MATERIALITY AND WAIVER OF BREACH:

The parties agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for valuable consideration, that each is substantial and important to the formation of this Agreement, and that each is, therefore, a material term hereof. Either party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

14. COMPLIANCE WITH LAWS:

The parties shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing their duties, responsibilities, and obligations related to this Agreement

15. MERGER:

This Agreement constitutes the entire Agreement between the SPECIAL MAGISTRATE and the CITY, and negotiations and oral understandings between the parties are merged herein. This Agreement further supersedes and replaces any and all prior agreements of this nature, and may only be altered, amended, modified, changed, added to, or repealed by a duly executed written instrument.

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IN WITNESS WHEREOF the parties have made and entered into this Agreement.

Witness Signature

David Nathan Tolces, Esq.

Witness Printed Name

Dated

Witness Signature

Witness Printed Name

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ATTEST:

CITY OF COCONUT CREEK

Leslie Wallace May, City Clerk

By: _____
Mary C. Blasi, City Manager

CITY ATTORNEY

Terrill C. Pyburn, City Attorney
APPROVED AS TO FORM