



June 14, 2019

TO: LOCSD Board of Directors

FROM: Roy A. Hanley, Past General Counsel

SUBJECT: **Agenda Item 2A – 6/18/2019 Special Board Meeting**
Approve Retainer Agreement with Adamski, Moroski, Madden, Cumberland and Green for Services as General Counsel and Ratify Said Retainer Agreement as of June 13, 2019

President
Marshall E. Ochylski

Vice President
Charles L. Cesena

Directors
Matthew D. Fourcroy
Vicki L. Milledge
Christine M. Womack

General Manager
Renee Osborne

District Accountant
Robert Stilts, CPA

Unit Chief
Scott M. Jalbert

Battalion Chief
George Huang

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DESCRIPTION

The Los Osos Community Services District (District) conducted a statewide recruitment for a new General Counsel. The recruitment culminated in interviews on June 13, 2019 of the final candidates with the selection made by the District Board of Directors reported out as action at the conclusion of the duly noticed and held closed session for the purposes of selecting new General Counsel. The Board reported out that the law firm of Adamski, Moroski, Madden, Cumberland and Green was selected. Jeffrey Minnery will serve as the named General Counsel.

The retained firm was asked to begin work immediately with the intention that the retainer agreement, together with ratification of all work performed according to the agreement beginning June 13, 2019 to be paid according to an approved written retainer. That written retainer is attached to this staff report.

It is legally permissible for a general counsel to negotiate the terms of its own retainer agreement. Despite that legal rule, previous general counsel has represented the Board of Directors in review of the proposed retainer agreement, has prepared the staff report in this regard and is making the recommendation below.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the draft retainer agreement attached. Staff recommends that the Board adopt the following motion:

Motion: I move that the Board approve the Retainer Agreement with Adamski, Moroski, Madden, Cumberland and Green, authorize the Board President execute it, and ratify expenditure of funds for all efforts to perform services as General Counsel beginning on June 13, 2019.

DISCUSSION

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

FINANCIAL IMPACT

The Retainer Agreement provides for hourly rates based upon defined services. A specific financial impact is impossible to state. The amounts paid will be dependent upon the services demanded and required to perform the function as General Counsel.

Attachment

**ADAMSKI MOROSKI MADDEN
CUMBERLAND & GREEN LLP**
ATTORNEYS AT LAW

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T 805-543-0990 • F 805-543-0980 • www.ammcglaw.com

June 14, 2019

VIA EMAIL

Los Osos Community Services District
Attn: Board of Directors
2122 9th Street, Suite 110
Los Osos, CA 93402

Re: Fee Agreement for Legal Services

Dear President Ochylski and Board of Directors:

This letter will confirm that the Los Osos Community Services District has engaged Adamski Moroski Madden Cumberland & Green LLP (the "Firm") to perform the legal services described below. When you countersign on behalf of the Los Osos Community Services District ("You"), this letter will evidence our agreement ("Agreement") with respect to those services. To the extent that California Business & Professions Code section 6148 applies to this engagement, this Agreement is intended to fulfill the requirements of that section.

As discussed below, it is understood and agreed that the Firm will submit its monthly invoices and costs advanced to the Los Osos Community Services District, attention General Manager. It is expressly understood and agreed that the Los Osos Community Services District is responsible for the attorneys' fees and cost obligations incurred by the Firm in representing the interests of the Los Osos Community Services District.

Please read this letter carefully. If You have concerns, please feel free to contact us. We encourage You to discuss these matters with us at any time from the inception of this Agreement through the course of representation.

1. RECITALS.

1.1. The scope of the requested representation is to advise and represent You in connection with any legal matters that you may refer to the Firm from time to time ("Matter(s)"), including general district legal counsel, litigation, and any matters related thereto.

1.2. The scope of our representation may be expanded from the work described above only if agreed upon in writing by both You and the Firm. We cannot guarantee a particular result or outcome in the Matter for which we have been retained. Our responsibility in representing You is to provide effective legal services consistent with our ethical and professional responsibilities and based upon all available information.

1.3. You recognize and agree that one or more lawyers and/or paralegals at the Firm may work on the Matter. You understand that You are hiring the law firm and not any individual lawyers. However, Jeffrey A. Minnery will be the attorney primarily responsible for this Matter.

1.4. This Agreement will be effective when it is countersigned by You. However, this Agreement will apply retroactively to any services we may provide in connection with the engagement before the date this Agreement is countersigned by You.

2. ATTORNEYS' FEES IN INDIVIDUAL ACTION; STATEMENTS IN "BLOCK BILLING" FORMAT.

2.1. You agree to pay attorneys' fees on the following bases. It is understood that no specific fee is set by law, and that this fee has been specifically agreed to between the parties.

2.2. Billing statements will be prepared and mailed to You on a monthly basis. The Firm's billing cycle is the calendar month. Payment of the billing statement is due upon receipt by You, and a billed amount will be deemed past due if not paid within thirty (30) days of the date of the billing statement on which it first appears. Upon completion of this representation, the Firm will send You a final statement for all remaining fees and costs, if any.

2.3. The attorneys' fees component of the Firm's billing statements will appear in "block billing" format. In other words, while the work performed by Firm attorneys on any given day will be stated in some detail, the time spent in performing those tasks will be aggregated and will appear as a single time entry for each attorney on that day. The minimum billing block is 0.2 hour for each task.

2.4. The legal services to be rendered by the Firm on Your behalf will be charged at an hourly rate. All attorneys and paralegals have an assigned hourly rate and separately record their time spent on each client matter. Hourly rates vary, and each statement reflects the hourly rates. Because the time spent by professionals in performing services on Your behalf is the most significant element in determining the amount of our fees, we cannot predict in advance what the total amount of fees will be for this engagement. Jeffrey A. Minnery's current rate and the rate for other attorneys in the Firm will be \$250.00 per hour. This is a discounted rate due to the public entity status of the Los Osos Community Services District. These rates are subject to change, typically on an annual basis. It is understood that the fees charged in this Matter will include these periodic increases and will be reflected on billing statements.

2.5. If a billing statement is not paid when due as described in paragraph 2.2 above, from the date when such statement is 30 days past due, interest will be charged on the principal balance (fees, costs, and disbursements) shown on the statement. Interest will be calculated by multiplying the unpaid balance by the periodic rate of 0.833 percent per month (ten percent [10%] annual percentage rate). The unpaid balance will bear interest until paid.

3. COSTS AND EXPENSES.

3.1. You shall be responsible for all costs and expenses incurred while working on Your Matter. These costs may include, without limitation, filing and other court-imposed fees, photocopying charges, telephone charges, on-line research charges, deposition costs, and travel expenses, including lodging, food and the like. With Your advance authorization, the Firm may employ outside investigators and other experts or consultants, whose fees and expenses shall be charged to You as costs.

3.2. The Firm may, in its discretion, advance some costs and expenses, with reimbursements to be made by You upon periodic billing, upon termination of the Matter, or upon our discharge or withdrawal as attorneys, whichever occurs first. The reimbursement of any costs advanced is in addition to any billed attorneys' fees.

3.3. We will require the deposit of our reasonably estimated costs and fees in any mediation, arbitration or trial ten (10) days prior to any such proceeding.

4. REPRESENTATIONS.

It is acknowledged that we have made no representation whatsoever regarding the successful resolution of the Matter.

5. COOPERATION AND RESOLUTION.

You agree to cooperate fully with us in all aspects of the Matter. Examples of the assistance that You are required to provide may include: providing information and access to records, being available for consultation and deposition sessions upon reasonable notice, actively participating in the decision-making process with regard to potential resolutions or strategy, and paying this Firm's invoices as they come due.

6. DISCHARGE, WITHDRAWAL OR COMPLETION OF REPRESENTATION.

6.1. You may discharge the Firm at any time. The Firm may withdraw for good cause. Among facts constituting good cause is the breach of this Agreement by You, failure to cooperate with us or to follow our advice on a material matter, failure to pay this Firm's invoices when due, or any fact or circumstance that would permit us to withdraw under California attorney ethics rules.

6.2. Unless specifically agreed by all parties, we will provide no further services and advance no further costs after receipt of notice that You have discharged the Firm as Your attorneys.

6.3. Should the Firm withdraw or be discharged, it shall be paid for all costs advanced and any outstanding balance of attorneys' fees. You will remain responsible for any costs incurred on Your behalf and remaining unpaid at the time of our discharge or withdrawal.

6.4. You and the Firm each agree to sign any documents reasonably necessary to complete the Firm's discharge or withdrawal as Your attorneys.

6.5. Upon completion of the legal tasks and representation covered by this engagement letter, the Firm will provide no further services unless agreed to in writing by both parties.

7. RIGHT TO SEEK INDEPENDENT LEGAL ADVICE.

Before entering into this Agreement, the Firm has advised You of Your right to seek the advice of an independent attorney concerning the terms and conditions of this Agreement. You may seek such independent advice as You desire concerning any questions on this matter.

8. INSURANCE COVERAGE.

The Firm maintains errors and omissions insurance applicable to the legal services to be provided.

9. ARBITRATION.

9.1. Any dispute between You and the Firm concerning attorneys' fees or other costs for professional services rendered by the Firm pursuant to this Agreement will be, at Your election, submitted to arbitration. If You elect to arbitrate such dispute, the arbitration shall be conducted pursuant to California Business & Professions Code sections 6200 et seq.

9.2. In the event of any arbitration, action, or proceeding arising out of this Agreement, the prevailing party shall be entitled to recover all costs and other expenses, including reasonable attorneys' fees, incurred by it in connection with or in preparation for such arbitration, action or proceeding.

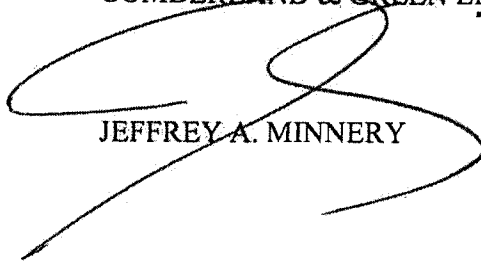
Please review this Agreement carefully. If You have any questions about this Agreement, please contact me before signing the consent set forth below. In addition, You are free to consult with independent counsel regarding this Agreement or regarding any other matter related to the Firm's representation of You.

Los Osos Community Services District
June 14, 2019
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Please sign and date this Agreement below, and return a signed copy to us at Your earliest convenience.

Very truly Yours,

ADAMSKI MOROSKI MADDEN
CUMBERLAND & GREEN LLP



JEFFREY A. MINNERY

JAM:jeb

I acknowledge that I have read, understood and agree to the terms set forth in this Agreement, that I have the authority to execute this Agreement on behalf of the Los Osos Community Services District.

LOS OSOS COMMUNITY
SERVICES DISTRICT

Dated: _____

By _____

Its _____