



November 7, 2024

TO: LOCSD Board of Directors

FROM: Ron Munds, General Manager

SUBJECT: **Agenda Item 7C – 11/07/2024 Board Meeting**
San Luis Obispo County Fire Schedule A Overpayment Audit
Results and Agreement for Repayment

STAFF RECOMMENDATION:

Motion: I move that the Board

- 1. Accept the San Luis Obispo County Fire Schedule A overpayment audit results and the settlement amount of \$1,199, 437.00; and***
- 2. Approve the Release and Settlement Agreement and authorize the Board President to sign.***

DISCUSSION

Background

The District has been working for the past several years with San Luis Obispo County Fire (County Fire) and Cal Fire to resolve billing and payment issues between fiscal years 2017-18 and 2021-22. After multiple meetings, including the District bringing in a retired Cal Fire employee experienced in the Cal Fire Schedule A accounting and billing practices, a fair overpayment amount of \$1,199,437.00 has been reached. The details of the audit are summarized in the attached correspondence.

County Counsel prepared a Release and Settlement Agreement (attached) to formalize the effort and the outcome. The District's legal counsel has reviewed and provided comments on the draft agreement; those comments have been incorporated into the agreement. Staff is requesting that the Board accept the settlement amount and authorize the Board President to sign the settlement agreement.

Attachment

Release and Settlement Agreement
County of San Luis Obispo Audit Correspondence

President
Marshall E. Ochylski

Vice President
Christine M. Womack

Directors
Charles L. Cesena
Matthew D. Fourcroy
Troy C. Gatchell

General Manager
Ron Munds

District Accountant
Robert Stilts, CPA

Unit Chief
John Owens

Battalion Chief
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RELEASE AND SETTLEMENT AGREEMENT BETWEEN THE
COUNTY OF SAN LUIS OBISPO AND
THE LOS OSOS COMMUNITY SERVICES DISTRICT
CONCERNING FIRE PROTECTION SERVICES AGREEMENTS

THIS AGREEMENT is made and entered into this _____ day of _____, 2024, by and between the LOS OSOS COMMUNITY SERVICES DISTRICT, hereinafter referred to as the “District”, and the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, hereinafter referred to as “County.” The District and the County are hereafter referred to individually and collectively as “Parties.”

WHEREAS, in 2004 the County and the District first entered into a “Cooperative Fire Protection Agreement” to provide fire and emergency services within the District’s service boundary through the California Department of Forestry and Fire Protection/County Fire Department under the County’s agreement with the State of California, Department of Forestry and Fire Protection (“CAL FIRE”); and

WHEREAS, under the terms of the Cooperative Fire Protection Agreement, CAL FIRE, acting as the County Fire Department pursuant to certain agreements between the County and CAL FIRE, was to bill the District the actual cost of services provided to the District in an amount not to exceed the amount set forth in the annually updated Schedule A of the Cooperative Fire Protection Agreement; and

WHEREAS, the County and District have continually operated since 2004 under the Cooperative Fire Protection Agreement, as updated, renewed, and amended (hereafter referred to collectively as the “Fire Protection Agreements”); and

WHEREAS, in the course of conducting an audit of those fiscal years beginning on July 1, 2017, and ending on June 30, 2022 (the “Subject Period”), the County discovered and notified the District that the District was billed contractual rates, and not the actual costs of services as agreed to in the Fire Protection Agreements; and

WHEREAS, following discussions between the County and the District, the County Auditor and Administrative Offices, using a mutually agreed upon set of data, assumptions,

and methodology, calculated an overpayment by the District in the amount of \$1,199,437 for services provided during the Subject Period under the Fire Protection Agreements; and **WHEREAS**, the parties enter into this Agreement to resolve this discrepancy concerning billing for fire protection services during the Subject Period and through June 30, 2024 under the Fire Protection Agreements.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the funds to be exchanged, and the releases to be executed, the Parties agree as follows:

AGREEMENT AND RELEASE

1. The County agrees to pay, and the District agrees to accept, a lump sum payment of \$1,199,437 as full payment, reimbursement, and satisfaction for all billing discrepancies for the Subject Period under the Fire Protection Agreements.

2. The District and its successors, assigns, agents, employees, representatives, and affiliated entities, hereby fully release and discharge the County and its divisions, departments, governing body, past and present officers, department heads, elected officials, executives, employees and former employees, agents, predecessors, attorneys, and representatives, as well as all representatives, insurers, successors in interest and assigns, and all persons acting by, through, under, or in concert with any of them, from all rights, claims, liabilities, causes of action at law or in equity whatsoever, known or unknown, between the District and the County with respect to payments made or owed under the Fire Protection Agreements for the Subject Period. It is the intent of the Parties to fully resolve and discharge all disputes and claims, known or unknown, present or future, actual or potential, that existed or exists between the District and County concerning overpayments by the District under the Fire Protection Agreements for the Subject Period and for fiscal years 2022-2023 and 2023-2024.

3. The County agrees to pay, and the District agrees to accept, a lump sum payment of \$30,000 as full payment, reimbursement, and satisfaction costs associated with conducting an audit of the Subject Period, incurred by the District. Each Party hereto has read and

understands section 1542 of the Civil Code of the State of California, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER OR IT, WOULD HAVE MATERIALLY AFFECTED HIS OR HER ITS SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Each Party hereto expressly waives and releases any right or benefit which such Party has or may have under said section 1542 of the Civil Code of the State of California to the full extent such Party may lawfully waive all such rights and benefits pertaining to the matters and things released herein. Each Party acknowledges that there is a risk that subsequent to the execution of this Agreement, one or more Parties will incur or suffer loss, damages, or injuries related to payments by the District under the Fire Protection Agreements during the Subject Period, or any similar claims, demands, causes of action known or unknown, present or future, actual or potential. IN CONNECTION WITH SUCH WAIVER AND RELINQUISHMENT, EACH PARTY TO THIS AGREEMENT HEREBY ACKNOWLEDGES THAT THEY ARE AWARE THAT THEY MAY HEREAFTER DISCOVER CLAIMS OR FACTS IN ADDITION TO, OR DIFFERENT FROM, THOSE WHICH THEY NOW KNOW OR BELIEVE TO BE TRUE WITH RESPECT TO THE MATTERS RELATED HEREIN, BUT THAT IT IS THE INTENTION OF EACH SUCH PARTY TO HEREBY FULLY, FINALLY, AND FOREVER SETTLE AND RELEASE ALL SUCH MATTERS, ALL CLAIMS RELATIVE THERETO, ALL SIMILAR CLAIMS, WHICH DO NOW EXIST, MAY EXIST IN THE FUTURE, OR HERETOFORE HAVE EXISTED AGAINST EACH AND ALL OF THE OTHER PARTIES HERETO FOR DAMAGES RESULTING FROM ANY DISPUTE CONCERNING PAYMENTS UNDER THE FIRE PROTECTION AGREEMENTS FOR THE SUBJECT PERIOD. In making this Agreement, each Party hereto agrees that they are acting on behalf of themselves, their dependents, heirs, their executors, administrators, assigns, agents, servants, representatives, successors, past and present directors, governing bodies, divisions, departments, subsidiaries, insurers, reinsurers, successors in interest, partners, officers, supervisors, executives, employees, assigns, agents, servants, representatives, predecessors, attorneys, and representatives, and all persons acting by, through, under or in concert with any of them, and further

acknowledges and agrees that the persons and entities released by this Agreement have at all times pertinent hereto negotiated, bargained, and settled this matter in good faith and have at all times pertinent hereto conducted themselves in good faith. Therefore, the undersigned and their dependents, heirs, their executors, administrators, assigns, agents, servants, representatives, successors, past and present directors, governing bodies, divisions, departments, subsidiaries, insurers, reinsurers, successors in interest, partners, officers, supervisors, executives, employees, assigns, agents, servants, representatives, predecessors, attorneys, and representatives, and all persons acting by, through, under or in concert with any of them, specifically waive and relinquish any and all rights, actions, causes of action, claims, demands, damages, costs, losses, expenses, and compensation with respect to events and actions giving rise to the purpose of this Agreement.

4. Each Party hereto acknowledges that such Party has been represented or has had the opportunity to be represented in negotiations for, and in the preparation of this Agreement by counsel of such Party's own choosing; that such Party has read this Agreement or has had the Agreement read to them by such Party's counsel; that such Party has had the Agreement fully explained to them by counsel or has had the opportunity to have the Agreement fully explained to them by retaining counsel; that such Party is fully aware of the content and legal effect of the Agreement; and that such Party has not been influenced to any extent whatsoever by any representations made by any of the other Parties hereto except as set forth in this Agreement

5. Each Party hereto agrees that such Party will not take any action which would interfere with the performance of this Agreement by any other Party hereto or which would adversely affect any of the rights provided for herein. This Agreement may not be modified or amended except by the written consent of all Parties hereto. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties hereto relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been relied upon by any Party hereto, except as specifically set forth in this Agreement. All prior discussions and negotiations have been and are merged and integrated into this Agreement and are fully superseded hereby.

6. This Agreement is being entered into in good faith by all Parties and was negotiated through arm's length bargaining. This Agreement shall be construed in accordance with and be governed by the laws of the State of California. This Agreement may be executed and delivered in two or more counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together constitute but one and the same instrument and agreement. Each person signing this Agreement represents and warrants that they are duly authorized and have legal capacity to execute and deliver this Agreement.

(SIGNATURE PAGES FOLLOW)

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT ON THE DATES BELOW THEIR SIGNATURES:

COUNTY OF SAN LUIS OBISPO ("COUNTY")

By: _____
Matthew P. Pontes
County Administrative Officer

Dated: _____

Approved as to Form and Legal Effect:
Rita L. Neal, County Counsel

By: _____
Deputy County Counsel

Dated: _____

LOS OSOS COMMUNITY SERVICES DISTRICT (“DISTRICT”)

By: _____
Marshall E. Ochylski
President, Board of Directors

Dated: _____

Approved as to Content:

By: _____
Ron Munds, General Manager

Dated: _____

Approved as to Form and Legal Effect:

By: _____
District Legal Counsel

Dated: _____



COUNTY OF SAN LUIS OBISPO

ADMINISTRATIVE OFFICE

Matthew Pontes *County Administrative Officer*

September 26, 2024

Los Osos Community Services District
Attn: Ron Munds, General Manager
2122 9th Street, Suite 110
Los Osos, CA 93402
rmunds@losososcscsd.org

Subject: Los Osos Community Services District Fire Services Agreement 5-Year Billing Audit

Beginning in 2004, Los Osos Community Services District (LOCSO) contracted for fire protection services in the community of Los Osos for California Department of Forestry and Fire Protection (CAL FIRE) services through the County's contract for services. The service agreement between LOCSO and County Fire states that LOCSO will be billed for actual cost of services provided, however, CAL FIRE has historically billed LOCSO contractual rates. This discrepancy was discovered after LOCSO requested a 5-year billing audit.

The County Administrative Office and Auditor's Office have completed the Los Osos Community Services District Fire Services Agreement 5-Year Billing Audit (Audit). The Audit included Fiscal Years (FY) 2017-18 through 2021-22. LOCSO engaged consultant, Eric Cleavland, to conduct a parallel audit on behalf of LOCSO. The Administrative Office has worked with Eric Cleveland and Ron Munds, LOCSO General Manager, as described in this letter.

According to the services agreement between LOCSO and County Fire, executed in 2004, LOCSO is obligated to pay the actual cost of fire protection service, not to exceed the amount set forth in the annually updated Schedule A of the service agreement. The actual costs of service outlined in the agreement includes costs associated with fire station staffing, fire prevention services, fire hazard mitigation services, dispatch services, training services, Chief Officer coverage, administrative services, fire investigation, and vehicle operation and maintenance costs at either a mileage or flat rate.

For each year included in the Audit, LOCSO paid to the County an amount equal to the annual Schedule A total cost for that year. While conducting the Audit, it was found that the actual expense associated with providing fire service to Los Osos was largely found to be coded to the broader County Fire rather than to Los Osos fire station. CAL FIRE produced fire station staffing salary and benefit costs in the form of AO-17 reports, however, some AO-17s were missing or incomplete. Additionally, supporting documentation for Schedule A operating costs were not obtained from County Fire, due to lack of expense coding in the CAL FIRE/County Fire accounting system.

Below is a summary of missing or incomplete AO-17 report data for each of the Audit years as well as assumptions used to estimate actual costs where data was missing.

AO-17 reports for FY 2017-18 were received for 10 of the 12 months. The missing information occurred in the first quarter of the year. An average of quarters 2-4 was used for the first quarter.

AO-17 reports for FY 2019-20 were received for 10 of the 12 months. The missing information occurred in the fourth quarter. The fourth quarter cost was provided by Eric Cleveland on behalf of LOCSD based on actuals identified by Eric Cleveland.

FY 2020-21 AO-17 reports did not separate Los Osos station personnel cost from the overall County Fire AO-17 reports. Eric Cleveland calculated Los Osos personnel cost based on personnel known to be assigned to the Los Osos fire station during FY 2020-21 and estimated overtime cost due to lack of actual coded overtime. County Administrative Office staff verified Eric Cleveland's calculations.

AO-17 reports for FY 2021-22 were received for 12 months, however, months 1, 11, and 12 included anomalies. Extended duty payment in month 1 was adjusted to match month 2. Months 11 and 12 included a staff count of 7 compared to the standard 8, however, no adjustment was made.

On August 1, 2024, County administrative staff including County Administrative Officer Matthew Pontes and Assistant County Administrative Officer Rebecca Campbell, met with LOCSD staff including LOCSD General Manager Ron Munds to discuss progress of the billing audit. Several key items were decided at the meeting: because Schedule A operating costs were not coded to Los Osos, Schedule A contractual operating costs will be used for purposes of the audit; the clerical position assigned to Los Osos, shown in Schedule A contractual costs, is included in FY 2017-18 through FY 2019-20 AO-17 staffing costs and so will not be included as part of Schedule A operating costs (the position was vacant in FY 2020-21 and 2021-22); uniform cost, shown in Schedule A operating costs, is included in AO-17 staffing costs and so will not be included as part of Schedule A operating costs; County overhead is considered an actual cost of providing service, however, because the actual overhead rate (calculated annually by the County Auditor's Office) was not included in the annual Schedule A provided to Los Osos, an overhead rate of 3.5% will be included in the audited actual cost of service. At the meeting, it was also understood that actual costs associated with contractual obligations related to fire prevention services, fire hazard mitigation services, dispatch services, training services, Chief Officer coverage, administrative services, fire investigation, and vehicle operation and maintenance have predominantly not been coded or correctly billed to Los Osos and historical billing for fire personnel staffing has shown inconsistencies.

Using the above-described data, assumptions and methodology, the County Auditor's Office and Administrative Office calculated the difference between payments made by LOCSD and the calculated actual cost of service for fiscal years 2017-18 through 2021-22. The total difference for these 5 years shows an overpayment by LOCSD in the amount of \$1,199,437. A summary table of payments and actuals is attached to this letter as Attachment 1.

As stated above, the actual cost of providing fire service to Los Osos has historically been substantially undifferentiated from the overall cost of operating County Fire. Additionally, certain contractual operating costs have not been billed to LOCSD, such as the cost of dispatch, training and actual rate of County overhead, however, the County is prepared to provide a settlement in the amount of \$1,199,437 to LOCSD to bring resolution to the LOCSD requested audit and to any billing incongruities through the end of fiscal year 2024. Additionally, County staff will work with CAL FIRE to establish correct coding and billing methodologies to accurately identify all costs associated with LOCSD Fire Protection Agreement, to be included in the FY 2024-25 fire protection agreement between LOCSD and County Fire.

Sincerely,

Matthew P Pontes
Matthew Pontes
County Administrative Officer


James Hamilton, CPA
Auditor-Controller

County of San Luis Obispo Government Center

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Attachment 1

Los Osos Payments to FC 140 County Fire							
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22		Totals FY 2018-2022
LOCSD Payments	\$ 1,069,447	\$ 1,083,602	\$ 1,133,852	\$ 1,232,617	\$ 1,218,863		
	\$ 1,069,447	\$ 1,083,602	\$ 1,133,852	\$ 1,205,109	\$ 1,218,863		
		\$ (41,363)			\$ (331,393)		
					\$ (117,381)		
Total Payments	\$ 2,138,894	\$ 2,125,841	\$ 2,267,703	\$ 2,437,726	\$ 1,988,953	\$ 10,959,117	
Los Osos Actuals Billed to County							
State Contract Exp	\$ 1,674,625	\$ 1,600,950	\$ 1,944,770	\$ 1,848,545	\$ 1,983,496		\$ 9,052,385
County Fire Exp							
Schedule A	\$ 91,551	\$ 98,490	\$ 99,783	\$ 106,363	\$ 115,035		\$ 511,222
Overhead at 3.5%	\$ 61,816	\$ 59,480	\$ 71,559	\$ 68,422	\$ 73,449		\$ 334,726
Total Actuals	\$ 1,827,992	\$ 1,758,920	\$ 2,116,112	\$ 2,023,329	\$ 2,171,979		\$ 9,898,333
CSA 9i Revenue	\$ (25,376)	\$ (26,274)	\$ (26,551)	\$ (27,613)	\$ (32,839)		\$ (138,653)
Total Billable	\$ 1,802,616	\$ 1,732,646	\$ 2,089,561	\$ 1,995,716	\$ 2,139,140		\$ 9,759,680
Difference	\$ 336,278	\$ 393,195	\$ 178,142	\$ 442,010	\$ (150,187)		\$ 1,199,437

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