# CITY OF COSTA MESA PROFESSIONAL SERVICES AGREEMENT WITH DAVID TAUSSIG & ASSOCIATES, INC.

THIS AGREEMENT is made and entered into this 1st day of October, 2015 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and DAVID TAUSSIG & ASSOCIATES, INC., a California Corporation ("Consultant").

#### WITNESSETH:

- A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to prepare a fee study for user fees and charges, as more fully described herein; and
- B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code, Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and
- C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and
- D. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

#### 1.0. SERVICES PROVIDED BY CONSULTANT

- 1.1. <u>Scope of Services</u>. Consultant shall provide the professional services described in the City's Request for Quote ("RFQ"), attached hereto as Exhibit "A," and Consultant's Response to City's RFQ (the "Response") attached hereto as Exhibit "B", both incorporated herein by this reference.
- 1.2. <u>Professional Practices</u>. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. It is understood that in the exercise of every aspect of its role, within the scope of work, consultant will be representing the City of Costa Mesa, and all of its actions, communications, or other work, during its employment, under this contract is under the direction of the department. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.
- 1.3. <u>Performance to Satisfaction of City</u>. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City Manager or his designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern:
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.
- 1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.
- 1.5. <u>Non-discrimination</u>. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code.
- 1.6. <u>Non-Exclusive Agreement</u>. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.
- 1.7. <u>Delegation and Assignment</u>. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.
- 1.8. <u>Confidentiality</u>. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

#### 2.0. COMPENSATION AND BILLING

2.1. <u>Compensation</u>. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's total compensation shall not exceed Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00).

- 2.2. <u>Additional Services</u>. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.
- 2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.
- 2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

#### 3.0. TIME OF PERFORMANCE

- 3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.
- 3.2. <u>Excusable Delays</u>. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

#### 4.0. TERM AND TERMINATION

- 4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of twelve (12) months, ending onOctober 1, 2016, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. At the end of the term period, Consultant and City may mutually agree, in writing, to renew the contract for up to four (4) term periods of one (1) year each.
- 4.2. <u>Notice of Termination</u>. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.
- 4.3. <u>Compensation</u>. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including

the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. <u>Documents</u>. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

#### 5.0. INSURANCE

- 5.1. <u>Minimum Scope and Limits of Insurance</u>. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:
  - (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
  - (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
  - (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
  - (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

- 5.2. <u>Endorsements</u>. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:
  - (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant.."
  - (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.
  - Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
  - (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
  - (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 5.3. <u>Deductible or Self Insured Retention</u>. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.
- 5.4. <u>Certificates of Insurance</u>. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "D" and incorporated herein by this reference.
- 5.5. <u>Non-limiting</u>. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

#### 6.0. GENERAL PROVISIONS

6.1. <u>Entire Agreement</u>. This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including

exhibits to this Agreement.

6.2. <u>Representatives</u>. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. <u>Project Managers</u>. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. <u>Notices</u>. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

IF TO CITY:

David Taussig & Associates, Inc. 5000 Birch Street
Suite 6000

Newport Beach, CA 92660

Tel: 949-955-1500 Fax: 949-480-0034 Attn: David Taussig City of Costa Mesa 77 Fair Drive Costa Mesa. CA 92626

Tel: 714-754-5610 Fax: 714-754-4913 Attn: Minoo Ashabi

- 6.5. <u>Drug-free Workplace Policy</u>. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "E" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.
- 6.6. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.
- 6.7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in

Orange County, California.

- 6.8. <u>Assignment</u>. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.
- Indemnification and Hold Harmiess. Consultant agrees to defend, indemnify. 6.9. hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.
- 6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers. agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.
- 6.11. <u>PERS Eligibility Indemnification</u>. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant

shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

- 6.12. <u>Cooperation</u>. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.
- 6.13. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.
- 6.14. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.
- 6.15. <u>Conflict of Interest</u>. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest

statute.

- 6.16. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.
- 6.17. <u>Prohibited Employment</u>. Consultant will not employ any regular employee of City while this Agreement is in effect.
- 6.18. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.
- 6.19. <u>Costs</u>. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.
- 6.20. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.
- 6.21. <u>Headings</u>. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.
- 6.22. <u>Construction</u>. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
- 6.23. <u>Amendments</u>. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.
- 6.24. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

- 6.25. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.
- 6.26. <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.
- 6.27. <u>Corporate Authority</u>. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA, A municipal corporation REDACTED	
	Date: 10/9/15
Chief Executive Officer	
CONSULTANT	
Signature	Date: 10/2/15
Signature  Oguid Tanssig Fresident  Name and Title	
Social Security or Taxpayer ID Number	
APPROVED AS TO FORM:	112
City Attorney	Date:

APPROVED AS TO INSURANCE REDACTED  Risk Management	Date:	10/7/15
APPROVED AS TO CONTENT: REDACTED		1-1-1-0-5
Project Manager	Date:	10/7/2015
Finance Director	Date:	10.07.15
ATTEST: REDACTED		
City Clerk and ex-officio Clerk Of the City of Costa Mesa		
REDACTED		10-7-15

## EXHIBIT A REQUEST FOR QUOTES

#### PROCESSING FEES STUDY CONSULTING SERVICES

DEPARTMENT: <u>Development Services Dept.</u>
PERSON SOLICITING THE QUOTES: <u>Dan Inloes, Associate Planner</u>

COMPANY	OHOTE			
	QUOTE	DATE QUOTE REC'D	DATE QUOTE 6 EXPIRES	QUOTE OBTAINED IN WRITING / VERBALLY
DAVIS TAUSSIG & ASSOCIATES, INC. David Taussig, Managing Director 5000 Birch Street, Suite 6000 Newport Beach, California 92660 (800) 969-4382 dtadavid@taussig.com	\$27,500  Met Qualifications  References Fee Schedule / No Insurance submitted	09/02/2015	09/09/2015	Writing
PACIFIC MUNICIPAL CONSULTANTS (PMC) Philip O. Carter, President 2729 Prospect Park Dr., Ste. 220 Rancho Cordova, CA 95670 916-361-8384, X10202 pcarter@pmcworld.com	Did not respond to RFQ	No Quote Submitted	N/A	N/A
WILLDAN FINANCIAL SERVICES Chris Fisher 27368 Via Industria, Ste. 110 Temecula, CA 92590 951-587-3500 cfisher@willdan.com	Did not respond to RFQ	No Quote Submitted	N/A	N/A
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COMMENTS:							
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## EXHIBIT B CONSULTANT'S PROPOSAL



# PROPOSAL TO THE CITY OF COSTA MESA

FOR

PLANNING DIVISION
USER FEES AND CHARGES
UPDATE STUDY

September 2, 2015

Public Finance Urban Economics Public Private Partnerships Clean Energy Bonds

> Netopon Beach Recession Section research Section Dates



## CITY OF COSTA MESA PLANNING DIVISION USER FEE AND CHARGES UPDATE STUDY

### Prepared for CITY OF COSTA MESA

77 Fair Drive Costa Mesa, California 92626costa (714) 754-5278

Prepared by

David Taussig & Associates, Inc.
5000 Birch Street, Suite 6000

Newport Beach, California 92660 (800) 969-4382

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#### SECTION I PROPOSAL SUMMARY

**DAVID TAUSSIG & ASSOCIATES, INC. ("DTA")** is pleased to submit this proposal to the City of Costa Mesa (the "City"). In brief, it is our understanding that the City is seeking a consultant to work with its staff to review and update the City's existing Planning Division User Fees and Charges, as listed on Pages 13 and 14 of Exhibit A of Resolution 08-87 ("Exhibit A"), which was included in the City's September 1, 2015 Request for Proposals ("RFP").

As described in greater detail in the attached proposal, DTA is a public finance consulting firm with offices in Newport Beach, San Francisco, San Jose, and Riverside, California, as well as Dallas, Texas. Since its establishment in 1985, DTA has completed consulting assignments for more than 2,500 clients in ten (10) states. During this period, the firm has been involved in the formation of more than 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. DTA's consulting services include, but are not limited to:

- Public Financing Plans and Strategies
- Special Tax and Assessment Engineering
- Development Impact Fee Justification Studies
- Municipal User Fee Studies
- Fiscal Impact Reports and Economic Impact Analyses
- Economic Development and Revitalization Studies
- Clean Energy Bonds
- Public Finance Construction Monitoring

DTA has provided public finance consulting services to virtually every major City and urban center in the State. Our City clients are too numerous to list individually, but include the Cities of Anaheim, Fresno, Long Beach, Los Angeles, Sacramento, San Diego, San Francisco, and San Jose. Our County clients have included the Counties of Alameda, Contra Costa, Fresno, Imperial, Los Angeles, Madera, Marin, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, Santa Barbara, Shasta, Sutter, Stanislaus, and Yuba.

DTA has assembled a project team for the City of Costa Mesa with the breadth of experience needed to provide financial consulting services in a professional and timely manner. David Taussig, President at DTA, would be the Principal-in-Charge and have the City of Costa Mesa's primary account responsibility. Mr. Taussig would be assisted by Mitch Mosesman, Nathan Perez, ESQ., John P. Johns, CPA, as well as other support staff. Brief resumes for each of our team members are included in Section III. DTA has an enviable reputation for producing high quality work in a quick and efficient manner to correspond with even the most aggressive project schedule.

But perhaps DTA's most outstanding qualification is the dedication and loyalty of the senior employees, many whom have worked at DTA for twenty (20) years or more and are available should any unique situations arise. As a result, DTA is able to offer a level of management expertise that is unequalled throughout the public finance consulting industry.



#### SECTION II ■ SCOPE OF SERVICES

DTA will prepare a comprehensive fee justification study ("Study") evaluating all Planning Division User Fees and Charges listed in Exhibit A of the RFP. The scope of services herein memorializes an approach that will enable DTA to identify the "full cost of service" associated with Planning Division services to ensure full cost recovery, determine the amounts of current fee adjustments that are justified and desired, and identify potential services for which new fees may be and desired. DTA will also survey surrounding communities to determine how proposed fee levels compare with those imposed by other communities. The outcome of this study will be a **defensible** fee schedule that provides allowable cost recovery for City planning services so that the General Fund is not subsidizing services to the development community and public. The fee model will be developed with the City's future use and sustainability in mind.

To ensure the sustainability of the Study's findings, as well as the technical tools delivered for the City's future use, DTA will work with City staff to develop a methodology for calculating the fees using the least burdensome manner of data collection, without compromising the defensibility of the results. If the process of collecting the original data is not feasible, then the likelihood of the fees being consistently and accurately updated in the future is decreased.

Throughout the study, DTA will request that various levels of City staff provide data, verify, or propose City cost recovery policy, and review interim findings. In evaluating the full cost of providing development review services, staff time information proves to be the best measurement for defensibly establishing fees. DTA will coordinate with key Planning Division staff members who work on development review services to generate self-reported time estimates. DTA and Planning Division staff will jointly plan and prepare detailed worksheets to be completed by staff members who provide planning services. Department and City leaders will need to be involved in interim review meetings to discuss full cost findings, review cost recovery goals, and discuss alternative fee structures.

DTA will undertake the following tasks to prepare the Study:

#### TASK No. 1 - KICKOFF MEETING

DTA will attend a kick-off meeting with Planning Division management to gain an understanding of the City's goals and objectives for the fee study and any City cost-recovery policy for service fees. Both DTA and management shall discuss proposed timesheet-related questions that can be included in surveys to be completed by Planning Division staff. The concept of analyzing fees beyond those listed in Exhibit A of the RFP will also be discussed.

#### TASK No. 2 - COMPARATIVE ANALYSIS WITH NEIGHBORING CITIES

Collect comparable Planning Department/Division User Fee and Charge data from five Orange County cities located in the vicinity of Costa Mesa to establish baseline of current fee levels in surrounding communities. Where possible, prepare table comparing similar user fees and charges in these five communities.

#### TASK No. 3 - DATA COLLECTION AND ANALYSIS

#### Subtask 3.1 - Collect Staff Data

DTA shall coordinate with Planning Division management to develop a format for the survey to be completed by Planning Division staff regarding the time they spend on each of the activities listed in Exhibit A of the



#### SECTION II SCOPE OF SERVICES

RFP, as well as any other tasks that were identified under Task No. 1. Timekeeping data will be collected through department records, or if records are unavailable, self-reported estimates by department staff in their responses to the survey. Self-reported estimates will be gathered through a structured data collection form. DTA will assist department staff through completion of the form in order to ensure the collection of the necessary level of detail describing staff time.

#### Subtask 3.2 - Cross-Reference Data Reporting

Information gathered from fee schedules will be cross-referenced with existing revenue data, volume statistics, and any other costs specific to individual activities to ensure a reasonable level of detail for reporting the data.

#### TASK No. 4 - FULL COST CALCULATIONS

#### Subtask 4.1 - Calculate Direct Costs

Using the time and salary data gathered under Task No. 3, a spreadsheet outlining the direct costs of feegenerating services and activities will be created. Direct costs will be those that can be identified specifically with a particular final cost objective. Typical direct costs are compensation of employees for the time devoted and identified specifically to the objective, cost of materials acquired, consumed, or expended, equipment and other approved capital expenditures, and travel expenses.

#### Subtask 4.2 - Calculate Indirect Costs

Indirect cost figures derived from the City's existing Cost Allocation Plan ("CAP") or other City data will be incorporated to identify an appropriate overhead allocation in our indirect cost calculations. Indirect costs are those incurred for a common or joint purpose benefitting more than once cost objective and not readily assignable to the cost objectives specifically benefitted.

#### Subtask 4.3 - Calculate the Full Cost of Service

The results of the previous subtasks will be combined to create a full cost of fee-generating services. The full cost of services may be expressed as a flat fee, dollars per direct hour, and/or total dollars. Some or all of the following cost categories will be represented in the full cost of services:

- Overhead (Departmental)
- Direct (fee-generating) Service Provision
- Indirect (non-fee-generating) Support Activities
- Indirect Activities that are allocated between fee-generating and non-fee-generating work, such as Paid Absences and Training
- Associated Non-labor Costs

#### TASK No. 5 - FEE EVALUATION

#### Subtask 5.1 - Identify Current Cost Recovery

DTA will prepare a comparison of the full costs of fee-generating services versus the projected revenues for the current budget year and actual revenues in the prior fiscal year.



#### SECTION II SCOPE OF SERVICES

#### Subtask 5.2 - Formulate Cost Recovery Objectives

Since costs not recovered from fees are paid for from other revenues, such as taxes, less than full cost recovery may be justifiable due to the benefit the service provides to the public at-large, based on City policy, or based on the practical consideration of whether the market can bear the full cost fee. DTA will work with City staff to identify alternative cost recovery levels where appropriate.

#### Subtask 5.3 - Calculate Fees

Applying the cost recovery objectives defined above to the full cost findings in Task 3, DTA will calculate a recommended fee schedule by category and department.

#### Subtask 5.4 - Finalize Model for Delivery

DTA will prepare the final fee model and planning fee study for delivery to City staff.

#### TASK No. 6 - DRAFT & FINAL REPORT

#### Subtask 6.1 - Draft Report

DTA will prepare a draft Fee Study Report that documents the methods used and objectives and provides a clear explanation of the fee development approach. This report will be at an executive level of detail summarizing the results of the study. Study findings, conclusions, and recommendations will be submitted for City staff review and input. Revisions will be reflected, as appropriate to incorporate warranted changes suggested by the City.

#### Subtask 6.2 - Final Report

DTA will prepare a final Fee Study Report based on revisions suggested by the City. Ten (10) bound copies of the final report plus an unbound master report copy will be provided to the City. The detail of the analysis will be included as a technical appendix that will provide the background for each department's fees.

#### Subtask 6.3 - Presentation to Planning Commission

DTA will prepare a presentation for the Planning Commission that will address the planning division processing fee study. DTA will then present the findings, the methodologies employed, the cost recovery objectives targeted, fee structures proposed, and implementation strategies developed.

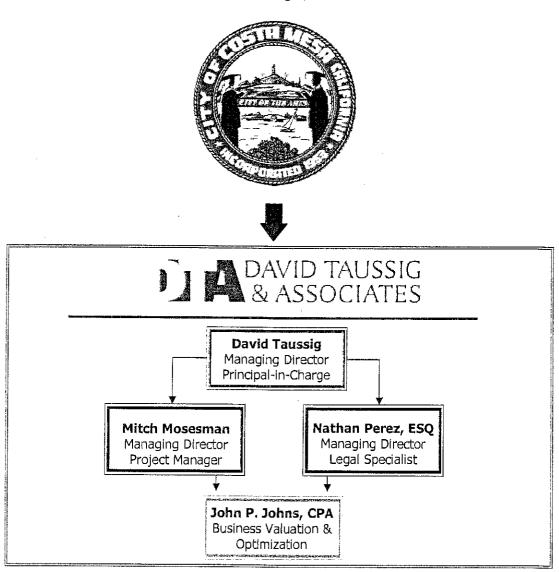
#### Subtask 6.4 - Presentation to City Council

DTA will also prepare a presentation for the City Council that will address the fee study. DTA will likewise present the findings, the methodologies employed, the cost recovery objectives targeted, fee structures proposed, and implementation strategies developed.



#### SECTION III PROJECT TEAM

DTA has assigned personnel to this project that bring experience and technical expertise to each unique element of study. Our team organization is illustrated below. Project roles of our key team members are described below, and are followed by professional biographies.



DTA has assembled a project team with the breadth of experience needed to assist the City with the review and update of the existing Planning Division Processing Fees. Mr. Taussig will serve as Principal-in-Charge of DTA's project team and will handle primary account responsibilities for this engagement. Mr. Taussig will attend meetings as necessary and supervise all project staff.

Mr. Mosesman will be responsible for the ongoing execution and completion of the entire work plan – matching the entire Consultant Team's work and deliverables with the City's needs and objectives. He will also manage the work of DTA's project team, leading data collection efforts, directing the development of our technical model, providing senior-level analysis, reviewing progress and work products with City staff and stakeholders, presenting study findings at project meetings, and finalizing study documentation. Mr. Mosesman will be assisted in these tasks by Mr. Perez, Mr. Johns, and other support staff.



#### SECTION III PROJECT TEAM

#### DAVID TAUSSIG

President | <u>dtadavid@taussig.com</u> Project Role - *Principal-in-Charge* 

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 a number of state-of-the-art analytical methods and modeling approaches, as well as personally directed the formation of more than 1,000 public financing districts and the subsequent sale of tax-exempt municipal bonds. These districts have funded public infrastructure and services for a variety of types of residential and non-residential development, and have included several hundred master planned communities built throughout California, as well as 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, as well as 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 was responsible for 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 was responsible for 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 qualified for full member status with the American Institute of Certified Planners in 1982, and is an active member of the Urban Land Institute's national Public Private Partnership Council.



#### SECTION III M PROJECT TEAM

#### MITCH MOSESMAN

Managing Director | <u>mitch@taussig.com</u> Project Role - *Project Manager* 

Mr. Mosesman has over 25 years of experience in the field of public finance. Since joining DTA in 1988, he has specialized in special tax and assessment as well as tax increment bond financing and is familiar with a wide range of infrastructure financing mechanisms, including Community Facilities Districts, Public Improvement Districts, Special Assessment Districts, Special Service Areas, and Tax Increment Development Districts.

During his tenure at DTA, he has managed over 300 special district financing assignments. Financings on which Mr. Mosesman has worked have run the gamut from new and parity bond issues to refundings and workouts, and have utilized various debt structures, including variable rate bonds, senior and subordinated bonds, and bond pools. In addition, Mr. Mosesman has also assisted in the formation of special tax and assessment districts to fund public services, including police and fire protection services, as well as lighting and landscape maintenance.

Recently, Mr. Mosesman's practice has focused on the implementation of Property Assessed Clean Energy Programs across the country. Mr. Mosesman's practice also involves the formation and implementation of special tax and assessment financings in the States of Illinois, New Mexico, and Texas. Mr. Mosesman was actively involved in the drafting of the New Mexico Public Improvement District Act and assisted with the formation and sale of bonds for the first public improvement district in that state.

Mr. Mosesman also established and co-manages DTA's district administration practice, which provides administrative services to over 200 districts in California, Illinois, New Mexico, and Texas. Mr. Mosesman has been a featured speaker for seminars and conferences conducted by the Urban Land Use Institute and the California Department of Real Estate.

#### NATHAN PEREZ, ESQ.

Managing Director | ncerez@taussig.com Project Role - Legal Specialist

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 hundreds of Mello-Roos Community Facilities Districts and Assessment Districts located throughout California, with responsibilities related to the development of tax spread proforma analyses and the preparation of rate and method of apportionments, Public Reports, and overlapping debt analyses.

Mr. Perez also has expertise in the preparation, peer-review, and defense of development impact fee studies. 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 115 fiscal impact reports and 55 economic



#### SECTION III # PROJECT TEAM

development analyses for a variety of residential, commercial, and mixed-use developments throughout California, New Mexico, and Washington.

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 California and Massachusetts. 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.

#### JOHN P. JOHNS, CPA

Manager | jjohns@taussig.com Project Role - Task Specialist

Mr. Johns is a Certified Public Accountant. He has been licensed as a CPA and has been performing auditing and business advisory services since 1994.

His background includes 27 years of experience in state and local government as both a public servant and business advisor. In local government he has held the positions of Finance Director, management auditor, budget analyst, treasurer, and purchasing agent.

In private practice Mr. Johns has worked for the "big four" accounting firm KPMG LLP in its Silicon Valley-based business performance improvement practice as a director. He was also a principal with IBM's business innovation services practice, serving public sector clients in the San Francisco Bay Area.

As a solo practitioner, Mr. Johns has provided audit services to the Alaska Senate Finance Committee, the Alaska Legislative Auditor, and a number of smaller communities in rural Alaska.

Mr. Johns' business cost allocation and cost recovery credentials includes:

- Maintenance of a comprehensive fee schedule (including plan check, building inspection, and development related impact fees) while finance director for the Town of Atherton, California.
- Providing cost allocation analysis and advisory services in a consultant capacity to numerous public agencies in conformity with U.S. OMB A-87 guidelines/circulars.
- Compliance auditing and analysis of public agency fees to ascertain conformity with the doctrine of "costs reasonably borne."



#### SECTION IV PROPOSED BUDGET

The proposed budget to complete Tasks 1 - 7 in Scope of Services and prepare a Planning Division User Fee and Charges Update Study is \$27,500 (excluding expenses). In addition to fees for services, City shall reimburse DTA for out-of-pocket and administrative expenses by paying a charge equal to 3% of DTA's monthly billings for labor, plus clerical time at \$75 per hour, travel costs, and any outside vendor payments, not to exceed a total of \$1,000. Fees for services shall be charged according to the following professional services fee schedule:

David Taussig & Associa 2015 Fee Sched	
President	\$220/Hour
Managing Director	\$210/Hour
Manager	\$200/Hour
Associate	\$170/Hour
Senior Analyst	\$150/Hour
Analyst	\$130/Hour
Research Assistant	\$110/Hour

Any additional tasks assigned by the City if the total fee listed above has been exceeded shall be charged at the hourly rates listed above. Consultant shall notify City if and when charges approach the estimates listed above to obtain written consent for additional fees to continue work. Invoices shall be submitted on a monthly basis and shall be due within thirty days thereafter. A late charge of <u>1.2 percent per month</u> shall be charged on late payments.

#### Limitations

The budget amounts shown above include attendance at a total of <u>three (3) formal meetings</u> with City staff and stakeholders. Attendance at more than three (3) meetings, detailed written responses to resolve disputes with development community or other interested parties, or preparation of more than one set of major revisions to the draft report will be classified as Additional Work and billed at hourly rates identified in the table above.

Other examples of Additional Work shall include:

- Additional analyses based on revised assumptions requested by the City, including adjustments to the methodology
- Additional coordination required for timely data collection
- Attendance at more than three (3) meetings
- Reproduction of more than ten (10) copies of draft or final reports

All hourly rates for services apply for a 12 month period from execution of the agreement and are subject to a cost-of-living increase every 12 months. On or about the first two weeks of each month during which Consulting Services are rendered hereunder, DTA shall present to City an invoice covering the current consulting services performed and the reimbursable expenses incurred pursuant to the agreement and exhibits thereto.





### EXHIBIT C FEE SCHEDULE

#### SECTION IV PROPOSED BUDGET

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