

HERITAGE RANCH COMMUNITY SERVICES DISTRICT

MEMORANDUM

TO: Board of Directors

FROM: Scott Duffield, General Manager

DATE: March 7, 2024

SUBJECT: Request to consider approval of an agreement with The JAM Law Group to provide general legal counsel services.

Recommendation

It is recommended that the Board of Directors consider approval of an agreement with The JAM Law Group to provide general legal counsel services.

Background

The firm of Adamski Moroski Madden Cumberland & Green LLP has been District General Counsel since 2002.

Discussion

At the December meeting your Board initiated advertising a Request for Proposals for these services. At the January meeting your Board voted to hire The JAM Law Group and directed staff to prepare this agreement. This item was tabled by your Board at the February meeting.

Fiscal Considerations

There are no direct costs associated with this item other than staff labor, Counsel labor, and paying for the cost of the services.

Results

By approving the agreement for legal services, the Board continues to provide for municipal services in a fiscally responsible manner and in accordance with applicable law.

Attachment: Agreement for Legal Services with The JAM Law Group

File: Agreements_District Counsel

AGREEMENT FOR LEGAL SERVICES

This Agreement for Legal Services (“Agreement”) is effective March 7, 2024 (“Effective Date”) between the Heritage Ranch Community Services District (“District”) and The JAM Law Group (“Firm”) to perform the legal services described below. The District and Firm are hereinafter referred to as the “Parties.” 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.

1. RECITALS.

1.1. The scope of the requested representation by the Firm is to advise and represent the District in connection with any legal matters that the District may refer to the Firm from time to time ("Matter(s)"), including acting as District general legal counsel, representing the District in litigation or conflicts, any matters related thereto, and any other matters of District business which may be referred to the Firm from time to time.

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

1.3. The District recognizes and agrees that one or more lawyers and/or paralegals at the Firm may work on the Matter. The District understands that it is hiring the law firm and not any individual lawyers. However, Jeffrey A. Minnery (“Attorney”) will be the attorney primarily responsible for this Matter so long as he is at the Firm and/or the Firm is an active on-going enterprise. Jeffrey A. Minnery is the intended attorney for representation of the District pursuant to the terms and conditions of this Agreement. Accordingly, the District hereby agrees and approves the Firm’s assignment of this Agreement to Jeffrey A. Minnery, individually, or to another firm where Jeffrey A. Minnery is employed or otherwise engaged. The execution of any such assignment or successor related documents may be done administratively by the District General Manager.

1.4. This Agreement is effective as of the Effective Date, regardless of when the Agreement is signed by the Parties.

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

2.1. The District agrees to pay attorneys' fees on the following basis. It is understood that no specific fee is set by law, and that this fee has been specifically agreed to between the Parties. It is understood and agreed that the Firm will submit its monthly invoices and costs advanced to Heritage Ranch Community Services District, attention General Manager. It is

expressly understood and agreed that the District is responsible for the attorneys' fees and cost obligations incurred by the Firm in representing the interests of the District.

2.2. Billing statements will be prepared and mailed by the Firm to the District on a monthly basis. The Firm's billing cycle is the calendar month. Payment of the billing statement is due upon receipt by the District, 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 the District 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 0.1 hour for each task.

2.4. The legal services to be rendered by the Firm on behalf of the District 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. Because the time spent by professionals in performing services on behalf of the District is the most significant element in determining the amount of our fees, the Firm cannot predict in advance what the total amount of fees will be for this engagement. The rate for all attorneys in the Firm will be \$ 215.00 per hour. The firm does not intend to charge for clerical staff in the ordinary course of business. However, the Firm will utilize paralegals if certain projects can be performed by firm paralegals in a manner that ensures the highest level of representation with a decreased cost to the District. The rate for all paralegals in the Firm will be \$ 115.00 per hour.

2.5. These rates are subject to change, typically on an annual basis. It is understood that fees charged in this Matter will include these periodic increases and will be reflected on billing statements.

