

**CITY OF MARATHON, FLORIDA
RESOLUTION 2007-40**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN AGREEMENT WITH GOVERNMENT SERVICES GROUP, INC. (GSG) FOR A WORK PLAN FOR IMPLEMENTATION OF A CITY-WIDE NON-AD VALOREM ASSESSMENT PROGRAM REGARDING WASTEWATER IMPROVEMENTS IN AN AMOUNT NOT TO EXCEED \$52,500

WHEREAS, the City of Marathon (the "City") needs to implement a city-wide Non-Ad Valorem Assessment program regarding wastewater improvements for fiscal year 2007-2008;

WHEREAS, the City wishes to retain a project consultant to develop a non-ad valorem assessment based on public policy set forth by the City Council;

WHEREAS, the Consultant and City, through mutual negotiation, have agreed upon a scope of services, schedule, and fee not to exceed \$52,500.00 (the "Project"); and

WHEREAS, the City desires to engage the Consultant to perform the services specified in the agreement attached as exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, that:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. Council approves the agreement, attached as Exhibit A with Government Services Group, Inc. (GSG) for a work plan for implementation of a city-wide non-ad valorem assessment program regarding wastewater improvements in an amount not to exceed \$52,500.

Section 3. This resolution shall take effect immediately upon its adoption.


PASSED AND APPROVED by the City Council of the City of Marathon, Florida, this 29th day of March, 2007.

THE CITY OF MARATHON, FLORIDA


Marilyn Tempest, Acting Mayor

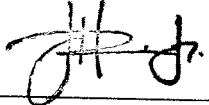
AYES: Cinque, Tempest, Worthington, Tempest
NOES: None
ABSENT: Bull
ABSTAIN: None

ATTEST:


Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE
CITY OF MARATHON, FLORIDA ONLY:**


City Attorney

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MARATHON
GOVERNMENT SERVICE GROUP, INC.
AND
NABORS GIBLIN & NICKERSON, P.A.**

THIS AGREEMENT is made between Government Services Group, Inc., a _____ corporation, and Nabors Giblin & Nickerson, P.A., (collectively, hereinafter the "Consultant"), and the **CITY OF MARATHON, FLORIDA**, a Florida municipal corporation, (hereinafter the "City").

WHEREAS, the City of Marathon (the "City") needs to implement a city-wide Non-Ad Valorem Assessment program regarding wastewater improvements for fiscal year 2007-2008;

WHEREAS, the City wishes to retain a project consultant to develop a non-ad valorem assessment based on public policy set forth by the City Council;

WHEREAS, the Consultant and City, through mutual negotiation, have agreed upon a scope of services, schedule, and fee not to exceed \$52,500.00 (the "Project"); and

WHEREAS, the City desires to engage the Consultant to perform the services specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the City agree as follows.

1. **Scope of Services/Deliverables.**

1.1 The Consultant shall furnish professional services to the City as set forth in the Scope of Services for the Project as specified in Exhibit "A," attached to this Agreement.

1.2 The "Scope of Services" includes a Project Schedule for the Project which includes a breakdown of tasks, timeline and deliverables to the City.

2. **Term/Commencement Date.**

2.1 This Agreement shall become effective upon execution by both parties and shall remain in effect through September 30, 2007, unless earlier terminated in accordance with Paragraph 8. The City Manager may extend the term of this Agreement up to an additional 90 days by written notice to the Consultant

2.2 Consultant agrees that time is of the essence and Consultant shall complete each deliverable for the Project within the timeframes set forth in the Project Schedule, unless extended by the City Manager.

3. **Compensation and Payment.**

- 3.1 The Consultant shall be compensated as set forth in the Scope of Services.
- 3.2 The Consultant shall invoice the City upon the completion of each task or deliverable in accordance with the Project Schedule.
- 3.3 The City shall pay Consultant in accordance with the Florida Prompt Payment Act.
- 3.4 If a dispute should occur regarding an invoice submitted, the City Manager may withhold payment of the disputed amount and may pay to the Consultant the undisputed portion of the invoice. Upon written request of the Finance Director, the Consultant shall provide written documentation to justify the invoice. Any compensation disputes shall be decided by the City Manager whose decision shall be final.

4. **Subconsultants.**

- 4.1 The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the Project.
- 4.2 Any subconsultants used on the Project must have the prior written approval of the City Manager.

5. **City's Responsibilities**

- 5.1 Furnish to Consultant, at the Consultant's written request, all available files and other data pertinent to the services to be provided by Consultant, in possession of the City.
- 5.2 Arrange for access to and make all provisions for Consultant to enter upon real property as required for Consultant to perform services as may be requested in writing by the Consultant.

6. **Consultant's Responsibilities**

The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Project as is ordinarily provided by a professional under similar circumstances. If at any time during the term of this Agreement or within one year from the completion of the Project, it is determined that the Consultant's deliverables are incorrect, defective or fail to conform to the Scope of Services of the Project, upon written notification from the City Manager, the Consultant shall at Consultants sole expense, immediately correct the work.

7. **Conflict of Interest.**

To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, represent any private sector entities (developers, corporations, real estate investors, etc.), with regard to any adversarial planning issues in the City. For the purposes of this section “adversarial” shall mean any development application where staff is recommending denial or denied the application; administrative appeal or court action wherein the City is a party.

8. **Termination.**

8.1 The City Manager without cause may terminate this Agreement upon thirty (30) days written notice to the Consultant, or immediately with cause.

8.2 Upon receipt of the City's written notice of termination, Consultant shall stop work on the Project unless directed otherwise by the City Manager.

8.3 In the event of termination by the City, the Consultant shall be paid for all work accepted by the City Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.

8.4 The Consultant shall transfer all files and data pertaining to the Project to the City, in a hard copy and CD format within 14 days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Insurance.**

The Consultant shall secure and maintain throughout the duration of this Agreement insurance of such type and in such amounts as required by the City Manager. The underwriter of such insurance shall be qualified to do business in the State of Florida and have agents upon whom service of process may be made in the State of Florida. If requested by the City Manager, the insurance coverage shall be primary insurance with respect to the City, its officials, employees, agents and volunteers. The insurance coverages shall include a minimum of:

9.1 Worker’s Compensation and Employer’s Liability Insurance. If applicable, coverage to apply for all employees at minimum statutory limits as required by Florida Law.

9.2 Comprehensive Automobile and Vehicle Liability Insurance. Motor vehicle liability insurance, including applicable no-fault coverage, with limits of liability of not less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

- 9.3 Commercial General Liability. If applicable, commercial general liability coverage with limits of liability of not less than \$1,000,000.00 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability.
- 9.4 Professional Liability: The Consultant shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$1,000,000.00.
- 9.5 Certificates of Insurance shall be provided to the City at the time of execution of this Agreement and certified copies provided if requested. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the City before any policy or coverage is cancelled or restricted.

10. **Nondiscrimination.**

During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and agrees to abide by all Federal and State laws regarding nondiscrimination

11. **Attorneys Fees and Waiver of Jury Trial.**


- 11.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.
- 11.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

12. **Indemnification.**

- 12.1 Consultant shall defend, indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant

HE
negligent
MAB

shall reimburse the City for all its expenses including reasonable attorney's fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

Negligent 

12.2 The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the City: Mike Puto, City Manager
City of Marathon, Florida
10045-55 Overseas Highway
Marathon, Florida 33050

For The Consultant: Camille Tharpe, Sr. Vice President
Government Services Group, Inc.
1500 Mahan Drive, Ste. 250
Tallahassee, FL 32308

Heather Encinosa, Esquire
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Ste. 200
Tallahassee, FL 32308

14. **Governing Law.**

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation arising out of this Agreement shall be in Monroe County, Florida, Middle Keys Division of the Circuit Court or the Southern District of Florida.

15. **Entire Agreement/Modification/Amendment.**

15.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

16. **Ownership and Access to Records and Audits.**

16.1 All records, books, documents, maps, data, deliverables, papers and financial information (the "Records") that result from the Consultant providing services to the City under this Agreement shall be the property of the City.

16.2 The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Consultant involving transactions related to this Agreement.

16.3 The City may cancel this Agreement for refusal by the Consultant to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

17. **Nonassignability.**

This Agreement shall not be assignable by Consultant unless such assignment is first approved by the City Manager. The City is relying upon the apparent qualifications and personal expertise of the Consultant, and such firm's familiarity with the City's area, circumstances and desires.

18. **Severability.**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. **Independent Contractor.**

The Consultant and its employees, volunteers and agents shall be and remain independent contractor and not agents or employees of the City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. **Compliance with Laws.**

The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

21. **Waiver**

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

22. **Survival of Provisions**

Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

23. **Prohibition Of Contingency Fees.**

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed original and such counterparts shall constitute one and the same instrument.

25. **Public Entity Crimes Act**

The Consultant represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to the City, may not submit a bid on a contract with the City for the construction or repair of a public building or public work, may not submit bids on agreements of real property to the City, may not be awarded or perform work as a consultant under a contract with the City, and may not transact any business with

the City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall be a material breach of the Agreement and result in termination of this Agreement and recovery of any monies paid by the City, and may result in debarment from the City's competitive procurement activities. In addition to the foregoing, the Consultant further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether the Consultant has been placed on the convicted vendor list.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature.

Attest:

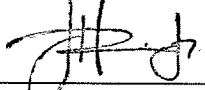
CITY OF MARATHON


Diane Clavier, City Clerk

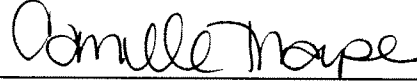
By: 
Mike Puto, City Manager

Date: 4/12/07

Approved by City Attorney
for legal sufficiency for City
use only:



City Attorney

GOVERNMENT SERVICES GROUP, INC.

By: 
Camille Tharpe, Sr. Vice President

Date: 4/4/07

NABORS, GIBLIN & NICKERSON, P.A.

By: 
Heather Encinosa, Esquire

Date: 4/5/07



GOVERNMENT SERVICES GROUP, INC.



February 14, 2007

Via Electronic Transfer

Mr. Mike Puto, City Manager
City of Marathon
10045-55 Overseas Highway
Marathon, FL 33050

Re: Work Plan for Implementation of a City-Wide Non-Ad Valorem Assessment Program for Wastewater Improvements

Dear Mike:

This correspondence is written to present a scope of services and fee for Government Services Group, Inc. (GSG) and Nabors, Giblin & Nickerson, P.A. (NG&N) to provide specialized assistance to the City of Marathon (City) and its staff in the development and implementation of City-wide non-ad valorem assessment program for wastewater improvements. This proposal supplants the proposal sent in June 2006 regarding similar projects – only the home rule assessment ordinance project was completed last year.

The objective of the project is to develop non-ad valorem assessments based on public policy set forth by the City's elected officials within the constraints of readily available data and case law precedent. To accomplish this objective, we will focus on the following tasks:

- Assistance with the development and implementation of a legally defensible method of apportionment conducive to use with the City's ad valorem tax roll database;
- Development of the implementation documentation for the annual collection method which meets all case law and statutory requirements; and
- Development of an assessment roll conducive to collecting the annual assessments and capable of being efficiently updated and used in subsequent years.

The proposed workplan is designed to develop the following deliverables during this project:

- All implementing resolutions for the annual assessment program;
- The statutorily required notice and billing documentation required for utilization of the tax bill collection method for the annual assessment program;
- Billing algorithms necessary to calculate the wastewater assessments pursuant to the approved methodologies;
- The final wastewater assessment rates; and

Mr. Mike Puto
February 14, 2007
Page 2

- An assessment roll in an electronic format capable of merging with the County's real property assessment roll in conformity with the requirements of the utilization of the tax bill collection method for Fiscal Year 2007-08.

Attached as Appendix A is a work plan which articulates the services to be provided by the firms to assist you in implementing a non-ad valorem assessment program in a manner that is conducive to the imposition and collection of the assessments via the ad valorem tax bill pursuant to the uniform method of collection in section 197.3632, Florida Statutes. Appendix A also provides a list of project deliverables, delivery schedule and payment schedule. Upon Notice to Proceed we will provide a detailed critical events calendar and a schedule for project deliverables tailored to the specific circumstances unique to the City.

The professional fees to assist the City in developing and implementing the contemplated assessment program do not include litigation defense services. However, we do all of our work in developing and implementing assessment programs with an eye on potential legal challenges in an attempt to maximize both the efficiency and the effectiveness of any defense. In the event there is a challenge, we would be available, on an hourly basis, to assist the City in its defense.

We look forward to working with the City on this very important project. If you or any other City officials have any questions, please feel free to telephone me.

Sincerely,



Camille P. Tharpe

Attachments

cc: Heather Encinosa, NG&N
Cindy Lawson, Finance Consultant
GSG Billing/File

Appendix A

SCOPE OF SERVICES

Scope of Services

- Task 1: Evaluate proposed projects and services; determine and obtain the necessary data** Evaluate the proposed projects and services and with the assistance of the City staff, determine and obtain the data and information necessary to develop an assessment methodology approach. Such data may include any existing GIS data, tax roll information, utility billing records, cost information as provided by the project engineer and land-use data.
- Task 2: Assist with the development of a preliminary assessment methodology** Using the data and criteria established by the City staff and engineer, GSG and NG&N will assist in the development of a preliminary assessment methodology based on the proposed projects, their location and properties benefited by the projects. This methodology may require the development of capacity figures for each potential parcel. If detailed data is not available, GSG will use current land-use information.
- Task 3: Develop the assessment billing and collection database** Using the boundary description of the benefit area, GSG will obtain the tax roll files to:
- Import the ad valorem tax roll data to develop a preliminary electronic database of properties based on their assignments of use by the Property Appraiser.
 - Obtain necessary information related to the methodology and apportionment of costs to be used for the assessment program.
 - Merge the requisite databases into a preliminary electronic database of property uses to comport with the requirements of the assessment methodology.
 - Use a series of queries and selection criteria to validate the common characteristics among the properties and identify properties requiring further evaluation and field work analysis.
 - Assign billing units based on the proposed assessment methodology.
- Task 4: Determine the assessment revenue requirements for the assessment program** Work with the City to review the funding requirements of the proposed projects and services. Based on these funding requirements, determine the total assessment revenue requirements for the proposed projects including program implementation costs and annual costs.
- Task 5: Create preliminary assessment roll** Using the tax rolls files and the assessment database created in the prior tasks, GSG will create a preliminary assessment roll.
- Determine parcels to be included within the assessment program.
 - Apply apportionment methodology to assessment database to test the data validity and legal sufficiency.
- Task 6: Calculate preliminary proforma assessment rates** Using the preliminary assessment roll, GSG will develop and apply the schedule of rates for the assessment program using the apportionment methodology for the assessment program.

- Task 7: Draft and edit the Initial Assessment Resolution** NG&N will draft the initial assessment resolution(s) that conform to the wastewater assessment ordinance to impose the wastewater assessments to implement the City's policy decisions and proposed methodology.
- Task 8: Draft and edit the Final Assessment Resolution** NG&N will draft the final assessment resolution(s) that conform to the wastewater assessment ordinance to impose the wastewater assessment and adopt final assessment rates.
- Task 9: Assist in Rate Adoption Process** Advise and assist with the legal requirements for the adoption of the final assessment rate resolution(s) and certification of the assessment roll(s) in accordance with Section 197.3632, Florida Statutes including: (a) the development of the first class notice and its distribution, (b) publication of the public hearing, and (c) attendance at the public hearing.
- Task 10: Certify the assessment roll** GSG will create the final assessment roll and test the files to ensure that they will merge with the Monroe County ad valorem tax roll in conformance with the Uniform Method requirements. GSG will certify the assessment rolls by September 15, 2007.

FEES AND COSTS

For services provided by GSG and NG&N, the lump sum fee for the proposed scope of services is \$52, 500. This lump sum fee for professional services includes an aggregate of three total on-site visits to the City by GSG and/or NG&N staff, including at least two meetings with City elected officials to present the Initial Assessment Resolution and assist in the final rate adoption process. Meetings in excess of those contemplated may be arranged at our standard hourly rates.

Payment will be based on the following schedule assuming that notice to proceed is received by March 2007. If notice to proceed occurs after March 2007, payment will be pro-rated on the basis of the anticipated number of months included in the project.

Payment Date	Payment Amount
April 2007	25% of total lump sum fee
June 2007	25% of total lump sum fee
August 2007	25% of total lump sum fee
October 2007	25% of total lump sum fee

The lump sum fee does not include the costs of producing and mailing the statutorily required first class notices for Fiscal Year 2007-08, which will depend on the number of assessable parcels of property within the area. Mailing and production costs average approximately \$1.25 per parcel, with the amount due and payable at the time of the adoption of the authorizing resolution. In the event that additional direct mailing costs occur (for example, if U.S. postage rates increase during the course of this engagement) we will notify you immediately with the revised unit cost per notice.

The lump sum fee also does not include the development of an assessment roll maintenance and customer service support system. Because of the complexity of this project, the City staff may want to develop customer service interface functions and address all report requirements. Information about these services is provided in the next section.

DELIVERABLES SCHEDULE

Event	Date
Notice to Proceed	March 2007
Develop Database	March - May 2007
Develop Revenue Requirements	March - May 2007
Develop Methodology	March - May 2007
Initial Assessment Resolution	June - August 2007
First Class Mailed Notice	June - August 2007
Published Notice	June - August 2007
Public Hearing	July - September 2007
Certification to Tax Collector	by September 15, 2007

ADDITIONAL SERVICES

ONLINE ASSESSMENT DATA MANAGEMENT SERVICE

GSG's Online Assessment Data Management Service is a web-based utility that can be tailored to the City's assessment programs, allowing the remote management and viewing of assessment program data. By using this service, County staff can generate reports and readily lookup and access assessment information, both current and historic, at the parcel level. Because the data and application are hosted by GSG, the City receives the benefit of the data service, without the overhead of dedicated technical staff and data processing hardware, storage and support.

ANNUAL UPDATES

On a recurring basis, the firms shall also be available to assist the City in the annual update of the City's assessment program for a fee to be determined upon completion of this project. Such annual update assistance would include assisting in the revisions to the assessment roll to correlate with changes to the ad valorem tax roll, facilitating the public notice requirements of the tax bill collection method including notice to property owners with property use changes, assistance with any transitional or interim assessments for omitted properties, and monitoring of the apportionment methodology relative to continued defensibility.

OTHER SERVICES

In recognition that GSG and NG&N are organizations dedicated to providing specialized assistance to local governments in developing innovative and efficient solutions to public sector issues, the firms shall, on an hourly or negotiated fee basis, also be available to provide additional services to the City on finance, revenue or other local governmental matters. Such services may be provided under a written change order, extension to this scope of services, or by separate agreement mutually acceptable to the parties.