P-2015/00074

COPY

VAB SPECIAL MAGISTRATE SERVICES
(EXEMPTION AND CLASSIFICATION/AD VALOREM TAXATION)

RFP #15-0031

This is an Agreement between the Lake County Value Adjustment Board, hereinafter referred to as the VAB, by and through its Chairman, and Al H. Schwarz, Esq., hereinafter referred to as SPECIAL MAGISTRATE.

WITNESSETH:

WHEREAS, the VAB has publicly submitted a Request for Proposals (RFP), #15-0031, for procurement of a Special Magistrate to conduct hearings and make recommendations to the Value Adjustment Board on issues involving exemptions and classifications in the area of ad valorem taxation; and

WHEREAS, the SPECIAL MAGISTRATE is a member in good standing with The Florida Bar with not less than five (5) years of experience in the area of ad valorem taxation, and desires to perform such services subject to the terms of this Agreement; and

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, promises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

Article 1. Recitals

1.1 The foregoing recitals are true and correct and incorporated herein.

Article 2. Scope of Professional Services

2.1 On the terms and conditions set forth in this Agreement, VAB hereby engages SPECIAL MAGISTRATE to provide the services for VAB as identified in **Exhibit A**, attached hereto and incorporated herein by reference.

2.2 This Agreement shall be effective for the twelve (12) month period immediately following the date of execution of the Agreement by the VAB. Prior to or upon completion of the initial term of this Agreement, the VAB reserves the sole right to renew this Agreement for two (2) additional twelve (12) month periods. The VAB reserves the unilateral right to extend this Agreement ninety (90) calendar days beyond the Agreement period. In such event, the VAB will notify the SPECIAL MAGISTRATE in writing of such extensions. This Agreement may be extended beyond the initial ninety (90) day extension upon mutual agreement of the VAB and SPECIAL MAGISTRATE. Exercise of the extension periods requires the prior approval of the VAB. The Agreement prices shall prevail for the full duration of the initial term and any renewal term(s) subsequently exercised.

2.3 The SPECIAL MAGISTRATE shall coordinate, cooperate, and work with any other consultants retained by the VAB. SPECIAL MAGISTRATE acknowledges that nothing herein shall be deemed to preclude the VAB from retaining the services of other persons or entities undertaking the same or similar services as those undertaken by the SPECIAL MAGISTRATE or from independently developing or acquiring materials or programs that are similar to, or competitive with, the services provided under this Agreement.

2.4 SPECIAL MAGISTRATE agrees that this shall be an open quantity contract. The VAB shall not guarantee to the SPECIAL MAGISTRATE any minimum amount of work throughout the term of this

Agreement. Furthermore, SPECIAL MAGISTRATE agrees and acknowledges that in the event SPECIAL MAGISTRATE cannot meet the needs of the VAB, that the VAB reserves the sole right to procure the services from an alternate consultant(s).

2.5 Any work that commences prior to and will extend beyond the expiration date of the current Agreement period shall, unless terminated by mutual written agreement between VAB and SPECIAL MAGISTRATE, continue until completion at the same prices, terms and conditions.

2.6 If, when, and to the extent during its activities under this Agreement a court determines that SPECIAL MAGISTRATE is a "contractor" for purposes of Section 119.0701, Florida Statutes, SPECIAL MAGISTRATE shall comply with the following:

A. Keep and maintain public records that ordinarily and necessarily would be required by the VAB in order to perform the services identified herein.

B. Provide the public with access to public records on the same terms and conditions that the VAB would provide the records and 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.

D. Meet all requirements for retaining public records and transfer, at no cost to the VAB, all public records in possession of the SPECIAL MAGISTRATE upon the conclusion of all hearings, and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the VAB in a format that is compatible with the information technology systems of the VAB.

Failure to comply with this section shall be deemed a breach of this Agreement and enforceable as set forth in Section 119.0701, Florida Statutes.