2.6. 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. The District shall be responsible for all costs and expenses incurred while working on a Matter for the District. 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 advance authorization from the District acting through the General Manager or the Board, the Firm may employ outside legal counsel, investigators and other experts or consultants, whose fees and expenses shall be charged to the District as costs.

3.2. The Firm may, in its discretion, advance some costs and expenses, with

reimbursements to be made by the District 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. The Firm will require the deposit of the Firm's reasonably estimated costs and fees in any mediation, arbitration or trial ten (10) days prior to any such proceeding.

4. RETAINER DEPOSIT.

The Firm will not require an advance retainer prior to the commencement of work in this Matter. The Firm may require a retainer if the anticipated scope of our work changes prior to any mediation, arbitration, or trial of the Matter. To the extent a retainer is requested, it will be deposited into the Firm's client trust account and retained there. The Firm's monthly invoices for fees and costs will be paid from the retainer amount until it is exhausted. If any portion of the retainer deposit is left at the conclusion of the Firm's engagement, it will be returned to the District.

5. REPRESENTATIONS.

It is acknowledged that the Firm has made no representation whatsoever regarding the successful resolution of the Matter.

6. COOPERATION AND RESOLUTION.

The District agrees to cooperate fully with us in all aspects of the Matter. Examples of the assistance that the District is 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.

7. DISCHARGE, WITHDRAWAL OR COMPLETION OF REPRESENTATION.

7.1. The District 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 the District are: 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.

7.2. Unless specifically agreed by all parties, the Firm will provide no further services and advance no further costs after receipt of notice that the District has discharged the Firm as the District's attorneys.

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

7.4. The District and the Firm each agree to sign any documents reasonably necessary to complete the Firm's discharge or withdrawal as the District's attorneys.

7.5. 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.

8. ARBITRATION.

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

8.2. 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.

9. OTHER PROVISIONS.

9.1. **Waiver.** Waiver by either Party of any term or condition in this Agreement or any breach shall not constitute a waiver of any other term or condition or breach of this Agreement.

9.2. **Right to Seek Independent Legal Advice.** Before entering into this Agreement, the Firm has advised the District of the District's right to seek the advice of an independent attorney concerning the terms and conditions of this Agreement. The District may seek such independent advice as it desires concerning any questions on this Matter.

9.3. **Insurance Coverage.** The Firm will maintain errors and omissions insurance applicable to the legal services to be provided.

9.4. **Notices.** Any notice or communication permitted or required by this Agreement shall be in writing and may be made by personal delivery to the Firm or to the Board President; or, if delivered by mail, shall become effective two (2) days after mailing by certified mail, return receipt requested, postage prepaid addressed as follows:

9.4.1. If to the District, to: Board President, Heritage Ranch Community Services District, at the then-current business address for the District.

9.4.2. If to the Firm, at the address listed on the last billing statement received by the District from the Firm.

9.5. **Entire Agreement.** This Agreement contains all of the terms agreed upon by all Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, arrangements, and communications between the parties concerning such subject matter, whether oral or written. This Agreement may only be amended by a written instrument signed and dated by all Parties and approved by resolution of the Board.

9.6. Drafting. This Agreement shall be interpreted as if it had been drafted by both parties concurrently and equally and shall not be interpreted against either Party by virtue of that Party having primarily drafted the Agreement.

THE JAM LAW GROUP (“FIRM”)

HERITAGE RANCH COMMUNITY SERVICES DISTRICT

By: _____

By: _____

Board President

Its: _____

Date: _____

Date: _____

HERITAGE RANCH COMMUNITY SERVICES DISTRICT

MEMORANDUM

TO: Board of Directors

FROM: Scott Duffield, General Manager

DATE: March 7, 2024

SUBJECT: Request to approve filling the vacancy on the Board by appointment and direct staff to post a notice of vacancy pursuant to the appointment process.

Recommendation

It is recommended that the Board of Directors

1. Approve filling the vacancy on the Board by appointment; and
2. Direct staff to post a notice of vacancy pursuant to the appointment process; and
3. Place consideration of an appointment on the March 21, 2024 agenda.

