

**BOARD OF COUNTY COMMISSION
AGENDA ITEM SUMMARY**

Meeting Date: 5/21/08 - KL

Division County Attorney's Office

Bulk Item: Yes X No

Staff Contact Person: Suzanne Hutton

AGENDA ITEM WORDING:

Approval to terminate contract with Richard Fowler, Esq. to serve as an Alternative Code Enforcement Special Master.

ITEM BACKGROUND:

On December 18, 2002, the County entered into a Professional Services Contract with Richard Fowler, Esq. to serve as an Alternate Code Enforcement Special Master in certain cases where the primary Special Master must recuse himself. The County has since moved to the State of Florida Division of Administrative Hearings and an Alternate Code Enforcement Special Master is no longer required by the County for this purpose. The contract provides for a 30-day written termination notice by either party.

PREVIOUS RELEVANT BOCC ACTION:

12/18/2002 BOCC approved Professional Services Contract.

CONTRACT/AGREEMENT CHANGES:

Termination.

STAFF RECOMMENDATIONS:

Approval.

TOTAL COST: N/A

BUDGETED: Yes No

COST TO COUNTY: N/A

SOURCE OF FUNDS:

REVENUE PRODUCING: Yes No

AMOUNT PER MONTH **Year**

APPROVED BY: County Atty  OMB/Purchasing Risk Management

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is made and entered into by and between Monroe County, a political subdivision of the State of Florida, hereafter COUNTY, whose address is Gato Building, 1100 Simonton Street, Key West, FL 33040, and RICHARD FOWLER, whose address is 323 Fleming Street, Key West, FL 33040, hereafter ATTORNEY.

WITNESSETH:

WHEREAS, the COUNTY has adopted Section 6.3-3, Monroe County Code, that authorized the prosecution of County Code violations before a special master instead of the Code Enforcement Board;

WHEREAS, Section 6.3-3 requires that any person serving as a Code Enforcement Special Master be approved by the Board of County Commissioners;

WHEREAS, the COUNTY desires to employ the above-named attorney to perform the duties of an alternate Code Enforcement Special Master;

WHEREAS, the ATTORNEY represents that he or she has been a member of the Florida Bar for more than 5 years, has experience in land use and local government law, and is professionally competent to handle the duties of Code Enforcement Special Master;

WHEREAS, it has become necessary to appoint an Alternate Code Enforcement Special Master due to the recusal of the primary Code Enforcement Special Master on certain cases;

NOW, THEREFORE, in consideration of the mutual promises contained in this contract the parties agree as follows:

1. The Attorney understands that he or she is one of several alternate Code Enforcement Special Masters approved by the Board of County Commissioners.

The Attorney further understands that the County Administrator, upon

notification of a recusal by the primary Code Enforcement Special Master, will designate one alternate to serve on the cases which triggered the recusal. If the designated alternate Code Enforcement Special Master is unable to or unwilling to hear those cases, he or she will notify the County Administrator who will select another alternate Code Enforcement Special Master.

2. The ATTORNEY shall conduct the hearings and issue the orders required by Chapter 6.3, Monroe County Code and Florida Statutes Chapter 162, in a timely manner on the assigned cases. All hearings must be held in County owned facilities on regular business days during regular business hours. The ATTORNEY shall coordinate the scheduling of hearings with the County's code enforcement attorney, code enforcement director and when appropriate, the persons cited as violators.
3. The COUNTY shall pay the ATTORNEY at a rate of \$150.00 (ONE HUNDRED FIFTY DOLLARS) per hour, including travel time, for services rendered at the discretion of the County Administrator.
4. The ATTORNEY must bill the County Administrator, or his designee, by the tenth of each month for services performed during the previous month. The bill must be in a form satisfactory to the County Clerk. Payment must be made to the ATTORNEY within 15 business days of the County Administrator's or his designee's, receipt of the bill.
5. The ATTORNEY is employed as an alternate Code Enforcement Special Master at the pleasure of the COUNTY'S Board of County Commissioners. The Board may terminate this contract by providing the ATTORNEY with 30 days written

notice of the Board's termination decision. Upon receipt of the notice or upon any effective termination date described in the notice, the ATTORNEY must immediately cease performing any further services under this contact. The COUNTY will remain obligated to pay the ATTORNEY for all services performed --but unpaid - up to the date of the ATTORNEY'S receipt of the notice or the effective date, which may be specified by the Board, which shall not be less than 30 days unless mutually agreed to, in writing, between the parties.

6. The ATTORNEY may terminate this contact by giving the COUNTY at least 30 days written notice. This notice requirement is for the COUNTY to have time to appoint a different alternate Code Enforcement Special Master(s) and to prevent the frustration of the right to due process of both the individuals cited for violations and the COUNTY. The ATTORNEY must be paid for all services performed - but unpaid - up to the effective date of his termination.
7. The ATTORNEY is one of several alternate Code Enforcement Special Masters. The COUNTY intends that the ATTORNEY conduct County code violations hearings that are assigned to this alternate special master by the County due to conflicts of interest, scheduling conflicts or recusals of the primary special master. The COUNTY will provide the ATTORNEY with at least 15 days notice of any scheduled hearing.
8. The ATTORNEY warrants that he has not employed, retained or otherwise had act on his behalf any former County officer or employee subject to the prohibition of Section 2 or Ordinance No. 010-1990 or any County officer or

employee in violation of Section 3 or Ordinance No. 010-1990. For breach or violation of this provision the COUNTY may, in its discretion, terminate this contract without liability and may also, in its discretion, deduct from the contract or purchase price, to otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former County officer or employee.

9. All written notices required under this contract will be considered to have been delivered and received if hand delivered or sent by certified US Mail or a nationally recognized courier service to the addresses first written above.
10. The term of this contract begins on the date of last signature.
11. In the event of litigation to enforce payment or any of the terms of the agreement, the prevailing party shall be entitled to receive reasonable attorneys' fees, including appellate attorney fees, if necessary.
12. Per Fla. Statutes, Chapter 287.0582 all contracts which bind Monroe County for the purchase of services or tangible personal property for a period in excess of one (1) fiscal year must have the following statement included in the contract:
"Monroe County's performance and obligation to pay under this contract, is contingent upon an annual appropriation by the BOCC."
13. Public Entity Crime Statement. All invitations to bid, request for proposals and any contract document shall contain a statement which reads as follows (Section 287.133 FS): "A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit

a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in Section 280.017 FS, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

(SEAL)
Attest: DANNY L. KOLHAGE, CLERK

By *Daniel C. De Santis*
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By *Dixie M. Spehar*
The Honorable Dixie M. Spehar, Mayor

DATE 12-18-02

Richard Fowler
Richard Fowler

Feb 18, 03
Date

FILED FOR RECORD

2003 MAY -6 AM 11:58

DANNY L. KOLHAGE
CLK. CIR. CT.
MONROE COUNTY, FLA.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY *[Signature]*
ATTORNEY'S OFFICE
DATE 1-8-03