

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is entered into as of the 1st day of April 2018, between the Upper Captiva Fire Protection and Rescue Service District, by and through its Commission, (the "District"), and the law firm of Mark G. Lawson, P.A. (the "Firm" or "MGLPA").

WHEREAS, the District desires specialized assistance with the development and refinement of a non-ad valorem revenue source to provide funding for the community's fire protection program; and

WHEREAS, the District desires to engage Mark G. Lawson, P.A. as special counsel to assist and advise the District in the development of strategies, planning and implementation of such revenue source, together with related activities and objectives, and other local government matters; and

WHEREAS, the District, with the concurrence of its staff (inclusive of its subject matter advisory committee) and District general counsel, has authorized and directed the engagement and use of the Firm as special counsel to the District.

NOW, THEREFORE, it is agreed as follows:

1. SPECIAL COUNSEL SERVICES. The Firm will provide legal services as special counsel to the District as provided for herein. The contemplated legal services are to be provided in conjunction with the efforts and input of the District's general counsel, designated consultants, experts, officials, and staff of the District. Such legal services and assistance are to be provided on an hourly or negotiated fee basis by separate work orders as provided herein and shall generally include the following:

(A) sharing the Firm's and its principals' experiences, relationships, and prior exposure in home rule and statutory special assessment and other local government revenue development programs, including programs which finance the planning, development and implementation of fire related essential services and capital programs;

(B) providing advice in developing a strategy to address both methodology and procedural issues associated with implementing and refining non-ad valorem revenue sources to fund in a smart, innovative and efficient fashion the community's fire protection program;

(C) facilitating the development or modification of appropriate written actions, resolutions, interlocal or other agreements and documents to collaboratively and cooperatively achieve the District's objectives, including implementation;

(D) providing research and advice;

- (E) rendering of written memoranda or reasoned analysis when necessary;
- (F) attending workshops, public meetings, and hearings as necessary; and
- (G) providing assistance in the prosecution or defense of litigation, including validation proceedings and all documents associated therewith, and on appeal, if necessary.

2. COMPENSATION FOR SPECIAL COUNSEL SERVICES. The Firm will be compensated for legal services at negotiated fees and/or hourly rates as authorized by specific work orders.

(A) The Firm will be compensated for legal services at the following discounted hourly rates for local governmental clients:

- (1) Firm attorneys at a blended rate of \$295 per hour; and
- (2) Firm legal assistants, paralegals or law clerks at the rate of \$75 per hour.

(B) Any negotiated fee for legal services shall include a scope of services and fee structure authorized by the District in writing as provided for herein.

(C) In addition to any negotiated fees or hourly rates, the Firm shall be entitled to receive reimbursement for actual costs incurred, such as computer printing or photocopies, extra-ordinary (overseas) long distance telephone charges, travel expenses and overnight delivery charges. Any requested or necessary travel expenses will be reimbursed in accordance with Section 112.061, Florida Statutes.

(D) The Firm shall bill the District periodically, but not more often than monthly, and provide an itemized statement of fees and costs incurred to date. All invoices shall be submitted to, approved and processed for payment by, the Contract Administrator as designated herein.

(E) The Firm shall only provide services upon direction and authorization to do so by the Contract Administrator as provided herein or pursuant to authorized written work orders.

3. ACKNOWLEDGMENT AND USE OF NECESSARY CONSULTANTS; APPROVAL PROCEDURE.

(A) The achievement of the District's objectives as contemplated herein will necessarily require more than legal expertise. Subject to the recommendation of the Contract Administrator and the approval of the District, the Firm shall have the authority to use or retain on behalf of the District such additional consultants, experts, or counsel that it deems necessary to implement the objectives and programs of the District. Such approval shall be first requested in writing and shall include a scope of services and method of compensation for each additional consultant, expert, or counsel requested. If requested, statements for fees and costs incurred by

any approved consultant, expert, or counsel, shall be first reviewed by the Firm and, upon approval, submitted to the Contract Administrator for payment. Such review by the Firm shall be conducted at no charge to the District.

(B) At the outset, the District acknowledges its use of Dr. Owen Beitsch, formerly of Real Estate Research Consultants, Inc., now a GAI Company ("GAI"), Dr. Frederick Bloetscher, of Public Utility Management and Planning Services ("PUMPS"), Inc., and Ennead, LLC ("ENNEAD") (collectively the "Assessment Professionals") for the purposes of providing professional services to the District and other local government officials in conjunction with the planning, development and implementation of fire protection related essential services and capital funding programs for the District and to implement the objectives and programs of the District. For engagements involving an hourly fee basis, GAI will bill at the rate of \$295 per hour, PUMPS will bill at the rate of \$125 per hour, and ENNEAD will bill at a rate of \$165 per hour. Any periodic change in such rates must be approved by the Contract Administrator.

4. DISCLOSURE. The Firm has disclosed to the District that it currently serves as general counsel and special counsel to numerous counties, municipalities and special districts throughout Florida, and that it has, and may in the future, serve as counsel in public finance or other transactions involving local governmental entities, redevelopment agencies, and other private or public economic development entities within or near the District and throughout Florida. After consultation with other counsel, the District waives any conflicts, if any, resulting from such representations. As well, the parties hereto acknowledge and agree that such representations, and the Firm's role as described herein to any other party, is not likely to create or cause any actual conflict, and service as counsel to other Firm clients in such regard will not per se be construed as a conflict or be objectionable to the District.

5. CONTRACT ADMINISTRATION.

(A) For ease and convenience of administration, the District shall from time to time designate one or more persons to provide policy direction and instructions to the Firm in the administration of its duties hereunder, approving and authorizing work orders and all other matters necessary to administer this Agreement on behalf of the District (the "Contract Administrator"). The initial Contract Administrator directed and authorized to act on behalf of the District shall be the Chair, or the Commissioner assigned to guide the District's access committee, or his designee.

(B) The Firm shall be entitled to reasonably rely upon direction received from the designated Contract Administrator, the Fire Chief, the District general counsel, or other designee of the Contract Administrator.

(C) The Firm and Contract Administrator are hereby directed and authorized to process the initial work order associated with the feasibility of a fire protection assessment program under this Agreement in substantially the form presented on even date. Subsequent amendments to the foregoing work orders or subsequent work orders shall be in substantially similar format and approved by the Contract Administrator.

6. GENERAL.

(A) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement may be amended only by a written agreement entered into by the parties.

(B) This Agreement may be terminated with or without cause by the Contract Administrator or by the Firm at any time upon thirty (30) days' written notice. In the event of termination and unless directed otherwise, the Firm shall assume responsibility for completion of and shall be compensated for all representation requested prior to the notice of termination. Provided, however, the Contract Administrator may terminate this Agreement for breach by the Firm with such notice as may be reasonable under the circumstances. In the event of termination without cause, the Firm shall be compensated in accordance herewith for reasonable time and expenses, expended prior to the date of termination.

(C) This Agreement may be executed in multiple counterparts.

(D) This Agreement shall become effective when executed by all of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Professional Services Agreement as of the date and year first above written.

MARK G. LAWSON, P.A.

By: _____
Authorized Signatory

**UPPER CAPTIVA FIRE PROTECTION AND
RESCUE SERVICE DISTRICT**

By: _____
Its duly authorized Chair

**FIRE PROTECTION ASSESSMENT
WORK ORDER No. 2018-1**

TO: Mark G. Lawson, P.A.
Attention: James C. Dinkins and Mark G. Lawson

FROM: District Board of Commissioners
Upper Captiva Fire Protection and Rescue Service District

1. SCOPE OF SERVICES. Mark G. Lawson, P.A. (the "Firm" or "MGLPA") is hereby directed and authorized to:

Task 1. Acquire and analyze relevant data and documentation including master parcel list, millage coding documentation, fire protection budgets, interlocal agreements, fire and assessment related statutes, ordinances and resolutions to determine those expenses which may be lawfully recovered through a fixed and variable cost recovery special assessment on a per tax parcel basis.

Task 2. Develop a preliminary non-ad valorem assessment roll including all tax parcels proposed for assessment.

Task 3. Consider and analyze case law and general law requirements and deadlines; and collaborate with District staff and officials to develop a detailed critical events schedule including key dates for necessary actions and deliverables.