Article 3. Payment

3.1 VAB shall pay SPECIAL MAGISTRATE for professional services performed under this Agreement at a rate of **One Hundred Fifty Dollars ($150.00) per hour**. The SPECIAL MAGISTRATE shall begin billing the hourly rate from the time the SPECIAL MAGISTRATE leaves his office in Winter Park and shall cease billing the hourly rate upon return to his office. In no event shall the SPECIAL MAGISTRATE bill the VAB for any other mileage, meal, travel, or other expenses whatsoever.

3.2 Invoices shall be submitted in duplicate to the Clerk of the Court – County Finance Department, P.O. Box 7800, Tavares, Florida 32778, within thirty (30) calendar days from the completion and acceptance of the services. Each invoice shall contain the RFP number, a detailed description of services and fees, dates and locations of services.

3.3 The VAB shall make payment on all invoices in accordance with the Florida Prompt Payment Act, Chapter 218, Part VII, Florida Statutes. Failure to submit invoices in the prescribed manner will delay payment, and SPECIAL MAGISTRATE may be considered in default of contract and the contract may be terminated.

3.4 Other than the hourly rate set forth above, the SPECIAL MAGISTRATE shall not be entitled to payment for any expenses, fees, or other costs it may incur at any time and in any connection with its

performance hereunder. The SPECIAL MAGISTRATE hereby agrees that its rates are fully loaded and includes all overhead and administrative expenses.

Article 4. VAB Responsibilities

4.1 VAB shall reimburse SPECIAL MAGISTRATE, in accordance with the provisions of Article 3 above for required services timely submitted and approved and accepted by VAB in accordance with the terms of this Agreement.

4.3 VAB will provide to the SPECIAL MAGISTRATE all necessary and available data, photos, and documents the VAB possesses that would be useful to the SPECIAL MAGISTRATE in the completion of the required services.

Article 5. Special Terms and Conditions

5.1 Qualifications. Firms or individuals will be registered with the State of Florida and have obtained at least the minimum thresholds of education and professional experience required by the law to perform the services contained herein. The SPECIAL MAGISTRATE shall either be registered or have applied for registration with the Florida Department of State in accordance with the provisions of Chapter 607, Florida Statutes.

5.2 Termination. This Agreement may be terminated by the VAB upon thirty (30) days advance written notice to the other party; but if any work or service/Task hereunder is in progress but not completed as of the date of termination, then this Agreement may be extended upon written approval of the VAB until said work or service(s)/Task(s) is completed and accepted.

A. Termination for Convenience. In the event this Agreement is terminated or cancelled upon the request and for the convenience of VAB with the required 30 day advance written notice, VAB shall reimburse SPECIAL MAGISTRATE for actual work satisfactorily completed and reasonable expenses incurred.

B. Termination for Cause. Termination by VAB for cause, default, or negligence on the part of SPECIAL MAGISTRATE shall be excluded from the foregoing provision. Termination costs, if any, shall not apply. The 30-day advance notice requirement is waived in the event of termination for cause.

C. Termination Due to Unavailability of Funds in Succeeding Fiscal Years. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, this Agreement shall be canceled and the SPECIAL MAGISTRATE shall be reimbursed for services satisfactorily performed and the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services/Tasks delivered under this Agreement.

5.3 Assignment of Agreement This Agreement shall not be assigned except with the written consent of the VAB. No such consent shall be construed as making the VAB a party to the assignment or subjecting the VAB to liability of any kind to any assignee. No assignment shall under any circumstances relieve the SPECIAL MAGISTRATE of liability and obligations under this Agreement and all transactions with the VAB must be through the SPECIAL MAGISTRATE. Additionally, unless otherwise stipulated herein, the SPECIAL MAGISTRATE shall notify and obtain prior written consent from the VAB prior to being acquired or subject to a hostile takeover. Any acquisition or hostile takeover without the prior consent of the VAB may result in termination of this Agreement for default.

5.4 Insurance. SPECIAL MAGISTRATE shall purchase and maintain, at its expense, from a company or companies authorized to do business in the State of Florida and which are acceptable to VAB, policies of insurance containing the following types of coverage and minimum limits of liability protecting from claims which may arise out of or result from the performance or nonperformance of services under this Agreement by the SPECIAL MAGISTRATE or by anyone directly or indirectly employed by SPECIAL MAGISTRATE, or by anyone for whose acts SPECIAL MAGISTRATE may be liable. Failure to obtain and maintain such insurance as set out below will be considered a breach of contract and may result in termination of the contract for default. SPECIAL MAGISTRATE shall not commence work under the Agreement until VAB has received an acceptable certificate or certificates of insurance evidencing the required insurance, which is as follows:

(i) General Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	$500,000
Products-Completed Operations	$500,000
Personal & Adv. Injury	$500,000
Fire Damage	$50,000
Medical Expense	$5,000
Contractual Liability	Included

(ii) Automobile liability insurance, including owned, non-owned and hired autos with the following minimum limits and coverage:

Combined Single Limit	$300,000
Or	
Bodily Injury (per person)	$100,000
Bodily Injury (per accident)	$300,000
Property Damage	$100,000

(iii) Workers' compensation insurance in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc). If not required by law to maintain workers' compensation insurance, the SPECIAL MAGISTRATE must provide a notarized statement that if he or she is injured, he or she will not hold the VAB responsible for any payment or compensation for that injury.

(iv) Employer's liability insurance with the following minimum limits and coverage:

Each Accident	$100,000
Disease-Each Employee	$100,000
Disease-Policy Limit	$500,000

(v) Professional liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions, etc.) as applicable, with minimum limits of $500,000 and annual aggregate of $1,000,000.

(vi) Value Adjustment Board, shall be named as additional insured as their interest may appear on all applicable liability insurance policies.

(vii) Certificates of insurance shall provide for a minimum of thirty (30) days prior written notice to the VAB of any material change or cancellation of the required insurance. It is the

SPECIAL MAGISTRATE's specific responsibility to ensure that any such notice is provided within the stated timeframe.

(viii) Certificates of insurance shall identify the RFP number, contract, project, etc., in the Description of Operations section of the Certificate.

(ix) The Certificate holder shall be: VALUE ADJUSTMENT BOARD, P.O. BOX 7800, TAVARES, FL 32778-7800

(x) Certificates of insurance shall evidence a waiver of subrogation in favor of the VAB, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the VAB.

(xi) SPECIAL MAGISTRATE shall be responsible for subcontractors and their insurance. Subcontractors are to provide certificates of insurance to the SPECIAL MAGISTRATE evidencing coverage and terms in accordance with the SPECIAL MAGISTRATE's requirements.

(xii) All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the VAB. At the option of the VAB, the insurer shall reduce or eliminate such self-insured retentions, or the SPECIAL MAGISTRATE or subcontractor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

(xiii) The VAB shall be exempt from and in no way liable for any sums of money which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the SPECIAL MAGISTRATE and/or subcontractor providing such insurance.

(xiv) Neither approval by the VAB of any insurance supplied by the SPECIAL MAGISTRATE, nor a failure to disapprove that insurance, shall relieve the SPECIAL MAGISTRATE of full responsibility of liability damages, and accidents as set forth herein.

(xv) If it is not possible for the SPECIAL MAGISTRATE to certify compliance, on the certificate of insurance, with all of the above requirements, then the SPECIAL MAGISTRATE is required to provide a copy of the actual policy endorsement(s) providing the required coverage and notification provisions.

5.5 Indemnity. The SPECIAL MAGISTRATE shall indemnify and hold the VAB and its agents, officers, commissioners or employees harmless for any damages resulting from failure of the SPECIAL MAGISTRATE to take out and maintain the above insurance. The SPECIAL MAGISTRATE agrees for good and valuable consideration in the amount of ten dollars ($10.00) to indemnify, and hold the Value Adjustment Board, its officers, commissioners, and employees free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities to the extent resulting from the negligent act, error or omission of the SPECIAL MAGISTRATE, its agents, employees or representative, in the performance of SPECIAL MAGISTRATE'S duties set forth in this Agreement.

5.6 Independent Contractor. SPECIAL MAGISTRATE agrees that it shall be acting as an independent contractor and shall not be considered or deemed to be an agent, employee, joint venturer, or partner of VAB. SPECIAL MAGISTRATE shall have no authority to contract for or bind VAB in any manner and shall not represent itself as an agent of VAB or as otherwise authorized to act for or on behalf of VAB.

5.7 Ownership of Deliverables. Upon completion of and payment for a task SPECIAL MAGISTRATE agrees all Tasks and/or deliverables under this Agreement, and other data generated or developed by SPECIAL MAGISTRATE under this Agreement or furnished by VAB to SPECIAL MAGISTRATE shall be and/or remain the property of VAB. SPECIAL MAGISTRATE shall perform any acts that may be deemed necessary or desirable by VAB to more fully transfer ownership of all Tasks and/or deliverables to VAB, at VAB's expense. Additionally, SPECIAL MAGISTRATE hereby represents and warrants that it has full right and authority to perform its obligations specified in this Agreement. SPECIAL MAGISTRATE and VAB recognize that SPECIAL MAGISTRATE'S work product submitted in performance of this Agreement is intended only for the project described in this Agreement.

5.8 Return of Materials. Upon the request of the Clerk of the Court, SPECIAL MAGISTRATE shall surrender to the VAB all memoranda, notes, records, drawings, manuals, computer software, and other documents or materials pertaining to the services hereunder, that were furnished to the SPECIAL MAGISTRATE by the VAB pursuant to this Agreement.

5.9 Accuracy and Warranty. The SPECIAL MAGISTRATE is responsible for the professional quality, technical accuracy, timely completion and coordination of all the services furnished hereunder. The SPECIAL MAGISTRATE shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its services. Any corrections shall be made within thirty (30) calendar days after such deficiencies or non-conformances are verbally reported by the VAB.

5.10 Codes and Regulations. All work completed under this Agreement shall conform to all applicable federal, state and local statutes, codes, regulations and ordinances.

5.11 Conflict of Interest. SPECIAL MAGISTRATE agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement, or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government. Further, SPECIAL MAGISTRATE hereby certifies that no officer, agent, or employee of VAB has any material interest either directly or indirectly in the business of SPECIAL MAGISTRATE conducted here and that no such person shall have any such interest at any time during the term of this Agreement unless approved by the VAB.

5.12 Right to Audit. The VAB reserves the right to require SPECIAL MAGISTRATE to submit to an audit by any auditor of the VAB'S choosing. SPECIAL MAGISTRATE shall provide access to all of its records which relate directly or indirectly to this Agreement at its place of business during regular business hours. SPECIAL MAGISTRATE shall retain all records pertaining to this Agreement and upon request make them available to the VAB for five (5) years following expiration of the Agreement. SPECIAL MAGISTRATE agrees to provide such assistance as may be necessary to facilitate the review or audit by the VAB to ensure compliance with applicable accounting and financial standards. Additionally, SPECIAL MAGISTRATE agrees to include the requirements of this provision in all contracts with subcontractors and material suppliers in connection with the work performed hereunder.

If an audit inspection or examination pursuant to this section discloses overpricing or overcharges of any nature by the SPECIAL MAGISTRATE to the VAB in excess of one percent (1%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the VAB'S audit shall be reimbursed to the VAB by the SPECIAL MAGISTRATE. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the SPECIAL MAGISTRATE'S invoices and/or records shall be made within a reasonable amount of time, but in no event shall the time exceed ninety (90) days, from presentation of the VAB'S audit findings to the SPECIAL MAGISTRATE.

Article 6. General Conditions

6.1 This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Agreement shall lie in Lake County, Florida.

6.2 Neither Party may assign any rights or obligations under this Agreement to any other party unless specific written permission from the other party is obtained.

6.3 The captions utilized in this Agreement are for the purposes of identification only and do not control or affect the meaning or construction of any of the provisions hereof.

6.4 This Agreement shall be binding upon and shall inure to the benefit of each of the parties and of their respective successors and permitted assigns.

6.5 This Agreement may not be amended, released, discharged, rescinded or abandoned, except by a written instrument duly executed by each of the parties hereto.

