



December 18, 2015

**TO:** LOCSD Board of Directors  
**FROM:** Michael W. Seitz, District Legal Counsel  
**SUBJECT:** **Agenda Item 6F – 1/7/2016 Board Meeting**  
Ratify Employment Contract for Temporary General Manager

**President**  
R. Michael Wright

**Vice President**  
Marshall E. Ochylski

**Directors**  
Charles L. Cesena  
Jon-Erik G. Storm  
Louis G. Tornatzky

**General Manager**  
Kathy A. Kivley

**District Accountant**  
Michael L. Doyel

**Fire Chief**  
Robert Lewin

**Battalion Chief**  
Tom McEwen

**DESCRIPTION**

Ratify the employment contract for the District's Temporary General Manager with Margaret Falkner.

**SUMMARY OF STAFF RECOMMENDATION**

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 and approve the attached contract employing Margaret Falkner as the District's Temporary General Manager.***

**DISCUSSION**

Government Code Section 61050 (a) provides as follows: The board of directors shall appoint a General Manager.

Margaret Falkner has agreed to provide the District with Temporary General Manager services, at \$50.00 per hour and with the benefits she is currently receiving as a District employee.

The contract took effect December 7, 2015 and shall remain in effect until one week after a permanent or Interim General Manager starts employment or until January 31, 2016, whichever occurs first.

Attachment

**Mailing Address:**  
P.O. Box 6064  
Los Osos, CA 93412

**Offices:**  
2122 9<sup>th</sup> Street, Suite 102  
Los Osos, CA 93402

**Phone:** 805/528-9370  
**FAX:** 805/528-9377

[www.losososcsd.org](http://www.losososcsd.org)

**LOS OSOS COMMUNITY SERVICES DISTRICT  
TEMPORARY GENERAL MANAGER  
EMPLOYMENT CONTRACT**

Attachment: Exhibit "A" – Temporary General Manager Job Description

This Agreement (sometimes referred to herein as "Contract"), is made and entered into by and between the Los Osos Community Services District, (herein referred to as "District"), and Margaret Falkner, (herein referred to as "Temporary General Manager") with reference to the following recitals:

**RECITALS**

A. District is a Community Services District organized and operating pursuant to 61000 et. seq., of the California Government Code.

B. District desires to enter into a Contract Employment relationship with Margaret Falkner as Temporary General Manager of the District.

C. Margaret Falkner desires to enter into an employment relationship as Temporary General Manager of the District.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

**SECTION 1. EMPLOYMENT OF TEMPORARY GENERAL MANAGER**

A. Subject to the terms and conditions of this Contract, District hereby agrees to employ Margaret Falkner as the District's Temporary General Manager and Secretary to the Board of Directors (collectively "Temporary General Manager").

B. It will be Margaret Falkner's option to return to Utility Compliance Technician III duties upon completion of her term as District Temporary General Manager.

**SECTION 2. DUTIES**

A. The duties of the Temporary General Manager are generally described in Exhibit "A", attached hereto and incorporated herein by this reference, and Government Code Section 61051 which provides as follows:

The General Manager shall be responsible for all of the following:

1. The implementation of the policies established by the Board of Directors for the operation of the District.
2. The appointment, supervision, discipline, and dismissal of the District's employees, consistent with the employee relations system established by the Board of Directors.
3. The supervision of the District's facilities and services.
4. The supervision of the District's finances.

B. The Temporary General Manager shall also act as the Secretary to the Board of Directors and shall be responsible for:

1. Maintaining accurate records of the proceedings of the Board of Directors.
2. Maintaining a book of District Ordinances or Codes with her attestation.
3. Maintaining District records including original Ordinances, Resolutions and Contracts and attest to the originals and true and correct copies of the same.
4. Administering Oaths or Affirmations and certifying affidavits and depositions pertaining to District affairs and business which may be used in any court or proceeding in the State.

C. The Temporary General Manager shall assist the Board of Directors in recruiting a permanent or Interim District General Manager.

D. The Temporary General Manager agrees to perform the function and duties specified in paragraphs A, B and C above and to perform other legally permissible and proper duties and functions as the District Board of Directors shall from time to time assign without additional compensation.

### **SECTION 3. TERM**

A. This Contract shall take effect on Monday, December 7, 2015 ("Effective Date"), and shall remain in effect until the first of the following to occur:

1. One week after the permanent or Interim District General Manager starts employment with the District; or

2. January 31, 2016 ("Termination Date").

B. Nothing in this Contract shall prevent, limit or otherwise interfere with the right of Temporary General Manager to resign at any time from her position with District, subject only to the provisions set forth in Section 4 of this Contract.

#### **SECTION 4. TERMINATION**

A. Temporary General Manager understands and expressly agrees that she has no constitutionally protected property or other interests in her employment as Temporary General Manager. Temporary General Manager understands and expressly agrees that she serves at the will and pleasure of the District Board of Directors and that she may be terminated or asked to resign at any time by the District Board of Directors, with or without cause.

B. District and Temporary General Manager acknowledge that when this contract is terminated, except for when that termination is for cause, that the Temporary General Manager shall return to her position as Utility Compliance Technician III at the salary then applicable to that position and without loss of credit for longevity in that position.

C. Termination For Cause: In the event Temporary General Manager is terminated for good cause, Temporary General Manager shall be entitled to all salary earned, but not paid as of the date of termination only. Temporary General Manager shall not be entitled to any other compensation, including, without limitation, any severance compensation. For purpose of this Contract, "good cause" shall include, but not necessarily be limited to, any of the following:

- (1) Any material breach by Temporary General Manager of any term or provision of this Contract;
- (2) Temporary General Manager's failure to perform her duties in a professional and responsible manner consistent with generally accepted standards of the profession;
- (3) Temporary General Manager's misfeasance;
- (4) Temporary General Manager's malfeasance;
- (5) Conduct unbecoming the position of Temporary General Manager or likely to bring discredit or embarrassment to the District;
- (6) Insobriety;

- (7) Conviction of a misdemeanor involving moral turpitude;
- (8) Conviction of a felony;
- (9) Engaging in illegal business practices in connection with the District's business;
- (10) Misappropriation of the District's assets;
- (11) Excessive unexcused absences of Temporary General Manager from her employment during usual working hours; or
- (12) Failure to perform or habitually neglecting the duties which she is required to perform under this Contract.

D. Temporary General Manager may terminate this Contract at any time by giving District twenty-one (21) calendar days written notice in advance, unless the parties otherwise agree. Should Temporary General Manager fail to give such period of notice, Temporary General Manager shall pay to the District as liquidated damages the sum of forty dollars (\$40) per working day (not to exceed a maximum of 4 days per week), for the difference between the number of actual days of prior notice and twenty-one (21) calendar days. Temporary General Manager agrees that the liquidated damages may be deducted from her final paycheck.

E. If this Contract is terminated by District for cause pursuant to Section C, above and it is later determined that the termination was wrongful, such termination automatically shall be converted and treated as a Termination Without Cause under Section B, above, and Temporary General Manager shall be entitled to receive only the amounts payable hereunder in the event of a Termination Without Cause.

## **SECTION 5. SALARY AND WORKING HOURS**

A. Salary. District agrees to pay Temporary General Manager for her services rendered at a rate of \$2,000.00 (two thousand dollars) per week, or prorated to the time that this contract is terminated, payable in equal installments at the same time as other employees of District are paid. The District shall deduct all normal withholdings required by law with respect to any amounts paid under this contract. The amount stated above covers not only her position as Temporary General Manager, but the position as Utility Compliance Technician III as well.

B. Hours per week. Temporary General Manager shall work a minimum of forty (40) hours per week in her position as Temporary General Manager and Utility Compliance Technician III.

C. Hours per day. Temporary General Manager shall work a minimum of eight (8) hours per day, five (5) days per week in her position as Temporary General Manager and in her position as Utility Compliance Technician III.

While working as a part of this contract, Temporary General Manager shall be considered as an exempt employee.

## **SECTION 6. TIME OFF**

Temporary General Manager is entitled to vacation and holidays in the same manner as she is entitled to those as Utility Compliance Technician III.

## **SECTION 7. BENEFITS**

Temporary General Manager is entitled to District benefits equivalent to those she is currently receiving in her position as Utility Compliance Technician III, such as health insurance, retirement, vacation or sick leave.

## **SECTION 8. EXPENSES**

The District shall reimburse Temporary General Manager for incurred expenses as follows:

A. Automobile. Temporary General Manager shall provide her own automobile. District shall reimburse Temporary General Manager for automobile expenses at the prevailing IRS per diem mileage rate for:

(1) Expenses incurred in performing services for the District.

B. Professional expenses. District shall consider requests for funds for certain items, activities and materials deemed necessary and desirable for Temporary General Manager's continued professional development, participation, growth and advancement including travel and subsistence expenses for professional meetings and similar functions as follows:

(1) Temporary General Manager shall prepare a budget for anticipated expenses that shall be approved by the District Board of Directors.

- (2) Temporary General Manager shall receive prior Board approval for all travel and subsistence expenses to courses, conferences and seminars conducted outside of the County of San Luis Obispo.
- (3) All expenses shall be paid in accordance with the laws of California and District Board policies and procedures.

C. Payment. Temporary General Manager shall invoice District on a monthly basis for expenses referenced in this Section which shall be considered for approval as part of the monthly Warrant Register prior to payment.

### **SECTION 9. AUTOMOBILE INSURANCE**

During the Contract Term Temporary General Manager shall maintain automobile insurance on personal vehicles. Proof of insurance shall be lodged with the District prior to the Effective Date.

### **SECTION 10. PERSONNEL POLICIES**

Temporary General Manager has read and agrees to be bound by the following District Policies:

- A. INJURED ON DUTY
- B. SAFETY
- C. USE OF DISTRICT VEHICLES AND PROPERTY
- D. APPEARANCE AND CONDUCT
- E. SUBSTANCE ABUSE
- F. SEXUAL HARASSMENT
- G. HARASSMENT
- H. FITNESS FOR DUTY

### **SECTION 11. NOTICES**

A. Notices pursuant to this Contract shall be in writing and shall be deemed received at the earlier of either (a) actual receipt, or (b) three (3) days following deposit in the U.S. Mail as provided below. Notices delivered by U.S. or private mail shall be directed to the addresses shown below, provided that a party may change addresses by giving written notice to the other party in accordance with this subsection:

1. District:  
Los Osos Community Services District  
2122 9th Street  
Los Osos, CA 93402  
Attn: President of the Board of Directors

2. Temporary General Manager:  
Margaret Falkner  
P. O. Box 1112  
Morro Bay, CA 93443-1112

B. Notices under this section may be:

- (1) Served personally; or
- (2) Sent by facsimile (provided a hard copy is mailed within one (1) business day); or
- (3) Delivered by first class U.S. Mail, certified, with postage prepaid and a return receipt requested; or
- (4) Sent by Federal Express or equivalent private mail delivery service.

## **SECTION 12. GENERAL PROVISIONS**

A. Temporary General Manager shall comply with all local and state requirements regarding conflicts of interest and shall avoid personal involvement in situations which are inconsistent or incompatible with a position of Temporary General Manager or give rise to the appearance of impropriety.

B. In accordance with and to the extent provided by California's Tort Claims Act (Government Code Section 825 et seq. and Government Code Sections 995-996.5), the District shall defend and indemnify Temporary General Manager against any and for all losses sustained by the Temporary General Manager in direct consequences of the discharge of the Temporary General Manager's duties on the District's behalf for the period of the Temporary General Manager's employment pursuant to this Contract.

C. The terms of this Contract are intended by the parties as the final expression of their agreement and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend that this Contract constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any, involving this Contract. Any amendments to this Contract must be in writing and executed by both parties.



D. In the event of Temporary General Manager's death, Temporary General Manager's heirs, legatees, devisees, executors or legal representatives shall be entitled to all salary earned, but not paid. Temporary General Manager and her heirs, legatees, devisees, executors or legal representatives shall not be entitled to any other compensation, including, without limitation, any severance compensation.

E. If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

F. This Contract shall be governed by the laws of the State of California. Temporary General Manager and the District agree that venue for any dispute shall be in San Luis Obispo County, California.

G. The parties acknowledge that they understand the significance and consequences of this Contract. The parties also acknowledge that they have been given full opportunity to review and negotiate this Contract and execute it only after full reflection and analysis, and that they have had an opportunity to review this document and its application and meaning with their respective attorneys and advisors. This Contract shall not be interpreted against the party who prepared the initial draft because all parties participated in the drafting of this Contract by having ample opportunity to review and submit suggested changes or corrections for incorporation into the final version of this Contract.

H. Temporary General Manager may not assign this Contract in whole or in part.

I. This Contract may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument, and shall be governed by the laws of the State of California.

J. This Contract shall become effective on the date the Contract is approved by the District Board of Directors.

**IN WITNESS WHEREOF**, District and Temporary General Manager have executed this Contract on the day and year first set forth below.

I have read this Contract and agree to be employed by the District under the terms and condition herein stated. I understand and agree that no representative of the District has the authority to enter into any agreement, expressed or implied, that would modify the terms and conditions of this Contract.

Margaret Falkner  
Margaret Falkner,  
Temporary General Manager

12/14/15  
Date

Approved by District Board of Directors

\_\_\_\_\_  
Michael Wright, President  
Board of Directors  
Los Osos Community Services District

\_\_\_\_\_  
Date