

**BOARD OF TRUSTEES
SAN DIEGUITO PUBLIC FACILITIES AUTHORITY
SPECIAL MEETING**

AGENDA

**THURSDAY, JANUARY 13, 2011
(IMMEDIATELY FOLLOWING 4 PM WORKSHOP)**

**DISTRICT OFFICE BOARD ROOM 101
710 ENCINITAS BLVD., ENCINITAS, CA. 92024**

A Special Meeting of the San Dieguito Public Facilities Authority of San Dieguito Union High School District has been scheduled for Thursday, January 13, 2011, immediately following the 4 PM board workshop.

1. CALL TO ORDER

2. APPROVAL OF MINUTES

Approve the minutes of the December 9, 2010, San Dieguito Public Facilities Authority Board Meeting, as shown in the attached.

DISCUSSION / ACTION ITEMS

3. APPROVAL OF AGREEMENT

Motion by _____, second by _____, to approve the agreement with Willdan Financial Services to provide community facilities district administration and Federal compliance consulting services for CFDs 94-1, 94-2, 94-3, 95-1, 99-1, 99-2, 99-3, and 03-1, commencing June 19, 2003, and is continuous, not-to-exceed thirty (30) years or until CFDs are dissolved unless terminated with 30-day written notice, in the amounts shown in Attachment B to the agreement, to be funded by the CFD's, and authorize Eric R. Dill to execute the agreement.

4. ADJOURNMENT

In compliance with the Americans with Disabilities Act, if you need special assistance, disability-related modifications, or accommodations, including auxiliary aids or services, in order to participate in the public meetings of the District's Governing Board, please contact the [Office of the District Superintendent](#). Notification 72 hours prior to the meeting will enable the District to make reasonable arrangements to ensure accommodation and accessibility to this meeting. Upon request, the District shall also make available this agenda and all other public records associated with the meeting in appropriate alternative formats for persons with a disability



BOARD OF TRUSTEES
SAN DIEGUITO PUBLIC FACILITIES AUTHORITY

Board of Trustees
Joyce Dalessandro
Barbara Groth
Beth Hergesheimer
Amy Herman
John Salazar

MINUTES

Superintendent
Ken Noah

Union High School District

DISTRICT OFFICE BOARD ROOM 101

THURSDAY, DECEMBER 9, 2010

710 ENCINITAS BLVD., ENCINITAS, CA. 92024

A Special Meeting of the San Dieguito Public Facilities Authority (SDPFA) of San Dieguito Union High School District was called to order on Thursday, December 9, 2010, at 6:45 PM. The meeting convened **immediately following Board action on Item 7j** of the Regular Board Meeting Agenda, (*Committee Appointments of Board Representatives*).

ATTENDANCE, BOARD MEMBERS

All Board members were present.

ATTENDANCE, DISTRICT ADMINISTRATION / CONSULTANTS

Ken Noah, Superintendent
Eric Dill, Associate Superintendent, Business
Terry King, Associate Superintendent, Human Resources
Rick Schmitt, Associate Superintendent, Educational Services
Delores Perley, Director, Finance
Denise Stanley, Principal, Adult Education
Becky Banning, Executive Assistant / Recording Secretary

DISCUSSION / ACTION ITEMS

1. APPROVAL OF MINUTES

APPROVAL OF MINUTES OF THE SEPTEMBER 2, 2010 SAN DIEGUITO PUBLIC FACILITIES AUTHORITY MEETING.

It was moved by Ms. Groth, seconded by Ms. Dalessandro, to approve Minutes of September 2, 2010 as presented. Motion unanimously carried.

2. ELECTION OF OFFICERS, 2011

2A. NOMINATION FOR CHAIRPERSON

It was moved by Taylor Bell, seconded by Shakila Guevara, that the President of the San Dieguito Union High School District Board of Trustees be elected Chairperson of the SDPFA. Motion unanimously carried.

2B. NOMINATION FOR VICE-CHAIRPERSON

It was moved by Becca Golden, seconded by Shakila Guevara, that the Vice-President of the San Dieguito Union High School District Board of Trustees be elected Vice-Chairperson of the SDPFA. Motion unanimously carried.

2C. NOMINATION AND APPOINTMENT OF TREASURER

It was moved by Ms. Groth, seconded by Ms. Dalessandro, that the Associate Superintendent of Business be appointed Treasurer of the SDPFA. Motion unanimously carried.

2D. NOMINATION FOR SECRETARY

It was moved by Becca Golden, seconded by Shakila Guevara, that the Clerk of the San Dieguito Union High School District Board of Trustees be elected Secretary of the SDPFA. Motion unanimously carried.

3. RATIFICATION OF SAN DIEGUITO PUBLIC FACILITIES AUTHORITY 2006 REVENUE BONDS / FOURTH SUPPLEMENTAL INDENTURE TRUST

It was moved by Ms. Groth, seconded by Ms. Dalessandro, to ratify the Fourth Supplemental Indenture Trust as presented. Motion unanimously carried.

4. ADJOURNMENT

The meeting was adjourned at 6:48 PM. The Board then reconvened to its regular meeting.

