



July 1, 2016

**TO:** LOCSD Board of Directors  
**FROM:** Peter J. Kampa, Interim General Manager  
**SUBJECT:** **Agenda Item 6D – 7/7/2016 Board Meeting**  
Adopt Resolution Approving a Contract for District Legal Services

**President**  
Marshall E. Ochylski

**Vice President**  
Jon-Erik G. Storm

**Directors**  
Charles L. Cesena  
Louis G. Tornatzky  
R. Michael Wright

**Interim General Manager**  
Peter J. Kampa

**Temporary District Accountant**  
Dale G. Flynn

**Unit Chief**  
Scott M. Jalbert

**Battalion Chief**  
Tom McEwen

**DESCRIPTION**

Approve a contract with Hanley & Fleishman, LLP for District legal service.

**STAFF RECOMMENDATION**

***Motion: I move that the Board adopt Resolution 2016-29 approving the contract with Hanley & Fleishman, LLP for legal counsel services.***

**DISCUSSION**

The District board of directors directed that staff prepare a request for qualifications and proposal (RFP/RFQ) for legal counsel services. The RFP/RFQ was distributed to several local firms, posted on the California Special Districts Association website, and provided to other firms who specifically requested to be considered by the Board. On May 23, 2016, eleven (11) proposals were received from legal firms from throughout the state. Board President Ochylski and Vice President Storm reviewed the proposals and scheduled interviews with the top three candidate firms.

Following interviews, the Board directed management to develop a draft contract with the firm of Hanley & Fleishman, LLP for consideration by the Board on the consent agenda. The standard engagement agreement has been reviewed and is included herein; recommended for your approval.

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.lososocsd.org](http://www.lososocsd.org)

Date: July 7, 2016  
Agenda Item: 6D  
( ) Approved  
( ) Denied  
( ) Continued to

**RESOLUTION NO. 2016-29**

**RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE LOS OSOS COMMUNITY SERVICES DISTRICT  
APPROVING A CONTRACT FOR DISTRICT LEGAL COUNSEL SERVICES**

**WHEREAS**, the Los Osos Community Services District (District) is formed an operating in accordance with California Government Code 61000 et seq to provide public services to the community of Los Osos; and

**WHEREAS**, the District is authorized by Government Code Section 61060 to enter into and perform all contracts, including, but not limited to, contracts for legal and other professional services, and

**WHEREAS**, the District has determined the need to engage the services of legal counsel qualified, licensed and insured to perform the duties of District General Counsel; and

**WHEREAS**, the District has determined that it is in the best interest of the District to enter into this contract with Hanley and Fleishman, LLP to serve as General Counsel; and

**WHEREAS**, Hanley and Fleishman, LLP has prepared a work proposal that meets the needs of the District, and is attached hereto and incorporated herein.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LOS OSOS COMMUNITY SERVICES DISTRICT AGREES THAT THE AGREEMENT WITH HANLEY AND FLEISHMAN, LLP IS HEREBY APPROVED EFFECTIVE IMMEDIATELY.**

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

Ayes: \_\_\_\_\_  
Noes: \_\_\_\_\_  
Absent: \_\_\_\_\_  
Conflicts: \_\_\_\_\_

The foregoing resolution is hereby passed, approved, and adopted by the Board of Directors of the Los Osos Community Services District this 7<sup>th</sup> day of July, 2016.

\_\_\_\_\_  
Marshall E. Ochylski  
President, Board of Directors  
Los Osos Community Services District

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Peter J. Kampa  
Interim General Manager and Secretary to the Board

\_\_\_\_\_  
Roy A. Hanley  
District Legal Counsel

# HANLEY & FLEISHMAN, LLP

## LEGAL SERVICES AGREEMENT {Municipal Law; General Counsel Services}

This Agreement made between HANLEY & FLEISHMAN, LLP ("H&F") and THE LOS OSOS COMMUNITY SERVICES DISTRICT ("District"), sets forth the terms and conditions under which H&F agrees to provide certain legal services to District and is intended to meet and fulfill the requirement for a written fee contract under California law.

### SCOPE OF SERVICES

LEGAL SERVICES. District retains H&F to advise, counsel, and represent it as its District General Counsel, as proposed by H&F in its response to the District's Request for Proposals attached hereto as Exhibit "A", and to provide routine legal advice, consultation, and opinions to the District Board and staff, to assist in the preparation and review of ordinances, agreements, contracts and related documents; to attend regular District Board meetings and other meetings as may be considered necessary; to maintain regularly scheduled office hours at District's offices or an agreed upon location, if requested by District; to monitor existing and pending legislation and case law which may affect District; to monitor and from time to time report on litigation in which District is a party or otherwise interested; and subject to prior approval of District, to represent District in litigation and appeals in which the District is a party. These services shall be referred to generally as "Legal Services." As used herein "General Legal Services" mean (1) Attendance at all regularly scheduled District Board meetings; (2) Review and/or preparation of ordinances, resolutions, orders, agreements, forms, notices, declarations, certificates, deeds, leases, and other documents required by the District; (3) Consultation with Board members and District staff as needed, rendering of legal advice and opinions concerning legal matters that affect the District, including new legislation and court decisions, perform research and interpret laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the Board and management staff on legal matters pertaining to District operations; (4) Legal work pertaining to property acquisition, property disposal, public improvements, public rights-of-way and easements, and matters relating to public utilities; (5) code enforcement not involving appearance in court; (6) monitor outside litigation. As used herein, "Special Legal Services" shall mean Legal Services in which H&F appears on behalf of District in a court, administrative agency or other body arising out of an action or proceeding in which District is a party or real party in interest.

ATTENDANCE AT MEETINGS. Unless excused by the Board President, or a majority of the District Board sitting in a duly noticed public meeting, H&F shall attend all regular, adjourned regular, and special meetings of the District Board.

#### DISTRICT ATTORNEY ASSIGNMENT

Roy A. Hanley shall be assigned as District General Counsel. David M. Fleishman shall be assigned as Assistant District General Counsel. Other outside counsel shall be used as necessary, with prior approval of District.

#### DISTRICT DESIGNATED REPRESENTATIVE

District designates its General Manager as its representative under this Agreement. The designated representative is authorized to review services and statements of H&F, and to authorize additional services.

#### RESPONSIBILITIES OF H&F AND DISTRICT

RESPONSIBILITIES OF H&F. H&F will perform the Legal Services called for under this Agreement, keep District informed of progress and developments, and respond promptly to District's inquiries and communications.

RESPONSIBILITIES OF DISTRICT. District will be truthful and cooperative with H&F, keep H&F informed of developments, and timely make any payments required by this Agreement.

#### LEGAL FEES AND BILLING PRACTICES

COMPENSATION. District agrees to pay H&F as and for attorneys' fees for General Legal Services, as defined *supra*, the sum of \$175 per hour for each hour of billed attorney time. District agrees to pay H&F as and for attorneys' fees for Special Legal Services, as defined *supra*, the sum of \$225 per hour for each hour of billed attorney time. The minimum time charge for any particular activity will be one-tenth (1/10) of an hour, and time in excess of the minimum shall be rounded up to the nearest one-tenth (1/10) of an hour.

CHARGEABLE TIME. H&F will account for all activities undertaken in providing Legal Services to District under this Agreement, including, but not limited to, telephone calls relating to District's matters, attendance at meetings, communications with the District Board and Staff, correspondence, review and drafting papers, and legal research.

COSTS. H&F will, in addition to its base fees, incur various costs and expenses in performing Legal Services under this Agreement. H&F agrees to absorb all internal copying and telephone charges. District agrees to pay all

other costs and expenses. Costs and expenses commonly include investigation costs, notarial and certification expense, deposition and reporting expense, expert witness expenses and travel expenses (except that mileage and travel time to and from regularly scheduled and special District Board meetings and office hours shall be absorbed by H&F). All external costs and expenses will be charged at H&F's actual cost. Mileage for other than regularly scheduled District Board meetings and office hours shall be charged at the then-current Internal Revenue Service reimbursement rate. H&F will obtain District's prior consent before incurring any cost item in excess of two hundred fifty dollars (\$250.00). H&F is not obligated to pay or advance any costs or expenses, and may, at its sole option, (1) require District to advance payment for the cost item(s), (2) arrange to have the cost billed directly to District, or (3) advance the cost on behalf of District and seek reimbursement from District.

**PERIODIC BILLING.** H&F will send District periodic statements, not less frequently than monthly, indicating attorney fees and costs incurred, any amounts applied from deposits, any current balance owed, a reasonably detailed description of services performed, and any costs and expenses for which H&F is entitled to reimbursement. District agrees to pay the balance within fifteen (15) days of billing.

#### TERM, DISCHARGE & WITHDRAWAL

**TERM AND TERMINATION.** This Agreement may be terminated by either party with or without cause at any time upon 30 days' written notice to the other party. In the event of termination, District shall be responsible only for fees for services and costs incurred as of the effective date of the termination. This Agreement shall continue until termination or until modified by written Agreement of the parties.

#### OTHER PROVISIONS

**INDEPENDENT CONTRACTOR.** H&F acknowledges that it and/or its principals are independent contractors and not employees of the District.

**ASSIGNMENT.** This Agreement cannot be assigned by either party for any reason whatsoever without the consent in writing of the other party.

**INSURANCE DISCLOSURE.** H&F represents and discloses to District that it maintains professional liability insurance, including errors and omissions coverage, in excess of the legally required limits. H&F further represents and discloses to District that it and/or its principals maintain automobile liability insurance on all vehicles used by H&F and/or its principals with minimum coverage of one hundred thousand dollars (\$100,000.00) per occurrence and three hundred thousand dollars (\$300,000.00) per policy term.



**RESTRICTIONS ON FUTURE REPRESENTATION.** In addition to the proscriptions regarding conflict of interest imposed on H&F by the Business and Professions Code and by the California Rules of Professional Conduct, particularly California Rule 3.310(d), H&F represents that no principal of H&F shall, after the termination of H&F's service or employment with District, appear before any board, commission, committee, or agency of District in relation to any case, proceeding, or application, or contract in which he participated during the period of his service or employment, or which was under his active consideration, for a period of six months from the date of termination of H&F's employment as District Attorney.

**NON-DISCRIMINATION.** H&F agrees that in the provision of services under this Agreement, it shall not unlawfully discriminate against any individual based on that individual's race, color, sex, religion, national origin, ancestry, age, cancer-related medical condition, marital status, physical or mental disability, sexual orientation, or on any other basis protected by California or federal law.

**ARBITRATION.** In case any disagreement, difference, or controversy shall arise between H&F and the District with respect to any matter in relation to or arising out of or under this Agreement, whether as to the construction or operation thereof, or the respective rights and liabilities of the District or otherwise, and the parties to the controversy cannot mutually agree as to the resolution thereof, then such disagreement, difference, or controversy shall be determined by arbitration under the commercial arbitration rules of the American Arbitration Association or upon such other rules as the parties may agree. The submission to arbitration in accordance with the requirements of this section of any and all agreements, differences, or controversies that may arise hereunder is made a condition precedent to the institution of any action or appeal at law or in equity with respect to the controversy involved. The award by the arbitrators shall have the same force and effect and may be filed and entered, as a judgment of the Superior Court of the State of California and shall be subject to appellate review upon the same terms and conditions as the law permits for judgments of Superior Courts.

**ENTIRE AGREEMENT.** This Agreement contains the entire understanding of the parties regarding their rights and obligations hereunder. Any alleged oral representations or modifications concerning this Agreement and the subjects thereof shall have no force or effect unless reduced to a writing signed by both parties.

**AMENDMENT.** This Agreement may be amended only in writing signed by both parties.

NOTICES. Notices regarding this Agreement shall be given to the parties at the following addresses:

District: Los Osos Community Services District  
Attn: General Manager  
2122 9<sup>th</sup> Street  
Los Osos, CA 93402

H&F: HANLEY & FLEISHMAN, LLP  
Attn: Roy Hanley  
8930 Morro Road  
Atascadero, California 93422

EFFECTIVE DATE. The effective date of this Agreement shall be July 1, 2016.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at Atascadero, California.

HANLEY & FLEISHMAN, LLP

BY  
Roy A. Hanley

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at, Los Osos, California.

LOS OSOS COMMUNITY SERVICES DISTRICT

BY \_\_\_\_\_

ATTEST: