

RESOLUTION 21-195

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH MARK G. LAWSON, P.A. FOR DEVELOPMENT, IMPLEMENTATION AND VALIDATION OF A SIMPLIFIED STORMWATER ASSESSMENT METHODOLOGY FOR THE BASIC AMOUNT OF \$150,000.

BE IT RESOLVED that the appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Agreement between the City and Mark G. Lawson, P.A., relating to the development, implementation and validation of a simplified stormwater assessment methodology, in the basic amount of One Hundred Fifty Thousand Dollars (\$150,000), in substantially the form attached and presented to the Council today, draft dated July 22, 2021, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 22nd day of July, 2021.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynde Fasone, City Clerk

RESOLUTION 21-195

STORMWATER ASSESSMENT OVERHAUL - SIMPLIFIED APPROACH
WORK ORDER No. 2021-1

TO: Mark G. Lawson, P.A.
Attention: Mark G. Lawson

FROM: City Manager
City of Panama City Beach, Florida

1. **SCOPE OF SERVICES.** Mark G. Lawson, P.A. (the "Firm" or "MGLPA") is hereby directed and authorized on an expedited basis due to pending statutory and budgetary deadlines, to:

Task 1. Acquire and analyze relevant data and documentation including master parcel list, millage coding documentation, stormwater related budgets, interlocal agreements, stormwater and assessment related statutes, ordinances and resolutions to determine those expenses which may be lawfully recovered through a fixed and variable cost recovery special assessment on a per tax parcel basis. This is sometimes called the 'Simplified Approach'TM which will be premised upon the logical relationship of stormwater management, services, programs, and facilities city-wide to the array of developable parcels using, in part, established economic theory addressing why property owners are attracted to the City, and measuring, in part, such attraction for public goods and services by publicly maintained transactional data. In many respects, the method will resemble that of the City's present apportionment approach to fire service assessments.

Task 2. Develop a preliminary non-ad valorem assessment roll including all tax parcels proposed for assessment for immediate delivery to a national printer to meet a statutory deadline for individual mailing notice.

Task 3. Consider and analyze case law and general law requirements and deadlines; and collaborate with City Staff and officials to develop an initial but immediate critical events schedule, which can be periodically updated to include key dates for necessary actions and deliverables.

Task 4. Be prepared to travel to and meet individually with City Staff and officials, elected officials and the City Attorney to carefully explain in person (or by conference call if more efficient) in a series of educative sessions or conferences, the pros, cons, nuances, public relations, legal, practical and financial implications of the major aspects of program implementation – both short and long term, and collections alternatives and protocols. Collegially evaluate and share how the City is staffed and positioned to assist in operational control of the program, so that the program becomes repeatable and cost effective in future revenue cycles. Field and, if necessary,

further research, receive questions and promptly provide answers and advice based upon the demonstrated experience of all of the professionals involved.

Task 5. Prepare and present to the City Council, City Manager, the City Engineer in charge of stormwater matters, and City Attorney a written executive summary or letter report summarizing the budget analysis, proposing an apportionment methodology and providing funding (amount) scenarios consistent with recommendations as provided by City Staff. The executive summary report will detail the net revenue results to confirm extraordinary decision-making purposes; and will allow for the resultant determination of the proposed assessment for any specific tax parcel. The executive summary will be evidentiary in nature and provide prompt, researched and documented answers, based upon research, analysis, prior use in the context of fire protection and other differing stormwater programs, and applied rationalization in the context of stormwater management activities applied to the positive political theory first described by Charles Tiebout in 1956. The executive summary will share an articulated tie-in to the legal sufficiency of both a legally defensible premise developed with an eye toward existing Florida case law and Chapter 403, Florida Statutes, and politically palatable apportionment of costs to all developed and undeveloped tax parcels. The net revenue information will be based upon an analysis of which classes or types of proposed budget expenditures can be assessed as a part of a two-tiered non-ad valorem assessment regime. The firms and the City acknowledge the cumulative and necessary work to develop the written executive summary report necessitate immediate attention from a broad range of institutional and unique knowledge and ongoing specialized services described in this Work Order to promptly and authoritatively present a flexible and educative rational decision-making tool for the City; and accomplish the City's objectives of updating its current method now based upon pervious and impervious attributes to use an alternative, more holistic, and more efficient means annually in fairly and reasonably sharing costs and benefits relating to needs for stormwater management, services, programs and facilities in the City of Panama City Beach.

