

**RESOLUTION NUMBER 24-32**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT WITH THE FLORIDA DEPARTMENT OF ADMINISTRATIVE HEARINGS AND MONICA SCHMUCKER FOR SPECIAL MAGISTRATE SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the current special magistrate for code enforcement matters has informed the Town that she desires to terminate her contract; and

**WHEREAS**, it is anticipated that there may be a need for additional code enforcement services in the near future; and

**WHEREAS**, having more than one code enforcement special magistrate provides the Town with needed resources to avoid schedule or other conflicts of interest; and

**WHEREAS**, the Florida Department of Administrative Hearings provides qualified hearing officials to serve as local hearing examiners for local governments in matters such as code enforcement at a cost of \$200 per hours; and

**WHEREAS**, Monica Schmucker is a local attorney, who is similarly qualified to provide special magistrate services at a cost of \$250 per hour; and

**WHEREAS**, it is in the best interest of the Town to enter into the negotiated contracts with both Ms. Schmucker and DOAH for performance of special magistrate services.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

Section 1. That the above recitals are true, correct, incorporated herein by this reference, and adopted as findings of the Town Council.

Section 2. That the Town Council hereby approves the agreement with addendum with Ms. Schmucker, attached as Exhibit A, and the agreement with DOAH, attached as Exhibit B, for the performance of special magistrate services for the Town's code enforcement cases.

Section 3. That this Resolution shall take effect immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Woodson and seconded by Council Member King, and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Karen Woodson, Council Member	Aye
Vacant, Council Member	N/A

ADOPTED this 5<sup>th</sup> day of February 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

*Dan Allers*  
Dan Allers (Feb 14, 2024 20:22 EST)

Dan Allers, Mayor

**ATTEST:**

*Amy Baker*  
Amy Baker (Mar 7, 2024 15:04 EST)  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

*Nancy Stuparich*  
Nancy Stuparich (Feb 21, 2024 12:24 EST)  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 14<sup>th</sup> day of February 2024.

## **AGREEMENT FOR SPECIAL MAGISTRATE SERVICES TOWN OF FORT MYERS BEACH**

THIS AGREEMENT is made and entered into on this 5<sup>th</sup> day of February, 2024, by and between the Town of Fort Myers Beach, hereinafter referred to as the “Town”, and Monica Schmucker of Schmucker & Lavy Legal, PLLC, hereinafter referred to as the “Special Magistrate”.

WHEREAS, the Town periodically requires the services of a special magistrate to adjudicate various code enforcement matters in the Town as set forth in Article V-Code Enforcement, Division 2 of the Town of Fort Myers Beach Code of Ordinances and Chapter 162, Florida Statutes; and

WHEREAS, the Fort Myers Beach Town Council at their duly advertised public meeting on January 22, 2024 authorized staff to negotiate an agreement for the delivery of professional services to the Town of Fort Myers Beach as its Special Magistrate;

WHEREAS, the Special Magistrate is a licensed Florida attorney familiar with and qualified to perform the duties and responsibilities of a Special Magistrate as provided in the Town’s Code of Ordinances and Chapter 162, Florida Statutes and agrees to perform such services as may be requested by the Town.

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. **TERM.** The term of this agreement shall begin on the 5th day of February, 2024, and shall continue for two (2-1) years, renewable on same terms or changed as agreed to by both parties as provided in Section 2-425(e), of the Town of Fort Myers Beach Code of Ordinances.
2. **SCOPE OF SERVICES.** The Special Magistrate will provide the Town with professional services relating to code enforcement issues in accordance Article V-Code Enforcement, Division 2 of the Town of Fort Myers Beach Code of Ordinances and Chapter 162, Florida Statutes
3. **COMPENSATION.** Town shall compensate the Special Magistrate for services rendered as follows:
  - a. Fees associated with professional services will be billed at a rate of \$250.00 per hour, rounded up to the nearest quarter hour. This rate shall apply to all relevant services rendered by the Special Magistrate, to include conducting hearings, reasonable preparation for hearings, and reasonable post-hearing activities necessary such as preparing findings, orders, or other necessary post-hearing documents.
  - b. Out of pocket costs will be charged at cost, with no mark-up or multiplier. There would be no separately billed copying charges unless it is deemed necessary to make copies through a third-party copying firm.
  - c. Travel and travel time will not be billed to the Town.
  - d. Fees will be billed monthly based on the hours of work performed. Billing will be due on the fifteenth day of each month.
4. **EXPERIENCE & COMPETENCY.** Special Magistrate represents to the Town that she has relevant experience and competency to deliver the services identified herein. A copy of the Special Magistrate’s resume is attached as Exhibit A.



**TOWN OF FORT MYERS BEACH, FLORIDA**  
**CONTRACT ADDENDUM**

**THIS STANDARD CONTRACT ADDENDUM** is made and entered into this 5th\_ day of February, 2024, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Monica Schmucker of Schmucker & Lavy Legal, PLLC hereinafter referred to as “Contractor”, concerning that certain Agreement for Special Magistrate Services, approved by the Town Council of the Town of Fort Myers Beach on February 5, 2024.

**WITNESSETH:**

**WHEREAS**, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning a contractor’s compliance with Florida’s Public Records Act; and

**WHEREAS**, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

**WHEREAS**, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process; and

**WHEREAS**, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

**WHEREAS**, Section 286.101, Florida Statutes contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern” and any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

**WHEREAS**, Sections 287.133 and 287.135, Florida Statutes contain restrictions on local governments contracting with companies that are considered “Scrutinized Companies” or who appear on convicted vendor lists; and

**WHEREAS**, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701 related to social government and corporate activism are also added by virtue of this Addendum

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

**1. Amendment.** This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

**2. Public Records Compliance.** Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency 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 this chapter 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 the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL  
2525 ESTERO BLVD.  
FORT MYERS BEACH, FL. 33931  
(239)765-0202  
AMY@FMBGOV.COM**

**3. Public Records Compliance Indemnification.** Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but

not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

**4. Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

**5. Non-appropriation.** Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

**6. E-Verify Compliance.** By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

**7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with

Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

Moreover, Contractor shall comply with the disclosure requirements set forth in section 286.101 (3) (a), F.S., which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), F.S.: "In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

**8. Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement; and ii) agrees to waive the right to file any action, suit or proceeding in, or remove any action, suit or proceeding to, any Federal Court.

**9. Attorneys' Fees and Costs.** Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fee and costs.

**10. Public Entities Crime or Convicted Vendor List.** Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

**11. Data Management; Notice of Breach.** Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

**12. Environmental and Social Government and Corporate Activism.** The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

**13. Taxes.** The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency as provided in Section 11.4 of the Agreement, to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

**14. Additional Terms.** Notwithstanding any of other provision to the contrary, the parties agree as follows:

A. None.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

**Contractor:** Monica Schmucker

\_\_\_\_\_

**Print Name:** Monica Schmucker

**Company:** Schmucker & Lavy Legal, PLLC

**ATTEST:**

**Town of Fort Myers Beach**

\_\_\_\_\_  
**Amy Baker, Town Clerk**

\_\_\_\_\_  
**Dan Allers, Mayor**

**APPROVED AS TO FORM & SUFFICIENCY**

(Last Rev. 12/23)

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**Vose Law Firm, Town Attorney**

(Last Rev. 12/23)

ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

This CONTRACT is between the TOWN OF FORT MYERS BEACH, (hereinafter the

“TOWN”), and the State of Florida, Division of Administrative Hearings

(DOAH).

WHEREAS, Section 120.65, Florida Statutes, authorizes DOAH to provide Administrative Law Judges (ALJs) on a contract basis to any governmental entity;

WHEREAS, the TOWN desires to use the services of DOAH’s ALJs to conduct hearings for code enforcement hearings for which ALJs may adjudicate violations, liens, and enforcement as provided by Chapter 162, Florida Statutes and the TOWN Code of Ordinances; and

NOW, THEREFORE, the parties, for valuable consideration and the mutual promises between them, agree as follows:

1. Scope of Services. The foregoing Recitals are hereby incorporated herein as if fully restated. DOAH agrees to make ALJs available to the TOWN. The ALJs will be full-time judges employed by the State of Florida, Division of Administrative Hearings, and are experts in the adjudication of administrative disputes.
2. Compensation. The fiscal year 2003-2004 General Appropriation Act, Chapter 2003-397, Laws of Florida, requires DOAH to renegotiate its contracts for ALJ services annually so that the hourly rate charged is based on a total – cost recovery methodology. The rate has been determined to be \$200.00 per hour beginning October 1, 2023. DOAH will notify the TOWN of the amended hourly rate on or about the first day of September of each year. That rate will become effective on the first day of October of that same year. The TOWN agrees to compensate DOAH for each hour actually worked, and subsequently, at the hourly rate determined in accordance with the Florida Legislature’s directive. This rate will apply for ALJ services in preparing for hearings, traveling to hearings, conducting hearings, and preparing Recommended Orders.

ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

3. Expenses. The TOWN agrees to pay the actual travel expenses, if required, of the assigned ALJ in the amount provided pursuant to Chapter 112, Florida Statutes. DOAH will submit invoices monthly and the TOWN agrees to remit payment monthly in accordance with Chapter 218, Part VII, Florida Statutes. DOAH agrees to provide the TOWN an itemized statement of the charges and costs in the invoice. Unless otherwise requested the parties agree that hearings will be held electronically when possible negating the need for the payment of travel expense.
4. Contract Management. Megan Silver, Executive Director & Administrative Law Judge, and Patricia Kenyon, Operations Manager, will provide contract management services under this Contract for DOAH.
5. Term. This contract is for a term of one (1) year and will automatically renew for succeeding yearly periods one year from the date last signed. This contract may be amended from time to time by mutual agreement of the parties, and may be terminated by either party for the convenience of that party upon thirty (30) days' written notice.
6. Request for Services. To initiate a proceeding, the TOWN shall send a letter to the Chief Judge, Division of Administrative Hearings, requesting the assignment of an ALJ and shall include with such request a copy of the relevant agency action letter, claim asserted and/or request for hearing, as well as any code provisions or other local procedure that governs the type of hearing requested. DOAH shall assign an ALJ promptly after receipt of the letter.
7. Effective Date. This Contract will become effective on the date the last signature is made.
8. Notices. All notices required or permitted by this Contract shall be in writing, and shall be deemed to have been duly given if mailed first-class, certified postage prepaid, addressed as follows:

To The Entity

ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

Town Manager  
Town of Fort Myers Beach  
2525 Estero Boulevard  
Fort Myers Beach, Florida 33931  
239-765-0202

To: DOAH  
State of Florida, Division of Administrative Hearings  
Attn: Patricia Kenyon, Operations Manager  
1230 Apalachee Parkway  
Tallahassee, FL 32301  
850-488-9675

WHEREUPON, the parties have executed this Contract as follows:

**TOWN OF FORT MYERS BEACH**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk  
Approved by the Town Council on the \_\_\_ day of \_\_\_\_\_, 2024

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE TOWN OF FORT  
MYERS BEACH ONLY:**

\_\_\_\_\_  
Vose Law Firm, Town Attorney

ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

STATE OF FLORIDA, DIVISION  
OF ADMINISTRATIVE HEARINGS

\_\_\_\_\_  
Megan S. Silver  
Executive Director & Administrative Law Judge

\_\_\_\_\_  
Date