

Council Meeting of  
January 24, 2006

Honorable Mayor and Members  
of the City Council  
City Hall  
Torrance, California

Members of the Council:

**SUBJECT: Amendment to the Consulting Services Agreement with David Taussig and Associates for the Development Impact Fees.**

**Expenditure: \$10,000**

### **RECOMMENDATION**

The Community Development Director recommends that the City Council:

1. Approve an Amendment (Attachment A) to the Consultant Services Agreement (C2004-036) with David Taussig & Associates to extend the term until December 30, 2006 and increase the contract amount by \$10,000, for a total of not-to-exceed \$93,000, to complete the Development Impact Fee implementation process for public safety (Fire and Police), and begin the feasibility study to add Parks and Community Services Department facilities into this program;
2. Authorize an appropriation of \$10,000 from the Parks & Recreation Open Space Fund to amend contract (C2004-036) and conduct the feasibility study; and,
3. Authorize the Mayor and City Clerk to execute and attest to said Amendment.

### **FUNDING**

The funding source for the feasibility study for the Community Services Department will be from the Parks and Recreation Open Space fund.

### **BACKGROUND**

On February 24, 2004, your Honorable Body approved a contract with the consulting firm of David Taussig and Associates to prepare a Development Impact Fee (DIF) Justification Study (the "Study"). The Study was to develop the methodologies to justify the collection of fees in accordance with the California

Government Code 66000 (AB 1600) and satisfies the “rational nexus” tests used by California courts to determine the legality of development exactions. This Study enabled the City to start levying fees from October 31, 2005 to partially fund facilities identified by the Study’s Needs List for transportation facilities, the undergrounding of utilities, Sewer and Storm Drain.

On July 26, 2005, your Honorable Body approved an Amendment to the said contract to expand the Development Impact Fee (DIF) for public safety (Fire and Police).

### **ANALYSIS**

Compiling the Needs List for Police and Fire facilities has been completed and a draft study has been prepared by David Taussig and Associates. Both the Needs List and the study need to be reviewed by the staff as well as the City’s outside legal counsel, Law Offices of Richards, Watson, and Gershon (RWG). In addition, in order to implement the Fees, the consultant needs to finalize the Study and process the fee implementation based on the California Government Code Section 66000. Therefore, staff is requesting that the City Council extend the Agreement term to December 30, 2006.

In addition, since the Community Services Department has indicated an interest in being included in the Development Impact Fee program, a feasibility study needs to be conducted by the consultant for an additional amount of not to exceed \$10,000.

### **FEE IMPLEMENTATION TIMELINE**

Pursuant to the Mitigation Fee Act, certain actions by the City Council are required to implement the DIF for fire and Police. Staff is recommending the following tentative time line for each action:

March 28, 2006 – City Council to:

- Review and approve the Development Impact Fee Justification Study;
- Hold an open and public meeting regarding the DIF Study;
- Consider and approve the time and place for the public hearing, to be held on March 14, 2006, at 7:00 p.m. in City Council chambers, regarding adoption of the development impact fee.

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April 11, 2006 – City Council to:

- Hold a public hearing at which oral or written presentations can be made regarding the proposed development impact fees; and
- Introduce the development impact fee ordinances for the two types of proposed impact fees: 1) Police; and 2) Fire.

April 25, 2006 – City Council to:

- Complete a second reading of the development impact fee ordinances;
- Adopt the development impact fee ordinances;
- Adopt the development impact fee resolutions, which set the amount of the various fees, contingent upon the effective date of the development impact fee ordinances.

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Respectfully submitted,

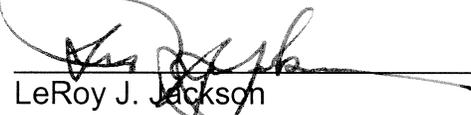
JEFFERY W. GIBSON  
Community Development Director

By   
 Ted Semaan, Manager  
 Transportation Planning,  
 Engineering Permits & Records Division

CONCUR:

  
 Jeffery W. Gibson  
 Community Development Director

  
 Gene Barnett  
 Community Services Director

  
 LeRoy J. Jackson  
 City Manager

- Attachments: A. Amendment to Agreement  
 B. Consulting Services Agreement C 2004-036

## AMENDMENT TO AGREEMENT

This Second Amendment to Agreement is made and entered into as of December 27, 2005 by and between the CITY OF TORRANCE, a municipal corporation ("CITY") and DAVID TAUSSIG AND ASSOCIATES, a California Corporation ("CONSULTANT").

### RECITALS:

- A. CITY and CONSULTANT entered into an Agreement on February 24, 2004, whereby CONSULTANT agreed to provide consulting services to the City of Torrance.
- B. The original Agreement was for a one-year term, effective through February 24, 2005.
- C. A First Amendment to Agreement was made effective July 26, 2005 effective through December 26, 2005.
- D. CITY is satisfied with the level of service provided by CONSULTANT and wishes to increase the amount of the contract and extend the contract through December 30, 2006.

### AGREEMENT:

- 1. Paragraph 2 "TERM" is amended to read in its entirety as follows:
  - "2. **TERM**  
Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect until December 30, 2006."
- 2. Paragraph 3.A, "COMPENSATION," is amended to read in its entirety as follows:
  - "3. **COMPENSATION**  
A. CONSULTANT's Fee.  
For services rendered pursuant to this Agreement, CONSULTANT will be paid an additional sum of \$10,000.00 upon completion of a feasibility study for a total amount not to exceed \$93,000.00 under Contract C2004-036 as amended.

- 3. In all other respects, the Agreement dated February 24, 2004, between CITY and CONSULTANT is ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE  
a Municipal corporation

DAVID TAUSSIG and ASSOCIATES  
a California Corporation

\_\_\_\_\_  
Dan Walker, Mayor

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III  
City Attorney

By: \_\_\_\_\_

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This Second Amendment to Agreement is made and entered into as of December 27, 2005 by and between the CITY OF TORRANCE, a municipal corporation ("CITY") and DAVID TAUSSIG AND ASSOCIATES, a California Corporation ("CONSULTANT").

### RECITALS:

- A. CITY and CONSULTANT entered into an Agreement on February 24, 2004, whereby CONSULTANT agreed to provide consulting services to the City of Torrance.
- B. The original Agreement was for a one-year term, effective through February 24, 2005.
- C. A First Amendment to Agreement was made effective July 26, 2005 effective through December 26, 2005.
- D. CITY is satisfied with the level of service provided by CONSULTANT and wishes to increase the amount of the contract and extend the contract through December 30, 2006.

### AGREEMENT:

- 1. Paragraph 2 "TERM" is amended to read in its entirety as follows:
  - "2. **TERM**  
Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect until December 30, 2006."
- 2. Paragraph 3.A, "COMPENSATION," is amended to read in its entirety as follows:
  - "3. **COMPENSATION**  
A. CONSULTANT's Fee.  
For services rendered pursuant to this Agreement, CONSULTANT will be paid an additional sum of \$10,000.00 upon completion of a feasibility study for a total amount not to exceed \$93,000.00 under Contract C2004-036 as amended.