Task 6. Immediately develop the necessary individual mailing using preliminary maximum rates to meet the Tax Collector's September 15 certification-related deadlines, which rates can be reduced in August at the required and extraordinarily noticed public hearing by the City Council; and prepare in advance ordinances, resolution(s) or other documents necessary to authorize and initiate the process required for the special assessment program. This is to be done so that as the City Council proceeds, implementation can proceed promptly through a publicly noticed decision-making process culminating on August 26, 2021, with certification for collection to the Tax Collector being accomplished prior to September 15, 2021, as is required by statute.

Task 7. Appear before the City Council, as needed, to present any required procedural and directory resolutions.

Task 8. Complete and assist the City in certifying the non-ad valorem assessment roll according to direction of the City Council.

Task 9. Update and refine the executive summary report to serve as evidentiary predicate for imposition of special assessments, if necessary.

Task 10. Expeditiously facilitate required notices and coordinate with City staff and counsel.

Task 11. Prepare a final assessment resolution levying assessments, approving the assessment roll and directing the use of the uniform method of collection for the initial fiscal year of imposition of this new assessment regime. This task is subject to timing and direction from the City as to the fiscal year period it wishes to fund, the work will ambitiously focus upon implementation of funding, for the current fiscal year.

Task 12. Appear and assist the City Council with a required public hearing to present the final assessment resolution; and, adoption thereof.

Task 13. Prepare and present the documentation necessary to file and prosecute an expedited proceeding on behalf of the City in order to obtain judicial determination as to the validity of the revenue to be derived from the assessment program to be used to finance and pay for capital, including preparation of all necessary resolutions, pleadings and documentation.

Task 14. If necessary, represent the City in any appeal proceeding, including preparation of all necessary briefs and documentation and conducting oral argument before the Florida Supreme Court.

Task 15. If directed to do so under the most exigent circumstances, assist the City in facilitating a direct billing of the assessment roll only if the uniform collection method becomes infeasible.

Task 16. Continue to facilitate compliance with any statutory prerequisites necessary for subsequent collection of the assessments on the annual property tax bill (as soon as FY 2022-23 and beyond). Depending on timing and direction, confirm or facilitate documentation of agreements with the tax collector and property appraiser as required by Section 197.3632, Florida Statutes, for collection of the special assessments on the annual property tax bill. This task will also be subject in some respects to timing issues and subsequent direction from the City as to the first fiscal year of imposition, and assumes the first fiscal year it intends to collect assessments will be FY 2021-22. However, if necessary and requested, the Firm will provide immediate assistance in implementing a direct billing regime for the upcoming fiscal year simultaneously approving and adopting the second year implementation process for FY 2022-23 using the Uniform Collection Method. This annual adoption and extension task is generally performed, in later years, based upon a separate negotiated fee, plus actual costs, on an evergreen (annually repeating) basis.

2. **ACKNOWLEDGMENT OF USE OF NECESSARY CONSULTANTS.** Pursuant to the Professional Services Agreement, the City directs and authorizes the use and collaboration with Dr. Owen Beitsch or GAI Consultants ("GAI"), Dr. Frederick Bloetscher ("Bloetscher") and Ennead, LLC ("Ennead") for the purpose of working with the City, to develop and implement the subject funding program. In such capacity, GAI, and Ennead shall not be deemed clients or subcontractors of the Firm, but also in privity with the City.

3. **COMPENSATION.** Fees will be based upon the expedited necessity of this Work Order and hourly rates as follows:

MGLPA	\$295.00 per hour for attorneys; \$75.00 per hour for legal assistants and law clerks
GAI and Bloetscher	\$295.00 per hour
Ennead	\$185.00 per hour

In addition to such rates, the professionals shall be entitled to reimbursement for itemized costs incurred, and when applicable not exceeding that provided by Chapter 112, Florida Statutes, or alternatively the Internal Revenue Service.

