

**CONSULTANT SERVICES AGREEMENT**  
**FOR**  
**BOND AND SPECIAL TAX CONSULTING SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of December, 2017 by and between the City of Laguna Beach, a Municipal Corporation, hereinafter referred to as the "CITY," and David Taussig & Associates, hereinafter referred to as "CONSULTANT."

**RECITALS**

WHEREAS, the CITY desires to engage CONSULTANT to render certain professional services as more fully identified in Appendix A, Scope of Services, attached hereto and included herein;

WHEREAS, CONSULTANT is qualified and agreeable to render the professional services desired by the CITY;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter expressed and intending to be bound hereby, the parties hereto do mutually agree as follows:

**PART I**

**FUNDAMENTAL TERMS**

**Article 1.     Engagement of CONSULTANT**

The CITY hereby agrees to engage CONSULTANT to perform the professional services as hereinafter set forth, and CONSULTANT agrees to perform those services in accordance with the terms and conditions of this Agreement.

**Article 2.     Scope of Services**

In compliance with all terms and conditions of this Agreement, CONSULTANT shall perform all work necessary to complete, in a manner satisfactory to the CITY, the services described and set forth in Appendix A, Scope of Services, attached hereto and by reference incorporated herein and made a part hereof.

**Article 3.     Time of Performance**

The services of CONSULTANT are to commence on December 6, 2017.

**Article 4.     Payment and Limitation of Cost**

The CITY shall compensate CONSULTANT for services performed under Article 2, as further defined in Appendix A, in accordance with the following schedule:

THE CITY SHALL BE BILLED A TOTAL AMOUNT NOT TO EXCEED NINETY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$97,500) AS OUTLINED IN APPENDIX A.

In order to receive payments, CONSULTANT shall submit to the CITY an invoice. The invoice will delineate the services performed with specificity, the amount invoiced to date, and such other documentation as may be necessary or requested by the CITY to demonstrate that appropriate progress has been made toward completion of the services.

Adjustments of total cost of services by up to 10% of the original contract amount will be permitted when CONSULTANT establishes, and the CITY agrees in writing, that there has been, or is to be, a significant change in:

- a. The scope, complexity or character of the services to be performed;
- b. the conditions under which the work is required to be performed; or
- c. the duration of work if the change from the time period specified in this Agreement for completion of the work warrants such adjustment in accordance with Part II, Section 3, Paragraph 3.13, Extension of Time for Delay.

**Article 5.     Attachments**

The provision set forth in Part II, General Provisions, and Appendix A, "Scope of Services," are by reference incorporated herein and made a part hereof.

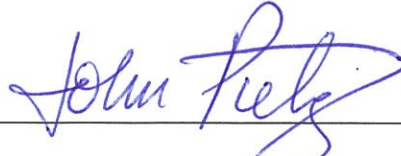
**Article 6.     Integration**

This Agreement represents the entire understanding of the CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this Agreement. This Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

IN WITNESS WHEREOF, persons executing this Agreement warrant and represent that they are authorized to do the same on behalf of the parties hereto and are authorized to bind those parties to the terms and conditions of this Agreement.

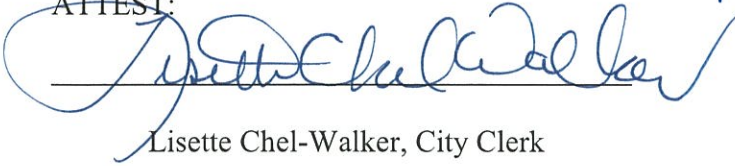
CITY OF LAGUNA BEACH

By



John Pietig, City Manager

ATTEST:



SD4

Lisette Chel-Walker, City Clerk

CONSULTANT

By



Title



Address



## PART II

### GENERAL PROVISIONS

#### SECTION ONE: SERVICES OF CONSULTANT

**1.1 Scope of Services.** In compliance with all terms and conditions of this Agreement, CONSULTANT shall perform all work necessary covered by this Agreement in a manner satisfactory to the CITY. This Agreement includes the services described and set forth in Appendix A, Scope of Services, attached hereto and by reference incorporated herein and made a part hereof, which may be referred to as "services."

**1.2 Changes and Additions to Scope of Services.** The CITY shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra services beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said services. No payment for extra services caused by a change in scope or complexity of work shall be made, unless and until such extra services and a price therefore have been authorized in writing and approved by the CITY. Such written approval shall set forth the changes of work, extension of time for preparation, and adjustment of the fee to be paid by the CITY to CONSULTANT. No claim for said additional work shall be made unless such additional work has been specifically authorized in writing by the CITY.

**1.3 Specifications.** All specifications, manuals, or standards, either attached to this Agreement or incorporated herein by reference, are deemed to be the version in effect as of the date of this Agreement and are binding as to the performance of the work in this Agreement unless they are changed by written amendment and this Agreement is modified in writing to incorporate such changes. Any changes are subject to CITY approval.

**1.4 Standard of Performance.** CONSULTANT hereby represents and warrants that it has the experience necessary to undertake the services to be provided herein. In light of such status and experience, CONSULTANT hereby covenants that it shall follow customary good professional standards in performing all services required hereunder and shall perform all work in a manner reasonably satisfactory to the CITY. CONSULTANT shall be responsible to ensure that all work performed, including by its employees if any, is performed to the standards set forth in this Agreement and that such work complies with the requirements of appropriate governmental agencies and applicable laws ordinances, codes and regulations of the federal, state and local governments in effect at the time such services are performed.

Notwithstanding any other provision herein, CONSULTANT agrees to perform all work to the satisfaction of the CITY within the time specified. If the CITY reasonably determines that the work is not satisfactory, the CITY shall have the right to take appropriate action, including but not limited to: (i) meeting with CONSULTANT to review the quality of the work and resolve matters of concern; (ii) requiring CONSULTANT to repeat unsatisfactory work at no additional charge until it is satisfactory; (iii) suspending the delivery of work to CONSULTANT for an indefinite time; (iv) withholding payment; and (v) terminating this Agreement as hereinafter set forth.

**1.5 Licenses, Permits, Fees and Assessments.** CONSULTANT shall obtain at its sole cost and expense all licenses, permits, and approvals that may be required by law for the performance of the services required by this Agreement. CONSULTANT shall have the sole obligation to pay any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for CONSULTANT's performance of the services required by this Agreement, and shall indemnify, defend, and hold harmless the CITY against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against the CITY thereunder.

**1.6 Personnel.** CONSULTANT represents that it employs, or will employ, at its own expense, personnel required in performing the services required under this Agreement. All of the services required hereunder will be performed by CONSULTANT and all personnel engaged in the work shall be fully qualified and be authorized or permitted under state and local law to perform such services. This Agreement contemplates the personal services of CONSULTANT and CONSULTANT's employees, and it is recognized by the parties hereto that a substantial inducement to the CITY for entering into this Agreement was, and is, the professional reputation and competence of CONSULTANT and CONSULTANT's employees. Neither this Agreement nor any interest therein may be assigned by CONSULTANT, except upon written consent of the CITY.

