



County of Santa Barbara  
BOARD OF SUPERVISORS

Minute Order

June 19, 2018

Present: 5 - Supervisor Williams, Supervisor Wolf, Supervisor Hartmann, Supervisor Adam, and Supervisor Lavagnino

COUNTY COUNSEL, BOARD OF DIRECTORS, FLOOD CONTROL AND WATER CONSERVATION DISTRICT

File Reference No. 18-00436

RE: Consider recommendations regarding an Agreement for Legal Services with Oliver, Sandifer and Murphy for Potential Eminent Domain Action, as follows: (4/5 Vote Required)

Acting as the Board of Directors, Flood Control and Water Conservation District:

a) Approve and authorize the Chair to execute the Agreement for Professional Services between the Santa Barbara County Flood Control and Water Conservation District and attorney Duff Murphy, of the firm Oliver, Sandifer and Murphy, from July 1, 2018 to June 30, 2020, for a total not to exceed amount of \$150,000.00; and

b) Find that the proposed contract is not a "project" under California Environmental Quality Act (CEQA) Guidelines Section 15378(b)(4) in that it does not involve a commitment to any specific project which may result in a potentially significant impact to the environment.

A motion was made by Supervisor Adam, seconded by Supervisor Hartmann, that this matter be Acted on as follows:

Acting as the Board of Directors, Flood Control and Water Conservation District:

a) Approved and authorized; Chair to execute; and

b) Approved.

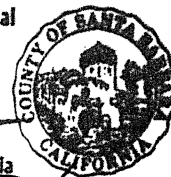
The motion carried by the following vote:

Ayes: 5 - Supervisor Williams, Supervisor Wolf, Supervisor Hartmann, Supervisor Adam, and Supervisor Lavagnino

This is a true certified copy of the original document on file or of record in my office. It bears the seal and signature, imprinted in purple ink, of the Clerk of the Board of Supervisors.

*Mona Higgins*  
Clerk of the Board, Santa Barbara County, California

Date 6-26-18 by Deputy: *Ryan Baker*



## AGREEMENT FOR PROFESSIONAL LEGAL SERVICES

**THIS AGREEMENT** (hereafter Agreement) is made by and between the Santa Barbara County Flood Control and Water Conservation District, a dependent special district of the County of Santa Barbara, a political subdivision of the State of California (hereafter DISTRICT), and OLIVER, SANDIFER & MURPHY, having its principal place of business at 1230 Rosecrans Ave., Suite 300, Manhattan Beach, California 90266 (hereafter ATTORNEY) wherein ATTORNEY agrees to provide and DISTRICT agrees to accept the services specified herein.

### RECITALS

WHEREAS, from time to time DISTRICT requires advice and representation by private legal counsel in the matter of condemnation of certain property; and

WHEREAS, the need for such advice and representation often arises quickly and unexpectedly, so that it is in DISTRICT's interest to have a contract with outside counsel under which those services are readily available as needed; and

WHEREAS, ATTORNEY is specially trained, skilled, experienced, and competent to perform the above-described legal services required by the DISTRICT, and DISTRICT desires to retain the services of ATTORNEY pursuant to the terms covenants, and conditions hereinafter set forth.

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

1. **DESIGNATED REPRESENTATIVE.** Deputy County Counsel Johannah Hartley at phone number 805-568-2950 is the representative of DISTRICT and will administer this Agreement for and on behalf of DISTRICT. Duff Murphy at phone number 213-621-2000 is the authorized representative for ATTORNEY. Changes in designated representatives shall be made only after advance written notice to the other party.

2. **NOTICES.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as agreed upon by the parties, as follows:

To DISTRICT:           Johannah Hartley  
                                  Office of County Counsel  
                                  County of Santa Barbara  
                                  105 East Anapamu Street, #201  
                                  Santa Barbara, California, 93101

To ATTORNEY:         Duff Murphy  
                                  Oliver, Sandifer & Murphy  
                                  Manhattan Towers  
                                  1230 Rosecrans Ave., Suite 300  
                                  Manhattan Beach, California 90266

or at such other address or to such other person that the parties may from time to time designate in writing. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. **SCOPE OF SERVICES.** ATTORNEY agrees to provide services to DISTRICT in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. **TERM.** ATTORNEY shall commence performance upon July 1, 2018 and end performance upon completion of services, but no later than June 30, 2020, unless otherwise directed by DISTRICT. This contract may be earlier terminated by DISTRICT as provided herein.

5. **COMPENSATION OF ATTORNEY.** ATTORNEY shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Billing shall be made by invoice, which shall include the contract number assigned by DISTRICT and which is delivered to the address given in Section 2 **NOTICES** above following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of invoice.

6. **INDEPENDENT CONTRACTOR.** It is mutually understood and agreed that ATTORNEY (including any and all of its officers, agents, and employees) shall perform all of its services under this Agreement as an independent contractor and not as an officer, agent, servant, employee, joint venturer, partner, or associate of DISTRICT. ATTORNEY understands and acknowledges that it shall not be entitled to any of the benefits of a DISTRICT employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. ATTORNEY shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, ATTORNEY shall be solely responsible and save DISTRICT harmless from all matters relating to payment of ATTORNEY's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, ATTORNEY may be providing services to others unrelated to the DISTRICT or to this Agreement.

7. **STANDARD OF PERFORMANCE.** ATTORNEY represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, ATTORNEY shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which ATTORNEY is engaged. All products of whatsoever nature, which ATTORNEY delivers to DISTRICT pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in ATTORNEY's profession. ATTORNEY shall correct or revise any errors or omissions, at DISTRICT'S request without additional compensation. Permits and/or licenses shall be obtained and maintained by ATTORNEY without additional compensation.

8. **DEBARMENT AND SUSPENSION.** ATTORNEY certifies to DISTRICT that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. ATTORNEY certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. **TAXES.** DISTRICT shall not be responsible for paying any taxes on ATTORNEY's behalf, and should DISTRICT be required to do so by state, federal, or local taxing agencies, ATTORNEY agrees to promptly reimburse DISTRICT for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

10. **CONFLICT OF INTEREST.** ATTORNEY covenants that ATTORNEY presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. ATTORNEY further covenants that in the performance of this Agreement, no person having any such interest shall be

employed by ATTORNEY. ATTORNEY has conducted a conflicts evaluation and has discovered no potential conflicts, other than those disclosed to DISTRICT prior to this Agreement. ATTORNEY shall inform DISTRICT immediately of any potential ethical issues or conflicts that may arise in the course of ATTORNEY's representation of the DISTRICT in this matter or at any time in the future, as soon as such an issue or conflict becomes known.

11. **EXPERTS/CONSULTANTS.** ATTORNEY shall get DISTRICT's approval prior to retaining any expert or consultant to assist with any matter covered by this Agreement.

12. **OWNERSHIP OF DOCUMENTS.** DISTRICT shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. ATTORNEY shall not release any materials under this section except after prior written approval of DISTRICT.

No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of DISTRICT. DISTRICT shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

13. **RECORDS, AUDIT, AND REVIEW.** ATTORNEY shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of ATTORNEY's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. DISTRICT shall have the right to audit and review all such documents and records at any time during ATTORNEY's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), ATTORNEY shall be subject to the examination and audit of the California State Auditor, at the request of the DISTRICT or as part of any audit of the DISTRICT, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). ATTORNEY shall participate in any audits and reviews, whether by DISTRICT or the State, at no charge to DISTRICT.

14. **INDEMNIFICATION AND INSURANCE.** ATTORNEY shall agree to defend, indemnify and save harmless the DISTRICT and to procure and maintain insurance in accordance with the provisions of EXHIBIT C attached hereto and incorporated herein by reference.

15. **NONDISCRIMINATION.** DISTRICT hereby notifies ATTORNEY that DISTRICT's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and ATTORNEY agrees to comply with said ordinance.

16. **NONEXCLUSIVE AGREEMENT.** ATTORNEY understands that this is not an exclusive Agreement and that DISTRICT shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by ATTORNEY as the DISTRICT desires.

17. **NON-ASSIGNMENT.** ATTORNEY shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of DISTRICT and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