Barbara Groth, Secretary, SDPFA

Date

Ken Noah, Superintendent

Date

San Dieguito Public Facilities Authority

INFORMATION REGARDING BOARD AGENDA ITEM

TO: BOARD OF DIRECTORS

DATE OF REPORT: January 4, 2011

BOARD MEETING DATE: January 13, 2011

PREPARED BY: Eric R. Dill, Treasurer
John Addleman, Director of Planning and
Financial Management

SUBMITTED BY: Ken Noah
Superintendent

SUBJECT: APPROVAL OF AGREEMENT

EXECUTIVE SUMMARY

At the June 19, 2003 meeting, the Board approved a third separate agreement to provide Community Facilities District (CFD) administration services with Willdan Financial Services, formerly MuniFinancial shortly after the formation of our ninth Community Facilities District, CFD 03-1. The two other current agreements were entered into over time as the other eight CFDs were formed and in total provide the same services for all nine CFDs. In an effort to more efficiently manage the multiple agreements, staff has worked with Willdan to consolidate the three existing agreements into one master agreement. The master agreement will supersede the prior agreements commencing with the term of the last agreement, and will continue to provide the same services as before, while reducing the base cost of those services by \$500 per year.

Some of the principal services provided by Willdan Financial Services are summarized below:

I. Community Facilities District Administration

- Prepare annual special tax report.
- Maintain and update electronic database of parcel basis data and annual special tax levy amounts by Assessor's Parcel Number.

- Provide a toll-free number to field inquiries from property owners regarding the district's CFD and special tax levy.
- Provide an annual report to California Debt and Investment Advisory Commission as required by Government Code Section 53359.5(b), as amended.
- Prepare a Notice of Special Tax as required by Government Code Sections 53340.2(b) and 53341.5, as amended.

II. Delinquency Management

- Monitor and report delinquent special tax payments
- Send delinquency reminder and/or demand letter to property owners as required
- Send foreclosure letter if necessary
- Coordinate judicial foreclosure services if necessary

The community facilities districts permit the use of special tax revenue to pay for the administration of the CFD's. Therefore, Willdan Financial Services will be paid for their services out of the special tax revenue generated by the CFDs, which is currently estimated at \$6,239,228.50 for the 2011/2012 levy.

RECOMMENDATION:

It is recommended that the Board approve the agreement with Willdan Financial Services to provide community facilities district administration and Federal compliance consulting services for CFDs 94-1, 94-2, 94-3, 95-1, 95-2, 99-1, 99-2, 99-3, and 03-1 commencing June 19, 2003, and is continuous, not-to-exceed thirty (30) years or until CFDs are dissolved unless terminated with 30-day written notice, in the amounts shown in Attachment B to the agreement, to be funded by the CFD's, and authorize Eric R. Dill to execute the agreement.

FUNDING:

Mello-Roos Special Tax Revenue

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is hereby entered into between the SAN DIEGUITO PUBLIC FACILITIES AUTHORITY, hereinafter referred to as "Authority," and WILLDAN FINANCIAL SERVICES, Taxpayer ID Number **33-0302345**, 27368 Via Industria, Suite 110, Temecula, California 92590, hereinafter referred to as "Contractor."

WHEREAS, Authority is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if such persons are specifically trained and experienced and competent to perform the special services required; and

WHEREAS, Authority is in need of such special services and advice, and

WHEREAS, Contractor is specially trained and experienced and competent to perform the special services required by the Authority, and such services are needed on a limited basis;

NOW, THEREFORE, the parties agree as follows:

1. Services to be Provided by Contractor.

Provide comprehensive administration and related services to the San Dieguito Public Facilities Authority for its Community Facilities Districts, which are incorporated herein full by this reference.

Per Attachment "A," which is herein incorporated in full by this reference.

Contractor shall keep Authority's chairperson and other designated representatives fully informed as to the progress of the work; and shall submit to the Authority such oral and written reports, as Authority may specify.

Contractor will submit invoices for payment to the Authority for approval on a quarterly basis.

2. Term. Contractor shall commence providing services under this Agreement on **June 19, 2003, and is continuous, not-to-exceed thirty (30) years** or until CFDs are dissolved pursuant to California Government Code, Section 53338.5. The project may be abandoned at any time by the Authority. Willdan and/or the San Dieguito Public Facilities Authority may cancel its obligations under this Agreement by providing thirty (30)-day notice in writing to the Contractor/Authority. *This contract supercedes any old contract b/w Authority & Contractor. CB*

3. Compensation. Authority agrees to pay the Contractor for services satisfactorily rendered pursuant to this Agreement **the rates for services, as outlined in "Attachment B."** Authority shall pay contractor according to the following terms and conditions:

Per Attachment "B," which is herein incorporated in full by this reference.

4. Expenses. Authority shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for Authority, except as follows:

Per Attachment "B," which is herein incorporated in full by this reference.

5. Precedence of Agreement over Exhibits. Should there be any ambiguity or inconsistency between any exhibits to this Agreement and the terms of this Agreement, the terms of this Agreement take precedence.

