

RESOLUTION NO. 00-11-75

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING AN ENGAGEMENT LETTER WITH GUSTAFSON & RODERMAN; AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon, Florida (the "City") desires the services of Gustafson & Roderman relating to a transit greenway project and associated grant activities.

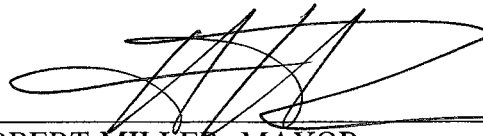
NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. The Engagement Letter from Gustafson & Roderman, Attorneys at Law, in substantially the form attached as Exhibit "A" is approved. The City Manager and City Attorney are authorized to finalize the terms and conditions of the Agreement and the Mayor is authorized to execute said Agreement on behalf of the City.

Section 3. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED the 8<sup>th</sup> day of November, 2000.



ROBERT MILLER, MAYOR

ATTEST:



Carol N. Chamberlain  
MY COMMISSION # CC682322 EXPIRES  
September 22, 2001  
BONDED THRU TROY FAIN INSURANCE, INC.

*Carol N. Chamberlain*  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY

*[Signature]*  
\_\_\_\_\_  
CITY ATTORNEY

00-10-75

# GUSTAFSON & RODERMAN ATTORNEYS AT LAW

**BARRY G. RODERMAN & ASSOCIATES, P.A.**  
BARRY G. RODERMAN  
S. TRACY LONG  
THOMAS F. GUSTAFSON, P.A.  
THOMAS F. GUSTAFSON  
RICK H. STRUL, LL.M.  
JOSEPH V. PRICER

SUITE 440  
4901 NORTH FEDERAL HIGHWAY  
FORT LAUDERDALE, FLORIDA 33308  
TELEPHONE (954) 492-0071  
FACSIMILE (954) 492-0074

**OF COUNSEL**  
MICHAEL I. SANTUCCI, P.A.

November 7, 2000

Craig Wrathell, Manager  
City of Marathon  
11090 Overseas Highway  
Marathon, Florida 33050

Re: Engagement Letter

Dear Mr. Wrathell:

As a part of our routine in undertaking new matters, Gustafson & Roderman (the "Firm") provides an engagement letter (the "Engagement Letter") to its clients. The purpose of this letter and the attached Standard Fee Addendum (the "Addendum") is to set forth our understanding of the legal services to be performed for you by the Firm and the basis on which the Firm will be paid for its services. It is

Accordingly, this will confirm that effective November 6, 2000, your authorization and our agreement to represent the City of Marathon (the "Client") in the following matters: draft a scope of work to develop a transit greenway system; make recommendations as to the schedule and funding of such planning efforts; and, assist the Client in completion of the Florida Department of Transportation "Transportation Outreach Program" (TOP) grant application and such additional matters and legal work as you may request us to undertake from time to time.

As further provided for in the Addendum:

- 1. Partner in Charge:** The undersigned member of the Firm will be the partner in charge of your legal matters.
- 2. Fees, Costs and Retainer:** You agree to pay the Firm the fees billed for services rendered as follows:

My current hourly rate is \$250.00, Rick Strul's hourly rate is \$150.00, and Joseph V. Priore's current hourly rate is \$120.00. The hourly rate for paralegals working for the Firm is \$60.00. You also agree to pay to the Firm costs incurred in the course of handling your matters. In no event shall the work undertaken involve fees in excess of \$5,000.00 and costs in excess of \$500.00 provided that you will provide copies of City documents relevant to such work efforts and assign Calvin, Giordano & Associates, Inc. and City staff to assist in the gathering of related background

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS

*December 15, 2000*

materials. The work effort as provided for herein will be completed on or before November 30, 2000 and no additional work shall be undertaken, or fees and costs billed, unless the additional work effort and relevant fees and costs are authorized by the Client and agreed to by the Firm.