3. In all other respects, the Agreement dated February 24, 2004, between CITY and CONSULTANT is ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE  
a Municipal corporation

DAVID TAUSSIG and ASSOCIATES  
a California Corporation

\_\_\_\_\_  
Dan Walker, Mayor

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III  
City Attorney

By: \_\_\_\_\_

## FIRST AMENDMENT TO AGREEMENT (C2004-036)

This First Amendment to Agreement ("Amendment") is made and entered into as of July 26, 2005 ("Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY") and David Taussig and Associates, a California corporation ("CONSULTANT").

RECITALS:

- A. CITY and CONSULTANT entered into an Agreement as of February 24, 2004, whereby CONSULTANT agreed to prepare a Development Impact Fee Justification Study for Traffic, Utility Undergrounding, and Fire and Police protection facilities.
- B. The original Agreement was for a twelve month term, effective February 24, 2004 through February 24, 2005.
- C. The CITY is satisfied with the work performed by CONSULTANT.
- D. Both parties wish to extend the term of the Agreement for an additional ten months, to increase the compensation and add to the Scope of Work.

AGREEMENT:

1. Paragraph 2, entitled TERM, is amended in its entirety to read as follows:
  - "2. TERM  
Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through December 26, 2005."
2. Paragraph 3.A, entitled COMPENSATION, is amended in its entirety to read as follows:
  - "3. COMPENSATION  
A. CONSULTANT's Fee.

For services rendered pursuant to this Agreement, CONSULTANT will be paid in accordance with the Budget attached as Exhibit B, provided, however, that in no event will the total amount of money paid the CONSULTANT, for services contemplated by this Agreement, exceed the

[Amendment to Consulting Services Agreement with David Taussig Associates]

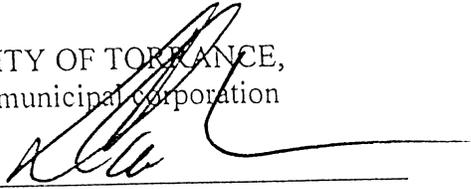
**ORIGINAL COPY**

C2004-036

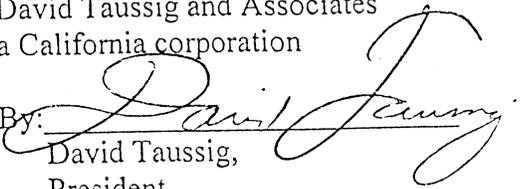
sum of \$83,000.00 ("Agreement Sum"), unless otherwise first approved in writing by CITY."

- 3. A new Exhibit 1 is attached, which adds additional items to CONSULTANT's Scope of Work.
- 4. In all other respects, the Agreement entered into as of February 24, 2004, between CITY and CONSULTANT, is ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE,  
a municipal corporation

  
 \_\_\_\_\_  
 Dan Walker, Mayor

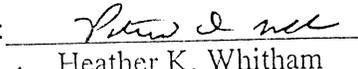
David Taussig and Associates  
a California corporation

By:   
 \_\_\_\_\_  
 David Taussig,  
 President

ATTEST:

  
 \_\_\_\_\_  
 Sue Herbers  
 City Clerk

APPROVED AS TO FORM:  
JOHN L. FELLOWS III  
City Attorney

By:   
 \_\_\_\_\_  
 Heather K. Whitham  
 Deputy City Attorney

Attachments:            Exhibit A-1    Additional Scope of Services

## EXHIBIT A- 1

ADDITIONAL SCOPE OF WORKCITY OF TORRANCE  
DEVELOPMENT IMPACT FEE JUSTIFICATION STUDY

David Taussig and Associates (DTA) shall finalize phase I of the Development Impact Fee Justification Study for Transportation facilities, Undergrounding Utilities, Sewer and Storm Drain facilities.

In addition, DTA will complete Phase II, Public Safety for Police and Fire. In total DTA will attend six meetings with staff and City Council.

## CONSULTING SERVICES AGREEMENT

This CONSULTING SERVICES AGREEMENT ("Agreement") is made and entered into as of February 24, 2004 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and David Taussig and Associates, a California Corporation ("CONSULTANT").

### RECITALS:

- A. CITY wishes to retain the services of an experienced and qualified CONSULTANT to prepare a Development Impact Fee Justification Study for Traffic, Utility Undergrounding, and Fire and Police protection facilities.
- B. CONSULTANT represents that it is qualified to perform those services.

### AGREEMENT:

#### 1. SERVICES TO BE PERFORMED BY CONSULTANT

CONSULTANT will provide the services listed in the Scope of Work attached as Exhibit A. CONSULTANT warrants that all work and services set forth in the Scope of Work will be performed in a competent, professional and satisfactory manner.

#### 2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through February 24, 2005.

#### 3. COMPENSATION

- A. CONSULTANT's Fee.

For services rendered pursuant to this Agreement, CONSULTANT will be paid in accordance with the Budget attached as Exhibit B, provided, however, that in no event will the total amount of money paid the CONSULTANT, for services initially contemplated by this Agreement, exceed the sum of \$ 45,000 ("Agreement Sum"), unless otherwise first approved in writing by CITY.

- B. Schedule of Payment.

Provided that the CONSULTANT is not in default under the terms of this Agreement, upon presentation of an invoice, CONSULTANT will be paid monthly the fees described in Paragraph 3.A. above, according to the Budget. Payment will be due within 30 days after the date of the monthly invoice.

C 2004-036

4. **TERMINATION OF AGREEMENT**

A. Termination by CITY for Convenience.

1. CITY may, at any time, terminate the Agreement for CITY's convenience and without cause.
2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONSULTANT will:
  - a. cease operations as directed by CITY in the notice;
  - b. take actions necessary, or that CITY may direct, for the protection and preservation of the work; and
  - c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
3. In case of such termination for CITY's convenience, CONSULTANT will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party written notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.
2. In the event this Agreement is terminated for cause by the default of the CONSULTANT, the CITY may, at the expense of the CONSULTANT and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONSULTANT under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONSULTANT and its surety from liability for the default. Under these circumstances, however, the CONSULTANT and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.

3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONSULTANT or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

In the event the CONSULTANT or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect CONSULTANT's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONSULTANT has been given notice and an opportunity to present evidence in mitigation.

5. **FORCE MAJEURE**

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental control, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

6. **RETENTION OF FUNDS**

CONSULTANT authorizes CITY to deduct from any amount payable to CONSULTANT (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate CITY for any losses, costs, liabilities, or damages suffered by CITY, and all amounts for which CITY may be liable to third parties, by reason of CONSULTANT's negligent acts or omissions or willful misconduct in performing or failing to perform CONSULTANT's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONSULTANT, or any indebtedness exists that appears to be the basis for a claim of lien, CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of

CONSULTANT to insure, indemnify, and protect CITY as elsewhere provided in this Agreement.

7. **CITY REPRESENTATIVE**

Ted Semaan is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONSULTANT.

8. **CONSULTANT REPRESENTATIVE(S)**

The following principal(s) of CONSULTANT are designated as being the principal(s) and representative(s) of CONSULTANT authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

David Taussig, Manager

9. **INDEPENDENT CONTRACTOR**

The CONSULTANT is, and at all times will remain as to CITY, a wholly independent contractor. Neither CITY nor any of its agents will have control over the conduct of the CONSULTANT or any of the CONSULTANT's employees, except as otherwise set forth in this Agreement. The CONSULTANT may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

10. **BUSINESS LICENSE**

The CONSULTANT must obtain a City business license prior to the start of work under this Agreement, unless CONSULTANT is qualified for an exemption.

11. **OTHER LICENSES AND PERMITS**

CONSULTANT warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

12. **FAMILIARITY WITH WORK**

By executing this Agreement, CONSULTANT warrants that CONSULTANT (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, CONSULTANT warrants that CONSULTANT has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should CONSULTANT discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONSULTANT must immediately inform CITY of that fact and may not proceed except at CONSULTANT's risk until written instructions are received from CITY.

13. **CARE OF WORK**

CONSULTANT must adopt reasonable methods during the term of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by CITY, except those losses or damages as may be caused by CITY's own negligence.

14. **CONSULTANT'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS**

Records of the CONSULTANT's time pertaining to the project, and records of accounts between CITY and the CONSULTANT, will be kept on a generally recognized accounting basis. CONSULTANT will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to CITY during normal working hours. CONSULTANT will maintain these records for three years after final payment.

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.

15. **INDEMNIFICATION**

CONSULTANT will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, arising from the negligent acts or omissions, or willful misconduct of CONSULTANT, its officers, employees, agents, subcontractors or vendors. It is further agreed, CONSULTANT's obligations to indemnify, defend and hold harmless the CITY from CONSULTANT's negligent acts, omissions or willful misconduct will apply even in the event of concurrent negligence on the part of the CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity.

City agrees to defend and hold harmless CONSULTANT and its officers, agents, and employees from and against any and all claims, liability, causes of action, damages and expenses or any kind arising out of or related to the performance of CONSULTANT's consulting services, except as may arise out of or be related to negligence or willful misconduct by CONSULTANT. In addition, notwithstanding the above, the CITY agrees, under all circumstances, to defend and hold harmless CONSULTANT and its officers, agents and employees from and against any and all claims, liability, causes of action, damages and expenses of any kind arising out of or related to the definition or interpretation of "special benefit" as used in the Right to Vote on Taxes Act. CITY's agreement to indemnify herein includes costs incurred by CONSULTANT in defending or settling claims brought against CONSULTANT and CONSULTANT shall be indemnified for any such and all such costs, attorney's fees, expert fees or other expenses associated with such defense or settlement.

If any action shall be brought against either party for which such party is indemnified hereunder, the indemnified party ("Indemnitee") shall notify the other party (Indemnitor") in writing thereof and Indemnitor shall promptly assume the defense thereof, including, without limitation, the employment of counsel mutually acceptable to CONSULTANT and CITY. In the event Indemnitor shall fail to discharge or undertake to defend Indemnitee against and claim, loss or liability for which Indemnitee is indemnified hereunder, Indemnitee may, at its sole option and election, defend or settle such claim, loss or liability, with Indemnitor paying all costs, attorney's fees, expert fees and other expenses associated with the defense or settlement of such claim.

16. **NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of CITY will be personally liable to CONSULTANT, in the event of any default or breach by the CITY or for any amount that may become due to CONSULTANT.

17. **INSURANCE**

- A. CONSULTANT must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:
1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:
    - a. Primary Bodily Injury with limits of at least \$500,000 per person, \$1,000,000 per occurrence; and
    - b. Primary Property Damage of at least \$250,000 per occurrence; or
    - c. Combined single limits of \$1,000,000 per occurrence.
  2. General Liability including coverage for contractual obligations with combined single limits of coverage of at least \$1,000,000 per occurrence.
  3. Professional liability insurance with limits of at least \$1,000,000 per occurrence.
  4. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least \$1,000,000.
- B. The insurance provided by CONSULTANT will be primary and non-contributory
- C. CITY, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.
- D. CONSULTANT must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.

- E. Each insurance policy required by this Paragraph must contain a provision that no termination or cancellation of coverage can be made without thirty days notice to CITY, except for 10 days notice for non-payment of premium.

**18. SUFFICIENCY OF INSURERS AND SURETIES**

Insurance or bonds required by this Agreement will be satisfactory only if issued by companies admitted or non-admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to CITY, the CONSULTANT agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONSULTANT will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of CITY within 10 days of receipt of notice from the Risk Manager.

**19. CONFLICT OF INTEREST**

- A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.
- B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

**20. NOTICE**

- A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:
1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
  2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.

3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.
6. Addresses for purpose of giving notice are as follows:

CONSULTANT: David Taussig & Associates  
1301 Dove Street, Suite 600  
Newport Beach, CA 92660

Fax: (949) 752-4058

CITY: City Clerk  
City of Torrance  
3031 Torrance Boulevard  
Torrance, CA 90509-2970  
Fax: (310) 618-2931

- B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

**21. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING**

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either CITY or CONSULTANT without the prior written consent of the other.

**22. INTEGRATION; AMENDMENT**

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

**23. INTERPRETATION**

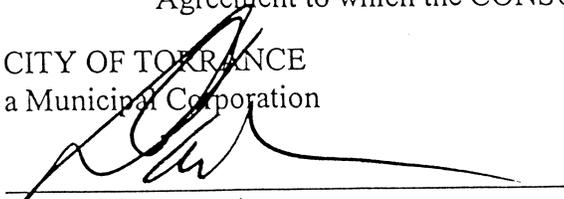
The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

24. **SEVERABILITY**  
If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.
25. **TIME OF ESSENCE**  
Time is of the essence in the performance of this Agreement.
26. **GOVERNING LAW; JURISDICTION**  
This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.
27. **COMPLIANCE WITH STATUTES AND REGULATIONS**  
CONSULTANT will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.
28. **WAIVER OF BREACH**  
No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will 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 and will not be a waiver of any other default concerning the same or any other provision of this Agreement.
29. **ATTORNEY'S FEES**  
Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.
30. **EXHIBITS**  
All exhibits identified in this Agreement are incorporated into the Agreement by this reference.
31. **CONSULTANT'S AUTHORITY TO EXECUTE**  
The person(s) executing this Agreement on behalf of the CONSULTANT warrant that (i) the CONSULTANT is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONSULTANT; (iii) by so executing this Agreement, the CONSULTANT 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 the CONSULTANT is bound.

CITY OF TORRANCE  
a Municipal Corporation

DAVID TAUSSIG & ASSOCIATES,  
a California Corporation

  
\_\_\_\_\_  
Dan Walker, Mayor

By:   
\_\_\_\_\_  
David Taussig, President

ATTEST:

  
\_\_\_\_\_  
Sue Herbers  
City Clerk

APPROVED AS TO FORM:  
JOHN L. FELLOWS III  
City Attorney

By:   
\_\_\_\_\_

Attachments:      Exhibit A      Scope of Work  
                         Exhibit B      Fee Schedule

## EXHIBIT A

SCOPE OF WORK

**CITY OF TORRANCE  
DEVELOPMENT IMPACT FEE JUSTIFICATION STUDY  
TRAFFIC, UTILITY UNDERGROUNDING, FIRE AND POLICE  
PROTECTION FACILITIES**

David Taussig and Associates (“DTA”) shall prepare a Development Impact Fee (“DIF” or “Fee”) Justification Study for the City of Torrance (the “City”) to enable the City to levy DIFs to fund the construction of traffic facilities and the undergrounding of utilities. The City shall also have the option of requesting that DTA prepare supplemental studies to support the levy of additional DIFs to fund police and fire protection facilities. The final product prepared by DTA shall be a written report recommending appropriate fee justification methodologies and DIF levels, and will include a mechanism to allow for annual updates of the recommended DIFs. The report shall be prepared pursuant to California Government Code 66000 (AB 1600) and will present a fee methodology which satisfies the “rational nexus” tests used by California courts to determine the legality of development exactions.

This Scope of Work consists of the following tasks:

**TASK NO. 1 DESCRIBE EXISTING SERVICE LEVELS AND DEFICIENCIES**

This task entails development and documentation of future facility service level projections based on population and dwelling unit estimates for the City. The projections developed under this task will ultimately be used to determine service levels, facility needs, and capital requirements for traffic facilities and utilities undergrounding (and optionally, for police and fire protection facilities). This task consists of two subtasks.

*Subtask 1.1 – Identify and Describe Existing Service Levels*

DTA will identify and describe existing facility service standards relative to the existing number of equivalent development units (“EDUs” based on land-use types) and residents/employees served. Existing service levels will then be compared with stated service standards of the City, as cited in the current General Plan and existing policies adopted by the City Council, as well as determined through input from City staff. Based on this comparison, DTA will identify existing service level deficiencies and will quantify, based on existing service levels, the facilities that are necessary to be constructed to serve future development.

*Subtask 1.2 – Conduct Entitlement Research and Dwelling Unit Projections*

DTA will coordinate with City staff to review existing entitlements for future dwelling units and commercial/industrial development in the City. To complete this subtask DTA will:

- Review the General Plan and other planning documents to determine expected development land use patterns in the City.
- Review City records to identify existing entitlements for dwelling units and commercial/industrial development.
- Project the number of new dwelling units and commercial/industrial development based on existing entitlements.

*WORK PRODUCT:* Technical memorandum presenting population and dwelling unit projections and describing existing service levels

## **TASK NO. 2 IDENTIFY AND CLARIFY FUTURE SERVICE LEVELS AND FACILITY NEEDS**

This task entails a determination of future service levels in cases where they may differ from existing service levels, and the identification of specific facility needs related to these future service levels. DTA will meet with City staff to determine these future service levels, as well as the specific facilities needs and costs, as follows:

### *Subtask 2.1 – Survey/Interview City Staff*

DTA shall survey/interview City staff to ascertain existing and projected facilities in the City (based on Task No. 1), along with major equipment needs, the timing at which improvements will be needed and any physical data that would assist in developing the costs estimated below in Subtask 2.3. Based upon the results of the surveys and interviews, DTA will verify and, if appropriate, expand the list of new facilities to be included within the DIF Program for the City.

### *Subtask 2.2 – Prepare Facilities List*

Based on the information collected in Subtask 2.1, DTA shall prepare a comprehensive list of new backbone facilities and equipment needed to adequately serve new development in the City.

### *Subtask 2.3 – Prepare/Review Cost Estimates*

DTA will prepare general cost estimates, pursuant to Government Code section 66005(a), for the backbone facilities identified in Subtask 2.2. In order to prepare the cost estimates, DTA's engineering staff will:

- Consult with City department heads and/or engineering staff or equivalent to ascertain and understand in-house cost data for existing and projected facilities and equipment.
- Apply appropriate inflation and cost of living escalators to the list of projected public facilities to determine future costs.
- Examine major sources of revenue to fund construction of new public facilities.
- Review and/or refine existing cost data. If no cost data is available, DTA's engineers will provide our opinion(s) of costs for proposed facilities based on industry-wide standards and assumptions. This task does not involve design of facilities or preparing detailed cost estimates or calculations.

- Provide a proportional estimate between projected costs for new facilities and projected revenue from mitigation fees and other sources.

*Subtask 2.4 – Describe Existing and Future Level of Service*

DTA will describe the impact upon service levels after the required additional facilities would be constructed and describe how new development would benefit from additional facilities.

*Subtask 2.5 – Staff Review of Facilities List, Preparation of Final Facilities List*

DTA will submit a copy of the Public Facilities Needs Cost Estimates to the City for review and consideration. This review is important, as this list is the basis on which the new Fee Program will be created.

**WORK PRODUCT:** Final Facilities Needs List and description of future and existing service levels

**TASK NO. 3 DEVELOP METHODOLOGY FOR CALCULATING NEW FEE AMOUNTS**

This task entails developing the methodology used to establish the DIF amount for each DIF component. There are two critical issues that must be considered in developing a DIF Program; the DIF Program must generate revenues in a timely manner and the methodology must meet the nexus or benefit requirements of AB 1600. Since fees of any sort are controversial, it is critical that any DIF established be defensible.

DTA's Fee Study methodology must meet the nexus or benefit requirements of AB 1600, which requires that there be a nexus between Fees imposed, the use of the Fees, and the development projects on which the Fees are imposed. Furthermore, there must be a relationship between the amount of the Fee and the cost of the improvements. In order to impose a DIF as a condition for a development project, the methodology must accomplish the following:

- Identify the purpose of the Fee.
- Identify the use to which the Fee is to be put. If the use is financing public facilities, the facilities must be identified.
- Determine how there is a reasonable relationship between the Fee's use and the type of development project on which the Fee is imposed.
- Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the Fee is being imposed.

Implicit in these requirements is a stipulation that a public agency cannot impose a Fee to cure existing deficiencies in public facilities or improve public facilities beyond what is required based on the specific impacts of new development. The benefit methodology established in this subtask will be documented in the Final Report.

**WORK PRODUCT:** Technical memorandum summarizing the Fee methodology

## TASK NO. 4 DETERMINE FEE LEVELS

This task entails calculating the Fee amounts based upon the dwelling unit and commercial/industrial development projections completed in Task No. 1, facilities needs and costs determined in Task No. 2, and the methodology selected in Task No. 3.

### *Subtask 4.1 – Calculate Recommended Fee Amounts*

DTA shall calculate the DIFs for the City by inputting the data compiled under the preceding tasks, and computing the amount of each Fee to be levied. This work will be done in a spreadsheet format that can be updated on an annual basis.

### *Subtask 4.2 – Document Fee Derivation*

DTA shall document the methodology utilized for the Fee calculation model in a manner that can be understood by the City and the public. DTA shall prepare written statements documenting the validity of the methodology for deriving each of the DIFs for the City. These statements will be made to meet the requirements of AB 1600 and will be documented in the Final Report.

**WORK PRODUCT:** Technical memorandum presenting preliminary Fee amounts

## TASK NO. 5 PREPARE FINAL REPORTS AND PRESENTATIONS

This task entails preparation of a draft and final report and presentations to the City Council and City Staff.

### *Subtask 5.1 – Prepare Report*

Based on the work completed in Tasks 1 through 4, DTA will prepare a draft and a final report for consideration by the City. The report will be prepared pursuant to the standards of AB 1600 and is expected to include:

- Executive Summary
- Population Projections
- Facilities and Improvements List
- Areas of Benefit (if applicable)
- Defined Levels of Service
- Fee Calculations
- Recommended Fee Levels
- Recommended Process for Keeping Fees Current

### *Subtask 5.2 – Present Final Report*

DTA will present the Final Report to City Council and City Staff.

**WORK PRODUCT:** Draft and final reports

**TASK NO. 6 ATTEND MEETINGS**

This task entails attendance at a total of four (4) sets of meetings. This would include three (3) meetings with City staff and/or other interested parties, and one (1) meeting for the presentation of the report findings to the City Council.

**EXHIBIT B****FEE SCHEDULE**

**CITY OF TORRANCE  
DEVELOPMENT IMPACT FEE JUSTIFICATION STUDY  
TRAFFIC, UTILITY UNDERGROUNDING, FIRE AND POLICE  
PROTECTION FACILITIES**

Fees for the preparation of a Development Impact Fee Justification Study would be charged on a time and materials basis according to the hourly fee schedule listed below. The maximum fee for performing Tasks 1-4 for traffic and utility undergrounding shall not exceed a total of \$30,000, plus out-of-pocket expenses. The addition of police protection and fire protection facilities would increase the fees by \$5,000 a piece, so all four facilities types would have a maximum fee of \$40,000. These fees assume the full cooperation of City staff in developing a needs list and gathering demographic data regarding the existing City as well as future growth. Should such cooperation not be forthcoming, DTA reserves the right to request additional funding to perform greater amounts of research or prepare more revisions to draft documents prepared by the firm.

David Taussig & Associates, Inc. Fee Schedule	
President	\$180/Hour
Vice President	\$170/Hour
Manager	\$155/Hour
Sr. Associate	\$135/Hour
Associate	\$115/Hour
Analyst	\$100/Hour
Research Assistant	\$ 75/Hour

The fee range for the attached Scope of Work represents a maximum amount not to be exceeded for professional services, subject to the limitations identified below. In addition to the above maximum fees for services, Client shall reimburse DTA for travel, duplication, facsimile, courier, long-distance telephone and other out-of-pocket expenses, in an amount not to exceed \$2,500.

At Client's request, services in addition to those identified in the Scope of Work may be provided if the total fee to complete the tasks selected is less than the maximum amounts listed above. Alternatively, if the selected tasks can be completed for less than the maximum amounts, only the hours actually expended will be billed.

**Limitations**

This budget covers only those tasks outlined in the Scope of Work. Additional consulting services beyond those included in the Scope of Work ("Additional Work") may be provided for additional fees if they cause the budget maximum to be exceeded.

For example, the following would be considered Additional Work:

- Additional analyses based on revised assumptions requested by the City
- Actual implementation of fee programs
- Additional formal meetings beyond the four meetings listed in the Scope of Work
- Any analysis associated with development processing fees or fee comparisons with other local jurisdictions not already in DTA's database
- Reproduction of more than 10 copies of technical memoranda or draft or final reports
- Changes to the needs list after Task 2 has been completed
- Major revisions to DTA's analysis required by challenges to the methodology from the development community and other interested parties

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## FIRST AMENDMENT TO AGREEMENT (C2004-036)

This First Amendment to Agreement ("Amendment") is made and entered into as of July 26, 2005 ("Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY") and David Taussig and Associates, a California corporation ("CONSULTANT").

RECITALS:

- A. CITY and CONSULTANT entered into an Agreement as of February 24, 2004, whereby CONSULTANT agreed to prepare a Development Impact Fee Justification Study for Traffic, Utility Undergrounding, and Fire and Police protection facilities.
- B. The original Agreement was for a twelve month term, effective February 24, 2004 through February 24, 2005.
- C. The CITY is satisfied with the work performed by CONSULTANT.
- D. Both parties wish to extend the term of the Agreement for an additional ten months, to increase the compensation and add to the Scope of Work.

AGREEMENT:

1. Paragraph 2, entitled TERM, is amended in its entirety to read as follows:
  - “2. TERM  
Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through December 26, 2005.”
2. Paragraph 3.A, entitled COMPENSATION, is amended in its entirety to read as follows:
  - “3. COMPENSATION  
A. CONSULTANT's Fee.

For services rendered pursuant to this Agreement, CONSULTANT will be paid in accordance with the Budget attached as Exhibit B, provided, however, that in no event will the total amount of money paid the CONSULTANT, for services contemplated by this Agreement, exceed the

[Amendment to Consulting Services Agreement with David Taussig Associates]

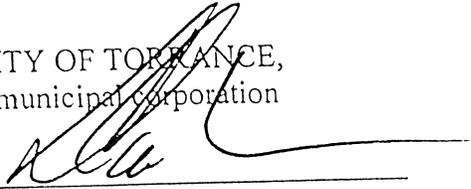
C2004-036

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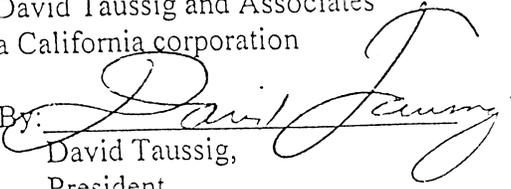
sum of \$83,000.00 ("Agreement Sum"), unless otherwise first approved in writing by CITY."

- 3. A new Exhibit 1 is attached, which adds additional items to CONSULTANT's Scope of Work.
- 4. In all other respects, the Agreement entered into as of February 24, 2004, between CITY and CONSULTANT, is ratified and reaffirmed and is in full force and effect.

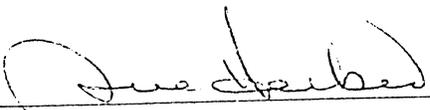
CITY OF TORRANCE,  
a municipal corporation

  
\_\_\_\_\_  
Dan Walker, Mayor

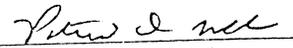
David Taussig and Associates  
a California corporation

By:   
\_\_\_\_\_  
David Taussig,  
President

ATTEST:

  
\_\_\_\_\_  
Sue Herbers  
City Clerk

APPROVED AS TO FORM:  
JOHN L. FELLOWS III  
City Attorney

By:   
\_\_\_\_\_  
Heather K. Whitham  
Deputy City Attorney

Attachments:      Exhibit A-1    Additional Scope of Services

## EXHIBIT A- 1

ADDITIONAL SCOPE OF WORKCITY OF TORRANCE  
DEVELOPMENT IMPACT FEE JUSTIFICATION STUDY

David Taussig and Associates (DTA) shall finalize phase I of the Development Impact Fee Justification Study for Transportation facilities, Undergrounding Utilities, Sewer and Storm Drain facilities.

In addition, DTA will complete Phase II, Public Safety for Police and Fire. In total DTA will attend six meetings with staff and City Council.

## CONSULTING SERVICES AGREEMENT

This CONSULTING SERVICES AGREEMENT ("Agreement") is made and entered into as of February 24, 2004 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and David Taussig and Associates, a California Corporation ("CONSULTANT").

### RECITALS:

- A. CITY wishes to retain the services of an experienced and qualified CONSULTANT to prepare a Development Impact Fee Justification Study for Traffic, Utility Undergrounding, and Fire and Police protection facilities.
- B. CONSULTANT represents that it is qualified to perform those services.

### AGREEMENT:

#### 1. SERVICES TO BE PERFORMED BY CONSULTANT

CONSULTANT will provide the services listed in the Scope of Work attached as Exhibit A. CONSULTANT warrants that all work and services set forth in the Scope of Work will be performed in a competent, professional and satisfactory manner.

#### 2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through February 24, 2005.

#### 3. COMPENSATION

- A. CONSULTANT's Fee.

For services rendered pursuant to this Agreement, CONSULTANT will be paid in accordance with the Budget attached as Exhibit B, provided, however, that in no event will the total amount of money paid the CONSULTANT, for services initially contemplated by this Agreement, exceed the sum of \$ 45,000 ("Agreement Sum"), unless otherwise first approved in writing by CITY.

- B. Schedule of Payment.

Provided that the CONSULTANT is not in default under the terms of this Agreement, upon presentation of an invoice, CONSULTANT will be paid monthly the fees described in Paragraph 3.A. above, according to the Budget. Payment will be due within 30 days after the date of the monthly invoice.

C2004-036

#### 4. TERMINATION OF AGREEMENT

##### A. Termination by CITY for Convenience.

1. CITY may, at any time, terminate the Agreement for CITY's convenience and without cause.
2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONSULTANT will:
  - a. cease operations as directed by CITY in the notice;
  - b. take actions necessary, or that CITY may direct, for the protection and preservation of the work; and
  - c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
3. In case of such termination for CITY's convenience, CONSULTANT will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

##### B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party written notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.
2. In the event this Agreement is terminated for cause by the default of the CONSULTANT, the CITY may, at the expense of the CONSULTANT and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONSULTANT under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONSULTANT and its surety from liability for the default. Under these circumstances, however, the CONSULTANT and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.

3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONSULTANT or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

In the event the CONSULTANT or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect CONSULTANT's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONSULTANT has been given notice and an opportunity to present evidence in mitigation.

5. **FORCE MAJEURE**

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental control, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

6. **RETENTION OF FUNDS**

CONSULTANT authorizes CITY to deduct from any amount payable to CONSULTANT (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate CITY for any losses, costs, liabilities, or damages suffered by CITY, and all amounts for which CITY may be liable to third parties, by reason of CONSULTANT's negligent acts or omissions or willful misconduct in performing or failing to perform CONSULTANT's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONSULTANT, or any indebtedness exists that appears to be the basis for a claim of lien, CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of

CONSULTANT to insure, indemnify, and protect CITY as elsewhere provided in this Agreement.

7. **CITY REPRESENTATIVE**

Ted Semaan is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONSULTANT.

8. **CONSULTANT REPRESENTATIVE(S)**

The following principal(s) of CONSULTANT are designated as being the principal(s) and representative(s) of CONSULTANT authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

David Taussig, Manager

9. **INDEPENDENT CONTRACTOR**

The CONSULTANT is, and at all times will remain as to CITY, a wholly independent contractor. Neither CITY nor any of its agents will have control over the conduct of the CONSULTANT or any of the CONSULTANT's employees, except as otherwise set forth in this Agreement. The CONSULTANT may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

10. **BUSINESS LICENSE**

The CONSULTANT must obtain a City business license prior to the start of work under this Agreement, unless CONSULTANT is qualified for an exemption.

11. **OTHER LICENSES AND PERMITS**

CONSULTANT warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

12. **FAMILIARITY WITH WORK**

By executing this Agreement, CONSULTANT warrants that CONSULTANT (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, CONSULTANT warrants that CONSULTANT has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should CONSULTANT discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONSULTANT must immediately inform CITY of that fact and may not proceed except at CONSULTANT's risk until written instructions are received from CITY.

13. CARE OF WORK

CONSULTANT must adopt reasonable methods during the term of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by CITY, except those losses or damages as may be caused by CITY's own negligence.

14. CONSULTANT'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS

Records of the CONSULTANT's time pertaining to the project, and records of accounts between CITY and the CONSULTANT, will be kept on a generally recognized accounting basis. CONSULTANT will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to CITY during normal working hours. CONSULTANT will maintain these records for three years after final payment.

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.

15. INDEMNIFICATION

CONSULTANT will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, arising from the negligent acts or omissions, or willful misconduct of CONSULTANT, its officers, employees, agents, subcontractors or vendors. It is further agreed, CONSULTANT's obligations to indemnify, defend and hold harmless the CITY from CONSULTANT's negligent acts, omissions or willful misconduct will apply even in the event of concurrent negligence on the part of the CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity.

City agrees to defend and hold harmless CONSULTANT and its officers, agents, and employees from and against any and all claims, liability, causes of action, damages and expenses or any kind arising out of or related to the performance of CONSULTANT's consulting services, except as may arise out of or be related to negligence or willful misconduct by CONSULTANT. In addition, notwithstanding the above, the CITY agrees, under all circumstances, to defend and hold harmless CONSULTANT and its officers, agents and employees from and against any and all claims, liability, causes of action, damages and expenses of any kind arising out of or related to the definition or interpretation of "special benefit" as used in the Right to Vote on Taxes Act. CITY's agreement to indemnify herein includes costs incurred by CONSULTANT in defending or settling claims brought against CONSULTANT and CONSULTANT shall be indemnified for any such and all such costs, attorney's fees, expert fees or other expenses associated with such defense or settlement.

If any action shall be brought against either party for which such party is indemnified hereunder, the indemnified party ("Indemnitee") shall notify the other party (Indemnitor") in writing thereof and Indemnitor shall promptly assume the defense thereof, including, without limitation, the employment of counsel mutually acceptable to CONSULTANT and CITY. In the event Indemnitor shall fail to discharge or undertake to defend Indemnitee against and claim, loss or liability for which Indemnitee is indemnified hereunder, Indemnitee may, at its sole option and election, defend or settle such claim, loss or liability, with Indemnitor paying all costs, attorney's fees, expert fees and other expenses associated with the defense or settlement of such claim.

16. **NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of CITY will be personally liable to CONSULTANT, in the event of any default or breach by the CITY or for any amount that may become due to CONSULTANT.

17. **INSURANCE**

A. CONSULTANT must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:

1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:
  - a. Primary Bodily Injury with limits of at least \$500,000 per person, \$1,000,000 per occurrence; and
  - b. Primary Property Damage of at least \$250,000 per occurrence; or
  - c. Combined single limits of \$1,000,000 per occurrence.
2. General Liability including coverage for contractual obligations with combined single limits of coverage of at least \$1,000,000 per occurrence.
3. Professional liability insurance with limits of at least \$1,000,000 per occurrence.
4. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least \$1,000,000.

B. The insurance provided by CONSULTANT will be primary and non-contributory

C. CITY, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.

D. CONSULTANT must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.

- E. Each insurance policy required by this Paragraph must contain a provision that no termination or cancellation of coverage can be made without thirty days notice to CITY, except for 10 days notice for non-payment of premium.

**18. SUFFICIENCY OF INSURERS AND SURETIES**

Insurance or bonds required by this Agreement will be satisfactory only if issued by companies admitted or non-admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to CITY, the CONSULTANT agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONSULTANT will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of CITY within 10 days of receipt of notice from the Risk Manager.

**19. CONFLICT OF INTEREST**

- A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.
- B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

**20. NOTICE**

- A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:
1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
  2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.

3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.
6. Addresses for purpose of giving notice are as follows:

CONSULTANT: David Taussig & Associates  
1301 Dove Street, Suite 600  
Newport Beach, CA 92660

Fax: (949) 752-4058

CITY: City Clerk  
City of Torrance  
3031 Torrance Boulevard  
Torrance, CA 90509-2970  
Fax: (310) 618-2931

- B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

21. **PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING**

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either CITY or CONSULTANT without the prior written consent of the other.

22. **INTEGRATION; AMENDMENT**

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

23. **INTERPRETATION**

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

24. **SEVERABILITY**

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

25. **TIME OF ESSENCE**

Time is of the essence in the performance of this Agreement.

26. **GOVERNING LAW; JURISDICTION**

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

27. **COMPLIANCE WITH STATUTES AND REGULATIONS**

CONSULTANT will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

28. **WAIVER OF BREACH**

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will 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 and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

29. **ATTORNEY'S FEES**

Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

30. **EXHIBITS**

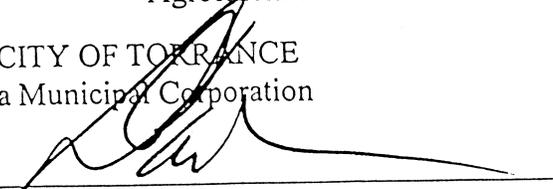
All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

31. **CONSULTANT'S AUTHORITY TO EXECUTE**

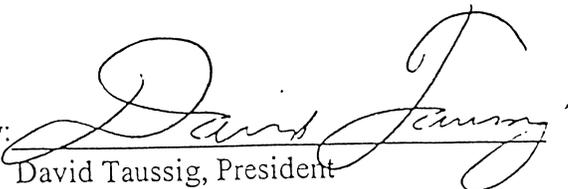
The person(s) executing this Agreement on behalf of the CONSULTANT warrant that (i) the CONSULTANT is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONSULTANT; (iii) by so executing this Agreement, the CONSULTANT is formally bound to the provisions of this Agreement;

and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONSULTANT is bound.

CITY OF TORRANCE  
a Municipal Corporation

  
\_\_\_\_\_  
Dan Walker, Mayor

DAVID TAUSSIG & ASSOCIATES,  
a California Corporation

By:   
\_\_\_\_\_  
David Taussig, President

ATTEST:

  
\_\_\_\_\_  
Sue Herbers  
City Clerk

APPROVED AS TO FORM:  
JOHN L. FELLOWS III  
City Attorney

By:   
\_\_\_\_\_

Attachments:      Exhibit A      Scope of Work  
                         Exhibit B      Fee Schedule

## EXHIBIT A

SCOPE OF WORK

**CITY OF TORRANCE  
DEVELOPMENT IMPACT FEE JUSTIFICATION STUDY  
TRAFFIC, UTILITY UNDERGROUNDING, FIRE AND POLICE  
PROTECTION FACILITIES**

David Taussig and Associates (“DTA”) shall prepare a Development Impact Fee (“DIF” or “Fee”) Justification Study for the City of Torrance (the “City”) to enable the City to levy DIFs to fund the construction of traffic facilities and the undergrounding of utilities. The City shall also have the option of requesting that DTA prepare supplemental studies to support the levy of additional DIFs to fund police and fire protection facilities. The final product prepared by DTA shall be a written report recommending appropriate fee justification methodologies and DIF levels, and will include a mechanism to allow for annual updates of the recommended DIFs. The report shall be prepared pursuant to California Government Code 66000 (AB 1600) and will present a fee methodology which satisfies the “rational nexus” tests used by California courts to determine the legality of development exactions.

This Scope of Work consists of the following tasks:

**TASK NO. 1 DESCRIBE EXISTING SERVICE LEVELS AND DEFICIENCIES**

This task entails development and documentation of future facility service level projections based on population and dwelling unit estimates for the City. The projections developed under this task will ultimately be used to determine service levels, facility needs, and capital requirements for traffic facilities and utilities undergrounding (and optionally, for police and fire protection facilities). This task consists of two subtasks.

*Subtask 1.1 – Identify and Describe Existing Service Levels*

DTA will identify and describe existing facility service standards relative to the existing number of equivalent development units (“EDUs” based on land-use types) and residents/employees served. Existing service levels will then be compared with stated service standards of the City, as cited in the current General Plan and existing policies adopted by the City Council, as well as determined through input from City staff. Based on this comparison, DTA will identify existing service level deficiencies and will quantify, based on existing service levels, the facilities that are necessary to be constructed to serve future development.

*Subtask 1.2 – Conduct Entitlement Research and Dwelling Unit Projections*

DTA will coordinate with City staff to review existing entitlements for future dwelling units and commercial/industrial development in the City. To complete this subtask DTA will:

- Review the General Plan and other planning documents to determine expected development land use patterns in the City.
- Review City records to identify existing entitlements for dwelling units and commercial/industrial development.
- Project the number of new dwelling units and commercial/industrial development based on existing entitlements.

*WORK PRODUCT:* Technical memorandum presenting population and dwelling unit projections and describing existing service levels

## TASK NO. 2 IDENTIFY AND CLARIFY FUTURE SERVICE LEVELS AND FACILITY NEEDS

This task entails a determination of future service levels in cases where they may differ from existing service levels, and the identification of specific facility needs related to these future service levels. DTA will meet with City staff to determine these future service levels, as well as the specific facilities needs and costs, as follows:

### *Subtask 2.1 – Survey/Interview City Staff*

DTA shall survey/interview City staff to ascertain existing and projected facilities in the City (based on Task No. 1), along with major equipment needs, the timing at which improvements will be needed and any physical data that would assist in developing the costs estimated below in Subtask 2.3. Based upon the results of the surveys and interviews, DTA will verify and, if appropriate, expand the list of new facilities to be included within the DIF Program for the City.

### *Subtask 2.2 – Prepare Facilities List*

Based on the information collected in Subtask 2.1, DTA shall prepare a comprehensive list of new backbone facilities and equipment needed to adequately serve new development in the City.

