

## AGREEMENT

This Agreement effective March 1, 2013 by and between the City of Key West, Florida, a Florida municipal corporation, P.O. Box 1401 Key West, Florida 33041 ("City") and J. Jefferson Overby (Overby), P.O. Box 429 Key West, Florida 33041.

WHEREAS, the City and Overby mutually desire to enter into an agreement whereby Overby will serve as Code Enforcement Special Magistrate for the City.

NOW, THEREFORE, the parties agree as follows:

### I. SCOPE OF WORK.

The City hereby offers to engage Overby, and Overby hereby accepts such offer of engagement to serve as Code Enforcement Special Magistrate for the City. Overby expressly agrees herein to exercise his authority as Special Magistrate in accordance with Chapter 162 of the Florida Statutes and Chapter 2 of the Key West Code of Ordinances. In addition, Overby expressly agrees herein to observe all pertinent laws in the exercise of his functions, including but not limited to, the Sunshine Law, the Public Records Law, Chapter 112 of the Florida Statutes relating to conflicts of interest, and laws relating to the procedures of quasi-judicial hearings.

### II. TERM AND TERMINATION.

a. The term of this Agreement shall be for a period beginning on the 1st day of March, 2013, and shall terminate on the 28th day of February, 2015, with an additional one year option to extend on behalf of the City.

b. The City may terminate this Agreement at any time for cause. "Cause" shall be defined as a failure to adhere to the provisions pertaining to the conduct of code enforcement procedures contained in Chapter 162 of the Florida Statutes and Chapter 2 of the Key West Code of Ordinances, or a violation of ordinance or law, or upon a majority vote of the City Commission as provided for in the Code of Ordinances.

c. The City may terminate this Agreement without cause upon no less than 30 days written notice to Overby.

d. Overby shall have the right to terminate this Agreement with no less than 30 days written notice to City.

e. Overby shall be entitled to compensation only for services rendered to the date of termination or resignation.

### III. COMPENSATION AND MEETINGS

Except as otherwise provided herein, the City shall compensate Overby at the rate of \$1,530.00 for each month that Overby is ready, willing and able to conduct Code Enforcement hearings pursuant to this Agreement. The hearing dates scheduled for 2013 and 2014 are attached hereto and incorporated herein. The meeting dates may be modified by mutual agreement of the City Code Compliance Manager and Overby. The City will timely supply dates for meetings in succeeding years to Overby. In the event Overby determines he is unavailable for a scheduled meeting, he shall provide City written notice of no less than 60 days to allow for an opportunity to reschedule the conflicted meeting to a mutually agreed upon new date. If a date cannot be agreed upon, the City may elect to engage an alternate Special Magistrate or postpone the meeting to the following month, in which case he shall receive no compensation for that month or months. The compensation provided for herein shall represent payment for Overby's preparation for and attendance at the City's Code Enforcement case hearings, as well as for the preparation and execution of Code Enforcement orders. Should the City need additional hearing sessions on other dates, in excess of the one scheduled date per month contemplated under this agreement, then Overby shall be compensated at the pro-rated amount of \$250.00 per hour with a two hour minimum and a maximum compensation of 6 hours per meeting unless approved in advance by the City Manager for exceptional circumstances. As additional compensation, the City shall furnish Overby a parking pass sufficient to enable him to secure parking necessary to carry out the duties specified herein.

### IV. INDEPENDENT CONTRACTOR

Overby is an independent contractor pursuant to this Agreement, and shall not be acting and shall not be deemed as acting as an officer, employee, or agent of the CITY, nor shall he accrue any of the rights or benefits of a City employee. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

### V. MAGISTRATES RESPONSIBILITIES

Overby agrees to be solely responsible for incidents occurring outside his role as special magistrate during the conduct of hearings, including intentional torts, malicious or criminal acts and negligence in the course of site visits. Consistent with the Rules of Professional Conduct, Overby shall provide for the indemnification and hold harmless of the City, its officers, employees, and agents from all actions, claims, penalties, and judgments for damages at law or equity of any nature whatsoever arising, or alleged to arise solely out of Overby's conduct as specified above. In such circumstances, Overby shall pay all reasonable expenses incurred by the City in defending itself, with regard to all damages and penalties the City may legally be required to pay as a result of the acts of Overby as aforesaid. Expenses shall include all incidental reasonable expenses including attorney fees, and shall include a reasonable value of any services rendered by the Office of the City Attorney. Nothing herein is intended to constitute a waiver of the City's limitation on liability as set forth in section 768.28, Florida Statutes. This covenant shall

survive the expiration or termination of this Agreement for actions taken during the term of this Agreement. This provision shall not be construed to require Overby to indemnify the City in situations wherein his rulings are appealed in the ordinary course as provided by law.

**VI. ARBITRATION.**

In the event the parties to this Agreement disagree as to any provision of this Agreement, for a period of not less than thirty (30) days the parties shall engage in good faith efforts to resolve the disagreement. If, after engaging in good faith efforts to resolve the disagreement, the parties shall submit to binding arbitration. Arbitration shall be through an Arbitrator mutually agreed upon by the parties. The decision of the Arbitrator shall be binding and non-appealable.

**VII. GENERAL PROVISIONS.**

This Agreement is the entire understanding of the parties. It shall be binding upon the parties and may not be amended except by a writing signed by the parties. If any provision or portion of this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable, shall not be affected by such ruling, and shall remain in full force and effect. The laws of Florida shall govern this Agreement and venue for any action hereunder shall be in Monroe County.

IN WITNESS WHEREOF, the parties hereto have made their agreement this \_\_\_\_ day of \_\_\_\_\_, 2013.

**ATTEST:**

\_\_\_\_\_  
**Cheri Smith, City Clerk**

\_\_\_\_\_  
**Craig Cates, Mayor**

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**J. Jefferson Overby**