



March 7, 2013

TO: LOCSD Board of Directors
FROM: Ampy Haber, District Accountant *ah*
SUBJECT: **Agenda Item 11F – 3/7/2013 Board Meeting**
Award Contract for Audit Services for Fiscal Years
2012/13 to 2014/15

President
Leonard A. Moothart

Vice President
Craig V. Baltimore

Directors
Marshall E. Ochylski
David S. Vogel
R. Michael Wright

Interim General Manager
Margaret Falkner

District Accountant
Amparo Haber

Fire Chief
Robert Lewin

Battalion Chief
Phill Veneris

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

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2122 9th Street, Suite 102
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www.locsd.org

DESCRIPTION:

Responses to the RFP for audit services issued in January 2013 closed on February 15, 2013. This item submits a contract with Moss, Levy & Hartzheim LLP, Certified Public Accountants for a fee of \$13,900 for each of the years to be audited which are Fiscal Years 2012/13 to Fiscal Year 2014/15.

STAFF RECOMMENDATION:

Staff recommends that the Board adopt the following motion:

Motion: I move that the Board award the contract for three-year audit services to Moss, Levy & Hartzheim as per attached.

DISCUSSION:

Staff has been in contact with the Financial Advisory Committee regarding the details and the selection process to award a contract for audit services. They and the Chairperson and Vice-Chairperson of the Committee have all received copies of the responses and the cost quotations. The selected firm, Moss, Levy & Hartzheim LLP submitted the lowest bid and also comes with commendable qualifications.

Copies of the responses are available at the District office to anyone who wants to inspect them.

This firm has extensive experience in governmental auditing. Among their clients are the Cities of Santa Maria and Morgan Hill and many independent Special Districts. The firm has offices in Santa Maria, Beverly Hills and Culver City.

Although the contract is only for three years, it is customary that an audit contract is extended without any RFP if all factors are satisfactory. There is a new legislation however that limits the total consecutive years to six years.

FINANCIAL IMPACT:

This appropriation for this item will be in the budget of FY2013/14.

Attachment

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

AGREEMENT FOR FINANCIAL AUDIT SERVICES

THIS AGREEMENT is made by and between the Los Osos Community Services District, a public agency duly existing and operating pursuant to the provisions of Government Code Section 61000 et seq. (hereinafter referred to as "LOCSD") and Moss, Levy & Hartzheim LLP, Certified Public Accountants having a principal place of business at 2400 Professional Parkway, Suite 205, Santa Maria, CA 93455 (hereinafter referred to as (CONTRACTOR"), wherein CONTRACTOR 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. Margaret Falkner, Interim General Manager, at telephone number (805) 528-9370 is the Contract Administrator (hereinafter referred to as CA) of LOCSD and will administer this Agreement for and on behalf of LOCSD. Ron A. Levy, CPA, at telephone number (805) 925-2579 is the authorized representative for CONTRACTOR. 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, or as attachments to electronic mail or otherwise delivered as follows:

LOCSD: Los Osos Community Services LOCSD
P.O. Box 6064
Los Osos, CA 93412
Attn: Margaret Falkner, Interim General Manager

Or to, mfalkner@lososocsd.org

CONTRACTOR: Moss, Levy & Hartzheim LLP, Certified Public Accountants
2400 Professional Parkway, Suite 205
Santa Maria, CA 93455
Attn: Ron A. Levy, CPA

Or to, rlevy@mlh@cpas.com

Notices may also be delivered to 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 seven (7) days following their deposit in the U.S. mail.

3. SCOPE OF SERVICES.

3.1. Subject to the terms and conditions of this Agreement, CONTRACTOR shall conduct three (3) consecutive yearly audits of the financial statements of the District, starting with fiscal year 2012-13 and ending with fiscal year 2014-15 in accordance with generally accepted auditing standards set forth by the bodies of authority, herein listed, for the purpose of expressing an opinion on the conformity of the financial statements with generally accepted accounting principles.

3.2. **REPORTS:** As a result of the conduct of work described in the preceding section, CONTRACTOR shall issue the following reports:

- a. A report on the fair presentation of the financial statements of LOCSD in conformity with generally accepted accounting principles
- b. A Single Audit report when a federal grant is received in a fiscal year meeting the qualifications of an auditable grant.
- c. A report on the internal control structures used in administering federal grants along with a report on compliance with general and specific requirements related to these grants.
- d. A management letter summarizing the findings from: (1) the review of the District's internal controls system, technology system or other management structures, along with recommendations for solutions or improvements, and (2) compliance review of pertinent laws and regulations.
- e. A report on the District's compliance with the Gann appropriation limit as per statutes.

