COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

GAIL FARBER, Director

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IN REPLY PLEASE
REFER TO FILE: CIO-0

January 6, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

REQUEST TO APPROVE A THIRD AMENDMENT TO THE ELECTRONIC DEVELOPMENT AND PERMIT TRACKING SYSTEM AGREEMENT WITH ACCELA, INC. (ALL DISTRICTS) (3 VOTES)

SUBJECT

Request for approval of the Third Amendment to the June 18, 2002, Agreement (No. 74058) with Accela, Inc., to formalize a negotiated resolution of matters relating to cessation of system implementation services and continuation of maintenance and support services for the existing electronic Development and Permit Tracking System.

JOINT RECOMMENDATION WITH THE ACTING CHIEF INFORMATION OFFICER THAT YOUR BOARD:

1. Approve and instruct the Chairman of the Board to execute a Third Amendment to the June 18, 2002, Agreement with Accela, Inc., to formalize a negotiated resolution of matters relating to cessation of system implementation services and continuation of maintenance and support services, through the end of the existing Agreement (June 17, 2012), with a maximum contract obligation not to exceed $1,485,439, authorized under the Agreement, including:

a. Mutual agreement between the County and Accela, Inc., to not seek recovery of damages or commence litigation;

b. Accela, Inc.'s agreement to not seek payment of any amounts, other than maintenance and support fees, due from County;

c. Continuation of maintenance and support services authorized under the original Agreement, to be performed for those portions of the software implemented and currently in use by the Department of Public Works, Fire Department, Department of Regional Planning, and Department of Public Health's Office of Environmental Health, referred to as Participating Departments. Total payment to Accela, Inc., will not exceed $194,749 for Participating Departments for the period of October 2008 through June 2012;

d. Continuation of hourly as-needed service, to be utilized only to maintain operational effectiveness of existing functionality, not to exceed $75,000 per year per department, total payment to Accela, Inc., will not exceed $1,125,000 for Participating Departments, for the period of December 2008 through June 2012;

e. A provision to require prior Board approval for each request to utilize hourly as-needed services; and

f. Reduction of the annual Maintenance and Support fees, retroactive to June 2006, for Participating Departments.

2. Authorize and instruct the Department Head of each Participating Department to release the hold on payments to Accela, Inc., for Maintenance Services and to make payment to Accela, Inc., in accordance with the negotiated schedule and reduced Maintenance and Support rates. Total payment to Accela, Inc., will not exceed $165,690 for Participating Departments, for the period of June 2006 through September 2008.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the Third Amendment to the electronic Development and Permit Tracking System (eDAPTS) Agreement (No. 74058) is to formalize the negotiated resolution of matters relating to the early termination and downsizing of the implementation services portion of the eDAPTS Agreement. With approval by your Board, the proposed Third Amendment will authorize and fully implement all recommendations presented to your Board on March 29, 2007, by the County Counsel, Chief Information Officer, and Director of Public Works.

In the March 29, 2007, report, a number of recommendations were set forth to effectively cease the implementation services portion of eDAPTS, ensure the County's financial and legal interests were protected, and ensure the continued delivery from Accela, Inc. (Contractor), of maintenance services for those portions of eDAPTS that had been successfully implemented. The negotiations to achieve these recommendations have been successfully concluded with Contractor. All of the goals originally set forth in the March 2007 report have been achieved and are appropriately reflected within the proposed Third Amendment.

Implementation of Strategic Plan Goals

The Countywide Strategic plan directs the provision of Service Excellence (Goal 1), Organizational Effectiveness (Goal 3), Fiscal Responsibility (Goal 4), and Community Services (Goal 6). The recommended Amendment will help meet these goals by enabling the County to continue providing services that will benefit the community.

FISCAL IMPACT/FINANCING

The maximum contract obligation under this Third Amendment is $1,485,439, including $194,749 in scheduled maintenance fees, $165,690 for release of prior maintenance fees, and $1,125,000 for discretionary as-needed services. Any use of the $1,125,000 discretionary funds will require prior approval by your Board. Financing for these services is included in Fiscal Year 2008-09 Public Works' General Fund Budget ($137,841.40), Flood Fund Budget ($20,819.80), and Road Fund Budget ($20,819.80), Fire Department's Administrative Budget Unit ($124,407), Department of Regional Planning's General Fund ($121,442), and Department of Public Health's Environmental Health Budget ($92,293). Funds to finance the remaining years will be requested through the annual budget process.

Under the terms of the proposed Third Amendment, neither the County nor Contractor will commence litigation or seek recovery of any damages or other payments purportedly due under the terms of the Agreement, exclusive of ongoing maintenance services. Specifically, the County will not be required to pay Contractor $560,176 for goods and services already received. This amount is comprised of the 10 percent in holdbacks totaling $333,094 for completed deliverables and software licenses and $227,082 in pending deliverable payments for other completed work.

Upon approval of the proposed Third Amendment, the County will also release its hold on maintenance payments, and retroactively apply the new reduced maintenance rates (Exhibit B), from June 2006 through September 2008. The reduced rates will result in a total cost savings or "avoidance" of $711,205 for the period of June 2006 through September 2008 for the Participating Departments. The new maintenance rate and the hourly as-needed rate are subject to annual Consumer Price Index increases, effective in October of each year, as allowed through terms in the existing Agreement.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The attached Third Amendment has been reviewed and approved from a legal standpoint by County Counsel. Acting on a recommendation from County Counsel, Contractor's review and approval of the proposed Third Amendment was obtained prior to submitting this proposal to your Board. Contractor's agreement to the negotiated resolution is reflected on the signature page of the Amendment, and was provided with the full understanding that the Third Amendment is not final and will only become effective upon approval by your Board.

ENVIRONMENTAL DOCUMENTATION

In accordance with Section 15378(b)(4) of the California Environmental Quality Act (CEQA) Guidelines, approval of the recommended action does not constitute a project and, hence, is not subject to the requirements of CEQA.

CONTRACTING PROCESS

The eDAPTS Agreement was first approved by your Board in June 2002. In April 2003, the Board adopted Addendum No. 1 to add the Fire Department, Department of Regional Planning, and Department of Public Health's Office of Environmental Health to the Agreement and project. The Board adopted Amendment No. 1 in June 2004, providing an extension of time to the implementation period for the eDAPTS Project. In July 2005, the Board adopted Amendment No. 2, providing a further extension of time for the implementation period, and allowing the Participating Departments to make progress payments to Contractor for deliverables completed by Contractor and accepted by County and for which there were no specified payments set forth under the Payment Schedule. Aside from the proposed Third Amendment, there have been no further changes to the Agreement.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Each of the Participating Departments has successfully implemented portions of eDAPTS to meet a number of business functions, and that functionality remains in use today. This functionality is considered by the Participating Departments to be a key in conducting their day-to-day land-based activities and must continue to be available because it has replaced prior systems or manual processes. The use of the successfully implemented portions of eDAPTS by the Participating Departments will require maintenance and support that can only be provided by Contractor.

The proposed Third Amendment will ensure these maintenance services continue to be provided until such time as the Participating Departments choose to replace or migrate away from eDAPTS. In addition to the annual maintenance fee, each Participating Department may seek Board approval to utilize hourly as-needed services, at a not to exceed cost of $75,000 per year per Department, should it be required to maintain operational effectiveness of existing functionality. For example, a Department may require hourly services to modify the eDAPTS to comply with new mandates or critical business process changes, or to maintain IT infrastructure currency.

CONCLUSION

Each of the Participating Departments has reviewed and approved the requested action in this Board letter. Please retain one executed original for your files and return one executed original of the contract and one adopted copy of this letter to the Department of Public Works, Chief Information Office, and one complete set of documents to the Chief Information Office.

