

City of South Daytona

Office of the City Manager

Post Office Box 214960 • South Daytona, FL 32121 • 386/322-3010 • Fax 386/322-3008



MEMORANDUM

To: The Honorable Mayor and Members of the City Council
From: James L. Gillis, Jr., City Manager
Re: Consideration of approving an agreement with Matthew D. Branz, Esquire to act in the capacity of Special Master for the City of South Daytona
Date: July 29, 2021

AGENDA ITEM

Item # D13

Date: August 10, 2021

Section 2-299 of the City's Code of Ordinances establishes the need for a Special Master to enforce our code. The Special Master has the power to hold hearings, assess fines, issue orders, subpoena violators and hear appeals. The Special Master must be an active or retired attorney and preferably not own property or have a business interest in the City to avoid any potential conflicts of interest. The City Council appoints the Special Master upon joint recommendation of the City Manager and City Attorney.

The City of South Daytona currently has no written contract for the provision of Special Master services. As a result, staff developed a Request for Proposals (RFP) to competitively procure those services. Staff advertised the RFP through the City website, Daytona Beach News Journal, postings at City Hall, Public Works and the Piggotte Community Center as well as utilizing the Volusia County Bar Association for assistance in our advertisement.

Proposals were received until Thursday, July 1, 2021, at 2:00pm which were publicly opened immediately following the closing time. The following proposals were received:

| <u>Name</u> | <u>Address</u> |
|--|---|
| Attorney Matthew D. Branz Paul, Elkind, Branz, Paul, Attorneys at Law | 142 E. New York Avenue DeLand, FL 32724 |
| Attorney Logan J. Opsahl Shuffield Lowman & Wilson, PA | 851 Dunlawton Avenue, Suite 300 Port Orange, Florida 32127 |
| Attorney Clay L. Meek, PLLC | PO Box 730188 Ormond Beach, Florida 32173 |

City Attorney Vose and I reviewed the proposals and determined that presentations were not necessary. After deliberation and a thorough review, the City Attorney and I are recommending that the City Council appoint Attorney Matthew D. Branz as the City's Special Master. His experience will provide the City with a well-rounded decision maker who sees both sides of an issue as he has served as a Special Master and has represented both cities and property owners in code enforcement cases. He does not own property or have a business interest in the City as our code prefers.

City Attorney Vose has drafted an agreement for the provision of these services which has been attached as Exhibit A to this document. Mr. Branz has already reviewed and signed the agreement which would need to be executed by the City if the Council approves of the recommendation. The term is for five years. The City Council can terminate the agreement at any time, with or without cause by a simple majority vote. The compensation to the Special Master will be paid at \$275 per hour which is all inclusive. Since our current Special Master hearings take place once a month and typically last around an hour, the City will experience a savings from the \$500 per month charge we were paying prior to this RFP.



SPECIAL MASTER SERVICES AGREEMENT

THIS AGREEMENT is entered into this 10th day of August, 2021 by and between the **City of South Daytona**, a municipal corporation duly incorporated pursuant to the laws of the State of Florida with administrative offices located at 1672 South Ridgewood Avenue South Daytona Florida 32119 hereinafter referred to as the **CITY**, and Attorney Matthew D. Branz, Esquire from Paul, Elkind, Branz, Paul, Attorneys at Law with administrative offices at 142 East New York Avenue, DeLand, Florida 32724 hereinafter referred to as the **SPECIAL MASTER**.

PURPOSE. The purpose of this Agreement is for the **SPECIAL MASTER** to provide contractual services to the **CITY** as the Special Master.

RECITALS. On June 10, 2021, the City of South Daytona publicly submitted a Request for Proposal (RFP) #2021-003, seeking individuals to serve as one or more code enforcement Special Masters with authority to impose administrative fines and other non-criminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing certain codes and ordinances in force within the city where a pending or repeated violation continues to exist. The Special Master(s) shall have the same status, powers and duties as a Code Enforcement Board as prescribed in Chapter 162, Part I, Florida Statutes, as amended.

The **SPECIAL MASTER** was one of three (3) respondents who submitted a proposal which were publicly opened at 2:00 pm on Thursday, July 1, 2021.

On July 6, 2021, the Selection Committee reviewed, evaluated and ranked the submitted proposals.

On July 9, 2021, the Selection Committee, after evaluating the written proposals and determined the **SPECIAL MASTER** to be the highest ranked.

As a result, the City Council at a regularly scheduled meeting on the 27th day of July 2021 authorized staff to award a contract for legal services to the **SPECIAL MASTER**.

SCOPE OF SERVICES. The **SPECIAL MASTER** will act in the capacity of Special Master and shall have the same status, powers and duties as a Code Enforcement Board as prescribed in Chapter 162, Part I, Florida Statutes, as amended, and may have such additional duties as provided by law or ordinance.

TERMS OF THE AGREEMENT. The **SPECIAL MASTER** is appointed by and serves at the pleasure of the City Council. The term of this Agreement shall be five (5)

years from the date of the Agreement first entered above. The Agreement can be cancelled, without notice or cause, at any time immediately upon simple majority vote of the City Council. If the **SPECIAL MASTER** desires to terminate this Agreement, they may do so by giving the **CITY** no less than sixty (60) days written notice. The City Council may waive the sixty-day notice requirement.

The **SPECIAL MASTER** agrees to devote a sufficient amount of time to the **CITY** adequately, properly and in a timely manner.

The **SPECIAL MASTER** shall be governed by the Code of Ethics (Chapter 112, Florida Statutes) and the Rules of Professional Conduct of the Florida Bar.

In the event that any term, paragraph or provision of this Agreement or its application to any circumstances shall be deemed invalid or unenforceable, the remainder of this Agreement shall be deemed valid and enforceable to the fullest extent permitted by law.

FLORIDA PUBLIC RECORDS' LAW:

Pursuant to Section 119.0701, Florida Statutes, the SPECIAL MASTER shall comply with the Florida Public Records' laws, and shall:

- A. Keep and maintain public records required by the **CITY** to perform the services identified in this Agreement.
- B. Upon request from the **CITY's** custodian of public records, provide the **CITY** 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 for 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 **SPECIAL MASTER** does not transfer the records to the **CITY**.
- D. Upon completion of the contract, transfer, at no cost, to the **CITY** all public records in possession of the **SPECIAL MASTER** or keep and maintain public records required by the **CITY** to perform the service. If the **SPECIAL MASTER** transfers all public records to the **CITY** upon completion of the contract, the **SPECIAL MASTER** shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If the **SPECIAL MASTER** keeps and maintains public records upon completion of the contract, the **SPECIAL MASTER** shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the **CITY**, upon request from the **CITY's** custodian of public records, in a format that is compatible with the information technology

systems of the CITY.

IF THE SPECIAL MASTER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SPECIAL MASTER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, BECKY WITTE, DEPUTY CITY CLERK AT, P.O. BOX 214960, SOUTH DAYTONA, FL 32121-4960, OR VIA EMAIL AT BWITTE@SOUTHDAYTONA.ORG.

Failure to comply with this subsection will be deemed a breach of the contract and enforceable as set forth in Section 119.0701, Florida Statutes.

COMPENSATION. The CITY shall pay the SPECIAL MASTER for professional services performed under this agreement at the rate of \$275.00 per hour.

No additional compensation will be given for any ancillary services, research expenses (such as Westlaw/Lexis fees), travel or miscellaneous expenses such as copying, phone, courier, etc. and any other costs or expenses.

The **SPECIAL MASTER** will be required to invoice the CITY monthly.

INSURANCE REQUIREMENTS. The **SPECIAL MASTER** shall procure and maintain, during the life of the agreement or service the insurance listed below. The policies of insurance shall be primary and written on forms acceptable to the CITY and placed with insurance carriers having a financial strength of "A, VII" as rated by A.M. Best, and approved and licensed by the Insurance Department of the State of Florida.

Workers' Compensation: The **SPECIAL MASTER** shall supply proof of coverage to apply for all of their employees at the statutory limits provided by state and federal laws. The policy must include Employers' Liability with a limit of \$100,000 each accident; \$100,000 each employee and \$500,000 policy limit for disease. Waiver of Subrogation in favor of the CITY is required.

Professional Liability Insurance: The **SPECIAL MASTER** shall purchase and maintain professional liability or malpractice or errors and omissions insurance with a minimum \$1,000,000, per occurrence, for the engagement, with a \$2,000,000 policy-term aggregate. If claims-made coverage is provided, coverage must apply during the entire Agreement term and for three (3) years following expiration or termination.

A Certificate of Insurance is to be issued to the CITY and current certificates are required to be on file during the term of the Agreement. All policies must provide

at least ten (10) days' notice of non-renewal or cancellation to the **CITY**. If policies do not contain such a provision, respondent shall be responsible to provide such notice directly to the **CITY**. All certificates of insurance must be on file with and approved by the **CITY** before commencement of any work activities under this Agreement.

The **SPECIAL MASTER** shall be solely responsible for payment of all premiums for insurance. Any and all deductibles related to the above referenced policies are to be the responsibility of the **SPECIAL MASTER**. Insurance is considered primary for any loss, regardless of any insurance maintained by the **CITY**. The **SPECIAL MASTER** is responsible for all insurance policy premiums, deductibles, SIR (self-insured retentions) or any loss or proportion of any loss that is not covered by any available insurance policy.

The **CITY** shall retain the right to review and modify, at any time, coverages, forms, and amounts of insurance.

REGULATIONS. Violation of any local, state or federal law in the performance of this Agreement shall constitute a material breach of this Agreement.

AMENDMENT. The **SPECIAL MASTER** understands and agrees that this Agreement constitutes the sole and complete understanding between the parties and supersedes all other or prior agreements between them, whether oral or written with respect to the subject matter. No amendment, change, or addendum to the resolution or contract is enforceable, unless agreed to in writing by both parties and incorporated into an amendment to this Agreement.

ASSIGNMENT OR SUBCONTRACTING. The **SPECIAL MASTER** shall not assign or subcontract any interest in this Agreement and shall not transfer any interest in it (whether by assignment, subcontract or otherwise) without the prior written consent of the **CITY**.

LIABILITY OF SPECIAL MASTER. The **SPECIAL MASTER** shall indemnify and hold harmless the **CITY**, its councilmembers, officers and employees, from all liabilities, damages, losses and costs (including, but not limited to, reasonable attorney fees and court costs, whether such fees and costs are incurred in negotiations, at the trial level or on appeal, or in the collection of attorney fees), to the extent caused by the negligence, recklessness, or wrongful conduct of the **SPECIAL MASTER's** attorneys, officers, employees, agents, and other persons employed or utilized by the **SPECIAL MASTER** in the performance of or the failure to perform this Agreement.

In the event of a claim, the **CITY** shall promptly notify the **SPECIAL MASTER** in writing by prepaid certified mail (return receipt requested) or by delivery through any nationally recognized courier service (such as Federal Express or UPS) which provides evidence of delivery, at the address provided in this

Agreement.

The **CITY** shall provide available information and assistance that the **SPECIAL MASTER** may reasonably require regarding any such claim. The agreement for indemnification shall survive termination or completion of this Agreement.

Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities of the **CITY**, as set forth in Florida Statutes, Section 768.28.

IN WITNESS WHEREOF, the parties to this Agreement for the provision of legal services to the City of South Daytona have caused the same to be signed by their duly authorized representatives on the dates indicated below.

SPECIAL MASTER

By: _____
(Signature)

Name: Matthew D. Branz, Esquire

Title: Attorney

Dated: 7/7/2021

CITY OF SOUTH DAYTONA

ATTEST:

FOR THE CITY COUNCIL:

By: _____
(Signature)

By: _____
(Signature)

Name: James L. Gillis, Jr.

Name: William C. Hall

Title: City Manager

Title: Mayor

Dated: _____

Dated: _____