**1.7 Prohibition Against Subcontracting or Assignment.** CONSULTANT shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the CITY, and excepting any services identified in Appendix A, Scope of Services, and excepting minor incidental services including, but not limited to couriers and reprographics services. In addition, neither the Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of the CITY. In the event of any unapproved transfer, the CITY may void the Agreement at the CITY's option in its sole and absolute discretion.

## **SECTION TWO: INSURANCE**

**2.1 Insurance.** Without limiting CONSULTANT's indemnification obligations, CONSULTANT shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT, its agents, representatives, employees, and/or subconsultants. In the event that CONSULTANT subcontracts any portion of the work in compliance with this Agreement, the contract between CONSULTANT and such subconsultant shall require the subconsultant to maintain the same policies of insurance that CONSULTANT is required to maintain pursuant to this Section 2.1. If the existing policies do not meet the Insurance Requirements set forth herein, CONSULTANT agrees to amend, supplement or endorse the policies to do so.

**2.1.1 Insurance Coverage Required.** The policies and amounts of insurance required hereunder shall be as follows:

(1) General Liability Insurance. Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations, with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for liability arising out of CONSULTANT's performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage, then the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, then the aggregate shall be double the each occurrence limit.

(2) Automobile Liability Insurance. Automobile Liability Insurance with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage, then the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto."

(3) Workers' Compensation Insurance. Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease. Said insurance shall cover all employees of CONSULTANT providing any service in the performance of this agreement. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement unless CONSULTANT's insurance carrier is the State of California Insurance Fund (SCIF) and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.

Workers' Compensation is not required for sole proprietors or a partnership with no employees. However, for sole proprietors or a partnership, CONSULTANT must complete a "Workers' Compensation Declaration." This form may be obtained from the CITY staff.

(4) Professional Liability Insurance. Professional Liability Insurance with minimum limits of \$1,000,000 each claim. Covered professional services shall include all work performed under this Agreement and delete any exclusion that may potentially affect the work to be performed.

**2.1.2 Evidence of Insurance.** CONSULTANT, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the CITY. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the CITY. If such coverage is cancelled or reduced, CONSULTANT shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the CITY evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

Original, signed insurance certificates and endorsements must be sent via email from CONSULTANT's insurance broker/agent to the CITY.

The CITY project title or description MUST be included in the "Description of Operations" box on the certificate.

Certificate Holder:

City of Laguna Beach, California

## **2.2 Endorsements.**

Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been approved by the City in writing.

**2.2.1** The insurance coverage required by Section 2.1.1 Commercial General Liability shall contain the following provisions or be endorsed to provide the following:

**Additional Insured:** The CITY, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not:

1. Exclude "Contractual Liability;"
2. Restrict coverage to the "Sole" liability of CONSULTANT;
3. Exclude "Third-Party-Over-Actions;" and
4. Contain any other exclusions contrary to the Agreement.

**Primary Insurance:** This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

**2.2.2** The policy or policies of insurance required by Section 2.1.3 Workers' Compensation shall be endorsed as follows:

**Waiver of Subrogation:** A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

**2.2.3** Any deductible in excess of \$50,000 and/or Self-Insured Retentions must be approved in writing by the CITY.

**2.2.4 Acceptable Insurance.** Each policy shall be from a company with current A.M. Best's rating of A VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable

provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the CITY.

**2.2.5 Insurance of Subconsultants.** CONSULTANT shall be responsible for causing subconsultants to maintain the same types and limits of coverage in compliance with this Agreement, including naming the CITY as an additional insured to the subconsultants' policies.

**2.3 Notice of Cancellation.** Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the CITY; except twelve (12) days written notice of cancellation shall be provided for non-payment of premium.

**2.4 Other Insurance.** Such other policies of insurance as may be required in the Special Provisions attached hereto.

**2.5 Contractual Liability.** Notwithstanding any other provision herein, the coverage provided shall also apply to the obligations assumed by CONSULTANT under the indemnity provisions of this Agreement.

**2.6 Claims Made Policies "aka: Tail Coverage."** If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Agreement with the CITY and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least three (3) years from termination or expiration of this Agreement. Upon expiration or termination of coverage of required insurance, CONSULTANT shall procure and submit to the CITY evidence of "tail" coverage or an extended reporting coverage period endorsement for the period of at least three (3) years from the time that all work under this Agreement is completed.

**2.7 Waiver of Subrogation.** Required insurance coverages shall not prohibit CONSULTANT from waiving the right of subrogation prior to a loss. CONSULTANT shall waive all rights of subrogation against the indemnified parties and policies required under this Agreement shall contain or be endorsed to contain such a provision.

**2.8 Failure to Maintain Coverage.** CONSULTANT agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the CITY and provide the CITY written notice of the same within 24 hours of suspending and ceasing all operations. The CITY shall have the right to withhold any payment due CONSULTANT until CONSULTANT has fully complied with the insurance provisions of this Agreement.

In the event that CONSULTANT'S operations are suspended for failure to maintain required insurance coverage, CONSULTANT shall not be entitled to an extension of time for completion of the Work because of production lost during suspension. Failure to maintain the required insurance coverage shall constitute good cause for termination.



### **SECTION THREE: INDEMNIFICATION**

**3.1 Indemnification.** To the full extent allowed by law, CONSULTANT shall indemnify, defend with counsel acceptable to the CITY, and hold harmless the CITY and its officers, officials, employees, agents and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitrations proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, arising out of or in connection with CONSULTANT's performance of the services provided under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of the CITY.

**3.1.1** CONSULTANT's obligation to defend and indemnify shall not be excused because of CONSULTANT's inability to evaluate Liability or because CONSULTANT evaluates Liability and determines that CONSULTANT is not liable to the claimant. CONSULTANT must respond within 30 days to the tender of any claim for defense and indemnity by the CITY, unless this time has been extended by the CITY. If CONSULTANT fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due CONSULTANT under and by virtue of this Agreement as shall reasonably be considered necessary by the CITY, may be retained by the CITY until disposition has been made of the claim or suit for damages, or until CONSULTANT accepts or rejects the tender of defense, whichever occurs first.

**3.1.2** With respect to third party claims against CONSULTANT, CONSULTANT waives any and all rights of any type to express or implied indemnity against the Indemnitees.

**3.1.3** Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2783, as may be amended from time to time, such duties of CONSULTANT to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

**3.1.4** Notwithstanding the foregoing, to the extent that this Agreement includes design professional services under Civil Code Section 2782.8, as may be amended from time to time, such duties of CONSULTANT to indemnify shall only be to the full extent permitted by Civil Code Section 2782.8.

