

**COUNTY OF ALAMEDA
PUBLIC WORKS AGENCY**

399 Elmhurst Street • Hayward, CA 94544-1395
(510) 670-5480

May 11, 2009

The Honorable Board of Supervisors
Administration Building
1221 Oak Street, Suite 536
Oakland, CA 94612-4305

Dear Board Members:

SUBJECT: MODIFY AGREEMENT WITH MOORE, IACOFANO AND GOLTSMAN, INC. (MIG) TO PROVIDE MEANS TO ESTABLISH COMMUNITY FACILITIES DISTRICT TO PROVIDE REVENUE TO ENSURE LONG-TERM MAINTENANCE OF STORMWATER TREATMENT FACILITIES AT PRIVATE DEVELOPMENT SITES

RECOMMENDATION:

Approve and execute Amendment No. 1 to Contract #1727 between the Alameda County Flood Control and Water Conservation District and MOORE IACOFANO GOLTSMAN, INC. (MIG) (Principal: Daniel Iacofano; Location: Berkeley) to develop a legal and administrative framework to establish a Community Facilities District (CFD) to provide revenue for ensuring long-term maintenance of privately owned stormwater treatment systems as required by the Countywide National Pollutant Discharge Elimination System (NPDES) stormwater permit. The modification would increase the original contract amount of \$678,500 to \$745,035 by adding \$66,535 to the contract. This amendment will extend the term of the contract by one year, through June 30, 2011.

DISCUSSION/FINDINGS:

Under the terms of the Countywide NPDES Municipal Stormwater Permit, the District, County, and other municipalities in the County are each required to implement a stormwater treatment measures operations and maintenance verification program. This program requires the County to verify that the public and private stormwater treatment measures continue to operate effectively. The CFD would establish a process for property owners to collectively and cooperatively fund and maintain the stormwater treatment systems that serve their property, or to repair or replace these systems if the treatment measures fail due to lack of maintenance at privately-owned properties without home owners associations. The CFD would also provide revenue and a legal means for both inspection and maintenance or rehabilitation of these stormwater treatment measures.

On November 6, 2007, your Board authorized the Public Works Agency to establish this legal and administrative framework and to proceed with contracting for these services.

MIG has been hired specifically to provide assistance to the District in developing means of revenue enhancement. The CFD is one component of the larger revenue enhancement effort. This work is consistent with the scope of services of the MIG contract.


SELECTION CRITERIA AND PROCESS:

A qualifications-based selection method as mandated by Government Code Sections 4525-4529.5 for selecting consultants was followed to select a firm to assist with revenue enhancement. In accordance with the County's consultant selection guidelines, a Request for Proposals (RFP) was issued May 8, 2007. The RFP was also advertised on May 10, 2007 in ANG Newspaper Group, placed on the Public Works' website, and mailed to qualified firms derived from the Public Works and General Services Agency consultant databases. Two firms (Convey Marketing and Communications [Convey] and Moore Iacofano Goltsman, Inc. [MIG]) submitted proposals and were subsequently interviewed on May 25, 2007. The two firms are either SLEB certified or have met the SLEB requirements. A four-member selection committee ranked the proposal, presentation and oral interview for both firms based on formal written criteria. MIG was selected based on the overall ranking results. Though MIG, itself, is no longer a SLEB it began as a SLEB Certified firm. MIG has since grown and is contracting a portion of work in this contract to SLEB Certified firms.

FINANCING:

There is no impact on the County General Fund. Funding for FY 09/10 for this contract in the amount of \$50,000 is available and budgeted in Fund 21801, ORG 270301, Account 610261, Program 50202 and in the amount of \$16,535 is available and budgeted in Fund 21801, ORG 270301, Account 610261.

Yours truly,


Daniel Woldesenbet, Ph.D., P.E.
Director of Public Works Agency

c: County Counsel
Auditor-Controller
MIG

ATTACHMENT 1

COMMUNITY FACILITY DISTRICT PROJECT
FOR THE UNINCORPORATED AREA OF ALAMEDA COUNTY

July 1, 2009 through June 30, 2011

Consultant	Location	Dollar Value of Contract Award	SLEB Participation	
			Percentage	Dollar Amount
MIG, Inc.	Berkeley, CA	\$66,535.00	20%	\$13,307
<p><u>Certified SLEB Partners:</u></p> <p>Dave Dickson Consulting 800 Hearst Avenue Berkeley, CA 94710</p> <p>SLEB #: 09-00166 Term: 7/6/09 - 6/30/11</p>				

Modification No. 1

To Agreement with Moore, Iacofano, Goltsman, Inc. (MIG)

This Modification No.1 is made as of July 1, 2009, by the Alameda County Flood Control And Water Conservation District ("District") and MIG ("Consultant") with respect to that Agreement to provide certain specialized services in connection with the Alameda County Flood Control and Water Conservation District, dated July 31, 2007, (the "Agreement").

RECITAL

District and Consultant desire to amend and modify the Modified Agreement to expand the scope of work of the contract.

THEREFORE, District and Consultant agree as follows:

1. The Modified Agreement will expand the scope of work as described in Exhibit A-1 of the Agreement.
2. As compensation for services provided per the Modified Agreement, District shall pay Consultant at the hourly rates set forth in the attached Exhibit B-1.
3. The total amount of compensation payable to Consultant for services provided in this modification shall not exceed \$66,535.00
4. The total amount of compensation payable to Consultant for all services provided under the Modified Agreement remains the same and shall not exceed \$745,035.

All provisions of the Contract, except as modified by this Modification, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Modification on the dates shown below their respective authorized signatures.

COUNTY OF ALAMEDA Flood Control and Water Conservation District

By: _____
Signature

Name: _____
(Printed)

Title: President of the Board of Supervisors

Approved as to Form:

By: Cecarey Beaman
Deputy County Counsel

MIG, Inc. Consulting Services

By: 
Signature

Name: Susan Goltsman
(Printed)

Title: President

Date: May 21, 2009

Federal Tax ID#: 94-3116998

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

EXHIBIT A SCOPE OF WORK

FINANCIAL SERVICES

Task 1 Project Management and Coordination

The proposed services include CFD Team management, meeting attendance, coordinate and chair regularly scheduled conference calls, billing compliance, meeting agendas and general coordination between the tax consultant, outside legal counsel and appropriate Alameda County staff (to include staff from the Development Services, Engineering & Construction, Alameda County Counsel and the Tax Assessors Office).

As part of this task, MIG will confirm that the CFD establishment is exempt from Local Agency Formation Commission (LAFCO) proceedings in Alameda County.

Task 2 Community Facilities District Formation and Annexation

The proposed services generally include preparation and recordation of the Boundary Map, development of the Community Facilities District (CFD) Report, which includes the description of services and facilities, preparation of the services and facilities budget and development of the rate and method of apportionment of special taxes and recordation of the notice of special tax lien. The specific sub tasks to be completed are as follows:

2.1 Collect Available Data

Collect available data from the County staff, Legal Counsel, County Assessor's office, Property Owner(s) and the Registrar of Voters that is pertinent to the formation of the Community Facilities District.

2.2 Prepare and Record the Boundary Map

Prepare a boundary map that identifies the parcels of property proposed for inclusion in the CFD. Coordinate with the Clerk of the Board to make sure the map is on file prior to the adoption of the Resolution of Intention. Coordinate the appropriate signature for the map and record the boundary map after approval by the County Board of Supervisors at the CFD Intent Meeting.

2.3 Prepare the Description of Facilities and Services

With assistance from the County's Public Works Department (Land Development and Clean Water Divisions), prepare the description of facilities and services to be financed by the levy of special taxes within the CFD.

2.4 Prepare the Facilities and Services Budget

With assistance from the County Public Works Department, prepare a services and facilities budget for the improvements to be financed by the levy of special taxes within the CFD.

2.5 Prepare the Method of Apportionment of Special Taxes

Prepare the rate and method of apportionment of special taxes for each taxable parcel within the proposed CFD. The rate and method of apportionment of special taxes will look at a number of

different alternatives such as taxing properties based upon their proportionate acreage (gross or net), potential developable building square footage, development status (e.g. should vacant parcels be taxed less than developed parcels).

2.6 Prepare the Community Facilities District Report

Prepare the CFD Report in accordance with Government Code Section 53321.5. At a minimum the CFD Report will include the items prepared in Tasks 4, 5 & 6 above and may also include (although not required):

- a) Estimates of incidental formation costs
- b) Description of the CFD and a copy of the recorded boundary map
- c) A brief explanation of the annual special tax rates by special tax classification
- d) Annual Fee adjustment mechanism to assure revenues will keep pace with inflation or other costs of doing business. Indexing mechanisms will be agreed upon with the CFD Project Team.

2.7 Record of Notice of Special Tax Liens

Coordinate with the Clerk of the Board and the County Recorder to ensure the Notice of Special Tax Lien is recorded at the County Recorder's office.

2.8 Attend Board Meetings

Attend the up to two County Board of Supervisor's meetings regarding adoption of the Resolutions and Ordinances and answer questions regarding the CFD.

2.9 Verify the Number of Registered Voters within the Community Facilities District

Coordinate with the County Registrar of Voters to determine the number of registered voters within the CFD.

2.10 Review Resolutions and Ordinances

Coordinate with Legal Counsel to review the draft resolutions and ordinances for County's review and approval.

2.11 Prepare Notice of Public Hearing

Assist Legal Counsel with writing, designing, printing and mailing of the notice of public hearing which will be mailed to each landowner within the CFD, as deemed necessary.

2.12 Prepare Templates for Annexation Procedures and Documents for Future Annexations

Assist Legal Counsel with the preparation future annexation procedures and templates for annexing territory into the CFD after formation to be integrated into County's development review process.

2.13 Prepare informational package for development project applicants and others subject to annexation into the CFD.

Optional Services

In addition to the above formation and annexation services, Harris & Associates can assist in the Annual Administration of the CFD if requested. On-going administrative services will be contracted for directly between the ACPWA and Harris & Associates.

Option 1 Prepare Annual Reports

Compile and submit the annual report required by Local Agency Special Tax and Bond Accountability Act under Government Code 50075.3 or 53411.

Prepare an Annual Report for the CFD including the annual budget, a list of valid assessor parcels, the calculated rates for each parcel based upon the rate and method of apportionment, describe development changes, delinquency summary, fund balance, debt service statements and other pertinent information about the CFD. This provides the County a summary of the calculation of the annual special tax for easy access and reference.

If requested by a person who resides in or owns property within the CFD, prepare an "Annual Report" as provided for in Government Code 53343.1. A fee for the cost of preparing the report may be charged to the requesting party.

Option 2 Cost Recovery

Work with the County to recover all costs associated with the ongoing administration of the CFD including, but not limited to, staff time, County costs, trustee fees, if applicable, consultant and legal fees.

Option 3 Track Parcel Changes

Track parcel changes and development changes and calculate the annual special tax for each parcel within the CFD.

Option 4 Attendance at Meetings

Attend County Board of Supervisor's meeting regarding adoption of the Resolutions and Ordinances and answer questions regarding the CFD. Attend meetings with respect to the ongoing administration of the CFD.

Option 5 Calculate and Place Special Taxes on Tax Roll

Calculate the special taxes in accordance with the rate and method of apportionment and place the special taxes on the County Tax Roll. Provide the County with a verification of the total amount placed on the tax roll for the CFD.

Option 6 Answer Property Owner/County Staff Questions

Answer property owner and/or county staff questions regarding the CFD, administration or special taxes placed on the tax roll. We also provide a toll-free phone number that is placed on the tax bill next to the special tax.

Option 7 Monitor Special Tax Payments

Monitor tax payments to the County twice a year after the December 10 and April 10 tax payment dates.

LEGAL SERVICES

- a) Consult with County staff and consultants (the "Working Group") respecting preliminary structure of the CFD and special tax program (the "Program"), including, at the request of County staff, attendance at meetings of the Working Group, the affected property owners and the Board of Supervisors at which matters pertaining to the Program are discussed;
- b) Participate with members of the Working Group to establish a proposed schedule of events for the legal proceedings and election required to establish the Program; provided that the special election will be conducted through the offices of and under the control and supervision of the County Elections Department;
- c) Participate in discussions of and, in coordination with County Counsel, provide guidance to the Working Group with respect to any legal issues known at the outset of the legal proceedings and legal issues which may arise during the course of the legal proceedings, with particular emphasis on legal issues relating to compliance with the Mello-Roos Act; provided that Special Legal Counsel will not be obligated to provide guidance with respect to provisions of the California Elections Code or to render a legal opinion with respect to any legal issue; and
- d) Draft the documents required for the Program legal proceedings (except for the items specified in paragraph (e) below), including Board resolutions, notice of hearing, draft statement of the ballot measure for the special, mailed-ballot election, and in the event of a successful election, draft ordinance providing for the levy of the special taxes (the "Special Taxes") and the front section for Notice of Special Tax Lien.
- e) Items for which other members of the Working Group will be responsible and for which Special Legal Counsel's involvement will be limited to review and comment thereon, at the request of the County staff, are (i) the CFD boundary map, (ii) description of the authorized uses of proceeds of the Special Taxes, (iii) the rate and method of apportionment of the Special Taxes, (iv) the hearing report required by the Mello-Roos Act, (v) services for either the publication of the notice of hearing or recording of the boundary map, (vi) establishment of the data base of taxable parcels upon which the Special Taxes are to be imposed, (vii) the date, time and place for the public hearing required by the Mello-Roos Act, (viii) the establishment of an election calendar for the special election, (ix) any election materials, including the form of special election ballot, the notice of election, the impartial analysis, any argument in favor of the ballot measure or any like materials pertaining to the conduct of the special election, (x) certification of the results of the election, (xi) in the event of a successful election, the publication or posting of the ordinance providing for the levy of the special tax and the recordation of the Notice of Special Tax Lien and (xii) any County staff report or like kind of document customarily provided to the County Board in connection with proposed County Board actions.

**EXHIBIT B
PAYMENT SCHEDULE**

This Payment Schedule includes staff charge rates, budget by task, other expenses and sub-contracting information.

FINANCIAL SERVICES

Team Member	Responsibility	Hourly Rate
David Dickson, MIG	Project Manager	\$150
Joyce Vollmer, MIG	Communications Specialist	\$175
Project Associate, MIG		\$125
Graphic Designer, MIG		\$135
Joan Cox, Harris & Associates	Tax Specialist	\$180
Senior Associate, Harris & Associates		\$130
Associate, Harris & Associates		\$85

Task 1.0 Project Management

Professional Time Subtotal \$8,375.00
 Direct Costs \$500
 Sub-Contract Administration 10% \$5,000

Task 2.0 Community Facilities District Formation and Annexation

Formation Professional Time Subtotal \$21,160
 Annexation Professional Time Subtotal \$2,500/development
 Direct Costs \$500

Task 3.0 Legal Services

Professional Time Subtotal \$ 25,000 (See details below)

Contingency Tasks @ 10% \$6,000

Total Estimated Costs \$ 66,535

Printing and Mailing Costs are not included in this proposal. Such costs will be borne directly by the County.

Optional Services

CFD Administration \$2,500 annually+\$5/parcel (first 2,500) and \$1/parcel thereafter

LEGAL SERVICES

Special Legal Counsel's compensation for the services described in the Scope of Work include legal fees and reimbursement of customary out-of-pocket expenses. Legal fees accrue at the hourly rates assigned to the attorneys providing services, as established by Special Legal Counsel annually, effective January 1 of each year. Special Legal Counsel agrees to cap the hourly rate for Mr. Sperry during 2008 at \$550. It is anticipated that out-of-pocket expenses will consist primarily of car travel (reimbursement rate as established from time to time by the IRS), photocopies (20 cents per sheet) and express delivery charges (as incurred)

Compensation is capped at \$25,000 and shall be payable by the County monthly based upon invoices submitted by Special Legal Counsel, with payment due within 45 days of submission of Special Legal Counsel of an invoice; provided that in the event that accrued compensation reaches the above cap, Special Legal Counsel will be entitled to suspend further work while Special Legal Counsel and the County negotiate an increase in the cap, and Special Legal Counsel will be entitled to terminate this engagement if agreement on an increase cannot be reached.