6. Standard of Performance. Contractor shall, in good and workmanlike manner and in accordance with the professional standards ordinarily exercised by members of Contractor's profession, at its own cost and expense, furnish all of the labor, technical, administrative, professional and all other personnel, all supplies and materials, equipment, printing, transportation, facilities and all other means whatsoever, except as herein otherwise expressly specified to be furnished by Authority, necessary or proper to perform and complete the work and provide the services required of Contractor by this Agreement.

ITEM 3

7. Independent Contractor. Contractor, in the performance of this Agreement, shall be and shall act as an independent contractor. Contractor shall perform its obligations under this Agreement according to the Contractor's own means and methods of work which shall be in the exclusive charge and under the control of the Contractor, and which shall not be subject to control or supervision by Authority except as to the results of the work. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees or agents of the Authority, and are not entitled to benefits of any kind or nature normally provided employees of the Authority or to which Authority's employees are normally entitled, including, but not limited to, State Unemployment compensation or Worker's Compensation. Contractor assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the service to be provided under this Agreement. Nothing in this Agreement shall give the Contractor authority with respect to any Authority decision beyond the rendition of information, advice, recommendation, or counsel. Contractor is not authorized to make any representation, contract or commitment on behalf of Authority.
8. Taxes. Contractor acknowledges and agrees that it is the sole responsibility of Contractor to make the requisite tax filings and payment to the appropriate federal, state or local tax authorities. No part of Contractor's compensation shall be subject to withholding by Authority for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation.
9. Materials. Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows:

Per attachment "B," which is herein incorporated by reference.
10. Originality of Services. Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays, and video productions prepared for, written for, submitted to the Authority and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other sources, except that submitted to Contractor by Authority as a basis for such services.
11. Confidentiality and Use of Information.
 - (a) Contractor shall hold in trust for the Authority, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the Authority's research, development, trade secrets and business affairs; but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.
 - (b) Contractor shall advise Authority of any and all materials used, or recommended for use by Contractor to achieve the project goals, that are subject to any copyright restrictions or requirements. In the event Contractor shall fail to so advise Authority and, as a result of the use of any programs or materials developed by Contractor under this Agreement, Authority should be found in violation of any copyright restrictions or requirements, or Authority should be alleged to be in violation of any copyright restrictions or requirements, contractor agrees to indemnify, defend and hold harmless, Authority against any action or claim brought by the copyright holder.
12. Audit and Inspection of Records. At any time during the normal business hours and as often as Authority may deem necessary, Contractor shall make available to Authority for examination at Authority's primary administrative offices, all data, records, investigation reports and all other materials respecting matters covered by this Agreement and Contractor will permit the Authority to audit, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this agreement.

ITEM 3

13. Works for Hire/Copyright/Trademark/Patent. Contractor understands and agrees that all matters produced under this Agreement shall be works for hire and shall become the sole property of Authority and cannot be used without Authority's express written permission. Authority shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the Authority. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
14. Termination. Authority may at any time, with or without reason, terminate the Agreement and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by Authority shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or not later than five (5) days after the day of mailing, whichever is sooner.

Authority may terminate this agreement upon giving of written notice of intention to terminate for cause. Cause shall include: (a) material violation of this Agreement by the Contractor; or (b) any act by Contractor exposing the Authority to liability to others for personal injury or property damage; (c) or if Contractor is adjudged a bankrupt, and Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency. Written notice by Authority of termination for cause shall contain the reasons for such intention to terminate, and unless within fifteen (15) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the fifteen (15) days cease and terminate. In the event of such termination, the Authority may secure the required services from another contractor. If the cost to the Authority of obtaining the services from another contractor exceeds the cost of providing the service pursuant to this Agreement, the excess cost shall be charged to and collected from the Contractor. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to Authority. Written notice by Authority shall be deemed given when received by the other party, or no later than five (5) days after the day of mailing, whichever is sooner.

15. "DEFENSE AND INDEMNITY."
- (a) Authority shall not be liable for, and Contractor shall defend and indemnify Authority and its Board of Trustees, officers, agents, employees and volunteers (collectively "Authority Parties"), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to the work covered by this Agreement arising either directly or indirectly from any negligent or wrongful act, error, omission of Contractor or its officers, employees, agents, contractors, licensees or servants, except claims caused by the negligent act or omission of Authority Parties.
- (b) Contractor shall defend and indemnify the Authority and its Board of Trustees, officers, agents and employees from every claim or demand made and every liability, loss, damage or expense, of any nature whatsoever, which may be incurred by reason of any liability for damages which may arise from the furnishing or use of any copyrighted or uncopyrighted matter or patented or unpatented invention under this Agreement.
16. Insurance. As a material part of the consideration due the Authority, Contractor agrees to procure and maintain at its own expense for the duration of this agreement commercial general liability (including operations, products and completed operations) and automobile liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the contractor, its agents, representatives, employees, or subcontractors. Such insurance shall maintain limits not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) project specific aggregate for bodily injury, personal injury, and property damage.

ITEM 3

The "San Dieguito Public Facilities Authority, its Board of Trustees, officers, employees, and agents" shall be named as additional insured under the insurance policies required by this section with respect to liability arising out of work or operations performed by or on behalf of the contractor including materials, parts or equipment furnished in connection with such work or operations; and with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor. Evidence of such coverage under the contractor's policy shall be provided to the Authority in the form of an endorsement to the contractor's insurance (ISO form CG 20 10 11 85 or similar) or as a separate owner's policy.

For any claims related to this project, the contractor's insurance coverage shall be primary insurance as respects the Authority, its Board of Trustees, officer, employees, and agents. Any insurance or self-insurance maintained by the Authority shall be excess and shall not contribute with it.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice by first class mail has been given to the Authority, ten (10) days' notice if cancellation is due to nonpayment of premium.

Contractor shall furnish the Authority with original certificates of insurance and amendatory endorsements affecting coverage required by this section.

17. Professional Errors and Omissions Insurance. Contractor agrees to procure and maintain at its own expense in full force and effect professional Errors and Omissions Insurance in the amount of one million dollars (\$1,000,000). No later than ten (10) working days after execution of this Agreement by both parties, Contractor shall provide Authority with copies of the policy or policies of insurance evidencing all coverage's and endorsements required hereunder including a thirty (30) day written notice of cancellation or reduction in coverage, ten (10) days' notice if cancellation is due to nonpayment of premium.
18. Workers' Compensation Insurance. Contractor agrees to procure and maintain at its own expense in full force and effect Workers' Compensation Insurance covering its employees and agents while these persons are participating in the activities hereunder. In the event a claim under the provisions of the California Workers' Compensation Act is filed against Authority by a bona fide employee of Contractor participating under this Agreement, Contractor agrees to defend and hold harmless the Authority from such claim.
19. Inspection By Authority. The services completed herein must meet the approval of the Authority and shall be subject to the Authority's right of inspection to secure the satisfactory completion thereof. If any services performed by Contractor do not conform to the specifications and requirements of this Agreement, Authority may require Contractor to re-perform the services until they conform to said specifications and requirements, at no additional cost, and Authority may withhold payment for such services until Contractor correctly performs them.

When the services to be performed are of such a nature that Contractor cannot correct its performance, the Authority shall have the right to: (1) Require the Contractor to immediately take all necessary steps to ensure future performance of services conforms to the requirements of this Agreement, and (2) Reduce the contract price to reflect the reduced value of the services received by Authority. In the event Contractor fails to promptly re-perform the services or to take necessary steps to ensure that the future performance of the service conforms to the specifications and requirements of this Agreement, the Authority shall have the right to either (1) Without terminating the Agreement, have the services performed by contract or otherwise, in conformance with the specifications of this Agreement and charge Contractor, and/or withhold from payment due to Contractor, any costs incurred by Authority that are directly related to the performance of such services; or (2) Terminate this Agreement for default.

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20. Hazardous Materials. ~~(not applicable to this contract) Contractor shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices, and training. Contractor agrees that it will not store any Hazardous Materials at any Authority Facility without prior approval of Authority Administrator of Agreement or in violation of the applicable site storage limitations by Environmental Law Contractor agrees to take, at its expense, all action necessary to protect third parties, including, without limitation, employees, students, and agents of the Authority from any exposure to Hazardous Materials generated or utilized in its performance under this Agreement. Contractor agrees to report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify the Authority of it. As used in this section, the term "Environmental Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so called "common law"), including, but not limited to, the Resource Conservation and Recovery Act, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environment conditions or other similar substances or conditions. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws, or (d) is any other material or substance giving rise to any liability, responsibility or duty upon the Authority with respect to any third person under any Environmental Laws.~~
21. Contact with Students. Contractor will not permit any of its employees who perform services under this Agreement to come in contact with pupils or communicate with pupils. In the event Contractor fails to prevent its employees from having contact with pupils or communicating with pupils and injury results from failure to prohibit pupil contact or communication, Contractor shall defend, indemnify, protect, and hold the Authority, its agents, officers and employees harmless from and against any and all claims, demands, liability, judgments, awards, losses, injury, damages, expenses, charges or cost of any kind or character whether to the Authority or to any person or property which arise from or are connected with or are caused or claimed to be caused by Contractor's failure to prohibit its employees, subcontractors or agents from having pupil contact or communication. Any subcontractors hired by Contractor shall be subject to and shall comply with this section, and it shall be the Contractor's responsibility to require compliance with this section. Contractor and subcontractor shall be jointly and severally liable for any injury that results from subcontractor's failure to comply with this provision. Based on the determination that neither Contractor nor any subcontractor of Contractor will have contact with pupils, no fingerprinting of Contractor or its agents, subcontractors or employees is required by this Agreement.
22. Assignment. The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.
23. Compliance with Applicable Laws. Contractor agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Contractor, Contractor's business, equipment and personnel engaged in operations covered by this Agreement, or occurring out of the performance of such operations.
24. Permits/Licenses. Contractor and all Contractor's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

ITEM 3

25. Employment With Public Agency. Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this Agreement.
26. Entire Agreement/Amendment. This Agreement and any exhibits attached hereto constitute the entire agreement among the parties to it and supersede any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the Agreement.
27. Nondiscrimination in Employment. Contractor agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation; or a perception that a person has, or is associated with a person who has, or is perceived to have, any of these characteristics.
28. Non-Waiver. The failure of Authority or Contractor to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.
29. Administrator of Agreement. This shall be administered on behalf of, and any notice desired or required to be sent to a party hereunder shall be addressed to:
30. Notice. All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) Personal service or (b) U.S. mail sent either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the fifth day after deposit in any U.S Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions set forth above.
31. Severability. If any term, condition or provision of this Agreement is held by a fourth of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.
32. Successors. All terms of this Contract shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
33. Neither Party Considered Drafter. Despite the possibility that one party may have prepared the initial draft of this Contract or played the greater role in the physical preparation of subsequent drafts, neither party shall be deemed the drafter of this Contract. In construing this Contract in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one party on the ground that such provision was drafted by the other.
34. Conflicts of Interest. Contractor presently has no interest, including but not limited to other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. The performance of this Agreement.
35. Cartwright Act. Following receipt of final payment under the Agreement, Contractor assigns to the Authority all right, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec 15) or under the Cartwright Act (Chapter 1)(commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the Contractor for sale to the Authority under this Agreement.

ITEM 3


- 36. Governing Law. The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in San Diego County, California.
- 37. Board Ratification and Approval or Review. The Parties acknowledge and understand that this agreement is subject to ratification and approval or review in accordance with California law by the Board of Trustees of the San Dieguito Public Facilities Authority. In the event any work is performed or payment made prior to the ratification and approval or review of a final Agreement by the Board, all parties agree the terms of this Agreement, as set forth herein, as of _____ (insert date Agreement is mailed to contractor or date services or work were orally agreed to) shall be binding and shall control the relationship of the parties and shall be the contract terms submitted to the Board for ratification and approval, or review.
- 38. Warranty of Authority. Each of the parties signing this Agreement warrants to the other that he or she has the full authority of the entity on behalf of which his or her signature is made.

This Agreement is entered into this 29th day of November, 2010.

SAN DIEGUITO PUBLIC FACILITIES AUTHORITY:

CONTRACTOR:

By: _____
Signature

By: 
Signature

Typed Name

Mark J. Risco
Typed Name

Title

Senior Vice President
Title

33-0302345
Social Security or
Taxpayer Identification Number

Attachment A

ITEM 3

SCOPE OF SERVICES

As a part of this agreement, Willdan Financial Services (“Willdan”) offers to perform the following services for the San Dieguito Public Facilities Authority (“Authority”):

District Administration Services

Community Facilities District Administration and Land-based Municipal Disclosure

All costs associated with CFD annual administration are fully recoverable either through the special tax levy or via requestor payment for special services.

Willdan will:

1. Prepare an Annual Special Tax Report, which will include:
 - The identification and recovery of CFD administrative costs.
 - Review of fund balances to identify any surplus funds.
 - Debt service requirements.
 - Delinquency summaries.
 - Related recommendations or issues.
2. Annually calculate and apportion the special taxes, as specified in the Rate and Method of Apportionment of Special Tax.
3. Prepare, if required by CFD formation documents, an annual resolution for special tax application to the County tax roll.
4. Maintain and periodically update an electronic database containing parcel-basis data and annual special tax levy amounts by Assessor’s Parcel Number (“APN”).
5. Provide special tax levies by APN for each parcel in the required formatted configuration of nine-track magnetic tape (or other required media) to the County Auditor / Controller’s Office for placement on the annual property tax roll.
6. Research and, if possible, resubmit installment amounts that are unapplied by the County Auditor/Controller’s Office. Willdan will, on behalf of the Authority, manually invoice special tax installments that cannot be collected on the County property tax roll.
7. Provide a toll-free number to field inquiries from Authority staff, property owners, and other interested parties regarding special tax installments and related information.
8. Monitor delinquencies each January and May, and submit periodic reports to the Authority. Willdan will provide a list of delinquencies requiring initiation of judicial foreclosure or other legal actions.
9. Provide an annual report by October 30 to the California Debt and Investment Advisory Commission (if required by the *California Government Code*, Section 53359.5[b], as amended).
10. Prepare a Notice of Special Tax, as required by the *California Government Code*, Sections 53340.2(b) and 53341.5, as amended.
11. Be available to attend meetings.

Attachment A

ITEM 3

12. Calculate written prepayment quotes for individual special tax liens, as described in the Rate and Method of Apportionment of Special Tax, or as described by resolution. For parcels prepaying the special tax, Willdan will coordinate lien removal. The fee for this service is \$125 per calculation, to be paid by the requestor.
13. Perform all required bond call spreads, and coordinate the early redemption of outstanding bonds. The fee for this service would be Willdan's hourly rates.
14. Review pertinent documents relating to the debt issue, collect third-party data and other information required to be included in the Annual Financial Information Statement, create a draft of the Annual Financial Information Statement for review by the County, finalize and disseminate (through the central post office) the Disclosure reports to all major repositories/depositories and to any other party directed by the County, and post the Disclosure reports on the Willdan's Website at www.willdan.com/financial/. Upon request (or if deemed necessary), we will prepare the Notices of Significant Events covering events enumerated in Rule 15c2-12(b) for review by the County.