4. **DUE TO TIME CONSTRAINTS A NEGOTIATED FEE IS REQUIRED.** The Firm, GAI, Bloetscher, and Ennead recognize the financial circumstances facing Florida communities and local governments, including the variability and heavy reliance upon property or sales tax receipts and other revenues sensitive to over-reliance for general fund and bonding purposes, and the real potential for substantial decline, or sudden general depression of property values, as well as the reluctance to develop and invest in a fundraising approach a governing body may not ultimately desire to embrace. However, due to the extraordinarily tight time frames to implement, this Work Order is necessarily and reasonably to be done on a negotiated fee basis as follows:

(a) The firms collectively will undertake all of the foregoing tasks for the lump sum professional services fees (i) of \$150,000 for all Tasks for the initial 2021-22 assessment stand-up year, and then (ii) \$30,000 for each ensuing year on a continual or evergreen basis, together with (iii) all verifiable costs incurred for the initial year (and not to exceed \$5,000 for subsequent years) to be paid within fifteen (15) days of invoicing;

(b) The City will pay all reasonable costs incurred by the firms on a monthly basis (upon provision of invoice and request for appropriate reimbursement with back-up and detail for audit purposes);

(c) The City shall pay an additional contingent lump sum based upon the aggregate hourly (or, if agreed to by the firms and the City, by negotiated fee) work for all professional services and unpaid costs in the event of a contested judicial validation or appeal following the validation proceeding (i.e. the judicial determination assessment revenues can be used to buy and

finance capital equipment or improvements) and any appeal therefrom, if any, or a policy decision by the City to not proceed further at any time after directing the firms to proceed; such amount shall be due and payable notwithstanding any subsequent policy decision not to impose or collect the assessments, and will be reasonably prorated based on work and effort to accomplish the foregoing but for the City's decision not to proceed; and

(d) If the firms are directed to proceed and the final judgment contemplated in Item 4(c) is not obtained upon appeal, any lump sum for additional professional services *beyond* those outlined in Item 4(a) will be charged at one-half of the hourly rates otherwise applicable.

Upon being directed to proceed, a single invoice shall be provided by the Firm on a periodic basis including invoices for all expenses incurred by the Firm, GAI, Ennead, and any other authorized consulting expertise during the course of this work order. All invoices will provide appropriate reimbursement backup and detail required by the City for audit purposes.

This negotiated fee reflects both an immediate need for substantial attention and a circumstantial discount and contingent payment agreement warranted by the size and circumstances of the City, the financial and equitable necessity to better employ and leverage general fund revenues, the City's consideration, direction and intent to proceed to develop, and act out of necessity to proceed immediately to impose and validate the use of the assessments and collect same using either the tax bill collection method authorized by section 197.3632, Florida Statutes, or the direct billing method as may be necessary in order to accomplish the City's objectives and the legal, administrative and policy circumstances which surround the imposition of the contemplated special assessments and more effective and equitable use of general fund revenues. The amount of the negotiated fee is the same as was charged for the fire service assessment standup and for a nearby and similarly sized municipality, under similar circumstances, successfully initiated and accomplished in a similar time frame in 2021.

The foregoing negotiated fee structure does not cover costs, including for example, amounts for published notices, printing or mailing, fees or charges of the property appraiser or tax collector, lockbox services, or similar expenses associated with assessment implementation, roll presentation via the internet, transcription fees or filing fees all of which will be the responsibility of the City; or, any additional work not described above or for other engagements.

[Remainder of Page Intentionally Left Blank]

5. **WORK ORDER BUDGET; IMMEDIATE DIRECTION TO PROCEED.** The initial budget appropriation for this Work Order shall be the amount of \$150,000, together with a budgeted allowance for up to \$8,000 in demonstrated expenses. Upon execution hereof by Contract Administrator and the Firm, direction to proceed is provided herein. The City acknowledges that additional costs and honoring any contingent fees may require an additional budget appropriation.

Authorized by:



Title: Contract Administrator
City Manager, Drew Whitman
As of July 22, 2021

And accepted by:



Mark G. Lawson, P.A.

As of July 22, 2021

Attest:



City Clerk, Wynne Fasone