3.3. **EXTRA SERVICES.** CONTRACTOR shall not perform any extra services which are considered beyond the scope of basic services as described in this section. Should there be a need identified by CONTRACTOR to perform extra services, CONTRACTOR will provide a written request to the CA, specifying these services, justification and cost. The CA will convey approval of these extra services only in writing to the CONTRACTOR at which point the CONTRACTOR can then proceed.

4. OTHER DELIVERABLES BY CONTRACTOR

4.1. CONTRACTOR agrees to appear in person before the Board of Directors to present the completed reports or at any time during the performance of this contract and to consult with and report as to the progress of the examination and all other matters pertaining thereto, when requested by the CA of LOCSD;

4.2. CONTRACTOR agrees that in the event that irregularities, unforeseen conditions, or the need for special inquiry requiring investigation beyond the scope of services required by this Agreement are discovered, CONTRACTOR will immediately report such conditions to the CA or the General Manager of LOCSD. Where the issue at hand involves these personnel, CONTRACTOR will report directly to the President of the Board of Directors of LOCSD. CONTRACTOR AND LOCSD acknowledge that further investigation beyond the scope of services required by this agreement would require negotiation and the execution of a separate agreement or amendment to this Agreement.

4.3. CONTRACTOR shall schedule an exit interview with the CA, and other appropriate LOCSD representatives to discuss any report and recommendations at the completion of the field work and prior to filing its report;

4.4. CONTRACTOR shall meet with and discuss each of its final reports including the Report to Management with the CA, and any other appropriate LOCSD representatives;

4.5. CONTRACTOR shall print or reproduce the reports in electronic medium as requested by LOCSD.

4.6. CONTRACTOR shall make available to LOCSD materials and any training resources regarding new accounting and reporting changes or developments that CONTRACTOR periodically becomes aware of to enable LOCSD to implement necessary updates to any of its accounting and other structures.

4.7. COMPLETION OF AUDIT AND DELIVERY OF REPORT. Under normal circumstances, LOCSD expects CONTRACTOR to have a final report presented to the Board of Directors no later than the board meeting in December each year which normally takes place on the first Thursday of the month.

5. AUDIT STANDARDS

5.1 CONTRACTOR agrees to perform, complete, and comply with the tasks and responsibilities as listed herein following audit standards prescribed by the following bodies of authority:

- a. Generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants (AICPA);
- b. The standards for financial audits set forth in the U.S. General Accounting Office's (GAO) Government Auditing Standards;
- c. The provisions of the Single Audit Act of 1984 as amended in 1996 and the provisions of the U.S. Office of Management and Budget (OMB) Circular A-133, as periodically amended, Audits of States, Local Governments, and Non-Profit Organization;
- d. Laws and regulations of the State of California, most specifically the California Code of Regulations (CCR), Title 2, Division 2, Chapter 2, Subchapter 5, Sections 1131.2 to 1131.5, Minimum Audit Requirements and Reporting Guidelines for Special Districts.
- e. Other pronouncements, guidelines or requirements issued from time to time by professional organizations considered as bodies of authority in the accounting and audit field such as, but not exclusive to, the Governmental Finance Officers Association (GFOA).

6. CONTRACT COMMENCEMENT AND EXECUTION. CONTRACTOR shall contact LOCSD staff to agree on times when field work or other initial audit steps that will involve LOCSD staff will commence, said times set to enable CONTRACTOR to meet the timelines of deliverables described herein.

7. COMPENSATION, PAYMENTS AND ADJUSTMENTS

7.1. Subject to the terms and conditions of this Agreement, the LOCSD shall pay to the CONTRACTOR a sum not to exceed \$13,900 for each fiscal year audited spanning three (3) fiscal years, FY2012/13 to FY2014/15. Said sum shall include all out-of-pocket expenses incurred by CONTRACTOR, including but not limited to, meals, lodging, copying and travel costs.

7.2. **RATES, BASES OF COMPENSATION.** The compensation of CONTRACTOR is based on the following hourly rates:

<u>Classification</u>	<u>Hourly \$ Rate</u>
Audit Partner	125
Audit Manager	85
Senior Staff	75
Staff Accountant	50
Administrative	30

7.3. Progress payments shall be made by LOCSD to the CONTRACTOR within forty-five (45) days of receipt from CONTRACTOR of billing for work performed in the preceding month or months, withholding retention of 20%. The retention shall be paid by LOCSD within 30 days of delivery of reports as herein listed and after receiving the final billing from CONTRACTOR.

7.4. 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 require CONTRACTOR to correct the work or billing or for LOCSD to seek any other legal remedy.

7.5. **DISALLOWANCE.** In the event the CONTRACTOR receives payment for services under this contract for which reimbursement is later disallowed by LOCSD, the CONTRACTOR shall promptly refund the disallowed amount to the LOCSD or, if approved by LOCSD, offset the amount disallowed from any future payment due to the CONTRACTOR under this Agreement.

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

9. PERFORMANCE STANDARDS.

9.1. **COMPLIANCE WITH LAWS.**

(a) CONTRACTOR shall (and shall cause its agents and contractors), at its sole cost and expense, 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 this Agreement. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether LOCSD be a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and LOCSD. Any corrections to CONTRACTOR's instruments of professional service which become necessary as a result of the CONTRACTOR's failure to comply with these requirements shall be made at the CONTRACTOR's expense.

(b) Should these requirements change after this agreement is entered into, CONTRACTOR shall be responsible for notifying LOCSD of such change in requirements. CONTRACTOR will bring the instruments of professional service into conformance with the newly issued requirements at the written direction of LOCSD. CONTRACTOR's costs for providing services pursuant to this paragraph shall be submitted to LOCSD as Additional Services.

9.2. **STANDARD OF PERFORMANCE.** CONTRACTOR represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONTRACTOR shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature which CONTRACTOR delivers to LOCSD pursuant to this Agreement shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession. CONTRACTOR 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 CONTRACTOR without additional compensation throughout the term of this Agreement.

9.3. **PROFESSIONAL SEAL.** CONTRACTOR shall have documents stamped by registered professionals, at CONTRACTOR's cost, for the disciplines covered by CONTRACTOR'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 Services.

10. TAXES. CONTRACTOR 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 CONTRACTOR

11. CONFLICT OF INTEREST. CONTRACTOR covenants that CONTRACTOR 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. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR.

12. RESPONSIBILITIES OF LOCSD. LOCSD shall provide all information reasonably necessary for CONTRACTOR in performing the services provided herein including trial balances, budgetary and encumbrance data, cash flow statements for proprietary funds, draft notes and adjustments for the government-wide statements.

13. OWNERSHIP OF DOCUMENTS. All draft reports and studies, all final reports and studies, documents and other instruments of professional service prepared by CONTRACTOR during the performance of this Agreement shall become the property of LOCSD. However, CONTRACTOR 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.

14. RECORDS, AUDIT AND REVIEW. CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent

practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. LOCSD shall have the right to audit and review all such documents and records, including records showing time spent by the audit staff, at any time during CONTRACTOR's regular business hours or upon reasonable notice and request copies of a reasonable number of documents and records.

In addition, CONTRACTOR shall be willing to respond to reasonable inquiries or request for documents and records by successor auditors.

15. INDEMNIFICATION.

15.1. CONTRACTOR 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 performance or attempted performance of this Agreement or occasioned by the performance or attempted performance of the other independent contractors and CONTRACTORS directly responsible to CONTRACTOR; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting solely from the negligence or willful misconduct of LOCSD.

15.2. Neither termination of this Agreement or completion of the tasks and responsibilities of CONTRACTOR under this Agreement shall release CONTRACTOR from its obligations 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 CONTRACTOR, its employees, agents or CONTRACTORS, or the employee, agent or CONTRACTOR of any one of them.

15.3. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in the Agreement does not relieve CONTRACTOR 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.

16. INSURANCE.

A. CONTRACTOR shall procure and maintain insurance with 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 on an "occurrence basis", written on the ISO form shown below (or its equivalent) at the minimum limits of liability specified for each:

Commercial General Liability Insurance	\$1 Million per occurrence
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(ISO Form CG 0001 11/85)	\$2 Million general aggregate
Commercial Automobile Liability Insurance (ISO Form CA 0001 12/90)	\$1 Million per accident
Workers' Compensation Insurance	per Statutory requirements
Employer's Liability Insurance	\$1 Million policy limit
Professional Liability Insurance	\$1 Million per claim \$2 Million in the aggregate

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

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

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

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

C. Prior to commencing work under this Agreement, CONTRACTOR 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 CONTRACTOR hereunder. Any failure to comply with this requirement shall constitute a material breach of this Agreement.

17. PERSONNEL. The CONTRACTOR 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 CONTRACTOR or under CONTRACTOR's supervision, and all personnel engaged in the work shall be qualified to perform such services.

18. NONEXCLUSIVE AGREEMENT. CONTRACTOR 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 CONTRACTOR as the LOCSD desires.

19. 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.

20. 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 CONTRACTOR to perform any provision of this Agreement. CONTRACTOR will be paid for services performed through the date of temporary suspension. In the event that CONTRACTOR'S services hereunder are delayed for a period in excess of six (6) months due to causes beyond CONTRACTOR'S reasonable control, CONTRACTOR'S compensation shall be subject to renegotiation.

21. TERMINATION.

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

B. RETURN OF MATERIALS. Upon such termination, CONTRACTOR shall immediately turn over to the District copies of draft and final studies, draft and final reports, computations, computer models and other instruments of professional services, whether or not completed, prepared by CONTRACTOR, or given to CONTRACTOR in connection with this Agreement. CONTRACTOR, however, shall not be liable for LOCSD's use of incomplete materials nor 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 CONTRACTOR undisputed payments set forth in Section 6, above, CONTRACTOR may, at CONTRACTOR'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.

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

A. LOCSD and CONTRACTOR 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).

23. PROGRESS AND PERFORMANCE OF SERVICES. No claim, potential claim, dispute or controversy, except non-payment by LOCSD of undisputed amounts, shall interfere with the progress and performance of the Services or any changes thereto, and CONTRACTOR shall proceed as directed by the LOCSD in all instances with its Services, including any disputed Services, or any changes thereto and any failure of CONTRACTOR to proceed shall be deemed a material breach of this Agreement entitling LOCSD to all remedies available under this Agreement and/or applicable law. Except as provided elsewhere in this Agreement, LOCSD shall continue to make payments in accordance with the Agreement.

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

25. NON-DISCRIMINATION. CONTRACTOR shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with, or related to, the performance of this Agreement.

26. UNAUTHORIZED ALIENS. CONTRACTOR hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONTRACTOR so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against LOCSD for such use of unauthorized aliens, CONTRACTOR hereby agrees to and shall reimburse LOCSD for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by LOCSD. CONTRACTOR shall comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein.

27. ASSIGNMENT. The expertise and experience of CONTRACTOR are material considerations for this Agreement. LOCSD has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon CONTRACTOR under this Agreement. In recognition of that interest, CONTRACTOR shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of CONTRACTOR's duties or obligations under this Agreement without the prior written consent of the LOCSD Board of Directors. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling LOCSD to any and all remedies at law or in equity, including summary termination of this Agreement.

28. NON-LIABILITY OF LOCSD OFFICERS AND EMPLOYEES. No officer or employee of LOCSD will be personally liable to CONTRACTOR, in the event of any default or breach by the LOCSD or for any amount that may become due to CONTRACTOR.

29. INTERPRETATION OF THIS AGREEMENT. The parties acknowledge that each party and its attorney had the opportunity to review, negotiate and revise this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the obligations contemplated by this Agreement.

The content of the RFP sent out by LOCSD and the response of CONTRACTOR to the RFP may be considered in interpreting any part of this agreement or in resolving some disputes that may arise where applicable.

30. 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.

31. 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.

32. 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.

33. REMEDIES NOT EXCLUSIVE. Except as provided in Sections 22, 23 and 24, 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.

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

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

41. 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.

42. 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.

CONTRACTOR: Moss, Levy & Hartzheim LLP, Certified Public Accountants

By: _____

Name: _____

Title: _____

Date: _____

LOS OSOS COMMUNITY SERVICES LOCSD

Margaret Falkner, Interim General Manager

Date: _____

Approved as to form:

Michael W. Seitz, District Legal Counsel

Date: _____