**3.1.5** If any term of portion of this Section 2.9 is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, said section shall be interpreted to allow the broadest indemnity permitted by law.

### **SECTION FOUR: LEGAL RELATIONS AND RESPONSIBILITIES**

**4.1 Independent Consultant.** It is expressly understood that in the performance of the services under the Agreement, CONSULTANT shall be, and is, an independent CONSULTANT, and is not an agent or employee of the CITY. The CITY shall not in any way or for any purpose become or be deemed to be a partner of CONSULTANT in its business or otherwise, or a joint venturer, or a member of any joint enterprise with CONSULTANT.

CONSULTANT shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of the CITY. CONSULTANT has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting CONSULTANT in the performance of required services. CONSULTANT shall be solely responsible and hold the CITY harmless for all matters relating to the payment of CONSULTANT's employees, including compliance with Social Security withholdings and all other regulations governing such matters. Neither CONSULTANT nor any of CONSULTANT's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement or other fringe benefits from the CITY; and neither the CITY nor any of its employees shall be paid by the CITY time and one-half for working in excess of forty (40) hours in any one week. Neither CONSULTANT nor any of CONSULTANT's employees shall be included in the competitive service, have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

**4.2 Non-Discrimination and Equal Employment Opportunity.** During its performance under this Agreement, CONSULTANT agrees as follows:

**4.2.1 Equal Employment Opportunity.** In connection with its performance under this Agreement, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, sexual orientation, AIDS or AIDS-related symptoms (including HIV positive findings), physical disability, mental disability, mental condition, family care leave, sexual orientation, ancestry or national origin. Actions encompassed by this prohibition shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment, or recruitment advertising; layoff or termination; rate of pay, or other forms of compensation; and selection for training, including apprenticeship.

**4.2.2 Sanctions for Noncompliance.** In the event of CONSULTANT's noncompliance with the non-discrimination provisions of this Agreement, CONSULTANT agrees that the CITY shall be authorized to impose such sanctions or penalties as the CITY may determine to be appropriate, including, but not limited to 1) withholding of payments to CONSULTANT hereunder until CONSULTANT complies with all applicable requirements and obligations, and/or 2) cancellation, termination or suspension of the Agreement, in whole or in part.

**4.3 Proprietary Information.** No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of CONSULTANT. All proprietary information developed specifically for the CITY by CONSULTANT in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual material or software programs, but not including CONSULTANT's underlying materials, software, or know-how, shall be the sole and exclusive property of the CITY, and are confidential and shall not be made available to any person or entity without the prior written approval of the CITY. CONSULTANT agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from the performance of CONSULTANT's services under this Agreement. CONSULTANT further understands and agrees that full disclosure of all proprietary information developed in connection with, or resulting from, the performances of services by

CONSULTANT under this Agreement shall be made to the CITY, and that CONSULTANT shall do all things necessary and proper to perfect and maintain ownership of such proprietary information by the CITY. Notwithstanding the above, all computer financial models including without limitation compilations of formulas and spreadsheet models used or developed by the Consultant in performing its work are proprietary and shall remain property owned solely by the Consultant.

**4.4 Use of Patented Materials.** CONSULTANT shall assume all costs arising from the use of patented or copyrighted materials, including but not limited to equipment, devices, processes, and software programs, used or incorporated in the services or work performed by CONSULTANT under this Agreement. CONSULTANT shall indemnify, defend, and save the CITY harmless from any and all suits, actions, or proceedings of every nature for or on account of the use of any patented or copyrighted materials.

**4.5 Retention of Funds.** CONSULTANT hereby authorizes the CITY to deduct from any amount payable to CONSULTANT (where arising out of the Agreement or otherwise) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate the CITY for any losses, costs, liabilities or damages suffered by the CITY, and all amounts for which the CITY may be liable to third parties, by reason of CONSULTANT's negligent acts, errors, or omissions, or willful misconduct in performing or failing to perform CONSULTANT's obligations under this Agreement. The CITY in its sole and absolute discretion, may withhold from any payment due to CONSULTANT, without liability for interest, an amount sufficient to cover such claim or any lien. The failure of the CITY to exercise such right to deduct or withhold shall not act as a waiver of CONSULTANT's obligation to pay the CITY any sums CONSULTANT owes the CITY.

**4.6 Termination for Convenience of the CITY.** The CITY may terminate this Agreement at any time by giving written notice of CONSULTANT of such termination. In that event, all finished or unfinished documents and other materials shall, at the option of the CITY, become the CITY's property. If this Agreement is terminated by the CITY as provided herein, then CONSULTANT will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of CONSULTANT covered by this Agreement, less payments of compensation previously made.

**4.7 Termination of Agreement for Cause.** In addition to the CITY's rights under Section 3.6, the CITY may, subject to the provisions of Paragraph 3.7.2, by written notice to CONSULTANT, terminate the whole or any part of this Agreement in any of the following circumstances: (1) if CONSULTANT fails to perform the services called for by this Agreement within the time(s) specified herein or any extension thereof; or (2) if CONSULTANT fails to perform the services called for by this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two circumstances does not correct such failure within a period of ten (10) days (or such longer period as the CITY may authorize in writing) after receipt of notice from the CITY specifying such failure.

**4.7.1** In the event the CITY terminates this Agreement in whole or in part as provided in this section, the CITY may procure, upon such terms and such manner as it may determine appropriate, services similar to those described in this Agreement.

**4.7.2** Except with respect to defaults of subconsultants, CONSULTANT shall not be liable for any excess costs if the failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of CONSULTANT. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes and unusually severe weather; but in every case, the failure to perform must be beyond the control of, and without the fault or negligence of CONSULTANT.

**4.7.3** Upon receipt of notice of termination from the CITY, CONSULTANT shall immediately stop its services, unless otherwise directed, and deliver to the CITY all data, drawing, reports, estimates, summaries and such other information and materials as may have been accumulated by CONSULTANT in the performance of this Agreement, whether completed or in process. Upon termination, CONSULTANT shall be paid the value of the work performed, less payments of compensation previously made.

**4.8 Waiver.** No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing.

**4.9 Legal Actions.** Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted or maintained in the Municipal and Superior Courts of the State of California in the County of Orange, or in any other appropriate court with jurisdiction in such County, and CONSULTANT agrees to submit to the personal jurisdiction of the court. If any claims related to the performance hereunder be asserted against either party hereto, then the party claimed against shall receive reasonable assistance from the other.

**4.10 Rights and Remedies are Cumulative.** The rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any rights or remedies for the same default or any other default by the other party.

**4.11 Attorneys' Fees.** In any action between the parties hereto seeking enforcement of any of the terms of provisions of this Agreement or in connection with the performance of the work hereunder, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to have and recover from the other party its reasonable costs and expenses, including, but not limited to, reasonable attorneys' fees, expert witness fees and courts costs. If either party to this Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Agreement by the other party, then the party so litigating shall be entitled to its reasonable attorneys' fees and costs from the other party to this Agreement.

