



February 1, 2012

President
Marshall E. Ochylski

Vice President
Leonard A. Moothart

Directors
Craig V. Baltimore
David S. Vogel
R. Michael Wright

General Manager

District Accountant
Amparo Haber

Fire Chief
Robert Lewin

Battalion Chief
Phill Veneris

TO: LOCSD Board of Directors
FROM: Jon Seitz, District Legal Counsel
SUBJECT: **Agenda Item 6C – 2/2/2012 Board Meeting**
Consider Contract with Mitch Cooney as District Interim
General Manager

RECOMMENDATION

Staff recommends that the Board by Motion approve the attached contract employing Mitch Cooney as the District's Interim General Manager

SUMMARY

Subject to approval of a contract, the Board at its Special Meeting held on Tuesday, January 31, 2012, unanimously voted to appoint Mitch Cooney as the District's Interim General Manager. This Item has been added to the February 2, 2012 Agenda as a Special Meeting Agenda Item. The proposed contract is attached to this staff report. Mitch Cooney has agreed to provide the District with Interim General Manager Services, on a part-time basis, at \$3,250.00 per month and without benefits normally received by District employees.

RECOMMENDED MOTION

I move to approve the attached contract hiring Mitch Cooney as the District's Interim General Manager.

Attachment

Mailing Address:
P.O. Box 6064
Los Osos, CA 93412

Offices:
2122 9th Street, Suite 102
Los Osos, CA 93402

Phone: 805/528-9370
FAX: 805/528-9377

www.locsd.org

**LOS OSOS COMMUNITY SERVICES DISTRICT
INTERIM GENERAL MANAGER
EMPLOYMENT CONTRACT**

Attachment:
Exhibit "A" – Interim General Manager Job Description

This Agreement (sometimes referred to herein as "Contract"), is made and entered into by and between the Los Osos Community Services District, (herein referred to as "District"), and Francis Mitchell Cooney, (herein referred to as "Temporary Contract Employee") with reference to the following recitals:

RECITALS

- A. District is a Community Services District organized and operating pursuant to 61000 et. seq., of the California Government Code.
- B. District desires to enter into a Contract Employment relationship with Francis Mitchell Cooney as Interim General Manager of the District.
- C. Temporary Contract Employee desires to enter into an employment relationship as Interim General Manager of the District.
- D. It is the purpose of this Contract to define the employment relationship of Francis Mitchell Cooney and the District during the term of this Contract. All references to Temporary Contract Employee in this Agreement refer to Francis Mitchell Cooney.

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

SECTION 1. EMPLOYMENT OF INTERIM GENERAL MANAGER

Subject to the terms and conditions of this Contract, District hereby agrees to employ Francis Mitchell Cooney as the District's Interim General Manager and Secretary to the Board of Directors (collectively "Interim General Manager").

SECTION 2. DUTIES

- A. The duties of the Interim General Manager are generally described in Exhibit "A", attached hereto and incorporated herein by this reference, and Government Code Section 61051 which provides as follows:

The General Manager shall be responsible for all of the following:

1. The implementation of the policies established by the Board of Directors for the operation of the District.

2. The appointment, supervision, discipline, and dismissal of the District's employees, consistent with the employee relations system established by the Board of Directors.
3. The supervision of the District's facilities and services.
4. The supervision of the District's finances.

B. The Temporary Contract Employee shall also act as the Secretary to the Board of Directors and shall be responsible for:

1. Maintaining accurate records of the proceedings of the Board of Directors.
2. Maintaining a book of District Ordinances or Codes with his/her attestation.
3. Maintaining District records including original Ordinances, Resolutions and Contracts and attest to the originals and true and correct copies of the same.
4. Administering Oaths or Affirmations and certifying affidavits and depositions pertaining to District affairs and business which may be used in any court or proceeding in the State.

C. The Temporary Contract Employee shall assist the Board of Directors in recruiting a permanent District General Manager.

D. The Temporary Contract Employee agrees to perform the function and duties specified in paragraphs A, B and C above and to perform other legally permissible and proper duties and functions as the District Board of Directors shall from time to time assign without additional compensation.

SECTION 3. TERM

A. This Contract shall take effect on Friday, February 3, 2012 ("Effective Date"), and shall remain in effect until the first of the following to occur ("termination date"):

1. One week after the permanent District General Manager starts employment with the District; or
2. May 15, 2012.

B. Nothing in this Contract shall prevent, limit or otherwise interfere with the right of Temporary Contract Employee to resign at any time from his position with District, subject only to the provisions set forth in Section 4 of this Contract.

