

**AGREEMENT FOR LAND USE AND CODE ENFORCEMENT
SPECIAL MAGISTRATE SERVICES**

THIS AGREEMENT is made and entered into on the 6th day of November, 2024 (the “Effective Date”), by and between the Village of Estero, a Florida municipal corporation (the Village) and Patrick Neale, with an address of 5470 Bryson Court, Ste. 103, Naples FL 34109 (the Contractor), collectively referred to as the Parties, as follows:

WHEREAS, the Estero Code of Ordinances provides for certain quasi-judicial matters to be heard before a Special Magistrate; and

WHEREAS, the Village periodically procures, on a non-exclusive basis, the contractual services of qualified attorneys to serve as Special Magistrate in order to ensure the Village has a sufficient number of Magistrates to provide such services where recusals or availability may require alternative assignment of cases; and

WHEREAS, § 1-44(a) of the Village Code provides that the Village Council may, from time to time, appoint one or more persons to serve as code compliance special magistrate, with such persons being members in good standing of The Florida Bar and possessing such other skills and experience as the Council may require, with such compensation as is deemed appropriate by the Council; and

WHEREAS, the Village has determined the need to retain a Special Magistrate to preside over code enforcement proceedings; and

WHEREAS, pursuant to Village Code § 2-173(a)(7), the acquisition of legal services to fulfill the legal needs of the Village, which includes the provision of qualified Special Magistrates, is exempt from the competitive procurement process; and

WHEREAS, the Contractor has expressed its willingness to provide his services as Special Magistrate to the Village; and

WHEREAS, the Village Council has reviewed the qualifications of the Contractor’s Contractor to serve as Special Magistrate and finds the Contractor to be qualified; and

WHEREAS, the Council finds that it is in the Village’s best interests to enter this Agreement with the Contractor for the provision of Special Magistrate services.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Scope of Services.

Contractor shall provide to the Village the following Special Magistrate services as the Village may require, and under the following conditions:

- The Contractor shall conduct hearings as provided for in Florida Statutes Chapter 162, Article II (Code Enforcement) of Chapter 1 of the Village Code, and all other parts of the Village Code (including its Land Development Code) related to the enforcement or application of the Village Code and associated permits or development orders.
- When providing Special Magistrate services, the Contractor will be a municipal police power function. Therefore, in the execution of his duties, the Contractor shall at all times observe all applicable laws, including compliance with Florida's Sunshine Law, the Public Records Law, Florida's Ethics Code for Public Officers and Employees (Part II of Florida Statutes Chapter 112), and Florida Statutes Chapter 162 (including compliance with the caselaw interpreting hearings conducted thereto).
- In performing as Special Magistrate, the Contractor must also have familiarity with, and comply with the Florida Code of Judicial Conduct, including the opinions which have been published related to that Code's applicability to quasi-judicial officers serving as code enforcement Special Magistrates.
- The obligations of the Contractor expressly include the agreement of the Contractor not to undertake representation of the Village for any other matter during the term of this Agreement without the express prior approval of the Village Council, after having consulted with the Village Attorney, and after having reviewed the ethical considerations of such representation.
- The Contractor must have and maintain a sound and current understanding of the procedural and evidence rules (including relevant interpretive caselaw) associated with local government quasi-judicial hearings.
- The Contractor is serving in a contractual services role and shall serve at the pleasure of the Village Council, and shall not be deemed an official or employee of the Village.
- The Village will not be responsible for the provision of clerical or administrative support for the Special Magistrate's legal research or drafting of orders or opinions. However, the Village Manager may assign the Village Clerk, or such other Village agent, volunteer or employee as may be appropriate, to serve as the hearing clerk, who's responsibility it will be to receive or send correspondence related to a proceeding (including providing parties notices of hearing and transmitting final written opinions to parties), to transfer any pre-hearing pleadings, motions, correspondence or briefs to the Special Magistrate, and to maintain the official record of the proceedings (including the retention and maintenance of exhibits submitted by Parties).
- Depending on the nature of the proceeding, the Village's case or legal arguments may, or may not, be presented by a Village employee (including an employed or contracted code enforcement officer or building official), or by an attorney from the Village Attorney's Office. Hearings will be conducted at **Village Hall, 9401 Corkscrew Palms Cir., 2nd Floor, Estero, FL 33928**, unless the Village determines security or logistical

considerations require an alternative location. The Special Magistrate will not be expected to provide hearing space.