With respect to the above matters, statements will be forwarded to you to describe the work done, the amounts due for fees and costs, and our use of any retainers received.

After your review of the foregoing, if you have any questions or if any of the terms of our agreement are not acceptable to you in all respects, please let me know. If you find these arrangements satisfactory, please sign this copy of the Engagement Letter and return it to me ~~with your payment of the above referenced retainer.~~

*[Signature]*

*[Signature]*

Upon the Firm's receipt of the signed copy of this letter, ~~(and the retainer payment)~~ this Engagement Letter and the Addendum will constitute the entire agreement between the Client and the Firm with respect to the matters set forth herein and will supersede all prior discussions, correspondence, oral and written agreements, commitments or understandings. This agreement shall not be amended, altered or modified except by written agreement signed by the party against whom enforcement is sought.

Thank you for agreeing to engage the Firm as your attorneys. We look forward to working with you on this matter.

Very truly yours,

GUSTAFSON & RODERMAN

BY: *Tom Gustafson*  
THOMAS F. GUSTAFSON

*[Signature]*

APPROVED AND AGREED to by the undersigned, which constitutes the Client for purposes of this agreement:

CITY OF MARATHON

BY: *Cozy Wathell*

TITLE: *City Manager*

DATE: *11/23/00*

## GUSTAFSON & RODERMAN STANDARD FEE ADDENDUM

This Standard Fee Addendum (the "Addendum") sets forth the standards and basis upon which Gustafson & Roderman (the "Firm") provides legal services to a client and bills for those services. This Addendum, inclusive of paragraphs 1 - 20, accompanies an engagement letter (the "Engagement Letter") addressed to a client or clients (jointly, severally, and collectively the "Client") and shall become part of the agreement between the Firm and the Client. It is intended that this Addendum shall be incorporated by reference into the Engagement Letter.

1. **Professional Undertaking:** The partner in charge of this matter will have primary responsibility for the Client's representation, and may, in his or her sole discretion, utilize other attorneys and legal assistants in the Firm who can accomplish the work. If at any time the Client has any questions, concerns, or criticisms concerning the utilization of other attorneys or legal assistants, or any other matters, the Client should contact the partner in charge.

2. **Fees:** The Firm takes into account many factors in billing for services rendered, and the partner in charge will review all statements before they are issued to ensure that the amount charged is appropriate. The principal factor is usually the Firm's schedule of standard hourly rates and most statements for amounts due for fees are the product of the hours spent working on the matter multiplied by the Firm's hourly rates in effect at the time the work is performed. However, there may be circumstances where the work is performed produces substantial value or a favorable result for the Client which may be far greater than originally anticipated, in which event, if the Firm and Client agree, an additional fee will be established that results in a total fee that is greater than the hourly rates multiplied by the number of hours worked.

The Firm's schedule of standard hourly rates for attorneys and other paralegal staff is based on their years of experience, specialization in training and practice, and level of professional attainment. This rate schedule is adjusted from time to time and may affect the hourly rates of the attorneys and paralegal staff working upon the Client's matters. A copy of our schedule of standard hourly rates is available to the Client upon request. Services billed will include all time the Firm spent working on the matter, including, but not limited to, legal research, review of file matters, preparation of memorandums and correspondence, telephone conferences, negotiations, meetings, presentations, and all other work which in the Firm's judgment is reasonably required or desirable to represent the Client's interests in the subject matter.

3. **Costs:** The Firm's fees do not include costs such as travel, lodging, meals, telephone calls, telecopy charges, express or other delivery charges, deposition transcripts, filing and recording costs, photocopying, computerized legal research and, when needed, staff overtime. These items are separately itemized on the Firm's statements as expenses.

4. **Billing:** The Firm's statements generally will be prepared and mailed during the month following the month in which services are rendered and costs incurred. When the Firm represents a client in litigation and a money judgment is obtained, the Firm may, at its option, take the Firm's outstanding fees and costs from funds collected out of the money judgment.

