

AGREEMENT BETWEEN THE ESCAMBIA COUNTY VALUE ADJUSTMENT BOARD
AND
ROBERT SUTTE
FOR SPECIAL MAGISTRATE SERVICES

This AGREEMENT is made this 31th day of October, 2016 (the effective date), by and between the Escambia County Value Adjustment Board (hereinafter, the "VAB"), whose mailing address is 221 Palafox Place, Pensacola, Florida 32502, and Robert Sutte (hereinafter, "MAGISTRATE"), whose mailing address is 2433 Lee Road, Winter Park, Florida 32789, for the provision of Special Magistrate Services.

WITNESSETH:

WHEREAS, VAB requests the services of MAGISTRATE pursuant to Chapter 194, Florida Statutes, for the purpose of taking testimony at hearings and making recommendations, which include findings of fact and conclusions of law, to the VAB; and

WHEREAS, MAGISTRATE desires to provide such services to the VAB as an independent contractor; and

WHEREAS, MAGISTRATE confirms he meets the qualifications of Section 194.035, Florida Statutes, in that he is not an elected or appointed official or an employee of Escambia County, and he shall not represent a person before the VAB in any tax year during the time he shall serve as MAGISTRATE.

NOW THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payment hereinafter set forth, VAB and MAGISTRATE agree as follows:

1. SCOPE OF SERVICES

1.1. MAGISTRATE shall perform professional services for VAB pursuant to Chapter 194, Florida Statutes, and Sections 12D-9 and 12D-10, Florida Administrative Code, which shall include, but not be limited to the following:

- A. Taking testimony at hearings provided pursuant to Chapter 194, Florida Statutes and Florida Administrative Code Sections 12D-9 and 12D-10;

- B. Making recommendations, which include findings of fact and conclusions of law, to VAB within ten (10) business days of each hearing date assigned to MAGISTRATE. Failure of MAGISTRATE to substantially comply with this requirement shall be considered detrimental to the VAB process, and cause for termination of this Agreement. Notwithstanding the foregoing, MAGISTRATE'S invoicing shall be reduced by One Hundred Fifty Dollars (\$150.00) per day (hereinafter referred to as "PENALTY") for each day that MAGISTRATE fails to complete recommendations pursuant to the time requirements set forth in this Section. The PENALTY shall not apply to instances where MAGISTRATE provides the VAB Clerk with a written explanation of good cause for any delay beyond the expiration of the time requirements set forth in this Section, which shall be accompanied by supporting evidence, if necessary. The notice period set forth in Section 3.2 herein shall not apply to VAB'S right to assess any PENALTY pursuant to this Section;
- C. Complying with the hearing procedures provided pursuant to Chapter 194, Florida Statutes, and Sections 12D-9 and 12D-10, Florida Administrative Code;
- D. Completing the required Department of Revenue training pursuant to Section 194.035, Florida Statutes, shall pass any corresponding exam(s) offered by the Department of Revenue, and shall provide proof of passing said exam(s) to the VAB Clerk. A newly selected magistrate without previous VAB Special Magistrate experience will also observe two (2) hours of hearings and taking of testimony conducted by an experienced magistrate. MAGISTRATE shall be responsible for all costs associated with the required observation and the required training pursuant to Section 194.035, Florida Statutes, and Section 12D-9, Florida Administrative Code;
- E. Completing any necessary training for the VAB software system, which will be offered in conjunction with presentations by the VAB administration and VAB Attorney, at a time and location determined by the VAB administration. Compensation will be paid for such training, at a rate of Fifty Dollars (\$50.00) per hour plus travel as defined in Section 2.1 herein. Failure of MAGISTRATE to substantially comply with this requirement shall be considered detrimental to the VAB process, and cause for termination of this Agreement; and
- F. Using the VAB software system provided by the VAB before, during, and following all VAB hearings. All recommendations to the VAB shall be on the prescribed forms or Department of Revenue forms if not available in the VAB software system.

1.2 MAGISTRATE shall:

- A. Avoid impropriety and the appearance of impropriety during all Special Magistrate activities;
- B. Promptly review all lists of property owners/petitioners provided by the VAB Clerk, and recuse himself from any hearing in which MAGISTRATE has a family, social, business, or other relationship with a petitioner which may pose a conflict of interest, and immediately request the VAB Clerk assign the case to an alternate Special Magistrate;
- C. Promote public confidence in the integrity and impartiality of the VAB process;
- D. Limit all discussions to the merits of each petition, and only have such discussions during properly scheduled hearing times in the presence of all parties;
- E. Avoid any and all ex parte communications, and report any and all ex parte communications to the VAB Attorney, in writing, immediately;
- F. Perform all Special Magistrate duties impartially and diligently;
- G. Be patient and courteous to the Petitioner, Property Appraiser, and their witnesses;
- H. Adhere to the rules and statutes regarding admission of evidence;
- I. Notify the VAB Clerk of any scheduling conflicts so that such conflicts may be resolved in a timely manner;
- J. Refrain from appearing as a witness or expert witness in any VAB proceeding in Escambia County, Florida; and
- K. Refrain from performing any appraisals for which MAGISTRATE has knowledge will be utilized as evidence or testimonial support for any VAB proceeding.

1.3 MAGISTRATE shall be responsible for complying with all federal, state, and local rules, regulations, statutes, laws, or ordinances, regarding payment for his/her services under this Agreement, and any reporting requirements therein.

1.4 MAGISTRATE agrees that he will not display or distribute business cards at any VAB hearing or meeting, or otherwise advertise his business at any VAB hearing or meeting, while serving as Magistrate for the VAB.

1.5 During any hours MAGISTRATE provides services to VAB, MAGISTRATE shall devote his full time and effort to the services being performed for the VAB. MAGISTRATE shall truthfully and accurately maintain all records and make such reports as the VAB may require. MAGISTRATE may complete work on files in his office and transmit the results to the VAB Clerk. MAGISTRATE shall comply with all requirements of Chapter 119, Chapters 193 through 197, and Chapter 286, Florida Statutes.

2. FEES

2.1 VAB shall pay MAGISTRATE the rate of **\$125.00 per hour** for his services as MAGISTRATE, plus reimbursement of expenses in accordance with §112.061, Florida Statutes. MAGISTRATE shall be paid a minimum of **8 hours** for the first day and a **4-hour minimum for subsequent days** he is scheduled to serve as MAGISTRATE and is physically present. Minimum payment will not be applicable if all originally scheduled petitions have been withdrawn or re-scheduled prior to 5:00 p.m. on the previous day.

2.2 Any time required for research and preparation beyond the hours required to conduct hearings shall not exceed two (2) times the number of hours required for the respective hearings without documentation of the need for such additional hours.

2.3 The cost of ordinary office supplies utilized or consumed pursuant to this Agreement will not be reimbursable.

2.4 This Agreement is neither a guarantee that MAGISTRATE will be scheduled to conduct hearings, nor a guarantee that MAGISTRATE will be available to provide services to VAB on all potential hearing dates. The Clerk to the VAB shall work with MAGISTRATE to coordinate scheduling of hearings.

3. TERM OF SERVICE

3.1 The term of this Agreement shall begin on the date of this Agreement and shall continue until formally terminated by either MAGISTRATE or VAB. Although this Agreement shall continue until formally terminated by either MAGISTRATE or VAB, this Agreement may be supplemented by an addendum at the sole discretion of the VAB, or replaced by a revised Agreement at the sole discretion of the BOARD, at any time.

3.2 This Agreement may be terminated by either party, with or without cause, by written notice to the other party of the intent to terminate. Such termination shall be effective immediately upon receipt of such written notice of intent to terminate. However, no termination for cause will be effective unless the defaulting party is first given ten (10) calendar days after receipt of notice of intent to terminate in which to cure the cause for termination.

3.3 In the event of termination, MAGISTRATE shall be entitled to compensation for services rendered and reimbursable travel costs incurred through the effective date of termination. All finished or unfinished documents prepared by MAGISTRATE shall become the property of the VAB and shall be delivered by MAGISTRATE to the VAB Clerk immediately upon the effective date of termination.

4. METHOD OF BILLING AND PAYMENT

4.1 MAGISTRATE will maintain a detailed record of time for his work under this Agreement, to include hearing date, time spent hearing each petition on said date and time spent providing services after each hearing date in order to complete recommendations for each petition on said hearing date. MAGISTRATE shall submit an invoice for each assigned hearing date, in the format specified or accepted by VAB, immediately upon completion of recommendations to VAB for petitions heard on each hearing date. All invoices shall be submitted directly to the Clerk to the Board's Office, 221 Palafox Place, Suite 110, Pensacola, Florida 32502. Invoices will not be paid unless and until all recommendations for the corresponding hearing dates are completed correctly, excluding any remands for the same. All invoices shall be signed and certified by MAGISTRATE as being accurate. In no event shall MAGISTRATE submit any invoice later than thirty (30) calendar days after the corresponding hearing date.

4.2 MAGISTRATE acknowledges that each invoice must be reviewed and approved by the VAB or its designee. Should VAB or its designee determine that the invoice is not commensurate with services performed, work accomplished, hours allotted pursuant to this Agreement or hours extended, the VAB Clerk will contact MAGISTRATE in order to resolve any issues or concerns. MAGISTRATE shall be entitled to payment of any portion of an invoice not in dispute and/or which is approved pursuant to Section 2.2 herein, if applicable.

4.3 VAB shall pay MAGISTRATE'S invoices in accordance with §§ 218.70 through 218.80, Florida Statutes, also known as "The Florida Prompt Payment Act."

5. STANDARDS AND CORRECTIONS

5.1 MAGISTRATE shall perform or furnish to the VAB his professional services in accordance with the generally accepted standards of MAGISTRATE'S profession and in accordance with any laws, statutes, ordinances, codes, policies, rules, and regulations governing MAGISTRATE'S services hereunder.

5.2 SPECIAL MAGISTRATE shall, without additional compensation, correct and revise any errors, omissions, or other deficiencies in his work product, services, or materials arising from the negligent act, error or omission of MAGISTRATE. The foregoing shall be construed as an independent duty to correct rather than waiver of VAB'S rights under any applicable statute of limitations. The review of, approval of, or payment for any of MAGISTRATE'S work product, services, or materials shall not be construed to operate as a waiver of any of VAB'S rights

under this Agreement or cause of action VAB may have arising out of the performance of this Agreement.

6. ASSIGNMENT

6.1 This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances by MAGISTRATE without the prior written consent of VAB. Further, no portion of this Agreement may be performed by subcontractors or sub-consultants without prior written notice to the VAB and prior written approval of such action by the VAB.

7. SEVERABILITY AND WAIVER

7.1 In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition or covenant shall not be construed by the other party as a waiver of any subsequent breach.

8. GOVERNING AND LAW VENUE

8.1 This Agreement shall be governed and construed in accordance with Florida law. In the event litigation arises involving the parties in connection with this Agreement, venue for such litigation shall be in Escambia County, Florida.

9. INDEPENDENT CONTRACTOR STATUS

9.1 MAGISTRATE is an independent contractor and is not an employee, servant, agent, partner, or joint venturer of VAB.

10. PUBLIC RECORDS LAW

10.1 MAGISTRATE acknowledges that this Agreement and any related correspondence, email, financial records, audits, reports, plans, and other documents created or received by the MAGISTRATE in the performance of this Agreement may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes. Accordingly, MAGISTRATE will provide the Clerk with access to and copies of its documents in response to a public records request pursuant to Chapter 119, Florida Statutes. Notwithstanding any other language in this Agreement, in the event MAGISTRATE fails to abide by the provisions of Chapter 119, Florida Statutes, the Clerk may, without prejudice to any other right or remedy and after giving MAGISTRATE seven days written notice during which period MAGISTRATE still fails to allow access to or copies of such documents, terminate this Agreement effective immediately.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first set forth above.

ATTEST:

PAM CHILDERS
Clerk of the Circuit Court & Comptroller

BY: _____
Deputy Clerk

ESCAMBIA COUNTY
VALUE ADJUSTMENT BOARD

By: _____
Douglas B. Underhill, Chairman

Date: _____

WITNESSES TO MAGISTRATE:

SPECIAL MAGISTRATE

(Signature)

Robert Sutte

Date: _____

This document approved as to form and legal sufficiency.

General Counsel, Clerk of Court

Date: _____