

Bd 3/6/07 #22



County Executive Office

Memorandum

March 5, 2007

To: Darlene Bloom, Clerk of the Board of Supervisors

From:  Tom Beckett, CEO Public Finance Manager

Subject: 3/6/07 Board Agenda Item #22, District Engineer Services Payment Authorization - Amended Recommended Action

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COUNTY BOARD OF SUPERVISORS

Please replace the Recommended Action of the subject ASR by the following Amended Recommended Action:

Amend the term of Agreement No. 06-004DE with VA Consulting, Inc. for District Engineer Services to be effective on August 28, 2006 and continue in full force and effect until September 30, 2011.

Additionally, attached is Agreement No. 06-004DE, including language for the above which is highlighted in Section 2 of this Agreement. This amendment is recommended to ensure that all services performed by and payments to VA Consulting, Inc. are contractually covered.

If you have any questions regarding this request, please call me at 834-5969 or Faye Watanabe at 834-3047. Thank you for your assistance.

Attachment

cc: T. Mauk, CEO
R. Franz, CFO
R. Richardson, Assistant to CEO

AGREEMENT NO. 06-004DE

DISTRICT ENGINEER SERVICES

This Agreement for District Engineer Services (this "Agreement") is made and entered into this 14th day of November, 2006, by and among the County of Orange, California, a political subdivision organized and existing pursuant to the Constitution and laws of the State of California (the "County") with respect to Assessment District No. 88-1 (Irvine Coast), Assessment District No. 92-1 (Newport Ridge), Reassessment District No. 94-1 (Golden Lantern), Newport Coast Reassessment District No. 99-1R, Newport Coast Reassessment District No. 01-1R and Assessment District 01-1 Newport Coast Phase 4 (collectively, the "Assessment Districts"), Community Facilities Districts Numbers 86-1, 86-2 and 87-5A through 87-5E (Rancho Santa Margarita), 87-1 (Dimensions Business Park), 87-2 (Portola Hills), 87-3 (Mission Viejo), 87-4 (Foothill Ranch), 87-6 (Baker Ranch), 87-7 (Los Alisos), 87-8 (Coto de Caza), 87-9 (Santa Teresita), 88-1 (Aliso Viejo), 88-2 (Lomas Laguna), and 99-1, 2000-1, 2001-1, 2002-1, 2003-1 and 2004-1 (Ladera Ranch) (the "Community Facilities Districts", and collectively, with the Assessment Districts, the "Districts")) and VA Consulting, Inc. ("VA").

RECITALS

WHEREAS, the County and the District require the services of a qualified district engineer to provide services with respect to County assessment and reassessment districts and community facilities districts; and

WHEREAS, VA has represented that it has the requisite experience to provide services as district engineer and that it is ready, willing and able to provide such services as provided herein.

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

Section 1. Engagement of VA. The County and Districts engage the services of VA as an independent contractor to provide district engineer services, as more fully described below. VA is willing and able to perform such services for and on behalf of the County and the Districts. In addition, VA shall provide services to newly formed assessment districts, reassessment districts and community facilities districts, as requested by the Contract Administrator. It is understood that F.H. "Bill" Currie, P.E. shall be the employee of VA principally responsible for performing the services described herein. Through the aforementioned person and such other VA staff as are needed to carry out the responsibilities of VA under this Agreement, VA shall provide the following professional services:

A. Basic Services

1. Submit to the County Executive Office within twenty (20) business days or as soon as practicable after approval of this Agreement by the County Board of Supervisors, "District Engineer's Procedures," indicating items to be reviewed and/or approved by the District Engineer, for approval by the County Executive Office and Auditor-Controller.
2. Provide district engineering services as required by the "Guidelines for Special District Acquisition Projects" (see Exhibit A) for each of the acquisition project phases indicated, to prepare acquisition reports.
3. Attend additional meetings (other than those required by above guidelines), when requested by County, to discuss status of projects, District cost, and procedural issues (not to exceed twelve hours per District per month unless authorized as a Special Service).
4. Assemble a monthly status and financial report for each District. Incorporate cost and schedules as provided by Design Engineer, and/or County.
5. Organize and store all records and files for a minimum period of seven (7) years.
6. Provide district engineering services, including, but not limited to, drafting an engineer's report in connection with the formation of new Community Facilities Districts and/or Assessment Districts and perform customary services in connection with the issuance of limited obligation improvement bonds in order to finance certain permitted improvements.

B. Special Services

Special Services shall be requested in writing by the Contract Administrator prior to commencement of any Special Services project. VA shall be entitled to compensation for such Special Services only if written authorization for such was obtained.

1. Provide tax segregation information for subdividing parcels to County Tax Collector.
2. Assist County in review and preparation of Acquisition, Funding and Disclosure Agreements (AFDAs) and AFDA modifications.
3. Work with the County to streamline reimbursement process, resolve policy issues, and educate staff on revised procedures.

4. Work with the County to coordinate issues, such as inspection and funding, for District work affecting other municipalities.
5. Assist the County in resolution of claims.
6. Review final construction quantities and cost, and cost distribution to verify design engineer's calculations.
7. Provide the County/Districts with assistance for resolution of litigation and warranty issues.
8. Work with the County/Districts to provide documentation and assistance in the event of an audit.
9. Provide other services required, but not otherwise available to the County, for the successful completion of the project (i.e., services required by amendments to the "Guidelines" or "AFDA", or services required under special circumstances which arise during the contract duration).

Section 2. *Term.* This Agreement is effective on August 28, 2006 and shall continue in full force and effect until September 30, 2011. Notwithstanding the foregoing, either party may terminate this Agreement at any time either in whole or in part upon 30 days' written notice to the other party regarding such termination.

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Section 3. *Compensation of VA.* With respect to services performed in accordance with this Agreement, County/Districts agrees to compensate VA in accordance with the following:

- A. Compensation for updating of "District Engineer's Procedures" shall not exceed \$1,500 and shall be based on the Hourly Rate Schedule.
- B. Compensation for District Engineer Services described in Section 1.A.2. as authorized in writing by the Contract Administrator on a project by project basis, shall be based on the Hourly Rate Schedule and shall not exceed \$18,000 per acquisition report, without written authorization from the Contract Administrator.
- C. Compensation for attendance at meetings as described in Section 1.A.3. shall be based on the Hourly Rate Schedule and shall not exceed \$6,000 per Agreement Year. For the purposes of this Agreement, "Agreement Year" shall mean the period beginning on the date first written in this Agreement, or anniversary date thereof, and continuing through the day immediately preceding such date the following year.
- D. Compensation for monthly status reports described in Section 1.A.4. shall not exceed \$1,200 per month and shall be based on the Hourly Rate Schedule and shall not exceed \$14,400 per Agreement Year.

- E. VA may invoice the Districts once for the cost of seven-year file storage described in Section 1.A.5. at the time an incomplete project is transferred from a previous district engineer or a new project is initiated.

Compensation for file storage shall not exceed that amount calculated by multiplying 3 square feet of file space per project times 84 months storage times \$2.00 per square foot.

- F. Compensation for Special Services in Section 1.B, shall be based on the hourly rates set forth in the Hourly Rate Schedule. Compensation for the aggregate of all Special Services and expenses authorized under this Agreement shall not exceed \$30,000 per Agreement Year.

HOURLY RATE SCHEDULE

| <u>Staff Classifications</u> | <u>Hourly Rate</u> |
|--|--------------------|
| Principal: Max Vahid | \$150 |
| Project Manager: Frank (Bill) Currie | \$140 |
| Professional Staff: Mohammad Heiat Keith Rutherford | \$140 |
| Clerical/Support Staff: Michael Carter Janine Valentine Kellee Monachello | \$55 |

- G. In addition to the compensation provided for in A through F above, County will pay VA for costs and expenses incurred in connection with the services performed pursuant to this Agreement, including, without limitation, filing and publication, document production and delivery, travel, long distance telephone, telecopy, transcripts, computer research, secretarial overtime and similar expenses, in an amount not to exceed 5% of the hourly fees invoiced from time to time herein. Extraordinary fees and expenses shall only be payable to the extent such fees receive the prior written approval of the Contract Administrator.

- H. For district engineering services in connection with the formation of Community Facilities Districts and Assessment Districts described in Section 1.A.6, VA shall be

compensated based upon the Hourly Rate Schedule set forth in F. above, plus expenses permitted in subparagraph G. Notwithstanding the foregoing, total compensation under this subparagraph H. shall not exceed \$55,000 without written authorization from the Contract Administrator.

Notwithstanding any other provision of this Agreement to the contrary, all obligations of the County under this Agreement shall be expressly contingent upon appropriation of sufficient funds by the County Board of Supervisors and shall be payable solely from moneys available for such purposes from special assessment or reassessment payments. No obligation of the County herein shall be payable from the County General Fund.

Section 4. Invoicing and Payment. VA shall submit to the Contract Administrator invoices in acceptable detail and format for services rendered, including any supporting documentation as may be requested by the Contract Administrator or County Auditor-Controller. Invoices must reference this Agreement No. (Insert Correct) and must clearly specify the services performed, the Districts for which the services were rendered and the names, classifications, hours and hourly rate of the VA staff providing the services. Each invoice shall be reviewed by County staff prior to payment to ensure that the billing is consistent with the compensation provisions of this Agreement. County or District (as appropriate) will pay VA within the normal processing schedule of the County Auditor-Controller's Accounts Payable Section or sooner.

Section 5. Contract Administration. For the purpose of this Agreement, the County Public Finance Manager or his designee shall act as the Contract Administrator. The Contract Administrator will provide overall coordination and guidance of the services to be performed herein and will address policy issues as necessary and appropriate.

Section 6. Standards of Work. VA agrees that the performance of work and services pursuant to the requirements of this Agreement shall conform to highest professional standards as exist in VA's profession, industry or field of practice.

Section 7. Errors and Omissions. All work submitted by VA shall be completed and shall be carefully checked prior to submission. VA understands that the County and District's examination of VA's work product is discretionary and VA shall not assume that the County or District will discover errors and/or omissions. If the County or District discovers any errors or omissions, VA's work may be returned to VA for correction, which work shall be corrected without additional cost to the County or Districts. Should the County, Districts or others discover errors or omissions in the work submitted by VA after the County or Districts' acceptance thereof, the County and/or District's approval of VA's work shall not be a defense by VA.

Section 8. Indemnification. VA agrees to indemnify and hold harmless the County, the Districts and their officers, agents and employees against any claims, losses or liability arising or alleged to arise out of the negligent acts or errors or omissions of VA, its officers, agents,

employees or subcontractors in the performance of any services under this Agreement. This Section 8 shall survive the termination of this Agreement.

Section 9. Conflict of Interest. Prior to its execution of this Agreement, VA has submitted to the Contract Administrator a list of clients represented by VA in matters which may be adverse to the County or the Districts. As to future representations, VA shall promptly notify and seek the written approval of the Contract Administrator before undertaking any future employment that may be adverse to the interests of the County or the Districts.

VA shall not utilize in the performance of this Agreement any formerly employed person of any County agency or departments if that person was engaged in any negotiations, transactions, planning, arrangement, or any part of the decision-making process relevant to this Agreement unless otherwise approved in writing by the Contract Administrator. This prohibition shall apply for a two-year period beginning on the date the person terminated County service.

VA shall not utilize in the performance of this Agreement any County employee unless such employment is required as a condition of the employee's regular employment with the County. An employee of the County is defined to be any person holding a permanent or temporary position with the County. VA shall not employ or negotiate to employ any County employee(s) who have been or are involved in administration or performance of this Agreement, unless otherwise approved in writing by the Contract Administrator.

Section 10. Compliance with Gift and Political Contribution Ban. By executing this Agreement, VA covenants to the County that it has complied, and will comply during the term of this Agreement, in all respects with the "Ban on Political Contributions and Gifts" provisions of Article V of the County of Orange, Board of Supervisors, Policies and Procedures for Consideration and Approval of Proposed Public Financings.

Section 11. Disclosure of Compensation. VA agrees to disclose in writing to the Contract Administrator any and all forms of compensation (except compensation paid pursuant to this Agreement) earned directly or indirectly from any services performed for, or in any way relating to, the Districts, whether services are performed on behalf of the County, the Districts or any other person or entity.

Section 12. Confidentiality of Work. All work performed by VA, including but not limited to all drafts, data, correspondence, proposals, reports and estimates compiled or composed by VA pursuant to this Agreement, but expressly excluding all documents, data, reports or correspondence typically circulated among a working group with respect to any financing, or any matter required to be disclosed pursuant to judicial process or California or federal law (including, but not limited to federal securities laws), is for the sole use of the County and the Districts and shall be confidential and not released to any third party without prior written consent of the Contract Administrator.

