



COUNCIL AGENDA STATEMENT

Meeting Date: November 9, 2021
To: Honorable Mayor and City Councilmembers
From: Steve Williams, City Attorney
Copy: George Garrett, City Manager

Agenda Item: Resolution 2021-115, Approving an Agreement between the City of Marathon and Jeff Vastola for Code Enforcement Special Magistrate Services; Authorizing the Mayor to Execute the Agreement on Behalf of the City; and Providing for an Effective Date.

BACKGROUND & JUSTIFICATION:

The City recently solicited special magistrates via an RFQ due to Jack Bridges' resignation. After asking for qualifications twice on DemandStar, one submittal was received from attorney Jeff Vastola at an hourly rate of \$200. The rate takes into consideration the review of complaints, research and attendance. Travel time, living expenses and other non-related expenses are not reimbursable. Staff feels Mr. Vastola is qualified and recommends approval.

CONSISTENCY CHECKLIST:

Table with 3 columns: Item, Yes, No. Row 1: Comprehensive Plan, Yes: blank, No: blank. Row 2: Other, Yes: blank, No: blank. Row 3: Not applicable, Yes: blank, No: blank.

FISCAL NOTE:

The adopted FY22 budget for the Code Department includes appropriations of \$6,000 for special magistrate services.

RECOMMENDATION: Approve Resolution

Sponsored by: Garrett

**CITY OF MARATHON, FLORIDA
RESOLUTION 2021-115**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE CITY OF MARATHON AND JEFF D. VASTOLA, ESQ. FOR CODE ENFORCEMENT SPECIAL MAGISTRATE SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the CITY recently passed an ordinance establishing a special magistrate code enforcement process; and

WHEREAS, the CITY subsequently solicited special magistrates via RFQ; and

WHEREAS, Jeff Vastola was the sole respondent to the RFQ; and

WHEREAS, Jeff Vastola represents that he is capable and prepared to provide such services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The City Council hereby approves the Agreement between Jeff Vastola and the City, a copy of which is attached hereto as Exhibit "A," for code enforcement special magistrate services, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney.

Section 2. The City Manager is authorized to execute the contract on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9TH DAY OF NOVEMBER, 2021.

THE CITY OF MARATHON, FLORIDA

Mayor

AYES:
NOES:
ABSENT:

ABSTAIN:

ATTEST:

Diane Clavier, City Clerk
(City Seal)

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

Steve Williams, City Attorney

CODE COMPLIANCE SPECIAL MAGISTRATE AGREEMENT

THIS AGREEMENT is entered into this ___ day of November 2021, between the CITY OF MARATHON, a Florida municipal corporation, located at 9805 Overseas Highway, Marathon, Florida 33050 (the "CITY"), and JEFF D. VASTOLA, ESQ, located at 91495 Overseas Hwy., Suite C, Tavernier, Florida 33070 (the "SPECIAL MAGISTRATE").

WHEREAS, the CITY recently passed an ordinance establishing a special magistrate code compliance process; and

WHEREAS, the CITY subsequently solicited special magistrates via a Request For Qualifications; and

WHEREAS, the CITY chose SPECIAL MAGISTRATE as the sole respondent to the RFQ; and

WHEREAS, the SPECIAL MAGISTRATE represents that he is capable and prepared to provide such services.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the CITY and the SPECIAL MAGISTRATE agree as follows:

1.0 Term

1.1 This Agreement shall take effect on the date of its execution by the Mayor.

1.2 The term of this Agreement shall be for one (1) year, commencing upon the effective date, unless otherwise terminated as provided herein.

1.3 The CITY shall have the option to renew the Agreement for additional one-year periods, as approved by the City Council, at the same terms and conditions, by giving the SPECIAL MAGISTRATE written notice not less than thirty (30) days prior to the expiration of the term then in effect. There shall be no limit on the number of terms a person may serve as a special magistrate.

2.0 Services to Be Performed by the SPECIAL MAGISTRATE

2.1 The SPECIAL MAGISTRATE shall perform the services as generally described in the Scope of Work Exhibit "A".

3.0 Compensation

3.1 General

3.1.1 The CITY shall pay SPECIAL MAGISTRATE on an hourly basis at a rate of \$200.00 per hour for all of SPECIAL MAGISTRATE's time, inclusive of all costs incurred to provide said

services. There will be no additional charges for office overhead to include administrative assistants/secretaries and other support personnel. The CITY will not provide reimbursement for travel, meals, or mileage.

3.1.2 The hourly rate, as set out in Section 3.1.1 may be adjusted by an Amendment to this Agreement, after mutual written agreement of the parties, annually beginning one year from the effective date of the Agreement. Approval by the CITY may only be granted by action of City Council, at its sole discretion.

3.1.3 Each individual invoice shall be due and payable forty-five (45) days after receipt by the CITY of a correct, fully documented invoice, in form and substance satisfactory to the CITY. All invoices shall be delivered to: City of Marathon, Attn: City Clerk, 9805 Overseas Highway Marathon, Florida 33050

4.0 Insurance

4.1 SPECIAL MAGISTRATE shall carry and provide proof of \$1,000,000 professional/malpractice insurance.

4.2 SPECIAL MAGISTRATE shall not commence work under this Agreement until the required insurance as stated herein has been obtained and proof of such insurance has been provided to the CITY.

5.0 Standard of Care

5.1 SPECIAL MAGISTRATE has represented to the CITY that he has the experience necessary to perform the work in a professional and workmanlike manner.

5.2 SPECIAL MAGISTRATE shall exercise the same degree of care, skill, and diligence in the performance of the services as is provided by a professional of like experience, knowledge, and resources, under similar circumstances.

6.0 Indemnification

6.1 SPECIAL MAGISTRATE shall indemnify and hold harmless the CITY, its council members, officers, employees, and agents from all actions, claims, penalties, judgments, liabilities, losses, and causes of action which may arise out of its fulfillment of this Agreement.

6.2 SPECIAL MAGISTRATE shall defend the CITY and shall pay all reasonable expenses incurred by the CITY in defending itself, with regard to all damages and penalties the CITY may legally be required to pay as a result of the negligence of the SPECIAL MAGISTRATE as aforesaid. Expenses shall include all incidental reasonable expenses including attorney fees and shall include a reasonable value of any services rendered by the CITY' s Legal Department.

6.3 Nothing in this indemnification is intended to constitute a waiver of the CITY's limitation on liability as set forth in section 768.28 FS.

6.4 This covenant shall survive the expiration or termination of this agreement.

6.5 This provision shall not be construed to require SPECIAL MAGISTRATE to indemnify the CITY in situations wherein their rulings are appealed in the ordinary course as provided by law.

7.0 Independent Contractor

7.1 SPECIAL MAGISTRATE undertakes performance of the services as an independent contractor and shall be wholly responsible for the methods of performance.

7.2 CITY shall have no right to supervise the methods used, but CITY shall have the right to observe such performance.

7.3 SPECIAL MAGISTRATE shall work closely with CITY in performing services under this Agreement. The parties expressly agree that the City of Marathon does hereby contractually extend to Jeff D. Vastola, Esq., the protections afforded by Florida Statute 768.28 while at all times performing his duties under this Contract

7.4 SPECIAL MAGISTRATE shall not pledge the CITY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness and shall have no right to speak for or bind the CITY in any manner.

7.5 SPECIAL MAGISTRATE further warrants and represents that he has no obligation or indebtedness that would impair his ability to fulfill the terms of this Agreement.

8.0 Authority to Practice

8.1 SPECIAL MAGISTRATE hereby represents and warrants that he has and will continue to maintain all licenses and approvals required to conduct his business, and that he will at all times conduct his business activities in a reputable manner.

9.0 Compliance with Laws

9.1 In performance of the services, SPECIAL MAGISTRATE will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards.

10.0 Conflicts and Unavailability

10.1 SPECIAL MAGISTRATE acknowledges that this Agreement is non-exclusive, that the CITY has an Alternate Special Magistrate, and consents to the CITY assigning any matter for which SPECIAL MAGISTRATE has or may have a conflict of interest, or for which SPECIAL MAGISTRATE is unavailable, to an Alternate Special Magistrate.

10.2 In the event that SPECIAL MAGISTRATE determines that a conflict of interest may arise or has arisen in reference to any matter that SPECIAL MAGISTRATE is handling for the CITY, SPECIAL MAGISTRATE shall notify the City Attorney and the City's Code Compliance Director no later than fourteen (14) days prior to the scheduled hearing. If a conflict arises or is first determined less than fourteen (14) days prior to the scheduled hearing, then the SPECIAL MAGISTRATE shall notify the CITY no later than 48 hours after such conflict arises or is first determined.

10.3 SPECIAL MAGISTRATE acknowledges that the CITY's code compliance hearing schedule will generally follow a set pattern and further agrees to inform CITY of any hearing dates that he will miss due to vacation or other planned absence at least thirty (30) days in advance.