5. **Late Payments:** Payment of the Firm's billings is due upon receipt of the statement. Because the Firm has ongoing overhead expenses and because of the cost of money to the Firm, a monthly late charge will be added for late payments of fees and costs. On the first day of each month, the balance of any statement then unpaid for more than one (1) month shall be subject to a late charge of one and one-half percent (1 1/2%) per month. In the event that it is necessary to institute legal proceedings to collect the Firm's fees, costs, and any interest charges, the Firm will also be entitled to reasonable attorneys' fees, paralegal fees and other costs of collection, even if such services and costs are provided by the Firm.

6. **Retainer:** It is the Firm's policy to require advance retainer payments for fees and costs before the Firm renders services. The Firm's retainer will be the amount set forth in the Engagement Letter. As the retainer is used by the Firm for payment of ongoing fees and costs, the Firm may require additional funds to replenish the retainer, or to enlarge it in the event the partner in charge anticipates large fees or cost expenditures due to the particular circumstances of the case. The Client agrees to pay or replenish the retainer upon notice from the Firm. At the time the Firm renders its final statement to the Client, the retainer balance will be applied first to outstanding interest charges, costs and then to unpaid fees before billing the Client for the balance due. Any balance remaining after payment of these outstanding interest charges, costs and fees, will be refunded to the Client.

7. **Security for Fees and Costs:** Florida law provides the Firm with the right to impose a lien upon documents, money, and other intangibles and materials coming into its possession to secure the payment of its fees and expenses. This retaining lien, as well as appropriate charging liens, may be asserted by the Firm in appropriate circumstances.

8. **Responsibility for Payments:** Whether the Firm's services are fully, substantially or nominally rendered to the Client, as identified in the Engagement Letter, or to corporations, partnerships, estates, trusts, and other entities connected with the Client, the Client shall be responsible and liable for payment of the Firm's fees and costs. Should the Client be other than an individual, the individual who signs on behalf of the Client, represents and warrants that he has the authority to bind the Client.

9. **Court Awarded Fees:** If the Firm is representing the Client on a contingent fee basis, and a court awards an attorney fee to the Client as the prevailing party pursuant to applicable statutory or other legal authority, the Firm shall be entitled, to the extent permitted by law, to receive the court awarded fee or the applicable contingent fee, whichever is greater.

10. **Employment of Professionals:** The Firm may deem it necessary to employ additional professionals, including but not limited to: investigators; medical experts; health planners; actuaries; surveyors; engineers; land planners; appraisers; accountants or other attorneys.

After approval by the Client, such professionals may be employed by the Firm in the name of the Client or, at the discretion of the Firm, in the Firm's name on behalf of the Client. Such professionals shall report exclusively to the Firm and the Client is responsible to pay the fees of such professionals in full upon the rendering of the professionals' statement. The Firm reserves the right to request and obtain additional retainer payments to defray the fees and costs of professionals employed in connection with the Client's matter. All fees and costs of such professionals shall be subject to the security provisions, interest provisions, and other applicable provisions of this Addendum.

11. **Termination:** The Client shall have the right to terminate the Firm's representation at any time by notice to the partner in charge, but the provisions of the Engagement Letter and this Addendum relating to payment and collection of fees and costs will not terminate. The Firm will have the same right to terminate the Firm's representation, subject to its obligation to give the Client reasonable notice to arrange for other representation unless good cause is shown for immediate termination. Written notice of at least ten (10) days shall be presumed reasonable notice for purposes of this paragraph. The Firm shall be entitled to its full fee as agreed upon in the Engagement Letter, or the reasonable value of its fee where all or a portion of the fee is contingent on results, if the Client discharges the Firm or obtains the substitution of another attorney before the Firm completes the services for which it was employed. Such a reasonable fee shall be determined in accordance with the standards applied by The Florida Bar (Rule 4-1.5) and may take into account the extent to which the Firm's efforts have progressed in achieving the benefits for the Client.

