

RESOLUTION NO. 2022 – 4013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, APPROVING A SPECIAL MAGISTRATE SERVICES AGREEMENT WITH HILLAH SARA MENDEZ, P.A.; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 32-62(8) of the Code of the City of Miami Springs (“City”), a Special Magistrate may be appointed by the City Council, or pursuant to City Council authorization, to preside over code compliance hearings; and

WHEREAS, the City is in need of a Special Magistrate who is an attorney admitted to practice law in the state of Florida, in good standing with the Florida Bar, and possesses a thorough understanding of City code compliance matters, the City Code and all applicable laws and regulations; and

WHEREAS, Hillah Sara Mendez, P.A. (the “Contractor”) has been determined to possess the qualifications to serve as the City’s Special Magistrate; and

WHEREAS, the City and Contractor, through mutual negotiation, have agreed upon a fee for the Contractor’s services as Special Magistrate and City desires to engage the Contractor to perform the services as Special Magistrate, as further provided in the Special Magistrate Services Agreement attached hereto as Exhibit “A” (the “Agreement”), pursuant to Section 32-62(8) of the City Code; and

WHEREAS, the City Council desires to approve the Agreement; and

WHEREAS, the City Council finds that this Resolution is in the best interest, health, and welfare of the residents of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval. That the City Council hereby approves the Agreement in substantially the form attached hereto as Exhibit “A” pursuant to Section 32-62(8) of the City Code.

Section 3. Authorization. That the City Council hereby authorizes the City Manager to execute the Agreement in substantially the form attached hereto as Exhibit

“A,” subject to approval by the City Attorney as to form, content, and legal sufficiency, and to take any action which is reasonably necessary to implement the intent and purpose of this Resolution.

Section 4. Effective Date. That this Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was offered by Vice Mayor Fajet who moved its adoption. The motion was seconded by Councilwoman Bravo and upon being put to a vote, the vote was as follows:


Vice Mayor Dr. Walter Fajet	<u>YES</u>
Councilman Bob Best	<u>NO</u>
Councilwoman Jacky Bravo	<u>YES</u>
Councilman Dr. Victor Vazquez	<u>NO</u>
Mayor Maria Puente Mitchell	<u>YES</u>

PASSED AND ADOPTED this 27th day of June, 2022.



MARIA PUENTE MITCHELL
MAYOR

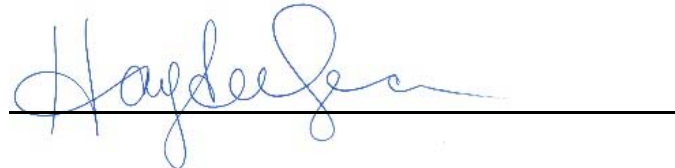
ATTEST:



ERIKA GONZALEZ, MMC
CITY CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND RELIANCE OF THE CITY OF MIAMI SPRINGS ONLY:



SPECIAL MAGISTRATE SERVICES AGREEMENT

BETWEEN

CITY OF MIAMI SPRINGS

AND

HILLAH SARA MENDEZ, P.A.

THIS AGREEMENT (this “Agreement”) is made effective as of the 1st day of July, 2022 (the “Effective Date”), by and between **CITY OF MIAMI SPRINGS, FLORIDA**, a Florida municipal corporation, (the “City”) and **HILLAH SARA MENDEZ, P.A.**, a Florida Professional Association, (hereinafter, the “Contractor”).

WHEREAS, the City is in need of a Special Magistrate to preside over code violation proceedings in accordance with Article VIII, “Code Compliance Board” of Chapter 32, of the City Code and Chapter 162, Florida Statutes; and

WHEREAS, the Contractor has been determined to possess the qualifications to serve as the City’s Special Magistrate; and

WHEREAS, the City and Contractor, through mutual negotiation, have agreed upon a fee for the Contractor’s services as Special Magistrate; and

WHEREAS, the City desires to engage the Contractor to perform the services as Special Magistrate; and

WHEREAS, the Contractor represents that she is capable and prepared to perform the services of Special Magistrate.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the City and the Contractor agree as follows:

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated into this Agreement as true and correct statements.

2. **Scope of Services.**

2.1. Contractor shall perform the services of a Special Magistrate (the “Services”) in accordance with the provisions of Article VIII, “Code Compliance Board” of Chapter 32, of the City Code, Chapter 162, Florida Statutes, and applicable laws.

2.2. Those Services shall include, but are not limited to, presiding over the City’s code compliance violations; adopting rules for the conduct of hearings; hearing and deciding alleged violations of the City’s Code of Ordinances; subpoenaing evidence and alleged violators and witnesses to its hearings; taking testimony under oath; assessing fines against violators of city codes and ordinances; issuing findings of fact based on evidence of record and conclusions of law; and issuing orders having the force of law to command whatever

steps are necessary to bring a violation into compliance. The City Code Compliance Clerk or other City employees shall provide clerical and administrative personnel as may be reasonably required by the Contractor for the proper performance of its duties. The Contractor shall have no powers except as provided by this Agreement or by law.