SECTION 4. TERMINATION AND SEVERANCE PAY

A. Temporary Contract Employee understands and expressly agrees that he has no constitutionally protected property or other interests in his employment as Interim General Manager. Temporary Contract Employee understands and expressly agrees that he serves at the will and pleasure of the District Board of Directors and that he may be terminated or asked to resign at any time by the District Board of Directors, with or without cause.

B. Termination Without Cause: Temporary Contract Employee serves at the will and pleasure of the District's Board of Directors, and may be terminated without cause. In the event the District terminates Temporary Contract Employee without cause, Temporary Contract Employee shall receive a lump sum cash payment (severance pay) equal to two weeks of employment (or \$1,265.00). The District shall deduct all normal withholdings required by law with respect to any amounts paid under this section.

C. Termination For Cause: In the event Temporary Contract Employee is terminated for good cause, Temporary Contract Employee shall be entitled to all salary earned, but not paid as of the date of termination only. Temporary Contract Employee shall not be entitled to any other compensation, including, without limitation, any severance compensation. For purpose of this Contract, "good cause" shall include, but not necessarily be limited to, any of the following:

- (1) Any material breach by Temporary Contract Employee of any term or provision of this Contract;
- (2) Temporary Contract Employee's failure to perform his duties in a professional and responsible manner consistent with generally accepted standards of the profession;
- (3) Temporary Contract Employee's misfeasance;
- (4) Temporary Contract Employee's malfeasance;
- (5) Conduct unbecoming the position of Interim General Manager or likely to bring discredit or embarrassment to the District;
- (6) Insobriety;
- (7) Conviction of a misdemeanor involving moral turpitude;
- (8) Conviction of a felony;
- (9) Engaging in illegal business practices in connection with the District's business;

- (10) Misappropriation of the District's assets;
- (11) Excessive unexcused absences of Temporary Contract Employee from his employment during usual working hours; or
- (12) Failure to perform or habitually neglecting the duties which he is required to perform under this Contract.

D. Temporary Contract Employee may terminate this Contract at any time by giving District twenty-one (21) calendar days written notice in advance, unless the parties otherwise agree. Should Temporary Contract Employee fail to give such period of notice, Temporary Contract Employee shall pay to the District as liquidated damages the sum of forty dollars (\$40) per working day (not to exceed a maximum of 4 days per week), for the difference between the number of actual days of prior notice and twenty-one (21) calendar days. Temporary Contract Employee agrees that the liquidated damages may be deducted from his final paycheck.

E. If this Contract is terminated by District for cause pursuant to Section C, above and it is later determined that the termination was wrongful, such termination automatically shall be converted and treated as a Termination Without Cause under Section B, above, and Temporary Contract Employee shall be entitled to receive only the amounts payable hereunder in the event of a Termination Without Cause.

SECTION 5. SALARY AND WORKING HOURS

Subject to the time off provisions of Section 5, the following shall apply to Temporary Contract Employee.

A. Salary. District agrees to pay Temporary Contract Employee for his services rendered, a monthly salary of \$3,250 (three thousand and two hundred fifty dollars) payable in equal installments at the same time as other employees of District are paid. The District shall deduct all normal withholdings required by law with respect to any amounts paid under this section.

B. Hours per week. Temporary Contract Employee shall work a minimum of 24 (twenty-four) hours per week.

C. Hours per day. Temporary Contract Employee shall work a minimum of 4 (four) hours per day, 4 (four) days per week.

D. Maximum hours per calendar year. Without expanding the minimum limitations on working hours per day and days per week referenced in this Section, Temporary Contract Employee's cumulative working hours shall not exceed nine

hundred sixty (960) working hours during any one calendar year without the express authorization of the District Board of Directors.

SECTION 6. TIME OFF

A. Vacations. Temporary Contract Employee may take time off for the purposes of vacation as follows:

(1) Provided Temporary Contract Employee's administrative duties are duly delegated, Temporary Contract Employee may take the following time off for vacation:

(a) February 20 – March 6, 2012.

(2) Provided that Temporary Contract Employee's duties are duly delegated and the President has been provided with a minimum of 10 (ten) calendar days notice, then, in addition to the vacation time authorized by subparagraph (1), Temporary Contract Employee may take additional vacation days not to exceed four (4) days in a thirty (30) day period.

(3) Temporary Contract Employee's monthly compensation shall be proportionally reduced for vacation time off.

B. Holidays. Subject to the fulfillment of Interim General Manager's duties, Temporary Contract Employee may take off District-approved legal holidays. If a holiday is taken off, then the weekly requirement for working days per week referenced in Section 4(A) shall be reduced but not the hours per week referenced in Section 4(B).

SECTION 7. BENEFITS

Temporary Contract Employee shall not receive and/or be entitled to District benefits such as health insurance, retirement, vacation or sick leave. Temporary Contract Employee shall not be credited for holidays or leave for jury duty.

SECTION 8. EXPENSES

The District shall reimburse Temporary Contract Employee for incurred expenses as follows:

A. Automobile. Temporary Contract Employee shall provide his own automobile. District shall reimburse Temporary Contract Employee for automobile expenses at the prevailing IRS per diem mileage rate for:

(1) Expenses incurred in performing services for the District; and

(2) Travel to and from Pismo Beach, California. On those days where a scheduled meeting begins prior to 10 a.m. and a second meeting begins after 6 p.m. at two round-trips per day for each day worked pursuant to Section 4(C).

B. Professional expenses. District shall consider requests for funds for certain items, activities and materials deemed necessary and desirable for Temporary Contract Employee's continued professional development, participation, growth and advancement including travel and subsistence expenses for professional meetings and similar functions as follows:

- (1) Temporary Contract Employee shall prepare a budget for anticipated expenses that shall be approved by the District Board of Directors.
- (2) Temporary Contract Employee shall receive prior Board approval for all travel and subsistence expenses to courses, conferences and seminars conducted outside of the County of San Luis Obispo.
- (3) All expenses shall be paid in accordance with the laws of California and District Board policies and procedures.

C. Payment. Temporary Contract Employee shall invoice District on a monthly basis for expenses referenced in this Section which shall be considered for approval as part of the monthly Warrant Register prior to payment.

SECTION 9. EMPLOYMENT STATUS

A. Temporary Contract Employee understands and agrees that he is not entitled to be paid compensation comparable to a regular District employee performing similar work, but that the compensation received herein is negotiated for services rendered by Temporary Contract Employee.

B. Temporary Contract Employee understands and agrees that the terms of his employment is governed only by this Contract and that no other right of regular employment is created hereby.

SECTION 10. AUTOMOBILE INSURANCE

During the Contract Term Temporary Contract Employee shall maintain automobile insurance on personal vehicles. Proof of insurance shall be lodged with the District prior to the Effective Date.

SECTION 11. PERSONNEL POLICIES

Temporary Contract Employee has read and agrees to be bound by the following District Policies:

- A. INJURED ON DUTY
- B. SAFETY
- C. USE OF DISTRICT VEHICLES AND PROPERTY

- D. APPEARANCE AND CONDUCT
- E. SUBSTANCE ABUSE
- F. SEXUAL HARASSMENT
- G. HARASSMENT
- H. FITNESS FOR DUTY

SECTION 12. NOTICES

A. Notices pursuant to this Contract shall be in writing and shall be deemed received at the earlier of either (a) actual receipt, or (b) three (3) days following deposit in the U.S. Mail as provided below. Notices delivered by U.S. or private mail shall be directed to the addresses shown below, provided that a party may change addresses by giving written notice to the other party in accordance with this subsection:

- 1. District:
Los Osos Community Services District
2122 9th Street, Los Osos, CA 93402
Attn: President of the Board of Directors
- 2. Temporary Contract Employee:
Francis Mitchell Cooney
840 Visalia St., Pismo Beach, CA 93449

B. Notices under this section may be:

- (1) Served personally; or
- (2.) Sent by facsimile (provided a hard copy is mailed within one (1) business day); or
- (3) Delivered by first class U.S. Mail, certified, with postage prepaid and a return receipt requested; or
- (4) Sent by Federal Express or equivalent private mail delivery service.

SECTION 13. GENERAL PROVISIONS

A. Temporary Contract Employee shall comply with all local and state requirements regarding conflicts of interest and shall avoid personal involvement in situations which are inconsistent or incompatible with a position of Interim General Manager or give rise to the appearance of impropriety.

B. In accordance with and to the extent provided by California's Tort Claims Act (Government Code Section 825 et seq. and Government Code Sections 995-996.5), the District shall defend and indemnify Temporary Contract Employee against any and for all losses sustained by the Temporary Contract Employee in direct consequences of

the discharge of the Interim General Manager's duties on the District's behalf for the period of the Interim General Manager's employment pursuant to this Contract.

C. The terms of this Contract are intended by the parties as the final expression of their agreement and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend that this Contract constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any, involving this Contract. Any amendments to this Contract must be in writing and executed by both parties.

D. In the event of Temporary Contract Employee's death, Temporary Contract Employee's heirs, legatees, devisees, executors or legal representatives shall be entitled to all salary earned, but not paid. Temporary Contract Employee and his heirs, legatees, devisees, executors or legal representatives shall not be entitled to any other compensation, including, without limitation, any severance compensation.

E. If any term, covenant, condition or provision of this Contract 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.

F. This Contract shall be governed by the laws of the State of California. Temporary Contract Employee and the District agree that venue for any dispute shall be in San Luis Obispo County, California.

G. The parties acknowledge that they understand the significance and consequences of this Contract. The parties also acknowledge that they have been given full opportunity to review and negotiate this Contract and execute it only after full reflection and analysis, and that they have had an opportunity to review this document and its application and meaning with their respective attorneys and advisors. This Contract shall not be interpreted against the party who prepared the initial draft because all parties participated in the drafting of this Contract by having ample opportunity to review and submit suggested changes or corrections for incorporation into the final version of this Contract.

H. Temporary Contract Employee may not assign this Contract in whole or in part.

I. This Contract may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument, and shall be governed by the laws of the State of California.

J. This Contract shall become effective on the date the Contract is approved by the District Board of Directors.

IN WITNESS WHEREOF, District and Temporary Contract Employee have executed this Contract on the day and year first set forth below.

I have read this Contract and agree to be employed by the District under the terms and condition herein stated. I understand and agree that no representative of the District has the authority to enter into any agreement, expressed or implied, that would modify the terms and conditions of this Contract.

Francis Mitchell Cooney,
Temporary Contract Employee

Date

Approved by District Board of Directors

Marshall Ochylski, President
Board of Directors
Los Osos Community Services District

Date

**EXHIBIT "A" TO
INTERIM GENERAL MANAGER'S EMPLOYMENT CONTRACT**

1. GENERAL

Under policy direction of the Board of Directors, plans, organizes, coordinates and supervises all District functions and activities related to the production and distribution of potable water within the District's water distribution zone and the collection, treatment and disposal of wastewater in various zones and other functions of the District including contract administration for fire and solid waste services; provides policy guidance and program evaluation to staff and the Board of Directors; fosters cooperative working relationships with intergovernmental and regulatory agencies, the public, various public and private organizations and District staff; acts as Secretary to the Board of Directors; performs related work as assigned. This position FLSA exempt.

2. EXAMPLES OF DUTIES (Illustrative Only)

A. Plans, organizes, coordinates and administers, either directly or through subordinate supervisors, the work of the District in accordance with the adopted goals and objectives of the Board of Directors and applicable laws and regulations.

B. Directs and coordinates the development and implementation of goals, objectives, policies, procedures and programs for the District; administrative policies, procedures and work standards to assure that goals and objectives are met and that programs provide mandated services in an effective and efficient manner.

C. Prepares and administers the budget for the District; reviews all District expenditures; provides financial management for the District.

D. Prepares Agendas, with the cooperation of the President, for all meetings of the Board of Directors.

E. Assures that appropriate notice of Board meetings is posted and that other legal notification requirements are met.

F. Responsible for the preparation of Staff Reports for Agenda items.

G. Prepares for and attends all regular and special meetings of the Board of Directors and other meetings as directed by the Board of Directors.

H. Represents the Board and the District in contacts with governmental agencies, community groups and various business, professional and legislative organizations and District customers; acts as a District liaison with the media.

I. Directs and reviews special studies; provides for contract services as required and administers various service contracts.

J. Administers discipline as required; provides guidance and direction to staff regarding policies and procedures.

K. Prepares a variety of correspondence, policies, procedures, reports, minutes and other written materials.

L. Maintains and directs the maintenance of official District files.

M. Assures that the Board is kept informed of the financial status of District programs and activities.

N. In concert with the District Counsel, monitors changes in the law and operational process changes that may affect District operations; implements operational and procedural modification as required.

3. LICENSING AND CERTIFICATION

A. Must possess a valid California Class C driver's license and have a satisfactory driving record.

B. Must be bondable by District's fidelity bond insurer.