**4.12 Jurisdiction.** This Agreement shall be interpreted in accordance with the statutes and laws of the State of California, the City of Laguna Beach and any other government agency applicable to the subject of this Agreement and the performance hereunder.

**4.13 Non-liability of City Officers and Employees.** No officer, official, employee, agent, representative, or volunteer of the CITY shall be personally liable to CONSULTANT, or any successor in interest, in the event of any default or breach by the CITY, or for any amount which may become due to the CITY or its successor, or for breach of any obligation of terms of this Agreement.

**4.14 Extension of Time for Delay.**

**4.14.1** If the work is delayed at any time by reason of a suspension ordered by the CITY or because of any other act of the CITY, or because of neglect by the CITY without contributory fault or neglect on the part of CONSULTANT, or if the work should be delayed at any time by reason of strikes, acts of God, the public enemy, acts of the CITY, fire, floods, epidemics, quarantine restrictions, freight embargoes, abnormal force, violence of the elements, or for any other unforeseen cause beyond the control and without the fault or negligence of CONSULTANT, or for any other reason which in the opinion of CONSULTANT is proper justification for such delay, then CONSULTANT shall be entitled to an extension of time equivalent to the time actually lost by such delay.

**4.14.2** CONSULTANT shall file a written request with the CITY for extension of time within ten (10) days following the beginning of such delay, and failure to do so shall constitute a waiver thereof, provided that in case of a continuing cause of delay, only one claim will be necessary. The CITY shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the CITY such delay is justified. The CITY's determination shall be in writing and be final and conclusive upon the parties to this Agreement.

**4.14.3** A request for an extension of time or the granting of an extension of time shall not constitute a basis for any claim against the CITY for additional compensation. CONSULTANT shall be deemed to have waived any claims for additional compensation and does hereby so waive any such claims unless he shall, at the time of filing a request for an extension of time, likewise file a claim for additional compensation on account of such delay.

**4.15 Interests of Members of the CITY and Others.** To the extent prohibited by applicable law, no officer, member or employee of the CITY and no member of its governing body nor other public official of the governing body of the locality or localities in which the work pursuant to this Agreement is being carried out, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the aforesaid work, shall (1) participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she has, directly or indirectly, any interest; or (2) have any interest, direct or indirect, in this Agreement or the proceeds thereof during his or her tenure or for one year thereafter.

**4.16 Interest of CONSULTANT.** CONSULTANT hereby covenants that it has, at the time of the execution of this Agreement, no interest, and that it shall not acquire any interest in the future, direct or indirect which would conflict in any manner or degree or be inconsistent with the performance of services required to be performed pursuant to this Agreement. CONSULTANT further covenants that in the performance of this work no person having any such interest shall be employed.

**4.17 Covenant Against Contingent Fees.** CONSULTANT warrants that it has not employed or retained any company or person to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the making of this Agreement. In the event of a breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the compensation or consideration due CONSULTANT, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts or contingent fee.

**4.18 Compliance with California Unemployment Insurance Code Section 1088.8.** If CONSULTANT is a Sole Proprietor, then prior to signing the Agreement, CONSULTANT shall provide to the CITY a completed and signed form W-9, Request for Taxpayer Identification Number and Certification. CONSULTANT understands that pursuant to California Unemployment Insurance Code Section 1088.8, the CITY will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

## **SECTION FIVE: MISCELLANEOUS PROVISIONS**

**5.1 Records and Audits.** CONSULTANT shall maintain complete and accurate records with respect to services performed (including, but not limited to, the identity of the person doing the work, a description by date and person of the work performed, and the amount of time expended on such work) and costs incurred under this Agreement. CONSULTANT shall also maintain its records supporting its cost proposals used and relied on to enter into this Agreement. CONSULTANT shall maintain records to show actual time and allowable costs with respect to each task set forth in the "Scopes of Services." All such records shall be maintained on a generally accepted accounting basis and shall be clearly identifiable. CONSULTANT shall submit to the CITY such progress reports and final reports in the manner and time set forth in Appendix B attached hereto and by reference incorporated herein. The final report and CONSULTANT's work product shall become the property of the CITY. All records required to be maintained hereunder shall be maintained by CONSULTANT for a period of five (5) years.

**5.2 Access to Records.** The CITY shall have access, upon reasonable notice, to the books and records of CONSULTANT related to CONSULTANT's performance of this Agreement in the event any audit is required. CONSULTANT shall allow inspection of all work data, documents, proceedings and activities related to the Agreement, and CONSULTANT's performance hereunder, for a period of one (1) year from the date of final payment under this Agreement.

**5.3 Ownership of Records.** All drawings, original documents, methodological explanations, computer programs, designs and reports and other materials prepared by CONSULTANT in this performance of this Agreement (i) shall be the property of the CITY and shall be delivered at no cost to the CITY upon request of the CITY or upon the termination of this Agreement in accordance with accepted standards relating to public contracts, and (ii) are confidential and shall not be made available to any individual or entity without prior written approval of the CITY. Any additional copies will be the responsibility of the CITY.

**5.4 Notices.** Unless otherwise provided herein, any notices required to be given under the Agreement shall be in writing with copies as directed herein and shall be personally delivered, or delivered by United States mail, prepaid, certified, return receipt requested, or by reputable document delivery service that provides a receipt showing date and time of delivery. Notices personally delivered or delivered by a mail document delivery service shall be effective upon receipt. Any notice given by mail shall be deemed to have been given when deposited in the United States mails certified and postage prepaid, addressed to the party to be served as follows:

**To CITY: City of Laguna Beach**

Attn: Wade Brown, Undergrounding Program Manager

505 Forest Avenue

Laguna Beach, CA 92651

Notices to CONSULTANT shall be delivered to the address set forth below CONSULTANT's signature on Part I of this Agreement. Changes in the address to be used for receipt of notices shall be effected in accordance with this Section 4.4.

**5.5 Severability.** Each provision of this Agreement shall be severable from the whole. If any provision of this Agreement shall be found contrary to law, then the remainder of this Agreement shall continue in full force.

**5.6 Authority.** The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

**5.7 Construction and Amendment.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The headings of sections and paragraphs of this Agreement are for convenience or reference only, and shall not be construed to limit or extend the meaning of the terms, covenants and conditions of this Agreement. This Agreement may only be amended by the mutual consent of the parties by an instrument in writing.

**5.8 Extent of Agreement.** This Agreement represents the entire integrated agreement between the CITY and CONSULTANT and supersedes all prior negotiations, representations of agreements, either written or oral. This Agreement may not be modified or amended except by a writing signed by both the CITY and CONSULTANT.

**5.9 Special Provisions.** Any additional or supplementary provisions or modifications or alterations of these General Provisions shall be set forth in Part III of this Agreement ("Special Provisions").