Background

At the January 18, 2024 meeting, Director Capps provided notice of relocating out of the area on February 29, 2024, which creates a vacancy on the Board for his term ending December 2024.

The District Municipal Code, and the California Government Code Section 61042, specifies that a vacancy in the office of Director shall be filled pursuant to Section 1780. Section 1780 provides details of the process and states that the vacancy may be filled by appointment of the remaining Directors, or by calling for a special election.

Further, an appointment must be made within sixty days of the effective date of the vacancy, or when the Board was notified of the vacancy, whichever is later. The person appointed shall hold office through the next general election cycle. If the vacancy is not filled by appointment within sixty days, the County Board of Supervisors may fill the vacancy or call for a special election. Government Code Section 1780 is attached.

Discussion

The District has made several appointments to vacant seats on the Board over its history. It has been the practice of the District to declare vacancies on their Board and to direct staff to post notices of vacancies pursuant to the legal requirements listed above. A proposed notice for this vacancy is attached.

Government Code Section 1780 states the vacancy notice must be placed in three or more places in the District for at least fifteen days before an appointment is made. The person appointed must be a registered voter residing within the boundaries of the District.

The County Clerk-Election's Office will confirm residency and voter registration. The Board must fill the vacancy by April 30, 2024.

Any person desiring to be appointed to the vacancy must submit a letter to the Board requesting such. Appointment of a candidate for the vacant seat is at the discretion of the Board and is done in open session.

The attached notice will be published on Friday, March 8, 2024, with a deadline for letters of interest of Friday, April 11, 2024, at 12:00 p.m. This allows the required period of time for interested people to respond to the notice of vacancy. All letters of interest received by the deadline will be forwarded to the Board for consideration at the April 18, 2024, regular meeting starting at 4:00 p.m., or a Special Meeting in April to be determined if needed.

Fiscal Considerations

There are no direct costs other than staff labor for the appointment process. If the Board chooses to hold a special election through the County Elections office, then there would be additional costs.

Results

By approving the appointment process, the Board continues to provide municipal services in a fiscally responsible manner and in accordance with applicable law.

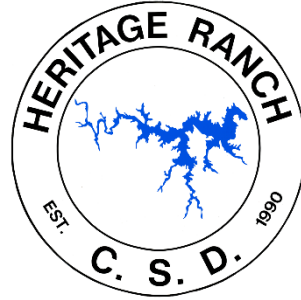
Attachment: Draft Vacancy Notice
Government Code Section 1780

File: Board of Directors

Heritage Ranch Community Services District
4870 Heritage Road, Paso Robles, CA 93446

Phone (805) 227-6230 Fax (805) 227-6231

Contact.us@heritageranchcsd.ca.gov



NOTICE OF VACANCY ON THE BOARD OF DIRECTORS

For the Heritage Ranch Community Services District

And the Intent to Appoint

To all interested and qualified persons:

A vacancy now exists on the Board of Directors for the Heritage Ranch Community Services District. This vacancy is a result of the resignation of Director Devin Capps. The appointed person will hold office through the next general election cycle in November (through November 2024).

It is the intent of the remaining four Directors to appoint a person to this vacancy at their regular meeting of April 18, 2024, at 4:00 p.m., or a special meeting in April to be determined if needed, to be held at the District office at the address above.

Any person interested in being appointed to the Board of Directors should submit a letter of interest to the Board no later than 12:00 p.m. on April 11, 2024. All letters of interest from candidates should be submitted to the District office for delivery to the Board members. Qualified candidates must reside within the service boundaries of the District and be a registered voter.

It is suggested that letters of interest include your reasons for wanting to serve, any experience and qualifications that relate to the position of Director, and any other information that you feel might be of benefit to the selection and appointment by the Board of Directors.

If you have any questions, please contact Scott Duffield, District General Manager.

Posted March 8, 2024


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GOVERNMENT CODE - GOV

TITLE 1. GENERAL [100 - 7931.000] (Title 1 enacted by Stats. 1943, Ch. 134.)

DIVISION 4. PUBLIC OFFICERS AND EMPLOYEES [1000 - 3599.84] (Division 4 enacted by Stats. 1943, Ch. 134.)

CHAPTER 4. Resignations and Vacancies [1750 - 1782] (Chapter 4 enacted by Stats. 1943, Ch. 134.)

ARTICLE 2. Vacancies [1770 - 1782]

(Article 2 added by Stats. 1943, Ch. 134.)

1780. (a) Notwithstanding any other provision of law, a vacancy in any elective office on the governing board of a special district, other than those specified in Section 1781, shall be filled pursuant to this section.

(b) The district shall notify the county elections official of the vacancy no later than 15 days after either the date on which the district board is notified of the vacancy or the effective date of the vacancy, whichever is later.

(c) The remaining members of the district board may fill the vacancy either by appointment pursuant to subdivision (d) or by calling an election pursuant to subdivision (e).

(d) (1) The remaining members of the district board shall make the appointment pursuant to this subdivision within 60 days after either the date on which the district board is notified of the vacancy or the effective date of the vacancy, whichever is later. The district shall post a notice of the vacancy in three or more conspicuous places in the district at least 15 days before the district board makes the appointment. The district shall notify the county elections official of the appointment no later than 15 days after the appointment.

(2) If the vacancy occurs in the first half of a term of office and at least 130 days prior to the next general district election, the person appointed to fill the vacancy shall hold office until the next general district election that is scheduled 130 or more days after the date the district board is notified of the vacancy, and thereafter until the person who is elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall hold office for the unexpired balance of the term of office.

(3) If the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next general district election, or if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy shall fill the balance of the unexpired term of office.

(e) (1) In lieu of making an appointment the remaining members of the board may within 60 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, call an election to fill the vacancy.

(2) The election called pursuant to this subdivision shall be held on the next established election date provided in Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code that is 130 or more days after the date the district board calls the election.

(f) (1) If the vacancy is not filled by the district board by appointment, or if the district board has not called for an election within 60 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, then the city council of the city in which the district is wholly located, or if the district is not wholly located within a city, the board of supervisors of the county representing the larger portion of the district area in which the election to fill the vacancy will be held, may appoint a person to fill the vacancy within 90 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, or the city council or board of supervisors may order the district to call an election to fill the vacancy.

(2) The election called pursuant to this subdivision shall be held on the next established election date provided in Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code that is 130 or more days after the date the city council or board of supervisors calls the election.

(g) (1) If within 90 days of the date the district board is notified of the vacancy or the effective date of the vacancy, whichever is later, the remaining members of the district board or the appropriate board of supervisors or city council have not filled the vacancy and no election has been called for, then the district board shall call an election to fill the vacancy.

(2) The election called pursuant to this subdivision shall be held on the next established election date provided in Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code that is 130 or more days after the date the district board calls the election.

(h) (1) Notwithstanding any other provision of this section, if the number of remaining members of the district board falls below a quorum, then at the request of the district secretary or a remaining member of the district board, the appropriate board of supervisors or the city council shall promptly appoint a person to fill the vacancy, or may call an election to fill the vacancy.

(2) The board of supervisors or the city council shall only fill enough vacancies by appointment or by election to provide the district board with a quorum.

(3) If the vacancy occurs in the first half of a term of office and at least 130 days prior to the next general district election, the person appointed to fill the vacancy shall hold the office until the next general district election that is scheduled 130 or more days after the date the district board is notified of the vacancy, and thereafter until the person who is elected at that election to fill the vacancy has been qualified. The person elected to fill the vacancy shall hold office for the unexpired balance of the term of office.

(4) If the vacancy occurs in the first half of a term of office, but less than 130 days prior to the next general district election, or if the vacancy occurs in the second half of a term of office, the person appointed to fill the vacancy shall fill the balance of the unexpired term of office.

(5) The election called pursuant to this subdivision shall be held on the next established election date provided in Chapter 1 (commencing with Section 1000) of Division 1 of the Elections Code that is held 130 or more days after the date the city council or board of supervisors calls the election.

(Amended by Stats. 2007, Ch. 343, Sec. 4. Effective January 1, 2008.)