18. **TERMINATION.**

- A. **By DISTRICT.** DISTRICT may, by written notice to ATTORNEY, terminate this Agreement in whole or in part at any time, whether for DISTRICT's convenience, for nonappropriation of funds, or because of the failure of ATTORNEY to fulfill the obligations herein.
1. **For Convenience.** DISTRICT may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, ATTORNEY shall, as directed by DISTRICT, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on DISTRICT from such winding down and cessation of services.
  2. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or DISTRICT governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then DISTRICT will notify ATTORNEY of such occurrence and DISTRICT may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, DISTRICT shall have no obligation to make payments with regard to the remainder of the term.
  3. **For Cause.** Should ATTORNEY default in the performance of this Agreement or materially breach any of its provisions, DISTRICT may, at DISTRICT's sole option, terminate this Agreement by written notice, which shall be effective upon receipt by ATTORNEY.
- B. **By ATTORNEY.** Should DISTRICT fail to pay ATTORNEY all or any part of the payment set forth in EXHIBIT B, ATTORNEY may, at ATTORNEY's option terminate this Agreement if such failure is not remedied by DISTRICT within thirty (30) days of written notice to DISTRICT of such late payment.
- C. Upon termination, ATTORNEY shall deliver to DISTRICT all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by ATTORNEY in performing this Agreement, whether completed or in process, except such items as DISTRICT may, by written permission, permit ATTORNEY to retain. Notwithstanding any other payment provision of this Agreement, DISTRICT shall pay ATTORNEY for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall ATTORNEY be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. ATTORNEY shall furnish to DISTRICT such financial information as in the judgment of DISTRICT is necessary to determine the reasonable value of the services rendered by ATTORNEY. In the event of a dispute as to the reasonable value of the services rendered by ATTORNEY, the decision of DISTRICT shall be final. The foregoing is cumulative and shall not affect any right or remedy which DISTRICT may have in law or equity.

19. **SECTION HEADINGS.** The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

20. **SEVERABILITY.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall

be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

21. **REMEDIES NOT EXCLUSIVE.** No remedy herein conferred upon or reserved to DISTRICT is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

22. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement and each covenant and term is a condition herein.

23. **NO WAIVER OF DEFAULT.** No delay or omission of DISTRICT to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to DISTRICT shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of DISTRICT.

24. **ENTIRE AGREEMENT AND AMENDMENT.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

25. **SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

26. **COMPLIANCE WITH LAW.** ATTORNEY shall, at ATTORNEY's sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of ATTORNEY in any action or proceeding against ATTORNEY, whether DISTRICT is a party thereto or not, that ATTORNEY has violated any such ordinance or statute, shall be conclusive of that fact as between ATTORNEY and DISTRICT.

27. **CALIFORNIA LAW AND JURISDICTION.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

28. **EXECUTION OF COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

29. **AUTHORITY.** All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or

federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, ATTORNEY hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which ATTORNEY is obligated, which breach would have a material effect hereon.

30. **SURVIVAL.** All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

31. **PRECEDENCE.** In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

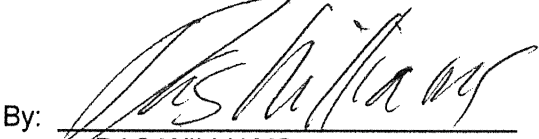
//

//

Agreement for Professional Legal Services between  
the District and Oliver, Sandifer & Murphy.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed  
by DISTRICT.

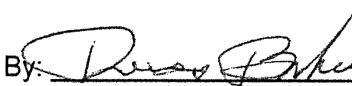
SANTA BARBARA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT

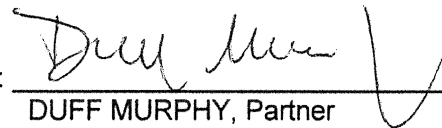
By:   
DAS WILLIAMS  
Chair, Board of Directors

Date: 6-19-18

ATTEST:  
MONA MIYASATO  
COUNTY EXECUTIVE OFFICER,  
CLERK OF THE BOARD and Ex  
Officio Clerk of the Board of Directors,  
Santa Barbara County Flood Control and  
Water Conservation District

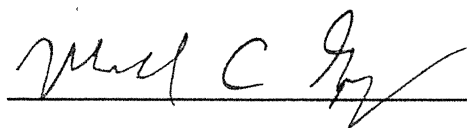
ATTORNEY:  
OLIVER, SANDIFER & MURPHY

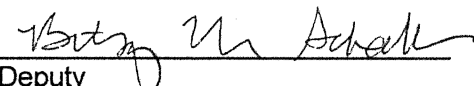
By:   
Deputy

By:   
DUFF MURPHY, Partner  
Tax ID Number: 95-2789775

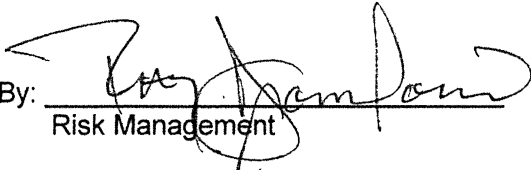
APPROVED AS TO FORM:  
MICHAEL C. GHIZZONI  
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:  
THEODORE A. FALLATI, CPA  
AUDITOR-CONTROLLER

By: 

By:   
Deputy

APPROVED AS TO FORM:  
RAY AROMATORIO,  
RISK PROGRAM ADMINISTRATOR

By:   
Risk Management



## EXHIBIT A

### STATEMENT OF WORK

ATTORNEY shall perform all legal services necessary in eminent domain proceedings for such matters as may be authorized by the Board of Directors. Projects may require the acquisition of an ownership interest in parcels to be designated by the Board. ATTORNEY shall report all progress to District Representative and, upon request, to the Board of Directors. All services provided hereunder shall comply with the terms and conditions set forth in this Agreement and with the applicable provisions of California law. Nothing herein obligates the DISTRICT to initiate any proceedings, or to exclusively use the services of ATTORNEY for any projects, or to incur charges for any minimum number of hours.

