



lisa schicker
<lisaschicker@sbcglobal.net>
>

05/05/2009 09:16 PM

To Chairperson Bruce Gibson <bgibson@co.slo.ca.us>,
Supervisor Frank Mecham <fmecham@co.slo.ca.us>,
Supervisor Jim Patterson <jpatterson@co.slo.ca.us>,
cc Lisa Schicker-Hotmail <lisaschicker@hotmail.com>

bcc

Subject Formal Complaint, Continued - Mr. Ogren's MWH Contracts,
Conflict of Interest and Flaws with Shortlist and Design-Build
Procurement Process for the County Los Osos Wastewater
Project

Dear Supervisor Gibson and Board Members:

As promised, here is a copy of my presentation from today (I got through about 1/4 of it during public comment) with the additional reference documents attached. Please include these in the public record and post in the official minutes for the meeting.

It has taken quite a bit of time to gather all of these documents for you, and many of these were referenced in several of my earlier communications with your Board.

Mr. Jensen, the AB2701 advisory vote was not in the bill, that was my error, but it was something that Assemblyman Blakeslee and I discussed extensively and I believe it is included in his personal notes that accompany the Bill, along with his request that the State audit the LOCSD waste water project; he understood the seriousness of these issues. I will look for his notes and I suggest you discuss this with him, too. Paavo and I also discussed the timing of an advisory vote regularly, perhaps he can shed additional light on this topic for everyone.

Please Mr. Gibson, do not "shoot the messenger", my comments today were not opinions, nor were they "unsubstantiated claims", as you stated in your closing comments. I presented both facts and questions to your Board that require clarification. These facts presented were derived from my first hand experiences and observations and

I am simply presenting these facts to the current decision-makers for their evaluation.

It is my duty and responsibility, that is how I see it. And just like you said about your decisions, "its not personal" for me either.

I believe that my concerns have merit, and I have no ulterior motive for making this effort to collect all of these documents for you other than keeping my promise to the people of Los Osos.

My promise to my community was to deliver an affordable 21st century sustainable water and waste water project as soon as possible, and I worked night and day towards that goal for over six years now, first as an activist and then as an elected official, despite unbelievable adversity.

My promise to my community was if the LOCSD supported AB 2701, we would be assured a fair, honest and open process and that all alternatives would be explored - including gravity and step and everything in between - so the people would get the best project for the best price.

That is why pre-empting the decisions of the Planning Commission, by expediting Public Works' recommendations to short-list gravity collection teams with the MWH design only is a bad idea - it circumvents the fair and coequal process that you promised the people, and it stifles the creative solutions that we need, and that is what is currently causing this recent citizen upheaval.

My goals are ones that I think we all share. The only way we can get there is by working together, citizens with their elected officials in an open democratic process, through these very tough issues and with mutual respect for our various points of view.

Thank you in advance for reviewing these additional materials.

Sincerely,

**Lisa Schicker, Past President and LOCSD Board Member
2004-2008**

.....

SUMMARY

In light of the information that has been provided to your Board and to the public and for the record, I request that your Board take action:

1. Vote to agendize a review of the LOWTP design build procurement process and rescind the current consultant shortlist, if it has been approved, until a complete investigation can occur and implement independent third party oversight for the Wastewater Project design build process.

2. Vote to agendize an audit of all County/Agency contracts that the Public Works Director has managed, including the Lopez Lake Dam Retrofit project, and including his past relationships with consultants such as RMC, Carollo, Carella, and MWH, among others. These same firms were the shortlisted bidders for the design of the LOCSD waste water project and most of them are already working on your project, too.

For your consideration:

“Elected and public employees are charged with a legal duty to report a suspected crime or illegal activities... If Board members knew about the illegal activity, their vote approving the final contract affirmed and condones it and all subsequent actions approving warrants and amendments to the contract simply continued the fraud on the public. They essentially participated in the criminal activity.” (Excerpt from the D.A.'s letter to LOCSD and their Attorneys, March 2, 2006)

This quote is timely for you; as you now have in your possession information and disclosure of illegal acts that have tainted the shortlisting and design build procurement process for the Los Osos project. This information will apply to all subsequent decisions that you make.

As I have said many times before, all Los Osos has ever asked for is a fair and honest process. We can still get there. Thank you for consideration of these materials.

May 5, 2009

RE: Formal Complaint: Mr. Ogren's Illegal MWH Contract, Conflict of Interest with MWH and Flaws with the Short listing of MWH and the Design-build Procurement Process for the Los Osos Wastewater Project

Dear Honorable Chairperson Gibson and Board of Supervisors:

As part of my duties as a previously elected person with direct knowledge of events that will influence decisions you will soon make on behalf of Los Osos citizens, it is my duty and responsibility to make you aware of information and activities that are unethical, illegal, and/or a suspected crime.

This will be my tenth communication and correspondence with you regarding a formal complaint filed a month ago, alerting you to past illegal activities of the Public Works Director, Paavo Ogren that are related to current County business and to unethical activities by consultants hired by Mr. Ogren for SLO County projects, including the LOWTP.

I have confirmed that your Board and/or County Counsel received my previous correspondence and documents which provide Attorney, DA and Engineering documents describing how Paavo Ogren (as IGM), directed the execution of an illegal MWH contract for the LOCSD's LOWTP.

Mr. Ogren appears now to have also violated the design-build code and contract procurement requirements for the County's project by hiring MWH in the fall of 2006, ignoring the refusal of the LOCSD to issue the necessary conflict waiver, and then short listing this same MWH firm again in April 2009.

MWH is a firm that has already made millions in Los Osos from this illegal contract, for a project that no one wanted (see your recent survey results), and has filed lawsuits against the

citizens/LOCSD that are still active. They are also under investigation by the DOJ and FBI in Florida - for bid rigging and unethical billing practices.

How did MWH ever make it past the reference check that was conducted by the County's Design Build interview panel? Who conducted this interview and what were their prior relationships with MWH? Did MWH disclose their current lawsuits, their legal problems in Florida or complaints still pending against them at the Construction Management Association to the County, as is customary?

My purpose is to assure, for the public record, that you are fully aware of the seriousness of these allegations. I recommend that each of you request that County Counsel compile a complete set of materials sent to you regarding this matter and that you have all the supporting documents, too, in order to remain completely informed.

I also request that you take prompt action to protect the County taxpayers and Citizens of Los Osos from any further financial harm. Please do not allow the continuation of a tainted procurement process being led by the Public Works Director, when at the very least there now is a perceived conflict of interest; both MWH and your Public Works Director must be immediately removed from working on this project.

I have attached additional supporting documents in PDF format for your review; most are new, and some have been previously referenced in writing and/or during my public testimony from March 28, 2009 to the present.

Here is a list of the enclosed attachments:

1. Official Memo from GM Bruce Buel, sent to LOCSD Board: January 6, 2006, stating that Interim GM Paavo Ogren directed him to backdate the first MWH contract for \$288,000. **According to the County DA, this is considered a "violation of Penal Code Section 424 and Government Code Section 6200, both of which prohibit falsification of public records such as the backdated contract..."** Paavo Ogren knowingly directed the backdating of the original contract, affecting all subsequent amendments and contracts for over \$16 million with MWH, which were executed after the fraudulent first contract.
2. Copy of the LOCSD/MWH backdated contract. The Attorney (and "approved to form" statement) and the Board President signatures are missing, as are required on LOCSD public contracts. Dated September 1, 1999, Paavo Ogren, IGM was in charge, before Bruce Buel, eventual GM, was even employed.
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4. Letter 1 to DA, all attachments, citing illegal acts and false claims, and including false claim letter to MWH (12-8-05), and an invoice showing Ogren's approval of \$29K invoice from MWH without board authority in Nov 1999. **This letter to the DA constituted the reporting of a crime, which by receipt of this note, you now have also been notified.**
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8. LOCSD letters 1 and 2 to MWH, terminating contracts and detailing all False Claims. August 2006.
9. Newspaper articles regarding these issues.

In light of the information that has been provided to your Board and to the public and for the record, I request that the BOS:

- 1. Vote to agendize a review of the LOWTP design build procurement process and rescind the current consultant shortlist, if it has been approved, until a complete investigation can occur and implement independent third party oversight for the Wastewater Project design build process.**
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One last thought, for your consideration:

“Elected and public employees are charged with a legal duty to report a suspected crime or illegal activities... If Board members knew about the illegal activity, their vote approving the final contract affirmed and condones it and all subsequent actions approving warrants and amendments to the contract simply continued the fraud on the public. They essentially participated in the criminal activity.” (Excerpt from the D.A.'s letter to LOCSD and their Attorneys, March 2, 2006)

This quote is timely for you; as you have in your possession information and disclosure of illegal acts that have tainted the short listing and design build procurement process for the Los Osos project. This information will apply to all subsequent decisions that you make.

As I have said many times before, all Los Osos has ever asked for is a fair and honest process. We can still get there. Thank you for consideration of these materials.

Most Sincerely,

Lisa Schicker

Past President and Director, LOCSD 2004-2008

Cc: The citizens of Los Osos, members of my community will also receive copies of this formal complaint

County Counsel, Design Build Institute of America, Construction Management Institute of America, DOJ, DA and AG

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Buel-MEMO-toLOCSD-reOgren-MWH1-6-06.pdf BayNews12.21.05-Buel-admits-backdatingMWHcontract.pdf



LOCSD-Attachments-60pp-LOCSD-re-illegalMWH-toDA-AG-12-21-05.pdf RESO-2005-47-LOCSD-requesting-DA-Investigation.pdf



LOCSD-letter1-toDA-MWH-illegalcontract12-21-05.pdf LOCSD-letter2-toDA-MWH-illegalcontract3-2-06pdf.pdf



LOCSD-letter1-toAG-MWH-illegalcontract-3-8-06.pdf LisaSchicker-to-BOS-submissions-reMWH-PublicWksDirector-4-7-09.pdf



LOCSD-GM-to-MWH-Falseclaim-illegalMWHcontract-12-8-05.pdf LOCSD-GM-toMWH-Default-FirstContract-FINAL SIGNED8-14-06.pdf



LOCSD-GM-toMWH-Default-SecondContractFINAL SIGNED8-17-06.pdf cape coral FI Dato=20070228&.pdf Capecoralsummary2.pdf



5-5-09-BOS-presentation-formal-complaint-lowtp.pdf

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To: Chairperson Gibson and the Board of Supervisors
From Lisa Schicker, Formal Complaint and Public Comment, submitted for the record May 5, 2009

May 5, 2009

RE: Formal Complaint: Mr. Ogren's Illegal MWH Contract, Conflict of Interest with MWH and Flaws with the Short listing of MWH and the Design-build Procurement Process for the Los Osos Wastewater Project

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Lisa Schicker
Past President and Director, LOCSD 2004-2008

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Los Osos sewer project tainted by 'expired' crime

Posted: Wednesday, April 22, 2009 11:07 pm

By DANIEL BLACKBURN



Supervisor Frank
Mecham said he wants to
hear County Counsel
opinion on contract
legality.

County planning commissioners Thursday will consider a proposal for construction of Los Osos' contentious wastewater project, a mission now shadowed by a documented crime.

Despite the existence of substantial evidence of unlawful backdating of key contract agreements, executed by now departed officials of the Los Osos Community Services District (LOCSD), county planners are moving toward a decision that could ratify what critics are calling "a fatally flawed procurement process." Several formal complaints by district officials to San Luis Obispo County District Attorney Gerald T. Shea, starting in 2005 and detailing allegations of potential conflicts of interest and other unlawful activities, were eventually brushed aside.

Chief Deputy District Attorney Steve Brown, in a response to citizen complaints, acknowledged in 2006 that "falsification of a public record by a public employee is a felony," and that a criminal act relating to the backdating apparently had occurred. But Brown declined further investigation by determining that a three-year statute of limitation had expired.

The backdating of the contract in question happened in 1999. Bruce Buell, who at the time was just coming into his job as general manager of LOCSD, has admitted to backdating the contract at the request of Paavo Ogren, then district interim manager and now San Luis Obispo County's director of public works.

Ogren was temporarily running Los Osos district when contractor Montgomery Watson Harza (MWH) of Broomfield, Colorado, was retained by the district for wastewater project management in early September 1999. Ogren did not sign the pact, nor did any board member. Instead, Ogren waited several weeks for Buell to begin his stint as the new district manager, and then told Buell to backdate the MWH contract.

Buell, in an explanatory memorandum he wrote in 2006, said the request was part of "unfinished business" and that Ogren "advised me that I should pre-date the agreement to accommodate the work actually done by MWH at the board's request." Buell's action was witnessed at his request by LOCSD employee Karen Vega, he said in the memo to another incoming LOCSD chief, Dan Blesky.

"Buell was not an agent for the district and had no authority to execute the contract and he had no authority to backdate the contract," Blesky wrote to his directors in 2005.

Buell has since left LOCSD and currently manages Nipomo's community services.

Ogren, now lead county planner for Los Osos' wastewater treatment future, also has become somewhat of a cheerleader for MWH, helping elevate it in recent days to the county's "short list" of preferred designer-builders of any eventual facility.

Former chairman of the LOCSD's board of directors Lisa Schicker believes that MWH's current participation may eventually jeopardize the entire sewer project. Schicker and other residents question the role of MWH in the Los Osos project, suggesting that numerous conflicts cloud any future project plans' legal status.

Schicker wrote in a recent memorandum to county supervisors that "it is a big mistake to consider any continued relationship with MWH, considering the illegal contract... pending investigations and lawsuits, and a potential conflict of interest with [Ogren]."

Gail McPherson, executive director of Citizens for Clean Water, said her group espouses "third party oversight" for

Los Osos project.

"We should back up, disallow MHW's participation, and pick from the [county-designated] top four engineering firms," said McPherson. "It's important that [supervisors] take action quickly and avoid problems."

MHW, despite its controversial role in the equally-mercurial LOCSD wastewater development process, was boosted recently to the top grouping of the county's list of preferred contractors to complete the Los Osos project. This has occurred even though MHW and LOCSD are themselves entangled in myriad disputes and litigation -- which could now prove the county.

The Los Osos district tried to cancel its contract with MHW in August 2006, asserting breach of contract and violations of state law, specifically the "California False Claims Act, Government Code 12650.

Alleging a list of conflicts of interest, the LOCSD letter of termination to MWH said the engineering firm "has knowingly and with malice actively worked with... third parties contractors... regulatory agencies... and other third parties in a manner not in the best interests of [LOCSD]." District officials then filed a claim against MWH, seeking payment of more than \$6 million. MWH has sued in response and all litigation is pending.

County supervisors were called upon April 7 to approve a \$558,000 contract with Carollo Engineers for engineering consulting services for the county's new master water plan.

Lou Carella of Carollo Engineers once was employed by MWH, now has become a Los Osos project engineer, and helped recommend MWH be placed on the county's design-build short list.

Supervisors voted 4-1 to approve the Carollo contract and a staff recommendation to arbitrarily move MWH up on the list of preferred engineering companies bidding for participation.

First District Supervisor Frank Mecham cast the lone dissenting vote, saying that "if there are allegations in there that reference any kind of an illegal act, then I don't want to vote for it until county counsel has had a chance to look at it."

Mecham said Wednesday he didn't feel right about ignoring issues raised by Schicker and others regarding legitimacy of contracts and the type of wastewater collection method that will eventually be employed.

He also said he was not familiar with the matter of Buell's contract backdating activities but that "it's certainly something I want to know more about."

LOS OSOS CSD

Memo

To: Dan Bleskey
From: Bruce Buel
CC: File, Karen Vega
Date: 1/6/06
Re: Statement Regarding Execution of 1999 Montgomery Watson Agreement

I reported to work as LOCSD's General Manager on November 16, 1999. Paavo Ogren, who was the Interim General Manager prior to my term, presented me with a series of items of unfinished business. One of these items was the draft agreement with Montgomery Watson (MW) to perform Wastewater Project Management Services. Paavo explained to me that the Board had selected MW in August 1999 to perform this work and had directed MW to assist in negotiations with Oswald Engineers (OE) for OE to produce the Project Report for the Wastewater Project. The negotiations with OE were lengthy and contentious and were not resolved until late October 1999. The Board formally approved the OE agreement and the MW agreement in early November 1999, but Paavo had not executed either document. Paavo advised me that the Board had authorized MW to assist in the negotiations and that I should pre-date the agreement to accommodate the work actually done by MW at the Board's request starting Sept 1, 1999. I did so. I also directed Karen Vega to witness my signature, which she did at my direction.

Feel free to call me at 805-528-9370 or e-mail me at bbuel@losososcscsd.org

APPEALS - INLAND GUIDE

San Luis Obispo County Department of Planning and Building

7/25/08

Many actions taken by the Department of Planning and Building staff, Building Official may be appealed. Actions by the Planning Department Hearings Officer, Subdivision Review Board, or Planning Commission, to approve or deny a permit application, may be appealed by the applicant or member of the public.

If you wish to appeal a decision, an appeal form must be completed and received by the Records Management Division accompanied by the required fee no later than 14 calendar days after the action, or 7 calendar days after the approval of a "Site Plan" type of land use permit.

Please state the reasons for your appeal as clearly as possible, setting out all of the facts, conditions, and considerations concerning your case under the section entitled "Basis for Appeal" on the form. You may, if you wish, submit a more detailed letter in addition to the required form.

After an appeal has been filed, staff will prepare a response and schedule an appeal hearing. The Planning Commission, Board of Supervisors or other Review Authority, as specified under the appropriate Ordinance, will hold the hearing. You will be notified by mail of the date, time and place of the hearing. It is best that you attend the scheduled appeal hearing so that you may answer any questions that may arise concerning the application and the appeal.

FEES

When an appeal is requested the following fees apply, depending on which Review Authority you are before, and what type of application you are processing. The fees cover the cost of advertising and mailing, as well as staff evaluation of the appeal and staff report preparation.

APPEALED FROM	APPEALED TO	FEE
Staff Curb, Gutter & Sidewalk Waiver- \$ If waiver is denied	Board of Supervisors	\$ 221.00
Planning Director Interpretation	Planning Commission	\$ 552.00
Planning Director Public Facilities Fees	Board of Supervisors	\$ 560.00
Planning Director Growth Management Ordinance	Planning Commission	\$ 617.00 + RTB
Building Official	Board of Construction Appeals Board of Handicapped Access	\$ 552.00
Subdivision Review Board	Board of Supervisors	\$ 560.00
Hearing Officer	Board of Supervisors	\$ 560.00
Planning Commission	Board of Supervisors	\$ 560.00

* RTB means the applicant will be billed for costs in excess of fees collected

If you have any questions, please contact the Records Management Division at (805) 781-5718.

INLAND APPEAL FORM

San Luis Obispo County Department of Planning and Building

7/25/08

Please Note: An appeal should be filed by an aggrieved person or the applicant at each stage in the process if they are still unsatisfied by the last action.

PROJECT INFORMATION Name: _____ File Number: _____

Type of permit being appealed:

- Plot Plan Site Plan Minor Use Permit Development Plan/Conditional Use Permit
 Variance Land Division Lot Line Adjustment Other: _____

The decision was made by:

- Planning Director (Staff) Building Official Planning Department Hearing
 Subdivision Review Board Planning Commission Other _____

Date the application was acted on: _____

The decision is appealed to:

- Board of Construction Appeals Board of Handicapped Access
 Planning Commission Board of Supervisors

BASIS FOR APPEAL

State the basis of the appeal. Clearly state the reasons for the appeal. In the case of a Construction Code Appeal, note specific code name and sections disputed). (Attach additional sheets if necessary)

List any conditions that are being appealed and give reasons why you think it should be modified or removed.

Condition Number _____ Reason for appeal (attach additional sheets if necessary)

APPELLANT INFORMATION

Print name: _____

Address: _____

Phone Number (daytime): _____

We have completed this form accurately and declare all statements made here are true.

Signature

Date

OFFICE USE ONLY

Date Received: _____

By: _____

Amount Paid: _____

Receipt No. (if applicable): _____

CSD Now Going After Sewer Project Engineers

By Jack Beardwood

Los Osos Community Services District is demanding more than \$6 million in damages and reimbursements from the lead consultant in the sewer project.

According to Dan Bleskey, interim general manager, the district filed a claim Dec. 9 against Montgomery Watson Harza for "contract irregularities" related to the wastewater treatment project.

"Citing numerous docu-

ments, the district claims that MWH billed the district, on 57 separate occasions, for services falsely claimed under their contract," according to a district press release.

Bleskey said the contract with MWH was executed before the CSD board approved it and that the firm submitted claims before the contract was valid.

The claim was filed with Marshall W. Davert, vice president MWH Americas, Inc. in Sacramento. A telephone call

to Davert was not returned.

The claim states that MWH is in violation of Government Code 12650, the California "False Claims Act" because of a defective contract between MWH and the LOCSD.

The contract is said to have been signed on Sept. 1 of 1999 by Bruce Buel, general manager who is currently on administrative leave. The claim states that Buel did not begin work for the CSD until Nov. 16 of that year. "Since Mr.

Buel was not the general manager of the CSD until Nov. 15, 1999, he was not an agent for the district and had no authority to execute the contract and he had no authority to backdate the contract."

Buel said he did backdate the contract. "The firm had been selected by the board in 1999 and I was directed to execute the agreement to cover the work they had already done for the district. Montgomery Watson Harza had actually started performing work for Los Osos

Community Services District in August of 1999. My understanding at that time was that the board was aware that they had performed services that the district was obligated to pay for."

When asked if it is legal to sign a contract dated before his time of employment, Buel replied: "I can't answer that. That's a legal question."

Bleskey said Government Code Section 12650 provides the district with the right for reimbursement of three times

the amount of damages, plus \$10,000 for each false claim made, plus other damages including but not limited to legal fees, staff costs and other real and punitive damages as may have been incurred. The CSD is seeking reimbursement of more than \$6 million, plus \$10,000 for every false claim submitted and attorney fees and interest for the amounts.

"The irregularities in

See CLAIM, page 3

CLAIM, from page 3

MWH contracts call into question whether the contract process was full and open as required by state law," said Lisa Schicker, CSD board president. "It calls into question whether or not there was ever an objective evaluation of all alternatives available."

Bleskey said staff is reviewing all district contracts. The CSD board of directors has asked the county District Attorney's Office to investigate the CSD and asked the Inspector General of the EPA to investigate circumstances surrounding the State Revolving Fund loan that was recently cancelled by the State Water Resources Control Board.

Bleskey said he is mystified by the fact that the district agreed to pay MWH \$7.5 million for two years to provide

construction management services. He said five people could have been hired to do the job at his rate of pay for \$1 million a year. "That construction contract should not cost more than \$2 million," he said. "It's absolutely an outrageous contract."

"I believe the old board was under such incredible pressure," said Bleskey. "They didn't have the expertise that this new board has. Bruce Buel is an administrator. He is not an engineer. He doesn't have formal training in construction contracts, like all the people on this board with the exception of Julie Tacker. The old board was really in a bad way."

"I believe that MWH showed up and recognized that and then they took the district for a ride. Their whole behavior after the election has been cover your ass."

Memo

To: Dan Bleskey
From: Bruce Buel
CC: File, Karen Vega
Date: 1/6/06
Re: Statement Regarding Execution of 1999 Montgomery Watson Agreement

I reported to work as LOCSD's General Manager on November 16, 1999. Paavo Ogren, who was the Interim General Manager prior to my term, presented me with a series of items of unfinished business. One of these items was the draft agreement with Montgomery Watson (MW) to perform Wastewater Project Management Services. Paavo explained to me that the Board had selected MW in August 1999 to perform this work and had directed MW to assist in negotiations with Oswald Engineers (OE) for OE to produce the Project Report for the Wastewater Project. The negotiations with OE were lengthy and contentious and were not resolved until late October 1999. The Board formally approved the OE agreement and the MW agreement in early November 1999, but Paavo had not executed either document. Paavo advised me that the Board had authorized MW to assist in the negotiations and that I should pre-date the agreement to accommodate the work actually done by MW at the Board's request starting Sept 1, 1999. I did so. I also directed Karen Vega to witness my signature, which she did at my direction.

Feel free to call me at 805-528-9370 or e-mail me at bbuel@losososcscsd.org.



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<< [Back](#)

Attorney general faults Cape Coral utilities project Bidding may have violated state law, opinion finds

By Don Ruane
druane@news-press.com
Originally posted on February 28, 2007

The City of Cape Coral may have violated a state law when it negotiated two contracts for major utilities projects, Florida's attorney general concluded in an opinion released on Tuesday.

The attorney general's report said the city was wrong to negotiate the price for complex utilities contracts in phases rather than all at once.

The findings could have far-reaching implications that could affect how future utilities projects are bid, how lawsuits are resolved, how quickly the utilities expansion program continues and how much confidence citizens have in the city's government.

"Any time the attorney general finds fault in the contractual process it doesn't argue well for what they're doing," said resident Bill Diele, who has a utilities-related lawsuit pending against the city.

Mayor Eric Feichthaler said the council needs to take the attorney general's opinion seriously.

"The big question is has the city done anything wrong. If the city has done anything incorrect, we need to correct it," Feichthaler said.

Councilman Tim Day, who has called for a new way to bid utilities projects, wants to talk about the issues at next Monday's council meeting.

"I don't know if anybody is going to step up to the plate," said Day.

Feichthaler said the issue will be on Monday's agenda.

He said he wonders whether the city could bid design work for a project separately and bid construction later.

Construction costs depend on the design, Feichthaler said.

First impact

Residents who live in areas where projects to install water, sewer and irrigation lines are pending, known



Cape Coral Councilman Day

CAPE OFFICIAL REACTS

Statement from City Manager Terry Stewart on Attorney General's Opinion on Construction Manager at Risk

"The State Attorney General's Office has rendered an opinion on the Construction Manager at Risk program delivery method and opined that state statutes did not "contemplate" this type of contractual arrangement.

This opinion does not state that the construction manager at risk method is prohibited by state statutes. Nor does it render our existing contracts null and void. More specifically, the Attorney General writes that negotiating "each phase of a multi-phase project" with a construction manager at risk does not comply with the intent of section 287.055(9)(c) Florida statutes.

The construction manager at risk method has been in place within the City of Cape Coral since 1999. This method also is widely used by other Florida cities and counties, as well as the state of Florida. This Attorney

as Southwest 6 and 7, are likely to be the first to feel the impact of any changes prompted by the attorney general's nonbinding report, Feichthaler said.

Work on the next project in line, called Southwest 5, may be too far along, he said.

The council approved the design phase of Southwest 6-7 on Feb. 19. Before it could make any changes, the council would have to calculate the costs of killing a contract with a firm called MWH Americas to manage the construction phase, the mayor said.

Work is under way in Southwest 4, where residents are paying \$17,992 for a typical two-lot building site to receive the utilities lines.

Audits critical

Three audits have criticized how the city is managing the program.

One of those is the 2006 state audit that led to the request for an attorney general's opinion.

A separate audit by Kessler & Associates has led to a U.S. Department of Justice investigation into possible bid rigging in three prior projects.

The third audit, by auditor R.L. Townsend in 2005, said the city was paying too much to run the expansion program. City officials rejected most of his findings.

Attorney General Bill McCollum's opinion on Tuesday addressed an issue raised in the state audit concerning utilities operations between Oct. 1, 2000, and March 31, 2005.

Projects in areas known as Southwest 1, 2, 3 and along Pine Island Road were under construction at the time.

"Accordingly, it is my opinion that separately negotiating each phase of a multiphase project that has been awarded to a construction manager at risk or program manager at risk does not comply with the plain language or intent of section 287.055(9)(c), Florida Statutes," McCollum concluded in his five-page opinion.

City Manager Stewart released a 220-word statement that largely ignored the main issue of how contracts are negotiated.

He defended the city's method of managing projects and devoted just one sentence to the issue of negotiating prices in phases.

"This opinion does not state that the construction manager at risk method is prohibited by state statutes. Nor does it render our existing contracts null and void," Stewart wrote.

The state audit said negotiating each project phase separately limits the city's ability to determine total estimated cost.

The city's response was that it could better ensure a competitive and fair price for each phase. Contractors also were more likely to ask for more money since it's hard to predict labor and material costs five years in advance, officials said.

State impact possible

Stewart said the overall impact of Tuesday's report is unclear and the city's staff is standing by to help the

General's opinion may have significant repercussions for communities and agencies beyond the City of Cape Coral. Because of this widespread impact, one option may be to pursue legislation that will clarify the intent of these statutes.

It is too early to establish what course of action that Cape Coral should follow since the overall impact of this opinion is yet unclear. However, staff stands ready to provide our City Council with all information necessary on existing construction manager at risk projects to help them determine the direction they wish to proceed."

WHAT'S NEXT?

- What: Report by City Manager Terry Stewart and City Attorney Dolores Menendez on the impact of the state attorney general's opinion
- When: Monday at 5:30 p.m.
- Where: Council chamber, City Hall, 1015 Cultural Park Blvd.
- Online: news-press.com updates
- Television: Cape TV Channel 14 on Comcast

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council determine how to proceed.

The impact could stretch beyond Cape Coral, so one option might be to ask the Legislature to clarify the intent of the statutes.

Day said the attorney general appears to have researched the intent of the statute.

"He's clear. It's very short, and he's clear," Day said of the opinion.

Going to the Legislature could take another year, Day said.

The lawsuits

The city is involved in at least four lawsuits related to the utilities projects, and the attorney general's opinion could have an impact on them.

"People have a shot at starting a class-action suit against the city. Some doors have been blown off here," said John Sullivan, one of those who sued. He founded the Cape Coral Minutemen, a group of residents devoted to lowering the costs of the utilities projects.

McCollum's opinion just raises more questions, Sullivan said.

"Are these contracts illegal? If they are, what recourse do citizens have? Are our public officials responsible for this?"

"This is just going to shore up those lawsuits," Sullivan said.

[<< Back](#)

April 7, 2009

Is it Worth the Risk?

MWH - Potential Conflict of Interest and Costly Engineering Decisions

Events and Activities for your Consideration

SLO County BOS Public Comment, Los Osos Wastewater Project April 7, 2009
Distributed to Board members in person
Submitted by Lisa Schicker, past LOCSD President, Board Member 2004-2008

Dear Honorable Board Members:

Please enter this document into the formal public record.

I have three requests.

1. Please rescind staff's decision to shortlist MWH for the LOCSD wastewater project.
2. Please include a STEP RFP today in the final project shortlist process.
3. Please hold the AB 2701 advisory vote following the full disclosure of all project costs from all teams.

I feel strongly that it is my public duty to make you aware of incidents and activities regarding the MWH history with both the LOCSD and the County that suggest Conflict of Interest and poor engineering judgment, many events of which you may not be aware.

I think it is a big mistake to consider any continued relationship with MWH, considering the illegal contract between MWH and the LOCSD, pending investigations into formal complaints against MWH, bankruptcy, lawsuits and a potential conflict of interest with your Public Works Director, Mr. Paavo Ogren.

Mr. Ogren served as the LOCSD's Interim GM in the fall of 1998 and had a relationship with MWH when an illegal contract between MWH and the LOCSD was made. Mr. Ogren must recuse himself

Is it Worth the Risk?

MWH - Potential Conflict of Interest and Costly Engineering Decisions

Events and Activities for your Consideration

immediately from any further decisions regarding MWH and he may have already compromised the process by hiring them in 2006, even after the LOCSD refused to release MWH, due to pending lawsuits.

In this document, I have included a brief description of events and activities regarding Los Osos and MWH.

Any one of these items should bring you alarm and concern and question your staff's reasoning for including MWH on a short list.

All MWH past work products already belong to the citizens of Los Osos – the citizens have paid for this work and any firm chosen will have full access to this work. MWH should not have received any credit (during their interview) for this past work, as they were paid handsomely (and sometimes twice) as part of their complex, convoluted and confusing contract amendment and billing procedures made with the LOCSD.

They should have received no credit for their past work product in their evaluation. The results of all past work from all past consultants are the property of the people of Los Osos and the County.

Our history with MWH is long and remains clouded, and there are many questions about suspicious activities that still remain. Unfortunately this relationship has been damaged beyond repair and you as decision makers should not take the risk – it is simply too high.

There are other fully qualified firms who can do the work, please remove MWH from any further consideration.

Further, I request that an RFP for a STEP collection system be included in this process and that after the people see true costs and

Is it Worth the Risk?

MWH - Potential Conflict of Interest and Costly Engineering Decisions

Events and Activities for your Consideration

can compare for themselves, that an advisory vote as stipulated in AB 2701 is given.

The reasons for including STEP are obvious; it is cost and the environment – and a fair process demands it. The people of Los Osos are demanding to know the “bottom line” - what are the true costs, this is what we have been asking about for years, now.

The only way to get to the true costs is to allow the process to play out. That includes removing the MWH firm with the clouded past in Los Osos, and including a STEP proposal from a qualified STEP firm such as Lyles. The people of Los Osos will be paying for the ultimate choice for years to come – perhaps one of the highest costs in the nation, just to flush, and we certainly deserve to know the full truth.

Thank you for your consideration of my comments.

Most Sincerely,



Lisa Schicker
Past President and Board Member LOCSD 2004-2008

Is it Worth the Risk?

MWH - Potential Conflict of Interest and Costly Engineering Decisions

Events and Activities for your Consideration

Potential Conflict of Interest and Costly Engineering Decisions - MWH, SLO County and LOCSD

1. September 1998. Paavo Ogren Interim GM, LOCSD. Original contract between LOCSD and MWH was an illegal contract discovered in 2005. Interim GM Ogren did not sign, Board President did not sign, it was signed by future Manager B. Buel, who was not employed by the LOCSD at the time the contract was implemented. This illegal contract was amended several times for millions of dollars.

Document Source: December 2005 False Claims Letter and Attachments and Federal Bankruptcy Court filings 2006.

2. 1998-2005 – Two original contracts between LOCSD and MWH were both amended 6-7 times each; millions of dollars in unscoped work are added to each of the original project costs.

Document Source: December 2005 False Claims Letter and Attachments and LOCSD records and Bankruptcy Court filings.

3. 2001 Project Report and Final EIR. MWH Project Report demonstrates that an out of town project is cheaper and FEIR discloses that it is environmentally preferred. MWH's conclusions about "cheaper-out-of-town" were not disclosed in the public document, the FEIR, causing disastrous effects and a town torn apart about the cheapest project location. Many of MWH's design disposal rate info for the Broderson site caused numerous professional challenges and legal and permit challenges – all engineering decisions that were either deceitful (hiding the cost info) and proved very costly for citizens.

Is it Worth the Risk?

MWH - Potential Conflict of Interest and Costly Engineering Decisions

Events and Activities for your Consideration

Document Source: LOCSD Wastewater Project Report and FEIR, lawsuits, revocation documents, engineering challenges and permit conditions and hearings.

4. Spring 2005 - Project bids for 3 separate elements of wastewater project came in 40-57% above MWH professional Engineers Estimates.

Document Source: LOCSD Records, December 2005 False Claims Letter and Attachments and May 2006 Formal Complaint Letter sent re MWH to Construction Management Association of America.

5. Spring 2005 – A third MWH contract for Construction Management was awarded for \$7.48 million - more than \$10, 000 a day based on the higher bids. There was no competition, this was a sole sourced contract (3-2 vote), and the decision was based on advice received from MWH who stood to directly benefit - potential conflict of interest.

Document Source: May 2006 Formal Complaint Letter sent re MWH to Construction Management Association of America, LOCSD minutes and videos and reports spring 2005.

6. Summer 2005 - MWH makes \$10,000 donation to Save the Dream, a political campaign group that was organized to fight against the recall, in order to save their lucrative contract with the LOCSD.

Document Source: County Clerk Recorder's Office – Official Forms submitted by Save the Dream re campaign donations.

7. Fall 2005 - Recall on September 27, 2005, there was a "break-in" and robbery of the MWH construction offices. This robbery occurred the following week after the successful recall - computers and files

Is it Worth the Risk?

MWH - Potential Conflict of Interest and Costly Engineering Decisions

Events and Activities for your Consideration

were stolen. LOCSD never received police report after several formal requests.

Document Source: LOCSD records, Bay News report and County Sheriff's Office, fall 2005.

8. Fall 2005 - LOCSD passed several resolutions and requests for formal a investigation of MWH, the illegal contracts and false claims - DA acknowledges the illegality of the original contract between MWH and LOCSD.

Document Source: LOCSD 2005 resolutions and Letters to and From the DA, False Claims Letter and Attachments.

9. Spring 2006 - False Claims complaint filed against MWH detailing reasons – results pending due to bankruptcy.

Document Source: False Claims Letter and Attachments A-E – LOCSD to MWH 2006. Bankruptcy Filings, SB Federal Court 2006-present.

10. Spring 2006 - Formal complaint filed against MWH with Construction Management Association of the Americas - still pending due to bankruptcy. (Attached for your review).

Document Source: May 2006 Formal Complaint Letter from LOCSD to Construction Management Association of America describing allegations and conflict of interest, 2006.

11. Spring 2006 - MWH sues LOCSD, still pending due to bankruptcy.

Is it Worth the Risk?

MWH - Potential Conflict of Interest and Costly Engineering Decisions

Events and Activities for your Consideration

Document Source: False Claims Letter and Attachments, SLO Superior Court, Federal Bankruptcy Court.

12. Spring 2006 court audit reveals that MWH was improperly paid out of SRF funds in the fall of 2005, funds that had been mandated to reimburse the district for borrowed project monies.

Document Source: LOCSD Independent CPA Audit (court ordered and approved) and July 2005 LOCSD Resolutions specifying that first SRF payment was to reimburse the district, not to pay consultants.

13. Fall 2006 - Paavo Ogren requests the LOCSD Board release MWH so that County can hire them - LOCSD refuses County's request due to lawsuits and false claims in bankruptcy, Paavo tells LOCSD says that he "hired them anyhow".

Source: LOCSD Board, personal communication with LOCSD Board members, 2006.