12. **Disclaimer of Warranty:** The Firm makes no warranties for the successful results as to any cause of action or matter, and all expressions made by anyone relative thereto are matters of opinion only.

13. **Nonreliance:** The Firm has made no representations to the Client and the Client has not relied on any representations which are not contained in the Engagement Letter or this Addendum.

14. **Power of Attorney to Execute Documents:** As provided in the Engagement Letter, the Client grants the Firm a power of attorney to execute all documents connected with this matter, including pleadings, contracts, settlement papers, settlement agreements and release notices, verifications, dismissals, orders, and any documents the Client may otherwise properly execute.

15. **Notice:** Any notices required under the Engagement Letter or this Addendum shall be in writing and are deemed duly served when hand delivered or sent by regular mail to the last known address of the person to whom said notice is required to be provided.

16. **Full Cooperation:** The Client agrees to give the Firm and any professionals employed by the Firm full cooperation at all times, and shall be available to the Firm at all reasonable hours at the Firm's office or elsewhere as to all matters when the Client is represented by the Firm. If this matter involves litigation and if the Client does not reside in the county where this matter is litigated, the Client understands that he or she, or the client's representative, may be required to appear in person in said county for questioning by opposing counsel prior to trial and will be required to appear in court in said county for trial of the cause.

17. **Applicable Law, Venue, and Jury Trial:** The laws of the State of Florida shall govern the construction and interpretation of this agreement and the parties agree that venue of any lawsuit between them shall be in Broward County, Florida. The parties waive their rights, if any, to demand a jury trial for any suits arising out of this agreement or its subject matter.

18. **Binding Effect:** This agreement shall be binding upon the Client, his, her or its heirs, successors and assigns.

19. **Closing Files/matters:** The Firm will notify the Client prior to closing a file. The Client may obtain material from their file including original documents by written request. The Firm will store the Client's file for a period of four (4) years from the date the file was closed and reserves the right to retain parts of the file thereafter for the Firm's own purposes. Except as to bank reorganizations, Chapter 11 bankruptcies and estate planning files, or files that, for other reasons known to the Firm, should be kept longer, the Firm will destroy the file four (4) years after closing the file, unless the Client specifically requests that all documents contained therein be returned to the Client.

20. **Counterparts:** This agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Executed signature pages to this agreement may be delivered by facsimile transmission and any such signature page shall be deemed an original.

LAW OFFICES OF  
**GUSTAFSON & RODERMAN**  
ATTORNEYS AT LAW

**BARRY G. RODERMAN & ASSOCIATES, P.A.**  
BARRY G. RODERMAN  
S. TRACY LONG  
**THOMAS F. GUSTAFSON, P.A.**  
THOMAS F. GUSTAFSON  
RICK H. STRUL, LL.M.  
JOSEPH V. PRIORE

OF COUNSEL  
MICHAEL I. SANTUCCI, P.A.

SUITE 440  
4901 NORTH FEDERAL HIGHWAY  
FORT LAUDERDALE, FLORIDA 33308  
TELEPHONE (954) 492-0071  
FACSIMILE (954) 492-0074

**FACSIMILE COVER SHEET**

**DATE:** NOVEMBER 2, 2000  
**TO:** DINA MICHAEL  
**FAX NO.:** 954/346-1292  
**VOICE NO.:** 954/753-5841  
**FROM:** JANA RODERMAN for TOM GUSTAFSON  
**NUMBER OF PAGES:** 5

**MESSAGE:** Pursuant to your request, attached is our engagement letter incorporating Tom's initials to Craig's changes.

**IF YOU EXPERIENCE ANY DIFFICULTY WITH THIS TRANSMISSION, PLEASE CALL (954) 492-0071**

THE INFORMATION CONTAINED IN THIS FACSIMILE IS ATTORNEY WORK PRODUCT AND CONSISTS OF PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY EXAMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE (IF LONG DISTANCE, PLEASE CALL COLLECT) AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU!