

**VISTANCIA COMMUNITY FACILITIES DISTRICT
PEORIA, ARIZONA
DISTRICT COMMUNICATION**

DC: _____
Amend No. 4B

Date Prepared: May 15, 2008

District Meeting Date: May 20, 2008

TO: Honorable Mayor and District Board Members

FROM: Steve Kemp, District Counsel 

SUBJECT: SDB v. Vistancia Community Facilities District et al.

RECOMMENDATION:

That the District Board approves the partial settlement agreement between the Vistancia Community Facilities District and Wilson & Company and authorizes the District Council to execute such documents as necessary to complete the settlement.

SUMMARY:

In 2005, SDB Contracting, who was the general contractor for the first phase of the Jomax Water Reclamation facility was terminated as the contractor in accordance with the City's procurement regulations used by the District. The District procured substitute performance. At the same time the District notified Wilson & Company that it (the District) had claims against Wilson.

Since that time, litigation has commenced and the parties have engaged in extensive discovery. Recently, the parties participated in a mediation meeting. As a result of that mediation session, the District has reached a basic agreement on terms of a settlement with Wilson & Company.

The Settlement is attached and it is my recommendation as District Counsel that the District Board approves the partial settlement agreement Wilson & Company

ATTACHMENT:

1. Draft Memorandum of Terms

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DISTRICT CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# _____ LIC. # _____
Action Date: _____

REV. 05/08

Settlement Agreement and Mutual Release

Vistancia Community Facilities District ("VCFD"), Wilson & Company and Wilson Engineers enter into this settlement agreement and mutual release effective April 29, 2008 with the following material terms:

1. Wilson & Company will pay VCFD \$70,000 on or before May 31, 2008
2. Wilson Engineers will pay VCFD \$30,000 on or before May 31, 2008
3. Wilson Engineers will provide up to five hours each of Ed McCurdy's, Alan Palmquist's and Michael Johnson's time, at no cost, to VCFD related to VCFD's ongoing litigation with SDB
4. VCFD will pay Messrs. McCurdy's, Palmquist's and Johnson's their hourly rate for their time, if any, beyond the five hours described above
5. VCFD, Wilson & Company and Wilson Engineers fully and completely release each other, their principals, directors, employees, assigns and insurance companies from any and all claims in any way related to the Jomax Water Reclamation Facility
6. VCFD agrees to defend, indemnify and hold Wilson & Company and Wilson Engineers harmless from and against any and all claims SDB, the City of Peoria and/or Vistancia LLC raise against Wilson & Company and/or Wilson Engineers that are in any way related to the Jomax Water Reclamation Facility
7. VCFD agrees to pay any Nitro costs from April 29, 2008 forward
8. VCFD and Wilson & Company will stipulate to the dismissal with prejudice of VCFD's Third-Party Complaint in Maricopa County Cause No. CV2005-010438
9. VCFD, Wilson & Company and Wilson Engineers expressly deny liability to each other and enter into this settlement agreement and mutual release to avoid the uncertainty and costs of trial
10. VCFD, Wilson & Company and Wilson Engineers will prepare and execute a formal settlement agreement and mutual release, which will include the foregoing terms
11. This settlement agreement and mutual release is subject to approval by the Board of the VCFD
12. The Board of the VCFD has 30 days to approve this agreement.


James Gibbs, Wilson & Company


Steve Todd, Wilson Engineers

On behalf of the VCFD