- The scope of the Special Magistrate's jurisdiction and authority shall be set forth in the relevant Village Code, as further limited by relevant statutory or case law. The Special Magistrate shall not be entitled or empowered to rule upon legal questions not within the Magistrate's jurisdiction, including but not limited to ruling on the constitutionality of the Village Code, whether a portion of the Village Code is preempted by a federal or state law, or whether a Village employee or official acted in a constitutional manner or complied with any federal or state law, nor shall the Magistrate be empowered to rule on matters sounding in equity. Notwithstanding the foregoing, the Special Magistrate will be authorized to rule on any defenses raised by a party subject to a citation or violation notice which are based on the application of facts to the Village Code, or which are founded on the Village's failure to adhere to the substantive or procedural terms of the Village Code, or of Florida Statutes Chapter 162.
- The Special Magistrate will be expected to verbally rule upon motions and objections made during a hearing, to administer oaths to witnesses called by a party, and to control his hearing room and the conduct of the proceedings according to the Judicial Cannons and Village Code (including any resolutions or administrative rules of procedure adopted by the Village relevant to the matter at issue).
- Final orders and opinions are to be made in writing, with said writing containing findings of fact and conclusions of law. Final orders and opinions shall be dated and electronically signed by the Special Magistrate. In the event the Village adopts a standard form or format for its quasi-judicial orders, the Special Magistrate shall use such form or format.
- To ensure parties receive timely resolution of the matter, the Special Magistrate shall, absent exceptional circumstances, render a final order or opinion within thirty (30) calendar days after closing the hearing and taking the matter under advisement. Unless a different process is required by a given portion of Village Code or state law, all final orders and opinions must be transmitted via email to the hearing clerk designated by the Village. The hearing clerk, not the Special Magistrate, shall then transmit the final order or opinion to the parties in the manner prescribed by law.
- The Special Magistrate will, when performing services for the Village, be interacting with the Village's residents, business owners, employees and officials on a regular basis. The Special Magistrate must, during all such interactions, dress in a professional manner befitting of his role, and must treat all such persons with professionalism and respect.
- The Special Magistrate shall be entitled to communicate with the Village Attorney for the purposes of gaining an understanding of the contents and organization of the Village Code, the Village's code enforcement and appeals process, procedures and forms, and similar matters of general information. However, the Special Magistrate shall not conduct *ex-parte* communications with the Village Attorney or any Village official with respect to a specific case, appeal, or other matter before him.

- The jurisdiction of the Special Magistrate is not exclusive. Code violations or appeals may be pursued by another lawful remedy at the option of the Village.
- Assignment of a matter to Contractor or any other contracted Special Magistrate shall be made by the Village-appointed hearing clerk who will, once a new matter requiring a hearing arises, inform the selected Special Magistrate of the assignment and the identity of the party or parties, and shall provide a copy of the initial enforcement or case file (including the relevant citation and copies of such photographs and correspondence as may exist up to the date of the assignment) so the Special Magistrate may review the party identities and basic facts to review for conflicts. Upon assignment, the Special Magistrate shall review the matter to ensure she/he does not have any ethical conflicts such as would require recusal. However, conflict check materials shall not be considered to be in evidence at a hearing, and it will be up to the parties to present their witnesses and documentary evidence formally at the hearing. The Special Magistrate shall, once a matter is assigned, work with the assigned hearing clerk to schedule the hearing in a prompt manner.
- If the Special Magistrate determines prior to the hearing convening that recusal is required, she/he shall inform the hearing clerk in writing (including email) of the reason for the recusal or other inability to serve. If the Special Magistrate convenes a hearing only to then determine that recusal is required, he shall recess the hearing and enter a formal order of recusal which the hearing clerk who will transmit such order to the parties.
- The Village intends to contract with more than one attorney/firm for Special Magistrate services so as to allow for matters to proceed in the event of a recusal, vacation, or illness, and so as to ensure redundancy of capacity for this service. To ensure a relatively equitable distribution of assignments, the hearing clerk will, when making assignments, endeavor use a rotational list which favors assignment to the Special Magistrate who has not heard a matter the longest, and which places at the end of the list the Special Magistrate who has most recently heard a matter. While this process will be used to help ensure fair distribution of the work, nothing herein shall be intended to create a right of a Special Magistrate to receive any given assignment, nor of a party to have any given Special Magistrate assigned to her/his/its case.

