

RESOLUTION NUMBER 24-210

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND RESTATING ITS CONTRACT WITH THE FLORIDA DEPARTMENT OF ADMINISTRATIVE HEARINGS FOR DELIVERY OF SPECIAL MAGISTRATE SERVICES; AUTHORIZING THE TOWN MANAGER OR MAYOR TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town Council to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, on February 5, 2024, the Town Council adopted Resolution 24-32, approving contracts with the Florida Department of Administrative Hearings (“DOAH”) and Monica Schmucker for Special Magistrate Services; and

WHEREAS, on March 7, 2024, following adoption of Resolution 24-32, the Town and DOAH entered into a contract for special magistrate services by DOAH Administrative Law Judges (“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

WHEREAS, on September 9, 2024, the Town Council passed Emergency Ordinance 24-29, amending the Town Code to reassign the responsibility for appellate review of decisions by the Town Building Official from the Lee County Board of Adjustment and Appeals to the Town of Fort Myers Beach Special Magistrates; and

WHEREAS, the Town and DOAH agree to amend and restate the March 7, 2024, contract to allow DOAH ALJs to perform appellate review of the decisions made by the Town’s Building Official, as authorized by Division 3 of Article I, and Division 2 of Article II, of Chapter 6 of the Town of Fort Myers Beach Land Development Code; and

WHEREAS, the parties agree to amend the contract to increase the hourly rate of DOAH’s ALJs’ from \$200.00 to \$207.00 per hour; and

WHEREAS, it is in the best interests of the Town to enter into the amended and restated contract with DOAH for special magistrates’ services.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

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

Section 2. The Town Council hereby approves the amended and restated contract with DOAH, attached as Exhibit “A,” for the performance of special magistrates' services, including but not limited to the appellate review of the Town Building Official’s decisions regarding unsafe structures, at an amended rate of \$207.00 per hour.

Section 3. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

THE FOREGOING RESOLUTION was adopted by the Town Council upon motion by Mayor Allers 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
Karen Woodson, Council Member	Aye
Scott Safford, Council Member	Aye
John R. King, Council Member	Aye

ADOPTED this 21st day of October 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (Nov 20, 2024 13:55 EST)

Dan Allers, Mayor

ATTEST:

Amy Baker
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 (Nov 22, 2024 13:03 EST)
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 20th day of November 2024.

Exhibit "A"

AMENDED AND RESTATED ADMINISTRATIVE LAW JUDGE
SERVICES CONTRACT

This Amended and Restated Administrative Law Judge Services Agreement dated the 23rd day of October, 2024, by and 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; and

WHEREAS, the TOWN desires to use the services of DOAH's ALJs to conduct hearings for any administrative matters for which ALJs may adjudicate administrative disputes, to conduct 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 to adjudicate appeals of the decisions by the Town of Fort Myers Beach Building Official, as provided in Division 3 of Article I, and Division 2 of Article II, of Chapter 6 of the Town of Fort Myers Beach Land Development Code.

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 \$207.00 per hour beginning October 1, 2024. 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

AMENDED AND RESTATED ADMINISTRATIVE LAW JUDGE
SERVICES CONTRACT

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.

3. Expenses. The TOWN agrees to pay the actual travel expenses 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. Prior Agreements. This Contract shall supersede and replace any prior

AMENDED AND RESTATED ADMINISTRATIVE LAW JUDGE
SERVICES CONTRACT

agreements between the parties, including but not limited to the March 7, 2024, Contract.

9. 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: TOWN

Town Manager
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 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 (05/13/2024 12:04 EDT)

Dan Allers, Mayor

ATTEST:



Amy Baker, Town Clerk Jason Freeman, Deputy To

AMENDED AND RESTATED ADMINISTRATIVE LAW JUDGE
SERVICES CONTRACT

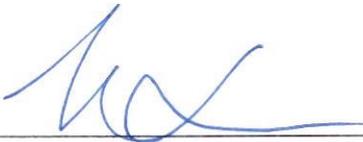
Approved by the Town Council on the 21st day of October, 2024

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

Nancy Stuparich
Nancy Stuparich (Oct 23, 2024 11:54 EDT)

Vose Law Firm, LLP, Town Attorney

STATE OF FLORIDA, DIVISION
OF ADMINISTRATIVE HEARINGS



Megan S. Silver
Executive Director & Administrative Law Judge

11/6/24
Date

ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

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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:

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ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

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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:
- 9.

ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

To *The Entity*

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

Dan Allers (Feb 14, 2024 20:17 EST)

Dan Allers, Mayor

ATTEST:

Amy Baker

Amy Baker (Feb 7, 2024 14:58 EST)

Amy Baker, Town Clerk

Approved by the Town Council on the 5th day of February 2024

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

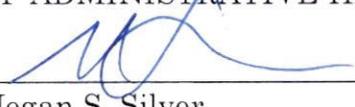
Nancy Stuparich

Nancy Stuparich (Feb 23, 2024 12:24 EST)

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

11/6/24
Date