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VILLAGE OF ESTERO, FLORIDA

RESOLUTION NO. 2016 - 13

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE
VILLAGE OF ESTERO, FLORIDA, AUTHORIZING THE
WAIVING OF COMPETITIVE BIDDING PROCEDURES
AND AUTHORIZING THE VILLAGE MANAGER TO
EXECUTE AN AGREEMENT FOR CODE ENFORCEMENT
SPECIAL MAGISTRATE SERVICES WITH JOSEPH
FAERBER; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Village requires code enforcement special magistrate services for the community development department; and

WHEREAS, the proposed agreement from Joseph Faerber was found to be sufficient for the Village's needs. Joseph Faerber is an attorney with experience in all facets of code enforcement. The proposal has an approximate recurring cost of \$50,000 per year and will be funded from the 2015-2016 fiscal year community development budget with a year-end budget amendment, if necessary, to fund the code enforcement function; and

WHEREAS, staff is recommending a waiver of the competitive bidding procedures as provided in Ordinance 2015-06, Section 5, and requests authorization of the Village Manager to execute an agreement with Joseph Faerber as provided in Ordinance 2015-06, Section 2(B) and (C).

NOW, THEREFORE, be it resolved by the Village Council of the Village of Estero, Florida:

Section 1. The competitive bid process is waived and the Village Manager is hereby authorized to execute an agreement with Joseph Faerber.

Section 2. The fiscal impact of the agreement is approximately \$50,000 per year and the current year amount will be funded from the 2015-2016 fiscal year community development budget with a year-end budget amendment, if necessary, to fund the code enforcement function.

Section 3. This Resolution shall take effect immediately upon adoption.

45 **ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero, Florida this 1st
46 day of June, 2016.

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48 Attest:

VILLAGE OF ESTERO, FLORIDA

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51 By: Kathy Hall
52 Kathy Hall, MMC, Village Clerk

By: Nicholas Batos
Nicholas Batos, Mayor

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55 Reviewed for legal sufficiency:

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57 By: Burt H. Saunders
58 Burt Saunders, Esq., Village Attorney
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**CODE ENFORCEMENT
SPECIAL MAGISTRATE AGREEMENT**

THIS AGREEMENT is made between the **Village of Estero, a Florida municipal corporation** (hereinafter the "Village"), and **Joseph Faerber**, 11400 Pembroke Run, Estero, Florida 33928 (hereinafter the "Special Magistrate").

WITNESSETH:

WHEREAS, the Village is authorized through the Local Government Code Enforcement Boards Act, Chapter 162, Florida Statutes and by Village of Estero, Florida Ordinance No. 2015-14 to establish a code enforcement process, including an alternative code enforcement hearing process; and

WHEREAS, the Village has heretofore provided for an alternative code enforcement hearing process which allows the use of Special Magistrates, also referred to as Hearing Examiners.

NOW THEREFORE, in consideration of the foregoing, and of the mutual covenants and conditions set forth below, the Village and the Special Magistrate intending to be legally bound, hereby agree as follows:

1. The Special Magistrate shall be employed to handle code enforcement issues as needed by the Village Council of the Village of Estero. The Special Magistrate shall become familiar with the Village of Estero's ordinances, including land regulations. The Special Magistrate shall exercise all powers and provide all services of a Special Magistrate (Hearing Examiner) as permitted under statutory law, in particular Chapter 162, Florida Statutes, and the Charter and ordinances of the Village. Services of the Special Magistrate will include up to two public hearings a month and all administrative duties related to the proper conduct of hearings and the issuance of orders.
2. The Special Magistrate represents that he is an attorney duly licensed to practice law in the State of Florida, and that he is currently in good standing with the Florida Bar. The Special Magistrate shall promptly advise the Village if any change in the foregoing shall occur during the terms of this Agreement.
3. The Special Magistrate shall abide by and perform his duties in accordance with the ethics of his profession and all federal, state, and municipal laws, regulations, and ordinances relating to the practice of law.

4. In consideration for the services rendered by the Special Magistrate under this Agreement, the Special Magistrate shall receive the sum of \$225.00 per hour for services rendered as the Special Magistrate, together with reimbursement for any necessary and actual expenses incurred by him. For the review of Code Enforcement orders and other documents necessary emanating from, and as a result of, the code enforcement hearings, the Special Magistrate shall receive the sum of \$100.00 per hour. The Special Magistrate shall submit to the Village Clerk a detailed monthly billing for services rendered and any expenses incurred under this Agreement.
5. The Special Magistrate shall keep accurate records of the affairs handled by the Special Magistrate. All income, funds and fines, if any, generated by the Special Magistrate as a result of the Village of Estero's code enforcement cases or other matters heard by the Special Magistrate shall belong to the Village, whether paid directly to the Special Magistrate or to the Village.
6. Except in extraordinary circumstances or complex matters, the Special Magistrate's code enforcement orders shall be prepared by the Village's Code Enforcement Department or other Village staff in accordance with the Special Magistrate's decisions and rulings, and shall be provided to the Special Magistrate for his review and signature at the conclusion of the code enforcement hearing, or as soon thereafter as may be practicable. Upon the signing of such orders by the Special Magistrate, the Village's Code Enforcement Department, or other Village staff designated for such purpose, shall forthwith mail, at the expense of the Village, the Special Magistrate's orders by regular United States Mail, or as otherwise directed, to the respondents and other parties designated in such orders, and shall, as may be applicable and necessary, arrange to submit and file the original orders with the Lee County Clerk of Court's office. It is the intention of the parties that the foregoing procedures shall permit the mailing of the signed Special Magistrate's code enforcement orders to occur no later than the fifth working day after completion of the code enforcement hearings.
7. The relationship created herein is not an employer/employee relationship. The Special Magistrate is an independent contractor in charge of the manner and method of performing the work of the Code Enforcement Special Magistrate for the Village.
8. The term of this Agreement is for (1) one year, from _____, 2016, until _____, 2017, with the Agreement to be automatically renewed for two

consecutive terms on the Agreement anniversary date, unless sixty (60) days' notice is given not to renew by either party. Further, the renewals shall be under the same terms and conditions set forth in this Agreement. Either Party may terminate this Agreement for convenience by giving ninety (90) days written notice. The Village may terminate the Agreement during its term immediately-for cause. Constitutes for cause occurs by any one of the following acts.

- a) Failure to timely notify the Village should the Hearing Examiner not be available for any code enforcement public hearing or for excessive unavailability as defined in paragraph (12.) twelve below.
 - b) Failure to timely render written decisions so as to preclude meaningful appeal rights of the Village or any respondent.
 - c) Failure to articulate a decision, whether written or as part of the record, so as to preclude meaningful appeal rights of the Village or any respondent.
 - d) Any act that would cause a judge to be in dereliction of his duties in the State of Florida.
 - e) Excessive billing that exceeds the reasonable amount of time to attend the public hearings and render the orders.
9. Any notice required to be given under this Agreement shall be sufficient if in writing and sent by regular United States Mail to the Special Magistrate's business address (or any other address designated by the Special Magistrate to the Village in writing) or to the Village Manager of the Village of Estero.
10. No amendments or variation of the terms or conditions of the Agreement shall be valid unless in writing and signed by the parties.
11. The Special Magistrate's rights and obligations under this Agreement are personal and not assignable or transferable to another attorney.
12. In the event the Special Magistrate is unavailable for hearings for up to (3) three consecutive months or (8) eight hearings in any fiscal year, an Alternate Special Magistrate designated by the Village Council will serve temporarily in lieu of the Special Magistrate. Should the Special Magistrate be unavailable in excess of the above or violate the Agreement pursuant to paragraph 8., an Alternate Special Magistrate will assume the duties as the regular Special Magistrate for the remainder of the term. If, upon review of the Hearing Agenda for any upcoming hearings, the Special Magistrate shall determine that he may have a conflict of interest as to any particular respondent, he shall, to the extent reasonably possible,

notify the Village's Code Enforcement Department sufficiently in advance in order that an Alternate Special Magistrate may hear the case on the date scheduled.

13. In the event the Village or Special Magistrate terminates the services of the Special Magistrate under this Agreement, to the extent reasonably possible, the Special Magistrate agrees to cooperate in a smooth transference of operations.
14. The validity or unenforceability of any particular provision of the Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all aspects as if such invalid or unenforceable provisions were omitted.

IN WITNESS THEREOF, the parties have executed this Agreement this _____ day of _____, 2016.

BY: _____
Joseph Faerber
Special Magistrate / Hearing Examiner

ATTEST: VILLAGE CLERK

VILLAGE OF ESTERO, FLORIDA

BY: _____
Kathy Hall, MMC, Village Clerk

BY: _____
Steve Sarkozy, Village Manager

APPROVED AS TO FORM

BY: _____
Burt Saunders, Esq., Village Attorney