



January 3, 2019

TO: LOCSD Board of Directors

FROM: Renee Osborne, General Manager
Roy Hanley, District Counsel

SUBJECT: **Agenda Item 11F– 1/10/2019 Board Meeting**
Ratify Contract with NBS for the Reassessment Report

President
Vicki L. Milledge

Vice President
Marshall E. Ochylski

Directors
Charles L. Cesena
Matthew D. Fourcroy
Christine M. Womack

General Manager
Renee Osborne

District Accountant
Robert Stilts, CPA

Unit Chief
Scott M. Jalbert

Battalion Chief
Greg Alex

DESCRIPTION

The attached contract is for a reassessment report needed for the wastewater bond refinancing.

STAFF RECOMMENDATION

Staff recommends that the Board ratify the contract between NBS Government Financial Group (NBS) and the Los Osos Community Services District (LOCSD).

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 ratify the contract with NBS to prepare a reassessment report as required by the California Streets and Highways Code 9523, in an amount not to exceed \$24,000.

SUMMARY

In order to determine viability of the refunding for the Wastewater Assessment District No. 1 bonds is feasible, a Reassessment Report is needed. Services were obtained by NBS Government Financial Group.

FINANCIAL IMPACT

The financial burden will be paid through the refunding bond costs of issuance and not by the District directly.

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.losososcsd.org

CONSULTING AGREEMENT

This Consulting Agreement (Agreement) is made as of the 18 day of December 2018, by and between NBS GOVERNMENT FINANCE GROUP, a California corporation, dba "NBS" ("Consultant"), and LOS OSOS COMMUNITY SERVICES DISTRICT ("DISTRICT").

RECITALS

- A. The Client desires to obtain certain consulting services for the Reassessment and Refunding of Wastewater Assessment District No. 1.
- B. The District desires to engage Consultant as an independent contractor to perform such services on the terms and conditions set forth herein.

In consideration of the foregoing and of the mutual promises set forth herein, and intending to be legally bound, the parties hereto agree as follows:

AGREEMENT

- Services. Consultant shall perform the scope of services described in Exhibit A, which is attached hereto and incorporated herein by reference ("Services"). Any other services required or requested by District shall be subject to mutual agreement of the parties and may be subject to additional scope of work and fee negotiations.
- Term. The term of this Agreement shall commence when agreement is fully executed.
- Compensation. Compensation to be paid by District to Consultant shall be in accordance with the schedule set forth in Exhibit B, which is attached hereto and incorporated herein by reference. District and Consultant recognize that the scope of the project may change from that defined in Exhibit A and that significant changes in the scope of services will require renegotiation of fees.
- Expenses. Except certain billable expenses as set forth in Exhibit B, Consultant will be responsible for all of its expenses incurred in performing the Services hereunder.
- Qualifications of Consultant. District has relied upon the professional training and ability of Consultant to perform Services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all Services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.
- Independent Contractor Status. The relationship of Consultant and District hereunder is an independent contractor relationship and nothing in this Agreement shall be construed to create any other relationship. No agent, employee, or representative of Consultant shall be deemed to be an agent, employee, or representative of District for any purpose. Consultant agrees that neither it nor any of its employees, is entitled to the rights or benefits afforded to District's employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave, or any other employment benefit. Consultant is responsible for providing, at its own expense, disability, unemployment, workers' compensation, training, permits, and licenses for its employees. Consultant

does not have, nor shall it hold itself out as having, any right, power or authority to create any contract or obligation, either express or implied, on behalf of, in the name of, or binding District.

7. Income Taxes. Consultant is responsible for paying when due all federal, state and local income taxes, incurred as a result of the compensation paid by District to Consultant for Services under this Agreement. Consultant agrees to indemnify District for any claims, costs, losses, fees, penalties, interest, or damages suffered by District resulting from Consultant's failure to comply with this provision.

8. Insurance Requirements. Consultant, at its own cost and expense, shall procure and maintain, for the duration of this Agreement, commercial general liability insurance (said insurance shall have a limit for each occurrence of at least Two Million Dollars (\$2,000,000), and Four Million Dollars \$4,000,000 aggregate) naming Los Osos Community Services District as additional insureds, in connection with Consultant's activities, officers, employees, officials, agents, officers, staff and Board members), workers' compensation insurance and employer's liability insurance as required by the State of California (said insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease), and professional errors and omissions liability insurance (said insurance shall cover Consultant's performance under this Agreement with a limit of liability of at least Two Million Dollars (\$2,000,000) for any one claim and aggregate), and automobile insurance with a limit of at least One Million Dollars (\$1,000,000). Prior to commencement of the Services, Consultant shall deliver to District a Certificate of Insurance evidencing compliance with this paragraph. The certificate shall stipulate that advance written notice of cancellation of the required policy shall be given to the District by any and all insurance companies.

9. District's Responsibilities. The District shall furnish Consultant with any pertinent information that is available to District and applicable to the Services. The District shall designate a person to act with authority on its behalf in respect to the Services. The District shall promptly respond to Consultant's requests for reviews and approvals of its work, and to its requests for decisions related to the Services. District understands and agrees that Consultant is entitled to rely on all information, data and documents (collectively, "Information") supplied to Consultant by District or any of its agents, contractors or proxies or obtained by Consultant from other usual and customary sources including other government sources or proxies as being accurate and correct and Consultant will have no obligation to confirm that such Information is correct and that Consultant will have no liability to District or any third party if such Information is not correct.

10. Indemnification. Consultant shall defend, indemnify and hold harmless District, its officers, employees, officials and agents from and against all claims, demands, losses, liabilities, costs and expenses, including reasonable attorneys' fees, (collectively "Liabilities") arising out of or resulting from the negligence or willful misconduct of Consultant or a breach by Consultant of its obligations under this Agreement, except to the extent such Liabilities are caused by the negligence or willful misconduct of District. Consultant will not be liable to the District or anyone who may claim any right due to a relationship with District, for any acts or omissions in the performance of Services under this Agreement, unless those acts or omissions are due to the negligence or willful misconduct of Consultant. Except in the case of Consultant's negligence, willful misconduct or breach of its obligations under this Agreement, District shall defend, indemnify and hold harmless Consultant, its officers, directors, shareholders, employees and agents from and against all Liabilities to the extent that such Liabilities arise out of Consultant performing Services pursuant to the terms of this Agreement, including, without limitation, any Liabilities arising as a result of District or any of its agents or

contractors supplying incorrect Information or documentation to Consultant. The provisions of this Section 10 shall survive termination of this Agreement.

11. Limitation of Liabilities. District hereby agrees that to the fullest extent permitted by law, Consultant's total liability to District for any and all injuries, claims losses, expenses or damages whatsoever arising out of or in any way related to Consultant's Services under this Agreement from any cause or causes, including but not limited to Consultant's negligence, errors, omissions or breach of contract (hereafter "District claims") shall not exceed the total sum paid on behalf of or to Consultant by Consultant's insurers in settlement or satisfaction of District claims under the terms and conditions of Consultant's insurance policies applicable thereto. The provisions of this Section 11 shall survive termination of this Agreement.

12. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, disability, ancestry, sex, gender identity, sexual orientation, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

13. Attorneys' Fees. In the event of any action or other proceeding, including arbitration or other non-judicial proceedings, arising from, in, under or concerning this Agreement and any amendment thereof, including, without limiting the generality of the foregoing, any claimed breach hereof, the prevailing party in such action or proceeding shall be entitled to recover from the other party in such action or proceeding, such sum as the court shall fix as reasonable attorneys' fees incurred by such prevailing party.

14. Compliance with Law. In connection with the services rendered hereunder, Consultant agrees to abide by all federal, state, and local laws, ordinances and regulations.

15. Entire Agreement; Amendment. This Agreement, including the Exhibits attached hereto, constitutes the final, complete and exclusive statement of the terms of the agreement between District and Consultant with respect to the transactions contemplated hereby and supersedes all prior and contemporaneous agreements, arrangements or understandings between them with respect thereto. This Agreement may not be amended, modified or changed except by instruments in writing signed by all of the parties hereto.

16. Nonwaiver. No failure or neglect of either party hereto in any instance to exercise any right, power or privilege hereunder or under law shall constitute a waiver of any other right, power or privilege or of the same right, power or privilege in any other instance. All waivers by either party hereto must be contained in a written instrument signed by the party to be charged.

17. Controlling Law; Jurisdiction. This Agreement shall be construed and enforced in accordance with the laws of the State of California without reference to its choice of law provisions. The parties hereto hereby irrevocably waive any objection, including, without limitation, any objection to the laying of venue or based on *Forum Non Conveniens*, which it may now or hereafter have to the bringing of any action or proceeding in the manner, or in any of the jurisdictions, provided herein.

18. Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

19. Further Assurances. The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

20. Successors and Assigns. Consultant and District each binds itself, its partners, its successors, legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect of all covenants and agreements contained herein.

21. Notices. All notices, requests, demands, and other communications required to or permitted to be given under this Agreement shall be in writing and shall be conclusively deemed to have been duly given (a) when hand delivered to the other party; or (b) when received when sent by e-mail or facsimile at the address and number set forth below (provided, however, that the receiving party confirms receipt of such notice by e-mail, facsimile or any other method permitted hereunder, and that any notice given by e-mail or facsimile shall be deemed received on the next business day if such notice is received after 5:00 p.m. (recipient's time) or on a non-business day); or (c) three business days after the same have been deposited in a United States post office with first class or certified mail return receipt requested postage prepaid and addressed to the parties as set forth below; or (d) the next business day after same has been deposited with a reputable overnight delivery service reasonably known by the parties (such as FedEx, DHL WorldWide Express, California Overnight, USPS Priority Mail Express, etc.), postage prepaid, addressed to the parties as set forth below with next-business-day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery service provider.

If to Consultant:

NBS Government Finance Group
Attention: Michael Rentner, Chief Executive Officer
32605 Temecula Parkway, Suite 100
Temecula, CA 92592
Telephone: (951) 296-1997
Fax No.: (951) 296-1998
E-Mail: mrentner@nbsgov.com

If to District:

Los Osos Community Facilities District
Attention: Renee Osborne, General Manager
P.O. Box 6064
Los Osos, CA 93412
Telephone: (805) 528-9370
E-Mail: rosborne@losososcfd.org

22. References and Titles. All references in this Agreement to Articles, Sections, Subsections and other subdivisions refer to corresponding Articles, Sections, Subsections and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any subdivision are for convenience only and do not constitute any part of such subdivision and shall be disregarded in construing the language contained in such subdivision. The words this Agreement, this instrument, herein, hereof, hereby, hereunder, and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. Pronouns in masculine,



feminine and neuter genders shall be construed to include any other gender, and words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires.

23. Time. Time is of the essence.

24. No Third Party Beneficiaries. Nothing contained in this Agreement is intended to and nothing contained herein shall be interpreted to confer on any party the rights of a third party beneficiary and this Agreement shall be for the sole benefit of the parties hereto.

25. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstances is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will, nevertheless, continue in full force and effect without being impaired or invalidated in any way.

26. Language. The language of this Agreement shall be construed as a whole and in accordance with the fair meaning of the language used. The language of this Agreement shall not be strictly construed against either party based upon the fact that either party drafted or was principally responsible for drafting this Agreement or any specific term or condition hereof.

27. Termination. This Agreement may be terminated by either party by giving thirty (30) business days written notice to the other party of its intent to terminate this Agreement. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination and District shall be entitled to all work performed to that date.

IN WITNESS WHEREOF, District and Consultant have executed this Agreement on the day and year first above written.

CONSULTANT

NBS GOVERNMENT FINANCE GROUP,
a California corporation, dba NBS

By: [Signature]
Name: Michael Rentner

Title: Chief Executive Officer

Date: 12/17/18

DISTRICT

LOS OSOS COMMUNITY SERVICES DISTRICT

By: [Signature]
Name

: Vicki L. Millidge
Title: Board President

Date: Dec. 19, 2018

Attachments:

- Exhibit A: Consultant Scope of Services
- Exhibit B: Compensation for Services

EXHIBIT A

CONSULTANT SCOPE OF SERVICES

REASSESSMENT CONSULTING SERVICES

NBS will prepare a Reassessment Report as required by the California Streets and Highways Code §9523. The Report will contain the following:

A schedule setting forth the unpaid principal and interest on the bonds to be refunded and the total amounts thereof.

- The total estimated principal amount of the reassessment and of the refunding bonds and the maximum interest rate thereon, together with an estimate of cost of the reassessment and of issuing the refunding bonds, including all costs of issuing the refunding bonds, as defined by subdivision (a) of Section 9600.
- The auditor's record kept pursuant to Section 8682 showing the schedule of principal installments and interest on all unpaid original assessments and the total amounts thereof.

The estimated amount of each reassessment, identified by reassessment number corresponding to the reassessment number on the reassessment diagram, together with a proposed auditor's record for the reassessment prepared in the manner described in Section 8682.

A reassessment diagram showing the boundaries of the reassessment district and referring to County Assessor's maps for the boundaries and dimensions of the subdivisions of land within the district (summary version subject to approval by legal counsel). Each subdivision, including each separate condominium interest as defined in Section 783 of the Civil Code, shall be given a separate number on the parcel/reassessment table of the diagram.

- A declaration of the method of reassessment and the original method of assessment (applicable to future apportionments of the lien due to parcel subdivisions and lot line adjustments). If any delinquent assessments are funded, a detail of the amounts capitalized will be included in the declaration of the method of spread.

Final reports and recordations shall be completed prior to bond sale.

- A Final Reassessment Report reflecting "As Confirmed and Recorded" reassessment amounts and the recorded Reassessment Diagram.

In addition to the Reassessment Report, NBS will provide bond disclosure information for the District. The information will be based upon the latest County Secured Tax Roll and the current Delinquency Redemption data available. NBS will process the data and provide tables as requested by the financing team. Typical tables include the following:

- Current and prior years assessment delinquencies. This will include the amounts delinquent and any penalty and interest penalty accrued.

- Reports of Assessed Valuation and Property Ownership will be prepared upon request of the Financing Team. Examples of available reports are, a) Top 25 property owners, b) Aggregate and individual lien to value calculations, c) Lien to value as a percentage of reassessment, and others.

NBS will review all draft and final financing documents and be available for any teleconference meetings with the reassessment team.

DISTRICT'S RESPONSIBILITIES

The District shall furnish Consultant with any pertinent information that is available to District and applicable to the Services. The District shall designate a person to act with authority on its behalf in respect to the Services. The District shall promptly respond to Consultant's requests for reviews and approvals of its work, and to its requests for decisions related to the Services. District understands and agrees that Consultant is entitled to rely on all information, data and documents (collectively, "Information") supplied to Consultant by District or any of its agents, contractors or proxies or obtained by Consultant from other usual and customary sources including other government sources or proxies as being accurate and correct and Consultant will have no obligation to confirm that such Information is correct and that Consultant will have no liability to District or any third party if such Information is not correct.

EXHIBIT B

COMPENSATION FOR SERVICES

REASSESSMENT CONSULTING SERVICES

Consulting Fee.....	\$22,000
Estimated Expenses (1).....	NTE \$1,500
Total Not to Exceed.....	\$24,000

(1) See description of expenses below

EXPENSES

Customary out-of-pocket expenses will be billed to the District at actual cost to NBS. These expenses may include, but not be limited to, mailing fulfillment, postage, reproduction, telephone, travel, meals and various third-party charges for data, maps, and recording fees.

ADDITIONAL SERVICES

The following table shows our current hourly rates. Additional services authorized by the District but not included in the scope of services will be billed at this rate or the then applicable hourly rate.

Title	Hourly Rate
Director	\$225
Associate Director	\$210
Senior Consultant / Manager	\$175
Consultant	\$155
Analyst	\$130
Clerical/Support	\$105

TERMS

Consulting services will be invoiced on a monthly basis upon completion of task. Expenses will be itemized and included in the next regular invoice. Fees for all other services will be invoiced upon completion of the task. If the project is prematurely terminated by either party, NBS shall receive payment for work completed. Payment shall be made within 30 days of submittal of an invoice. If payment is not received within 90 days simple interest will begin to accrue at the rate of 1.5% per month. Either party may cancel this contract with 30 days written notice.

Municipal Advisor Disclosure

DISCLOSURE OF CONFLICTS OF INTEREST AND LEGAL OR DISCIPLINARY EVENTS

Pursuant to Municipal Securities Rulemaking Board (“MSRB”) Rule G-42, on Duties of Non-Solicitor Municipal Advisors, Municipal Advisors are required to make certain written disclosures to clients and potential clients which include, amongst other things, Conflicts of Interest and any Legal or Disciplinary events of NBS and its associated persons.

CONFLICTS OF INTEREST

Compensation

NBS represents that in connection with the issuance of municipal securities, NBS may receive compensation from an Issuer or Obligated Person for services rendered, which compensation is contingent upon the successful closing of a transaction and/or is based on the size of a transaction. Consistent with the requirements of MSRB Rule G-42, NBS hereby discloses that such contingent and/or transactional compensation may present a potential conflict of interest regarding NBS’ ability to provide unbiased advice to enter into such transaction. This conflict of interest will not impair NBS’ ability to render unbiased and competent advice or to fulfill its fiduciary duty to the Issuer.

It should be noted that other forms of compensation (i.e. hourly or fixed fee based) may also present a potential conflict of interest regarding NBS’ ability to provide advice regarding a municipal security transaction. These other potential conflicts of interest will not impair NBS’ ability to render unbiased and competent advice or to fulfill its fiduciary duty to the Issuer.

Other Municipal Advisor Relationships

NBS serves a wide variety of other clients that may from time to time have interests that could have a direct or indirect impact on the interests of another NBS client. For example, NBS serves as municipal advisor to other municipal advisory clients and, in such cases, owes a regulatory duty to such other clients just as it does to the Los Osos Community Services District. These other clients may, from time to time and depending on the specific circumstances, have competing interests. In acting in the interests of its various clients, NBS could potentially face a conflict of interest arising from these competing client interests. NBS fulfills its regulatory duty and mitigates such conflicts through dealing honestly and with the utmost good faith with the Los Osos Community Services District.

If NBS becomes aware of any additional potential or actual conflict of interest after this disclosure, NBS will disclose the detailed information in writing to the issuer or obligated person in a timely manner.

LEGAL OR DISCIPLINARY EVENTS

NBS does not have any legal events or disciplinary history on NBS' Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. The Issuer may electronically access NBS' most recent Form MA and each most recent Form MA-I filed with the Commission at the following website: www.sec.gov/edgar/searchedgar/companysearch.html.

There have been no material changes to a legal or disciplinary event disclosure on any Form MA or Form MA-I filed with the SEC. If any material legal or regulatory action is brought against NBS, NBS will provide complete disclosure to the Issuer in detail allowing the Issuer to evaluate NBS, its management and personnel.