Respectfully submitted,

GAIL FARBER
Director of Public Works

RICHARD SANCHEZ
Acting Chief Information Officer

GF:RS:JP:ygd

Attachments (2)

c: Chief Executive Office (Lari Sheehan)
County Counsel
Fire Department
Department of Public Health Office of Environmental Health
Department of Regional Planning

THIRD AMENDMENT TO DEVELOPMENT AND INSPECTION TRACKING SYSTEM AGREEMENT

This Third Amendment to Development and Inspection Tracking System Agreement ("Third Amendment") is entered into and executed as of the ____ day of _____, 2008 by and between the County of Los Angeles (the "County") and Accela, Inc. ("Contractor"). The County and the Contractor are sometimes hereinafter referred to collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, the Parties entered into that certain Development and Inspection Tracking System Agreement (the "Agreement") which was adopted by the Board of Supervisors of the County (the "Board") on June 18, 2002 (the "Effective Date") for the development and implementation by Contractor of an electronic development and permit tracking system (the "System") for the County's Department of Public Works ("DPW"), and post-implementation maintenance and support;

WHEREAS, under Addendum No. 1 to the Agreement (the "Addendum") adopted by the Board on April 1, 2003, the Parties agreed to supplement the Agreement to provide, among other things, for the addition of the County's Department of Regional Planning, the County's Fire Department and the County's Department of Health Services' Office of Environmental Health (such departments collectively, the "Additional Entities") as additional entities under the Agreement;

WHEREAS, under the First Amendment to the Agreement (the "First Amendment") adopted by the Board on June 1, 2004, the Parties agreed to amend the Agreement to provide for an extension of time until August 1, 2005 for Contractor to complete the implementation work scheduled to be performed under the Agreement;

WHEREAS, under the Second Amendment to the Agreement (the "Second Amendment") adopted by the Board on July 19, 2005, the Parties agreed to further amend the Agreement to provide, among other things, the Program Directors for DPW and the Additional Entities the authority to revise their respective payment schedules to allow the County to make progress payments thereunder to the Contractor for deliverables completed by the Contractor and accepted by the County but for which there are no payment milestones currently provided for under such payment schedules, without the requirement of further Board approval;

WHEREAS, Section 5.4 of the Agreement provides that any changes to the Agreement which affect the scope or work, term, payment or any other term or condition of the Agreement shall be accomplished by way of a negotiated written amendment to the Agreement executed by the County's Board of Supervisors and the Contractor's authorized representative; and

WHEREAS, the Parties wish to further amend the Agreement under this Third Amendment to provide for the following:

- All work to be performed under the Agreement by Contractor (including any remaining eDAPTS System implementation services) is terminated, except for the continuation of maintenance and support services, as herein modified, for those portions of the eDAPTS System which were successfully implemented and currently in use by DPW and/or the Additional Entities;
- Any such maintenance and support services shall be performed for the remaining term of the Agreement by Contractor at the rates set forth in a revised Exhibit B (Fees and Payments) attached to this Third Amendment;
- Each Party agrees that it will not seek recovery of any damages or other payments from the other for any purported default by said other Party in the performance or nonperformance of its obligations under the Agreement to the date of this Third Amendment; and
- Each Party agrees that it shall not commence litigation against the other for any matter arising to the date of this Third Amendment under or in connection with the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants of the Parties contained in the Agreement, the Addendum, the First Amendment, the Second Amendment and this Third Amendment, the Parties hereby agree as follows:

1. Notwithstanding any provision of the Agreement to the contrary:

   (a) Any portion of this Agreement which provides for the performance of Services by Contractor in connection with the Implementation of the System or any Component thereof is hereby immediately terminated. For purposes of clarification, such terminated portions of the Agreement shall not include any provisions relating to the performance of future maintenance and support Services by Contractor described in Paragraph 9 (Maintenance and Support) of the Agreement and herein modified.

   (b) The provision by Contractor of any hourly as-needed services under this Agreement shall require prior Board of Supervisors approval.

2. Exhibit B (Fees and Payments) of the Agreement is hereby deleted in its entirety, and shall be replaced by a new Exhibit B (Fees and Payments), a true and correct copy of which is attached to this Third Amendment and incorporated herein by this reference.

3. Each Party agrees that it will not seek recovery of any damages or other payments from the other for any purported default of said other Party in the performance or nonperformance of its obligations under the Agreement to the date of this Third Amendment.

4. 6. Paragraph 9.1(c) of the Agreement is replaced in its entirety by the following: "Provide unlimited telephone support between the hours of 4:00 a.m. and 6:00 p.m. PT, Monday through Friday. County shall maintain a regular training program to allow for needed training as typical turnover of trained Users may occur. Pursuant to Section 10.0 (Rates and Charges) of the Agreement, Contractor shall make appropriately trained support personnel available by telephone during non-business hours to facilitate County's installation and implementation of new releases, versions, or enhancements of the System. County shall maintain trained central, internal County System support personnel who will constitute a designated list of approved persons to contact Contractor for System support. These approved persons shall receive support issues from all Users and provide the first level of support and assistance to them. If additional assistance is needed, these approved persons shall contact Contractor support. The approved persons list shall be maintained by the County, updated and submitted to Contractor on a regular basis."

5. "The Parties hereto agree that each of the recital paragraphs set forth in this document above is hereby incorporated by reference into this Fourth Amendment as though set forth herein."

6. 7. In all other respects the Agreement, the Addendum, the First Amendment, the Second Amendment and the respective rights and obligations of the Parties thereunder, remain as previously written and in full force and effect.

IN WITNESS WHEREOF, the County of Los Angeles and Accela, Inc. have caused this Third Amendment to be executed by and through their respective and duly authorized representatives on the day and year above first written.

COUNTY
COUNTY OF LOS ANGELES

By _____ Chairman, Board of Supervisors

ATTEST:

SACHI A. HAMAI Executive Officer and Clerk Board of Supervisors of the County of Los Angeles

By: _____

CONTRACTOR
ACCELA, INC.

By _____ Title ASST. CORP. SECRETARY

APPROVED AS TO FORM: RAYMOND G. FORTNER, JR. County Counsel

By _____ Jose Silva Principal Deputy County Counsel

Exhibit B
FEES AND PAYMENTS

I. Annual Maintenance Fees:

A. Reduced user base and Maintenance Fees effective June 2006:

	Maintenance Fee June 2006 thru September 2006		Maintenance Fee October 2006 through September 2007		Maintenance Fee October 2007 through September 2008		Total Maintenance Fees "Held" by County and due to Accela
	# of Users	Proration of Prior Annual Fee	# of Users	Per User License Fee $161.62 Annual Fee	# of Users	Per User License Fee $161.62 Annual Fee	
DRP	N/A		94	$15,192	94	$15,192	$30,384
Fire	N/A		100	$16,162	100	$16,162	$32,324
OEH	N/A		35	$5,657	35	$5,657	$11,314
DPW	N/A	$47,222	200	$32,324	75	$12,122	$91,668
Total Due Accela		$47,222		$69,335		$49,133	$165,690

B. New Annual Maintenance Fee Structure effective October 2008:

	Maintenance Fee Effective October 2008 through September 2009	
	# of Users	Per User License Fee $170.83
DRP	94	$16,058
Fire	100	$17,083
OEH	35	$5,979
DPW	75	$12,813
Total		$51,933

Note: The number of users may increase or decrease from year to year; and pursuant to Section 1.3.9 "CPI Adjustment" and Section 10.0 "Rates and Charges", Maintenance fees and Hourly As-Needed Rates (Exhibit K) are subject to change; the October 2008 rate is inclusive of the most recent CPI increase.

II. Maintenance and Support Services - Hourly As Needed

Departments may utilize As-Needed Maintenance and Support Services not to exceed $75,000 annually per Department. Use of As-Needed Maintenance and Support Services requires prior approval by the Board of Supervisors and may only be utilized to maintain operational effectiveness of existing functionality, such as compliance with new mandates, critial changes to business processes, or Orcale/IT infrastructure upgrades.

Pursuant to Section 1.3.9 "CPI Adjustment" and Section 10.0 "Rates and Charges", Maintenance fees and Hourly As-Needed Rates (Exhibit K) are subject to change.

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- Any such maintenance and support services shall be performed for the remaining term of the Agreement by Contractor at the rates set forth in a revised Exhibit B (Fees and Payments) attached to this Third Amendment;

- Each Party agrees that it will not seek recovery of any damages or other payments from the other for any purported default by said other Party in the performance or nonperformance of its obligations under the Agreement to the date of this Third Amendment; and

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