10.4 In all other instances where the SPECIAL MAGISTRATE is unavailable, he agrees to give the CITY thirty (30) day notice, or if the unavailability arises less than thirty (30) days before a hearing date, SPECIAL MAGISTRATE agrees to provide notice of unavailability to the CITY within one (1) business day of when it arises.

11.0 CITY's Responsibilities

11.1 CITY shall be responsible for providing information in the CITY's possession that may reasonably be required by SPECIAL MAGISTRATE to provide the services described in Section 2.0.

12.0 Termination of Agreement

12.1 This Agreement may be terminated by the SPECIAL MAGISTRATE upon ninety (90) days prior written notice to the CITY.

12.2 This Agreement may be terminated by the CITY with or without cause upon ninety (90) days prior written notice to the SPECIAL MAGISTRATE.

12.3 Unless the SPECIAL MAGISTRATE is in breach of this Agreement, the SPECIAL MAGISTRATE shall be paid for services rendered to the CITY's satisfaction through the date of termination.

13.0 Governing Law and Venue

13.1 This Agreement shall be governed in all respects by the laws of the State of Florida, and any litigation with respect thereto shall be brought only in the courts of Monroe County, Florida or the United State District Court, Southern District of Florida, Key West Division.

14.0 Non-Discrimination

14.1 SPECIAL MAGISTRATE warrants and represents that all his employees are treated equally during employment without regard to race, color, religion, gender, age, or national origin.

15.0 Waiver

15.1 A waiver by either the CITY or SPECIAL MAGISTRATE of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

16.0 Severability

16.1 The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement.

16.2 Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

16.3 The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

16.4 The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement to be determined to be void.

17.0 Entirety of Agreement

17.1 The CITY and the 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.

18.0 Modification

18.1 The Agreement may not be modified unless such modifications are evidenced in writing signed by both CITY and SPECIAL MAGISTRATE. Such modifications shall be in the form of a written Amendment executed by both parties.

19.0 Successors and Assigns

19.1 CITY and SPECIAL MAGISTRATE each binds itself/himself and its/his partners, successors, assigns, and legal representative to the other party to this Agreement and to their partners, successors, executors, administrators, assigns, and legal representatives.

19.2 SPECIAL MAGISTRATE shall not assign, transfer, convey, sublet, or otherwise dispose of this Agreement, or of any or all of its rights, title, or interest therein, or the SPECIAL MAGISTRATE's power to execute this Agreement, to any person, company, or corporation without prior written consent of the CITY. Such consent may be withheld for any reason in the sole discretion of the City Council.

20.0 Public Records

20.1 The SPECIAL MAGISTRATE shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the CITY as provided under Section 119.011(2), Florida Statutes, specifically agrees to:

- (1) Keep and maintain public records required by the CITY to perform the service
- (2) 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.
- (3) 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 contract and following completion of the contract if the SPECIAL MAGISTRATE does not transfer the records to the CITY.
- (4) Upon completion of the contract term, transfer, at no cost, 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 service. If the SPECIAL MAGISTRATE transfers all public records to the CITY upon the completion of this Agreement, the SPECIAL MAGISTRATE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the SPECIAL MAGISTRATE keeps and maintains public records upon completion of the contract, 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 or designee, in a format that is compatible with the information technology of the CITY.

20.2 IF THE 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 305-743-0033, clavierd@ci.marathon.fl.us, OR BY MAIL AT 9805 OVERSEAS HIGHWAY, MARATHON, FLORIDA 33050.

21.0 Notice

21.1 Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by overnight courier service or by Certified Mail, postage prepaid as follows:

As to CITY:

City of Marathon
Attention: City Manager
9805 Overseas Highway
Marathon, Florida 33050

With a copy to:

City of Marathon
Attention: City Attorney
9805 Overseas Highway
Marathon, Florida 33050

As to SPECIAL MAGISTRATE:

Jeff D. Vastola, Esq.
9145 Overseas Hwy. Suite C
Tavernier, FL 33070

22.0 Contract Administration

22.1 Except as otherwise provided in this Agreement, services of SPECIAL MAGISTRATE shall be under the general direction of the City Council, or their designee, who shall act as the CITY's representative during the term of the Agreement.

[THE REMAINDER OF THIS PAGE INTENTINALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have executed this Contract on the day and date first above written.

Attest:

CITY OF MARATHON

By: _____
Diane Clavier, City Clerk

By: _____
George Garrett, City Manager

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

By: _____
Steve Williams, City Attorney

**Signed, sealed, and witnessed in the
presence of:**

SPECIAL MAGISTRATE

By: _____

By: _____
Jeff Vastola, Esq.