SECTION 8. MISCELLANEOUS

8.1 **GENERAL MANAGER** shall comply with all local and state requirements regarding conflicts of interest and shall avoid personal involvement in a situations which are inconsistent or incompatible with a position of **GENERAL MANAGER** or give rise to the appearance of impropriety.

8.2 The **DISTRICT** may set such other terms and conditions of employment as it may determine from time to time, relating to the duties of the position of **GENERAL MANAGER** of the **DISTRICT**, providing such terms and conditions are not in conflict with the provisions of this Agreement, or any state or local law.

8.3 **DISTRICT** shall provide the defense of **GENERAL MANAGER** in any action or proceeding alleging an act or omission within the scope of employment of the **GENERAL MANAGER** in conformance with State law (Government Code Section 995 et.seq.).

8.4 This Agreement constitutes the entire understanding of the parties hereto. This Agreement supersedes all previous contracts between the parties, and **GENERAL MANAGER** shall be entitled to no other benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and approved by Board action taken at a regularly scheduled meeting.

8.5 If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

8.6 This Agreement shall be governed by the laws of the State of California. The parties agree that in the event any legal action is taken to enforce/interpret any provisions of this Agreement, said action shall be filed in the court of proper jurisdiction within the County of San Luis Obispo.

IN WITNESS WHEREOF, the parties have executed this Agreement on October 22, 1999.

GENERAL MANAGER:

BRUCE BUEL

DISTRICT:

ROSEMARY BOWKER, President

WITNESS:

SECRETARY TO THE BOARD

Approved as to form:

DISTRICT LEGAL COUNSEL

GENERAL MANAGER employ agree 10-07-99

CHAPTER SEVEN - JOB DESCRIPTIONS

7000 – GENERAL MANAGER

1. DEFINITION:

The General Manager is the Executive Officer of the District and for the Board of Directors. The position has full-time management status, and is FLSA exempt. He/she administers the District and has exclusive management and control of the operations and works of the District, subject to approval of the Board of Directors, and provides day-to-day leadership for the District. He/she has general charge, responsibility and control over all property of the district. He/she shall:

- attend all meetings of the District's Board, and such other meetings as the Board specifies from time to time.
- employ such assistants and other employees as he/she deems necessary for the proper administration of the District and the proper operation of the works of the District.
- delegate authority at his/her discretion and has authority over and directs all employees, including terminating for cause.
- provide a motivating work climate for District employees.
- maintain cordial relations with all persons entitled to the services of the District.
- attempt to resolve all public and employee complaints.
- encourage citizen participation in the affairs of the District.
- seek to carry into effect the expressed policies of the Board of Directors, including planning the short, medium and long term work program for the District, facilitating constructive and harmonious Board relations.
- translate the goals and objectives of the Board to the community.
- prepare and manage the District budget, conducting studies, making oral and written presentations.
- supervise and perform a variety of duties related to the recording, classifying, examining and analyzing of District financial transactions and associated data and records.
- supervise and perform a variety of duties relating to maintenance of the District's accounting system by interpreting, supplementing and revising the system as necessary.
- supervise and perform a variety of duties relating to the resolution of customer problems, and providing information requested by customers and other members of the public having an interest in District affairs.
- serve as the District Treasurer upon appointment by the Board of Directors.
- oversee the District's investment policy.
- oversee the District's personnel policies, including vacation scheduling, discipline, termination, etc..

EXHIBIT "A" TO
GENERAL MANAGER'S EMPLOYMENT
AGREEMENT

- supervise and maintain the District's various insurance policies to ensure appropriate coverage.

2. REQUIRED QUALIFICATIONS:

Education and experience to include possession of a bachelor's degree in public administration or a related field and five (5) years' experience in an increasingly responsible public agency management position. Possession of a valid California driver's license is required.

3. DESIRABLE QUALIFICATIONS:

Education to include possession of a master's degree in public administration or a related field. Also desirable are the abilities to: 1) administer personnel policies; 2) administer the delivery of sewer and water services; 3) prepare annual budgets and long-term revenue/outlay plans efficiently; 4) implement major capital improvement projects; 5) communicate effectively, both in writing and verbally, with the constituents and other agency personnel; and 6) meet and serve the public courteously and efficiently.

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

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

Mailing Address:
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Los Osos, California 93412
Phone 805/528•9370
Fax 805/528•9377
www.losososcsd.org

August 14, 2006

Advanced Copy By Fax
Registered Mail/Return Receipt Requested

Marshall W. Davert
Montgomery Watson Harza, Americas, Inc.
3321 Power Inn Road, Suite 300
Sacramento, CA 95826

SUBJECT: TERMINATION OF CONTRACT FOR DEFAULT: WASTEWATER PROJECT MANAGEMENT AND PREPARATION OF PROJECT REPORT (AS AMENDED)

Dear Mr. Davert:

This letter is official notification that the subject Contract, as amended, has been terminated effective immediately.

Montgomery Watson Harza (MWH) has knowingly violated numerous contract provisions and failed to correct these deficiencies in accordance with the contract agreement.

The Los Osos Community Services District (District), during the course of the analysis of MWH's performance related to the subject contract, has determined that MWH is in material breach of certain contract terms and has failed to perform in accordance with the contract provisions as promised by MWH. The termination for default is based on the following:

Violation of Section 4 entitled "Scope of Services", in that MWH:

- Has had numerous substantive contacts and communications with contractors, regulators, governmental agencies, litigants and other third parties and has not copied the District, despite the District's request for such copies, minutes and transcripts of such contacts and communications.

Violation of Section 6 entitles "Compensation of Consultant", in that MWH and individuals employed by MWH:

- Have submitted invoices not in accordance with the Agreement;
- Have submitted invoices and has been compensated multiple times for the same work;
- Has knowingly submitted multiple false claims in violation of Government Code (GC) §12650.

Violation of Section 10 entitled "Performance Standards", in that MWH:

- Calculated an effluent application rate for the Broderson Leach Fields was not in compliance with normally accepted standards and guidelines as established by the United States Environmental Protection Agency (USEPA) and the State Water Resources Control Board (SWRCB). On July 7, 2006, the District requested that MWH explain the discrepancy and justify the application rates used in the Project Report and that served as the basis of design. On July 15, 2006, MWH refused to provide this information (Section 10(A) and (B));
- Has knowingly submitted multiple false claims in violation of GC §12650 (Section 10(A));
- Has knowledge of said false claims and not disclosed said false claims in violation of GC §12651(Section 10(A));
- Submitted inaccurate, false and misleading information to the District, local and state agencies in support of, but not necessarily limited to, regulatory requirements, permits, financing and licenses (Section 10(A) and (B));
- Failed to have documents stamped by a registered professional engineer that was in responsible charge of the work at the time of submission of critical reports in violation of the Business and Professions Code (BPC) § 6735 (Section 10(A), (B) and (C));
- Failed to provide a project manager for the period of March 3, 2000 through January 30, 2002 that was a registered professional engineer in responsible charge of the work in violation of BPC §6700 through §6706.3 and BPC §6785 through §6788 and the rules of professional conduct as established by the BPC and administered by the California Department of Consumer Affairs.

Violation of Section 12 entitled "Conflict of Interest", in that MWH has aggressively acted, on numerous instances, in a manner that is a clear conflict of interest but at a minimum is the appearance of a conflict of interest as follows:

- Has knowingly and with malice actively worked with regulatory agencies in a manner that is not in the best interests of the District;
- Has knowingly and with malice actively worked with third parties in a manner that is not in the best interests of the District;
- Has knowingly and with malice actively worked with contractors in a manner that is not in the best interests of the District;
- Has knowingly and as a matter of public record made financial contributions to entities that are litigating against the District in an effort to stop the project;
- Has knowingly and as a matter of public record made financial contributions to government officials in a manner so as to influence courses of actions that are not in the best interests of the District;
- Has knowingly and as a matter of public record made financial contributions to special interest groups in a manner that are not in the best interests of the District;
- Has knowingly and with malice had inappropriate contacts and communications with parties litigating against the project and said contacts and communications are not in the best interests of the District
- Failed to notify the District of the above described conflicts of interest or the appearance of a conflict of interest.

The numerous actions that violate Section 12 were clearly designed to benefit parties at the District's risk, including but not limited to MWH, third parties and the contractors in such a manner to demonstrate MWH's loss of objectivity in representing the best interests of the District.

Violation of Section 14 entitled "Ownership of Documents" and Section 15 entitled "Records, Audit and Review", in that MWH:

- Has not provided copies of all electronic data as requested by the District including but not limited to e-mails, data files, CAD data, etc.;

Violation of Section 17 entitled "Insurance", in that MWH:

- Has not provided a copy of the original Certificates of Insurance;
- Has not provided any proof of Professional Liability Insurance;
- Has not provided any Certificates of insurance evidencing renewal of coverage.

The District is continuing its investigation into the circumstances regarding MWH's contract performance and reserves all rights and remedies per Section 29 of the Contract Agreement.

As provided under Section 34 of the contract agreement, MWH is directed to provide all requested documents immediate upon receipt of this notice of termination for default.

The District is formulating a claim for reimbursement of all costs incurred and anticipated to be incurred as a result of MWH's default.

Sincerely,

Daniel M. Bleskey
Interim General Manager

Cc: Board of Directors
Interim General Counsel
Special Counsel, S. Onstot
Special Counsel, J. Biggs
MWH Surety
Attorney General
Regional Water Quality Control Board, R. Briggs
State Water Resources Control Board, C. Cantu
USEPA Region 9
USEPA Inspector General
Office of Management and Budget

President
Lisa Schicker

Vice-President
John Fouche

Director
Chuck Cesena
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August 17, 2006

Advanced Copy By Fax
Registered Mail/Return Receipt Requested

Marshall W. Davert
Montgomery Watson Harza, Americas, Inc.
3321 Power Inn Road, Suite 300
Sacramento, CA 95826

SUBJECT: NOTIFICATION OF POTENTIAL CONTRACT TERMINATION FOR DEFAULT: PROJECT DESIGN AND CONSTRUCTION MANAGEMENT SERVICES FOR THE LOS OSOS COMMUNITY SERVICES DISTRICT WASTEWATER PROJECT, AS AMENDED

Dear Mr. Davert:

This letter is official notification that Los Osos Community Services District (District) is considering terminating the subject Contract, for default.

Montgomery Watson Harza (MWH) has failed to perform in accordance with the contract provisions, failed to control the management of the construction effort and failed to correct known deficiencies in accordance with the contract agreement. The potential termination for default is based on the following:

Violation of Section 4 entitled "Scope of Services", in that MWH:

- Has had numerous substantive contacts and communications with contractors, regulators, governmental agencies, litigants and other third parties and has not copied the District, despite the District's request for such copies, minutes and transcripts of such contacts and communications.

Violation of Section 7 entitles "Compensation of Consultant", in that MWH and individuals employed by MWH:

- Has submitted invoices not in accordance with the Agreement;
- Has submitted invoices and has been compensated multiple times for the same work;
- Has knowingly submitted multiple false claims in violation of Government Code (GC) §12650.

Design Phase Services

Violation of Section 12 entitled "Performance Standards", in that MWH:

- Utilized as the basis for design an effluent application rate for the Broderson Leach Fields that is not in compliance with normally accepted standards and guidelines as established by the United States Environmental Protection Agency (USEPA) and the State Water Resources Control Board (SWRCB). On July 7, 2006, the District requested that MWH explain the discrepancy and justify the application rates used in the Project Report and that served as the basis of design. On July 15, 2006, MWH refused to provide this information (Section 12(A) and (B));
- Prepared an affordability report, a requirement of the application for the SRF loan and would serve as a tool in applying for grants and loan programs, that MWH claimed was in compliance with United States Environmental Protection Agency's (USEPA) affordability analysis requirements, when the report was not prepared in accordance with the USEPA Guidelines on affordability;
- Has knowingly submitted multiple false claims in violation of GC §12650 (Section 12(A));
- Has knowledge of said false claims and not disclosed said false claims in violation of GC §12651(Section 12(A));
- Submitted inaccurate, false and misleading information to the District, local and state agencies in support of, but not necessarily limited to, regulatory requirements, permits, financing and licenses (Section 12(A) and (B));
- Commenced critical phases of work, including but not limited to design, based on analysis and documents that were not stamped by a registered professional engineer that was in responsible charge of the work in violation of the Business and Professions Code (BPC) § 6735 (Section 12(A), (B) and (C));

Violation of Section 12 entitled "Performance Standards" and 40 CFR 31.36; in that MWH:

- Represented to the District that they were experts in the services to be provided and that the District relied on these representations;
- Knew that the project was funded under the State of California as a grantee of USEPA grant funds;
- Knew that the District was a subgrantee as defined by the USEPA and 40 CFR 31.3;
- Knew that 40 CFR 31.36 requires full and open competition;
- Did not structure the bid documents in such a manner so as to promote full and open competition.

Violation of 40 CFR 31.36 (c)(5) (i)–(iii); in that MWH:

- Represented to the District that they were experts in the services to be provided and that the District relied on these representations;
- Knew that the project was funded under the State of California as a grantee of USEPA grant funds;
- Knew that the District was a subgrantee as defined by the USEPA and 40 CFR 31.3;
- Knew that 40 CFR 31.36 requires that the construction contracts prepared by MWH for the District were subject to "Buy American" procurement requirements;
- Did not did not include in the bid or construction documents, provisions for "Buy American".

Bid-Phase:

Violation of Section 12 entitled "Performance Standards", in that MWH:

- Failed to structure the bid schedules so as to promote full and open competition;
- Structured bids in such a manner so as to favor larger pipeline construction firms;
- Recommended contractor prequalification when such prequalification served to limit competition and denied the District the benefit of price competition through full and open competitive bidding;
- Recommended that all work be commenced simultaneously when it was not necessary thereby putting the District, the State and the Federal Government at great financial peril due to the risk of front loaded contracts, bids and schedules;
- Had full knowledge of a recall election in which three board members were up for recall and an initiative that dealt with project siting criteria had a high probability of success and of which if any one of the four events were successful (when in fact all four were successful) that the character of the Board would have changed in such a manner that relocating the treatment plant portion of the work would have been highly likely if not a certainty;
- Acted outrageously by failing to prudently and reasonably utilize the contract tools available; recklessly put at risk millions of dollars of District, State and Federal funds;
- Promised that all engineer's estimates of construction cost would be +/-10% accurate;
    - That the construction bids were in the range of 40 to 60% over MWH's estimate;
    - That MWH had knowledge that the Regional Water Quality Control Board took no exceptions to rebidding the construction contracts;
    - That MWH initially recommended rebidding the construction contracts but than, without explanation, reversed itself and recommended the award of the construction contracts;

Post Award Phase;

Violation of Section 12 entitled "Performance Standards", in that MWH:

- Collaboratively issued and enforced the provisions of a "Conditional Notice to Proceed", a procedure and contract action that is not provided for in the contracts;
- Collaboratively issued and enforced the provisions of a "Conditional Notice to Proceed" prior to a commitment of project funding;
- Enforced the "Conditional Notice to Proceed" with no explanation other than to commence work prior to the looming recall election;
- Enforced the "Conditional Notice to Proceed" thereby imprudently and unreasonably exposed the District and community to unprecedented risks;
- Did not act in accordance with the normally expected standards of conduct for the engineering profession and failed to implement any one of a plethora of administrative and contractual tools that the catastrophic impacts to the District that were reasonably foreseeable would have been avoided.
- Had full knowledge that the San Luis Obispo County Department of Public Works had required that in light of the uncertainty of the situation in Los Osos and with the impending risks that were reasonably evident due to the pending recall election, required the contractors to take out a site restoration bond;
    - Understood that the bond was to be obtained for separate contractors performing separate contracts;

- Knew that the District Board had passed a resolution specifically authorizing the bond could only be taken out with the Surety know as Insco Dico and that this authority would meet the County restoration bond requirement to cover both of the separate construction contractors;
- Knowingly collaborated with one of the contractors, Monterey Mechanical, to obtain the SLO County Public Works required restoration bond with the firm of Safeco, in violation of the District Boards resolution;
- Knowingly collaborated with Monterey Mechanical to obtain the SLO County Public Works required restoration bond for another contractor, Barnard Construction without District Board authority and without a duly authorized change order to the construction contracts to do so;
- Knowingly collaborated with Monterey Mechanical, illegally and without authority, to obtain the SLO County Public Works required restoration bond with the intention of starting the work in advance of the looming recall election and to further MWH, Monterey Mechanical and Barnard's economic interest at the expense and risk of the District;

- In violation of Section 01505 of the construction contracts titled "Mobilization" allowed some of the contractors to mobilize prior to the start date as stated in the NTP;
  - Allowed some of the contractors to move-in;
  - Allowed some of the contractors to install temporary power, wiring and lighting facilities;
  - Allowed some of the contractors to establish field offices and place field trailers;
  - Allowed some of the contractors to arrange and erect their work and storage yard;
- Failed to enforce the provisions of GC Article 2.3 titled "Commencement of Contract Times; Notice to Proceed";
- Failed to enforce the provisions of GC Article 2.4 titled "Starting the Work";
- Failed to enforce the provisions of GC Article 2.5 titled "Preconstruction Conference", specifically in the MWH processed Contractor Payment Applications without having obtained the required submittals including but not limited to the Project Schedule and the Schedule of Prices;
- Failed to enforce the provisions of Article 3 of the Construction Contract Agreements titled "Liquidated Damages";
  - Failed to enforce the requirement that the contractor's provide CPM schedules;
  - Failed to enforce the requirement that the contractor's provide a Schedule of Prices;
  - Failed to enforce the requirement that the contractor's provide Record Drawings.
- Failed to enforce the provisions of Article 5 of the Construction Contract Agreements titled "Payment Proceedures";
  - Knowingly processed certain of the contractor's payment requests early and without contractual authority and in advance of the start date as specified in the Notice to Proceed;
  - Knowingly processed certain of the contractor's payment requests early and without authority in Violation of GC Article 14 titled "Payments to Contractor and Completion".

Construction Phase

Violation of Article 3 of the Agreement titled "Exhibits" as amended by Amendment No. 7, Exhibit C, "Scope of Engineering Services during Construction and Construction Management Services" and violation of Section 12 entitled "Performance Standards", in that MWH

- Has failed to live up to its promises to administer and manage the work;
- Has failed to perform the Services promised under Amendment No. 7, Exhibit C, Task 2.11 titled "Payment Applications";
- Has failed to perform the Services promised under Amendment No. 7, Exhibit C, Task 2.12 titled "Schedules";
- Has failed to perform the Services promised under Amendment No. 7, Exhibit C, Task 2.14 titled "Claims and Disputes";
- Has failed to enforce the requirements of the Construction Contracts as follows:
    - MWH failed to implement the conditions of the requirements of the Construction Agreements Article 3, titled "Liquidated Damages" for some contractor's failure to provide Record Drawings;
    - MWH failed to implement the conditions of the requirements of the Construction Agreements Article 3, titled "Liquidated Damages" for some contractor's failure to provide CPM Schedules;
    - MWH failed to implement the conditions of the requirements of the Construction Agreements t Article 3, titled "Liquidated Damages" for some contractor's failure to provide Schedule of Values;
    - MWH Failed to control the work by allowing the contractors to mobilize prior to the start date as declared in the Notice to Proceed,
        - MWH allowed the ordering and delivery of materials to the site in advance of the start date;
        - MWH allowed the contractors to move-on to the site;
    - MWH knew that by allowing the Contractors to mobilize prior to the start date as stated in the NTP that the costs for those actions were at the contractor's risk;

Improper Progress Payment Processing

- MWH failed to implement the conditions of the requirements of the Construction Agreements Article 5 titled "Payment Procedures": and GC Article 14 entitled "Payment to Contractors and Completion", specifically:
    - MWH did not enforce the requirements of GC 14.1 titled "Schedule of Values (Lump Sum Price Breakdown)";
    - MWH did not enforce the requirements of GC 14.3 (A) (1) through (8);
- MWH failed to enforce the requirements of GC 14.5 titled "Review of Applications for Progress Payment;
    - MWH knew that the Project was funded by a State SRF Loan;
    - MWH understood that funds available to the District for contractor payments were contingent upon SRF Disbursements;
    - MWH had detailed knowledge of District Board resolutions confirming that the first SRF disbursement was not for the payment of contractors work;

- MWH knew that the first SRF Agreement with the District that specified that the first disbursement was not for the payment of Construction costs, but rather to reimburse the District for pre-construction activities;
- MWH knew that the SRF did not advance the District any funds for the payment of the contractors and that the SRF would reimburse the Contractors for work completed in accordance with the disbursement schedule contained in the SRF Agreement with the District;
- MWH knew that the character of the funds from the first SRF disbursement meant that funds were not available for contractor payments;
- MWH knowingly allowed the contractors to submit payment requests that did not conform to the requirements of GC Section 17.19(D) (2) titled "Timely Progress Payments; Interest; Payment Request" and Public Contract Code §20104.5;
- MWH knew that under the terms of GC Section 17.19(D) (2) and Public Contract Code §20104.5 that the payments submitted by the contractors were not properly executed;
- MWH improperly certified the improperly executed progress payments in breach of Amendment No. 7, Exhibit C, Task 2.11(c) to MWH's Agreement with the District;
- MWH imprudently accelerated the first progress payment and allowed the contractors to be improperly paid early without authority or consideration for the District's financial well being and in violation of numerous contract provisions:
    - As stated above, MWH knew that the progress payment applications were not properly executed in accordance with GC Section 17.19(D) (2) and Public Contract Code §20104.5;
    - GC 14.5 (A) allowed MWH 7 days to review any application for payment and provided that all properly executed contractor payment requests were due and payable in 30 days;
    - MWH turned the first contractor payment applications around in less than one day;
    - GC 14.5 (A) provides that a "properly executed" Application for Payment was due in 30 days;
    - MWH improperly accelerated the approval of the first progress payment without obtaining any concessions from the contractors for early payment as is customary practice or recommending to the District to do so;
    - MWH accelerated the payments due to the immanency of a recall election that had a high certainty of changing the project and jeopardizing the contractor's and MWH's economic interests;
    - MWH lobbied the SRF to pay the first disbursement in less than the thirty days provided for in the contract documents;
    - The SRF disbursed the funds in three days in violation of the disbursement schedule and customary practice;
    - MWH's failure to properly process the progress payments financially damaged the District and the State of California. in the interest lost.

Other Violations and Performance Deficiencies

Violation of Section 14 entitled "Conflict of Interest", in that MWH has aggressively acted, on numerous instances, in a manner that is a clear conflict of interest but at a minimum is the appearance of a conflict of interest as follows:

- Has knowingly and with malice actively worked with regulatory agencies in a manner that is not in the best interests of the District;
- Has knowingly and with malice actively worked with third parties in a manner that is not in the best interests of the District;
- Has knowingly and with malice actively worked with contractors in a manner that is not in the best interests of the District;
- Has knowingly and as a matter of public record made financial contributions to entities that are litigating against the District in an effort to stop the project;
- Has knowingly and as a matter of public record made financial contributions to government officials in a manner so as to influence courses of actions that are not in the best interests of the District;
- Has knowingly and as a matter of public record made financial contributions to special interest groups in a manner that are not in the best interests of the District;
- Has knowingly and with malice had inappropriate contacts and communications with parties litigating against the project and said contacts and communications are not in the best interests of the District
- Failed to notify the District of the above described conflicts of interest or the appearance of a conflict of interest.

The numerous actions that violate Section 14 were clearly designed to benefit parties at the District's risk, including but not limited to MWH, third parties and the contractors in such a manner to demonstrate MWH's loss of objectivity in representing the best interests of the District. MWH's behavior during specific periods of performance clearly illustrate MWH's various conflicts of interest and breach of its fiduciary responsibility to protect the District from unnecessary riskincluding but not necessarily limited to the post-design/pre-bid period, the post-bid/pre-award period, the post-award/pre-Notice To Proceed period

Violation of Section 16 entitled "Ownership of Documents" and Section 17 entitled "Records, Audit and Review", in that MWH:

- Has not provided copies of all electronic data as requested by the District including but not limited to e-mails, data files, CAD data, etc.;

Violation of Section 19 entitled "Insurance", in that MWH:

- Has not provided a copy of the original Certificates of Insurance;
- Has not provided any proof of Professional Liability Insurance;
- Has not provided any Certificates of insurance evidencing renewal of coverage.

It is a fact that MWH is not a party to the SRF Agreement between the SRF and the District. MWH is fully aware of SRF agreement between the State and the District, and that the SRF is the source of project funding. The District contends that MWH would economically benefit if MWH could induce the SRF to bring pressure of any sort on the District to inhibit the District from relocating the wastewater treatment plant, including but not limited to the contractors inducing the State to breach the SRF contract. It is clear that MWH intended to disrupt the

relationship between the District and the SRF for MWH's economic gain. MWH's actions caused an actual disruption of the relationship between the District and the SRF; and MWH's actions have damaged the District.

MWH has submitted a claim and initiated litigation in violation of Section 43 of the Agreement titled "Force Majeure" in that MWH knows that the District has been damaged by the State of California's Breach of the conditions of the SRF Agreement between the District and the State. Furthermore, MWH's claim and litigation violate the provisions of Public Contract's Code §20104.5.

MWH has not performed the Design or the Construction Management services in accordance with the Agreement. Therefore, as provided for under Section 7 of the Agreement titled "Compensation to the Consultant", specifically paragraph C, MWH is not entitled to payment.

The District is continuing its investigation into the circumstances regarding MWH's contract performance and reserves all rights and remedies per Section 33 of the Contract Agreement.

The District is formulating a claim for reimbursement of all costs and damages incurred and anticipated to be incurred as a result of MWH's potential default.

The District is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether MWH's failure to perform arose from causes beyond MWH's control and without fault or negligence on MWH's part. Accordingly, MWH is given the opportunity to present, in writing, any facts that satisfactorily correct the situation within 7 days after receipt of this notice. MWH's failure to present any excuses within this time may be considered as an admission that none exist.