14. Winter 2006 - Carollo Scope of Work lists MWH as subconsultants.

Document Source: Carollo Scope of Work December 2006, p.32

15. Spring 2009 - MWH selected for County short list

Document Source: SLO County Staff Report – April 1, 2009

16. Spring 2009 - Excerpt from Design Build code appears to disqualify MWH from short list

Document Source: Design Build Code of Law.

Is it Worth the Risk?

MWH - Potential Conflict of Interest and Costly Engineering Decisions

Events and Activities for your Consideration

The County uses the California Contractors Code statute 20133 as their legal basis for the design build project delivery method. Attached is an excerpt of 20133, as it relates to MWH.

20133 excerpt:

(d) Design-build projects shall progress in a four-step process, as follows:

(1) (A) The county shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the public improvement, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the county's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(B) Any architect or engineer retained by the county to assist in the development of the project specific documents shall not be eligible to participate in the preparation of a bid with any design-build entity for that project.

(2) (A) Based on the documents prepared in paragraph (1), the county shall prepare a request for proposals that invites interested parties to submit competitive sealed proposals in the manner prescribed by the county. The request for proposals shall include, but is not limited to, the following elements:

.....

17. Related - FBI and DOJ investigation of MWH in Cape Coral Florida for alleged bid tampering in wastewater projects - ongoing case.

Document Source: LOCSD Board correspondence 2005-2009.



May 10, 2006

FILE COPY

President

Lisa Schicker

Vice-President

John Fouche

Director

Chuck Cesena

Steve Senet

Julie Tacker

Interim General Manager

Daniel M Bleskey

Utilities Manager

George J Milanés

Fire Chief

— Matt Jenkins

Bruce D'Agostino
Executive Director
Construction Management Association of America
7918 Jones Branch Drive, Ste. 540
McLean, VA 22102

**SUBJECT: FORMAL COMPLAINT REGARDING
MONTGOMERY WATSON HARZA'S CONDUCT
IN MANAGING THE LOS OSOS WASTEWATER
PROJECT**

Dear Mr. D'Agostino:

This letter is submitted as a formal complaint against Montgomery Watson Harza (MWH) regarding their behavior and performance related to the Los Osos Community Services District's Wastewater Project. We are requesting that the Construction Management Association of America, which MWH is a member, be investigated for their egregious behavior that completely failed their client, the Los Osos Community Services District and the Citizens of Los Osos.

MWH was hired by the District in September 1999 to be the Project Manager for a planned wastewater treatment system in the community of Los Osos, which is serviced by a Community Services District. This initial assignment was a contract for \$288,000.

The first project programming step was to develop a Wastewater Facilities Plan, and the District prepared an RFP for this scope. Oswald Engineering was selected for this task in summer 1999 and MWH was the firm that was hired in the fall to manage Oswald's work. As described below, it is apparent that MWH failed in their

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oversight of this portion of the work and undermined Oswald's efforts. It late 1999, less than one year after MWH was hired, MWH succeeded in taking over Oswald's portion of the work. MWH then completed the Facilities Plan under the terms of Oswald's original contract, which was amended at least six times for an additional amount paid to MWH exceeding \$1.5 million. MWH had replaced Oswald in less than one year. Oswald was working on a ponding project, the scope of which was developed under MWH's management. The Central Coast Regional Water Quality Control Board (RWQCB) refused to approve the MWH managed ponding design, due to site size limitations. Instead of reworking the ponding system with Oswald or relocating the plant site, MWH assisted the District in removing and suing Oswald. Recent documentation obtained by the District clearly indicates that MWH colluded with RWQCB staff to work against the Oswald design. Furthermore, MWH inappropriately postured itself to take over the preparation of the Facilities Plan from Oswald. This is a clear ethics violation in that MWH not only failed in its responsibilities to objectively evaluate alternatives, but removed oversight controls that have resulted in significant damages to the District and citizens of Los Osos.

MWH completed the Facilities Plan for an entirely different project. The original MWH contract, which was amended at least six more times, raised the MWH's fees five-fold. MWH's efforts in recommending against the community preferred system more than doubled the estimated project construction costs. The amendments and the billings are difficult to track, and in some cases not sequential. Subsequent investigation has revealed that MWH overcharged the District and in numerous instances doubled charged the District.

When MWH completed the Project Facilities Plan (Plan), the District issued an RFP that was prepared by MWH, for the design of the project recommended in the MWH Facilities Plan. The Facilities Plan prepared by MWH was clearly biased against any technology that was different from treatment systems previously designed by MWH for other clients. MWH's selection criteria were grossly skewed towards a specific treatment process. MWH's failure to objectively and ethically evaluate all available treatment systems, as well as collection systems, significantly increased the project costs to the citizens. MWH failed to openly inform the District and citizens of other options available that would have been to the community's preferences and been the environmentally preferred option at a significant savings in capital construction and maintenance and operations.

MWH, serving in their role as the Project Manager, should not have competed for the design phase of the project. MWH clearly had a conflict of interest in developing and assisting with the design proposal phase of the project since they competed for the

design contract. MWH wrote the language for the design request for proposal. This gave them a significant advantage during the design competition. MWH's role as the Project Manager and then performing the design was not only inappropriate but clearly denied the District the object oversight of the design that a Project Manager would have provided. Investigations into the design work project clearly indicate that there was a significant amount of design work that required rework. MWH's role as the Project Manager allowed MWH to cover up these design errors and omissions. MWH clearly violated its fiduciary responsibility to the District and the citizens of Los Osos to assure that payment was only for acceptable quality work. MWH's breach of this fiduciary duty as the Project Manager was also flawed because as the Project Manager, MWH was not only responsible for the design reviews but also would review all requests for payment by the design firm to make sure the invoices were correct and reasonable. MWH clearly had a conflict of interest and their objectivity in performing these reviews at a minimum does not meet an acceptable level of performance and certainly did not provide an independent review of the design.

MWH competed with DMJM and Corrolla Engineering for the design assignment in mid 2001, and was awarded the contract in 2002. MWH developed the design, prepared bidding documents into three separate construction packages, and issued these documents to the construction community for bid.

MWH then assisted the District in conducting all phases of the pre-construction activity in the capacity as the District's technical representative. They assisted with and/or prepared the Invitation for Bid, established the contractor prequalification criteria, facilitated the contractor prequalification process, assisted in the bidding process, reviewed the bids, recommended to the District what bids should be accepted, and assisted in the construction contract awards and the Notice(s) to Proceed.

In 2004, MWH advised the District that it was necessary to pre-qualify contractors bidding on the three contract phases. The project consisted of a conventional MBR plant with micro filtration along with two contracts for the installation of a conventional gravity collection system. Although there may be some justification to pre-qualify the treatment plant contractor, there is no justification to pre-qualify the gravity collection system pipeline contractors. MWH sized the pipeline contracts to such a level that it limited the construction bid capability of prospective bidders to only larger firms. The sizing of the pipeline contracts coupled with the extraordinary pre-qualifications of the pipeline contractors clearly limited the ability of small to medium size contractors to bid the gravity collection system. This act by MWH limited bid competition and exposed the District to increased expense due to the limited competition. A similar argument regarding the pre-qualification of the treatment plant contractors also exposed the

District to limited bid competition and was a significant factor in the excessively high bids received.

As a result of the stringent pre-qualification criteria drafted by MWH, there was only one bidder on two of the construction contract packages, and two bidders on the third package. The bids received were substantially above the Engineer's Estimate that had been prepared by MWH (bids were 24% - 57% over the Engineer's Estimate).

At the bid opening, a MWH representative remarked to at least two of the District Directors (one of them being me) that the project should be re-bid, due to the lack of competition and because the bids were so high above the Engineer's Estimate. They also made these statements and prepared a report that also strongly recommended that the project should be rebid due to the high bids. This reported was formally presented to the District Board and the Citizens of Los Osos at a District Wastewater committee meeting and at a District business meeting (tapes available.) Mysteriously, only one week later, after MWH was awarded a \$7.685 million (sole sourced) amendment to their design contract for construction management services (total MWH contract value was increased to approximately \$14 million), MWH then reversed their opinion about rebidding the construction of the project and recommended that all construction contracts be awarded. This resulted in a total project bid price of approximately **\$128.2M** (MWH = \$14M; Whitaker = \$24.5M; Barnard = \$43.5M; Monterey Mechanical = \$46.2M). The Engineer's Estimate was **\$78.2M** (Whitaker = \$19.8M; Barnard = \$29.1M; Monterey Mechanical = \$29.3M).

The cost of construction was \$36M more than the Engineer's Estimate. MWH's negotiated fee for the construction management services was 18% of the Engineer's Estimate. MWH's motivation for accepting the bids was due to the fact that they would be paid more because their sole source construction management contract was based on a percentage of these higher construction bids. MWH did not compete for this lucrative and excessive Construction Management phase of the work. It is interesting to note that given MWH's sole source construction management contract and the 740 day duration of the contract this would mean that MWH would be billing at a rate of over \$10,000 per day for a team of 5 MWH employees.

This brought the project cost for construction to average of over \$50,000 per property owner. Other costs not reflected in the \$50,000 amount did not include the decommissioning of individual septic tanks and the installation of residential lateral lines, estimated at \$2000-\$6000 more per household or the construct of over \$30 million in deferred capital facilities. Add to that the cost of financing, real estate purchase, and operating cost, and the monthly cost to the property owner is extremely high for a

moderate income community, with 5000 households being required to hook up to the sewer. In addition, because of the land constraints (which MWH ignored), plant expansion to accommodate any additional properties outside the project area, also known as the "Prohibition Zone", would be impossible. This would likely mean that if there was any growth, or if the remaining residences who were not being sewerred (approx. 800 more homes) would choose to hook up at a later date, another treatment plant would be needed at significant additional costs.

The current LOCSD Board contends that MWH colluded with the Central Coast Regional Water Quality Control Board staff, staff of the California State Water Resources Control Board and the construction contractors to accelerate the construction contract awards less than a month before a scheduled recall election that would have significant impact on the location of the treatment plant portion of the work. The project funding, in the form of a State Revolving Fund Loan, was good until December 20, 2005; so there was no reason to rush. MWH, despite no contractual provision to do so, issued an illegal "conditional" Notice to Proceed (NTP). The "conditional" NTP was issued prior to the project being funded and contractually required permit being procured. MWH failed to notify the LOCSD that its recommendation to issue a "conditional" NTP which would permit the contractor to incur significant costs, was not provided for in the contract terms, violated contractual prohibition against front loading the contract and violated state and federal laws prohibiting unauthorized commitments.

As one of two of the seated dissenting Board members at the time of issuance of this "conditional" NTP, I personally protested in writing and at public meetings in May-September 2005, alleging such illegality – I was overruled. I also have numerous email correspondences with our past General Manager Bruce Buel and Steve Hyland, MWH engineer, protesting the use of this "Conditional" NTP notice, clearly and unequivocally pointing out that MWH's actions violated the contract provisions, and State and Federal law.

Both of the minority Board members (one of them being me) were physically barred from one bidder's conference MWH conducted in February 2005 (tapes available) and two construction kick-off meetings MWH conducted that were held in late July 2005, (photos available). MWH also refused to video tape the construction meetings, although both Directors and members of the public requested this taping.

It is our Board's opinion that a violation of state law did occur when the District issued this "conditional" Noticed to Proceed (NTP) to the contractors on July 6, 2005. Because this "conditional" NTP allowed the contractors to incur costs, and because the District

did not have the funds or the funding authority it needed to cover these incurred costs. It is clear that MWH's actions wantonly violated State and Federal laws prohibiting unfunded obligations. Furthermore MWH's actions clearly violated contractual clauses that specifically prohibited the contractors from front loading construction expenditures. It is incredibly ironic that the contract language prohibiting this act was written by MWH.

It is our opinion that a violation of state and federal law did occur when the "conditional" NTP was issued by MWH to the contractors on July 6, 2005. Project funding by the SWRCB Division of Financial Assistance did not obligate the project funding until August 8, 2005, nearly one month after MWH issued the "Conditional Notice to Proceed". The required Coastal Commission permit and the site grading permit were required prior to the SWRCB funding the project. These permits were approved and the SWRCB funded the project on August 22, 2005.

The mandatory San Luis Obispo County (SLO) grading permit required that the District obtain a site restoration bond prior to the commencement of any and all grading activities. SLO County Public Works required the bond due to the pending recall election and pending voter initiative that could have halted work at the treatment plant site. Because of the County's bond requirement, the District Board authorized staff to obtain the required grading bond specifically from "Insko Dico". However, when Insko Dico refused to issue the bond (due to MWH's failure to disclose the project risks and significant environmental impacts). MWH colluded with Monterey Mechanical, the treatment plant contractor, to arrange an alternate bond that not only covered the restoration of portions of the treatment plant site but also the restoration of the pipeline contractor's sites. MWH's action was not allowed under the contract terms and was in direct violation to the District Board's authorization.

The District did not have the approved Coastal Commission permit (not issued until August 18, 2005) which was the necessary authority to allow the SWRCB to issue the funds (funds were not released until August 22, 2005) from the SRF Loan fund.

In addition to the improper bond and the illegal "conditional NTP", MWH colluded with two of the three contractors to improperly pay the contractors at least 30 and possible 60 days early. On August 22, 2005, MWH issued an NTP in accordance with the contract documents. On August 28, 2005, the District requested disbursement of the first draw of funds from the SWRCB SRF loan. The first disbursement of SRF loan funds was specifically required to reimburse the District for all pre-design work and establish a construction contingency fund, as required under the terms of the SRF Loan Agreement. MWH was directed by the District Board to immediately draw down the

full amount of the first disbursement, \$10,968,984 from the SRF loan as authorized in the SRF contract documents. MWH, without cautioning the former District General Manager and in direct violation of the District Board's direction, only requested an initial disbursement from the SWRCB of \$6,486,144. MWH's collusion with the former General Manager gives the perception that MWH was working with the former General Manager to cause the most financial damage to any newly elected Board, should the recall succeed.

It is worth noting that MWH worked with the contractors to accelerate the construction contractors' financial commitment to the project in an effort to influence the voter recall election and/or make the outcome of the election a moot point. It was said by District staff, who MWH was advising, that any financial obligations incurred prior to the recall election would make it too costly to "change course".

On August 24, 2005, two days after the formal NTP, the contractors invoiced the LOCSD for \$1.616M. The construction contract has specific requirements that must be met before MWH could recommend approval of the invoices. In an egregious violation of the payment provisions, MWH did not require the contractors to submit the required construction schedules, certified payrolls, a work payment schedule and other mandatory required documents and certifications. Instead of using the contractually provided seven day progress payment review period provided for MWH to review the submitted payment requests, MWH immediately approved the invoice the same day and without any of the required support documentation or payment justification. In light of the recent disclosure of MWH's \$10,000 contribution to the anti-recall effort and the fact that MWH would have financially benefited if termination of the project had not occurred, it is apparent that MWH seriously and egregiously breached its fiduciary responsibility to protect the citizens of Los Osos from any and all actions that could potentially or reasonably be expected to do so.

It is worth noting that MWH and one of the three contractors (Barnard Construction) also donated \$10,000 each to the campaign committee called "Save the Dream" to fight against the recall election, in a further effort to influence the outcome of the vote – both would have benefited financially if the recall had not been successful.

The contractors invoiced the District for \$1.616M on August 24, 2005, two days after the August 22 formal NTP was issued; and MWH immediately approved the invoices the same day, without MWH performing their contractually required review of the invoices. MWH, working in cooperation with the former General Manager, then rushed the payment through. MWH blatantly ignored the contract requirements that all invoices are due and payable no earlier than 30 days after invoice approval. The

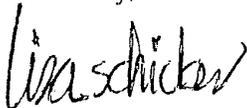
contract documents and daily logs clearly show that the first payment clearly should have been due for payment on October 27, 2005. All of these expedited actions were done prior to the recall election held on 9/27/2005 and were intended to make termination of the project extremely costly and difficult. MWH would have benefited financially if termination of the project had not occurred. MWH's rush to get those payments through solely benefited the contractors, was grievous to the District's financial security, violated numerous contractual protections and was solely designed to influence the outcome of the pending recall election.

MWH was the only District consultant with the necessary technical expertise to assess the merits of the various technical issues that arose on the project. The District relied on MWH's professional advice and representations that they were the subject matter expert on all aspects of the project. The District morally and contractually expected MWH to act in District's best interest. As such, it is obvious that MWH has egregiously failed in their fiduciary obligation to represent the best interest of the District and the Citizens of Los Osos.

It is the District's contention that MWH had a clear conflict of interest when they made recommendations or took actions which they knew or should have even minimally known were in clear violation of contract provisions, their fiduciary responsibility and State and Federal statutes. Most of all, MWH's actions were patently not in the best interest of their "client". MWH's actions and repeated disregard for their client's best interest were knowingly and willingly designed to expedite the award of the controversial construction contracts in advance of the recall election. It was in MWH's financial interest to see the project go forward, but it clearly was to the absolute detriment of the District and the Citizens of Los Osos.

We strongly request that you investigate MWH's actions in the matter. Our staff has voluminous additional proof of MWH's shameful actions and ethics violations (correspondence, emails, board meeting tapes and minutes). I am available for additional questions at any time.

Sincerely,



Lisa Schicker, President
Board of Directors
Los Osos Community Services District



Construction Management Association of America

7918 JONES BRANCH DRIVE • SUITE 540 • McLEAN, VIRGINIA 22102-3307
(703)356-2622 • FAX: (703)356-6388 • WWW.CMAANET.ORG

copy TO DIRECTORS
copy to Roger / Tom
copy to legal team

RECEIVED
MAY 30 2006

BY: _____

26 May 2006

Ms. Lisa Schicker
President
Los Osos Community Services District
P.O. Box 6064
Los Osos, CA 93412

Dear Ms. Schicker:

Thank you for sending me your letter of 10 May 2006 regarding Los Osos Community Services District's experience with Montgomery Watson Harza (MWH). Since CMAA promotes professionalism and excellence in the management of the construction process, we are very interested to learn when one of our members doesn't meet their client's expectations.

I have asked MWH for a through response to your letter and have been informed that due to your lawsuit with them that they will be unable to comment. Please inform me when this case has concluded so that CMAA can continue with its investigation.

Thanks again for providing us with this formal complaint.

Sincerely,

Bruce D'Agostino
Executive Director



President

Lisa Schicker

Vice-President

John Fouche

Director

Chuck Cesena
Steve Senet
Julie Tacker

Interim General Manager

Daniel M. Bleskey

Utilities Manager

George J. Milanés

**Administrative
Services Manager**

Patricia J. McClenahan

Fire Chief

Phill Veneris



Offices At:
2122 9th Street
Los Osos, California 93402

Mailing Address:
PO Box 6064
Los Osos, California 93412
Phone 805/528-9370
Fax 805/528-9377
www.losososcsd.org

December 8, 2005

Advance Copy by FAX
Certified Mail/Return Receipt Requested

Marshall W. Davert
Vice President
MWH Americas, Inc.
3321 Power Inn Road, Suite 300
Sacramento, California 95826

Subject: NOTICE OF ILLEGAL CONTRACT AND CLAIM
FOR REIMBURSEMENT: VIOLATION OF
GOVERNMENT CODE §12650

Dear Mr. Davert:

This letter is the Los Osos Community Services District's (LOCS D) notification of Montgomery Watson Harza's (MWH) violation of Government Code 12650, the California "False Claims Act". Specifically the LOCS D has investigated the circumstances related to a defective contract between MWH and the LOCS D dated September 1, 1999 including all amendments (Contract). A copy of this contract is included as Attachment A.