**5.10 Precedence.** In the event of any discrepancy between Part I (“Fundamental Terms”) and Part II (“General Provisions”), Part II shall take precedence and prevail over Part I. Part III shall take precedence and prevail over Part I and Part II.

**5.11 Compliance with Laws.** CONSULTANT warrants and represents to CITY that it shall comply with all applicable statutes, standards, rules, and regulation required by Federal, State, and local agencies, including compliance with CAL/OSHA requirements as may be applicable.



## **APPENDIX A**

### SCOPE OF SERVICES

(See Attached)

## SPECIAL TAX CONSULTING SERVICES

### CITY OF LAGUNA BEACH

#### SCOPE OF SERVICES AND FEE PROPOSAL

November 27, 2017

Public Finance  
Public Private Partnerships  
Urban Economics  
Clean Energy Bonds

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Newport Beach  
San Francisco  
San Jose  
Riverside

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## INTRODUCTION TO DTA

David Taussig and Associates, Inc. ("DTA") is a public finance, urban economics, and clean energy bond consulting firm specializing in public-private partnerships and infrastructure and public services finance. Our firm, which provides public finance consulting services to both public and private sector clients, has offices in Newport Beach, San Francisco, San Jose, and Riverside, California. Additional information on DTA is available on our website ([www.taussig.com](http://www.taussig.com)).

Since its establishment in 1985, DTA has completed consulting assignments for over 2,500 clients in 10 states. During this period, the firm has been involved in the formation of over 1,500 public finance districts, with total bond authorizations exceeding \$60 billion. Our financing programs have utilized a variety of public financing mechanisms such as Assessment Districts ("ADs"), Community Facilities Districts ("CFDs"), Certificates of Participation, Tax Allocation Bonds, Sewer and Water Revenue Bonds, Marks-Roos Bond Pools, Landscaping and Lighting Districts ("LLDs"), Integrated Financing Districts, and various types of fee programs. To-date, DTA has worked on the establishment of over 1,000 CFDs throughout California.

DTA has developed a Statewide reputation based on its specialized expertise in the design and administration of public finance programs to fund infrastructure and public services, including the issuance of many types of municipal debt. However, in addition to the planning and implementation of public financing mechanisms, DTA is involved in the fiscal and economic analysis of land development impacts, project feasibility studies, retail market analyses, and economic development studies. DTA staff has prepared over 650 fiscal impact reports ("FIRs") estimating the revenue and cost impacts of various land use decisions on cities, counties, and special districts. Our firm is also highly experienced in grant writing for federal and State grant and tax credit programs. All of these capabilities are frequently combined with our infrastructure finance consulting services to develop public infrastructure and services financing strategies and plans.

DTA's consulting services include:

- Special Tax and Assessment Engineering
- Public Infrastructure and Public Services Financing Strategies, Public Private Partnerships
- Fiscal and Economic Impact Analyses
- Clean Energy Bonds
- Federal and State Grant and Loan Applications and Tax Credit Programs

DTA has a staff of 50 employees, all of whom are directly involved solely in public finance. Staff members come from backgrounds in several fields, including land development, public administration, civil engineering, investment banking, economic consulting, redevelopment, law, and land-use planning. This diversity of experience and expertise allows DTA to meet a wide-variety of challenges, both related to the actual work-product and to client-management. All of DTA's personnel have considerable experience in computer-based financial analysis and modeling, which is a key component of the firm's consulting services. This ensures that the review and development of computer models will be in experienced hands.

## DTA TEAM FOR SPECIAL TAX CONSULTING SERVICES

DTA has assembled a project team to provide special tax consulting services to the City of Laguna (the "City") with the breadth of experience needed to provide these services in a professional and timely manner. Ms. Andrea Roess, Managing Director, would be Principal-in-Charge and would handle quality control on the project, manage the project and would be the City's primary point of daily contact throughout DTA's involvement. Ms. Roess will be assisted by Nate Perez, DTA's in-House Counsel, Nehal Thumar, Vice President, Diego DeLeon, Senior Associate, and other support staff. In addition, Mr. David Taussig will be available during our engagement to provide input and expertise.

Brief resumes for these senior team members are provided on the following pages.



■ **DAVID TAUSSIG**  
**PRESIDENT**

**PROFESSIONAL EXPERIENCE**

Mr. Taussig has nearly 40 years of experience in the fields of real estate finance and urban economics. His areas of expertise include municipal finance programs for infrastructure and public facilities development, fiscal and redevelopment impact analysis, and land development project feasibility studies.

Mr. Taussig has an extensive background in computerized financial analysis. Since founding DTA in 1985, Mr. Taussig has developed several state-of-the-art analytical methods and modeling approaches, and directed the formation of over 1,000 public financing Districts and the subsequent sale of tax-exempt municipal bonds. These Districts have funded public infrastructure and services for many types of residential and non-residential development, and have included several hundred master planned communities built throughout California, and in several other western states. Mr. Taussig's work has involved both the preparation and implementation of financing plans, and his public-sector clients have included virtually every major urban county and city within California, and hundreds of special districts. He has provided similar consulting services to many of the largest land development firms in the State. The financing programs implemented by Mr. Taussig have ranged from land-secured Community Facilities Districts and Assessment Districts to redevelopment tax-increment programs and lease revenue-based Certificates of Participation. He is also responsible for DTA's successful efforts related to funding opportunities through federal and State grant programs and various tax credit programs.

Mr. Taussig has also overseen the preparation of numerous feasibility and impact studies involving the computerized analysis of project cash-flows and/or impacts on public agencies and landowners. This has included several hundred fiscal impact analyses that have evaluated the municipal revenues generated by a land development project as compared with the costs to a municipality of providing public services to that project. In addition, Mr. Taussig has established and implemented development impact fee programs and affordable housing programs for numerous public agencies.

Prior to establishing his own firm, Mr. Taussig was Director of Finance for Gfeller Development Company, where he handled all take-out and construction financing for the Company's residential projects and infrastructure.

He also prepared development project proformas that were used by prospective lenders and joint venture partners to evaluate the Company's proposed projects.

Mr. Taussig was previously employed for six years by Mission Viejo Company ("MVC") where, as Manager of Housing and Community Development, he was involved in the planning and financing of two planned communities encompassing over 50,000 homes. These planned communities are now the cities of Mission Viejo and Aliso Viejo in Orange County, California. Mr. Taussig handled a substantial portion of MVC's mortgage financing and infrastructure financing during that period. He also worked for five years in the public sector as the administrator of a federal housing and community development program, and as a land-use planner. Mr. Taussig's educational background includes a Masters in City Planning from the University of California at Berkeley and a B.A. in Economics from Cornell University. He has qualified for full member status with the American Institute of Certified Planners, and is an active member of the Urban Land Institute's national Public Private Partnership Council.



**TECHNICAL EXPERTISE**

- Development Impact Fee Studies
- Special District Formation
- Special District Annual Administration
- Fiscal Impact Reports
- Financial Modeling

**CREDENTIALS**

- MBA, University of California, Berkeley, City Planning
- BA, Cornell University, Economics
- Municipal Advisor Representative - Passed Series 50 Exam in 2017



■ **ANDREA ROESS**  
**MANAGING DIRECTOR**

**PROFESSIONAL EXPERIENCE**

Ms. Roess has a background in finance and public policy analysis. Since joining DTA in 1992, Ms. Roess has participated in all aspects of the formation and implementation of special finance districts to fund infrastructure and services. She has managed the formation of more than 300 land-secured financing districts, including several PACE programs. She also has expertise in the preparation of rate and fee studies, fiscal consultant reports, and fiscal impact reports. In addition, Ms. Roess established and manages DTA's water and sewer practice and is a leader in the development of PACE Programs.

Ms. Roess has utilized her computer skills to develop numerous state-of-the-art computer models that evaluate cash flows related to funding infrastructure and public services. This ability has enabled her to develop sophisticated bond structuring concepts for Community Facilities Districts and Assessment Districts, as well as complex fiscal impact and fee impact models. She has also prepared hundreds of Rates and Methods of Apportionment for ADs, and been involved in the development of escrow release formulas and bond pool financing structures. In addition, Ms. Roess has experience in the preparation of public facilities financing plans, water/sewer revenue bond analyses and tax increment analyses. She is also the project manager in charge of the annual special tax administration for more than 120 financing districts throughout California, Hawaii, and Nevada.

Ms. Roess holds an M.B.A. degree with a concentration in finance from San Francisco State University, and a B.A. in psychology/public policy analysis from Pomona College. Ms. Roess is also active in industry groups including Women in Public Finance, Coalition of Adequate School Housing, California Society of Municipal Finance Officers, and many others.



**TECHNICAL EXPERTISE**

- Development Impact Fee Studies
- Special District Formation
- Special District Annual Administration
- Fiscal Impact Reports
- Financial Modeling

**CREDENTIALS**

- MBA, San Francisco State University, Concentration in Finance
- BA, Pomona College, Psychology/Public Policy Analysis
- Municipal Advisor Representative - Passed Series 50 Exam in 2017

■ **NATHAN PEREZ, Esq.**  
**IN-HOUSE COUNSEL**

**PROFESSIONAL EXPERIENCE**

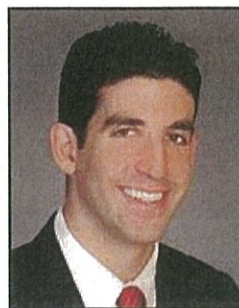
Mr. Perez has a background in law, economics, business administration, and statistical analysis. Since joining DTA, Mr. Perez has been involved in all aspects of the formation and implementation of numerous Mello-Roos Community Facilities Districts located throughout California, with responsibilities related to the development of tax spread proforma analyses and the preparation of rate and method of apportionments, various Public Reports, and overlapping debt analyses.

Mr. Perez also has significant expertise in the preparation of development impact fee studies, routinely working in the role of Project Manager for both new studies and updates. This includes considerable work related to the preparation of facilities needs lists and the apportionment of infrastructure and services costs to a variety of land uses based on benefit criteria. He has also specialized in the apportionment of costs and the setting of service levels for the construction and maintenance of law enforcement and fire protection facilities, open space acquisition, parkland, transportation facilities, drainage facilities, government services facilities, community centers, and library facilities. Furthermore, he has also completed nearly 60 fiscal impact reports and 45 economic development analyses for a variety of residential, commercial, and mixed-use developments throughout California.

Finally, his experience as an attorney has allowed Mr. Perez to effectively and efficiently evaluate dozens of state and Federal legal, regulatory, and administrative frameworks related to public finance and infrastructure development.

Prior to joining DTA, Mr. Perez worked for the Boston office of an international law firm, where he advised sponsors, managers, and investors on the tax aspects of fund formation and investment. Mr. Perez is admitted to the bar in both Massachusetts and California. Mr. Perez received his law degree from Harvard Law School, and his B.A. in Economics and History, with highest distinction, from the University of North Carolina at Chapel Hill.

Mr. Perez is an active member of the Urban Land Institute, the California Bar Association, and the Hispanic National Bar Association.



**TECHNICAL EXPERTISE**

- CFD/AD Formation
- CFD/AD Annual Administration
- Fiscal Impact Analyses
- Financial Modeling
- Rate and Fee Studies

**CREDENTIALS**

- Law Degree, Harvard Law
- BA, University of North Carolina, Economics/History
- Municipal Advisor Representative - Passed Series 50 Exam in 2017



■ **NEHAL THUMAR**  
**VICE PRESIDENT**

**PROFESSIONAL EXPERIENCE**

Mr. Thumar has a background in economics and finance. Since joining DTA in 2000, Mr. Thumar has been involved in all aspects of formation and implementation of numerous Mello-Roos Community Facilities Districts located throughout California. Mr. Thumar's responsibilities related to these CFDs have included the preparation of tax spread proforma analyses, as well as the preparation of rate and method of apportionments, Public Reports, and overlapping debt analyses. In addition, he has managed the annual administration of over twenty-five CFDs in Southern California, and has prepared due diligence, tax projections and disclosure reports related to land-secured bond issuances for numerous clients in California, Nevada, and Arizona. Mr. Thumar has also prepared consultant reports and tax increment models for numerous redevelopment areas as well as fiscal impact reports for various public agency clients. Mr. Thumar has also worked on the preparation of development impact fee justification studies. His work during the impact fee justification and apportionment analysis process has included the preparation of capital improvement and public facilities needs lists, fee model development, report writing, data collection, interfacing with staff, and key stakeholders.



**TECHNICAL EXPERTISE**

- Special Districts Formation
- Special Districts Annual Administration
- Rate and Fee Studies
- Fiscal Impact Analyses
- Financial Modeling

**CREDENTIALS**

- MBA, USC, Finance, 2006
- BS, USC, Economics, 2000
- Municipal Advisor Representative - Passed Series 50 Exam in 2017

■ **DIEGO DELEON**  
**SENIOR ASSOCIATE**

## **PROFESSIONAL EXPERIENCE**

Mr. De Leon has a background in economics and accounting. Mr. De Leon joined DTA in the summer of 2015 and has since assisted in the formation and administration of over 10 Community Facilities Districts and Assessment Districts within California. Mr. De Leon has been responsible for conducting due diligence, performing overlapping debt and value-to-lien analyses, researching parcel development, delinquency data collection and analysis, and reviewing account statements. Additionally, his annual administrative duties have involved the preparation of numerous administrative reports and disclosure reports pertaining to land-secured bond issuances. With respect to formation, Mr. De Leon has experience in the preparation of tax spread proforma analyses, as well as rate and method of apportionments, CFD Reports, and overlapping debt analyses.

Mr. De Leon received his Bachelor of Arts degree in Economics, with a minor in Accounting, in 2015 from the University of California, Irvine.

## **TECHNICAL EXPERTISE**

- Special Districts Annual Administration
- Special Districts Formation
- Financial Modeling
- Economic Analysis

## **CREDENTIALS**

- BA, University of California, Irvine

## EXHIBIT A - SCOPE OF SERVICES

### Bond Consulting Services

#### *City of Laguna Beach*

#### PHASE 1 - GENERAL OBLIGATION ("GO") BOND ELECTION AND BOND SALE

David Taussig & Associates, Inc. ("DTA") will provide consulting services to assist the City with a general obligation ("GO") bond election and bond sale. The GO Bond is expected to fund improvements for roughly ten evacuation routes, including the Laguna Canyon corridor. DTA will perform the following tasks:

1. Obtain current and historical Assessor's data from County of Orange to determine the secure and unsecured assessed value, and the unitary value, within the boundaries of the City.
2. Using historical growth rates, project annual assessed valuation growth for City for bond sizing and establishment of *ad valorem* tax rates.
3. Prepare Financing Plan for the City that specifies:
  - City of Laguna Beach current tax base and projected growth;
  - Estimated bond amounts, construction proceeds, and issuance dates;
  - Estimated average and highest annual tax rates for three (3) financing alternatives (level debt service/descending tax rates with series bonds, increasing debt service/level tax rates with series bonds, and increasing debt service/level tax rates with one upfront bond issue);
  - Verification of bond issuance capacity based on statutory requirements.
4. Prepare the Tax Rate Statement for use by Registrar of Voters as part of the election materials. Assist in preparation of other election materials.
5. Attend up to two (2) meetings to present Financing Plan and Tax Rate Statement.
6. Prepare a detailed analysis of Assessor's data for property within the City, including: breakdown of number of residential units by assessed value ranges, summary of assessed value and number of parcels by land use types, and projections of top tax-payers.
7. Prepare schedule for GO bond election and sale.
8. Prepare tax rate and other information and graphics for election campaign. Make presentations at up to two (2) information workshops for voters.
9. Assist with preparation of required legal documents (e.g., bonding capacity certificates), and tables for Official Statement.

10. Assist Underwriter in structuring of bond issues (i.e., use of serial and capital appreciation bonds) to establish an optimal schedule of bond sales to maximize funding capacity and minimize tax rates
11. Attend up to two (2) additional meetings with City staff, City Council, financing team members, and other interested parties.
12. Provide verbal consulting services and advice to regarding GO financing during the period in which Steps 1-11 are being completed.

## **PHASE 2 –CFD FORMATION AND BOND SALE**

DTA shall provide special tax consulting services to assist the City in the formation of a Community Facilities District (“CFD”). The CFD is expected to fund improvements related to the undergrounding of utilities in certain neighborhoods. It is our understanding that the CFD will encompass a majority of the City and will be based on a registered voter election requiring a positive 2/3 vote.

DTA shall perform the following tasks for the formation of the CFD:

### **Task 1. Kickoff Meeting**

DTA staff will meet with City staff in a kick-off meeting to finalize the details of the project, deliverables, timetables, and tasks, discuss the special tax methodologies and best practices, identify needed information (i.e., reports, project/needs lists, stakeholder groups, data, etc.), prepare final schedule, discuss the public process, and resolve other concerns.

### **Task 2. Refine Background Research**

Refine previously developed planning, development information, and financial information provided by City staff and project proponent(s). Assist City in determining CFD-eligible facilities and services, if any, and the cost of such services to be funded through CFD.

### **Task 3. Registered Voter Research**

DTA shall request from the County Registrar of Voters, the applicable registered voter roll. DTA shall compile such data and present findings to City. Such analysis will include a summary of voters based on location of voters or other criteria, as needed.

### **Task 4. Tax Spread Analysis**

DTA shall rely on data provided by the County Assessor which will be used to prepare cash flow models to estimate CFD revenues and expenses, as necessary. Determine the special tax rates required to fund desired public facilities and services. Estimate effective total property tax rates. This task includes the preparation of up to ten (10) Tax Spreads, utilizing various absorptions and cost assumptions.

DTA shall rely on data provided by the County Assessor, and shall not be responsible for verifying its accuracy.

Task 5. Overlapping Debt Analysis

Utilizing information obtained from the City, DTA shall prepare sample tax bills and overlapping debt estimates to assist in identifying the projected tax burden on homeowners and non-residential landowners for each land use type.

Task 6. Rate and Method of Apportionment of Special Tax (the Special Tax Formula)

Prepare Rate and Method of Apportionment of Special Tax (the "RMA"). The RMA will document the special tax formula, maximum special tax rates, classification of property for purposes of the annual levy, etc. The RMA will be designed to adapt to changes in land use, densities, and absorption. DTA will also evaluate the need for improvement areas or zones and if required, develop a separate RMA for each improvement area or zone.

Task 7. Document Review and Preparation

Assist CFD Formation Counsel (if contracted) with the preparation of required documents, including the Resolution of Intention, Resolution of Formation, tables for the Official Statement, and related items, and with the administration of the CFD property owner election. Also, provide necessary data and advice to CFD Formation Counsel regarding implementing the CFD, including policies that address future annexations, parity bonds tests, and the formation of an advisory board to make decisions regarding the issuance of parity bonds.

Request from the County Registrar of Voters confirmation of registered voters' status residing in the boundaries of the CFD prior to the adoption of the Resolution of Formation (Government Code Section §53322).

Task 8A. Boundary Map (Determine CFD Boundaries)

Based on data provided by the City and/or its consultants, DTA will determine which parcels should be included within the CFD boundary. DTA may be required to conduct on-site research to determine a parcel's status (i.e., undergrounding needed for utilities). Based on the results of this research, DTA will compile the information needed for the preparation of the boundary map as described in Task 8B below.

Task 8B. Boundary Map (Preparation)

This task entails the preparation of the CFD boundary map under the Mello-Roos Act and the County Recorder's Office. DTA may also require computerized base maps provided by the City, if available. The boundary map will describe the property to be subject to the special tax. When finalized, and as requested, DTA will prepare mylar and black line originals of the boundary map and coordinate execution of the signature blocks and recordation.

Task 9. Public Report

Prepare the public report which shall contain a description and estimated cost of the proposed public services to be financed by the CFD and related costs and incidental expenses, an explanation of the special tax apportionment methodology, and projections of special taxes for each year of the levy. Ten (10) copies shall be furnished for the City's use.

Task 10. City Mailing of Notices (Optional)

If requested by Client, DTA will prepare a mailing of notices to all registered voters in the City which will include the information required under the Right to Vote Act, and a ballot which can

be returned to the City by the registered voter. The mailing will be completed no less than 45 days prior to the public hearing.