Sincerely,

Daniel M. Bleskey
Interim General Manager

Cc: Board of Directors
Interim General Counsel
Special Counsel, S. Onstot
Special Counsel, J. Biggs
MWH Surety
Attorney General
Regional Water Quality Control Board, R. Briggs
State Water Resources Control Board, C. Cantu
USEPA Region 9
USEPA Inspector General
Office of Management and Budget

President
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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 (LOCSD) notification of Montgomery Watson Harza's (MWH) violation of Government Code 12650, the California "False Claims Act". Specifically the LOCSD has investigated the circumstances related to a defective contract between MWH and the LOCSD 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 LOCSD 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.

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

- On November 4, 1999, the LOCSD 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.

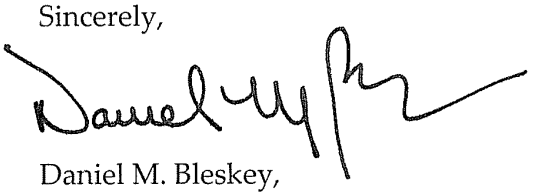
Persons dealing with California public agencies are charged with knowledge of the limitations of authority of its officers and agents; contracts made without authority are invalid and cannot be the subject of ratification or estoppel. (*City of Pasadena v. Estrin* (1931) 212 Cal. 231; *Foxen v. City 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

Attachment A

1st Contract Reg Plan
Reg Report
Bond 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 "LOCSD") 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 LOCSD and LOCSD 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 LOCSD and will administer this Agreement for and on behalf of LOCSD. 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:

LOCSD: 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 (ISO Form CG 0001 10/93)	$ 1 Million per occurrence $ 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, it 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

General Manager

Date: 9/1/99

ATTEST:

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 (LOCSD) 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 LOCSD 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 LOCSD, design consultant, environmental, financial and other consultants and regulatory and funding agencies. The goal of this coordination is to aid the LOCSD 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 LOCSD's agent during the planning and design phases of the project. He will also coordinate and determine with the LOCSD the need for MW's support staff as required for project assignments.

LOCSD 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 it's own activities and work products including reports, technical memoranda, facilities plans, preliminary designs, designs, estimates, schedules and other items. Similarly, the LOCSD'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 it's 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.

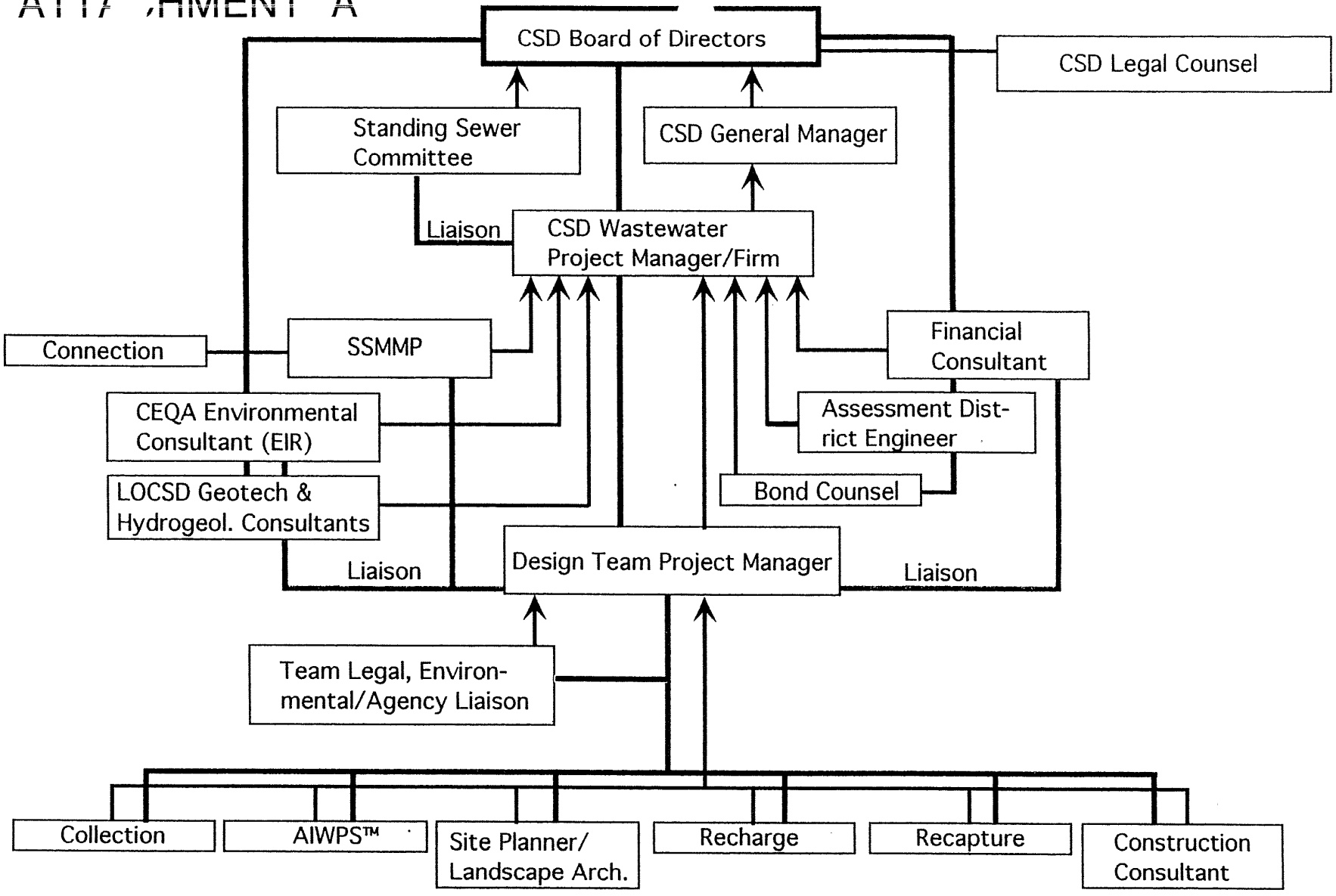
   4.2. The Billing Rates used as a basis for payment apply to all of Consultant's professional personnel (including with limitation project managers, estimators, schedulers, support staff, and field personnel) engaged directly on the project. Billing Rates may increase up to 4% per year maximum consistent 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

Our File No:
04844-0001
jbiggs@bwslaw.com

March 8, 2006

Hon. Bill Lockyer, Attorney General
State of California
Public Inquiry Unit
Post Office Box 944255
Sacramento, California 94244-2550

Re: *Los Osos Community Services District Investigation*

Dear Mr. Lockyer:

Enclosed is correspondence from our office to the District Attorney's office in San Luis Obispo regarding the decision by the District Attorney not to prosecute the falsification of a public record by the former General Manager of the Los Osos Community Services District. We believe this is a matter of significant importance to the community and would appreciate your review and consideration of bringing legal action.

The materials submitted are relatively self-evident. The issue involves a contract purportedly entered into in 1999 by the District and Montgomery Watson Harza for services related to construction of a wastewater sewer facility. The contract was not signed by the President of the Board of Directors as authorized by the Board. Instead it was signed by the then General Manager, Bruce Buel, and it was dated September 1, 1999. Mr. Buel did not start working for the District until December of 1999. The contract was also attested to by the District Clerk, Ms. Karen Vega who was also a new employee at the time.

Mr. Buel has stated in public comments to the press that he was directed to backdate the contract by the Board and that he also directed Ms. Vega to backdate the contract. As we have noted in the correspondence, a contractor may not constitutionally be paid retroactively for work done for a public entity.

In any event, we would very much appreciate your investigation of this matter. Please do not hesitate to contact me if there is any way that I may be of assistance.

Very truly yours,

BURKE, WILLIAMS & SORENSEN, LLP

Julie Hayward Biggs

Enclosures

RIV #4842-9235-2512 v1

Original signed

Biggs to Shea

12-21-05

BURKE, WILLIAMS & SORENSEN, LLP

3403 Tenth Street - Suite 300
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RECEIVED
DEC 27 2005
BY:

Our File No:
04844-0001
jbiggs@bwslaw.comil

December 21, 2005

Gerald T. Shea, District Attorney
San Luis Obispo County District Attorney's Office
County Government Center, 4th Floor
San Luis Obispo, CA 93408

Re: *Los Osos Community Services District Investigation*

Dear Mr. Shea:

As you are aware, the Los Osos Community Services District (the "CSD") has asked your office to investigate certain apparent irregularities within the District that have occurred in the past. On December 8, 2005, the interim General Manager sent you a copy of a letter directed to the Vice President of Montgomery Watson Harza ("MWH"), a contractor with the CSD, alleging violation of the False Claims Act (Government Code §12650).

The allegations in that letter are predicated on CSD actions documented by official minutes and by its General Manager, Bruce Buel, as well as other CSD employees and officers. It appears from the Minutes of the CSD that the CSD approved the contract for MWH on November 4, 1999 and authorized the Board President to sign that contract.

The contract, however, is hand-dated September 1, 1999 and purportedly signed on that date by Mr. Buel, the District Clerk and MWH. Records show that Mr. Buel was not employed by the CSD on that date and could not bind the CSD to the terms of any contract. Mr. Buel's personnel records, and public statements he has made in public under oath, demonstrate that his first day of employment was November 15, 1999.

In fact, there does not appear to be any authority for anyone to execute a contract on September 1, 1999. Execution of the contract by Mr. Buel, who was not an employee of the CSD until November 15, 1999, could not bind the CSD as of September 1, 1999 . MWH was participated in the public hearing process that led to approval of the terms of the contract on November 4, 1999, and also knew that no one was authorized to sign a contract with MWH dated September 1, 1999 because no such contract had been approved at that time.

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At the Board meeting on November 4, 1999, the staff report included only a letter dated October 29, 1999, from Gary Karner, husband of Pandora Nash-Karner who was then chair of the Standing Sewer Committee for the CSD, recommending various terms and conditions to be included in the contract that clearly had yet to be prepared. That letter was presented as the recommendation of the ad hoc subcommittee appointed by the Standing Sewer Committee. No contract was presented on November 4, 1999, and none was ever signed by the CSD President.

The ad hoc subcommittee recommendation included a provision that the contract would be "retroactive to the date services were initially provided." Article 11, section 10(a) of the California Constitution strictly forbids a public agency from making retroactive payments for services rendered to it prior to entering into a contract. Under the law, any work performed before approval of the contract on November 4, 1999 would not have been entitled to payment even if a valid contract had been properly executed by the parties after that date.

The ad hoc subcommittee recommendation acknowledges that the parties knew services were being rendered without a contract or agreement for payment and that the Board and MWH intended to provide retroactive compensation for such services. Minutes of the CSD show that the terms to be included in the contract were not approved by the CSD Board until November 4, 1999, and that at that time the District President was authorized to execute an agreement "upon final preparation by legal counsel." This confirms that as late as November 4, 1999, no contract existed.

In addition, District contracts usually include a signature line for District counsel to approve the contract as to form. Interestingly, this contract which was apparently prepared by District legal counsel contains no "approval as to form" line or the approval of District legal counsel.

No provision included in the final contract prepared by legal counsel states that it is to be retroactive. The contract does contain a standard provision (section 32) noting that the contract as written constitutes the entire agreement of the parties. It thus appears that the parties attempted to circumvent the constitutional prohibition by simply pretending that the contract had been signed at an earlier date.

Based on these records, it appears that the contract was back-dated by the parties and that the date of signature was falsified by Mr. Buel and the District Clerk as well as MWH in order to permit payment for services previously rendered to the CSD. It

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may be that this falsification was done at the direction of one or more of the CSD Directors, or with their knowledge, but that cannot be discerned from the records alone.

As you are undoubtedly aware, falsification of records, and payments made or received as a result of such falsification, is a violation of Penal Code §424. Payment of invoices on such an account, constitutes misappropriation of public funds under Penal Code §424 as well.

Our review indicates that there is potential criminal liability on the part of Mr. Buel, Ms. Karen Vega, MWH and potentially one or more of the CSD board members who were in office at the time for falsification of public records and misappropriation of public funds as a result of payments made by the CSD to MWH for work performed prior to approval of the contract on November 4, 1999. Further, because the contract is not signed by an authorized representative of the CSD, we believe it is void and any payments made after November 4, 1999 are also false claims which may constitute embezzlement under the provisions of Penal Code §434. Facts supporting this contention became known only after the election of Ms. Lisa Schicker and Ms. Julie Tacker to the CSD Board in November of 2004.

I would be pleased to assist your investigation in any way that might be helpful to resolving this issue in a manner consistent with California law. Please call me at (951) 788-0100 if you wish further information.

Very truly yours,

BURKE, WILLIAMS & SORENSEN, LLP

Julie Hayward Biggs/mf

Julie Hayward Biggs

cc: Daniel Bleskey, Interim General Manager, Los Osos CSD
John G. McClendon, District Counsel, Los Osos CSD
Stephen R. Onstot, Esq.

RIV #4820-3738-4448 v1

may be that this falsification was done at the direction of one or more of the CSD Directors, or with their knowledge, but that cannot be discerned from the records alone.

As you are undoubtedly aware, falsification of records, and payments made or received as a result of such falsification, is a violation of Penal Code §424. Payment of invoices on such an account, constitutes misappropriation of public funds under Penal Code §424 as well.

Our review indicates that there is potential criminal liability on the part of Mr. Buel, Ms. Karen Vega, MWH and potentially one or more of the CSD board members who were in office at the time for falsification of public records and misappropriation of public funds as a result of payments made by the CSD to MWH for work performed prior to approval of the contract on November 4, 1999. Further, because the contract is not signed by an authorized representative of the CSD, we believe it is void and any payments made after November 4, 1999 are also false claims which may constitute embezzlement under the provisions of Penal Code §434. Facts supporting this contention became known only after the election of Ms. Lisa Schicker and Ms. Julie Tacker to the CSD Board in November of 2004.

I would be pleased to assist your investigation in any way that might be helpful to resolving this issue in a manner consistent with California law. Please call me at (951) 788-0100 if you wish further information.

Very truly yours,

BURKE, WILLIAMS & SORENSEN, LLP

Julie Hayward Biggs/mf

Julie Hayward Biggs

cc: Daniel Bleskey, Interim General Manager, Los Osos CSD
John G. McClendon, District Counsel, Los Osos CSD
Stephen R. Onstot, Esq.

RIV #4820-3738-4448 v1

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

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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 (LOCSD) notification of Montgomery Watson Harza's (MWH) violation of Government Code 12650, the California "False Claims Act". Specifically the LOCSD has investigated the circumstances related to a defective contract between MWH and the LOCSD 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 LOCSD 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.

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

- On November 4, 1999, the LOCSD 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

Our File No:
04844-0001
jbiggs@bwslaw.com

March 8, 2006

Mr. Steve Brown, Esq.
Senior Deputy District Attorney
San Luis Obispo County District Attorney's Office
County Government Center
1035 Palm Street, 4th Floor
San Luis Obispo, CA 93408

Re: *Los Osos Community Services District Investigation*

Dear Mr. Brown:

Thank you for your letter dated March 2, 2006 in which you decline to investigate allegations of falsification of public records by certain employees of the Los Osos Community Services District (the "District"). We understand that you contend that although falsification of public records by a public employee is a felony under California law, prosecution of Mr. Buel and/or Ms. Vega is barred by the statute of limitations set forth in Penal Code Section 801. You also appear to contend that because other public officials were aware that work was being done for the District by Montgomery, Watson Harza, Inc. ("MWH") without approval of a final contract, those public officials were on notice of subsequent falsification of the contract and execution by an unauthorized public employee.

I must admit that I am somewhat perplexed by your response to our inquiry. While Section 801 would impose a three year limit from commission of a criminal act, Section 801 clearly does not apply to the circumstances presented to your office for review. Those actions are subject to the provisions of Section 803 which provide as follows:

> "(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to , the following offenses:

1) Grand theft of any type, forgery, **falsification of public records**, or acceptance of a bribe by a public official or a public employee."

Clearly this statute of limitation applies to violation of Penal Code Section 424 and Government Code Section 6200, both of which prohibit falsification of public records such as the backdated contract involved in the matter referred to you. As such, the statute of limitations does not commence to run until the violation of law was discovered .

Your position seems to be that because the Board of Directors, legal counsel and other concerned parties knew that MWH had commenced work prior to approval of its contract with the Board, the "victim" had knowledge of the crime and did nothing to address it within the statutory period.

To evaluate your position, it must first be determined who the victim is in this case. The case you cite to support barring any action at the current time, *People v. Lopez* (1997) 52 Cal. App. 4th 233, is instructive in this regard. As noted there,

> "We hold therefore that in cases involving fiscal crimes against government, a victim for purposes of the discovery provisions of Penal Code section 803, subdivision (c), is a public employee occupying a supervisorial position who has the responsibility to oversee the fiscal affairs of the governmental entity and thus has a legal duty to report a suspected crime to law enforcement authorities. n6
>
> n6 In the unlikely event that there is no such supervisor or in cases in the which the supervisor either is the accused or aided and abetted the accused or conspired with him, **the statute starts to run upon discovery by law enforcement authorities**." (*Id* at 247-248)

The problem in this case is that the "unlikely event" contemplated in the *Lopez* case has occurred. Mr. Buel was the highest level supervisory public employee charged with a legal duty to report a suspected crime to law enforcement authorities. He was, however, also the apparent perpetrator of the crime. It appears that you believe that the members Board of Directors in place at the time of this illegal activity were somehow supervisory public employees. Assuming that that were true, If Board members knew about the illegal activity, their vote approving the final contract affirmed and condoned 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. Conversely, If they did not know that the contract would be falsified in order to pay the contractor for work performed without an approved contract and simply believed that the contract would take effect on the date it was executed by the parties, then they were not on notice of suspicious criminal activity and would have no duty to report anything.

The standard for determining whether law enforcement or the victim had notice as required to start the running of the statute of limitations is stated succinctly in *People v. Lopez, supra*, as follows:

> "On that question, "[t]he crucial determination is whether law enforcement authorities or the victim had actual notice of circumstances sufficient to make them suspicious of [criminal activity] thereby leading them to make inquiries which might have revealed the [criminal activity]." (*People v. Zamora, supra, 18 Cal. 3d at p. 571,* italics omitted.) The victim has the requisite actual notice when he has knowledge of facts sufficient to make a reasonably prudent person suspicious of criminal activity. (*Id*. at p. 562.)" (*Id* at 248)

The fact that work was underway prior to final approval of the contract would not in itself give rise to a suspicion that a contract had been or would be illegally falsified and backdated if and when it was approved. A reasonably prudent person would have assumed that the contract, when approved, would be a legal and binding document signed at an appropriate time by authorized individuals that in some way provided compensation for all work to be performed to the satisfaction of the parties.

In fact, as demonstrated in extensive detail in various email communications between Mr. Buel and Directors Schicker and Tacker beginning in late 2004, Mr. Buel refused to provide copies of the relevant documents to either newly elected member of the Board of Directors despite repeated requests. This correspondence and the resistance of Mr. Buel to disclosure of the falsified contract did in fact put the newly elected members of the Board on notice in late 2004 that something was wrong, potentially criminally wrong, which is why through persistence and over the objections of Mr. Buel and other Board members the falsified contract was uncovered. Copies of that correspondence will be available upon request should your office choose to reconsider its position on this matter.

Finally, again citing from the case on which you predicate your determination not to pursue prosecution of this matter, the *Lopez* court expressly limited the scope of who might be considered a victim

> The court began by noting that "[n]o California reported decisions have specifically addressed whose discovery triggers the operation of the statute or the scope of the term 'victim.' " (*People v. Kronemyer*, *supra*, 189 Cal. App. 3d at p. 331.) Defendant in that case contended that "the statute should begin to run on discovery by anyone who, because of some special interest in the victim or the subject matter, is reasonably likely to discover and report the offense. He contends that only when no such other person discovers the crime should the statute be deferred until discovery by law enforcement." (*Id*. at p. 332.) The court rejected the argument. "We do not believe fairness and common sense require a class of 'discoverers' to include all members of the general public, neighbors, residuary beneficiaries or nieces-in-law of victims who fail to investigate or advise law enforcement officials of mere suspicions of wrongdoing." (*Id*. at p. 333.) Instead, the court concluded the **benefits of a discovery statute** "**should extend no further than those persons who are direct victims, persons having a legal duty to report and investigate crime**, and those persons who are clothed with a status imposed by law as guardian, conservator or equivalent, in the absence of express statutory direction." n5 (*Id*. at pp. 334-335.) (*Id* at 248.)

Thus the fact that someone generally interested in the matter might have known about the falsification of public records but did not report it is not sufficient to start the running of the statute of limitations in this case.

So, it appears that there are two errors underlying your decision not to prosecute this matter. First, the statute of limitations set forth at Penal Code 803 applies rather than the one set forth at Penal Code Section 801. Section 803 provides that the statute of limitations only begins to run upon discovery of the crime. The crime alleged here was not discovered by any victim prior to November of 2004, assuming that the public and the newly elected members of the CSD Board might be considered “victims” under the law. Further, because there was no public employee in a supervisorial position obligated to report the matter who was not involved in the alleged criminal activity, under the provisions of Section 803, the statute only began to run once your office was informed of the matter in December of 2005.

To summarize:

1. Nothing that occurred in the public forum, and specifically work performed by the contractor prior to approval of the contract, was

sufficient to alert anyone to the possibility that a public record had been falsified.

2. There was no supervisory employee charged with a duty to oversee the finances of the District who had an obligation to report the crime who was not himself or herself involved in it.

3. The only possible victim, i.e., any non-involved supervisory public employee or the public, had no actual knowledge of the crime until after the November 2004 election when new members of the Board who had not participated in the falsification of the contract were elected and, after extensive demands, were finally given access to a copy of the falsified contract.

4. The statute of limitations in this case began to run at the earliest in November of 2004, and at the latest upon notice to your office.

Rather than declining to investigate this situation as it relates to former General Manager Bruce Buel and District Clerk Karen Vega, your office should be investigating the involvement in these illegal activities by the public officials then in charge of the Los Osos Community Services District. Given the statement you have sent us, however, it seems very unlikely that your office will in fact reconsider this matter. As a result, we will be forwarding all of these materials to the Attorney General for consideration of future action.

Very truly yours,

BURKE, WILLIAMS & SORENSEN, LLP

Julie Hayward Biggs

cc: Bill Lockyer, Attorney General

RIV #4850-4241-1776 v1

Robert Stark
<birgie1326@sbcglobal.net>

05/06/2009 04:04 PM

Please respond to
birgie1326@sbcglobal.net

To planningcommission@co.slo.ca.us, Robert Stark <birgie1326@sbcglobal.net>, al barrow <a.barrow@charter.net>

cc

bcc

Subject Los Osos Sewer design

THE "NO-SEWER" ALTERNATIVE

Summary:
1. The alleged need for a sewer has been increasingly questioned over time as basic data for support has been overcome by newer information.
2. A correlation does not exist between an increase in nitrate concentration with an increase in population over the 35 year time frame.
3. Expert testimony has questioned the procedures used to collect the original samples that were the basis for the need decision.
4. Isotope study of 1987 questioned the source of the nitrates as coming from septic systems.
5. An additional isotope study of 2006, made using more available testing, confirmed the nitrates were not from septic systems.
6. Physical testing of the septic effluent for denitration as it travels down the soil column suggests the nitrates are not reaching the ground water.
7. Other areas similar to Los Osos that are adjacent to large amounts of organic ground cover find high ground water concentrations of nitrates.
8. The need for a sewer was based on reported contamination of the Morro Bay bay thought to have come from septic systems. DNA testing showed this to not be true. The quality of the water has improved since other sources were stopped and shell fish production is now permitted.
9. There are areas in Los Osos that have septic systems too close to ground water level that are not operating properly. This has to be corrected but does not justify including the whole area in a sewer system just to solve this small problem.
10. The "no sewer alternative" maintains a preferred point source distribution of treated effluent and the existing water balance. It creates no environmental problems. It eliminates interdepartmental friction about designs and financing. It is "shovel-ready" and will reunite the area.

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.

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 was their prior relationship 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. Attorney (approved to form) and 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.

3. LOCSD Resolution 2005-47, requiring DA to investigate the MWH contracts. December 2005.

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.**

5. Letter 2 to DA, citing illegal acts - March 2006.

6. Letter to AG with all copies of DA correspondence, citing illegal acts - March 2006.

7. LOCSD letter to Construction Management Association, citing illegal acts, conflict of interest and examples of MWH poor engineering judgment. March 2006.

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.

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.

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

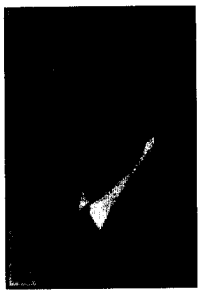
County Counsel, Design Build Institute of America, Construction Management Institute of America, DOJ, DA and AG

This Formal Complaint was presented in person during public comment at BOS Meeting - Los Osos Wastewater Update and hand delivered to each supervisor and the County Clerk for inclusion in the record

This formal complaint with all attachments was emailed to the BOS, and County Counsel on the evening of May 5, 2009.

Los Osos sewer project tainted by 'expired' crime

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



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

By DANIEL BLACKBURN

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 plotter 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 MHW'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 on 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 ms," 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 ently to the top grouping of the county's list of preferred contractors to complete the Los Osos project. This has curred even though MHW and LOCSD are themselves entangled in myriad disputes and litigation -- which could now ve the county.

The Los Osos district tried to cancel its contract with MHW in August 2006, asserting breach of contract and olations 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 owingly and with malice actively worked with… third parties contractors… regulatory agencies… and other third rties 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 nsulting 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 elbed 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 e 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 hat 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 t."

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@lososcsd.org.

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One city, one firm, fat profits

By Jeff Cull
jcull@news-press.com
Originally posted on December 31, 2006

Imagine $100 million — or maybe a little more.

For that amount of money you can build a new three-mile causeway to connect Sanibel and Captiva islands to the mainland.

Or you can lay plastic water and sewer pipe for about 2 percent of the city of Cape Coral.

Those lines are being laid in a part of the Cape known as Southwest 4 and will cost each of nearly 4,000 residents of the area $25,000 to $40,000.

And Southwest 4 is only one piece of an overall utilities expansion plan to cost $1 billion or more by the time it's finished.

ALSO FROM NEWS-PRESS.COM
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- Up next, Southwest 5 homeowners brace for costs
- Cape has done things its way, its way only
- **Photo Gallery:** Cape Utilities

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The program began in 1999 and has brought utilities to nearly 8,000 homesites in the southwest part of Cape Coral. Others who don't have utilities will get them in phases over the next 12 years.

But citizens' outrage has never been as high as in the current area where property owners are paying about $22,000 plus additional fees for a two-lot homesite.
Assessment in areas done earlier were between $11,000 and $15,000.

Leslie McGarry was "speechless" when she imagined the cost of the new causeway compared to the price of the water and sewer lines being installed in her neighborhood.

"I don't know what to say," said the 1982 Cape Coral High School graduate who will pay about $25,000 for the new utilities. "It makes no sense. There's something wrong somewhere."

Cape Councilman Tim Day belly-laughed at the comparison.
"I rest my case," said Day, one of two council members opposed to the utility expansion program as it exists. The other is Councilman Mickey Rosado.

"It's like living in the twilight zone. It's outrageous."

Cape officials are steadfast that the program is necessary and that they're doing all they can to save residents money.

"It's all about water independence," said City Manager Terry Stewart. "It's not one thing. It's an accumulation of things that affect the availability of water resources. Our system is strained."

Cost-laden

The Southwest 4 utility extension is just one of nearly 30 utility construction projects under way in the city. Others include a new water treatment plant, renovations to two existing sewer plants and a variety of related projects.

Research by The News-Press has found the following hidden within the contracts for the utility lines and the water plant:

• Layers of management fees.
• Huge contractor profits.
• No incentives to lower costs.
• Contract clauses that make it difficult for outsiders — or even city auditors — to get an accurate view of how the money is spent.

In September, for example, Colorado-based Montgomery Watson Harza — the city's sole contractor — billed more than $16 million for work on about 30 city utility contracts. Among those bills was one for $438,000 in program management fees.

That was for roughly 17 MWH employees — some paid more than $200 an hour — to oversee the entire building program.

The bill was for management, scheduling, permitting, document control, health and safety and accounting. It also included time for secretaries and customer service representatives.

If the city had used that same money to hire people to do the work, it could have added 20 workers to the city payroll and paid each of them what City Manager Terry Stewart makes — $157,560 a year plus benefits.

The News-Press research indicates when the amount the contractor said it paid its employees plus their benefits is deducted from its bill, MWH is left with a profit of 55 percent.

While MWH is authorized to get a 4.5 percent construction fee on the Southwest 4 project, The News-Press found the firm also earns a $3.5 million program management fee, a $3.2 million construction management fee and a $3.7 million design fee.

Estimated profits on those fees add up to more than $8 million or about 8.5 percent.
MWH spokesman Paul Lonnegren said those fees are really "budget estimates."

"The city will only be charged for the actual costs incurred in each of those categories. If costs are less than estimated, all of the savings revert to the city," Lonnegren said.

In comparison, MWH charged Collier County a 5 percent fee to build a nearly $39 million water treatment plant

in 2005. That contract didn't include additional money for program management or design. Construction management labor was reimbursed at MWH's actual labor cost.

Lonnegren said the Collier contract is not comparable to the Cape deal because MWH was retained only to build the facility, not do design or management.
On the Sanibel Causeway, the contractor's billing rates for management services are about 69 percent lower than what MWH charges to Cape Coral.

So why doesn't the Cape get cheaper fees?

For one thing, in a move contrary to the way other Florida cities handle large public works projects, Cape staffers decided — and city council agreed — to hire one firm to manage, coordinate, permit, design, bid and build the utility projects.

That put all the city's utility expansion eggs in one basket with only a small city staff to monitor the work.

"If I thought we could bring it in-house and do the project successfully we would," said Cape Mayor Eric Feichthaler.

City officials said they wanted someone to shoulder all the risk of price increases to avoid lawsuits similar to those that plagued utility projects completed in the 1990s.

Then, the city tried to build a $209 million utility expansion by hiring an engineering firm to design the project and bid the work.

Three of four contractors involved sued the city, claiming the engineers created drawings that resulted in huge cost overruns.

The city, in turn, sued the engineers, Massachusetts-based Camp, Dresser & McKee Inc., and settled in 2000 for $1.3 million. The city, however, paid nearly $16.2 million to settle the contractors' claims and spent another $1.2 million on attorney's fees.

"The city lost that money because the assessments had already been delivered to the homeowners," said City Manager Terry Stewart.

That prompted the city to lay the risk on one company when it started additional utility expansions.

In fact, the city hired the firm that stands to profit the most, MWH, to tell it what it should build and when. In 2005, MWH charged the city more than $600,000 for that assessment.

City officials said six firms, including MWH, were interviewed before the next phase of the contract was awarded. They said a contract and prices were negotiated after MWH was selected as the best contractor for the work.

Other issues

The News-Press researched thousands of public records, reviewed similar projects in other communities throughout Florida, asked readers for their thoughts, spoke with experts and found:

• MWH pays about 75 percent of its staff — some earning more than $200 an hour — less than what it told the city when it negotiated its billing rates, according to notes from a September city audit that are available at news-press.com.

Neither the city staff nor council has raised an objection.

The contractor charges the city based on labor rates it said it pays its employees, then marks it up by a factor of 2.65 or 3, depending on the work being done.

City staff agreed to this billing formula.

They have asked MWH for comparable rates from other firms, but MWH has provided only rates for engineering companies. No construction companies were surveyed.

When individual labor rates were compared, nine out of 12 MWH employees were paid less than the company told the city, the audit notes said.

However, when auditors used MWH "average" labor rates over the entire project, the rates complied, said city auditor Dona Newman.

A clause allowing "average" rates was inserted into the contract at MWH's request nearly one year after the original contract was signed. The original contract called for a comparison of individual labor rates.

Newman told council that using "average" rates made it nearly impossible to audit or enforce.

"It was never defined in the contract what the average labor rates were — by category or all the rates," she said.

• The city's contract with MWH — agreed to in 2004 — allows it to pay its people up to 5 percent less than the negotiated rate in the contract without having to return any money.

In addition, if MWH overbills the city by more than 1 percent of its total billings for the program, the company has to repay the city for the audit that found the discrepancy.

However, MWH would have to overbill the city by as much as $7 million before the penalty clause kicks in. Billings on the program are likely to total at least $700 million.
City officials have said they will review those contract terms, along with the "average" labor rate for audits. The contract can be changed by mutual agreement or the city can terminate it for any reason with 60 days notice to the contractor.

"We're working on something to clear up that language," said Wayne Wolfarth, the city's utility expansion manager.

• MWH earns contractor fees of 4.5 to 7 percent of the cost, depending on the project, plus 3.5 to 4.2 percent to manage the city's overall utility expansion program. That includes major plants, transmission lines and well fields. The firm gets additional fees for design and construction management.

That makes the contractor's average fees 8.5 to 11 percent or higher.

Independent auditor R.L. Townsend told the city last year that the average fee for 25 construction manager-at-risk projects he surveyed was about 3 percent.

• A new well and septic system in Cape Coral typically costs between $16,000 and $21,000, said Annette Carrasquillo, of Portofino Homes in Cape Coral.

That's nearly what new utilities cost on a typical two-lot site. With city utilities, most lots can handle larger homes because space is not reserved for the septic tank and drain field.

But 54 percent of the homes in Southwest 4 — bounded roughly by Skyline and Chiquita boulevards and Veterans and Mohawk parkways — are already built.
That means people who have already paid for a well and septic system will, in effect, have to pay double for utilities, said John Sullivan, a Southwest 4 resident and active critic of the city.

"The sad part is they're asking people to throw that money away," he said. "Now the assessment's not $20,000, it's $40,000. That's the real cost."

• A federal audit of New Orleans found that city officials there awarded a contract to MWH that violates federal rules.

The audit said the deal with MWH tied profits to costs, an arrangement that violates federal rules because it provides no incentive to keep costs low.

MWH's contract with the Cape ties profits to costs.

MWH spokesman Lonnegren defended the New Orleans contract.

He said city and state officials are satisfied that the process in the wake of Hurricane Katrina was competitive and "a determination was made that the contracting methodology was appropriate."

One contractor

The city of Cape Coral and MWH entered into a contract in 2004 that gives the firm the leadership role in all areas of Cape construction work relating to utilities and plants until 2011.

City officials said at least four new expansion areas will be built in that timeframe along with other projects such as the new water and wastewater plants.

The Cape uses a project delivery method called "program manager-at-risk." It's used when one entity oversees a number of different projects at the same time, said Bruce D'Agostino, executive director of the Construction Management Association of America in McLean, Va.

"It's becoming common, especially in school construction," D'Agostino said.
MWH oversees all management, design, permitting, and construction for five underground utility projects and other facilities worth more than $500 million. That includes expanding the city's wastewater treatment plants on Everest Parkway and the Southwest Cape.

The city pays MWH a fee to manage the overall project of 4.2 percent but recently reduced that to 3.5 percent, Wolfarth said.

About 30 projects are in various stages of completion.

City officials said that having one engineering/design firm puts all the risk for cost overruns on them. Plus, they said, the city doesn't have the staff to do the work in-house.

Fighting back

The Cape utility project and the new Sanibel Causeway have one thing in common. Both have been controversial and both have spurred lawsuits.

At this point, though, debate over the causeway and its $6 tolls has subsided.

In the Cape — where nearly 4,000 landowners face bills of $25,000 or more to pay for the latest utility expansion project — a grass-roots protest is gaining momentum.

Citizens have formed opposition groups, filed lawsuits and paraded before City Council weekly with lists of complaints.

One group, the Cape Coral Minutemen, has a Web site and its members have been going door-to-door to tell residents who don't have utilities yet when they're likely to face assessments. More than 30,000 property owners will be affected in the future.

"The actions of the City Council to continue to implement high-cost and over-priced water and sewer services — over the objections and reasoned input from the public — has created an urgent need to both inform and organize property owners," said
Larry Barton, a member of the Minutemen and a newly appointed citizen member of
The News-Press editorial board.

Other residents contend the city is paying too much for the project and say elected officials are listening to contractors instead of residents.

"I think this City Council has terrorized citizens," said Lee Mars, who lives in Southwest 4. "We're afraid to speak at council meetings for fear of retribution."

And the city may be reacting to the outcry.

MWH has recently found some savings by moving pipes closer to the street.

The city, for its part, changed the way it assesses large properties and decided to pay for some improvements with other funds. The price to residents for the utility lines dropped from about $22,000 to about $18,000.

However, it still costs about $6,000 to hook up to the system.

City officials argue that a new well and septic system costs nearly what the utility assessment charges, that the project is necessary and that they're doing all they can to keep costs down.

"The council and the majority of our citizens want this," said Mayor Eric Feichthaler.

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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

ALSO FROM NEWS-PRESS.COM
Help us investigate: Cape utilities project
Transcript: Attorney general's opinion of Cape sewer bidding process

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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.

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August 14, 2006

Advanced Copy By Fax
Registered Mail/Return Receipt Requested

Marshall W. Davert
Montgomery Watson Harza, Americas, Inc.
3321 Power Inn Road, Suite 300
Sacramento, CA 95826

SUBJECT: TERMINATION OF CONTRACT FOR DEFAULT: WASTEWATER PROJECT MANAGEMENT AND PREPARATION OF PROJECT REPORT (AS AMENDED)

Dear Mr. Davert:

This letter is official notification that the subject Contract, as amended, has been terminated effective immediately.

Montgomery Watson Harza (MWH) has knowingly violated numerous contract provisions and failed to correct these deficiencies in accordance with the contract agreement.

The Los Osos Community Services District (District), during the course of the analysis of MWH's performance related to the subject contract, has determined that MWH is in material breach of certain contract terms and has failed to perform in accordance with the contract provisions as promised by MWH. The termination for default is based on the following:

Violation of Section 4 entitled "Scope of Services", in that MWH:

- Has had numerous substantive contacts and communications with contractors, regulators, governmental agencies, litigants and other third parties and has not copied the District, despite the District's request for such copies, minutes and transcripts of such contacts and communications.

Violation of Section 6 entitles "Compensation of Consultant", in that MWH and individuals employed by MWH:

- Have submitted invoices not in accordance with the Agreement;
- Have submitted invoices and has been compensated multiple times for the same work;
- Has knowingly submitted multiple false claims in violation of Government Code (GC) §12650.

Violation of Section 10 entitled "Performance Standards", in that MWH:

- Calculated an effluent application rate for the Broderson Leach Fields was not in compliance with normally accepted standards and guidelines as established by the United States Environmental Protection Agency (USEPA) and the State Water Resources Control Board (SWRCB). On July 7, 2006, the District requested that MWH explain the discrepancy and justify the application rates used in the Project Report and that served as the basis of design. On July 15, 2006, MWH refused to provide this information (Section 10(A) and (B));
- Has knowingly submitted multiple false claims in violation of GC §12650 (Section 10(A));
- Has knowledge of said false claims and not disclosed said false claims in violation of GC §12651(Section 10(A));
- Submitted inaccurate, false and misleading information to the District, local and state agencies in support of, but not necessarily limited to, regulatory requirements, permits, financing and licenses (Section 10(A) and (B));
- Failed to have documents stamped by a registered professional engineer that was in responsible charge of the work at the time of submission of critical reports in violation of the Business and Professions Code (BPC) § 6735 (Section 10(A), (B) and (C));
- Failed to provide a project manager for the period of March 3, 2000 through January 30, 2002 that was a registered professional engineer in responsible charge of the work in violation of BPC §6700 through §6706.3 and BPC §6785 through §6788 and the rules of professional conduct as established by the BPC and administered by the California Department of Consumer Affairs.

Violation of Section 12 entitled "Conflict of Interest", in that MWH has aggressively acted, on numerous instances, in a manner that is a clear conflict of interest but at a minimum is the appearance of a conflict of interest as follows:

- Has knowingly and with malice actively worked with regulatory agencies in a manner that is not in the best interests of the District;
- Has knowingly and with malice actively worked with third parties in a manner that is not in the best interests of the District;
- Has knowingly and with malice actively worked with contractors in a manner that is not in the best interests of the District;
- Has knowingly and as a matter of public record made financial contributions to entities that are litigating against the District in an effort to stop the project;
- Has knowingly and as a matter of public record made financial contributions to government officials in a manner so as to influence courses of actions that are not in the best interests of the District;
- Has knowingly and as a matter of public record made financial contributions to special interest groups in a manner that are not in the best interests of the District;
- Has knowingly and with malice had inappropriate contacts and communications with parties litigating against the project and said contacts and communications are not in the best interests of the District
- Failed to notify the District of the above described conflicts of interest or the appearance of a conflict of interest.

The numerous actions that violate Section 12 were clearly designed to benefit parties at the District's risk, including but not limited to MWH, third parties and the contractors in such a manner to demonstrate MWH's loss of objectivity in representing the best interests of the District.

Violation of Section 14 entitled "Ownership of Documents" and Section 15 entitled "Records, Audit and Review", in that MWH:

- Has not provided copies of all electronic data as requested by the District including but not limited to e-mails, data files, CAD data, etc.;

Violation of Section 17 entitled "Insurance", in that MWH:

- Has not provided a copy of the original Certificates of Insurance;
- Has not provided any proof of Professional Liability Insurance;
- Has not provided any Certificates of insurance evidencing renewal of coverage.

The District is continuing its investigation into the circumstances regarding MWH's contract performance and reserves all rights and remedies per Section 29 of the Contract Agreement.

As provided under Section 34 of the contract agreement, MWH is directed to provide all requested documents immediate upon receipt of this notice of termination for default.

The District is formulating a claim for reimbursement of all costs incurred and anticipated to be incurred as a result of MWH's default.

Sincerely,

Daniel M. Bleskey
Interim General Manager

Cc: Board of Directors
Interim General Counsel
Special Counsel, S. Onstot
Special Counsel, J. Biggs
MWH Surety
Attorney General
Regional Water Quality Control Board, R. Briggs
State Water Resources Control Board, C. Cantu
USEPA Region 9
USEPA Inspector General
Office of Management and Budget

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August 14, 2006

Advanced Copy By Fax
Registered Mail/Return Receipt Requested

Marshall W. Davert
Montgomery Watson Harza, Americas, Inc.
3321 Power Inn Road, Suite 300
Sacramento, CA 95826

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Sincerely,

Daniel M. Bleskey
Interim General Manager

Cc: Board of Directors
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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 (LOCSD) notification of Montgomery Watson Harza's (MWH) violation of Government Code 12650, the California "False Claims Act". Specifically the LOCSD has investigated the circumstances related to a defective contract between MWH and the LOCSD 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 LOCSD 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.

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

- On November 4, 1999, the LOCSD 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

Attachment A

1st Contract Proj Plan
Proj Report
Bond 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 "LOCSD") 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 LOCSD and LOCSD 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 LOCSD and will administer this Agreement for and on behalf of LOCSD. 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:

LOCSD: 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 (ISO Form CG 0001 10/93)	$ 1 Million per occurrence $ 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, it 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

General Manager

Date: 9/1/99

ATTEST:

Karen L. Vogt

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 (LOCSD) 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 LOCSD 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 LOCSD, design consultant, environmental, financial and other consultants and regulatory and funding agencies. The goal of this coordination is to aid the LOCSD 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 LOCSD's agent during the planning and design phases of the project. He will also coordinate and determine with the LOCSD the need for MW's support staff as required for project assignments.

LOCSD 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 it's own activities and work products including reports, technical memoranda, facilities plans, preliminary designs, designs, estimates, schedules and other items. Similarly, the LOCSD'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 it's 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