The Contract was purportedly signed on September 1, 1999, by Bruce Buell for the LOCS D and attested to by Karen Vega purportedly on the same date. Carol Tate, a Vice President for MWH also purports to have executed the Contract on September 1, 1999. The Contract was amended eight times. The total amount paid on these contracts was \$1,841,987.27.

LOCS D staff has reviewed the circumstances of the award of the Contract and determined that the Contract was not executed in accordance with the LOCS D Board action of November 4, 1999, specifically:

- On November 4, 1999, the LOCS D Board of Directors approved Agenda Item No. 13, "Consideration and approval of Montgomery Watson's contract for Wastewater Project

- Management Services in an amount not to exceed \$288,145.00." Review of the November 4, 1999, LOCSD Board meeting minutes indicate that the Board authorized, by a 3 to 2 vote, the Board President to execute an agreement with Montgomery Watson upon final preparation by legal counsel, see Attachment B and Attachment C.
- The date of execution of the Contract is September 1, 1999. It appears that the date of execution of the Contract is in conflict with the date of the Board's November 4, 1999 authorization. There is no provision in the Board's authorization to back-date the Contract.
- There is no record of the LOCSD Board of Director's taking any action to ratify the Contract.
- On November 5, 1999, LOCSD received MWH's Invoice Number 262856, dated October 29, 1999 in the amount of \$29,979.90 and the period of services for this invoice was August 10, 1999 through October 29, 1999, Attachment D.
- The period of the services and the date of the invoice precede the date of the Contract as well as the date of the LOCSD Board's authorization to enter into the Contract.
- On October 22, 1999, the LOCSD entered into a contract that established an employment relationship with Mr. Bruce Buel as the General Manager, Attachment E. Mr. Buel's first day of service as the General Manager was November 16, 1999.
- The only person authorized to execute the Contract was the Board President. The Contract was executed by Bruce Buel as the General Manager in violation of the LOCSD's Board November 4, 1999, action;
- Mr. Buel was not the General Manager of the LOCSD until November 16, 1999. Since Mr. Buel was not employed by the District until November 15, 1999, he was not an agent for the District and had no authority to execute the Contract and he had no authority to backdate the Contract.

Persons dealing with California public agencies are charged with knowledge of the limitations of authority of its officers and agents; contracts made without authority are invalid and cannot be the subject of ratification or estoppel. (*City of Pasadena v. Estrin* (1931) 212 Cal. 231; *Foxen v. City of Santa Barbara* (1913) 166 Cal. 77, 82 ["all persons

contracting with a municipal corporation must at their peril inquire into the power of the corporation or its officers to make the contract."].) Failure to abide by those procedures and then seek payment from that entity constitutes a violation of the "False Claims Act," specifically Government Code Section 12650.

MWH billed the LOCSD on fifty-seven separate occasions for services falsely claimed under the Contract. Government Code Section 12650 provides the LOCSD with right for reimbursement of three times the amount of the damages plus \$10,000 for each false claim made, plus other damages including but not limited to legal fees, staff costs and other real and punitive damages as may have been incurred. Therefore, the LOCSD is seeking reimbursement from MWH in the amount of \$5,525,961.81 plus \$10,000 for every false claim submitted and attorney fees and interest for the full amounts. Therefore, the LOCSD demands that MWH immediately submit payment to the LOCSD in the amount of \$6,095,961.81 as the first installment of the amounts due the LOCSD. LOCSD staff is continuing to investigate the Legal fees, putative damages and staff time incurred as a result of MWH's violations, including any other currently unidentified amounts that the LOCSD and the citizens of the Los Osos Community Services District are rightfully due.

The LOCSD reserves the right to amend this claim pending further investigation and reserves all civil and criminal remedies available resulting from MWH's violation of the California "False Claims Act"

Sincerely,



Daniel M. Bleskey,
Interim General Manager

Attachments

Cc: LOCSD Board of Directors
John McClendon, Interim District Counsel
Julie Biggs, Special District Counsel
Steve Onstot, Special District Counsel
Alexis Strauss, Director US EPA Region IX
Inspector General of the US EPA
SLO, District Attorney
Attorney General of the State of California

Print

From: bgibson@co.slo.ca.us (bgibson@co.slo.ca.us)
To: lisa schicker
Date: Monday, March 30, 2009 6:32:43 PM
Cc: ahill@co.slo.ca.us; fmecham@co.slo.ca.us; Supervisor Jim Patterson; Kachadjian@co.slo.ca.us; Lisa Schicker-Hotmail; pogren@co.slo.ca.us
Subject: Re: Please investigate Los Osos Shortlist decisions asap

Ms Schicker -- I have forwarded your letter to Paavo Ogren for his consideration. I will also have staff forward it to the Clerk for inclusion in the record.

As indicated in the press release referenced, the project team will have comments regarding the RFQ/SOQ and short list process as part of their monthly update on April 7. They will also explain the appeal process that submitters have available to them.

Thank you for your continued interest in the LOWWP.

Bruce Gibson
 Chair, Board of Supervisors
 San Luis Obispo County

lisa schicker <lisaschicker@sbcglobal.net>

03/28/2009 11:50 PM

To Bruce Gibson <bgibson@co.slo.ca.us>, Supervisor Jim Patterson <jpatterson@co.slo.ca.us>, fmecham@co.slo.ca.us, ahill@co.slo.ca.us, Kachadjian@co.slo.ca.us

cc Lisa Schicker-Hotmail <lisaschicker@hotmail.com>

Subject Please investigate Los Osos Shortlist decisions asap

Dear Honorable Supervisors:

Please include this letter as formal public comment - to be submitted into the record, and included with included with the packet for the public, for the April 7, 2009 BOS meeting item regarding the Los Osos waste-water project.

I ask you please to inquire of your staff, and provide to the public as soon as possible, the reasons why a "STEP" firm was not included on the short list of bidders for the Los Osos waste-water project. I project. I also ask you to investigate and report as to why the firm MWH, a firm with a clouded and as of as of yet unsettled history in Los Osos, was selected for two shortlists when there were five other perfectly perfectly qualified bidding firms.

Speaking as perhaps the person in possession of the most detailed written history and direct personal personal knowledge of the LOCSD's waste-water project during the days of the MWH past contracts, the the sole sourced contracts, the early destruction of the TRI-W property, the recall, the robbery and break-break-in of MWH offices one week after the recall, the project suspension, the bankruptcy, the lawsuits, lawsuits, the loan, etc. , and hearing that MWH has apparently been selected for TWO of the County's

County's shortlists, this news is most disturbing.

I have written Paavo requesting a copy of a press release that he has prepared (please see note below), but below), but I must respectfully request that you, as the responsible elected officials, look into these matters immediately.

Please request that your staff provide a complete history and explanation to you and to the public, as to as to how a firm that is still being investigated, is currently involved with the LOCSD's bankruptcy and and has formal complaints against it in several states across the US could even be considered by the the County for the Los Osos project. This is a very sensitive time for Los Osos and this project and the the people of this town do NOT have short memories when it comes to MWH.

I am writing with some urgency, because selecting the MWH firm for the Los Osos project shortlists is a is a very big mistake, due to history and events that occurred during my time as an elected official. Not official. Not including a "STEP" firm in the final short list is also a very big mistake, considering what what you have promised the public. It is also a mistake because of what you have heard from the public, public, the NWRI independent review and report, from respectable environmental non-profit agencies from SLO County and in hundreds of written pages of public comment.

Los Osos citizens and ratepayers of the project truly expect a fair process and these two decisions, if either if either are carried forward, will taint a fair process in a very big way.

Thank you very much for your time and for honoring my request to investigate this matter.

I ask that you please respond to my letter as soon as possible and let me know what you have learned and learned and how I can help.

Most Sincerely, Lisa Schicker
former LOCSD President and Board Member with direct knowledge about the MWH investigations 2004-2004-2008

Lisa Schicker
805-528-3268

----- Forwarded Message -----

From: lisa schicker <lisaschicker@sbcglobal.net>
To: pogren@co.slo.ca.us
Cc: "clcesena@charter.net" <clcesena@charter.net>; Mary Fullwood <maryf@best1.net>
Sent: Saturday, March 28, 2009 10:58:29 PM
Subject: Fw: what do you know about the short list

Hi Paavo - can you please send me the information that Mary mentions in this note.

Would sure like to hear more about the short list and who was selected and why.

Not having any "STEP" qualified firms on the shortlist is extremely disappointing for many of us, and and from the outside looking in, it makes absolutely no sense. Considering the amount of public comment comment and participation you have received on this issue from the public, Los Osos ratepayers and local

<http://us.mg201.mail.yahoo.com/dc/launch?.partner=sbc&.rand=ctuntrt31n1stg>

4/7/2009

Daniel M. Bleskey
Interim General Manager
2122 9th Street
Los Osos, CA 93402
805-528-9436 OFFICE
805-528-9377 FAX

**LOS OSOS
COMMUNITY
SERVICES DISTRICT**

Fax

To: Honorable Bill Lockyer

From: Daniel M. Bleskey

Fax: 916-323-5341

Pages: 4 (including this page)

Phone: 916-445-9555

Date: December 9, 2005

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

● **Comments:**



President

Lisa Schicker

Vice-President

John Fouche

Director

Chuck Cesena

Steve Senet

Julie Tacker

Interim General Manager

Daniel M. Bleskey

Utilities Manager

George J. Milanés

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Phill Veneris



Offices At:

2122 9th Street

Los Osos, California 93402

Mailing Address:

P.O. Box 6064

Los Osos, California 93412

Phone 805/528-9370

Fax 805/528-9377

www.losososcscd.org

December 8, 2005

Advance Copy by FAX
Certified Mail/Return Receipt Requested

Marshall W. Davert
Vice President
MWH Americas, Inc.
3321 Power Inn Road, Suite 300
Sacramento, California 95826

Subject: NOTICE OF ILLEGAL CONTRACT AND CLAIM
FOR REIMBURSEMENT: VIOLATION OF
GOVERNMENT CODE §12650

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- There is no record of the LOCSD Board of Director's taking any action to ratify the Contract.
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contracting with a municipal corporation must at their peril inquire into the power of the corporation or its officers to make the contract."].) Failure to abide by those procedures and then seek payment from that entity constitutes a violation of the "False Claims Act," specifically Government Code Section 12650.

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Sincerely,



Daniel M. Bleskey,
Interim General Manager

Attachments

Cc: LOCSD Board of Directors
John McClendon, Interim District Counsel
Julie Biggs, Special District Counsel
Steve Onstot, Special District Counsel
Alexis Strauss, Director US EPA Region IX
Inspector General of the US EPA
SLO, District Attorney
Attorney General of the State of California

Attachment A

1st Contract Proj Man
by Legat
Fac Plan

Los Osos Community Services District
P.O. Box 6064
Los Osos, CA 93412

AGREEMENT FOR SERVICES OF INDEPENDENT CONSULTANT

Project Description: FACILITY PLAN (the "Project")

Project Location: Los Osos Community Services District

THIS AGREEMENT (hereinafter referred to as "Agreement") is made by and between the Los Osos Community Services District, a community services district duly existing and operating pursuant to the provisions of Government Code Section 61000 et seq. (hereinafter referred to as "LOCSO") and Montgomery Watson Americas, Inc., having a principal place of business at 1340 Treat Blvd, Suite 300, Walnut Creek, CA 94596 (hereinafter referred to as "Consultant"), wherein Consultant agrees to provide the LOCSO and LOCSO agrees to accept the services specified herein.

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

1. DESIGNATED REPRESENTATIVES. Bruce Buel, District General Manager at telephone number (805) 528-9370 is the representative of LOCSO and will administer this Agreement for and on behalf of LOCSO. Mark Ysusi, Project Manager, at telephone number (805) 528-9370 or (559) 261-9555 is the authorized representative for Consultant. Changes in designated representatives shall be made only after advance written notices to the other party.

2. NOTICES. Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first-class mail, postage prepaid, or otherwise delivered as follows:

LOCSO: Los Osos Community Services District
P.O. Box 6064
Los Osos, CA 93412
Attn: Bruce Buel, District General Manager
Facsimile: (805) 528-9377

CONSULTANT: MONTGOMERY WATSON AMERICAS, INC.
516 West Shaw Ave., Suite 200
Fresno, CA 95204
Attn: Mark Ysusi
Facsimile: (805) 528-9377 and (559)
261-9688

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. ATTACHMENTS. Attached to this Agreement are the following Exhibits. Said Exhibits shall be initiated by Consultant upon request of LOCSD or by LOCSD directly. Said Exhibits are incorporated herein by reference:

A. Description of scope of services (the Project) to be performed by Consultant, including a timeline for Project completion..

B. A listing of hourly rates of Consultant's personnel and Consultant's agents and contractors applicable to providing services under this Agreement, a definition of reimbursable costs with a maximum limit for reimbursable costs, along with a contract budget for the services described in Exhibit "A".

4. SCOPE OF SERVICES.

A. Consultant agrees to provide the services to LOCSD in accordance with Exhibit "A".

B. The Consultant shall perform its services in character, sequence and timing so that they will be coordinated with the requirements of LOCSD and other consultants of LOCSD for the Project and so that Consultant's services shall conform to LOCSD's original or revised schedule and budget for the Project. Except as authorized by LOCSD in writing, LOCSD shall be informed of all substantive communications between the Consultant and contractors or other consultants of LOCSD for the Project, and shall be copied with all written communications between Consultant and other contractors and consultants.

5. TERM. Consultant shall commence performance within 365 days of LOCSD's Notice to Proceed, and end performance upon completion, as provided in Exhibit "A", unless otherwise directed by LOCSD or unless earlier terminated.

6. COMPENSATION OF CONSULTANT.

A. The Consultant will be paid for services provided to LOCSD on a time and material basis in accordance with the schedule set forth in Exhibit "B".

B. Payment of undisputed amounts are due within 60 days of receipt of invoices. Invoices shall reflect the phase to which the request for payment is being invoiced in accordance with the "Scope of Service" (Exhibit "A") and the percentage of completion of each phase.

C. The contract budget, as stated in Exhibit "B" shall not be exceeded without the written authorization of LOCSD.

D. Payment to Consultant shall be considered as full compensation of all personnel, materials, supplies, and equipment used in carrying out the services as stated in Exhibit "A".

E. LOCSD's failure to discover or object to any unsatisfactory work or billing prior to payment will not constitute a waiver of LOCSD's right to:

1. Require Consultant to correct such work or billings; or
2. Seek any other legal remedy.

7. REIMBURSABLE COSTS. Consultant shall be reimbursed at cost for reimbursable costs as provided in Exhibit "B".

8. EXTRA SERVICES. Should services be requested by Consultant which are considered to be beyond the scope of Basic Services in this Agreement by the Consultant, the Consultant shall provide a written request for consideration of Additional Services to the LOCSD Contract Administrator.. The LOCSD Contract Administrator will make due consideration of this request for Additional Services and will forward his/her recommendation to the LOCSD Board of Directors for approval. Consultant shall not provide any Additional Services until Consultant has received written approval by the LOCSD to perform same. Should the Consultant elect to proceed prior to receiving written approval by the LOCSD for Additional Services, the Consultant does so at Consultant's own risk.

9. INDEPENDENT CONTRACTOR. Consultant, its agents and contractors, are independent contractors, responsible for all methods and means used in performing the Consultant's services under this agreement, and are not employees, agents or partners of LOCSD.

10. PERFORMANCE STANDARDS.

A. Compliance with laws.

(1) Consultant shall (and shall cause its agents and contractors), at its sole cost and expense, to comply with all District, County, State and Federal ordinances, regulations and statutes now in force or which may hereafter be in force with regard to the Project and this Agreement. The judgment of any court of competent jurisdiction, or the admission of Consultant in any action or proceeding against Consultant, whether LOCSD be a party thereto or not, that Consultant has violated any such ordinance or statute, shall be conclusive of that fact as between Consultant and LOCSD. Any corrections to Consultant's instruments of professional service which

become necessary as a result of the Consultant's failure to comply with these requirements shall be made at the Consultant's expense.

(2) Should these requirements change after the date of design or drawing preparation, Consultant shall be responsible for notifying LOCSD of such change in requirements. Consultant will bring the instruments of professional service into conformance with the newly issued requirements at the written direction of LOCSD. Consultant's costs for providing services pursuant to this paragraph shall be submitted to LOCSD as Additional Services..

B. **Standard of Performance.** Consultant represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, Consultant shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which Consultant is engaged. All products of whatsoever nature which Consultant delivers to LOCSD pursuant to this Agreement shall conform to the standards of quality normally observed by a person practicing in Consultant's profession. Consultant shall correct or revise any errors or omissions at LOCSD's request without additional compensation. Permits and/or licenses shall be obtained and maintained by Consultant without additional compensation throughout the term of this Agreement.

C. **Professional Seal.** Consultant shall have documents stamped by registered professionals, at Consultant's cost, for the disciplines covered by Consultant's instruments of professional service when required by prevailing law, usual and customary professional practice, by LOCSD, or by any governmental agency having jurisdiction over the Project.

11. TAXES. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant

12. CONFLICT OF INTEREST. Consultant covenants that Consultant presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under the Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Consultant.

13. RESPONSIBILITIES OF LOCSD. LOCSD shall provide all information reasonably necessary by Consultant in performing the services provided herein.

14. OWNERSHIP OF DOCUMENTS. All drawings, specifications, data, and other instruments of professional service prepared by Consultant during the performance of this Agreement shall become the property of LOCSD. However, Consultant shall not be

liable for LOCSD's use of documents and instruments of professional service if used for other than the Project or scope of services contemplated by this Agreement.

15. RECORDS, AUDIT AND REVIEW. Consultant shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Consultant's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. LOCSD shall have the right to audit and review all such documents and records at any time during Consultant's regular business hours or upon reasonable notice.

16. INDEMNIFICATION.

A. Consultant shall defend, indemnify and save harmless LOCSD, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of the negligent performance or attempted performance of this Agreement or occasioned by the negligent performance or attempted performance of the other independent contractors and consultants directly responsible to Consultant; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting solely from the negligence or willful misconduct of LOCSD.

B. Neither termination of this Agreement or completion of the Project under this Agreement shall release Consultant from its obligations referenced in subsections A, above, as to any claims, so long as the event upon which such claims is predicated shall have occurred prior to the effective date of any such termination or completion and arose out of or was in any way connected with performance or operations under this Agreement by Consultant, its employees, agents or consultants, or the employee, agent or consultant of any one of them.

C. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in the Agreement does not relieve Consultant from liability referenced in subsection A, above. The obligations of this article shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

17. INSURANCE.

A. Consultant shall procure and maintain, in insurance companies authorized to do business in the State of California and assigned an A.M. Best's rating of no less than A-(IX), the following insurance coverage, written on the ISO form shown below (or its equivalent) at the limits of liability specified for each:

Commercial General Liability Insurance	\$ 1 Million per occurrence
(ISO Form CG 0001 10/93)	\$ 2 Million in the aggregate

Commercial Automobile Liability Insurance (ISO Form CA 0001 6/92 or 12/93)	\$ 1 Million per accident
Workers' Compensation Insurance	Statutory
Employer's Liability Insurance	\$ 1 Million policy limit
Professional Liability Insurance	\$ 1 Million per claim \$ 1 Million in the aggregate

B. The Commercial General and Commercial Automobile liability policies shall be endorsed to include the following:

(1) LOCSD, its officers, directors, employees and agents shall be named as Additional Insureds under ISO Form CG 2010 11/85 or its equivalent; and

(2) the coverage afforded LOCSD shall be primary and non-contributing with any other insurance maintained by LOCSD.

(3) If not covered separately under a business automobile liability policy, the general liability policy shall also be endorsed to include non-owned and hired automobile liability.

C. Prior to commencing work under this Agreement, Consultant shall provide LOCSD with Certificates of Insurance evidencing compliance with the foregoing requirements, accompanied by copies of the required endorsements. Certificates of Insurance for automobile liability, workers' compensation/ employer's liability, and professional liability insurance shall specify that the insurer shall give LOCSD an unqualified thirty (30) days advance written notice by the insurer prior to any cancellation of the policy.

D. All insurance coverage required hereunder shall be kept in full force and effect for the term of this Agreement. Professional liability insurance shall be maintained for an additional, uninterrupted period of three (3) years after termination of this agreement, provided such insurance is commercially available at rates reasonably comparable to those currently in effect. Certificates of Insurance evidencing renewal of the required coverage shall be provided within ten (10) days of the expiration of any policy at any time during the period such policy is required to be maintained by Consultant hereunder. Any failure to comply with this requirement shall constitute a material breach of this Agreement.

18. PERSONNEL. The Consultant represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by the Consultant or under

Consultant's supervision, and all personnel engaged in the work shall be qualified to perform such services.

19. NONEXCLUSIVE AGREEMENT. Consultant understands that this is not an exclusive Agreement and that LOCSD shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Consultant as the LOCSD desires.

20. ASSIGNMENT. Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of LOCSD and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

21. TEMPORARY SUSPENSION. The LOCSD's Contract Administrator shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as he/she deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for services performed through the date of temporary suspension. In the event that Consultant's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Consultant's reasonable control, Consultant's compensation shall be subject to renegotiation.

22. TERMINATION.

A. Right to terminate. LOCSD retains the right to terminate this Agreement for any reason by notifying Consultant in writing thirty (30) days prior to termination. Upon receipt of such notice, Consultant shall promptly cease work and notify LOCSD as to the status of its performance. LOCSD shall pay Consultant for its reasonable costs and expenses through the date of termination. However, if this Agreement is terminated for fault of Consultant, then LOCSD shall be obligated to compensate Consultant only for that portion of Consultant services which are of benefit to LOCSD, up to and including the day Consultant receives notice of termination from LOCSD.

B. Return of materials. Upon such termination, Consultant shall immediately turn over to the District copies of studies, drawings, mylars, computations, computer models and other instruments of professional services, whether or not completed, prepared by Consultant, or given to Consultant in connection with this Agreement. Consultant, however, shall not be liable for LOCSD's use of incomplete materials or for LOCSD's use of complete documents if used for other than the project or scope of services contemplated by this Agreement.

C. Should LOCSD fail to pay Consultant undisputed payments set forth in Section 6, above, Consultant may, at Consultant's options, suspend its services or terminate this agreement if such failure is not remedied by LOCSD within thirty (30) days of written notice to LOCSD of such late payment.

23. DISPUTE RESOLUTION. The following procedures apply only to disputes where the amount in controversy is less than \$50,000.00.

A. LOCSD and Consultant agree that disputes between them arising out of or relating to this Agreement where the amount in controversy is less than \$50,000.00 shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise. If the dispute is not settled by mediation, then the parties agree to submit the dispute to binding arbitration as provided in subsection B, below.

B. Either party may demand arbitration by filing a written demand with the other party within thirty (30) days from the date of final mediation, in accordance with the prevailing provisions of the California Arbitration Act at the time of written demand. The arbitration procedures are as follows:

(1) The parties may agree on one arbitrator. If they cannot agree on one arbitrator, there shall be three: one named in writing by each of the parties within five days after demand for arbitration is given, and a third chosen by the two appointed. Should either party refuse or neglect to join in the appointment of the arbitrator(s) or to furnish the arbitrator(s) with any papers or information demanded, the arbitrator(s) may proceed ex parte.

(2) A hearing on the matter to be arbitrated shall take place before the arbitrator(s) within the County of San Luis Obispo, state of California, at the time and place selected by the arbitrator(s). The arbitrator(s) shall select the time and place promptly and shall give each party written notice of the time and place at least sixty (60) days before the date selected. The procedures of the California Arbitration Act are incorporated herein by reference.

(3) If there is only one arbitrator, his or her decision shall be binding and conclusive on the parties, and if there are three arbitrators, the decision of the two shall be binding and conclusive. The submission of a dispute to the arbitrator(s) and the rendering of a decision by the arbitrator(s) shall be binding on the parties. A judgment confirming the award may be given by any Superior Court having jurisdiction, or that Court may vacate, modify, or correct the award in accordance with the prevailing provision of the California Arbitration Act.

(4) If three arbitrators are selected, but no two of the three are able to reach an agreement regarding the determination of the dispute, then the matter shall be decided by three new arbitrators who shall be appointed and shall proceed in the same manner, and the process shall be repeated until a decision is agreed on by two of the three arbitrators selected.

(5) The costs of the arbitration shall be borne by the losing party or shall be borne in such proportions as the arbitrator(s) determine(s).

24. LOCSD NOT OBLIGATED TO THIRD PARTIES. LOCSD shall not be obligated or liable for payment hereunder to any party other than the Consultant.

25. NON-DISCLOSURE AGREEMENT. Unless waived in writing by District, prior to commencing work, Consultant shall enter into a non-disclosure agreement with Oswald Engineering regarding proprietary technology of Oswald Engineering.

26. COSTS AND ATTORNEY'S FEES. The prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

27. SECTION HEADINGS. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

28. SEVERABILITY. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

29. REMEDIES NOT EXCLUSIVE. Except as provided in Sections 22 and 23, no remedy herein conferred upon or reserved to LOCSD is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

30. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement and each covenant and term is a condition herein.

31. NO WAIVER OF DEFAULT. No delay or omission of LOCSD to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to LOCSD shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of LOCSD.

32. ENTIRE AGREEMENT AND AMENDMENT. In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended

or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

33. SUCCESSORS AND ASSIGNS. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

34. CALIFORNIA LAW. This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of San Luis Obispo, if in state court, or in the federal court nearest to San Luis Obispo County, if in federal court.

35. EXECUTION OF COUNTERPARTS. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

36. AUTHORITY. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Consultant hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Consultant is obligated, which breach would have a material effect hereon.

37. PRECEDENCE. In the event of conflict contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

38. FORCE MAJEURE. Neither party shall hold the other responsible for damages or delays in performance caused by force majeure (acts of nature) or other events beyond the reasonable control of either party.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by the LOCSD.

CONSULTANT

By: Carol H. Tate

Name: Carol H. Tate

Title: Vice President

Date: 9/1/99

LOS OSOS COMMUNITY SERVICES DISTRICT

[Signature]

General Manager

Date: 9/1/99

ATTEST:

[Signature]

Date: 9/1/99

form consultant agree 7-30-99
File 57

EXHIBIT A

SCOPE OF WORK

Los Osos Community Services District Wastewater Project Management

Introduction

The Los Osos Community Services District (LOCSO) is embarking upon a major capital project to provide wastewater treatment and disposal facilities for the community. This project will be consistent with the vision established in the Comprehensive Resource Management Plan prepared by The Solutions Group.

To assist in delivering the project LOCSO has retained Montgomery Watson (MW) to be the Wastewater Project Manager (WPM). The key functions of the WPM will be to provide leadership and to coordinate the activities of the various project participants including the LOCSO, design consultant, environmental, financial and other consultants and regulatory and funding agencies. The goal of this coordination is to aid the LOCSO in ensuring that the project proceeds on schedule and budget and that effective reporting and communication are maintained among all project participants through project completion.

Mark Ysusi will serve as MW's WPM. The WPM will serve as the project focal point and will be the LOCSO's agent during the planning and design phases of the project. He will also coordinate and determine with the LOCSO the need for MW's support staff as required for project assignments.

LOCSO has retained the firm of Oswald Engineering, Inc. (Design Engineer) to provide design-engineering services for the project. The initial design engineering services include preparation of a Facilities Plan to be submitted to the State Regional Water Quality Control Board in January 2000. It is understood and agreed that the Design Engineer will be solely responsible for the completeness and accuracy of its own activities and work products including reports, technical memoranda, facilities plans, preliminary designs, designs, estimates, schedules and other items. Similarly, the LOCSO's other consultants shall be responsible for the completeness and accuracy of their own work products. Project communication and management direction (chain of command) is generally shown on Attachment "A" - Los Osos Community Services District, Chain of Command, Management Direction.

The WPM's time commitment to the Los Osos wastewater project and MW's commitment for the WPM to be in Los Osos is generally detailed in Attachment "B" - Los Osos Wastewater Project, Project Management Commitment.

MW will perform the following project management services.

Task 1 – Administration

Task 1.1 - Project Management

Task includes work related to the management, administration and coordination of activities for the project management contract.

- Prepare Project Management Plan including organization, schedule, communications, reporting, documentation and project procedures.
- Prepare Work Plans for each work order as it is authorized, including work tasks, labor required, individuals responsible for each task and the budget by task.
- Track and document work progress and budget expenditures for MW and its subconsultants efforts.
- Track and document work progress and budget expenditures for LOCSD in-house and LOCSD consultants efforts.
- Administer the contract by providing assistance with monthly status reports, invoices, and managing LOCSD consultants and MW subconsultants.
- Attend and provide minutes for regular project management meetings with the LOCSD related to management of this contract.
- Prepare cost proposals for change orders and amendments to this contract.

Task 1.2- Monthly Status Report

Using the information developed under Task 1.1 as well as supplemental information, MW will prepare a detailed Monthly Status Report for the LOCSD. Master schedule and budget status will be reported. The report will include progress and budget status information for the WPM, MW subconsultants and each LOCSD consultant. Key Project Journal information including action items completed will also be provided. Problem areas and suggested solutions will be included. Key upcoming activities and milestones will be identified. Agency contacts and status will be summarized. An executive summary of each Monthly Status Report will be provided on the Project Journal.

Task 1.3 - Program Assistance Services

As requested, assist LOCSD staff in management of contracts and project issues. This would include the WPM attending project coordination meetings, preparation of analyses of technical issues, assistance in developing construction contract packages, preparation of a construction management plan, and related services. This assistance will also include development of a master project schedule and budget. Assist the LOCSD in reviewing LOCSD consultants scopes of work and budgets. Assist the LOCSD in assessing the quality of progress and completed work products. The consultant will also prepare level of effort estimates for engineering change orders and contracts for work to be performed under LOCSD consultant contracts, as necessary. MW will assist LOCSD staff as requested during the preparation of construction contract documents and the bidding process.

Task 1.4 – Permit and Easement Acquisition Support and Agency Coordination

Our team will coordinate work performed by the environmental, permitting and easement consultants. We will review the documents and assist in gathering drawings as needed and provide input based on experience to assist in expediting permits and easements. Maintain regular liaison with all affected regulatory and funding agencies including SWRCB, RWQCB, Department of Fish and Game and DOHS. Prepare a project binder containing all permitting and approval documents.

Task 1.5 – Inter/Intranet Site (Project Journal)

Establish and maintain an inter/intranet Project Journal that can be accessed by LOCSD and other project participants. The Journal will include e-mail, general project information, project directory, project calendar, meeting minutes, status reports, technical issue discussions and related materials. As part of

community outreach, this site may also be expanded to provide public access to general project information.

Task 1.6 – Master Filing System/Document Control

Prepare a master filing system to organize all project documents to and from the LOCSD. MW will review a selection of commercial document control products and recommend a document control system to provide document retention and tracking for appropriate documents during the design period. MW can also provide its own Access-based document control system.

Task 1.7 – Technical Focus Workshops/Liaison

Working in close conjunction with LOCSD staff and the design team, involve MW's and subconsultant resources with specific experience in needed areas in focused workshops. Suggested subject areas are listed below. These areas can be modified during the initial project meetings.

- Design Criteria
- Effluent Disposal/Groundwater Quality
- Permits and Easements
- Project Financing
- Cost Estimating
- Scheduling and Construction Packaging
- Constructability/Biddability
- Community Outreach Strategy

Brief meeting minutes and/or technical memoranda will be prepared.

Maintain regular contact and dialog with the project design team so that appropriate questions are asked and issues raised in a timely manner in order to maintain progress and the project schedule.

Task 1.8-Master Consultants Budget, Schedule and Deliverables

Prepare a master budget and schedule showing all LOCSD consultant services including those of the WPM. This will facilitate proper consultant services tracking and coordination. The schedule will also show all major deliverables to be provided by each consultant. Identify all deliverables required from each consultant. Consultants invoices/expenditures will be tracked under Task 1.1 and reported under Task 1.2.

Task 1.9- Action Items Calendar

Prepare an action items calendar for LOCSD and consultants efforts. This will be based upon the master schedule generated under Task 1.8 and will be included in the Project Journal so that all parties will be able to assess the progress of each participant and tasks that need to be completed prior to the next milestone.

Task 1.10- Assessment District Engineering Coordination and Funding Considerations

Maintain regular contact and coordinate with the project Assessment District Engineering consultant. Assist the LOCSD and Assessment District Engineer in conducting public meetings required for the assessment district process. Assist the LOCSD in assessing the adequacy of overall project funding, coordination with State Revolving Fund loan requirements and other associated considerations. Assist the LOCSD in assessing the viability of alternative funding sources. Assist the LOCSD in developing project cash flow requirements consultant services and construction.

Task 2 – Review Existing Information

Montgomery Watson will establish a project library so that project team members can become familiar with existing project planning and environmental documents, regulatory and permitting agency requirements and other pertinent existing information. The library will incorporate existing documents compiled by the LOCSD.

Task 3- Project Facilities Plan and Environmental Documentation Coordination

Task 3.1- Coordinate Draft Facilities Plan and Environmental Document Preparation

MW will meet with the project design consultant to assist in developing a Facilities Plan table of contents acceptable to the LOCSD, the SWRCB and the RWQCB. MW will assist the LOCSD in reviewing the draft Facilities Plan. MW will also meet with the project environmental consultant to assist in developing a table of contents for necessary environmental documentation acceptable to regulatory and permitting agencies and will assist in reviewing the draft document. MW will track the progress of each effort to monitor compliance with the master schedule milestones. MW will assist the LOCSD and design and environmental consultants in responding to SWRCB and RWQCB review comments. Following draft Plan acceptance, MW will assist the LOCSD and design consultant in developing additional design consultant scope necessary to complete the facilities planning predesign process.

Task 3.2- Coordinate Final Facilities Plan and Environmental Documentation Preparation

MW will track the progress of the final Facilities Plan and final environmental documentation preparation to monitor compliance with the master schedule milestones. MW will monitor Facilities Plan project scope changes and environmental mitigation requirements to assess impacts upon the project estimated construction cost. MW will assist the LOCSD in reviewing the final Facilities Plan and the final environmental documentation prior to their submittal to the SWRCB and the RWQCB.

Task 4-Assess Design-Build Approach (Optional Service)

At the LOCSD's request, MW would assess the appropriateness of employing the design-build delivery system for one or more project elements. Compatibility with project funding and LOCSD institutional requirements would also be assessed.

Task 5 -Design Quality Monitoring

Task 5.1 – Technical Reviews

As appropriate, perform technical reviews of design phase work completed by the design consultant. The intent of these reviews is not to duplicate the design consultant's own QA/QC reviews, but to supplement reviews by LOCSD staff to address project-wide issues, interfaces between construction contracts, consistency (e.g., specifications, standard details), and related issues such as system hydraulics, construction contract packaging, etc. Reviews will consider overall consistency of the documents with particular consideration to minimizing exposure to potential construction claims. Technical reviews will be conducted at the preliminary design (Facilities Plan preparation), mid-point design and 90 percent design completion steps for each contract. Review comments will be documented along with agreed upon resolution and circulated to the design teams and LOCSD staff. An operability review would also be completed in conjunction with the LOCSD's Utilities Manager.

Task 5.2 – Value Engineering Services/Constructability Review

Under this task, MW will plan, organize, facilitate, and document a value engineering/constructability review workshop focusing on the preliminary design for each contract. These workshops will address the preliminary design work. At the 90 percent level of design, the consultant will plan, organize, facilitate and document a constructability review.

Task 6 – Construction Cost Estimates and Schedules

Task 6.1 – Design and Construction Schedule

Coordinate with the design team and LOCSD staff to create a comprehensive design schedule. The design team is responsible for its own schedule commitments within the established project milestones. This schedule will be used to coordinate information and permitting/approvals needs and identify interdependencies between project elements. Our team will manage the schedule to minimize schedule impacts due to informational needs.

Prepare a comprehensive construction schedule at the preliminary, midpoint, and 90 percent levels of design. Scheduling will be performed with Primavera Project Planner for Windows.

Task 6.2 – Construction Cost Estimate

Prepare a comprehensive construction cost estimate at the preliminary, midpoint, and 90 percent levels of design. Unit prices, estimating methods and related information will be provided. Cost estimates will conform to a standardized work breakdown structure/cost code to be determined. Cost estimates at each milestone will be prepared in a format that facilitates comparison between the current estimate and all previous estimates, so that major differences between the estimates can be identified. Prepare an engineer's estimate for each contract package, based on the 90 percent design estimate with any final review comments and market adjustments, prior to advertisement for bids.

To facilitate the tracking of changes between estimates, the cost estimator will perform estimates of the work, including possible design alternatives, and work with the design consultants to identify likely cost impacts from each design change. Major changes beyond a cost or schedule impact threshold (to be determined) will be documented and presented to the LOCSD and design consultants. The LOCSD will make the decision whether or not to approve such changes and "trend" them into the baseline estimate as part of the ongoing design.

Task 7 – Bid Period Assistance (Optional Service)

Provide assistance during bid period including coordinating advertisement, conducting prebid conferences, fielding bidders telephone calls, soliciting input from the design engineer, coordinating responses and coordinating preparation of addenda to the Contract Documents. Such assistance will be provided for each bid package.

Assist the LOCSD in determining the apparent low bidder(s) and in preparing the package(s) for submittal to the SWRCB. Assist the LOCSD in receiving SWRCB approval to award (ATA) to enable LOCSD execution of each construction contract.

Task 8- Construction Management Services (Optional Service)

At the LOCSD's request, MW will submit a scope of work and budget estimate to perform construction management services. These services would consist of construction contract administration and inspection and materials testing.

Task 9 – O&M Manual Quality Assurance (Optional Service)

Provide quality assurance for operations and maintenance (O&M) manuals prepared by the design team for the new facilities. Check the manuals for conformance with the project documents and with any agreed upon O&M procedures from project workshops. Also check for compliance with LOCSD

standards and NPDES permit requirements. Coordinate with LOCSD's Utilities Manager. Upon the LOCSD's request, as an optional service MW could also prepare the O&M manual.

Task 10 – Record Drawings Quality Assurance (Optional Service)

At the completion of construction, provide quality assurance for the preparation of Record Drawings. Actual Record Drawings preparation will be by the design team. This will include all changes to the contract documents resulting from addendum items, change orders and other changes made during construction.

Task 11 – Community Relations Program (Optional Service)

Upon the LOCSD's request, using a public relations/information firm or individual acceptable to the LOCSD, MW would prepare a community relations/information plan. The community outreach staff will coordinate, prepare and distribute materials to keep the public informed about the project and to maintain community support. MW would also assist the LOCSD in preparing for and conducting public meetings.

Task 12- Additional Services (Optional Service)

Upon the LOCSD's request MW would meet with the LOCSD to identify additional services to address project needs. MW would then develop scopes of work and budgets necessary to provide those services. These would be added to the existing agreement by contract amendment.

END OF EXHIBIT A

EXHIBIT B

COMPENSATION FOR SERVICES

Los Osos Community Services District Wastewater Project Management

This Exhibit B is attached to, and made a part of and incorporated by reference with, the Agreement for Services of Independent Consultant (with its exhibits and attachments, all as defined therein, the "Agreement"), made between the Los Osos Community Services District (LOCSD) and Montgomery Watson America's, Inc. (Consultant), providing wastewater project management services.

1. Amount of Compensation for Services.

1.1. Consultant shall be paid for its services rendered based upon:

- 1.1.1. Billing Rates of personnel employed directly on the project shall be calculated on the basis of Actual salary (raw salary excluding all other salary related and/or fringe benefit costs of any type, nature or description) times a multiplier of 2.97 (The multiplier includes 130.8% overhead for costs such as indirect labor, employee fringe benefits, occupancy, non-project related travel, and training; 15.7% general and administrative expenses such as corporate management, professional liability insurance, legal, marketing, bad debt, and interest charges; and 10% profit. The multiplier also includes interest on invested capital, readiness to serve, and all other contingencies and other considerations for the work of this agreement).
- 1.1.2. Consultant shall also receive an allowance for "Associated Project Costs" (APC) of \$7.25 times each direct labor hour of Consultant's professional staff, times 115.7% (= \$8.39/direct labor hour).
- 1.1.3. Consultant shall be reimbursed for subconsultant costs times 115.7%. Subconsultant cost is the reimbursable cost invoiced to Consultant at a multiplier basis or an hourly rate dependent on the subconsultant's established billing structure. Subconsultants' billing rates or multiplier must be approved writing in, in advance by both Consultant and LOCSD.
- 1.1.4. Consultant shall be reimbursed for Reimbursable Expenses at cost times 115.7%.
- 1.1.5. Consultant shall be reimbursed for eligible mileage at a rate of \$0.32/mile times 115.7% (= \$0.37/mile).

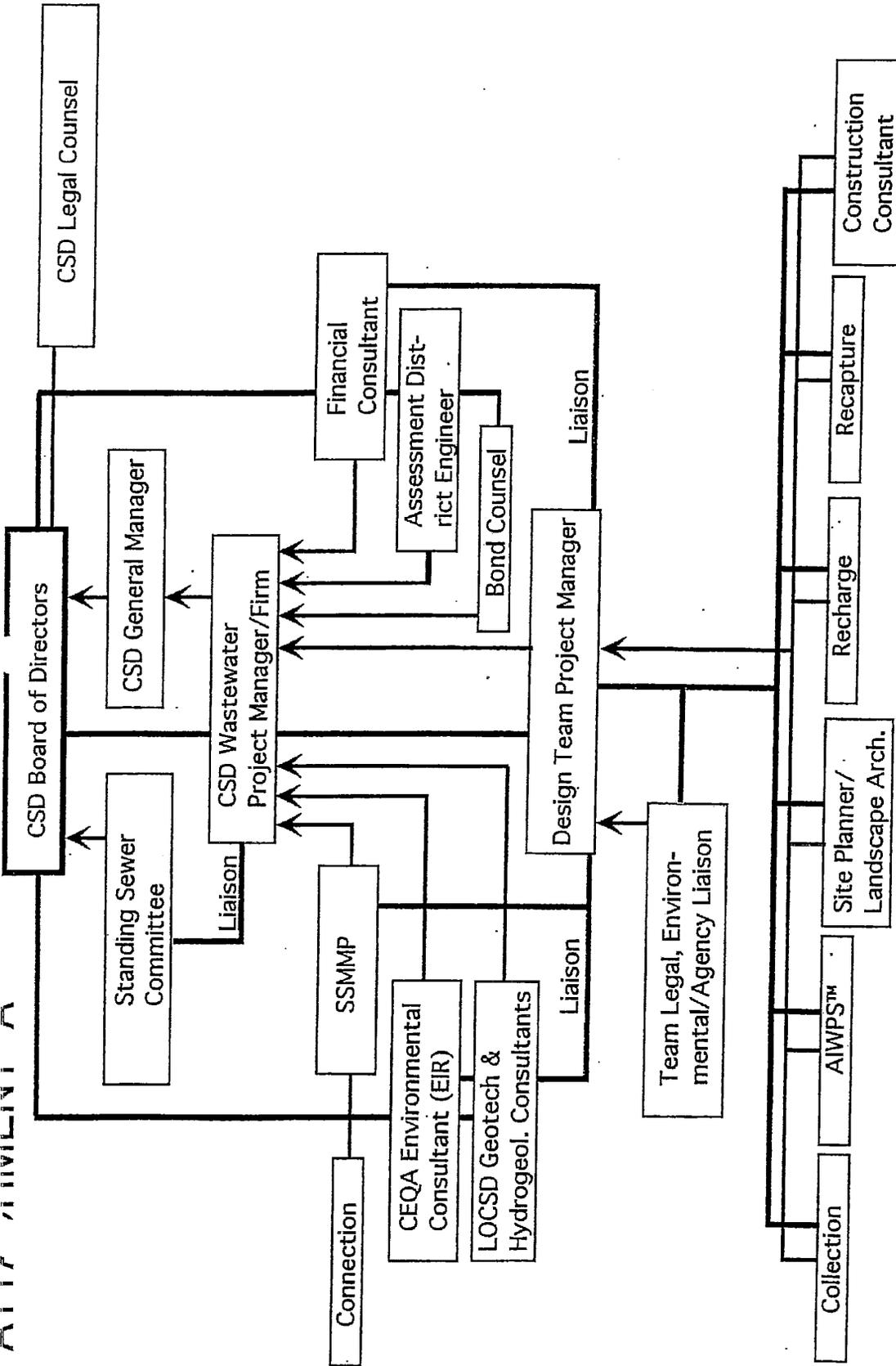
2. Contract Budget.

- 2.1. The contract budget for the services, described in the agreement, is hereby established at \$288,145. The contract budget includes all costs, including Reimbursable Expenses (as described below) and shall not be exceeded without the written authorization of LOCSD.

3. Methods of Payment for Services and Expenses of Consultant.
 - 3.1. For Basic Services on the project, Consultant shall submit monthly invoices with reasonable detail of the time incurred by personnel assigned to the project, along with a schedule of Reimbursable Expenses incurred, supported by invoices and appropriate backup documentation in a form acceptable to the LOCSD. Each invoice shall report on Consultant's total billings and Reimbursable Expenses to date.
 - 3.2. For Extra Services as defined below, the LOCSD shall pay Consultant as follows:
 - 3.2.1. General. For Extra Services of Consultant's professional staff engaged directly on the project, on the basis of a lump sum negotiated between the parties, or at LOCSD's option, at Consultant's billing rates.
 - 3.2.2. Subconsultants and Subcontractors. For Extra Services of subconsultants or subcontractors employed by Consultant to render Extra Services, the amount billed to Consultant therefore times 115.7%.
 - 3.2.3. For Extra Services on an hourly basis, Consultant agrees that all subconsultant and subcontractor billing will be limited to a not-to-exceed amount upon prior written approval of the LOCSD.
 - 3.2.4. For Reimbursable Expenses, LOCSD shall pay Consultant the actual cost of all Reimbursable Expenses times 115.7%.
4. Definitions.
 - 4.1. "Extra Services" means services beyond the scope of services defined in this agreement.
 - 4.2. The Billing Rates used as a basis for payment apply to all of Consultant's professional personnel (including with limitation project managers, estimators, schedulers, support staff, and field personnel) engaged directly on the project. Billing Rates may increase up to 4% per year maximum consistent with Consultant's established salary review schedule, subject to written approval by the LOCSD in advance of any adjusted billing rate adjustment.
 - 4.3. "Reimbursable Expenses" means actual expenses incurred by Consultant for only the following costs: 1) reasonable and necessary project-related travel expenses, while travelling on behalf of the Project beyond a 30-mile radius of Los Osos, for trips authorized in advance by LOCSD; 2) mileage costs for automobile use by Mr. Ysusi between Fresno and Los Osos ("commute"); 3) other Reimbursable Expenses not included in "APC" which are authorized in advance in writing by LOCSD.
 - 4.4. "Associated Project Costs" or "APC" include telecommunications, postage/express mail, convenience copying (in-house printing, printing for communication between LOCSD and between LOCSD consultants, and printing other than for bid packages or major printing efforts), Consultant's network, standard personal computers and software, faxes and general office supplies.

END OF EXHIBIT B

ATTACHMENT "A"



= Management Path (Chain of Command)
 = Contractual Path for CSD commitments
 = Contractual Path for Design Team
 = Liaison

Los Osos Community Services District
 Chain of Command
 Management Direction
 Recommendations by Standing Comm.
 3/23/99 Rev: 10/28/99

ATTACHMENT B

PROJECT MANAGEMENT COMMITMENT

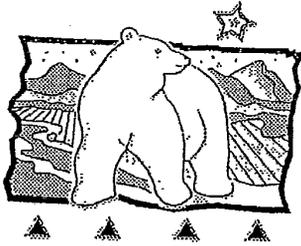
Los Osos Community Services District Wastewater Project Management

The following statements describe Montgomery Watson's project management time commitment to the Los Osos Wastewater Project. Specific items, relating to working conditions and eligible reimbursable costs, are also described.

1. The weekly workload is anticipated to vary between 3 and 5 days per week, depending on project requirements at the time. The project budget has been developed assuming that the Wastewater Project Manager (WPM) will, on average, devote 3-1/2 days per week working on the Los Osos Wastewater Project.
2. In general, the WPM will be in Los Osos two or more days per week. Monday and Tuesday are the regular days for the WPM to be in residence in Los Osos.
3. The WPM will customarily attend the meetings of the LOCSD Wastewater Committee and report project status and provide project information to committee members. The LOCSD Wastewater Committee currently convenes the second and fourth Tuesday of each month.
4. The WPM's daily location will be posted on the project management journal to facilitate contacting him when he is not working in the LOCSD office. The WPM's anticipated working locations will be posted one week in advance. The LOCSD office staff will be notified of the communication location and phone number of the WPM when not in residence in Los Osos. WPM will provide for project and public contact access at his location(s) during the work week.
5. The LOCSD will provide office space in the CSD offices at 2122 9th Street, Los Osos, California. The LOCSD will also provide a phone for project-related business. Montgomery Watson will pay long distance phone costs, not related to the Los Osos Wastewater Project.
6. The WPM's time commuting between Montgomery Watson's Fresno office and Los Osos is not chargeable. Travel time required for other project-related business is chargeable.
7. Mileage reimbursement between Fresno and Los Osos will be limited to one round trip per week, or more if pre-approved by LOCSD's General Manager.
8. Mileage costs within a 30-mile radius of LOCSD offices will not be charged.

END OF ATTACHMENT B

Attachment B



Los Osos Community Services District

P.O. Box 6064 • Los Osos, California 93412 • Phone 805/528-9370 • Fax 805/528-9377

President: Rosemary Bowker
Vice-President: Pandora Nash-Karner
Directors: Stan Gustafson, Gordon Hensley, Sylvia Smith
Interim General Manager: Paavo A. Ogren
Utilities Manager: George Milanés

November 4, 1999

Board of Directors
Los Osos Community Services District

**Subject: Agenda Item No. 13:
 Consideration and approval of Montgomery Watson's contract for Wastewater
 Project Management Services in an amount not to exceed \$288,145.00.**

Summary

Attached are recommendations developed by the District's wastewater committee for inclusion in the Los Osos Community Services District Wastewater Project Management Agreement with Montgomery Watson. These recommendations result from a meeting of the ad-hoc subcommittee appointed by the Standing Sewer Committee and Mark Ysusi, District Wastewater Project Manager on October 28, 1999.

Recommendation

That after discussion and public comment, your Board

1. Review the recommendations of the Advisory Committee and adopt them, or in the alternative, modify and adopt the recommendations.
2. Authorize the District's President to execute an agreement with Montgomery Watson upon final preparation by legal counsel.

Sincerely,

Paavo A. Ogren
Interim General Manager

GARY E. KARNER, FASLA
CA Landscape Architect #1175
350 Mitchell Drive, Los Osos, CA 93402
(805) 528-7014 • FAX (805) 528-7033
email: <gkarner@calpoly.edu>

FAX MEMO: 5 pp. total including this page

Date: October 29, 1999

To: Paavo Ogren - CSD Gen Mgr
Jon Seitz - CSD Counsel
Mark Ysusi - WWT PM
Frank Freiler
Bob Semenson

cc: Pandora Nash-Karner, Chair, Standing Sewer Committee
✓ Stan Gustafson - Standing Sewer Committee

Re: WPM Agreement Review

Frank, Bob and I met with Mark Ysusi yesterday and reviewed aspects of the Agreement for WPM (Montgomery Watson). Our recommendations are attached.

I have revised the "Chain of Command" chart, adding coordination of the geotech and hydrogeology consultants as part of the WPM's duties. This chart is in color and I will leave copies at the CSD office for reproduction and inclusion in the Agreement. The chart was created in Canvas.

I am sending this to all parties identified above. If there are questions or if I have not recorded the meeting accurately, please call.

I will attempt to email this to all concerned with the documents attached as files. Hope they get through.

Best,
Gary

This FAX and the information it contains is intended to be a confidential communication only to the person or entity to whom it is addressed. If you have received this FAX in error, please notify us by telephone and return the original to this office by mail. We will reimburse any costs incurred in complying with this request.

LOCSD WWT PM Agreement Review and Recommendations
October 28, 1999

! Following is a summary of recommendations for inclusion in the Los Osos Community Services District Wastewater Project Management Agreement between Montgomery Watson and the LOCSD. These recommendations result from a meeting of the ad-hoc subcommittee appointed by the Standing Sewer Committee (Frank Freiler, Gary Karner and Bob Semenson) and Mark Ysusi, LOCSD WWT Project Manager ("WPM") on October 28, 1999.

1) The Agreement is to be on an hourly-maximum basis, not to exceed the cost projections in the Montgomery Watson proposal for the Los Osos Wastewater Project Manager dated July, 1999, under "Fees and Expenses".

2) The Agreement is to be for one year, retroactive to the date services were initially provided, and subject to annual extensions by mutual agreement by the parties.

3) The Scope of Work (Exhibit "A") for Los Osos Community Services District Wastewater Project Management was reviewed and approved for inclusion in the Agreement.

4) The Terms and Conditions to be included in the Agreement were reviewed and approved with minor changes. Mr. Ysusi is to clarify these modifications with LOCSD legal counsel.

5) The chart entitled "Chain of Command, Management Direction" (Recommendations by Standing Committee, 3/23/99), revised 10/28/99 is to be attached to the Project Manager Scope of Services as Attachment "A". This chart was revised by the ad-hoc committee and WPM to reflect that the geotechnical and hydrogeology consultants retained directly by the LOCSD would report to and be coordinated by the WPM.

6) The WPM is to prepare Attachment "B" to the Project Manager Scope of Services to define the WPM's time commitment to be in residence in Los Osos and to define communication procedures both while in residence in Los Osos and away. Generally, the WPM's commitment is for four days per week devoted to the Los Osos WWT Project, with a minimum of two days per week in residence in Los Osos. This attachment is subject to approval by the parties and may be

modified by mutual consent.

- 7) It is recommended that this document (LOCSD WWT PM Agreement Review and Recommendations, October 28, 1999) be attached to the Scope of Services as Attachment "C" in the Agreement.
- 8) Billing Procedures: It was agreed that:
- a) Mr. Ysusi would be billed at a flat hourly rate of \$140. per hour. Mr. Ysusi's time "commuting" between Fresno and Los Osos is not chargeable.
 - b) All other MW personnel would be billed in general accordance with the document entitled "MWA Cost Recovery", June 14, 1999 prepared by Rick Frank. (See Reimbursable Expenses, below.)
 - c) In addition, we agreed that a profit margin of 10% would be acceptable.

Effectively, personnel will be billed according to the following formula (numbers are for illustration only):

Item:	Example
Direct Salary:	\$40.00
Overhead (130.8% x \$40)	52.32
APC (flat charge per direct labor hour)	<u>7.25</u>
subtotal	99.57
G&A (15.7% x \$99.57)	<u>15.63</u>
Subtotal	\$115.20
Profit (10% x \$115.20)	<u>11.52</u>
Billing Rate	\$126.72

Personnel will be billed by classification and by person and services charges allocated to "project billing sectors".

- d) The WPM is to establish project billing sectors, generally to account for expenditures attributable to:

SSMMP
Collection System
Treatment System

Recharge/discharge System
Harvesting System
(Others, as required for clarity)

9) Reimbursable Expenses: With the exception of the following, all expenses are included in the billing formula described above.

Exceptions:

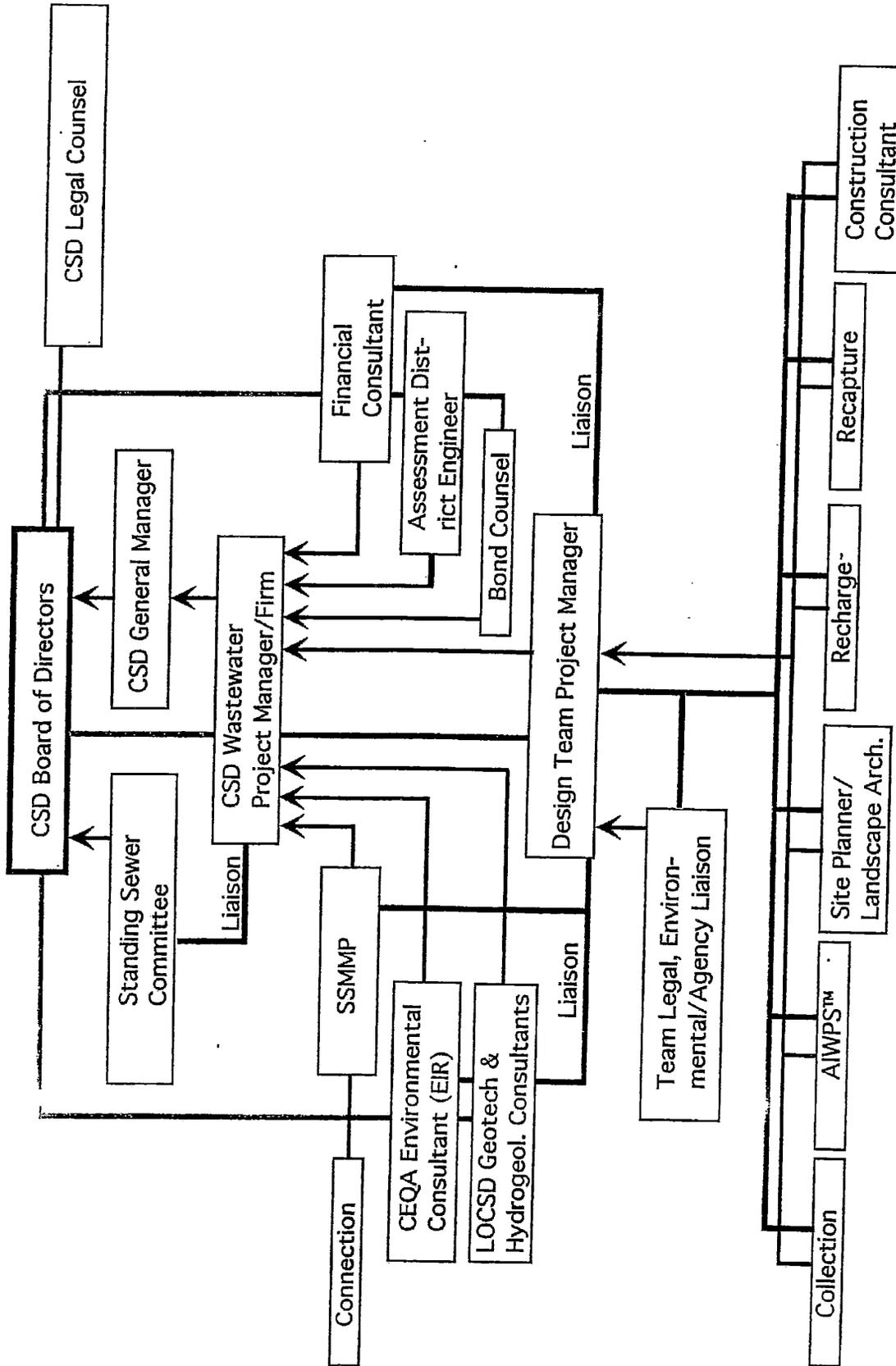
a) The LOCSD will provide office space in the CSD offices in Los Osos for the WPM, at the pleasure and direction of the CSD.

b) Reasonable and necessary project-related travel expenses, while travelling on behalf of the Project beyond a 30-mile radius of Los Osos, are chargeable at cost + 15.7%.

c) Mileage costs for automobile use by WPM between Fresno and Los Osos ("commute"), and for reasonable and necessary Project travel, are chargeable at \$0.31/mile + 15.7%. (= \$.36/mile). Note: WPM's time in "commuting" between Fresno and Los Osos is not chargeable. Non-project automobile use is not chargeable.

10) It was agreed that the ad-hoc subcommittee would review Montgomery Watson's billings compared to the proposed cost projections in the MW proposal on a quarterly basis. It is the WPM's responsibility to control expenditures in accordance with the proposal.

END



= Management Path (Chain of Command)
 = Contractual Path for CSD commitments
 = Contractual Path for Design Team
 = Liaison

Los Osos Community Services District
 Chain of Command
 Management Direction
 Recommendations by Standing Comm.
 3/23/99 Rev: 10/28/99

Fees and Expenses

First Year Project Management Costs			
Staff Member	Estimated Hours	Hourly Rate	Amount (\$)
WPM			
Ysusi	1400	140	\$196,000
Labor Subtotal	1400		\$196,000
APC			\$10,150
Other Direct Costs			\$20,000
Reimbursable Subtotal			\$30,150
Estimated First Year WPM Cost			\$226,150
Additional Staff (as determined by CSD)			
Bergen	16	140	\$2,240
Creager	16	135	\$2,160
Monroe	16	135	\$2,160
Gellerman	24	135	\$3,240
Vause	16	135	\$2,160
Erskine	24	75	\$1,800
Middlebrooks	16	125	\$2,000
Richardson	60	140	\$8,400
Smith	32	125	\$4,000
Zurawski	40	115	\$4,600
Hasan	40	100	\$4,000
Administrative Aid	288	60	17,280
Clerk	32	60	\$1,920
Labor Subtotal	620		\$55,960
APC			\$4,495
Other Direct Costs			\$1,500
Reimbursable Subtotal			\$5,995
Estimated Cost of Additional Staff			\$61,955

Post-It® Fax Note	7671	Date	11/1/99	# of pages	1
To	KAREN VEGIA	From	MARK YUSI		
Co./Dept.		Co.			
Phone #		Phone #			
Fax # (805) 528-9277		Fax #			

EXHIBIT A

SCOPE OF WORK

Los Osos Community Services District Wastewater Project Management

Introduction

The Los Osos Community Services District (DISTRICT) is embarking upon a major capital project to provide wastewater treatment and disposal facilities for the community. This project will be consistent with the vision established in the Comprehensive Resource Management Plan prepared by The Solutions Group.

To assist in delivering the project DISTRICT has retained Montgomery Watson (MW) to be the Wastewater Project Manager (WPM). The key functions of the WPM will be to provide leadership and to coordinate the activities of the various project participants including the DISTRICT, design consultant, environmental, financial and other consultants and regulatory and funding agencies. The goal of this coordination is to aid the DISTRICT in ensuring that the project proceeds on schedule and budget and that effective reporting and communication are maintained among all project participants through project completion.

Mark Ysusi will serve as MW's WPM. The WPM will serve as the project focal point and will be the DISTRICT's agent during the planning and design phases of the project. He will also coordinate and determine with the DISTRICT the need for MW's support staff as required for project assignments.

DISTRICT has retained the firm of Oswald Engineering, Inc. (Design Engineer) to provide design engineering services for the project. The initial design engineering services include preparation of a Facilities Plan to be submitted to the State Regional Water Quality Control Board in January 2000. It is understood and agreed that the Design Engineer will be solely responsible for the completeness and accuracy of its own activities and work products including reports, technical memoranda, facilities plans, preliminary designs, designs, estimates, schedules and other items. Similarly, the DISTRICT's other consultants shall be responsible for the completeness and accuracy of their own work products.

MW will perform the following project management services.

Task 1 – Administration

Task 1.1 - Project Management

Task includes work related to the management, administration and coordination of activities for the project management contract.

- Prepare Project Management Plan including organization, schedule, communications, reporting, documentation and project procedures.

- Prepare Work Plans for each work order as it is authorized, including work tasks, labor required, individuals responsible for each task and the budget by task.
- Track and document work progress and budget expenditures for MW and its subconsultants efforts.
- Track and document work progress and budget expenditures for DISTRICT in-house and DISTRICT consultants efforts.
- Administer the contract by providing assistance with monthly status reports, invoices, and managing DISTRICT consultants and MW subconsultants.
- Attend and provide minutes for regular project management meetings with the DISTRICT related to management of this contract.
- Prepare cost proposals for change orders and amendments to this contract.

Task 1.2- Monthly Status Report

Using the information developed under Task 1.1 as well as supplemental information, MW will prepare a detailed Monthly Status Report for the DISTRICT. Master schedule and budget status will be reported. The report will include progress and budget status information for the WPM, MW subconsultants and each DISTRICT consultant. Key Project Journal information including action items completed will also be provided. Problem areas and suggested solutions will be included. Key upcoming activities and milestones will be identified. Agency contacts and status will be summarized. An executive summary of each Monthly Status Report will be provided on the Project Journal.

Task 1.3 - Program Assistance Services

As requested, assist DISTRICT staff in management of contracts and project issues. This would include the WPM attending project coordination meetings, preparation of analyses of technical issues, assistance in developing construction contract packages, preparation of a construction management plan, and related services. This assistance will also include development of a master project schedule and budget. Assist the DISTRICT in reviewing DISTRICT consultants scopes of work and budgets. Assist the DISTRICT in assessing the quality of progress and completed work products. The consultant will also prepare level of effort estimates for engineering change orders and contracts for work to be performed under DISTRICT consultant contracts, as necessary. MW will assist DISTRICT staff as requested during the preparation of construction contract documents and the bidding process.

Task 1.4 – Permit and Easement Acquisition Support and Agency Coordination

Our team will coordinate work performed by the environmental, permitting and easement consultants. We will review the documents and assist in gathering drawings as needed and provide input based on experience to assist in expediting permits and easements. Maintain regular liaison with all affected regulatory and funding agencies including SWRCB, RWQCB, Department of Fish and Game and DOHS. Prepare a project binder containing all permitting and approval documents.

Task 1.5 – Inter/Intranet Site (Project Journal)

Establish and maintain an inter/intranet Project Journal that can be accessed by DISTRICT and other project participants. The Journal will include e-mail, general project information, project directory, project calendar, meeting minutes, status reports, technical issue discussions and related materials. As part of community outreach, this site may also be expanded to provide public access to general project information.

Task 1.6 – Master Filing System/Document Control

Prepare a master filing system to organize all project documents to and from the DISTRICT. MW will review a selection of commercial document control products and recommend a document control system to provide document retention and tracking for appropriate documents during the design period. MW can also provide it's own Access-based document control system.

Task 1.7 – Technical Focus Workshops/Liaison

Working in close conjunction with DISTRICT staff and the design team, involve MW's and subconsultant resources with specific experience in needed areas in focused workshops. Suggested subject areas are listed below. These areas can be modified during the initial project meetings.

- Design Criteria
- Effluent Disposal/Groundwater Quality
- Permits and Easements
- Project Financing
- Cost Estimating
- Scheduling and Construction Packaging
- Constructability/Biddability
- Community Outreach Strategy

Brief meeting minutes and/or technical memoranda will be prepared.

Maintain regular contact and dialog with the project design team so that appropriate questions are asked and issues raised in a timely manner in order to maintain progress and the project schedule.

Task 1.8-Master Consultants Budget, Schedule and Deliverables

Prepare a master budget and schedule showing all DISTRICT consultant services including those of the WPM. This will facilitate proper consultant services tracking and coordination. The schedule will also show all major deliverables to be provided by each consultant. Identify all deliverables required from each consultant. Consultants invoices/expenditures will be tracked under Task 1.1 and reported under Task 1.2.

Task 1.9- Action Items Calendar

Prepare an action items calendar for DISTRICT and consultants efforts. This will be based upon the master schedule generated under Task 1.8 and will be included in the Project Journal so that all parties will be able to assess the progress of each participant and tasks that need to be completed prior to the next milestone.

Task 1.10- Assessment District Engineering Coordination and Funding Considerations

Maintain regular contact and coordinate with the project Assessment District Engineering consultant. Assist the DISTRICT and Assessment District Engineer in conducting public meetings required for the assessment district process. Assist the DISTRICT in assessing the adequacy of overall project funding, coordination with State Revolving Fund loan requirements and other associated considerations. Assist the DISTRICT in assessing the viability of alternative funding sources. Assist the DISTRICT in developing project cash flow requirements consultant services and construction.

Task 2 – Review Existing Information

Montgomery Watson will establish a project library so that project team members can become familiar with existing project planning and environmental documents, regulatory and permitting agency requirements and other pertinent existing information. The library will incorporate existing documents compiled by the DISTRICT.

Task 3- Project Facilities Plan and Environmental Documentation Coordination

Task 3.1- Coordinate Draft Facilities Plan and Environmental Document Preparation

MW will meet with the project design consultant to assist in developing a Facilities Plan table of contents acceptable to the DISTRICT, the SWRCB and the RWQCB. MW will assist the DISTRICT in reviewing the draft Facilities Plan. MW will also meet with the project environmental consultant to assist in developing a table of contents for necessary environmental documentation acceptable to regulatory and permitting agencies and will assist in reviewing the draft document. MW will track the progress of each effort to monitor compliance with the master schedule milestones. MW will assist the DISTRICT and design and environmental consultants in responding to SWRCB and RWQCB review comments. Following draft Plan acceptance, MW will assist the DISTRICT and design consultant in developing additional design consultant scope necessary to complete the facilities planning predesign process.

Task 3.2- Coordinate Final Facilities Plan and Environmental Documentation Preparation

MW will track the progress of the final Facilities Plan and final environmental documentation preparation to monitor compliance with the master schedule milestones. MW will monitor Facilities Plan project scope changes and environmental mitigation requirements to assess impacts upon the project estimated construction cost. MW will assist the DISTRICT in reviewing the final Facilities Plan and the final environmental documentation prior to their submittal to the SWRCB and the RWQCB.

Task 4-Assess Design-Build Approach (Optional Service)

At the DISTRICT's request, MW would assess the appropriateness of employing the design-build delivery system for one or more project elements. Compatibility with project funding and DISTRICT institutional requirements would also be assessed.

Task 5 –Design Quality Monitoring

Task 5.1 – Technical Reviews

As requested, perform technical reviews of design phase work completed by the design consultant. The intent of these reviews is not to duplicate the design consultant's own QA/QC reviews, but to supplement reviews by DISTRICT staff to address project-wide issues, interfaces between construction contracts, consistency (e.g., specifications, standard details), and related issues such as system hydraulics, construction contract packaging, etc. Reviews will consider overall consistency of the documents with particular consideration to minimizing exposure to potential construction claims. Technical reviews will be conducted at the preliminary design, mid-point design and 90 percent design completion steps for each contract. Review comments will be documented along with agreed upon resolution and circulated to the design teams and DISTRICT staff. An operability review would also be completed in conjunction with the DISTRICT's Utilities Manager.

Task 5.2 – Value Engineering Services/Constructability Review

Under this task, MW will plan, organize, facilitate, and document a value engineering workshop focusing on the preliminary design for each contract. These workshops will address the preliminary design work. At the 90 percent level of design, the consultant will plan, organize, facilitate and document a constructability review.

Task 6 – Construction Cost Estimates and Schedules

Task 6.1 – Design and Construction Schedule

Coordinate with the design team and DISTRICT staff to create a comprehensive design schedule. The design team is responsible for its own schedule commitments within the established project milestones. This schedule will be used to coordinate information and permitting/approvals needs and identify

interdependencies between project elements. Our team will manage the schedule to minimize schedule impacts due to informational needs.

Prepare a comprehensive construction schedule at the preliminary, midpoint, and 90 percent levels of design. Scheduling will be performed with Primavera Project Planner for Windows.

Task 6.2 – Construction Cost Estimate

Prepare a comprehensive construction cost estimate at the preliminary, midpoint, and 90 percent levels of design. Unit prices, estimating methods and related information will be provided. Cost estimates will conform to a standardized work breakdown structure/cost code to be determined. Cost estimates at each milestone will be prepared in a format that facilitates comparison between the current estimate and all previous estimates, so that major differences between the estimates can be identified. Prepare an engineer's estimate for each contract package, based on the 90 percent design estimate with any final review comments and market adjustments, prior to advertisement for bids.

To facilitate the tracking of changes between estimates, the cost estimator will perform estimates of the work, including possible design alternatives, and work with the design consultants to identify likely cost impacts from each design change. Major changes beyond a cost or schedule impact threshold (to be determined) will be documented and presented to the DISTRICT and design consultants. The DISTRICT will make the decision whether or not to approve such changes and "trend" them into the baseline estimate as part of the ongoing design.

Task 7 – Bid Period Assistance

Provide assistance during bid period including coordinating advertisement, conducting prebid conferences, fielding bidders telephone calls, soliciting input from the design engineer, coordinating responses and coordinating preparation of addenda to the Contract Documents. Such assistance will be provided for each bid package.

Assist the DISTRICT in determining the apparent low bidder(s) and in preparing the package(s) for submittal to the SWRCB. Assist the DISTRICT in receiving SWRCB approval to award (ATA) to enable DISTRICT execution of each construction contract.

Task 8- Construction Management Services (Optional Service)

At the DISTRICT's request, MW will submit a scope of work and budget estimate to perform construction management services. These services would consist of construction contract administration and inspection and materials testing.

Task 9 – O&M Manual Quality Assurance

Provide quality assurance for operations and maintenance (O&M) manuals prepared by the design team for the new facilities. Check the manuals for conformance with the project documents and with any agreed upon O&M procedures from project workshops. Also check for compliance with DISTRICT standards and NPDES permit requirements. Coordinate with DISTRICT's Utilities Manager. Upon the DISTRICT's request, as an optional service MW could also prepare the O&M manual.

Task 10 –Record Drawings Quality Assurance (Optional Service)

At the completion of construction, provide quality assurance for the preparation of Record Drawings. Actual Record Drawings preparation will be by the design team. This will include all changes to the

contract documents resulting from addendum items, change orders and other changes made during construction.

Task 11 – Community Relations Program (Optional Service)

Upon the DISTRICT's request, using a public relations/information firm or individual acceptable to the DISTRICT, MW would prepare a community relations/information plan. The community outreach staff will coordinate, prepare and distribute materials to keep the public informed about the project and to maintain community support. MW would also assist the DISTRICT in preparing for and conducting public meetings.

Task 12- Additional Services (Optional Service)

Upon the DISTRICT's request MW would meet with the DISTRICT to identify additional services to address project needs. MW would then develop scopes of work and budgets necessary to provide those services. These would be added to the existing agreement by contract amendment.

Attachment C

FILE COPY

**Los Osos Community Services District
Board of Directors
Minutes of the November 4, 1999 Meeting**

AGENDA ITEM	DISCUSSION OR ACTION	FOLLOW-UP										
Call to Order	The meeting was called to order at 6:30 p.m. by President Bowker.											
Roll Call	<table style="width: 100%; border: none;"> <tr> <td style="width: 80%;">Director Smith</td> <td style="width: 20%;">Present</td> </tr> <tr> <td>Director Hensley</td> <td>Present</td> </tr> <tr> <td>Director Gustafson</td> <td>Present</td> </tr> <tr> <td>Vice President Nash-Karner</td> <td>Present</td> </tr> <tr> <td>President Bowker</td> <td>Present</td> </tr> </table>	Director Smith	Present	Director Hensley	Present	Director Gustafson	Present	Vice President Nash-Karner	Present	President Bowker	Present	
Director Smith	Present											
Director Hensley	Present											
Director Gustafson	Present											
Vice President Nash-Karner	Present											
President Bowker	Present											
Adjourn to Closed Session	<p>President Bowker announced that the meeting would adjourn to closed session for the following: Pursuant to Section 54957 for the following: Public Employment of Utilities Manager</p> <p>Pursuant to Subsection c of Section 54956.9 for the following: Conference with Legal Counsel, Existing Litigation:</p> <p>Re: In real property, APN 074-221-089 Owner: Morro Palsades, a general partnership</p> <p>Re: In real property, APN 074-221-092 Owner: Morro Shores Company</p>											
Reopening to Public Session	The meeting reopened to public session at 7:00 p.m.											
Report on Closed Session	<p>Legal Counsel Jon Seitz reported on the following: No action was taken pursuant to Section 54957.</p> <p>Pursuant to Subsection c of Section 54956.9, the Board discussed the court order that was obtained by the District to obtain permission to enter APN 074-221-089 and APN 074-221-092 to determine their feasibility as sites for the wastewater treatment plant.</p>											
Pledge of Allegiance												

AGENDA ITEM	DISCUSSION OR ACTION	FOLLOW-UP
Public Comment	<p><u>Lisa Gonzales, 1297 15th Street</u>: She spoke for herself, and also read letters from Mary Teft, 1285 15th Street, and Carolyn Niblick, 1288 15th Street, requesting assistance in controlling traffic speeds on 15th Street near the intersection of Santa Maria.</p> <p><u>George Taylor, 423 Mitchell Drive</u>: He spoke in opposition to the proposed tenancy of Hollywood Video in the Ralphs complex, both from an aesthetic standpoint and the potential loss of business for the three existing video rental stores in Los Osos.</p> <p><u>Pandora Nash-Karner, Chair, County Parks and Recreation Commission</u>: She gave an update on the progress for the new swimming pool.</p> <p><u>Sylvia Smith</u>: She reported that the South Bay Library book sale and event was a huge success. She thanked Fire Chief Bruce Pickens, Utilities Manager George Milanés, and sound technician Hunter Kilpatrick for their help.</p> <p><u>Rosemary Bowker</u>: She invited the community to the Los Osos CSD Independence Day celebration and open house on November 14th.</p>	
1. Report from Sheriff's Department	<p>Sergeant Hodgkin reported on the following:</p> <ul style="list-style-type: none"> • The CSD must get the encroachment permit for the skateboard park construction to move forward. • The Sheriff's Department will participate in the Veteran's Day ceremony on 11/12 and the CSD celebration on 11/14. • Halloween was relatively quiet with no major incidents to report. 	
2. Report from Utilities Systems Manager	<p>George Milanés reported on the following:</p> <ul style="list-style-type: none"> • The FLOHelp volunteers have requested the District research possible insurance coverage. Staff is currently researching the options and costs for this type of coverage. • He met last week with the State Department of Health Services for the annual inspection of the Baywood Park water system. The District's operating permit is forthcoming. • The utility crews are cleaning up the drainage basins and culverts before the storm season. • As of November 1, 1999, the District has assumed responsibility for the well sites. A standby schedule is in place to respond to alarms. • The first water billing has been mailed out. 	

AGENDA ITEM	DISCUSSION OR ACTION	FOLLOW-UP
3. Report from Fire Chief	Chief Pickens submitted a warrant in the amount of \$1,221.50 to WPC for work on the station remodel. This contract had been previously approved by the Board.	
4. Report from Legal Counsel	Jon Seltz reported that he is working on a District e-mail policy to present for the next meeting.	
5. Report from Interim General Manager	<p>Interim General Manager Ogren reported on the following:</p> <ul style="list-style-type: none"> • November 11th is the first meeting with bond counsel. • Request for discussions on fire employees MOU will be postponed until the bargaining unit is formed. • Information on Social Security will be distributed to employees tomorrow. • This is the last pay period for County employees prior to their transition to the District. 	
Consent Agenda		
<p>6. Approval of Warrants</p> <p>7. Approval of Previous Meeting Minutes of October 21, 1999</p> <p>8. Approval of a Revision of the District Personnel Policies to Reflect Various Benefits, Rights, and Responsibilities for Exempt Employees</p> <p>9. Approval of Modifications to the Fire Chief and Fire Captain/Fire Marshal Job Specifications</p> <p>10. Approval of an Increase in the Section 125 Cafeteria Plan of \$19.04 Per Month Per Employee By the District</p> <p>11. Approval of a Resolution Authorizing the Establishment of a District Bank Account for Employee Payroll</p> <p>12. Approval of a 3.3% Cost of Living Adjustment to the District Salary Schedule for Administrative Secretary and Fire Chief Positions, Retroactive to June 26, 1999</p>	<p>Interim General Manager Ogren announced that Agenda Item No. 9 would be pulled from the consent agenda and placed on the regular agenda.</p> <p>A motion was introduced by Director Smith to approve Agenda Items 6,7,8,10,11, and 12. The motion was seconded by Vice President Nash-Karner.</p> <p>The motion was approved unanimously by voice vote.</p> <p>District Legal Counsel Jon Seltz reported that additional changes to the Fire Chief position should be approved as follows: Under "Typical Tasks": "Plans, organizes, and directs all employees of all classifications, including volunteer firefighters, if any, assigned to the District's fire department..." In addition, under the fifth bulletin item, "and good morale" should be stricken. Under the Fire Captain/Fire Marshal job description, "Definition", sixth line, delete "and Fire Captain/Paramedic".</p> <p>A motion was introduced by Director Gustafson to approve modifications to the Fire Chief and Fire Captain/Fire Marshal job specifications as amended. The motion was seconded by Director Smith.</p> <p>The motion was approved unanimously by voice vote.</p>	

AGENDA ITEM	DISCUSSION OR ACTION	FOLLOW-UP
Regular Agenda		
<p>13. Consideration and Approval of Montgomery Watson's Contract for Wastewater Project Management Services in an Amount Not To Exceed \$288,145.00.</p>	<p>A motion was introduced by Director Hensley to approve the contract with Montgomery Watson for Wastewater Project Management Services in an amount not to exceed \$288,145, with the conditions that the District charge the appropriate rent, that no mileage charges be reimbursed. The motion was seconded by Director Smith.</p> <p>Roll Call Vote: Director Smith Yes Director Hensley Yes Director Gustafson No Vice President Nash-Karner No President Bowker No</p> <p>The motion failed to pass with three (3) negative votes.</p> <p>A motion was introduced by President Bowker to accept staff recommendation to approve the contract with Montgomery Watson for Wastewater Project Management Services in an amount not to exceed \$288,145, with the condition that Mr. Ysusi does not charge the District his hourly rate for travel time, that mileage reimbursement between Fresno and Los Osos be limited to one round trip per week, or more if pre-approved by the District's General Manager, and that Montgomery Watson not be charged rent. The motion was seconded by Director Gustafson.</p> <p>Roll Call Vote: Director Smith No Director Hensley No Director Gustafson Yes Vice President Nash-Karner Yes President Bowker Yes</p> <p>The motion passed with three (3) affirmative votes.</p>	
<p>14. Consideration and Approval of Technical Corrections to Section 4020 of the District Personnel Policies, Sick Leave, To Eliminate Payment of Accrued Leave Upon Termination of Employment by the Fire Captain/Fire Marshal, Fire Captain/Paramedics, Fire Engineer/Paramedics, and Fire Engineer</p>	<p>A motion was introduced by Vice President Nash-Karner to approve the attached technical corrections to Section 4020 of the District Personnel Policies, Sick Leave, to eliminate payment of accrued leave upon termination of employment by the Fire Captain/Fire Marshal, Fire Captain/Paramedics, Fire Engineer/Paramedics, and Fire Engineer. The motion was seconded by Director Hensley.</p> <p>The motion passed unanimously by voice vote.</p>	

AGENDA ITEM	DISCUSSION OR ACTION	FOLLOW-UP
15. Consideration and Approval of Group Life Insurance and Group Long-Term Disability Plans, At an Estimated Annual Cost of \$6,720.00	A motion was introduced by Director Hensley to approve group life insurance and group long-term disability plans, at an estimated annual cost of \$6,720.00, and to authorize the Interim General Manager to submit payment with the applications. The motion was seconded by Director Gustafson. The motion passed unanimously by voice vote.	
16. Consideration of a Request for Funding Up To \$15,000.00 of a Joint Project of the Army Corps of Engineers Feasibility Study to Determine Further Action By the Corps To Solve the Problems of Morro Bay, At Total Study Cost of \$1.6 million	No action was taken on this item.	
17. Consideration and Approval of a Staff Recommendation For the Board To Set Up an Ad Hoc Committee To Review Bids Received For Purchase of Utilities Vehicles, To Authorize This Committee To Execute the Necessary Documents, and That After Review By Legal Counsel, This Committee Be Authorized To Purchase the Equipment That Meets the Bid Specifications and Is Within the Budgeted Amounts Previously Approved By the Board	A motion was introduced by Director Hensley to approve staff recommendation for the Board to set up an Ad Hoc Committee Composed of Directors Gustafson and Smith to review bids received for purchase of utilities vehicles, to authorize the committee to execute the necessary documents, including any necessary deposits, and that after review by legal counsel, this committee be authorized to purchase the equipment that meets the bid specifications and is within the budgeted amounts previously approved by the Board. The motion was seconded by Vice President Nash-Karner. The motion passed unanimously by voice vote.	
Committee Reports		
a. Ad Hoc Identity/Outreach	Vice President Nash-Karner thanked several people who have volunteered their time and talents for the CSD Independence Day on 11/14.	
b. Ad Hoc Environmental	<ul style="list-style-type: none"> • Deadline for Board comment on the draft Comprehensive Conservation Management Plan is imminent. A special Board meeting is scheduled for November 14, 1999 at 12:00 p.m. to approve a letter of comments to be sent. • Inquiries on the habitat conservation plan, which the District is negotiating with Fish and Wildlife, need to be addressed. 	Ogren to respond to Mr. Bob Robertson of Los Osos Auto Body regarding status of habitat conservation plan.
c. Ad Hoc Mission Statement	No report.	
d. Wastewater	Written report submitted.	
e. Drainage	Committee met on 11/2. Written minutes will be submitted.	
f. Water Operations	Committee met 11/3. The District needs to address a policy for removal of meters from abandoned properties. County Planning needs to notify the District on permits issued in Los Osos.	
g. Finance & Budget	Committee will meet Monday, 11/8 at 9:30 a.m.	

AGENDA ITEM	DISCUSSION OR ACTION	FOLLOW-UP
Directors' Comments	<p>Director Gustafson suggested that the new General Manager will take over more of the staff functions, and that committees will become more advisory in nature.</p> <p>Vice President Nash-Karner wanted the wastewater committee minutes amended to reflect that Rick Hernandez was present at the last meeting, not absent.</p> <p>Director Hensley is concerned that the Ralphs project may not reflect the proper "gateway to Los Osos".</p> <p>Director Smith reported that the Chamber of Commerce Board would meet with the real estate negotiator for Ralphs regarding the potential tenancy of Hollywood Video.</p>	
Adjournment	The meeting was adjourned at 9:20 p.m.	

Attachment D



MONTGOMERY WATSON

INVOICE

Please Reference Invoice No. With Payment
Remit To: Post Office Box 51140
Los Angeles, CA 90051-5440

Los Osos County Services District
PO Box 6064
Los Osos, CA 93412

Date: 10/29/99

Invoice No: 262856

Contract No: 10834311

Attention: Ms. Rosemary Bowker
President

Client No: 217576

FOR PROFESSIONAL SERVICES RENDERED DURING PERIOD OF 08/10/99 THRU 10/29/99.

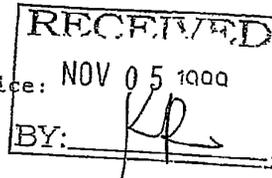
Wastewater Project Management Services
Initial Services Authorization & Compensation

Professional Classification	Name	Hours	Rate	Amount
Principal Professional	Ysusi, Mark A.	152.0	140.00	21,280.00
Senior Professional	Shuter, Kelli A.	3.5	100.00	350.00
Senior Professional	Hasan, Ali	4.0	100.00	400.00
Professional	Harrison, Robin S.	2.0	90.00	180.00
Associate Professional	Hill, Joseph R.	58.5	76.00	4,446.00
Senior Administrator	Shepherd, Nancy L.	2.5	60.00	150.00
Total Labor:				\$ 26,806.00

Other Direct Charges	Cost	Plus 15.7 %	Amount
Travel	592.55	93.03	685.58
Mileage	537.54	84.40	621.94
Associated Proj. Costs	1,613.13	253.25	1,866.38

Total ODC: \$ 3,173.90

Total This Invoice: \$ 29,979.90



Contract Amount: \$ 30,000.00
Amount Previously Billed: \$.00

OK per Paavo 11/12/99
over phone

Equal Opportunity Employer
Serving the World's Environmental Needs

OSOS County Services District
PO Box 6064
Los Osos, CA 93412

Date: 10/29/99

Invoice No: 262856

Amount This Invoice:	\$	29,979.90
Total Amount Billed to Date:	\$	29,979.90

Please Note: This invoice is due within 30 days of the invoice date.
A charge of 18.00% will be added to past due accounts.

Visit our home page on the World Wide Web at <http://www.mw.com>

FMT: HR0001
BATCH: 548660
VERSION: Z

Attachment E

LOS OSOS COMMUNITY SERVICES DISTRICT

GENERAL MANAGER

EMPLOYMENT AGREEMENT

THIS AGREEMENT, is made and entered into by and between Los Osos Community Services District, herein referred to as DISTRICT, and BRUCE BUEL, with reference to the following recitals:

RECITALS

A. DISTRICT is a Community Services District organized and operating pursuant to 61000 et. seq., of the California Government Code.

B. DISTRICT desires to enter into an employment relationship with BRUCE BUEL as DISTRICT GENERAL MANAGER;

C. BRUCE BUEL desires to enter into an employment relationship as GENERAL MANAGER of the DISTRICT.

D. It is the purpose of this Agreement to define the employment relationship of BRUCE BUEL and the DISTRICT during the terms of this Agreement. All references to GENERAL MANAGER in this Agreement refer to BRUCE BUEL.

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

SECTION 1. DUTIES

DISTRICT hereby agrees to employ BRUCE BUEL as GENERAL MANAGER of the DISTRICT. A general description of the duties

and responsibilities of the GENERAL MANAGER are set forth in a Board-adopted job description, attached hereto as Exhibit "A". BRUCE BUEL agrees to perform the function and duties of the position and to perform other duties specified by statute and any additional duties as may be assigned from time to time by the Board.

SECTION 2. TERMS

This Agreement shall take effect forty (40) days from the date the GENERAL MANAGER signs this Agreement, and shall remain in effect indefinitely until terminated as provided for in the following provisions:

A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of DISTRICT to terminate the services of BRUCE BUEL at any time, subject only to the provisions set forth in Section 3, Paragraph A, of this Agreement.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of BRUCE BUEL to resign at any time from his position with DISTRICT, subject only to the provisions set forth in Section 3, Paragraph B, of this Agreement.

SECTION 3. TERMINATION AND SEVERANCE PAY

A. The GENERAL MANAGER shall serve at the will and pleasure of the DISTRICT Board of Directors, and may be terminated without cause. In the event the GENERAL MANAGER is terminated without cause within six (6) months of commencing employment with DISTRICT, the GENERAL MANAGER shall receive a lump sum cash payment (severance pay) equal to three (3) months base salary. Thereafter, the severance package will increase to six (6) months base salary, in addition to any

accumulated leave entitlement pursuant to Section 6 of this Agreement. However, in the event BRUCE BUEL is terminated for good cause, DISTRICT shall have no obligation to pay such severance pay. For the purpose of this Agreement, "good cause" shall include, but not necessarily be limited to, any of the following:

1. A material breach of the terms of this Agreement;
2. A failure to perform his duties in a professional and responsible manner consistent with generally accepted standards of the profession;
3. Conduct unbecoming the position of GENERAL MANAGER or likely to bring discredit or embarrassment to the DISTRICT;
4. Violation of the DISTRICT'S harassment policies and/or substance abuse policies;
5. Conviction of felony;
6. Incapacity due to mental or permanent physical disability rendering the GENERAL MANAGER unable to perform job duties. Termination under this provision is without prejudice to disability claims, if any, the GENERAL MANAGER may have resulting from the incapacity.

B. In the event BRUCE BUEL voluntarily resigns his position with DISTRICT, BRUCE BUEL shall give DISTRICT thirty (30) days notice in advance, unless the parties otherwise agree.

SECTION 4. COMPENSATION/ BENEFITS

4.1 Salary. DISTRICT agrees to pay GENERAL MANAGER for his services at a base salary of Sixty-five Thousand Dollars (\$65,000.00) per annum, payable in installments at the same time as other employees of DISTRICT are paid. DISTRICT agrees

to evaluate the GENERAL MANAGER'S compensation as part of the annual budget process.

4.2 Automobile. GENERAL MANAGER'S duties require that he have the use of an automobile at all times during his employment with DISTRICT. The DISTRICT, in its sole discretion, may at any time during the term of this contract:

(a) Provide the GENERAL MANAGER with an automobile;

or

(b) Reimburse the GENERAL MANAGER Two Hundred Eighty-three Dollars (\$283.00) per month for use of his personal automobile, plus \$.31 per mile for travel outside of the County of San Luis Obispo.

4.3 Health Insurance. DISTRICT agrees to provide GENERAL MANAGER with a Cafeteria Plan for health, dental and vision insurance at the rate of Four Hundred Sixty-two Dollars (\$462.00) per month).

4.4 Retirement. DISTRICT agrees to contribute One Hundred Percent (100%) of both the employer's and the employee's contribution to the PERS Retirement Program.

4.5 The GENERAL MANAGER may participate in DISTRICT'S Section 125 and Section 457 Plans, as provided to other DISTRICT employees.

4.6 GENERAL MANAGER shall be reimbursed for expenses incurred by him for packing and moving himself, his family and his personal property from his home in McKinleyville. Said reimbursement shall be made in full with a one time payment within one month of submission of his invoices, bills or receipts to the DISTRICT.

SECTION 5. PAYMENT OF ADDITIONAL EXPENSES

5.1 GENERAL MANAGER'S Expenses. DISTRICT will pay the GENERAL MANAGER'S reasonable expenses to participate in and

attend meetings where the GENERAL MANAGER'S attendance is a benefit to the DISTRICT. The payment of GENERAL MANAGER'S expenses under this paragraph is subject to Board review.

5.2 DISTRICT agrees to budget and to pay the professional dues and subscriptions of GENERAL MANAGER necessary for his continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of DISTRICT in an amount not to exceed the amount approved by the DISTRICT in its annual budget.

SECTION 6. VACATION, SICK LEAVE AND ADMINISTRATIVE LEAVE

6.1 Commencing on the 183rd day of employment, GENERAL MANAGER shall accrue, and have credited to his personal account, vacation time at the rate of ten (10) working days per annum. GENERAL MANAGER'S vacations shall not be scheduled when it would leave the DISTRICT without appropriate management.

6.2 Commencing on the 1st day of employment, GENERAL MANAGER shall accrue, and have credited to his personal account, sick leave at the rate of ten (10) working days per annum.

6.3 GENERAL MANAGER shall be entitled to five (5) days administrative leave. Administrative leave shall not be scheduled when it would leave the DISTRICT without appropriate management.

SECTION 7. VALUATIONS

7.1 The DISTRICT Board of Directors shall evaluate the GENERAL MANAGER during the months of May and June of each year.