### *Subtask 2.3 – Prepare/Review Cost Estimates*

DTA will prepare general cost estimates, pursuant to Government Code section 66005(a), for the backbone facilities identified in Subtask 2.2. In order to prepare the cost estimates, DTA's engineering staff will:

- Consult with City department heads and/or engineering staff or equivalent to ascertain and understand in-house cost data for existing and projected facilities and equipment.
- Apply appropriate inflation and cost of living escalators to the list of projected public facilities to determine future costs.
- Examine major sources of revenue to fund construction of new public facilities.
- Review and/or refine existing cost data. If no cost data is available, DTA's engineers will provide our opinion(s) of costs for proposed facilities based on industry-wide standards and assumptions. This task does not involve design of facilities or preparing detailed cost estimates or calculations.

- Provide a proportional estimate between projected costs for new facilities and projected revenue from mitigation fees and other sources.

*Subtask 2.4 – Describe Existing and Future Level of Service*

DTA will describe the impact upon service levels after the required additional facilities would be constructed and describe how new development would benefit from additional facilities.

*Subtask 2.5 – Staff Review of Facilities List, Preparation of Final Facilities List*

DTA will submit a copy of the Public Facilities Needs Cost Estimates to the City for review and consideration. This review is important, as this list is the basis on which the new Fee Program will be created.

**WORK PRODUCT:** Final Facilities Needs List and description of future and existing service levels

**TASK NO. 3 DEVELOP METHODOLOGY FOR CALCULATING NEW FEE AMOUNTS**

This task entails developing the methodology used to establish the DIF amount for each DIF component. There are two critical issues that must be considered in developing a DIF Program; the DIF Program must generate revenues in a timely manner and the methodology must meet the nexus or benefit requirements of AB 1600. Since fees of any sort are controversial, it is critical that any DIF established be defensible.

DTA's Fee Study methodology must meet the nexus or benefit requirements of AB 1600, which requires that there be a nexus between Fees imposed, the use of the Fees, and the development projects on which the Fees are imposed. Furthermore, there must be a relationship between the amount of the Fee and the cost of the improvements. In order to impose a DIF as a condition for a development project, the methodology must accomplish the following:

- Identify the purpose of the Fee.
- Identify the use to which the Fee is to be put. If the use is financing public facilities, the facilities must be identified.
- Determine how there is a reasonable relationship between the Fee's use and the type of development project on which the Fee is imposed.
- Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the Fee is being imposed.

Implicit in these requirements is a stipulation that a public agency cannot impose a Fee to cure existing deficiencies in public facilities or improve public facilities beyond what is required based on the specific impacts of new development. The benefit methodology established in this subtask will be documented in the Final Report.

**WORK PRODUCT:** Technical memorandum summarizing the Fee methodology

## TASK NO. 4 DETERMINE FEE LEVELS

This task entails calculating the Fee amounts based upon the dwelling unit and commercial/industrial development projections completed in Task No. 1, facilities needs and costs determined in Task No. 2, and the methodology selected in Task No. 3.

### *Subtask 4.1 – Calculate Recommended Fee Amounts*

DTA shall calculate the DIFs for the City by inputting the data compiled under the preceding tasks, and computing the amount of each Fee to be levied. This work will be done in a spreadsheet format that can be updated on an annual basis.

### *Subtask 4.2 – Document Fee Derivation*

DTA shall document the methodology utilized for the Fee calculation model in a manner that can be understood by the City and the public. DTA shall prepare written statements documenting the validity of the methodology for deriving each of the DIFs for the City. These statements will be made to meet the requirements of AB 1600 and will be documented in the Final Report.

*WORK PRODUCT:* Technical memorandum presenting preliminary Fee amounts

## TASK NO. 5 PREPARE FINAL REPORTS AND PRESENTATIONS

This task entails preparation of a draft and final report and presentations to the City Council and City Staff.

### *Subtask 5.1 – Prepare Report*

Based on the work completed in Tasks 1 through 4, DTA will prepare a draft and a final report for consideration by the City. The report will be prepared pursuant to the standards of AB 1600 and is expected to include:

- Executive Summary
- Population Projections
- Facilities and Improvements List
- Areas of Benefit (if applicable)
- Defined Levels of Service
- Fee Calculations
- Recommended Fee Levels
- Recommended Process for Keeping Fees Current

### *Subtask 5.2 – Present Final Report*

DTA will present the Final Report to City Council and City Staff.

*WORK PRODUCT:* Draft and final reports

TASK NO. 6 ATTEND MEETINGS

This task entails attendance at a total of four (4) sets of meetings. This would include three (3) meetings with City staff and/or other interested parties, and one (1) meeting for the presentation of the report findings to the City Council.

## EXHIBIT B

FEE SCHEDULE

**CITY OF TORRANCE  
DEVELOPMENT IMPACT FEE JUSTIFICATION STUDY  
TRAFFIC, UTILITY UNDERGROUNDING, FIRE AND POLICE  
PROTECTION FACILITIES**

Fees for the preparation of a Development Impact Fee Justification Study would be charged on a time and materials basis according to the hourly fee schedule listed below. The maximum fee for performing Tasks 1-4 for traffic and utility undergrounding shall not exceed a total of \$30,000, plus out-of-pocket expenses. The addition of police protection and fire protection facilities would increase the fees by \$5,000 a piece, so all four facilities types would have a maximum fee of \$40,000. These fees assume the full cooperation of City staff in developing a needs list and gathering demographic data regarding the existing City as well as future growth. Should such cooperation not be forthcoming, DTA reserves the right to request additional funding to perform greater amounts of research or prepare more revisions to draft documents prepared by the firm.

David Taussig & Associates, Inc. Fee Schedule	
President	\$180/Hour
Vice President	\$170/Hour
Manager	\$155/Hour
Sr. Associate	\$135/Hour
Associate	\$115/Hour
Analyst	\$100/Hour
Research Assistant	\$ 75/Hour

The fee range for the attached Scope of Work represents a maximum amount not to be exceeded for professional services, subject to the limitations identified below. In addition to the above maximum fees for services, Client shall reimburse DTA for travel, duplication, facsimile, courier, long-distance telephone and other out-of-pocket expenses, in an amount not to exceed \$2,500.

At Client's request, services in addition to those identified in the Scope of Work may be provided if the total fee to complete the tasks selected is less than the maximum amounts listed above. Alternatively, if the selected tasks can be completed for less than the maximum amounts, only the hours actually expended will be billed.

Limitations

This budget covers only those tasks outlined in the Scope of Work. Additional consulting services beyond those included in the Scope of Work ("Additional Work") may be provided for additional fees if they cause the budget maximum to be exceeded.

For example, the following would be considered Additional Work:

- Additional analyses based on revised assumptions requested by the City
- Actual implementation of fee programs
- Additional formal meetings beyond the four meetings listed in the Scope of Work
- Any analysis associated with development processing fees or fee comparisons with other local jurisdictions not already in DTA's database
- Reproduction of more than 10 copies of technical memoranda or draft or final reports
- Changes to the needs list after Task 2 has been completed
- Major revisions to DTA's analysis required by challenges to the methodology from the development community and other interested parties

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