Task 4. Be prepared to travel to and meet individually with District staff and officials, elected officials and advisory committee, and the District general counsel to carefully explain in person (or by conference call if requested) in a series of educative sessions or conferences, the pros, cons, nuances, public relations, legal, practical and financial implications of every aspect of program implementation – both short and long term, and collections alternatives and protocols. Collegially evaluate and with particularity share how the District can be staffed and positioned to assist in operational control of the program and the unique operational and capital needs to assure continual availability of the local shell covered access areas necessary to provide District services, so that the program becomes repeatable and cost effective in future revenue cycles. Field and, if necessary, further research, every question and promptly provide answers and advice based upon the demonstrated experience of all of the professionals involved.

Task 5. Prepare and present to the Commission, Fire Chief and District general counsel a written executive summary report summarizing the budget analysis, proposing an apportionment methodology and providing funding (amount) scenarios consistent with recommendations as provided by District staff. The executive summary report will detail a

variety of net revenue results for extraordinary decision-making purposes; and will allow for the resultant determination of the proposed assessment for any specific tax parcel. The executive summary will provide prompt, fully researched and documented answers, based upon research, analysis, and demonstrated use and legal sufficiency of both a legally defensible and politically palatable apportionment of costs to all developed and undeveloped tax parcels. The net revenue information will be based upon focused analysis of which classes or types of proposed budget expenditures can be assessed as a part of a non-ad valorem assessment regime. The firms and the District acknowledge the work to develop the executive summary will exceed the value of the initial fee described in Section 4.(a) hereof and will be provided, in part, at-risk, but is necessary to promptly and authoritatively present a powerful, flexible and educative decision-making tool for the District.

Task 6. Reasonably prepare in advance resolution(s) or other documents necessary to authorize and initiate the process required for the special assessment program. This Task will include the assembly of a ballot question and facilitation of elector-approval uniquely demanded by the Legislature in chapter 191, Florida Statutes. This work is to be done so that if the Commission determines to proceed, implementation can proceed promptly.

Task 7. Appear before the Commission to present any required procedural and directory resolution.

Task 8. Update the non-ad valorem assessment roll according to direction of the Commission.

Task 9. Update and refine the executive summary report to serve as evidentiary predicate for imposition of special assessments, if necessary.

Task 10. Facilitate all required notices with District staff.

Task 11. Prepare a final assessment resolution levying assessments, approving the assessment roll and directing the initial use of the billing method for the initial fiscal year of imposition. This task will be subject in some respects to timing and direction from the District as to the fiscal year periods it wishes to fund, but the work will be able to focus upon implementation of funding, if possible, for the current or immediately following fiscal year.

Task 12. Appear and assist the Commission with a required public hearing to present the final assessment resolution; and, adoption thereof.

Task 13. Prepare and present the documentation necessary to file and prosecute an expedited proceeding on behalf of the District in order to obtain judicial determination as to the validity of the revenue to be derived from the assessment program to be used to finance and pay for capital, including preparation of all necessary resolutions, pleadings and documentation.

Task 14. If necessary, represent the District in any appeal proceeding, including preparation of all necessary briefs and documentation and conducting oral argument before the Florida Supreme Court.

Task 15. If directed to do so, facilitate finalization and billing of the assessment roll (subject to favorable elector direction, and subsequent validation and/or appeal outcome) (possibly for FY 2018-19) by use of the Uniform Collection Method.

Task 16 Facilitate compliance with any statutory prerequisites necessary for subsequent collection of the assessments on the annual property tax bill (anticipated for FY 2019-20 and beyond). Depending on timing and direction, confirm or facilitate execution of agreements with tax collector and property appraiser as required by Section 197.3632, Florida Statutes, for collection of the special assessments on the annual property tax bill. This task will also be subject in some respects to timing issues and subsequent direction from the District as to the first fiscal year periods it intends to fund using the Uniform Collection Method. This Task is generally performed, in later years, based upon a negotiated fee, plus actual costs, on an evergreen (annually repeating) basis.

2. ACKNOWLEDGMENT OF USE OF NECESSARY CONSULTANTS. Pursuant to the Professional Services Agreement, the District directs and authorizes the use and collaboration with Dr. Owen Beitsch or GAI, Dr. Frederick Bloetscher of PUMPS, and ENNEAD, for the purpose of working with the District to develop and implement the subject funding program. In such capacity, GAI, PUMPS and ENNEAD shall not be deemed clients or subcontractors of the Firm, but also in privity with the District.

3. COMPENSATION. Fees will be based upon hourly rates as follows:

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|--------|---|
| MGLPA | \$295.00 per hour for attorneys; \$75.00 per hour for legal assistants and law clerks |
| GAI | \$295.00 per hour |
| PUMPS | \$125.00 per hour |
| ENNEAD | \$165.00 per hour |

In addition to such rates, the professionals shall be entitled to reimbursement for actual costs incurred, but not exceeding that provided by Chapter 112, Florida Statutes.

4. PARTIALLY CONTINGENT NEGOTIATED FEE. The Firm, GAI, PUMPS and ENNEAD recognize the financial circumstances facing Florida communities and local governments, including the variability and heavy reliance upon property tax receipts and other revenues sensitive to over-reliance for bonding purposes, substantial decline, or sudden general depression of property values, and that the District serves a small, confined barrier island community. Notwithstanding anything herein to the contrary, the District and the firms have

and do hereby agree to undertake the work effort contemplated in this Work Order based upon a negotiated and partially contingent fee as follows:

(a) The firms will undertake all of the foregoing tasks for a single initial lump sum professional services fee of \$10,000 and actual and verifiable costs (not to exceed \$5,000) to be paid within fifteen (15) days of delivery of the executive summary report described in Task 5;

(b) The District shall pay all reasonable costs incurred by the firms on a monthly basis (upon provision of appropriate reimbursement back-up and detail for audit purposes);

(c) The firms shall submit itemized hourly statements for all work if the firms are directed to proceed beyond Task 5, but may for convenience and upon mutual agreement of firms and the District, in its sole discretion, apply alternative agreed upon negotiated fees for same;

(d) The District shall pay an additional contingent lump sum based upon the aggregate hourly (or, if agreed to by the firms and the District, negotiated fees) work for all professional services and unpaid costs for all tasks (with a credit for the initial \$15,000 fee paid in accordance with Item 4(a) above) following a successful judicial validation (i.e. the judicial determination assessment revenues can be used to buy and finance capital equipment or improvements) and any appeal therefrom, if any, or a policy decision by the District to not proceed further at any time after directing the firms to proceed beyond Task 5; such amount shall be due and payable notwithstanding any subsequent policy decision not to impose or collect the assessments; and,

(e) If the firms are directed to proceed beyond Task 5 and the final judgment contemplated in Item 4(d) is not obtained upon appeal, no lump sum for additional professional services beyond those outlined in Item 4(a) will be charged.

If the firms are directed to proceed beyond Task 5, a single invoice shall be provided by the Firm on a periodic basis including invoices for all expenses incurred by the Firm, GAI, PUMPS, ENNEAD, and any other authorized consulting expertise during the course of this work order. All invoices will provide appropriate reimbursement backup and detail required by the District for audit purposes.

This negotiated fee reflects a circumstantial discount and contingent payment agreement warranted by the size and demographics of the District, the District's direction and intent to proceed to develop, and if determined after Task 5 to proceed immediately to impose and validate the use of the assessments and collect same using the tax bill collection method authorized by section 197.3632, Florida Statutes, as may be necessary in order to accomplish the District's objectives and the legal, administrative and policy circumstances which surround the imposition of the contemplated special assessments.

The foregoing negotiated fee structure does not cover amounts for the cost of published notices, printing or mailing, fees or charges of the supervisor of elections, property appraiser or tax collector, or similar expenses associated with assessment implementation, roll presentation via the internet, transcription fees or filing fees all of which will be the responsibility of the District, or any additional work not described above or for other engagements.

5. WORK ORDER BUDGET. The initial budget appropriation for this Work Order shall be the amount of \$15,000 (\$10,000 initial lump sum fee and a budgeted allowance for up to \$5,000 in demonstrated expenses). The District acknowledges that additional costs and honoring the contingent fee if it determines to proceed will require an additional budget appropriation after Tasks 1-5 herein.

Authorized by:

And accepted by:

Title: Contract Administrator

Mark G. Lawson, P.A.

Date: _____

Date: _____