## EXHIBIT B

### PAYMENT ARRANGEMENTS Periodic Compensation

- A. Unless previously agreed in writing by DISTRICT, DUFF MURPHY shall be the attorney personally responsible for providing all services hereunder. For attorney services to be rendered under this AGREEMENT, ATTORNEY shall be paid a total contract amount, including cost reimbursements, not to exceed \$150,000.00.
- B. Payment for services and /or reimbursement of costs shall be made upon ATTORNEY's satisfactory performance, based upon the services set forth in **EXHIBIT A** as determined by DISTRICT. Payment for services and/or reimbursement of costs shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **Attachment B-1** (Schedule of Fees). Invoices submitted for payment must contain sufficient detail to enable an audit of the charges and provide supporting documentation.
- C. Monthly, ATTORNEY shall submit to the DISTRICT DESIGNATED REPRESENTATIVE an invoice or certified claim on the Treasury for the service performed over the period specified. These invoices or certified claims must cite the assigned Board Contract Number. DISTRICT REPRESENTATIVE shall evaluate the quality of the service performed and if found to be satisfactory and within the cost basis of **Attachment B-1** shall initiate payment processing. DISTRICT shall pay invoices or claims for satisfactory work within 30 days of presentation.
- D. DISTRICT's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of DISTRICT's right to require ATTORNEY to correct such work or billings or seek any other legal remedy.

## ATTACHMENT B-1 SCHEDULE OF FEES

### HOURLY RATES

ATTORNEY's hourly rates are as follows:

- Principal/Partner Attorneys—Hourly rate is \$350
- Senior Associate/Of Counsel Attorneys—Hourly rate is \$325
- Associate Attorneys—Hourly rate is \$300
- Paralegal —Hourly rate is \$175

### COSTS AND EXPENSES

DISTRICT shall reimburse ATTORNEY for certain costs and expenses actually incurred and reasonably necessary for completing the matter for which DISTRICT has engaged ATTORNEY, as long as DISTRICT's charges for costs and expenses are competitive with other sources of the same products or services. Cost and expenses shall not exceed the amount established in Exhibit B, section A, unless further approved by the DISTRICT's Board of Directors. DISTRICT shall reimburse ATTORNEY in accordance with the following guidelines:

- *Billable costs and expenses:* DISTRICT shall reimburse ATTORNEY at the DISTRICT's reimbursement rates for reasonable costs and expenses incurred by it in performing services for the DISTRICT, such as photocopying, messenger and delivery service, computerized research, travel (including mileage, parking, airfare, lodging, meals, and transportation), long-distance telephone, and filing fees.
- *Nonbillable overhead and administration:* DISTRICT does not expect to be charged for and will not pay for any of the following: attorney time spent preparing time sheets or bills, conflicts checks, local phone service, local travel costs, secretarial services, word processing services, librarian services, other clerical activities such as creating, organizing and maintaining files, distributing documents, overtime, or any other services traditionally considered overhead or administrative.
- *Photocopying:* DISTRICT will reimburse ATTORNEY at a maximum of \$.15 per page for normal photocopying and will not be responsible for time spent by photocopying personnel. ATTORNEY shall give DISTRICT an opportunity to use its own internal staff to duplicate documents or an outside photocopying vendor if certain jobs can be less expensively performed by the DISTRICT or by the vendor.
- *Computerized research:* ATTORNEY shall perform any computerized research in a low-cost manner. Computerized research charges such as Lexis/Nexis or Westlaw that are billed to DISTRICT shall be billed at ATTORNEY's cost and shall be accompanied by a copy of the invoice received by ATTORNEY.
- *Document delivery:* For document delivery costs that are billed to DISTRICT, ATTORNEY shall use the most economical delivery method or service available. To help minimize such costs, ATTORNEY shall use messengers and overnight delivery only where necessary in the interests of urgency and reliability.
- *Multiple billing:* If an attorney works simultaneously on the DISTRICT's matter and a matter for another client of ATTORNEY's firm, DISTRICT shall be billed only for the proportionate amount of time spent on the DISTRICT's matter.

