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DATE: April 8, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Financial Services Department

SUBJECT: **APPROVAL OF A THREE-YEAR PROFESSIONAL SERVICES AGREEMENT WITH DAVID TAUSSIG & ASSOCIATES, INC., OF NEWPORT BEACH IN AN AMOUNT NOT TO EXCEED \$143,440 FOR CONSULTING SERVICES SPECIFIC TO THE ADMINISTRATION OF COMMUNITY FACILITIES DISTRICTS, DELINQUENCY MANAGEMENT AND CONTINUING DISCLOSURE, AND AUTHORIZATION FOR THE CITY MANAGER TO EXECUTE THE AGREEMENT.**

**SYNOPSIS**

Staff recommends that the City Council approve a three-year professional services agreement with David Taussig & Associates, Inc., of Newport Beach, in an amount not to exceed \$143,440 for consulting services specific to the administration of Community Facilities Districts, Delinquency Management and Continuing Disclosure and authorize the City Manager to execute the agreement.

**BACKGROUND**

David Taussig & Associates has served as the special tax consultant for the formation of all four of the City's Community Facilities Districts (CFDs): 2000-1 (Ocean Ranch Corporate Centre), 2001-1 and Improvement Area No 1. (Morro Hills), 2001-2 (Trendwest Resorts) and 2006-1 (Pacific Coast Business Park).

Their current agreement with the City expires on June 30, 2009.

**ANALYSIS**

In December 2008, a Request for Proposal for consulting services was sent to ten firms throughout California and resulted in three responses. Staff from Finance and Treasury, interviewed all three firms.

It was unanimously agreed that David Taussig & Associates, Inc. is the most qualified firm to provide the consulting services required by the City of Oceanside. The contract term will commence on July 1, 2009, and end on June 30, 2012. Pricing for the contract includes an annual total of \$38,250 for district administration, \$2,250 for prepayment calculations and \$5,000 for letter of credit calculations, plus cost of living increases for

the second and third year of the contract. Each CFD pays an annual administration expense fee that the City collects as part of the special tax levy each property tax year.

**FISCAL IMPACT**

For FY 09-10, there are budgeted amounts of \$14,000 in account 627116.5241 (Ocean Ranch), \$30,000 in 659886.5241 (Morro Hills), and \$2,000 in account 627115.5241 (Trendwest) which is sufficient to cover the maximum annual fee of \$38,250. Each budget will be adjusted accordingly during the mid-cycle budget adjustments, including the addition of budget for the Pacific Coast CFD (627119.5241). Annual administrative expense fees are collected through CFD special taxes each year that cover the cost of the contract.

**COMMISSION/COMMITTEE REPORT**

Does not apply.

**CITY ATTORNEY'S ANALYSIS**

The referenced document has been reviewed by the City Attorney and approved as to form.

**RECOMMENDATION**

Staff recommends that the City Council approve a three-year professional services agreement with David Taussig & Associates, Inc., of Newport Beach, in an amount not to exceed \$143,440 for consulting services specific to the administration of Community Facilities Districts, Delinquency Management and Continuing Disclosure and authorize the City Manager to execute the agreement.

PREPARED BY:

  
\_\_\_\_\_  
Teri Ferro  
Director of Financial Services

SUBMITTED BY:

  
\_\_\_\_\_  
Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager  
Michele Lund, Treasury Manager

  
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## CITY OF OCEANSIDE

### PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, dated July 1, 2009 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and David Taussig & Associates, Inc. hereinafter designated as "CONSULTANT".

#### RECITALS

- A. CITY desires to obtain services from an independent contractor for the purpose of consulting services specific to the administration of Community Facilities Districts, Delinquency Management and Continuing Disclosure.
- B. CONSULTANT has submitted a proposal to provide consulting services for the CITY in accordance with the terms set forth in this Agreement.
- C. CITY desires to contract with CONSULTANT as an independent contractor and CONSULTANT desires to provide services to CITY as an independent contractor.
- D. CONSULTANT has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education and expertise.

#### **NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

- 1.0 **SCOPE OF WORK.** The scope of work pertaining to CFD Numbers 2000-1, 2001-1, 2001-1 IA No. 1, 2001-2 and 2006-1 and is particularly described as follows:
  - 1.1 **PROFESSIONAL SERVICES PROVIDED BY CONSULTANT.** The professional services to be performed by CONSULTANT shall consist of but not be limited to the following:
    - 1.1.1 **Land Use Research.** Determine, gather and organize the land use data required to apportion and collect special taxes, including subdivision research, development research and database management.

- 1.1.2 Classification of Property. Apply the Rate and Method of Apportionment of the Special Tax to determine appropriate special tax classifications for each parcel in the subject CFDs and identify and delineate exempt and taxable properties.
- 1.1.3 Financial Analysis. Calculate the Special Tax Requirement for each fiscal year and allocate it to properties with the subject CFDs and IA. Includes assisting the CITY in the preparation of administrative expense budgets, confirming interest and principal payments and determining other charge or credits to the tax levy. Also includes computing the fiscal year special tax rates for all classifications of taxable property.
- 1.1.4 Report Preparation. Prepare an Annual Special Tax Report for each CFD and IA containing the findings of the financial analysis and an explanation of the methodology employed to apportion the taxes for the subject CFDs and IA. The report will include a list of special taxes by Assessor's Parcel. The report will be made available to the City in time to be reviewed and docketed for the first City Council meeting each July.
- 1.1.5 Submittal of Special Taxes to the County of San Diego. Submit the special tax levy for each CFD and IA on or before August 10<sup>th</sup> of each year, or such other date as specified by the County of San Diego to the Auditor-Controller for inclusion of the consolidated property tax bills. The special tax levy will be submitted on CD-ROM or other media required by the County.
- 1.1.6 Roll Changes. Monitor changes to the secured tax roll, which necessitate new or adjusted property tax bills. This includes calculation of new or adjusted bills and the preparation of requests to the County to prepare such bills.
- 1.1.7 Response to Property Owner Questions. Provide information to individuals and other interested parties regarding the amount and calculation of special tax. Provide a toll free number for the convenience of property owners and CITY staff.
- 1.1.8 Annual Reporting and Disclosure. Assist the City in meeting the requirements of SB 1484, the Fair Political Practices Commission as to Consultants and the 1992 Mello-Roos Amendment Bill. Including preparation and submission of required data to the California Debt and Investment Advisory Commission each October and assist the City in preparation of special tax disclosure documents pursuant to applicable Civil and Government Code. Provide the annual SB 165 Report in time for City staff to review and docket the report for the first City Council meeting each January.

- 1.1.9 Fiscal Year End Delinquency Report. Provide the City with a comprehensive list of delinquencies at the end of the fiscal year.
- 1.1.10 Meetings. Attend Council meetings involving the levy and collection of special taxes each fiscal year. Schedule meeting with the CITY to review the spread of Mello-Roos special taxes and the upcoming special levy for each CFD and IA, including a discussion of the findings of the financial analysis.
- 1.1.11 Monthly Review of All Funds and Accounts. Monitor fiscal agent financial statements for all funds and accounts for each CFD and IA to assure fiscal agent is adhering to the “Bond Indenture.” Prepare monthly report of financial activity for all funds showing account balances, interest earnings and other revenues and expenditures.
- 1.1.12 Prepayment Calculations. Prepare special tax prepayment calculations for interested parties, assist in the pricing of bond call provisions and prepare the Notices of Cancellation of Special Tax Lien for parcels that have prepaid the special tax.
- 1.1.13 Prepare Updated Letter of Credit Calculations. Prepare updated letter of credit calculations for CFDs and IA at the request of the CITY or developer. Distribute the final calculation to the CITY and coordinate with the fiscal agent regarding the new letter of credit amount.

## 2.0 **TIMING REQUIREMENTS**

- 2.1 Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing as set forth by the CITY. Failure by CONSULTANT to strictly adhere to these timing requirements may result in termination of this Agreement by the CITY and the assessment of damages against the CONSULTANT for delays.
  - 2.2 For all time periods not specifically set forth herein, the CONSULTANT shall respond in the most expedient and appropriate manner under the circumstances, by either telephone, fax hand delivery or mail.
- ## 3.0 **DESIGN CRITERIA AND STANDARDS.** All work shall be performed in accordance with applicable CITY, state and federal codes and criteria. In the performance of its professional services, CONSULTANT shall use the degree of care and skill ordinarily exercised by consultants under similar conditions.

4.0 **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the Director of Financial Services. CONSULTANT shall be sole responsible for the performance of any of its employees, agents or subcontractors under this agreement.

CONSULTANT shall report to the CITY any and all employees, agents and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.

5.0 **CITY BUSINESS LICENSE.** Prior to the commencement of any work under this agreement, the CONSULTANT shall obtain and present a copy of an Oceanside City Business License to the Director of Financial Services.

6.0 **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions and provide certification of such compliance as a part of these Award Documents. The certification shall be in accordance with Subsections 7.3 through 7.8 of this Agreement.

7.0 **LIABILITY INSURANCE.**

7.1 CONSULTANT shall, throughout the duration of this Agreement, maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including, but not limited to, premises and automobile.

7.2.1 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance  
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance  
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
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\*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

- 7.2.2 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchases by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY’S Project Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT’S work.
- 7.3 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as “additional insured” under the designated insurance policy for all work performed under this Agreement. Insurance coverage provided to the CITY as an additional insured shall be primary insurance and other insurance maintained by the CITY, its officers, agents and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 7.4 All insurance companies affording coverage to the CONSULTANT pursuant to this Agreement shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 7.5 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 7.6 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

- 7.7 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 7.8 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
- 8.0 **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million dollars (\$1,000,000).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

- 9.0 **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of CONSULTANT'S work, including the negligent acts, errors or omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees founded upon, resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

10.0 **NO CONFLICT OF INTEREST.** The CONSULTANT shall not be financially interested in any other CITY contract for this project. For the limited purposes of interpreting this section, the CONSULTANT shall be deemed a “City officer or employee”, and this Section shall be interpreted in accordance with Government Code section 1090. In the event that the CONSULTANT becomes financially interested in any other CITY contract for this project, that other contract shall be void. The CONSULTANT shall indemnify and hold harmless the CITY, under Section 9 above, for any claims for damages resulting from the CONSULTANT’S violation of this Section.

11.0 **OWNERSHIP OF DOCUMENTS.** All documentation produced on behalf of the CITY, including details, computations and other documents, prepared or provided by the CONSULTANT under this Agreement shall be the property of the CITY. CONSULTANT may retain a copy of all material produced under this Agreement for the purpose of documenting their participation in this project.

12.0 **COMPENSATION.**

12.1 For work performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT in accordance with the schedule of billing rates set forth in Exhibit “A”, attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this Agreement without prior written approval of the Director of Financial Services. CONSULTANT’S compensation for all work performed in accordance with this Agreement shall not exceed the total contract price of \$ \$143,440 for fiscal years 2009-2010, 2010-2011 and 2011-2012 broken down as follows:

FY 2009-2010 \$45,500  
FY 2010-2011 \$47,775  
FY 2011-2012 \$50,165

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the Director of Financial Services. CONSULTANT shall obtain approval by the Director of Financial Services prior to performing any work which results in incidental expenses to CITY as set forth in Section 13.2.2.

12.2 CONSULTANT shall maintain accounting records including the following information:

- 12.2.1 Names and titles of employees or agents, types of work performed and times and dates of all work performed in connection with this Agreement which is billed on an hourly basis.
- 12.2.2 All incidental expenses including reproductions, computer printing, postage, mileage and subsistence.
- 12.3 CONSULTANT'S accounting records shall be made available to the Director of Finance for verification of billings, within a reasonable time of the Director's request for inspection.
- 12.4 CONSULTANT shall submit monthly invoices to CITY. CITY shall make partial payments to CONSULTANT not to exceed the total contract price within thirty (30) days of receipt of invoice, subject to the approval of the Director of Finance.
- 13.0 **TERMINATION OF AGREEMENT.** This agreement shall terminate at the end of fiscal year ending June 30, 2012. Either party may terminate this Agreement by providing thirty (30) days written notice to the other party.

If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement, in accordance with Section 13. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.

- 14.0 **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT'S duties be delegated, without the express written consent of the CITY. Any attempt to assign or delegate this Agreement without the express written consent of the CITY shall be void and of no force or effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

- 15.0 **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations or agreements.

16.0 **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

17.0 **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an Agreement in writing, signed by the parties hereto.

18.0 **DISPUTE RESOLUTION.**

- a. Any controversy or claim arising out of or relating to this Agreement, or concerning the breach or interpretation thereof, shall be first submitted to mediation, the cost of which shall be borne equally by the parties.
- b. No suit shall be brought on this contract unless all statutory claims filing requirements have been met.

19.0 **NOTICES.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

**TO CITY:**  
Teri Ferro, Director of Financial Services  
City of Oceanside  
Financial Services  
300 North Coast Highway  
Oceanside, CA 92054

**TO CONSULTANT:**  
David Taussig  
5000 Birch Street  
Suite 6000  
Newport Beach, CA 92660

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur:

- a. Actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or
- b. Three (3) working days following the deposit in the United States mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

20.0 **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

**IN WITNESS WHEREOF** the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures on the dates indicated below:

DAVID TAUSSIG & ASSOCIATES, INC.

CITY OF OCEANSIDE

By:   
Name/Title President

By: \_\_\_\_\_  
City Manager

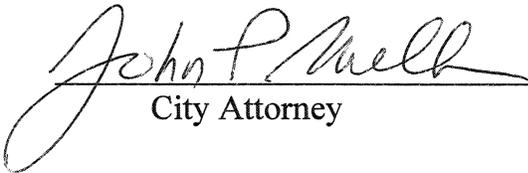
Date: 3/31/09

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

By: \_\_\_\_\_  
Name/Title

APPROVED AS TO FORM:

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

  
City Attorney

\_\_\_\_\_  
Employer ID No.

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On 3/31/09  
Date

before me,

Jennifer Porres, Notary Public  
Here Insert Name and Title of the Officer

personally appeared \_\_\_\_\_

Name(s) of Signer(s)

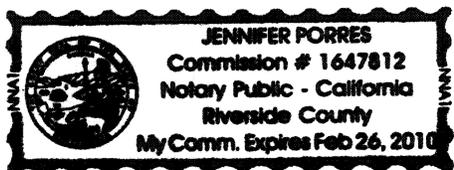
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Signature of Notary Public



Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

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OF SIGNER  
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