

Livermore Area Recreation and Park District

Staff Report

TO: Chair Furst and Board of Directors

FROM: Mathew Fuzie, General Manager

PREPARED BY: Patricia Lord, Assistant General Manager

DATE: April 10, 2019

SUBJECT: Renewal of Agreement with District Legal Counsel

RECOMMENDATION: That the Board of Directors adopt Resolution No. ____, approving the renewal of the agreement for legal services with Neumiller and Beardslee for a three-year term ending April 30, 2022.

BACKGROUND: The District's General Counsel, the legal firm of Neumiller and Beardslee, with assigned counsel Rod Attebery, has completed the term of the agreement from May 1, 2016 through April 30, 2019. The District wishes to renew the agreement for an additional three years, commencing May 1, 2019 and running through April 30, 2022. The firm of Neumiller and Beardslee has agreed to keep the same terms and fee structure for the monthly retainer with a flat fee for basic legal services. The agreement outlines the blended hourly rate for all legal services not included in the retainer. (See attachment). Staff has had an excellent working relationship with the firm and is very satisfied with their work. Staff recommends approval of the renewal.

FISCAL IMPACT: The cost of contract work with Neumiller and Beardslee is included in the District budget. There is no fiscal impact with the agreement extension.

ATTACHMENT:

Amended and Restated Attorney-District Public Agency Representation Agreement



Neumiller & Beardslee

ATTORNEYS AND COUNSELORS | EST. 1903

A Professional Corporation

**AMENDED AND RESTATED
ATTORNEY-DISTRICT PUBLIC AGENCY REPRESENTATION
AGREEMENT**

THIS AGREEMENT (“**Agreement**”) is entered into by and between Neumiller & Beardslee, A Professional Corporation (“**Firm**”) and Livermore Area Recreation and Park District, a Special District organized under the California Public Resources Code (“**District**”).

**SECTION 1
TERM**

Firm shall be engaged for a term beginning May 1, 2019 and ending April 30, 2022. Subject to earlier termination, as provided in this Agreement, this Agreement may be renewed annually or for longer periods by written agreement signed by both parties. An annual review of the Firm’s contract performance will be conducted by the Board and discussed with the Firm.

**SECTION 2
SCOPE AND NATURE OF SERVICES**

District hires the Firm to faithfully represent the legal interests of District and provide accurate, thorough and timely legal services in connection with the District as General Counsel. This Agreement covers all legal services the District may request at the direction of the Board of Directors, the General Manager or other authorized staff. The Firm has designated Rod A. Attebery as General Counsel for District matters. Firm’s designated General Counsel cannot be changed without prior consultation and approval of District. The Firm will take all reasonable steps to keep District informed of progress and to respond to District’s inquiries. On a monthly basis, Firm will submit a status report to District of legal activity for the prior month.

**SECTION 3
OUTSIDE SERVICES**

Any selection in use of services outside of Firm shall first have prior consultation and approval of District.

**SECTION 4
INDEPENDENT CONTRACTOR**

The Firm shall provide legal services to District as an independent contractor, with control over its offices, powers, support staff and other matters except as provided herein.

SECTION 5 **DISTRICT'S DUTIES**

District agrees to be truthful with the Firm, to cooperate, to keep the Firm informed of any information or developments which may come to District's attention that impact the services provided by the Firm. District agrees to abide by this Agreement, pay the Firm's invoices on time. District will assist the Firm in providing necessary information and documents and will appear when necessary at legal proceedings.

SECTION 6 **BILLING PRACTICES, INVOICES, PAYMENTS, AND LATE CHARGES**

A. Separate Files for Matters. The Firm will typically set up separate files for each matter for which we provide service and will invoice those files to you under the assigned matter names. When the Firm's services are completed for a matter, the Firm will separately close and then store the closed files. The Firm may classify small matters that do not warrant setting up separate files as part of a "general" category and will invoice those matters under the "general" matter (although separate files will be opened for minor work if requested).

B. Activities Billed. The Firm will charge for all activities undertaken in providing legal services to District under this Agreement as specifically provided in Section 7.

C. Use of Multiple Attorneys. Depth and diversity of experience and skill is a major asset of the Firm. From time to time, it will be reasonable and necessary for two or more attorneys to meet or confer regarding the facts, law, strategy or tactics of a situation, in order to provide services to District in the most efficient, prudent, and cost-effective manner. When two or more of the Firm's personnel are engaged in working on a matter at the same time, such as in conferences between them, or with District, the Firm will review and consider the subject of the work and the reasonable necessity of having multiple personnel involved in determining whether the total amount billed for such conferences, consultations or meetings should be invoiced.

D. Monthly Statements. The Firm will send District monthly statements reflecting attorney fees and costs incurred and a brief description of work performed. District will pay any balance in full (net 40 days) upon receipt. Any balance remaining unpaid after forty (40) days will incur late charges at the rate of seven-tenths of one percent (0.7%) per month, compounded annually, but in no event higher than the maximum interest rate permitted by law.

SECTION 7 **LEGAL FEES**

Monthly Retainer	\$3500
Blended Rate	\$295 per hour for all Legal Services not included in Retainer

A. Retainer. The District shall pay a flat fee of \$3,500 per month for basic legal services, as may be adjusted by written agreement signed by both parties. Basic legal services (estimated at 15 hours per month) shall include attendance at two Board Meetings per month, travel to Board Meetings, preparation for Board meetings, including but not limited to, agenda

review, assisting the Board and District staff in preparation of the agendas, and telephone and email advice to the District's General Manager and Board Members on routine matters of the District, such as public meeting procedural questions, general Brown Act compliance, basic conflict of interest matters, and form document review and approval.

B. **Blended Rate.** The District shall pay a blended rate of \$285 per hour, as may be adjusted by written agreement signed by both parties, for all other legal services, including but not limited to, legal services related to capital projects, preparation and review of bid documents, bid protests, contract/agreement drafting and review, environmental document preparation and review, employment matters, tax and assessment issues, litigation, and all other legal services not included in basic legal services as defined above.

SECTION 8 COSTS AND OTHER CHARGES

A. **General.** Except as otherwise provided in Section 7, the Firm will incur various costs and expenses in performing legal services under this Agreement. District agrees to pay for all costs, disbursements and expenses in addition to the legal fees.

B. **Out of town travel.** Except as otherwise provided in Section 7, District agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel to the Firm's personnel. District will also be charged the hourly rates for the time the Firm's personnel spend traveling.

C. **Experts, Consultants and Investigators.** To aid in the preparation or presentation of District's case, it may become necessary to hire expert witness, consultants or investigators. District agrees to directly pay such fees and charges. Firm shall engage such outside services pursuant to Section 3 of this Agreement.

D. **Court Action or Arbitration.** If the matter involves a court action or arbitration, District understands that District may be required to pay fees or costs, or both, to other parties in the action. Any such payment will be entirely the responsibility of District.

SECTION 9 ESTIMATED FEES AND COSTS

Except as otherwise provided in Section 7 from time to time, estimates of fees and costs likely to be incurred in a given matter or if a given course of action is pursued may be provided by the Firm. Any estimate provided to District at any time is only an estimate and is not a flat fee or a not-to-exceed amount. Actual legal fees can vary widely depending upon the circumstances of the matter, including the number of meetings, the number of changes required to documents, and how much coordination with third parties is required to obtain information or for other purposes. The estimate also *excludes* any costs or amounts necessary to be paid to third (3rd) parties to complete the work, unless such fees or amount are specifically noted in the estimate. The Firm does not guarantee that actual fees and costs will fall within any estimate provided.

SECTION 10 NO GUARANTY OF OUTCOME

Nothing in this Agreement and nothing in the Firm's statements to District will be construed as a promise or guarantee about the outcome of any matter. While the Firm will make every effort to achieve favorable results for District, the Firm makes no promise or guarantee of any result. The Firm's comments about the outcome of the matter are expressions of opinion only.

SECTION 11 CONFLICTS OF INTEREST

Pursuant to *California Rules of Professional Conduct*, an attorney must avoid representation of adverse interests. Adverse interests may be in the form of actual or potential conflicts. An actual conflict of interest typically exists when the attorney is representing or has previously represented a party whose interests are adverse to District's interests in the present matter. A potential conflict occurs where representation of District in the current matter could develop into an actual conflict in the future. In the event of an actual or potential conflict, the Firm will take necessary steps to comply with the *California Rules of Professional Conduct*, *Business Professions Code*, or any other applicable law.

SECTION 12 ELECTRONIC RESOURCES AND CLOUD STORAGE

To increase the Firm's efficiency for the District, the Firm regularly makes use of email and cellular telephone communications. These technologies are not encrypted and although the Firm believes the risk is slight, there is some possibility that confidential communications with the District could become compromised. The Firm also makes use of off-site computer storage facilities which, although such facilities are encrypted and password protected, does expose communications and material kept at the computer storage facility or "in the cloud" to possible compromise. By agreeing to the Firm's representation, District consents to the Firm's use of these technologies.

SECTION 13 INTEGRATION CLAUSE

This Agreement, when signed by District, is the sole Agreement between the Firm and the District with regard to the matters it addresses. No prior agreement, arrangement, or understandings pertaining to those matters is affective for any purpose. This Agreement may only be modified by a writing signed by both parties.

SECTION 14 SEVERABILITY IN EVENT OF PARTIAL INVALIDITY

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

SECTION 15 INSURANCE

Firm shall provide, and keep in effect for the duration of this Agreement, Certificates of Liability Insurance and Endorsements that provide that District, its officers, employees and agents are named additional insured's under the policy. Said insurance shall be in amounts no less than the following: Professional Liability Insurance in the amount of six (6) million dollars per claim and six (6) million dollars aggregate. In addition, Firm shall comply with California Worker's Compensation coverage requirements. Firm shall also maintain Commercial and General Liability and Bodily Injury Insurance with an occurrence limit of one (1) million dollars, and an aggregate limit of two (2) million dollars. Firm shall also maintain Automobile, Liability and Property Damage Insurance, including coverage on owned, hired, and non-owned automobiles and other vehicles, if used in connection with the performance of the work, with bodily injury and property damage limits of not less than one (1) million dollars per person/per occurrence.

SECTION 16 MEDIATION

If a dispute arises out of or relating to any aspect of this Agreement between District and Law Firm, or the breach thereof, and if the dispute cannot be settled through negotiation, Law Firm and District agree to discuss in good faith the use of mediation before resorting to arbitration, litigation, or any other dispute resolution procedure.

SECTION 17 TERMINATION OF SERVICES

District may terminate services of the Firm at any time upon thirty (30) days' written notice. After receiving such notice and within the thirty (30) day period, the Firm will cease providing services in a manner which protects District's interest to the greatest extent possible. The Firm will cooperate with District in the orderly transfer of all related files and records to District's new counsel.

The Firm may terminate services at any time with District's consent or for good cause. Good cause exists if (a) any statement for fees and costs is not paid within sixty (60) days of its date; (b) District fails to meet any other obligation under this Agreement and continues in that failure for fifteen (15) days after the Firm sends written notice to LARPD; (c) District has misrepresented or failed to disclose material facts to the Firm, refused to cooperate with the Firm, refused to follow advice of the Firm on a material matter, or otherwise made representation by the Firm unreasonably difficult; or (d) any other circumstance exists in which ethical rules of the legal profession mandate or permit termination, including situations where a conflict of interest arises. If the Firm terminates its services, District agrees to execute a substitution of attorneys promptly and otherwise cooperates in effecting the termination.

Termination of the Firm's services, whether by District or by the Firm, will not relieve the obligation to pay for services rendered and costs incurred before the Firm's services formally ceased.

SECTION 18
USE OF SCANNED AND ELECTRONIC SIGNATURES

By agreeing to the Firm's representation, District agrees that scanned counterparts of this Agreement that have been signed by and exchanged between District and the Firm will be deemed binding and effective in the same manner as signed original documents.

AGREED AND ACCEPTED this ____ day of April, 2019.

DAVID FURST
Chair

ROD A. ATTEBERY
Attorney at Law

Date