Section 13. Independence of VA. VA and the agents and employees of VA, in performance of this Agreement, shall act in an independent capacity and not as employees, officers or agents of the County or the Districts.

Section 14. Subcontracts. VA is responsible for all requirements under this Agreement even though the requirements are carried out pursuant to subcontract. All Agreement requirements apply to subcontractors. All proposed subcontracts must be filed with, and approved by the Contract Administrator prior to execution of any agreement with the subcontractor.

VA shall submit a listing which identifies the name of the subcontractor, the method by which the subcontractor was selected, and the total funding to be paid to the subcontractor. If other than the lowest bidder or a sole-source provider is selected, all documents used in subcontractor selection must be presented in writing to the Contract Administrator for prior approval before awarding any contract. The Contract Administrator reserves the right to disapprove any subcontractor.

Section 15. News Releases. VA agrees to submit to the Contract Administrator, prior to release, copies of news releases related to this Agreement. The County and the Districts reserve the right to modify or deny the release of such news releases.

Section 16. Examination of Accounts, Audit and Records. VA's records relating to services provided under this Agreement shall be subject at all reasonable times to inspection, audit and reproduction by the County, the Districts or any of their duly authorized representatives.

Section 17. Ownership of Records. All work-product, records, and materials relating to this Agreement shall be the sole and exclusive property of County and the Districts, as the work is completed or otherwise upon termination of this Agreement. VA shall deliver to the Contract Administrator all copies of any and all materials pertaining to this Agreement.

Section 18. Name Change. VA shall provide written notice to the Contract Administrator at least thirty (30) days prior to any changes to VA's current legal name, if practicable, but in any event, not later than the date of any such change. The Contract Administrator shall be provided with all pertinent information relating thereto which is requested.

Section 19. Changes in Staff. The Contract Administrator has the reasonable right to approve or disapprove any proposed changes in VA's staff from the individuals named in this Agreement. The Contract Administrator shall be provided with a resume of any proposed substitute and shall be given the opportunity to interview that person prior to his or her decision to approve or disapprove.

Section 20. Child Support Compliance. Unless provided contemporaneously with its execution of this Agreement, VA agrees to furnish to the Contract Administrator within thirty (30) days of this Agreement's effective date:

- A. The name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten percent (10%) or more in VA;
- B. A certification that VA has fully complied with all applicable federal and state reporting requirements regarding its employees;
- C. A certification that VA has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment, and will continue to so comply.

The failure of VA to timely submit the data or certifications required by Subsections A, B or C, or to comply with all federal and state employee reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Agreement, and failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of this Agreement.

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders, and for no other purpose.

The Contract Administrator, with the concurrence of the County Purchasing Agent, may waive the requirements of this provision, or any part thereof.

The Contract Administrator shall forthwith transmit data received from VA under the provisions of this Section to the Orange County District Attorney, and shall not use or disclose the data for any other purpose.

Section 21. Insurance. VA shall maintain insurance acceptable to the County and the Districts in full force and effect throughout the term of this Agreement. If VA fails to maintain insurance acceptable to the County and the Districts for the full term of this Agreement, the County and/or the Districts may terminate this Agreement.

The policy or policies of insurance maintained by VA shall provide the limits and coverages as set forth herein below.

| <u>Coverage</u> | <u>Per Occurrence</u> | <u>Annual Aggregate</u> |
|---|--|-------------------------|
| Comprehensive General Liability, Broad Form Property Endorsement, Comprehensive Automobile Liability, Employer's Liability | \$1,000,000 Combined including single limit per occurrence | \$1,000,000 |
| Professional Liability | \$1,000,000 | \$1,000,000 |
| Workers' Compensation | Statutory | Statutory |

Insurance as specified in this Section 21 shall be in force from the effective date of this Agreement and shall be maintained by VA in full force and effect, at all times during the term of this Agreement.

Each insurance policy required by this Agreement shall contain the following clauses:

1. "This insurance shall not be changed, canceled, limited in scope of coverage or non-renewed until after 10 days written notice has been given to County, CEO Public Finance, 10 Civic Center Plaza, 3rd Floor, Santa Ana, CA 92701 Attention: Public Finance Manager." (Endorsement must be attached to Certificates of Insurance).
2. "All rights of subrogation are hereby waived against the County and the members of the Board of Supervisors and elective or appointive officers or employees, when acting within the scope of their employment or appointment, and any Boards or Commissions which are governed by the County Board of Supervisors." (Endorsement must be attached to Certificates of Insurance).
3. As respects operations of the named insured performed on behalf of the County, the following are added as additional insureds:

"The County of Orange." (Except to Workers' Compensation and Professional Liability. Endorsement must be attached to Certificate of Insurance).
4. It is agreed that any insurance maintained by the County will apply in excess of and not contribute with, insurance provided by this policy. (Endorsement must be attached to Certificate of Insurance).
5. Any losses shall be payable notwithstanding any act or failure to act or negligence of the County, nor any other person.

6. Cancellation clause in the insurance policy must include language as follows which edits the pre-printed accord certificate:

~~SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENT OR REPRESENTATIVE.~~

VA agrees to deposit with the Contract Administrator within thirty (30) days of the effective date of this Agreement, Certificates of Insurance including copies of all endorsements required herein, necessary to satisfy the County and the Districts that the insurance provisions of this Agreement have been complied with, and to keep such insurance and the certificates therefor on deposit with the County during the entire term of this Agreement. VA shall submit the Certificate of Insurance form.

The County and the Districts shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby and to require reasonable changes to such coverage, as determined by the County's Risk Manager.

The procuring of such required policy or policies of insurance shall not be construed to limit VA's liability hereunder.

Section 22. Notices. Any and all notices between the County, the Districts and VA provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly given when personally delivered to one of the parties or in lieu of such personal service, when deposited in the United States mail, postage prepaid, addressed to such party at the following address:

If to the County or the Districts:

County of Orange
10 Civic Center Plaza, 3rd Floor
Santa Ana, CA 92701-4062
Attention: Public Finance Manager
Telephone: (714) 834-5969 Facsimile: (714) 834-3346

If to VA:

VA Consulting, Inc.
17801 Cartwright Road
Irvine, CA 92614
Telephone: (949) 474-1400 Facsimile: (949) 261-8482

Section 23. Governing Law, Venue and Entire Agreement. This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, withstanding Code of Civil Procedure Section 394.

The parties specifically agree that by entering into and performing under this Agreement, VA shall be deemed to be doing business within Orange County within the meaning of Code of Civil Procedure Section 394 from this Agreement's effective date through the expiration of any applicable limitations period. Furthermore, the parties have specifically agreed, as part of the consideration given and received for entering into this Agreement, to waive any and all rights to request that an action be transferred for trial to another county under Code of Civil Procedure Section 394.

This Agreement constitutes the entire agreement between the County, the Districts and VA with respect to the matters addressed herein and supersedes any previous agreement(s), negotiations, proposals or understanding, whether written or oral concerning such matter, unless expressly included in this Agreement.

Section 24. Amendment or Modifications. No amendment, modification or other alteration of this Agreement shall be valid unless in writing and signed by the parties hereto.

Section 25. Severability. In the event that any provision herein contained is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and such invalidity shall in no way affect, impair, or invalidate any other provision contained herein if there is no substantive effect to the services to be rendered to the County and the Districts by such judicial finding of invalidity.

Section 26. Counterparts. This Agreement may be executed in any number of counterparts, each counterpart shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

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

County of Orange, California

By: _____
Thomas L. Beckett
Public Finance Manager

Community Facilities Districts Nos. 86-1, 86-2 and 87-5A through 87-5E (Rancho Santa Margarita), 87-1 (Dimensions Business Park), 87-2 (Portola Hills), 87-3 (Mission Viejo), 87-4 (Foothill Ranch), 87-6 (Baker Ranch), 87-7 (Los Alisos), 87-8 (Coto de Caza), 87-9 (Santa Teresita), 88-1 (Aliso Viejo), 88-2 (Lomas Laguna), and 99-1, 2000-1, 2001-1, 2002-1, 2003-1 and 2004-1 (Ladera Ranch)

Approved as to Form
Benjamin De Mayo, County Counsel

By: _____
Thomas L. Beckett
Public Finance Manager

By: _____
John H. Abbott, Deputy

VA Consulting, Inc.

By: _____
[President and CEO]

By: _____
[Secretary]