



## **BOARD MEETING AGENDA SUBMITTAL**

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**TO:** GCSB Board of Directors

**FROM:** Peter Kampa, General Manager

**DATE:** June 29, 2023

**SUBJECT:** Agenda Item 1A: Adoption of a Resolution Authorizing the General Manager to Enter into a Professional Services Contract with White Brenner, LLC for General Counsel Legal Services for the District

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### **RECOMMENDED ACTION:**

Staff recommends the following action:

*I move to adopt Resolution 32-2023 authorizing the General Manager to enter into a Professional Services Contract with White Brenner, LLC for General Counsel Legal Services for the District.*

### **BACKGROUND:**

On May 10, 2023, staff received a letter from Attorney Eric Nims notifying the District that their firm will no longer be able to represent GCSB due to the retirement of the firm's Municipal Agency Department's Lead Attorney, Dan Schroeder.

On May 24, 2023, the Board adopted Resolution 28-2023 *Authorizing the General Manager to issue Request for Proposal and Scope of Work for General Counsel Legal Services for the District*. On May 25, 2023, staff issued the Request for Proposals (RFP) on the CSDA RFP Clearinghouse, the RFP deadline was June 16<sup>th</sup>. The District received one (1) proposal from White Brenner, LLC; after reviewing White Brenner's Scope of Work staff has determined that White Brenner, LLC Firm is very experienced with Municipal Local Governments and currently serves as General Counsel for Georgetown Divide Public Utility District, Grizzly Flats Community Services District, Rio Linda-Elverta Community Water District, and San Simeon Community Services District to name a few.

Representation by Neumiller & Beardslee will expire after June 30, 2023, for this reason, staff is recommending the Board to authorize the General Manager to enter into a Professional Service Contract with White Brenner, LLC for General Legal Counsel before the end of June, to avoid a lapse in representation.

## **FINANCIAL IMPACT**

The Firm will bill straight by the hour for General Counsel Legal Services. White Brenner, LLC bills at a blended rate for all professionals including attorneys, paralegals, and law clerks. Hourly time is billed in increments of 1/10 of an hour.

**General Legal:** \$200 per hour for all attorneys, paralegals, and law clerks

**Special:** \$295.00 per hour for all attorneys, paralegal, and law clerks

**Cost Recovery:** \$395.00 per hour for all attorneys, paralegal, and law clerks

The Firm does not charge for administrative professionals.

## **ATTACHMENTS:**

1. White Brenner Proposal (linked)  
<https://www.gcsd.org/files/66d3f7e37/Groveland+CSD+Proposal+for+General+Counsel+Services.pdf>
2. Professional Services Agreement (Draft)
3. Resolution 32-2023

## CONTRACT FOR PROFESSIONAL SERVICES

This Contract is made this 29<sup>th</sup> day of June, 2023 by and between Groveland Community Services District, a special district organized under the laws of California (hereinafter called "District") and White Brenner, LLC hereinafter called "Consultant."

### 1. THE CONTRACT

This Contract consists of: (1) the general terms and conditions contained herein, and (2) the Exhibits attached hereto, as Exhibits A1 and A2 through B inclusive. The District has furnished the Consultant with the general program and requirements of Consultant's services and the Consultant acknowledges being informed as to the nature and extent of the services required. It is expressly understood between the parties that the District is relying on and looking to the Consultant for performing and establishing the specific and technical requirements of the professional services described below, except where otherwise provided.

### 2. THE PROFESSIONAL SERVICES

Consultant shall execute the following professional services specified in Exhibit A1 and A2 (Scope of Work) attached hereto and incorporated herein by reference.

### 3. COMPENSATION FOR SERVICES

Consultant shall receive compensation for performance of the professional services in the amount, and at the times specified, in Exhibit B (Compensation) attached hereto and incorporated herein by reference.

### 4. CONSULTANT'S RESPONSIBILITIES

A. The Consultant shall perform those services specified in Exhibit A (Scope of Work) and any such additional services as may be authorized in accordance with Article 6 hereof.

