

Lake Don Pedro Community Services District

Regular Meeting of September 18, 2017

AGENDA SUPPORTING DATA

5. DISCUSSION AND ACTION ITEMS

- d. Adoption of a resolution approving agreement with Utility Services Associates for water service line leak detection services throughout the system

Recommended Action

Staff recommends the following motion:

I move to adopt the resolution approving agreement with Utility Services Associates for water service line leak detection services throughout the system

Background

The District has been routinely experiencing treated water system losses of 20% to 40%, which is costly and risky during drought. The District does not have the funding to completely replace all service laterals in the system, and there may be many that are not leaking and will last many more years. The most efficient method to replace the laterals is to identify those that are currently leaking. A leak report and priority list of laterals to be replaced is then provided to the contractor performing the replacement project. That way, known leaky laterals are replaced first.

The District could purchase equipment to perform leak detection, but this requires current equipment, training and manpower. Another option is to hire a company specializing in leak detection. Considering that the District has no staff or equipment, and we need to direct the contractor to the leaks in the coming months, management evaluated the scope of work and cost of hiring a professional firm. Cost proposals were very similar among contractors, and a scope of work and cost was negotiated with the most experienced, and available firm. The proposal and agreement are attached.

Subsequent to securing the proposals, I requested and received authorization from the DWR grant program that the associated expense is reimbursable under the grant. The leak report will provide much needed information as to whether additional funding must be secured to deal with many more leaks in the system.



September 12, 2017

Lake Don Pedro CSD
Attn: Peter Kampa
9751 Merced Falls Rd.
La Grange, CA 95329

Dear Mr. Kampa:

We would like to take this opportunity to thank you for your confidence in Utility Services Associates, LLC to perform a water leak detection project. We use the latest technologies available for surveying and pinpointing leaks in areas of the system as discussed. We understand that this project has been approved and the money is available

CONFIRMED SCHEDULE

This letter is to serve as confirmation of previously discussed scheduling. Our Water Loss Consultant, **Matthew Sanchez** with equipment will meet **you at 9751 Merced Falls Rd. at 7:30 AM on Friday, November 3, 2017**. This project has been scheduled for **14 days**.

The charge for this project is:	
14 days @ \$1,250.00 per day:	\$17,500.00
Mobilization Charge:	\$1,041.00
Project Total:	\$18,541.00

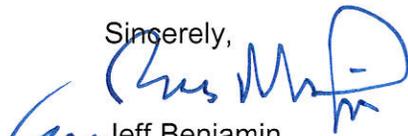
Project Schedule

Field Work – 11/03 through 11/17/2017
No Field Work – 11/20 through 11/24/2017
Field Work – 11/27 through 11/29/2017

In order to expedite this project and to get the most effective water line survey, it will be necessary for the Lake Don Pedro CSD to supply a helper at all times who can assist our Water Loss Consultant with information regarding the water system. A helper will also ensure that no areas are missed during the survey and all possible methods are utilized to locate all lines accurately.

Thank you for allowing us to serve you.

Sincerely,



Jeff Benjamin
Consultant

CONSULTING AGREEMENT

Consultant Use Only	
Client Number	<u>CA329</u>
Database update	_____
Calendar Update	_____
Log Update	_____

This Consulting Agreement #17334 (this "Agreement") is made and entered into between Utility Services Associates, LLC (the "Consultant") and Lake Don Pedro CSD, located at 9751 Merced Falls Rd., La Grange, CA 95329 (the "Client").

I. SCOPE OF SERVICES

The Consultant will provide consulting services to the Client for a Leak Detection Project, which, together with the scope of services to be provided, is described in Appendix A to this Agreement, which is attached hereto and incorporated herein by reference.

It is important to note that not all leaks create noise levels that can be detected using even the most sophisticated leak detection instrumentation. The Consultant will perform all work under this contract at the highest level of professional workmanship in its industry, however, Consultant cannot guarantee the detection of any leak. Client has read the above paragraph and understands that there is no guarantee that any leakage will be detected or pinpointed during this project. There is also no guarantee on pinpointing accuracy due to the many variables that effect pinpointing. As such, Client agrees to pay Consultant as outlined herein. _____ *(initial)*

Should Consultant be required to operate appurtenances (system valves, services, hydrants, etc.) Client agrees to hold Consultant harmless for any damage that may occur when they are operated as stated in Appendix A, Section II, subsection C. _____ *(initial)*

Client will provide detailed system information to Consultant prior to preparing a proposal of pricing. Should the system specifics differ from that provided by Client it may become necessary to change the scope of the project in a timely manner. _____ *(initial)*

II. INVOICING

The charges to the Client for the services provided by the Consultant of work to be completed under this Agreement will be \$18,541.00, broken down as follows:

14 days @ \$1,250.00 per day:	\$17,500.00
Mobilization Charge:	\$1,041.00

The cost of prevailing wage contract filings and state and local tax, when applicable, will be added to the final invoice.

Invoices will be sent when fieldwork is completed or at the end of the calendar month for projects that carry over to the next month. When work is performed within two or more calendar months invoices shall be identified as "Progress Invoice" for interim invoices and "Final Invoice" when fieldwork is complete.

In the event that less time is needed to complete the proposed footage (as per Peter Kampa) and pricing is based upon time to complete (i.e. "by the day"), the Consultant will charge, and will be entitled to, the total charge stated in the preceding paragraph; provided, however, that this shall not apply if the Consultant is responsible for the reduction in time.

In the event that pricing is based on distance to be surveyed and the project is tied to a specific finish date, and it is not possible to complete the required mileage by said finish date because system specifics differ from that provided by Client, it may be necessary to modify or amend the project to a "daily" rate structure, allowing us to complete as much of the proposed work as possible, in the original amount of time allotted. In such a case, we will simply convert the rate proposed for the linear distance into a daily rate. Such changes will be in writing and amended to the contract. _____ *(initial)*

III. PAYMENT

The Client will make monthly progress payments based on work completed, the terms of which shall be net 30 days. If paying by check Client will mail payment to:

Utility Services Associates, LLC
19655 1st Ave. S., Suite 101
Seattle, WA 98148

If paying with a credit card, a processing fee of 5% for Visa and MasterCard and 10% for American Express will be added at the time of payment.

IV. IDENTIFICATION OF CONSULTING AGREEMENT DOCUMENTS; INTEGRATION

This Agreement includes Appendix A attached hereto, which is hereby incorporated herein by reference. This Agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement other than those expressly stated in this Agreement.

Client and Consultant are further identified as follows:

CLIENT

Lake Don Pedro CSD
9751 Merced Falls Rd.
La Grange, CA 95329

CONSULTANT

Utility Services Associates, LLC
19655 1st Ave. S., Suite 101
Seattle, WA 98148

The undersigned has the authority to commit CLIENT and CONSULTANT to the project as identified in these documents. IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CLIENT (please print or type name)

Date: _____

Name: _____

Title: _____

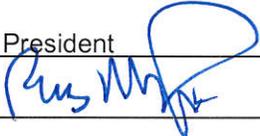
Signature: _____

CONSULTANT

Date: 9/12/2017

Name: Rob Meston

Title: President

Signature 

Facsimile signatures shall be sufficient unless originals are required by a third party. If original signature is not on file with the Consultant, please follow with original signature on this document by mail.

Appendix A
To Consulting Agreement

I. SERVICES TO BE PROVIDED BY CONSULTANT

Please refer to the Procedures and Methods as outlined in the previously submitted proposal.

II. SERVICES TO BE PROVIDED BY THE CLIENT

- A. The Client will furnish, at no cost to the Consultant, a complete set of maps and line data on the water distribution system to be surveyed, showing line size, type, and location of mains, valves, and fire hydrants. Consultant shall be entitled to rely on the accuracy and completeness of the information furnished to Consultant and shall be under no duty or obligation to verify the accuracy or completeness thereof, or to notify Client of any errors or omissions contained therein.
- B. The Client will make the water system valves, valve boxes, customer service stops, and boxes accessible by hand, operating key or probe and, if necessary, assist in field locating of all pipelines within the designated service area.
- C. The Client shall provide a qualified helper to locate and operate valves, services, hydrants, etc. when requested by Consultant, and generally provide information to assist the Consultant when requested by Consultant. In the event that client fails to provide a qualified helper and valves, services and hydrants need to be operated to perform the services described in this agreement, Client agrees to hold Consultant harmless for any damage that may occur when system valves, services, hydrants, etc are operated.

This qualified helper will assist with necessary equipment (flags, traffic cones, etc.) as required to meet local, state, and federal regulations in controlling vehicular traffic for man and equipment safety.

- D. Upon request of Consultant, Client shall provide additional access points on the water system as may be required on an occasional basis by the Consultant in order to effectively complete the survey when normal contact points are not available within a reasonable distance for correlation.

III. RELATIONSHIP OF THE PARTIES

The parties intend that the Consultant, in performing services herein specified, shall act as an independent contractor and shall have control of its work and the manner in which it is performed. The Consultant shall be free to contract for similar services to be performed for others while the Consultant is under contract with the Client. The Consultant is not to be considered an agent or employee of the Client and is not entitled to participate in any pension plans, workers' compensation insurance, or similar benefits that the Client provides for its employees.

IV. MODIFICATION; WAIVER

This agreement may not be modified, altered or amended except by a subsequent written instrument executed by both parties hereto. No waiver of any provision of this Agreement shall be binding unless evidenced by a subsequent written instrument executed by the party against whom such waiver is sought to be charged.

V. PROJECT DATA AND DOCUMENTS

The Consultant shall be entitled to rely upon the accuracy of all data furnished by the Client to the Consultant, which is or may be used by the Consultant in the provision of services under this Agreement. The Consultant has the right to retain and use all data furnished to it, and all plans, designs, specifications and other work product created by the Consultant during its provision of service under this Agreement

VI. LIMITATION OF LIABILITY

To the maximum extent permitted by law, the liability of the Consultant for claims arising hereunder or for services performed or materials furnished under this Agreement shall be limited to the amount of compensation paid by Client to Consultant under this Consulting Agreement, and any addenda, modifications or supplements thereto.

VII. INDEMNIFICATION

Client shall indemnify Consultant and its directors, officers, employees, agents, subsidiaries and other affiliates for, and hold each of them harmless from and against, any and all Losses arising from or in connection with (i) the breach of any covenant or agreement of Client contained in this Agreement, or (ii) any wrongful or negligent act or omission of Client related to the performance of its obligations under this Agreement.

Consultant shall indemnify Client and its directors, officers, employees, agents, subsidiaries and other affiliates for, and hold each of them harmless from and against, any and all Losses arising from or in connection with (i) the breach of any covenant or agreement of Consultant contained in this Agreement, or (ii) any wrongful or negligent act or omission of Consultant related to the performance of its obligations under this Agreement.

For purposes hereof, "Losses" shall mean all fees, costs, damages, judgments, penalties and expenses incurred by either party, including reasonable attorneys' fees and expenses, in connection with the investigation, prosecution or defense of any claim, arising from or to an act or omission for which indemnity is granted herein, or in connection with the enforcement of the obligation to indemnify contained in this Agreement. Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other or to any third party for consequential, special, punitive, indirect or exemplary damages in any action, proceeding or dispute arising out of or relating to the Agreement or the performance or non-performance by either party under the Agreement.

VIII. TERMINATION OF AGREEMENT

Either the Consultant or the Client may terminate this Agreement upon thirty (30) days written notice to the other sent to the addresses listed on the first page of this Agreement. In the event that Client terminates this Agreement, the Client specifically agrees to pay the Consultant for all services rendered and costs incurred or for which commitment theretofore has been made by Consultant through the termination date.

IX. DISPUTE RESOLUTION; VENUE; WAIVER OF JURY TRIAL; GOVERNING LAW

A. The parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement. Either party may initiate negotiations by providing written notice in letter form to the other party, setting forth the subject of the dispute and the relief requested. The recipient of such notice will respond in writing within three (3) business days from receipt with a statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by this exchange of correspondence, then the parties will meet at a mutually agreeable time and place within seven (7) business days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. If the dispute is not resolved by these negotiations within 15 business days following the date of the initial written notice, the matter will be submitted to mediation in accordance with subsection (B) below.

B. Except as provided herein, no civil action with respect to any dispute, claim or controversy arising out of or relating to this

Agreement may be commenced until the parties have attempted in good faith to resolve the matter through a mediation proceeding, under the mediation procedure of the CPR Institute for Dispute Resolution ("CPR"), JAMS/Endispute, the American Arbitration Association ("AAA"), or as otherwise agreed upon by the parties. Either party may commence mediation by sending a written request for mediation to the other party, setting forth the subject of the dispute and the relief requested. Unless the parties agree otherwise in writing, the mediation shall be conducted by a single mediator, and the mediator shall be selected from an appropriate CPR, JAMS/Endispute, AAA or other panel as agreed upon by the parties. The mediation shall be conducted in King County, Washington. Each party shall pay an equal share of the fees and expenses of the mediator and administrative fees and expenses of mediation. Either party may seek equitable relief prior to or during the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

C. The parties further agree that in the event any dispute between them relating to this Agreement is not resolved under subsection XIV (A) or (B) above, exclusive jurisdiction shall be in the trial courts located within King County, Washington, any objections as to jurisdiction or venue in such court being expressly waived. In the event of a breach or threatened breach by Client of this Agreement, Consultant in its sole discretion may, in addition to other rights and remedies existing in its favor and without being required to post a bond or other security, apply to any court for specific performance and/or injunctive or other relief in order to enforce, or prevent the violation of, this Agreement. **BOTH CLIENT AND CONSULTANT HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF THE PARTIES IN THE NEGOTIATIONS, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.**

D. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Washington or any other jurisdiction) that would cause the application hereto of the laws of any jurisdiction other than the laws of the State of Washington. In furtherance of the foregoing, the internal law of the State of

Washington shall control the interpretation and construction of this Agreement, even though under any other jurisdiction's choice of law or conflict of law analysis the substantive law of some other jurisdiction may ordinarily apply.

X. ATTORNEY'S FEES

In the event of any litigation between the parties hereto arising from or with respect to this Agreement, the breach of any warranty, representation or breach of any other terms hereof, and/or the performance of the obligations hereunder, the losing party shall pay all costs and expenses incurred by the prevailing party in connection with such litigation, including, but not limited to, reasonable attorneys' fees and costs, reasonable accountant's fees and costs, and reasonable expert fees and costs, whether incurred at the pre-trial, trial or appellate levels, and/or bankruptcy or other creditors rights' proceedings.

XI. TERMS OF SALE

The terms of sale between the Client and the Consultant shall be net 30 days unless otherwise agreed upon in writing signed by each party.

XII. SERVICE CHARGE

In the event any particular billing is not paid when due, all sales, regardless of prior terms, will become immediately due and owing upon demand by the Consultant. A service charge will be assessed on past due or delinquent accounts at the rate of 1.5 % per month.

XIII. MISCELLANEOUS

Neither party shall have the right to assign any or all of its rights or delegate its duties under this Agreement to any person, firm or company without prior written consent of the other party. An attempted assignment or delegation without prior written consent of the other party will be invalid and ineffective against the non consenting party. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legatees, administrators, legal representatives, successors and permitted assigns. In the event any court of competent jurisdiction shall deem any of the provisions of the Agreement invalid, the same shall be deemed severable, and as never having been contained herein, and this Agreement shall then be construed and enforced in accordance with the remaining provisions hereof. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures shall have the same effect as original signatures.

End of Appendix A

RESOLUTION 2017 - ____

RESOLUTION OF THE BOARD OF DIRECTORS OF THE
LAKE DON PEDRO COMMUNITY SERVICES DISTRICT APPROVING AN
AGREEMENT WITH UTILITY SERVICES ASSOCIATES FOR SYSTEMWIDE
WATER LEAK DETECTION SERVICES

WHEREAS, the Lake Don Pedro Community Services District (herein referred to as District) is a local government agency formed and operating in accordance with Section §61000 et seq. of the California Government Code; and

WHEREAS, the District's water distribution system has been experiencing leakage rates exceeding 20% which is well above the industry standard; and

WHEREAS, the District has determined that contracting with a professional firm specializing in leak detection services is desired and most cost efficient; and

WHEREAS, Utility Services Associates has submitted a services proposal which meets the needs of the District and which is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LAKE DON PEDRO COMMUNITY SERVICES DISTRICT that the proposal and agreement with Utility Services Associates included herein as Exhibit A, shall be approved and effective immediately.

WHEREFORE, this Resolution is passed and adopted by the Board of Directors of the Lake Don Pedro Community Services District on September 18, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Danny Johnson, President, Board of Directors

ATTEST:

Syndie Marchesiello,
Secretary
CERTIFICATE
OF SECRETARY
(STATE OF
CALIFORNIA) (COUNTY
OF MARIPOSA)

I, Syndie Marchesiello, the duly appointed and Secretary of the Board of Directors of the Lake Don Pedro Community Services District, do hereby declare that the foregoing Resolution was duly passed and adopted at a Regular Meeting of the Board of Directors of the Lake Don Pedro Community Services District duly called and held at the District office at 9751 Merced Falls Road, La Grange, CA 95239, on September 18, 2017