

#### **14. CITY ATTORNEY'S REPORT**

- a. Approval of an agreement between the City of Sanibel and Anthony J. Gargano, P.A. to continue the current Code Enforcement Hearing Examiner Services providing for a rate of \$175 per hour for FY 07-08 and a retainer of \$100/month and authorize the Mayor to execute same

**AGREEMENT  
BETWEEN THE CITY OF SANIBEL  
AND ANTHONY J. GARGANO, P.A.  
FOR  
CODE ENFORCEMENT HEARING SERVICES**

**THIS AGREEMENT** is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the **CITY OF SANIBEL**, a Florida municipal corporation (hereinafter the "**CITY**"), and **ANTHONY J. GARGANO, P.A.**, a Florida corporation (hereinafter the "**SERVICE PROVIDER**").

**WITNESS:**

**WHEREAS**, the **CITY** is authorized, by home rule provisions contained in the Florida Constitution, statutory authority (in particular, the Local Government Code Enforcement Boards Act, Chapter 162, Florida Statutes) and by City Charter and ordinances to establish a code enforcement process, including an alternative code enforcement hearing process; and

**WHEREAS**, the **SERVICE PROVIDER** has experience regarding code enforcement hearings and performing services as a hearing officer/special master and in land use law to perform the services hereunder; and

**WHEREAS**, the **CITY** has pursuant to City of Sanibel Ordinance No. 97-11, provided for an alternative code enforcement hearing process which allows the use of special masters, also called hearing officers, in place of a code enforcement board; and

**WHEREAS**, both the **CITY** and the **SERVICE PROVIDER** are desirous of entering into this Agreement for Code Enforcement Hearing Services;

**NOW, THEREFORE**, in consideration of the foregoing, and of the mutual covenants and conditions set forth below, the **CITY** and the **SERVICE PROVIDER**, intending to be legally bound, hereby agree as follows:

1. The **SERVICE PROVIDER** agrees to provide to the **CITY** Code Enforcement Hearing Services by Anthony J. Gargano, Esquire, exercising all powers and providing all services of a special master (hearing officer or hearing examiner) as permitted under general statutory law, in particular Chapter 162, Florida Statutes and the charter and ordinances of the **CITY**.

2. By way of example and not by limitation, the SERVICE PROVIDER will have all powers and authority to conduct hearings on all City code enforcement matters, to exercise all notice and subpoena powers, to enter all findings of fact, conclusions of law and to enter all orders, as permitted under state general or special law or CITY ordinances.

3. Hearings shall be conducted within the CITY, unless waived by the parties in the code enforcement case, or unless subsequently amended by agreement between the CITY and the SERVICE PROVIDER.

4. The SERVICE PROVIDER will provide for the recording, or transcription if desired by CITY or Respondent at their expense, of all hearings, numbering and securing of all exhibits, and will be responsible for preparing and drafting notices and orders.

5. Upon request of the CITY or at the discretion of the SERVICE PROVIDER, the SERVICE PROVIDER will send a report to the City Council of the CITY concerning activities from the preceding year, making any recommendations for improvements to the code enforcement process, and highlighting any problem areas in interpretation (e.g., inconsistent or ambiguous language) of City ordinances, rules or regulations.

6. The CITY agrees that the SERVICE PROVIDER is and shall be empowered to exercise all powers and authority as set forth above.

7. Separate and apart from the compensation as set out below, the CITY agrees to provide sufficient space, logistical requirements, copying, postage and telephone/fax service for the conduct of hearings.

8. The CITY agrees to pay the SERVICE PROVIDER the fees set forth in (a) and (b) below:

(a) \$175.00 per hour, billable in one-tenth hour increments, bills to be submitted upon the completion of each matter and payable within forty-five (45) days of receipt, for the first year of this Agreement. Such fee shall increase to \$185.00 per hour for the second year and \$195.00 per hour for the third year of this contract. The SERVICE PROVIDER will be responsible for all costs incurred without reimbursement from the CITY. No travel time will be compensated.

(b) A retainer fee of \$100.00 per month payable in quarterly installments. The purpose of this fee is to account for the common occurrence where the SERVICE PROVIDER schedules hearings at the CITY'S request which are canceled at the last minute due to compliance, and to reimburse SERVICE PROVIDER for calls, questions, scheduling, and similar activities which are otherwise uncompensated.

9. The CITY will keep the original records of the cases, under control and authority of the SERVICE PROVIDER.

10. The CITY will provide the SERVICE PROVIDER with a copy of the Sanibel Plan, the Sanibel Land Development Code, the Sanibel Code, all updates of ordinances and any or all other City documents necessary for the fulfillment of the SERVICE PROVIDER'S duties as described herein.

11. The SERVICE PROVIDER will provide to the City a set of written procedures to assure that due process is provided in all code enforcement hearings.

12. This Agreement shall be deemed retroactive to October 1, 2007, and shall remain in effect until September 30, 2010, unless sooner terminated as provided for herein. Further, all actions, decisions and contract-related matters conducted by SERVICE PROVIDER as Hearing Examiner are hereby approved and ratified from the date of retention of the SERVICE PROVIDER through the date of this Agreement.

13. This Agreement may be terminated by either party with or without cause, upon 60 days written notice to the non-terminating party.

14. The parties agree and acknowledge that the SERVICE PROVIDER (Hearing Examiner), specifically Anthony J. Gargano, Esquire is an attorney at law licensed in the State of Florida, that he will be fair and impartial, knowledgeable in code enforcement matters and that he will be kept free from any interference by City personnel or litigants.

15. For purposes of activities under this Agreement, the SERVICE PROVIDER shall be deemed to be an independent contractor acting on behalf of the CITY.

16. Nothing contained in this Agreement constitutes a waiver of the immunities of the respective parties.

IN WITNESS WHEREOF the undersigned have set their hands and seals on the dates indicated.

**CITY OF SANIBEL:**

**SERVICE PROVIDER:**

**ANTHONY J. GARGANO, P.A.**

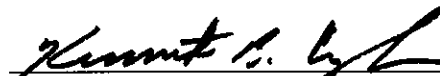
By: \_\_\_\_\_  
Mick Denham, Mayor

By: \_\_\_\_\_  
Anthony J. Gargano, President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

  
Kenneth B. Cuyler, City Attorney

Date: 2/13/08

**FINANCIAL SUFFICIENCY APPROVED**  
  
Renee M. Lynch, FINANCE DIRECTOR