

## AGREEMENT FOR ADMINISTRATIVE SERVICES

THIS AGREEMENT ("Agreement") is made and entered into this 17<sup>th</sup> day of September 2015, by and between the Village of Lombard located at 255 E. Wilson Avenue, Lombard, Illinois 60148, hereinafter called "Client," and David Taussig and Associates, Inc., located at 5000 Birch Street, Suite 6000, Newport Beach, CA 92660, hereinafter called "Consultant." Client and the Consultant, in consideration of the mutual promises and conditions herein contained, with respect to the project(s) known as the Village of Lombard Special Assessment Districts, hereinafter the "Project," agree as follows.

### ARTICLE I TERM OF CONTRACT

**Section 1.1** This Agreement shall become effective on the date stated above and shall continue in effect until terminated as provided in Article VI below.

### ARTICLE II SERVICES TO BE PERFORMED BY CONSULTANT

**Section 2.1** Professional Services. Consultant agrees to perform the professional services for the Client in accordance with the applicable standard of care 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 "Administrative Services."

**Section 2.2** Instruments of Service. 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"), reports, drawings, specifications, computer files, field data, notes and other documents and instruments prepared by Consultant are Instruments of Service of Consultant and shall remain the property of Consultant. Consultant shall likewise retain all common law, statutory and other reserved rights, including the copyright thereto. 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 Administrative 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. The reports and models used to generate such reports are for use on this Project only. The Client shall not reuse or make any modification to the hard copy or electronically transmitted reports generated pursuant to the Administrative Services without the prior written authorization of the Consultant. Client acknowledges that Consultant may have used reports and analyses that Consultant 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 Consultant 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 Consultant authors for Consultant's other clients, provided, however that Consultant shall not use any confidential information provided by Client in such future reports and analyses. Client further acknowledges and agrees that Consultant has spent substantial time and effort in collection and compiling data and information (the "Data

Compilations") in connection with the Administrative Services and that such Data Compilations may be used by Consultant for its own purposes, including, without limitation, sale or distribution to third parties; provided, however, that Consultant 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 Administrative 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 Administrative Services, in accordance with this Agreement, a professional fee computed according to the Fee Schedule attached as Exhibit "B" hereto and incorporated herein by reference. Client acknowledges and agrees that portions of Consultant's professional fees and expenses may be incurred by Consultant prior to the execution of this Agreement (the "Pre-Agreement Fees") and Client agrees to pay such Pre-Agreement Fees in accordance with this Agreement.

**Section 3.2** Client shall reimburse Consultant for Consultant's out-of-pocket expenses subject to Exhibit "B."

**Section 3.3** On or about the first two weeks of each quarter during which Administrative Services are rendered hereunder, Consultant shall present to Client an invoice covering the previous quarter's Administrative Services performed. Such invoices shall be paid by Client within thirty (30) days of the date of each invoice. A 6.0% annual charge may be imposed against accounts that are not paid within 30 days of the date of each invoice. If Client objects to any portion of an invoice, Client shall notify Consultant within fourteen (14) calendar days of receipt of the invoice, otherwise the invoice shall be deemed accepted. If Client objects to any portion of an invoice, Client shall so timely notify Consultant in writing identifying the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement.

**Section 3.4** The maximum total fee amount set forth in Exhibit "B" may be increased as a result of any expansion of the Administrative Services to be rendered hereunder pursuant to Section 2.3 or as provided in Exhibit "A" hereto. Any such changes in the maximum total professional fee amount agreed to by the parties shall be reflected in an amendment to the Fee Schedule entered into in accordance with Section 7.2.

**Section 3.5** Records of Consultant's costs relating to (i) Administrative Services performed under this Agreement and (ii) reimbursable expenses shall be kept and be available to 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 Administrative Services in accordance with Exhibit "A" and the applicable standard of care. 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 Administrative 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 subconsultant (a "Subconsultant") and Client either consents or fails to respond to notification with respect to the use of any particular proposed Subconsultant.

**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.

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

**Section 5.1** Client shall provide full information in a timely manner regarding requirements for and limitations on the Project. 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. Furthermore, Client shall designate one or more representatives authorized to act on Client's behalf with respect to the Project. Client or such designated representative shall render decisions in a timely manner pertaining to documents submitted by Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's Administrative Services.

**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** Client, County of DuPage and other public agencies, property owners, and other professionals and parties dealing with Client, County of DuPage, or involved in the Project referred to in the Scope of Work Statement (collectively, the "**Furnishing Parties**") 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 Instruments of Service called for by the Scope of Work Statement. Consultant shall

not be obligated to establish or verify the accuracy of the information furnished by or on behalf of the Furnishing Parties, nor shall Consultant be responsible for the impact or effect on its Instruments of Service of the information furnished by or on behalf of the Furnishing Parties, in the event that such information is in error and therefore introduces error into Consultant's Instruments of Service.

