

AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into this **21st day of December, 2005**, by and between the City of Naples, Florida, a municipal corporation, (hereinafter referred to as the "OWNER") and **NBS, whose business address is 32605 Highway 79 South, Suite 100, Temecula, CA 92592** (hereinafter referred to as the "CONTRACTOR").

WITNESSETH:

WHEREAS, the OWNER desires to obtain the professional services of the CONTRACTOR concerning certain services related to **provide management of the Special Assessments** (hereinafter referred to as the "Project"), said services being more fully described in Exhibit A, which is attached hereto and incorporated herein; and

WHEREAS, the CONTRACTOR has submitted a proposal for provision of those services; and

WHEREAS, the CONTRACTOR represents that it has expertise in the type of professional services that will be required for the Project.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

ARTICLE ONE CONTRACTOR'S RESPONSIBILITY

1.1. The Basic Services to be performed by CONTRACTOR hereunder **are to provide management of the Special Assessments.**

1.2. The CONTRACTOR agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida, the City of Naples, and in Collier County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the CONTRACTOR pursuant to this Agreement.

1.3. The CONTRACTOR agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ and/or retain only qualified personnel to provide such services.

1.4. CONTRACTOR agrees to employ and designate, in writing, within five (5) calendar days after receiving its Notice to Proceed, a qualified licensed professional to serve as the CONTRACTOR's project manager (hereinafter referred to as the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONTRACTOR with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement.

1.5. The CONTRACTOR has represented to the OWNER that it has expertise in the type of professional services that will be required for the Project. The CONTRACTOR agrees that all services to be provided by CONTRACTOR pursuant to this Agreement shall be subject to the OWNER's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by CONTRACTOR hereunder. In the event of any conflicts in these requirements, the CONTRACTOR shall notify the OWNER of such conflict and utilize its best professional judgment to advise OWNER regarding

resolution of the conflict.

1.6. CONTRACTOR agrees not to divulge, furnish or make available to any third person, firm or organization, without OWNER's prior written consent, or unless incident to the proper performance of the CONTRACTOR's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONTRACTOR hereunder, and CONTRACTOR shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph.

1.7. CONTRACTOR agrees not to employ or offer to employ any Elected Officer or City Managerial Employee of OWNER who in any way deals with, coordinates on, or assists with, the professional services provided in this Agreement, for a period of two (2) years after termination of all provisions of this Agreement. For purposes of this paragraph, the term "Elected Officer" shall mean any member of the City Council. For purposes of this paragraph, the term "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director. In the event CONTRACTOR violates the provisions of this paragraph, CONTRACTOR shall be required to pay damages to OWNER in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee of OWNER from or on behalf of the contracting person or entity, or an amount equal to the former Elected Officer's or City Managerial Employee's last two (2) years of gross compensation from OWNER, whichever is greater.

1.8. CONTRACTOR agrees not to provide services for compensation to any other party other than OWNER on the same subject matter, same project, or scope of services as set forth in this Agreement without approval from the City Council of OWNER.

1.9. Except as otherwise provided herein, CONTRACTOR agrees not to disclose or use any information not available to members of the general public and gained by reason of CONTRACTOR'S contractual relationship with OWNER for the special gain or benefit of CONTRACTOR or for the special gain or benefit of any other person or entity.

ARTICLE TWO OWNER'S RESPONSIBILITIES

2.1. The Owner shall designate in writing a project coordinator to act as OWNER's representative with respect to the services to be rendered under this Agreement (hereinafter referred to as the "Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to CONTRACTOR's services for the Project. However, the Project Coordinator is not authorized to issue any verbal or written orders or instructions to the CONTRACTOR that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- (a) The scope of services to be provided and performed by the CONTRACTOR hereunder;
- (b) The time the CONTRACTOR is obligated to commence and complete all such services; or
- (c) The amount of compensation the OWNER is obligated or committed to pay the CONTRACTOR.

2.2. The Project Coordinator shall:

(a) Review and make appropriate recommendations on all requests submitted by the CONTRACTOR for payment for services and work provided and performed in accordance with this Agreement;

(b) Arrange for access to and make all provisions for CONTRACTOR to enter the Project site to perform the services to be provided by CONTRACTOR under this Agreement; and

(c) Provide notice to CONTRACTOR of any deficiencies or defects discovered by the OWNER with respect to the services to be rendered by CONTRACTOR hereunder.

2.3. CONTRACTOR acknowledges that access to the Project Site, to be arranged by OWNER for CONTRACTOR, may be provided during times that are not the normal business hours of the CONTRACTOR.

ARTICLE THREE TIME

3.1. Services to be rendered by CONTRACTOR shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from OWNER for all or any designated portion of the Project and shall **commence on or about December 21, 2005 and be for eight years, with no renewals.** Time is of the essence with respect to the performance of this Agreement.

3.2. Should CONTRACTOR be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of CONTRACTOR, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of the OWNER, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then CONTRACTOR shall notify OWNER in writing within five (5) working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which CONTRACTOR may have had to request a time extension.

3.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of CONTRACTOR's services from any cause whatsoever, including those for which OWNER may be responsible in whole or in part, shall relieve CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONTRACTOR's sole remedy against OWNER will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion. Provided, however, if through no fault or neglect of the CONTRACTOR, the services to be provided hereunder have not been completed within 18 months of the date hereof, the CONTRACTOR's compensation may be equitably adjusted, with respect to those services that have not yet been performed, to reflect the incremental increase in costs experienced by CONTRACTOR after expiration of said 18 month period.

3.4. Should the CONTRACTOR fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the OWNER hereunder, the OWNER at its sole discretion and option may withhold any and all payments due and owing to the CONTRACTOR until such time as the CONTRACTOR resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the OWNER's satisfaction that the CONTRACTOR's performance is or will shortly be back on schedule.

ARTICLE FOUR COMPENSATION

4.1. The total compensation to be paid to the CONTRACTOR by the OWNER for all Basic Services **shall be set at per bid price amount and shall be paid in the manner set forth in Exhibit A,** which is attached hereto and incorporated herein.

**ARTICLE FIVE
MAINTENANCE OF RECORDS**

5.1. CONTRACTOR will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by CONTRACTOR for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. OWNER, or any duly authorized agents or representatives of OWNER, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above; provided, however, such activity shall be conducted only during normal business hours.

**ARTICLE SIX
INDEMNIFICATION**

6.1. CONTRACTOR agrees to indemnify and hold harmless the City from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employer or utilized by the Contractor in the performance of the Contract.

**ARTICLE SEVEN
INSURANCE**

7.1. CONTRACTOR shall obtain and carry, at all times during its performance under the Contract Documents, insurance of the types and in the amounts set forth in Exhibit B to this Agreement.

**ARTICLE EIGHT
SERVICES BY CONTRACTOR'S OWN STAFF**

8.1. The services to be performed hereunder shall be performed by CONTRACTOR's own staff, unless otherwise authorized in writing by the OWNER. The employment of, contract with, or use of the services of any other person or firm by CONTRACTOR, as independent contractor or otherwise, shall be subject to the prior written approval of the OWNER. No provision of this Agreement shall, however, be construed as constituting an agreement between the OWNER and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against the OWNER beyond such as may otherwise exist without regard to this Agreement.

**ARTICLE NINE
WAIVER OF CLAIMS**

9.1. CONTRACTOR's acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against OWNER arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by CONTRACTOR as unsettled at the time of the final payment. Neither the acceptance of CONTRACTOR's services nor payment by OWNER shall be deemed to be a waiver of any of OWNER's rights against CONTRACTOR.

**ARTICLE TEN
TERMINATION OR SUSPENSION**

10.1. CONTRACTOR shall be considered in material default of this Agreement and such default will be considered cause for OWNER to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice(s) to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as

directed by OWNER, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by CONTRACTOR or by any of CONTRACTOR's principals, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. The OWNER may so terminate this Agreement, in whole or in part, by giving the CONTRACTOR seven (7) calendar day's written notice.

10.2. If, after notice of termination of this Agreement as provided for in paragraph 10.1 above, it is determined for any reason that CONTRACTOR was not in default, or that its default was excusable, or that OWNER otherwise was not entitled to the remedy against CONTRACTOR provided for in paragraph 10.1, then the notice of termination given pursuant to paragraph 10.1 shall be deemed to be the notice of termination provided for in paragraph 10.3 below and CONTRACTOR's remedies against OWNER shall be the same as and limited to those afforded CONTRACTOR under paragraph 10.3 below.

10.3. OWNER shall have the right to terminate this Agreement, in whole or in part, without cause upon seven (7) calendar day's written notice to CONTRACTOR. In the event of such termination for convenience, CONTRACTOR's recovery against OWNER shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by CONTRACTOR that are directly attributable to the termination, but CONTRACTOR shall not be entitled to any other or further recovery against OWNER, including, but not limited to, anticipated fees or profits on work not required to be performed.

ARTICLE ELEVEN CONFLICT OF INTEREST

11.1. CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. CONTRACTOR further represents that no persons having any such interest shall be employed to perform those services.

ARTICLE TWELVE MODIFICATION

12.1. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

ARTICLE THIRTEEN NOTICES AND ADDRESS OF RECORD

13.1. All notices required or made pursuant to this Agreement to be given by the CONTRACTOR to the OWNER shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following OWNER's address of record:

City of Naples
735 Eighth Street South
Naples, Florida 34102-3796
Attention: Dr. Robert E. Lee, City Manager

13.2. All notices required or made pursuant to this Agreement to be given by the OWNER to the CONTRACTOR shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CONTRACTOR's address of record:

**NBS
32605 Highway 79 South
Suite 100
Temecula, CA 92592
Attention: David B. Ketcham, Director**

13.3. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

ARTICLE FOURTEEN MISCELLANEOUS

14.1. CONTRACTOR, in representing OWNER, shall promote the best interest of OWNER and assume towards OWNER a duty of the highest trust, confidence, and fair dealing.

14.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

14.3. This Agreement is not assignable, in whole or in part, by CONTRACTOR without the prior written consent of OWNER.

14.4. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

14.5. The headings of the Articles, Exhibits, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Exhibits, Parts and Attachments.

14.6. This Agreement constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

ARTICLE FIFTEEN APPLICABLE LAW

15.1. Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate Florida state court in Collier County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for the day and year first written above.

ATTEST:

OWNER:

CITY OF NAPLES, FLORIDA,
A Municipal Corporation

By: _____
Tara A. Norman, City Clerk

By: _____
Dr. Robert E. Lee, City Manager

Approved as to form
and legal sufficiency:

By: _____
Robert D. Pritt, City Attorney

CONTRACTOR:

NBS

By: _____

Witness

V. Cost Proposal

Please note: NBS has provided the following cost proposal based on the information in the RFP, recent and past conversations with the City and our understanding of the overall level of effort required. Should NBS be selected to work with the City, we will endeavor to set up a fee and billing schedule that is commensurate with the tasks required that meets the needs of the City. The table below summarizes the base fees, with further discussion below.

Summary Table for Fees

[Special Assessment Management Services]

The following table summarizes the proposed annual fees by district for all of the services required, except as noted elsewhere for additional items like delinquency action steps.

District Name	Parcel Count	Annual Admin Fee
West Naples Bay Dredging	400	\$2,000
Reuse Phase I	2,100	\$5,000

Prepayment Calculations (each) \$35
 (Party requesting calculations shall pay)

[Arbitrage Rebate]

Base Fees

Commitment Fee: \$500
 Report Fee (per annual report): \$1,250

Note: The Report Fee is based on the assumption of annual calculations. Should there be a change to fifth year calculations only, the fee will be \$2,500.

Additional Service Fees

Computation Periods in Excess of 18 Months (per year): \$500-1,000
 Commingled Funds Analysis (as appropriate): 500-1,000
 Transferred Proceeds Analysis (as appropriate): 500-1,000
 Variable Rate Issues 500-1,000

[Continuing Disclosure]

Per Bond Issue \$1,000
 Per Questionnaire \$500
 Optional - Annual Report Fee (Full Scope of Services)
 Annual Report (per report) TBD
 Significant Event Notification hourly or \$100 per event

Dissemination Services	
Report Dissemination (per recipient).....	\$25
Significant Event Dissemination (per recipient).....	\$25
Posting to NBS website	No charge

[Delinquency Management]

Late Notices.....	\$20 *
Payment Plan Administration	150
Subsequent Foreclosure Fees	75 **

All fees are based on a per parcel/per district basis

*This fee will be recovered as part of the next levy.

**This fee is per parcel/per district/per year from the initiation of the foreclosure process.

[Annual Fee Increases]

Cost of living increases may be applied to the services listed above on October 1 each year, beginning with October 1, 2006. The COLA would be the actual cost of living increase, based on the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all urban consumers for the Tampa-St. Petersburg-Clearwater area.

[Additional Services]

NBS will provide a fee structure for any district closeouts or bond tender programs, depending on the City's needs and complexity of the programs. Other additional services authorized by the City will be billed at the rates shown below or the then-applicable hourly rate.

Title	Hourly Rate
Director	\$ 190
Senior Consultant/Programmer	150
Engineer	140
Consultant	130
Analyst	100
Clerical/Support	55

[Terms]

Administration services will be invoiced quarterly at the beginning of each quarter. Expenses will be itemized and included in the next regular invoice. Fees for all other services will be invoiced upon completion of the task. If the project is prematurely terminated by either party, NBS shall receive payment for work completed. Payment shall be made within 30 days of submittal of an invoice. If payment is not received within 90 days simple interest will begin to accrue at the rate of 1.5% per month. Either party can cancel contracts with 30 days written notice.

SERVICES

The City of Naples is seeking a qualified vendor to provide management of the Special Assessments. The primary responsibility will be to calculate the annual assessment levy for each parcel in each of the districts and submit the amount for each parcel to the County in the format and medium (i.e. tape, diskette) required by the County. Additional services are:

- 1) Kick-Off Meeting, Project Schedule. Participate in meetings with City staff, legal counsel and other interested parties to:
 - Establish lines of communication.
 - Clarify the specific project goals and criteria that will meet the City's preference.
 - Identify and resolve any special circumstances that may be involved in the administration of the districts.
 - Develop project schedules to meet legal requirements and provide for effective interaction of all involved parties.
 - Establish meeting dates consistent with schedule to achieve project milestones.

- 2) Data Collection. Gather and review data relevant to the administration of the districts. Data will be obtained from various sources, including City records, Assessor's parcel maps, and County Assessor information and establish a database for the assessment districts.
- 3) Policy Review. Review policies and procedures that have been established by the City for compliance with the governing documents and law and offer improvements
- 4) Cost Recovery. Identify all costs associated with the administration of the Assessment Districts and recover those costs through the levy process to the extent allowed by law. These costs may include, but not be limited to Registrar/Transfer/Paying Agent fees, Arbitrage Rebate calculation fees, bank fees, and expenses of the City and its consultants related to the administration of the districts.
- 5) Annual Assessment Levy. Calculate the annual assessment levy for each parcel in each of the districts and submit the amount for each parcel to the County in the format and medium (i.e. tape, diskette) required by the County.
- 6) Resubmission or Rejects. Research the status of any parcels rejected by the County, and resubmit corrected data for collection on the County Tax Roll. Any parcels that are not accepted by the County for collection will be invoiced directly, with payment directed to the City.
- 7) Maintain Assessment District Data. Annually track all parcel changes to ensure that all changes are documented. Historical parcel change and assessment apportionment data will be maintained by the selected vendor. If the change in parcel required an assessment pay-off, the vendor will be responsible to contact the owner, title company, attorney, or other appropriate person and pursue the collection of all assessment principal and interest.
- 8) Local or Toll-Free Phone Number. Selected vendor will provide a local or toll-free phone number for use by City staff, other interested parties and affected property owners.

- 9) Annual Report. Provide a comprehensive Annual Report that will show a detail listing of the amounts submitted to the levy or directly billed for collection, details of delinquent assessments, paid off parcels and release of liens.
- 10) Delinquency Monitoring. Provide the City with a comprehensive list of delinquencies after each installment becomes due. This report will show delinquency percentage as well as a detailed list of each delinquent parcel.
- 11) Online Web Access to Assessment Data. The City desires staff and customer secure access to a website for viewing assessment information.
- 12) Expert Resource. Act as the City's "expert resource," and answer questions and advise the City on particular issues involving the Assessment Districts.
- 13) Other duties required by the Contractor include but is not limited to responding to estoppel letters, drafting satisfactions of liens, drafting an annual special assessment resolution, recalculating the assessment whenever there is a change in the number of parcels in a district, and responding to all inquires and/or correspondence related to the special assessment.

GENERAL INSURANCE REQUIREMENTS

The Contractor shall not commence work until he has obtained all the insurance required under this heading, and until such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work until all similar insurance required of the subcontractor has also been obtained and approved by the Owner.

Certificates of insurance must be issued by an authorized representative of the insurance company at the request and direction of the policyholder and must include sufficient information so as to identify the coverage and the contract for Owner's improvements for which they are issued. Certificates of insurance must be issued by a nationally recognized insurance company with a Best's Rating of no less than B+VII, satisfactory to the Owner, and duly licensed to do business in the state of said Contract.

The Contractor shall procure and maintain, during the life of this Contract, Workmen's Compensation Insurance for all of his employees to be engaged in work under this Contract, and he shall require any subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by the Contractor's insurance. In case any employees are to be engaged in hazardous work under this Contract, and are not protected under this Workmen's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate coverage for the protection of such employees. It is acceptable to use a State-approved Workmen's Compensation Self-Insurance fund.

The Contractor shall take out and maintain during the life of this Contract, Public Liability and Property Damage and shall include Contractual Liability, Personal Injury, Libel, Slander, False Arrest, Malicious Prosecution, Wrongful Entry or Eviction, Broad Form Property Damage, Products, Completed Operations and XCU Coverage to be included on an occurrence basis, and to the full extent of the Contract to protect him, the Owner, and any subcontractor performing work covered by this Contract from damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either of them. The Contractor shall also maintain automobile liability insurance including "non-owned and hired" coverage. The entire cost of this insurance shall be borne by the Contractor.

The amount of such insurance shall be no less than \$1,000,000 annual aggregate for bodily injury and property damage combined per occurrence.

The City of Naples and their Engineer must be named as **Additional Insured** on the insurance certificate and the following must also be stated on the certificate. "These coverages are primary to all other coverages the City possesses for this contract only." The City of Naples shall be named as the Certificate Holder. **The Certificate Holder shall read as follows:**

**The City of Naples
735 Eighth Street South
Naples, Florida 34102**

No City Division, Department, or individual name should appear on the Certificate.
No other format will be acceptable.

Thirty (30) days cancellation notice required.

The Certificate must state the bid number and title.

When using the "Accord" form of insurance certificate, please note that under the cancellation clause, the following must be deleted: "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company"