



September 22, 2017

TO: LOCSD Board of Directors

FROM: Roy A. Hanley, General Counsel

SUBJECT: Agenda Item 11H – 10/12/2017 Board Meeting
Adopt Resolution Approving the Restated Contract Between the Los Osos Community Services District and Grace Environmental Services for General Manager Services

President
Jon-Erik G. Storm

Vice President
Vicki L. Milledge

Directors
Charles L. Cesena
Marshall E. Ochylski
Louis G. Tornatzky

General Manager
Renee Osborne

District Accountant
Robert Stilts, CPA

Unit Chief
Scott M. Jalbert

Battalion Chief
Greg Alex

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.losososcscsd.org

DESCRIPTION

The District contracts with Grace Environmental Services (GES) for General Manager services. The original contract provided for a monthly payment of about \$6,205.00 per month. GES serves as an independent contractor, and no specific hours were contractually required. However it was contemplated at the beginning that the services would be part time and not full time, similar to the part time services provided by the immediate predecessor as contract general manager.

The parties have come to feel that a commitment of services more similar to a full time general manager would be in the District's interest. Before the Board is a restated contract that does just a few things different than the existing contract. This contract calls for full time services by GES specifically. As is required for contracts with independent contractors, the specifics of how to fulfill that commitment are left up to the contractor. (Failure to do so provide risks having the position deemed standard employment and would increase the cost to the District by approximately 40%.) The compensation is increased to \$8,010.50 per month. (This is approximately what was paid for the previous part time services mentioned above.) The contract specifically states that it will be reviewed in six months. (This is not a six month contract. It is terminable by either party without cause upon proper notice. It will not have to be readopted in six months. This is a declared understanding of the parties that they intend to revisit the issue in six months.)

The contract allows for reimbursement of expenses. Expenses incurred have to be approved by the District. Lastly, although GES will appoint a person with primary responsibility to serve as General Manager it is understood and contemplated that from time to time another person from GES will perform general manager tasks within the purview of this contract and without extra expense. GES, as the independent contractor, will make those determinations. Consultation with the Board is always encouraged.

STAFF RECOMMENDATION

Staff is requesting approval of the contract as restated as opposed to having an amendment to the existing contract.

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 adopt Resolution 2017-26 approving the restated Contract with Grace Environmental Services and authorize the Board President execute it.

DISCUSSION

The Board is not legally required to accept the recommendation of General Counsel. General Counsel does recommend approval.

FINANCIAL IMPACT

Approximately \$2,005.00 increased expenditure per month

Attachments: Resolution 2017-26 w/Proposed Contract

RESOLUTION 2017-26

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE LOS OSOS COMMUNITY SERVICES DISTRICT
APPROVING THE RESTATED CONTRACT BETWEEN THE DISTRICT AND GRACE
ENVIRONMENTAL SERVICES FOR GENERAL MANAGER SERVICES**

WHEREAS, the Los Osos Community Services District ("District") is a community services district organized under California Law pursuant Government Code to § 61100 et. seq.; and

WHEREAS, the Board desires to provide for prudent management of the District; and

WHEREAS, the Board has previously contracted with Grace Environmental Services for part time General Manager services: and

WHEREAS, the Board has determined that it is in the best interests of the District to increase the level of service under the contract for general manager services for a six month period.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE LOS OSOS COMMUNITY SERVICES DISTRICT DOES HEREBY DETERMINE AS FOLLOWS:

- 1. The Board approves the restated agreement between the District and Grace Environmental Services to be effective as of October 1, 2017;**
- 2. Authorizes the Board President to execute the restated contract;**

On the motion of Director _____, seconded by Director _____, and on the following roll call vote, to wit:

Ayes: _____

Nays: _____

Absent: _____

Conflicts: _____

The foregoing resolution is hereby passed, approved, and adopted by the Board of Directors of the Los Osos Community Services District this 5th day of October 2017.

Jon-Erik Storm, President
LOCSD Board of Directors

ATTEST:

APPROVED AS TO FORM:

Ann Kudart
Deputy Secretary to the Board

Roy A. Hanley
District Legal Counsel

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into effective as of the 1st day of October, 2017, by and between the LOS OSOS COMMUNITY SERVICES DISTRICT, a political subdivision of the State of California, formed and operating in accordance with California Government Code Section 61000 et seq., hereinafter referred to as "District" and GRACE ENVIRONMENTAL SERVICES, a California Limited Liability Corporation, hereinafter referred to as "Consultant".

RECITALS

WHEREAS, District desires to obtain services from Consultant as specified in Section 1; and

WHEREAS, Consultant is duly licensed, qualified and equipped to perform said services for the benefit of District; and

WHEREAS, the performance of such services by Consultant has been determined by District to be in the public interest.

NOW, THEREFORE, District and Consultant agree as follows:

1. **Scope of Work.** District engages the services of Consultant as an independent contractor to perform the work and render the services described in in Consultant's Proposal to District dated September 13, 2016 attached hereto as Exhibit B (hereinafter referred to as the "Work"), both of which are incorporated. The Work is generally described as follows: serve as contract general manager.

Consultant shall (a) provide all labor, equipment, material, supplies, advice, consultation, analysis, administration, and preparation of policies, procedures and documents required or necessary to properly, competently and completely perform the Work; (b) determine the method, details and means of doing the Work; and (3) perform the Work in a manner commensurate with the highest professional standards of qualified and experienced personnel in Consultant's field.

A. GES shall appoint a full-time manager of the District (the "General Manager") who shall be experienced in the management and operation of a Special District including comparable to the "District" and be otherwise appropriately certified under applicable law. GES acknowledges that the performance of the individuals serving from time to time as the General Manager will have a material bearing on the quality of service provided hereunder, and that effective cooperation between the District and GES will be essential to effectuating the intent and purpose of the AGREEMENT. The parties will review this AGREEMENT in six (6) months.

2. **Payment.** In exchange for the Work, District shall pay to Consultant \$8,010.50 per month. District will pay, upon invoice, within 30 days.

A. Incidental expenses incurred by GES or any sub-consultant it may hire after preapproval to perform services for this project are reimbursed by District. Reimbursable expenses include, but are not limited to, reproduction costs, postage, shipping and handling of drawings and documents, long distance communications, fees paid to authorities having jurisdiction over the District and travel expenses.

3. **Term.**

A. This Agreement shall take effect on the above date and shall continue in effect until completion of the Work to the satisfaction of District unless sooner terminated as provided below.

B. This Agreement may be terminated by either party, at will, upon thirty days written notice.

C. In the event of such termination, District shall pay to Consultant as full payment for all services performed and all expenses incurred under this Agreement, in an amount which bears the same ratio to the total fee otherwise payable under this Agreement as the services actually rendered hereunder by Consultant bear to the total services necessary for the full performance of the Work.

4. **Ownership of Documents.** Every document prepared by Consultant under this Agreement shall be the exclusive property of District. By this Agreement, Consultant transfers all of its right, title and interest in such documents to District. To the extent any document prepared under this Agreement constitutes a copyrightable work, the Work under this Agreement shall be considered a work for hire and by this Agreement Consultant shall be deemed to transfer all rights, title and interest in the copyrightable work to District, including the exclusive copyright. Documents prepared by Consultant under this Agreement shall not be provided by Consultant to any other person without District's prior written approval.

5. **Compliance with Laws.** Consultant shall perform the Work in compliance with all applicable federal, state and local laws and regulations regarding safety of persons and property and their protection from damage, injury or loss, including applicable Cal-OSHA regulations. Consultant also shall possess and maintain all permits, licenses and certificates that may be required for it to perform the Work. Consultant shall comply with all laws and regulations as required by local, state and federal agencies regarding nondiscrimination including, but not limited to, Title VII of the Civil Right of 1964, the Americans with Disabilities Act, the Age Discrimination Employment Act of 1967, and the California Fair Employment and Housing Act. The Consultant is aware of the District's anti-harassment policy and agrees to abide by the policy, practices and procedures set forth and established by the District.

6. **Indemnification.** Consultant agrees to defend, indemnify and hold District, its elected officials, officers and employees harmless from any and all claims, damages, losses or liabilities to the extent caused by the negligent acts errors, or omissions of Consultant in the performance of services under this Agreement. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist to the parties to this Agreement.

7. **Insurance.**

A. Types and Limits. Consultant at its sole cost and expense shall procure and maintain for the duration of this agreement the following types and limits of insurance:

<u>Type</u>	<u>Limits</u>	<u>Scope</u>
Commercial Public Liability and Property Damage	\$1,000,000 per occurrence	at least as broad as ISO CG 0001
Automobile Liability	\$1,000,000 per accident	at least as broad as ISO CA 0001, code 1 (any auto)
Workers' Compensation Employers' Liability	as required by State Law	

B. Other Requirements. The public liability, property damage and automobile liability insurance furnished by Consultant shall name District as an additional insured and shall directly protect, as well as provide the defense for District, its officers, agents and employees as well as Consultant, and its agents, and employees, if any, from all suits, actions, damages, losses or claims of every type and description to which they may be subjected by reason of or resulting from Consultant's operations in the performance of the Work pursuant to this Agreement, and all insurance policies shall so state. Said insurance shall also specifically cover the contractual liability of Consultant. Said insurance shall also specify that it acts as primary insurance and District's insurance shall not contribute with Consultant's insurance. If Consultant fails to maintain such insurance, District may declare a default in the performance of this Agreement and exercise the remedies specified in Section 5 of this Agreement.

C. Consultant shall be permissibly self insured or shall carry full workers' compensation coverage for all persons employed, either directly or through subcontractors, in carrying out the Work contemplated by this Agreement and in accordance with the Workers' Compensation Act contained in the Labor Code of the State of California. If Consultant fails to maintain such insurance, District may declare a default in the performance of this Agreement and exercise the remedies specified in Section 5 of this Agreement.

D. Consultant agrees to furnish a certificate or certificates substantiating the fact that it has taken out the insurance set forth above for the period covered by the Agreement and all endorsements substantiating coverage of District and its agents and employees as additional insureds. All insurance is to be placed with insurers with a current A.M. Best rating A:VII or better unless otherwise accepted in writing by District.

Each such certificate shall bear an endorsement precluding the cancellation or reduction in coverage of any policy covered by such certificate before the expiration of thirty (30) days after District shall receive notification of such cancellation or reduction.

8. **Independent Contractor.** The parties hereto agree that at all times during the term of this Agreement Consultant, Consultant's employees and agents hired to perform services pursuant to this Agreement are independent contractors and are not agents or employees of District. Consultant shall have control over the means, methods, techniques, sequences, and procedures for performing and coordinating the Work required by this Agreement. District shall have the right to control Consultant only insofar as the result of Consultant's services rendered pursuant to this Agreement. If, in the performance of this Agreement, any third parties are employed or contracted by Consultant, such employees or subcontractors shall be entirely and exclusively under the direction, supervision and control of Consultant. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or contract shall be determined by Consultant, and District shall have no right or authority over such persons or the terms of their employment or contract.

Therefore, neither Consultant or any third persons employed by or contracted by Consultant to perform services pursuant to this Agreement shall be entitled to workers' compensation benefits from District should Consultant or any of its employees or contractors sustain an injury in the course of performing services specified in this Agreement. Furthermore, neither Consultant nor any third persons or contractors employed by Consultant shall be entitled to any other benefits payable to employees of District. Consultant hereby agrees to defend and hold District harmless from any and all claims that may be made against District based on any contention by any third party that an employer/employee relationship exists or that a contractual relationship exists between District and that third party by reason of this Agreement.

Consultant represents that it, and its employees and contractors, if applicable, are properly licensed and will remain so during the progress of the Work contemplated by this Agreement.

9. **Entire Agreement.** This writing and the documents incorporated herein by reference represent the sole, entire, exclusive and integrated contract between the parties concerning the Work, and supersedes all prior oral and/or written negotiations, representations or contracts. Each party to this Agreement acknowledges that no representations or promises have been made by any party hereto which are not embodied herein, and that no other agreement or promise not contained in this Agreement or in the incorporated documents shall be valid or binding. This Agreement may be amended only by a subsequent written contract approved and executed by both parties.

10. **Successors and Assignment.** This Agreement shall bind and inure to the benefit of the heirs, successors and assigns of the parties; however, Consultant shall not subcontract, assign or transfer this Agreement or any part of it without the prior written consent of District.

11. **No Waiver of Rights.** Any waiver at any time by either party of its rights as to a breach or default of this Agreement shall not be deemed to be a waiver as to any other breach or default. No payment by District

to Consultant shall be considered or construed to be an approval or acceptance of any Work or a waiver of any breach or default.

12. **Severability.** If any part of this Agreement is held to be void, invalid or unenforceable, then the remaining parts will nevertheless continue in full force and effect.

13. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California.

14. **Notice.** Any notice, invoice or other communication that is required or permitted to be given under this Agreement shall be in writing and either served personally or sent by prepaid, first class U.S. mail addressed as follows:

District: Los Osos Community Services District
2122 9th Street, Suite 102
Los Osos, CA 93402
Attention: _____

Consultant: Grace Environmental Services
Attention: Charles Grace
2060D E. Avenida De Los Arboles #327
Thousand Oaks, CA 91362

Any party may change its address by notifying the other party of the change in the manner provided above.

16. **Attorneys Fees.** In the event of litigation between the parties, or if a party becomes involved in a litigation because of wrongful acts of the other party, the prevailing or innocent party shall be entitled to an award of reasonable attorney's fees from the other party. The prevailing party will be entitled to an award of attorney's fees in an amount sufficient to compensate the prevailing for all attorney's fees incurred in good faith.

LOS OSOS COMMUNITY SERVICES DISTRICT

By: _____

Name

Title

CONSULTANT

By: _____

Name

Title