

RESOLUTION NO. 2015-45

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO SPECIAL MASTER SERVICES; AUTHORIZING THE VILLAGE MANAGER TO EXERCISE THE FIRST EXTENSION CLAUSE OF THE CONTRACT WITH RICHARD L. DOODY, ESQ., FOR A PERIOD OF ONE (1) YEAR, AT AN ESTIMATED ANNUAL COST OF \$9,000; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Mayor and Village Council adopted Ordinance No. 03-08 on June 2, 2003, creating a code enforcement chapter entitled, "Code Enforcement Procedures"; and,

WHEREAS, according to the rules and procedures set forth in Ordinance No. 03-08, the Mayor and Council have the power to appoint a Special Master provided that certain qualifications are met; and,

WHEREAS, the Village published a Request for Qualifications (RFQ. 2013-PZ-01) seeking proposals from qualified individuals or firms to provide Special Master Services for code compliance to the Village; and,

WHEREAS, based on the qualifications detailed in the proposal submitted by Richard L. Doody, Esq., the Village appointed Mr. Doody to the position of Special Master for code compliance services per Resolution No. 2013-54, for a period not to exceed two (2) years with two (2) additional one (1) year options to extend; and,

WHEREAS, the first two (2) years of the contract ends on June 11, 2015; and,

WHEREAS, Mr. Doody is eligible for the first of two (2) optional contract extensions; and,

WHEREAS, Mr. Doody has presided competently and consistently at the Village's Special Master hearings, and approval of a one (1) year extended contract option would be appropriate in light of his service; and,

WHEREAS, the contract provides for a minimum payment of three (3) hours of Special Master services per month at a rate of \$100 an hour; and,

WHEREAS, the estimated annualized total cost of Special Master services based upon prior years is approximately \$9,000 and said amount has been budgeted.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

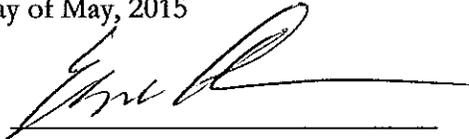
Section 1. The above recitals are included herein by reference.

Section 2. In accordance with the rules and procedures of Ordinance No. 03-08 and Resolution No. 2013-54, Richard L. Doody, Esq., is hereby reappointed to serve as Special Master for the Village of Palmetto Bay, for an extended one (1) year period to expire on June 10, 2016.

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

PASSED and ADOPTED this 4th day of May, 2015

Attest: 
Meighan Alexander
Village Clerk


Eugene Flinn
Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE
USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:


Dexter W. Lehtinen
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Karyn Cunningham	<u>YES</u>
Council Member Tim Schaffer	<u>YES</u>
Council Member Larissa Siegel Lara	<u>YES</u>
Vice-Mayor John DuBois	<u>Absent</u>
Mayor Eugene Flinn	<u>YES</u>



VILLAGE OF PALMETTO BAY

March 6, 2015

Richard L. Doody, ESQ., P.A.
PO BOX 11511
Ft. Lauderdale, FL 33339

Re: Contract with Richard L. Doody, ESQ., P.A., for Special Master Services

Dear Mr. ~~Ross~~, *Doody*,

On June 3rd, 2013, Village of Palmetto Bay Council approved Resolution No. 2013-54, relating to Special Master Services for the Village of Palmetto Bay.

Pursuant to Contract No. RFP-2013-PZ-01, Section 3.1, Commencement Day and Term, term of services were for two (2) years with an option for two (2) one (1) year extensions. Such extension of service may be granted provided you are in compliance with the agreement and you agreeing to maintain the same terms and conditions of the contract. At this time, the Village is extending to you the offer to exercise the first of the two (2) available one (1) year extension options. If you accept the contract extension, the request for the extension shall begin June 11, 2015, through June 10, 2016, and shall be heard by the Mayor and Village Council for further consideration.

Please indicate your company's concurrence of this contract continuance option below and return to our office with a copy of your company's most recent certificate of insurance. Should you need further information, please feel free to contact 305-259-1234.

Richard L. Doody, ESQ., P.A.

Richard L. Doody

Approved
Richard L. Doody, ESQ.
Owner

Disapproved
Richard L. Doody, ESQ.
Owner

Sincerely,

Kristy Bafla

Kristy Bafla, Procurement Specialist

Cc: Darby P. Delsalle, Planning and Zoning Director

**CONTRACT BETWEEN THE VILLAGE OF PALMETTO BAY
AND MR. RICHARD L. DOODY, ESQ.**

This contract is made and entered into this 1st day of July, 2013, between the Village of Palmetto Bay (Village), a Florida municipal corporation, located at 9705 East Hibiscus Street, Palmetto Bay, Florida 33157 and Mr. Richard L. Doody, Esq., individually, located at the Law Offices Richard L. Doody, Esq., P.A., 800 East Broward Boulevard, Suite 710, Cumberland Building, Fort Lauderdale, Florida 33301 (Contractor).

WITNESSETH:

WHEREAS, the Village issued a Request for Qualifications (RFQ) for Special Master Services and the Contractor is the sole bidder and qualified candidate to provide services; and,

WHEREAS, Mr. Doody was selected by the Village Council to be the Special Master for the Village; and,

WHEREAS, the Village desires to engage and retain the services of the Contractor to perform Special Master Services as described in this contract and the Contractor desires to accept the engagement; and,

NOW THEREFORE, in consideration of the sum of \$10.00 the mutual promises and covenants contained in this contract, and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged by both parties, the parties agree as follows.

1. WHEREAS CLAUSES

1.1. The above whereas clauses are incorporated and made a part of this contract.

2. STATEMENT OF WORK

2.1 The statement of work for this project shall be as provided in the RFQ for Special Master Services, which is attached as Exhibit 1, and is incorporated and made a part of this contract. In the event of any conflict, the terms of this contract will govern over the provisions of any incorporated documents.

3. COMMENCEMENT DATE AND TERM

3.1 The term shall commence upon the date of the execution of this contract and expire in two (2) years. Upon the expiration of two (2) years of service, the Contractor may be reappointed for two (2) additional one (1) year options to extend, provided that such reappointment be recommended by the Village Manager and be approved by a majority vote of the Village Council.

3.2 Work shall commence upon the issuance of a written task order by the Village. Work shall proceed in substantial compliance with the schedule of services contained in the statement of work.

4. PAYMENT

4.1 The Village shall pay the Contractor \$100.00 per hour as provided in the RFQ, which is attached as Exhibit 1. The parties agree that the Contractor shall be entitled to a minimum of three billable hours in any month in which the Contractor is required to attend at least one hearing, meeting, or preceding as part of Contractor's Special Master duties.

4.2 The Village shall not be liable to pay, and shall not pay, charges for extra work, delay charges, or additional work, unless the Village's contract officer specifically authorizes the extra or additional work, in a written task order before the commencement of the work.

5. TRANSFER AND ASSIGNMENT



Village


Contractor

5.1 None of the work or services under this contract shall be subcontracted unless the Contractor obtains prior written consent from the Village. Approved subcontractors shall be subject to each provision of the contract and the Contractor shall be responsible and indemnify the Village for all subcontractors' acts, errors or omissions.

5.2 The Contractor shall not assign, transfer or pledge any interest in this contract without the prior written consent of the Village; provided, however, that claims for money by the Contractor from the Village under this contract may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Village's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 10 days by the Contractor to the Village.

6. MODIFICATIONS-CHANGE ORDERS

6.1 The Village may, at any time, by written change order make changes to the scope of work, and to the means and methods of performing the performance that does not alter the scope of work. Changes, including any increase or decrease in the amount of the Contractor's compensation, shall be incorporated in written amendments to this contract.

6.2 If any changes cause an increase or decrease in the price charged, the maximum amount of the contract, or the time required for conditions of this contract, the Village shall make an equitable adjustment to the maximum amount, the price(s), the delivery schedule, or other affected terms, and shall modify the contract with a written change order.

7. TERMINATION FOR DEFAULT

7.1 Either party may terminate this contract prior to the expiration of the initial term or any subsequent renewal term on account of a material breach of this contract by the other party, which has not been cured within 10 days from the date of receipt of written notice of breach from the party seeking termination.

7.2 Termination shall be effective as of the end of the notice period in the case of any uncured material breach.

7.3 The Contractor may terminate this contract prior to the expiration of the initial term or any subsequent renewal term upon not less than 10-days prior written notice to the Village in the event that the Contractor is unable to complete the services identified in paragraph 2.1 due to causes beyond the Contractor's control.

7.4 The Village shall have no liability to the Contractor for future profits or losses in the event of termination for default.

7.5 The rights and remedies of the Village provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

7.6 Should the Contractor provide the Village with written notice of cancellation of contract, the Contractor will be required to refund a pro-rata share of the compensation identified in paragraph 4.

8. TERMINATION FOR DELAY

8.1 If the project is suspended or the Contractor's services are delayed by the Village for more than 30 consecutive days, the Contractor may terminate this contract by giving not less than 10 days written notice.

8.2 The liability of the Village upon termination by the Contractor for suspension or delay of the project shall be for the value of services performed pursuant to the schedule contained in the statement of work rendered by the Contractor to the time of termination by the Contractor. The Village shall not be liable for future profits or losses.

9. TERMINATION FOR CONVENIENCE



Village


Contractor

9.1 The Village may terminate this contract for convenience at any time by giving 10 days notice in writing to the Contractor. The Contractor will be paid for the value of services performed pursuant to the schedule contained in the statement of work, up to and including the termination date. The Contractor will be permitted to complete on-going investigations and shall be paid for all satisfactory work completed. The Village shall not be liable for future profits or losses.

9.2 In the event that the Village improperly terminates the contract for default under paragraph 7, the termination shall be deemed a termination for convenience under this paragraph.

10. TERMINATION FOR LACK OF FUNDS

10.1 Notwithstanding any other provisions of the contract, if the funds anticipated by the Village for the for the payment of work under this contract are at any time not forthcoming, through the failure of the Village to appropriate funds, the failure of Miami-Dade County, the Florida Legislature, or the U.S. Congress to appropriate funds, or the refusal of the administrative branch of the federal or county government to release funds, or due to any other reason for the unavailability of funds in succeeding fiscal years, or the discontinuance or material alteration of the program under which funds are to be provided, the Village shall have the right to terminate the contract without penalty by giving not less than 10 days written notice of the lack of available funding

10.2 In the event the Village declines to appropriate funds for payment of the contract for future fiscal years, the Contractor shall be paid for work performed under the contract with funds that are appropriated for the current fiscal year. The liability of the Village to the Contractor shall be limited to the obligation to budget and appropriate funds for work performed during the current fiscal year.

10.3 For any portion of the work that is funded by county, state or federal appropriations or grants, the liability of the Village to the Contractor shall be limited to payment for services when payment is received by the Village from the county, state or federal authority. The Village shall submit all required documents requesting payment within a reasonable time. The Village shall not be liable to the Contractor for work performed in the event that payment is not received by the Village from the county, state or federal funding authority. This is a pay-when-paid clause.

11. INTEREST PAYMENTS DUE TO LATE PAYMENT

11.1 The Village shall make payment to the Contractor within 30 days of receipt of the original written invoice and sufficient backup documentation and acceptance of the work by the Village. Interest shall accrue on unpaid invoices as provided by Section 218.74, Florida Statutes.

11.2 The Contractor shall not be entitled to any carrying charges or finance fees due to late payment by the Village.

12. LIENS

12.1 The Contractor, subcontractors, suppliers and laborers are prohibited from placing a lien on Village's property.

13. INDEPENDENT CONTRACTOR

13.1 The Contractor is furnishing its services as an independent contractor and nothing in this contract shall create any association, partnership or joint venture between the parties, or any employer-employee relationships.


Village

Contractor

14. INDEMNIFICATION

14.1 The Contractor shall defend, indemnify and hold the Village harmless from any and all claims, liability, losses, expenses and causes of action arising solely out of any intentional misconduct or negligence.

15. MEDIATION

15.1 Any claim or dispute arising out of or related to this contract shall be subject to informal mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Both parties waive any right to arbitration.

15.2 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Miami-Dade County, Florida, unless another location is mutually agreed upon.

15.3 Contracts reached in mediation shall be enforceable as settlement contracts in the Circuit Court for the 11th Judicial Circuit for the State of Florida.

16. JURISDICTION AND VENUE

16.1 For the purposes of this contract, Florida law shall govern the terms of this contract. Venue shall be in Miami-Dade County, Florida.

17. SOVEREIGN IMMUNITY AND ATTORNEY'S FEES

17.1 The Village does not waive sovereign immunity for any claim for breach of contract or for an award of prejudgment interest; provided, however, that in any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

18. NOTICES

18.1 All notices given or required under this contract shall be deemed sufficient if sent by certified mail, return receipt requested, to the addresses of the Contractor and to the Village specified in this contract, unless either party shall specify to the other party a different address for the giving of the notices.

19. CONTRACTING OFFICER REPRESENTATION

19.1 For the purposes of this contract, the contracting officers are as follows:

To the Village: Village of Palmetto Bay
9705 East Hibiscus Street
Palmetto Bay, Florida 33157
Attention: Village Manager

To the Contractor: Law Offices Richard L. Doody, Esq., P.A.
800 East Broward Boulevard
Suite 710, Cumberland Building
Fort Lauderdale, Florida 33301
Attention: Richard L. Doody, Esq.

20. EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS

20.1 The Village, or any of their duly authorized representatives, shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's books, ledgers, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.



Village


Contractor

20.2 The right to access and examination of records in subparagraph 24.1 shall continue until disposition of any mediation, claims, litigation or appeals.

21. OWNERSHIP OF DOCUMENTS

21.1 All documents, reports, plans, specifications or other records, including electronic records, resulting from the professional services rendered by the Contractor under this contract shall be deemed the property of the Village and the Village shall have all rights incident to this ownership. The Contractor acknowledges that all documents prepared under this contract shall be public records, and shall be subject to the public inspection and copying, as provided by Florida Statutes chapter 119. Upon conclusion of this contract and any extensions, all documents shall be delivered by the Contractor to the Village. The Contractor shall have the right to retain copies of the documents at the Contractor's expense.

22. SEVERABILITY

22.1 Should any paragraph or any part of any paragraph of this contract be rendered void, invalid or unenforceable by any court of law, for any reason, the determination shall not render void, invalid or unenforceable any other section or part of any section of this contract.

23. ENTIRE CONTRACT

23.1 The contract, when signed by all of the parties, constitutes the full and complete understanding and contract of all parties and may not be in any manner interpreted or fulfilled in contradiction of its express terms. This contract and the incorporated attachments constitute the entire understanding between the parties and integrates by its terms all previous contracts or understandings, oral or written, between the parties.

24. CONTINGENCY FEE AND CODE OF ETHICS WARRANTY

24.1 The Contractor warrants that neither it, nor any principal, employee, agent, representative or family member has promised to pay, and the Contractor has not, and will not, pay a fee the amount of which is contingent upon the Village awarding this contract to the Contractor.

24.2 The Contractor warrants that neither it, nor any principal, employee, agent, representative or family member has procured, or attempted to procure, this contract in violation of any of the provisions of the Miami-Dade County or the Village of Palmetto Bay conflict of interest and code of ethics ordinances.

24.3 A violation of this paragraph will result in the termination of the contract and forfeiture of funds paid, or to be paid, to the Contractor.

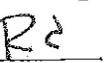
25. WARRANTY OF AUTHORITY

25.1 The signatories to this contract warrant that they are duly authorized by action of their respective Village commission, board of directors or other authority to execute this contract and to bind the parties to the promises, terms, conditions and warranties contained in this contract.

26. MISCELLANEOUS

26.1 In the event a court must interpret any word or provision of this agreement, the word or provision shall not be construed against either party by reason of drafting or negotiating this agreement.

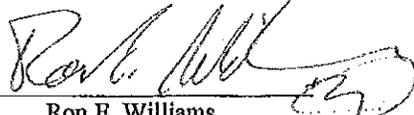
[Signature Page to follow].


Village

Contractor

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized officers, have executed this contract as of the date first above written.

The Village of Palmetto Bay

Contractor

By: 
Ron E. Williams,
Village Manager

By: 
Richard L. Doody, Esq.
Richard L. Doody Esq P.A.

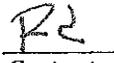
ATTEST:

VILLAGE CLERK

By: 
Melghan J. Rader,
Village Clerk

Approved as to form:

By: 
Eve A. Bontsis,
Office of Village Attorney


Village

Contractor



541 E. Mitchell Hammock Road Oviedo, Florida 32765
Phone: 800-633-6458 Fax: 800-781-2010
www.flmic.com

Created by The Florida Bar for its members

Lawyers Professional Liability Policy
This is a Claims Made and Reported Policy. Please read it carefully.

Declarations

Policy Number: 71892

Item 1. Named Insured: Richard L. Doody, Esq., P.A.

Mailing Address: P.O. Box 11511
Fort Lauderdale, FL 33339-1151

Item 2. Policy Period: From 04/01/2015 **to** 04/01/2016 **at 12:01 A.M.**

Standard Time at Your Address Shown Above

Item 3. Limit of Liability: \$250,000 *Per Claim*
\$500,000 *Total Limit*

Item 4. Deductible: \$2,500 *Annual Aggregate*

Item 5. Policy Premium: \$1,885.00 *Annual Premium*

Item 6. Forms and Endorsements Attached at Policy Issuance:

FLPL-101 (R.08/01/2011) FLPL-200R (R.01/01/2014) FLPL-103 (R.08/01/2011)
FLPL-108 (R.08/01/2011)

The Policy is not valid until signed by Our authorized representative.

March 10, 2015
Date Issued


Authorized Representative

FLPL-100 (R.08/01/2011)

Page 1 of 1

RESOLUTION NO. 2013-54

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO PLANNING AND ZONING AND RFQ-2013-PZ-01; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE CONTRACT BETWEEN THE VILLAGE OF PALMETTO BAY AND RICHARD L. DOODY, ESQ., PA, FOR SPECIAL MASTER SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to the powers granted by the Florida Constitution, and applicable sections of Chapters 162 and 166 of the Florida Statutes, the Mayor and Council adopted Ordinance No. 03-08 on June 2, 2003, creating Article VII, Sections 2-204 through 2-300 entitled, "Code Compliance Procedures"; and,

WHEREAS, the Village requires the assistance of a qualified vendor to implement the "Code Compliance Special Master Services" program to ensure proper municipal adjudication of Village code compliance cases; and,

WHEREAS, according to the rules and procedures set forth in Section 2-204 of the Village's Code, the Mayor and Council have the power to appoint a Special Master provided that certain qualifications are met; and,

WHEREAS, previously the Village issued a Request for Qualifications for Special Master services, and issued a contract award in July of 2009 via Resolution 09-57; and,

WHEREAS, the Special Master Contract is scheduled to expire in July of 2013; and,

WHEREAS, in an effort to once again obtain qualified special master services, the Village issued RFQ-2013-PZ-01, in accordance with established guidelines; and,

WHEREAS, the Village desires to select the most responsive and cost-effective qualified proposer to provide services as delineated in the request for qualifications; and,

WHEREAS, Richard L. Doody, Esq., PA, was determined to be the most responsive and cost-effective proposed vendor; and,

WHEREAS, on May 6, 2013, the Mayor and Village Council approved the selection of Richard L. Doody, Esq., PA, as the most responsive proposer and authorized the Village Manager to begin negotiations with Mr. Doody so as to present a finalized contract to the Village Council at an upcoming meeting; and,

WHEREAS, the Village Manager and Richard L. Doody, Esq., PA, have completed those negotiations and the contract is now being brought back to the Mayor and Village Council for approval; and,

WHEREAS, the Mayor and Village Council desire to approve the contract between the Village and Richard L. Doody, Esq., PA.

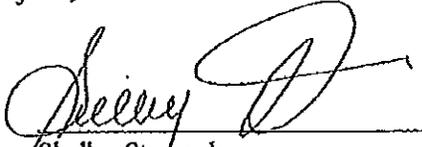
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. The Village of Palmetto Bay Mayor and Council hereby approves the contract between the Richard L. Doody, Esq., PA, to provide special master services pursuant to RFQ No. 2013-PZ-01. A copy of the contract is attached hereto as Exhibit A.

Section 2. This Resolution shall take effect immediately upon approval.

PASSED AND ADOPTED this 3rd day of June, 2013.

Attest: 
Meighan J. Alexander
Village Clerk


Shelley Stanczyk
Mayor

APPROVED AS TO FORM:


Eve A. Boutsis
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore	<u>YES</u>
Council Member Tim Schaffert	<u>YES</u>
Council Member Joan Lindsay	<u>YES</u>
Vice-Mayor John DuBois	<u>YES</u>
Mayor Shelley Stanczyk	<u>YES</u>

ORDINANCE NO. 03-08

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO CODE ENFORCEMENT; CREATING CHAPTER ____, ENTITLED CODE ENFORCEMENT PROCEDURES; PROVIDING FOR "CODE ENFORCEMENT PROCEDURES," INCLUDING A SYSTEM OF ISSUING CITATIONS AND ENFORCEMENT OF VILLAGE, COUNTY AND STATE LAWS; AND PROVIDING FOR THE QUALIFICATIONS, POWERS OF, AND COMPENSATION OF SPECIAL MASTERS TO HEAR CODE ENFORCEMENT APPEALS; PROVIDING FOR SEVERABILITY, ORDINANCES IN CONFLICT, AND AN EFFECTIVE DATE.

Whereas, the intent of this ordinance relating to code enforcement and creation of a special master appeal system is to promote, protect and improve the health, safety and welfare of the residents and businesses of, and visitors to, the Village of Palmetto Bay by creating a code enforcement system, providing a system of citations for the imposition of administrative fines and non-criminal penalties to promote a fair, expeditious, effective and an inexpensive method of enforcing the codes, ordinances and statutes in force in the city and a process to appeal citations to a special master; and,

Whereas, the code enforcement system created by this ordinance is based on the constitutional home rules powers given to municipalities by the Florida constitution and chapter 166 and section 162.22, Florida Statutes; and,

Whereas, in interpreting and applying the provisions of this ordinance, the village council intends for parties and courts to be guided by the expressed intent of the village council in adopting this ordinance and by judicial appellate decisions construing such sections or provisions of chapter 162, Florida Statutes, as are reflected in this ordinance, but this shall not be construed by any reviewing court as an election by the village to be limited in the exercise of its home rule powers by any provision of chapter 162 that is not incorporated into this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL MEMBERS OF THE VILLAGE OF PALMETTO BAY, FLORIDA:

Section 1. Chapter __ of the Code of Ordinances of the Village of Palmetto Bay is created and entitled "Code Enforcement Procedures" to read as follows:

Chapter __

CODE ENFORCEMENT PROCEDURES

Section __.1. Special master

- (a) Pursuant to the constitutional home rule powers granted to municipalities by the Florida constitution, and chapter 166 and section 162.22, Florida Statutes, the village creates the position of special master for the village to enforce the occupational license, building, zoning, sign, and other related codes and ordinances of the village and all ordinances of Miami-Dade County and statutes of the state of Florida that the village is authorized to enforce.
- (b) All procedure and conduct of hearings shall be as provided in sec. __.2 of this code. The village attorney shall serve as counsel to the village in the defense of appeals to the special master. The village attorney shall have the power, upon approval by the council members, to initiate civil actions for declaratory and injunctive relief, and orders to compel, and to commence any other action to enforce civil fines, correction orders and orders of the special master, and to compromise and settle fines and penalties.
- (c) The special master shall have the powers to:
 - (1) Adopt by-laws and rules of procedure.
 - (2) Hear *de novo* appeals by alleged violators from civil citations; affirm in whole or in part, or reverse, the charge of violation; and affirm or modify the order of corrections and fine levied in the citation.
 - (3) Conduct hearings.
 - (4) Subpoena and swear witnesses.
 - (5) Take evidence under oath.
 - (6) Issue orders having the force of law to command action to correct a violation.
 - (7) To assess costs, including reasonable attorney's fees, against violators in proceedings before the special master and to enforce compliance with citations and orders of the special master.
 - (8) Authorize the village attorney to request the issuance of inspection warrants.
 - (9) Initiate civil actions for declaratory and injunctive relief, order to compel, and take any other civil action in the village's name, upon

1 approval by the council members, to enforce applicable laws
2 against violators.

3 (10) Mitigate, compromise and settle fines and penalties.

4 (11) Take any action that is necessary to effectuate the powers of the
5 special master consistent with the intent of this chapter.
6

7 (d) Power to appoint. A special master shall be appointed upon
8 recommendation of the village manager, and a majority vote of approval
9 from the council members based upon the criteria established under
10 subsection (e) below.
11

12 (e) Qualifications. In order to qualify for the special master position, the
13 applicant shall be a non-resident of the village and shall possess
14 outstanding reputation for civic pride, interest, integrity, responsibility and
15 business or professional ability. In addition, the applicant shall possess at
16 least one of the following traits:
17

18 1) Be a retired Florida judge;

19 2) A member in good standing of the Florida Bar, with at least 5 years
20 experience in zoning, land use, code enforcement, real estate
21 transactions or litigation.
22

23 (f) Term. A special master's term of appointment shall be limited to one year.
24 A special master may be reappointed as provided for under subsection (d).
25 If a special master is unable to hear a case due to conflict of interest or any
26 other reason, the case shall be assigned to another special master. No more
27 than three special masters shall be appointed for service for any one year
28 period.
29

30 (g) Removal. The village council at its sole discretion may remove a special
31 master from office at any time.
32

33 (h) Compensation. A special master shall be compensated at a rate not to
34 exceed \$100.00 per hour for attendance at hearings and preparation of
35 orders of the special master.
36

37 Sec. __.2. Code enforcement procedures.

(a) Code enforcement officers.

- (1) Code enforcement officers are charged with enforcing the occupational license, building, zoning, sign, and other related codes and ordinances of the village and all ordinances of Miami-Dade County and statutes of the state of Florida that the village is authorized to enforce.
- (2) A "code enforcement officer" means any designated employee or agent, including, but not limited to, code inspectors and police officers of the village or Miami-Dade County whose duty it is to enforce the applicable laws within village limits.

(b) Civil offenses. The violation of any applicable law shall constitute a civil offense punishable by civil penalty in the amount prescribed in the schedule of fines included in this section. Failure to correct a violation, pay an administrative fee and fine, or otherwise comply with lawful direction by the code enforcement officer or order of the special master may subject a violator and, or, property owner to civil actions taken in the name of the village, upon approval of the village council, for, including, but not limited to, declaratory and injunctive relief, order to abate a nuisance, to take corrective action, to compel payment, to foreclose a lien on the property that is subject to the citation or order, or to foreclose a lien on any personal or other real property of the violator, or to take any other civil action to compel compliance. The village is authorized to withhold the issuance of any occupational license, land use and development approvals, including, but not limited to, zoning amendment, special exception, variance, building permit, final inspection approval, and temporary or final certificate of occupancy and use until the violation is corrected.

(c) Citations.

- (1) A code enforcement officer is authorized to issue a civil citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil violation of an applicable law.
- (2) A citation shall contain:

1. The date of issuance.
 2. The name and address of the person to whom the citation is issued.
 3. The date and time the violation was committed.
 4. The facts constituting reasonable cause.
 5. The section or paragraph of the applicable law violated.
 6. The name and authority of the code enforcement officer.
 7. The procedure for the person to follow in order to correct the violation and to request in writing a compliance inspection by the code enforcement officer.
 8. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
 9. A statement that if the person elects to appeal the citation a penalty of up to \$500 per day may be imposed upon a determination that a violation was committed.
 10. The applicable civil penalty if the person elects not to appeal the citation.
 11. Whether the civil penalty is a one time fine and or daily continuing fine.
 12. A statement that if the person fails to pay the civil penalty within the time allowed, or fails to appeal the citation, the person shall be deemed to have waived his or her right to contest the citation and that a lien may be recorded against the property and the citation may be enforced by initiating an enforcement action in county court.
- (3) Continuing fines may be imposed for those violations which remain uncorrected beyond the prescribed time period for correction included in the civil infraction notice. For each day of continued violation after the time period for correction has run, an additional penalty in the same amount as the fine for the original violation shall be added.
- (4) In cases of a repeat violation, or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety or welfare, or if the violation is irreparable or irreversible, the code enforcement officer does not have to provide the person with a reasonable time period to correct the violation prior to issuing a citation, and may immediately issue a citation and require immediate corrective action.

- (5) A "repeat violation" means a violation of the same law at the same address by a person, or by someone in contractual privity with the person, or by a member of the person's immediate family, such as the person's mother, father, brother, sister, son, daughter, or by someone residing with the person, within the past five years.
- (6) In cases where a violation presents a serious threat to the public health, safety or welfare, the code enforcement officer may also request a special meeting of the special master and the village manager for the purposes correcting the violation by, among other things, providing oversight of the corrective action by the violator or property owner, undertaking corrective action by the village in response to the violation, and authorizing legal action against the violator and, or, property owner.
- (d) Notice of civil infraction. Prior to issuing a citation, the code enforcement officer shall give a civil infraction notice as a courtesy to the person that a violation of an applicable law has been committed and shall establish a reasonable time period within which the person must correct the violation. Where the violator is not the owner of the real property on which the violation occurs, the code enforcement officer may also give notice to the owner or to the owner's agent or representative. The time period to correct the violation shall not exceed 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the time period specified in the civil infraction notice, the code enforcement officer shall issue a citation to the person who has committed the violation, and may issue a citation of the owner of the real property, or to the owner's agent or representative.
- (e) Criminal penalty for willful refusal to sign and accept citation. Any person who willfully refuses to sign and accept a citation shall be guilty of a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083, Florida Statutes.
- (f) Appeals to special master.
- (1) A violator who has been served with a civil citation shall elect to either:
1. Pay the civil penalty in the manner indicated on the citation and to immediately correct the violation; or

2. Request a hearing before the special master to appeal the determination of the code enforcement officer which resulted in the issuance of the civil citation.
- (2) An appeal to the special master shall be accomplished by filing a written request with the code enforcement division of the building department, identifying the citation by the citation number or by the address indicated on the citation, no later than 20 days after the service of the citation.
 - (3) Upon receipt of a timely request for a hearing, the code enforcement division will schedule the appeal on the agenda for the next regularly scheduled meeting of special master. A notice of hearing will be mailed by certified mail to the alleged violator's last known address and, or, to the address of the property owner that appears on the tax records.
- (g) Hearings before special master.
- (1) All hearings before the special master shall be conducted as quasi-judicial hearings. All witnesses shall be sworn to tell the truth under penalty of perjury. Although the Florida Rules of Evidence shall not be applied to the proceedings strictly, due process and fundamental fairness shall be accorded to all alleged violators. Hearsay testimony may be considered to give weight or credibility to other evidence, but no order shall be entered based solely on hearsay testimony.
 - (2) In determining appeals, the special master shall determine whether:
 - i. The person and, or, the property owner were properly served with the civil citation and notice of hearing.
 - ii. The citation adequately identifies facts constituting reasonable cause and the section or paragraph of the applicable law violated.
 - iii. The special master shall consider all the evidence presented during the hearing.

- (3) The record shall consist of the code enforcement file, the testimony of the code enforcement officer who issued the civil citation and any other evidence accepted by the special master.
 - (4) The special master shall base its determination on substantial, competent evidence in the record and shall issue an order containing a statement of facts, conclusions of law and order. The order may affirm in whole or in part, or reverse, the charge of violation, affirm or modify the fine levied in the ticket, direct additional corrective action by the violator and, or, property owner, request corrective action by the village, include the cost of repairs incurred, or that might be incurred by the village, in correcting the violation, request the initiation of enforcement proceedings and take any other action consistent with the powers of the special master.
 - (5) An audiotape and written minutes summarizing the actions of the special master shall be made. A transcription of the hearing may be undertaken at the expense of the party requesting the transcript.
 - (6) After all evidence has been submitted and all testimony heard, the special master shall issue findings of fact and conclusions of law, at the hearing, which shall then be incorporated in a written order affording the proper relief consistent with the powers granted in this chapter. The order may command a violator to take whatever steps are necessary to bring a violation into compliance by the date announced at the meeting and subsequently placed in the written order. The order shall be announced orally at the meeting and within seven working days subsequent to the hearing shall be reduced to writing and mailed to the violator.
- (h) Enforcement of orders and liens.
- (1) At any time, the special master, upon its own, at the direction of the council members, or upon request of any person, may direct the enforcement of its orders, and respond to a serious threat to the public health, safety or welfare.
 - (2) In any action to enforce an order of the special master or foreclose a lien, the prevailing party shall be entitled to an order against the other

party awarding its reasonable attorney's fees incurred in all stages of the proceeding, and costs.

- (i) Liens; priority and foreclosure of liens.
 - (1) A certified copy of an order imposing a fine may be recorded in the public records of Miami-Dade County and shall, upon recording, constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator.
 - (2) Liens shall be enforced by foreclosure in circuit court and subject to the provisions contained in subsection 162.09(3), Florida Statutes, as amended; provided, however, that the lien shall have the same priority, effect and duration as a special assessment lien. Liens shall have a duration of 20 years.
- (j) Appeals. An aggrieved party, including the violator, property owner, village, and property owners and tenants within 300 feet of the property that is subject to an order of violation by the special master, may seek review of the final order in the circuit court. In the case of property owners and tenants, they shall have standing to appeal to the circuit court only if they appeared at the hearing before the special master and presented evidence in substantial opposition to the final order of the special master. The appeal shall not be a hearing *de novo* but shall be limited to appellate review of the record. A request for circuit court review shall be filed within 30 days of rendition of the order.
- (k) Notices. Notices shall be provided in the manner authorized by section 162.12, Florida Statutes, as amended, entitled "Notices."
- (l) Schedule of fines. Fines shall be imposed for violations of applicable laws as provided in Miami-Dade County Code of Ordinances. A fine shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of oversight of repairs, costs of repairs, and costs, including reasonable attorneys fees, incurred at all stages of proceedings defending appeals before the special master and in prosecuting orders entered by the special master. In the event the special master finds that a violation presents a serious threat to the public health, safety or welfare, or the violation is

irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 for each violation.

(m) In determining the deviation, if any, from the scheduled fine, the special master shall consider the following factors:

- (1) The gravity of the violation.
- (2) Actions taken by the violator to correct the violation.
- (3) Previous violations committed by the violator.
- (4) The benefit received by the violator from the violation.
- (5) The violator's ability to pay.
- (6) The deterrent effect to be achieved by the fine.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are repealed.

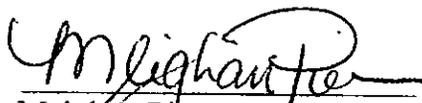
Section 4. This ordinance shall be codified and included in the code of ordinances.

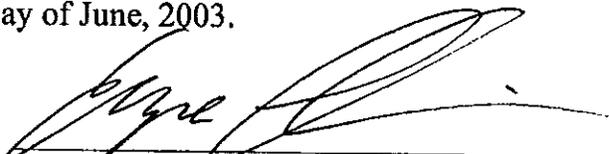
Section 5. If any section, clause, sentence, or phrase of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this ordinance.

Section 6. This ordinance shall take effect immediately upon enactment.

PASSED AND ENACTED this 2nd day of June, 2003.

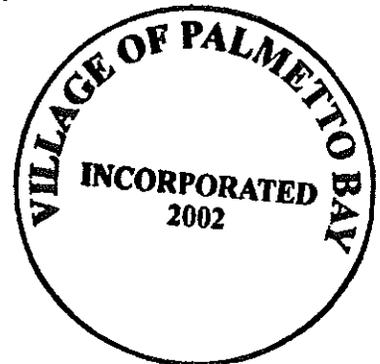
Attest:


Meighan Pier
Village Clerk


Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:


Earl G. Gallop,
Village Attorney



FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>YES</u>
Council Member Paul Neidhart	<u>YES</u>
Council Member John Breder	<u>ABSENT</u>
Vice-Mayor Linda Robinson	<u>YES</u>
Mayor Eugene P. Flinn, Jr.	<u>YES</u>

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