B. Consultant enters into this Contract, and will remain through the term of this Contract, as an independent contractor. Consultant agrees that Consultant is not and will not become an employee of the District while this Contract is in effect. Consultant is not entitled to the rights or benefits afforded to the District's employees, including but not limited to disability or unemployment insurance, worker's compensation, medical insurance, sick leave or other employment benefits. Consultant is responsible for providing at Consultant's own expense disability, unemployment, and other insurance, workers' compensation (as set forth below), training, permits, and licenses for Consultant and for Consultant's employees and subcontractors. The Consultant shall be responsible for methods and means used in performing the Consultant's services under this Contract.

C. In the event the Consultant's services are related to a particular project, the Consultant's services shall be performed in a manner, sequence and timing so that they will be coordinated with the needs of the District and other consultants, engineers, architects or contractors for the project. The District shall be the general administrator of the professional services for the project and shall facilitate the exchange of information amongst the consultants, engineers, architects or contractors retained by the District for the project as necessary for the coordination of the project. Except as authorized by the District, all communications between the Consultants and the District or others for the project shall be through the District.

D. The Consultant shall provide progress copies of drawings, reports, specifications and other necessary information to the District and other contracted consultants for coordination and review. All aspects of the project designed by the Consultant shall be coordinated by the Consultant, and the Consultant shall also become familiar with aspects of the project designed by the engineers and/or contracted consultants as necessary for the proper coordination of the project.

E. Consultant may, at Consultant's own expense, use any employees or subconsultants as Consultant deems necessary to perform the services required of Consultant by this Contract. The District shall not control, direct or supervise Consultant's employees or subconsultants in the performance of those services.

F. Consultant agrees that all designs, plans reports, specifications, drawings, inventions, processes and other information or documents produced by Consultant as a product of the performance of Consultant's services under this Contract will be and are hereby assigned to the District as the sole and exclusive property of the District and the District's assigns, nominees and successors, as well as any copyrights, patents, or trademarks obtained by Consultant in connection with the performance of services under this Contract.

G. Any written, printed, graphic, electronically or magnetically recorded information furnished by the District for Consultant's use are the sole property of the District. All such information shall be proprietary, including, but not limited to customer requirements, customer lists, marketing information and information regarding the project, the District's employees, products, services, prices, operations and subsidiaries. Consultant will keep such proprietary information in the strictest confidence, and will not disclose it by any means to any person except with the District's approval or except as required by law. On termination of the Contract, Consultant will return any proprietary information in Consultant's possession to the District.

H. Consultant agrees to indemnify and hold harmless the District, the members of its governing board and its officers, agents and employees from and against all demand, claims, damages, losses, liabilities, expenses and/or costs including reasonable attorney's fees and court costs, arising out of Consultant's willful misconduct, or negligent or reckless acts, errors, or omissions of services contemplated by this Contract, except however, for any such demands, claims, damages, losses liabilities, expenses and/or costs resulting from the willful misconduct, reckless acts, errors or omissions, or negligence of the District and/or its prorata share of negligence.

## 5. DISTRICT'S RESPONSIBILITIES

A. If the Consultant's services are related to a particular project, the District shall, with reasonable promptness, provide available information regarding the requirements for the project, including any existing or proposed plans and specifications and any requirements of public or quasi-public governmental agencies of which the District is aware.

B. The District may designate a representative authorized to act on the District's behalf with respect to the Consultant's services and, if applicable, the project. The District or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.

## 6. TERMINATION, SUSPENSION OR ABANDONMENT

A. Notwithstanding any other provision of this Contract, this Contract may be terminated by either party at any time by giving thirty (30) days written notice to the other party. In the event of such termination, Consultant shall be compensated hereunder for the value of services performed to the date of termination. In the event of such termination without cause, the District shall not be entitled to rely upon, nor shall Consultant have any liability arising out of the District's use of incomplete designs, plans, reports, specifications, drawings, or other uncompleted tasks.

B. This Contract may be terminated by either party upon not less than seven (7) days written notice should the other party fail to substantially perform in accordance with the terms of this Contract through no fault of the party initiating the termination. For purposes of this subparagraph, the failure to substantially perform in accordance with this Contract includes, but is not limited to, the following:

(1) The District's failure to pay Consultant any compensation due within sixty (60) days after written demand for payment.

(2) Consultant's failure to competently complete the services specified under this Contract within the time periods specified herein or as reasonably directed by the District.

(3) Consultant's or the District's material breach of any representation or agreement contained herein.

(4) Failure of consultant to maintain insurance coverage as required in Section 7.

(5) Consultant may also withdraw from this Contract upon seven (7) days written notice in the event of the District's refusal to cooperate with Consultant or to follow Consultant's advice on any material matter, or the occurrence of any fact or circumstance that would render Consultant's services unlawful or unethical.

(6) In the event of any such termination, Consultant shall be compensated hereunder for the value of services performed to the date of termination.

## 7. INSURANCE COVERAGE

A. Consultant shall maintain insurance covering claims arising out of the performance of professional services under this Contract and caused by the errors, omissions or negligent acts for which the Consultant is liable, in an amount of no less than \$1,000,000 per occurrence. Additional coverage or terms may be required for Consultant's services related to a particular project.

B. The Consultant shall carry the following additional insurance:

C. General Liability Insurance, which insurance shall have limits of liability not less than the following:

Bodily Injury:	\$1,000,000 each occurrence
	\$1,000,000 each person
	\$2,000,000 aggregate
Property Damage:	\$1,000,000 each occurrence
	\$2,000,000 aggregate

Consultant shall furnish the District, upon request, with (1) a certificate of insurance countersigned by an authorized agent or representative of the insurance company, that the insurance policies will not be cancelled, altered or reduced without thirty (30) days prior written notice to the District and that the policy or policies do not exclude coverage for contractual liability, and (2) an endorsement to the General Liability Policy, in the form of CG2010, or such other form reasonably acceptable to the District, confirming that the District and/or any of the affiliates and additional entities of the District that the District may designate, are named as additional insured on such policies. In the event of cancellation for non-payment, the District may pay premiums due by Consultant and deduct the paid payment from amounts then or subsequently owing to the Consultant hereunder. Insurance limits called for herein shall be considered to be minimum and the District shall have the absolute discretion to require higher limits should the nature of the work and risks involved therein call for such higher limits.

## 8. SAFETY

A. Consultant shall strictly observe and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or properties or their protection from damage, injury or loss. Without limiting the foregoing, Consultant shall comply with requirements, regulations, orders and directives promulgated under the Federal Occupational Safety and Health Act, the California Occupational Safety and Health Act, and the California Safe Drinking Water and Toxic Enforcement Act of 1986.

B. Consultant shall be liable to the District for all loss, cost and expense attributable to any acts of commission or omission by the Consultant, or its employees or agents resulting from the failure to use reasonable safety precautions and programs or to comply with safety laws, regulations or ordinances, including but not limited to any fines, penalties or corrective measures.

## 9. PAYMENT PROVISIONS

A. Unless otherwise specified in Exhibit B, the Consultant shall render monthly invoices in duplicate covering work completed in such month. Invoices received by the tenth (10<sup>th</sup>) of the month and approved for payment shall be paid within thirty (30) days.

B. Additional services, beyond the services listed in Exhibit A, may be required by the District. Such additional services shall be performed only in accordance with Change Orders, authorized and issued by the District or the District's designated representative. Each Change Order shall list the scope of revisions to be performed, state the time within which the work is to be completed, designate any special conditions, and state the agreed upon compensation for such services.

## 10. MISCELLANEOUS PROVISIONS

A. This Contract represents the entire and integrated agreement for the services between the District and Consultant and may be amended only by written instrument signed by both the District and Consultant.

B. Any notices required to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested, by facsimile, or by any nationally recognized overnight service. Notices must be addressed to the parties at the addresses indicated on this Contract, but each party may change the address by giving written notice in accordance with this paragraph. Notices personally delivered will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of the date of receipt or the fifth day after mailing, whichever occurs first. Notices sent by overnight services or facsimile shall be deemed communicated as of the earlier of the date of receipt or twenty-four (24) hours after mailing.

C. If any provision of this Contract is held by a court of a competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

D. This Contract shall be binding upon the executors, administrators, heirs, successors and assigns of the District and the Consultant.

E. If any legal action or arbitration is instituted, including an action for declaratory relief to enforce or interpret the provisions of the Contract, the prevailing party will be entitled to reasonable attorney's and expert fees, which may be set by the court in such action or arbitration,

or in a separate action brought for that purpose, in addition to any other relief to which that party may be awarded.

F. This Contract will be governed by and construed in accordance with the laws of the State of California.

G. In the event that either the District or the Consultant shall at any time waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or any other covenant, condition, or obligation.

H. If any term, condition or covenant of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Contract shall be valid and binding on District and Consultant.

I. If the scope of services includes Consultant's assistance in applying for governmental permits or approvals, Consultant's assistance shall not constitute a representation, warranty or guarantee that such permits or approvals will be acted upon favorably by any governmental agency.

**District Signature:**

**Consultant Signature:**

**By:** \_\_\_\_\_  
Groveland Community Services District

**By:** \_\_\_\_\_  
White Brenner, LLC

**Its:** \_\_\_\_\_  
General Manager, Peter Kampa

**Its:** \_\_\_\_\_

Groveland Community Services District  
18966 Ferretti Rd.  
Groveland, CA 95321

White Brenner, LLC  
1414 K Street, 3rd Floor  
Sacramento, CA 95814

Mailing Address:  
P.O. Box 350  
Groveland, CA 95321-0350

Tel: (916) 468-0946

Tel: (209) 962-7161



## Exhibit A1

### SCOPE OF WORK

Counsel is hired by and reports to the Board of Directors and is responsible for advising on all legal matters. The primary responsibilities the District will require of its counsel shall include, but are not limited to, the following:

- Represent and provide legal advice and consultation on a regular basis to the District and District Staff as requested or required. Contacts are usually made by email or telephone and same-day response is typically expected.
- Attend monthly Board meetings (when necessary) by zoom or in person and be prepared to advise the Board on matters on the agenda as well as procedural or substantive issues that arise during the meeting.
- Coordinate and manage the services and costs of all outside or special legal counsel within budgetary limits as approved by the Board.
- Recommend policies and procedures that comply with the requirements of the law.
- Keep the Board and District Staff informed of legislation or judicial opinions that have potential impact to the District.
- Prepare, review and revise staff documents, including, but not limited to, initiation of memorandums concerning legal issues, contracts, agreements, ordinances, meeting agendas, resolutions, land use decisions on appeal, and staff reports for the legal support of District functions and duties.
- Provide staff assistance, legal research and counseling related to the acquisition or sale of property, preparation of leases, deeds and easements, agreements, utility franchise agreements, operations governed by law, liability situations, grant guidelines, pension law, personnel, employee relations and other matters as necessary requiring legal advice.
- Provide guidance concerning the requirements of the Brown Act, Conflict of Interest (AB 1234), the Political Reform Act, the Public Records Act, due process, and other legal requirements imposed by statute and common law.
- Provide guidance and assist with the Proposition 218 process as it relates to rate increases by Special Districts.
- Assist with responses to Public Records Act requests when needed.
- Research and interpret laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the Board and District staff on legal matters pertaining to District operations.

- Represent the District as requested before other governmental bodies and agencies to promote the interest of the District.
- Perform other legal duties as may be required by the District as may be necessary to complete the performance and functions mentioned above.
- Promptly return all phone calls from the Board and District Staff.

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## Exhibit A2

### SCOPE OF WORK

Firm shall perform the following Legal Services for District upon the request of District's General Counsel:

- Real estate transactions;
- Environmental, labor, and employment services;
- Routine legal advice, consultation, and opinions to District and the General Counsel;
- Legal compliance advice, including, but not limited to, conflicts of interest advice;
- General transaction work, including drafting contracts and agreements;
- Assistance in the preparation and review of construction and procurement documents;
- Monitoring pending and current state and federal legislation and case law, as appropriate; and
- Litigation.

## Exhibit B

### COMPENSATION

#### Fee Proposal

The Firm understands the challenges public agencies face in trying to balance selecting a firm that is the most qualified with the firm that is the most cost-effective. White Brenner combines both of these factors by implementing more cost-effective and efficient systems for delivering high quality legal services in a timely fashion and at an affordable cost. We believe the quality and depth of our experience and expertise is unmatched by any other firm, large or small. Our Firm will monitor the District's legal expenses and budget on a regular basis. Actively monitoring expenses allows our Firm the ability to work with the District to proactively address any budgetary concerns and set expectations.

Our Firm is consistently able to keep legal charges at or below the budgeted amount. When adjustments need to be made it is largely due to unforeseen issues such as unexpected litigation. When these unexpected events do occur, the Board of Directors and General Manager are immediately informed and an estimated budget for the unexpected event is created. The Board of Directors and General Manager are then in a position to be able to put together a budgetary plan even when the unexpected happens.

During the interview process, our Firm would welcome the opportunity to discuss a fee structure that would best suit the District's needs. Prior to any such discussions, the Firm proposes the following compensation arrangement. Below is an hourly fee structure for our public clients, which reflects our discounted rates for both General Counsel and Specialized services.

#### Hourly Billing

The Firm will bill straight by-the-hour for General Counsel legal services. White Brenner bills at a blended rate for all legal professionals including attorneys, paralegals, and law clerks. Hourly time is billed in increments of 1/10 of an hour.

General Legal: Blended at \$200.00 per hour for all attorneys, paralegals, and law clerks

Special: Blended at \$295.00 per hour for all attorneys, paralegals, and law clerks

Cost Recovery: Blended at \$395.00 per hour for all attorneys, paralegals, and law clerks

The Firm does not charge for administrative professionals.

General Counsel Legal Services: Examples of the legal services that are considered general legal services include the following:

- Routine legal advice, consultation, and opinions to the District and staff;
- Assistance in the preparation and review of agendas for Board meetings and other special meetings;
- Review of agreements, contracts and related documents, forms, notices, and other documents required by the District;

- Attendance, in-person or via video or teleconferencing, at scheduled Board meetings or other meetings as requested by the Board;
- Routine employment law advice and counsel; and
- Coordinating the work of outside legal counsel as needed and as directed by the Board and General Manager.

**Special Counsel Legal Services:** Special Counsel legal services will be provided in addition to, and billed separately from, the General Counsel legal services. Special Counsel legal services include all research, preparation, and follow through on various types of specifically requested special service matters including, but not limited to, litigation, water, complex land development and real estate transactions, matters paid for by enterprise funds, complex environmental, and complex labor and employment services, which will be provided at the hourly rates listed above.

**RESOLUTION 32-2023**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE GROVELAND COMMUNITY SERVICES DISTRICT AUTHORIZING THE GENERAL MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT WITH WHITE BRENNER, LLC FOR GENERAL COUNSEL LEGAL SERVICES FOR THE DISTRICT**

**WHEREAS**, the Groveland Community Services District (herein referred to as District) is a local government agency formed and operating in accordance with Section §61000 et seq. of the California Government Code; and

**WHEREAS**, on May 10, 2023, the District received a resignation notice from Neumiller & Beardslee Attorney and Counselors Law Firm; and

**WHEREAS**, on May 24<sup>th</sup> the Board directed staff to issue Request for Proposals (RFP) to retain General Legal Services for the District; and

**WHEREAS**, on May 25, 2023, District staff issued Request for Proposal for General Legal Counsel to the California Special Districts Association RFP Clearinghouse with the deadline being May 16, 2023; and

**WHEREAS**, the District received one (1) proposal from White Brenner, LLC; and

**WHEREAS**, after reviewing White Brenner, LLC Scope of Work staff has determined that White Brenner, LLC Firm is very experienced with Municipal Local Governments.

**NOW THEREFORE BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF THE GROVELAND COMMUNITY SERVICES DISTRICT DOES** hereby adopt Resolution 32-2023 authorizing the General Manager to enter into a Professional Services Contact with White Brenner, LLC for General Counsel Legal Services for the District.

**WHEREFORE**, this Resolution is passed and adopted by the Board of Directors of the Groveland Community Services District on June 29, 2023, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT

APPROVE:

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Nancy Mora, Board President

ATTEST:

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Rachel Pearlman, Board secretary

**CERTIFICATE OF SECRETARY**

I, Rachel Pearlman, the duly appointed and acting Secretary of the Board of Directors of the Groveland Community Services District, do hereby declare that the foregoing Resolution was duly passed and adopted at a Special Meeting of the Board of Directors of the Groveland Community Services District, duly called and held on June 29, 2023.

DATED: \_\_\_\_\_