2.3. Contractor shall furnish all orders, reports, documents, and information obtained pursuant to this Agreement during the term of this Agreement (hereinafter "Deliverables") to the City.

3. **Term/Commencement Date.**

3.1. The term of this Agreement shall be from the Effective Date through one year thereafter, unless earlier terminated in accordance with Paragraph 8. Additionally, the City Manager may renew this Agreement on an annual basis on the same terms and conditions as set forth herein upon written notice to the Contractor.

4. **Compensation and Payment.**

4.1. In consideration for the Services to be provided by the Contractor, the City agrees to pay the Contractor at a rate of \$250.00 per hour. In the event of the City's termination of this Contract prior to the end of the Contract Term, the City shall pay the Contractor for actual Services performed by the Contractor prior to the City's termination of this Contract. The Contractor shall receive no less than four hours of compensation for each hearing attended plus the prorated hourly rate for any time in excess of four hours. Such initial four hour compensatory time shall be inclusive of travel time to and from the hearing in an amount of travel time not to exceed an hour. The Contractor may also be paid for reasonable hearing preparation time billed, legal research services, and preparation of orders. Reasonable expenses, including copy and printing charges (.15 per page) are acceptable.

4.2. Contractor shall deliver an invoice to City no more often than once per month detailing Services completed and the amount due to Contractor under this Agreement. Fees shall be paid in arrears each month, pursuant to Contractor's invoice, which shall be based upon the percentage of work completed for each task invoiced. The City shall pay the Contractor in accordance with the Florida Prompt Payment Act, Chapter 218 Florida Statutes.

5. **Contractor's Responsibilities; Representations and Warranties.**

5.1. The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily provided by a Contractor under similar circumstances. If at any time during the term of this Agreement or within two (2) years from the completion of this Agreement, it is determined that the Contractor's Deliverables or Services are incorrect, not properly rendered, defective, or fail to conform to City requests, the Contractor shall at Contractor's sole expense, immediately correct its Deliverables or Services.

5.2. The Contractor hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to

perform the Services for City as an independent contractor of the City. Contractor further warrants and represents that it has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first class manner.

5.3. The Contractor represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Contractor have been duly authorized, and this Agreement is binding on Contractor and enforceable against Contractor in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

6. City's Responsibilities; Representations and Warranties.

6.1. The City shall be responsible for providing information in the City's possession that may reasonably be required by Contractor to provide the services described in Section 1.0. of this Agreement.

7. Conflict of Interest and Unavailability.

7.1. To avoid any conflict of interest or any appearance thereof, Contractor shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any current, or foreseeable, adversarial issues in the City.

7.2. In the event that Contractor determines that a conflict of interest may arise or has arisen in reference to any matter that Contractor is handling for the City, Contractor shall notify the City Attorney and the City's Code Compliance Director prior to the scheduled hearing and no later than 48 hours after such conflict arises or is first determined.

7.3. The Contractor acknowledges that the City's code compliance hearing schedule will generally follow a set pattern and further agrees to inform City of any hearing dates that Contractor will miss due to vacation or other planned absence at least 30 days in advance. Should the unavailability arise less than 30 days before a hearing date, the Contractor agrees to provide notice of unavailability within 48 hours of when it arises.

8. Termination.

8.1. The City Manager, without cause, may terminate this Agreement upon thirty (30) calendar days' written notice to the Contractor, or immediately with cause.

8.2. Upon receipt of the City's written notice of termination, Contractor shall immediately stop work unless directed otherwise by the City Manager.

8.3. In the event of termination by the City, the Contractor shall be paid for all Services actually performed up to the date of termination, provided that the Contractor has first complied with the provisions of Paragraph 8.4 of this Agreement.

8.4. The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services to the City, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. Nondiscrimination. During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and will abide by all Federal and State laws regarding nondiscrimination.

10. Attorneys Fees and Waiver of Jury Trial.

10.1. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

10.2. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

11. Indemnification.

11.1. Contractor shall indemnify and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Contractor's negligent performance or non-performance of any provision of this Agreement. Contractor shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Contractor's negligent performance or non-performance of this Agreement.

11.2. Nothing herein is intended to serve as a waiver of sovereign immunity by the City nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The City is subject to section 768.28, Florida Statutes, as may be amended from time to time.

11.3. This provision shall not be construed to require the Contractor to indemnify the City in situations wherein their rulings are appealed in the ordinary course as provided by law.

11.4. To the extent permitted by law, the City will indemnify, hold harmless, and defend the Contractor in their capacity as Special Magistrate for municipal Code Enforcement proceedings, including from any cause of action that may arise from the performance of the Services.

11.5. The provisions of this section shall survive termination of this Agreement.

12. Notices/Authorized Representatives. Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail, return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice. A copy of the formal notice shall also be sent via electronic mail to the parties (or their successors) at the addresses listed on the signature page of this Agreement.

13. Governing Law and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

14. Entire Agreement/Modification/Amendment.

14.1. This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

14.2. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document. Such modifications shall be in the form of a written Amendment executed by both parties.

15. Ownership and Access to Records and Audits.

15.1. Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which relate to Services to the City which are conceived, developed or made by Contractor during the term of this Agreement (“Work Product”) belong to the City. Contractor shall promptly disclose such Work Product to the City and perform all actions reasonably requested by the City (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

15.2. Contractor agrees to keep and maintain public records in Contractor’s possession or control in connection with Contractor’s performance under this Agreement. The City Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall 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 Agreement, and following completion of the Agreement until the records are transferred to the City.

15.3. Upon request from the City’s custodian of public records, Contractor shall 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 by Chapter 119, Florida Statutes, or as otherwise provided by law.

15.4. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City.

15.5. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the City Manager, at no cost to the City, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the City in a format that is compatible with the City's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

15.6. Any compensation due to Contractor shall be withheld until all records are received as provided herein.

15.7. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.

15.8. Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: ERIKA GONZALEZ, MMC, 201 WESTWARD DRIVE, MIAMI SPRINGS, FL 33166, 305-805-5006, GONZALEZE@MIAMISPRINGS-FL.GOV.**

16. Nonassignability. This Agreement shall not be assignable by Contractor unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and expertise of the Contractor, and such firm's familiarity with the City's area, circumstances, and desires.

17. Severability. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

18. Independent Contractor. The Contractor and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. Compliance with Laws. The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this

Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.

20. **Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.
21. **Survival of Provisions.** Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.
22. **Prohibition of Contingency Fees.** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.
23. **Public Entity Crimes Affidavit.** Contractor shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.
24. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
25. **E-Verify Affidavit.** In accordance with Section 448.095, Florida Statutes, the City requires all contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The City will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.
26. **Non-Exclusive Agreement.** The City reserves the right to procure or acquire similar services from another provider while this Agreement is in full force and effect.
27. **Termination Due To Lack of Funding.** This Agreement is subject to the condition precedents that: (i) City funds are available, appropriated and budgeted, for the Services annually for each year of the Term; (ii) the City secures and obtains any necessary proceeds, grants or loans for the accomplishment of the Services pursuant to any borrowing legislation adopted by the City Council relative to the Services; and (iii) the City Council enacts legislation or other necessary

resolutions, which awards and authorizes the execution of this Agreement and the annual appropriation and budgeting for the Services. The City represents to Contractor that the City has adopted a resolution authorizing execution of this Agreement, if required by applicable law. In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal year for payments due under this Agreement, then the City, upon written notice to the Contractor of such occurrence, shall have the unqualified right to terminate this Agreement without any penalty or expense to the City.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year as first stated above.

CITY OF MIAMI SPRINGS

CONTRACTOR


By: 
William Alonso, CPA, CGFO
City Manager

By: _____
Name: Hillah Sara Mendez
Title: Principal Attorney
Entity: Hillah Sara Mendez, P.A.

Attest:

By:  
Erika Gonzalez, MMC
City Clerk

Approved as to form and legal sufficiency:

By: 
Weiss Serota Helfman Cole & Bierman, P.L.
City Attorney

Addresses for Notice:

City of Miami Springs
Attn: City Manager
201 Westward Drive
Miami Springs, FL 33166
305-805-5011 (telephone)
alonsow@miamisprings-fl.gov (email)

Addresses for Notice:

Hillah Sara Mendez, P.A.
Attn: Hillah Sara Mendez
237 S. Dixie Highway
Fourth Floor
Miami, FL 33133
305-300-6618 (telephone)
h.mendezpa@gmail.com (email)

With a copy to:

Weiss Serota Helfman Cole & Bierman, P.L.
Attn: Haydee Sera, Esq.
City of Miami Springs Attorney
2800 Ponce de Leon Boulevard, 12th Floor
Coral Gables, FL 33134
hsera@wsh-law.com (email)

E-VERIFY AFFIDAVIT

In accordance with Section 448.095, Florida Statutes, the City requires all contractors doing business with the City to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The City will not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity’s participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>

By signing below, the contracting entity acknowledges that it has read Section 448.095, Florida Statutes and will comply with the E-Verify requirements imposed by it, including but not limited to obtaining E-Verify affidavits from subcontractors.

Check here to confirm proof of enrollment in E-Verify has been attached to this Affidavit.

In the presence of:

Signed, sealed and delivered by:

Witness #1 Print Name: _____

Print Name: _____

Witness #2 Print Name: _____

Title: _____

Entity Name: _____

ACKNOWLEDGMENT

State of Florida
County of _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 20__, by _____ (name of person) as _____ (type of authority) for _____ (name of party on behalf of whom instrument is executed).

Notary Public (Print, Stamp, or Type as Commissioned)

Personally known to me; or

Produced identification (Type of Identification: _____)

Did take an oath; or

Did not take an oath