Task 11. Ballot Tabulation & Election Certification (Optional)

If requested by Client, DTA will tabulate ballots returned to the City by registered voters and prepare a certificate as to the results of the balloting.

Task 12. Notice of Special Tax Lien

Provide a list of Assessor's Parcels to be attached to the Notice of Special Tax Lien and coordinate its recordation with the County, under the Streets & Highway Code §3114.5.

Task 13. Bond Sizing

Assist Underwriter in sizing of bond issue (e.g., use of increasing debt service, capitalized interest, etc.) to establish an optimal schedule of bond sales to maximize funding capacity and generate the greatest possible benefit to all interested parties, as well as to alleviate cash flow constraints.

Task 14. Special Tax Consultant Certificate

DTA shall prepare and execute a Special Tax Consultant Certificate confirming the adequacy of special taxes to meet debt service requirements for bond issue.

Task 15. Bond Issue Document Review and Preparation

Prepare tables for the Official Statement, and related items. Also, provide necessary data and advice to Bond Counsel regarding bond sizing, including parity bonds tests and the formation of an advisory board to make decisions regarding the issuance of parity bonds.

Task 16. Meetings/Hearings/Workshops

Attend meetings to present and discuss the CFD pro forma, the Rate and Method of Apportionment, and Public Report. If requested, DTA will also attend the City Council meetings at which the Resolution of Intention and the Resolution of Formation are adopted. This task includes attendance at up to three (3) meetings or hearings, including the Kick-Off Meeting.

Task 17. General and Technical Assistance

Answer questions and provide technical advice to City and financing team.

Task 18. Public Outreach (Optional)

DTA will assist the City and/or its consultants with any public outreach efforts.

## **EXHIBIT B – FEE SCHEDULE**

### **Special Tax Consulting Services**

#### ***City of Laguna Beach***

#### **PHASE 1: GO BOND SALE**

David Taussig & Associates, Inc.'s ("DTA") proposed budget for services, excluding expenses, for assisting the City of Laguna Beach (the "City") with a general obligation ("GO") bond election and bond sale would be as follows.

**Table 1 – Phase 1 - Proposed Budget**

<b>Tasks</b>	<b>Outcome</b>	<b>DTA Proposed Fee Schedule</b>
Tasks 1 – 8, 12	Unsuccessful GO Bond Measure	Time and materials at Hourly Rates in Table 2 not to exceed \$25,000 (plus out of pocket expenses)
Tasks 1 – 12	Sale of GO Bonds	Time and materials at Hourly Rates in Table 2 not to exceed \$40,000 (plus out of pocket expenses)

DTA would be remunerated for services rendered based on the hourly rates listed below, with invoices being submitted to the City monthly.

**Table 2 – Hourly Rates**

<b>David Taussig &amp; Associates, Inc. Fiscal Year 2017-18 Fee Schedule</b>	
President	\$255/Hour
Managing Director	\$235/Hour
Vice President	\$210/Hour
Senior Associate	\$175/Hour
Associate	\$150/Hour
Senior Analyst	\$125/Hour
Research Assistant	\$100/Hour

All fees for services apply for a 12 month period from execution of an Agreement for Consulting Services or commencement of work, whichever occurs first, and are subject to a cost-of-living increase every 12 months.

In addition to fees for services, the City will reimburse DTA for travel, photocopying, courier, facsimile, clerical, telephone expenses, data services, materials, and other out-of-pocket expenses and administrative charges, not to exceed \$2,000

## **PHASE 2: CFD FORMATION AND BOND SALE**

David Taussig & Associates, Inc.'s ("DTA") proposed budget for services, excluding expenses, for assisting the City with formation of a CFD would be as follows:

Tasks	Outcome	DTA Proposed Fee Schedule
Tasks 1 – 9, 13, 16 - 18	Unsuccessful CFD Bond Measure	Time & Materials at Hourly Rates in Table 2 not to Exceed \$42,500 (plus out of pocket expenses)
Tasks 1 – 9, 12 - 18	Sale of CFD Bonds	Time & Materials at Hourly Rates in Table 2 not to Exceed \$57,500 (plus out of pocket expenses)
Tasks 10 & 11 (Optional)	NA	TBD
Task 18	NA	TBD

In addition to fees for services, the City will reimburse DTA for travel, photocopying, courier, facsimile, clerical, telephone expenses, data services, materials, and other out-of-pocket expenses and administrative charges, not to exceed \$2,500.

## **Limitations**

Services besides those identified in the Scope of Services may be provided within the maximum fee if the actual fee required to complete the work is less than the maximum fee. Over seven (7) meetings and/or voter workshops may be considered Additional Work, if such meetings cause the total fee to be exceeded. Additional Work will be charged on a time and materials basis at the hourly rates listed above. The proposed budget is based on an November 2018 bond election. If the bond election is delayed, then additional fees may be required. Any tasks associated with subsequent bond issues, the annual levy of taxes, ongoing continuing disclosure, or annual independent financial audits of bond proceed expenditures will require a separate Agreement.

The proposed compensation amount assumes the formation of a typical CFD with a schedule between initiation of work and adoption of the Resolution of Formation that is no longer than nine (9) months. If the tasks in the Scope of Services are not completed within nine (9) months, at any point thereafter, DTA may request an increase in the maximum compensation if total hourly billings to-date exceed the proposed compensation level listed above.



CONSULTANT SERVICES AGREEMENT  
FOR  
BOND AND SPECIAL TAX CONSULTING SERVICES

THIS AGREEMENT is made and entered into this 6 day of December, 2017 by and between the City of Laguna Beach, a Municipal Corporation, hereinafter referred to as the "CITY," and David Taussig & Associates, hereinafter referred to as "CONSULTANT."

**RECITALS**

WHEREAS, the CITY desires to engage CONSULTANT to render certain professional services as more fully identified in Appendix A, Scope of Services, attached hereto and included herein;

WHEREAS, CONSULTANT is qualified and agreeable to render the professional services desired by the CITY;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter expressed and intending to be bound hereby, the parties hereto do mutually agree as follows:

**PART I**

**FUNDAMENTAL TERMS**

**Article 1.     Engagement of CONSULTANT**

The CITY hereby agrees to engage CONSULTANT to perform the professional services as hereinafter set forth, and CONSULTANT agrees to perform those services in accordance with the terms and conditions of this Agreement.

**Article 2.     Scope of Services**

In compliance with all terms and conditions of this Agreement, CONSULTANT shall perform all work necessary to complete, in a manner satisfactory to the CITY, the services described and set forth in Appendix A, Scope of Services, attached hereto and by reference incorporated herein and made a part hereof.

**Article 3.     Time of Performance**

The services of CONSULTANT are to commence on December 6, 2017.

**Article 4.     Payment and Limitation of Cost**

The CITY shall compensate CONSULTANT for services performed under Article 2, as further defined in Appendix A, in accordance with the following schedule: