

## **AGREEMENT FOR CONSULTING SERVICES**

THIS AGREEMENT is made and entered into this 2nd day of May 2006, by and between the City of Redlands at 35 Cajon Street, Suite 10, Redlands, CA 92373, herein called "Client," and David Taussig and Associates, Inc. at 1301 Dove Street, Suite 600, Newport Beach, CA 92660, herein after called "Consultant." The Client and the Consultant in consideration of the mutual promises and conditions herein contained agree as follows.

### **ARTICLE I** **TERM OF CONTRACT**

**Section 1.1** This agreement shall become effective on the date stated above and will continue in effect until the earlier of (i) that day when the services provided for herein have been performed or (ii) until terminated as provided in Article 6 below.

### **ARTICLE II** **SERVICES TO BE PERFORMED BY CONSULTANT**

**Section 2.1** Consultant agrees to perform the professional services for the Client and to deliver the work products to the Client as described in the Scope of Work statement attached as Exhibit "A" hereto. Such professional services and work products, as from time to time modified in accordance with Section 2.3 hereof, are collectively referred to as the "Consulting Services."

**Section 2.2** Consultant will determine the method, details and means of performing the Consulting Services. Consultants may, at Consultants' own expense, employ such assistance as it deems necessary to perform the Consulting Services required by Client under this Agreement. Consultants shall conduct research and arrive at conclusions with respect to their rendition of information, advice, recommendation or counsel independent of the control and direction of the Client, other than normal contract monitoring. All computer software (including without limitation financial models, compilations of formulas and spreadsheet models), inventions, designs, programs, improvements, processes and methods (collectively, the "Proprietary Models") used or developed by DTA in performing its work is proprietary and shall remain property owned solely by, or licensed by a third party to DTA. Client acknowledges and agrees that the consideration paid by Client herein only entitles Client to a license to use the hard copy or electronically transmitted reports generated pursuant to the Consulting Services and that any Proprietary Model that Consultant uses to generate such reports is owned by, or is duly licensed from a third party to Consultant and is not being provided to Client hereunder. Client acknowledges that DTA may have used reports and analyses that DTA authored for other clients as base works or templates for the reports and analyses prepared for Client pursuant to this Agreement, and Client acknowledges and agrees that DTA has the right to use the reports and analyses that it authors pursuant to this Agreement as base works or templates for reports and analyses that DTA authors for DTA's other clients, provided, however that DTA shall not use any confidential

information provided by Client in such future reports and analyses. Client acknowledges and agrees that DTA has spend substantial time and effort in collection and compiling data and information (the "Data Compilations") in connection with the Consulting Services and that such Data Compilations may be used by DTA for its own purposes, including, without limitation, sale or distribution to third parties; provided, however, that DTA will not sell or distribute any of Client's confidential information that may be contained in such Data Compilations, unless such confidential information is used only on an aggregated and anonymous basis.

**Section 2.3** Any proposed changes in the Consulting Services hereunder shall be submitted to the other party hereto, and any such changes agreed to by the parties shall be reflected in an amendment to Exhibit "A" in accordance with Section 7.2 hereto.

**Section 2.4** Nothing in this Agreement shall give the Consultant possession of authority with respect to any Client decision beyond the rendition of information, advice, recommendation or counsel.

### **ARTICLE III** **COMPENSATION**

**Section 3.1** Client agrees to pay Consultant for its Consulting Services a professional fee computed according to the Fee Schedule attached as Exhibit "B" hereto.

**Section 3.2** The Client shall reimburse the Consultant for Consultant's out-of-pocket expenses plus a 15% administrative charge. Expenses shall include all actual expenditures made by Consultant in the performance of any Consulting Services undertaken pursuant to the Agreement, including, without limitation, the following expenditures:

- (a) Cost of clerical assistance @ \$35.00 per hour, including typing, collation, printing and copying, plus copier and photography costs, including photographic reproduction of drawings and documents.
- (b) Transportation costs, including mileage for the use of personal automobiles at the prevailing IRS standard rate, rental vehicles, lodging and regularly scheduled commercial airline ticket costs.
- (c) Courier services, facsimile, and telephone expenses.

**Section 3.3** On or about the first two weeks of each month during which Consulting Services are rendered hereunder, Consultant shall present to Client an invoice covering the current Consulting Services performed and the reimbursable expenses incurred pursuant to this Agreement and exhibits thereto. Such invoices shall be paid by Client within thirty (30) days of the date of each invoice. A 1.2% charge may be imposed against accounts which are not paid within 30 days of the date of each invoice.

**Section 3.4** The maximum total fee amount set forth in Exhibit "B" may be increased as a result of any expansion of the Consulting Services to be rendered hereunder pursuant to Section 2.3 or as provided in Exhibit "A" hereto.

**Section 3.5** Records of the Consultant's costs relating to (i) Consulting Services performed under this Agreement and (ii) reimbursable expenses shall be kept and be available to the Client or to Client's authorized representative at reasonable intervals during normal business hours.

#### **ARTICLE IV** **OTHER OBLIGATIONS OF CONSULTANT**

**Section 4.1** Consultant agrees to perform the Consulting Services in accordance with Exhibit "A". Should any errors caused by Consultant's negligence be found in such services or products, Consultant will correct them at no additional charge by revising the work products called for in Exhibit "A" to eliminate the errors.

**Section 4.2** Consultant will supply all tools and instrumentalities required to perform the Consulting Services under the Agreement.

**Section 4.3** Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Consultant without the prior written consent of Client. However, Consultant may subcontract portions of the work to be performed hereunder to other persons or concerns provided Consultant notifies Client of the name and address of said proposed subcontractor and Client either consents or fails to respond to notification with respect to the use of any particular proposed subcontractor.

**Section 4.4** In the performance of its Consulting Service hereunder, Consultant is, and shall be deemed to be for all purposes, an independent contractor (and not an agent, officer, employee or representative of Client) under any and all laws, whether existing or future. Consultant is not authorized to make any representation, contract or commitment on behalf of Client.

**Section 4.5** Neither this Agreement, any duties or obligations under this Agreement, nor the intentions or expectations of Client will cause the Consultant to be a "public official" as that term is used in Section 87100 of Title 9 of the California Government Code. Client and Consultant agree that Consultant is not a "public official" or "participating in governmental decision" as those terms are used in Section 87100. The Client and Consultant also agree that no actions and opinions necessary for the performance of duties under the Contract will cause the Consultant to be a "public official" or "participating in a governmental decision" as those terms are used in Section 87100.

#### **ARTICLE V** **OTHER OBLIGATIONS OF CLIENT**

**Section 5.1** Client agrees to comply with all reasonable requests of Consultant and provide access to all documents reasonably necessary to the performance of Consultant's duties under this Agreement with the exception of those documents which Exhibit "A" calls upon the Consultant to prepare.

**Section 5.2** Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Client without the prior written consent of Consultant.

**Section 5.3** Consultant frequently is retained by developers, landowners, and other persons and concerns interested in development projects which often eventually lead to the preparation on a contract

basis by Consultant of preliminary tax spread models for government agencies to determine tax rates and other matters necessary to accomplish various improvements to realty for financing under a Mello-Roos or other financing programs. In light of the foregoing, Client will determine whether or not it is appropriate to conduct a "significant substantive review" or a "significant intervening substantive review" of Consultant's activities conducted pursuant to this Agreement as such terms are defined in Section 18700(c)h of Title 2 of the California Administrative Code. Should Client elect to conduct such a substantive review, then Client shall determine whether it has sufficient expertise on staff to conduct such a review, and, if not, will retain an independent expert consultant to review Consultant's work. Thereafter, Client shall conduct such review, or cause such independent review to be conducted, prior to the making of any governmental decision relating to the matters contained within the Scope of Work described in Exhibit "A". The parties do not intend and nothing in this Section 5.3 is meant to imply that Consultant is a "public official," "participating in a governmental decision," or has a "financial interest" in the services provided as such terms are used in Section 87100 of Title 9 of the California Governmental Code.

**Section 5.4** Client, public agencies, landowners, consultants and other parties dealing with Client or involved in the subject development project referred to in Exhibit "A" will be furnishing to Consultant various data, reports, studies, computer printouts and other information and representations as to the facts involved in the project which Client understands Consultant will be using and relying upon in preparing the reports, studies, computer printouts and other work products called for by Exhibit "A." Consultant shall not be obligated to establish or verify the accuracy of the information furnished by or on behalf of Client, nor shall Consultant be responsible for the impact or effect on its work products of the information furnished by or on behalf of Client, in the event that such information is in error and therefore introduces error into Consultant's work products.

**Section 5.5** Client agrees to defend, indemnify and hold Consultant harmless from and against all obligations, losses, liabilities, damages, claims, attachments, executions, demands, actions and/or proceedings (collectively, "Claims") and all costs and expenses in connection therewith, including reasonable attorneys' fees, arising out of or connected with the performance of Consultant's Consulting Services under this Agreement, except as may arise from Consultant's willful misconduct or gross negligence. In that regard, Client will indemnify and hold Consultant harmless from any Claims arising from, growing out of, or in any way resulting from, errors contained in data or information furnished by Client or Client's designee to Consultant for use in carrying out the Consulting Services called for by this agreement. If for any reason the indemnification under this Section 5.5 is unavailable to Consultant or insufficient to hold it harmless, then the Client shall contribute to the amount paid or payable by Consultant as a result of such loss, liability, damage, claim, demand, action or proceeding in such proportion as is appropriate to reflect not only the relative benefits received by the Client on the one hand and Consultant on the other hand but also the relative fault of the Client and Consultant as well as any relevant equitable considerations; provided that Consultant's contribution obligations hereunder shall in no event exceed the amounts received by Consultant under this Agreement.

**Section 5.6** In the event that court appearances, testimony or depositions are required of Consultant by Client in connection with the services rendered hereunder, Client shall compensate Consultant at a rate of \$250 per hour and shall reimburse Consultant for out-of-pocket expenses on a cost basis.

## **ARTICLE VI**

### **TERMINATION OF AGREEMENT**

**Section 6.1** Either party may terminate or suspend this Agreement upon thirty (30) days written notice. Unless terminated as provided herein, this Agreement shall continue in force until the Consulting Services set forth in Exhibit "A" have been fully and completely performed and all proper invoices have been rendered and paid.

**Section 6.2** Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party at its option may terminate this Agreement by giving written notification to the defaulting party. Such termination shall be effective upon receipt by the defaulting party, provided that the defaulting party shall be allowed ten (10) days in which to cure any default following receipt of notice of same.

**Section 6.3** The covenants contained in Sections 3.1, 3.2, 4.4, 5.3, 5.4, 5.5, 5.6 and all of Article VII shall survive the termination of this Agreement.

## **ARTICLE VII**

### **GENERAL PROVISIONS**

**Section 7.1** Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by written notice in accordance with the first sentence of this Section 7.1. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two (2) days after mailing.

**Section 7.2** This Agreement and exhibits hereto supersede any and all agreements, either oral or written, between the parties hereto with respect to the rendering of service by Consultant for Client and contains all of the covenants and agreements between the parties with respect to the rendering of such services. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement (including any exhibit hereto) will be effective if it is in writing and signed by the party against whom it is sought to be enforced.

**Section 7.3** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**Section 7.4** Any controversy between the parties hereto involving the construction or application of any of the terms, covenants, or conditions of this Agreement will, on the written request of one party served on the other, be submitted to binding arbitration in accordance with the commercial rules and regulations of the American Arbitration Association and the provisions of the California Arbitration Act (Sections 1280 through 1294.2 of the California Code of Civil Procedure). The arbitration shall take place in Newport Beach, California, or such other location mutually agreed to by the parties.

The arbitrator(s) shall be selected as follows: In the event that Consultant and Client agree on one arbitrator, the arbitration shall be conducted by such arbitrator. In the event Consultant and Client do not so agree, Consultant and Client shall each select an arbitrator and the two arbitrators so selected shall select the third arbitrator. If there is more than one arbitrator, the arbitrators shall act by majority vote. The parties may propose arbitrators from JAMS, ADR, ARC or any independent arbitrator/neutral for dispute resolution. The parties are not required to hire an AAA arbitrator for resolution of a dispute hereunder.

The decree or judgment of an award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**Section 7.5** The prevailing party in any arbitration or legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorneys' fees. The non-prevailing party shall be liable, to the extent allowable under law, for all fees and expenses of the arbitrator(s) and all costs of the arbitration.

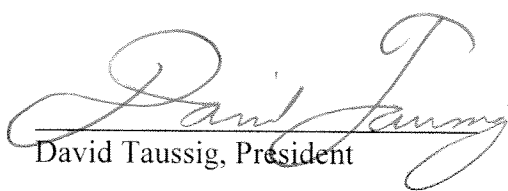
**Section 7.6** This Agreement will be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this Agreement has been executed on the date and year first above written.

CONSULTANT:

David Taussig & Associates, Inc.

By:

  
David Taussig, President

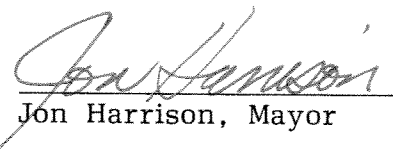
Date:

4/13/06

CLIENT:

City of Redlands

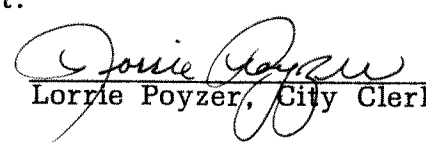
By:

  
Jon Harrison, Mayor

Date:

May 2, 2006

Attest:

  
Lorrie Poyzer, City Clerk

## **EXHIBIT A**

### **MELLO-ROOS SPECIAL TAX ADMINISTRATION SERVICES**

#### **COMMUNITY FACILITIES DISTRICT NO. 2003-1 OF THE CITY OF REDLANDS**

### **SCOPE OF WORK**

David Taussig & Associates, Inc. ("Consultant") shall provide financial consulting services to assist the City of Redlands ("Client") in the administration of Client's Community Facilities District ("CFD") No. 2003-1. The focus of these services shall be to determine the special tax rates and to facilitate the collection of the special taxes in fiscal year 2006-07 by the County of San Bernardino.

The specific activities and tasks to be performed under this Scope of Work include the following:

#### **Task 1 Land Use Research**

This task involves determining, gathering and organizing the land use data required to apportion and collect special taxes, and includes the following subtasks:

- 1.1 Subdivision Research:** Identify and obtain copies of all final tract or parcel maps for CFD No. 2003-1. Determine acreage for each parcel.
- 1.2 Development Research:** Review current Assessor Parcel maps to determine which parcel numbers will be valid for each fiscal year.
- 1.3 Database Management:** Create automated parcel database to include all parcels. Data items will include Assessor Parcel Number, corresponding tract and lot number, acreage, and building permit issuance date.

#### **Task 2 Classification of Property**

This task involves application of the Rate and Method of Apportionment of the Special Tax to determine the appropriate special tax classification for each parcel located within CFD No. 2003-1, and includes the following subtasks:

- 2.1 Exempt Property:** Identify all property owned by public agencies or entities otherwise exempt from the special tax and classify as exempt property.
- 2.2 Taxable Property:** Identify all taxable properties and classify each as "Taxable Development Property," "Taxable Public Property" or "Taxable Property Owner Association Property." Assign each "Taxable Development Property" to the appropriate zone.

### **Task 3 Financial Analysis**

This task involves calculating the Special Tax Requirement for each fiscal year and allocating it to property in CFD No. 1, and includes the following subtasks:

- 3.1 Determine Special Tax Requirement:** Assist Client with the preparation of an administrative expense budget. Confirm interest and principal payments. Determine any other charges or credits to tax levy.
- 3.2 2006-07 Special Tax Rates:** Based on tax classifications and special tax requirement, compute the fiscal year 2006-07 special tax rates for all classifications of taxable property.

### **Task 4 Report Preparation**

This task includes the preparation of an Annual Special Tax Report containing the findings of the financial analysis and an explanation of the methodology employed to apportion the special taxes for CFD No. 2003-1. Included in the report is a list of special taxes by Assessor's Parcel which can be used as the exhibit to the resolution authorizing the levy and collection of special taxes for fiscal year 2006-07.

### **Task 5 Submittal of Special Taxes to County of San Bernardino**

This task involves submitting the special tax levy on or before August 10, of each year, or such other date specified by the County of San Bernardino to the Auditor-Controller for inclusion on the fiscal year 2006-07 consolidated property tax bills. The special tax levy will be submitted on magnetic tape or other media as specified by the County.

### **Task 6 Delinquent Property Owner Research**

This task involves the review and research of County records to determine which parcels are delinquent in the payment of property and special taxes, and includes the following subtasks:

- 6.1 Delinquent Special Tax Report:** Review special tax payment information from the County of San Bernardino. Determine which parcels are delinquent and the corresponding amount of delinquent special taxes. Prepare report summarizing the amount of delinquent special taxes.
- 6.2 Collection of Delinquent Special Taxes:** Assist Client with the development of procedures to cure delinquent special taxes. Assist with the preparation of demand letters as necessary.

### **Task 7 Roll Changes and Adjusted Property Tax Bills**

This task involves monitoring any changes to the secured tax roll which necessitate new or adjusted property tax bills. This task includes the calculation of new or adjusted bills and the preparation of requests to the County to prepare such bills.

### **Task 8 Responses to Property Owner Questions**

This task involves the provision of information to individuals and other interested parties regarding the amount and calculation of the special tax.

### **Task 9 Monthly Review of All Funds and Accounts**

This task involves continuous monitoring of fiscal agent financial statements for all funds and accounts for CFD No. 2003-1 to assure the fiscal agent is adhering to the "Bond Indenture." Prepare monthly report of financial activity for all funds showing account balances, interest earnings and other revenues, and expenditures.

### **Task 10 Meetings**

Consultant will attend the City Council meeting at which the resolution authorizing the levy and collection of special taxes is scheduled for adoption.

### **Task 11 CFD Disclosure**

This task involves assisting Client meet the annual disclosure requirements of SB 1464, the 1992 Mello-Roos Amendment Bill, and includes the following subtasks:

- 11.1** Submit required data to the California Debt and Investment Advisory Commission each October in compliance with Section 53359.5 of the Government Code as stated in SB 1464.
- 11.2** Provide special tax disclosure documents to Client for resale properties pursuant to Section 1102.6b of the Civil Code and Section 53340.2 of the Government Code as stated in SB 1464.
- 11.3** Assist Client in the preparation of material required by the Continuing Disclosure Agreement.

## **EXHIBIT B**

### **MELLO-ROOS SPECIAL TAX ADMINISTRATION SERVICES**

#### **COMMUNITY FACILITIES DISTRICT NO. 2003-1 OF THE CITY OF REDLANDS**

### **FEE SCHEDULE**

#### **Professional Services Fee**

Consultant shall charge the following hourly fees for services related to Tasks 1 through 11:

|                           |            |
|---------------------------|------------|
| President                 | \$185/Hour |
| Vice President            | \$175/Hour |
| Director                  | \$170/Hour |
| Manager                   | \$160/Hour |
| Senior Associate/Engineer | \$140/Hour |
| Associate                 | \$130/Hour |
| Senior Analyst            | \$120/Hour |
| Analyst                   | \$105/Hour |
| Research Assistant        | \$ 80/Hour |

Subject to the limitations below, fees related to Tasks 1 through 11 shall not exceed \$9,500 for fiscal year 2006-07. Monthly progress payments will be made by Client upon presentation of invoice by Consultant providing details of services rendered and expenses incurred. At Client's request services in addition to those identified in the Scope of Work may be provided if the total fee required to complete Tasks 1 through 11 is less than \$9,500. Alternatively, if the Scope of Work can be completed for less than the maximum amount, only the hours actually expended will be billed.

In addition to fees for services, Client will reimburse Consultant for travel, photocopying, database services or materials, facsimile and telephone calls, clerical services, and other out-of-pocket expenses, in an amount not to exceed \$1,000.

#### **LIMITATIONS**

If the maximum amount has been exceeded as a result of "extraordinary" consulting services required in connection with Task 8 or 9, such additional services in excess of the maximum shall be billed at the hourly rates listed above. For the purposes of this section, services rendered in connection with Task 8 or 9 which exceed \$1,000 shall be considered extraordinary.

Additional services other than those necessary to amend errors on the part of Consultant in Tasks 1 through 11 are not covered by the maximum fee listed above.

J:\PROPOSAL\ADMIN\CALIF\redlands.cit\CFD2003-1Agreement06-07.doc