- *Travel:* DISTRICT will reimburse ATTORNEY at the DISTRICT's reimbursement rates for reasonable travel expenses directly related to ATTORNEY's work for DISTRICT when ATTORNEY has obtained DISTRICT's prior approval. First class airfare, luxury accommodations and lavish meals are considered unreasonable expenses and will not be paid. Travel time outside of customary business hours (8 a.m. – 5:30 p.m.) should be billed only when productive work actually is being performed for the DISTRICT.

## **BILLING PROCEDURE**

All invoices must include the following information, in addition to the information specified in Exhibit B:

- Matter description and number;
- A chronological listing and informative description of all legal activity performed (whether or not billed) broken down by date, identity of timekeeper, time spent in increments of one-tenth of an hour, and amounts billed;
- A summary of the names and corresponding billing rates of each attorney or other personnel working on the matter with the total number of hours billed by each during the time period covered by the invoice;
- The total number of hours billed for the matter during the time period covered by the invoice;
- The total charges for the matter for the time period covered by the invoice, for the year to date, and for the matter to date; and
- The last payment, the total payments made by the DISTRICT and any outstanding balances for the matter.

Reimbursable expenses must be included on each bill and should be broken down by category.

## **RESPONSE TO AUDIT INQUIRIES**

If DISTRICT asks ATTORNEY to assist in connection with the issuance of an auditor's report on DISTRICT's financial statements, ATTORNEY may be requested to respond to an inquiry from DISTRICT's auditors based upon accounting standards that require DISTRICT's auditors to make inquiry of DISTRICT's lawyers as to their knowledge of certain "loss contingencies." Upon receipt of an audit inquiry ATTORNEY will, among other things, search ATTORNEY's databases to identify lawyers devoting time to DISTRICT's matters, make inquiry of those lawyers as to their knowledge of any reportable matters and prepare a written response to DISTRICT's auditors and to DISTRICT. Absent special circumstances, ATTORNEY's fee structure for the preparation of these letters is a minimum of \$200 and a maximum of \$500, depending on the extent and number of any matters reported. However, under limited circumstances, the fee may exceed \$500 if the letter requires extensive substantive attention to disclosure or other related issues. This charge will appear on ATTORNEY's invoice as a line item for "Services rendered in connection with preparation of response to audit inquiry." Charges for audit inquiry letters may be changed periodically without prior notice, typically after the end of each calendar year.

## EXHIBIT C

### Indemnification and Insurance Requirements (For Professional Contracts)

#### INDEMNIFICATION

ATTORNEY agrees to indemnify, defend (with counsel reasonably approved by DISTRICT) and hold harmless DISTRICT and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by DISTRICT on account of any claim except where such indemnification is prohibited by law. ATTORNEY's indemnification obligation applies to DISTRICT's active as well as passive negligence but does not apply to DISTRICT's sole negligence or willful misconduct.

#### NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

ATTORNEY shall notify DISTRICT immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

#### INSURANCE

ATTORNEY shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the ATTORNEY, his agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if ATTORNEY has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions) Insurance** appropriate to the ATTORNEY'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the ATTORNEY maintains higher limits than the minimums shown above, the DISTRICT requires and shall be entitled to coverage for the higher limits maintained by the ATTORNEY. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – DISTRICT, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the ATTORNEY including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the ATTORNEY's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the ATTORNEY's insurance coverage shall be primary insurance as respects the DISTRICT, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the DISTRICT, its officers, officials, employees, agents or volunteers shall be excess of the ATTORNEY's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the DISTRICT.
4. **Waiver of Subrogation Rights** – ATTORNEY hereby grants to DISTRICT a waiver of any right to subrogation which any insurer of said ATTORNEY may acquire against the DISTRICT by virtue of the payment of any loss under such insurance. ATTORNEY agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the DISTRICT has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the DISTRICT. The DISTRICT may require the ATTORNEY to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – ATTORNEY shall furnish the DISTRICT with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the DISTRICT before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the ATTORNEY's obligation to provide them. The ATTORNEY shall furnish evidence of renewal of coverage throughout the term of the Agreement. The DISTRICT reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, DISTRICT has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by DISTRICT as a material breach of contract.
9. **Subcontractors** – ATTORNEY shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and ATTORNEY shall ensure that DISTRICT is an additional insured on insurance required from subcontractors.

10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
- i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the ATTORNEY must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – DISTRICT reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. ATTORNEY agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of DISTRICT to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of DISTRICT.