



February 2, 2023

TO: LOCSD Board of Directors

FROM: Ron Munds, General Manager

SUBJECT: Agenda Item 10J – 02/02/2023 Board Meeting
Approval of the Release of the Request for Proposal (RFP) for Environmental Work for the Water Resiliency Intertie Project.

DESCRIPTION

At the October 6, 2022 Board meeting, the Board conceptually approved moving forward with the environmental work for the Water Resilience Intertie Project. Staff and the District Engineer have developed an RFP to move forward with the work and are seeking approval to release the RFP.

President

Charles L. Cesena

Vice President

Marshall E. Ochylski

Directors

Matthew Fourcroy

Troy C. Gatchell

Christine M. Womack

General Manager

Ron Munds

District Accountant

Robert Stilts, CPA

Unit Chief

John Owens

Battalion Chief

Paul Provence

SUMMARY OF STAFF RECOMMENDATION

This item will be approved along with the Consent Calendar unless it is pulled by a Director for separate consideration. If so, Staff recommends that the Board adopt the following motion:

Motion: I move that the Board:

- 1. Approve the Request for Proposal as presented; and***
- 2. Authorize the General Manager to solicit proposal submittals according to the terms and timeline in the RFP; and***
- 3. Authorize the General Manager to execute a contract with the most responsive and responsible proposer with a cost which is within 20% of the Engineer's Estimate of \$80,000.***

DISCUSSION

At the October 6, 2022, the Board directed staff to:

- Send correspondence to the County expressing the District's interest in acquiring State Water;
- Continue negotiations to secure water, preferably Table A State Water, which is a more assured and reliable water contract;
- Move forward with the environmental work based on the preliminary preferred design presented in the Technical Memorandum in order to position the project for future grant and other funding.

The Board also approved allocating \$80,000 to fund the cost of the environmental work needed to move the project forward.

Staff and the District Engineer have developed an RFP to move forward with the work and are seeking approval to release the RFP.

The following is the schedule outlined in the RFP:

Mailing Address:

P.O. Box 6064
Los Osos, CA 93412

Offices:

2122 9th Street, Suite 110
Los Osos, CA 93402

Phone: 805/528-9370

FAX: 805/528-9377

www.losososcsd.org

Item	Date
Proposal Due	2/21/23
District Review of Proposals	2/21/23 to 2/24/23
District Recommendation of Selected Firm/Staff Report	2/24/23
Board Meeting to Award Contract	3/7/23 (if needed)
Consultant Notice of Contract Award	3/8/23
Contract Negotiation/Notice to Proceed	3/16/23

FINANCIAL IMPACT

The estimated cost for the professional services for the environmental work is \$80,000. With the recent escalated costs due to inflation, the recommendation is to authorize the General Manager to execute a contract within 20% of this estimated cost or \$96,000. This is consistent with the recently adopted procurement policy. As stated, the Board allocated \$80,000 to project at the October 6, 2023 Board meeting. There are sufficient funds in the Fund 500 Capital Outlay budget to cover this expenditure.

Attachment

**REQUEST FOR QUALIFICATIONS/PROPOSAL (RFQ/P)
LOS OSOS COMMUNITY SERVICES DISTRICT
ENVIRONMENTAL REVIEW FOR WATER RESILIENCY INTERTIE**

The Los Osos Community Services District (District) has prepared this Request for Qualifications/Proposal (RFQ/P) for the implementation of a Project to provide environmental review for providing a potable water intertie, that would allow for the delivery of available potable water from outside water sources to the District. Climate change and extended drought conditions on the West Coast are a reality, and must be planned for by all local water agencies. Qualified environmental consultants are being requested to provide a proposal addressing the scope and needs of this Project described herein.

Proposal Due Date: Tuesday, February 21, 2023. Any proposals received after this date/time will be returned to the proposer un-opened. It shall be the proposers' responsibility to verify and confirm receipt of the proposals by the specified due date and time.

Pre-Proposal Meeting: The District will not hold a pre-proposal meeting; however, proposers may contact Steve Tanaka, Wallace Group at 805-544-4011 for additional information and questions.

Proposal Delivery Location: Provide only PDF electronic proposals, emailed to Steve Tanaka, Wallace Group, stevent@wallacegroup.us. SUBMIT PROPOSED FEES IN A SEPARATE PDF, CLEARLY MARKED "PROPOSER NAME_ENVIRONMENTAL REVIEW FOR WATER RESILIENCY INTERTIE", AND EMAIL TO THE CONTACT PERSON NAMED ABOVE.

Contact: Steve Tanaka, Wallace Group, 805-544-4011 for details and information regarding this proposal and associated requirements.

BACKGROUND

See Attachment A, Project Description and Scope of Services. Also see attached Figure 1 which depicts the general Project pipeline alignment being considered.

INQUIRIES DURING PROPOSAL PERIOD

Consultants must direct all inquiries to the District in writing, via email, Attention: Steven Tanaka, at stevent@wallacegroup.us. All inquiries will be responded to in writing, and questions and responses will be disseminated to all consultant teams for their consideration. The origination of the questions will not be disclosed. **All inquiries must be received no later than Friday, February 10, 2023 (close of business) in order to receive responses from the District.** Inquiries received after this deadline will not be considered or responded to.

ADDENDA TO RFP

Through the course of the proposal development, consultants may raise questions concerning the RFP, which may impact proposals. The District will issue addenda as necessary to further clarify the requirements and expectations of the RFP. The District reserves the right to issue addenda up to 5 business days prior to the due date of the RFP, without time extension of the RFP due date. At the time each addendum is issued, consultants shall acknowledge receipt by immediately faxing the acknowledgment form (included with the addendum) to the District.

**REQUEST FOR PROPOSALS
LOS OSOS COMMUNITY SERVICES DISTRICT
ENVIRONMENTAL REVIEW FOR PROGRAM C WELL SITES**

PROPOSAL REQUIREMENTS

Proposal Rejection or Withdrawal. Late proposals (submitted after the specified due date/time) shall be rejected by the District. The District reserves the right to accept or reject any or all proposals.

Agreement. Consultant shall review the Agreement for Services included as Attachment B, and list any exceptions desired for consideration during negotiation of services and fees for the Project. The District will consider all requests; however, reserves the right to reject any or all of Consultant's contract exceptions.

PROPOSAL FORMAT

General. Proposals shall be in simple letter format, and present only the information required to delineate scope of services, general approach to the Work, work schedule and fees. Do not provide resumes, company information or other information not specifically related to the scope of services for the Project. Address the letter proposal to:

Mr. Ron Munds, General Manager,
Los Osos Community Services District
2122 9th Street, Suite 110
Los Osos, CA 93402

In addition to scope of services, your letter proposal must provide:

- Approach. Provide discussion of your approach to implement the scope of services. Please be brief.
- Scope clarifications clearly indicating assumptions, what is included and what is excluded from your scope of services. If you propose optional tasks, provide separate line item in the fee table corresponding to this optional work. Please embellish and expand on the Attachment A Scope of Work, based on your understanding of the Project environmental review requirements to satisfy CEQA.
- Schedule. Provide a project schedule, in narrative or simple bar chart form, along with a clear statement as to all assumptions and basis for the proposed schedule.
- Contract Exceptions. Include a description of proposed contract exceptions that you wish the District to consider as part of the Work.

The project award schedule is as follows:

Item	Date
Proposal Due	2/21/23
District Review of Proposals	2/21/23 to 2/24/23
District Recommendation of Selected Firm	2/24/23
Board Meeting to Award Contract	3/7/23
Consultant Notice of Contract Award	3/8/23
Contract Negotiation/Notice to Proceed	3/20/23

REQUEST FOR PROPOSALS LOS OSOS COMMUNITY SERVICES DISTRICT ENVIRONMENTAL REVIEW FOR PROGRAM C WELL SITES

Attachment A

Project Description and Scope of Services

This Attachment A includes project background/description, outline scope of services.

Project Background

This Project would allow delivery of potable water to the District's water distribution system, thereby reducing the amount of local groundwater pumping from the Los Osos Groundwater Basin (thus providing further protection against seawater intrusion).

The Project would require an inter-tie, or physical connection to a local water transmission facility, to allow transport of potable water to the District's water system. This would essentially be a vault with piping, meter, and valves (and pump station if necessary), that would allow the controlled and metered flow of potable water to the Los Osos CSD. The only identified nearby water transmission system is the Chorro Valley Pipeline (CVP), which delivers State Water to the City of Morro Bay. An inter-tie to the CVP would need to be constructed in South Bay Boulevard, between the District's water system (at Santa Ysabel Avenue/South Bay Boulevard), or roughly 2.5-miles long. To tie in to the CVP, the water pipeline would head east on Quintana Road from South Bay Boulevard, then turn north to cross under Highway 1 to the CVP. **Refer to Figure 1 for a graphic layout of the expected pipeline alignment.**

The intertie project would include the following elements:

- New 12" pipeline, around 2.5 miles in length, in South Bay Boulevard, extending from the District's water system (at Santa Ysabel Avenue/South Bay Boulevard) to the CVP in Morro Bay. To tie in to the CVP, the water pipeline would head east on Quintana Road from South Bay Boulevard, then turn north to the cross under Highway 1 to the CVP. The pipeline is expected to be a 12" PVC C900 Class 235 pipeline, except at bridge crossings and in the vault (turnout) where the pipeline would be ductile iron. There would be two creek crossings along South Bay Boulevard, at Chorro Creek and Los Osos Creek.
- Inter-tie or turn-out, connecting to the Chorro Valley Pipeline, which includes valving, tie-in to the 18" CVP, and metering vault. It is envisioned the metering vault would include a check valve to safeguard against the potential to introduce water in the CVP. The Option 1 tie-in location (shown on Figure 1) is the only viable tie-in location and thus the other two options shown need not be evaluated as part of this Project. The District will be Lead Agency on this Project.

REQUEST FOR PROPOSALS LOS OSOS COMMUNITY SERVICES DISTRICT ENVIRONMENTAL REVIEW FOR PROGRAM C WELL SITES

SCOPE OF SERVICES

The following minimum scope of services shall be provided, and included in Consultant's letter proposal:

Task 1. Prepare Environmental Document

Task 1.1, Field Review/Constraints Analysis. Conduct required field review and constraints analysis of the Project, including the Option 1 tie-in location (see Figure 1). Due to the sensitive nature of this Project, contact the District a minimum of two weeks prior to planned site reconnaissance work to allow District sufficient time to conduct outreach to appropriate stakeholders.

The District believes that all areas requiring access are in the public right of way, or easements for the CVP. Thus, no property access agreements will be required for this Work.

Consultants shall assume that the pipeline alignment will remain within the South Bay Boulevard public right of way (and within the paved roadway) at all times, and that the pipeline will traverse both bridges by structural attachment to the bridges. The District understands that evaluation of Morro Shoulder-banded Snail may need to be conducted on a habitat assessment level, and that protocol surveys may need to be conducted later (protocol survey during the rainy season) as part of the recommended mitigation measures.

Task 1.2, Prepare Initial Study/Mitigated Negative Declaration. Prepare the required Initial Study/Mitigated Negative Declaration (IS/MND) for the identified pipeline alignment and tie-in location shown on Figure 1. The IS/MND shall be suitable to allow the District to obtain the Coastal Development Permit for the Project. Include in the IS/MND review and discussion of potential construction impacts, and impacts during operation of the pipeline. Make your recommendation as to specific requirements to satisfy CEQA, including at a minimum, cultural and biological resource review, traffic impacts, air quality, noise, and traffic impacts.

Task 1.3, Meetings. Attend two meetings, one kick-off meeting, and one review meeting (following submission of the draft Initial Study), with District staff and the District Engineer.

Deliverables:

- PDF, Draft Constraints Analysis
- PDF, Final Constraints Analysis
- PDF, draft Environmental Report (IS/MND)
- PDF, final Environmental Report (IS/MND)

The following are assumptions made by the District. Consultant shall modify this list, and state assumptions in your Proposal.

- No Federal funding (thus NEPA requirements do not apply)
- No permitting requirements to conduct this Environmental Review Work
- No new cultural resources and no significant updates to previously recorded sites.
- No subsurface archaeological testing, data recovery investigations, build environment surveys, Native American consultation, or cultural resource monitoring.
- No CEQA noticing/filing fees

**REQUEST FOR PROPOSALS
LOS OSOS COMMUNITY SERVICES DISTRICT
ENVIRONMENTAL REVIEW FOR PROGRAM C WELL SITES**

District Responsibilities:

- Obtaining and executing site access agreements, if needed, with the various property owners for the site environmental review.
- The District will conduct early consultation with the County and the City of Morro Bay in conjunction with this environmental work and the Coastal Development Permit process, to help identify any issues or specific areas of concern the County or City may have.

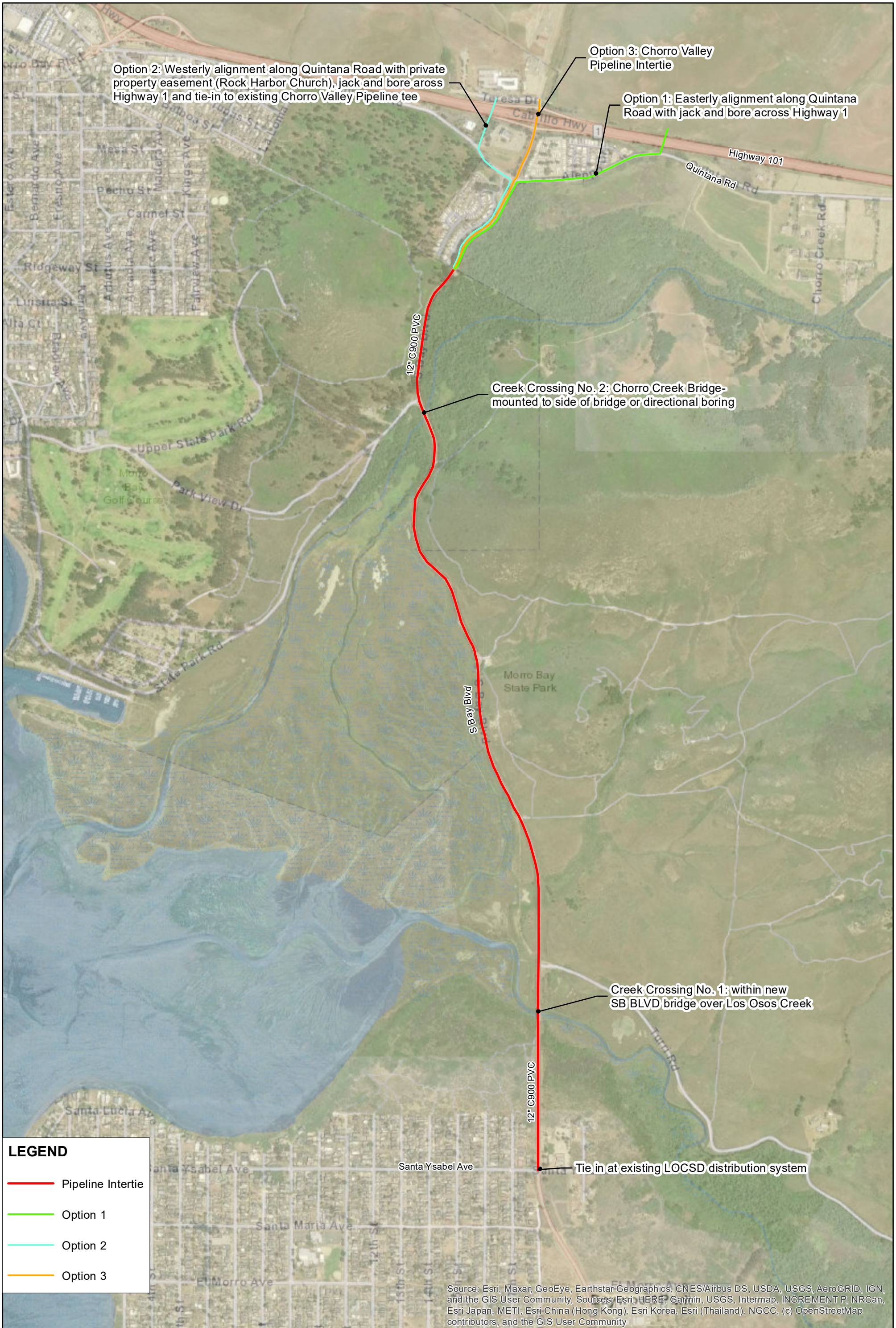


Figure 1
Los Osos Morro Bay Resiliency Intertie

**REQUEST FOR PROPOSALS
LOS OSOS COMMUNITY SERVICES DISTRICT
ENVIRONMENTAL REVIEW FOR PROGRAM C WELL SITES**

ATTACHMENT B

LOS OSOS CSD STANDARD AGREEMENT

AGREEMENT FOR PROFESSIONAL SERVICES

This **AGREEMENT FOR PROFESSIONAL SERVICES** ("Agreement") is made and effective as of _____, 2022 (the "Effective Date"), between _____ ("Consultant"), and the **LOS OSOS COMMUNITY SERVICES DISTRICT**, a political subdivision of the State of California ("District"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on the Effective Date and shall remain in effect from through _____ ("Term").

2. SERVICES

Consultant shall perform the tasks described in Consultant's proposal for _____ (the "Proposal") attached hereto as Exhibit A and incorporated herein by this reference. To the extent that any of the terms of this Agreement conflict or contradict terms contained in the Proposal, the terms of this Agreement shall control.

3. PERFORMANCE

Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. AGREEMENT ADMINISTRATION

District's General Manager shall represent District in all matters pertaining to the administration of this Agreement. _____, will represent Consultant in all matters pertaining to the administration of this Agreement.

5. PAYMENT

The District agrees to pay Consultant in accordance with the Proposal set forth in Exhibit A. Consultant agrees that in no event will the total amount of money paid to Consultant for services contemplated by this Agreement exceed the sum of _____ Dollars (\$_____.00), unless otherwise first approved in writing by the District. Invoices will be submitted monthly, and payment is due within 45 calendar days from receipt of invoice.

6. **SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

(a) The District may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the District suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the District shall pay to Consultant for the actual work performed up to the time of termination. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice and all relevant work product up to the date of termination to the District pursuant to Section 5.

7. **DEFAULT OF CONSULTANT**

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, District shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

(b) If the District General Manager or its delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, the District General Manager shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the District shall have the right, notwithstanding any other provision of this Agreement to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. **LAWS TO BE OBSERVED.** Consultant shall:

(a) Procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incidental to the due and lawful prosecution of the services to be performed by Consultant under this Agreement if agreed upon in the Project Scope of Services. If the scope of services includes Consultant's assistance in applying for governmental or regulatory permits or approvals, Consultant's assistance shall not constitute a representation, warranty or guarantee that such permits or approvals will be acted upon favorably by any governmental agency;

(b) Keep itself fully informed of all existing and proposed federal, state and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this Agreement, any materials used in Consultant's performance under this Agreement, or the conduct of the services under this Agreement;

(c) At all times observe and comply with, and cause all of its employees to observe and comply with all of said laws, ordinances, regulations, orders, and decrees mentioned above;

(d) Immediately report to the District's General Manager in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications, or provisions of this Agreement; and

(e) The District, and its officers, agents and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

(f) The Consultant, and its officers, agents and employees, shall not be liable at law or in equity occasioned by failure of The District to comply with this Section.

9. **OWNERSHIP OF DOCUMENTS**

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by District that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of District or its designees at reasonable times to such books and records; shall give District the right to examine and audit said books and records; shall permit District to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, electronic files designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the property of the District and may be used, reused, or otherwise disposed of by the District without the permission of the Consultant.

10. **INDEMNIFICATION**

(a) Consultant shall hold harmless and indemnify, including the cost to defend (with legal counsel acceptable to the District), the District, and its respective principals,

directors, officers, agents, and employees from and against all claims, loss, liability, suits and damages, including attorney's fees, that arise out of, pertain to, or relate to Consultant's negligence, recklessness or willful misconduct in connection with the performance of Consultant's obligations under this Agreement, or that of Consultant's sub-consultants, agents or employees (or any entity or individual for which Consultant bears legal liability).

(b) Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section from each and every sub-consultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required, Consultant shall be fully responsible for all obligations under this Section. District's failure to monitor compliance with this requirement imposes no additional obligations on District and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend District as set forth herein is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

(c) Without affecting any of the rights of District under any provision of this Agreement, Consultant shall not be required to indemnify and hold harmless District for liability attributable to the active negligence of District, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where District is shown to have been actively negligent and where District active negligence accounts for only a percentage of the liability involved, the obligation of Consultant will be for that entire portion or percentage of liability not attributable to the active negligence of District.

11. **INSURANCE**

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit B attached hereto and incorporated herein as though set forth in full.

12. **WORKERS' COMPENSATION AND OTHER EMPLOYEE BENEFITS**

District and Consultant intend and agree that Consultant is an independent contractor of District and agree that Consultant and Consultant's employees and agents have no right to Workers' Compensation and other District -sponsored employee benefits. Consultant agrees to provide Workers' Compensation and other employee benefits, where required by law, for Consultant's employees and agents. Consultant agrees to hold harmless and indemnify District for any and all claims arising out of any claim for injury, disability, or death of Consultant and any of Consultant's employees or agents.

13. **INDEPENDENT CONSULTANT**

(a) Consultant is and shall at all times remain as to the District a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither District nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the District. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against District, or bind District in any manner.

(b) No employee benefits shall be available to Consultant in connection with performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, District shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for District. District shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

14. **UNDUE INFLUENCE**

Consultant declares and warrants that no undue influence or pressure was or is used against or in concert with any officer or employee of the District in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the District will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the District to any and all remedies at law or in equity.

15. **NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

No member, officer, or employee of District, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the project performed under this Agreement.

16. **RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without District's prior written authorization. Consultant, its officers, employees, agents, or subcontractors, shall not without written authorization from the District General Manager or unless requested by the District Counsel, voluntarily provide declarations, letters of support, testimony at

depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the District. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives District notice of such court order or subpoena.

(b) Consultant shall promptly notify District and District shall notify Consultant either parties officers, employees, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder. District and Consultant retain the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with District and to provide the opportunity to review any response to discovery requests provided by Consultant. However, District's right to review any such response does not imply or mean the right by District to control, direct, or rewrite said response.

17. **NOTICES**

Any notice which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To District: Ron Munds, General Manager
Los Osos Community Services District
2122 9th St
Los Osos, CA 93402

With a copy to: Jeffrey A. Minnery, District Counsel
Adamski Moroski Madden Cumberland & Green, LLP
P.O. Box 3835
San Luis Obispo, CA 93403

To Consultant:

18. **ASSIGNMENT**

The Consultant shall not assign the performance of this Agreement, nor any part thereof, without the prior written consent of the District.

19. **GOVERNING LAW**

The District and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Proper venue for any litigation concerning this Agreement shall be in the County of San Luis Obispo.

20. **ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. **TIME**

District and Consultant agree that time is of the essence in this Agreement.

22. **CONSTRUCTION**

The parties agree that each has had an opportunity to have their counsel review this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto. The captions of the sections are for convenience and reference only, and are not intended to be construed to define or limit the provisions to which they relate.

23. **AMENDMENTS**

Amendments to this Agreement shall be in writing and shall be made only with the mutual written consent of all of the parties to this Agreement.

24. **AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

25. **LITIGATION**

In the event District desires Consultant to prepare for or appear in litigation on behalf of District, and Consultant agrees to perform said services, other than herein specified, District shall pay Consultant the usual and customary fees charged by Consultant for such services, and Consultant agrees to perform said services.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**LOS OSOS
COMMUNITY SERVICES DISTRICT**

By: _____

By: _____

Attest:

Its: _____

Approved As To Form:

Jeffrey A. Minnery, District Counsel

Attachments:
Exhibit A- Consultant's Proposal
Exhibit B- Insurance Requirements

EXHIBIT A
CONSULTANT'S PROPOSAL

EXHIBIT B

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the Work, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to District in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to District.

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office “Commercial General Liability” policy from CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant’s employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer’s liability limits no less than \$1,000,000 per accident or disease.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured’s liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to District for injury to employees of Consultant, subcontractors or others involved in the Work. The scope of coverage provided is subject

to approval of District following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1 Million per occurrence.

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designated to protect against acts, errors or omissions of the Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this agreement.

Insurance procured pursuant to these requirements shall be written by insurer that are admitted carriers in the state California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and District agree to the following with respect to insurance provided by Consultant:

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds District, its officials employees and agents, using standard ISO endorsement No. CG 2010. Consultant also agrees to require all Consultants, and subcontractors to do likewise.

2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against District regardless of the applicability of any insurance proceeds, and to require all Consultants and subcontractors to do likewise.

3. All insurance coverage and limits provided by Consultant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the District or its operations limits the application of such insurance coverage.

4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to District and approved of in writing.

5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any Consultant or subcontractor.

6. All coverage types and limits required are subject to approval, modification and additional requirements by the District, as the need arises. Consultant shall not make

any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect District's protection without District's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to District at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, District has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by District shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at District option.

8. Certificate(s) are to reflect that the insurer will provide 30 days notice to District of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self-insurance available to District.

10. Consultant agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors who are brought onto or involved in the project by Consultant will be submitted to District for review.

11. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will review and terminate any subcontract consultant has with a subconsultant, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to District. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the District. At the time the District shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

12. The District reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the District will negotiate additional compensation proportional to the increase benefit to District.

13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

14. Consultant acknowledges and agrees that any actual or alleged failure on the part of District to inform Consultant of non-compliance with any insurance requirements in no way imposes any additional obligations on District nor does it waive any rights hereunder in this or any other regard.

15. Consultant will renew the required coverage for the duration of the project.

16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to District within five days of the expiration of the coverages.

17. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

18. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.

19. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

20. Consultant agrees to be responsible for ensuring that no contract used by any party directly under contract with the Consultant and involved in the portion of the project under control of the Consultant reserves the right to charge District or Consultant for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to District. It is not the intent of District to reimburse any third party for the cost of complying with these requirements. There shall

be no recourse against District for payment of premiums or other amounts with respect thereto.

21. Consultant agrees to provide immediate notice to District of any claim or loss against Consultant arising out of the work performed under this agreement. District assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve District.