Client Responsibilities

Willdan will rely on obtaining the following information from the San Dieguito Public Facilities Authority:

- List of parcels that are issued building permits each fiscal year.

Delinquency Management

To assist the Authority in complying with its foreclosure covenant to bondholders for each Community Facilities District, Willdan provides a wide variety of Delinquency Management services that can be tailored to fit your needs. Authorization from the San Dieguito Public Facilities Authority will be obtained prior to proceeding with actions in item numbers three (3) through seven (7) below.

Willdan will:

1. Monitor delinquent tax bill payments in December and April of each year.
2. Provide delinquency reports to the Authority around January and May that detail all Delinquency Management services performed by Willdan (if applicable). Reports also compare (by district):
 - Aggregate number of all levied parcels,
 - All delinquent parcels,
 - Aggregate amount of total dollars levied,
 - Total dollars delinquent (for the current and prior tax years), and
 - Delinquency percentages for parcels and amounts.
3. Issue, in an attempt to collect the delinquency, a delinquency reminder letter to each property owner after the tax bill's first installment becomes delinquent (December 10).
4. Send a thirty (30)-day delinquency demand letter after the tax bill's second installment becomes delinquent (April 10) informing each delinquent property owner that if the delinquency has not been collected by the County within thirty (30) days, the Authority may elect to initiate judicial foreclosure proceedings to collect delinquent installments in accordance with applicable law. A brochure providing answers to commonly asked delinquency questions will, likewise, be enclosed with the demand letter.
5. Remove, thirty (30) days after the demand letters are mailed, delinquent installments of special taxes for the current and/or prior tax year(s) from the County tax roll. Removal is in compliance with SB-1471.

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6. Send a final twenty-one (21)-day delinquency foreclosure letter to each delinquent property owner after receiving County confirmation that requested delinquent installments of special taxes have been removed from the tax roll.

This foreclosure letter provides the following information:

- Advises property owners that the delinquent special tax can no longer be redeemed at the County, but rather must be paid directly to the Authority within twenty-one (21) days of the foreclosure letter's mailing;
- Total amount due; and
- Instructs how to make payments directly to the Authority.

Payments mailed to Willdan will be immediately forwarded to the Authority for verification. A brochure that provides answers to frequently asked delinquency and judicial foreclosure questions accompanies the foreclosure letter.

7. Send parcels, whose special taxes continue to remain delinquent after twenty-one (21) days from mailing foreclosure letter, to special judicial foreclosure counsel designated and retained by the Authority. Foreclosure counsel will collect delinquent special taxes, as well as all applicable penalties, interest, fees, and other authorized costs.
8. Provide (throughout the entire Delinquency Management / foreclosure process) a toll-free telephone number to field inquiries from Authority staff, parcel owners, lenders, and other interested parties regarding annual installments and delinquencies. Operators are bilingual in Spanish and English.
9. Assist foreclosure counsel (with respect to foreclosed parcels) in initiating and prosecuting judicial foreclosure proceedings according to bond foreclosure covenants. Willdan can also perform subsequent foreclosure services for the Authority.

Please Note: Delinquent property owner(s) are responsible for Delinquency Management and foreclosure counsel fees.

10. Provide payoff quotes to all interested parties (upon request) for stripped delinquent tax installments. Fees for this service are paid for by the requesting party and may be charged to a credit card. **There is no charge to property owners and/or to the Authority.**

Subsequent Foreclosure

These services include:

1. Prepare and forward to foreclosure counsel a detailed report of parcels to be foreclosed.
2. Provide foreclosure counsel with the necessary Authority resolutions and other documents to proceed with the judicial foreclosure process.
3. Monitor foreclosure counsel's activities concerning foreclosed parcels, and report to the Authority. Confirm that foreclosure counsel sends periodic reports to the Authority and to Willdan.
4. Inform the Authority and foreclosure counsel of special situations that may arise, such as parcel owner bankruptcies, County tax foreclosure sales, Deed of Trust / Trustee Foreclosure Sales, etc.
5. Provide foreclosure counsel with the subsequent year's delinquency information, which consists of any delinquent installments / years on parcels already in foreclosure.
6. Generally respond to all inquiries from Authority staff and foreclosure counsel regarding the status of any foreclosure action and/or other pertinent, relevant information.

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Additional Services Offered

Willdan can, at the discretion and approval of the Authority, negotiate a repayment schedule with property owner(s) to collect the delinquency and avoid initiation of judicial foreclosure.

Federal Compliance Services**Arbitrage Rebate**

The following chart identifies the Arbitrage tasks and deliverables:

Phase I	Task	
Document Collection	Coordinate the collection of bond documents and cash flow information.	
Document Review	To confirm that financing is subject to the Arbitrage Rebate requirements, review pertinent documents relating to debt; and identify relevant exceptions, elections, and yield restrictions.	
File Setup	Load subject bond issues into Willdan Financial Services' online <i>Compliance Management System</i> .	
Work Plan Discussion	Review tax-exempt financings that are subject to federal compliance regulations; discuss work plan.	
Phase II	Task	
Computation	Annually calculate investments' yield.	
	Identify gross proceeds inclusive of replacement and transferred proceeds, and commingled funds that are allocated to the issue.	
	Determine (by fund) excess investment earnings.	
	Test for exceptions to rebate, including spending exceptions and penalty "in lieu" requirements.	
	Determine the yield reduction payment, pursuant to Section 148(f) of the Internal Revenue Code.	
	Determine the cumulative Arbitrage liability, pursuant to Section 148(f) of the Internal Revenue Code.	
Quality Control	Verify that two senior analysts review the calculation and summary findings.	
	If requested, engage the services of an outside tax counsel.	
Deliverable	Prepare a comprehensive rebate report, including: <ul style="list-style-type: none"> • Executive summary • Summary analysis of all relevant dates and assumptions • Sources and uses of funds • Arbitrage yield and yield restriction requirements 	<ul style="list-style-type: none"> • Rebate liability by fund and aggregate liability for the issue • Arbitrage/investment yield comparison graph • Rebate calculations by fund • Outstanding investments summary
	Prepare the necessary IRS forms, and provide filing instructions.	
	As directed, provide copies of completed rebate reports in an electronic or hardcopy format.	
Phase III	Task	
Procedural Support	Review current policies and procedures for tracking expenditure and investment earning allocations, and make recommendations to improve funds and records management.	
Regulatory Changes	Consult with Board staff regarding enforcement actions and code/regulation changes that may affect Arbitrage compliance requirements.	
Audit Support	In the event of a rebate calculation audit, assist staff.	
Document Retention	Provide assistance with record retention and documentation relating to Arbitrage Rebate.	

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Nonland-based Municipal Disclosure

Willdan will help the Authority provide required financial and operating data requested by investors that would, otherwise, be considered material in keeping securities holders informed of the investment quality of the debt issue. Willdan will also assist the Authority in responding to questions from investors and other market participants.

Annual Financial Information Statement Preparation

Willdan will provide one or all of the following services, as directed by the Authority:

1. Review pertinent documents relating to the debt issue, including the Official Statement, financial statements, and annual reports.
2. Collect third-party data and other information required to be included in the Annual Financial Information Statement directly from Trustees, fiscal agents, state, and county agencies.
3. Analyze the information for accuracy, materiality, and appropriateness.
4. Provide advice and direction on inclusion and presentation of the information in the Annual Financial Information Statement.
5. Create a draft of the Annual Financial Information Statement for review by the Authority.
6. Discuss any relevant issues with the Authority regarding the report, and address questions the Authority may have regarding Disclosure matters.
7. Finalize and disseminate the Annual Financial Information Statement, including (as necessary), arranging for electronic and paper reproduction and distribution.
8. Assist the Authority with respect to new debt issues in developing reporting requirements for the disclosure documents, for compliance with relevant requirements and meeting the demands for information from the marketplace.

Dissemination

Willdan will disseminate the Disclosure reports to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access website ("EMMA") and will post the final Disclosure reports on the Willdan website at www.willdan.com/financial/. In addition, Willdan Financial Services will also assist the Authority when request for information are received, and respond to questions from investors and other market participants.

Material Event Notices

Upon notification by the Authority and/or if Willdan becomes aware, and if deemed to be material, Willdan will prepare Notices of Significant Events covering events enumerated in Rule 15c2-12(b) for review by the Authority.

Client Responsibilities

Willdan will also rely upon obtaining certain financial and operating information to perform the necessary due diligence on the bonds. This information will include, but may not be limited to, the following information:

- Adopted Budget,
- Audited Financial Statements, and
- Current balances on funds held at the Authority.

The San Dieguito Public Facilities Authority acknowledges that Willdan Financial Services shall be relying upon the accuracy and validity of the information provided by the Authority and the County, and agrees that Willdan shall not be liable for any inaccuracies contained therein.

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FEES FOR SERVICE

The number of parcels and districts shown below are the basis of this agreement. Any substantial variation in number may cause a change in our fee structure. All hourly rates, fees, and expense rates are subject to increase, which will not exceed the most recent annual change in the Consumer Price Index (CPI) within the applicable area, as calculated by the United States Department of Labor. As the work progresses, these fees are payable on a **quarterly** percentage-completion basis, unless another billing format is mutually agreed upon between the San Dieguito Public Facilities Authority and Willdan.

District Administration Services

Community Facilities District Administration

District	Parcel Count	Base Annual Fee
Community Facilities District No. 03-1	139	\$ 3,000
Community Facilities District No. 94-1	8	1,500
Community Facilities District No. 94-2	1,794	3,500
Community Facilities District No. 94-3	702	3,000
Community Facilities District No. 95-1	1,696	3,500
Community Facilities District No. 95-2	268	3,000
Community Facilities District No. 99-1	53	3,000
Community Facilities District No. 99-2	188	2,500
Community Facilities District No. 99-3	263	3,000
Payoff Quote *		\$ 250

* *The requesting party pays the fee for this service.*

Please Note: A \$2.00 per parcel fee is added for each levied parcel (above and beyond the initial parcel count) shown above. Annual CPI is applied the year after contracted date for each district.

Land-based Municipal Disclosure

Annual Information Statement Preparation

Debt Issue	Annual Fee
San Dieguito Union High School District Revenue Bonds, Series 2006	\$ 2,750

Dissemination Fees

Significant Event Notices (Per Event) \$ 100

Significant Event Notice Preparation

(If necessary) Hourly rates

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Delinquency Management

As the service is rendered, the fees below are invoiced to the Authority. They are ultimately paid by, or on behalf of, the delinquent property owners.

Services	Fee
Fees Ultimately Reimbursed to Authority by Property Owner:	
Delinquency Reminder Letter	\$ 10
Delinquency Demand Letter	35
Foreclosure Letter	53
Effect Removal from Tax Roll and Record Subsequent Notice of Satisfaction ⁽¹⁾	102
Payment Plan	200
Subsequent Foreclosure Services	150
Fees Paid Directly to Willdan by Requestor:	
Delinquency Demand Payoff ⁽²⁾	\$ 50
Zero Demand ⁽²⁾	50

⁽¹⁾ ***This fee complies with Section 8833 of the California Streets and Highways Code and/or Section 53356.2 of the California Government Code, which requires recording of a Notice of Intent to Remove Delinquent Special Assessments and/or Special Taxes from the County tax roll. It DOES NOT include the County tax roll removal charge, or similar fee, if any.***

⁽²⁾ ***This fee is waived for the property owner (except for escrow purposes) or for the San Dieguito Public Facilities Authority.***

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Federal Compliance Services**Arbitrage Rebate**

Following is the Arbitrage fee table for any future Arbitrage Rebate calculations required by the Authority.

Arbitrage Services	Fee
Engagement Fee. One-time fee charged for newly-contracted issues.	\$500
Base Fee Range. Annual report.	\$900 to \$1,500
Yield Restriction Computation. If we determine that a yield reduction payment is due on yield-restricted, nonpurpose investments, an additional fee will be charged to analyze and determine the due yield reduction payment.	\$500 Per Fund
Spending Exception Analysis. If the proceeds of a bond issue are spent within a specific timeframe, regulations offer few exceptions to Arbitrage Rebate rules.	\$500 Per Period
Commingled Funds Analysis. Clients providing data with commingled funds will incur an additional charge to uncommingle transactional data.	\$250 Per Fund
Parity Reserve Allocation. Bonds that have been issued on parity that require an allocation of the reserve fund.	\$250 Per Fund
Data Analysis in Excess of 12 months. Arbitrage analysis for periods greater than one year will be charged an extra fee for each additional bond year that is analyzed.	\$250 Per Fund
Transferred Proceeds Analysis. The regulations require an additional level of analysis for proceeds of refunding and refunded bonds.	\$500 Per Fund
Non-bona Fide Debt Service Fund. Our base fee assumes that the bond fund, as defined in bond documents, meets the bona fide debt service fund exemption to rebate. If this fund fails to qualify for this exemption, an additional fee will be charged to analyze the investment activity.	\$500 Per Fund
Request for Refund of Overpayment	\$150 Per Hour
IRS Audit Assistance	\$150 Per Hour
Online Compliance Management System	No Charge
Preparation of IRS Form 8038T (Payment)	No Charge

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Nonland-based Municipal Disclosure

Service	Fee
Setup Fee (one-time charge for new issues)	\$ 250
Base Annual Report Fee: • Lease Revenue Bonds, Series 2010A	1,000
Additional Services:	
Supplemental Reports	\$ 250
Amended Reports	500
Report Dissemination (Per Report)	100
Dissemination Only	500
Notice of Material Events	250
Annual Third-party Expenses	At Cost

Reimbursable Expenses

Willdan will be reimbursed for out-of-pocket expenses. Examples of reimbursable expenses include, but are not limited to:

- Postage,
- Electronic data provided from the county and/or other applicable resources,
- Travel expenses,
- Construction cost periodicals, and
- Mileage (currently 50¢ per mile),
- Copying (currently 6¢ per copy).
- Maps,

Any additional expense for reports or from outside services will be billed to the Authority. Charges for meeting and consulting with counsel, the Authority, or other parties regarding services not listed in the scope of work above will be at our then-current hourly rates (see "Additional Services" section). In the event that a third party requests any documents, Willdan may charge such third party for providing said documents in accordance with Willdan's applicable rate schedule.

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Additional Services**Hourly Rates**

Additional services may be authorized by the San Dieguito Public Facilities Authority and will be billed at our current hourly consulting rates below.

Title	Hourly Rate
Group Manager	\$ 210
Principal Engineer	200
Principal Consultant	200
Senior Project Manager	165
Project Manager	145
Senior Project Analyst	130
Senior Analyst	120
Analyst	100
Analyst Assistant	100
Property Owner Services Representative	55
Support Staff	50