**Section 5.4** In the event that court appearances, testimony or depositions are required of Consultant by Client in connection with the Administrative Services rendered hereunder (except for those arising from the negligent performance of Consultant), Client shall compensate Consultant at a rate of \$350 per hour and shall reimburse Consultant for out-of-pocket expenses on a cost basis.

**Section 5.5** Client shall provide prompt written notice to Consultant if Client becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in Consultant's Instruments of Service.

## 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 Administrative 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** In the event of any termination that is not the fault of Consultant, Client shall pay Consultant, in addition to payment for Administrative Services rendered and reimbursable costs incurred in connection with this Agreement, for all expenses reasonably incurred by Consultant in connection with the orderly termination of this Agreement, including demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

**Section 6.4** Suspension and Termination for Non-Payment. (i) In addition to any other provisions in this Agreement regarding breach of the Agreement, if Client fails to make payments when due, Consultant may suspend performance of services upon ten (10) calendar days' notice to Client. Consultant shall have no liability whatsoever to Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by Client. Upon payment in full by Client, Consultant shall resume Administrative Services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for Consultant to resume performance. (ii) If Client fails to make payment to Consultant in accordance with the payment terms herein, and/or Client has failed to cure its breach or default following a suspension of services as set forth above.

this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by Consultant upon seven (7) days written notice to Client. (iii) Payment of invoices shall not be subject to any discounts or set-offs by Client, unless agreed to in writing by Consultant. Payment to Consultant for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

**Section 6.5** The covenants contained in Sections 2.2, 3.1, 3.2, 5.3, 5.4, 5.5, 6.3 and 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) business 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 Administrative Services by Consultant for Client and contains all of the covenants and agreements between the parties with respect to the rendering of such Administrative 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** The prevailing party in any 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.

**Section 7.5** This Agreement will be governed by and construed in accordance with the laws of the State of Illinois. Venue shall be in the County of DuPage.

**Section 7.6** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Client or Consultant. Consultant's services under this Agreement are being performed solely for Client's benefit, and no other party or entity shall have any claim against Consultant because of this Agreement or the performance or nonperformance of services hereunder.

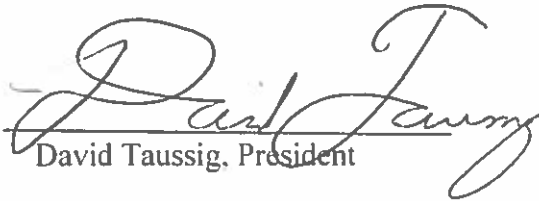
**Section 7.7** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither Consultant nor Client, their respective officers, directors, partners, employees, contractors or Subconsultants shall be liable to the other for, or shall make, any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

**Section 7.8** It is intended by the parties to this Agreement that Consultant's services in connection with the Project shall not subject Consultant's individual shareholders, officers, directors, members, managers or employees to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, Client agrees that any claim, demand or suit arising under this Agreement shall be directed and/or asserted only against Consultant and not against any of the individual shareholders, officers, directors, members, managers or employees.

**Section 7.9** Limitation of Liability – For Available Insurance. In recognition of the relative risks and benefits of the Project to both Client and Consultant, the risks have been allocated such that Client agrees, to the fullest extent permitted by law, to limit the liability of Consultant to Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of Consultant to Client shall not exceed the sum of insurance coverage available at the time of settlement or judgment. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, provided the Consultant and/or Subconsultant maintains in effect professional errors and omissions liability insurance with limits of at least \$1,000,000 (the "Insurance Requirement"). Notwithstanding anything to the contrary contained herein, this limitation of liability shall not apply (i) to any claim for which there is no insurance coverage or if Consultant and/or Subconsultant fails to maintain the Insurance Requirement, (ii) to any claim arising from Consultant's or Subconsultant's willful misconduct, or (iii) where such limitation is otherwise prohibited by law. Lastly, with respect to any and all causes of action arising from the performance of Administrative Services, it is agreed that Consultant shall only be responsible to the extent any claim or liability is caused by the negligence, recklessness or willful misconduct of Consultant and/or Subconsultant.


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: Sept. 28, 2015

CLIENT:  
Village of Lombard

By:   
Village President

Date: September 17, 2015

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## ***Exhibit A - Scope of Work Statement***

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The Scope of Work statement for the administration of the Village's assessment programs is outlined below.

### **Task 1: Parcel Database**

This task involves gathering and organizing the information required to establish and maintain a parcel database necessary to extend, bill, and collect the special assessments. Using data provided by the Village, DTA will establish and maintain a parcel database for each assessment program that will include the relevant PINs, property reference data, and special assessment data.

### **Task 2: Special Assessment Bills**

This task involves preparation and mailing of annual assessment bills using bill specifications mutually agreed upon by DTA and the Village. DTA will review County records to determine the record owner and corresponding mailing address for each PIN, prepare an annual special assessment roll indicating the components of the annual assessment amount (e.g., interest, principal, and administrative expenses), and prepare and mail the assessment bills.

### **Task 3: Payment Reconciliation**

This task involves review of payment data provided by the Village and/or the designated lock box bank. On or about 15 days after the end of each month, the DTA shall prepare a report setting forth the owner name, address, assessment amount billed and collected for each PIN.

### **Task 4: Delinquency Follow-up**

This task entails the preparation and mailing of demand letters to property owners with delinquent special assessments and includes four subtasks:

- 4.1 Preparation and Mailing of Delinquency Notices:** DTA will mail up to three courtesy notices to property owners that are delinquent in the payment of the annual assessment, provided such owner has not furnished to the DTA evidence of a filing for bankruptcy. Such notices shall inform the property owner that the property will be subject to a tax sale if the delinquency is not cured.
- 4.2 Publication of Tax Sale List:** DTA will prepare a tax sale list setting forth all delinquent parcels and corresponding amounts of delinquent special assessments. DTA will coordinate with the Village to publish the tax sale list in a newspaper with the requisite circulation.
- 4.3 Tax Sale Notice:** DTA shall prepare upcoming tax sale notices for each property owner whose payment is still delinquent after the publication of the tax sale list. Such notice shall provide property owner notification of when the tax sale is expected to occur and options to remedy payment prior to the tax sale.
- 4.4 Final Tax Sale List:** DTA shall prepare a list of the parcels for which payment



has not been received as of the final deadline after tax sale notices have been mailed and shall submit such list to the County for inclusion in the County's next tax sale.

### **Task 5: Prepayments**

This task entails the calculation of assessment prepayment amounts and coordination with the Trustee, and associated record keeping in the event any special assessment is prepaid in full or part. This task includes the following subtasks:

- 5.1 Prepayment Calculation:** Upon request, DTA will calculate the amount needed to prepay the special assessment and submit information with respect to such calculation to the Trustee pursuant to the Trust Indenture. The prepayment information provided will identify the amount due, the deadline for payment, and direction regarding where payment is to be remitted.
- 5.2 Release:** Consultant will coordinate with Village and its counsel regarding the preparation and recordation of the assessment lien release following any prepayment in full.
- 5.3 Bond Redemption:** This task involves analysis of the early redemption of bonds resulting from the prepayment of special assessments. DTA will coordinate with the Trustee to assist in the proper application of such funds.
- 5.4 Roll Modification:** This task entails the modification of the Assessment Roll in the event of a partial prepayment.

### **Task 6: Taxpayer Inquiries**

This task involves responding to telephone calls from prospective or current property owners or other interested parties who have questions regarding the assessments. DTA will provide property owners with a toll-free number for inquiries.

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## *Exhibit B - Fee Schedule*

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### **PROFESSIONAL FEES**

Consultant's annual compensation for Tasks 1 through 6 of the Scope of Work statement is a fixed fee of \$70.10 per parcel or \$3,500, whichever is more through calendar year 2021.

### **GENERAL TERMS AND CONDITIONS**

The annual fee shall be billed in four equal installments, with invoices submitted by DTA to Village on or about the first two weeks of each quarter. Such invoices shall be paid by Village within thirty (30) days of the date of each invoice. A 6.0% annual charge may be imposed against accounts that are not paid within 30 days of the date of each invoice.

Any additional tasks assigned by Village shall be charged at the hourly rates listed in Table 1 below. Such additional tasks would include, but not be limited to, the following:

- Attendance, other than via telephone, at meetings with Village or property owners; and
- Mailing of more than three annual notices of delinquency.

<b>TABLE 1 HOURLY RATES</b>	
Managing Director	\$250/hour
Vice President	\$225/hour
Manager	\$200/hour
Senior Associate	\$180/hour
Associate	\$165/hour
Senior Analyst	\$145/hour
Analyst	\$125/hour
Research Assistant	\$105/hour

The preceding hourly rates apply for a 12 month period from execution of the Agreement. Price adjustments may be made for the following years of the contract, but may not exceed the lesser of 5% or the rate of inflation for the Chicago metropolitan region to be determined using the Consumer Price Index as of December each year (December 2016 for the year beginning January 1, 2017). Consultant shall notify Client in advance of any such increase.

[http://127.0.0.1/resources/Proposals/ADMIN/ILLINOIS/Lombard/Admin Agreement \(2015\).docx](http://127.0.0.1/resources/Proposals/ADMIN/ILLINOIS/Lombard/Admin%20Agreement%20(2015).docx)