2. Term, Extension.

A. The initial term of this Agreement shall be from the Effective Date through 11:59 p.m., September 30th 2025. The Parties agree that unless the Village, in its sole discretion, provides notice of intent not to renew at least thirty (30) calendar days prior to the end of the initial term, this Agreement shall automatically renew on October 1st 2025, for a renewal term through 11:59 p.m. of September 30th 2026. Thereafter, this Agreement may continue to automatically renew on the same annual dates unless notice is provided by the Village in the manner set forth above.

B. Notwithstanding the foregoing, either Party may terminate this Agreement at any time during a term for any or no reason upon giving the non-terminating Party at least thirty (30) calendar days prior written notice. However, any such termination shall not relieve Contractor of the obligation

to bring to conclusion any matter currently before him as Special Magistrate even if such conclusion extends past the termination date. Nor does any such termination relieve the Village of its obligation to pay all properly-submitted invoices for undisputed work performed by Contractor, including work performed to bring a matter to conclusion past the termination date.

C. The insurance and indemnification obligations set forth in this Agreement survive the expiration or termination thereof.

3. Payment

A. Pursuant to Florida Statutes §§ 218.73 and 218.74, Contractor shall be paid **\$200.00** per hour (with a one-hour minimum) for all Special Magistrate services performed by Contractor not more than forty-five (45) days after Contractor has submitted to the Village a proper and undisputed invoice, which invoice shall be submitted only after the Contractor's required services have been completed.

B. Improper payment requests shall be addressed by the Village as provided for in Florida Statutes § 218.76, and any disputes with respect to payment of an invoice shall be determined as provided for in that statute and any associated Village procurement codes or procedures applicable to resolution of vendor payment disputes.

4. Amendments.

This Agreement may only be amended by a written Amendment executed by both Parties.

5. Severability.

In the event that any provision or portion of this Agreement shall be found to be invalid or unenforceable, then such provision or portion may be severed and such invalidity or unenforceability shall not affect the validity or enforceability of any other provision or portion of the Agreement.

6. Miscellaneous Terms.

A. **Qualifications.** Contractor represents and warrants to the Village that the Contractor is lawfully entitled to provide the services required herein under the laws of the State of Florida, and will continue to meet throughout the term(s) of this Agreement all of the qualifications required by the Village, including status as a current Florida licensed attorney in good standing. Contractor must immediately inform the Village Manager and Village Attorney in the event the Contractor has any required license (including Florida Bar membership in good standing) suspended or revoked, or is disciplined by The Florida Bar, the state bar of a foreign state, or any other governmental regulatory agency.

B. **Attorney Fees.** In any action brought between the Parties to enforce or construe the terms of this Agreement, each Party shall bear its own attorneys' fees and costs, including any fees incurred on appeal, regardless of the resolution of the case or appeal(s).

C. Immigration Compliance; E-Verify. Contractor acknowledges that he is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a, *et seq.*, and regulations relating thereto. Failure to comply with the above statutory provisions shall be considered a material breach and shall be grounds for immediate termination of this Agreement. The Contractor's employment of unauthorized aliens is a violation of § 274A(e) of the Federal Immigration and Employment Act. The Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of this Agreement, and shall require the same verification procedure of any Subcontractors authorized by the Owner. Pursuant to Florida Statutes § 448.095(5), Contractor (unless Contractor employs no one else) shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. Contractor's contract with the Village cannot be renewed unless, at the time of renewal, Contractor certifies in writing to the Village that it has registered with and uses the E-Verify system (or that it is not an employer). If Contractor enters into a contract with a subcontractor, the subcontractor must provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien and Contractor shall maintain a copy of such affidavit for the duration of the contract. If Contractor develops a good faith belief that any subcontractor with which it is contracting has knowingly violated Florida Statutes § 448.09(1) (making it unlawful for any person knowingly to employ, hire, recruit, or refer, either for herself or himself or on behalf of another, for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States) Contractor shall terminate the contract with the subcontractor. If the Village develops a good faith belief that Contractor has knowingly violated Florida Statutes § 448.09(1) (making it unlawful for any person knowingly to employ, hire, recruit, or refer, either for herself or himself or on behalf of another, for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States) the Village shall terminate this contract. Pursuant to Florida Statutes § 448.095(5)(c)(3), termination under the above-circumstances is not a breach of contract and may not be considered as such.

D. Indemnification, Preservation of Immunity. Each Party hereby agrees to fully indemnify and hold harmless the other, its officers, employees, and agents from and against any and all claims, losses, costs, expenses, actions and causes of action, including reasonable attorney's fees at all levels, arising out or by reason of any damage or injury to persons or property suffered or claimed to have been suffered, by any intentional, reckless or negligent act or omission of the indemnifying party, its directors, officers, employees, or agents in the carrying out of the terms and conditions of this Agreement. The Party claiming right to indemnification ("Claimant") will give the indemnifying Party ("Indemnitor") prompt notice of any such claim and the Indemnitor will undertake the defense thereof by representatives of its own choosing. In the event Indemnitor, within a reasonable time after notice of claim, fails to defend, the Claimant shall have the right to undertake the defense, compromise or settlement of such claim on behalf of and for the account and risk of the Indemnitor, subject to the right of the Indemnitor to assume such defense at any time prior to settlement, compromise or final determination thereof. Notwithstanding the foregoing, in the event either Party reasonably believes that counsel defending any such action has unacceptable conflicts of interest or otherwise lacks the skill to adequately protect such Party's interest, such Party reserves the right to defend itself with its own counsel or retained counsel at

the Indemnitor's expense, unless the Claimant is found negligent or otherwise responsible for the occasion of the litigation. Nothing herein shall be interpreted as a waiver by the Village of its rights, including the procedural requirements and limited waiver of immunity, as set forth in Florida Statutes § 768.28, or any other statute, and the Village expressly reserves these rights to the full extent allowed by law.

E. No Third-Party Beneficiary. This Agreement is for the benefit of the Parties and their respective successors and permitted assigns, and it is not the intent of the Parties to enter this Agreement for any other person's or entity's benefit, and no person or entity not a Party to this Agreement is intended to have standing to file any court action seeking the enforcement or interpretation thereof.

F. Jurisdiction, Venue, Applicable Law. In the event of any litigation between the Parties with respect to the interpretation or enforcement of this Agreement, same shall be conducted, if in state court, in the appropriate circuit or county court in and for Lee County, Florida, and if in federal court, in the United States District Court for the Middle District of Florida, Ft. Myers Division. In any such litigation, the substantive and procedural laws of the State of Florida shall be applied.

G. Public Records. In accordance with Florida Statutes § 119.0701, the Contractor shall:

1. Keep and maintain public records required by the Village to perform the service.
2. Upon request from the Village's custodian of public records, provide the requesting Village 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.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the Village.
4. Upon completion of the contract, transfer, at no cost, to the Village all public records in possession of the Contractor or keep and maintain public records required by the Village to perform the service. If the Contractor transfers all public records to the Village 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 Village, upon request from the Village's custodian of public records, in a format that is compatible with the information technology systems of the Village.

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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE VILLAGE OF ESTERO, VILLAGE CLERK'S OFFICE, AT:

TELEPHONE: 239.221.5035

EMAIL: Csacco@estero-fl.gov

ADDRESS: 9401 Corkscrew Palms Cir Second Floor, Estero, FL 33928

H. **Assignment and Subcontracting.** The Village has selected Contractor for his stated skills, resources, abilities and unique experience, as represented to the Village by Contractor's statement of interest. Contractor has represented to the Village that it has the in-house capabilities, resources and expertise to perform the services required by this Agreement except as otherwise expressly set forth in this Agreement. Therefore, except in the case of a sale, transfer or assignment of all or substantially all of the assets of Contractor to a successor who has asserted its intent to continue the business of Contractor, Contractor shall not assign or transfer any right or duty under this Agreement to any other party without the prior written consent of the Village. The services required by this Agreement may not be subcontracted.

I. **Notices.** Any and all notices sent pursuant to this Agreement shall be given in writing via certified mail or overnight courier and shall be delivered to the following addresses:

As to Contractor:

Patrick H. Neale
5470 Bryson Court, Suite 103
Naples FL 34109

As to Village:


Estero Village Manager
9401 Corkscrew Palms Circle
Estero, FL 33928

IN WITNESS WHEREOF, the Parties have set their hands and seals on the Effective Date.

Village of Estero

By: _____
Village Manager

Contractor

By: 

Patrick H. Neale