6.6 The failure of any party hereto at any time to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.

6.7 During the term of this Agreement SPECIAL MAGISTRATE assures VAB that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that SPECIAL MAGISTRATE does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discriminate in any form or manner against SPECIAL MAGISTRATE employees or applicants for employment. SPECIAL MAGISTRATE understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance.

6.8 SPECIAL MAGISTRATE shall at all times comply with all Federal, State and local laws, rules and regulations.

6.9 The employee(s) of SPECIAL MAGISTRATE shall be considered at all times its employee(s) and not an employee(s) or agent(s) of VAB. SPECIAL MAGISTRATE shall provide employee(s) capable of performing the work as required. The VAB may require SPECIAL MAGISTRATE to remove any employee it deems unacceptable. All employees of the SPECIAL MAGISTRATE shall wear proper identification.

6.10 Any individual, corporation, or other entity that attempts to meet its contractual obligations with the VAB through fraud, misrepresentation or material misstatement, may be debarred for up to five (5) years. The VAB as a further sanction may terminate or cancel any other contracts with such individual, corporation, or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

6.11 SPECIAL MAGISTRATE shall act as the prime consultant for all required items and services and shall assume full responsibility for the procurement and maintenance of such items and services. SPECIAL MAGISTRATE shall be considered the sole point of contact with regards to all stipulations, including payment of all charges and meeting all requirements of this Agreement. All subcontractors will be subject to advance review by the VAB in terms of competency and security concerns. No change in subcontractors shall be made without consent of the VAB. SPECIAL MAGISTRATE shall be responsible for all insurance, permits, licenses and related matters for any and all subcontractors. Even if the

subcontractor is self-insured, the VAB may require the SPECIAL MAGISTRATE to provide any insurance certificates required by the work to be performed.

6.12 The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

6.13 Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand or mailed by United States registered or certified mail or sent by facsimile, addressed as follows:

If to SPECIAL MAGISTRATE:

Al H. Schwarz, Esq.
Vose Law Firm, LLP
324 West Morse Boulevard
Winter Park, Florida 32789

If to VAB:

Clerk of the Circuit Court/Finance
Lake County Administration Building
315 West Main Street
Post Office Box 7800
Tavares, Florida 32778-7800

Each party hereto may change its mailing address by giving to the other party hereto, by hand delivery, United States registered or certified mail notice of election to change such address.

Article 7. Scope of Agreement

7.1 This Agreement is intended by the parties hereto to be the final expression of their Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.

7.2 This Agreement contains the following Exhibits:

Exhibit A Scope of Services

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: VAB through its duly authorized representative, and by SPECIAL MAGISTRATE through its duly authorized representative.

SPECIAL MAGISTRATE

Al H. Schwarz, Esq.

This 16th day of July, 2015.

VALUE ADJUSTMENT BOARD

Sean M. Parks
Chairman

This 23 day of July, 2015.

ATTEST:

Neil Kelly, Clerk of the Board
of County Commissioners
of Lake County, Florida

Approved as to form and legality:

Sanford A. Minkoff
County Attorney

EXHIBIT A: SCOPE OF SERVICES

Provide special magistrate services for the Lake County Value Adjustment Board as provided for in Section 194.035(1), Florida Statutes, and in accordance with Chapter 12D-9 Florida Administrative Code.

Special magistrate shall conduct hearings and make recommendations to the Value Adjustment Board on issues involving exemptions and classifications in the area of ad valorem taxation. Special Magistrate shall also made determinations of good cause in cases of petitions filed after the statutory deadlines. The Board may act upon those recommendations without further hearing.

No special magistrate shall be permitted to represent a person before the Board in any tax year during which he or she has served that Board as a special magistrate.

Qualifications:

A. The Special Magistrate shall be a member of the Florida Bar with no less than five (5) years' experience in the area of ad valorem taxation and having received training provided by the Florida Department of Revenue.

B. The Special Magistrate is not required to be a resident of Lake County.

C. The Special Magistrate may not be an elected or appointed official or an employee of the County. Employees and elected or appointed officials of a taxing jurisdiction or of the State may not serve as a Special Magistrate.